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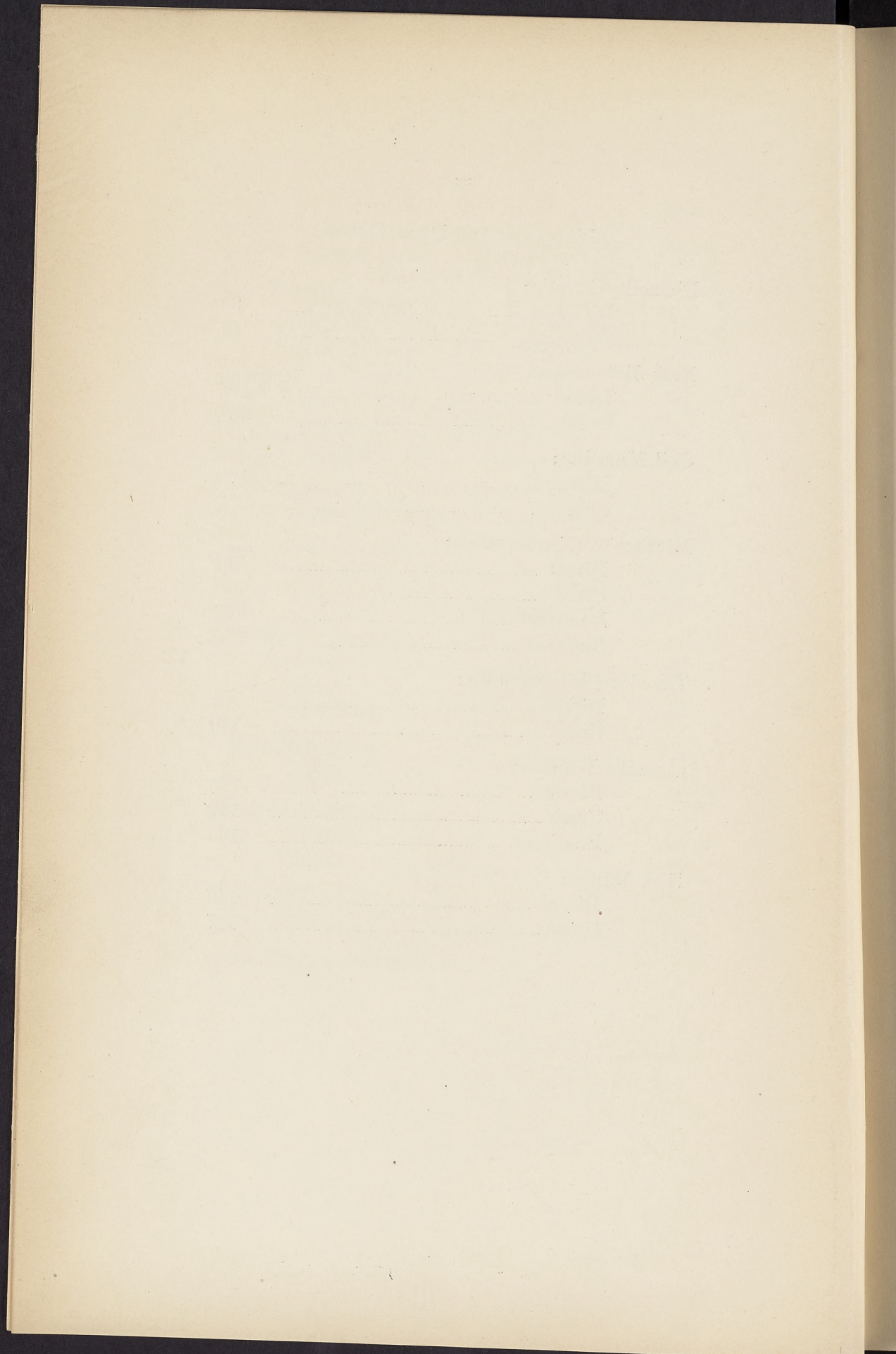
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First Writ of Error.

The State of New Jersey to The Honorable Walter D. Van Riper, Judge of the
[SEAL] *Court of Quarter Sessions of the County of Essex, Greeting:*

Because in the judgment of the Court of Quarter Sessions of the County of Essex, upon a certain indictment against Diomedis Mandis, late of the City of Newark, in said County, wherein the said Diomedis Mandis was charged with the crime of robbery, *pro ut* the said indictment, whereof before you he hath been indicted and is thereof convicted by a certain jury of the County taken between the State of New Jersey and the said Diomedis Mandis, as is said, manifest error hath intervened to the great damage of the said Diomedis Mandis, as from his complaint we have received information; we being willing in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Diomedis Mandis, command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching and concerning the same to our Supreme Court of Judicature to be held at Trenton, New Jersey, on the first day of July, 1929, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, what of right and according to the laws and customs of New Jersey Court to be done.

WITNESS, WILLIAM S. GUMMERE, our Chief Justice at Trenton, this 11th day of June, 1929.

FRED L. BLOODGOOD,
Clerk.

RICHARD DOHERTY,
Attorney.

Return.

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

10 I, WALTER D. VAN RIPER, Judge of the Court of
 Quarter Sessions, County of Essex, State of New
 Jersey, Do Hereby Certify and return to the
 Supreme Court of Judicature of the State of New
 Jersey, the Indictment, Judgment record, and all
 proceedings together with the entire record of
 the proceedings, had at the trial and all things
 touching and concerning the same as by the within
 Writ to me directed I am commended.

20 IN WITNESS WHEREOF, I have hereunto set my
 hand and affixed the official seal of said Court at
 Newark, this 22nd day of July, A. D. 1929.

WALTER D. VAN RIPER,
 Judge of the Court of Quarter Sessions.

[SEAL]

30

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Second Writ of Error.

The State of New Jersey to The Honorable Walter D. Van Riper, Judge of the
 [SEAL] *Court of Quarter Sessions of the County of Essex, Greeting:*

Because in the judgment of the Court of Quarter Sessions of the County of Essex upon a certain indictment of the April, 1929, Term No. 382 against Diomedes Mantis, late of the City of Newark, in said County, wherein the said Diomedis Mantis was charged with the crime of robbery, *pro ut* the said indictment, whereof before you he hath been indicted and is thereof convicted by a certain jury of the County taken between the State of New Jersey and the said Diomedis Mantis, as is said, manifest error hath intervened to the great damage of the said Diomedis Mantis, as from his complaint we have received information; we being willing in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Diomedis Mantis, command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching and concerning the same to our Supreme Court of Judicature to be held at Trenton, New Jersey, on the 5th day of July, 1929, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, what of right and according to the laws and customs of New Jersey Court to be done.

WITNESS, WILLIAM S. GUMMERE, our Chief Justice at Trenton, this 15th day of June, 1929.

FRED L. BLOODGOOD,
 Clerk.

RICHARD DOHERTY,
 Attorney.

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Return.

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

10 I, WALTER D. VAN RIPER, Judge of the Court of
 Quarter Sessions, County of Essex, State of New
 Jersey, Do Hereby Certify and return to the
 Supreme Court of Judicature of the State of New
 Jersey, the Indictment, Judgment Record, and all
 proceedings together with the entire record of
 the proceedings had at the trial and all things
 touching and concerning the same as by the within
 Writ to me directed I am commended.

20 IN WITNESS WHEREOF, I have hereunto set my
 hand and affixed the official seal of said Court at
 Newark, this 22nd day of July, A. D. 1929.

WALTER D. VAN RIPER,
 Judge of the Court of Quarter Sessions.

[SEAL]

Record.

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 first Tuesday of April in the year of our Lord, one thousand nine hundred and twenty-nine, 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 E. W. Wollmuth, Joseph C. Bell, Wm. Brenner, Edward Oertzen, Cornelius R. Berrien, Nathan Myers, Patrick Farrell, M. James Fine, John J. Peckelis, Henry Buerman, Mark Anton, James P. Ingram, Wm. F. Haas, Abram Weinstock, J. Arthur Berry, Percy E. Reeves, Forrest Fettinger, William Hagmann, Otto Bernz, William J. Crecca, A. H. Swett, Jr., Thomas W. Reilly, George Baumann, Jr., good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Essex County, to wit:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Nick Manus alias Frank Manus, Leonard Mancuso, Diomedes Mantis, Theodore Mavropoulos and Adam Miller, on the twenty-sixth day of March, in the year of our Lord one thousand

Record.

10 nine hundred and twenty-nine, at the City of Newark, in the County of Essex aforesaid, did make an assault upon David Jacobwitz, and then and there did beat, wound and ill-treat the said David Jacobwitz, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

20 And the Grand Jurors aforesaid, upon their oath do further present that the said Nick Manus alias Frank Manus, Leonard Mancuso, Diomedes Mantis, Theodore Mavropoulos and Adam Miller, on the twenty-sixth day of March, in the year of our Lord one thousand nine hundred and twenty-nine, at the City of Newark, in the County of Essex aforesaid, feloniously did make an assault upon David Jacobwitz and then and there did put said David Jacobwitz in bodily fear, and money to the value of two hundred and fifty dollars, one pin of the value of seventy-five dollars, in all of the value of three hundred and twenty-five dollars, the property of said David Jacobwitz from the person and against the will of said David Jacobwitz then and feloniously, violently and forcibly did steal, take and carry away contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

30

JOSEPH L. SMITH,
Prosecutor of the Pleas.

Record.

Essex County, to wit:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Nick Manus alias Frank Manus, Leonard Mancuso, Diomedes Mantis, Theodore Mavropoulos and Adam Miller, on the twenty-sixth day of March in the year of our Lord one thousand nine hundred and twenty-nine, at the City of Newark, in the County of Essex aforesaid, did make an assault upon William Weber, and then and there did beat, wound and ill-treat the said William Weber, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 10

And the Grand Jurors aforesaid, upon their oath do further present that the said Nick Manus alias Frank Manus, Leonard Mancuso, Diomedes Mantis, Theodore Mavropoulos and Adam Miller, on the twenty-sixth day of March, in the year of our Lord one thousand nine hundred and twenty-nine, at the City of Newark, in the County of Essex aforesaid, feloniously did make an assault upon William Weber and then and there did put said William Weber in bodily fear, and money to the value of one hundred and fifty dollars, one watch of the value of seventy-five dollars, in all of the value of two hundred and twenty-five dollars, the property of said William Weber, from the person and against the will of said William Weber then and there feloniously, violently and forcibly did steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 20 30

JOSEPH L. SMITH,
Prosecutor of the Pleas. 40

Record.

On the thirtieth day of March A. D., Nineteen hundred and twenty-nine, on which day the said Indictments were 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 indictments to be handed down to the Court
10 of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was then and there made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the twenty-
20 second day of April A. D., nineteen hundred and twenty-nine, at a Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable Walter D. Van Riper, Presiding Judge of the Court of Common Pleas, Diomedes Mantis, impleaded in the custody of Conrad Deuchler, Sheriff of the County of Essex aforesaid, and the said Diomedes Mantis being brought before the bar in his own proper person and forthwith being demanded of and concerning
30 the premises in the above indictments specified and charged upon, how he would acquit himself thereof, says that he is Not Guilty thereof, and therefore for good and evil he puts himself upon the country, &c., and Joseph L. Smith, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like.

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 thir-
40 teenth day of May, A. D. Nineteen hundred and

Record.

twenty-nine, 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 of the said Diomedes Mantis, impleaded, to recognize upon their oath whether the said Diomedes Mantis is Guilty of the premises in the said indictment specified or Not Guilty because the said Joseph L. Smith, Esquire, Prosecutor, &c., as the said Diomedes Mantis puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

10

And afterwards, that is to say, the fifteenth day of May, A. D. Nineteen hundred and twenty-nine, trial was moved before the Hon. Walter D. Van Riper, when Bernard M. Degheri, Esq., attorney for Diomedes Mantis moved for severance of trial, which motion after being heard by the Court was denied.

20

By agreement of counsel, both indictments were tried together and the Court ordered the Sheriff to return a panel from the General Panel, the drawing and serving of the Special Panel having been waived by Samuel G. Wlodower, Esq., attorney for all defendants at that time. Attorney of defendant Diomedes Mantis objected to the said waiver of drawing and serving of said Special Panel, whereupon the following witness was sworn to support said waiver.

30

Evidence—Otto A. Liebert.

After the evidence was closed, the Court denied the motion to set aside the said waiver and ordered the trial to proceed and that the jury be drawn from the General Panel.

40

Record.

At this stage of the proceedings the attorney for defendant Diomedes Mantis challenged the array of jurors which was overruled by the Court; whereupon the following persons were returned from the General Panel and sworn as jurors:

10 And afterwards, that is to say, on the same day, the fifteenth day of May, A. D. Nineteen hundred and twenty-nine, at the same Court of Quarter Sessions, comes the said Joseph L. Smith, who prosecutes as aforesaid, and the said Diomedes Mantis, and the jury of whom mention is before made, and by Conrad Deuchler, Sheriff of the County of Essex, for this purpose empanelled and returned after the following challenge, by defendant Diomedes Mantis, one, to wit, 1. Reuben Rappaport, 2. Russell P. Merrick, 3. Samuel D. Soutwayd, 4. Frederick W. Grant, 5. John Fischer, 6. James J. McFadden, 7. Charles E. Maxwell, 8. William F. Guenther, 9. Harvey M. Struble, 10. Walter C. Bettinson, 11. Charles Werthman, 12. Arthur H. Bower, being called were sworn upon that jury who to speak the truth of and concerning the premises. At this stage of the proceedings (after defendants Manus and Mancuso had retracted their pleas and pleaded Guilty) attorney for defendant Diomedes Mantis moved for a
20 mistrial which motion the Court denied.

30 And afterwards, that is to say on the sixteenth day of May, A. D. Nineteen hundred and twenty-nine, attorney for defendant Diomedes Mantis made a motion for direction of a verdict of Not Guilty, which motion was denied by the Court.

And further, that is to say on the seventeenth day of May, A. D. Nineteen hundred and twenty-nine, attorney for defendant Diomedes Mantis made a motion for direction of a verdict of Not
40 Guilty, which motion the Court denied, and there-

Record.

upon the trial of said issue was commenced and continued, when the jury returned into Court in charge of the officer sworn to attend them and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath, "they find the defendant Diomedes Mantis Guilty in manner and form as is set forth in the indictments (Nos. 381 and 382) and so they say all." 10

Whereupon all and singular, the premises being seen and by the Court now here fully understood, it is on this twenty-third day of May, A. D. nineteen hundred and twenty-nine, Ordered and Adjudged that the defendant Diomedes Mantis be imprisoned in the State Prison of this state for a term of Twelve and one-half years at hard labor upon this conviction and to stand committed until the costs are paid which said costs are taxed by the Clerk at the sum of thirty dollars and six cents, and the said defendant be in Mercy, etc. 20

30

40

Stipulation.

NEW JERSEY SUPREME COURT.

10

STATE OF NEW JERSEY,
Defendant-in-error,

vs.

DIOMEDIS MANTIS, *et als.*,
Plaintiffs-in-error.

In Error.
Stipulation.

20

The plaintiff-in-error, Diomedis Mantis, having been severally indicted upon indictments Nos. 381 and 382, April, 1929, Term, and the trials upon said indictments having been consolidated and the same evidence having been adduced in support and defense thereof, and the plaintiff-in-error having been convicted and adjudged upon both said indictments, and having sued out several writs of error to review said conviction,

30

It is hereby stipulated that the said writs of error may be jointly returned, and the record of the proceedings of the trial be returned by a single certification, and that the said writs of error be jointly noticed for argument and jointly disposed of.

Dated June 17, 1929.

JOSEPH L. SMITH,
Prosecutor of the Pleas.

RICHARD DOHERTY,
Attorney of Plaintiff-in-error.

40

Testimony.**ESSEX COUNTY COURT OF QUARTER
SESSIONS.**

Wednesday, May 15, 1929.

STATE OF NEW JERSEY, <i>vs.</i> NICK MANUS alias FRANK MANUS.	On Indictment No. 379 for Concealed Weapons.	10
STATE OF NEW JERSEY, <i>vs.</i> NICK MANUS alias FRANK MANUS, LEONARD MANCUSO, DIOMEDES MANTIS, THEODORE MAVRO- POULOS and ADAM MILLER.	On Indictment No. 380 for Entering with Intent to Rob.	20
STATE OF NEW JERSEY, <i>vs.</i> NICK MANUS alias FRANK MANUS, LEONARD MANCUSO, DIOMEDES MANTIS, and THEODORE MAVRO- POULOS.	On Indictment Nos. 381 and 382 for Assault and Battery and Robbery.	30
STATE OF NEW JERSEY, <i>vs.</i> NICK MANUS alias FRANK MANUS, LEONARD MANCUSO, DIOMEDES MANTIS, and THEODORE MAVRO- POULOS.	On Indictment No. 384 for Assault with Intent to Rob.	40

Opening of Case.

10	STATE OF NEW JERSEY, <i>vs.</i> NICK MANUS alias FRANK MANUS, LEONARD MANCUSO, DIOMEDES MANTIS, and THEODORE MAVRO- POULOS.	} On Indictment Nos. 385 and 386 for Assault and Battery and Robbery.
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Before Hon. WALTER D. VAN RIPER, Judge, and a jury.

For the State appears SIMON L. FISCH, First Assistant Prosecutor of the Pleas.

20 For the Defendant Leonard Mancuso appears JOSEPH D'ALESSIO.

For the Defendant Adam Miller appears WILLIAM MALONEY (of the New York Bar).

For the Defendant Mantis appears BERNARD L. DEGHERI.

For the Defendant Mavropoulos appears ALEXANDER F. ORMSBY.

30 For the Defendant Manus appears SAUL G. WLODAVER.

Mr. Degheri: From what I was able to learn from my man, Mantis, I was more convinced than I was this morning that the young boy is absolutely innocent of any crime.

Mr. Fisch: I must object to statement of counsel before the panel of jurors.

40 Mr. Degheri: I have to predicate my statement, your Honor, upon what I have

Opening of Case.

learned this morning, that this young boy has had nothing to do with this and for this reason I am going to ask your Honor for a severance, as far as Mantis is concerned. It may be that these other defendants are involved. I can't answer for them. I am going to ask for a severance. I feel that he cannot be tried fairly unless there is a severance. 10

The Court: I have not any information that would lead me to believe that the rights of the defendant would be prejudiced.

Mr. Degheri: The further application is with respect to the general panel. I understand this is a general panel. In the ordinary course of events, if the defendant demanded it, there should be a special panel. 20

Mr. Mahoney: I would like to make the same application that Mr. Degheri made. On behalf of the defendant Miller, I want to make a motion for a severance. This defendant was not arrested and taken into custody with the other four defendants. He was simply picked up in New York on a description. This defendant Miller has not been identified by anybody in this case in New York, and for that reason I would like to have his case tried separately. 30

The Court: I will have to repeat what I said before, that a severance is whether the trial, if moved, will in any way prejudice the rest of the defendants. Suppose it is true—of course, I don't know—that one of these defendants might be guilty and another one not.

Mr. Ormsby: I want to renew the same motion on behalf of Theodore Mavropou- 40

Otto A. Lebert—Direct.

10 los, for the same reason brought out by counsel for Mr. Mantis, one that there be a severance, and, second, I ask that the defendant be served with a special panel. We have had a very brief period to consult with our clients. Application has been made to admit to bail, but the bail is excessive. I am moving at this time for a severance as to Mavropoulos. I ask that the defendant be given a copy of the special panel. I think he is absolutely entitled to it, as I understand the law.

The Court: Is there any record that shows the appearance of counsel?

20 Mr. Fisch: Mr. Lebert, of the Sheriff's office, says that the special panel was waived.

The Court: Mr. Lebert may be sworn and interrogated as to what actually happened. I will not rule on this motion until I get the facts as to what happened.

OTTO A. LEBERT SWORN.

30 By Mr. Fisch:

Q. You are connected with the Sheriff's office of Essex County? A. Yes, sir.

Q. In what capacity? A. Court attendant.

Q. And a Deputy Sheriff? A. Yes, sir.

Q. And as such are you in charge of the direct serving of special panels where they are required by law? A. Yes, sir.

40 Mr. Fisch: Before I ask this next question, I would like to know whether counsel

Otto A. Lebert—Cross.

has consented to try all these indictments together.

The Court: You may inquire whether they object to trying them together.

Defendants' counsel reply in the affirmative.

Mr. Fisch: The record will show that all of these indictments, with the exception of indictment 383, will be tried together. I make the exception in that case, because the complaining witness is ill and unable to appear in court. 10

Q. Were you in the act of preparing the special panel to serve upon the defendant? A. I was instructed by the Sheriff to draw a special panel, and I believe his counsel was Mr. Degheri, and I communicated with him over the telephone, and he said he wanted to waive the special panel. 20

Q. (Showing witness papers.) These are the waivers? A. Yes, sir.

Q. And these are the waivers with the name Saul Wlodaver on? A. Yes, sir. He said he wanted to go on with the regular jury.

Cross-examination by Mr. Degheri:

Q. Do you remember the day I 'phoned? A. April 25th. 30

Q. What time of the day was it, do you remember? A. It was in the morning.

Q. What was the conversation? A. The conversation was, you asked me how many jurors we draw, and I told you 180—

Q. You started the conversation first? A. Yes; I asked you if you wanted a special panel. You asked me how many jurors we drew in New Jer- 40

Opening of Case.

sey, and I said 180 names, and you said you didn't want a special panel, and that was the whole conversation.

Q. Do you remember what the reason was for waiving a special panel? A. I can't remember that.

10 Q. Do you remember I asked you what the difference was between the special panel and that the only difference is 48 jurors in the special panel and the regular jury? A. Yes. You told me you wanted to draw from the regular panel. That is the reason I marked it down, and it is in black and white.

20 Mr. Degheri: I think on the statement of Mr. Lebert and not refuting anything the Sheriff said, there has not been in this case such a reasonable application to insure the defendant——

The Court: Have you finished with the witness?

Mr. Degheri: Yes.

The Court: There are three indictments on which you do not need a special panel.

Mr. Fisch: That is correct.

The Court: I will deny your motion.

30 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.

Walter D. Van Riper,
Judge.

40 Mr. Ormsby: It does appear to me now that I should, in justice to my client, challenge the array in the jury box on the ground that the general panel heard the

Opening of Case.

argument for a severance. I want it to appear in the record that such an objection has been made.

The Court: The array is challenged because the panel was in the room at the time the motion was made?

10

Mr. Ormsby: Yes.

The Court: Motion denied, and the same ruling applies to all the defendants.

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

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

Walter D. Van Riper,
Judge.

20

Mr. Fisch: I would like to have it appear on the record that any remarks counsel made which he believes may have resulted in prejudice, that it was done by defendants' counsel.

The Court: I think the record may show that the general panel was present in the room at the time that counsel for the defendants made various motions asking for a severance as to some of the defendants and asking for a special panel, and that these motions were made in the presence of the panel before the jury was called and that there were some remarks on the motion by counsel for defendant.

30

(A jury is called and sworn.)

Mr. Fisch opens in behalf of the State.

At one o'clock P. M., the Court took a recess for one hour.

40

Opening of Case.

AFTER RECESS.

Mr. Maloney: May I ask that the witnesses be excluded from the courtroom?

The Court: I will deny the request.

10 Mr. Fisch: I would like to offer this map to which I referred in my opening.

Mr. Maloney: I don't recall whether there was an exception taken. May I have an exception, and that exception applies to all the defendants?

The Court: Yes.

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

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

20

WALTER D. VAN RIPER,
Judge.

(The map referred to is marked Exhibit S-1.)

30 Mr. Fisch (to the defendant Manus): I understand you desire to retract your plea of not guilty to this indictment No. 379 of the April Term, 1929, charging you with carrying a concealed weapon and enter a plea of guilty. Is that right?

The Defendant Manus: Yes.

Mr. Fisch: I understand you also desire to retract your plea of not guilty to indictment No. 380 charging you with entering with intent to rob and enter a plea of guilty?

The Defendant Manus: Yes, sir.

40 Mr. Fisch: And also as to indictment No. 381, charging you with assault and battery and robbery on Jacob Jacobowitz and plead guilty?

Opening of Case.

The Defendant Manus: Yes.

Mr. Fisch: And I understand you also desire to retract your plea of not guilty to assault and battery and robbery on William Webber and enter a plea of guilty.

The Defendant Manus: Yes.

Mr. Fisch: That is indictment No. 382. 10
I understand you desire to retract your plea of not guilty to indictment No. 383 of the April Term, charging you with assault and battery and robbery on a Mr. Horowitz and plead guilty to assault and battery?

The Defendant Manus: Yes.

Mr. Fisch: And I understand you desire to plead guilty to indictment No. 384 of the April Term, 1929, charging you with assault and battery and intent to rob William Mullen. 20

The Defendant Manus: Yes.

Mr. Fisch: And also as to indictment No. 385, you desire to retract your plea of not guilty charging you with assault and battery and robbery and enter a plea of guilty?

The Defendant Manus: Yes.

Mr. Fisch: And also indictment No. 386, 30
charging you with assault and battery and robbery, you desire to retract your plea of not guilty and plead guilty. Is that correct?

The Defendant Manus: Yes.

Mr. Fisch (to the defendant Mancuso):
I understand you desire to retract your plea of not guilty to indictment No. 380, charging you with entering with intent to rob and plead guilty. 40

Opening of Case.

The Defendant Mancuso: Yes, sir.

Mr. Fisch: And also to indictment No. 381 charging you with assault and battery and robbery, that you desire to retract your plea of not guilty and plead guilty?

10

The Defendant Mancuso: Yes, sir.

Mr. Fisch: And as to indictment No. 382 charging you with assault and battery and robbery.

The Defendant Mancuso: Yes, sir.

Mr. Fisch: And No. 383, charging you with assault and battery, that you desire to retract your plea of not guilty and enter a plea of guilty?

The Defendant Mancuso: Yes.

20

Mr. Fisch: And also as to indictment No. 384, you desire to retract you plea of not guilty and plead guilty to this indictment charging you with assault and battery with intent to rob?

The Defendant Mancuso: Yes.

Mr. Fisch: And as to indictment No. 385, charging you with assault and battery and robbery, you desire to retract you plea of not guilty and plead guilty?

30

The Defendant Mancuso: Yes, sir.

Mr. Fisch: And you desire to retract your plea of not guilty to indictment No. 386 for assault and battery and robbery and plead guilty?

The Defendant Mancuso: Yes.

Mr. Ormsby: A condition has arisen during the midst of the trial which I certainly think may prove of great prejudicial interest against my client. There has been an atmosphere surrounding the case where a jury, no matter how fair they want to be,

40

Gertrude Hixson, for the State—Direct.

will be unable to shake from their minds. I want my objection noted. I believe it is prejudicial to my client and I am going to ask your Honor to withdraw a juror. I think we can only then have a fair and impartial trial before a jury of their peers.

The Court: I will deny your motion.

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

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

Walter D. Van Riper,
Judge.

10

GERTRUDE HIXSON, sworn in behalf of the State.

20

Direct examination by Mr. Fisch:

Q. Were you employed by the Grant Lunch Company? A. Yes, sir.

Q. As what? A. Cashier and bookkeeper.

Q. This map that has been offered in evidence shows the lay-out of the floor, does it not? A. Yes, sir.

Q. You enter from Market street and go up the stairway; is that correct? A. Yes, sir. 30

Q. And then you turn to the right, and there is a turn into the office of the Grant Lunch Company; is that correct? A. Yes, sir.

Q. Is there a little railing, with a gate on it? A. Yes, sir.

Q. Inside of that railing there are some tables and chairs and desks? A. Yes, sir.

Q. Is there a counter there? A. Yes, sir.

40

Gertrude Hixson, for the State—Direct.

Q. And a little swinging gate that leads into the office? A. Yes, sir.

Q. Are there some desks and chairs in that office? A. Yes, sir.

Q. And a wash basin? A. Yes, sir.

10 Q. And cabinet? A. Yes, sir.

Q. What kind of a cabinet is that? A. A steel cabinet.

Q. Where is your office, where do you sit? A. I sit in back of the counter.

Q. That is in the front part, behind this counter? A. Yes, sir.

Q. And then in the rear is there a door leading into a private office? A. Yes.

Q. And whose office is that? A. Mr. Jacobowitz.

20 Q. And who is Mr. Jacobowitz? A. He is the president of the concern.

Q. Do you remember the 25th of March, of this year? A. Yes, sir.

Q. Do you remember something happening down there that day? A. Yes.

Q. About what time was it? A. Around noon.

Q. When you say around noon, what do you mean by that? A. A little after twelve.

Q. And where were you at the time? A. I was in the cashier's cage, behind the counter.

30 Q. That is in the front part of the office? A. Yes, sir.

Q. While you were there in the cashier's cage, tell us, in your own words, what you saw and what happened. A. I saw a man walk up to me, and he had a gun in his hand, and he said, "Open the door, and walk out, I am taking the money." I walked out, and as I walked toward the office where Mr. Jacobowitz was and I found him covered, one man held two guns.

Gertrude Hixson, for the State—Direct.

Q. One man told you to open the door and told you to walk out? A. Yes, sir.

Q. And then where did you go? A. To the back of the room, where Mr. Jacobowitz' office was.

Q. You saw Mr. Jacobowitz? A. Yes, sir.

Q. What was happening to him? A. He was being held up by another man. 10

Q. And then how many guns? A. Two.

Q. And then what happened? A. He told Mr. Jacobowitz and Mr. O'Connor to go in the waiting room inside of the gate, and we all sat there.

Q. Where is that? A. (Indicating on diagram.) Right here.

Q. You all stood there? A. Yes.

Q. Mr. O'Connor, where was he at the time? A. He was in Mr. Jacobowitz' office. He was also instructed to get out of the back room. 20

Q. Did he get out? A. Yes.

Q. And then what happened? A. They got two men out.

Q. Is this the Trent office, in here (indicating) where there is a table and a desk and another desk in the front? A. Yes, sir.

Q. Are there desks leading from Mr. Trent's office into the Grant Lunch Company? A. One door that is open.

Q. You say that a man went in there? A. The man that held me up went in there and those two men did. 30

Q. Who were those two men? A. Mr. Webber and Mr. Jacobowitz.

Q. What happened to Mr. Webber and Mr. Jacobowitz when they came out? A. They were also covered with guns and held in the place we were in. Meanwhile, two other men came in and went to the back where the money was and took the money out. 40

Gertrude Hixson, for the State—Direct.

Q. That is, two other men, other than the men that were there that had covered you and Mr. Jacobowitz? A. Yes, sir.

Q. Where did they get the money from? A. This steel cabinet.

10 Q. How was the money kept in there? A. It was kept in bags.

Q. Burlap bags? What kind of bags? A. Bank bags, I guess they are.

Q. And how much money was there? A. In the neighborhood of \$3,000.

Q. Was it in bills or in specie or both? A. Both.

Q. How many bags were there? A. I think there was three.

20 Q. You say two other men had come in and gotten the money. What did they do then? A. They got the money.

Q. And then what happened? A. Then, while one man covered us with two guns, one man tied our legs and hands and gagged us.

Q. Tied you with what? A. Insulated wire and gagged us with handkerchiefs.

Q. And then what did they do after they tied you and searched you? A. They searched everyone outside of myself.

30 Q. Who did they search? A. O'Connor, Jacobowitz, Webber, the four of us, and just then Mr. Mullen came in.

Q. He came in during the course of the holdup? A. Yes, sir; they searched him and bound him and later Mr. Goodman came in. They searched him and bound him, and they instructed us to get in the office and we were all bound in one heap.

40 Q. Your hands were bound behind you and your ankles? A. Yes, sir.

Gertrude Hixson, for the State—Direct.

Q. You were instructed to go into Mr. Jacobowitz' office? A. Yes, sir.

Q. And how did you get in? A. I was carried in.

Q. How did the others get in? A. They hopped in.

Q. And then what happened? A. They bound us all together. 10

Q. Then what happened? A. As they were getting ready to leave Mrs. Eisenschmidt walked in, and they were in a hurry to leave, and they didn't offer to search her, and they told her to keep quiet, and they went out.

Q. What happened to the telephone wires? A. I went to the wire to notify the police, and then I noticed the wire was cut, and we had to go next door.

Q. Did you see what happened to Mr. Jacobowitz? A. I didn't see it at the time it happened, but I saw that his tie was cut after. 20

Q. Do you know whether or not Mr. Jacobowitz was in the habit of wearing a pin in that tie? A. Yes, he was.

Q. Was that pin there after the hold-up? A. It was not.

Q. You say that you saw these different people searched. Did you see anything taken from them?

A. No, I didn't see anything taken. 30

Q. You were pretty much excited?

Objected to.

Q. Were you excited? A. Yes, sir.

Q. In your office? A. Yes, sir.

Q. According to your best recollection, how many men, altogether strangers, were there in this hold-up? A. Four men.

Q. That is, according to your recollection? A. Yes, sir. 40

Gertrude Hixson, for the State—Direct.

Q. Were you able to identify any of these men?

A. Two men.

Q. Which two can you identify? A. Manus and Mancuso.

Q. The others you have no recollection of? A. No.

10 Q. After the hold-up, did you go over to New York? A. Yes, sir.

Q. Did you see the line-up of men? A. Yes.

Q. How many men were in the line up? A. I judge about a dozen.

Q. Were you able to pick any men out of that line-up? A. I picked two men out.

Q. These two same men that you mentioned? A. The same two men.

20 Q. What two men? A. Manus and Mancuso.

Q. I show you this wire and I ask you if that is the wire that you were bound with down there? A. Yes, sir.

Mr. Fisch: I offer that in evidence.

(Marked Exhibit S-2.)

Q. I show you a piece of telephone wire and ask you whether or not that is the telephone wire you found after this hold up? A. Yes, sir.

30 Mr. Fisch: I offer that in evidence.

(Marked Exhibit S-3.)

Q. I show you a handkerchief and ask you if you recognize that as the handkerchief with which you were gagged? A. I don't know; I know it was dirty.

Q. You don't know whether it was a handkerchief which looked like this? A. Yes, sir.

40 Mr. Maloney: I object to that as leading.

William A. Mullen, for the State—Direct.

Q. I show you two pieces of silk and ask you if you recognize those? A. That is Mr. Jacobowitz' tie.

Q. Is that the condition it was in after the hold-up, the condition which you found it in? A. Yes, sir.

(Marked Exhibit S-4.)

10

Q. I don't know whether you told us anything about whether or not anything was done with your mouth in connection with this hold-up. A. I was gagged with a handkerchief.

Q. What about the others? A. They also were gaged.

Cross-examination waived.

20

WILLIAM A. MULLEN, sworn in behalf of the State.

Direct examination by Mr. Fisch:

Q. Did you hold some stock in the Grant Lunch Corporation? A. Yes, sir.

Q. Did you have occasion to go to their offices on Market street on the 26th of March? A. Yes, sir.

30

Q. About what time did you go there? A. About five or ten minutes after twelve.

Q. When you got there, tell us just what you saw and what happened, in your own way? A. I saw a man stagger inside the door with two guns. One man rushed me over and one man tied my hands with wire, and two other men were standing up. They searched me and didn't get anything out of me. Then they bound my arms with wire and put me aside with the other crowd.

40

William A. Mullen, for the State—Direct.

Q. And then what happened? A. That was all for the present.

Q. And then what happened after that ? A. They took us in the inner room, wove the wire around my neck, and Mr. Jacobowitz actually, he worked the crowd together, and then they made
10 their get-away.

Q. After that did you get away from the wire?

A. Yes; I slipped from underneath the wire. I was the smallest one.

Q. Subsequently, did you go over to New York?

A. I did.

Q. Where did you go in New York? A. I went to the police station, but I didn't remember what station it was.

Q. Did you see a line-up of men there? A. Yes,
20 sir.

Q. How many men were in the line-up? A. I think there were nine or ten.

Q. Were you able to distinguish or recognize and pick out the men that you saw at this Grant Lunch office on the day of this hold-up? A. Yes,
sir.

Q. Did you pick them out? A. Yes, I picked out four.

Q. Can you pick them out here in Court? A. Yes, sir.
30

Q. Can you step down and put your hand on their shoulders? A. (The witness steps down from the witness stand.)

Mr. Fisch: He indicates the defendant Mavropoulos.

Witness: These two men were the last two men to leave the place, those two men that had the wire. These are the men that
40 held the guns.

William A. Mullen, for the State—Direct.

Mr. Fisch: Indicating the defendants Mancuso and Mavropoulos.

Witness: These two men were making their get-away. There was a man I couldn't recognize well.

The Court: Pointing to these two men on the end here, what do you say about those two men? The first two, indicating Manus and Mavropoulos. 10

Witness: One man had the gun.

Q. Which one? A. This one (indicating).

Q. Who was the other man? A. This man is the man who searched me.

Q. What did you say about not recognizing one man? A. The other two men were trying to get away. 20

Q. Mavropoulos and Mantis? A. Yes.

Q. What did you say about not recognizing one well? A. I just recognized him through his features. I just recognized him that way.

The Court: Perhaps, for the benefit of the record, we had better get it on the record.

Q. When you stepped down from the witness stand, you put your hand on the shoulder of Mavropoulos and Manus, is that correct? A. Yes. 30

Q. Will you please tell the Court and jury what you saw them do? A. This end man—I don't know his name—I didn't see him do anything.

Q. But you saw him there? A. The other man held the two guns.

Q. Indicating Manus? A. Yes, sir.

Q. You said something about these fellows making their get-away. Which ones were they? A. 40

William A. Mullen, for the State—Direct.

This man on the end and the man on the other end.

