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Writ of Error.

WRIT OF ERROR.

NEW JERSEY, ss.

The State of New Jersey to the
 (SEAL) Chief Justice and other Justices of
 our Supreme Court of Judicature, 10
 GREETING. Because in the record and proceed-
 ings, and also in the giving of judgment in a
 certain plaint which was in our said Supreme
 Court of Judicature, before you, on appeal from
 a judgment of conviction on a certain indictment
 against Peter McCarthy and John Witt, of the
 County of Essex for false pretenses, larceny and
 receiving, by a certain jury of the County of
 Essex taken before the State of New Jersey,
 and Peter McCarthy and John Witt, and where- 20
 of before you said judgment has been affirmed,
 as it is said, manifest error hath intervened, to
 the great damage of the said Peter McCarthy
 and John Witt, as by their complaint we are in-
 formed; we being willing that the error, if any
 there be, should, in due manner, be corrected,
 and full and speedy justice be done to the parties
 aforesaid in this behalf, do command you, that
 if judgment be thereupon given and affirmed, 30
 then you distinctly and openly send, under your
 seal, the record and proceedings and plaint
 aforesaid, with all things touching and concern-
 ing the same, to our judges of our Court of
 Errors and Appeals in the last resort in all
 causes, at Trenton, on the 5th day of December
 next, together with this writ, that the record
 and proceedings aforesaid beng inspected, we
 may cause to be done thereupon, for correcting
 that error what of right and according to the
 law and custom of the State of New Jersey
 ought to be done. 40

Writ of Error.

WITNESS our Chancellor and president Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 15th day of November, 1927.

JOSEPH F. S. FITZPATRICK,
Clerk.

10

IRVING SIEGLER,
Attorney.

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Writ of Error.

WRIT OF ERROR.

New Jersey Supreme Court

NEW JERSEY, *to wit.*

The State of New Jersey to Newton H. Porter, Judge of the Court of (L. s.) Quarter Sessions of the County of Essex, and the Court of Quarter Sessions of the County of Essex, GREETING:

10

Because in the record and proceedings and also in giving of judgment on a certain indictment against Peter McCarthy and John Witt, of the County of Essex for false pretenses, larceny and receiving, whereof before you they have been indicted and are thereof convicted by a certain jury of the County of Essex, taken before the State of New Jersey, and Peter McCarthy and John Witt, as it is said, manifest error hath intervened to the great damage of the said Peter McCarthy and John Witt, as from his complaint we have received information, we being willing in their behalf to correct the error in due manner, if any there be, and that full and speedy justice be done to the said Peter McCarthy and John Witt, do command you that if judgment be thereon given then that you distinctly and openly send under your seal the record concerning the same, to our Justices of our Supreme Court of the State of New Jersey, at Trenton, on the 23rd day of March, next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done therein what of right and according to law should be done.

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Return.

WITNESS, Hon. William S. Gummere, Chief Justice of our Supreme Court, this third day of March, 1925.

EDWARD J. KELLEHER,
Clerk.

10 KESSLER & KESSLER,
Attorneys.

RETURN.

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

20 I, NEWTON H. PORTER, Judge of the Court of Quarter Sessions in and for the County of Essex, New Jersey, Do HEREBY CERTIFY and return to the Supreme Court of Judicature of the State of New Jersey, the indictment, judgment, record and proceedings, together with all things touching and concerning the same together with the entire record as by the within writ to me directed, I am commanded.

30 (SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of said Court and County at Newark, New Jersey, this 19th day of March, A. D. 1925.

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

Indictment.

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

Be it remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the third Tuesday in September, A. D. Nineteen hundred and twenty-four, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Walter C. Richman, John J. Ghegan, William Pfeil, Sr., George Bailey, Alfred Stahl, Louis G. Breidenbach, Howard Liveright, Robert C. Thomson, Charles G. Hahn, Richard P. Hartdegen, Stephen Fogarty, Hugh J. Devlin, Robert C. Klemm, John A. Stengel, Joseph McDonough, William H. Muhlker, Leopold Rich, John Kay, Mitchell J. Preston, James J. Fitzsimmons, Henry W. Keim, John A. Kelly and George J. Wolf, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

30 Essex County, to wit: The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Peter McCarthy, John Witt, John Doe and Richard Roe on the twenty-fourth day of April, in the year of our Lord one thousand nine hundred and twenty-four, at the City of East Orange, in the County of Essex aforesaid unlawfully did steal, take and carry away ten cases of gin, each case of the value of fifty dollars; ten cases of whis-

Indictment.

key, each case of the value of seventy-five dollars; ten cases of beer, each case of the value of twenty-five dollars, in all of the value of fifteen hundred dollars of the goods and chattels of Henry Werpup contrary to the form of the statute in such case made and provided, and
 10 against the peace of this State, *the* government and dignity of the same.

And the Grand Jurors aforesaid, upon their oath do further present that the said Peter McCarthy, John Witt, John Doe and Richard Roe on the twenty-fourth day of April, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Newark in the County of Essex aforesaid unlawfully and feloniously did receive and have ten cases of gin, each case
 20 of the value of fifty dollars; ten cases of whiskey, each case of the value of seventy-five dollars; ten cases of beer, each case of the value of twenty-five dollars, in all of the value of fifteen hundred dollars of the goods and chattels of Henry Werpup before then feloniously stolen, taken and carried away, the said Peter, John Witt, John Doe and Richard Roe then knowing the said goods and chattels to have been
 30 feloniously stolen, taken and carried away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Peter McCarthy, John Witt, John Doe and Richard Roe on the twenty-fourth day of April, in the year of our Lord one thousand nine hundred and twenty-four, at the City of
 40 Newark, in the County of Essex, aforesaid did

Indictment.

falsely pretend to Henry Werpup that the said Peter McCarthy, John Witt, John Doe and Richard Roe were then and there officers of the United States whereas in truth, as the said Peter, John Witt, John Doe and Richard then knew, the said Peter McCarthy, John Witt, John Doe and Richard Roe were not then and there
 10 officers of the United States and the said Henry relying upon the said false pretenses as true and being deceived thereby, did then and there pay to the said Peter, John Witt, John Doe and Richard the sum of fifteen hundred dollars and the said Peter, John Witt, John Doe and Richard did then and there knowingly and designedly by color and means of said false pretenses, obtain from the said Henry the sum
 20 of fifteen hundred dollars of the goods and chattels of said Henry with intent then and there to cheat and defraud said Henry of the same, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

J. O. BIGELOW,
 Prosecutor of the Pleas.

On the twenty-fifth day of October, A. D. Nine-
 30 teen hundred and twenty-four, on which day the said indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an
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Judgment Record.

entry of such order and delivery and filing was then and there made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

10 And afterwards, that is to say, on the thirtieth day of October, A. D. Nineteen hundred and twenty-four, at a Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable Newton H. Porter, Presiding Judge of the Court of Common Pleas, Peter McCarthy and John Witt, in the custody of Harry H. O'Connell, Sheriff of the County of Essex aforesaid, and the said Peter McCarthy and John Witt being brought before the bar in their own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon them, how they would acquit themselves thereof, say that they are not guilty thereof, and, therefore, for good and evil they put themselves upon the country, &c., and John O. Bigelow, Prosecutor of the Pleas of said State, for said County of Essex, in this behalf doth the like.

30 Therefore, let a jury thereupon come before the Court of Quarter Sessions, to be holden at Newark, in and for the County of Essex on the twelfth day of November, A. D. Nineteen hundred and twenty-four, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Peter McCarthy and John Witt to recognize upon their oath whether the said Peter McCarthy

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Judgment Record.

and John Witt are guilty of the premises in the said indictment specified or not guilty because the said John O. Bigelow, prosecutor, &c., as the said Peter McCarthy and John Witt put themselves upon the jury and the same time is given to the parties aforesaid at the same place.

10 And afterwards, that is to say on the fifth day of February, A. D. Nineteen hundred and twenty-five, to which day the trial of aforesaid indictment was postponed, at the same Court of Quarter Sessions, holden before the Honorable Newton H. Porter, Judge of the Court of Common Pleas, plea of not guilty by defendant Peter McCarthy was withdrawn and motion to quash third count of the indictment was made by Samuel I. Kessler, Esq., attorney for said defendant. Said motion having been heard by the Court, same was denied whereupon plea of not guilty was re-entered by said defendant Peter McCarthy.

20

Whereupon on the same day, at the same court, holden before the Honorable Newton H. Porter, Judge of the Court of Common Pleas, comes the said John O. Bigelow, who prosecutes as aforesaid, and the said Peter McCarthy and John Witt, and the jury of whom mention is before made, and by Harry B. O'Connell, Sheriff of the County of Essex, for this purpose empanelled and returned after the following challenges by the State, 1; by the defendants, 3; to wit: Thomas H. Mead, H. Anderson Thompson, Phillip L. Gifford, Charles W. Groo, Henry Durna, Edward A. Ise, Edgar N. Bernhardt, Alfred Groves, John F. Fagan, Fred G. Clark, Roy K. Smith, John M. Rowley, being called were sworn upon the jury who to speak the truth of and concerning the premises and thereupon the

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Judgment Record.

trial of said issue was commenced and continued until the sixth day of February, A. D. Nineteen hundred and twenty-five.

10 Whereupon the Court on motion of John O. Bigelow, Prosecutor of the Pleas, order the indictment amended to read "City of East Orange" instead of "City of Newark," the jury being called all appeared and trial progressed, when the jury returned into court in charge of the officer sworn to attend them, and then and there in the presence of the prosecutor, defendant and Court do say upon their oath, "We find both defendant's guilty in the first count in the indictment (larceny) with a recommendation of mercy; and we find both defendants not guilty on the second count in the indictment as directed 20 by the Court; and we find both defendants guilty on the third count in the indictment (false pretense) and so they say all.

Judgment Signed March 3, 1925. Newton H. Porter, Judge. Whereupon all and singular, the premises being seen and by the Court now here fully understood, it is on this third day of March, A. D. Nineteen hundred and twenty-five, ORDERED and adjudged that each defendant be committed to the penitentiary of this County for a term of eighteen months at hard labor upon this conviction; that they pay the costs of this prosecution and that they stand committed until said costs be paid, which said costs are taxed by the clerk at the sum of one hundred and thirty-five dollars and forty-nine cents, and the defendants be in 30 mercy, etc. 40

Motion to Quash Indictment.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Thursday, February 5, 1925.

STATE, vs. PETER McCARTHY and JOHN WITT. *Indictment No. 60. False Pretenses, Larceny and Receiving. On Motion to Quash Indictment.* 10

Before Hon. Newton H. Porter, Judge, and a jury. 20

For the State appears Simon L. Fisch, second assistant prosecutor of the pleas.

For the defendants appears Samuel I. Kessler.

Mr. Kessler: I desire to make a motion to quash the indictment in this case on the ground that the third count does not set up a crime under the law of the State of New Jersey.

The Court: What is the third count? 30

Mr. Fisch: We have an indictment, your Honor please, charging that Peter McCarthy and John Witt impersonated a United States officer and obtained money under false pretenses.

Mr. Kessler: I take it that the charge of impersonating a Federal officer is the charge in the indictment on the third count.

The Court: Give that again.

Mr. Fisch: Impersonating a United States officer and thereby obtaining money under false pretenses. 40

Motion to Quash Indictment.

Mr. Kessler: I move to quash the third count of the indictment. This count does not charge a crime under our law in the State of New Jersey. Impersonating an officer is not a crime in this State.

10 Mr. Fisch: The motion, as I understand it, is directed to the indictment which charges the defendants that they did feloniously pretend to Henry Werpupp that they, Peter McCarthy and John Witt and Richard Doe, were officers of the United States, whereas in truth they were not officers of the United States and, that further,

20 WHEREAS, Henry Werpupp believing that the said defendants, Peter McCarthy and John Witt were United States officers, did pay thereto the sum of fifteen hundred dollars. Now, Mr. Kessler's point is that there is no statute covering the impersonation of a Federal officer, or no statute denouncing that as an offence in this State.

30 If your Honor, please, I suppose that Mr. Kessler's argument is that because there is no statute making it a crime for a person to impersonate a Federal officer, there is no crime of this kind in this State. Now, if your Honor, please, this is a charge, charging the defendants with having impersonated an officer and also this is a count for false pretenses under the allegation in the indictment that they did feloniously pretend to John Werpupp; the pretension that they were Federal officers is merely an element in the false pretenses charged. They might just as well have pretended that tomorrow was going to be the Fourth of July. It would not be a crime for any one to tell another that tomorrow would be the Fourth of July, but it would be a crime for a man to tell another that tomorrow is the Fourth of July, and by that pretense ob-

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Motion to Quash Indictment.

tained falsely an amount of money so as to buy fireworks. I contend that these defendants did get from John Werpupp by false pretenses a sum of money under representation or pretension that they were Federal officers, and that the pretension of being Federal officers is only an element in the case of getting this money.

10 Mr. Kessler: Pretending to be officers, that would not be a crime. They might represent that they were President and Vice-President of the United States and that would not be a crime.

Mr. Fisch: If by pretending that, that would be a crime if they did obtain what the indictment says.

20 Mr. Kessler: That is not what the indictment says. They did pretend that they were Federal officers and they did receive money. They should have been charged differently. The indictment does not say that as Federal officers they were paid the money.

The Court: I will overrule the motion and grant you an exception.

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

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

NEWTON H. PORTER,
Judge.

There being no appearance for the defendant John Witt at the commencement of the trial:

40 The Court: The presence of the defendants is waived by counsel, and I assign Mr. Kessler to act as counsel for John Witt, subject to this being changed, however, if Mr. Witt appears with counsel.

Henry Werpupp, direct.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Thursday, February 5, 1925.

10

STATE,	}	<i>Indictment</i>
<i>vs.</i>		<i>No. 60.</i>
PETER McCARTHY and JOHN WITT.		<i>False Pretenses, Larceny and Receiving.</i>

Before Hon. Newton H. Porter, Judge, and a jury.

20

For the State appears Simon L. Fisch, second assistant prosecutor of the pleas.

For defendant John Witt appears Wilbur A. Mott.

For defendant Peter McCarthy appears Samuel I. Kessler.

A jury is called and sworn.

30

HENRY WERPUPP, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q Mr. Werpupp, where do you live? A 50 Hillcrest Terrace, East Orange.

Q And how old are you? A Sixty-seven.

Q What is your business? A I have no business now.

40

Q You are retired, are you? A Yes, sir.

Henry Werpupp, direct.

Q And what was your business before you retired? A I was thirty-two years collector for Trefz Brewery.

Q And you remember the 25th of April, 1924? A Yes, sir.

Q At that time did you have any liquors at your home? A Yes, sir.

Q What liquors did you have at your home? A Well, all different kinds.

Q Did you have any gin? A Some gin.

The Court: What kind of liquors, did you have, Mr. Werpupp?

The Witness: Different kinds.

The Court: Well, what kinds?

The Witness: Some gin, some champagne, some whiskey.

Q How much gin did you have? A Well, I could not remember that; I could not say.

The Court: You must keep your voice up, Mr. Werpupp, so that the jury can hear you.

Q How many cases of gin did you have? A Maybe four.

Q And how many cases of whiskey did you have? A I guess about eight.

Q And how many cases of beer did you have? A No beer at all.

Q Didn't have any beer? A No, sir.

Q What else did you have? A Some champagne.

Q How many cases of champagne? A I guess two of the, if I remember.

Q What was the value of the liquors which you had there? A About \$1,500.

Henry Werpupp, direct.

The Court: Pre-war prices or present prices?

The Witness: Pre-war prices.

The Court: I mean pre-prohibition.

The Witness: Pre-prohibition.

10 Mr. Kessler: I think you Honor was correct, pre-war prices. What was the answer?

Mr. Fisch: The answer was pre-prohibition prices.

Q Now, on the 25th of April, 1924, did anybody come to your house? A Excuse me; it was on the 24th.

Q The 24th of April? A Yes, sir.

Q 24th of April, how do you fix your date?

A I remember the date.

20 Q You remember the date?

Mr. Kessler: I ask to let the witness fix the date.

The Court: Counsel must not lead the witness.

Mr. Fisch: I ask the indictment to be amended to the 24th of April.

30 The Court: The date is not the important part of the indictment; the act of larceny and impersonating an officer is the important part.

Mr. Kessler: Your Honor has seen the indictment, and you will see that there is a variance in this testimony with the facts of this case.

Mr. Fisch: I only ask that the indictment be amended as to this date.

40 The Court: Does the indictment say on or about the 25th of April?

Henry Werpupp, direct.

Mr. Fisch: It does not, it says the 25th of April.

The Court: I will allow the amendment requested in the motion as to the date.

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

Exception allowed; let it be sealed, and 10 it is signed and sealed accordingly.

NEWTON H. PORTER,
Judge.

Q Now, on the 24th of April, 1924, did anybody come to your house? A Yes, sir.

Q What time of the day was it? A Half-past two.

Q In the afternoon? A In the afternoon.

Q And had you ever seen these men before? 20 A I had never seen those men before.

Q Are any of those men present in court here today? A Yes, sir.

Q Where are they? Point them out, please.

(Witness indicates saying "right here," pointing to a man sitting at the end of the counsel table.)

Q Do you mean the last man at the table? A 30 Yes.

Q You mean that man with the small moustache (indicating the defendant, John Witt)?

A Yes, sir.

Q And where is the other man, McCarthy?

The Court: Where is he?

The Witness: The next man to Mr. Kessler.

The Court: Stand up, Mr. McCarthy. 40

Henry Werpupp, direct.

Q Is that the man you mean? A Yes, sir (indicating the defendant McCarthy).

Q Now, when these men came in, what, if anything, did they say to you? A They said to me—

10 Mr. Kessler: Who said it, please?

The Court: Wait a moment, please.

Q Who started off the conversation? A This man there (indicating); what's his name? I don't know his name.

The Court: Which one is he, the first or the second?

The Witness: The one with a moustache.

20 Q That is Witt? A All right.

Q Now, what did Witt say? A He said, "We are out from the prohibition office, and two fellows are out from Washington"—that man McCarthy and his partner which is not here, you know, and they said they had a search warrant and they had to search my house.

30 (Mr. Wilbur A. Mott appeared at 2:35 P. M. to represent the defendant John Witt.)

Q Now, he did say all this? A Yes.

Q When Witt said this, where was McCarthy? A McCarthy was with the other big fellow.

Q Well, how far away was McCarthy when Witt was telling you this? A They were all together in the same room.

40 Q Now, what was said after that, did they show you anything?

Henry Werpupp, direct.

Mr. Kessler: Your Honor, I must ask the prosecutor not to lead this witness; this witness is intelligent and he ought to be able to answer.

The Court: I don't think the question was objectionable; I will admonish Mr. Fisch not to lead him. 10

Mr. Fisch: I will try not to lead him.

Q You say he did show you something? A They showed me a paper.

Q A search warrant? A Yes.

Q They showed you a paper, and they said it was a search warrant? A I don't know.

Q They showed you a search warrant? A They said it was.

Mr. Fisch: The witness says they showed 20 him a warrant.

The Court: Who showed it to you?

The Witness: The man who showed me that paper is not here; he is not arrested.

Q The man who showed you that paper? Did they show you anything else? A He showed me a badge, too.

Q Who did? This same fellow? A Yes. 30

Q And when this fellow showed a badge, where were McCarthy and Witt? A They were there.

Q Right there, were they? Now, after this fellow showed you a badge and this paper, which he said was a search warrant, then they asked you for the key?

Mr. Kessler: I object.

The Court: Who asked you for the key? 40

Henry Werpupp, direct.

Q Who asked you for the key? A This big fellow who is not here.

The Court: Very well.

10 Q Where were McCarthy and Witt when they asked you for the key? A He was there with me.

The Court: Who was there with you?

The Witness: McCarthy and Witt; the whole bunch.

Q Now, what happened after he asked you for the key? A They went down the cellar.

20 Q Who went down the cellar? A This fellow with the other two. There are two fellows; I could not identify them; I only looked at those three, you know.

Q Where were McCarthy and Witt while those other fellows went down the cellar? A In our kitchen.

Q And did McCarthy or Witt say anything to you then? A Yes, sir.

Q What was said, and by whom? A Yes, sir, by John Witt.

30 Q What did Witt say? A He told me that that matter could be settled, but that I had to talk to "the Chief," so I talked to "the Chief."

Q Now, just a minute; he told you the matter could be settled, but that you had to talk to "the Chief," is that right? A Yes, sir.

Q Did he say anything as to who "the Chief" was? A He told me this fellow that was with him, McCarthy.

40 The Court: The one with the badge, you mean?

Henry Werpupp, direct.

The Witness: Yes, sir, he was "the Chief," they told me.

Q And then what did you do then? A And I said, "Maybe I have to pay a fine for having liquor in my possession."

Q You said that to who? A To that "Chief." 10

The Court: Well, you call him "the Chief" and we will know who you are talking about.

Q That is one of the fellows who is not arrested? A Yes, sir.

Q And you said that to this fellow you call the Chief? A Yes, sir.

Q Where was that? A In our own kitchen. 20

Q And who was there when you said that to him? A McCarthy was there and John Witt was there.

Q McCarthy was there and John Witt was there? A Yes, sir.

Q And what was said after that? A Then he told me that matter would cost \$10,000 to fix it up.

Q Who told you that? A John Witt.

Q And where was McCarthy when Witt told you that? A They were in the same room. 30

Q And what did you say to that? A I told him that I have not got \$10,000 in the whole of my possession; I have got a thousand dollars in the bank; if that would do, I would give him the thousand dollars, and he said, "That is not enough, because those two fellows from Washington want it fixed up."

Q Now, you say that Witt told you that \$1,000 is not enough? A Yes, sir. 40

Henry Werpupp, direct.

Q And did he say anything else to you as to who McCarthy was?

Mr. Kessler: I object to that, your Honor, as absolutely leading and suggestive of an answer.

10 The Court: I will allow the question.

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

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

NEWTON H. PORTER,
Judge.

The Witness: Yes, sir.

20 Q Now, what did he say to you as to who McCarthy was? A He said McCarthy was from Washington and that other fellow, the two came from Washington and they had to be fixed up, and that a thousand dollars would not be enough.

Q Did Witt say anything to you as to who he was? A Yes, he was from the prohibition office in Newark.

Q Where from?

30 The Court: He was from the prohibition office in Newark.

Q Now, when they told you that one thousand dollars would not be enough, and that these fellows in Washington had to be fixed up, what did you say then, what happened then? A I told them maybe I can borrow five hundred dollars and give him fifteen hundred.

Q And then what was said? A He said, "All right."

40 Q Who said, "All right"? A John Witt.

Henry Werpupp, direct.

Q Anybody else? A No, sir.

Q Witt said, "All right"? A Yes, sir.

Q And all during this conversation where was McCarthy? A McCarthy was there.

Q And how about "the Chief"? A "The Chief" was sitting there in the kitchen; they made me sit down.

Q Made you sit down? A They did not let me get up, they made me sit down; "the Chief" said, "You sit still in your chair, don't get up."

Q Then after you said that you could borrow five hundred dollars and make it fifteen hundred dollars, and Witt said, "All right," then what happened? A They said, "You must get dressed."

Q Who said that you should get ready? A Witt.

Q What for? A To go with him down to the bank and get the fifteen hundred dollars. John Witt told me I should get dressed, that I should get ready, because the bank closes at four o'clock and they had to be back at the prohibition office because that closes at four o'clock, too.

Q Where was McCarthy when he told you that? A He was there.

Q Then did you get ready, did you get dressed? A Yes, I got ready.

Q What did you do? A I put my collar and necktie on, and my coat and everything that was necessary.

Q Now, after you put your collar and tie on and your coat and everything that was necessary, then what happened? A Then we walked to the corner.

Q Who? A John Witt and McCarthy and myself.

Q Just the three of you? A Yes, sir.

Henry Werpupp, direct.

Q What became of "the Chief"? A "The Chief," he stayed in my house.

Q And how about the other fellows? A The other fellows were there, I suppose; I didn't see them any more.

Q You didn't see them after they went down
10 the cellar, is that it? A Yes, sir.

The Court: When did you last see the two men?

The Witness: When they came in, your Honor.

The Court: When they came in, what did they do?

The Witness: They went down in my
20 cellar.

The Court: "The Chief" was still in the kitchen when you left?

The Witness: "The Chief" was still there in the kitchen, yes, sir.

Q Then you and McCarthy and Witt went out of the house? A Yes, sir.

Q And where did you go to? A We went down to South Orange avenue.

30 Q How far is that from your house? A It is one block.

Q Now, when you got to South Orange avenue, what did you do? A We took a jitney.

Q You took a jitney, who? A John Witt.

Q Did he take a jitney alone? A No; it is the regular bus.

Q I understand, but did he get in a jitney alone? A No, the three of us.

Q And where was that jitney bound? A
40 Towards Newark.

Henry Werpupp, direct.

Q And how far did you go? A We went as far as Bergen street.

Q And then what happened? A John Witt made me get out and he sees a cab and says, "Come on, we will be too late at the bank; we will take a cab here."

Q So you got out of the jitney? A Yes, 10
sir, we got out of the jitney.

Q Anybody else? A Witt and McCarthy and myself; John Witt hired a taxi.

Q And who got in the taxi? A The three of us.

Q You and Witt and McCarthy? A Yes, sir.

Q And where did you go then? A To the American National Bank.

Q Where is that? A The corner of Spring-
20 field avenue and Belmont avenue.

Q And how did you come to go to the American National Bank? A Because I had my money there.

Q And how did they know that, did you say anything to them, did you tell them where you had your money? A Yes, sir; I told them where to go.

Q You told them that, did you? A Yes, 30
sir.

Q And when you got to the American National Bank what happened? A I wanted fifteen hundred dollars.

Q Now, wait a minute. What happened as soon as you got to the bank? A The taxi came to the bank, and he got me out of the taxi.

Q Who? A John Witt and I got out of the taxi.

Q What did McCarthy do? A He remained in the taxi. 40

Henry Werpupp, direct.

Q And what did John Witt do? A He went into the bank, and he was there waiting till I got the money.

Q And where did you go? A I went to the cashier.

Q And what did you do? A I told him that I had to have fifteen hundred dollars.

Q What is the name of the cashier of that bank? A Mr. Meyer Dierck.

Q That is one of the officials there at the bank; is that right? A Yes, sir, cashier.

Q And did you have fifteen hundred dollars on deposit there? A I did not, I had a little over one thousand dollars there, and wanted fifteen hundred.

Q You wanted fifteen hundred, is that right? A Yes.

Q Well, then, what did you do towards getting the \$1,500? A I had to sign a note.

Q Yes, and when you signed the note, how much did you sign the note for? A For \$500.

Q And then did you get any money? A I got the \$1,500.

Q And where did you get that \$1,500, from Mr. Meyer Dierck or from the paying teller? A From Mr. Coller.

Q Is he here in court? A I do not see him today.

Q And in what denominations did you get this \$1,500, do you remember? A Yes, sir, it was a thousand dollar bill and a five hundred dollar bill.

Q Two bills, a one thousand dollar bill and a five hundred dollar bill? A Yes, sir.

Q And where was Witt while you were conducting these negotiations with Mr. Meyer Dierck, the cashier? A He was standing right there.

Henry Werpupp, direct.

Q Well, does Mr. Meyer Dierck have his desk in an enclosure or not? A He has a desk enclosed; yes, sir.

Q Well, did you go inside of the enclosure? A Yes, sir.

Q Where did Witt go? A He was standing outside.

Q Now, then, afterwards, after you had seen Mr. Dierck you went to the paying teller's window? A Yes, sir.

