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*Writ of Error*

NEW JERSEY, ss.

The State of New Jersey to  
our Essex County Court of  
Quarter Sessions and Edwin  
C. Caffrey, Judge of our Essex  
County Court of Quarter  
Sessions.

Because in the record and process and also in giving of judgment upon a certain indictment against Amiello Raimondi, late of the City of Newark, in the said County of Essex; 10

“That Amiello Raimondi on the tenth day of June in the year of our Lord one thousand nine hundred and twenty-five at the City of Orange, in the County of Essex aforesaid willfully and maliciously did burn and cause to be burned and aid and consent to the burning of the dwelling house of said Aniello Raimondi, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 20

That the said Amiello Raimondi on the tenth day of June in the year of our Lord one thousand nine hundred and twenty-five, at the City of Orange, in the County of Essex aforesaid willfully and maliciously did set fire to and burn and aid, procure and consent to the setting fire of and burning of the building known as number 128 South Jefferson Street in the City of Orange, aforesaid, which building was then insured by the New Brunswick Fire Insurance Company and the American Eagle Insurance Company of New York, corporations, against loss and damage by fire, with intent to pre-jurice said corporations, said corporations having theretofore underwritten certain policies of insurance on said building, the said policies being then and there in fully force and effect, 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 40

*Writ of Error*

PROUT the said indictment and the several counts therein, whereof, before you, he the said Amiello Raimondi, hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Amiello Raimondi, as it is said, manifest error hath inter-  
 10 vened to the great damage of the said Amiello Raimondi, 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 Amiello Raimondi, commend 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 the same to our  
 20 Justices of our Supreme Court, to be held at Trenton, on the 30th day of January next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

WITNESS: WILLIAM GUMMERE, Chief Justice of our Supreme Court at Trenton, this 11th day of January, A. D. One thousand nine hundred and twenty-six.  
 30

EDWARD J. KELLEHER,  
 Clerk.

HAROLD SIMANDL,  
 Attorney.

Presented in Open Court this 12th day of Jan., 1926.

EDWIN C. CAFFREY  
 Judge

40 Bail \$5000. E. C. C.

*Indictment*

STATE OF NEW JERSEY ss.  
 COUNTY OF ESSEX:

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the third Tuesday of September, in the year of our Lord, one thousand nine hundred and twenty-five by the Hon. 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 William E. Blewitt, Norbert M. V. Kneuer, Arthur B. Matthews, Henry M. Gassner, Charles Gibbons, Sidney S. Smith, Frederick Ardrey, James F. McGuire, Michael Lisena, Judson C. Prosser, Arthur L. Geason, James J. Foley, James H. Davenport, Julius Maier, John W. Dobbins, Fayette Simonson, Emil Vollweiler, Harry A. Mills, Richard K. Fields, Fred W. Kaucher, DeWitt C. Reynolds, Roscoe R. Johnson, Harry W. Barclay, 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 Amiello Raimondi on the tenth day of June, in the year of our Lord one thousand nine hundred and twenty-five at the City of Orange in the County of Essex aforesaid willfully and maliciously did burn and cause to be burned and aid and consent to the burning of the dwelling house of said Amiello Raimondi 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.  
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 40

*Indictment.*

10 And the Grand Jurors aforesaid, upon their oath do further present that the said Amiello Raimondi on the tenth day of June, in the year of our Lord, one thousand nine hundred and twenty-five, at the City of Orange, in the County of Essex aforesaid willfully and maliciously did set fire to and burn and aid, procure and consent to the setting fire to and burning of the building known as number 128 South Jefferson Street, in the City of Orange, aforesaid which building was then and there insured by the New Brunswick Fire Insurance Company and the American Eagle Insurance Company of New York, corporations, against loss and damage by fire, with intent to prejudice said corporation, said corporations having therefore underwritten certain policies of insurance on said building, the said policies being then and there in full force and effect 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 JOHN O. BIGELOW,  
Prosecutor of the Pleas.

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*Record of Delivery of Indictment*

On the twenty-ninth day of September A. D. Nineteen hundred and twenty-five on which day the indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said Indictment to be handed down to the Court of Quarter Sessions, 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.