Q. Mavropoulos and Manus? A. Yes, sir.

Q. You also indicated this man with the green sweater, the defendant Mancuso? A. He wired my hands.

10 Q. He wired your hands? A. And he searched my pockets.

Q. Did he find anything? A. Nothing.

Q. What about the defendant Miller, were you able to identify him?

Objected to.

A. I never seen him at all.

20 Q. You said something about recognizing the features of the defendant Mantis, and then subsequently you said something about hearing him talk. What did you mean by that? A. I meant that he was the man that assaulted me. He had a stiff hat on, and when he met me, he had a felt hat on.

Q. When you heard this defendant Mantis talk you recognized his language? A. Yes, sir.

Q. And you recognized him as one of the men that was down there at the Grant Lunch room?

Objected to.

30 Q. Do you say now that, after having seen his profile, and talking with him, having heard him talk, that he is the man that you heard talk that day down at the Grant Lunch office? A. He is the man who had the guns and he had a felt hat on.

Q. Did you pick out that man Mantis when you were in New York? A. Yes, sir.

40 Q. Was he one of the men that was in the Grant Lunch Company office that day? A. He looks like him.

William A. Mullen, for the State—Cross.

Q. Did you swear that he is one of the men? A. I can't positively swear.

Q. Did one of these men strike you? A. Yes.

Q. What did he strike you with? A. He struck me with his hand.

Q. Which man did that? A. The man holding the man in the center. 10

Q. Indicating Manus. Did you pick out Mantis in New York? A. Yes, sir.

Q. Did you say that he was one of the men that was in the hold-up?

Mr. Ormsby: I object.

Q. Did you pick out Mantis in New York as being one of the men? A. I did.

Q. Were you sure that he was one of the men? A. I wasn't positively sure, but he resembled the man. He wore the same clothing that I saw when he went away. 20

Q. That is the same man that you saw in the Grant Lunch room and that you recognized in New York and he wore the same clothing? A. Yes, sir.

Q. Did you recognize his features?

Objected to.

The Court: Objection sustained. 30

Mr. Degheri: No cross-examination on the part of the defendant Mantis.

Cross-examination by Mr. Maloney:

Mr. Fisch: I don't know what bearing this has. I understand that this counsel represents the defendant Miller. This witness has not testified against the defendant Miller—that is, he has not identified him.

William A. Mullen, for the State—Cross.

Q. Did you notice whether or not any of these men who took part in this so-called hold-up had any covering at all on their faces? A. Not when I was there.

Q. None of them at all? A. Not while I was there.

10 Q. You are positive of that? A. I was the last one getting in there. They were getting ready to go away.

Q. You saw nobody on those premises who had a mask, or resembling a mask, on his face? A. None whatever.

Cross-examination by Mr. Ormsby:

20 Q. How old are you? A. Forty-eight years old.

Q. And how is your eyesight? A. Fairly well.

Q. In what distance is your vision good? A. I can see men in the back room there.

Q. What time was it you entered this restaurant? A. About five or ten minutes after twelve.

Q. Did you have anybody with you that day going in there? A. None whatever.

Q. What was the first thing that attracted your attention when you went to this restaurant? A. I went to the office upstairs.

30 Q. To the office? A. Two guns.

Q. And you have testified that this man here, the tallest man of the group, Manus, had these guns? A. Yes, sir.

Q. You have identified this gentleman here, this man, Mr. Manus? A. I have.

Q. When did you first see him? A. I saw him standing on the side when I had the wires around my arms.

40 Q. Can you point out the position where you first saw him? A. Right alongside of the door,

William A. Mullen, for the State—Cross.

this tall man stood with the guns, and this other fellow stood alongside of him.

Q. Who? A. The fellow with the green sweater.

Q. That is Mancuso? A. Then these other men stood about there.

Q. Which one stood about there? A. This gentleman on the end.

10

Q. Mavropoulos? A. Yes, sir.

Q. When did you first see him? A. I saw him standing on the side when I had the wires around my arms.

Q. Can you point out the position where you first saw him? A. Right alongside of the door; this tall man stood with the guns and this other fellow stood alongside of him.

Q. Who? A. The fellow with the green sweater.

Q. That is Mancuso? A. Then this other man stood about there (indicating on diagram).

20

Q. Which one stood about there? A. This gentleman on the end.

Q. Mavropoulos? A. Yes, sir; and the other fellow stood close over to me.

Q. Which man do you mean? A. This man that I couldn't identify. I couldn't get his countenance. This railing is where Mrs.—what is her name?—was behind. There is the cage over there.

30

Q. I thought the cage was over here. A. I thought it was over here.

Q. Here is the entrance here. A. Here is the cage.

Q. That is a chair there. A. That is a cabinet. I don't know where the cage is.

Q. How often did you frequent that place? A. Only once.

Q. Was this the first day that you had been up there? A. No, sir.

40

William A. Mullen, for the State—Cross.

Q. When had you been up there? A. Twice; once to join it and once to get my money.

Q. Did you look at it? A. No; I just came up the steps.

10 Q. (Indicating on diagram.) Why did you say this was the cage? A. I am not an architect. If you took me down to the building I could tell you.

Q. Is this where you said Mavropoulos was? A. Yes, sir.

Q. I understand you to say that you saw Mavropoulos do nothing? A. He didn't do nothing.

Q. And you further said that you identified Mavropoulos in New York? A. I did.

Q. What assisted you in making your identification? A. His features.

20 Q. What particular features? A. I only got one look at him, that is all, and I can identify him again if you place him in that crowd, among a crowd of people.

Q. What particular features? A. His resemblance, that is all, his face.

Q. You have just given us an idea of your resemblance of a man on the other end? A. Yes.

Q. Do you base your conclusion on the same resemblance? A. I didn't get as clear a view of one man as I did the other.

30 Q. Did he have a sweater on? A. No. He didn't have a sweater on.

Q. How was Mr. Mavropoulos dressed? A. He had a cap on, dark clothes—I couldn't say—dark clothing.

Q. Did you see any mask over his eyes? A. I was next to the last one in there and I guess they had gotten through with the masks.

40 Q. You pointed out different ones, you say Manus, Mancuso, Mantis and Mavropoulos? A. Yes, sir.

William A. Mullen, for the State—Cross.

Q. Is that right? A. Yes, sir.

Q. They were just standing there, there was no activity there? A. No, they were ready to make a get-away.

Q. Did you see anybody make a get-away? A. Both of them went away when both of my hands were being wired. 10

Q. Which ones? A. I can't remember the names.

Q. Point them out. A. The men there.

Q. Mavropoulos and Mantis? A. Yes, sir.

Q. Were they running or walking? A. I couldn't say whether they were running or walking fast.

Q. Did they have any gun in their hands? A. They didn't. 20

Q. What makes you think they were running to get away from something? A. Because they had all the other people tied up.

Q. What connection did they have with these other people that were tied up? A. They must have been the same gang because the four were all together.

Q. Your conclusion is because Mr. Mavropoulos was in this particular spot, you concluded that he was aiding the other fellows? A. If he wasn't, he would have helped the others. 30

Q. When you went in there, were you goin in with a suspicious mind? A. I was going in to get money on some stock.

Q. When you went to this place this day, did you have your glasses on? A. I did.

Q. Do you wear them all the time? A. All the time.

Q. If you had your glasses off, how far could you see? A. I wore glasses all my life. 40

William A. Mullen, for the State—Cross.

Q. You always wear them? A. Since I was twelve years old.

Q. Are they strong? A. They are.

Adjourned until tomorrow, Thursday,
May 16, 1929, at ten o'clock A. M.

10

SECOND DAY.

Thursday, May 14, 1929.

Continued pursuant to adjournment.
Present, counsel as before stated.

WILLIAM A. MULLEN resumes the stand.

20 *Cross-examination (Continued) by Mr. Maloney:*

Q. When were you first called upon to make an identification of any men concerned in this alleged hold-up? A. Two days after the hold-up. I don't know what date.

Q. To what place were you sent over to? A. New York City, and I don't remember the station.

Q. Who accompanied you to the station? A. Detectives.

30 Q. Do you know the names of those men? A. Yes, sir.

Q. What forces were they attached to? A. Newark force and New York force.

Q. What time of the day was it? A. About ten o'clock in the morning.

Q. When you were brought into this place to identify these men, did they have a line-up there? A. They did.

40 Q. How many men were in that line-up? A. I presume from ten to eleven men.

William A. Mullen, for the State—Cross.

Q. What instructions were you given before you made your identification, if any? A. None whatever.

Q. Were you asked to pick out a man? A. That is all.

Q. To pick out what men? A. The men in the Grant Lunch hold-up. 10

Q. Pick out the men that you saw at this Grant hold-up? A. Yes.

Q. Who did you pick out upon your examination? A. I picked out four men.

Q. What four men did you pick out?

Mr. Fisch: I would like to call your Honor's attention to the fact that these men are not here. I think it is quite important that they be here. 20

The Court: Yes, I think so.

Q. Did you receive any pictures of the men before you made your identification? A. None whatever.

Q. Not a single picture? A. No, sir.

Q. Did you see in the newspapers any pictures of these men who were alleged to be in this hold-up? A. I did not.

Q. What description can you give us now of Mr. Mavropoulos that you saw on the day this hold-up took place? A. I don't know him by name, but I can tell you (indicating) that is the man. I don't know names. 30

Q. You can't identify them by name? A. No, I can't identify them by name; just by their faces.

Q. Mr. Mavropoulos—

Mr. Fisch: He says he didn't know their names. 40

William A. Mullen, for the State—Cross.

Q. Can you identify the first man you picked out yesterday? A. Yes, sir. (Indicating) There he sits, right over there, indicating the man near the glass bottle there.

10 Mr. Fisch: Indicating the defendant Mavropoulos.

Q. How was he dressed the day of the hold-up? A. He had dark clothes on.

Q. Did you notice what kind of shoes he had on? A. I didn't notice; the job happened so fast, I didn't notice.

Q. You didn't see any job happen? A. No, sir.

Q. When you say the job happened so quick, you don't mean that. A. They held me up so
20 quick, I just got a glance at their faces.

Q. Who held you up? A. Manus.

Q. It wasn't this man Mavropoulos? A. No, sir; it was not.

Q. When was it you first saw him? A. I saw him standing a little away from where this fellow was tying my hands.

Q. Where? A. Just inside of the door.

Q. This man didn't have anything to do with tying your hands (indicating)? A. Nothing what-
30 ever.

Q. Were you grabbed by anybody? A. The other fellow with the green sweater (indicating).

Q. Indicating Mancuso. At this time Mavropoulos didn't have anything to do with you? A. He didn't have anything to do with me. He had no mask on. He had a cap pulled down over his forehead.

Q. Did you have a complete vision of Mavropoulos? A. Of his face, I did, yes.

40 Q. Even though you say his cap was pulled down over his eyes? A. Yes, sir.

William A. Mullen, for the State—Cross.

Q. What kind of a neck tie did he have on, do you know? A. I didn't notice.

Q. Did you pick out Mr. Mavropoulos on your first examination in New York when you went over this list of these men, did you pick out Mavropoulos?

10

Objected to.

Q. When you looked over the line-up of men, when you were making your identification of these men, did you pick out the defendant, Mr. Mavropoulos?

Mr. Fisch: I object. The question has already been answered.

The Court: Objection sustained.

20

Q. How many days was it after the hold-up when you made your identification?

Mr. Fisch: I object to that. He has testified to that.

The Court: He told us two days.

Q. You made a statement yesterday and picked out certain individuals here as those men whom you picked out in New York; is that right? A. Yes, sir.

30

Q. And you were called in a proceeding in New York and testified under oath that these were the very men that were concerned in that hold-up; is that right? A. I was asked to identify the men I identified them.

Q. Yesterday, when you were asked to pick out these men again, you changed your opinion as to the identification of one, didn't you?

Mr. Fisch: I object to that. He didn't testify to that. 40

William A. Mullen, for the State—Cross.

The Court: You can ask the witness whether or not his testimony was the same yesterday as it was in New York or at any other time. I do not think your characterization of it, as his opinion, is the proper way.

10

Q. How much time did you spend over there identifying Mavropoulos? A. I spent probably five minutes. They changed the line.

Q. What was your procedure when you went over and made the identification? Just tell the court and jury how you made your identification. A. The four men were right in a row; then they changed the line, took some of them down in the middle and some down at the end.

20

Q. Did you look either one of them in the eye? A. Yes.

Q. On that first examination did you pick out Mr. Mavropoulos? A. I did.

Q. Are you positive that you picked out Mr. Mavropoulos on that first examination? A. I am positive.

Q. Isn't it a fact that you didn't identify Mr. Mavropoulos upon your first examination—yes or no. A. You are right. It is.

30

Q. So that now you are not so positive as you were in the beginning about making identifications in the first instance? A. When they switched the line, I was positive, when they put them apart.

Q. Isn't it a fact that upon your second examination to make an identification, that you passed the entire list of men and didn't point out Mr. Mavropoulos—yes or no? A. I pointed him out.

Q. You pointed him out, you say? A. Yes.

40

Q. Isn't it a fact that you made your second examination without identifying Mr. Mavropoulos,

William A. Mullen, for the State—Cross.

but your attention was called to this man by a police officer? A. None whatever. No police officer called my attention to no man.

Q. Did any police officer call your attention to Mavropoulos? A. None whatever.

Q. Did you have any conversation with any police officer there at the time? A. Not in New York. 10

Q. Where did you have a conversation with a police officer with reference to this identification?

A. Nothing whatever, except the police officer in Newark. We didn't talk anything about this case; they didn't give me any instructions whatever, only to go there and identify the men.

Q. You say you identified Mr. Mavropoulos on the second occasion. What position was he in? A. I couldn't tell you. 20

Q. You say they changed the men on your second examination? A. They did.

Q. Was Mavropoulos' position changed? A. Yes, put down the line further.

Q. You say he was? A. Yes.

Q. What position did he occupy in the first examination? A. They stood, one, two, three, four.

Q. You mean right, four together? A. I presume so, I think so.

Q. How many would you say were in that line-up? A. There were ten or eleven in the first line-up. 30

Q. How many in the second? A. I presume fourteen.

Q. Isn't it a fact that there were no more than nine in either line-up? A. No, they added men to it the second time I went in.

Q. How many were in it? A. Ten or eleven.

Q. Did you count them? A. I didn't count them. I am just giving you a guess, that is all. 40

William A. Mullen, for the State—Cross.

Q. In your earlier talk here, you wanted the jury to believe that when you saw Mavropoulos he did nothing that you could identify him immediately, didn't you?

Objected to.

10

Objection sustained.

Q. Did you so testify, that you could identify Mavropoulos if you saw him, at once?

Objected to.

The Court: Where and when?

Mr. Maloney: Any place.

20

The Court: That line of examination is proper for the purpose of testing the credibility of the witness. You will have to be definite about it, whether he testified here yesterday or in New York.

Mr. Ormsby: There was some testimony taken in the New York Supreme Court relative to certain extradition proceedings. That testimony is in the hands of the Prosecutor.

The Court: Is this a motion, or is this an objection?

30

Mr. Ormsby: I want the testimony taken in New York so that we can check up on discrepancies. We would like an opportunity to see it.

The Court: So far as this application is concerned, it will be 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.

40

WALTER D. VAN RIPER,
Judge.

William A. Mullen, for the State—Cross.

Q. It is a fact that upon this second examination in the Police Station in New York, the detective said to you, "Point him out, don't be afraid," and he had reference to Mavropoulos?

Mr. Ormsby: I object, unless there is incorporated the name of the detective, if any. 10

The Court: I will permit that.

A. It is not.

Q. Did you understand my question? A. I did.

Q. Isn't it a fact that you gave your testimony in New York, you testified in this record that Mavropoulos took some money? A. I did not.

Q. And now today you say he didn't do anything or take anything. A. I seen him take no money. 20

Q. And isn't it also a fact that you say Mavropoulos didn't have a mask upon him. A. When I entered he had not.

Q. And is it also a fact that the first time you saw Mavropoulos was going out of this busy lunch room at noon time?

Objected to.

Objection sustained.

Q. Do you positively swear on this identification of Mr. Mavropoulos? A. At the present time? 30

Q. Not at the present time. From the time that it happened on this identification originally. A. Well——

Q. You have no qualms of conscience about it?

Objected to.

Objection sustained.

Q. You are absolutely positive, you say, of the identification? A. Yes, sir. 40

William A. Mullen, for the State—Cross.

Q. There is no chance of your being mistaken?
You were yesterday.

Objected to.

Objection sustained.

10 Q. Did you see me out in the hall this morning
here? A. I think I did.

Q. Did you wave to me? A. I said, "Good
morning".

Q. Were you talking to some men out there
when you saw me? A. Several.

Q. Particularly, at the time that you waved to
me. A. Yes.

Q. Were you talking to a detective at that time?
A. I was.

20 Q. And what detective were you talking to?
A. Mr. Thomas.

Q. Is he here now? A. No.

Q. What was the nature of your conversation
with him?

Objected to.

Objection sustained.

Q. Were you talking about this case? A. None
whatever.

30 Mr. Fisch: Since the adjournment of
Court yesterday afternoon, and after pleas
to these indictments had been entered by
two of these defendants, I continued with
my own investigation of this matter and
with the interviewing of witnesses, and I
am satisfied that there participated in this
hold-up four men. That is, I am satisfied
40 that the State would be able to prove only
that there were four men who participated
in this hold-up, that the State was depend-

William Webber, for the State—Direct.

ing upon. As I stated in my opening, with regard to the identification of the defendant Miller by the witness Webber, whom I spoke to, I am informed by the witness Webber that, although he did at a previous day identify the defendant Miller, that he is not certain Miller was one of the men who was in this hold-up; and, further, in view of the fact that Miller was arrested at a different place from where the other defendants were arrested, and the fact, as counsel pointed out in the examination of jurors, that Miller was of a different type and nationality than the other defendants, I am satisfied from my investigation that Miller cannot be identified, and I therefore move that the indictment be *nolle prossed*. That application applies also to indictment No. 183, which is not on trial now.

The Court: Motion granted.

WILLIAM WEBBER SWORN in behalf of the State.

Direct examination by Mr. Fisch:

Q. Were you in the building at 199 Market Street on the 26th of March last? A. I was.

Q. In whose office were you? A. Mr. Trien's office.

Q. And he is an accountant? A. Yes, sir.

Q. You had some business there with him? A. Yes, sir.

Q. With reference to what? A. Building and Loan shares.

Q. Are you familiar with the map, Exhibit S-1? A. I believe I am.

William Webber, for the State—Direct.

Q. It has been testified that Mr. Trien's office is right in this room (indicating on diagram). A. Yes, sir.

Q. And the Grant Lunch Corporation offices are adjoining? A. Yes, sir.

10 Q. While you were in Mr. Trien's office, was anybody with you? A. Mr. Horowitz.

Q. Was Mr. Trien present? A. No; I was waiting for him.

Q. Did you have any money in your possession? A. I did.

Q. How much? A. \$150 and my watch.

Q. What was the value of the watch? A. \$75.

20 Q. While you were waiting for him, what happened? A. While I was waiting Manus came in and saw me go in the other room, the Grant Lunch room.

Q. Which door did he come in? There seems to be a doorway which seems to be blocked by a table? A. (Indicating on diagram) I believe that is the doorway, right there.

Q. That would be the most northerly doorway of the Trien office. When he came in and told you that, what did you do? A. I got up and walked in.

Q. What did Horowitz do? A. Did the same thing.

30 Q. Where did you walk to? A. We walked to the corner of the office where the rest of the people were.

Q. Who was there? A. Miss Hixson, Mullen, Jacobwitz and O'Connor.

Q. What condition were they in? Were their hands free? A. They had them suspended in the air.

Q. Hands-up position? A. Yes.

40 Q. And then what happened? A. Well, he told me to get in with them and put my hands up.

William Webber, for the State—Direct.

Q. Indicating by he—who? A. Manus. Manus told me to get with the rest of them and put my hands up and face the wall, which I did.

Q. And then what happened? A. Then I saw the activities around the office there.

Q. What was the activity? A. Going over to the filing cabinet and got the box. I just saw them run along to the cabinet and get the box out. 10

Q. Who went over to the cabinet? A. Two men.

Q. What happened to you? A. I remained with the rest of them, after these two men walked out, Mancuso covered us with his gun.

Q. What happened to your money? A. He took the money out of my pockets.

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

Q. Were your hands tied? A. Not at that time, no. 20

Q. When were your hands tied? A. As soon as they left, Mancuso took some wire out of his pocket and started tying us up.

Q. Did he tie your hands in back of you? A. Yes, sir; and tied our ankles together.

Q. After you were all tied up, what happened? A. We were told to go to Mr. Jacobowitz' office and we hopped in, and they carried Miss Hixson in.

Q. Then what happened? A. Mancuso took a lot of wire out of his pocket and tied us all up by the neck, and then we were gagged. 30

Q. With what? A. Our handkerchiefs, tied them in a knot, and after that Mancuso warned us not to make any out-cry. After he went, after he left, we managed to get out of our wires. Each one helped the other. We untied ourselves and notified the police.

Q. Did anybody else search you beside Mancuso? A. No. 40

William Webber, for the State—Cross.

Q. Did you see anybody do any searching there except Mancuso as far as you can recall? A. I believe I did see one of the masked men search.

Q. Did one of those masked men remove his mask before he left there? A. He did, yes.

10 Q. You testified in the Supreme Court in New York? A. I did.

Q. And at that time you made an identification of the man Miller, against whom I just moved a *nolle pros*? A. That is right.

Q. Since that time you told me that you were not certain? A. That is right.

Q. And that man whom you identified as being the man Miller, if it was Miller, was that one of the men who had removed the mask? A. It was.

20 Q. I show you a mask and ask you if that looks like the mask you saw? A. It does.

(The mask referred to is offered in evidence and marked Exhibit S-5 for identification.)

Cross-examination by Mr. Ormsby:

Q. You say two of the men wore masks, that was your answer? A. Two men were not masked and three men were masked.

30 Q. There were five men there? A. There were five, yes.

Q. Sure about that? A. Certainly.

Q. And the two men in masks were whom? A. Mancuso and Mavropoulos.

Q. You heard Mr. Mullen testify? A. Yes, sir.

Q. You heard him answer, in answer to the Prosecutor, that none of the men were masked while you were there? A. I heard that, yes.

40 Q. Is that true or untrue, so far as you are concerned? A. Untrue.

Jacob Jacobowitz, for the State—Direct.

JACOB JACOBOWITZ, sworn in behalf of the State.

Direct examination by Mr. Fisch:

Q. Are you the president of the Grant Lunch Corporation? A. Yes, sir.

Q. Were you in your office on the 25th of March, last? A. Yes, sir. 10

Q. And your private office is in the rear of the suite? A. Yes, sir.

Q. Who was in the office with you between 12 and 12:30? A. Mr. O'Connor, the electrician.

Q. While you were in that room with Mr. O'Connor, the electrician, what happened? A. A man walked in with two guns and told us, "Stick 'em up", so I thought it was a joke, so I told Mr. O'Connor we better put our hands up. 20

Q. You thought discretion was the better part of valor?

Objected to.

Q. So you put your hands up, did you? A. Yes, sir.

Q. After you put your hands up, what happened? A. Then they walked up to the other part here, outside of my office, between this big office and this one here, they walked up here, put us here in the corner, and kept us there until they got the rest of them tied. 30

Q. Who were the rest of them that they got? A. They got a few more—I don't know exactly their names, but they came into Grien's office. I was so excited I really couldn't count them.

Q. Did you see Mr. Webber there, the man who was just on the stand? A. Yes, sure.

Q. How about Mr. Mullen, did you see him there? A. Yes, he came at the last. 40

Jacob Jacobowitz, for the State—Direct.

Q. How about Mr. Goodman? A. Mr. Goodman came in also before him, if I am not mistaken. I couldn't keep track of it, because I was against the wall and I couldn't see.

10 Q. Did you have any money or jewelry? A. Yes, sir. A man cut my neck tie and took the pin out of it.

Q. I show you Exhibit S-4 and ask you if you recognize that as being the tie? A. Yes, sir.

Q. Is that the way it was cut? A. Yes, sir; he didn't have time to take it out.

Q. What was the value of that pin? A. About \$75.

Q. How much money did you have on your person? A. \$200—\$250—something like that.

20 Q. What happened to that? A. He took everything.

Q. Were your hands and feet left free? A. No.

Q. Tell us about that. A. Afterwards they tied our feet and hands and handkerchiefs.

Q. What were you tied with? A. Wire.

Q. I show you Exhibit S-2 and ask you if that looks like the wire. A. It looks like it.

Q. How were your hands tied? A. Hands tied in back and legs tied together.

30 Q. The handkerchiefs around the mouth, and then what happened? A. They put us in the other office and tied up altogether.

Q. Did you have a telephone in that office? A. Yes.

Q. What happened to that? A. It was cut.

Q. Is that the telephone wire that was cut, showing you Exhibit S-3? A. That is the telephone wire.

40 Q. Are you able to tell us how many men were in the place during this hold-up? A. I seen four. I know there was four, anyway.

Sam Goodman, for the State—Direct.

Q. Are you able to identify the men? A. I couldn't, because I was so excited, I couldn't identify the men.

Q. Do you know whether any of the money belonging to the company was taken during that hold up? A. I have seen them grab the money. I seen them carry the bags. 10

Q. Do you know whether or not the company's money was taken? A. Oh, it was the company's money, all right.

Q. You didn't know the amount? A. Yes, I knew the amount.

Q. How much? A. Something between two and three thousand dollars—I don't remember.

20

SAM GOODMAN, sworn in behalf of the state.

Direct examination by Mr. Fisch:

Q. Mr. Goodman, what is your business? A. Bookkeeper, Grant Lunch Corporation.

Q. Were you such in March, 1929? A. Yes, sir.

Q. Did you have charge of the money? A. That was Miss Hixson's business.

Q. Did you make up the figures? A. No, Miss Hixson did, but I know what the figures were. 30

Q. Tell us what they were. A. They were something around \$2,699.

Q. What was it contained in? A. Specie and bills.

Q. Where was it? A. It was in the lower part of the compartment when I left the office.

Q. Was it just laying loose? A. Miss Hixson was working on the last bag, as I understand.

Q. What kind of a bag? A. A canvas bag. 40

Sam Goodman, for the State—Direct.

Q. Whose money was that? A. The Grant Lunch Corporation.

10 Q. Around noon time, March 25th, did you have occasion to go back? A. I walked in the office. When I came in I was stunned and I didn't know what was going on. I saw them huddled in the office.

Q. Who was in the huddle? A. Miss Hixson, Mr. O'Connor, Mr. Webber, I later found out, Mr. Mullen.

Q. How about Mr. Horowitz? A. He was there, I later found out.

20 Q. And put you in the huddle? A. Mr. Mavropoulos put two guns in my back, and I was a little slow in doing that, and he told me several times, and then he pushed me up against the wall.

Q. And then what happened? A. My hands were tied, my feet were left loose, and we were led into the other office, and we were all tied together by our necks.

Q. You say you came in after these people were all in a huddle? A. Yes, sir; one came in after me.

Q. Who was that? A. Mrs. Eisenschmidt.

30 Q. How many men did you see participate in this hold-up? A. I knew there were two. The money was gone when I got to the office.

Q. The money was already out of the place when you got there? A. Yes, sir.

Q. And there were still two men there operating? A. Yes.

Q. And the two men that you saw were whom? A. Identified as Manus and the one with the green sweater.

Q. Mancusi? A. Mancusi.

Sam Goodman, for the State—Cross.

Joseph F. O'Connor, for the State—Direct.

Cross-examination by Mr. Mahoney:

Q. You didn't see any men with masks on? A. There were only two men there.

Q. They didn't have masks on? A. Not those two.

10

Cross-examination by Mr. Ormsby:

Q. When did you first see Mr. Goodman? A. After the police arrived.

JOSEPH F. O'CONNOR, sworn in behalf of the State.

20

Direct examination by Mr. Fisch:

Q. You are the man that was spoken of as the electrician? A. Yes, sir.

Q. Did you have occasion to be in the office of the Grant Lunch Corporation on the 25th of March, last? A. I did.

Q. In whose company were you? A. Mr. Jacobowitz.

Q. What part of the offices were you in? A. I sat in a chair which at that time was in a position, at an angle to the table (indicating on diagram). This is a table or desk, whatever you might call it. Mr. Jacobowitz sat here. We had ceased with our conversation with reference to some lighting matter, and on my arriving the man identified as Mr. Mancuso pointed a gun at me and Mr. Jacobowitz, and I thought it was a joke and Mr. Jacobowitz advised me, "You better put your hands up, I don't think it is a joke," and then he ordered us

30

40

Joseph F. O'Connor, for the State—Direct.

10 out of the private office into the entrance which divides his private office and the gate which leads into their financial end of the office, and had us stand in a position, and upon us standing in that position, there came continually others in through the office. Before they entered the office, I was one of the men to go toward that principal office, which is located adjoining, went through the door, and next I saw Mr. Webber and Mr. Horowitz, I saw them coming, so they came right through this gate out in here, and put them with Mr. Jacobowitz and myself. Manus stood in a position right about here at the door with both guns pointing. I seen two men in there and they said, "Where is the dough?" and Miss Hixson pointed to the cabinet. She was afterwards asked to join the crowd. Then at that time one of these men who had been taking this money stood there and the other young man, who had searched us, he said, "Come on, put them in here in the back with the rest."

20 Q. Indicating who? A. I was in such a position I could not identify him. I was ordered by Mr. Manos to hold my head high. I think I know him, the man with the derby, directly in front of me, and I could, in this position, hear the conversation about putting the money in the bag. Those two men left. Then they tied my hands and Mr. Jacobowitz' hands and our feet and Miss Hixson, as well, and then I remember Mr. Goodman, who was tied, and if I remember rightly, they also tied his hands and ordered him in the group. He wasn't searched, I noticed that. Apparently they were losing time.

Objected to.

40 Witness: They ordered us to go to the other room, to the private office, and I was

Joseph F. O'Connor, for the State—Direct.

tied at the feet, and I had difficulty in making the office, and I kind of fell over, and I remember one of these men making a remark, "Don't put the wires on the guy." And I said, "Hold me up." And there was assistance offered me to my right, to help me in the room. As they started to group us, I remember this elderly woman coming in, and she remarked, "This is the Grant Lunch Corporation?" And then she noticed the man with the gun and she offered him her money, which they threw out on the floor, they didn't take her money. In the meanwhile, they tied us together, and he said, "Get closer together," the wire wasn't long enough, and one man remarked, "Does this door lock, or only close?" and he said, "Don't make a holler for fifteen minutes." 10
 Objected to. 20

Q. Did you have any money or jewelry on your person? A. I had \$170 in cash and change in my pocket. I wore a white gold watch.

Q. What was the value of that? A. \$50.

Q. What else? A. I had a chain of the value of \$15. I had an Elk's tooth, the value of \$25.

Q. What happened to all of these things? A. 30
 The man who was going through all of our pockets took our money and relieved me, and he did take my keys off of the chain and throw them back.

Q. How many men were there engaged in this hold-up? A. Four men.

Q. How many men are you able to identify, if any? A. Mr. Manus was the only one I was in a position to identify, as I had to keep my eyes on him, as I say, I was ordered by him. 40

*Joseph F. O'Connor, for the State—Cross—
Re-direct.*

Louis Skleary, for the State—Direct.

Q. I show you this wire and ask you if that is like the wire which they used? A. That is similar.

Q. What about the telephone? A. They cut the
10 wire.

Cross-examination by Mr. Maloney:

Q. Did you see anybody masked there? A. Two apparently had masks on when they came in.

Q. Don't say apparently. Did you see anybody with a mask? A. Yes, sir.

Q. How many? A. Two.

Re-direct examination by Mr. Fisch:

20 Q. Did you see Mr. Mullen there? A. I did.

Q. Did you see him when he came in? A. Mr. Mullen came in prior to the latter part of this.

Q. Do you know whether or not any of these men had masks on at that time? A. No, they didn't.

Q. You had your face toward the wall? A. No, sir; Mr. Manus had ordered that the gentleman with the derby be kept with his head high.

Q. And you were the man with the derby? A.
30 Yes, sir.

LOUIS SKLEARY sworn in behalf of the State.

Direct examination by Mr. Fisch:

Q. You are a prosecutor's detective? A. Yes, sir.

Q. Do you know Mr. Abraham Horowitz? A.
40 I do.

James Shannahan, for the State—Direct.

Q. Did you have a subpoena for Mr. Horowitz?

A. Yes, sir.

Q. Do you know what his physical condition is?

A. He is sick in bed.

Q. When did you find that out? A. Tuesday night, nine o'clock, and last night, 8:45.

10

Q. Is he under the care of a physician? A. Yes, sir.

Q. Did you receive a certificate from him? A. I have, that Mr. Horowitz is suffering with influenza, and unable to leave his bed.

Cross-examination waived.

JAMES SHANNAHAN SWORN in behalf of the State. 20

Direct examination by Mr. Fisch:

Q. You are the superintendent of the building at 199 Market Street? A. I am, yes, sir.

Q. Do you recall the 26th of March? A. Yes, sir, I recall the date.

Q. Do you remember hearing about the hold-up of the Grant Lunch Corporation? A. Yes, sir.

Q. When did you hear about it, what time? A. The same day, about twelve o'clock, when Detective Thomas was going through the building. 30

Q. Shortly after that did you find anything in the hallway of the building? A. A cap.

Q. (Showing witness cap.) Is that the cap? A. I don't know whether it is or not. It had the lining out.

Q. What did you do with it? A. I gave it to Detective Thomas.

Mr. Fisch: I offer this for identification. 40

(Marked Exhibit S-6 for identification.)

James Shannahan, for the State—Cross.

William R. Thomas, for the State—Direct.

Cross-examination by Mr. Maloney:

Q. You are not sure that is the hat? A. It was a brown cap.

10 Q. You couldn't be positive about it, though, could you? A. No, sir.

WILLIAM R. THOMAS sworn in behalf of the State.

Direct examination by Mr. Fisch:

Q. You are connected with the Newark Police Department? A. Yes, sir.

20 Q. Attached to police headquarters? A. Yes, sir.

Q. How long have you been connected with the police department? A. Eighteen years.

Q. On the 26th of March, did you have occasion to go to 199 Market Street? A. Yes, sir.

Q. Did you see Mr. Shannahan there? A. Yes, sir.

Q. Did he turn anything over to you? A. He did, a brown cap.

30 Q. (Showing witness cap.) Is that the cap he turned over to you? A. That is the cap.

Mr. Fisch: I offer that in vidence.

(Marked Exhibit S-6.)

Q. Did you make an examination of the hallway yourself? A. Yes, sir.

40 Q. What, if anything, did you find? A. I found part of a lady's silk stocking, with some holes cut out, apparently used as a mask, in behind a radi-

William R. Thomas, for the State—Direct.

ator as you enter the building. Immediately as you enter, there is a door and behind that door there is a radiator. The mask was stuck down behind that radiator.

Q. I show you Exhibit S-5 for identification and I ask you if that is the silk stocking you say you found behind the radiator? A. It is.

10

Mr. Fisch: I offer that in evidence.

(Marked Exhibit S-5.)

Q. Did you have anything to do with the apprehension of any of the defendants in this case? A. I did.

Q. Will you tell us about that? A. I, with Detective Fallon and Detective Anderson, of Newark Police Headquarters, went to New York City on March 27, about five o'clock in the afternoon. We were up around 42nd Street and 8th Avenue, between 8th and 9th Avenues. We had received some information that we could get the parties that were responsible for that hold-up between 9 and 9:30 at 42nd Street and 9th Avenue. We picked up two men between 42nd Street and 9th Avenue together with Detective Gilroy, who is attached to that precinct.

20

Q. Is he in court? A. We told him of the information we had and what we were after, and so he was assigned to accompany us, and he went out with us, and at 42nd Street and Ninth Avenue, we picked up two men.

30

Q. Who were those men? A. Adam Miller and the other was Peter Crotty. We picked them up on the street and brought them to the 27th Street station house, and left them there. We went out again and we went to 43rd Street and 9th Avenue. I went in the side entrance, up to the second floor,

40

William R. Thomas, for the State—Direct.

10 which was a Greek coffee house, a Greek restaurant. We went to the rear of this restaurant. It rather looked like a dining room, the second room as you enter, and we found four men sitting at a table. Two were in the back, in conversation, and two men in front. We took the two men in the back and stood them up and searched them, and from one of the men Detective Gilroy took \$300 cash and from this other man that was sitting in the front, he took \$257, I believe.

Q. Who were those two men? A. Nick Manus and Leonard Mancuso.

20 Q. Who were the other two men that were apprehended? A. The other two men were apprehended in the front. One was Diomedes Mantis who claimed to be part owner of this restaurant, and the other Peter Mavropoulos, who said he was the cook in the restaurant.

Q. What was the position of these men? A. They were sitting together at a table in the front.

Q. Did you learn where Manus lived? A. Yes; Manus gave the address he lived, in the same building, where Mantis' restaurant was conducted.

Q. Did you learn from him or Mantis from whom Manus rented his room?

30 Objected to.

Objection overruled.

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

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

Judge.

Q. Who? A. He rented this furnished room from Mantis and Mantis' supposed partner.

40 Q. Were there other people in the restaurant there? A. There were.

William R. Thomas, for the State—Direct.

Q. Were any of the other people in that restaurant arrested at that time? A. Besides those I have mentioned, one other one was arrested, yes.