Q And where was Witt while you went to the paying teller's window? A He was standing right there, on the same spot.

Q Now, then, after you got these two bills, a one thousand dollar bill and a five hundred dollar bill, what did you do? A I handed them to him.

Q Where did you hand them to him? A Right in the same bank.

Q The same bank? A Yes, sir.

Q And then after you handed him the money where did you go? A Then we went out to the taxi.

Q The same taxi? A Yes, sir.

Q And you and Witt got in? A Yes, sir.

Q Now, then, did you give the taxi driver any instructions? A No, sir.

Q Do you know who gave the taxi driver instructions? A John Witt.

Q What did he say to the taxi driver? A He told him to drive back to Belmont avenue, and all the way up, they drove up Eighteenth street towards Irvington, and I made the remark, "What is the use? What is going on here? Why don't we drive right over to my house?" and he said, "We have got lots of papers here; we have got to make some stops here."

Henry Werpupp, direct.

Q So that they took you from the American National Bank up to Grove street? A Up to Grove street, yes.

Q And from Grove street, where did they take you? A Then they took me over to South Orange avenue.

10 Q Did they make any stops? A They didn't make any stops.

Q And how long did it take before you got near the vicinity of your home? A Well, it took—

The Court: From where, Mr. Fisch?

Mr. Fisch: From the American National Bank.

The Witness: Well, at least half an hour.

20 The Court: What time was it when you left your home, Mr. Werpupp? Do you know?

The Witness: Three o'clock, your Honor.

The Court: Two o'clock?

The Witness: Three o'clock, or a little after.

The Court: A little after three o'clock?

Mr. Fisch: What's that?

30 The Court: I asked him what time it was when he left his house and he said a little after three o'clock.

Q Yes, and what time was it when you got to the bank; do you know? A Well, it was not very late; after three, you know, we got there; I don't remember that.

40 Q Now, then, after you had been driving in this taxi up to Grove street and over Grove street up to South Orange avenue, were you

Henry Werpupp, direct.

driving toward the vicinity of your home? A Yes, sir.

Q And did the taxi drive up to your home? A It did not.

Q Where did the taxi stop? A It stopped half a block away on another corner.

Q Who told the taxi driver to stop there? 10 A John Witt, you know; it was John Witt told him.

Q John Witt told him? A Yes, sir.

Q And did you make any inquiry about that? A I did; I said, "What is the use?" and McCarthy said, "You know we don't want to stop in front of your house, we will stop a little way off." "All right," I said, and then when I wanted to get out, they kept me in the taxi, and McCarthy says, "You stay here in the taxi with this fellow and I am going to go 20 into the house, and I will come right back."

Q He said, "I will come right back," is that right? A Yes, sir.

Q Well, now, did you stay in the taxi with John Witt? A I had to; yes, sir.

Q And McCarthy went to your house and he did come back? A Yes, he did come back.

Q Well, it didn't take long? A No, sir.

Q And when he came back, what did he say? 30 A He said, "Mr. Werpupp, you can go home now; 'The Chief' has given you a clear paper and everything is all right."

Q And then what did you do? A Then I got out of the taxi and went home.

Q And what became of Witt and McCarthy? A Well, now, the taxi was far away from my house at this time.

Q And when you got out of the taxi Witt was still in the taxi? A Yes, sir. 40

Henry Werpupp, direct.

Q And when you got out of the taxi McCarthy was right there, was he? A Yes, sir.

Q And did McCarthy get in the taxi, do you know? A I did not see that.

Q And that was where you left McCarthy and Witt, at the taxi? A Yes, sir.

10 Q And you went home? A Yes, I went home.

Q And when you went home, what did you find? A I found that nobody was in the house any more, and on the kitchen table, was a bottle of gin about half empty; of course, they had a drink; and then I thought, that is funny, and I hollered and I went downstairs, and I saw the light was lit in the cellar and everything was taken out.

20 Q And what was taken out? A Well, all the liquor.

Q All the liquor was taken out? A Yes, sir.

Q Then what did you do? A Well, then I went upstairs and I woke up, you know.

Mr. Kessler: What is that?

The Witness: I woke up.

30 Mr. Fisch: You had not been sleeping, had you?

The Witness: No.

Mr. Kessler: The question is, what did you do?

The Court: What did you do?

The Witness: A reporter came to my house.

40 The Court: Well, what did you do; did you do anything before the reporter came to your house?

Henry Werpupp, direct.

The Witness: I went upstairs and sat down, waiting for somebody to come, because the house was alone.

The Court: Who were you waiting for to come?

The Witness: For my girl, or my wife.

Mr. Fisch: Yes.

The Court: And did either of them come?

The Witness: They did come.

The Court: Who came first?

The Witness: Our girl came.

The Court: Your daughter, you mean, or your servant?

The Witness: Our girl; I have no daughter; our servant girl.

The Court: Yes, and did anyone else come?

The Witness: No, sir.

Q And then what did you do about this thing, did you do anything about it? A Why, certainly, I went down to headquarters and reported it.

Q What headquarters? A Police headquarters.

Q How soon after Witt and McCarthy had left, how soon after you got home and you discovered the liquor was gone, did you go down to police headquarters and report it? A The next morning.

Q Now, when, was the next time that you saw any of these five men? A The next time when they had McCarthy arrested.

Q Yes, and where did you see him? A Police headquarters.

Henry Werpupp, direct.

Q And how did you identify him? A I did identify him.

Q How? A I picked him out of a whole lot of men.

Q Out of a line-up, do you mean? A A line-up.

10 Q You picked him out? A Yes, sir.

Q How long was that after the 24th of April?

A I guess that was around two weeks.

Q Yes, but what date? A I don't know the date.

Q Which one of those defendants was it that you picked out at that time? A McCarthy.

Q Now, when was the next time that you saw Witt? A It was at police headquarters.

20 Q When? A Some night; I can't remember.

Q Before you saw McCarthy at police headquarters or after? A Oh, no, after.

Q How long after? A Oh, that must be a month or two months after.

Q And did you identify him? A I identified him.

Q How did you identify him? A From a line-up.

30 Q About how many men were there in that line-up? A About fifteen, I guess.

Q Did you ever after the 24th of April see any of these other men? A No, sir.

Q Never see them? A No, sir.

Q Now, since that time have you ever talked with either McCarthy or Witt? A Yes, sir.

Q Which one? A McCarthy.

Q When did you talk to him? A In the police station; the Fourth Precinct.

40 Q How long ago? A Well, that was right after he was identified in headquarters.

Henry Werpupp, direct.

Mr. Kessler: The same day or immediately after identification?

The Witness: Was it the same day or the next day?

A I do not know.

10 Q What did he say? A He told me he wanted to talk to me. He says, "Well, Mr. Werpupp, we will pay you everything, but give us some time, a few weeks' time."

Q What did you say to that? A I told him any arrangements that could be made will be only with the consent of the Court. If the Court is satisfied I am satisfied.

Q Was that all the conversation at that time?

A That was all that time.

20 Q Now, have you spoken to him since that time? A Yes, sir.

Q When was the next time that you spoke to him? A Right here in the Court House.

Q While this case has been on the calendar for trial, do you mean? A Yes, sir.

30 Q What did he say to you and what did you say to him? A He told me out here he had fifteen hundred dollars he wanted to give to me, and I told him the same thing always.

Q What did you tell him? A I told him any arrangements has to be made now in the prosecutor's office.

Q What, if anything, did he say about the \$1,500? A He wanted me to tell the Court that I do not press the charge.

40 Q And what did you say in regard to that? A I told him I could not do that because it is in the hands of the prosecutor and any arrangements that must be made must be made in the prosecutor's office.

Henry Werpupp, direct.

Q Now, did you speak to him after that again?

Mr. Kessler: Please give me the date of the last conversation that he had.

The Court: When was this last conversation that you have just told about? 10

The Witness: That was when the trial was set, your Honor, for the 24th of November.

The Court: November 24th.

Q And did you speak to him again? A Twice; the next time again.

Q And where was that? A On the steps up on the third floor.

Q Of this Court House? A Yes. 20

Q And what was said then? A Well, he told me the same thing; he wanted to give me \$1,500.

Q Did he say what he wanted to give you \$1,500 for? A He wanted to give me the \$1,500 if I did not press the charge.

Q Yes, and what did you say? A I told him the same; I could do nothing except the Court is satisfied.

Q Did you ever speak to him after that? A Yes. 30

Q But where? A In your office.

Q Where? A In your office.

Q That is, in the prosecutor's office? A Yes.

Q And what did he say at that time? A I told him he should go with me into the Prosecutor's office, and I went in there and I told the Prosecutor about it, and he was sitting outside on the bench.

Q Who was sitting outside? A McCarthy. 40

Henry Werpupp, direct.

Q And then did McCarthy come in? A McCarthy came in; he came into your office.

Q And I was there? A Yes, sir.

Q You were there and Detective Coucossa was there?

Mr. Kessler: In your presence was this conversation, Mr. Fisch? 10

Mr. Fisch: In my presence.

Q What did I say to him and what did he say to me? A You told him: "I understand that you want to make restitution to Mr. Werpupp," and you said, "I allow you to make restitution but no promises can I make and restitution must be made here in my office."

Q And what, if anything, did McCarthy say to that? A I do not know what he told the prosecutor. 20

Q Well, did you hear him say anything in response to that? A I did not hear that.

Q Well, when I said to him, "I understand that you want to make restitution, and I will allow that, but it must be made here in my office," what, if anything, did McCarthy say? A Didn't he say he did not make the restitution himself, some friends would make it, or what, I do not understand that. I did not hear that. I do not know what he said. 30

Q Did I make that statement to you in one statement or was it several questions that I asked him, do you remember? A In one statement.

Q Did he make restitution? A He did not.

Q Did he pay you any money? A No, sir.

Mr. Kessler: I will testify to that. 40

Henry Werpupp, cross.

The Court: You may cross examine, Mr. Kessler. Wait, let me ask him one question first, Mr. Kessler. When did you first know the names of McCarthy and Mr. Witt, Mr. Werpupp? When did you know the names of these two men first?

10 The Witness: Through headquarters, the police headquarters.

The Court: They did not tell you their names when they came to your house?

The Witness: No, sir.

The Court: And when you reported that day to the police station, you did not tell them their names?

The Witness: I could not know of any name.

20 *Cross examination by Mr. Kessler.*

Q Mr. Werpupp, how long have you lived in this house where you are now living? A Four years.

Q When did you move there? A Four years ago.

Q When? A Four years ago.

30 Q When?

Mr. Fisch: Well, now, I object, if your Honor please, I submit that is not cross examination and entirely irrelevant and immaterial to this issue.

The Court: Overruled. I will allow it.

A I guess it was on the first of October.

40 Q What year? A Well, that is four years ago, about.

Henry Werpupp, cross.

Q Well, what year would you say it was? A 1920.

Q October, 1920? A I don't know the date; I can't tell you the date.

Q You did tell us the date; is there anything wrong with that date or is it right? October, 1920, you moved to that house? Where did you live before then? 10

Mr. Fisch: I object, it is immaterial to this issue, I object to the question.

The Court: I will allow it.

A 199 South Sixth street.

Q How long did you live there? A Twenty-six years.

Q And what was your business before this last position of collector? A I was collector for the brewery. 20

Q And up to what time were you employed by the brewery? A Well, I have to look that up.

Q All right, go ahead. A New Year, 1918.

Q In July, 1918? A No, New Year, 1918.

Q You worked for them till the first day of January, 1918? What have you been doing since January 1, 1918? A Oh, I did—I sold some liquor in bond papers. 30

Q You were a liquor leader, weren't you? A I was selling liquor to permit holders.

Q You were a liquor dealer? A I was no liquor dealer. I bought the papers; you know, at that time everybody bought papers.

The Court: No, I didn't.

Q You dealt in whisky certificates, is that right? A Yes, sir. 40

Henry Werpupp, cross.

Q And for how long a period of time did you deal in whisky certificates? A That was only till 1921.

Q From 1918 to 1921 you became in whisky certificates? A Sometimes.

Q What did you do other times, did you do anything else? A No, sir.

10 Q What did you do since 1921? A I didn't do anything.

Q Were you in any kind of business at all? A No, sir.

Q Now, this liquor that you had that was taken away from you, did you say how long you have had it? A Oh, some of them for years already.

Q Well, how many years would you say? A I cannot tell you exactly.

20 Q What was your idea? A I cannot tell you exactly.

Q Well, was it prior to 1918? A Some of it, yes, sir.

Q Did you have any after 1918? A Yes, sir.

Q And when did you get that after 1918? A I can't remember that.

Q Cannot say; never mind the month. A I could not answer you that question.

30 Q How long ago did you get the last load of liquor? Before you say that you were robbed? A I say I cannot answer that.

Q Was it a month or a week, was it a day, or was it the same day? A Oh, it was long before.

Q How long before? A I do not keep no books about that.

Q Was it two months before? A Maybe, yes.

40 Q Maybe three months before? A Yes, three months before, it may be.

Henry Werpupp, cross.

Q You got this liquor in 1924, is that right? A I don't know what you mean.

The Court: He is trying to find out when you got this liquor that you had in your cellar and that was stolen from you. When was the last that you got.

The Witness: I could not say that. 10

Q Well, you said it might be a couple of months before the robbery.

Mr. Fisch: I thought he meant it might be a couple of months before 1918.

The Court: Well, when was the last time that you got some liquor before the robbery?

The Witness: I could not say, your Honor. 20

Q Well, when was the last time? A I could not say.

Q Could not say; all right. Do you know a man by the name of Miller? A Miller?

Q Yes, Miller; do you know a man by the name of George Miller? A No, sir.

Q You know no man by the name of George Miller? A I know some Millers, you know. 30

Q You know some Millers, don't you? A I don't know any George Miller.

Q You said you knew some Millers. A Well, there is a lot of Millers.

Q Well, do you know a man by the name of George Miller living at the Highlands, New Jersey? A No, sir.

Q Why are you so sure about that? A I do not know any George Miller.

Q Do you know any man by the name of George Miller living along by the shore? A 40

Henry Werpupp, cross.

I knew a man, George Miller, who was a painter, but he is dead, you know.

Q When did he die? A I don't know. Of course, I don't know when he died. That George Miller was a painter, you know.

Q Did he work for any brewery at that time? A No.

Q When did he die? A About ten years ago.

The Court: About ten years ago? Don't you know a man by the name of George Miller living at the Highlands, New Jersey?

Mr. Fisch: He has answered that question, your Honor, three or four times.

The Court: He can answer it again.

Q Do you know a man by the name of George Miller living at the Highlands, New Jersey? A Never had any business with him.

Q From whom did you buy your last lot of liquor? A I refuse to answer that way.

Q Do you refuse to answer? A I do not keep any books.

Mr. Fisch: Now I submit that this cross examination has gone much further than the defense is entitled to. It is not material to the indictment; it is not material to this Court and jury in the case which we are now trying.

The Court: That may be so, but when I find that it is not material, I will strike it out. It is not material where this liquor comes from.

Mr. Kessler: We are charged with larceny, your Honor.

Henry Werpupp, cross.

Q So you refuse to answer?

The Court: He does not say that. He used the word "refused" and then he changed it.

Q Why do you refuse to answer, Mr. Werpupp? A Because I do not know. 10

Mr. Fisch: Well, your Honor, please, I object to that question. That is argumentative; counsel has no right to argue with a witness. The witness gave the answer as to why he refused to answer; because he did not know.

The Court: Counsel is not quite clear what the witness means.

Mr. Fisch: I submit, if your Honor please, that the question is argumentative. 20

The Court: Well, I will allow it.

Q What liquor did you have there?

Mr. Kessler: I think the prosecutor ought to have the evidence.

Mr. Fisch: *You* have the evidence.

A Some champagne and some gin and some whisky. 30

Q What liquor did you have there? A Didn't I tell you? Some champagne.

Q How much champagne? A Two cases, maybe.

Q How much was it about? Be more definite than "maybe"; was it more than two cases? A I did not keep exactly track of how much it was. 40

Henry Werpupp, cross.

Q Was the champagne in cases or was it laid out on shelves? A In cases.

Q Well, how many cases did you have? A About two.

Q How much was champagne worth? I want to know how you arrived at \$1,500. A I do not know; I do not know what it was worth.

Q Well, how did you know your liquor was worth \$1,500? A Well, I figured it out about that.

Q What else did you have besides two cases of champagne? A Well, some gin.

Q How much gin did you have? A About two cases or three cases.

Q Sure about that? A Well, I cannot swear about that; I don't know.

Q Well, you are swearing. A It might be three or four cases.

Q Was it more than that?

The Court: It might be three or four cases, he said.

Q Was it more than four cases? A No, sir.

The Court: Keep your voice up, Mr. Werpupp.

Q And you said you had some whisky? A Yes, sir.

Q And how much whisky did you have? A About eight cases.

Q Was it all in cases? A In the cases and out of the cases, too.

Q How much did you have in the case and out of the case? A I know there were eight cases there, and I don't know how many bottles was on the shelf.

Henry Werpupp, cross.

Q Well, about how many bottles were there? A Well, about two dozen or a dozen and a half.

Q That is a case or a case and a half; what kind of whiskey was it? Rye or scotch? A Rye.

Q All rye? A Yes.

Q What time of the day was it when they first came there? A Half-past two in the afternoon.

Q How long were you in the house with these men before you left? A How long what?

Q How long were you in the house with these men before you left to go downtown with them? A Them two went downtown with me, and the other three were left in the house.

Q How long were you in the house before that time, how long? A Well, I could not tell you that. When I came back, they were all gone.

Q No, how long were you in the house when you went to go downtown with McCarthy and Witt? A You say how long was I in the house? About half an hour.

Q And so you left then to go downtown with them? A Yes, sir.

Q Now, you believed these men to be prohibition agents when they came? A Yes, I thought at first they were.

Q Well, if these men were prohibition agents, why were you afraid of them, and why did you pay them hush money?

Mr. Fisch: I object to that, if your Honor, please, as not being material to this issue and as being argumentative, and as not being cross examination.

The Court: What is the purpose of it, Mr. Kessler?

Henry Werpupp, cross.

Mr. Kessler: That is the main part of the State's case, your Honor, why he paid the money to these men. I want to use it to test his veracity as to whether he did or did not.

10 The Court: In other words, this is a case of false pretentions.

Mr. Fisch: Yes, your Honor.

Mr. Kessler: I assume that.

The Court: I will allow it.

Q Why were you willing to pay these men \$1,500? A Because I thought there would be no trouble, and they would leave my goods there.

20 Q Why did you need your goods there? A Well, I thought I have a right to have goods in my cellar, haven't I?

Q Why did you need your goods there?

Mr. Fisch: Well, your Honor, please, I object. I submit that that question has been answered.

The Court: I do not think it has been answered responsively; he answered it categorically.

30 Mr. Fisch: I submit, if your Honor please, that the question is entirely immaterial and irrelevant to this issue. Why do I have any clothing in my home?

40 The Court: Well, I will allow it; it may be material. I think, perhaps, it is. You asked him, "Why did you need your goods there?" He answered that he thought he had a right to them. The answer that he gave to that question was not satisfactory to Mr. Kessler.

Henry Werpupp, cross.

Q Why do you say that you need the goods there?

The Court: Well, re-frame the question. You may ask him whether he did need the goods there and he may answer.

Q Did you need your goods there? A I 10 have a right to have them, haven't I?

Mr. Fisch: Now, then, I refer to the record your Honor, please. (Stenographer refers to record.)

Q You felt you had a right to your goods, didn't you? Why was it necessary to pay hush money to keep them? 20

The Court: Did you get the question?

The Witness: Why I told you before; I told them I gave them that money because they would leave the goods there.

Q You felt that you had a right to have possession of those goods there? A Yes, sir.

Q And why were you willing to bribe Federal officers? 30

Mr. Fisch: I object to that, your Honor, please; it is entirely irrelevant to this issue, and there is no testimony that this money was given as a bribe.

The Court: I allow it.

Mr. Kessler: What would you call it? Have you a name for it?

A Because they asked me first for \$10,000. 40

Henry Werpupp, cross.

Q You were willing to bribe them for \$1,500?

A Yes, sir.

Q Were you afraid of them? A I was afraid of them.

Q Were you? A Yes, sir.

Q So they had you intimidated, they had you—
10

Mr. Fisch: I object.

The Court: Sustained.

Mr. Fisch: I withdraw the objection.

Q They had you scared; you were scared of them? A Of course I was; it was because of that \$10,000 I got scared.

Q Were you scared of them that they might do you any physical harm? A Not as long as I knew that they were prohibition officers; they would not do me any harm.
20

Q So that when they asked you to go into a cab, and go downtown to the bank, you willingly went, didn't you? A Yes, sir.

Q And when you got to the bank, you went inside and these men waited outside. Is that right? A Only one went into the bank with me.

Q Which one? A Witt.

Q Witt went into the bank, and where did you go in the bank? A To the cashier.
30

Q You went to see Mr. Meyer Dierck? A Yes, Mr. Meyer Dierck.

Q What is his business there? A He is a cashier.

Q You went into his office to borrow \$500? A I wanted \$1,500.

Q You had \$1,000; you went in to borrow \$500. Why didn't you tell Mr. Meyer Dierck what was happening and why didn't you ask your banker to tell you what to do?
40

Henry Werpupp, cross.

Mr. Fisch: I object to that, your Honor, as not being relevant to this issue and not being proper cross examination.

The Court: I will allow the question.

Q Why didn't you do that? A I didn't think of it.
10

Q Why not? A I cannot tell.

Q And after you went on a note and you signed it, and you gave it to Mr. Meyer Dierck, then you went to the cashier's desk and you drew your check for \$1,500, is that right? A Correct.

Q To whose order did you draw that check?

A That check was made out to me.

Q Your own order, is that right? A Yes, sir.

Q And you endorsed it and cashed it? A I signed the check, yes, sir, and then I got my fifteen hundred dollars.
20

Q In cash? A In cash.

Q And then when you came out, did you give that money to Mr. Witt or to Mr. McCarthy?

A To Mr. Witt in the bank.

Q Right in the bank, and where was Mr. Witt standing when you gave him that money? A Right in the middle of the floor there.
30

Q And where was Mr. McCarthy? A He was in the taxi.

Q And you gave him that money right in the presence of Mr. Meyer Dierck? A I don't know.

Q Well, he was looking on, wasn't he? A I don't know whether he was looking on or not. I did not get the money from Mr. Meyer Dierck.

Q Oh, I see; I understand that you went to Mr. Meyer Dierck and then you went to the cashier, and then you went and gave the money
40

Henry Werpupp, cross.

to Mr. Witt, but Mr. Meyer Dierck and the cashier and you were all in the same room? A Yes, sir.

Q And then where did you go? A We went out into the taxi.

Q And where was the taxi? A Right outside. 10

Q And they drove you home? A They drove me home.

Q And they drove you home within a block of your house? A They would not let me get out.

Q You got out eventually. I do not want to waste any time, if I can help it. A All right.

Q Now, Mr. Werpupp, did you see this paper that "the Chief" showed you? A Well, he took it out of his pocket; I thought my name was on it. 20

Q Did you read it? A No, I didn't read it; he put it back in his pocket, I didn't read it.

Q You didn't read it? A No, sir.

Q What has been your familiarity with search warrants; do you know anything about search warrants?

Mr. Fisch: May your Honor please, I do not think that is testimony. 30

The Court: I think it is; there has been testimony in this case that there has been a search warrant. I think it is relevant and competent and very material.

Mr. Fisch: Then, if your Honor thinks it is competent, I withdraw my objection.

Q Did you ever see a search warrant? A No.

Q Never read this paper? A No. 40

Henry Werpupp, cross.

Q Why do you call this paper a search warrant? A Well, they told me.

Q Who told you? A "The Chief" you know. "The Chief" told me it was a search warrant.

Q The Chief told you it was a search warrant and showed you a badge? A Yes, sir.

Q You know what a search warrant is, you know the purpose of a search warrant? A Know what? 10

Q Do you know for what purpose a search warrant is issued? A Why, certainly.

Q Well, what kind of a badge did the Chief show you? A It was a brass badge.

Q Now, he had it in his hand when he showed you, didn't he? A Yes, sir.

The Court: He had it in his hand?

The Witness: Yes, sir, he had it in his hand. 20

Q Did you read it? A No, sir.

Q And you are sure there were five men came to your house? A Five men.

Q You did not think it was two? A No, it was five.

Q Is it not a fact, Mr. Werpupp, that a day or two or three days before this alleged occurrence you had received a shipment of liquor into your house? A No, sir. 30

Q How long before then did you receive a shipment of liquor? A What I told you before, I do not know. I could not tell.

Q Your memory is pretty good; you even remember what you told us before. Well, how long before this alleged date did this liquor come to your house? A I could not tell.

Q Had you paid for this liquor before that time? A If I buy anything from anybody, I pay for it, I do not owe a penny to the world. 40

Henry Werpupp, cross.

Q Had you paid for the liquor before that date? A When I got liquor, certainly.

Q To whom did you pay that money?

Mr. Fisch: I object to it as immaterial.

The Court: I allow it on the same theory
10 as before.

Q Do you understand the question? Who was it you bought the liquor from, Mr. Werpupp?
A I do not know.

Q Do you know where the man lives from whom you bought the liquor? A Well, I cannot remember from whom I got the liquor.

Q Well, did the man live in Newark or in the Highlands, New Jersey, or in Irvington? A
20 Well, he lived in Newark.

Q He lived in Newark? A Yes, I think so.

Q Do you remember how much it was? A Well, I cannot remember.

Q It was not \$1,500, was it? A No, sir.

Q When you discovered on the 24th day of April, 1924, that all your good liquor was gone, you were pretty mad, weren't you?

30 Mr. Fisch: Your Honor, please, I object to the question. I do not think it is proper cross examination.

The Court: I think it is. It is a question as to his attitude.

Mr. Kessler: A question of his veracity.

Mr. Fisch: He did not say that all his good liquor was gone.

The Court: I allow it. Repeat the question.
40

Henry Werpupp, cross.

Q You were pretty mad when you discovered your liquor was gone, is that right? A Why, certainly, would not you?

Mr. Kessler: We agree in one thing; you and I would both get mad after losing our liquor.

Mr. Fisch: Especially after paying \$1,-
500. 10

Mr. Kessler: That's what I am going to prove, that he paid \$1,500.

Q Well, you were mad, and so mad, that you sat down and waited till somebody came home, is that right? A Yes, sir.

Q And you have a telephone in your house, haven't you? A Yes, sir.

Q You use the telephone, don't you? A Sometimes, yes. 20

Q I mean when you have occasion; there is no difficulty about your using a 'phone? A No, sir.

Q When you discovered that you were robbed, why didn't you pick up the receiver and ask central to connect you with police headquarters and report the robbery? A Because a friend
30 of mine came in and said, "I bring you somebody," you know. "You tell him all about it, he is from the police"; and that fellow came in and I told him about it and he was a reporter.

Q When did this friend come to your house?
A The same day, you know.

Q What time? A It was dark.

Q Well, what time, was it after six o'clock, or before six o'clock? A After six o'clock.

Q Would it be after seven? A No, I don't think so. 40

Henry Werpupp, cross.

Q Did you tell anybody about this robbery?

A Certainly.

Q Who did you tell? A Well, I told my neighbors.

Q That day? A That day, yes.

10 Q What time of the day was it that you told your neighbors about this robbery? A When I came home and I seen it, you know.

Q What time was it that you went out and told your neighbors? A Well, you know when I came back from the bank.

Q I was not with you, I don't know.

The Court: Four o'clock, he says.

Mr. Kessler: Four o'clock.