*Plea*

And afterwards, that is to say, on the eighth day of October, A. D., Nineteen hundred and twenty-five at a Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Hon. Edwin C. Caffrey, Presiding Judge of the Court of Common Pleas, Amiello Raimondi, in the custody of Harry B. O'Connell, Sheriff of the Essex aforesaid, and the said Amiello Raimondi, being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, 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 John O. Bigelow, 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 twenty-seventh day of October, A. D., Nineteen hundred and twenty-five, then next ensuing twelve free and

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*Plea*

10 lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Amiello Raimondi to recognize upon their oath whether the said Amiello Raimondi is Guilty of the premises in the said indictment specified or Not Guilty because the said John O. Bigelow, Esquire, as the said Amiello Raimondi puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

*First Verdict*

20 And afterwards, that is to say twenty-seventh day of October, A. D. Nineteen hundred and twenty-five at the same Court of Quarter Sessions, holden before the Hon. Edwin C. Caffrey, Judge of the Court of Common Pleas, come the said prosecutor who prosecutes as aforesaid, and the said Amiello Raimondi and the jury of whom mention is before made, and by Harry B. O'Connell, Sheriff of the County of Essex, for this purpose empanelled and returned to wit: Herbert W. Killner, Louis F. Boehme, James A. Shea, James A. Leonard, Michael J. Craig, Walter R. Hoerner, Creighton M. Konkle, James Modica, William Andrae, Richard L. Aiery and Raymond C. Barton, (after juror No. 4 was drawn, the Sheriff reported the Special Panel exhausted, whereupon the Court ordered the Sheriff to draw from the General Panel, at this period a jury in a previous trial returned into Court and Jurors Nos. 6, 7, 8, 9 and 10, who were on the Special Panel were drawn, being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of

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*First Verdict*

said issue was commenced and continued until the twenty-ninth day of October, A. D., Nineteen hundred and twenty-five when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the persence of the Prosecutor, defendant and Court do say upon their oath they cannot agree. Whereupon the Jury was discharged and the Court order a retrial.

10

*Verdict On Re-Trial*

And afterwards, that is to say on the sixteenth day of November retrial of aforesaid case was commenced, at the same Court of Quarter Sessions holden before the Hon. Edwin C. Caffrey, Judge of the Court of Common Pleas, come the said John O. Bigelow, Prosecutor &c., who prosecutes as aforesaid, and the said Defendant Amiello Raimondi and the jury of whom mention is before made, and by Harry B. O'Connell, Sheriff of the County of Essex, for this purpose empanelled and returned to wit: after the following challenges by the State 3; by the Defendant 9; Andrew Blain, William J. Cleveland, Thomas Harrington, Sr., Norman D. Bush, Kenneth Adams, John G. Haeberle, Ralph G. Goldsmith, Eugene H. Phillips, Sidney E. Pope, Charles J. Conway, John Kempsey, Elmer H. Buechele, being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the tenth day of December, A. D., Nineteen hundred and twenty-five, when the jury returned into Court in charge of the officer sworn to attend them and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath, "We find the defendant Guilty of Burning Building to defraud Insurers and recommend him to the Mercy of the court, and so they say all.

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*Judgment and Sentence*

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Judgment signed January 11,  
1926.

EDWIN C. CAFFREY,  
Judge.

Whereupon all and singular, the premises being seen and by the Court now here fully understood, it is on this eleventh day of January, 1926, the Court (Hon. Edwin C. Caffrey) Judge &c do order and adjudge that defendant be imprisoned in the State Prison of this State for a minimum term of two and one-half years and for a maximum term of five years at hard labor upon this conviction; that he pay the costs of this prosecution and that he stand committed until said costs be paid, which said costs are taxed by the clerk at the sum of Ninety-two dollars and ninety-nine cents, and the defendant be in Mercy, etc.

*Return*

State of New Jersey, ss:  
County of Essex,

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

10

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Newark, N. J., this day of Jan. A. D., 1926.

20

EDWIN C. CAFFREY,  
Judge of the Court of  
Quarter Sessions,  
Essex County, N. J.

30

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Opening

ESSEX COUNTY COURT OF GENERAL  
QUARTER SESSIONS.

10	STATE OF NEW JERSEY	}	On indictment
	vs.		No. 1, Sept., T, 1925.
	AMIELLO RAIMONDI		for ARSON.

Before Hon. Edwin C. Caffrey, Judge, and a Jury.  
For the State appears J. Victor D'Aloia, Assistant  
Prosecutor of the Pleas of Essex County.

20 For the defendant appear Mott & Bernheim.

Mr. Mott: What is the status of the first count?

Mr. D'Aloia: It is out. In the last cast we de-  
cided to proceed with the second count alone.

(A jury is called and sworn).

At this point the Court takes a recess for one  
hour.