Q. Who was that? A. His name was Brown.

Q. Was he identified by anybody? A. He was not.

Q. And he was discharged? A. He was discharged. 10

Q. How many people were there in the restaurant besides these four men, Mantis, Mancuso, Mavropoulos and Mancuso? A. Twelve or fifteen, including a couple of women.

Q. None of the others were taken into custody at all? A. They were not.

Q. I believe you testified you went to this restaurant on some apparent information that you had received? A. Yes, sir. 20

Q. Did you make these arrests based on that information? A. Based on that information, yes.

Q. After these men were arrested, where were they taken to? A. 47th Street precinct.

Q. What happened there? A. They were recorded, fingerprinted, finger-printed booked and questioned, and then we mentioned this hold-up.

Q. Did any of them admit any participation in it? A. They all denied it, they all denied ever having been in New Jersey. 30

Q. Were they subsequently placed in the line-up? A. Yes, sir; in the police station; they were brought up in the corridor which adjoins the court room and put in the line-up of fourteen men.

Q. Were any of these defendants in that line-up? A. Yes, sir.

Q. Did Mr. Mullen make an identification? A. Yes, sir.

Q. And Mr. Horowitz? A. Yes, sir.

Q. And you and Miss Hixson? A. Yes, sir. 40

William R. Thomas, for the State—Direct.

Q. And Mr. O'Connor? A. Yes, sir.

10 Q. Is there anything else that you know, of your own knowledge, about this case that I haven't asked you about? A. I was on the scene of this hold-up immediately after it happened, about five minutes after, I started to collect the things in evidence that were lying around this piece of wire that the persons had been bound with, they were on the floor, and I started to pick them up, and the telephone wire was on the floor, and the handkerchiefs, that these people had been gagged with, I picked them all up and stuffed them into this hat which had been given me by the superintendent of the building, which had been found in the hallway.

20 Q. I show you these handkerchiefs. Are these the handkerchiefs that you found at the scene of the holdup? A. Yes, sir.

Mr. Fisch: I offer them in evidence.

(Marked Exhibit S-7.)

Mr. Maloney: I object to them as immaterial.

The Court: Objection overruled.

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

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

Judge.

Witness: I gathered the wire up in Mr. Jacobowitz' private office.

Q. You are referring to Exhibits S-2 and S-3?
A. Yes; also Mr. Jacobowitz' tie I picked up that was on the floor.

40 Q. Exhibit S-4? A. Yes.

William R. Thomas, for the State—Cross.

Q. Who accompanied you to the lunch place?
A. Detective Luke Conlon and Detective Moffett and Detective Fallon.

Q. Which detective Moffett was it? A. I think it is Harold.

Cross-examination by Mr. D'Alessio:

10

Q. You say upon some information you went to New York? A. Yes, sir.

Q. And who gave you that information? A. It was an anonymous telephone call.

Q. Did you ask who it was? A. No.

Q. Where did it come from? A. I don't know.

Q. Did you ask? A. No.

Q. What did they say? A. The call was, "If you want to get the men who held up the Grant Lunch Company, come to the 43rd Street and 9th Avenue, in the restaurant, you will find them there."

20

Q. Was it a male or female voice? A. It was a male voice.

Q. Did you ask for the man's name? A. I did not.

Q. Didn't you care who was giving this information? A. I had received anonymous calls before and you don't usually get the right name anyhow.

30

Q. So that was a tip, so to speak? A. If you call it a tip.

Q. And it was 'phoned directly to you? A. No, sir.

Q. To whom? A. I don't know who it was 'phoned to.

Q. How did you get the telephone call? A. It was relayed to me.

Q. Were you speaking with the man at the other end of the wire yourself? A. No.

40

William R. Thomas, for the State—Cross.

Q. Didn't you say a minute ago that somebody called you up? A. I didn't say they called me. I said it was an anonymous call.

Q. You do know the one who told you about it, who told you that somebody made such anonymous telephone call? A. Captain Sebold.

10 Q. Of the Newark Police Department? A. Yes, sir.

Q. And who gave this tip to you? A. He gave me the information, he said, "Go there and take detectives with you and see what you can find out."

Q. What time of the day was it? A. This was about five o'clock he told me.

20 Q. That was the day of the hold-up? A. Day after the hold-up.

Q. Did you take anybody with you? A. I did.

Q. And who was it? A. Detective Fallon and Anderson.

Q. Both from the Newark Department? A. Both from the Newark department.

Q. Did you receive any instructions from your captain? A. In reference to what?

30 Q. In reference to what to do or who to take? A. I had the investigation. The Captain didn't have the investigation of this hold-up. I knew what to do.

Q. Did you pick up any men? A. They were on the investigation immediately after it happened.

Q. You say you went to New York? A. Yes, sir.

Q. Directly to this restaurant? A. No.

Q. Didn't you? A. No.

40 Q. Where did you go? A. Went to New York, to the 47th precinct.

William R. Thomas, for the State—Cross.

Q. And a man was detailed to go with you? A. Yes, sir.

Q. And where did you go? A. Then we went down around 8th Avenue and 42nd Street, 9th Avenue, 43rd Street, at the pool room in the vicinity.

Q. And why did you do that? A. Looking for the parties. 10

Q. Why didn't you go directly to the restaurant? A. I didn't think it was the opportune time to go there.

Q. Why didn't you think it was? A. Because I know the class of place it was and I know that kind of restaurant, they don't start doing business——

Mr. D'Alessio: I move to strike that out as not responsive. 20

The Court: I will permit it to remain.

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

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

Walter D. Van Riper,
Judge.

Mr. Ormsby: I press an objection at this time on the ground that I do not see where it has any bearing of any kind. 30

The Court: You have your exception.

Witness: The reason I didn't go to the restaurant, I have had previous experience with this kind of places, and I know from experience they don't start to do business until late in the evening.

Q. You have answered my question. A. I knew if I went there shortly after five or six o'clock, I 40

William R. Thomas, for the State—Cross.

would find the place deserted, I would find nobody there, and I knew if I waited around long enough at the proper time and the proper hour, that I would get the place probably well patronized and get the people that I was looking for in there, which I did.

10 Q. You said you went to several other places before you went to this restaurant? A. Yes.

Q. Did you quiz anybody in those other places? A. No.

Q. Why not? A. Had no reason to quiz anybody.

Q. Why did you go there? A. I went there looking for a certain party.

20 Q. Did you have any names that you were looking for? A. No, but I had descriptions, I had descriptions from the people at that time in the Grant Lunch.

Q. Have you got them with you? A. No.

Q. Why not? A. They are in the report at the police station.

Q. Have you any recollection of these descriptions? A. I have got a general recollection of what they were.

30 Q. How many men were described to you? A. I wouldn't say how many were described to me. I will tell you what was given to me.

Q. How many men were described to you, one, two or four or five? A. There were five.

Q. So you went out looking for five men? A. Yes.

Q. And have you mentioned about three or four places that you went to before you went to the restaurant? A. Yes, sir.

40 Q. And when you started from Newark, about what time was it? A. I should judge around half-past four.

William R. Thomas, for the State—Cross.

Q. How many places did you go to before you went to the restaurant? A. Three or four.

Q. Did you inquire of anybody in these places about these men you were looking for? A. I didn't.

Q. You made no inquiry at all? A. No.

Q. What was the purpose of going to these places? A. I was told that I would be able to find them there in one or the other places, that I would be able to find these men.

Q. So you must have inquired. A. No, sir; I didn't inquire. I just went and looked around, and when I didn't find them, I came to the conclusion that they would be in the restaurant, which was right.

Mr. D'Alessio: I move that "which was right" be stricken out. 20

Q. So you finally went around to this restaurant? A. Yes.

Q. What time did you arrive there? A. The first time was between eight and nine, the evening that these men were arrested.

Q. The day after this alleged hold-up? A. Yes, sir.

Q. What did you do? A. I walked in, looked around and talked to a man who said he was the boss. 30

Q. Can you identify him? A. I am not sure whether it was Mantis or whether his partner, Wallace.

Q. (Indicating a man in the audience.) Is that the gentleman you saw? A. I think it was, but I wouldn't say positive.

Q. What conversation did you have with Wallace? A. Who owned the place and what kind of a place it is, and who comes there and who frequents it, and where his partner was. I think he 40

William R. Thomas, for the State—Cross.

wasn't in. He said he was on a little drunk. "Where was he last night?" He said he wasn't here, his other partner was here.

Q. How did you know he had a partner? A. He told me.

10 Q. You asked him before he told you? A. I asked him who was running the place and he said he is and a partner.

Q. You didn't care whether the partner was drunk or not the night before? A. It didn't bother me.

Q. It didn't mean anything to you, as far as the police department was concerned? A. No, sir.

Q. Is that all that happened on the first occasion? A. That is all that happened, and talked to another man that was there.

20 Q. Who was that other man? A. Mavropoulos.

Q. (Indicating.) Is this the fellow? A. Yes, sir; that is him.

Q. Did you talk with Mavropoulos? A. Just asked him who he was, what his name was and what he was doing there.

Q. Did he answer you frankly? A. He said he was a cook there.

Q. You didn't suspect Manus then?

Objected to.

30

Objection sustained.

Q. What other question did you ask him other than what he was doing there? A. Just general questions, where he lived, what his name was, how things were going, and it wasn't the time for me to act.

Q. When you finished talking with him, did you think you had learned anything? A. Yes.

40 Q. From whom? A. Not from him; from my observation, that he was one of the men.

William R. Thomas, for the State—Cross.

Q. What was that description? A. The description was he was a sallow complected fellow, a Greek, stocky built.

Q. Is that all? A. That is about all.

Q. And you identified him from that description? A. No, I was told he was one of the men that hung out there and that he hung out there. 10

Q. Are those the only two men you talked with the first time? A. And there was another stout man there, who claimed he was the cook. He had an apron on and everything.

Q. Did you speak to him? A. Yes, sir, I asked him who he was and he said, "I am the cook, I work here."

Q. Anything else? A. No.

Q. Did you inquire about Mavropoulos? A. As to his company? 20

Q. Yes. A. No.

Q. Mavropoulos told you he was the company? A. Yes, that is right, and he is liable to tell you anything.

Q. Didn't that arouse your suspicions when he told you he was the company and not the first man? A. No; that confirmed my suspicion that he was the man.

Q. Was there anybody else there at that time? A. I don't think there was. 30

Q. And it was between eight and nine o'clock? A. I should say it was.

Q. And you went away? A. We went away.

Q. During this first visit, you were not alone, somebody else was with you? A. Yes, sir.

Q. Detective Fallon? A. Gilroy.

Q. What happened to Anderson and Fallon? A. They were in the vicinity.

Q. Outside, shadowing? A. No, he wasn't shadowing anybody, because there wasn't anybody down there. They were just left downstairs. 40

William R. Thomas, for the State—Cross.

Q. Where did you go after you left the restaurant? A. Came out and walked back to the precinct.

Q. Did you meet Fallon and Anderson outside? A. A little later we met them.

10 Q. What happened at the precinct? A. At the precinct we had a little conference and as a result of that conference we spoke amongst ourselves and said that the people we were looking for were not at that restaurant, we would have to go back a little later.

Q. What time did you go back? A. Between eleven and twelve; maybe a little later—I don't remember.

20 Q. Did you tell those three men whom you questioned why you were questioning them? A. We told them we were police officers and we went in there on the pretense that we were making an inspection to see what kind of a joint it was.

Q. Going back to the second time, with whom did you go the second time? A. Gilroy and myself, Fallon and Anderson, the four of us.

30 Q. Tell us, if you will, what happened on your second visit and whom you found there. A. We got up there and walked in the door. There were twelve to fifteen men in the place and two or three women, and I already stated I knew Mavropoulos—I knew Mavropoulos the first time I went there, and he had light clothes on, and the second time he had a new suit and a collar, a tie, he was dressed sportily.

Q. You don't mean that? A. When I saw him the first time he was all greasy looking.

Q. He was a cook? A. Yes.

40 Q. That would explain his personal appearance, wouldn't it? A. Yes.

William R. Thomas, for the State—Cross.

Q. What I am getting at is, when you went back this second time, you found Mavropoulos all dressed up? A. Yes, sir.

Q. What did you say to him? A. I said, "Stand up." I didn't quite recognize him then as the same man I had seen earlier in the evening on account of being dressed up. I said, "What are you doing here?" "I am the company." He is a big fat fellow. He said, "He relieves me in the evenings." I said, "What are you doing around here after you are finished working?" He said, "I live here." I said, "Where?" And he said "Right over there," and he said, "In the back room." I motioned him in the back room, and in the meantime two or three minutes after Mantis walked up. He was sitting down at the table as we were there, and as we took Mavropoulos away, and, of course, he wanted to get an ear-full of what it was all about. So when he came over I said, "What is your name?" He told me his name. I said, "What are you doing here?" He said, "I am one of the bosses." And he was searched and put in the other room too. 10 20

Q. What did you find on them when you searched them? A. Nothing more than the ordinary man would carry.

Q. What did you find? A. I didn't find anything that was worth while taking away from him. 30

Q. But, nevertheless, you told him to go in the room with Mavropoulos? A. Yes.

Q. Why did you do that? A. He is one of the men implicated in this hold-up.

Q. You didn't know his name before that? A. He is one of the proprietors, my information was, one of the proprietors of this restaurant and he was in on this hold-up, and after talking to Mr. 40

William R. Thomas, for the State—Cross.

Wallace, I figured it wasn't him, so it must have been the other proprietor.

Q. You told both of them to go in the room? A. Yes.

Q. Did you lock the door? A. No, sir.

10 Q. And then what did you do? A. Other detectives were in the rear, they were searching the other, Mancuso, and a man named Brown—in fact, everybody was wired—and they had to identify themselves to our satisfaction, and after that was done, we took these five men and took them to the 47th street precinct.

Q. You have only told us about two. A. Gilroy and Anderson had them in the back room and after they were searched, we took the five men.

20 Q. There is Manus, Mancuso, Mantis, Mavropoulos. Who is the fifth? A. A fellow named Brown.

Q. Why did you pick him up? A. We just took him along on general principles because he was hanging around there.

Q. Isn't it a fact that you didn't pick Mantis out on general principles? A. Yes; we thought we would take him on general principles. His face was all scraped up, as if he had been in a battle.

30 Q. So the five of you went to the 47th Street precinct? A. Yes, sir.

Q. Did you tell them what they were arrested for? A. After we got there they didn't ask.

Q. You don't mean that three detectives took five men and they didn't ask you what it was all about? A. They asked us what it was all about, and we said, "We'll tell you when we get up to the precinct."

40 Q. Then what did you do? A. We took their pedigree, finger-prints, and questioned them about this hold-up.

William R. Thomas, for the State—Cross.

Q. Did any of them admit they were in the hold-up? A. No, they didn't.

Q. What happened to Brown? A. After questioning him, we found out how he got his injuries and where it was at, and then we kept him there until the next morning.

Q. What happened to the rest of them? A. He 10
was later discharged.

Q. Did you get your five men? A. We had our fifth man already.

Q. You were in court when Miller's case was *nolle prossed*? A. The case was *nolle prossed*.

Q. You got a fifth man? A. We got a fifth man.

Q. But you are sure these are the men? A. I don't know.

Q. You had the first line-up in New York, didn't you? A. Yes, sir. 20

Q. Did you have any pictures taken before the line-up of these four men? A. I didn't.

Q. Did the Newark Police Department have pictures of these men? A. No, sir, they could not because they were arrested late in the evening.

Q. They don't take pictures at night? A. I don't know whether they do in New York. I know they don't do it here.

Q. After these men were arraigned, what did you do with them? A. They were held pending extradition. I wrote up the report of the case, and got ready to have them extradited. 30

Q. And proceedings were drawn up and filed in New York? A. Yes, sir.

Q. And there was a hearing on those extradition proceedings? A. There was.

Q. And the witnesses to this alleged hold-up were taken over to New York? A. Yes, sir.

Q. You were present at the extradition proceedings? A. Yes, sir. 40

William R. Thomas, for the State—Cross.

Q. And those extradition proceedings were contested by two lawyers? A. I think there were five lawyers in New York.

Q. And the result of that proceeding was the witnesses identified the men? A. They were all identified.

10 Q. You were present at the identification? A. At the Supreme Court, New York.

Q. Who identified Miller? A. I would have to get my slip.

Q. Who identified Manus? A. I guess they all pretty near identified Manus.

Q. How about Mancuso? A. Pretty much the same with him.

20 Q. How about Mavropoulos? A. I don't recall. I know he was identified. I don't recall him. If I had my notes that were taken at the time of the hearing, I could tell you.

Q. During that identification, Detectives Fallon and Anderson were present? A. In the Supreme Court?

Q. Yes. A. They were present there.

30 Q. So I understand you to say, correctly, that Brown, the fellow that you picked up, was discharged by the New York Police Department upon their being satisfied that he had nothing to do with it. A. Oh, no, he wasn't brought up in connection with this hold-up. He was brought in on general principles.

Q. When was he discharged? A. I think he was discharged about a week after he was arrested.

Q. Do you remember picking up Miller? A. Yes, sir.

Q. And was there anybody else picked up with him? A. Yes, sir.

40 Q. Who? A. A man named Peter Crotty.

Q. Did you question him? A. Yes, sir.

William R. Thomas, for the State—Re-direct.

Q. Why? A. Because he had a criminal record.

Q. Was he identified by anybody? A. He was not.

Q. What happened to him? A. He was discharged by a Magistrate in the Seventh District.

Q. Not in these proceedings, though? A. No; 10
at the request of the New York authorities.

Q. You were present on the first of March? A. I was.

Q. And Detective Fallon was there too? A. Yes, sir.

Q. He took part in the identification? A. What do you mean, took part?

Q. Why, directed them to the line. A. I didn't witness the first identification. I had all the witnesses grouped together, and I was sending down a witness, and they were free, uninstructed what to do. 20

Q. By Gilroy? A. Yes, sir.

Mr. Ormsby: I would like to have the cross-examination apply to Mavropoulos. I can't see any distinction.

Re-direct examination by Mr. Fisch:

Q. What instructions did you give these witnesses in this line-up? A. I had them all grouped together, I was sending them down one by one. We had told them on the way over that we had arrested five men in New York City, and we brought them over to New York for the purpose of seeing whether they could identify any of the men who held them up. I said, "There will be a line-up." I said, "These men that held you up will be in this line-up," and I said, "If you see anybody there that looks like the men who held you up, put your hand on their shoulder." I don't know 40
where they were. I didn't see the line-up.

William R. Thomas, for the State—Cross.

Q. You testified that you went to this Greek coffee house owned by Mantis. What floor is that on? A. The restaurant is on the second floor.

Q. I believe you said you were there on two occasions, and on the first occasion you saw Mavropoulos at that time? A. I did.

10

Q. At that time did he wear any apron or gown or a cap indicating that he was a cook?

Objected to.

A. He did not.

Q. Why didn't you arrest him on the first occasion you were there? A. Because the other men that I was looking for were not present. I didn't want to arrest him and take him out and have a commotion around there, and if these fellows came and would tell them, our case would be spoiled.

20

Cross-examination by Mr. Ormsby:

Q. What is the first time you went there? A. Some time between eight and nine.

Q. You are sure it wasn't seven? A. No, sir.

Q. When was the second time? A. It might have been around twelve. I didn't look at the time.

30

Q. Both times you were there Mavropoulos was there? A. Yes, sir.

Q. In other words, if he wanted to make a get-away, he could have done so?

Objected to.

Objection sustained.

Q. What instructions did you give the witnesses of the procedure to follow in the identification? Had you heard any detectives, in your presence, say to Mr. Mullen, "Don't be afraid, go ahead, he has got no gun upon him." A. I did not.

40

Clarence C. Gilroy, for the State—Direct.

CLARENCE C. GILROY sworn in behalf of the State.

Direct examination by Mr. Fisch:

Q. You are a detective connected with the Police Department of the City of New York? A. I am. 10

Q. Did you have occasion to meet Detective Thomas and some other detectives from the Newark Police Department on the 27th of March? A. I did, yes, sir.

Q. Where? A. At the Ninth squad detective office, West 47th Street, New York, City and County of New York, Borough of Manhattan.

Q. After you met them, did you go somewhere with them? A. We did. 20

Q. Where did you go? A. We went down Ninth Avenue in the vicinity of 42nd Street, to 43rd Street, to a coffee room. We made an investigation. We were looking for some men in connection with the robbery in the City of Newark, looked around, and we didn't see anyone there that we wanted at that time, and we later apprehended two men, one by the name of Peter Crotty, another by the name of John P. Brown, on the northwest corner of 47th Street and 9th Avenue.

Q. (Indicating.) Were any of the men these men? A. Miller was one of the men. We started out again, and the next time we went to 2 West 42nd Street, to a Greek restaurant, which was located on the second floor. We there met the defendant Mavropoulos and a man who gave the name as Wally, and a woman, who stated she was his wife. 30

Q. How was Mavropoulos dressed? A. He was more or less shabbily dressed. 40

Clarence C. Gilroy, for the State—Direct.

Q. Did he have an apron or a cap or gown? A. I don't recall what he had on, insofar as the apron or hat.

10 Q. What did you do on that occasion? A. I asked Wallace what kind of a place he was running around there, and made a minute inspection of the ice box, and so forth, and he said he was running a half a dozen places.

Q. How did you come to go to that place, in the first place? A. On information imparted to me by the Newark detectives, I went there.

20 Q. Tell us about the second occasion. A. The second occasion I was accompanied by the Newark detectives. There were about ten or twelve people in the place, meaning the men and one woman that I saw, and in the small room, off the main dining room, which is the first room you enter coming from the hallway, I saw the defendants Mancuso and Mantis and the defendant who was later discharged, John T. Brown.

Q. That is the man that was never charged with this hold-up? A. No, sir. I questioned Manus and Mancuso and also Brown, while the Newark detectives took Mavropoulos and Mantis.

30 Q. Were they both sitting at the same table? A. Yes. The three defendants that I questioned were sitting at a table in the adjoining room. I didn't know them, I stood them up and gave them a frisk, and I searched them, and I found two or three hundred dollars on both. I said, "What is your business?" He said, "Gambling." It was United States money, and I asked him where he worked, and he said "The Eagle Electric Water Company."

40 Q. What was done with the money that was taken? A. I took the money from each one of

Clarence C. Gilroy, for the State—Cross.

them and gave them a receipt for it and placed it in the deposit box of the 47th precinct.

Q. (Showing witness envelope.) Is the money in those envelopes? A. Yes, sir.

Mr. Fisch: I ask that those two envelopes be marked for identification. 10

(Marked Exhibits S-8 and S-9 for identification.)

Cross-examination by Mr. Ormsby:

Q. What was the reason for bringing Brown over there? A. I apprehended him on suspicion.

Q. Because he was with Mancuso and Mantis, isn't that the fact? A. Not exactly, no.

Q. That had something to do with it, didn't it? 20
You have no hesitation about answering that. A. I wouldn't say that it was, because it was that the other defendant was arrested. We have known him on numerous crimes committed in the State of New York and New York City, and I thought he might be identified.

Q. But he was with Manus and Mancuso at the time you apprehended the three of them? A. He was in the same room.

Q. The other two men, Mavropoulos and Mantis 30
were in the front part of the building? A. Yes, sir.

Mr. Ormsby: The same cross-examination will apply to my client.

Howard H. Fallon, for the State—Direct.

HOWARD H. FALLON, sworn in behalf of the State.

Direct examination by Mr. Fisch:

10 Q. You are connected with the Newark Police Department, attached to the Detective Bureau, Police Headquarters? A. Yes, sir.

Q. How long have you been such? A. Eleven years.

Q. Were you assigned to this Grant Lunch hold-up? A. I was.

Q. Did you go to 199 Market Street with detectives Thomas and Anderson? A. Yes, sir.

Q. Were you present when this cap was found? A. Yes, sir.

20 Q. Were you present when this silk stocking was found? A. No, I wasn't.

Q. Did you subsequently go to New York in this identification? A. In company with Detective Shannahan and Detective Gilroy of the 47th street precinct.

Q. Did you subsequently go to this Greek coffee house that was run by Manus? A. Yes, sir; on the second visit I went there.

30 Q. When you went there what did you find? A. We found the four defendants on trial here located in the restaurant on the second floor. Mavropoulos and Manus was located in the main dining room. The other two defendants was in the small room off the kitchen.

Q. Did you learn where Manus lived? A. We did.

Q. Where? A. He said he lived on the third floor, 400 West 43rd street.

40 Q. Did he tell you who rented the room to him? A. He told us one of the proprietors rented it to him.

Howard H. Fallon, for the State—Direct.

Q. Did he tell you which proprietor rented the room to him?

Objected to.

Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court. 10

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

Walter D. Van Riper,
Judge.

A. Manus.

Q. He told you Manus was renting the restaurant? A. Yes.

Q. And then subsequently these four men were taken into custody? A. Yes, sir. 20

Q. And a charge made against them in connection with this hold-up? A. Yes, sir.

Q. Were they subsequently placed in the line-up? A. They were.

Q. Were you present at that line-up? A. I was.

Q. And some witnesses from Newark were taken over there? A. They were.

Q. Did you hear the instructions given to the witnesses? A. I gave them instructions.

Q. What instructions did you give them? A. I said, "There is a line of men there." I said, "You identify any man that you saw at 199 Market street who participated in the hold-up, to put your hand on them." 30

Q. Was that all your instructions? A. That was all my instructions.

Q. Did you tell them anything about where certain defendants were situated in the line-up? A. No. I talked out loud so the others could hear me.

Q. How many men were in the line-up? A. 40
There were fourteen men.

Motions.

Q. And these four men were identified in that line-up? A. That is right.

Cross-examination waived.

Recess from one to two P. M.

10

AFTER RECESS.

Mr. Fisch: The State rests.

20

Mr. Degheri: In behalf of the defendant Mantis, I respectfully submit to your Honor that the State has failed in any way to prove or connect this defendant Mantis with the crime. The only attempt to connect Mantis was by the witness Mullen, and if your Honor will recall the witness's testimony, he stated two or three times to the Prosecutor that he could not identify Mantis as being one of the men present during the hold-up. I did not cross-examine him, however, because there was no necessity for it. I feel, and I say it sincerely to your Honor, bare as it is, it should require your Honor to direct a verdict of acquittal in favor of the defendant Mantis. That is my motion.

30

The Court: I will deny your motion and allow you an exception.

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.

Walter D. Van Riper,
Judge.

40

Mr. Ormsby: I want to make a motion for a verdict of acquittal on behalf of the

Diomedes Mantis, for Defendants—Direct.

defendant Theodore Mavropoulos, on the ground that there has been no *prima facie* case made out against him, and that the identification, the only witness produced by the State, was absolutely uncertain and indefinite.

The Court: I will deny your motion. 10

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

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

Walter D. Van Riper,
Judge.

Mr. Degheri: I would like to call upon the Prosecutor to open, insofar as the point he intends to rely upon for conviction. 20

The Court: Are you resting your case?

Mr. Degheri: No.

The Court: Our practice here is to open to the jury as to what the defense intends to prove.

Mr. Degheri opens in behalf of the defendant Mantis.

DIOMEDES MANTIS, sworn on behalf of defendants. 30

Direct examination by Mr. Degheri:

Q. How old are you? A. Not quite twenty-two.

Q. When were you twenty-one? A. On January 21st.

Q. Where do you reside? A. 3912 Caroline Street, Long Island City. 40

Diomedes Mantis, for Defendants—Direct.

Q. Were you born in this country? A. I was not.

Q. How long have you been in this country? A. Fifteen years.

Q. What is your nationality? A. Greek.

10 Q. What has been your education?

Mr. Fisch: I object to that as immaterial, whether he is a college graduate or not doesn't make any difference.

The Court: I suppose a man who is on trial on a charge of this kind is entitled to show a background.

A. Fourth grade high school.

Q. How long have you been out of high school?

20 A. It is quite near six years—seven years.

Q. Since that time you have been working? A. Ever since.

Q. Are you in business? A. I am, at the present time.

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

Q. Where is that located? A. 400 West 43rd Street.

Q. How long have you been in business? A. The beginning of January. It is three months before I was arrested.

30 Q. With whom are you in business, alone or with somebody else? A. Partners, Mr. Wally.

Q. Wallace, is that the gentleman that stood up this morning? A. Yes, sir.

Q. On March 26, 1929, were you operating this business with Mr. Wallace in New York? A. I was, yes, sir.

40 Q. Where were you on that date? A. I was up at my place of business most of the time excepting that I had to leave a few times to go some-

Diomedes Mantis, for Defendants—Direct.

wheres, such as go out to a store and buy something, and then come back, but I was there from eleven up to one o'clock the next morning.

Q. Eleven o'clock A. M., Tuesday, March 26, until one o'clock on March 27th? A. That is right.

Q. What are your duties over there, what do you do? A. I help all around, outside and inside. 10

Q. That particular morning, March 26th, what time of the day did you get to your place of business? A. It was a little after eleven.

Q. Then how long did you stay there? A. I didn't stay there at all. I just went upstairs and my partner asked me to go out and go something for him.

Q. Was Mr. Wallace there? A. That was something for the store. I believe there was a hole in the wall and he had to get it plastered, and my partner asked me—— 20

Objected to.

Witness: My object in leaving the place was——

Q. Just tell us what you did? A. I left my place and I went downstairs, and it is one flight, and I crossed the east side of Ninth Avenue, and when I crossed it was to have a cup of coffee. 30

Q. You have a restaurant and you went across the street to get a cup of coffee? A. Yes, sir. I don't use the Greek coffee. We only have demi tasse.

Q. And then what did you do? A. I went to 40th Street, to this fellow that was supposed to do the work for me. I met somebody in the Coffee Pot at that time, when I went in the Coffee Pot, and I went into the lavatory, and I came out—— 40

Diomedes Mantis, for Defendants—Direct.

The Court: Do not give us all the details.
Where did you go from the Coffee Pot?

Witness: To 40th Street.

Q. Who did you see there? A. Mr. Marudis.

Q. (Indicating) Is that the gentleman you met?

10 A. Yes, sir.

Q. What did you go to meet him there for? Is he a carpenter or what? A. He is a carpenter.

Q. What time was it when you got to his place?

A. It was about 12 o'clock.

Q. How long did you stay with him? A. About five or ten minutes before we left his place.

Q. Where did you go then? A. We went back to my store.

Q. With him? A. With him.

20 Q. About what time was it when you got back to your store? A. It was about twenty-five minutes after twelve.

Q. And you had negotiations with him about this hole or this crack in the wall? A. It wasn't no crack.

Q. But you wanted to repair it? A. Yes, sir.

Q. How long was he there with you? A. He was there fifteen minutes. He looked at it and he told me the price and I told him I didn't want to go as high as that, and then he left.

30 Q. What did you do then? A. I stayed in my place. I helped out.

Q. How long did you stay there? A. I stayed there until quarter to two.

Q. What did you do after that? A. I went over to the grocery store and bought the things that we needed.

Q. How long did you stay there? A. About half an hour or so, but previous to that, in the
40 Coffee Pot, I met somebody, he is here, but his

Diomedes Mantis, for Defendants—Cross.

name is Nick—I don't know his last name. I don't know his second name.

Q. You met him there in the Coffee Pot? A. Yes, sir.

Q. What time did you meet him there? A. It must have been about quarter past eleven, because when I left my place it was a little after eleven, because I walked out to the lavatory and I saw him. 10

Q. Were you in Newark, in the City of Newark, on the 26th day of March, 1929? A. I was never in Newark—I was in Newark about three years ago.

Q. Answer my question. Were you there on March 26, 1929, at any time during the day? A. No, sir. 20

Q. Did you participate, directly or indirectly, with the commission of a crime of hold-up in the Grant Lunch Corporation on Market Street on the 26th day of March, 1929? A. Not I.

Q. Have you ever been convicted of any crime?

Mr. Fisch: I object. I do not see how the defense can offer such a proposition in evidence.

The Court: We generally permit it here.

Mr. Fisch: No, only on cross-examination. 30

The Court: I will permit it.

A. No.

Cross-examination by Mr. Fisch:

Q. You say you have been conducting this Greek coffee house since January? A. Yes, sir, I have.

Q. That is what it is, it is a Greek coffee house, a restaurant? A. It is a Greek restaurant. 40

Diomedes Mantis, for Defendants—Cross.

Q. It is on West 43rd Street? A. Yes, sir.

Q. On the second floor? A. Just one flight up.

Q. You have some rooms there that you rent out? A. Not I.

Q. How many floors do you occupy? A. The only things I have in the place is the restaurant.

10 Q. How many floors do you occupy? A. Do you mean my partner and I?

Q. Both of you. A. He has the top floor and I am concerned with the restaurant.

Q. You make a distinction? A. Yes, sir.

Q. Who do you pay rent to? A. My partner takes care of all that.

Q. How much rent do you pay? A. \$110, the first floor.

20 Q. How much for the second floor? A. I don't know.

Q. Who is the landlord? A. Goldsmith.

Q. He is not here? A. I don't think so. I don't know him.

Q. Who do you pay the money to? A. My partner pays that.

Q. When did you become a partner of this man Wallace? A. Since January.

30 Q. Was the restaurant established there before January or did you establish it? A. The restaurant was established.

Q. The restaurant was established. Did you buy an interest in it? A. I did.

Q. From Wallace? A. Yes, sir.

Q. How much did you pay him for it? A. \$200.

Q. There are rooms on this floor above the restaurant, aren't there, which are rented out?

Mr. Degheri: I object to that as incompetent, irrelevant and immaterial.

40

The Court: Objection overruled.

Diomedes Mantis, for Defendants—Cross.

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.

Walter D. Van Riper,
Judge.

10

A. Yes, sir, they are not rented out through any one I know of.

Q. Do you know this man Manus? A. Yes, sir.

Q. You know that he lives at this place? A. He did.

Q. Up to the time of his arrest? A. Yes, sir.

Q. He was living there at the time you bought the restaurant? A. He was there before I went there.

20

Q. And he was a frequenter of your restaurant?

A. I know he was a frequenter; he used to come up, and that is all I know of him.

Q. And he used to hang around there? A. No, sir; he didn't hang around there.

Q. You know the defendant Mancuso? A. I saw him once or twice.

Q. And isn't it a fact that he came in that restaurant frequently? A. No, sir; I only saw him once or twice.

30

Q. And isn't it a fact that he came in that restaurant? A. No, he didn't.

Q. You don't know when the first time was? A. No, sir.

Q. When was the second time you saw him? A. The second time, I guess, was when the detectives came up.

Q. And arrested you? A. Yes, sir.

Q. When was the first time you saw Mancuso, the first time? A. I don't remember—that is the truth.

40

Diomedes Mantis, for Defendants—Cross.

Q. You don't remember—you don't know whether it was a day or a week or a month. A. He was there once or twice, and that is all I can remember. I don't remember seeing him——

10 Q. Once or twice besides the time he was arrested with you? A. That is right. Just about once before I was arrested. I don't know; about a week or so.

Q. Sure about that? A. Positive.

Q. You are not positive that it was a week before? A. I am not positive it was a week ago—it was about a week ago.

Q. Why did you tell us just a minute ago that it was the truth that you couldn't remember?

Objected to.

20 Objection overruled.

Q. Why did you, just a few moments ago, tell us the truth, that you can't remember? A. I can't say just the date.

Q. I asked you, did I not, if you told us whether it was a day, a week or a month, and you told us you couldn't remember.

Mr. Degheri: I don't think he said that.

Witness: Will you ask me that question again?

30

Q. I asked you whether it is a day or a week or a month before. A. That is a thing I don't know.

Q. You don't know whether it is a day or a week or a month? A. I don't know.

Q. You also said it was about a week or so. A. About a week or so—I don't know.

Q. You know the last name of this man whom you referred to as Nick? A. The last name?

40

Q. Yes. A. If I know it?

Q. Yes. A. If I know his second name now?

Diomedes Mantis, for Defendants—Cross.

Q. Just what is his name? A. Manus.

Q. The man you referred to as Nick, and you said you didn't know his name, and you met him at the Coffee Pot, and you had a cup of coffee.

A. The second name?

Q. Yes. A. I can't recall the second name. It is very hard. 10

Q. How long have you known him? A. To see him?

Q. How long have you known him? A. About five years.

Q. He is a friend of your family, isn't he? A. Well, he is. We used to live in the same block.

Q. How long did you live in the same block together? A. I don't know.

Q. Did you live in the same block a month or a year or five years? 20

Mr. Degheri: Objected to. 'It is likely to raise prejudice. I can't see the relevancy or materiality of testimony of that kind, if he doesn't happen to remember the name.

The Court: It all goes to the question of credibility, to attack his credibility. However, you may have an exception.

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. 30

WALTER D. VAN RIPER,
Judge.

Q. Did he live on the same block with you for a month or a year or five years? A. I don't know. I used to see him in the block.

Q. For how long did you observe him on the same block with you? A. I don't know. I couldn't 40

Diomedes Mantis, for Defendants—Cross.

tell you that. He was a neighbor. He lived in 40th Street, and I don't know how long he lived in 40th Street.

Q. Can't you give us an idea how long he lived in 40th Street? A. Yes.

Q. You lived in 40th Street a number of years?
10 A. Yes.

Q. And you saw him very frequently? A. I wouldn't say.

Q. You knew what his business was? A. The only way I knew he was in business was he was driving a bus, and I saw him a few times going through the block, and then he was working for a coffee house, and he delivered coffee in my place once.

Q. And you knew him for five years and you tell
20 us you don't know what his name is? A. I wasn't related to him and we never got so familiar with him.

Q. He visited members of your family? A. It wasn't frequent.

Q. I didn't ask you that. You know he is Greek, and you know that his name is Nick Manus. A. Something like that, but I am not positive, but I don't know his name.