20 Q When did you go out and tell your neighbors? A Right away when I saw that business.

Q Who were the neighbors that you told?

The Court: Who are the neighbors that you told?

The Witness: Oh, I told a fellow by the name of Waldron.

30 Q Where does he live? A He lives across the street from me.

Q Why did you go over and tell him? A Well, of course, we are friends, you know, and he was working that day in the garden and I told him about it, and he said, "I thought already they were fakers."

Q Well, how did he know they were fakers? A Oh, he seen them.

The Court: What was his name?

40 The Witness: Waldron.

Henry Werpupp, cross.

Q What did that remark mean? A I don't know when he seen them. He seen them go in my house, I suppose.

Q Well, how did he know what they were or who they were, and why they were there?

A Why, I told him what happened, and then he said to me he had expected that was no prohibition agents. 10

Q Why didn't you tell that to the prosecutor when he asked you those questions? You went out to your neighbors and talked about it, didn't you? A Well, I didn't think it has anything to do with the case.

Q Well, did you tell the prosecutor that after you discovered a robbery you went upstairs and woke up, and you sat there and waited until your servant girl came and your wife came? A Because I was all excited. 20

Q And the next morning you went out to police headquarters and you stayed in the house that night until your girl came and your wife came and the next morning you went to police headquarters? A The next morning we went to police headquarters; the same night.

Mr. Kessler: Your Honor, please, I submit that he told that to the prosecutor, he has more interest in this case than I have. 30

Mr. Fisch: I object to such a statement from counsel. Now, your Honor, I am representing the State of New Jersey in this action and I am entitled to use all the power and pep I have. This witness did not say in his direct examination that he called up the police that night; he did say he went the next day and he did say he had gone out and told his neighbors. Now, your Honor, please, 40

Henry Werpupp, cross.

my recollection is that he went to the police headquarters the same day.

Q Did you telephone that same day? A This fellow telephoned and called up Captain Brex, you know, and I was told tomorrow morning to be down at police headquarters.

10 Q What city were you talking about, what city? A Newark.

Q Did you report to the police headquarters in Newark? A Yes, sir.

Q You live in East Orange, don't you; you know they have police headquarters there? A Certainly.

Q You know they are located in the City Hall, don't you? A Yes, sir.

20 Q You know you pay your taxes there, don't you? A Yes, sir.

Q Why did you call up Newark and not to East Orange? A It was reported to East Orange the same way and because they said taking fifteen hundred dollars from me in Newark, that belongs to Newark.

Q Why did you report to Newark? A I don't know; they said I had to go out and take it to Newark.

30 Q Why did you first report it to the Newark police headquarters? A Because they told me that belongs to Newark.

Q Why didn't you report it to the police headquarters of East Orange? A Well, I told you that I reported it there the same way.

Q Well, how many days after this robbery did you report it to East Orange? A After, how long after; well, I don't remember; some day.

40 Q How long after you had reported it to Newark? A I have told you, they told me in

Henry Werpupp, cross.

Newark I should go out to Chief O'Neill and so I did.

Q That was a couple of days after? A I think so.

Q Why did you not report the robbery to East Orange right away; why did you wait a couple of days? A I thought the police does that; you know the Newark police; that is what I understood that they notified East Orange.

Q Didn't you wait a couple of days before you went and reported it to the police at East Orange? A Yes, I was told when I reported it to the police in Newark, "Now you have to report it in East Orange."

Q Why did you do that? A I went there as soon as they told me.

Q How long was it after the robbery? A I don't know how long it was. They told me in Newark, they said, "We have only to do with this fifteen hundred dollars; the other business belongs to East Orange," and I went to East Orange.

Q Did you go to East Orange the same day or afterward? A Afterwards.

Q Why didn't you go there the same day?

The Court: What Mr. Kessler means is, did you go to the East Orange police headquarters the same day as the Newark people told you to go there?

The Witness: The same day, yes.

Q How many days after the robbery? A The robbery, that was on a Friday, the next day would be Saturday.

Q When was the robbery, do you know; do you know what day of the week the robbery was? A That was Friday.

Henry Werpupp, cross.

Q And when did you go to police headquarters in East Orange. A I think Saturday.

Q Well, you said that you went to the Newark headquarters on Saturday and you said that you went to the East Orange police headquarters two days later.

10 The Court: No, he did not; he said that he went to the East Orange police the same day he was told to do so at Newark police headquarters.

A I cannot remember that, whether it was the same day or Monday.

Q Is it not a fact that you did not report the robbery to the police because of the fact that you went to the person from whom you had bought the liquor to try to get it back for yourself? A Never went a step. That is not the reason.

Q That is not the reason you did not report it, is it? A No, sir.

Q And is it not a fact that Mr. McCarthy, Mr. Werpupp, at no time offered to pay you money but that on the contrary you told him you would drop the case if he could pay \$1,500?

A That is not so, I never did ask him anything like that.

30 Q You were willing to take \$1,500 to drop the case? A I was not; I told him that it could be only settled with the consent of the Court if any settlement was made.

Q Now, you were willing, so far as you personally were concerned, you were willing to take \$1,500, as far as you were concerned, if the Court is satisfied? A If the Court is satisfied.

Q All right; if the Court is satisfied, you were willing to take \$1,500 to drop this case? A Yes, 40 if the Court is satisfied.

Henry Werpupp, cross.

Q Then you were satisfied? All you care about this case is getting \$1,500? A Well, I ought to get the whole money, which is what he promised me.

Q All that you care about this case is getting the \$1,500?

10 Mr. Fisch: I submit that he has answered the question.

The Court: He may answer it again.

The Witness: I will take the \$1,500, if the Court is satisfied.

Q Is it not a fact that you went to Mr. McCarthy's home and told him that if he would go with you to the prosecutor's office you would tell the prosecutor that you do not remember McCarthy and that you were willing to have the case dismissed against him; is not that so? Yes or not. A No, no. 20

Mr. Kessler: Don't get excited about it. One "no" is just as strong as sixteen "no-s."

Q And is it not a fact that as a result of what you said to Mr. McCarthy he went with you to the prosecutor's office, and that you went inside and spoke to Mr. Fisch, and that Mr. Fisch, the present prosecutor, called McCarthy in and in your presence, did not the prosecutor say to Mr. McCarthy, "So I understand that you want to settle the case for \$1,500," and didn't Mr. McCarthy say, "I don't want to settle it for anything?" A I didn't hear that. 30

Q Well, what was Mr. McCarthy's answer? A I don't know what his answer was. 40

Henry Werpupp, cross.

Q Well, you were right there; your hearing is good? A I understood him to say "not me wants to pay the money; some friends"; I didn't listen.

Q You didn't listen? A No, sir.

10 Q So that you didn't say in the presence of the prosecutor if he would pay you \$1,500 you were willing to drop this case? A I did not say that.

Q That is not a fact? A No, sir.

Mr. Fisch: Your Honor, I have a witness out of a sick bed that cannot be here tomorrow.

The Court: I will allow that witness to testify now.

20 Mr. Fisch: Just one question more of this witness on the stand.

By Mr. Fisch.

Q Where was your wife on the day in question at the time that these men were there? A She was in the house.

30 Q And was she there all the time these men were there? A No; she had to leave to go to the doctor's.

Mr. Mott: You say your wife was there when these men came there to the house. Do I understand that the witness now says his wife was not there all the time?

Mr. Fisch: Yes.

40 Mr. Mott: I thought he told us he went upstairs and waited for his wife and his servant.

Fannie Werpupp, direct.

The Court: That is when he came back from the bank. He says his wife was there and he sent her out to the doctor's.

FANNIE WERPUPP, sworn in behalf of the State. 10

Direct examination by Mr. Fisch.

Q You are the wife of Mr. Werpupp who was on the witness stand? A Yes.

Q And you live up in East Orange, do you? A Yes, sir.

Q And do you remember the 24th of April, 1924? A Yes, sir.

Q And did some men come to your house on that day? A Yes, sir. 20

Q About what time of the day was it? A It was in the afternoon.

Q And how many men came? A I seen three, of course; the men came in when I was upstairs.

Q Oh, the men came in when you were upstairs? A Yes, sir.

Q Now, when you came down, how many men did you find in your home? A In the hall three. 30

Q And was your husband there? A He came back; they came out of my husband's room.

Q Now, do you see any of these men in court here today? Will you please look around and tell us if you see any of those men in court here today?

(Witness stands up to identify the men.)

The Witness: I have not got my glasses.

Mr. Fisch: What's that? 40

Fannie Werpupp, direct.

The Court: She has not got her glasses along. Mr. Werpupp, lend her a pair of glasses.

(Mr. Werpupp loans witness glasses.)

10 Mr. Fisch: I want you to look all over the court room; not only in the back of the court room, but all over the court room, please.

Q Now, let me ask you this question, please.

Mr. Kessler: Just a minute, please.

The Witness: Let me step down here, please, and pick him out.

20 (Witness leaves the stand and picks out a Mr. Uslander in the audience.)

The Witness: That is one, I think.

Mr. Fisch: Look at him closely, please.

The Witness: I thought that was one, now I see it is not, the man had a little moustache.

Q Do you know whether or not this is one of the men? A No.

30 Q You cannot say positively? A It looks like him.

Mr. Kessler: It looks like him.

The Witness: He was thicker set and youngish.

Q What makes you say just now "thicker set and youngish"? A I remember that.

40 Q Now, please look at the people inside the rail.

Fannie Werpupp, direct.

Mr. Kessler: This lady has been on the witness stand and has looked at everybody.

(Witness looks around through her glasses on every one inside the rail, and at last comes to counsel table, to one end of the table, saying, as follows: "This man is the one who spoke German to me in the house.") 10

The Court: Is that what you say, Mrs. Werpupp?

The Witness: Yes.

The Court: Are you sure that is the man?

The Witness: Yes (indicating the defendant John Witt) he had a hat and coat on.

Q He had a hat and coat on? A Yes.

Q Would you be able to tell better if he had a hat and coat on? A He was sitting with me in the dining-room and kept a conversation. 20

The Court: See if you can pick out the other man, any other man.

Mr. Fisch: See if you can pick out any other man in the court room and see if you can recognize any other man who was there that day?

The Witness: This man (indicating a tall man sitting behind clerk). 30

The Court: Is this the man?

(Prosecutor's detective, McCarthy, is indicated.)

Q Now, are you sure that this is one of the men?

The Court: Mr. McCarthy, come up close to Mrs. Werpupp. 40

Fannie Werpupp, direct.

The Witness: No, I cannot be sure; the other man was taller.

Q Do you know whether he had a moustache or not? A No, sir, he had no moustache.

Q All right; sit down Detective McCarthy.

10 The Witness: I cannot see well. (Witness comes close to counsel table to identify the other man.)

Mr. Fisch: Stand up, please (indicating Detective Coucossa).

Mr. Kessler: I object, your Honor, it is not the proper thing to do.

The Court: I cannot allow that, Mr. Fisch.

20 The Witness: (Looking at Detective Coucossa.) Now, it was a tall man. (Witness discovers defendant McCarthy and indicates him as the other man.)

Q So you say this is the man? A I believe so.

Q Well, could you tell better if he stood up and stood close to you? A He looks more like it, I think it is.

30 Q Can you say whether or not this is one of the men? A I think that is the other man.

Q You think that is the other man? A Yes, sir.

Defendant McCarthy: May I put my hat on?

Mr. Fisch: Go ahead, put your hat on if you want to.

The Court: Look at this man now with the hat on.

40 The Witness: It looks like him.

Fannie Werpupp, direct.

Mr. Kessler: Is it?

Mr. Fisch: Is that the man?

The Witness: I think so.

The Court: Now, Mr. Fisch, Mr. Kessler objected to your statement to the witness or to the question to her to look not only behind the rail but this side of the rail, on the ground that it was an improper question when she was identifying, on the theory that it was calling attention to these men, both of whom happen to be on this side of the railing, and for the purpose of the record I will say that I think it was a proper question and I will grant an exception. 10

Mr. Kessler: Your Honor, I make a motion for a mistrial on the ground of the attitude of the prosecutor in conducting this identification. 20

The Court: You mean in the way of identification?

Mr. Kessler: Yes, your Honor.

The Court: I will allow it.

Q You say that the man you pointed out in the court room, the man with the moustache, had a conversation with you in German? A Yes, sir. 30

Q What did he say to you? A Well, he spoke about different things, why they were there.

Q All right, what else? A And where they had to go the same day.

Q Did he say anything to you about who he was? A Well, he said they had to go up the avenue.

Q Did he say anything to you about who he was? A He said, "I speak German, too," and 40

Fannie Werpupp, direct.

he spoke German to me. He speak about my house.

Q He spoke about your house. Did they show you anything? A The other big fellow which is not here, he showed me a badge.

10 Q Where were you when they showed it to you? A I was in the hall, and the big fellow was familiar to me. I said, "I believe I know you," when I was seeing that man there.

Q And, now, where was the badge when he showed it to you? A In his hand.

Q What color was the badge? A Brass, or something.

20 Q Well, now, where was your husband when you were speaking to Witt in German? A He was with the man in the kitchen talking and sitting in the chair.

Q And your husband was sitting in the chair? A Yes, and the kitchen door leads into the hall.

Q And did your husband come out before you or did you go out before him? A I went out before him.

30 Q Now, when you went out where was your husband? A He was in the kitchen with that man.

Q And where was this man that spoke German to you? A He was in the dining room.

Q And where was this big man? A He was standing in front of me.

Q And where did you go? A I had to go to the doctor.

Q You had a machine? A A friend of ours called for me with a machine.

40 Q And you got into the machine and went to the doctor? A Yes, sir.

Henry Werpupp, re-direct.

Cross examination by Mr. Kessler.

Q Did you know what these men were there for? A Yes, my husband said they are prohibition agents and they said, "Yes, we are prohibition agents."

Q Is that all? A Yes, sir.

10

The Court: That is all, madam.

Adjourned until tomorrow Friday, February 16, 1925, at ten o'clock A. M.

SECOND DAY.

Friday, February 6, 1925.

(Trial continued pursuant to adjournment.)

20

(Present, counsel as before stated.)

HENRY WERPUPP, recalled in behalf of the State.

Re-direct examination by Mr. Fisch.

30 Q Mr. Werpupp, you said yesterday, in response to a question by Mr. Kessler on cross examination, with regard to your being willing to drop the case upon their payment of—upon the payment to you of a sum of money, some twelve or fifteen hundred dollars, and you did say they promised me the whole money, now, what do you mean by that? A They promised to pay me the \$1,500 and for the goods.

Q Who said that? A McCarthy.

40 Q Now, at any conversation with McCarthy with regard to paying you \$1,500 and the money

Henry Werpupp, re-direct.

for the goods, was anything else said in regard to whether or not you knew McCarthy?

Mr. Kessler: I ask that the time be fixed.

Mr. Fisch: I think the time has been fixed. Any conversation with McCarthy with regard to paying this witness \$1,500.

10

Mr. Kessler: He has testified to a number of conversations. When was this conversation you are now bringing up? We have a right to know that.

Mr. Fisch: I will reframe the question.

The Court. All right.

Q Did you have a conversation with McCarthy with regard to the payment of this money, of \$1,500, and payment for the goods?

20

A Yes.

Q When was that? A That was in the Fourth Precinct Station.

Q When? A The day after—

Mr. Kessler: Was that at the time of the arrest?

30

The Witness: The day we had to go before the Judge in the Fourth Precinct.

Q Was anything said in that conversation with regard to whether or not you knew McCarthy? A I only knew McCarthy after I identified him in the court.

Q Well, was anything said by McCarthy as to whether or not you knew him? A Nothing said whatever.

40

Q Now, at any subsequent conversation with McCarthy was anything said by him as to

Henry Werpupp, re-direct.

whether or not you knew him? A Nothing said about that.

Q Well, did he say anything to you with regard to what you were to do if he would pay you the \$1,500 and pay you the money for the goods?

Mr. Mott: I object. This is direct examination and that is too leading.

10

Mr. Fisch: It is re-direct.

Mr. Mott: Well, anyway, it is direct. I do not object to his developing any conversations, but not summarizing the testimony.

The Court: I will allow the question. It is open to some objection because it is leading, but it is not very objectionable on that ground.

20

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,

Judge.

Q (Question read.) A Yes.

Q What did he say? A He told me—

30

Mr. Kessler: That is still objected to on the same ground.

The Court: Overruled.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,

Judge.

40

Adrian G. Chamberlain, direct.

A He told me the only way it could be settled, if I am going before the Judge and tell him I made a mistake in the identification.

Q What did you say to that? A I said I would not do that for all the money in the whole City of Newark.

10

ADRIAN G. CHAMBERLAIN, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q You are the Prohibition Director for New Jersey? A Yes.

20

Q Of the United States? A Yes.

Q And as such are you in charge of the prohibition force in New Jersey? A Yes.

Q How long have you been a Prohibition Director? A Since May 1, 1923.

Q And can you tell us whether or not Peter McCarthy or John Witt, the defendants here, have ever been prohibition agents?

30

Mr. Mott: I object. You mean within what jurisdiction?

Mr. Fisch: New Jersey.

Mr. Mott: All right.

A No, sir.

Q Do you know whether they have been, so far as your knowledge is concerned, prohibition agents from any other jurisdiction?

40

Mr. Kessler: Objected to. He may not have knowledge.

Adrian G. Chamberlain, direct.

The Court: He asked him within his knowledge.

Mr. Kessler: He cannot draw any conclusion from what his answer may be.

The Court: Suppose you ask what his knowledge may be.

Mr. Mott: Your Honor has no knowledge of whether they are. The jurors have no knowledge. That carries no evidential weight.

10

The Court: That is true.

Mr. Mott: And for this witness to say—He is here in an official capacity; for him to say—and I assume he has no knowledge—

The Court: But I will allow Mr. Fisch to inquire into his knowledge.

20

Q Do you know whether or not either of the defendants, McCarthy or Witt, are prohibition agents of the United States?

Mr. Kessler: That is objected to.

The Court: Objection sustained.

Q Are you familiar with the prohibition agents who operate in New Jersey? A Not all of them, no, sir.

30

Q Are you familiar with the prohibition agents who operate from your office in New Jersey? A Yes, thoroughly.

Q Are either of the defendants, John Witt or Peter McCarthy, connected with your office or with the prohibition office in New Jersey in any way? A No, sir.

Q Have they ever been since you have been there? A No, sir.

40

Adrian G. Chamberlain, direct.

Q Were they connected with the prohibition office in Newark, or either of them, on the 24th of April, 1924?

10 Mr. Kessler: Objected to. My objection is prohibition agents in Newark. If counsel means prohibition agents connected with his office I have no objection. They may be prohibition agents in Newark and not connected with Mr. Chamberlain's office.

The Court: I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

20 NEWTON H. PORTER,
Judge.

The Court: This man is in charge.

Mr. Kessler: The question should contain the prohibition office in Newark under which you are in charge. There may be an agent in Newark who may not be in charge of Mr. Chamberlain. If you incorporate in the question under his charge it is not objectionable.

30 The Court: I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge.

40 Q (Question read.) A Under my direction, no, sir.

Adrian G. Chamberlain, cross.

Q And your office, the office that you are in charge of, is located where? A 999 Broad street, Newark, New Jersey.

Q And that is the prohibition office of the Director of Prohibition for New Jersey? A Yes.

Q And is there any other office and Prohibition Director for New Jersey? A No, sir. 10

Cross examination by Mr. Mott.

Q Do you know a man connected with the Prohibition Enforcement Department in New York by the name of Merrick? A Yes, sir.

Q What is his position? A He is Divisional Chief for New York.

Q What does that cover? A It covers the northern counties of New Jersey, which would include Essex County. 20

Q Essex County is included in his jurisdiction? A Yes.

Q Is it not a fact that he has made frequent raids through his men in this county during the last year? A Yes, that is part of his duty.

Q And did you have knowledge of those raids previous to their being made? A No, sir; we never do. 30

Q And you had no knowledge as to the men under him who were over here? A No, sir. General agents are a mobile force and operate over the entire country. They may come from Alabama or may come from California.

Q Frequently is it not so that a general agent from Washington will appear in your jurisdiction? A Yes.

Q Is there a Divisional General Agent in Philadelphia? A Yes. 40

Adrian G. Chamberlain, re-direct

Q What is his name? A Mr. Sams. He has jurisdiction over Eastern Pennsylvania and the the lower South Jersey counties.

Q But no jurisdiction in Essex County? A No, sir.

Q And is it not true that Mr. Sams—what was his name? A Sams.

Q Through his agents more or less frequently comes into New Jersey and makes raids? A In the South Jersey counties, yes.

Re-direct examination by Mr. Fisch.

Q Do they come in and make raids in Essex County? A No, sir; not Mr. Sams' agents.

Cross examination by Mr. Kessler.

Q But Mr. Merrick's agents do? A Yes.

By the Court.

Q You know some of the agents who are not connected with your office? A Yes. I would not know all for the reason they come from all over the country.

Q Yes, but you do meet them? A Yes, they come over frequently.

Re-direct examination by Mr. Fisch.

Q Did your office make, or authorize the making of a raid or the removal of any liquor on the 24th of April from the home of Mr. Werpupp at 50 Hillcrest Terrace, East Orange? A No, sir.

Q Do you know whether or not a raid or the removal of any liquor from those premises was authorized or made by any other prohibition officers?

Adrian G. Chamberlain, re-direct

Mr. Kessler: Objected to.

A I would not know that.

Mr. Kessler: Withdraw the objection.

Q If a raid is made by officers of the Prohibition Department not directly connected with your office, but under the supervision of Mr. Merrick would you receive information of it after it is made? A No, sir.

Mr. Kessler: Objected to—no, I withdraw the objection.

The Witness: I will correct that.

Mr. Kessler: Then I do object to it. It does not meet any part of this indictment. The indictment charges in the last count representing one of the agents, not taking out and receiving.

The Court: I think it is material. I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge.

Q (Question read.)

The Court: Now, give us your answer.

A We get a copy of all raids in our jurisdiction when the case is made and presented to the district attorney and a copy forwarded to the prohibition director or commissioner at Washington. I get a copy of all cases.

William S. Sword, direct.

Q Did you ever receive a copy of a raid made on these premises I have referred to?

Mr. Kessler: Objected to.

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

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

NEWTON H. PORTER,
Judge.

A No, sir.

WILLIAM S. SWORD, sworn in behalf of the State.

20

Direct examination by Mr. Kessler.

Q Mr. Sword, what is your business? A Why, driving for my dad. Real estate gardener and nursery man.

Q And in April, 1924, what was your business? A I was driving a cab for the Brown and White Taxi Company in Newark.

30 Q You were a chauffeur? A Yes.

Q And on the 24th of April, where were you stationed? A What time of day?

Q In the afternoon, between two and three o'clock?

Mr. Kessler: I have no objection to directing him to this particular trip.

40 Q At 2:45 P.M.? A Corner of Bergen street and South Orange avenue. The car was standing on Bergen street.

William S. Sword, direct.

Q In Newark? A Yes.

Q Were you engaged by any one? A I was in the restaurant and somebody told me there was a job on the corner, and three men were in the car and told me to drive to the American National Bank, Belmont avenue and Springfield avenue.

10

Q Were you told to drive to the American National Bank? A Yes.

Q Who told you to drive there? A I couldn't say exactly, but it was one of the three people in the car.

Q Do you know Mr. Werpupp? A Never before this case.

Q Do you know him now? A Why, slightly, through the case.

Q Was he one of the men who was in the car? A Yes.

20

Q And do you know the defendant McCarthy? A Not before the case, no, sir.

Q Do you know whether or not the defendant McCarthy was one? A Yes.

Q And how about the defendant John Witt? A He was in the car, yes.

Q And those were the three men? A Yes.

Q Now, you drove to the American National Bank and that is located where? A Corner of Belmont avenue and Springfield avenue, Newark.

30

Q And when you got there, what did you do? A I was told to stay in front of the bank and I did so.

Q Who told you that? A Why, a call from the back.

Q You don't know which one? A No.

Q One of the three men? A Yes.

Q And when you stopped did anybody get out? A Yes.

40

William S. Sword, direct.

Q Who got out? A Mr. Werpupp and Mr. Witt.

Q Werpupp and Witt? A Yes.

Q What did McCarthy do? A McCarthy stayed in the cab.

10 Q Did you then drive away or what? A No, sir. I was standing in front of the bank and the officer on traffic duty told me not to stand there but pull around the corner, and I pulled around the corner and joined in a conversation with Mr. McCarthy.

Q What was that conversation?

Mr. Kessler: Objected to. I will withdraw the objection.

20 A Why, I had received a summons for traffic violation and I just happened to speak on the subject and talking to Mr. McCarthy on the subject of the summons.

Q What did he say?

Mr. Kessler: I object to the conversation, unless it relates to this particular case.

Mr. Fisch: I will withdraw it.

30 Q How long did you stay there? A Why, it was no longer, I will say about five minutes.

Q Then what happened? A Mr. Werpupp and Mr. Witt came out of the bank and got in the car. I was on the driver's seat at the time and told to drive to Avon avenue and Twentieth street.

40 Q Who told you to drive to Avon avenue and Twentieth street? A I was on the driver's seat and when driving pay very little attention to what goes on in the rear of the car.

William S. Sword, direct.

Q You don't know which one of the men told you to drive to Avon avenue and Twentieth street? A I don't. It was up toward Avon avenue and Twentieth street I received a call from the rear of the car to go to Hillcrest Terrace in East Orange.

Q Do you know who told you that? A I do not know. 10

Q Did you go to Hillcrest Terrace? A Why, I was near Eighteenth avenue. I drove up Eighteenth to Grove street, to South Orange avenue, and up South Orange avenue and over Hillcrest Terrace and stopped at the corner of some street.

Q Why did you stop at that corner? A I was told to.

Q Who told you? A A call from the rear.

Q Who told you that? A One of the three men. 20

Q You stopped at the corner of Hillcrest Terrace and some street? A Yes.

Q But you are sure you did not stop in front of 50 Hillcrest Terrace? A Positive of that.

Q When you stopped at the corner of Hillcrest Terrace and this street, what happened?

A I was sitting on the seat and the first thing I saw was the old man go around the corner, out of sight, and the two other gentlemen told me to drive back downtown. 30

Q Now, do you remember when you got to Hillcrest Terrace and the corner of this street, the name of which you don't know, who got out of the cab first? A Why, that I really could not say. I really do not remember that. It is quite a while ago.

Q You don't remember who got out of the cab first? A I really don't. 40

William S. Sword, direct.

Q And did you wait there after somebody got out of the cab? A It was not very long. Well, no more than, we will say, two minutes at the longest.

Q And do you know whether or not anybody came back to the cab before you drove away?

10 A Why, Mr. McCarthy was out of the car and got back in and told me to drive away.

Q McCarthy was out of the car and he got in back and told you to drive away? A It seems he was in conversation with Mr. Werpupp.

Q Was Mr. Witt out of the car there? A No, sir.

Q And McCarthy then told you to drive away? A Yes.

20 Q Where did you drive to? A In driving down South Orange avenue I was told, on reaching Twelfth street, to pull over Twelfth street to the right and went over Twelfth street to Springfield avenue and down Springfield avenue—well, below Plane street, nearer Washington street and Branford Place, between Plane and Washington on Branford Place.

Q What happened there? A Why, the gentlemen got out and paid me the fare.

30 Q Who paid you the fare? A Mr. McCarthy.

Q What was the fare? A The fare was three dollars and I got three dollars and a half.

Q He gave you three dollars and a half and he got out? A Yes.

Q Subsequently were you questioned by the police about this trip? A I surely was.