30 Mr. D'Aloia opens for the State.

40

State's Witness, John L. Day, Direct

JOHN L. DAY sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q. Mr. Day, on June 10, 1925-June 11 and 12,  
were you the official photographer connected with  
the Newark Police Department?

A. Yes. 10

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*State's Witness, John L. Day, Direct*

Q. And at the request of the Prosecutor's office, did you go to these premises in Orange?

A. I did.

Q. At the corner of South Jefferson and Madison Streets?

A. Yes.

10 Q. Did you take any photographs there?

A. I did.

Q. Give us the exact date and the time?

A. It was right after dinner, approximately half past one, on June 10.

Q. Do you remember what day of the week that was?

A. I do not.

Q. I show you a photograph and ask you if you took this on that occasion?

20 A. I did.

Q. And this smudge that appears on the side of the building, was that there at the time?

A. It was.

Photograph offered in evidence and marked Exhibit S-1.

Mr. D'Aloia: It is the outside of the building. It is the house showing both sides on both streets, and showing the smudge which was caused by the fire on the outside, the exterior.

30

Q. I show you another photograph and ask you if you took that photograph?

A. I did.

Q. Will you please tell us what that represents?

A. This is the hallway and the rear entrance and the rear apartment at 128 Jefferson Street.

Q. What does it show?

40 A. It shows the door-way with two tubs, with one about full of a liquid.

*State's Witness, John L. Day, Direct*

Q. Was that on the first floor?

A. On the first floor, yes.

Photograph marked Exhibit S-2.

Q. I ask you if you took this photograph?

A. I did.

Q. What does that represent? 10

A. This is under the stairway of the first floor in the left hand side of the house at 128 South Jefferson Street.

Q. The same place?

A. The same place.

Q. You say it is under the stairway of the first floor?

A. Yes.

Q. Which side of the house? 20

A. Left side.

Q. As you go in the door?

A. Yes.

Q. That would be on the Madison Street side?

A. Yes.

Q. Toward the street?

A. Yes.

Q. This photograph represents what you saw there and what was there at the time you took it?

A. Yes.

Photograph marked Exhibit S-3. 30

Q. I show you another photograph. Did you take that at the same time and place?

A. I did.

Q. What does that represent?

A. This is under the stairway on the right hand side of the apartment of 128 South Jefferson Street.

Photograph marked Exhibit S-4.

Q. I show you another photograph and ask you 40

*State's Witness, John L. Day, Direct*

if you took that at the same place at the same time?

A. I did. This is off the middle room, sort of a little alcove, on the first floor, right hand apartment.

Q. What does that show?

A. That shows newspapers and a hole through the wall from the right hand apartment and the closet to the left apartment.

Q. The hole is shown right in the middle of the picture?

A. Yes, and the can alongside of it.

Photograph marked Exhibit S-5.

Q. I will have you explain this photograph. What do you call the hole in the wall? Does there appear on the other side through the hole some flooring?

A. Yes.

Q. In the next room?

A. Yes.

Q. I show you another photograph. Did you take that on the same date at the same place?

A. I did.

Q. What does that represent?

A. This is a hallway of the rear entrance on the first floor of the right side apartment.

Photograph marked Exhibit S-6.

Q. Is there a receptacle that appears in the center of that picture?

A. There is. There is a low tub and papers hanging out of the top of it.

Q. I show you another photograph and ask you if you took that?

A. I did.

Q. On the same day and at the same place?

40

*State's Witness, John Scavone, Direct*

A. Yes. This is the middle room, or alcove, from the left apartment. It shows the hole.

Photograph marked Exhibit S-7.

Q. I show you another photograph. Did you take that on the same date?

A. I did.

Q. At the same place?

A. Yes.

Q. What does that represent?

A. This is the kitchen on the left side of 128 South Jefferson Street.

Q. What is in the center?

A. In the center there is a tub and on the sink or tub is another small tub, a handle tub.

Photograph marked Exhibit S-8.

Q. I show you the last photograph that you took there. What does that represent?

A. This is a general view of the first floor taken from the so-called living room or front room of the house.

Q. Right through?

A. Right through.

Photograph marked Exhibit S-9.

Cross-examination waived.

JOHN SCAVONE sworn in behalf of the State.