Q. What time did you go to your restaurant
30 that morning on March 26th? A. A little after eleven.

Q. Did you stay there until one o'clock the following morning, is that right? A. I went out, intervals of going out.

Q. Didn't you tell us on your direct examination that you got there at eleven o'clock and that you stayed there until one o'clock the next morning?

40 Mr. Degheri: I object. He didn't testify that way. He said on direct examination

Diomedes Mantis, for Defendants—Cross.

he went out twice, one time to the Coffee Pot, and once to get some groceries.

Q. You told us that you were there from eleven o'clock in the morning until one o'clock the following morning. A. I went out a few times.

Q. And you know Detective Gilroy? A. I do, 10
since my arrest.

Q. And he talked with you and he asked you what time you got to your place of business on the 26th of March? A. Yes—it wasn't Gilroy that asked me.

Q. Who was it? A. I think it was Mr. Thomas.

Q. Mr. Gilroy was present, wasn't he? A. I don't remember.

Q. Irrespective of who it was, whether it was Thomas or Gilroy, didn't you tell them that you 20
never got to your place of business until five o'clock in the afternoon? A. I did not.

Q. Because you worked at night and your restaurant business was mostly at night? A. I didn't.

Q. You say you didn't tell them that? A. I did not.

Q. Did you make it a practice to come to your place of business at eleven o'clock every morning? A. I was supposed to be there; that was 30
our agreement.

Q. Did you make it a practice to be there at eleven o'clock in the morning? A. Yes, sir.

Q. Did you make it your business to go out of your restaurant and get a cup of coffee? A. Not every morning. Whenever I felt like having a cup of coffee.

Q. Did you have your lunch at your own restaurant? A. I did.

Q. What time did you have your lunch that day? A. About four o'clock. After I came back 40
from the store.

Diomedes Mantis, for Defendants—Cross.

Q. What time did you have your breakfast? A. About eleven.

Q. You had some breakfast at your restaurant? A. Some pancakes.

Q. How many times before that had you been in that Coffee Pot, had you been into have your coffee or breakfast or whatever it was? A. A few times.

Q. How many times a week? A. I don't think I went there some of the weeks. I just went in a few times.

Q. Who was the man that waited on you? A. I don't know him.

Q. You wouldn't know him? A. I don't think I would.

Q. You think he would know you? A. I don't think he would.

Q. He would recognize you? A. I don't think they would recognize me if they saw me.

Q. Did you go there after you were arrested and attempt to appear in New York and see if they recognized you? A. I didn't.

Q. Why not? A. I don't know the man and they wouldn't know me.

Q. You made up your mind that they wouldn't know you so you didn't go there?

30

Objected to.

Objection overruled.

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

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

Walter D. Van Riper,
Judge.

A. Why didn't I go there?

40

Q. You made up your mind that the man didn't know you and that is why you didn't go there to

Diomedes Mantis, for Defendants—Cross.

find out whether he recognized you or not; is that it? A. No, it is not that. I couldn't go in there and tell the fellow anything about it.

Q. You knew that you were going to try to prove an alibi, didn't you? A. Sure, I did.

Q. You know that you tried to prove an alibi in the habeas corpus proceedings to avoid extradition, didn't you? 10

Mr. Degheri: I object. I don't see why this is relevant.

The Court: I consider it proper to ask if he did not do something in New York.

(Question read.)

A. Yes, I did, but I didn't want to go and have everybody on the street know me, and whoever I didn't know, that would know me, and recognize me when he saw me. I didn't want him to come and testify. 20

Q. Then the only people you wanted to come and testify were people that knew you a long time?

A. Not necessarily, no.

Q. Then why didn't you go to that restaurant?

A. When I was arrested, I didn't come out of the jail for about two weeks, or a week, ten days, eleven days, and I don't think that man would recognize me, because I didn't go there enough to be recognized. 30

Q. So the reason you didn't go there was because you didn't think he would recognize you?

A. No, sir.

Q. You got hold of Nick? A. I didn't.

Q. Somebody got hold of him for you? A. Yes, I told my brother I saw him.

Q. What is the name of the man in the grocery store? A. Mr. Couplopoulos.

Q. He is the grocery store man? A. Yes. 40

Diomedes Mantis, for Defendants—Cross.

Q. How long have you known him? A. About eight years.

Q. You were good friends? A. We always bought groceries from him, our family.

Q. You live in Long Island? A. I lived in 40th street for years.

10 Q. And how long have you known Marudis? A. I don't know him very long.

Q. How long? A. Do you mean just to say "Hello" to him, or something?

Q. How long have you known him?

Mr. Degheri: I object. Why is this material unless these men are brought on the stand to testify?

20 The Court: It goes to the question of credibility. Objection 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.

Walter S. Van Riper,
Judge.

Q. How long have you known him? A. About a year and a half or so.

30 Q. He is a Greek, too? A. Yes, sir.

Q. Do you make pancakes in your own restaurant? A. No, sir.

Q. You did eat in your own restaurant? A. I do.

Q. But this day you decided not to eat in your own restaurant and have your breakfast outside? A. No; it was just because I was going out of my store and I was passing there and have a cup of coffee there.

40 Q. How far from your store? A. In the middle of the block.

Diomedes Mantis, for Defendants—Cross.

Q. It is less than two minutes from your store?
A. I will say so, yes.

Q. And you had a cook in your restaurant, didn't you? A. Yes, sir.

Q. Was the cook there when you got there at eleven o'clock? A. I didn't go in the kitchen.

Q. You don't know whether the cook was there or not? A. I was separate in there. 10

Q. You don't know who was? A. I didn't see him face to face. He must have been there, though.

Q. Do you know who it was? A. It must have been him.

Q. How many cooks did you have? A. Just one.

Q. Do you know who it was? A. It must have been—— 20

Q. You didn't employ a boy and then a cook?
A. No, but there used to be a fellow that washed the dishes and cooked in the kitchen and helped him out.

Q. You didn't employ a boy and another cook, did you? A. No, I didn't.

Q. How long have you known Mavropoulos?
A. Ever since I went up to the store there.

Q. How long? A. About three years—three months. 30

Q. And he is a Greek, is he? A. He is, yes.

Q. Can you tell me what time you got to your place of business on the 19th of March, 1929? A. I usually get there——

Q. No, not what you usually do. What did you do on the 19th of March? A. About the same time.

Q. Eleven o'clock? A. I always get there eleven o'clock.

Q. What time did you get there on the 19th of 40

Diomedes Mantis, for Defendants—Cross.

March? A. I don't remember. It must have been before eleven, because that is my hours.

Q. You don't remember what time you got there? A. No, sir.

Q. What kind of a day was it on the 19th of March? A. I don't know.

10

Objected to.

Objection overruled.

Q. What kind of a day was the 19th of March?

A. I don't remember.

Q. Where did you have your breakfast on the 19th of March? A. Home, I guess.

Q. Do you know? A. I am not positive.

20

Q. Were you in the cafe or restaurant on the 19th of March? A. No, I don't think so, but I don't remember.

Q. Can you give us the names of any of the men that you met on the 19th of March? A. No.

Q. Can you tell us where you were on the 19th of March? A. In my business place, I guess.

Q. How do you know? A. I have been there for the past three months, and I have always worked.

Q. But you said that you guessed you were there? A. Yes, I was there.

30

Q. Do you know what day of the week the 19th of March was on? A. If I figure it I will—no, I don't.

Q. Can you tell us where you were on the following day, on the 20th of March? A. I don't remember.

Q. You don't know who you saw on that day, do you? A. No, I don't.

Q. Do you know where you were on the 21st of March? A. In my business place.

40

Q. Where is that? A. 400 West 40th Street.

Diomedes Mantis, for Defendants—Cross.

Q. Who did you meet on the 21st of March? A. A lot of people, I guess.

Q. Who? A. The customers that came in, that is about all I remember. I don't remember so far back.

Q. Did you go to the grocery store on that day? 10
A. Every day I go.

Q. Did you go there on the 21st of March? A. I don't remember.

Q. Did you see Couplopoulos on the 21st? A. I may have seen him.

Q. Did you? A. Not that I do know.

Q. Did you see Marudis on the 21st of March?
A. No—I might have, passing to 40th Street.

Q. Never mind, if you don't remember. A. No.

Q. Do you remember what day of the week the 21st was on? A. I don't remember. 20

Q. But you do remember where you were on the 26th of March and you can account for the minutes of your time since eleven o'clock in the morning on the 26th until one o'clock on the morning of the 27th. That is correct; isn't it? A. Yes.

Q. And when you were arrested and Mavropoulos and Mancuso were arrested, Mancuso and Mavropoulos, in your presence, denied that they had any part in this robbery. A. Where, in the store there? 30

Q. In the police station—any place? A. Yes, sir.

Q. And you denied it? A. Yes, sir.

Q. And you were placed in a line-up? A. Yes, sir.

Q. And you were identified in the line-up and you were picked out in the line-up, were you not?

Mr. Degheri: I object. The best evidence is the men who identified him and who say he did. 40

Diomedes Mantis, for Defendants—Cross.

The Court: That is the best evidence, but that does not make this evidence incompetent and immaterial. Some man made some identification.

I will permit it.

10

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

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

Walter D. Van Riper,
Judge.

Q. You were identified in this line-up? A. Well, I was—we were all in a line-up in the police station and there were six fellows picked out—no, there was five or six persons came out, and the last one that came out was Mr. Mullen, and we were standing——

20

Q. I ask you a question and I want you to answer it. You were identified in this line-up, were you not?

Mr. Degheri: I object. I think he has a right to answer it.

The Court: He can tell us what happened there.

30

A. So we were standing in a line, Mr. Mavropoulos was standing number one, and I was standing next to him, and Mr. Mavropoulos came out—Mr. Mullen came out, the last man that was to do the identifying, and he passed Mavropoulos and me, and he went all the way down the line, and he picked on two of the boys, and then he came back again and he looked at us and he didn't put his hand on us at all, but somebody said, "Pick them out," and he came without looking at

40

Nick Jiatransis, for Defendant—Direct.

anyone and then he picked Mavropoulos and me and the other two.

Q. You said he did that without looking at you?

A. I don't think he took a good look at us.

Q. You say somebody told him to pick you out?

A. I heard somebody say, "Go ahead, pick them out."

10

Q. And then he put his hand on you, Mavropoulos, Mancuso and Mantis? A. Yes, I think he picked on Miller the first time.

Q. You think he did? A. Yes, sir.

NICK JIATRANSIS sworn in behalf of the defendant.

20

Direct examination by Mr. Degheri:

Q. Where do you live? A. 220 West 40th Street.

Q. How long have you lived there? A. 40th Street, since 1913.

Q. What is your business? A. Vegetable, produce.

Q. What was your business on March 26, 1929? A. The same.

Q. Do you know Mr. Mantis? A. Yes.

30

Q. Did you know him on that day? A. I do.

Q. How long had you know him before that? A. A month.

Q. Did you know his family? A. Yes, sir.

Q. Where did you see Mr. Mantis on March 26, 1929, if you did see him? A. I did see him at 502 Ninth Avenue, on Tuesday, in New York City.

Q. What kind of a place was it you saw him in? A. The Athletic Cafe.

Q. What were you doing there? A. I was there to serve the place with vegetables.

40

Nick Jiatransis, for Defendant—Cross.

Q. And this was one of the places, is that the idea? A. One of my customers.

Q. Did you see Mr. Mantis in there? A. I did.

Q. What time of the day was it? A. Quarter-past eleven.

10 Q. What was he doing there? A. When I got in there, I saw Mr. Mantis come out of the lavatory, and I didn't see him for a month before, and as soon as I seen him I was glad and I say, "Hello, Mantis," and I was talking to him, and he comes out and he asks me how I do, and I said, "I just start a new business," and I said, "Come out and get on the new truck," and I went on my business and he was at the counter, and I left him there twenty-five minutes after eleven.

20 Q. Why are you so sure it was twenty-five minutes after eleven? A. I have a book and they pay so much money, the boss comes in, so I came in, and have a cup of coffee and he has his coffee and cigarettes. I make it my business to get up there after he has his coffee and cigarettes, I go up there, and it was quarter-past eleven, and I said then is the time he was feeling good, I could talk to him, so I turned around and I saw Mantis come out of the lavatory, and that is why I happened to know it was quarter past eleven and the
30 time I left it was twenty-five minutes past eleven, he left me standing, I told him I am going out, and sitting on his stool on the counter.

Q. Was that the only time you saw him on that day? A. Yes, sir.

Cross-examination by Mr. Fisch:

Q. How many times did you stop at this Athletic Cafe? A. Three times.

40 Q. What days of the week? A. Tuesdays, Thursdays and Saturdays.

Nick Jiatransis, for Defendant—Cross.

Q. How do you know that you didn't see Mantis there on a Thursday? A. I didn't went there on Thursday—didn't see Mantis there on Thursday.

Q. How do you know that you didn't see him there on Thursday? A. Naturally, if I see him, I would know it.

Q. Did you make a record of it? A. Yes, sir.

Q. Where? A. In my book.

Q. You knew that you were going to testify here? A. I did.

Q. And you knew that was the date in question? A. Yes, sir.

Q. And you testified in the proceedings in New York? A. I did.

Q. And did you have the little book there? A. I had my book. I have all of my books that the Athletic Cafe received such and such.

Q. You haven't got that book here? A. I have the receipt.

Q. I presume the place had some merchandise— A. I did.

Q. Did you sell the Athletic Cafe some merchandise on Thursday? A. I don't remember if I did.

Q. Did you make a record of that? A. I did.

Q. Was that the same record you used Tuesday; isn't your book the same as regards Thursday; is that right? A. Yes, sir.

Q. So the fact that you have a record that you were there on Thursday and you were there on Tuesday, that didn't help you any to remember that you met Mantis there on Tuesday? A. I heard he got arrested—

Q. No. (Question read.) It did help you to remember or didn't? A. It did help me.

Q. Because these entries were in your book that you were at the Athletic Cafe on Tuesday and you

Nick Jiatransis, for Defendant—Cross.

were also there on Thursday preceding it, weren't you? A. Yes, sir.

Q. And you say that these entries helped you to remember that you met him on Tuesday instead of Thursday? A. I don't understand what entry.

10 By the Court:

Q. The memorandum in the book, written in the book Tuesday, helped you to remember, is that the reason that you remember that you saw him there on Tuesday, the 26th? A. The question, what makes me remember I saw Mantis on Tuesday morning. It was Thursday night I found out——

20 Q. You were asked a question. You have a book and your book contains information you were in the restaurant on the 26th? A. Yes, sir.

Q. And also on Thursday, the 28th? A. Yes, sir.

Q. Do you remember you saw Mantis on the 26th because of the writing in the book? A. No, sir.

Q. You can answer that question yes or no. Do you remember that because of the writing in the book? A. No.

By Mr. Fisch:

30 Q. Were you there on the 21st of March? A. Well, I was there Saturday. I was there three times a week.

Q. Were you there on the 21st? A. Three times a week.

Q. Were you there on the 21st? A. Every three times a week. What day does it come on?

Q. You don't know what day it was?

Objected to.

40 The Court: I will permit it.

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

Nick Jiatransis, for Defendant—Cross.

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

Walter D. Van Riper,
Judge.

Q. You wouldn't be able to tell unless you knew the day of the week? A. That is right. I followed the days of the week. 10

Q. Then, if the 21st of March was a Thursday, were you there on the 21st of March, on a Thursday? A. Yes, sir.

Q. Did you make an entry in your book? Did he buy anything? A. I don't remember exactly. I would have to look up the book.

Q. Did you meet Mantis there on the 21st of March? A. No, I didn't. 20

Q. How do you know that? A. I remember exactly. I haven't met Mr. Mantis for a month before the date of the 26th of March.

Q. And that is the reason you give? A. Yes, sir.

Q. Did you see him there on the 23rd of March? A. Yes, sir.

Q. How long have you known Mantis? A. Since 1921.

Q. I thought you told us on your direct examination that you know him a month? A. No, I didn't see him a month. 30

Q. Didn't you say that you knew him a month and that you hadn't seen him in a month before the date? You met him in the Coffee Pot, didn't you say that? A. I didn't say that. I said I didn't see Mantis a month before, but I know him since 1921.

Q. Didn't you say on your direct examination, in answer to your counsel's questions, how long did you know Mantis, that you said a month be- 40

Nick Jiatransis, for Defendant—Cross.

fore he was arrested? A. I said I didn't see him for a month.

Q. As a matter of fact, you have known Mantis a good many years? A. Yes, sir.

Q. You know his family? A. Yes, sir.

10 Q. And you have visited his family on a number of occasions? A. Yes, sir.

Q. And you have been friends for thirteen years? A. I said 1921. I was in 40th street since 1913.

Q. Will you say you haven't known him since 1913? A. I didn't.

Q. Sure about that? A. Exactly, because I was in service, in the army.

20 Q. You visited Mantis in his house? A. After 1921.

Q. Many, many times? A. Not exactly many, many times. The family was up to my house and they was to my wedding and I was always to their parties. I couldn't tell you how many times it was. The families were friendly.

Q. Your families were friendly? A. Yes, sir.

Q. And you know them as old friends? A. That is right.

30 Q. You testified in proceedings in New York before Mr. Justice Sherman in the Supreme Court, did you not, on the writ of habeas corpus on the 19th of April, 1929? A. I did.

Q. You testified in the Supreme Court, Special Term, part two, before Justice Sherman in the writ of habeas corpus? A. I don't understand.

Q. You testified about a month ago in this case? A. Yes, sir.

40 Q. Do you remember being asked this question: "You say that your family and his family are old, old friends? Answer: Yes, sir." Do you remember being asked this question: "How many years

Chil Marudus, for Defendant—Direct.

have you been friends? Answer: I know them since 1913. I know the family, but I was going to the house when I was a single man." Then you did know the family since 1913? A. Yes, sir.

Q. And do you remember being asked this question: "You visited their house how many times?" Do you remember that? A. Yes, that is correct. 10

Q. Where was your place of business? A. 320 West 40th Street.

Q. Where did you start with your deliveries on the 26th of March? A. Out of the garage.

Q. Where is the garage? A. 351 West 40th Street.

Q. What time did you start out? A. About three o'clock in the morning.

Q. What time did you start to make deliveries? A. I had to go to Washington Market to make my purchases. 20

Q. Where did you go from Washington Market? A. To the store.

Q. When did you go to this coffee house? A. About four o'clock.

Q. It took you from half past eight until quarter past eleven before you got there? A. Yes, sir.

Q. The reason you remember the date is because you put it in your book? A. I remember the date because I found out Mantis was arrested. 30

Q. And the thing that makes you remember is you looked at the book? A. Yes, sir.

CHIL MARUDUS sworn in behalf of the defendant.

Direct examination by Mr. Degheri:

Q. Where do you live? A. 463 West 57th Street, New York City. 40

Chil Marudus, for Defendant—Direct.

Q. How long have you lived there? A. Fourteen months.

Q. And do you know the defendant, Mr. Diomedes Mantis? A. Yes, I seen him.

Q. Do you know him? A. Yes, sir.

10 Q. How long have you known him? A. A year or a year and a half.

Q. Do you recall the 26th day of March, 1929? A. Yes, sir.

Q. Do you recall or recollect whether or not you saw Mr. Diomedes Mantis on that day? A. He came in my place.

Q. Where is your place? A. 306 West 40th Street.

20 Q. What is your business? A. Painter and decorator.

Q. You say on that day you saw Mr. Mantis? A. Yes.

Q. Where was it that you saw him? A. He came in my shop.

Q. What time of the day was it? A. About ten minutes to twelve.

Q. How do you know that? A. I know, because it is lunch time, because twelve o'clock I go to eat with him.

30 Q. What was the purpose of his visit with you? A. He came in my place to tell me he has something to fix in the toilet, a broken wall. I say, "All right," and of course I go with him because this is 43rd Street, and I go to 57th Street, and then he and I go to 43rd Street, first floor, a Greek restaurant, and he showed me the toilet crack in the wall, both sides, and he asked me to take a little material and a little labor.

Q. You went to his place of business; is that right? A. Yes, sir.

40 Q. Do you remember what time you got there?

Chil Marudus, for Defendant—Direct.

A. About twelve o'clock; maybe ten minutes after twelve, five minutes after twelve.

Q. What distance is there between your place of business and Mr. Mantis' place of business? A. Three blocks.

Q. When you got there tell us what you found he wanted you to do. A. He showed me a broken place in the toilet and the hole and he showed me a broken place, and he said could I fix that, and I said, "Yes, I can fix it for you." He said, "How much you want?" And I said, "\$15." And he said to me, "God! I give you \$10, I find somebody else." And he started joking with me. I said, "If you want it for \$15, let me know, I will be in in the afternoon in the store, any time you want let me know," and I left him to go home. 10

Q. What time was it, if you know, when you left him at his place of business? A. The only time I know, when I got to go home, it is quarter to one. 20

Q. When you got home, the three blocks— A. No, his place is 43rd to 57th Street; it is about fourteen blocks. The only thing I remember it is quarter to one when I get to my home because my wife says, "What is the matter"——

Objected to.

30

Q. Is that the only time you saw Mantis that day? A. Yes, sir.

Q. You saw him again, did you? A. After that, you see.

Q. What makes you so sure that this was Tuesday, March 26th? A. Because two o'clock Thursday I heard this from my landlord, he says, "You know"——

Objected to.

40

Chile Marudus, for Defendant—Cross.

Q. Don't tell us what your landlord told you. Tell us as a result of what you were told, what did you do? A. I heard it on Thursday that he was arrested for a robbery held on Tuesday.

Q. And you are sure that the day you heard it was a Thursday? A. Certainly, I am very sure.

10

Cross-examination by Mr. Fisch:

Q. What makes you so sure that the day you heard it was a Thursday? A. I heard he was arrested on Tuesday; that makes me sure.

Q. What makes you sure that you heard on Thursday that he was arrested in connection with the hold-up that was held on Tuesday? A. Because I heard that he was arrested on Tuesday.

20

Q. I thought you told us you heard it on a Thursday? A. Yes, on a Thursday. That is what makes me sure.

Q. You told us a few minutes ago that you heard on Thursday that Mantis was arrested? A. Yes, sir.

Q. How do you know that it was Thursday when you heard it? A. Because my landlord told me on Thursday.

Q. How do you know that he told you on Thursday? A. I know my week days.

30

Q. How do you know that, did you make a memorandum? A. No, I know my week days.

Q. Did you put it down in a book? A. I know very well it is Tuesday and Thursday, because he told me it happened on Tuesday.

Q. Then your landlord told you that something happened on Tuesday; is that right? A. Yes, sir.

Q. And you said that Couplopoulos told you on Thursday? A. Yes, Thursday.

40

Q. I want to know how you know that it was Thursday that Couplopoulos told you that? A. I

Chile Marudus, for Defendant—Cross.

guess if you asked me—don't I remember what happened two days——

Q. Just tell me how you know it was Thursday that Couplopoulos told you about Mantis being arrested? A. I told Mr. Couplopoulos told me Thursday, because he told me about Tuesday and this was Thursday, two days after. 10

Q. The only way you can tell us that you know it was Thursday is that you know it was Thursday, and that is all, is that it? A. Yes.

Q. You can't give us any reason for remembering that it was Thursday, can you? A. That is the reason I gave you, that something happened.

Q. You can't give us any reason for remembering that it was Thursday that you spoke to Couplopoulos? A. What reason I give? 20

Q. Who are some of the other people that you saw on Thursday besides Couplopoulos? A. I saw many friends.

Q. You met a lot of people on Thursday? A. Not Thursday; every day I meet them.

Q. How long have you known Mantis? A. The only thing I know him, about a year or a year and a half; I saw him in the street; he is not a friend of mine.

Q. You know him about a year or a year and a half? A. I saw him in 40th Street. 30

Q. How do you know it was ten minutes to twelve that he came into your place? A. It was twelve o'clock that I left my place.

Q. How do you know that? A. I know what time I go to eat.

Q. You know the time from being hungry? A. I know the time from my stomach.

Q. So that from your stomach you knew it was ten minutes to twelve? A. I remember my watch, 40 too.

Chile Marudus, for Defendant—Cross.

Q. Did you look at your watch? A. I look at it all the time; I look at it too; I got a wrist watch too. I am working by appointment.

Q. Did you look at your watch at ten minutes to twelve that day? A. Yes, he told me, "Come on, now," and I said, "It is twelve o'clock."

10 Q. Did you look at your watch at ten minutes to twelve? A. Yes.

Q. Why then did you tell us that you knew it was ten minutes to twelve by your stomach? A. Because twelve o'clock I am going home to eat. Twelve o'clock we have to go home to eat.

Q. Why didn't you tell us that you looked at your watch instead of telling us that you looked at the time by your stomach? A. I don't see any difference between the watch and the stomach.

20 Q. Did you look at your watch when you got to Mantis' place? A. Yes, I looked at my watch.

Q. What time was it when you got to Mantis' place? A. When I go home I look at my watch.

Q. Did you look at your watch when you were at Mantis' place? A. No, I looked at home.

Q. You didn't have to consult your stomach? A. Yes, because my wife said, "Why you come in so late?"

30 Q. You had to consult your watch as well as your stomach? A. Yes, sir.

Q. Did you look at the calendar? A. Yes, I look every morning. I have a check book here.

Q. That is a good thing to have. What time did you look at the calendar? A. As soon as I open my eyes and I go to wash myself, I look at the calendar.

Q. What time? A. Half past six.

Q. You looked at the calendar every morning. Did you know when you looked at the calendar

40

Chile Marudus, for Defendant—Cross.

and washed yourself what date it was, what date was it then? A. Tuesday.

Q. What date? A. March 26th.

Q. Did you make a memorandum? A. I make a memorandum because I am interested in that case, because I hear it.

Q. When did you make the memorandum? A. 10
Just as soon as Mr. Couplopoulos tell me Mr. Mantis is arrested yesterday for robbery Tuesday.

Q. When Mr. Couplopoulos told you that Mantis was arrested and charged with having committed a robbery on the 26th of March, and then you immediately made a note of it because you knew that Mantis was a friend of yours, and that it was the date on which he was charged with that kind of a crime? 20

Objected to.

Objection sustained.

Q. But you made a note of it, didn't you? A. I don't understand.

Q. You made a note of it. A. What do you mean?

Q. You said a few minutes ago you made a note of it. A. Yes, I know it was Tuesday.

Q. Where did you make that note? A. I don't 30
say I make a note.

Q. Didn't you, in answer to my question just a few minutes ago, say that you made a memorandum? A. Yes. Here (indicating the head).

Q. You made a mental memorandum in your head? A. Yes.

Q. When did you do that? A. As soon as I heard he was arrested.

Q. Do you know what day of the week the 15th of March fell on? A. I don't know. It is very 40
easy to find.

Chile Marudus, for Defendant—Cross.

Q. And it is very easy to find what day of the week the 26th of March fell on, too, isn't it? A. I didn't come here to lie to the Judge——

The Court: Wait a minute. Answer the question.

10 Witness: I don't know what is the 15th.

The Court: The Prosecutor asked you if it wasn't easy to find out what day the 26th was on.

Witness: Yes.

By Mr. Fisch:

Q. You know the Mantis family, too, don't you?

20 A. I see them sometimes—I don't know—he is not a friend of mine. I see him. He is a Greek. He is not a friend of mine.

Q. Couplopoulos was the one that told you that Mantis was charged with committing a robbery? A. On the 28th he tells me he was arrested on Tuesday in Newark for robbery.

Q. So that it was on Thursday that he told you that Mantis was charged with committing a robbery on Tuesday, the 26th of March? A. That is it.

30 Q. After Mantis was arrested, he came to see you, didn't he? A. Yes, sir.

Q. And spoke to you about appearing as a witness for him, didn't he? A. I came myself.

Q. Answer yes or no. A. Yes.

Michael G. Couplopoulos, for Defendant—Direct.

MICHAEL G. COUPLOPOULOS, sworn in behalf of the defendant.

Direct examination by Mr. Degheri:

Q. Where do you live? A. On 7th Avenue, New York City. 10

Q. How old a man are you? A. About forty.

Q. How long have you lived there? A. Two years.

Q. That is, in New York City? A. Yes.

Q. Do you know Diomedes Mantis? A. Yes, sir.

Q. How long have you known him? A. About eight years.

Q. Do you remember the 26th day of March, 1929? A. Yes, sir. 20

Q. Do you remember or recall whether or not you saw Mr. Mantis on that day? A. I remember that I did.

Q. And what time of the day did you see him? A. About two or a little after two.

Q. In the afternoon? A. In the afternoon.

Q. Where was it you saw him? A. In my store.

Q. Where is your store? A. 306 West 40th Street, New York.

Q. What business are you in? A. Grocery store. 30

Q. What was his purpose in visiting you? A. To buy some stuff, some groceries.

Q. How long were you with him or was he with you? A. He was about, I imagine, half an hour in the store.

Q. Was that the only time that day you saw him? A. That was the only time I saw him.

Michael G. Couplopoulos, for Defendant—Cross.

Cross-examination by Mr. Fisch:

Q. He comes in your store nearly every day?

A. Yes, sir.

Q. Was he there on the 24th? A. Maybe he was.

10 Q. You don't remember? A. I don't remember.

Q. Was he there on the 23rd? A. Pretty nearly every day—I don't remember exactly.

Q. You don't remember exactly whether he was there on the 23rd? A. He comes pretty nearly every day.

Q. And that is why you say he was there on the 26th? A. I remember that; it was on the 26th.

20 Q. Isn't it a fact that because he comes to your store every day and is a customer of yours and you know him for eight years, that is why you say he was there on the 26th of March? A. I remember exactly because they said he committed a crime on that date, and I was sure that he was in my store.

Q. Because they say that he committed a crime in Newark that day, that is the only thing that makes you positively sure that he was in your store on that date; is that right? A. It makes me more sure that day that he was in my store.

30 Q. You didn't make any memorandum of it? A. I didn't make any memorandum because he comes almost every day.

Q. Pretty nearly every day? A. Yes, sir.

Q. Because he comes there pretty nearly every day and because you heard that he was charged with a crime in Newark on the 26th, makes you sure that he was in your store on that day? A. Because I remember he was there.

40 Q. What makes you remember it? A. Because two days I found out that he got arrested on oc-

Michael G. Couplopoulos, for Defendant—Cross.

count that he committed a crime in Newark, that is why I remember it.

Q. Was he there on the 27th? A. No, not on the 27th.

Q. Sure about that? A. I am sure that he wasn't there. He was not there on the 25th.

Q. Was he on the 27th? A. He was there on the 27th. 10

Q. How do you remember that? A. He was in the store.

Q. What makes you remember that? A. He was in the store. I remember it wasn't very long till he got arrested, that is why I remember that.

Q. What is it that makes you remember that he was there on the 27th? A. The same way that I will remember that I am here in Newark today. Tomorrow, I will remember that I know I spent my day here. 20

Q. What time was he there on the 27th? A. Maybe some time in the afternoon.

Q. What time? A. After two.

Q. How long after two? A. I don't remember exactly; maybe it was quarter after two or more.

Q. And maybe it was three or half past three? A. No, it wasn't so late.

Q. How do you remember it was between two and three? A. As much as I recall, it was that time. 30

Q. What is that? A. I think it was that time because I start about two o'clock most of the day. I relieve my brother about that time.

Q. That is why you think it was that time? A. Yes, sir.

Q. What time was it on the 26th that he was there? A. On the 26th, it was two o'clock or a little after two. 40

Michael G. Couplopoulos, for Defendant
—Re-direct—Re-cross.

Q. Did you make a memorandum of that? A. No, I don't make a memorandum.

Q. Do you know what day of the week the 23rd of March was? A. I think was Saturday, if I am not mistaken.

10 Q. Was he in there on that day? A. Maybe he was there.

Q. Was he? A. Well, I am not sure, I am telling you.

Q. The only days that you are sure about are the 26th and 27th of March? A. Yes, sir.

Re-direct examination by Mr. Degheri:

Q. You say he visited your store pretty nearly every day? A. Yes.

20 Q. To buy groceries? A. Yes, to buy groceries.

Q. And you heard he was arrested? A. I heard of his arrest on the 28th.

Q. Did that make you remember anything what happened on Tuesday? A. Yes, sir.

Re-cross-examination by Mr. Fisch:

Q. Did Mantis pay you for the groceries that he bought? A. Yes, sir.

30 Q. He paid you himself? A. Sure.

Q. In cash? A. Cash.

Q. Sure about that? A. I am positively sure.

Q. You are sure his partner didn't pay you? A. No, sir, I got it from him. No matter who comes in the store, he pays.

Q. You got the money from Mantis? A. Yes, sir.

Q. And you know this man Marudus? A. Yes, sir.

40 Q. How long do you know him? A. About three years.

Theodore Mavropoulos, for Defendants—Direct.

Q. You are Marudus' landlord? A. Yes, sir.

Q. So that you are all friends there together?

A. Of course, when you have a business you have to have friends.

Q. You are a Greek too, are you not? A. I am.

10

THEODORE MAVROPOULOS, sworn in behalf of the defendants.

Direct examination by Mr. Degheri:

Q. What is your occupation? A. Cook.

Q. How long have you been employed by Mr. Mantis and Mr. Wallace? A. I have been employed for Mr. Wallace since January 7, 1929.

20

Q. Were you visited while in the course of your duties by any police during the month of March?

A. Yes, sir.

Q. Do you remember the particular time when they came there? A. I do.

Q. Just tell your story when the police first came to see you at your place of business. A. It was, I believe, after seven or eight o'clock, I don't know exactly, but the two police officers, they walked in the place. I was in the place, taking care of the place, because the bosses was out. They came in. I was sitting at a table. There was nothing doing. There was only a few people there, but the officers came in and they walked from the dining room to the back. Before the kitchen there is another room. They walked in that room and started asking questions. I didn't answer them first.

30

Q. Are those police officers present here? A. Yes, sir.

40

Theodore Mavropoulos, for Defendants—Direct.

Q. And you can pick them out? A. Yes, sir; it was Mr. Thomas and Mr. Gilroy. They came in and first I didn't notice they was officers, but afterwards I seen them in the back room and they was talking to the waiters. The conversation, I don't know what it was about.

10 Q. Where were you at this time? A. I was right in the dining room. It is a front room, it is a dining room; the second room is a little dining room and the back of the room is the kitchen; so I walked in front of the officers and I asked them what they want, so they told me they are police officers. I said, "Is there anything I can do for you?" Thomas started to question me. He said, "What is your name?" He went in a rough way.
20 I told him my name, my address, and so forth. He said, "We don't want anything now, sit down," and then I got back and sat down in a chair. They went in the kitchen looking all over. I don't know what they was looking for, and they left the place.

Q. At what time was that when they left the place, about? A. Probably they stayed about fifteen minutes in the place. I don't recall the time exactly.

Q. Was it the earlier part of the evening? A. It was between half past seven and eight o'clock.
30 They left the place. I didn't think anything was wrong. About fifteen minutes later the boss came in.

Q. What boss came in? A. Diomedes and Mr. Wallace.

Q. Mr. Mantis and Mr. Wallace? A. Yes, sir. And I told him the officers came in the place and he asked me what they was looking for and I said, "I don't know." About half past eleven I always
40 get through there.

Theodore Mavropoulos, for Defendants—Direct.

Q. What were your hours there? A. Eleven to eleven.

Q. What time did you go to work that day, the day of March 26th? A. Eleven o'clock.

Q. Is that all that transpired or happened on the first visit? A. Yes, sir.

Q. Tell us what happened on the second visit? A. The second visit it happened that they came up again and I was all dressed up, I didn't have the other clothes on, I had these clothes on me, and I was just ready to walk out of the place. I was going to take my clothes that was hanging right next to the cash register. They came in again, the same officers, and two more.

10

ADJOURNED until tomorrow, Friday, May 17, 1929, at ten o'clock A. M.

20

THIRD DAY.

Friday, May 17, 1929.

Continued pursuant to adjournment.
Present, counsel as before stated.

30

THEODORE MAVROPOULOS resumes the stand in behalf of the defendants.

Direct examination by Mr. Degheri (continued):

(Last answer read as follows: "The second visit it happened that they came up again and I was all dressed up, I didn't have the other clothes on, I had these clothes on, I had these clothes on me, and

40

Theodore Mavropoulos, for Defendants—Direct.

I was just ready to walk out of the place. I was going to take my clothes that was hanging right next to the cash register. They came in again, the same officers, and two more.”)

10 Q. Just continue your story from that point on.
A. I seen Thomas come over and search me.

Q. Tell what time the second visit took place.

A. Half-past eleven, I believe, quarter after eleven, half-past eleven. So they searched me and they didn't find nothing on me, and they said to me: “Sit down there”. The other officers told me to go and sit down. I sat down there, and they searched the other people, and they was asking me questions, so Mr. Thomas came over and asked

20 me questions.

Q. What questions did they ask you at that time? A. What I was doing here, what was my name, where I was living. I told them. He said: “All right, you sit down”. I sat down again, and after they was searching all of the people, I believe Officer Fallon, they was talking between themselves, Fallon and Thomas together, and the way I understand——

Objected to.

30

Q. Just tell us what happened. A. What happened, they was just talking to themselves, and point out the fellows, and Mr. Thomas came over to me and said: “Get up, come on”.