40 Q And when you were questioned by the police about it, did you make a statement to them? A I did.

William S. Sword, cross.

Q And did you furnish them with any description of the occupants of your car? A I did, as much as I could remember.

Mr. Kessler: We do not deny these men were in the cab.

Cross examination by Mr. Kessler.

10

Q Mr. Sword, all you know about these three men is they were on South Orange avenue and Bergen street and asked you to drive to the American National Bank? A Yes.

Q And that was the first time you met any of the three men? A Yes.

Q And can you say—please try to remember—as to who asked you to drive to the American National Bank? A That I cannot. 20

Q You heard Mr. Werpupp testify in court yesterday? A Yes.

Q And do you recognize his voice as that being the voice that asked you to drive to the American National Bank? A It is so long ago I cannot say.

Q You observed Mr. Werpupp has some kind of accent. Doesn't that refresh your memory? A Well, I really could not say.

30 Q After they came out of the bank, do you recall who told you to drive to Avon avenue and Twentieth street? Was it the same voice? A It is pretty hard.

Q Do you know who asked you—who spoke to you for the third time and asked you to go up to Hillcrest Terrace? Was it the same voice? A I could not say.

40 Q And then you came to the corner of Hillcrest Terrace and some other street and some voice told you to stop? A Yes.

40

William S. Sword, cross.

Q Who got out of the cab? A Why, I really didn't take notice as to who got out of the cab, but I know that Mr. McCarthy and Mr. Werpupp were out of the car and they had some conversation.

10 Q Right at your cab? A Why, as much as I remember.

Q Isn't this true, that when you stopped your cab at the corner Mr. McCarthy got out and immediately following Mr. McCarthy, Werpupp got out and stood by your cab talking a minute or two and Mr. McCarthy got into the cab and Mr. Werpupp went on around the corner, isn't that what happened? A It seems to me that is what happened.

20 Q Yes. It is not the fact, is it, that McCarthy, when he got out of the cab he walked around the corner and he came back and then you saw Werpupp get out of the cab and he came back? A Not that I can remember.

Q By the way, do you know where the whiskey curb is in Newark? A Just through talk?

Q Yes. A It is supposed to be Branford Place and Halsey street.

30 Q Yes, within a half a block or a quarter of a block of where you stopped this cab? A A block and a half, to be exact.

The Court: When who stopped?

Mr. Kessler: At the end of the drive.

Q Well, you were paid your money? A Yes.

The Court: Where you were paid off and discharged?

40 The Witness: Yes, sir.

William S. Sword, re-direct.

Q Well, isn't the whiskey curb between Washington street and Halsey, on Branford Place?

Mr. Fisch: I do not think that is competent.

The Court: Well, he only knows what he 10 heard.

Re-direct examination by Mr. Fisch.

Q Mr. Kessler asked you whether, when you got to this corner of Hillcrest Terrace and some other street, the name of which you do not remember, Mr. McCarthy got out of the car and walked around Hillcrest Terrace corner and then came back to the cab and then Mr. Werpupp got out and you said you could not remember. 20 Now, is that what you mean, it is possible it could have happened and you do not remember it?

Mr. Kessler: Objected to. It is not a proper question on the part of his own witness. Anything is possible, but the jury ought to draw the inference, but not what the prosecutor desires to put in the mouth 30 of this witness.

The Court: I think that is correct. Suppose you reframe it?

Q Mr. Kessler asked you when you got to Hillcrest Terrace, at the corner of this street you do not remember, whether McCarthy got out of the cab and walked over Hillcrest Terrace and then subsequently returned to the cab and that when he returned to the cab, Werpupp got out and your answer was, as I recall it, not that 40

William S. Sword, re-cross.

I can remember; is that correct? A That is my answer. Yes, that is correct.

Q And can you say positively whether or not that happened?

10 Mr. Kessler: Objected to. The answers must stand as they are.

The Court: I will ask that the question be repeated. I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge.

20 A I cannot say; I really do not know.

Q You have given us, have you, your best recollection? A Yes.

The Court: How long was that cab stopped at Hillcrest Terrace?

The Witness: Not longer than two minutes.

30 *Re-cross examination by Mr. Kessler.*

Q Your recollection is that McCarthy and Werpupp got out and McCarthy got out first and Werpupp immediately after and they talked at your cab and Werpupp went on and McCarthy got back in your cab and you drove downtown? A Well, as I said before, there seemed to be a conversation.

40 Q That is what I say, McCarthy got out and Werpupp got out and had a conversation and after a while Werpupp went around the corner

Adrian G. Chamberlain, re-direct.

and McCarthy got in the car and you went downtown, isn't that your recollection? A That is my recollection.

ADRIAN G. CHAMBERLAIN, recalled for 10
Re-direct examination by Mr. Fisch.

Q Any liquors which are seized or taken in any raids in Essex County, irrespective of whether that liquor is seized or taken by members under your control from the prohibition office in Newark, or by other prohibition officers, can you tell me what disposition is made of that liquor? 20

Mr. Kessler: Objected to on the ground it has no evidential value in this case.

The Court: I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge. 30

A They are supposed to place that at the Eagle Warehouse at 36 Hayes street in my custody until it is ordered to be destroyed by the Court at the direction of the United States Marshal.

Q And do you receive a memorandum of any kind of liquor that is stored there? A Yes. I have a warehouse receipt for everything that is stored there. 40

Charles G. Meierdierck, direct.

Q Did you ever receive any warehouse receipt, or knowledge of any kind, of liquor stored at the Eagle Storage Warehouse from premises on Hillcrest Terrace?

Mr. Kessler: That is objected to.

10 The Court: I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge.

A No.

20

CHARLES G. MEIERDIERCK, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q Mr. Meierdierck, what is your business?

A Banker.

30 Q Connected with what bank? A The American National Bank of Newark.

Q And that is located where? A Belmont avenue and Springfield avenue.

Q And were you connected with that bank on the 24th of April, 1924? A Yes.

Q Do you know Mr. Werpupp? A Yes.

Q Is he a depositor at your bank? A Yes.

Q Was he at that time? A Yes.

Q Did you see him on that day? A Yes.

40 Q What time? A Between the hours of two and three.

Charles G. Meierdierck, cross—re-direct.

Q And did you transact any business with him there? A Yes.

Q What business did you transact with him? A He came to my desk and made application for a loan of \$500 on an unsecured note and I granted the loan.

10 Q And that was all the business you did with him that day? A And then he said, "I am in a great hurry, will you make out a check for \$1,500, as I would be glad to cash it," and I did it and he signed it and endorsed it and he said, "I would like to have it cashed," and I directed him to the paying teller, William Zoellner, and he walked out of my office, and I took that note and gave it to the note teller, whose cage is located immediately in back of the officers' desks. That was all.

20 Q Did you have anything to do with the handling of the cash? A No, sir.

Cross examination by Mr. Kessler.

Q Mr. Werpupp keeps a rather active account in your bank? A Yes.

Re-direct examination by Mr. Fisch.

30 Q Do you know what his balance was on the 24th of April?

Mr. Kessler: That is objected to.

The Court: He has testified it was a thousand dollars. I think it is a proper question, if you want to go into that.

A Now, do you wish to have the balance before the note was discounted or after?

40 Q Yes, before. A \$1,219.56.

40

Charles G. Meierdierck, re-cross.

Re-cross examination by Mr. Kessler.

Q Is that a transcript of his deposits and records? A Yes.

Q What is this paper? A That is a transcript of the ledger sheet showing Mr. Werpupp's individual account on our records.

10 Q And the left-hand side shows the checks in detail and that shows checks out? A On the left-hand side that means the checks paid out and on the right-hand side is the various deposits and discounts.

Mr. Fisch: I want to know whether Mr. Kessler is making Mr. Meierdierck his own witness.

Mr. Kessler: Yes.

20 The Witness: On the extreme right-hand side shows the balance.

Mr. Fisch: Then I would like to ask the witness a question.

Mr. Fisch: Did you make this transcript yourself?

The Witness: No, sir.

Mr. Kessler: What difference does it make?

30

Q Could you tell the balance without looking at this paper? A No, sir.

40

Frank J. McTague, Sr., direct.

WILLIAM G. ZOELLNER, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q Are you connected with the American National Bank? A Yes.

Q And were you connected with the American National Bank on the 24th of April, 1924? A Yes.

Q In what capacity? A Paying teller.

Q Do you know Mr. Werpupp? A Yes.

Q He is one of your depositors? A Yes.

Q Did you see him in the bank on the 24th of April? A Yes.

Q Did you transact some business with him there? A Yes.

Q What business did you transact with him? A I cashed a check for \$1,500 for him.

Q And who did you give the cash to? A Mr. Werpupp.

Q What denominations were the bills? A Two bills, one of a thousand dollars and one of five hundred dollars.

Cross examination waived.

30

FRANK J. McTAGUE, SR., sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q What is your business? A Representative of the Newark Ledger.

Q And was that your business on the 24th of April, 1924? A It was.

40

Frank J. McTague, Sr., direct.

Q And do you know Mr. Werpupp? A I do.

Q Were you at his home on the 24th of April, 1924? A I was.

Q What brought you there? A Information that was common gossip in the neighborhood, that he had been cleaned out of some liquor.

10

Mr. Mott: I move to strike that out.

The Court: I will allow it. This man is a reporter and he was asked why he went there. What difference does it make?

Mr. Kessler: We object to it, the gossip.

The Court: That the place had been cleaned out.

Mr. Kessler: That is the objection.

The Court: What difference does it make why he went there?

20

Mr. Kessler: It is not a question of why he went there. We object to his answer and ask it be stricken out on the ground that it is improper as to what the—

The Court: I will strike out that part where he says that Mr. Werpupp had been cleaned out.

30 Q When you got to the house, who did you see? A Mr. Werpupp.

Q Did you have a conversation with him? A I did.

Q And as a result of that conversation with him what did you do?

Mr. Mott: I object to the question as to the result of the conversation.

40 Q After the conversation with Mr. Werpupp, what did you do? A I wrote the usual story.

Frank J. McTague, Sr., cross.

Q And was that story published in the papers? A Yes.

Q Do you know whether or not the police were notified?

Mr. Kessler: I object to this line of testimony. It is not relevant or material. 10

The Court: I think it is relevant and I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,

Judge.

Mr. Fisch: I will withdraw the question. 20

Cross examination by Mr. Kessler.

Q You had known Mr. Werpupp before this situation? A I knew of him, but not intimately.

Q How long had you known him before this? A Why, I happened to be on the story when his daughter was killed in the Clifton avenue trolley car accident some years ago and I went to his home and got the picture of his daughter. 30

Q I suppose you have gained knowledge of the localities in the City of Newark? A I do.

Q Do you know what the whiskey curb is?

Mr. Fisch: I object to that as not proper cross examination.

Mr. Kessler: Withdraw it.

Q What time did you get to Mr. Werpupp's house and—I withdraw that for the moment. 40

Frank J. McTague, Sr., re-direct—re-cross.

You say about this daughter being killed. That killing took place about eighteen years ago? A Yes.

Q So you have known Mr. Werpupp for eighteen years off and on? A Just a moment. On that occasion—

10 Q Yes or no. A Well, I answered the question about how intimately.

Q I didn't ask you how intimately. I withdraw the off and on. You have known Mr. Werpupp for eighteen years? A Yes.

Q What time did you go to Mr. Werpupp's house this day? A Early evening.

Q What would you say? A Between six-thirty and seven o'clock.

20 *Re-direct examination by Mr. Fisch.*

Q Now, you say you have known Mr. Werpupp for eighteen years. What has been your knowledge of Mr. Werpupp for these eighteen years? A Well, of course, Mr. Werpupp is an old resident of Newark. He lived on Littleton avenue then, and when I went and got the picture, I don't suppose I saw the man from that time until I saw him in Hillcrest Terrace.

30 Q So you did not see him from the time his daughter was killed in the Clifton avenue railroad accident up until the time you saw him at Hillcrest Terrace? A No, sir.

Re-cross examination by Mr. Kessler.

Q Why did you say you saw him off and on? A That was the prosecutor's remark. I wanted to tell you how intimately I knew him and then
40 you objected.

William A. Norton, direct.

WILLIAM A. NORTON, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q You are a police officer of the City of Newark? A Yes.

Q Connected with Police Headquarters? A Yes. 10

Q And you have the rank of lieutenant? A Yes.

Q And how long have you been connected with Police Headquarters? A Nineteen years and a half.

Q Do you know the defendant, Peter McCarthy? A I know him from being brought to headquarters. 20

Q And when did you see him at headquarters?

Mr. Kessler: We admit that he was there.

Q Did you make a record of the time when you saw him at headquarters? A Yes.

Q And is this the record which you made at the time? A Yes.

Q Now, did you ask him any questions? A He was brought to the desk and I asked him what his name was. 30

Q What did he answer? A Peter McCarthy.

Q What else did you ask him? A I asked him his residence and he said 29 Nelson Place.

Q What else did you ask him? A Where he was born. United States. Father and mother born in Ireland. His age thirty-one. His occupation he answered salesman, and then whether he could read or write. He answered yes. 40

William A. Norton, direct.

Whether he was employed. He said yes, and married or single, and he answered single.

Q Did you again have occasion to see Mr. McCarthy and have occasion to ask him some questions? A I am not sure whether I slated him before that.

10

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

Mr. Fisch: I have no objection.

The Court: Strike it out.

Q Do you know the defendant, John Witt?

A I saw him, but I don't know whether it was in headquarters or not.

Q Did you ask him any questions? A Well, if he was brought before the desk. I would like to see that card. Yes.

20

The Court: Is that your handwriting?

The Witness: Yes, sir.

Q The card which you now are referring to is in your handwriting and it was made by you? A Yes.

Q Now, can you say by reference to that card where you have seen the defendant, John Witt, before? A I saw him at police headquarters in front of the desk.

30

Q Did you ask him any questions? A I asked him his name and he answered John Witt, and one of the detectives standing there—I don't know which one—told me—

Mr. Kessler: Objected to.

The Court: Objection sustained.

40

William A. Norton, cross.

Q Did you ask him any questions? A I asked him his address and he said 205 Clinton avenue, and I asked him his age and he said 34, and where he was born and he said the United States, and his father and mother were born in the United States, and his occupation was huckster, and that he could read and that he was not employed; that he was single.

10

Q Do you know whether or not these questions were made in response to—these questions were asked at the time he was arrested on this charge? A Yes.

Cross examination by Mr. Kessler.

Q Lieutenant, I direct your attention to the McCarthy card. Is that in your handwriting?

A Yes.

20

Q And you wrote that out? A Yes.

Q When did you do that? A On September 24th, at 2:25 P. M.

Q What year? A 1924.

Q September 24, 1924? A Yes.

Q And I ask you to look at the Witt card and ask you what date you talked to Witt and you obtained this information that you just gave us?

A On the tenth month, seventh day, 1924, at eleven P. M.

30

Q That is in October? A Yes.

Q 1924? A Yes.

Q You don't know what the business of these two men was in April and prior thereto in April, 1924? A No, sir, I don't.

40

Frank E. Drastel, direct.

FRANK E. DRASTEL, sworn in behalf of the State.

Direct examination by Mr. Fisch.

10 Q You are connected with the Newark Police Department and have been for how long? A For seventeen and a half years.

Q And you have the rank of lieutenant? A Yes.

Q Connected with headquarters? A Yes.

Q Do you know the defendant, Peter McCarthy? A Well, I recall the man. He was at headquarters. I recorded him.

20 Q And did you ask him some questions? A I asked him questions which are necessary when a person is arraigned before the desk.

Q And did you write out the answers? A Yes.

Q I show you a card and ask you if that is the card which you wrote out? A Yes, that is my handwriting.

Q Was that written out in his presence? A Yes.

30 Mr. Kessler: I object to the use of this card until it is shown it is necessary to refresh his memory.

Q Can you remember the questions which you asked Mr. McCarthy and the answers which he gave you without a reference to the memorandum made by you at the time? A I can recall the questions, but not the answers.

40 Q So that you would require the use of a memorandum which you made as to the answers? A Yes.

Adolph Lindeman, direct.

Q You may use it. Now, what questions did you ask him and what answers—

The Court: Do you want all the questions?

10 Q Did you ask him what his occupation was? A I asked him what his occupation was and he said he was a clerk.

The Court: What date?

The Witness: On the 19th of June, 1924.

Cross examination by Mr. Kessler.

20 Q Do you know what his business was prior to that time? A No.

Re-direct examination by Mr. Fisch.

20 Q These questions which you asked him and the answers which he gave you, were they in connection with his arrest in this case? A In that one particular arrest, yes.

ADOLPH LINDEMAN, sworn in behalf of the State. 30

Direct examination by Mr. Fisch.

Q You are a police officer of the City of Newark? A Yes.

Q And bear the rank of lieutenant? A Yes.

Q And been connected with the police department how long? A Twenty-one years.

40 Q And you are a lieutenant assigned to the First Precinct? A Yes.

Frank W. Hemmer, direct.

Q Do you know the defendant, Peter McCarthy? A I knew him when he was brought into the precinct that night.

Q And did you ask him certain questions? A Yes.

Q And did he give you some answers? A He did. 10

Q Did you write them down on a card? A I did.

Q And can you remember the date and the answers which he gave you without a reference to the card? A No, I cannot.

Q I show you a card and ask you if that is the memorandum which you made? A Yes.

Q Now, will you refer to that memorandum and tell me the questions which you asked him and the answers which he gave? 20

The Court: All of them?

Q Well, did you ask him what his occupation was? A I did.

Q And what did he say? A Salesman.

Q What was the date of that? A April 22, 1924.

30

FRANK W. HEMMER, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q You are a police officer of the City of Newark? A Yes.

Q Connected with headquarters? A Yes.

Q How long have you been a police officer? 40 A Ten years.

Frank W. Hemmer, direct.

Q What is your connection with this case?

Mr. Kessler: Objected to.

The Court: Objection sustained.

Q Did you cause the arrest of either of these defendants? A I arrested both. 10

Q When did you arrest McCarthy? A June 19, 1924.

Q When did you arrest Witt? A October 17, 1924.

Q Where did you arrest McCarthy? A Here at the Court House.

Q And where did you arrest Witt? A On Halsey street.

Q And how did you come to make the arrest? 20

Mr. Kessler: Objected to as immaterial. Upon information received, I have no doubt. If he will answer that, all right, but we cannot go into details.

The Court: Is that the fact?

The Witness: Yes, sir.

Q Who did you get the information from? 30

Mr. Kessler: Objected to as immaterial, irrelevant and incompetent. The defendant is in court.

The Court: I think that is correct.

Q At the time you arrested McCarthy did you have any conversation with him? A No.

Q Did you have any conversation with Witt when you arrested him? A No, I didn't.

Q How long have you known McCarthy? A I have known him to see some years. 40

Frank W. Hemmer, cross.

Q Do you know what his business is?

Mr. Kessler: Objected to, unless he can show how he knows. It may be hearsay.

The Court: Answer that yes or no. Do you know?

The Witness: I do not.

10 Q How long have you known Witt? A Since October.

Q Of 1924? A Yes.

Q You did not know him before that? A No.

Q Who else was with you when these arrests were made? A Detective Wagner with McCarthy and Sergeant O'Malley with Witt.

Q Do you know Mr. Werpupp? A I do.

20 Q And after Mr. McCarthy was arrested did you see Mr. Werpupp anywhere? A He was called to headquarters.

Q And was Mr. McCarthy there? A He was.

Q And where was Mr. McCarthy when Mr. Werpupp was called to headquarters?

Mr. Kessler: If the purpose of this testimony is to show that Werpupp identified the parties we will admit it.

30 Q And do you admit that Witt was identified in the line-up?

Mr. Kessler: We admit the identification was good.

Cross examination by Mr. Mott.

40 Q Did you have any arrangement with Witt that he was to come to headquarters? A Not I personally.

Frank W. Hemmer, cross.

Q Who was that made with? A I think he made that with Sergeant O'Malley.

Q Well, he did go to headquarters? A He didn't.

Q Did he tell you where he would be? Did you receive information?

Mr. Fisch: I do not think that is cross 10 examination.

The Court: What is the idea of it?

Mr. Mott: Why, that this man voluntarily came, or made an arrangement and informed the police where he would be and surrender himself?

The Court: I will allow it.

Q Did you get some information from Sergeant O'Malley? A As to what? 20

Q As to Witt and where you would find him? A No, I didn't.

Q Well, from anyone? A I heard from Sergeant O'Malley that he saw Witt the night before his arrest.

Q And had a talk with him? A Yes, O'Malley did.

Q And did O'Malley tell you the result of that talk, the substance of it? 30

Mr. Fisch: I object to that.

The Court: I cannot allow that.

Mr. Mott: I am not going to ask him what it was, but I think my question was proper.

The Court: I do not think he can tell what the result of the conversation was.

Mr. Mott: No. I asked if O'Malley told him the conversation he had with Witt. That is yes or no. 40

Michael C. Keveney, direct.

The Court: Did he?

Mr. Fisch: Yes or no.

The Witness: No.

Q Did he tell you anything about it? A He told me something about meeting him the night before. 10

Q And did you get any information from him as to Witt's whereabouts? A No.

Q And didn't you go to a certain place to find Witt? A We went to several places that night.

At this point the Court takes a recess until two o'clock.

20

AFTER RECESS.

MICHAEL C. KEVENEY, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q What is your occupation? A Personnel and Disbursing Officer in the office of Divisional Prohibition Agent Number Two. 30

Q Where is that? A 1102 Broadway, New York City.

Q Who is the Divisional Chief? A R. C. Merrick.

Q How long have you been in that office? A Five years.

Q You say you are personnel officer? A Disbursing and Personnel Officer. 40

Michael C. Keveney, direct.

Q Are you familiar with all of the Federal agents connected with the Prohibition Department for that unit? A Yes, I am.

Q What is your familiarity with those agents? A Well, every agent, before he enters on duty, is sworn in by me or one of my assistants.

Q Can you say whether Peter McCarthy or John Witt were ever connected with the Prohibition Department? A They were never connected with Division Number Two, no. 10

Q And does your office have any jurisdiction in Essex County with regard to liquor raids? A Yes, we take in all the five northern communities of New Jersey.

Q And that takes in Essex County? A Yes.

Q And outside of the agents from your office what other agents do you know are authorized to make raids in Essex County? A The Federal prohibition agents assigned to office of the prohibition officer in Newark, New Jersey. 20

Q And that is Director Chamberlain? A Yes.

Q When there is a raid made or liquor seized in Essex County by any of the men connected with your division, do you receive a report of that? A Yes, we do.

Mr. Kessler: You personally? 30

The Witness: No, I don't personally.

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

The Court: It does not hurt you. He said, "We do, but I do not personally."

Mr. Kessler: It is all right the way the record stands.

Q And did you have a record in your office of any such raids? A Yes. 40

Michael C. Keveney, cross—re-direct.

Mr. Kessler: I object to that, whether he has or not doesn't mean anything. There may be a raid without a record.

The Court: I would like a foundation laid. I cannot tell from this question whether it has any materiality.

10 Mr. Kessler: He ought to lay a foundation first.

The Court: That is what I am suggesting.

Q Is there a record of every raid made? A All raids in New Jersey are reported to our office and that report is made by the agent and subsequently typewritten in New York.

Cross examination by Mr. Kessler.

20 Q You don't know whether any of these men connected with your department have any connection with any other department? A No, sir.

Q You have no knowledge who the agents in the fifth, sixth and seventh districts are? A No, sir; but they do not operate in this district.

30 Q But you don't know whether they operate anywheres else in the United States? A No, sir.

Re-direct examination by Mr. Fisch.

Q Are there any other agents outside of the agents connected with Director Chamberlain's office and the agents connected with your office in New York to make raids in Essex County?

Mr. Kessler: I object to that.

40 The Court: I will allow it.

Michael J. Waldron, direct.

A No, sir.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER, 10
Judge.

MICHAEL J. WALDRON, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q Where do you live? A 61 Hillcrest Terrace, East Orange. 20

Q And what is your business? A I have been foreman for the Public Service.

Q And on the 24th of April, 1924, where were you living? A 61 Hillcrest Terrace.

Q You know Mr. Werpupp? A Yes, he is a neighbor of mine.

Q Where is your house with reference to Mr. Werpupp's house? A Almost directly across the street.

Q And were you at your house on the afternoon of April 24th? A Yes. 30

Q Whereabouts? A Right opposite, on a vacant lot.

Q What were you doing? A I was getting some soil to put around the flowers.

Q And was your attention directed to anything on the street? A Well, more or less. I was directed to a wagon standing on the street. I took notice of it very personally, because I thought it funny for him to drive up. Everyone owns his own house— 40

Michael J. Waldron, direct.

Mr. Mott: I object to what he thought.

Q You saw a wagon drive up to the curb? A Yes.

Q What kind of wagon? A Brown covering.

10 Q Was it driven by horses? A It was an automobile.

Q And where did that stop with reference to Mr. Werpupp's house? A It stopped about four houses below Mr. Werpupp's house.

Q Was your attention directed to Mr. Werpupp's house after that? A Well, no, not particularly. When I took some soil over I went to another lot opposite Mr. Werpupp's house and I took some more soil over.

20 Q Mr. Mott suggests I have you fix the time. What time was it when you saw that wagon pull up there? A It would be around three o'clock. I would not be positive of the time exactly.

Q And then did you see anybody around Mr. Werpupp's house? A Yes, I saw three or four men, as near as I could judge, going up the steps of Mr. Werpupp's house.

30 Q And then subsequently did you notice that automobile truck again? A Yes. I saw it stop there quite a while and I saw it pull right up and go into Mr. Werpupp's drive.

Q Was that before or after you saw the three or four men go in his house? A After.

Q And you saw the automobile truck go in his driveway? A Yes.

Q What next did you notice? A I saw the wagon about fifteen or twenty minutes or half an hour and I saw the three or four men go past my house towards South Orange avenue from Mr. Werpupp's house.

40 Q The same truck? A Yes.

Motions for Direction of a Verdict.

Q Now, did you see Mr. Werpupp on that day? A Yes, I saw him about a half an hour or three-quarters of an hour afterwards.

Q After you had seen the truck go away with these men on it? A Yes.

Q Where did you see him? A He came across the lot where I was digging soil. 10

Q Did you have a conversation with him? A Yes, I did.

Q And he told you something, did he? A Yes.

Q And then did you tell him something? A I did. I made a suggestion.

Cross examination waived.

Mr. Fisch: The first count in this indictment, the larceny count, charges the stealing and carrying away of this liquor and the receiving of it as at the City of Newark. I ask, if your Honor please, that the indictment, the first count, be amended to read the City of East Orange. 20

Mr. Kessler: No objection to that.

Mr. Mott: I have none.

The Court: No objection.

STATE RESTS.

30

(The jury retires during the making of the following motions.)

Reserving the right to put in a defense, defendants' counsel move for the direction of a verdict as to the first count of the indictment, on the ground that there is no evidence in the case of any larceny or breaking and entering by the defendants. 40

Motions for Direction of a Verdict.

Defendants' counsel move for the direction of a verdict on the count for receiving, on the ground there is not any suggestion of any evidence that these men ever actually took the goods into their physical possession and that they could not receive through an agent.

10

Defendants' counsel move for the direction of a verdict on the count for false pretenses on the ground that the State has failed to prove the false pretense set out in the indictment to be false, in that the State must prove that the persons named in the indictment were not officers of the United States.

20

The Court: I think there is sufficient to let the case go to the jury on the question of larceny, because if there has been a larceny by their confederates it is sufficient. That will be my ruling on that point. There is sufficient evidence to make it a jury fact.