*Direct Examination by Mr D'Aloia*

Q. Do you remember June 9 and June 10, 1925?

A. Yes.

Q. On the night between the two dates, where were you?

A. Why, I was coming down Madison Street.

Q. What time was it?

40

*State's Witness, Joseph B. McCartney, Direct*

- A. Between 12:30 and 12:45.  
 Q. Now, do you know this building on the corner of Madison Street and South Jefferson Street?  
 A. Yes.  
 Q. What did you notice, if anything, about that building at that hour?  
 10 A. All I noticed was a blaze coming out of the side of the building.  
 Q. Which side?  
 A. The Madison Street side.  
 Q. What did you do?  
 A. I looked for a fire box, and I just left a friend of mine, and I got him.  
 Q. What is his name?  
 A. Joseph McCartney.  
 Q. Were you there when he turned in an alarm?  
 20 A. Yes.  
 Q. Where was the box situated?  
 A. On Globe and South Jefferson Streets.  
 Q. How many blocks from the building?  
 A. One block.  
 Q. Did you see anyone around the building?  
 A. No, sir.  
 Cross-examination waived.  
 JOSEPH B. McCARTNEY sworn in behalf of the State.  
 30 *Direct Examination by Mr. D'Aloia.*  
 Q. Where were you around 12:30 or quarter to one on the morning of June 10, 1925?  
 A. On Bell Street.  
 Q. Did you know this last witness?  
 A. Yes.  
 Q. Did you see him that morning?  
 A. He was with me.  
 40 Q. Do you know this place at the corner of South Jefferson and Madison Streets, Orange?

*State's Witness, Joseph B. McCartney, Cross*

- A. Yes.  
 Q. Did you notice anything about that building as you were near it?  
 A. No, sir. Scavone come to me and said there was a fire.  
 Q. Did you see the building after Scavone gave you some information?  
 10 A. I did.  
 Q. What did you do after you received the information?  
 A. I went down and pulled the alarm.  
 Q. Why?  
 A. Because the building was on fire.  
 Q. What box did you pull?  
 A. Globe and South Jefferson Streets.  
*Cross Examination by Mr. Mott.*  
 20 Q. Did you see anybody around the building there?  
 A. No.  
 Q. Did you look inside of the building at all?  
 A. No.  
 Q. Through what did you see the fire—did you look through the window?  
 A. Why, one of the windows was broken and the flames were coming out.  
 Q. What do you mean by one of the windows was broken open?  
 30 A. Well, I mean the glass must have cracked and the flames were coming out of it on the Madison Street side.  
 OTTO KIRCHER sworn in behalf of the State.  
*Direct Examination by Mr. D'Aloia.*  
 Q. On or about June, 1925, you were a captain connected with the Orange Fire Department?  
 40 A. Yes.

*State's Witness, Otto Kircher, Direct*

- Q. And on the morning of June 10, 1925, between 12 and 1 o'clock that morning, did you answer an alarm of fire?
- A. Yes.
- Q. What time did that alarm come in?
- A. 12:46.
- 10 Q. Where did the alarm come from?
- A. Box 47.
- Q. Where is Box 47 located?
- A. Corner Globe and South Jefferson Streets.
- Q. How far is the corner of Globe and South Jefferson Streets from the corner of South Jefferson Street and Madison Street?
- A. Oh, I judge six or seven hundred feet.
- Q. How long did it take your apparatus to get around there from your quarters?
- 20 A. From the time the alarm came in until we reached there, I judge, would be two minutes.
- Q. Will you please describe what you saw of the building on the corner of South Jefferson Street and Madison Street?
- A. When I rode up to the fire I was on the truck. I pulled into the Madison Street side of the building and I saw the flames coming out of the window there and I ordered a chemical line in. While they were laying the big line and we got over to the door and the door was locked.
- 30 Q. What did you do to that door?
- A. We busted the door in with an axe.
- Q. Then what else did you do?
- A. Then we used a chemical line on a tub of gasoline that sat on the landing.
- Q. On the landing as you came in the door?
- A. Yes.
- Q. And you put that fire out around that tub?
- A. We put the fire out around the wood-work on
- 40 the tub and we did not get results from the chemical

*State's Witness, Otto Kircher, Direct*

- line and we pulled the tub over and the gas flowed out in the street and we smothered it with a large two and one-half inch line.
- Q. Did you go in on the first floor?
- A. Yes.
- Q. Did you notice the condition of the windows and the doors?
- 10 A. Yes.
- Q. Was any window open?
- A. There was no window open at all.
- Q. Going straight through the house on that floor from the Madison Street side, as the building is shown on the photograph S-1, going from that door to the other side of the house, was there another door on that side corresponding to that?
- A. On the outside.
- Q. Yes, on the side of the building
- 20 A. Why, I could not say anything about the other side. The chief had charge of that. I was on the Madison Street side.
- Q. Did you find any windows or doors open on that first floor.
- A. Not on the first floor, no.
- Q. How long was your company there?
- Q. We were there about an hour.
- Q. How many more tubs, outside of the one upon which you played the house or chemical line first,
- 30 did you see there?
- A. On the Madison Street side there was a tub in under the stairway leading up to the second floor, and then there was a tub in the rear, in the little rear space that made a partition—the partition was cut out. That laid up to the partition.
- Q. I show you a photograph marked Exhibit S-3, and ask you if that is what you mean by under the stairway?
- A. Yes.
- 40