Q. You mean the officer who testified here yesterday? A. That is right. He says to come along to the police station. I said: “Me, too”? And he says “Yes”. All right; then I put my coat on and I went over to the police station, I went there,
40 and we found two more fellows there, a fellow by

Theodore Mavropoulos, for Defendants—Direct.

the name of Miller and a fellow by the name of Crotty; so they took us separately, led us down; they took this big fellow, Nick, I believe it was, first they took him over in the room and they questioned him. I don't know what they were saying about, and I was sitting outside in the other room with the rest of them. A little while after they came over, I believe it was the third or fourth fellow, and Mr. Fallon called me over to the desk and asked me questions, whether I was in Newark that day, and the next day, and I answered the questions, and he says to me—and then he asked me where I was living again, and he marked that down. He asked me if I have ever been arrested before. I told him I did; so that is all there was, and after I sat down in a chair, and then they took our fingerprints and my pedigree and how old I am, and so forth. 10 20

Q. Where did this take place, at your place of business where you were? A. No, that took place in the police station.

Q. Tell the Court where this took place.

Mr. Fisch: He has already told the Court.

The Court: That is the way I understood it.

Witness: They take our pedigree and where I was born—I don't know what it was all about. Then I asked the Officer Gilroy, I said: "What is this all about, Mr. Gilroy?" He says: "You will find out". He didn't say another word, and I didn't say anything. They took us down to police headquarters the same night, the one fellow at the desk, and they took us and put us down as fugitives from justice and robbery and assault, and I didn't know what it was 30 40

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all about. I turned yellow and green. I says: "What do you call that, Mr. Gilroy?" He says: "You will find out". I says: "What do you mean, robbery and assault and battery and fugitive from justice?" I said: "I don't know what the words fugitive from justice means, I want an explanation". I said: "What do you mean?" He says: "They want you in another town", and he says: "You will find out", and they took us downstairs, and we stayed there all night, and they separate us the next morning, they took us over to Police Headquarters in 53rd Street, and we was second, the other two fellows that was up in the police station, and they had two extra fellows—they put us in a line-up.

Q. How many men were in that line? A. Well, there was nine or ten, I couldn't recall exactly how many there was; there was nine or ten when they put me in the line; they put me in first, Diomedes Mantis was next to me. I don't recall exactly; Mancuso and Mantis was next to me, and they came over—

Q. When you say they, who do you mean? A. These people that come from Newark who claimed they got robbed. First there was a man with a lumber jacket on him, he came over, and one of the police officers, Gilroy, I believe it was, he says to him: "Point him out, don't be afraid". The man comes around, passed by me, and he goes all around the line; he comes back, and he then shakes his head, so Mr. Gilroy repeats the words: "Point them out, don't be afraid, they ain't got no guns on them". They passed me, and Mr. Gilroy says: "Take a good look at them", and he looked at Mantis, and he pointed out the fellow Manus and

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Mancuso; so the officer told him, that is all, and he says "Yes", and all right, he went away; and then they brought in another young lady; she came over, and she looked me over and she looked everybody over, and she pointed out these two men.

Q. (Indicating.) Is that the young lady that testified here, Miss Hixson? A. I don't recall the name. The first young lady that was on the stand. She said: "That is all". I don't remember exactly who was the third man, and pointed out these two men again, and then there was another fellow, a big fat fellow, and he testified the other day, which he identified nobody. Then another lady came in, and she identified nobody. I don't remember exactly if there was another fellow that came over for identification—identify us—I don't remember that exactly. I remember this Mr. Mullen, he came over the line and he passed me down——

Q. How many inspections were made by these people; in other words, how many line-ups were there? A. It is the same line-up I am talking about from the beginning; they start looking us over.

Q. When you first went in there, in the first line-up? A. That is the first line-up I am talking about now.

Q. Go on. A. And then Mr. Mullen came over and passed by me and went over down and he pointed to Manus, and then he comes back, and he was shaking his head, I don't know exactly what it was—no—yes. Mr. Gilroy, Officer Gilroy, he turned around and he says to him: "Point them out, don't be afraid, they ain't got no guns on them", and all of a sudden he turned around at the time he see that I was in a position in back of him, without looking at me, he took position, like, stuck his head out, and he pointed to Mantis and he pointed to Manus——

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Mr. Fisch: The witness pointed with his hand. I don't know what that means.

Witness: It means, Mr. Prosecutor, that he put his hand on me——

10 Q. On your shoulder? A. No, on my chest, and he put his hand on Mantis, and then he pointed out Manus, and then he pointed out the guy that was here yesterday, he pointed out Miller. When I said he pointed me out, I demanded of the officer, I said, "Mr. Gilroy, I believe that man is crazy". That is the way I expressed myself. I said, "That man makes some mistake, he is crazy". I said, "I want another identification", and he said, "All right, I will do that for you", and this was in the alley next to the courtroom.
20 There was the officer and the rest of the people, the witnesses. He said, "All right, I will do that for you". All right, when he did that, I figured——

Objected to.

The Court: Just tell us what happened.

Witness: I just told the officer, "Please let me go further down, change my position because the man looked at me"——

30 Q. Don't tell us what you figure and guess, just tell us what you said and other people said to you and what they did. A. I just told the officer the man who pointed me out didn't look at me, and the officer said, "Stay where you are, never mind that". I had to stay there and, without looking at me again, he put his hand on me, Mavropoulos, Manus and Miller, and then he turned around to go away. I am not positively sure—I don't know exactly which one he meant, he pointed to me and
40 he said, "I am not exactly sure of that man".

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Who he means, I don't know. They took us before the Magistrate and we was held as fugitives from justice. Then it was a week later that the officers from Newark, they came over—

Mr. Fisch: I haven't put in any objection, but this witness is rambling along in a narrative way. 10

The Court: Interrogate him.

Q. What took place after this identification took place? A. They took us over to the Magistrate's Court and they told him we are fugitives from justice.

Q. Were you subsequently brought here to Newark; after the termination of these proceedings you were brought to Newark, were you not? 20
A. I was brought to Newark by—we went to the Supreme Court first—

By the Court:

Q. After you got through in the Supreme Court you came over to Newark? A. Yes.

By Mr. Degheri:

Q. Tell the Court and jury where you were on March 26, 1929, last. A. I was working 400 West 30
43rd Street.

Q. What time of the day were you working at that particular place? A. I went to work at 11 o'clock in the morning until eleven in the night.

Q. And you stayed there until eleven at night? A. Right.

Q. Were you ever in Newark on that date? A. I was never in Newark in my life.

Mr. Degheri: I object to the Prosecutor standing so near the witness stand. I think it is prejudicial to the defendant. 40

Theodore Mavropoulos, for Defendants—Cross.

The Court: I do not think it is prejudicial to the defendant.

Q. Was anybody present there while you were at work? A. Yes, sir.

10 Q. Is there anybody that was present there in court today while you were at work from eleven o'clock on? A. The boss of the place.

Q. What is his name? A. Mr. Wallace.

Q. He was present, was he? A. Yes, sir.

Q. Did you, either directly or indirectly, have anything to do with this alleged hold-up that took place in Newark? A. I don't know what it is all about. I never had anything to do with it and I was never implicated in a crime like that.

20 *Cross-examination by Mr. Fisch:*

Q. How long have you been working in this restaurant? A. Since January 2nd.

Q. How long have you known Mantis? A. I know him since he came over to the place.

Q. Since when? A. I don't recall exactly; January, some time, after a week I started to work.

Q. How long do you know Manus? A. I know Manus since the day I went to work in the place.

30 Q. He lives in that place, doesn't he? A. I don't know exactly.

Q. What is that? A. I don't know exactly.

Q. You are there every day? A. Surely.

Q. According to your testimony. A. Yes, sir.

Q. And he eats in that restaurant? A. I see him there sometimes.

Q. And you know that he lives in a room in that same building right above the restaurant? A. I don't recall that; I don't know that exactly.

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

40 Q. What do you mean, you don't know it exactly, what do you mean by that? A. Because I

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don't ask the man's business, where he lives, what he is doing.

Q. You talked to him? A. No, sir.

Q. You never spoke to him in your life? A. The way I am working in the kitchen and he passed by, the way the entrance, he passed by the entrance, and he said, "Hello, Chef, Hello." 10

Q. And that is all? A. That is all.

Q. You didn't know where he lived? A. No, sir.

Q. You knew that he had a room in that place? A. I don't know exactly.

Q. And you knew that he rented a room? A. I don't know exactly.

Q. Do you know Mancuso? A. I never saw that man until the day we got arrested. 20

Q. You are sure about that? A. I am positively sure.

Q. Do you know Couplopoulos? A. The way I know him—

Q. Do you know him?

Mr. Degheri: I object to the caustic way the Prosecutor is asking the questions.

The Court: He can answer that question.

A. The way I know that man—

Q. Do you know him by sight? A. I just seen the man go in the grocery store sometimes and buy something. 30

Q. Then you do know him? A. This way.

Q. Do you know Jiatiansis? A. No, sir.

Q. Do you know Marudus? A. No, sir.

Q. Don't know Marudus either? A. No, sir.

Q. How long do you know Wallace? A. I know him, I believe, a few days before I went to work up there.

Q. Who paid your wages? A. Mr. Wallace. 40

Theodore Mavropoulos, for Defendants—Cross.

Q. Who paid the bills? A. I don't know—the boss.

Q. Who? A. I don't know exactly who paid the bills.

Q. You did see goods come in? A. I did see goods come in.

10 Objected to.

 The Court: I think it is objectionable.

Q. Did you have a room at this place, too, at one time? A. No, sir.

Q. Never did? A. Never did.

Q. Sure about that? A. Positively sure.

Q. But you knew that Manus lived there? A. I didn't know.

20 Q. Didn't know that he did? A. No, sir.

Q. How long have you been in New York? A. Since 1922, I believe.

Q. Where were you before that? A. Virginia.

Q. How long were you in Virginia? A. Since 1920.

Q. And since 1922 you say you have been in New York and you have never been in New Jersey at all? A. No, sir.

Q. Never been to Newark? A. Not only not in Newark, but never have been in New Jersey state.

30 Q. You never saw Mr. Mullen before he came over to the lineup? A. Right.

Q. Never saw him before that? A. Never saw him in my life.

Q. Do you know of any reason why he should testify falsely?

 Mr. Degheri: I object. That is a very improper question. How does he know?

 The Court: If he knows, he can say so.

40 Objection overruled.

Theodore Mavropoulos, for Defendants—Cross.

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

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

WALTER D. VAN RIPER,
Judge. 10

A. Do I know why Mr. Mullen pointed me out?

Q. Do you know of any reason why Mr. Mullen should testify falsely against you?

Mr. Ormsby: I object to that.

Mr. Fisch: Who is representing this man, I would like to know.

The Court: The question is permissible.

Defendants' counsel prays an exception to this ruling of the Court. 20

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

WALTER D. VAN RIPER,
Judge.

Q. Do you know of any reason why Mr. Mullen should lie about you? A. I don't know exactly. We were all prisoners, your Honor.

Q. You say you didn't know, when you were charged, what a fugitive from justice meant? A. 30
No.

Q. You knew what assault and battery and robbery meant? A. The way I understand, as far as I learned, and reading a few words in the papers—of course, I can read a little bit. I know robbery is stealing.

Q. You knew that? A. Yes, I did.

Q. And you thought that you ought to tell us that you knew that from reading the papers? 40

Objected to.

Objection sustained.

Theodore Mavropoulos, for Defendants—Cross.

Q. When you were arrested that night, prior to your arrest, you say that the officers came into the place and they sort of made an inspection of the place, didn't they? A. Right.

10 Q. They said they wanted to look over the place and see what kind of a place you were running there? A. I don't know about that.

Q. Is that what they said? A. No, they didn't say a word about coming to inspect the place.

Q. They looked in the ice box? A. I don't know, because they don't let me go as far as the kitchen.

Q. The first time they were there? A. Yes, the first time they were there they didn't let me go to the kitchen. I was sitting by the cash register, sitting at the table.

20 Q. How many people were in the place? A. Five or six; I don't know exactly.

Q. Subsequently, when they came back, there were a greater number of people in the place, when they arrested you? A. Yes, there was a lot of people in there.

Q. They didn't take them all into custody, did they? A. They searched all the people—what do you mean by custody?

Q. They didn't arrest them? A. No, they arrested five.

30 Q. They arrested you and Mantis and Manus and Mancuso and they took a fellow by the name of Brown to the station house and subsequently released him? A. That is right.

Q. What time do you say it was when the officers first came there? A. Between seven and eight o'clock, something like that.

Q. What is that? A. Between half past seven and eight.

40 Q. You were not in the kitchen, then, you say; is that right? A. That is right.

Theodore Mavropoulos, for Defendants—Cross.

Q. What time was it when they came the second time? A. About quarter after eleven, half past eleven.

Q. And you were not in the kitchen then? A. No; that is the time I get through working.

Q. You were not in the kitchen then? A. No.

Q. Were you paid, and by whom? A. Yes, sir.

Q. How much were you paid? A. \$28.

Q. What day did you get paid on? A. Monday.

Q. Do you make any record of the dates when you get paid, or is there any record made by anybody in any book?

Mr. Ormsby: I object to that as immaterial.

The Court: I think it is material. It goes to the question of whether he is employed there.

(Question read.)

The Court: So far as you know—do you know of any record?

Witness: I don't know, your Honor.

Q. Do you sign a slip for your pay? A. No, sir.

Q. Do you ever see anybody put anything down in a book when you get paid?

Mr. Ormsby: I object to that—I object to this line of examination.

The Court: I will permit 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.

Walter D. Van Riper,
Judge.

A. I didn't pay any attention to it.

Theodore Mavropoulos, for Defendants—Cross.

Q. Who paid you? A. Mr. Wallace.

Q. Always Wallace? A. Yes, sir.

Q. Never Mantis? A. Never.

Q. Did you have a cook's license? A. No, sir.

Q. You have to have a license in New York to be a cook, don't you? A. I don't know about that.

Q. From the Department of Health? A. I used to have a card in 1926 from the Department of Health.

Q. You haven't any card now? A. No.

Q. You haven't had a card since 1926, have you? A. Yes, sir.

Q. And you say you worked every day from eleven until eleven as a cook? A. Yes, sir.

Q. Let me see your hands. Stand up a minute and let the jury see them.

(Witness exhibits hands to the jury.)

Q. And you say those are the hands that do the cooking? A. Yes, sir.

Q. Have you ever been convicted of crime? A. Yes, sir—what kind of a crime, Mr. Prosecutor? You didn't ask me.

Mr. Fisch: No more questions. That is all.

By Mr. Ormsby:

Q. Have you ever been convicted of a crime? A. Yes, sir.

Q. What crime, if any? A. Vagrancy.

Mr. Ormsby: My client has made a special request to see if we can't have an opportunity to look over these minutes. He says if we can look over the minutes

Theodore Mavropoulos, for Defendants—Cross.

his innocence can be proven because of the conflict of the testimony that was taken at that time.

Mr. Fisch: I suppose the purpose is to attack the credibility of the witnesses—some of the state's witnesses; is that so?

Mr. Ormsby: I suppose that is what he has in mind.

The Court: As I recall the testimony of the defendant who has just left the stand, with reference to the identification of the lineup, he has not said anything that wasn't embraced in the cross-examination or your associate's cross-examination of the State's witness. For instance, it was asked the witness Mullen whether he didn't pass by and put his hand on him. All the evidence was embraced in the questions directed to the State's witnesses.

Mr. Degheri: I think, as representing him, we have examined the other witnesses, as far as we know. We don't know what is in the record.

The Court: It is a transcript in the Supreme Court.

Mr. Degheri: If we had that testimony we would have been in a better position to examine these witnesses.

The Court: I do not think the defense is entitled to this. If there is a public record in New York, they could have gotten a copy of that testimony, the same as you did. I am simply going to ask you to allow them to see the record.

Mr. Fisch: It seems to me it is just an opportunity to make a speech.

Caterius Wallace, for Defendants—Direct.

10 The Court: I do not think you are entitled to request the Court to ask the Prosecutor to turn all the testimony over, for the reason I have just said, but, in order to satisfy your client, that you are doing everything you can, I will merely ask the Prosecutor if he cares to do it.

Mr. Fisch: I have arisen for the purpose of offering the testimony and the portion they want of it.

20 Mr. Degheri: I want this to go in the record. I think it is very important. I resent the remark as to his arising to offer the record. We asked the Prosecutor the day before yesterday if he would let us have that record. Now, he is amiable and offers it at the last minute.

The Court: If there is anything in that record that shows that any injustice would be done, or any such inference, so far as it is in the power of the Court to correct it, it will be corrected. You have the record and you can make such use of it as to satisfy your client. That is as much as you can do.

30

CATERIUS WALLACE, sworn in behalf of the defendants.

Direct examination by Mr. Degheri:

Q. Where do you live? A. 254 Manhattan Avenue; that is my mother, but I have the rooms above that restaurant and I live there.

Q. Are you in business? A. Yes, sir.

40 Q. How old a man are you? A. Thirty.

Caterius Wallace, for Defendants—Direct.

Q. What kind of business are you in? A. Restaurant business.

Q. Where is it located? A. 400 West 43rd Street.

Q. Is it an ordinary restaurant, or any particular kind of a restaurant? A. It is a particular kind. I specialize only in Greek food.

10

Q. Are you in business alone or with someone? A. I was lately in business with Mr. Mantis.

Q. Before that who were you with? A. With my father.

Q. How lately have you been in business with Mr. Mantis? A. Since January 1st.

Q. What year? A. 1929.

Q. Did he buy a share in the business? A. Yes, sir.

Q. Did he pay you for it? A. Yes, sir.

20

Q. What are your duties, and what are his duties concerning the renting of the place? A. We both manage it.

Q. Have you got a cook? A. We have a cook.

Q. Who is the cook? A. Mavropoulos was the cook.

Q. Anybody else help you? A. Yes; my father. He is not exactly employed.

Q. Anybody else? A. I had my wife help.

Q. Do you remember the 26th day of March, 1929? A. Yes, sir.

30

Q. Where were you? A. In my place of business.

Q. What time did you get there? A. I got to my place of business about 10:30 in the morning.

Q. Was there anybody there? A. When I got there there was nobody there.

Q. Did anybody come in? A. Mavropoulos came in about quarter to eleven.

Q. Did Mantis come in? A. Mantis came in eleven o'clock.

40

Caterius Wallace, for Defendants—Direct.

Q. Did Mavropoulos go right to work? A. Yes, sir.

Q. How long did he stay there? A. He worked the day through.

Q. What were his hours? A. Eleven to eleven at night.

10 Q. Were you there a greater part of the day? A. I was. All day.

Q. While you were there did Mavropoulos leave the place? A. No, sir.

Q. How long did Mantis stay there? A. Mantis, just as soon as he came in the place, I sent him out.

Q. Where did you send him? A. I sent him to get a carpenter to repair a hole in the wall in the place.

20 Q. Where was this hole? A. In the lavatory.

Q. Did he go out for the carpenter? A. He went out for the carpenter.

Q. What time did he leave your place? A. I should judge about eleven o'clock. Just as soon as he came in, I told him.

Q. Did he come back? A. He came back.

Q. Did he come back with anybody? A. Yes, sir.

30 Q. Is that the gentleman that testified yesterday, Marudus? A. Yes, sir.

Q. Did Mantis come back with him? A. Mantis came back with him.

Q. How long did they stay there? A. About ten or fifteen minutes.

Q. He left for somebody? A. The carpenter.

Q. Did Mantis leave? A. Mantis didn't leave.

Q. How long did he stay? A. He stayed only—he stayed until close to two o'clock.

40 Q. And he stayed there and you saw him all the time? A. Yes, sir.

Caterius Wallace, for Defendants—Cross.

Cross-examination by Mr. Fisch:

Q. Where did he go at two o'clock? A. For groceries, on account of my leg, I sent him out for groceries to buy.

Q. When did he come back? A. He came back in about an hour or so. 10

Q. What time did he come back? A. I should judge about three o'clock.

Q. Maybe half-past two? A. I can't exactly say.

Q. Maybe half-past three? A. I can't say, but I should judge he was gone for an hour.

Q. You don't know whether it was half-past two or half-past three? A. Yes, sir.

Q. But you are sure that he came in at eleven o'clock? A. Yes, sir. 20

Q. What makes you sure about that? A. Why, that is usually his hour to come in to work.

Q. The only reason that you are sure that he came in at eleven o'clock on the 26th of March, that that is his usual hour for coming in? A. Yes, sir.

Q. And is it not true that his usual hour for coming in is nine o'clock in the morning? A. I said eleven o'clock in the morning.

The Court: Answer the question. 30

Witness: I couldn't hear it.

Q. It is not so that his usual hour for coming in is nine o'clock in the morning, is it? A. Not nine o'clock.

Q. You say that his usual hour for coming in is eleven o'clock and that is how you know that he came in this date at eleven o'clock on the 26th day of March, that is the only reason you know?

A. The only other reason I know it is that the 40

Caterius Wallace, for Defendants—Cross.

day before that I have told him to come in there and requested him to get someone to get that hole in the wall fixed.

Q. You told him that the day before? A. Yes, the night before.

Q. What time did you tell him? A. About eight
10 or nine o'clock; I couldn't exactly remember; some time that day.

Q. Do you keep books in this place? A. I do.

Q. Do you keep a record of your payments to people? A. Yes, sir.

Q. Your payments to grocers, and so forth? A. I do.

Q. And the dates of your purchases? A. The dates that I keep in the book.

Q. Have you got those books here? A. I
20 haven't got these books because I sold the place.

Q. When did you sell it? A. Three or four weeks ago.

Q. Sold it three weeks ago and you haven't got the books any more. What became of the books? A. I have some of the books. I haven't all of them.

Q. Where are they? A. I haven't got them with me.

Q. Do you keep a record of the payments to the cooks? A. No, sir; not the wages; only the
30 daily expenses.

Q. You didn't keep a record of the payment of any wages for your cook? A. No, I didn't put it down in my own book, in my own account book.

Q. Did you put it down in any book? A. For the wages?

Q. You had a partner, didn't you? A. I did.

Q. How did you account to him for your profits if you didn't put it into the books, the payments
40 that you made for wages to your cook?

Caterius Wallace, for Defendants—Cross.

Mr. Degheri: That is objected to. We want to object to this question, that it is absolutely irrelevant and immaterial.

The Court: The defense is an alibi. Isn't it quite proper to cross-examine him as to that? Mavropoulos testified that he was employed by this man and this man testified to the same thing. I will permit it. 10

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

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

Walter D. Van Riper,
Judge.

(Question read.)

20

A. My rent and my wages, we knew what it was every week and we took it out at the end of the week, and I didn't think it was necessary to put it down in our book. I didn't think it was necessary to mark down the wages, only the daily expense.

Q. You marked down the daily expense, and you didn't think it was necessary to put down the wages; is that right? A. That is right.

Q. How long do you say Mavropoulos was working for you? A. January 2nd. 30

Q. Did you make a record of that? A. I didn't make a record, but I knew from the payments that I made.

Q. Payments to whom? A. Mavropoulos.

Q. I thought you said you didn't keep any records of those payments. A. I know when I employed him.

Q. How do you know that? A. I think I know in my business who I employ or don't employ. 40
Do you want me—

Caterius Wallace, for Defendants—Cross.

The Court: Do not argue with the Prosecutor.

Q. Did you make any record? A. What?

Q. Of the type that would inform you of the date that you employed Mavropoulos? A. I didn't make any record; no.

Q. Did you make any kind of a record? A. I didn't make no kind of a record. I just made the record, just right on my own mind, I remember that exactly well.

Q. Do you remember the date and you remember how much you employed him for without putting it down anywhere at all? A. Yes, I do remember that.

Q. How long have you been in business with Mantis? A. Since the beginning of January.

Q. What day? A. We were supposed to begin—

Q. What date? A. The first of January.

Q. And have you been in business with him since the first of January? A. That is the date we started in partners. I owned it two years before myself.

Q. Did you have partnership papers drawn up? A. I didn't have no papers drawn in.

Q. I say, did you have partnership papers drawn up? A. I didn't have no papers drawn up, no, sir.

Q. Had nothing to show in writing that he was your partner? A. I just had a common slip.

Q. A slip signed by him? A. By him and by me.

Q. Where is that slip? A. I have got that somewhere at home.

Q. You haven't got that with you here? A. I didn't think it was necessary to bring it with me.

Caterius Wallace, for Defendants—Re-direct.

Q. You say you sold the business? A. Yes, sir; with my father. He was my partner too.

Q. Did you say this: "While he was my partner, his interest was mostly in my profits?" Is that what you said, that his interest was mostly in your profits? Is that what you said? A. I didn't say that. I don't think I said on profits. 10

Q. What did you say? A. That he is my partner in business.

Q. And that his interest was in what? A. In profits what we make.

Q. That is what you did say? A. Yes.

By Mr. Fisch:

Q. So that while he was your partner, his only interest was in the profits, so you went ahead and you and your father went ahead and sold the business? A. Yes. 20

Re-direct examination by Mr. Degheri:

Q. The Prosecutor asked you a moment ago who was your partner. If you don't understand the questions, you can say so.

The Court: He has not said that he does not understand the questions. I do not think you ought to make a statement which tends to put into his mouth a statement. 30

Q. Who was your partner in that business before Mr. Mantis was arrested? A. My father. I was in business with my father.

Q. When were you in business with your father? A. Ever since I opened the place, May, two years ago.

Q. And when did you and your father terminate business relations, if you did terminate? A. We terminated at the end of last year. 40

Nick Manus, for Defendants—Direct.

Q. Who continued the business at the end of last year? A. I continued it.

Q. With whom, if anybody? A. With Mantis.

Q. What happened to your father? A. It was an understanding that my father to keep—

10

Mr. Fisch: I object. I don't think this is re-direct examination.

The Court: We have been all over it. I think he testified on direct examination about his father.

Mr. Degheri: I do want to clear these points up. I think there have been a lot of irrelevant, immaterial and insignificant points brought out in this case.

20

Q. After January 1st, when you took Mr. Mantis as a partner, that is right, isn't it? A. Yes.

Q. Did he continue to work? A. He helped me some. We didn't pay him any wages. On account of my leg, I was sick, and I had to have someone.

Q. And he was assisting your interests? A. Yes, he was assisting my interests.

30

NICK MANUS, sworn in behalf of the defendants.

Direct examination by Mr. Degheri:

Q. I understand you were implicated on the 26th day of March, 1929, in this hold-up; is that right? A. Yes, sir.

Q. Who was implicated with you in that hold-up? A. It was me and Mancuso and two other fellows.

40

Q. Were those two other fellows either Mr. Mavropoulos or Mr. Mantis? A. No, sir.

Nick Manus, for Defendants—Cross.

Cross-examination by Mr. Fisch:

Q. You are a Greek? A. Yes, sir.

Q. Where do you live? A. 1200 West 31st Street.

Q. Do you know where Mantis's restaurant is?
A. I know Wallace's restaurant, yes. 10

Q. You know Mantis is there too? A. I do, sure, but I don't know Mantis as the owner of the restaurant.

Q. You don't? A. No.

Q. You live in that same building, don't you?
A. Yes, sir.

Q. You have a room on the third floor? A. On the third floor.

Q. How long have you had a room there? A. Since last December. 20

Q. The last part of the month of December?
A. The beginning of December.

Q. Who did you pay for your room? A. I pay Mr. Wallace.

Q. How much did you pay him? A. \$5 a week.

Q. You had your meals in the restaurant there, didn't you? A. Yes, sir.

Q. And you had your meals in the restaurant right along since last December?

Mr. Degheri: I object to that as leading. 30
He ought to ask him, "Had you had your meals there?"

Witness: He can ask me anything.

Q. Did you or did you not have your meals there? A. I had my meals there—not every day.

Q. Very frequently? A. Yes.

Q. You saw Mantis there? A. Yes.

Q. And Mavropoulos there? A. Yes, sir.

Q. And you were arrested in that place? A. 40
Yes, sir.

Nick Manus, for Defendants—Cross.

Q. You played cards there? A. A good many times I played a game of cards.

Q. It is one of those regular Greek coffee houses? A. I beg your pardon? One side was a coffee house and on one side there was a dining room and on one side they didn't allow cards.

10 Q. On one side they didn't allow cards? A. Just a pasttime game.

Q. What are the names of these other men that you say were in this hold-up with you? A. I know a fellow by the name of Martinis; his first name was Blackie; that is his nickname.

Q. Blackie Martinis, where does he live? A. He lives in Brooklyn.

20 Q. Whereabouts? A. I don't know, he told me it was Brooklyn.

Q. How long did you know him? A. About three months.

Q. Where did you meet him? A. In a card game.

Q. Where? A. Down town.

Q. When did you see him last? A. The last I seen him was the day, the 26th of March.

Q. That was the last time you saw him? A. Yes, sir.

30 Q. What was the name of this other fellow whom you saw? A. The other fellow I know by the name of Frank. He is a Jew.

Q. What do you mean by that? A. Frank, the Jew.

Q. Was he Jewish? A. So he told me he was, yes, sir.

Q. He told you that? A. Yes, sir.

Q. What was his last name? A. I don't know his last name.

40 Q. And this other fellow Martinis, you didn't know what his first name was? A. Blackie.

Nick Manus, for Defendants—Cross.

Q. His name wasn't Frank Martinis? A. No, sir.

Q. How long did you know Frank? A. I met him in the same place.

Q. In what place? A. Downtown in Cherry Street.

Q. How long ago? A. Three months ago; three months before I got arrested. 10

Q. When was the last time you saw him? A. The same day; I saw him the same day, on the 26th.

Q. Where does he live? A. Downtown.

Q. Whereabouts? A. I don't know.

Q. You knew them both three months, and you didn't know where they lived? A. No, sir.

Q. And you participated in this hold-up with them? A. Yes. 20

Q. Now, neither one of these men, the fellow you call Frank the Jew, and that fellow that you call Blackie Martinis, neither one of these men look like Mavropoulos or Mantis, do they? A. No.

Mr. Degheri: I object to that as irrelevant and not proper cross-examination.

By the Court:

Q. Did they look anything like those two men, Mavropoulos and Mantis? A. Didn't look like them. 30

By Mr. Fisch:

Q. Didn't look like them at all, did they? A. No.

Q. Did you plan the hold-up before you pulled the job? A. I would like to make a statement.

Q. Did you plan the hold-up before you pulled the job? A. In my room. 40

Nick Manus, for Defendants—Cross.

Q. In your room, in the same building where Mantis' restaurant was, and where Mavropoulos says he worked as a cook? A. Yes, sir.

Q. And Mancuso was there with you? A. Mancuso was there the last time.

10 Q. He was there when you planned the job?
A. Yes, the day before that.

Q. How did you come to Newark? A. By train.

Q. Tube train? A. Yes.

Q. Four of you came over together? A. Yes, sir.

Q. Who had the guns? A. I had a gun and Mancuso had one.

Q. Where did you get it from? A. I got it from Blackie and Frankie.

20 Q. Those were the only names that they used, Blackie and Frank? A. Yes, Frank the Jew and Blackie. I always used to call them by their first names.

Q. They were the only names you knew them by? A. Yes, sir.

Q. How many guns did you have? A. One.

Q. Where did you get that gun from? A. From Blackie.

Q. Sure about that? After this job was pulled, where did you go? A. To my room.

30 Q. You went back to New York to your room, and is that where you divided up the money? A. Yes, sir.

Q. And how much was your share? A. \$800.

Q. How much was Mancuso's share? A. His was the same.

Q. He got the same? A. Yes.

Q. What about Frankie and this fellow you call Blackie? A. They got about \$650 apiece, and they kept the jewelry.

40 Q. You don't know where these men lived? A. No, sir.

Nick Manus, for Defendants—Cross.

Q. And you didn't know what their last names were? A. I know one of their names.

Q. One, you say you knew his last name; you didn't know his first name? A. I said Blackie, and Martinis is the second name.

Q. When you went into this Grant Corporation office, who took the money? A. These two fellows. 10

Q. Who? A. Blackie and Frank.

Q. They took the money, did they? A. Yes, sir.

Q. What did you do? A. I was holding them up.

Q. What do you mean by that, you held the gun while the other fellows went and got the money?

A. Yes, sir.

Q. Was Mancuso—what was Mancuso doing? 20
A. Mancuso was tying them up.

Q. With this wire, is that right? A. Yes, sir.

Q. Where did Mancuso get the wire from? A. I gave it to him. I gave it to him before that.

Q. Where did you get it? A. In a ten-cent store.

Q. You bought it, did you? A. Yes, sir.

Q. Sure about that? A. Yes, sir.

Q. Then, during the course of this hold-up, you say this fellow Blackie and Frankie, they were 30
the ones who got the money and they got the jewelry, is that right? A. Yes, sir.

Q. And they went out of the place before you did? A. Yes, sir.

Q. And did you go back to New York together?
A. No, sir.

Q. Who went back first? A. They went.

Q. And you went afterwards? A. Yes, sir.

Q. And you met them in your room? A. Yes,
sir. 40

Nick Manus, for Defendants—Cross.

Q. You mean to tell this Court and jury that you didn't know where they lived and yet you went into this job with them? A. Yes, sir.

Q. And you permitted them to take the money and the jewelry and go to New York? A. Yes, sir.

10 Q. Together, without you and Mancuso, and that you and Mancuso then went over and met them there and divided up the money? A. Yes, sir.

Q. Did you ever think about the fact that they might not show up there and beat it with the money and the jewelry and doublecross you? A. I knew the men three months.

20 Q. But you didn't know where they lived, you didn't know where you could find them, either one of them. A. I know I could trace the man. We was playing cards together for three months.

Q. Do you think you could find the men today? A. If I went to the places.

Q. Where? A. In Cherry Street.

Q. Whereabouts in Cherry Street? A. Cherry Street.

Q. What is the address? A. Oh, all around Cherry Street, inside of Cherry Street, that is where they all hang out.

30 Q. You don't know what number? A. Three or four blocks down.

Q. New York? A. No, Cherry Street.

Q. New York? A. Yes, sir.

Q. You don't mean number one in New York, you don't mean that? A. I beg pardon?

Q. You don't mean number one in New York, when you say that number? A. I don't understand that.

40 Q. It is just three or four blocks down in Cherry Street, New York? A. I don't remember any

Nick Manus, for Defendants—Cross.

number, but I have been three or four blocks inside of Cherry Street.

Q. What did you do with the gun that you had in the holdup? A. I threw the gun away in the train. I kicked it out between the cars.

Q. Did you have it covered up? A. No, sir.

Q. Where did you have the gun? A. In my bosom. 10

Q. There were other people in this train? A. Very few.

Q. There were other people in the train? A. Two or three.

Q. There weren't any windows open on the train? A. I didn't notice.

Q. Who were you sitting with? A. I was alone, reading the paper. 20

Q. Where was Mancuso? A. Mancuso was on one side.

Q. You went right back to New York after the holdup, didn't you? A. Yes.

Q. And you say Mancuso was sitting opposite you? A. Yes, in the same car.

Q. Where did you dispose of the gun? A. I went to the last car in the next to that.

Q. Between cars? A. Yes, sir.

Q. It wasn't wrapped up in anything at all? A. No, sir. 30

Q. Did you see what Mancuso did with his gun? A. No. I was reading the paper.

Q. You didn't see him open the window? A. I didn't see what he did.

Q. You didn't throw your gun out of the window? A. No, sir.

Q. You kicked it between the cars? A. Yes, sir.

Q. And then you went back to New York to this building where Mantis had his restaurant and that 40

Nick Manus, for Defendants—Cross.

is where you divided up the money? A. Not in the restaurant.

Q. No, in the building there, in your room? A. Yes, sir.

Q. And from whom did you rent that room? A. From Wallace.

10

Q. That is Mantis' partner? A. Yes, sir.

Q. What time was that? A. It was after one o'clock, about fifteen minutes after one o'clock.

Q. About quarter-past one? A. Yes, sir.

Q. So that you had an opportunity to come over and hold up the place and let the other fellows go back to New York first, and you were back there by quarter-past one, is that right? A. Yes, sir.

Q. How long did you stay there? A. It took us about an hour and a half.

20

Q. So that you were there until quarter of three; is that right? It took you all that time to divide the money? A. Yes, sir.

Q. Did you make an appointment to meet again? A. Yes, sir.

Q. For when? A. That was on a Friday.

Q. This was on a Tuesday, wasn't it? A. Yes, sir.

Q. And you were arrested the following night? A. I don't remember.

30

Q. You don't remember when you were arrested? A. I think it was on the 28th.

Q. You think you were arrested on the 28th. On Wednesday what did you do? A. I went out here and there and everywhere.

Q. What do you mean by that, here, there and everywhere? A. I went around the places where I knew the fellows and talked with them.

Q. Who? A. There was quite a few I knew.

Q. Did you see Frank the Jew? Did you see Blackie? A. No, sir.

40

Nick Manus, for Defendants—Cross.

Q. Did you see them? A. I had an appointment with them on Friday.

Q. And you didn't see them on Wednesday?

A. No, sir.

Q. And you didn't see them on Thursday? A. No, sir.

Q. And you have never seen them, have you? 10

A. No.

Q. When you were arrested they found some money on you, didn't they? A. Yes.

Q. 300? A. Yes, sir.

Q. That is all you had left of the \$800? A. Yes, sir.

Q. What became of the rest of it? A. I bought a lot of clothes and I gave some money away.

Q. To whom? A. A lot of gamblers.

Q. Who are they? A. Different Greeks and 20 Americans.

Q. Where are they? A. 40th Street.

Q. Right around the neighborhood where you lived? A. Yes, sir.

Q. And you gave away \$500? A. I don't know.

Q. Well, you had \$800 from the robbery? A. Yes, sir.

Q. And that \$300 that was found on you was \$300 in money that was taken in that robbery, wasn't it? A. Yes, sir.

Q. And that is all the money that you had left? 30
A. Yes, sir.

Q. So that you gave away \$500 inside of twenty-four hours? A. I spent about \$300 buying clothes—\$200.

Q. What clothes did you buy? A. There was three suits and a top coat.

Q. When you were arrested you denied that you had anything to do with this crime, didn't you? A. Yes, sir. 40

Nick Manus, for Defendants—Cross.