30

Now, on the second point Mr. Kessler makes the motion that in case of an indictment for receiving, as I understand his motion, there must be evidence of the receiving by the defendants themselves rather than any confederate of them. (Argument.) I will grant your motion to quash on your second point for receiving stolen goods.

40

Now, with respect to the other point that Mr. Mott has argued, it seems to me that the real issue in this false pretense charge is not the exact construction to be put on the words officers of the United States, but that the real charge here is that they made a false pretense and by reason of the false pretense that they made they obtained cer-

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tain things. Now, it seems to me that that is the real issue in this case, and it does not strike me with any force, that just because they said they were officers for the United States is the real meat of the question. It seems to me that the evidence has been, up to this point, that these men came in there and alleged that they were officers of the United States. On that evidence I think it presents a question of fact for the jury. There has been evidence brought before this jury negating the fact that they were officers of the United States, as it reasonably can be negated. Let us assume for a minute that a prohibition officer is not technically speaking an officer of the United States. Probably there are thousands of others that are. Certainly the State cannot come here and prove by the President and Congress and every member of the cabinet that these men are not officers of the United States.

10

20

For the reasons I have stated I will deny your motions.

An exception is allowed both defendants on the denial of the Court to grant the first and last motions for the direction of a verdict; let them be sealed and they are signed accordingly.

30

NEWTON H. PORTER,
Judge.

40

John Witt, direct.

Mr. Kessler opens for both defendants.

JOHN WITT, defendant, sworn in his own behalf.

Direct examination by Mr. Kessler.

10 Q How old are you? A Thirty-four years.

Q Where do you live? A Newark.

Q Have you had a legitimate business in your lifetime? A Yes.

Q What was it? A I was a huckster for fifteen years.

Q And what is your business now and what was it until recently? A In the booze business.

Q By booze business I assume you had transactions for the sale of whiskey? A Yes.

20 Q Do you know Werpupp? A Yes.

Q How long have you known him? A Since late in 1923.

Q Does he know you by name? A He knows me by the name of Johnnie.

Q What do you call him? A Henry.

Q Where does he live? A 50 Hillcrest Terrace.

Q Have you been to his house on any occasion? A I should judge four or five times.

30 Q And over what period of time have you been to his house for these four or five times; when was the first time and when was the last time? A The first time was late in 1923, and the last time I went up with George.

Q And that was around this 24th day of April, 1924? A Yes.

Q You mean George Miller? A George Miller, yes.

40 Q Did your other three or four occasions to visit Mr. Werpupp's house have any reference to any business transaction? A Yes.

John Witt, direct.

Q What? A Well, Henry and I had a little booze business there before.

Q That is Henry Werpupp? A Yes.

Q And that had to do with the sale and buying of liquor? A Yes.

Q And on this particular occasion, how did you come to go there on the 24th day of April, 1924? A Well, the 24th day of—on the 23rd day of April, in the evening, I had a telephone call from George— 10

Q George who? A Miller. —and I made arrangements to meet him at the whiskey curb, that is, Halsey street and Branford Place, at two o'clock.

The Court: Two o'clock when?

The Witness: The following day. 20

Q Afternoon or morning? A Afternoon.

Q And did you meet him? A Yes.

Q And did he come there and in what kind of conveyance? A He come there in a machine.

Q An automobile? A Yes.

Q Who drove it? A He drove it himself.

Q Who was with you at the time George Miller came? A Well, when George Miller came Pete was with me. 30

The Court: Peter McCarthy?

The Witness: Yes, sir.

Q That is the other defendant in this case? A Yes.

Q Where were you going from there? A We were going to Cappawanna's.

Q Where is Cappawanna's? A In Orange. 40

John Witt, direct.

Q Were you interested in that business of Cappawanna's? A Yes.

Q And was McCarthy interested in that business with Cappawanna? A Yes.

Q And with George Miller? A Yes.

10 Q Did you have a drink of liquor in that place? A Well, we got in the car and had a little drink. Then we were going up to meet Cappawanna and we started to go up and he said, "I done some business with Henry; I have got to go in and see him; I have some money coming off him," and on the way going up he said—

Q Who was with you at the time you stopped at Mr. Werpupp's house? A Just Pete McCarthy, I and George.

20 Q Were there more than three men? A No, sir.

Q Were there ever, during that time, two o'clock on, to the time you left Werpupp off at his house, after you returned from the bank, were there ever more than three men in your party? A No, sir.

Q Now, when you got to Werpupp's house did you go in? A Yes, I went in with George.

30 Q George Miller? A Yes.

Q You and George Miller went into his house and what happened to McCarthy? A Pete stayed outside.

Q Then what happened after you got in? How did you get in? A Why, when he walked up he said, "I am going in to get that money."

40 Q How did you get in? A I walked right in. He was on the porch talking to Henry, and the three of us went in the house.

John Witt, direct.

Q What happened when you got inside? A Well, he opened up a little booze and we had a little drink and a little talk.

Q Then what happened, did you leave McCarthy outside all the time? A No, we were to have a little drink and I said, "Come on in and have a little drink." 10

Q And then the three of you were in the house? A Yes, sitting down.

Q Then what happened inside? A Well, then, he talked to Mr. Werpupp a few minutes and Mr. Werpupp said, "Let that go until tomorrow," and he said, "I cannot, you promised it for me today and I have got to have it for my business," and he said, "It is a little late and I cannot get down to the bank," and Mr. Werpupp finally suggested—he just put his coat and vest on— 20

Q Ready for what? A To go down to the bank and draw the \$1,500 he was supposed to give to George.

Q What happened? A We had a little drink there and finally he suggested to go, and George said—

Q Call them by their last names. A George Miller said to me, "Johnnie, I have an appointment with Cappawanna up there," and he said, "I cannot miss it," and he said, "The hour is coming on for it now and the chances are I might miss it, but," he said, "you want to do a favor, you know Mr. Werpupp, go down to the bank with him," and I said I would, and he said, "He is going to give you \$1,500," and I said I would do it, and finally we walked down the street and I said, "Why don't we call a cab?" and finally a jitney came along. 30 40

John Witt, direct.

Q Who came out of the house? A I came out of the house, Mr. Werpupp come out of the house and Pete come out of the house and George got in his car and we talked for a few minutes.

Q Outside? A Yes.

10 Q Do you know whether Mr. Werpupp locked the door after he went out? A Yes, he must have.

Q And while you were in there did George Miller talk to Werpupp as if he had known him for any length of time? A Sure, friendly.

Q And Werpupp was the very man you had been doing business with for some months, or a year, isn't it? A Yes.

Q And when you all came out the door was locked? A Mr. Werpupp was the last one that left the door.

20 Q And Miller went in his car and went on to meet Cappawanna in Orange? A Yes.

Q And you and McCarthy went down with Mr. Werpupp to the bank? A Yes.

Q Did you have any appointment as to where you were to meet Miller after you got the money? A Well, George Miller said he would go up to Orange to attend to that business and we had agreed to meet downtown.

30 Q Where? A Downtown at the curb, around Branford Place.

Q And then when you went—this thing happened just as Mr. Werpupp related, that you went down by jitney and then you had to go across town to the American National Bank and jumped in a taxi and went down there and got the money and he turned the \$1,500 over to you? A Yes.

40 Q What happened after he got out of the bank? A Well, when he gave me the \$1,500 we

John Witt, direct.

come out to the car and I said, "I will see you again, Henry," and he said, "Where are you going?" I said, "We are going downtown," and he said, "Won't you drive me home?" and I said, "We can," and he said, "I have stops I would like to make," and he looked at his watch and I said, "All right, we will do that," and so we got in the car and he suggested to go to Twentieth street and Avon avenue. 10

Q Was he the gentleman that called out to the cab driver to go to Twentieth street and Avon avenue? A Yes.

Q What happened there? A Well, he agreed not to stop up to the place; he was talking about his wife being sick and he said, "I better go home," and I said, "Where do you want to go, back to the house?" and he said, "Yes, to Hillcrest Terrace." 20

The Court: Who did he say that to?

The Witness: To the driver of the car.

Q And then you did drive to Hillcrest Terrace? A Yes.

Q Did McCarthy get out of the car when you got to the corner of Hillcrest Terrace and some other street and go to Mr. Werpupp's house and then come back? A No, sir. 30

Q What happened at that time? A Well, when we got to his street he said, "Johnnie, don't stop in front of the house," and I said, "All right, stop on the corner," and so Mr. McCarthy got out and he got out and they talked a few minutes and I said, "Good-bye."

Q Why did McCarthy get out? A Well, there were three in the car and he was sitting on the end. 40

John Witt, direct.

Q So McCarthy got out to let Werpupp out?
A Yes.

Q Then you went where? A Branford Place and Washington street.

Q Did you meet George Miller later? A Yes.

Q Who got the \$1,500? A I got it and gave
10 it to him.

Q Did you, while in that house, or any of the three members of your party, ever produce a badge or search warrant or paper that you represented to be a search warrant? A No, sir.

Q Did you represent yourselves to be a government officer or prohibition officers or agents from Washington? A No.

Q Did Werpupp know what your business was for the last year or so? A I sat in his
20 house and drank with him.

Q And did he know the business of George Miller? A Yes.

Q And do you know whether Mr. Werpupp knew Mr. McCarthy? A Sure, he seen Pete with me.

Q I don't mean that. Any other time? Were you ever present when Pete McCarthy ever met him? A Yes, I seen them talk to one another.

30 Q Before this? A Yes.

Q Where? A Down on the curb.

Q And does Mr. Werpupp frequent the neighborhood of the whiskey curb? A Not often; maybe once a month or five or six weeks.

Q Now, when for the next time did you see Mr. Werpupp after the 24th day of April, 1924? A Well, after that day I met Mr. Werpupp about half-past one the next afternoon; that is, he met me. He was driving with some friend of his in a car.
40

John Witt, direct.

Q Where did he see you? A Halsey, right next to the Ledger.

Q Did you have any conversation with him? A He called me over to the car.

Q What happened? A He said, "Say, Johnnie, who was that fellow drives George's car, the truck?" I said, "Why do you ask me that?" He said, "What is he?" I said, "I don't know. He is some fellow from the Highlands." He said, "Do you know where I can find him?" I said, "I don't know where you can find him, not offhanded." "Well," he said, "I want to find him, he stole my stuff, he took my stuff out." So I said, "I don't know nothing about that." I said, "That is news to me." So he said, "Well, I will fix you if I don't get my stuff back," and I said, "Why do you speak
10 that way to me? You shouldn't speak to me that way," and that was all. We had a little conversation and he went away.
20

Q Did he ask you about repayment of the cost of this liquor that was stolen from him?

Mr. Fisch: I object to the question. It is leading.

The Court: Reframe it.
30

Q Was there anything else said at that particular time? A To me, you mean?

Q Yes, to you by Mr. Werpupp at the time you were holding this conversation? A Yes.

Q Tell us. A Well, he said to me, "If you know any of those fellows I would like to see them, where can I get ahold of them?" I said, "I don't know, Henry, I couldn't tell you where those fellows are."
40

John Witt, direct.

Q What fellows was he talking about? A He was talking about the truck driver.

Q Did he ask you for anything? A Yes, "I want that money back."

Q What did you say? A I said, "I have not any money." I said, "The money you gave me I turned over to George Miller."

10 Q Did he say anything about seeing you later? A No.

Q Did you see him again after that? A Yes.

Q How often? A Oh, I should judge I saw him about a month after that.

Q Where did you see him a month after that? A Well, I wanted to do some business with him and he said, "No, no, no," and I couldn't get any conversation with him.

20 Q Did he tell you that he had sworn out a warrant for your arrest? A No, sir.

Q And you had seen him? A Yes, and he never said a word.

Q How long after this alleged robbery were you arrested? A About seven or eight months.

30 Q How did you come to be arrested on this alleged robbery and impersonation of officers? A Well, I was going down to Waterwitch one night and the detective said to me, he said, "I think there is a warrant out for you, I am not sure." I said, "There is no warrant out for me." "Well," he said, "I think there is a warrant out for you." He said some detective has the warrant. I said, "I don't know what it can be."

Q Did he mention the name of the detective? A I think he said Detective Hammer.

Q You are well known to the police? A Yes.

Q And had you been around in the city all this time? A No, I was away.

40 Q For how long? A Seven or eight weeks at a time.

John Witt, direct.

Q And then be away again and then come back and go away again? A Yes, in and out.

Q And you were well known to the police? A Yes.

Q And met them often? A Yes, to see them and say "hello."

10 Q Did you know up to seven months ago there was a warrant out for you in this case? A No.

Q And when this detective told you Hammer had a warrant for you, what did you do? A Well, he said the best thing you can do, this detective will be in tomorrow around two o'clock, and if you want to go there and see him and explain what it was, and I had an appointment, and I kind of got bunched up until that night late and I said, "If I don't come down to that place by two o'clock I will be around here," and that night at ten o'clock that detective walked up and he said, "Hello, Johnnie," and he said, "This is the man that has the warrant," and he said, "Do you want to take a walk to headquarters?"

20 Q And they told you— A What the trouble was.

30 Q Where is George Miller? A He is somewhere in Cuba.

Q When did you last see him? A The last I seen George was about two months ago.

Q And did he sail for Cuba at that time? A Yes.

Q And has he come back? A I have not seen him.

Q Have you tried to see him? A Yes.

John Witt, cross.

Cross examination by Mr. Fisch.

Q Did you see George Miller sail for Cuba?
A No, sir.

Q When was the last time you saw George Miller?
A The last time I seen him was about two and a half months ago, ten weeks ago.

10 Q Was it before you pleaded to this indictment or after?
A Sir?

Q Was it before you pleaded to this indictment or after?
A After.

Q You saw him after you pleaded to the indictment. You knew what the indictment was, didn't you?
A No, sir.

Q When you pleaded the indictment was read to you, wasn't it?
A No indictment was read to me.

20 Q Weren't you told when you came to the Court House to plead that this indictment charged you with obtaining \$1,500 from Mr. Werpupp by false pretenses?
A Yes.

Q And that this indictment charged you with stealing liquor from Mr. Werpupp's house?
A They told me all that.

Q So that when you saw Mr. Miller last you knew what this charge was against you, did you not?
A Yes.

30 Q And you knew that it referred to the time when you had received \$1,500 from Mr. Werpupp, did you not? You knew that, didn't you?
A Yes.

Q And you knew also, did you not, that Mr. Miller—that Mr. Miller's testimony would be very important in this case, didn't you?
A Well, yes, it would.

40 Q Did you inform your counsel of that?
A I didn't get no counsel. I didn't want no counsel.

John Witt, cross.

Q Did you inform the prosecutor's office of that?
A No, sir.

Q Did you ask the Court to adjourn this case until you could have an opportunity to present Mr. Miller in court?
A No, sir.

Q Why not?
A Because I didn't need him.

Q Didn't need him? Well, you thought that your word would be sufficient, is that right?
A Well, I couldn't get in touch with George. I told George, and I couldn't get in touch with him, he was gone. It was too late for me to get him then.

Q Did you serve him with a subpoena?
A I knew the places he hung out, but I didn't know where he lived.

Q At the time you pleaded to this case in court you were notified that a date for your trial had been fixed, were you not?
A Yes.

Q So that when you saw Miller you knew that your trial had been set down for a specific date, didn't you, is that right?
A For the day of the trial?

Q Yes. You knew that your trial had been set down for a specific date?
A Yes.

Q And you did not serve Miller with any subpoena?
A No.

Q You say you are well known to the police, is that right?
A Well, a few.

Q You are known as Johnnie boy?
A Yes.

Q And you were in court here yesterday when Mrs. Werpupp came down to identify you?
A Yes.

Q And you were sitting over at the clerk's table, weren't you?
A Yes.

Q And when Mrs. Werpupp was going over to the end of the court room where you were you picked up a pen from the clerk's desk and

John Witt, cross.

held it in your hand as though you were writing, didn't you? A I cannot recall that.

Q You cannot recall it? A No, sir.

Q Will you say you did not do it? A I might have, but I cannot say I done it for any purpose.

10 Q Didn't you pick that pen up and pretend that you were writing so that Mrs. Werpupp would think that you were a clerk in this court and not one of the defendants? A No, sir.

Mr. Kessler: I object as not proper cross examination, and it was done in the presence of the jury and if they did not observe it it is not proper to refer to it at this time.

The Court: He has already answered it.
20 He said no.

Q And when Mrs. Werpupp was in court yesterday had you at that time, before she identified you, determined to take the witness stand and tell this Court and jury that you had been at Mr. Werpupp's house?

Mr. Kessler: Objected to as immaterial and improper cross examination.

30 The Court: I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge.

40 Q (Question read.) A Did I intend to take the stand?

John Witt, cross.

Mr. Kessler: And tell that you had been at Mrs. Werpupp's house?

A Yes.

Q You had made up your mind to that at that time, had you? A No, at any time.

Q Had you already made up your mind to that before Mrs. Werpupp identified you in court? A That I was going to get on the stand? 10

Q Yes. A Why, certainly.

Mr. Kessler: This is not proper cross examination.

The Court: I think it is.

Mr. Kessler: Will you allow me an exception to the entire line of testimony? 20

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge.

Q Why, then, when Mrs. Werpupp was walking around this court room in an endeavor to identify the two men that had been at her house did you turn your head from her and sit at the clerk's desk? 30

Mr. Kessler: I object. There is no such testimony in the record.

The Witness: No, sir.

The Court: I will not allow the question. Strike it out. 40

John Witt, cross.

Q And when you were at Mrs. Werpupp's house you spoke in German to her? A Yes.

Q Sat at the table with her? A I ate, too, already.

Q I am talking about the 24th of April. A Yes.

10 Q When did you eat there? A When did I eat there?

Q Yes. A Three times.

Q When? A Why, five months—four months before that.

Q On what date? A I cannot recall that.

Q In what month? A I cannot just say the month.

Q What time of day was it? A Well, one, and I had a sandwich and a couple of bottles of beer.

20 Q Who else was there? A Just Henry and I and his wife.

Q You know that his wife is not in court today? A I do not see her here.

Q And you heard it testified that she could not be brought here because she was brought out of a sick bed? A She was sick. I know that.

Q And you heard that in court yesterday?

30 Mr. Kessler: Objected to as immaterial.

The Court: What difference does it make, Mr. Fisch?

Mr. Fisch: I think it makes a great difference. I will not pursue it.

The Court: All right. He is not pursuing it.

40 Q And on this day in question, on the 24th day of April, you spoke to Mrs. Werpupp and

John Witt, cross.

told her about some stops you had to make, didn't you? A Stops?

Q Yes. A No, sir.

Q Didn't tell her that? A No.

Q Didn't tell her where you had to go? A No. The only thing I told her was, I said, "Mrs. Werpupp,"—I spoke German—I got in the side room—I said, "if you were a little younger the Hot Springs might be good for your ailment."

Q Oh, you were very much interested in her welfare? A At times I did have a little conversation like that with her.

Q Very often? A Well, when I go there.

Q And who was present at any of these other conversations that you say you had with Mrs. Werpupp? A Her husband.

Q That is all? A That is all.

Q Nobody else? A I didn't see anybody.

Q And when you came to Mr. Werpupp's house that day, did you see a truck outside? A No, sir.

Q There was not any truck there? A No, sir.

Q There was not any there? A No, sir.

Q And there was not any truck there when you went out to go to the bank with Mr. Werpupp? A No, sir.

Q Sure about that? A Yes.

Q If there was any truck on that street you would have seen it?

Mr. Mott: Is that a question?

Q Isn't that right? A I was not on the alert for anything like that. That is probably why I didn't see it.

Q And while you were on the way to the bank you first took a jitney, did you not? A Yes.

John Witt, cross.

Q It was pretty near closing time for the bank, wasn't it? A Well, Henry said it was, yes. He knew his banking house there, I didn't.

Q It was pretty near closing time for the bank? A That I don't know, what time the bank closed. 10

Q Don't you know what time a bank closes? A No, sir; sometimes they stay a little longer. Generally it is three.

Q You know that they close at three? A Some of them do.

Q And it was pretty near closing time when you left Mr. Werpupp's house to go to the bank, is that right? A Well, it was about 2:30.

Q And you had to go all the way from East Orange to Springfield avenue and Belmont avenue? A Yes. 20

Q Where did he tell you what bank he was going to? A He said he was going down to some bank on Belmont avenue.

Q When did he tell you that? A When we got in the cab; when we got out of the jitney.

Q He did not tell you that until you got out of the jitney? A No.

Q How did you know which way to go? A I asked him where we had to go to and he said Belmont avenue, and I said, "You will never get there in that time." 30

Q Didn't he tell you before he left that house that he banked at the American National Bank? A He did not tell me nothing about the American National Bank.

Q So, that when you left his house to go to the bank, you did not know whether you were going to the Fidelity Union Trust Company on Broad street, or the First National of Belle- 40

John Witt, cross.

ville? A He said the First National on Belmont avenue and Springfield avenue.

Q And he told you that before you left the house? A No, sir.

Q My question was a moment ago, that when you left the house you didn't know whether you were going to a bank in Belleville or to a bank on Broad street, or to the American National Bank at Springfield avenue and Belmont avenue, did you? A Yes. 10

Q You did know? A I didn't know.

Q Why, then, did you take a jitney going down South Orange avenue? A Why did we take a jitney going down South Orange avenue?

Q Yes. A Because he said we would take that jitney down as far as his bank. I said, "Where is your bank at?" and he said, "Belmont avenue and Springfield avenue." 20

Q Then you knew before you got into the jitney that you were going to Belmont avenue and Springfield avenue? A Yes.

Q And your friend, Mr. Miller, whom you say is now in Cuba, had been right there at the house, had he? A Been at what house?

Q Mr. Werpupp's house. A No, he had left. 30

Q He had been at the house? A He was outside.

Q And he had an automobile? A Yes.

Q And what kind of an automobile was that? A He had a closed coach.

Q What kind? A I think it was a Hudson.

Q And Mr. Miller was the man that was anxious to get the \$1,500? A Well, he wasn't anxious; no, he wasn't anxious.

Q He was not anxious? A Why, no. 40

John Witt, cross.

Q He was not anxious to get the money and yet he asked you to go down to the bank for him to get it? A He wanted me to go and get it for him.

Q He was not anxious to get the money and yet he asked Mr. Werpupp to get the money that day, is that right? A That is right.

Q He was not anxious to get the money and yet Mr. Werpupp said to him, "Leave it go until tomorrow," and Miller was not willing to let it go until tomorrow? A That is right.

Q Is that right? A Yes.

Q And you did not have any interest in this \$1,500? A No, sir.

Q There was not any part of that money coming to you? A No, sir.

Q So, that the only man that was to be benefited by that trip to the bank was Mr. Miller? A Yes.

Q And Mr. Miller's automobile was outside in front of Mr. Werpupp's house and you did not take Mr. Miller's automobile to go to the bank? A No, but he left when we went to go to the bank.

Q But you took a jitney bus? A No. He went away. Henry discovered he did not have his book and then we walked down the street after he went in the house.

Q Mr. Miller was going to go to the bank with Mr. Werpupp? A No, he asked me to go inside.

Q Didn't you say just a minute ago that he left to go to the bank with Henry and Mr. Werpupp discovered that he didn't have his bank book? A No, sir.

Q You didn't say that? A No, sir.

John Witt, cross.

Q And Mr. Werpupp went back to get his bank book? A He did, after he was walking with me.

Q So that he had started out of the house without his bank book, is that right? A Yes.

Q Was he excited? A No, he wasn't excited.

Q And yet he had gotten dressed to go to the bank with you and he had forgotten his bank book, is that right? A He just put his coat on, a light coat.

Q And put his shoes on? A He put gaiters on.

Q And a collar and tie? A He had his collar and tie on.

Q And he had done those things for the express purpose of going to the bank with you to get \$1,500? A Yes.

Q And he was not nervous? A No, sir.

Q And he did not appear to be excited? A No, sir.

Q And this was an ordinary, every-day transaction? A Well, that I don't know with him.

Q As far as you were concerned, you did not see anything out of the ordinary in that transaction? A No, sir.

Q Nothing to make him excited or nervous? A No, sir.

Q And yet he walked out of his house without his bank book? A Yes.

Q Now, you were in the kitchen there, too, weren't you? A I was in the kitchen when we went in.

Q And Mr. Werpupp was sitting down in the kitchen? A No. He went out and got a bottle of Canadian Club and brought it in.

John Witt, cross.

Q And Mr. Werpupp was sitting down in the kitchen? A Yes.

Q And Mr. Werpupp was sitting down in the kitchen while Mrs. Werpupp went out to go to the doctor, is that right? A No.

Q He wasn't sitting down in the kitchen? A No.

10 Q You saw Mrs. Werpupp go out? A Yes.

Q And she told you she was going to the doctor? A She did not say she was going to the doctor. She said she was going out with some friends of her's in a car.

Q And you saw an automobile outside? A I didn't see no automobile.

Q Now, then, after you left the bank you got into the taxi again, didn't you? A Yes.

20 Q And Mr. Werpupp asked you to take him home, is that right? A No, sir. I said to Henry, "Well, everything is all right, Henry. I will see you myself later on," and he said, "Aren't you going to take me home?" and I said, "No, I have an appointment downtown," and he said, "Why don't you take me home while you are here with the taxi?" and Mr. Werpupp got in and I got in after him and he said, "While you are down here I want to run over to Twentieth street and Avon avenue," and

30 I looked at my watch and said we did not have much time for that, but we granted him that and drove down.

Q You were in a hurry to get downtown? A Yes.

Q And you were doing Werpupp a favor to take him home? A I didn't take him home.

Q He asked you to take him home? A Later on.

40 Q He asked you to take him home when you left the bank? A No, sir. I said, "I am

John Witt, cross.

going to leave you here," and he said, "Take me on a ride home."

Q And you were going to do him a favor to take him home? A Yes.

Q Because you were in a hurry to get down to the whiskey curb? A No. I was not in a hurry. I had an hour.

Q But you told him that? A Yes.

Q So, when you got in the machine and you were going to take him home he asked you to take him somewhere else, is that right? A Yes.

Q And you took him somewhere else? A He said he wanted to go up—he told me where he wanted to go.

Q And you took him there? A Yes.

Q And he told you that he wanted to make a stop there? A He wanted to see some friend of his.

Q Did he tell you where that friend was? A He just said Twentieth street and Avon avenue.

Q And you got all the way up to Avon avenue and Twentieth street? A Yes.

Q And in spite of the fact that he had asked you to take him up there and in spite of the fact that he told you he wanted to see some friend there and make a stop, after you got there you went right on? A I went right on.

Q The whole taxi cab full of you? A No.

Q He didn't get out? A No. When we got to the place I said, "Are you going to be in the place some time? If you are, I am going downtown"; and he said, "No, leave it go."

Q And after you got all the way up there and put yourself out to the extent of taking him up to Twentieth street and Avon avenue, then, when he was right there where he wanted to be,

10

20

30

40

John Witt, cross.

he did not get out to see his friend at all? A No. We were talking some business and he said, "Oh, leave it go and drive me home."

Q Then he changed his mind and asked you to drive him home? A He said to the driver, "Drive us home."

10 Q You knew where he lived? A Sure.

Q You did not tell the taxi driver? A He said himself. I did not have to tell him.

Q And you did not drive right up to the front of his house and let him out? A Well, he didn't want to.

Q You did not drive right in front of his house and let him out there? A I wanted to stop there.

20 Q Will you please answer my question? You did not stop in front of his house and let him out? A No, sir.

Q You stopped around the corner? A On the corner, yes, about three houses from his house.

Q And it only takes you a couple of minutes to walk from where you stopped to his house? A Yes.