*State's Witness, Otto Kircher, Cross*

- Q. Is that the tub you saw there?  
 A. Yes. The plaster board was cut out.  
 Q. The plaster board as shown here was cut out?  
 A. Yes.  
 Q. I show you another photograph, and that is  
 10 on the other side of the house, the same floor, do you  
 remember that?  
 A. Well, I was not on the other side.  
 Q. You stayed on the Madison Street side?  
 A. I stayed on the Madison Street side. The  
 chief took care of the other side.  
 Q. But now, when you say there was a hole  
 through the partition, I show you Exhibit S-5, does  
 that show that hole?  
 A. Yes, the hole was through the same partition.  
 Q. I show you Exhibit S-7. Does that show the  
 20 hole on the other side, where your finger is?  
 A. Yes, but I was not on the other side.

*Cross Examination by Mr. Mott.*

- Q. Were any windows of the building open?  
 A. No, sir.  
 Q. Well, you were asked if any windows were  
 opened and you said no, not on the first floor, and  
 hesitated.  
 A. He asked me if there was any door open on  
 30 the first floor and I hesitated.  
 Q. Well, why did you hesitate?  
 A. Because on the second floor there were.  
 Q. Tell me about that?  
 A. The second floor, in the front of the building,  
 the both doors in the front were off of the front  
 porch.  
 Q. You mean off, they had not been swung, or  
 had they been, as far as you could see, on and taken  
 off?  
 40 A. Well, the hinges were on them. They looked

*State's Witness, Otto Kircher, Direct*

- like they had been on and they were taken off.  
 Q. And just what part of the building was it  
 where these doors had been taken off?  
 A. In the front part of the building, on the  
 second floor. There is a porch there.  
 Q. You mean the doors on the second floor  
 porch? 10  
 A. Yes.  
 Q. Are those doors in the photograph that you  
 see, the picture?  
 A. They are the doors.  
 Q. And were they lying about as they are now?  
 A. Yes.  
 Q. Did you go up to the second floor?  
 A. I did, yes, to ventilate it.  
 Q. You are familiar with the construction of  
 the second floor? 20  
 A. Yes, of the second floor.  
 Q. And from these doors on the second floor  
 that were off, you could go to any part of the  
 building?  
 A. No, they led out to the front porch.  
 Q. But couldn't you go into the building from  
 there?  
 A. Yes, after you went up from there (illustrat-  
 ing.)  
 Q. After you were up to the door which was off, 30  
 you could go through that door and then go to any  
 part of the building?  
 A. On the second floor.  
 Q. Yes, and you could go down stairs to the  
 first floor?  
 A. Yes.  
 Q. You observed the windows on the second  
 floor?  
 A. Yes.  
 Q. And they were all shut? 40  
 A. They were all shut and hooked with a catch.

*State's Witness James McMillan, Direct*

*Redirect Examination by Mr. D'Aloia.*

Q. To go up on that second floor porch from the first floor porch, or from the exterior of the building, was there a stairway?

10 A. There was a stairway leading up in the front. They were the stairs we went up.

Q. You mean inside of the building?

A. Yes. There are no stairs outside.

Q. On the outside of the building, externally, is there any way of going up to that second floor porch?

A. Not from the outside.

Q. But, inside there is a stairway leading upstairs?

A. Yes.

20 *Recross Examination by Mr. Mott.*

Q. What do you mean when you say there is no way of getting up to that second floor porch from the outside?

A. Not unless you took a ladder.

Q. Oh, it could be done easily with a ladder?

A. Yes.

*Cross Examination by Mr. D'Aloia.*

30 Q. You were the first one to arrive with your company. In view of the last question, did you find any ladder?

A. No.

JAMES McMILLAN, sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

Q. On June 10 and June 9, 1925, were you the

40

*State's Witness, James McMillan, Direct*

chief of the Orange Fire Department?