Q. And you sued out a writ of habeas corpus?

A. I don't know anything about habeas corpus.

Q. Did this man, Mr. Wlodaver, represent you as your lawyer in the proceedings in the Supreme Court in New York? A. Yes, sir.

10 Q. He was the same man that represented Mantis, the defendant in this case, in the Supreme Court proceedings in New York, wasn't he? A. Yes, sir.

Q. And those proceedings were proceedings on a writ of habeas corpus, so you were endeavoring to prevent your coming to New Jersey for trial? A. I didn't know the meaning of habeas corpus.

20 Q. You were told in these proceedings, before you were called to the stand, that you could not be compelled to answer any questions, you were told that by Mr. Justice Sherman, were you not? A. Yes, sir.

Q. And when he told you that you said that you didn't want to take the stand and you didn't want to answer any questions, didn't you? A. Yes, sir.

Q. And you remember that in those proceedings Mr. Wlodaver made the statement that he was expecting a witness to come there and testify to your alibi? A. I don't know that.

Q. You were there? A. Yes, sir.

30 Q. You heard that? A. I didn't talk with anybody.

Q. I didn't ask you about that. When you were in the Supreme Court room in New York in these proceedings, you heard Mr. Wlodaver say to the Court on several occasions that he was waiting for a witness to come to testify and prove your alibi, didn't you? A. I didn't know whether they had a witness or not. I didn't know a thing.

40 Q. I didn't ask you that. You heard him say that? A. I didn't hear him say.

Nick Manus, for Defendants—Cross.

Q. Did you hear him say it? A. He might say something. In fact, I didn't pay much attention to what they was saying.

By the Court:

Q. Did you hear him say it? A. I didn't hear him say it. 10

By Mr. Fisch:

Q. You didn't say at that time, or even after you were brought over to New Jersey on this writ which was sued out in New York and which was dismissed, you didn't say at that time that you were guilty of this crime? A. No, I didn't.

Q. Did you tell your lawyer that you were guilty? A. Yes, sir. 20

Q. You told him that? A. Yes, sir.

Q. When did you tell him? A. The first line-up.

Q. That is, Mr. Wlodaver? A. Yes, sir.

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

Q. Yet he sued out the writ of habeas corpus? A. I don't know nothing about that.

Q. And did you tell him also that Mancuso was guilty? A. No, I didn't say anything about Mancuso. I just told him about myself.

Q. You knew that you had been picked out by almost every witness that came over there, that you and Mancuso had been identified, didn't you? A. Yes. That is the reason I told my attorney that. 30

Q. And you knew also that Mavropoulos had been identified only by Mullen, didn't you? A. Yes, sir.

Q. And you knew also that Mantis had only been identified by Mullen, didn't you? A. Yes, sir. 40

Nick Manus, for Defendants—Cross.

Q. And then you made up your mind that as long as you and Mantis had been identified by so many people, that you wouldn't have an opportunity to get out of it, didn't you?

Objected to.

10

Objection sustained.

Q. You knew that your lawyer, this man Wlodaver, was the attorney for Mantis, didn't you?

A. I don't know about that.

Q. You didn't know that. Didn't you know that in the proceedings in New York he represented you? A. Yes; I say, in the proceedings in New York he defended me.

20 Q. And you made up your mind absolutely that you were going to take the fall?

Objected to as not cross-examination.

The Court: I will permit that.

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.

WALTER D. VAN RIPER,
Judge.

30 A. You said, did I make my mind up?

Q. Did you make up your mind that you were going to take the fall? A. Of course, I was guilty.

Q. Who got the lawyer for you? A. Myself.

Q. Yourself, where? A. Right in 51st Street, right after the line-up; Mr. Wlodaver was there, and I called him in there.

Q. Do you remember being in my office downstairs, in this building, on Wednesday afternoon?

A. Yes, sir.

40 Q. Of this week. Do you remember Detective Skleary being there? A. Yes, sir.

Nick Manus, for Defendants—Cross.

Q. And do you remember Detective Luke Conlon being there? A. Yes, sir.

Q. And Detective Fallon being there? A. Yes, sir.

Q. And do you remember my asking you at that time how you came to get that lawyer? A. I remember that. 10

Q. Do you remember telling me, in the presence of those men who were there, whose names I have just mentioned, that Mantis got that lawyer for you? A. No, sir.

Q. You say you didn't say that? A. I said he came there for Mantis, and I called him over and talked to him.

Q. And didn't you say that Mantis had gotten the lawyer for you? A. No, sir.

Q. And that the lawyer told you that Mantis had sent him to you? A. I said that I signed a slip for \$300. I had to fight my case while he was there, and Mantis did the same thing. 20

Q. In other words, then, Wlodaver was to represent you and Mancuso and Mantis, is that right? A. Yes.

Q. And you and Mancuso signed a slip over to Wlodaver for the money which had been taken from your person? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And that money was a part of this robbery? A. Yes, sir. 30

Q. And you told Wlodaver you were guilty? A. Yes, sir.

Q. And you were to sign that slip over so he could get the money from the police for his fee; is that right? A. Yes, sir.

Q. How long have you known Mancuso? A. About two months. 40

Nick Manus, for Defendants—Cross.

Q. You knew where he lived, didn't you, in 37th Street? A. I don't know exactly. I don't know his house number.

Q. And you often went out with him? A. Not very often. We used to go on games together.

10 Q. I thought you said you had an appointment to meet all of these men on Friday after the robbery? A. Yes, sir.

Q. How is it that you were with Mancuso on the night you were arrested, and that was before Friday, wasn't it? A. Mancuso, he came up there to see me, I suppose, or something. He came over to see me.

Q. What time? A. It was around 10:30 or eleven o'clock.

20 Q. At night? A. Yes, sir.

Q. What about? A. In the restaurant.

Q. Did you have an appointment to meet him there in the restaurant? A. No, I didn't have no appointment with Mancuso.

Q. You didn't have any appointment to meet him in the restaurant? A. No, sir.

Q. Can you tell us how he knew that you were going to be in the restaurant? A. He knew I was staying up there.

Q. At the restaurant? A. Yes.

30 Q. He didn't come to your room, he came to the restaurant? A. Yes, but he knew that I was staying up there.

Q. He didn't come to the room, he came to the restaurant? A. Yes, sir.

Q. And you and he were sitting at the table and Mantis and Mavropoulos were sitting nearby when you were all arrested? A. Not Mavropoulos, he was in the dining room. We was in the inside room.

40 Q. Did Blackie and Frank ever come into that restaurant and meet you there? A. Yes.

Nick Manus, for Defendants—Cross.

Q. When? A. Not in this restaurant, the other restaurant.

Q. I am talking about this restaurant. A. No, I never had a date there.

Q. The four of you were going on this holdup together and had gone on the holdup? A. Yes, sir. 10

Q. How long before the holdup was it that you first spoke about it, or planned it? A. Three weeks before.

Q. From the first time you spoke about it, three weeks before, you had met together, the four of you, several times; is that right? A. Several times, yes, sir.

Q. Where? A. Different places, cafeterias. One time we met in the Magnet Cafeteria on 9th Avenue. 20

Q. You also met in Mantis' restaurant there, didn't you? A. Yes.

Q. You never met any of these men in Mantis' restaurant? A. Only Mancuso.

Q. When? A. That night, and a couple of times before that.

Q. So you met Mancuso there before, didn't you? A. Yes, sir.

Q. He was one of the fellows that was in on this stickup, this holdup, that you were going to pull off? A. Yes, sir. 30

Q. Can you tell us how it is that you met Mancuso there and you say you didn't meet Blackie and Frank? A. I met Frank and Blackie before I met Mancuso. I met these two fellows before I met Mancuso.

Q. Can you tell us how it was that you say you met Mancuso, one of these three men that you say you pulled this job with, and that you say that Frank and Blackie you didn't meet there. Can 40

Nick Manus, for Defendants—Cross.

you tell us how that was? A. Why we didn't meet in the restaurant?

Q. Yes. A. We met in different places. We was gambling together, gambling houses and club houses.

10 Q. You played cards in Mantis' restaurant, didn't you? A. Yes, sir.

Q. Gambled there? A. Not for money.

Q. You are a gambler? A. Mr. Prosecutor, but not in the restaurant.

Q. You are a gambler? A. Yes, sir.

Q. And you played cards in Mantis' restaurant? A. Yes, sir.

Q. But you say you didn't play for money? A. Played rummy, or just passed time, when we had nothing else to do.

20 Q. Was there any reason why you didn't make the date with Blackie and Frankie to meet you at Mantis' restaurant? A. I don't see any reason at all.

Q. Was there any reason? A. I don't see no reason.

Q. You used to meet there pretty often? A. Yes.

Q. And you lived in this house? A. Yes, sir.

30 Q. And they came up to your room in that house? A. Yes, sir.

Q. How many times were they up to your rooms in that house? A. Several times.

Q. And yet when you wanted to meet them in the restaurant or a coffee house, you wouldn't meet them in Mantis'? A. No, sir.

Q. There wasn't any special reason? A. There wasn't any special reason because I didn't want these other Greek fellows to know.

40 Q. Know what? A. What I was going to do.

Nick Manus, for Defendants—Cross.

Q. You say the reason that you didn't make a date to meet them in Mantis' restaurant was that you didn't want the other Greek fellows to know them and know what you were going to do; is that right? A. Yes, sir.

Q. Why did you make a date to meet Mancuso?
A. Mancuso was already there. He used to come there. He was already in that place. 10

Q. But Mancuso was one of the men that was in on the job with you; that is right? A. Yes, sir.

Q. You didn't have any objection to meeting him in Mantis' restaurant and having these other Greek fellows see you there? A. Mancuso used to go in there.

Q. That is the only reason you can give us for meeting Mancuso there and not meeting Frankie and Blackie there, that is the only reason? A. Yes, sir. 20

Q. How long have you known Mavropoulos?
A. Ever since he has been in that place.

Q. You have known him how long? A. About three months.

Q. And Mantis the same length of time? A. Yes, sir.

Q. And Mancuso the same length of time? A. Not exactly, less than that, two months. 30

Q. And Blackie and Frankie? A. I met both of them the same time.

Q. Isn't it a fact that you made an agreement that you and Mancuso were to plead guilty to these charges and testify in behalf of Mavropoulos and Mantis so that they could get out? A. No, sir.

Mr. Degheri: I object. That is a very unfair question. Mr. Wlodaver's name has been brought into the picture, and it is 40

William R. Thomas, for the State—Direct.

only fair that I should have an opportunity of consulting with him a minute and see what he might want to do with respect to the use of his name.

Q. Mavropoulos lived in the room next to you?
10 A. Not to my knowledge; I don't know; I didn't see him.

Q. Didn't you tell Detective Thomas that Mavropoulos occupied the room next to you in this building on the floor above Mantis' restaurant?
A. No, sir; Mr. Thomas is mistaken.

Mr. Degheri: Mr. Wlodaver tells me he reserves the right to make a statement at the proper time and the defense rests.

20

WILLIAM R. THOMAS recalled in behalf of the State in rebuttal.

Direct examination by Mr. Fisch:

Q. Were you present in my office in this building on Wednesday afternoon, on the 15th of May, when I was interviewing Manus? A. No, I wasn't in the office.

30 Q. Did you have a talk with Manus with regard to where Mavropoulos lived? A. I did.

Q. Where was that? A. After Manus was arrested—after they were all arrested—I took Manus back to where he said he lived, 400 West 43rd Street, top floor, to search his room, and Detective Gilroy and I took him to his room and searched his room, and on that top floor there were five or six other rooms. All the doors were open. There were beds in the rooms, but nobody
40 had been in them, so we took Manus to the flat

Luke Conlon, for the State—Direct.

and asked him who occupied these different rooms and the room next to him was a big room, with two beds in it, and a big double room, and he said, "Teddie, the cook, sleeps there," and then others that he mentioned were several others who lived there.

Q. Where did he say Mavropoulos lived? A. 10
Mavropoulos was the cook.

Cross-examination by Mr. Degheri:

Q. He didn't say Teddie Mavropoulos, the cook?
A. He was the only cook that was there.

Q. You don't know that? A. Yes, sir.

Q. There was only one cook there? A. The fellow said he was the cook when I was there.

Q. Well, you don't know whether there was 20
more than one cook? A. I met another man there who said he was the cook. That was later at night. It was after eleven o'clock.

Q. What I am getting at is, did you say it was Mavropoulos the cook, didn't he say, "Teddie the cook"? A. "Teddie the cook."

LUKE CONLON, sworn in behalf of the State, in 30
rebuttal.

Direct examination by Mr. Fisch:

Q. Were you present in my office on the afternoon of Wednesday, May 15th, when I was interviewing Manus? A. I was.

Q. At that time did you hear me ask Manus with regard to how he came to employ Mr. Wlodaver, the same lawyer that Manus had? A. I heard you ask him that question, yes. 40

Luke Conlon, for the State—Cross.

Q. What did he say?

Mr. Degheri: I object. It is immaterial as to what Mr. Wlodaver did.

10 The Court: I will certainly sustain the objection as to what Mr. Wlodaver did, because whatever he did has nothing to do with the guilt or innocence of the defendants, but it goes to the question of whether something was done by Mr. Wlodaver for Mavropoulos, and I will permit the question.

A. Manus said, in reply to the Prosecutor, that Mantis said he had a lawyer and that he would represent him.

20 Q. That he would represent whom? A. Would represent Manus.

Cross-examination by Mr. Degheri:

Q. What is your rank? A. Sergeant.

Q. Do you remember when this trial started?
A. Yes, sir.

Q. When was that? A. It was in the morning.

Q. You were in court Wednesday? A. Yes.

30 Q. Did you meet the witness Mullen on that day? A. Well, I suppose I did. I saw him in the corridor and I spoke to him Wednesday, yesterday, and today.

Q. Did you know that Mr. Mullen was on the stand Wednesday afternoon?

Mr. Fisch: I object to that as not cross-examination.

Mr. Degheri: I will make him my own witness.

40 Mr. Fisch: I have no objection to that.

Luke Conlon, for the State—Re-direct—Re-cross.

Q. Do you remember that the witness Mullen was on the stand when the court adjourned Wednesday afternoon? A. Yes, sir.

Q. That his examination had not been completed at that time? A. Yes.

Q. Did you see Mr. Mullen in the corridor of this building Thursday morning and talk with him out here? A. Yes, I spoke to him. 10

Re-direct examination by Mr. Fisch:

Q. What did you speak to him about? A. I saw him in the corridor and I said to him, "Has anybody seen you? I understand there is another witness to be seen in this case by counsel". That is what I said to him.

Q. Is that as far as your conversation went? A. He said, "No". 20

Re-cross-examination by Mr. Degheri:

Q. Who was that witness that you say was seen by counsel? A. I understand, from what I learned, Mr. Webber, had been seen.

Q. By Mr. Ormsby or me, did he mention any particular name? A. No.

Q. Didn't you ask what counsel it was? A. I did not.

Q. Didn't you think it was fair to ask the man? 30

Mr. Fisch: This is the defendant's witness.

The Court: There is no objection to counsel asking the witness if they did it in a proper manner.

Mr. Degheri: This witness Mullen was on the witness stand Wednesday afternoon, and you will remember that he could not positively identify this defendant.

Mr. Fisch: I object to that. 40

STATE RESTS.

Motion to Direct a Verdict.

Mr. Degheri: There are three instances where the Prosecutor asked the witness Mullen whether he was sure of the defendant Mantis.

10 The Court: The jury are the judges of the facts, and they will take their own recollection.

20 Mr. Degheri: I am making a motion to direct a verdict. My motion is this: the only scintilla of evidence in this case with respect to the defendant Mantis rests upon the shoulders of the witness Mullen. Mr. Mullen was the last witness who took the stand on the first day of the trial, and I remember distinctly the evidence, as I recall it, the fact that he failed, when the Prosecutor asked him, "Are you sure it was Mantis, that he was one of the men you saw in the Grant Restaurant Corporation?" He says, "I am not sure", or words to that effect. Upon that testimony, I say, rests the entire case against this defendant Mantis, and I say that the State has absolutely failed to prove, beyond a reasonable doubt, that the defendant Mantis was at the scene of this crime, and I

30 urge this point sincerely. I renew this motion now, having made this at the end of the State's case. I believe now that the defendant has proved an alibi, coupled with the testimony in the case, that it is necessary for your Honor to grant the motion. The State has not proven him guilty of being at the scene of the crime, beyond a reasonable doubt. There is absolutely no doubt that he was not there, absolutely no

40 doubt.

Motion to Direct a Verdict.

The Court: I will deny your motion.

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.

WALTER D. VAN RIPER, 10
Judge.

Mr. Ormsby: I want to make a similar motion as to the defendant Mavropoulos, on the ground of the contradictory testimony given by Mr. Mullen, is the only testimony given by the State to connect up Mr. Mavropoulos in any way in this case.

The Court: The motion is denied.

Defendant's counsel prays an exception to this ruling of the Court. 20

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

WALTER D. VAN RIPER,
Judge.

Mr. Degheri sums up in behalf of defendant Mantis.

Mr. Ormsby sums up in behalf of the defendant Mavropoulos.

Mr. Fisch sums up in behalf of the State. 30

Charge.

The Court charged the jury as follows:
VAN RIPER, J.

We are now arriving at that stage of the case where the real work of the jury commences.

- 10 These defendants, as all defendants in criminal cases, come into the court with the presumption of innocence, and that presumption of innocence continues until the State has proven their guilt beyond a reasonable doubt. The burden is always upon the State, and that burden is to prove the defendant guilty beyond a reasonable doubt. That is not a mere possible imaginary doubt because, as you will perceive, that everything connected with human affairs is open to some imaginary or possible doubt, but it is after all the evidence on the part of the State and the part of the defendant has been presented, you believe, to a moral certainty as to the truth of the charge. If, after a consideration of all the evidence in the case, you cannot say that you have in your own mind an abiding conviction as to the guilt of the defendants, and if you have a reasonable doubt as to the guilt of the defendants, then they should be acquitted. Of course, if, after a consideration of all the evidence you do not feel, you cannot say to a moral certainty that you are convinced that they are guilty beyond a reasonable doubt, then they should be acquitted.
- 20
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- These defendants are being tried upon these six indictments in which Manus, Mancuso, Mantis and Mavroupolus are all joined together. As has been explained and as you have seen, Manus and Mancuso have entered pleas of guilty, and the indictment as to Miller has been quashed. The only defendants, as you understand, are Mantis and Mavropoulos. These indictments charge the de-
- 40

Charge.

fendants with assault and battery and attempted
 robbery and the fourth indictment with robbery.
 It is not necessary for me to go into detail as to
 what robbery is, that is, as to the legal definition.
 In other words, whoever is guilty at all, is guilty
 as charged in these indictments. The question of
 fact is for you to determine as to who are the
 guilty people. The sole question of fact you have
 to determine in this case is whether they are
 guilty. There is no legal proposition as to what
 they are guilty of. If they are guilty, they are
 guilty as charged in the indictment. The State
 contends that Mavropoulos and Mantis were also
 there and took part in this robbery. Of course,
 whoever took part in the robbery is equally guilty.
 It does not make any difference whether one
 might have had a gun and the other used wire,
 whether one might have taken the money out of
 the safe, it doesn't make any difference, they are
 all equally guilty. It resolves into the fact as to
 whether they were there.

10

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As jurors, you are the sole judges of the facts.
 If counsel and if the Court has referred to facts
 which are adverse to your recollection, you are to
 determine these facts, and that is solely your
 province, and you are to decide the facts from the
 testimony given by the witnesses on the witness
 stand, and it is your recollection of the facts that
 ought to govern.

30

I do not intend to review the testimony because
 it has been reviewed ably by counsel on both
 sides, and I only intend to refer to it very briefly,
 because there has been some controversy with ref-
 erence to the testimony of Mr. Mullen, with ref-
 erence to his identification of the defendant Man-
 tis. I will refer just briefly to that, having in
 mind that you are the sole judges of the facts.

40

Charge.

My recollection is that Mr. Mullen said he recognized Mantis by his language, that he certainly looks like the man. The Prosecutor asked the question: "Do you swear now that he is one of the men that was there?" He said, "I cannot positively swear. I picked him out in New York. I was not positively sure, but he resembles the man and he wore the same clothing that I saw the man wear when he went out of the place." And, of course, you have the testimony of Mr. Mullen as to his identification, and in which he declares he is positive of his identification of the defendant Mavropoulos, of whom he said he had a view, according to my recollection, at the time of the hold-up, and he identifies Mavropoulos; and, my recollection of the testimony is, when asked what Mavropoulos was doing, he said, "Nothing, he was right there." You have a right to take into consideration the circumstances under which these men left and in which they were found. The fact that Manus had a room over the restaurant with Manus, and the further fact that they were found together in this restaurant at two tables. Take into consideration all the testimony in an effort to determine whether these two men were in the office of the Grant Lunch Room at the time this hold-up took place.

Of course, you heard the testimony of the two defendants in which they denied they were there. Mavropoulos brings witnesses to say that on the day of the hold-up he was in the place in New York. Of course, you will take into consideration all of the evidence in this case in an endeavor to ascertain the truth. Was he in New York or was he in Newark taking part in this hold-up? Mavropoulos takes the stand and denies that he was there. Mullen says he was there. Taking

Charge.

into consideration Mavropoulos's denial and all the circumstances and facts in the case, was Mavroupolos there? Take into consideration the story of Mancuso. Take into consideration whether he is telling the truth, as to whether these men were there, and, in determining that question of course, you must take into consideration all of circumstances. It is not necessary for me to call your attention to the fact that this crime is a particularly atrocious one, but because it is atrocious, that is no reason for people to be convicted. Your duty is to take into consideration the facts and render your verdict; but your verdict ought not to be rendered in this case, or any other case, by reason of prejudice or passion or by reason of sympathy. All that it should be rendered upon is the hard, cold evidence as given here by the witnesses in the case. So, I leave the case with you saying again that the only question for you to determine is the fact, were those two men there. If they were there, they are guilty on all six indictments. Another thought, one of these men you may find guilty, if the evidence warrants it, and the other you may find not guilty, if the evidence warrants it.

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[THE JURY RETIRES.]

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Requests to Charge and Exceptions.

10 Mr. Degheri: We pray a general exception, especially to two parts of the charge, where it was mentioned, as a matter of fact, that the jury is the judge of the facts, and to that part where your Honor said, "You have a right to take into consideration the circumstances under which they lived, and the fact that they were found in the same restaurant at different tables". I think a general exception will cover it.

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

WALTER D. VAN RIPER,
Judge.

20 Mr. Ormsby: I also pray a general exception. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

The Court is requested to charge in behalf of the defendants Mantis and Mavropoulos as follows:

30 1. The mere fact that the defendant has interposed the defense of alibi does not thereby put the burden upon the defendant of proving that alibi, but the burden remains upon the State to prove beyond a reasonable doubt, the defendant's presence at the scene of the alleged crime.

2. And if from all the evidence adduced, there is left in your minds a reasonable doubt as to the defendant's whereabouts on the day of the alleged crime, you must find the defendant not guilty.

Request for Certification of Entire Record.

**ESSEX COUNTY COURT OF QUARTER
SESSIONS.**

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

DIOMEDES MANTIS.
Plaintiff-in-Error.

10

On Conviction
for Robbery.

To the Honorable Walter D. Van Riper, Judge.

The above named plaintiff-in-error having sued out, and served, a writ of error to review the conviction herein, on indictment No. 381, April, 1929, Term, he hereby requests that the entire record of the proceedings had upon the trial of said cause be returned with the said writ of error.

20

Dated June 27, 1929.

RICHARD DOHERTY,
Attorney of Plaintiff-in-Error.

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40

Certificate of Stenographer.

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

10	STATE OF NEW JERSEY <i>vs.</i> DIOMEDES MANTIS,	} On Indictments 381 and 382, April Term, 1929. } For Assault and Battery and Robbery.
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On indictments 381 and 382, April Term, 1929.

For assault and battery and robbery.

20 I, JOSEPH S. FISHKIND, one of the official stenographers of the Essex County Court of Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by Walter W. Ressler, a stenographer engaged by me, at the trial of the above mentioned case, which trial was held before the Honorable Walter D. Van Riper, Presiding Judge of the Essex County Court of Quarter Sessions in and for the County of Essex and a jury on Wednesday, May 15, 1928, Thursday, May 16, 1928, and Friday, May 17, 1928.

30

JOSEPH S. FISHKIND.

Dated Newark, New Jersey, September 25, 1929.

Certificate of Judge.

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

On indictments 381 and 382, April Term, 1929.

For assault and battery and robbery.

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STATE OF NEW JERSEY

vs.

DIOMEDES MANTIS.

Certificate of
Judge.

I, WALTER D. VAN RIPER, Presiding Judge of
the Essex County Court of Quarter Sessions, and
the Judge who presided over the aforesaid cause,
do hereby certify that the above printed book
contains the entire record of the proceedings had
upon the trial of the said cause and that the same
is returned by the plaintiff-in-error with the writ
of error bringing up the bill of exceptions, signed
and sealed in this cause.

20

Dated Newark, New Jersey, September 26th,
1929.

30

WALTER D. VAN RIPER,
J.

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Assignments of Error.

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant-in-Error,	In Error.
	<i>vs.</i>	
	DIOMEDES MANTIS, Plaintiff-in-Error.	

The plaintiff-in-error assigns and sets down as grounds for reversal of the judgment of the Essex County Court of Quarter Sessions, the following:

- 20 1. The Court erred in denying the motion of the plaintiff-in-error to direct a verdict of acquittal at the close of the State's case.
2. The Court erred in denying the motion to direct an acquittal of the plaintiff-in-error at the close of the entire case.
3. The Court erred in charging the jury respecting the nature of reasonable doubt as follows:
- 30 "That it is not a mere possible imaginary doubt because, as you will perceive, that everything connected with human affairs is open to some imaginary or possible doubt, but it is after all the evidence on the part of the State and on the part of the defendant has been presented, you believe, to a moral certainty as to the truth of the charge."
- 40 4. The Court erred in otherwise charging the jury as to the nature of reasonable doubt as follows:

Assignments of Error.

"If, after a consideration of all the evidence in the case, you can not say that you have in your own mind an abiding conviction as to the guilt of the defendants, and if you have a reasonable doubt as to the guilt of the defendants, then they should be acquitted."

5. The Court erred in otherwise charging the jury as to the nature of reasonable doubt as follows: 10

"Of course, if, after a consideration of all the evidence you do not feel, you cannot say to a moral certainty that you are convinced that they are guilty beyond a reasonable doubt, then they should be acquitted."

6. The Court erred in failing, and refusing, to define the offenses of robbery, attempted robbery and assault and battery charged in the indictments. 20

7. The Court erred in failing to expound the law as to the criminal responsibilities of principals in the first and second degree, and the proof essential to the constitution of each.

8. The Court erred in failing to charge the jury as to the necessity of proof as presence with common intent in the cases of crimes jointly committed, and proof necessary to establish an aiding and abetting. 30

9. The Court erred in failing to give any instructions differentiating the three crimes charged in the indictment, and as to the proof that would convict or exculpate the plaintiff-in-error on each of said charges.

10. The Court erred in charging the jury as follows: 40

Assignments of Error.

"Whoever is guilty at all, is guilty as charged in these indictments."

11. The Court erred in charging the jury as follows:

10 "There is no legal proposition as to what they are guilty of; if they are guilty, they are guilty as charged in the indictment."

12. The Court erred in charging the jury as follows:

20 "It does not make any difference whether one might have had a gun and the other used wire, whether one might have taken the money out of the safe, it does not make any difference, they are all equally guilty. It resolves itself into the fact as to whether they were there."

13. The Court erred in charging the jury as follows:

30 "You have the right to take into consideration the circumstances under which these men left and in which they were found, the fact that Manus had a room over the restaurant with Mantis, and the further fact that they were found together in this restaurant at two tables; take into consideration all the testimony in an effort to determine whether these two men were in the office of the Grant Lunch Room at the time this hold-up took place."

14. The Court erred in charging the jury as follows:

"So, I leave the case with you saying again that the only question for you to determine is the fact, were those two men there. If they were there, they are guilty on all six indictments."

RICHARD DOHERTY,
Attorney of and of Counsel
with Plaintiff-in-Error.

Specifications of Causes.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

DIOMEDES MANTIS,
Plaintiff-in-Error.

In Error.
Specifications
of Causes.

10

The plaintiff-in-error specifies as causes for the reversal of the judgment of the Essex County Court of Quarter Sessions, the following:

20

1. The plaintiff-in-error suffered manifest wrong and injury in this: The Court denied the motion of the plaintiff-in-error to direct a verdict of acquittal at the close of the State's case.

2. The plaintiff-in-error suffered manifest wrong and injury in this: The Court denied the motion to direct an acquittal of the plaintiff-in-error at the close of the entire case.

3. The plaintiff-in-error suffered manifest wrong and injury in this: The Court charged the jury respecting the nature of reasonable doubt as follows:

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"That it is not a mere possible imaginary doubt because, as you will perceive, that everything connected with human affairs is open to some imaginary or possible doubt, but it is after all the evidence on the part of the State and on the part of the defendant has been presented, you believe, to a moral certainty as to the truth of the charge."

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Specifications of Causes.

4. The plaintiff-in-error suffered manifest wrong and injury in this: The Court otherwise charged the jury as to the nature of reasonable doubt as follows:

10 "If, after a consideration of all the evidence in the case, you cannot say that you have in your own mind an abiding conviction as to the guilt of the defendants, and if you have a reasonable doubt as to the guilt of the defendants, then they should be acquitted."

5. The plaintiff-in-error suffered manifest wrong and injury in this: The Court otherwise charged the jury as to the nature of reasonable doubt as follows:

20 "Of course, if, after a consideration of all the evidence you do not feel, you cannot say to a moral certainty that you are convinced that they are guilty beyond a reasonable doubt, then they should be acquitted."

6. The plaintiff-in-error suffered manifest wrong and injury in this: The Court failed and refused to define the offenses of robbery, attempted robbery and assault and battery charged in the indictments.

30 7. The plaintiff-in-error suffered manifest wrong and injury in this: The Court failed to expound the law as to the criminal responsibilities of principals in the first and second degree, and the proof essential to the constitution of each.

40 8. The plaintiff-in-error suffered manifest wrong and injury in this: The Court failed to charge the jury as to the necessity of proof as presence with common intent in the cases of crimes jointly committed, and proof necessary to establish an aiding and abetting.

Specifications of Causes.

9. The plaintiff-in-error suffered manifest wrong and injury in this: The Court failed to give any instructions differentiating the three crimes charged in the indictment, and as to the proof that would convict or exculpate the plaintiff-in-error on each of said charges.

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10. The plaintiff-in-error suffered manifest wrong and injury in this: The Court charged the jury as follows:

“Whoever is guilty at all, is guilty as charged in these indictments.”

11. The plaintiff-in-error suffered manifest wrong and injury in this: The Court charged the jury as follows:

“There is no legal proposition as to what they are guilty of; if they are guilty they are guilty as charged in the indictment.”

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12. The plaintiff-in-error suffered manifest wrong and injury in this: The Court charged the jury as follows:

“It does not make any difference whether one might have had a gun and the other used wire, whether one might have taken the money out of the safe, it does not make any difference, they are all equally guilty. It resolves itself into the fact as to whether they were there.”

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13. The plaintiff-in-error suffered manifest wrong and injury in this: The Court charged the jury as follows:

“You have the right to take into consideration the circumstances under which these men left and in which they were found, the fact that Manus had a room over the restaurant with Mantis, and the further fact that they were found together in this restaurant at two tables; take into consideration all the testimony in an effort to determine whether these

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Specifications of Causes.

two men were in the office of the Grant Lunch Room at the time this hold-up took place."

14. The plaintiff-in-error suffered manifest wrong and injury in this: The Court, although requested by the plaintiff-in-error, refused to charge the jury as follows:

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"The mere fact that the defendant has interposed the defense of alibi, does not thereby put the burden upon the defendant of proving that alibi; the burden remains on the State to prove beyond a reasonable doubt, the defendant's presence at the scene of the alleged crime."

15. The plaintiff-in-error suffered manifest wrong and injury in this: The Court, although requested by the plaintiff-in-error, refused to charge the jury as follows:

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"If from all the evidence adduced there is left in your mind a reasonable doubt as to the defendant's whereabouts on the day of the alleged crime, you must find the defendant not guilty."

16. The plaintiff-in-error suffered manifest wrong and injury in this:

30

(a) The verdict convicting him of assault and battery upon David Jacobowitz was against the weight of evidence;

(b) The verdict convicting him of robbery against the person of David Jacobowitz was against the weight of evidence;

(c) The verdict convicting him of assault and battery upon William Weber was against the weight of evidence;

(d) The verdict convicting him of robbery against the person of William Weber was against the weight of evidence.

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RICHARD DOHERTY,
Attorney of and of Counsel
with Plaintiff-in-Error.

Per Curiam Opinion, Filed Aug. 20, 1930.

NEW JERSEY SUPREME COURT.

No. 6, Jan. T., 1930.

STATE OF NEW JERSEY

10

vs.

DIOMEDES MANTIS.

Error to Essex Quarter Sessions.

Argued before Gummere, Chief Justice, and
Justice Campbell.

For Plaintiff-in-Error, Richard Doherty.

20

For the State, Joseph L. Smith, Prosecutor of
the Pleas.

PER CURIAM

The defendant was convicted upon two indict-
ments tried in the Essex Quarter Sessions. The
first contained a count charging him and four
others with assault and battery on one Jacobowitz
and robbing him of his property. The other in-
dictment charged the same defendants with as-
sault and battery and robbery upon the person
of one William Webber. The indictments were
tried together by consent of the parties. The
proofs on the part of the State showed that on
the 25th day of March, 1929, a robbery of the
safe in the Grant lunch room at Newark and of
the people at that time present on the premises
was committed by four men. The proprietor of

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Per Curiam.

the lunch room was Jacobowitz. One of the four men, as the State attempted to prove, was the defendant Mantis. The evidence submitted by the State was convincing as to the commission of the robbery, the holding up of the employees with
10 guns by the robbers, and also the holding up of customers in the restaurant, one of whom was Webber, the tying up of all the parties who were first searched and what money they had taken from them, and also the stealing of the money from the cabinet in the lunch room where it was kept by the proprietor.

The first ground upon which we are asked to reverse the conviction is that there was no proof submitted by the State justifying the conclusion
20 that Mantis had anything to do with the robbery and that therefore it was error to refuse a request submitted on his behalf to direct a verdict in his favor. Our examination of the evidence leads us to the conclusion that this contention is without substance. The evidence submitted showed that Mantis was one of a party of four that came into the restaurant together. That some of the members of this party held up the occupants of the restaurant while others committed the robbery is
30 not denied. Whether or not all of these four men who came in together participated in the robbery was, under the proofs submitted, a question for the jury. This being so, the refusal to direct a verdict of acquittal in favor of Mantis was fully justified.

The next contention is that the instruction of the Court defining reasonable doubt in charging the jury was misleading and injurious. Our examination of the charge satisfies us that it was a
40

Per Curiam.

correct statement of the law bearing upon this subject.

Next it is contended that it was error on the part of the Court to refuse to define the crimes of robbery, assault and battery, and entering with intent to rob; and also in refusing to define a principal in the second degree, aiding and abetting. The answer to this contention is that there was no such refusal but merely a failure to define these several crimes and the characteristics of a principal in the second degree, aiding and abetting. Such failure, however, does not constitute legal error. It is only where instructions are requested and not complied with that error exists. 10

It is further argued that there was injurious error in the Court's refusal to charge certain requests submitted, stating the rule as to the burden upon the State to prove guilt, and also the rule of reasonable doubt in relation to a defense of alibi, that defense being submitted by the plaintiff-in-error. It appears from an examination of the state of the case that these requests were not submitted until after the jury had been charged and had retired. The Court was under no legal obligation to recall the jury for the purpose of charging these requests. In other words, requests not submitted before the charge is begun, or immediately after it has been concluded, may properly be disregarded by the Court. 20 30

Other grounds of reversal are argued in the brief of counsel for the plaintiff-in-error, but they are so palpably without merit as not to be worthy of discussion by this Court.

The conviction under review will be affirmed.

Remittitur.**NEW JERSEY SUPREME COURT.**

On Writ of Error.

10 THE STATE OF NEW JERSEY,
 Defendant in Error,
 vs.
 DIOMEDES MANTIS,
 Plaintiff in Error.

20 This cause having been submitted at the January Term, nineteen hundred and twenty-nine, of this Court by Joseph L. Smith, Esquire, attorney for the defendant in error, and Richard Doherty, Esquire, attorney for the plaintiff in error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions;

30 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.

Entered September 5th, 1930.

On motion of

JOSEPH L. SMITH,
 Prosecutor of the Pleas,
 Attorney of Defendant in Error.

40 "A true copy.
 FRED L. BLOODGOOD,
 Clerk."

Writ of Error.