30 Q It would only take a couple of minutes to walk from this house on the corner and walk back to where the taxi cab was? A I couldn't say three houses. I will say close to a half a block.

Q It only takes two or three minutes? A Yes.

Q And you did not get out of the automobile? A No.

Q Did McCarthy get out of the automobile? A Yes.

40 Q And he was the first one out of the automobile? A Yes.

John Witt, cross.

Q And after did McCarthy get out of the automobile? A Yes.

Q Werpupp got out? A Yes.

Q You were never a Federal officer of any kind? A No, sir.

Mr. Kessler: Objected to as not proper, 10
and I ask that the answer be stricken out.

The Court: Strike it out. It is not proper cross examination.

Mr. Fisch: I submit he was asked what his business was and I have a right to cross examine.

The Court: I will allow it. Let it stand.

Q You were not a Federal officer on the 24th of April, 1924, were you? A No, sir. 20

Q Now, you have said you are in the booze business, is that right? A I was in the booze business.

Q Up 'til when? A Oh, not so long ago.

Q How long ago? A Well, I should say six months ago, five months.

Q Five or six months ago you were in the booze business? A Yes.

Q Buying and selling liquor? A Yes. 30

Q When was the last time you sold liquor?

Mr. Kessler: I object to this, unless this witness is advised as to his confidential rights in the matter. It may tend to incriminate him.

The Court: Has he refused to answer on that ground?

The Witness: Yes, sir. 40

John Witt, cross.

Q When was the last time you sold liquor?

A I refuse to answer that question.

Q Why? A Why, I might incriminate myself.

Q You picked up that cue very quickly.

10 Mr. Kessler: Well, if your Honor please, counsel has a right to advise him.

Q When was the last time you bought liquor?

Mr. Kessler: He was advised before he went on the stand. Counsel has a right to advise him that that might incriminate him, and I advised him on that ground.

20 Mr. Fisch: Who represents who in this case?

The Court: It is agreed that their defense is the same and they each represent both.

Mr. Kessler: And exceptions run to both clients.

Q When was the last time that you bought liquor?

30 Mr. Kessler: The witness is entitled to legal advice as to whether it will incriminate him or not and he may refuse to answer.

A I refuse to answer those questions.

Q Why? A Because I might incriminate myself.

Q Now, where were you arrested on this charge? A On Halsey street in from Branford Place.

40 Q On the street? A Yes.

John Witt, cross.

Q Sure about that? A Well, not exactly on the street. I was coming out of Patsy Klein's.

Q Weren't you arrested in Patsy Klein's place? A No, in the hall, right in the hallway.

Q You were arrested in the hallway? A Well, it is not a hallway; it is an entrance to a saloon.

10 Q And the officers came there looking for you? A That I don't know.

Q And they took you right down to headquarters? A They talked to me a minute.

Q And then they took you to police headquarters? A And they asked me if I wanted to take a walk down and I said yes.

Q And after they took you for this nice, pleasant walk to police headquarters they kept you there? A They kept me there, yes.

20 Q Now, the last time that you had seen Mr. Werpupp before April 24, 1924, was when? A When was the first time I met him?

Q When was the last time you had seen him prior to April 24, 1924, when you got this \$1,500? A The next day.

Q When was the last time prior to April 24, 1924; the last time before April 24, 1924? A The last time I met him before April 24th?

30 Q Before that date? A About four months before that.

Q You had not seen him in four months? A Four months before that.

Q And you had not done any business with him? A No, sir.

Q Sure about that? A Yes.

40 Q And when you met your friend George Miller, whom you say is now in Cuba, on the 24th, he said, "I have some business with Henry," is that right? A He said he had some business with Henry.

John Witt, cross.

Q Is that right? A He didn't say nothing like that to me.

Q Didn't George Miller say to you that he had some business with Henry? A The 24th day?

Q Yes. A That was downtown.

10 Q Yes, downtown. A He didn't say that downtown. He said that on the way to Orange. He said, "I want to stop off at Henry's and get that \$1,500."

Q You had not seen Henry Werpupp in four months, had you? A I seen him maybe two months or two and a half months. I would not say exactly four months.

Q You had not seen him in two and a half months? A Not at his house.

20 Q Anywhere? A Oh, yes, I seen him downtown two or three days right after that.

Q After what?

The Court: He is talking about before April 24, 1924.

A Sure, I met him. I met Mr. Werpupp downtown.

30 Q How often before April 24th did you meet him downtown? A Oh, about a week and a half.

Q What do you mean by testifying in answer to my question a few minutes ago that the last time you had seen Mr. Werpupp was four months prior to April 24, 1924? A Well, the way you expressed it I didn't get it.

40 Mr. Kessler: You see you talk so loud probably the witness did not get the meaning of your question.

John Witt, cross.

The Court: What did you think he asked you when you said four months and then reduced it to two and a half months?

The Witness: I thought he was talking about George Miller.

Q That is your answer? A No, sir.

10

Q That is not your answer? A Not the question that you asked me. You asked me a question now that I first get.

Q So what you meant when you said four months and changed it to two and a half months was because you thought I was talking about George Miller? A I didn't think you meant Mr. Werpupp.

Q That is your answer? A Yes, that is what I meant. I did not get you, to be frank.

20

Q Now, then, please pay attention to my questions so that you will not be mistaken about what I mean. I will try to be very specific to you. When was the last time preceding April 24, 1924, that you saw Mr. Werpupp? A Well, about a week and a half.

Q About a week and a half? A Yes.

Q You had not seen him within that space of time? A No, sir.

Q You had not seen Miller within that space of time? A In that week and a half?

30

Q Yes. A No, I didn't see Miller at that time. I made a trip right after that.

Q How long before the last time that you saw Werpupp was it that you saw Miller? A When was the last time I saw Werpupp that I saw Miller?

Q Yes, how long before the last time you saw Werpupp was it before this occurrence that you saw Miller?

40

John Witt, cross.

The Court: What is the answer?
(Question read.)

A Why, I seen Miller maybe about three weeks.

Q Three weeks before? A Before I seen Werpupp, yes.

10 Q You saw Miller, then, about three weeks before April 24, 1924? A Yes.

Q What did you mean, sir, when you said a few minutes ago that you thought that I meant Miller and that was why you had not seen him for three and a half or four months prior to April 24, 1924? A Well, I thought that you asked me how long after did I see Miller after I was arrested. That is what I thought you were getting at.

20 Q Oh, so that you didn't understand that question, either? A No, sir.

Mr. Kessler: That is not fair. That is not what he said at all.

The Court: I understood it.

Q Now, you knew Mr. Werpupp real well?
A Yes.

30 Q And you called him Henry and he called you Johnnie? A Yes.

Q And if he had any complaint to make about you he knew your name, didn't he? A He just knew my name Johnnie.

Q He knew your name was Johnnie Witt?
A Johnnie Witt, no; just Johnnie.

Q And you had been in his house and you had been with him and you drunk with him and you had done business with him? A Yes.

40 Q And you knew him for some period of time? A Yes.

John Witt, cross.

Q And you say he does not know what your last name is? A He does not know my last name. He just knew me by Johnnie.

Q Why not? A Because I never told him.

Q Why not? A Because I had no reason to.

Q And none of your friends ever mentioned your last name in his presence? A No, sir.

10 Q Now, this appointment which you had with Miller on the night of April 24th, that had plenty of time, didn't it? A No, I didn't have plenty of time. He said that he would run up to Orange and he would stop downtown and we had arrangements to meet downtown.

Q But the business you had to meet downtown in the evening, that had plenty of time?
A No, that didn't have plenty of time.

20 Q Didn't you say on your direct examination that the business you had with Miller on that night was to be transacted at night? A But not—yes, the business, but not the time to meet.

Q Oh, so that this business that you had to transact was to be transacted at night. What was that business? A That I refuse to answer.

Q On what ground? A Well, I might incriminate myself in some way to talk out of my turn.

30 Q This is your turn. You still refuse to answer the question, is that right? A Yes.

Q Now, isn't it a fact that you never knew or saw Mr. Werpupp before the 24th of April, 1924? A Is it a fact that I never seen him?

Q Yes. A I did see him.

Q And isn't it a fact that you never turned any \$1,500 over to a Mr. Miller? A I turned \$1,500 over to Mr. Miller.

Q Who was there when you turned money over to Mr. Miller? A Mr. McCarthy.

40 Q McCarthy was there, was he? A Yes.

John Witt, cross.

Q Nobody else? A No, sir.

Q What denomination were the bills you turned over to Mr. Miller? A A thousand dollar bill and five hundred dollar bill.

Q And where was the place you turned it over? A Well, down in front of a saloon.

10 Q In front of what saloon? A Between Branford Place—right next to a parking station.

Q On what street? A On Branford Place.

Q Between what streets? A Between Washington and Halsey.

Q And by Mr. McCarthy you mean your co-defendant here? A I mean Mr. McCarthy.

Q You mean Peter McCarthy? A Peter McCarthy, yes.

Q He was there? A Yes.

20 Q And he saw you turn the money over? A Yes.

Q Nobody else did? A No, sir; nobody else was there.

Q Except Mr. Miller, and Mr. Miller has gone to Cuba, is that right?

Mr. Mott: I object. He has answered the question.

The Court: Let him answer it again.

30

A Mr. Miller, I understand, is in Cuba.

Q What efforts have you made to locate him?

A I did not see that I needed him.

Q Didn't you testify on cross examination that you knew that he would be an important witness for you and your defense in this case?

A In what case?

Q In this case. A Yes, he would, sure.

40 Q And you knew it, didn't you? A I didn't know it, but I figured that he would be.

John Witt, cross.

Q You figured that he would be? A Yes.

Q And yet you made no efforts to locate him? A Well, I couldn't locate him down there.

Q You didn't make any efforts to locate him? A I didn't know how to.

Q Please answer my question. You did not make any efforts to locate him? A No, sir. 10

Mr. Fisch: Miss Staubass, stand up.

Q Did you ever see this lady before? A I can't say I did.

Q You mean you did not see her before, is that it? A Well, her face is familiar.

Q Her face is familiar? A Yes.

Q Did you ever see her before? A Yes, I seen her before. 20

Q Where? A Out in front with Mr. Werpupp, in front of his house.

Q When? A When I delivered some stuff there one evening.

Q When? A Well, about two months or so; two and a half months before that trouble came up.

Q In February? A In February, yes—well, yes, around February.

Q In February, 1924? A 1923. 30

Q Nineteen twenty-three? A Yes—1924. Pardon me?

Q February, 1924, you saw this lady? A I ain't saying for sure, but it looks something like her.

Q And that was when you delivered some liquor to Mr. Werpupp's house? A Yes.

Q You delivered the liquor? A Yes.

Q Did you have a permit to deliver that liquor? 40

John Witt, re-direct—re-cross.

Mr. Kessler: I object.

The Court: Objection sustained.

Re-direct examination by Mr. Kessler.

10 Q Did you have a lawyer—up to what time—when for the first time, did you have a lawyer in this case? A Yesterday.

Q All the time from the day of your—since April, 1924, did you have a lawyer until yesterday? A No, sir.

Q And yesterday was the time you retained your lawyer and that was Judge Mott? A Yes.

Q And before yesterday morning you did not have a lawyer? A No, sir.

20 *Re-cross examination by Mr. Fisch.*

Q And when you retained Judge Mott, you told him what your defense was, I suppose?

Mr. Mott: I object.

The Court: Objection sustained.

Mr. Mott: Nobody but an offensive prosecutor would ask a question like that.

30 Mr. Fisch: I do not think that is a fair statement to make.

Mr. Mott: The idea of asking whether he told his lawyer or not.

The Court: The question was he asked him whether he told you what his defense was.

Mr. Mott: It is quite improper.

40 Q Your friend McCarthy had a lawyer? A That I didn't know.

Peter McCarthy, direct

Q Didn't know that? You had been in the court house several times when this case was on the calendar for trial? A Yes.

Q And McCarthy was with you? A Yes.

Q And you talked to McCarthy about it? A Yes.

10

PETER McCARTHY, defendant, sworn in his own behalf.

Direct examination by Mr. Kessler.

Q You had a lawyer for some two or three months, didn't you, in this case? A About September.

Q In September, last year, you retained me as your lawyer? A Yes. 20

Q And I have been your lawyer ever since up until today? A Yes.

Q Do you know George Miller? A Yes.

Q And in the preparation of this trial, did you go to see if you could locate Mr. Miller? A I went several times.

Q Where did you go to see him? A At the Highlands.

Q Where? A On Sea Cliff avenue. 30

Q What is there? A The bungalow, where he lives.

Q And did you get any information where Mr. Miller was? A Mr. Miller was in the Court House here one morning.

Q And when we prepared for trial last week, did you go down to see where he was? A I went down again to locate him.

Q What information did you get? A He sailed for Cuba or Havana, I don't know which. 40

Peter McCarthy, direct

Q Do you know Mr. Werpupp? A I met him. I knew him by sight and I had met him at his house.

Q You mean meeting him at his house was the 24th day of April, 1924? A I was introduced to him on Halsey street.

10 Q Before or after this? A Previous.

Q How long before? A Around the holidays. The year previous to these holidays.

Q You mean around Christmas, 1923, and New Year's, 1924; that was about three or four months before you went to his house? A Yes.

Q Well, were you introduced to him by any given name? A No. By the name of McCarthy.

Q Well, that is the given name. Is that your right name? A It is my right name.

20 Q Had you talked with him when you met him before? A No. Held no conversation with him. He knew I was a dealer.

Q Had you seen him there at the curb? A Several times.

Q And did he see you? A Several times.

Q Do you know what his business is? A Yes.

30 Mr. Fisch: I object.

Q What is his business?

Mr. Fisch: I object, unless it is shown he knows what his business is.

Q How do you know? A He deals in liquor.

40 The Court: No, strike that out.

Peter McCarthy, direct

Q How do you know what his business is?
A Mr. Miller used to sell him liquor.

Mr. Kessler: Strike that out. I consent to that.

Q Tell us how you know what his business was? A I heard a conversation one day between him and Mr. Miller. 10

Q And the conversation indicated to you what his business was? A Indicating that he was buying liquor and retailing it.

Q Do you know George Miller? A I know him personally.

Q How long have you known George Miller?
A I have known him two years.

Q Do you know what Mr. Miller's business is? A Miller takes liquor in from the ships. I used to work for him. 20

Q Now, coming down to the 24th day of April, 1924, did you meet Mr. Miller that day? That is the day you went to Werpupp's house?
A Yes.

Q And where did you meet him? A At Halsey street.

Q And who was with you? A Mr. Witt.

Q And did you go anywhere that day? A We were on our way to South Orange, Cappa- 30
wanna's.

Q South Orange or Orange? A Orange.

Q What happened on the way up? A Well, Mr. Miller had a little business with Mr. Werpupp, and on the way up we stopped at Mr. Werpupp's house.

Q At whose suggestion? A Mr. Miller's.

Q And how many people were in this car you were driving up in? A Mr. Miller, myself and Witt. 40

Peter McCarthy, direct

Q Nobody else? A Nobody else.

Q And the three of you drove up to Mr. Werpupp's house? A Yes.

Q Did you know prior thereto just where Werpupp lived? A No.

Q This was the first time you knew where Werpupp lived? A Yes.

10 Q And when you got up to the house, did you see Werpupp there? A Yes.

Q Where was he? A He was in a little office in the front.

Q What happened? A I stayed in the car first and Mr. Miller and Witt got out of the car and they were in talking to Mr. Werpupp and they come out and asked me if I cared to have a little drink.

20 Q They went out and in a little while Witt came out and asked you if you wanted to have a drink? A Yes.

Q Did you go in? A Yes.

Q Did you see at any time any truck in that neighborhood? A No.

Q Did you have any knowledge of any truck going that day to take any liquor away? A No.

30 Q Did you know there was any liquor in the house? A No, except what he had on his desk.

Q And which you participated in drinking? A Yes.

Q At any time while you were in there, were there any more than three men that came in your party, you, Witt and Mr. Miller and the complaining witness, Werpupp? A No.

Q And did you have a conversation with the complaining witness, Werpupp and Mr. George Miller? A They were talking in German.

40 Q Is George Miller a German? A Yes.

Peter McCarthy, direct

Q I think from your name you are— A Irish.

Q Do you understand German? A No.

Q So, you did not understand the conversation? A They were talking in German.

Q And then what happened after this conversation was going on? A Why, Mr. Miller went on to Cappawanna's and said, "You ride downtown with Mr. Werpupp and meet me down at the curb." 10

Q Why didn't you go on with Miller to Cappawanna's? A Well, he requested me to go down with him.

Q Why? A Well, because he told me when this fellow collected the money to give it to me. He said, "You take that money from him when he gets it and hold it for me," and he insisted on holding it and I didn't insist. 20

Q You had known Mr. Miller for some time? A I have known Mr. Miller for two years.

Q And you have heard the story by Witt and Werpupp about going to the bank in the taxi cab. That is what happened? A Yes.

Q And who gave the driver instructions to go to Twentieth street and Avon avenue and then crosstown to the home of Mr. Werpupp? A Mr. Werpupp. 30

Q And at the taxi at Werpupp's house did anybody ask him not to approach in front of the house? A He was asked not to go in front of the house.

Q Then what happened? A He said, "I don't like the neighbors to know I deal in liquor."

Q Did you get out? A I got out to let him out.

Q Is that the only reason? A Yes.

Q And did you leave the cab and go around the corner and did Werpupp go? A No. 40

Peter McCarthy, direct

Q And then where did you go from there?
A I stepped back in the cab.

Q And then you went down to the whiskey curb and met him there? A Went downtown and got off at Washington street, at the telephone building, and met George down in the middle of the block an hour or so later. I had an appointment myself.

Q Now, Mr. McCarthy, have you been in the city all the time since the 24th day of April?
A Most of the time.

Q Well, how long a period of time were you away, if at all? A Oh, maybe a week or three or four days.

Q A week or three or four days was all and you are pretty well acquainted around? A Yes.

Q And you are known to the police? A Well, they know me.

Q You have been convicted of crime?

Mr. Fisch: I object to that.

The Court: Objection sustained.

Q You know a number of policemen, don't you? A Quite a few of them.

Q And they know you? A Yes.

Q And in the time since April up to the time you were arrested did you meet any of these policemen? A A lot of them.

Q And they know you by your name—you have never had any other name than McCarthy?
A Just McCarthy.

Q Did you ever meet the complaining witness, Werpupp, any time after the 24th day of April, 1924? A Yes. I saw him at the curb.

Q Did you have a conversation with him?
A I talked to him.

Peter McCarthy, direct

Q What was the subject of the conversation?
A He told me the day we stopped at his house with Mr. Miller he lost some stuff and he asked me if I knew anything about it, and I told him no, and he said, "I think that Johnnie boy knows something about it." I said, "He is around here every day."

Q Who did he mean by Johnnie boy? A John Witt. He used to call him Johnnie.

Q And after you were arrested did you see him? A Did I see who?

Q Werpupp. A Yes.

Q And did you have any conversation? A Yes, I had a conversation with him in the Fourth Precinct Police Court and up in the Court House corridor here, and he come looking for me down on the street.

Q Did he find you? A Yes.

Q What was the subject of the conversation?
A Well, after the arrest he thought I knew something about his liquor, at least, he accused me of being a party to stealing his liquor. He said that I took him to the bank along with John Witt while somebody went in there and took his liquor away from the cellar.

Q Did he ask you to make good? A Well, he threatened if he didn't get his liquor back he was going to go to court and he was going to give me five years one time and seven years another time.

Q What did he want his money for? A For the stock he lost.

Q Did you ever offer him any money? A No, sir.

Q Did you ever mention to him that if he failed to identify you you would give him twelve or fifteen hundred dollars? A No, he mentioned that to me.

Peter McCarthy, direct

Q That if you would give him twelve or fifteen hundred dollars he would not identify you?
A Yes.

Q And did you have that much money? A I never had that much money.

Q Well, do you remember the occasion when you came to the prosecutor's office and talked to Mr. Fisch? A He met me and made an appointment with me for the following morning.

Q You remember when you came here? A Last week.

Q How did you come to come here? A Mr. Werpupp come down looking for me.

Q What happened? A The same conversation over again. He threatened that he was going to push the case and do this and do that.

Q Did you convince him that you had nothing to do with it? A Yes, I always did. I always told him I had nothing to do with the stealing of his liquor.

Q What did he say at that time? A He said, "I am going to go through that case; I am going to push it."

Q I am talking about the time you came up with Werpupp to the prosecutor's office. Why did you come up here? A I met him by appointment and he brought me up here.

Q What did he say he was going to do? A He said he arranged with Mr. Fisch to drop the case.

Q And did he say he was convinced? A He said he was convinced—

Mr. Fisch: I object to the counsel putting words in the witness' mouth.

The Court: I will allow it.

Peter McCarthy, cross.

Q What did he say? A He said he was convinced I didn't have anything to do with the larceny of his liquor and he was going to withdraw his charge.

Q Did you come here? A Yes.

Q Then what happened? A Mr. Fisch was trying a case and the case got adjourned for recess and Mr. Werpupp went in and I said, "I don't think it is any place for me."

Q And you stayed outside? A Yes.

Q And Mr. Fisch sent for you? A Yes.

Q That is the prosecutor trying this case? A This Mr. Fisch here.

Q And then you went inside and talked to Mr. Fisch? A Yes.

Q What did you say to him? A He asked me if I wanted to make restitution to Mr. Werpupp and if in doing so I would enter a plea of some kind and wipe the case off the books, and I told him I had no idea of doing anything like that.

Q Did you tell him why you came to the Court House? A Yes. I told him what Mr. Werpupp suggested.

Cross examination by Mr. Fisch.

Q I asked you, did I not, whether it was a fact that you wanted to make part restitution to Mr. Werpupp to the extent of twelve or fifteen hundred dollars? A Yes.

Q And you said yes? A I said no.

Q You said no? A I said no.

Q Do you remember Mr. Cocozza being there? A You sent him out for me.

Q And do you remember him being there when you spoke to me? A He stood right opposite you.

Peter McCarthy, cross.

Q And you say that you said no? A I did say no.

Q And you remember saying that some friend of yours was going to put up \$1,200 for you?

A I told you that was Mr. Werpupp's conversation.

10 Q Didn't you tell me, in my office, that some of your friends were going to raise some money and put up \$1,200 for you? A I didn't tell you anything of the kind.

Q And didn't I tell you that I was perfectly agreeable to your making part restitution? A Yes.

Q And didn't I tell you that if any restitution was to be made it was to be made in my office? A Yes.

20 Q And didn't I tell you that if you made any restitution that it was to be with the understanding that there was no promise to be made to you as to the disposition of this case? A You did, yes.

Q And didn't you then say, "Well, I don't know about that, I will have to see my friends"? A No.

Q You didn't say that? A No.

30 Q And did you see Lieutenant Linarducci there? A Standing right opposite your desk.

Q And didn't you say in my presence that you thought the arrangement was that the case would be dropped if you paid the money? A No, sir.

Q And didn't Mr. Werpupp then say, "No, sir, that is not the arrangement"? A No. Mr. Werpupp did not talk in my presence except to verify that you sent for me.

40 Q Now, Mr. Miller, you have known him a couple of years? A Two years ago last summer.

Peter McCarthy, cross.

Q You used to help him take cases from ships?

A I had a bungalow with him down at the Highlands.

Q And you used to help him take cases from ships? A Yes.

Q And you have known Mr. Miller for about two years? A Two and a half years. 10

Q A good friend of yours? A A personal friend of mine.

Q By personal friend of yours, you mean a close friend? A Yes, a close friend. He rented a bungalow to me.

Q And you have seen him since you pleaded to this indictment, did you not? A I had him up in the Court House corridor.

Q You had him up here? A Up here.

Q After you had engaged counsel? A After 20 I had engaged counsel.

Q And did you serve him with a subpoena? A No, sir.

Q Do you know whether your counsel served him with a subpoena? A No, sir; he volunteered to come up himself.

Q And he is a good friend of yours? A He is a good friend of mine.

Q And he knew this case was coming up? 30 A Yes.

Q And he knew he was to be a witness? A Yes.

Q And he didn't tell you that he was going to Cuba? A No, sir.

Q And the first that you knew that he had gone to Cuba was when you went down to the Highlands to look for him? A He was still at the Highlands three weeks ago when this case was postponed. 40

Peter McCarthy, cross.

Q Then he did not go to Cuba a couple of months ago? A Not to my knowledge. He answered me over the telephone.

Q He spoke to you over the telephone? A Yes.

Q Three weeks ago? A Three weeks ago.

10 Q And you spoke about the case being postponed? A Yes.

Q And he did not say anything then of going to Cuba? A No, sir; he said he would try and be up.

Q And you didn't know anything about his going to Cuba? A Not at that time.

Q You never made any requests for adjournment on the ground your witness had gone to Cuba? A I never made any request at all.

20 Q Did you ever make any request for an adjournment of this case on that ground?

Mr. Kessler: I object to that, because it appears that this witness had counsel and the witness would not make the request but counsel would.

The Court: Well, he has already answered it that he made no request of any kind.

30 Q You had gone to the bank with Mr. Werpupp? A With Mr. Werpupp and Mr. Witt, yes.

Q Who went out of the house first? A The four of us left together.

Q You all went out together, did you? A Yes.

40 Q And what direction did you take, you and Witt and Mr. Werpupp? A We went to the left. We walked over towards South Orange avenue.

Peter McCarthy, cross.

Q And you went right on and got into the jitney bus, is that right? A Yes. Mr. Werpupp went back to the house, went back to his home.

Q What for, do you know? A He said he forgot his bank book, the bank book, or check book, I don't know which.

10 Q And you had spoken about going to the bank before you left his house, hadn't you? A I didn't speak about going to the bank. I promised to take him to the bank.

Q Somebody had spoke to him about going to the bank? A Well, they had that conversation between themselves. They were talking in German half the time.

Q Oh, they were talking in German and you did not understand what was going on? A I do not understand German.

20 Q Then you didn't understand very much of the conversation? A Part of it.

Q Part of the German conversation? A No, part of the conversation they had.

30 Q What did you understand? A Well, the liquor transaction and the amount he owed him, that \$1,500, and whatever they said in German they laughed over it, but I understood the fact that he owed Mr. Miller a balance of \$1,500. Mr. Miller told us that going up in the car.

Q And part of that conversation was had in English? A Part of it.

Q Part of that conversation was had in English and you stayed in the automobile when you got down to the bank? A I did.

Q Why did you do that? A Why, Mr. Werpupp promised to give Mr. Witt the money.

40 Q You were the one that was supposed to get the money? A Mr. Miller told Mr. Werpupp to give me the money.

Peter McCarthy, cross.

Q You were the one that was supposed to get the money? A For whom?

Q For Mr. Miller? A From whom?

Q You were supposed to get the money for Mr. Miller? A From Mr. Witt.

Q Oh, had it been arranged that Mr. Witt was to go in the bank with Mr. Werpupp and get the money? A Yes.

Q That had been arranged beforehand? A Yes.

Q And then Mr. Witt was to turn the money over to you, is that right? A He said, "When you get that money you take it, Pete, and meet me at the curb and give it to me."

Q Now, will you please answer my question? It had been arranged that Mr. Witt was to go into the bank with Mr. Werpupp to get the money, is that right? A You don't make yourself quite clear. I do not understand you. You are puzzling me a little.

Q What is puzzling about that? A You are twisting me up. Mr. Miller said—

Q Wait a minute. A You go down—

Q Wait a minute. It had been arranged that Mr. Witt was to go into the bank with Mr. Werpupp? A Yes.

Q And Mr. Werpupp was to give the money to Mr. Witt? A Yes.

Q Is that right? A Yes.

Q And it had also been arranged that Mr. Witt was to turn the money over to you? A Afterwards.

Q And it had also been arranged that you were afterwards to turn the money over to Mr. Miller, is that right? A Just a minute.

Q Is that correct? A Just a minute.

Q Is that correct or isn't it? A Yes.

Peter McCarthy, cross.

Q Now, why, can you tell me, why, if you were supposed to turn that money over to Mr. Miller and you were to get the money for him, why is it that you didn't go into the bank with Mr. Werpupp and get the money? A Mr. Witt and Mr. Werpupp started for the bank by themselves. I was going over to Cappawanna's place with Mr. Miller. I was already in his car and he said, "Pete, you better go down with them and you take that \$1,500 and hold it for me." That is why.

Q But the arrangement had been made that Witt was to go into the bank? A To go with Mr. Werpupp. I am not saying to go to the bank, but when they got down there they went in the bank together.

Q Didn't you tell me a minute ago that it had been arranged that Mr. Witt was to go into the bank with Mr. Werpupp? A He was to go down with him.

Q Didn't you tell me just a few minutes ago that it had been arranged that Mr. Witt was to go into the bank with Mr. Werpupp?

Mr. Kessler: I request that the prosecutor resume his position at the table.

The Court: All right. He has resumed it.

Q Didn't you tell me that? A They were going to the bank together.

Q Please answer that question. Didn't you tell me that? A They were going to the bank together.

The Court: No, that is not the question. The question is did you not, a few minutes ago, tell the prosecutor that it had been ar-

Peter McCarthy, cross.

ranged that they were to go to the bank together and get the money and then it was to be handed over by Mr. Witt to you and you were to hand it over to Mr. Miller? Didn't you say that in answer to the prosecutor's question a few minutes ago?

10 The Witness: Yes, but at the same time I told him he had me upset. Mr. Witt and Mr. Werpupp was going to the bank together and I was going over to Orange, over to Cappawanna's place, and Mr. Miller changed his mind and said, "You better go down with them, Pete, and get that \$1,500 and hold it for me," and we walked down the street and Mr. Werpupp discovered he left some kind of book home and then he went on back.

20 The Court: Then it was not arranged in advance before going to the bank that Mr. Witt was to go in the bank?

The Witness: If it was, it was not to my knowledge.

Q But before Miller made up his mind to go up to Orange to Cappawanna's alone he told you to get the money? A Before he made up his mind to go to Cappawanna's?

30 Q Alone. A He told me to go down to the bank with them.

Q To get the money for him? A How could I get the money alone?

Q He told you to go down to get the money for him? A He instructed me to go down and get the money and hold it for him.

Q Why, then, didn't you go in the bank to get the money? A It was not necessary.

40 Q You knew that Witt could get it? A Why, he had already arranged to give him the money.

Peter McCarthy, cross.

Q And that was arranged in the house? A In the house, yes.

Q And when you came outside Werpupp got into the automobile with Witt, that is correct?

A Outside where?

Q Well, when Werpupp came outside of the bank? A Yes.

Q And you were in the machine all the time? 10

A All the time.

Q You were waiting there? A Yes. A traffic officer ordered us around the corner.

Q And you didn't get the \$1,500, did you?

A I never received any part of it. I never handled it, didn't have any reason to. Mr. Witt stayed with me all the time.

Q And you trusted Witt, didn't you? A Why shouldn't I? 20

The Court: Well, the question is, you trusted him. Yes or no.

The Witness: Yes.

Q And you trusted Witt to turn the \$1,500 over to your friend, George Miller? A Yes.

The Court: Did you ask Mr. Witt for the money?

The Witness: No, I didn't, as long as I was going to stay with him. 30

Q Didn't you testify on direct examination that you asked Witt for the money? A I told him I was instructed for me to give him the money.

Q And you asked him for it? A I said, "George said for you to give me that \$1,500."

Q And you asked him for it? A I didn't ask him for it. 40

Peter McCarthy, cross.

Q You didn't? A I told him about it, but I didn't ask him for it.

Q You were just making a speech to him?
A I just told him George said, "When you get that \$1,500 to give it to me, I am going to meet him downtown."

10 Q And you asked him for the money? A I never asked him for it.

Q And he insisted on holding it? A I never asked him for it.

Q Did he insist on holding it? A I never asked him for it.

Q Will you answer my question?

Mr. Mott: I object to the question. If he didn't ask there couldn't be any response.
20

The Court: He said that he told him that Miller told him he could give him the money, and he said, "I hadn't asked him for it," and he further says that, "I am going to see Miller" and Witt then said, "So am I to see him." That is the way I understand it. Then I do not understand that Mr. McCarthy insisted or asked after that for the money and it was not given to him and he stayed with Witt until Witt gave it to him.
30

Mr. Fisch: I believe the question has been answered. The question is, "And Witt insisted on holding the money."

Q Answer my question. Did Witt insist on holding the money?

Mr. Mott: I object to the question.

The Court: Objection sustained.
40

Peter McCarthy, cross.

Mr. Fisch: The witness testified in these words on direct examination that Witt insisted on holding the money.

The Court: Well, if that is the case let him answer the question.

Mr. Fisch: Well, there is not any sense in asking him now.
10

The Court: Go ahead.

Q Now, the conversations which you had with Werpupp at the Fourth Precinct and in the Court House were all after you had been arrested on this charge, weren't they? A Yes.

Q And the case had already been brought to court, hadn't it? A It was brought up for a Police Court hearing.

Q Yes, and you were held for the Grand Jury? A My counsel waived the examination for the Grand Jury.
20

Q And you were held for the Grand Jury?
A Yes.

Q And the conversations which you had with him in the Court House were had after you had been indicted by the Grand Jury, is that right?
A Yes.

Q And after the case had been set for trial, isn't that correct? A Yes.
30

Q And you had emissaries to go and see Mr. Werpupp?

Mr. Kessler: I object as not proper cross examination.

A No.

Mr. Kessler: I withdraw it.

The Court: He has answered it. Let it stand.
40

Henry Werpupp, direct.

Q Have you ever been convicted of crime?
A Yes.

Q How many times? A Is it relative to this case? Should I answer that?

The Court: Yes.

10 A (Continuing) I was convicted twice of crime.

Q What for? A Disorderly house.

Q What else? A An assault and battery.

Q And weren't you convicted of crime in New York? A No, sir.

Q What is that? A No, sir.

Q Weren't you convicted of the crime of robbery in the City of New York on the 31st of May, 1912? A No, sir.

20 Q And sentenced to the Elmira Reformatory by Judge O'Sullivan? A No, sir.

Q Under the alias of John Stewart? A No, sir.

Q And your conviction on the assault and battery charge was when?

Mr. Kessler: Objected to as immaterial as to time.

The Court: It is immaterial.

30

DEFENDANTS REST.

HENRY WERPUPP, recalled in behalf of the State in rebuttal.

Direct examination by Mr. Fisch.

40 Q Mr. Werpupp, do you know any George Miller? A No, sir.

Henry Werpupp, direct.

Q Was there any man talking German to you on the 24th of April, 1924, when the two defendants were at your house? A John Witt.

Q Did anybody beside John Witt talk German to you? A No, sir.

Q Had you ever seen John Witt or Peter McCarthy before that day? A Never in my life; never seen the fellow. 10

Q Had Witt been to your house four or five times before that? A Never.

Q Had he ever had anything to eat in your house? A Never.

Q Did you ever do any booze business with Miller? A I don't know anybody by Miller at all.

The Court: His answer is no, sir.

The Witness: No. 20

Q Did you say to anybody on the 24th of April, in the presence of these defendants, when they asked you for \$1,500, to pay \$1,500, leave it go until tomorrow? A No, sir.

Q And then did this man insist upon your paying it that day? A No, sir.

Q When you left the house with these two defendants to go to the bank did you go back to the house for a bank book? A No, sir. 30

Q Did you have your bank book with you when you left your house? A I didn't need any.

The Court: Did you have it?

The Witness: No.

Q And did you take any? A I didn't.

The Court: Did you take a check book? 40

Henry Werpupp, direct.

The Witness: I even did not take a check book.

Q Where did you get the check? A In the bank.

10 Q Did you hear anyone say, "I have got to go to Cappawanna's, you, (speaking to McCarthy and Witt), you go to the bank with Werpupp?"

A To who?

Q Did you hear anyone say to McCarthy and Witt, "I have got to go to Cappawanna's, you go to the bank with Werpupp?" A No, sir.

Q Did you ask these two defendants, or either of them, to stop at Twentieth street and Avon avenue? A No, sir.

20 Q Do you know anybody in that vicinity? A No, sir.

Q And did you, after you got to Twentieth street and Avon avenue, say to these defendants, or either of them, "Never mind, you wouldn't stop, you would go home"? A I never spoke to them.

Q Did you tell these two defendants, or either of them, that you didn't want them to stop in front of your house and that you wanted them to stop on the corner? A No, sir.

30 Q Did you see Witt the following day after this occurrence? A No, sir.

Q And did you ask him who is the fellow who drives George's truck? A No, sir.

Q Where can I find him; he took my stuff out? A I never seen him.

Q Did you say, "I will fix you?" A No.

Q Did you say, "I want that money back?" A Never.

40 Q Did you see him a month after that and talk to him again? A I did not.

Henry Werpupp, direct.

Q Did you ever see Witt and McCarthy after the 24th of April, 1924, and before they were arrested? A Before?

The Court: No, between the time of April 24, 1924, and the time they were arrested.

The Witness: I didn't see any of them. 10

Q Did you know either of their names? A I didn't know their names, either.

Q Were you introduced to McCarthy around Christmas or on New Year's, 1923, by the name of McCarthy, or any other name? A No, sir.

Q Did you ask them to stop at the corner and say, "I don't like to let neighbors know I deal in liquor"; did you say that? A No.

Q Did you say to McCarthy, "When you see George tell him I want to see him, I want him to call me up?" A Never, no, sir. 20

Q Did you make the suggestion about McCarthy paying you any money? A Never; no, sir.

Q Who made the suggestion? A McCarthy did and some other fellows through him.

Q Did you tell McCarthy that you had arranged with me to drop the case? A No, sir.

30 Q Did you tell me that you were convinced that he did not have anything to do with it? Did you tell McCarthy that you were convinced that he, McCarthy, did not have anything to do with it? A No, sir.

Q Did you hear me ask him, in my office, if he wanted to make restitution? A Yes.

Q And what did he say? A I don't know exactly. I didn't hear what he said. He said some friends wanted to put up the money.

Q And did I say to him that I didn't have any objection to his making restitution? A Yes. 40

Henry Werpupp, cross.

Q But that it must be made in my office? A Yes.

Q Without any promise as to the disposition of the case? A Yes.

Mr. Kessler: That is not rebuttal.

10

Q And did he say that he understood it was the arrangement that the case was to be dropped when he was in my office? A I didn't know what he said.

Q Now, did you swear to the complaint in this case in the Police Court? A Yes.

Q And is this the complaint which you swore to? A Yes.

Q And did you give the names of the defendants to the people—to the Judge at the time you made the complaint? A I didn't know any names to give.

20

Complaint offered in evidence and marked Exhibit S. 2.

The Court: When you left your house with Mr. McCarthy and Mr. Witt did the Chief—was he still in the house when you left?

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The Witness: He was still in the house.

Cross examination by Mr. Kessler.

Q Why did you leave him there? A Well, I don't know. I was careless.

Q The information that was given to the Court upon which this complaint was drawn was the notice that you gave, is that right? A Yes.

Q And you swore to it as true, is that right? A Yes.

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Henry Werpupp, cross.

Q Now, you told us on direct examination yesterday that they said—that unless you fixed it up with them they would take your liquor or seize your liquor?

Mr. Fisch: I object to that. That is not cross examination, as to what he told us on the stand yesterday.

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Mr. Kessler: But it is connected now.

The Court: I think so. I will allow it.

Q Isn't that what they said to you? (Question read.) Isn't that so?

The Court: When they were in the kitchen in your house, didn't you say yesterday, on direct examination, that unless you fixed it up with them they would seize your liquor and take it away?

20

The Witness: They didn't say that.

The Court: They did not?

The Witness: No.

The Court: Did you say that yesterday in your testimony?

The Witness: Not that I know.

Q What did they say that they would do? A They said if they get \$1,500 then they leave everything alone.

30

Q And if they don't get \$1,500 then what would they do? A They didn't say a word about that.

Q Did they threaten to arrest you? A They didn't.

Q I ask you to look at the affidavit that you signed to this complaint which says, "John Doe and Richard Roe did then and there knowingly

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Henry Werpupp, re-direct.

by false pretense, to wit, by representing themselves to be Federal officers and threatening complainant with arrest, obtaining from complainant \$1,500"—how is it that you came to swear to that if that is not what they said? You can read English? A Yes.

10 Q You say that by representing themselves to be officers and threatening complainant with arrest? A I didn't read that.

Q Do you mean to tell me you would sign an affidavit without knowing of what the facts were? A Well, in the Police Court I signed my name.

Q In any event, this affidavit is not true, is it? A Yes.

Q That is not true, they didn't threaten you with arrest, did they? A They didn't.

20 Q Did you testify before the Grand Jury in this case? A Yes.

Q When did you go before the Grand Jury? A I don't know the date.

Q Do you know the month?

The Court: Do you know the month?

Mr. Kessler: It is of no importance.

30 *Re-direct examination by Mr. Fisch.*

Q With reference to this complaint, who filled it out? Did you fill it out? A I didn't, no.

Q You told the police what happened? A I did.

Q And you told the Judge what happened? A I did.

Q And then somebody filled out the complaint? A Somebody filled it out.

40 Q And then you signed it? A And I signed it.

Annie Staubass, direct.

ANNIE STAUBASS, sworn in behalf of the State in rebuttal.

Direct examination by Mr. Fisch.

Q Mrs. Staubass, did you live in Mr. Werpupp's house? A Yes.

Q And were you living there in April, 1924? 10 A Yes.

Q And how long have you been living in his house? A About thirty years.

Q And who prepares the meals there? A I do.

Q And who serves the meals? A I do.

Q Did you ever see the defendants John Witt or Peter McCarthy at your house? A No, sir.

Mr. Kessler: Objected to. It has no probative value at all. There is nobody testified that they saw this lady. It is immaterial. 20

The Court: I will allow it. It might be material.

Q Did you ever serve the defendant John Witt with anything to eat? A No, sir.

Mr. Kessler: Objected to as not proper cross examination. 30

The Court: I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

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

NEWTON H. PORTER,
Judge.

*Charge to Jury.***CHARGE.**

The Court charges the jury as follows:

PORTER, J.

10 GENTLEMEN OF THE JURY: You have been called upon to try a charge that has been brought against these two men by the Grand Jury of this county. The fact that the charge has been made does not raise any presumption against them. It is your function to find, from the facts, as to the truth or falsity of this charge. It is the function of the Court to direct you with respect to the law, and you must take as being a correct statement what the Court says to you as to what the law is governing this transaction.

20 The Grand Jury of this county have brought a charge against Peter McCarthy and John Witt, John Doe and Richard Roe, charging that "On the 24th day of April, 1924, in the City of East Orange, in the County of Essex, they did unlawfully steal and take away ten cases of gin, each case of the value of fifty dollars; ten cases of whiskey, each case of the value of seventy-five dollars; ten cases of beer, each case of the value of twenty-five dollars, in all of the value of fifteen hundred dollars, of the goods and chattels of Henry Werpupp, 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.

30 "And the Grand Jurors aforesaid do further present that the said Peter McCarthy, John Witt, John Doe and Richard Roe, on the 21st day of April, 1924, at the City of Newark, and County of Essex aforesaid, unlawfully and feloniously did receive and have"—I will not read this second count. The second count is a count for re-
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Charge to Jury.

ceiving, and I direct that you acquit on this second count, namely, the charge that is contained in this indictment, which I started to read, which charges that they feloniously received goods, knowing them to have been stolen.

The next charge: "And the Grand Jurors of the State of New Jersey, for the County of Essex present that Peter McCarthy, John Witt, John Doe and Richard Roe, on the 24th of April, 1924, in the City of Newark, in the County of Essex aforesaid, did falsely pretend to Henry Werpupp that the said Peter McCarthy, John Witt, John Doe and Richard Roe were then and there officers of the United States, whereas in truth the said Peter McCarthy, John Witt, John Doe and Richard Roe, then knew the said Peter McCarthy, John Witt, John Doe and Richard Roe were not then and there officers of the United States, and the said Henry relying upon the false pretenses as true, and being deceived thereby, did then and there pay to the said Peter, John Witt, John Doe and Richard the sum of fifteen hundred dollars, and the said Peter, John Witt, John Doe and Richard did then and there knowingly and designedly, by color and means of said false pretenses, obtain from the said Henry the sum of fifteen hundred dollars, of the goods and chattels of the said Henry, with intent then and there to cheat and defraud said Henry of the sum, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same." 10 20 30

In other words, there are two charges here that you must pass upon, one for larceny of certain goods, and the second for obtaining money under false pretenses. The other charge, 40

Charge to Jury.

that of receiving, I direct you to bring in a verdict of acquittal on.

10 Now, it is charged in this indictment that these various crimes were committed by the two defendants now on trial, and two other people whose names are not known, who are, therefore, designated in the indictment as John Doe and Richard Roe. Of course, the only people that you are trying are these two de-
fendants, John Witt and Peter McCarthy.

20 On the larceny charge. Larceny is the unlawful taking of goods and chattels with intent to steal them. It is not necessary that you be satisfied beyond a reasonable doubt that those goods that are described were stolen, but if any goods were stolen it is sufficient. In other words, if you find that it was a similar quantity, not the exact quantity charged, it is sufficient to cover this indictment; and it does not make any difference whether the goods that were stolen was liquor or not; the nature of the goods makes no difference.

30 Another thing, it does not make any difference whether these two defendants actually stole these goods or not. If you believe that someone acting for them, under their direction, stole the goods, that is sufficient. If the defendants instructed someone, and someone acted for them and under their instructions, and stole the goods, that is sufficient in order for you to convict, if you believe that beyond a reasonable doubt.

40 In regard to the false pretenses, the statute in regard to that says that any person who, knowingly or designedly, by color of any false token, counterfeit letter or writing, or false pretense or pretenses, shall obtain from any person money, wares, merchandise, goods or chattels, or other valuable thing, with intent to keep or

Charge to Jury.

defraud any person, body politic or corporate, of the same, shall be guilty of a misdemeanor.

10 The elements of this crime are that the accused shall have made representations or exhibited some token. It is not necessary that the pretenses shall have been in writing or that the token shall have been visible. Neither is it necessary to prove the pretenses in the precise words laid in the indictment. The representa-
tions must be positive, not a mere opinion or supposition on the part of the accused that certain facts existed. The representations must have induced the person to whom they were made to part with his property, or to have in-ferred an obligation; that the representation which so caused the owner to part with his property or to infer an obligation were untrue. Counsel for the defendant has asked me to charge on this point this, and I think I have covered it. "A false representation, to be a criminal pretense within the statute, must be of such a nature as will be sufficient to induce a man to part with his property, and must not be absurd in itself considered as an efficient cause." I so charge you.

30 The second request he asks me to charge is this: "If the complaining witness knew the defendants and knew that they were not officers of the United States, then he could not have been influenced by the statement that they were officers of the United States, if they made that representation." I so charge you.

These defendants are presumed to be innocent until proven guilty, and the defendants are entitled to the benefit of any reasonable doubt arising upon the evidence.

The burden is upon the State to prove beyond such a doubt every material element of the

Charge to Jury.

crime and, if upon such proof there be a reasonable doubt with regard either to the guilt of the accused or to the degree of criminality they are entitled to the benefit of that doubt. Such burden of proof remains upon the prosecution throughout the whole case and never shifts.

10 Reasonable doubt is defined, in an opinion of the highest court of this State, in these words: "It is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they
20 feel an abiding conviction to a moral certainty of the truth of the charge." The evidence must establish the truth of the facts to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. But, if, after carefully considering the evidence, giving the accused the benefit of reasonable doubt, you are lead to the conclusion that they are guilty, you should
30 so declare by your verdict.

I am not going to take your time to refer to the evidence. The counsel for the defendants and counsel for the state have very ably and fairly reviewed for you the evidence in the case, and because of the lateness of the hour and because of the fact that they have done it, I deem it unnecessary for me to go over the same thing again.

40 There has been some testimony given, however, by word of mouth, and there have been certain

Charge to Jury.

circumstances that you must also take into consideration when you weigh the evidence and come to your conclusion. I want to say a word about circumstantial evidence. An accused may be convicted of the highest crime known to the law by circumstantial evidence, but the first inquiry in an issue raised upon circumstantial
10 evidence is whether the facts sworn to are satisfactorily proved, which involves a consideration of the credibility and accuracy, and observation and memory of the witnesses by whom such facts are testified to, and in the next place, assuming that the facts sworn to by the witnesses are satisfactorily proved, then the further inquiry arises whether the facts proved are explained or are explainable on any other rational conclusion than that the prisoners are the guilty
20 persons. Whether the inference of guilt deduced from such facts is, in the judgment of the jurors, sufficiently strong to justify the conviction that the prisoners are guilty is to be decided by a consideration of whether the facts proved are capable of being reconciled with the hypothesis of innocence.

Circumstantial evidence cautiously dealt with, in conformity with the legal principles I have stated, is frequently regarded as the most satisfactory proof that jurors can rely upon.
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If you believe that a witness wilfully, or knowingly, testified falsely to any material facts in this case you may give such weight to his or her testimony on other points as you may think it is entitled to, or you may disregard it altogether. False in one thing, false in all is not a mandatory rule of evidence, but is rather a permissible inference that the jury may or may not draw when convinced that an attempt has been made to mislead them in some material
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Charge to Jury.

respect. And that is true with respect to any witnesses who have testified in this case.

10 There has been some evidence introduced in this case of the fact that one of these defendants, Peter McCarthy, has previously been convicted of crime. He is not here charged with anything except these two offenses which are in the indictment, and on only those charges must you consider and bring in a verdict. The only effect of the evidence of his previous convictions of crime was for the purpose of showing his credibility. You may, because of the fact that he has previously been convicted of crime, disbelieve everything that he has said; or, if you wish, you may, on the other hand, in spite of the fact that he has previously been convicted of crime, believe everything that he has said.

20 The only purpose, I repeat, is with respect to his credibility as a witness.

Counsel for the State, in summing up, referred to the fact that John Witt assumed the position, at the counsel table, yesterday, when Mrs. Werpupp was trying to identify them, of the clerk, in that he picked up a pen. Counsel for the defendant objected to that, and because of his objection I think it important for me to call your attention to that. What I wish to say about that is this: I do not remember that any evidence was introduced in this case about that fact. I do remember that the prosecutor asked John Witt, on cross examination, whether or not he did do that, and you will recall what he said. Of course, anything that transpired in this court room, that you saw, may influence you, even though it has not been directly put in evidence. Just so, you may deduce and conclude whether these witnesses are telling the truth or not, by their manner, by the method,

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Charge to Jury.

the way in which they answered the questions. You gentlemen must decide wherein the truth lies, and in arriving at the truth you must weigh the statements that are made. You must consider the circumstances of the case as I have defined the legal phrase, circumstantial evidence; you must consider their demeanor on the stand. You must also have in mind the interest that the various witnesses may have in testifying as they do.

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If you gentlemen are satisfied beyond a reasonable doubt of the truth of the charges brought against these two men, it will be your duty to bring in a verdict of guilty, either against one or both of them. If, on the other hand, you have a reasonable doubt, or you do not believe them guilty as charged, it will be your duty to bring in a verdict of acquittal. You must weigh this evidence and bring in a verdict in accordance with the evidence, irrespective of whether these men were engaged in an unlawful business or not, irrespective of whether you believe this complaining witness was or was not also engaged in an unlawful business. None of them are here charged with a violation of the prohibition law. The sole question that you must decide is whether they are guilty of the charges for which they have here been tried.

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One other thing, gentlemen. If I have misstated or if counsel have misstated any of the evidence—and I do not think I have because I have hardly referred to it—you must disregard what any of us has said with regard to the testimony here; this case must be decided on your own recollection of the testimony, not on ours.

Of course, gentlemen, I said that you could find one defendant guilty or both, but I should

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Exceptions to Charge.

elaborate on that by saying that you could find one or both guilty of each charge, or one or both guilty of either charge.

You may now retire.

(The jury retires.)

10 Mr. Kessler: If your Honor please, I desire to except to that part of your Honor's charge in which you say it makes no difference whether these two men stole or some one of the others stole the goods, that is sufficient.

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

NEWTON H. PORTER,

Judge.

20 Mr. Kessler: I except to that part of the charge wherein you refer to the remark by the prosecutor with reference to John Witt's action in court, because it clearly shows in the record just what the prosecutor did say.

The Court: I should not think you would object to that.

Mr. Kessler: Perhaps it is more objectionable on the prosecutor than on the part of the Court.

30 The Court: You may have it.

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

NEWTON H. PORTER,

Judge.

Mr. Kessler: I desire to ask for a mistrial on the ground that the prosecutor had no right to discuss that matter before the jury.

40 The Court: On what theory?

Exceptions to Charge.

Mr. Kessler: He has no right to discuss anything outside of the evidence, and that is not evidence.

The Court: Motion denied.

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

Exception allowed; let it be sealed, and it is signed and sealed accordingly. 10

NEWTON H. PORTER,

Judge.

Mr. Kessler: I also desire to take an exception to that part of the charge wherein you say that anything you see in the court room may influence you. I do not think that is the law.

The Court: That is not all I said. Do you refer to all I said following that? 20

Mr. Kessler: That is all I can quote, but to all your Honor said.

The Court: You may have an exception.

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

NEWTON H. PORTER,

Judge.

The Court: Do these exceptions cover both defendants? 30

Mr. Kessler: Yes, your Honor. I desire a general exception.

Defendants' counsel prays a general exception to the charge of the Court.

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

NEWTON H. PORTER,

Judge. 40

Defendants' Requests to Charge.

DEFENDANTS' REQUESTS TO CHARGE.

1. A false representation, to be a criminal pretense within the statute, must be of such a nature as will be sufficient to induce a man to part with his property, and must not be absurd in itself considered as an efficient cause.

10 2. If the complaining witness knew the defendants and knew that they were not officers of the United States, then he could not have been influenced by the statement that they were officers of the United States, if they made that representation, and the representation, though false, is not criminal.

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Motion in Arrest of Judgment.

ESSEX COUNTY COURT OF OYER AND TERMINER.

Monday, March 2, 1925.

STATE,	}	<i>Indictment</i>	10
		<i>No. 60.</i>	
<i>vs.</i>		<i>False</i>	
PETER McCARTHY and JOHN WITT.		<i>Pretenses,</i>	
		<i>Larceny and</i>	
		<i>Receiving.</i>	
		<i>On Motion in</i>	
		<i>Arrest of</i>	
		<i>Judgment.</i>	

Before Hon. Newton H. Porter, Judge.

For the State appears Simon L. Fisch, Second Assistant Prosecutor of the Pleas. 20

For defendants appear Wilbur A. Mott and Samuel I. Kessler.

Mr. Mott: I desire to move in arrest of judgment on the ground that there is error in the record in that the Court denied the motion of counsel to direct a verdict, on the count for false pretenses, because there was no evidence in the case of the false pretense alleged in the indictment, to wit, that the defendants were officers of the United States. 30

The Court: (After argument.) My view at the time of the trial was that the indictment was broad enough to cover it, that it set it out with sufficient particularity for you to know what the charge was, and you have covered it, and I am not willing to arrest the judgment, under the circumstances. I have covered these points, during the trial, and I think I should stand on that; 40

Motion in Arrest of Judgment.

there is nothing that you have brought up now that I have not ruled on before.