The State of New Jersey, to wit: The State of New Jersey, to the Chief Justice and Associate Justices of our Supreme Court of judicature of the State of New Jersey, GREETING:

Because in the record and proceedings and also
 in the giving of judgment in a certain plaintiff, 10
 which was in our said Supreme Court of Judicature, before you, between Diomedes Mantis, plaintiff in error, and the State, defendant in error, manifest error hath intervened to the damage of said Diomedes Mantis, plaintiff in error, as is said and we being willing in that behalf, that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the plaintiff in error, do command you, that you distinctly and openly send under your hand and seal, 20
 the record and proceedings aforesaid, with all things touching and concerning the same, to our judges of the Court of Errors and Appeals in the last resort in all causes, at Trenton, on the thirtieth day of September, 1930, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done therein, for correcting that error, what of right and according to the laws of the State of New 30
 Jersey ought to be done.

WITNESS: Edwin Robert Walker, Esq., our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this tenth day of September, 1930.

JOSEPH F. S. FITZPATRICK,
 Clerk.

RICHARD DOHERTY,
 Attorney.

Return.

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

WILLIAM S. GUMMERE,
Chief Justice,
New Jersey Supreme Court.

Assignment of Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20

In Error.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

DIOMEDES MANTIS,
Plaintiff in Error.

30 And now comes the plaintiff in error, Diomedes Mantis, by Richard Doherty, his attorney and says that in the record in the giving of the judgment there is manifest error in this:

The Supreme Court, by its judgment, affirmed the conviction and judgment of the Essex County Court of Quarter Sessions, whereas in law and right it should have reversed the same.

RICHARD DOHERTY,
Attorney of Plaintiff in Error.

40

Specification of Cause for Reversal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

In Error.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

DIOMEDES MANTIS,
Plaintiff in Error.

10

And now comes the plaintiff in error, Diomedes Mantis, by Richard Doherty, his attorney, and says that in the record in the giving of the judgment there is manifest wrong and injury in this:

The Supreme Court, by its judgment, affirmed the conviction and judgment of the Essex County Court of Quarter Sessions, whereas in law and right it should have reversed the same.

RICHARD DOHERTY,
Attorney of Plaintiff in Error. 30

40

Specification of Cases for Review

These cases will be reviewed by the

Committee on

the following cases

1. The case of the

2. The case of the

3. The case of the

These cases

will be reviewed by the

And now comes the question of the

4. The case of the

5. The case of the

6. The case of the

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All these cases

will be reviewed by the

11. The case of the

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15. The case of the

16. The case of the

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18. The case of the

19. The case of the

20. The case of the

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> DIOMEDES MANTIS, <i>Plaintiff-in-Error.</i>	}	<i>On Error.</i>
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BRIEF FOR THE STATE.

Plaintiff-in-Error, Diomedes Mantis, together with Frank Manus, Leonard Mancuso, Theodore Mavropoulos and Adam Miller, were charged under indictments 380, 381, 382, 384, 385 and 386, at the April Term, 1929, of the Essex Court of Quarter Sessions, with assault and battery and robbery, committed on various persons, on March 26, 1929. The six indictments were nolle prossed as to Miller for lack of evidence. The defendants Manus and Mancuso retracted their pleas and pleaded guilty (pp. 21 and 22) and the trial proceeded as to Mantis and Mavropoulos, who were found guilty of all the indictments. On May 23, 1929, a judgment of 12½ years at hard labor at the State Prison was given under indictments 381 and 382, to operate consecutively, and judgments on the other indictments were suspended.

Writs of error were taken by the plaintiff-in-error Mantis covering indictments 381 and 382. By stipulation, the two writs taken in indictments 381 and 382 were argued jointly before the Supreme Court (Case, p. 12).

The Supreme Court in a *PER CURIAM* opinion rendered by Chief Justice Gummere and

Justice Campbell gave the following decision (Vol. VIII, N. J. Adv. Rep. No. 36, p. 669, not yet reported):

PER CURIAM:

“The defendant was convicted upon two indictments tried in the Essex Quarter Sessions. The first contained a count charging him and four others with assault and battery on one Jacobowitz and robbing him of his property. The other indictment charged the same defendants with assault and battery and robbery upon the person of one William Webber. The indictments were tried together by consent of the parties. The proofs on the part of the state showed that on the 25th day of March, 1929, a robbery of the safe in the Grant lunch room at Newark and of the people at that time present on the premises was committed by four men. The proprietor of the lunch room was Jacobowitz. One of the four men, as the state attempted to prove, was the defendant Mantis. The evidence submitted by the state was convincing as to the commission of the robbery, the holding up of the employees with guns by the robbers, and also the holding up of customers in the restaurant, one of whom was Webber, the tying up of all the parties who were first searched and what money they had taken from them, and also the stealing of the money from the cabinet in the lunch room where it was kept by the proprietor.

The first ground upon which we are asked to reverse the conviction is that there was no proof submitted by the state justifying the conclusion that Mantis had anything to do with the robbery and that therefore it was error to refuse a request submitted on his behalf to direct a verdict in his favor. Our examination of the evidence leads us to the conclusion that this contention is without substance. The evidence submitted showed that Mantis was one of a party of four that

came into the restaurant together. That some of the members of this party held up the occupants of the restaurant while others committed the robbery is not denied. Whether or not all of these four men who came in together participated in the robbery was, under the proofs submitted, a question for the jury. This being so, the refusal to direct a verdict of acquittal in favor of Mantis was fully justified.

The next contention is that the instruction of the court defining reasonable doubt in charging the jury was misleading and injurious. Our examination of the charge satisfies us that it was a correct statement of the law bearing upon this subject.

Next it is contended that it was error on the part of the court to refuse to define the crimes of robbery, assault and battery, and entering with intent to rob; and also in refusing to define a principal in the second degree, aiding and abetting. The answer to this contention is that there was no such refusal but merely a failure to define these several crimes and the characteristics of a principal in the second degree, aiding and abetting. Such failure, however, does not constitute legal error. It is only where instructions are requested and not complied with that error exists.

It is further argued that there was injurious error in the court's refusal to charge certain requests submitted stating the rule as to the burden upon the state to prove guilt, and also the rule of reasonable doubt in relation to a defense of alibi, that defense being submitted by the plaintiff-in-error. It appears from an examination of the state of the case that these requests were not submitted until after the jury had been charged and had retired. The court was under no legal obligation to recall the jury for the purpose of charging these requests. In other words, requests not submitted before the charge is begun, or immediately

after it has been concluded, may properly be disregarded by the court.

Other grounds of reversal are argued in the brief of counsel for the plaintiff-in-error, but they are so palpably without merit as not to be worthy of discussion by this court.

The conviction under review will be affirmed."

The judgment of the Supreme Court, affirming the conviction and the judgment of the Essex Court of Quarter Sessions is now assigned for error by the plaintiff-in-error. The points and the authorities now relied upon by the plaintiff-in-error are the same as the points and authorities submitted by him before the Supreme Court.

Facts.

On March 26 (Case, p. 29, l. 29), at about 12:15 P. M., four armed bandits entered the offices of the Grant Lunch Corporation, at Newark. One of the four, armed with a gun, walked up to Miss Hixon, Cashier, and ordered her to open the door, and walk out, so that he could take the money. Miss Hixon, obeying the command, walked out to the office where Mr. Jacobowitz, an officer of the corporation, was and found him covered by another of the four, also armed (Case, p. 24, l. 25 to p. 25, l. 10). While two of the four held the occupants of the office at the point of their guns, *the other two came in and went to the place where the money was and took approximately \$3,000 from a steel cabinet, in bags* (Case, p. 25, l. 27; p. 26, l. 15). Then while one man covered the victims with his gun, another one tied their legs with a telephone wire, gagged them with handkerchiefs, searched them and robbed them of their moneys and personal belongings. At this time a Mr. Webber and a Mr. Goodman came in, who were

also bound, gagged and searched; then all of the victims were taken and dragged into an inner office where they were all tied together (Case, p. 26).

William A. Mullen testified that on March 26, at about 12:10, he had occasion to go to the offices of the Grant Lunch Company; that as he entered the office he saw a man inside the door with two guns; one man rushed him over and one man tied his hands with wire *and two other men were standing up*; that after being searched he was put aside with the crowd (Case, p. 29, ll. 33-40). That while two men covered them *the other two were trying to get away* (Case, p. 31, l. 20).

William Webber testified that at the time he was with a man named Horowitz, in an adjoining office, that Manus came in and told them to go into the Grant Lunch Company's office with the rest, where they were ordered to hold up their hands and face the wall; that while Mancuso and Manus covered them with a gun *the other two went to the cabinet and took the money and walked out*; that he was then robbed of \$150 he had in his pocket, and that their hands were tied, they were gagged and tied together. Three of the men were masked (Case, pp. 48, 49, 50).

The testimony of Jacobowitz and O'Connor was corroborative of the testimony of the others, describing the manner of the holdup, the robbery committed on each individual, and the *active participation of all four* (Case, p. 52, l. 39; p. 57, l. 37).

Goodman testified that by the time he entered the offices (when he was gagged and tied with the rest), *the money was gone, and two men were still operating* (Case, p. 54, l. 30).

The undisputed testimony is that all four men took an active part; Manus and Mancuso tied, gagged and covered the occupants with their guns, while the other two got away with the bags of money. The question resolves itself into the identity of these other two; or, as far as Mantis is involved, whether he was there and participating.

Plaintiff-in-error points out certain confusion in names, as indicating a weakness of the evidence on identification. It should be noted, however, that the witnesses did not know the defendants by names, nor did they attempt to identify them by names. Identifications were made by witnesses placing the hand on the shoulder of each defendant.

Two days after the holdup the witness Mullen was taken to a police station in New York, where, in a line-up of nine or ten men, he picked out the four defendants (Case, p. 30, l. 27; p. 36, l. 37; p. 83, l. 36). The line-up of men was changed and again he identified the same four (Case, p. 42, l. 16) and he identified them in the New York Supreme Court at a hearing on a writ of habeas corpus in connection with extradition proceedings (Case, p. 41, l. 31; p. 75, l. 33; p. 76, l. 9). He identified Mavropoulos and Mantis during the trial by pointing them out upon the request of Mr. Ormsby, counsel for Mavropoulos (p. 37, l. 15) reiterating his former statement that the ones he pointed out, Mavropoulos and Mantis, were making ready to get away and that they did make a get-away while the other two were gagging and tying the occupants of the office (Case, p. 37, l. 10; p. 31, l. 21).

We give below a few excerpts from the record, indicating the manner in which identification was made in the case.

P. 30, l. 32:

"Q Can you step down and put your hand on their shoulders? A (The witness steps down from the witness stand.)

Mr. Fisch: He indicates the defendant Mavropoulos.

The Witness: These two men were the last two men to leave the place, those two men that had the wire. These are the men that held the guns.

Mr. Fisch: Indicating the defendant-ants Mancuso and Mavropoulos.

The Witness: These two men were making their get-away. There was a man I could not recognize well.

The Court: Pointing to these two men on the end here, what do you say about those two men? The first two, indicating Manus and Mavropoulos.

The Witness: One man had the gun.

Q Which one? A This one" (indicating).

P. 31, l. 39:

"Q You said something about these fellows making their get-away. Which ones were they? A This man on the end and this man on the other end.

"Q Mavropoulos and *Manus*? A Yes, sir."

Counsel for plaintiff-in-error, in his brief admits that it was Mantis who was pointed out, and "Manus" was a misstatement by the Prosecutor (p. 6 of brief of plaintiff-in-error, l. 24).

P. 32, l. 36:

"Q Did you pick out that man Mantis when you were in New York? A Yes, sir.

"Q Was he one of the men that was in the Grant Lunch Company office that day? A He looks like him.

"Q Did you swear that he is one of the men? A I can't positively swear.

"Q Did one of these men strike you?

A Yes.

"Q Which man did that? A The man holding the man in the center.

"Q Indicating Manus. Did you pick out Mantis in New York? A Yes, sir.

"Q Did you say that he was one of the men that was in the hold-up?

"Mr. Ormsby: I object.

"Q Did you pick out Mantis in New York as being one of the men? A I did.

"Q Were you sure that he was one of the men? A I wasn't positively sure, but he resembled the man. He wore the same clothing that I saw when he went away.

"Q That is the same man that you saw in the Grant Lunch room and that you recognized in New York and he wore the same clothing? A Yes, sir."

P. 37, l. 8:

"Q Did you see anybody make a get-away? A Both of them went away when both of my hands were being wired.

"Q Which ones? A I can't remember the names.

"Q Point them out. A The men there.

"Q Mavropoulos and Mantis? A Yes, sir."

This was during cross examination by Mr. Ormsby, counsel for Mavropoulos, who knew both Mavropoulos and Mantis. There was no confusion of names here.

It is evident, from the foregoing, that the transcript of the record cannot disclose the true nature of the identification. No matter how much confusion there may have been as to names, there could have been no confusion as to the identity of each defendant, as they were pointed out physically by the witness, who also related, without contradiction, the part played by each one of them: The jury not only heard the testi-

mony of identification, but actually saw it; it was up to them to decide whether or not the identification was satisfactory.

There was other evidence connecting the plaintiff-in-error, Mantis, with the crime. The very day after the hold-up all four defendants, Mantis, Manus, Mancuso and Mavropoulos, were found together, seated at tables, in a restaurant in New York City, in which restaurant Mantis alleges to have a half interest; Mavropoulos was a cook there, and Manus occupied a room above the restaurant, which he rented from Mantis and his partner (See Thomas' testimony, Case, pp. 62 and 63). All four men denied ever having been in New Jersey. This is important as bearing upon the credibility of Manus, who subsequently testified on behalf of Mantis. Mavropoulos occupied a room, in the same building, adjacent to the one occupied by Manus. Manus, Mantis and Mavropoulos knew each other for about three months prior to the date of the hold-up; still, Mavropoulos pretended not to know that Manus rented a room from Mantis, directly above the restaurant, and adjacent to his own room (See p. 130, ll. 21-41; p. 165, ll. 1-10).

Aside from the facts, the jury had the opportunity to observe the conduct of the plaintiff-in-error, and his witnesses, and to place the proper reliance upon their extraordinary accurate memories and convenient lapses of memories and alleged ignorance of certain facts.

On his direct examination, Mantis, plaintiff-in-error, stated that at about a quarter-past eleven on the morning of March 26, he met one Nick at a "Coffee Pot" restaurant near his own restaurant, where he had gone to get a cup of coffee

(p. 87, l. 31; p. 89, ll. 8-12). He professed not to know "Nick's" last name, who was then in court (p. 88, l. 40; p. 89, l. 1). On cross examination he stated that he could not remember Nick's second name because it was very hard, although he had known Nick for five years (p. 93, ll. 10-13). Nick's last name is Jiatransis.

On further cross examination he was asked:

"Q You know he is Greek, and you know that his name is Nick Manus. A Something like that, but I am not positive, but I don't know his name" (p. 94, l. 25).

Mantis is a Greek, and it was unbelievable that for him the name "Jiatransis" was hard to remember, having known him for five years and having lived in the same neighborhood with him. This "Nick," spoken of by Mantis, was in court (p. 88, l. 40) and it does not appear likely that Mantis would believe that the name Jiatransis was something like "Manus." Mantis says he met Nick Jiatransis in the "Coffee Pot," 40th street and 9th avenue, New York City, at about 11:15 A. M. The robbery was committed at 12:15. It would take 30 to 40 minutes from 40th street and 9th avenue, New York City, to the Grant Lunch office in Newark. The jury could properly draw the inference that Mantis had met Jiatransis at the "Coffee Pot" and yet could have come to Newark to take part in the robbery.

Mantis' defense was alibi. The witnesses who testified in his behalf, to corroborate his alibi, were all Greeks, and close friends of his. He failed to call, or attempt to call, the proprietor, or any of the waiters of the "Coffee Pot," where he said he was at 11:15 A. M. on the day in question (pp. 96 and 97).

Jiatransis, testifying for Mantis, remembered the time, to the minute, when he met Mantis at the Atlantic Cafe (Coffee Pot) on Tuesday, March 26. This witness explained that he went to the "Coffee Pot" three times a week; Tuesdays, Thursdays and Saturdays, to sell merchandise. He remembers every minute detail as to what he did at the "Coffee Pot" on Tuesday, when he is supposed to have seen Mantis. He had a cup of coffee, he smoked a cigarette, and he thought the proprietor would be feeling good, and he saw Mantis coming out of the lavatory, etc. (p. 104, ll. 20-40) but he does not remember whether he sold to the Atlantic Cafe any merchandise on Thursday, March 28th (p. 105, l. 26). At one time the witness said the records he kept of his sales to the "Coffee Pot" helped him to remember that Mantis was there on Tuesday, March 26 (p. 105, l. 37). His records for that day were not different from others; and on further cross examination he said it was not because of writing in the book that he remembered (p. 106, l. 24). Once he said he had not seen Mantis for a month before March 26th, and then he admitted seeing him on the 25th (p. 107, l. 20) Jiatransis' testimony is incredible and lacks the earmarks of truth.

It should be noted that Jiatransis did not see plaintiff-in-error, Mantis, if he saw him at all, on that day after 11:25 (p. 104, l. 30), which would give Mantis enough time to come to Newark and take part in the robbery.

Couploupoulos, another alibi witness, testified that he saw Mantis in his grocery store in New York a little after 2:00 P. M. on Tuesday, March 26 (p. 117, l. 25). He does not remember whether Mantis was in his store on the 24th or the 23rd (p. 118); he once said Mantis was not in his store

on the 27th (p. 119, l. 3), and said perhaps he was there on the 27th, sometime in the afternoon (p. 119, l. 23). Couplopoulos' testimony would not in any way tend to prove Mantis' alibi, because the robbery was committed at 12:15, and Mantis then had ample time to get to Coulopoulos' store by 2 P. M., after having been in Newark at the scene of the robbery.

Nick Manus, a co-defendant, testified that he, Mancuso, and two others did the robbery. He gave the names of these other two as "Blackie Martinis" and "Frank, The Jew," and further stated that *neither one of these two look like Mavropoulos or Mantis* (p. 149, l. 21). He planned the hold-up in his room above Mantis' restaurant where Mavropoulos was a cook (p. 150, l. 1). *He did not know where "Blackie" or "Frank" lived* (p. 150, l. 40), *but he, Manus, the self-confessed leader of the four, allowed them, "Blackie" and "Frank," to get away with the money bags while he and Mancuso did the tying and gagging; they did not return to New York together; and afterwards they met again in his room, above Mantis' restaurant, and divided the loot* (p. 150, l. 35, to p. 152, l. 14). Manus, who was the last to leave the Grant Lunch office, was back in his room in New York by 1:15 (p. 154, l. 14), which would make it probable for Mantis (who with Mavropoulos got away with the money) to have been back in the restaurant before 1:00 o'clock.

In the Supreme Court hearing in New York, on extradition proceedings, Manus and Mantis were represented by the same counsel and the defense of each was alibi. Manus knew Mantis and Mavropoulos for about three months (p. 163, l. 20).

The jury heard the witnesses and observed their conduct. They alone could properly decide

what reliance to place upon the testimony of the various alibi witnesses; it was for them to decide whether these witnesses were telling the truth or whether there was a fabrication of testimony to help a friend in difficulty; whether or not Manus, a self-confessed robber, was making a clean, truthful statement, or was he "taking the fall," blaming, with himself, the fictitious characters of "Frankie" and "Blackie."

POINT I.

The Court was justified in refusing to direct a verdict of acquittal, and the verdict was not against the weight of the evidence.

All of the State's witnesses who were present during the robbery testified to the active part taken by all four: that all four participated in the robbery cannot be disputed. Some of the witnesses could not identify Mantis because they were too excited, and because he was masked. Mullen identified him as one of the two making their get-away while the other two were gagging and tying the occupants of the office. Since Mantis denies that he was there at all the question whether he was present as an innocent bystander does not arise.

The case of *State v. Fox*, 70 N. J. L. 353, cited by plaintiff-in-error, is not at all in point, for, in that case, the accused admitted his presence and said he stood a minute or two while the assault and battery was going on; whereas in the case at bar, all four took an active part, and Mantis denied that he was there at all.

Plaintiff-in-error has cited several cases in support of the power of this court to set aside the verdict if said verdict is against the weight of

the evidence: but this does not mean that the appellate court should substitute its own judgment for that of the jury.

It is an elementary rule that where there is evidence from which the jury might properly find the defendant guilty, the issue is one for the determination of the jury, and the Court will refuse to direct a verdict of acquittal on the ground that there was no legal evidence of the defendant's guilt.

State v. Krupin, 100 N. J. L. 7.

In the case of *State v. Grace*, 98 N. J. L. 341, the defendant was convicted of robbery. His defense was alibi, and he produced many witnesses to support it. One of the grounds argued on error was that the verdict was against the weight of the evidence. We quote the decision of the Court on this point:

"But under that statute the court of review weighed the evidences in the same manner as upon a rule to show cause in a *civil case* where the reason assigned is that the verdict is against the weight of the evidence. *State v. Morehouse*, 97 N. J. L. 285; *State v. Fischer*, *Id.* 34; affirmed, *ante*, p. 293. The mere fact that the number of the defendant's witnesses exceed those for the state is no ground for setting aside a verdict against the defendant. *Bowell v. Public Service Corporation*, 77 N. J. L. 231; *Campbell v. Del. & Atl. Tel. Co.*, 70 *Id.* 195. To justify the setting aside of a verdict as against the weight of the evidence, it must be so clear as to give rise to an inference that it was the result of mistake, passion or prejudice. *Queen v. Jennings*, 93 *Id.* 353; *Floersch v. Donnell*, 82 *Id.* 357. Tested by these rules, and considering the interest of the defendant's *alibi* witnesses in the controversy, their opportunity for knowledge of the subject, the influence under which they were testifying and

having due regard to the manifest inherent infirmity of the testimony of several of them, we cannot say that the verdict was against the weight of the evidence.”

State v. Grace, 98 N. J. L. 34.

In *State v. Fischer*, 97 N. J. L. 34, cited by plaintiff-in-error, the Court, discussing the effect of the statute allowing a review of the evidence, and reversal upon finding that the verdict is against the weight of the evidence, says:

“It does not require, or *empower* the court, upon finding that the verdict was not against the weight of the evidence, to go further and consider whether the evidence left a reasonable doubt of the defendant’s guilt.”

“The Court should not set a verdict aside, even although, in its opinion, the jury might, upon the evidence, have found otherwise.”

Queens v. Jennings, 93 N. J. L. 353.

Knickerbocker Ice v. Anderson, 31 N. J. L. 333.

There is nothing in the case at bar to indicate any passion, prejudice or mistake, and the verdict of the jury was sufficiently sustained by the evidence.

It is submitted that the Court was justified in refusing to direct a verdict and the verdict is not against the weight of the evidence.

POINT II.

Assignments and Specifications 3, 4 and 5.

This takes up the trial court’s instructions on reasonable doubt, which are quoted below:

“The burden is always upon the State, and that burden is to prove the defendant guilty beyond a reasonable doubt. That is not a mere possible imaginary doubt because, as you will perceive, that everything connected

with human affairs is open to some imaginary or possible doubt, but it is after all the evidence on the part of the State and the part of the defendant has been presented, you believe, to a moral certainty as to the truth of the charge. If, after a consideration of all the evidence in the case, you cannot say that you have in your own mind an abiding conviction as to the guilt of the defendants, and if you have a reasonable doubt as to the guilt of the defendants, then they should be acquitted. Of course, if, after a consideration of all the evidence you do not feel you cannot say to a moral certainty that you are convinced that they are guilty beyond a reasonable doubt, then they should be acquitted."

The charge in the case at bar is precisely the same as that approved and adopted in *State v. Linker*, 94 N. J. L. 411, and entirely different from the charge disapproved in that case. The disapproved charge in the *Linker* case placed no degree or qualification upon the satisfaction of the minds of the jury, and therefore left no room for the operation of the doctrine of reasonable doubt, but permitted the jury to find the defendant guilty if they were satisfied that the defendant did the act charged against him.

That the Court, in the case at bar, analyzed the charge approved in the *Linker* case, and gave it in separate portions, reiterating every element of it, does not make it a "garbling" as characterized by counsel for plaintiff-in-error in his brief.

The charge sufficiently defined reasonable doubt, and it was not incumbent upon the Court to follow the exact wording of the charge in the *Linker* or any other case. In substance, the charge was exactly the same as in the *Linker* case.

The Court in one part of the charge said:

"If you cannot say to a moral certainty that you are convinced, etc."

In *State v. Leo*, 80 N. J. L. 21, it was held that "convince" means "abiding conviction," and certainly that is the sense in which the word was used in the case at bar, as the Court several times emphasized "abiding conviction."

There was, it is submitted, no error on this point.

POINT III.

Assignment and Specification 9.

Indictment No. 380 was for entering with intent to rob; Nos. 381 and 382 were for assault and battery and robbery; No. 384 was for assault with intent to rob, and 385 and 386 were for assault and battery and robbery. Defendant Mantis was on trial on all of these indictments and was found guilty on all of them, although judgment was suspended on all but 381 and 382.

The undisputed evidence in the case, as corroborated by Manus, one of the participants, who testified on behalf of the defendant Mantis, conclusively proved an accomplished and perfected robbery. The question of attempted robbery does not enter into the case at all. There was no legal proposition as to what they were guilty of. If they were guilty at all, they were guilty of robbery. The question of fact to be determined was *who* were the parties. The indictment charged robbery, and assault and battery with intent to rob. Under the evidence this jury could only find them guilty of completed robbery, and that is what they obviously found. There being no dispute as to the nature of the act committed, and

there being no evidence other than that showing robbery, it was proper for the Court to leave to the jury the sole question of the identity of the participants, and it was not error, or harmful error, to state that the defendants were charged with assault and battery and attempted robbery, and robbery.

The Court, in effect, expressed the opinion that if the defendants were guilty they were guilty of robbery: this is in conformity with the rule in *State v. Fiore*, 93 N. J. L. 362.

It is submitted that the Court did not err on this point.

POINT IV.

Assignment and Specification 6.

The nature of the crime committed by the defendants, including Mantis, plaintiff-in-error herein, was not in issue. It was not disputed that it was robbery that had been committed. Counsel for plaintiff-in-error begins his brief with the accepted proposition that "a bold robbery of the safe and of people present on the premises of the Grant Lunch Room, at Newark, was committed by four men" (p. 2 of brief of plaintiff-in-error, l. 10). Plaintiff-in-error was convicted and sentenced under indictments Nos. 381 and 382, which charge robbery. The facts sustain such a finding. The nature and the legal consequences of the acts committed by the defendants being conceded, it would have been meaningless for the Court to have expounded to the jury the definitions of, and the law concerning, robbery, and would have served no purpose other than to burden the minds of the jury with the solution of questions not in issue.

Plaintiff-in-error does not even contend that on the facts in the case, the plaintiff-in-error, if found guilty at all could have been found guilty of anything other than robbery, the charge under which he was sentenced. We are inclined to think that counsel's criticism of the charge on this point is merely academic, and discloses absolutely no harm or injury to plaintiff-in-error.

It is a well settled rule that the charge of the Court must be viewed with regard to the issues raised by the pleadings and the evidence, and should not be taken as an abstract proposition.

State v. Egan, 87 Atl. 455, N. J.

State v. Jones, 71 N. J. L. 543.

In the case at bar, the only issue raised being the presence of the plaintiff-in-error, the charge of the jury was free from error, and the plaintiff-in-error suffered no harm.

POINT V.

Assignments and Specifications 7, 8, 10 and 11.

As stated previously, the sole point in issue was the identity of Mantis and Mavropoulos. If Mantis was guilty at all, he was guilty as a principal, as an active participant, and not as a principal in the second degree, or an aider and abettor. Mantis and Mavropoulos, or either of them, did not contend that they were mere innocent bystanders. No possible interpretation of the evidence adduced by the State or by the defense could sustain the theory that Mantis or Mavropoulos were innocent bystanders.

The case of *State v. Fox*, 70 N. J. L. 353, cited by plaintiff-in-error, is not controlling in the case at bar, because in the Fox case, the undisputed evidence was that Fox was present, and the point

in issue was the nature and legal consequences of his conduct at the time.

In the case at bar, the uncontradicted testimony was that four men committed the robbery; Mancuso and Manus did the tying up and the gagging, while the other two got away with the money. And Mullen identified Mantis and Mavropoulos as the ones who so got away.

The trial court was therefore perfectly justified in charging that the question resolved itself into the fact as to whether they (Mantis and Mavropoulos) were there.

On page 19 of his brief, counsel for plaintiff-in-error argues that Mantis could not be guilty of these crimes except as an aider and abettor. The undisputed facts show that if he was guilty at all, he was guilty as an active participant, as a principal. However, if he was present as aider and abettor, he was guilty as a principal.

State v. Carlino, 98 N. J. L. 48.

No error was committed by the Court on this point.

POINT VI.

Assignments 12, 13 and 14,

Specifications 12 and 13.

It is submitted that the arguments of counsel for plaintiff-in-error under this point are entirely irrelevant to the issue. Counsel complains that "the Court itself had determined all other questions of fact against plaintiff-in-error" (p. 21 of plaintiff-in-error's brief). These "other questions of fact" have reference to what occurred at the premises. Again we have to repeat that "those other questions of fact" were not in issue

and the Court did not usurp the province of the jury by considering them as undisputed facts. Plaintiff-in-error's own witness, Manus, stated that four men committed the robbery on a pre-arranged plan; that all four men were active participants. The sole question was the identity of the two other than Manus and Mancuso.

The Court did not invade the province of the jury by assuming a fact to be proved, when those "facts" were testified to by plaintiff-in-error's own witness, conceded to be true, and are still undisputed by counsel for plaintiff-in-error.

The case of *State v. Pitman*, 98 N. J. L. 626, relied on by plaintiff-in-error, is not at all in point. In that case, the charge was carnal abuse and the age of the girl was the issue, and the Court charged that if the act was committed before a certain date, the defendant was guilty because on that date the girl became 16 years of age. The difficulty with that charge was that the date of the birth was disputed.

In our case, the "intent" with which the four men entered the Grant Lunch Company offices was not only not disputed, but asserted by Manus as a witness for plaintiff-in-error.

In the case of *State v. Boccadoro*, Vol. VII, N. J. Adv. Rep., p. 305, a similar point was raised by plaintiff-in-error. It was there contended that the Court erred in making the following statement to the jury: "Now, gentlemen, the question which you must decide in this case is simply this: 'Did Boccadoro kill Thompson?' " The argument was that this instruction was improper because the jury should have been told to find not only that fact, but also that the killing occurred during the perpetration of a burglary. The answer to this contention was that the fact that Thompson

came to his death as the result of a bullet fired at him by a person burglarizing the Thompson house was uncontroverted. The Court of Errors and Appeals, affirming the conviction, held that it being "practically conceded that the killing was done by a man attempting to commit a burglary, the only question left for determination was whether the defendant was or was not that man."

And in our case, it being conceded that four men had committed the robbery, the sole question of fact was whether Mantis was or was not one of said four.

No error was committed on this point.

POINT VII.

Specifications 14 and 15.

The requests to charge, refusal of which is assigned for error, were as follows:

"1. The mere fact that the defendant has interposed the defense of alibi does not thereby put the burden upon the defendant of proving that alibi, but the burden remains upon the State to prove beyond a reasonable doubt, the defendant's presence at the scene of the alleged crime.

"2. And if from all the evidence adduced, there is left in your minds a reasonable doubt as to the defendant's whereabouts on the day of the alleged crime, you must find the defendant not guilty."

It does not appear from the State of the Case that these requests to charge, if made at all, were made at the proper time; that is, at the close of the evidence. Nor does it appear that any exceptions were taken upon the Court refusing to grant the same. We therefore submit that the refusal of these two requests to charge, if there was such a refusal, did not constitute error.

Assuming, however, that the requests were made at the proper time, it is further submitted that the requests did not present an accurate statement of the law and were properly declined.

None of the cases cited by plaintiff-in-error sustain the principle given in the two requests to charge.

In the case of *Sherlock v. State*, 60 N. J. L. 31, cited by plaintiff-in-error, the charge was that the defendant must prove the alibi by a preponderance of the evidence, which concededly was wrong. In *State v. Diamond*, 84 N. J. L. 17, cited by plaintiff-in-error, there was error in the charge on the burden of proof of alibi.

In *State v. DeGeralmo*, 83 N. J. L. 135, the request to charge was quite different from the request in our case. In the *DeGeralmo* case, the request was "*That if reasonable doubt of guilt is raised, even by inconclusive evidence of the alibi, defendant is entitled to benefit of it.*" It will be noted that "reasonable doubt" is applied to guilt and not to the whereabouts of defendant. The rule of the *DeGeralmo* case, as we understand it, is *that if a reasonable doubt as to defendant's guilt is created by the evidence on alibi, even though the evidence on alibi does not conclusively prove the alibi, the defendant is entitled to an acquittal.*

The rule of the *DeGeralmo* case calls for consideration of the evidence on alibi in arriving at a "conviction beyond reasonable doubt, of defendant's guilt." And that rule was fully complied with in the charge of the Court in the case at bar, by instructing the jury to take into consideration the testimony of the defendants and their witnesses as to whether the defendants were at the Grant Lunch Room.

The case of *State v. Tanzarello*, 1 N. J. Misc. Rep. 375, was precisely the same as the case of *State v. DeGeralmo*. In both of these cases the request called for the application of a correct legal principle, that if the reasonable doubt of *guilt* is created by the evidence on alibi, defendant should be acquitted.

In all the cases giving a ruling on the question of alibi, "reasonable doubt" is applied to the "guilt," and not to the whereabouts of the defendant. In other words, if, after considering *all the evidence in the case*, including the evidence on the alibi, even though such alibi is not proved, the jury is satisfied beyond a reasonable doubt of the defendant's guilt, even though they are not satisfied beyond a reasonable doubt of the defendant's whereabouts at the time, they would have to return a verdict of guilty.

In *State v. Heller*, 2 N. J. Misc. 1023, on page 1026, our Supreme Court says:

"A reasonable doubt, which entitled a defendant to an acquittal is a doubt which remains in the minds of the jurors upon a consideration of all the evidence in the case, and not upon certain selected material facts."

It is submitted that the requests to charge were inaccurate statements of the law and were properly refused.

In the case of *State v. Guarino*, Vol. 7, N. J. Adv. Rep., p. 1103, the Chancellor, considering the charge that,

"* * * The burden of proving the defendant guilty rests upon the State throughout and never shifts; that the rule is the ultimate one surviving all others and is an independent and final protection of the defendant, and notwithstanding all other presumptions and burdens it remains upon the State until and after all the evidence is in,

and then the jurors must consider upon all the evidence in the case whether or not the burden has been sustained," said

"This was a valid instruction, *broad enough to include the alibi.*" (Italics ours.)

The Court then reversed the conviction because of error found elsewhere in the charge, in that the trial court had placed the burden of proving the alibi upon the defendant.

There is no such error in the case at bar; the charge of the trial court was broad enough to include the alibi, and the requests to charge were erroneous.

It is also to be noted that the guilt or innocence of the defendant was placed upon the sole issue, whether or not he was present; as the Court so emphatically charged that the only question to decide was whether or not the defendant was there, and that the guilt of the defendant coincided with his presence, to charge that the jury must be convinced beyond a reasonable doubt of defendant's guilt, was, in this case, tantamount to a charge that they must be convinced, beyond a reasonable doubt, that defendant was there. It is submitted that, taking the charge as a whole, the Court, in substance, charged as requested by counsel for Mantis and Mavropoulos.

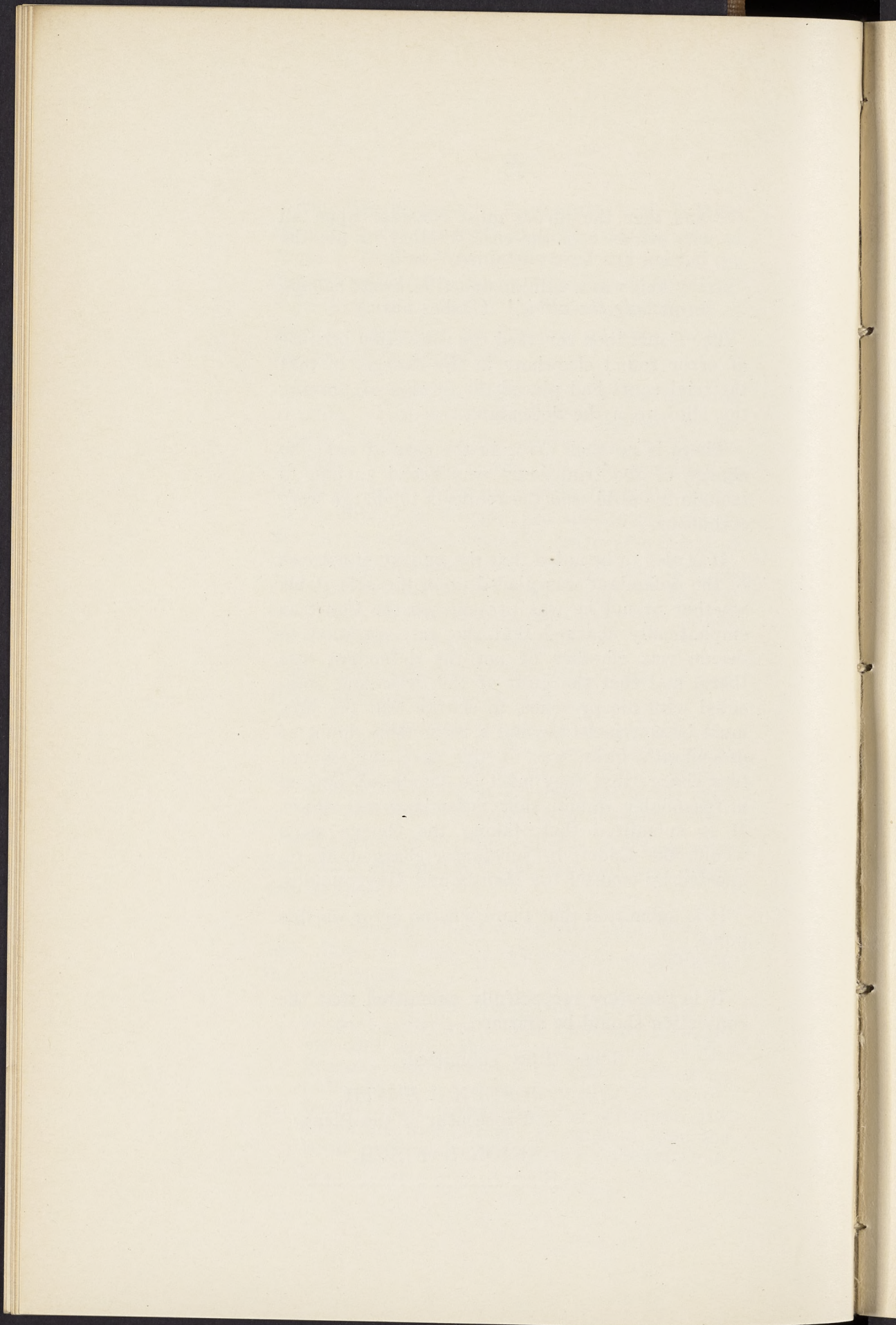
It is submitted that there was no error on this point.