10 Mr. Kessler: Your Honor has the power if you think that Mr. Mott's argument has merit. Judge Mott has only touched on one count in the indictment. There is a count in the indictment charging larceny, and I say that an examination of the record shows that there is absolutely no evidence whatever of a larcenous taking in the case.

20 The Court: (After further argument.) I will deny your motion. I passed on practically all of these questions during the progress of the trial, and I considered it then, and I have thought about it since. I do not think the cited case is analogous, but I am perfectly willing to have the higher court pass on it. If you are right you have got a perfectly good record so, therefore, you are not being harmed by my decision at this time.

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

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

30 NEWTON H. PORTER,
Judge.

*Certificate of Judge.*ESSEX COUNTY COURT OF QUARTER
SESSIONS.

STATE,

*vs.*PETER MCCARTHY and JOHN
WITT.

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I, Newton H. Porter, Presiding Judge of the Essex County Court of General Quarter Sessions, and the Judge who presided over the aforesaid cause, certify that the foregoing contains and constitutes the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff-in-error therein with the writ of error bringing up the bill of exceptions, signed and sealed, in this cause.

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Dated: March 26, 1925.

NEWTON H. PORTER,
Presiding Judge of the Essex
County Court of General
Quarter Sessions.

30

Certificate of Court Stenographer.

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

STATE,

 vs.
10 PETER McCARTHY and JOHN
 WITT.

I, Alan G. Kennish, one of the stenographers of the Essex County Courts, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken at the trial of the case of the State of New Jersey *v.* Peter McCarthy and John Witt, on indictment number 60, for false pretenses, larceny and receiving, which said trial was held before the Honorable Newton H. Porter, Presiding Judge of the Essex County Court of General Quarter Sessions, and a jury, on Thursday, February 5, 20 1925, at Newark, New Jersey.

ALAN G. KENNISH.

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Assignments of Error.

ASSIGNMENTS OF ERROR.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
 Defendant-in-Error,

 vs.
PETER McCARTHY and JOHN
 WITT,
 Plaintiffs-in-Error.

*Assignments
of Error.* 10

Afterwards, to wit, on this day, before the Supreme Court of the State of New Jersey, comes Peter McCarthy and John Witt, by their attorneys, Kessler & Kessler, and say: 20

That in the record and proceedings aforesaid and also in the giving of the verdict and judgment aforesaid there was manifest error to the prejudice and injury of the said plaintiffs-in-error, and assign the following for causes of error: 20

First: Because the Trial Judge charged the jury as follows, to wit: "Another thing, it does not make any difference whether these two defendants actually stole these goods or not. If you believe that someone acting for them, under their direction, stole the goods, that is sufficient. If the defendants instructed someone, and someone acted for them and under their instructions and stole the goods, that is sufficient in order for you to convict if you believe that beyond a reasonable doubt." 30

Second: Because the Trial Judge charged the jury as follows, to wit: "Counsel for the 40

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Assignments of Error.

State, in summing up, referred to the fact that John Witt assumed the position, at the counsel table, yesterday, when Mrs. Werpupp was trying to identify them, of the clerk, in that he picked up a pen. Counsel for the defendant objected to that, and because of his objection I think it important for me to call your attention to that. 10
 What I wish to say about that is this: I do not remember that any evidence was introduced in this case about that fact. I do remember that the prosecutor asked John Witt, on cross examination, whether or not he did do that, and you will recall what he said. Of course, anything that transpired in this court room, that you saw, may influence you, even though it has not been directly put in evidence."

20 Third: Because the Trial Judge charged the jury as follows, to wit: "Of course, anything that transpired in this court room that you saw, may influence you, even though it has not been directly put in evidence."

Fourth: Because the Trial Judge denied the motion, made by the plaintiffs-in-error, for a mistrial.

30 Fifth: Under the general exception taken to the charge of the Court to the jury, the said plaintiffs-in-error assign errors of law upon the following portions of the charge:

a. Because the Trial Judge charged the jury as follows, to wit: "Another thing, it does not make any difference whether these two defendants actually stole these goods or not. If you believe that someone acting for them, under their direction, stole the goods, that is sufficient. If the defendants instructed someone, and someone 40 acted for them and under their instructions and

Assignments of Error.

stole the goods, that is sufficient in order for you to convict if you believe that beyond a reasonable doubt."

b. Because the Trial Judge charged the jury as follows, to wit: "Counsel for the State, in summing up, referred to the fact that John Witt assumed the position, at the counsel table, yesterday, when Mrs. Werpupp was trying to identify them, of the clerk, in that he picked up a pen. Counsel for the defendant objected to that, and because of his objection I think it important for me to call your attention to that. What I wish to say about that is this: I do not remember that any evidence was introduced in this case about that fact. I do remember that the prosecutor asked John Witt, on cross examination, whether or not he did do that, and you will recall what he said. Of course, anything that transpired in this court room, that you saw, may influence you, even though it has not been directly put in evidence." 10 20

c. Because the Trial Judge charged the jury as follows, to wit: "Of course, anything that transpired in this court room that you saw, may influence you, even though it has not been directly put in evidence." 30

Sixth: Because the Trial Court denied the motion made at the close of the State's case to direct a verdict for the defendants on the first count of the indictment.

Seventh: Because the Trial Court denied the motion made at the close of the State's case to direct a verdict for the defendants on the count in the indictment for false pretenses.

Eighth: Because the Trial Court denied the motion of the plaintiffs-in-error in arrest of 40

Assignments of Error.

judgment on the ground that there was error in the record in that the Court denied the motion to direct a verdict on the count for false pretenses.

10 Ninth: Because the Trial Court denied the motion of the plaintiffs-in-error in arrest of judgment on the ground that the record shows that there was absolutely no evidence whatever of a larcenous taking by the plaintiffs-in-error.

Respectfully submitted,

KESSLER & KESSLER,
MOTT & BERNHEIM.

Service of a copy of the within assignments of error acknowledged this June 12, 1925.

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J. O. BIGELOW,
Prosecutor of the Pleas.

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*Specification of Causes for Reversal.***SPECIFICATION FOR CAUSES
OF REVERSAL.**

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,

*Defendant-in-Error,**vs.*PETER MCCARTHY and JOHN
WITT,*Plaintiffs-in-Error.*

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*Specification
for Causes
of Reversal.*

And now come the said Peter McCarthy and John Witt, by Kessler & Kessler, their attorneys, and say:

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That in the entire record of the proceedings had upon the trial of the said Peter McCarthy and John Witt, returned by the plaintiffs-in-error herein, with the writ of error, the plaintiffs-in-error suffered manifest wrong and injury in the charge of the Court and they specify pursuant to the statute as cause for reversal the following portion of the charge of the Court, to wit: "Another thing, it does not make any difference whether these two defendants actually stole these goods or not. If you believe that someone acting for them, under their direction, stole the goods, that is sufficient. If the defendants instructed someone, and someone acted for them and under their instructions and stole the goods, that is sufficient in order for you to convict if you believe that beyond a reasonable doubt."

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The said plaintiffs-in-error further specify pursuant to the statute as aforesaid as cause for

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Specification of Causes for Reversal.

reversal, the following portion of the charge of the Court, to wit: "Counsel for the State, in summing up, referred to the fact that John Witt assumed the position, at the counsel table, yesterday, when Mrs. Werpupp was trying to identify them, of the clerk, in that he picked up a pen. Counsel for the defendant objected to that, and because of his objection I think it important for me to call your attention to that. What I wish to say about that is this: I do not remember that any evidence was introduced in this case about that fact. I do remember that the prosecutor asked John Witt, on cross examination, whether or not he did do that, and you will recall what he said. Of course, anything that transpired in this court room, that you saw, may influence you, even though it has not been directly put in evidence."

The said plaintiffs-in-error further specify pursuant to the statute as aforesaid as cause for the reversal the following portion of the charge of the Court, to wit: "Of course, anything that transpired in this court room that you saw, may influence you, even though it has not been directly put in evidence."

The said plaintiffs-in-error further say that on the entire record aforesaid they suffered manifest wrong and injury and specify as causes for reversal the following, to wit:

1. Because the Trial Court denied the motion made at the close of the State's case to direct a verdict for the defendants on the first count of the indictment.

2. Because the Trial Court denied the motion made at the close of the State's case to direct

Specification of Causes for Reversal.

a verdict for the defendants on the count in the indictment for false pretenses.

3. Because the Trial Court denied the motion of the plaintiffs-in-error in arrest of judgment on the ground that there was error in the record in that the Court denied the motion to direct a verdict on the count for false pretenses.

4. Because the Trial Court denied the motion of the plaintiffs-in-error in arrest of judgment on the ground that the record shows that there was absolutely no evidence whatever of a larcenous taking by the plaintiffs-in-error.

Respectfully submitted,

KESSLER & KESSLER,
MOTT & BERNHEIM.

Service of copy of the within acknowledged this 12th day of June, 1925.

J. O. BIGELOW,
Prosecutor of the Pleas.

Opinion of Supreme Court.

OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

No. 11, May Term, 1927.

PETER McCARTHY, <i>et als.</i> , <i>Plaintiffs-in-Error,</i> <i>vs.</i> THE STATE OF NEW JERSEY, <i>Defendant-in-Error.</i>	}	<i>On Writ of Error.</i>
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Submitted May Term, 1927, decided October 27, 1927.

Before Gummere, Chief Justice and Justices Black and Lloyd. 20

For the plaintiffs-in-error, Messrs. Kessler and Kessler and Messrs. Mott and Bernheim.

For the defendant-in-error, Mr. John O. Bigelow, prosecutor of the pleas.

PER CURIAM:

The defendants in this case were convicted under the first and third counts in the indictment, which alleged, that the defendants had obtained \$1,500 by means of false pretenses. The Court directed a verdict for the defendants on the second count receiving stolen goods. It is now urged for a reversal, that the trial court erred in refusing to grant the motion to direct a verdict on the third count for false pretenses. Let this be as it may. It will not cause a reversal for the conviction on the first count or grand larceny, as that count is not attacked. That

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Opinion of Supreme Court.

count is sufficient to support the judgment. *State v. Huggins*, 84 N. J. L. 254; *State v. Rommel*, 127 Atl. 600, affirmed 130 Atl. 920.

The judgment of the Essex Court of Quarter Sessions is affirmed.

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*Remittitur.***REMITTITUR.**

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> PETER McCARTHY and JOHN WITT, <i>Plaintiffs-in-Error.</i>	}	<i>On Error.</i> <i>Remittitur.</i>	10
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This cause having been submitted at the May, nineteen hundred and twenty-seven Term of this Court, by John O. Bigelow, Esquire, attorney for the defendant-in-error, and Messrs. Kessler and Kessler and Messrs. Mott and Bernheim, attorneys for the plaintiffs-in-error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions; 20

It is thereupon ordered and adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said court. 30

Entered November 3, 1927, on motion of

JOSEPH L. SMITH,
 Prosecutor of the Pleas,
 Attorney of Defendant-in-Error.

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*Assignments of Error.***ASSIGNMENTS OF ERROR.****NEW JERSEY COURT OF ERRORS
AND APPEALS.**

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

*On Writ of
Error.*

PETER McCARTHY and JOHN
WITT,
Plaintiffs-in-Error.

*Assignments
of Error.*

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Afterwards, to wit, on this day, before the
Court of Errors and Appeals of the State of
New Jersey, comes Peter McCarthy and John
Witt, by their attorney, Irving Siegler, and say:

That in the record and proceedings aforesaid
and also in the giving of the judgment afore-
said there was manifest error to the prejudice
and injury of the said plaintiffs-in-error, and
therefore, assign the following for cause of
error:

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1. That the New Jersey Supreme Court erred
in rendering judgment affirming the verdict and
judgment of the Essex County Court of Quarter
Sessions.

Respectfully submitted,

IRVING SIEGLER,

Attorney of Plaintiffs-in-Error.

Service of the within assignments of error is
hereby acknowledged this 25th day of Novem-
ber, 1927.

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JOSEPH L. SMITH,

Attorney for Defendant-in-Error.

New Jersey Court of Errors and Appeals

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

vs.

PETER McCARTHY and JOHN
WITT,
Plaintiffs-in-Error.

*On Indict-
ment for
False Pre-
tenses,
Larceny and
Receiving.*

BRIEF FOR PLAINTIFFS-IN-ERROR.

The plaintiffs-in-error were tried and convicted
on two counts of the indictment, namely, the
count for false pretenses and the count for
larceny.

The case comes up on a strict bill of excep-
tions and on the entire record under the one
hundred and thirty-sixth section. The certificate
of the trial judge certifying the entire record
will be found on page 179.

The indictment was against the plaintiffs-in-
error and two other defendants, who were not
apprehended. McCarthy and Witt alone were
tried.

The false pretense alleged in the indictment
charges that the defendants "did falsely pre-
tend to Henry Werpup that the said Peter
McCarthy, John Witt, John Doe and Richard
Roe, were then and there officers of the United
States, whereas in truth, as the said Peter, John
Witt, John Doe and Richard then knew, the said
Peter McCarthy, John Witt, John Doe and Rich-
ard Roe were not then and there officers of the
United States, etc."

POINT I.

1.

At the conclusion of the State's case, counsel for the defendants moved for a direction of a verdict on the count for false pretenses on the ground that the State had failed to prove the false pretense set out in the indictment to be false. This motion was denied, page 104. A motion in arrest of judgment was made, page 177, on the ground that there was error in the record in that the Court denied the motion of counsel to direct a verdict on the count of false pretenses, because there was no evidence in the case of the false pretenses alleged in the indictment, to wit, that the defendants were officers of the United States. This motion was denied and an exception duly allowed and sealed.

2.

The law seems to be well settled in this State that a motion to direct a verdict at the close of the State's case brings into review only the question whether upon the evidence as it stood when the motion was made there was a case for the jury, and that an erroneous refusal so to direct a verdict constitutes reversible error.

In the case of *State v. Contarino*, 92 N. J. L. 381, at page 383, Chancellor Walker, speaking for the Court of Errors and Appeals, says:

"We are satisfied with the decision reached by the Supreme Court; and with its opinion, save in the following particulars:

First. The Supreme Court said that there was no error in the refusal of the trial court to direct the jury to acquit at the conclusion of the State's case, since it is well settled that such a direction at that juncture is discretionary and not reviewable, citing

State v. Burnett, 62 N. J. L. 510 and *State v. Jagers*, 71 *Id.* 281. It is true that in *State v. Burnett* (1898) it was held that the denial of a motion to direct an acquittal at the close of the State's case on the trial of an indictment, was not subject to review on error, and it was queried whether such a refusal at the close of the whole case was reviewable. In that case, section 136 of the Criminal Procedure Act was not invoked, and the cause was before the court upon a strict bill of exceptions.

Later, in the Court of Errors and Appeals, in *State v. Jagers* (1904) *supra*, it was held that while the motion to direct a verdict of not guilty at the close of the State's case was addressed to the discretion of the court; yet that by the force of section 136 of the Criminal Procedure Act the question is reviewable—the question whether upon the evidence as it stood when the motion was made there was a case for the jury.

The Supreme Court, in *State v. Liberman*, 80 N. J. L. 506 (at p. 508), said that under section 136 of the Criminal Procedure Act a court of review is required to consider, among other things, whether the defendant has suffered manifest wrong or injury in the denial of any matter by the trial court which was a matter of discretion, and this applied to a refusal to direct a verdict at the close of the State's case, and brings into review the question whether, upon the evidence as it stood when the motion was made, there was a case for the jury.

The Supreme Court, in *State v. Bachellor*, 89 N. J. L. 433, held that the refusal of a motion to direct a verdict of acquittal at the close of the case for the State, where the case fails to show the defendant's guilt, is an error reviewable under section 136 of the Criminal Procedure Act, and that the right to review is not waived by the defendant because he thereafter proceeds with his defense. In this respect the case at bar is exactly parallel with that of *State v. Bachel-*

lor—that is, the motion to acquit the defendant in this case was made when the State rested, and was not renewed at the conclusion of the whole case. The defendant was, nevertheless, entitled to have the discretionary refusal of the trial court to direct an acquittal reviewed. This the Supreme Court did not do, and that obliged us to examine the testimony to see whether or not there was evidence tending to prove the guilt of the defendant, which should have been submitted to the jury at the close of the State's case."

POINT II.

1.

In *State v. Riley*, 65 N. J. L. 192, the Court says:

"The offense consists of the making of the false representations and the obtaining money or other thing of value by means thereof."

The making of a false representation is therefore an essential element of the crime.

The State must prove that the particular representation alleged to have been made was in fact made, and was in fact false.

Sharp v. State, 53 N. J. L. 511.

In *Harris v. State*, 58 N. J. L. 436 at 438, the Court says:

"There is no doubt with respect to the rule of criminal pleading applicable to this subject. It is the requisition that the corpus of the crime must be, in all matters of substance, truly stated in the record. In other words, that the allegata and probata must correspond, and it would be superfluous to cite authorities in support of a principle so familiar and rudimentary."

Descriptive words when used in an indictment are material and must be strictly proven.

In *Evans v. State*, 52 N. J. L. 261, Chief Justice Beasley, speaking for the Supreme Court, says:

"The word 'without' may not have been necessary, but it seems to be descriptive and therefore material as all matters of description are. A man charged with stealing a black horse cannot be convicted of stealing a white one. The adjective 'black' is unnecessary, but it is material as it is matter of the description."

The complaining witness Werpup was the only witness who testified as to the representations or statements made by the defendants. He testifies, page 16, that Witt said, "We are out from the prohibition office and two fellows are out from Washington," that man McCarthy and his partner which is not here, you know, and they said they had a search warrant and they had to search my house. At page 18, Werpup says, referring to Witt: "He told me that that matter could be settled, but that I had to talk to the 'Chief' so I talked to the 'Chief.' He told me this fellow that was with him, McCarthy was the 'Chief.'" At page 19, Werpup says: "I told him that I have not got \$10,000 in the whole of my possession; I have got \$1,000 in the bank. If that would do, I would give him the \$1,000 and he said, 'that is not enough, because those two fellows from Washington want it fixed up.'"

At page 20 Werpup testifies as follows:

"Q Now, what did he say to you as to who McCarthy was? A He said McCarthy was from Washington and that other fellow, the two came from Washington and they had to be fixed up, and that a thousand dollars would not be enough.

Q Did Witt say anything to you as to who he was? A Yes, he was from the prohibition office in Newark."

The foregoing is a statement of all the evidence there is in the case as to the representations made by any of the defendants.

The only testimony in the case that any of the defendants stated that they were agents, employees or officers of the United States is Witt's alleged statement that he was "from the prohibition office in Newark." The statement that McCarthy and the other fellow "came from Washington" is not a representation that they were "officers of the United States." Indeed, as a matter of legal proof, it is no more a statement that they came from Washington, D. C., than it is a statement that they came from Washington, New Jersey.

We therefore respectfully insist that as to McCarthy there was no evidence in the case showing or tending to show that a representation was made that he was either an agent, employee or officer of the United States.

The statement by Witt that he was from the prohibition office in Newark is not a statement that he was an officer of the United States.

Section 38 of the Volstead Act authorizes the Commissioner of Internal Revenue and the Attorney General of the United States to appoint and employ assistants, experts, clerks and other employees and agents and inspectors in the field service, but these assistants, experts, clerks, employees and agents and inspectors in the field service are not "officers of the United States."

In *U. S. v. Germaine*, 99 U. S. 508, the Supreme Court says:

"Officers of the United States are those nominated by the President and confirmed by the Senate or those who are appointed under an act of Congress by the President alone or a court of law or a head of a department. * * * Nine-tenths of the employees of the United States are said not to be officers."

Why the State chose in the drafting of the indictment to ignore the direct statement of Witt that he was from the prohibition office in Newark, we, of course, do not know. We, however, insist that the State having chosen to ignore that direct statement and failed to allege it as a false pretense, and substituted therefore the broad statement or representation that they are officers of the United States, the State was bound to prove the statement or representation laid in the indictment, and this we respectfully insist the State utterly failed to do.

Not only did the State fail to prove that the defendants made the statement or representation that they were officers of the United States, but the State utterly failed to prove that they were not officers of the United States.

Adrien G. Chamberlain, prohibition director for New Jersey, testified as follows, page 67:

"Q Are you familiar with the prohibition agents who operate in New Jersey? A Not all of them, no, sir.

Q Are you familiar with the prohibition agents who operate from your office in New Jersey? A Yes, thoroughly.

Q Are either of the defendants, John Witt or Peter McCarthy, connected with your office or with the prohibition office in New Jersey in any way? A No, sir.

Q Have they ever been since you have been there? A No, sir.

Q Were they connected with the prohibition office in Newark, or either of them, on the 24th of April, 1924? A Under my direction, no, sir."

On cross examination, page 69, Mr. Chamberlain further testifies as follows:

"Q Do you know a man connected with the prohibition enforcement department in New York by the name of Merrick? A Yes, sir.

Q What is his position? A He is divisional chief for New York.

Q What does that cover? A It covers the northern counties of New Jersey, which would include Essex County.

Q Essex County is included in his jurisdiction? A Yes.

Q Is it not a fact that he has made frequent raids through his men in this county during the last year? A Yes, that is part of his duty.

Q And did you have knowledge of those raids previous to their being made? A No, sir. We never do.

Q And you had no knowledge as to the men under him who were over here? A No, sir. General agents are a mobile force and operate over the entire country. They may come from Alabama or may come from California.

Q Frequently, is it not so that a general agent from Washington will appear in your jurisdiction? A Yes.

Q You know some of the agents who are not connected with your office? A Yes, I would not know all for the reason they come from all over the country."

Michael C. Keveney, testified, page 98, that he was personnel and disbursing officer in the office of Divisional Prohibition Agent No. 2 at 1102 Broadway, New York City. The Divisional Chief was R. C. Merrick.

"Q How long have you been in that office? A Five years.

Q You say you are personnel officer?
A Disbursing and personnel officer.

Q Are you familiar with all the Federal agents connected with the prohibition department for that unit? A Yes, I am.

Q What is your familiarity with those agents? A Well, every agent, before he enters on duty, is sworn in by me or one of my assistants.

Q Can you say whether Peter McCarthy or John Witt were ever connected with the prohibition department? A They were never connected with division No. 2, no."

On cross examination, page 100, Keveney testified as follows:

"Q You don't know whether any of these men connected with your department have any connection with any other department?
A No, sir.

Q You have no knowledge who the agents in fifth, sixth and seventh districts are?
A No, sir.

The foregoing constitutes all the evidence there was in the case to prove that the defendants were not "officers of the United States." We respectfully insist that this testimony utterly fails to prove the falsity of the representation laid in the indictment, to wit, that McCarthy and Witt were "officers of the United States."

Bearing in mind the testimony of Chamberlain, page 69, that frequently general agents from Washington appear in his jurisdiction, and his further testimony, that "general agents are a mobile force and operate over the entire country. They may come from Alabama or may come from California," how can it possibly be said, looking at the record in this case and that only, that the State proved that Witt and McCarthy were not general agents from Washington, or were not a part of the mobile force that operates over the

entire country and may come from Alabama or from California.

It is no answer to this argument to say that the State was in a position where it was practically impossible to prove, by legal evidence, that the defendants were not officers of the United States. The complaining witness testified that Witt made the direct statement that he was from the prohibition office in Newark. The testimony of Mr. Chamberlain was at hand to prove that that statement was false. For some undisclosed reason, the pleader chose to ignore this alleged direct and specific statement of Witt and substituted therefore in the indictment the general allegation that the defendants said they were officers of the United States.

“The difficulty of showing criminal guilt does not relieve the State from that obligation, and there is no presumption of guilt.”

State v. Batcheller, 89 N. J. L. 433 at 438.

The State is bound by the language of the indictment. The rule of criminal pleading that the allegata and the probata must correspond, applies to this situation.

We therefore earnestly insist that the motion to direct a verdict on the count for false pretenses should have been granted. First, because the State failed to prove that the defendants made the representation alleged in the indictment. Second, because the State failed to prove that the representation alleged in the indictment to have been made was in fact false.

In *State v. Batcheller*, 89 N. J. L. 431, the Court, page 435, in speaking of the rule that an erroneous refusal to direct a verdict of acquittal at the close of the State's case constitutes manifest wrong or injury for which the defendant is

entitled to a reversal of the judgment against him, says:

“This is a just rule, for the policy of the law is against compelling a person charged with a crime to prove his innocence until the State has made a case from which guilt may be inferred.”

2.

It is thus apparent from a review of all of the evidence on the entire case that there was no evidence from which the jury could have found a verdict of guilty on the third count, and that it was a duty of the trial judge to direct a verdict of acquittal on the third count for that reason. It is contended, therefore, in behalf of the defendants that the refusal of the Court to direct a verdict of acquittal on the third count of the indictment was manifest error and seriously prejudicial to them. The judgment rendered in this case is distinguishable from the verdict rendered in the case of *State v. Rommell*, 127 Atl. 598, 130 Atl. 920, in the case of *State v. Juggins*, 84 N. J. L. 254, 87 Atl. 630, for the reason that the judgment rendered in this cause as appears by the record was not a general judgment, but reads as follows (Case, p. 8):

“We find both defendants guilty in the first count in the indictment (larceny) with a recommendation of mercy; and we find both defendants not guilty on the second count in the indictment as directed by the Court; and we find both defendants guilty on the third count in the indictment (false pretenses) and so say they all.”

This is a most specific judgment directed to each and every count in the indictment and sufficiently indicates that the judgment of the jury was based on a consideration of such evidence

as was presented by the State in support of each of the counts in the indictment. It therefore follows, that if as appears in this case, the State failed to produce evidence sufficient to sustain the allegations charged in the third count and the jury specifically renders a verdict of guilty on this count, that the defendants certainly were seriously prejudiced and have suffered a grave injustice by the refusal of the trial court to direct a verdict of acquittal on the third count.

I, therefore, respectfully insist that the refusal of the Court to direct a verdict on the count for false pretenses at the close of the State's case, constitutes reversible error and that the judgment below should be reversed.

Respectfully submitted,

IRVING SIEGLER,
Attorney for Plaintiffs-in-Error.

65 FEB.T.1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

PETER McCARTHY and JOHN

WITT,

Plaintiffs-in-Error.

On Error.

BRIEF OF THE STATE.

The opinion *per curiam* of the Supreme Court was as follows:

"The defendants in this case were convicted under the first and third counts in the indictment, which alleged, that the defendants had obtained \$1,500.00 by means of false pretenses. The Court directed a verdict for the defendants on the second count, receiving stolen goods. It is now urged for a reversal, that the Trial Court erred in refusing to grant the motion to direct a verdict on the third count for false pretenses. Let this be as it may. It will not cause a reversal for the conviction on the first count of grand larceny, as that count is not attacked. That count is sufficient to support the judgment. *State v. Huggins*, 84 N. J. L. 254; *State v. Rommel*, 127 Atl. 600, affirmed 130 Atl. 920."

Counsel for the defendants attempts to distinguish the Huggins and Rommel cases on the ground that the verdict in those cases was a general verdict of guilty, while the verdict in the case at bar specifically found the defendants guilty on the first count and guilty on the third count.

We cannot see that this distinction is material.
The judgment should be affirmed.

Respectfully submitted,

JOSEPH L. SMITH,
Prosecutor of the Pleas.

JOHN O. BIGELOW,
Of Counsel.