It is therefore respectfully submitted that the conviction should be affirmed.

Respectfully submitted,

JOSEPH L. SMITH,
Prosecutor of the Pleas,

SIMON L. FISCH,
First Assistant Prosecutor.



115-FEB. 1. 1931

A-9.

New Jersey Court of Errors and Appeals.
On Error to Supreme Court.

STATE OF NEW JERSEY,

Defendant in error,

—against—

DIOMEDES MANTIS,

Plaintiff in error.

BRIEF FOR PLAINTIFF IN ERROR.

This matter is on writ of error to the Supreme Court which affirmed the conviction of the plaintiff in error.

In the Supreme Court two writs of error were issued to review the convictions and judgments under indictments Nos. 381 and 382, April Term, tried in Essex Quarter Sessions. The plaintiff in error was also accused by indictments Nos. 380, 384, 385 and 386, and, the trial of the six indictments being consolidated, was convicted upon all. Judgments were entered on Nos. 381 and 382 only, and suspended on the others. The trial Court has made return only as to those upon which judgment was given, but has certified the entire proceedings had upon the trial of all six.

Indictment No. 381 contained a count charging the plaintiff in error and four others with assault and battery on David Jacobowitz, and another count charging robbery against his person.

Indictment No. 382, similarly framed, charged the same defendants with an assault and battery and a robbery against the person of William Webber. It is indicated that indictment 383 charged the same offenses in respect of the person of a Mr. Horowitz, and that No. 384 charged them with an assault with intent to rob William A. Mullen. Nothing appears as to the identity of the victims whom the defendants are charged with assaulting and robbing in Nos. 385 and 386. A schedule of the indictments is found on page 13 and reference to their allegations are made on pages 20, 21 and 22.

The Supreme Court ruled on four points only, which are here re-argued, and dealt respectively with (a) sufficiency of the evidence, (b) definition of reasonable doubt, (c) Court's failure to define the crimes of robbery, assault and battery, entering with intent and assault with intent, and (d) its refusal to charge respecting the burden on a defense of alibi. It passed over, as unmeritorious, three other points, viz: (a) the Court's misinformation and misstatement to the jury as to the crimes charged; (b) its neglect to define a principal in the second degree, aiding and abetting and common intent; and (c) its error in charging that mere presence was sufficient to convict. These points are likewise here re-argued.

Facts.

March 25th, 1929, about noon (p. 24, ll. 20-25) a bold robbery, of the safe and of the people present on the premises of the Grant Lunch Room, at Newark, was committed by four men (p. 27, l. 39), and the process of the crime was clearly elucidated by the evidence. The proprietor,

Jacobowitz, was talking to a man named O'Connor in one of the private offices when a man entered and held them up with two guns (p. 24, l. 39; p. 51, l. 15; p. 55, l. 35). This robber is fully identified as the defendant, Manus (p. 31, l. 36; p. 33, l. 10; p. 34, ll. 30-40; p. 40, l. 21; p. 48, l. 19; p. 49, l. 1; p. 56, l. 15). About the same time a confederate entered the adjoining office of the cashier, Miss Hixson, with a gun in his hand and ordered her to walk into the office where Manus, Jacobowitz and O'Connor were (p. 24, ll. 30-40). Upon reaching the office of Jacobowitz, and while Manus still covered the party with guns, the second man gagged them and tied their hands and legs with wire, searched them and robbed them (p. 26, ll. 25-30). While this was going on four visitors, Webber, Horowitz, Goodman and Mullen, entered the room singly in the order named, and were each searched, robbed and bound by the same man who tied the others, except Mullen, who was not robbed (p. 26, ll. 30-40; p. 29, ll. 30-40; p. 48, ll. 20-30; p. 51, ll. 35-40; p. 56, l. 30). The man who approached Miss Hixson, and who did the wiring and robbing, is fully identified as the defendant, Mancuso, "the man in the green sweater" (p. 28, ll. 1-20; p. 32, l. 8; p. 40, ll. 30-35; p. 49, ll. 20-40; p. 54, l. 38). Manus, who wore a felt hat, also assaulted Mullen by striking him with his hand (p. 32, ll. 22-35; p. 33, ll. 5-15). While Manus and Mancuso were thus operating, two other men entered the room which Miss Hixson had left and stole from a steel cabinet \$3,000. The theory of the State was that these were the defendant, Maviopoulos and Mantis, the plaintiff in error (p. 26, ll. 1-20; p. 31, ll. 18-21; p. 37, ll. 1-30).

Manus and Mancuso pleaded guilty to all in-

dictments (pp. 20, 21 and 22), and Mavropoulos and Mantis (plaintiff in error), went to trial, both interposing the defense of alibi. To testify to the general facts the State called six witnesses, Miss Hixson, Mullen, Webber, Jacobowitz, Goodman and O'Connor. Miss Hixson, Webber, Jacobowitz and O'Connor all witnessed the theft from the cabinet, but none of them could identify either Mavropoulos or Mantis (plaintiff in error) (p. 25, l. 35; p. 49, l. 10; p. 53, l. 10; p. 56, ll. 20-30). The theft was not witnessed by Goodman or by Mullen (p. 40, ll. 10-20; p. 54, l. 30). The men who took the cash departed before Goodman arrived (p. 54, l. 30). Although Mullen entered last he (p. 51, l. 40), and he alone, testified that he saw two men "making their get-away" (p. 33, l. 5). His identification of Mavropoulos was positive (p. 45, l. 40), but never, either at the police lineup or at the trial, did he positively identify Mantis. In no part of his testimony does he speak the name of Mantis, protesting vigorously that he knew nothing about the *names* of the defendants. He testified, "I can't remember the names" (p. 37, l. 11); "I don't know names" (p. 39, l. 33); "I can't identify them by name" (p. 39, l. 35).

Notwithstanding his disavowal of ability to distinguish the defendants by names, in examining him, the assistant prosecutor led him to adopt nomenclature of the attorney's own choosing. By this means the record would appear to exhibit an instance when the witness identified the plaintiff in error as having been one of the chief actors, were it not for the fact that the prosecutor himself was patently confused amid the exotic titles of Manus, Mantis, Mancuso and Mavropoulos. Three times he used the wrong designation and

lured the witness, Mullen, into the adoption of his error. Manus, the man with the guns and the felt hat, who held up and assaulted Mullen (p. 32, l. 34; p. 33, ll. 3-11; p. 40, l. 21), was referred to by the prosecutor in two questions on page 32, not as Manus but as *Mantis* (p. 32, l. 19 and l. 25); on the same page at line 2, the prosecutor used the name of Manus instead of Mantis, and the indiscriminating witness in every instance assented thereto. The question at page 32, line 2, was the same as that asked on the previous page (p. 31, l. 21), and was the same question propounded on page 37, line 15. Throughout his testimony the sole occasion upon which this witness voiced the name of any defendant is found on page 40, line 21, as follows: "Q. Who held you up? A. Manus." Everywhere else the naming, accurately and erroneously, was done by the prosecutor.

Referring to the two men who were "making the get-away" and who were distinguishable from Manus and Mancuso, the entire testimony of Mullen is as follows:

"Q. What did you say about not recognizing one man? A. The other two men were trying to get away.

Q. Mavropoulos and Mantis? A. Yes" (p. 31, l. 18).

"Q. You said something about these fellows making their get-away, which ones were they? A. This man on the end and the man on the other end.

Q. Mavropoulos and *Manus*? A. Yes, sir" (p. 31, l. 39).

"Q. Did you pick out that man Mantis when you were in New York? A. Yes, sir.

Q. Was he one of the men who was in the Grant Lunch Company office that day?

A. He looks like him.

Q. Did you swear that he is one of the men? A. I can't positively swear" (p. 32, l. 37).

"Q. Did you pick out Mantis in New York as being one of the men? A. I did.

Q. Were you sure that he was one of the men? A. I wasn't positively sure, but he resembled the man. He wore the same clothing that I saw when he went away" (p. 33, l. 18).

"Q. That is Mancuso? A. Then this other man stood about there (indicating on diagram).

Q. Which one stood about there? A. This gentleman on the end.

Q. Mavropoulos? A. Yes, sir; and the other fellow stood close over to me.

Q. Which man do you mean? A. This man that I couldn't identify. I couldn't get his countenance" (p. 35, ll. 20-28).

Q. Is this where you said Mavropoulos was? A. Yes, sir.

Q. I understand you to say that you saw Mavropoulos do nothing? A. He didn't do nothing.

Q. And you further said that you identified Mavropoulos in New York? A. I did.

Q. What assisted you in making your identification? A. His features.

Q. What particular features? A. I only got one look at him, that is all, and I can identify him again if you place him in that crowd, among a crowd of people.

Q. What particular features? A. His resemblance, that is all, his face.

Q. You have just given us an idea of your resemblance of a man on the other end? A. Yes.

Q. Do you base your conclusion on the same resemblance? A. I didn't get as clear a view of one man as I did the other" (p. 36, ll. 12-29).

"Q. They were just standing there, there was no activity there? A. No, they were ready to make a get-away.

Q. Did you see anybody make a get-away? A. Both of them went away when both of my hands were being wired.

Q. Which ones? A. I can't remember the names.

Q. Point them out? A. The man there.

Q. Mavropoulos and Mantis? A. Yes, sir.

Q. Were they running or walking? A. I couldn't say whether they were running or walking.

Q. Did they have any gun in their hands? A. They didn't.

Q. What makes you think they were running to get away from something? A. Because they had all the other people tied up.

Q. What connection did they have with these other people that were tied up? A. They must have been the same gang because the four were altogether.

Q. Your conclusion is because Mr. Mavropoulos was in this particular spot, you concluded that he was aiding the other fellows? A. If he wasn't he would have helped the others" (p. 37, ll. 2-30).

"Q. At this time Mavropoulos didn't have anything to do with you? A. He didn't have anything to do with me. He had no mask on. He had a cap pulled down over his forehead.

Q. Did you have a complete vision of Mavropoulos? A. Of his face, I did, yes" (p. 40, ll. 34-38).

"Q. Do you positively swear on this identification of Mr. Mavropoulos? A. At the present time?

Q. You are absolutely positive, you say, of the identification? A. Yes, sir" (p. 45, ll. 30-40).

The defendant denied his presence at the scene of the crime, explained his presence elsewhere (pp. 85-103) and was corroborated by four entirely credible witnesses (Testimony of Jiantrannis, Marudus, Couplopoulos and Wallace). A motion at the close of the State's case to direct an acquittal on the ground of failure of proof (p. 84) and a like motion for acquittal at the close of the entire case (p. 168) were denied.

The charge exhibits the following features:

(a) The Court misinformed the jury that one of the indictments charged attempted robbery, and further misinformed them that there was but a single indictment charging robbery;

(b) The Court refrained from informing the jury that one indictment charged entering with intent, that another charged assault with intent to rob and that there were four indictments for robbery;

(c) The Court announced that it was

unnecessary to define robbery, and made no allusion whatever to the elements of assault and battery, assault with intent to rob, entering with intent, or of the non-existent charge of attempted robbery;

(d) The Court limited the jury to a finding of the single fact whether the defendant was present, and instructed them that upon the finding of that one fact they should render a verdict of guilty on all six indictments (p. 170, ll. 34-40; p. 171, ll. 1-25; p. 173, ll. 21-25).

Requests to charge that the burden of proving an alibi did not rest on the defendant, that it rested upon the State, and that the defendant should have the benefit of a reasonable doubt as to his whereabouts, were refused.

POINT I.

A. There was error and injury in the Court's refusal to direct a verdict at the close of the State's case and at the close of the entire case—and likewise the verdict was against the weight of evidence. (Assignments of Error 1 and 2; Specifications 1, 2 and 16); and

B. The Supreme Court erred in ruling that the evidence submitted showed that the plaintiff in error was one of a party of four that came into the restaurant together.

Under this point are discussed both the denial by the Trial Court of the motions; the insufficient weight of the evidence; and the baselessness of

the view of the Supreme Court that plaintiff in error was one of a party that arrived together at the scene of the crime.

The case against Mantis turned entirely upon the evidence of Mullen. He did not witness the arrival of the robbers and did not witness the abstraction of the money from the steel cabinet. It does not appear that there was any indictment charging Mantis, or the other defendants, with the larceny of the money of the Grant Lunch concern; no reference to such an indictment is contained in the case or made by the Court in its exposition to the jury. Four people witnessed this larceny, but none could identify Mantis as the thief. Mullen, the late arrival, testified only to his unreliable impression that Mantis was present during the robberies committed by Manus and Mancuso against the persons of the people who were held up in the private room. No evidence whatever implicating him in the larceny from the safe, his criminality could be viewed only from the standpoint of aiding and abetting the robberies. He has been sentenced for the robberies of Jacobowitz and Webber. The issue therefore involved his guilt as a principal in the second degree in respect of those crimes, Mancuso being shown to be the first degree offender; to establish the guilt of Mantis as principal in the second degree the burden of the State was to show (a) presence, (b) aiding and abetting, and (c) common intent. The proof of mere presence or the failure to interfere is insufficient.

State v. Fox, 70 N. J. L. 353.

At the close of the State's case its full probative worth was the timid opinion of Mullen alone that the defendant was present. The same witness

gave testimony that there was no activity fostering the crime on the part of either Mantis or Mavropoulos, whom he described as "making their get-away". When a further opinion was sought from him he rendered that "Mavropoulos and Mantis must have been aiders, or they would have helped the victims" (p. 37, l. 30). The jury was authorized to find beyond a reasonable doubt that Mantis was present, on the strength of the suggestion of a lone witness, who emphasized his own doubt as to the fact. How the jury could be convinced by the testimony of a witness who was unconvinced himself is one of the nice problems of the case.

The State having completely ignored the burden of proving participation, and having submitted but a single scrap of opinionatory evidence that Mantis was present, it was the duty of the Court to grant the motion to acquit at the close of the State's case. The power to do so implies a duty to exercise it and the right to review in case of refusal. The same reason that compels a direction of acquittal where the State refuses to offer any proof applies where the proof offered is insufficient to warrant conviction.

Burnett v. State, 62 N. J. L. 510;
State v. Brown, 72 N. J. L. 354;
 1 Cum. Supp., C. S., Crim. Proc., Par.
 78, p. 886;
State v. Jagers, 71 N. J. L. 281.

The *Jagers* case is authority for the rule that an abuse of direction in refusing the motion must be corrected when manifestly wrong and injurious.

Mullen's incertitude was met by the evidence of Mantis, a young man of good record (p. 89,

ll. 20-30), good education and exceptional ambition and industry (p. 86); his alibi was fully sustained by four respectable men. This evidence the State was unable to question, and did not attempt to rebut. The only direct evidence as to the whereabouts of Mantis was furnished on the defendant's case.

In this situation the Court should have directed a verdict at the close of the State's case or at least at the close of the whole case, and this Court in passing on the wrong and injury thereby done may rapidly recognize that the verdict that ensued was against the weight of evidence.

1 Cum. Supp., C. S., Crim. Proc., Par. 137-A, p. 898;

State v. Knight, 96 N. J. L. 461;

State v. Fisher, 97 N. J. L. 34;

State v. Forman, 97 N. J. L. 168;

State v. Morehouse, 97 N. J. L. 286;

State v. Karpowitz, 98 N. J. L. 546;

State v. Grace, 98 N. J. L. 341.

It will be gathered from the statute and from the cases cited that the Court on review will weigh the evidence in its totality, the same as upon a rule to show cause in a civil action, and correct the injury when the weight of evidence is so clear as to give rise to an inference that the verdict was the result of mistake, passion or prejudice.

Specific judgments were entered on the indictments charging assault and battery against the persons, respectively, of Jacobowitz and Webber. As shown above there was no proof of any act aiding or abetting those particular crimes; for all that appeared in the case those crimes may

have been completed before the arrival of Mullen who says that upon such arrival he merely saw two men "getting away". He implicated the plaintiff in error in nothing.

It is here contended that in the state of the evidence there was error, wrong and injury in the denial of the motions, and that on the issue of Mantis' presence, upon which the State staked all, the weight of evidence was in favor of the plaintiff in error.

From evidence that dealt exclusively with the *departure* of the person mistaken for the plaintiff in error, the Supreme Court was wholly unwarranted in its view that Mantis *arrived* as one of a party of four that came together. The undisputed testimony was that Manus and Mancuso came together; that a substantial period of time elapsed while Webber, Horowitz, Goodman and Mullen were arriving and being tied up; the case is silent as to the duration of the interval between the time of Mullen's arrival and his observation of the two men whom he claims to have seen departing from the place.

POINT II.

The several instructions defining reasonable doubt were misleading and injurious. (Assignments 3, 4 and 5; Specifications 3, 4 and 5.)

The Court in three independent instructions as to the nature of a reasonable doubt charged the jury as follows:

(a) It is after all the evidence on the part of the State, and on the part of the defendant, has been presented, *you believe*

to a moral certainty as to the truth of the charge (p. 170, l. 20) ;

(b) If, after a consideration of all the evidence in the case, you cannot say that you have in your own mind an *abiding conviction as to the guilt* of the defendants, and, if you have a reasonable doubt as to the guilt of the defendants then they should be acquitted ;

(c) If after a consideration of all the evidence you cannot say to a moral certainty that you are convinced that they are guilty beyond a reasonable doubt, then they should be acquitted.

It is obvious that the Court in giving the foregoing instructions was mindful of the formula approved in *Donnelly v. State*, 26 N. J. L. 601, an approved condensation of which is found in *State v. Linker*, 94 N. J. L. 411, as follows:

"It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the mind of the jurors in that condition in which they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

It is contended that a proper association of the terms "abiding conviction" and "moral certainty" are indispensable to a correct exposition of the rule, and that the same instructional result is not attained when the terms are separated, or when, upon the dropping of one term, language of different significance is substituted. In the first extract above the Court substituted "believe" for

"abiding conviction". In the second statement the Court used "abiding conviction" without qualifying that it should be to a "moral certainty". In the third expression the jury was instructed that the defendants should not be acquitted unless the jury had both a reasonable doubt *and* lacked a moral certainty that they were convinced as to guilt.

The Court was not required, in the absence of a request, to define reasonable doubt; but having undertaken to do so was required to define it correctly; and if it undertook to expound the *Webster* case formula, it should have been done without garbling.

State v. Linker, supra.

There is scarcely any other legal rule so punctilious in expression, and the comminuted instructions above set forth could not produce the same understanding that would have been attained had the rule been correctly and coherently stated.

Instances of reversal ordered because of failure to adhere to the exact wording of the *Webster* formula, are

State v. Rosenberg, 97 N. J. L. 430;
State v. Parks, 96 N. J. L. 360.

POINT III.

It was error and injury for the Court to misinform the jury as to the crimes charged in the indictments; to neglect to inform the jury of the nature of the crimes actually charged; and to misstate that one such indictment charged attempted robbery. (Assignment 9; Specification 9.)

This point was not treated by the Supreme Court.

From the certified case it appears that there were six indictments presented against Mantis and the others (p. 13), and that the trial of the six was consolidated (p. 17, l. 10). Four indictments, *i. e.*, 381, 382, 385 and 386, charged assault and battery and robbery; 380 charged entering with intent to rob, and 384 charged assault on William Mullen with intent to rob. The terse reference of the Court to the scope of the issues was as follows:

“The indictments charge the defendants with assault and battery and attempted robbery, and the fourth indictment with robbery.”

Although previously and subsequently told that there were six indictments, from this announcement the jury might gather, as one alternative, that there were three indictments charging assault and battery and attempted robbery, and one charging robbery; or that one or more charged assault and battery in a single count, one or more charged attempted robbery in a single count, and

the remaining one charged robbery. In either case the information was false; there was neither an indictment nor a count charging attempted robbery.

The plaintiff in error complains that the jury was deprived of its right to determine his innocence or guilt through the normal process of applying the law of the case to the facts found. He contends that it is the unavoidable duty of a trial court to inform the jury accurately as to the character of the crime charged in the indictment, to furnish its legal definition and to state its elements; if the case ought, as a matter of law, to have gone to the jury at all, it is elementary that it ought to have gone to the jury with proper instructions as to the crimes charged.

Brunswick v. Standard Accident Ins. Co. (Mo.), 213 S. W. 45, 7 A. L. R. 1213.

In *Bindernagle v. State*, 60 N. J. L. 307, the following syllabus is set forth:

"It is the duty of the trial court to define the elements of fact necessary to constitute a disorderly house, but whether the proof is sufficient to establish that conclusion, as well as whether by such proof and the other evidence the person charged in the indictment is responsible, as a matter of fact, for the management and control of the same, are questions which must be submitted to the jury, and which are entirely within the province of the jury to determine."

Where several offenses are charged, the Court should define and instruct as to each, but it is

not necessary to instruct separately where the same crime is charged in two or more counts of an indictment, the only difference between them being in the allegation of the method by which it was accomplished.

A definition by the Court of the crime charged, in precise and accurate language, setting forth the essential constituents thereof, is indispensable.

12 Cyc. Crim. Law, p. 614 and cases cited.

The duty of the Trial Court in a criminal case to enlighten the jury as to the character of the offenses, and the evidence necessary to sustain it, is a prevailing one that is owing, not to the defendant, but to the public in order that the processes of justice should not be perverted. While the defendant may not complain, in the absence of a special request, that a particular instruction favorable to himself was not given, the defendant is not charged with supervising the performance of a fundamental duty by the Court which it should discharge in the fulfilment of its judicial mission. A contrary view would relieve the Court of all responsibility in respect of guarding the integrity of the verdict, and authorize it to refuse to give any instruction except such as were properly requested by the defendant himself.

The failure properly to inform the jury as to the crimes actually charged disabled them from the performance of their sole duty of registering the truth as to the maintainability of the indictments.

The misstatement that an indictment charged them with attempted robbery was merely an

accusation emanating from the Court, in usurpation of the functions of the grand jury.

After the jury was informed that the indictments charged assault and battery and attempted robbery, except one which charged robbery alone; after it was informed that the finding of one fact against the plaintiff in error demanded a verdict of guilty upon all six indictments, and after such verdict was rendered, it was then applied to four indictments charging robbery, one entering with intent and one assault with intent; even the present record shows judgments entered upon two indictments for robbery on the sanction of a verdict given by a jury which had been informed that there was only one such indictment.

The two judgments rendered and now under review were for robbery perpetuated against the persons of David Jacobowitz and William Webber. No one has the means of knowing whether it was to one of these indictments, or to indictments 385 or 386, that the Court referred when it informed the jury that they were dealing with but a single indictment for robbery.

The Court's power was limited to submitting to the jury the question of the defendant's guilt under the indictments actually found. Its duty was to enable the jury to give an intelligent answer upon the issue framed on such indictment and the plea; that service could not be rendered by a jury ignorant of the nature of the charge, and *a fortiori* it could not be answered by a jury passing upon the question of attempted robbery which was not charged at all.

In *State v. Geltzeiler*, 2 N. J. Misc. Rep. 1106, the Supreme Court ruled that a court is not obliged to define the crime, and can submit a case to a jury without a charge if it desires to do so,

and the method to be taken to secure a charge upon any branch of the case is by a request. The holding was in reliance on *People v. Gray*, 5 Wend. 288 and *State v. Ross*, 247 Pac. Rep. 1149.

The *Gray* case is no authority for the principle. In that case a request was made for a charge and ignored. The opening statement of C. J. Savage is:

"It is no doubt the duty of the judge to charge the jury and state to them the law of the case, but there may be good reasons for omitting to do so."

The reasons, adopted as sufficient, were that there was no dispute about the law, the Court could not have finished a charge before the Sabbath morning when the jury must have been discharged or kept together over the Sabbath, and the testimony presented a clear case of wilful murder.

The Court observed, however, that where such an omission to charge operated to the prejudice of the defendant, the verdict should be set aside.

The *Ross* case is not to be found in the volume of the Pacific Reporter cited and persistent industry has failed to locate it elsewhere.

The obligation of the Court to charge the jury in a criminal case is plainly recognized in *State v. Roesell*, 62 N. J. L., at page 422. In the syllabus it is set forth that "the maxim '*ad questionem facti non respondent iudices*' so '*ad questionem juris non respondent juratores*' applies to both civil and criminal cases." The office of the charge is to prevent the jurors from responding to questions of law.

Under a statement of the principle that it is the duty of the Court to charge the jury although no request for instructions has been made, the American authorities are collated in 16 Corp. Jur. 962.

POINT IV.

It was error and injury for the Court to fail, even without request, to define the crimes of robbery, assault and battery, entering with intent and assault with intent to rob which the indictments charged. (Assignment 6; Specification 6.)

The Supreme Court adverted to this point as follows: "The answer to this contention is that there was no such refusal but merely a failure * * * Such failure does not constitute legal error. It is only where instructions are requested, and not complied with, that error exists." Although the course of the Trial Court was characterized in the brief, submitted to the Supreme Court, as a "refusal", the assignments and specifications in that Court complained of both "refusing and failing" to define (p. 179, l. 20; p. 182, l. 25). It is contended that in point of prejudicial results *failure* is as grievous as *refusal*, and that a defendant in a criminal trial is not obliged to request the Court to inform the jury as to the question in traverse.

Industrious search has failed to discover any case where the Court wholly failed to enlighten the jury as to the nature of the crime charged. Cases are common in which the Court, after attempting a general definition, was justified in refusing, without a proper request, to give a particular definition.

Such a case in our State is *Mead v. State*, 53 N. J. L. 601. In that case the Court gave a general definition of forgery, but failed to explain clearly how a forged indorsement could prejudice the complainant. The Court of Errors and Appeals said:

“When no instructions are requested, the charge to the jury and the selection of the points to which the charge shall be directed rests in the discretion of the court, and the omission to state a pertinent legal principle is not error.”

The failure to define the crimes charged, succeeding a failure to inform the jury as to even their nature, was not an omission to state a “pertinent legal principle”. It was a control of the trial that blindfolded the jury in the intelligent performance of their vital function. If such a judicial method rests, as stated, in the sound discretion of the Court, it is now submitted that such discretion is reviewable under Section 136 of the act, and that its exercise in the present instance was manifestly wrong and injurious and violative of the constitutional right of trial by jury.

POINT V.

It was error for the Court to refuse to define a principal in the second degree, aiding and abetting, and to fail to charge with respect of common intent as between joint principals. (Assignments 7, 8, 10 and 11; Specifications 7, 8, 10 and 11.)

This point was not treated by the Supreme Court.

No evidence whatever was offered to prove that the plaintiff in error was a principal in the first degree. Mullen spoke only of two men "making a get-away", while Manus and Mancuso robbed the victims. The indictments reviewed under the present writs charged the robbery of Jacobowitz and Webber. The same man, who is clearly identified as Mancuso, searched and robbed both Jacobowitz and Webber (p. 26, l. 30; p. 49, ll. 15-20 and l. 40). Mantis could not be guilty of these crimes except as an aider and abettor, and it was the Court's duty to instruct as to the state's burden beyond the mere proof of presence.

In *State v. Fox, supra*, the instruction condemned was:

"That a defendant who is present while an assault was being committed by others and took no hand to prevent it was guilty in law."

As an accompaniment of the rule that mere presence does not constitute an aider or abettor is the requirement that to render one responsible for a crime as principal in the second degree, there must be a community of unlawful purpose at the time the act is committed, and even when there is a common unlawful purpose, acts done by one, but not in pursuance of the arrangement will not render the other liable. Words or acts of encouragement and abetting must be used with the intention of encouraging and abetting the actual perpetrator.

Hicks v. United States, 150 U. S. 442, 12 Cyc. 188, and cases cited.

As hereafter discussed the Court not only ignored the necessity of instructing the jury that it must find that the plaintiff in error was both present and aiding and abetting with a common intent, but it charged the jury that those considerations, with the exception of presence, were immaterial. The language was:

“There is no legal proposition as to what they are guilty of * * *. It does not make any difference whether one might have had a gun and the other used wire, whether one might have taken the money out of the safe, it doesn't make any difference, they are all equally guilty. It resolves itself into the fact as to whether they were there * * *. Take into consideration all the testimony in an effort to determine whether these two men were in the office of the Grant Lunch Room at the time this holdup took place * * *; so I leave the case with you saying again that the only question for you to determine is the fact were those two men there, if they were there, they are guilty on all six indictments.”

These assignments fall within the general exception taken to the charge. It was required by law that the defendant should both aid and abet. These have been held by the Court of Errors and Appeals to be not synonymous terms, and that guilt can be fastened only when there is *both* an aiding *and* abetting.

State v. Flynn, 76 N. J. L. 474.

POINT VI.

There was error and injury in the instruction that proof of mere presence was sufficient to convict. (Assignments 12, 13 and 14; Specifications 12 and 13.)

This point was not treated by the Supreme Court.

Reference is made to the quotations from the charge under the previous point. The Court's statement that Mantis was guilty if he was merely present was not a casual slip. In four places it was emphasized as the only fact that the jury was to decide. This limitation of the scope of the jury's inquiry imported but one thing—that the Court itself had determined all other questions of fact against the plaintiff in error. In this manner the Court had decided already that the plaintiff in error aided, abetted, was present with common intent and had entered with intent to rob. The illegitimacy of this invasion by the Court of the jury's province does not call for argument. Both before and after informing the jurors that they were the sole judges of the facts of the case, the Court, with unmistakable positiveness, limited their finding to the single fact of the accused being present.

It is error for the Court to invade the province of the jury by withholding from it the determination of facts essential to sustain a conviction, by controlling the jury as to the credibility of witnesses, by assuming a fact to be proved, or by any other method.

Donnelly v. State, supra;

State v. Rosa, 71 N. J. L. 316, 72 N. J. L. 462;
Smith v. State, 41 N. J. L. 598;
State v. Herbert, 92 N. J. L. 341;
State v. Lionetti, 93 N. J. L. 24;
State v. Pitman, 98 N. J. L. 626;
State v. Lanto, 98 N. J. L. 401.

In the last two cases reversals were ordered because the Court in each case limited the jury's right to pass upon the credibility of the testimony that the prosecutrices in carnal abuse cases were under the age of 16.

On the indictments charging assault with intent and entering with intent, the jury was barred from considering the essential element of intent in respect of both crimes.

POINT VII.

There was manifest wrong and injury in the Court's refusal to charge the requests accurately stating the rules as to burden and reasonable doubt in relation to an alibi. (Specifications 14 and 15.)

The requests are found on page 174 and were as follows:

1. The mere fact that the defendant has interposed the defense of alibi does not thereby put the burden upon the defendant of proving that alibi, but the burden remains upon the State to prove beyond a reasonable doubt, the defendant's presence at the scene of the alleged crime.

2. And if from all the evidence adduced, there is left in your minds a reasonable doubt as to the defendant's whereabouts on the day of the alleged crime, you must find the defendant not guilty.

The charge of the Court was silent as to the burden of proving an alibi, the effect of inconclusive evidence and the efficiency of the proof in creating a reasonable doubt of guilt. The complaint that the plaintiff in error was wronged and injured by the refusals is unanswerable.

Sherlock v. State, 60 N. J. L. 31;
State v. Diamond, 84 N. J. L. 17;
State v. DeGeralmo, 83 N. J. L. 135;
State v. Tanzarello, 1 N. J. Misc. Rep.
 375.

The Supreme Court declined to consider this point, observing, "It appears from an examination of the state of the case that these requirements were not submitted until after the jury had been charged and had retired". It is respectfully claimed that no such factual situation is disclosed.

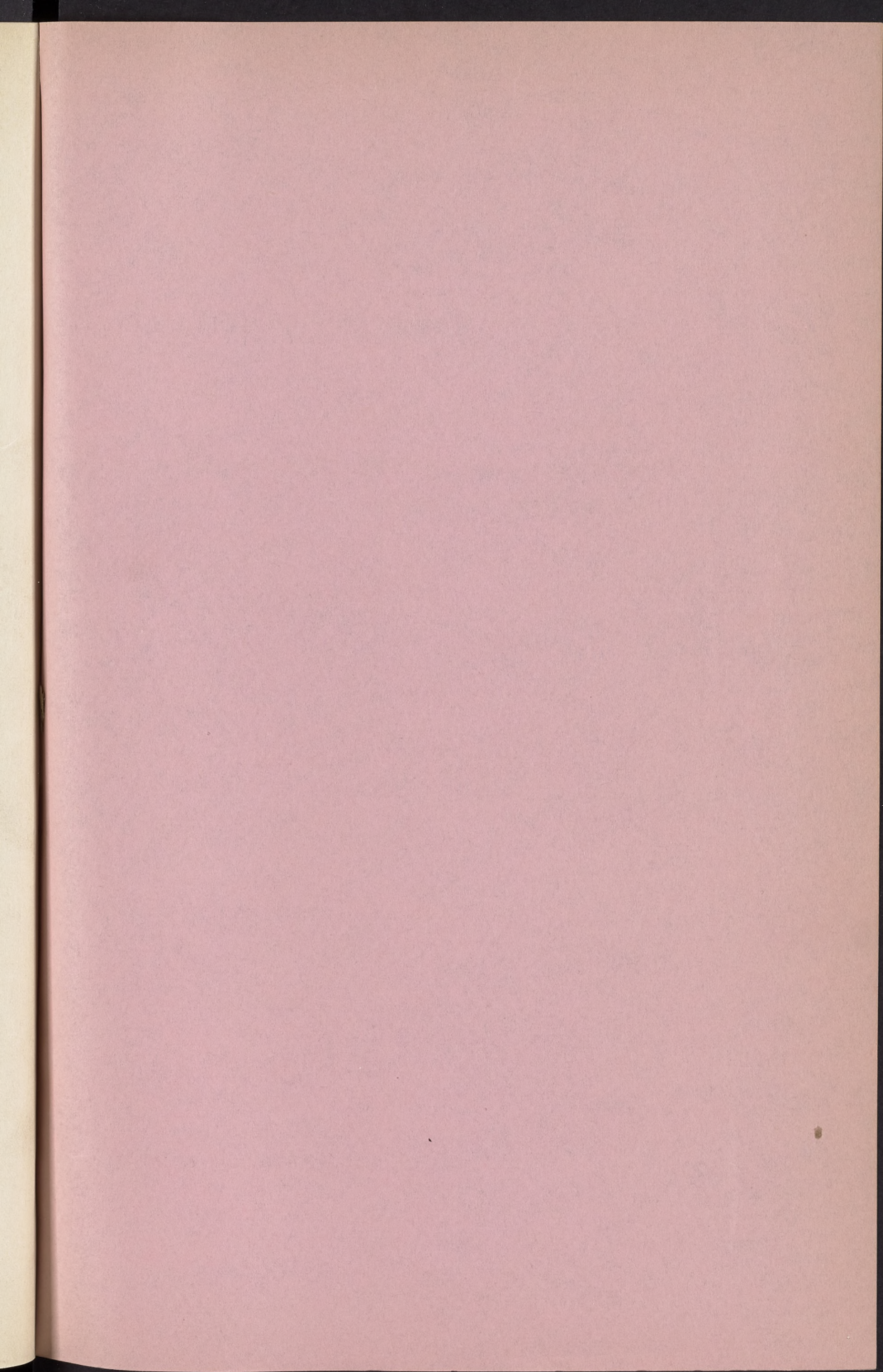
While it is true that, in the arrangement of the record, the requests are the last activity recorded in respect of the trial, there is nothing to show that they were made after the jury was charged and retired. This Court may well take cognizance of the common practice of trial judges, after the perusal of the requests, to hand them to the stenographer, who thereafter consults his own convenience as to where they may be inserted in the preparation of the record; it may also be noted that the record does not show that the Trial Judge refused the requests because they were

belated, which would be the ordinary thing to do. As shown in the present record the requests are isolated, and the natural presumption is that, in the absence of a suggestion to the contrary, they were properly and seasonably submitted.

CONCLUSION.

It is respectfully submitted that the convictions should be reversed.

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*Attorney for, and of counsel, with,
plaintiff in error.*



of which it is the duty of the court to take notice. It is shown in the present record that the records are correct and that the plaintiff is entitled to the relief sought. The court is of the opinion that the plaintiff is entitled to the relief sought and that the defendant is not entitled to the relief sought.

CONCLUSION

It is respectfully submitted that the conclusions of the court should be reversed.

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plaintiff in error.