A. I was.

Q. And did you answer an alarm of fire which came in at 12:47 on the morning of June 10?

A. I did.

Q. What building was afire?

A. I found a building—describe the building? 10

Q. Which building was afire?

A. The building on the corner of South Jefferson Street and Madison Street.

Q. Now, in looking at the State's Exhibit 1, this photograph, I ask you if that is the building you refer to.

A. That is the building.

Q. What time did you arrive there?

A. About 12:49.

Q. What did you do immediately upon your arrival? 20

A. I ordered a line in the Madison Street side. Then I took the—which would be the north side of building. This building faces the west, and I took the south side of the building, to prevent the fire from going down the street. Both sides of the building was on fire, with a concrete wall, running from the front to the back, the entire length of the building.

Q. Dividing the first floor into two apartments? 30

A. Dividing the first floor into two apartments.

Q. How long did it take your men and the men there under Captain Kircher to control the fire, get it under control, so as to enable you to make an investigation?

A. About twenty minutes.

Q. After the fire was gotten under control, did you observe what there was about the premises to be seen?

A. I did. 40

*State's Witness, James McMillian, Direct*

- Q. Will you please tell the Jury what you found?  
 A. I found a fire on both sides of this concrete wall on the first floor.  
 Q. Upon your arrival at the fire, what was there that you noticed, if anything?  
 A. I noticed a strong odor of gasoline as I came up first, as I stepped out of the car.  
 10 Q. Where was your car with reference to the building when you stepped out of it?  
 A. In front of the building.  
 Q. Now, when the fire was gotten under control, in twenty minutes or so, was that odor of gasoline what led you to make an investigation?  
 A. That and the conditions of the fire.  
 Q. What were the conditions of the fire?  
 A. The conditions were, we found a liquid in there burning like gasoline.  
 20 Q. Now, after making your observations, please tell the jury what you found.  
 A. I found eleven tubs containing a liquid that I took to be gasoline, from the way it burned, and from the way it smelled.  
 Q. How were those eleven tubs placed?  
 A. This is a four family, two-story, frame dwelling, facing the west—  
 Q. The rooms on the first floor would be sufficient for two families?  
 30 A. Yes.  
 Q. One on each side of this concrete wall which divided the premises?  
 A. Yes.  
 Q. Now, tell us where, with respect to that, the tubs were.  
 A. Well, there was one hole under the stairs, with a hole cut out of the plaster board to enable the fire to go up-stairs, and there was also a hole  
 40 cut out of the wainscoating and the wainscoating

*State's Witness, James McMillian, Direct*

- was turned up to enable the fire to go up through the partition.  
 Mr. Mott: I object and ask that that be stricken out.  
 The Court: Yes.  
 Mr. D'Aloia: I will consent to it. 10  
 Q. Do not say what it was enabling the fire to do. Just tell us what you saw. There was a hole cut in the base of the wall?  
 A. Yes.  
 Q. Did it go clear through?  
 A. Not the concrete wall, I am speaking about the partition wall.  
 Q. Now, there was a hole in that?  
 A. Yes. This was under the stairs. 20  
 Q. I show you Exhibit S-3. Does that photograph show that hole?  
 A. This is the hole I have reference to. That shows the tub of gasoline there and the hole cut, which I have reference to.  
 Q. What about this (illustrating)?  
 A. Well, that is the plaster cut out of the stairs, leaving the boards bare.  
 Q. Leaving the boards bare?  
 A. Yes. 30  
 Q. Now, what else did you find besides those two tubs?  
 A. Coming down into the next room there was a china closet. In the china closet we found a tub containing a liquid. In that china closet, at the bottom of the concrete wall, there was a hole cut through, and in that hole I found a fuse. That fuse was made of lamp wick and matches.  
 Q. Now, I show you what you call a fuse and ask you if that is what you have reference to? 40

*State's Witness, James McMillian, Direct*

- A. That is it.  
 Q. And you say this was through that hole?  
 A. Through that hole.  
 Q. And running from one room to the other?  
 A. Running from one room to the other.  
 Q. Will you please tell what it was attached to?  
 10 A. Each end was attached to a paper streamer,  
 which run into a tub.  
 Q. What kind of paper?  
 A. Well, newspapers, running along the floor.  
 Q. I will give you a piece of paper here and you  
 tell us what you mean by a streamer.  
 A. Each end was dipped in a tub of gasoline  
 and this streamer was saturated with gasoline.  
 Q. And where did that lead to?  
 A. To the tub.  
 20 Q. And what was in the tub?  
 A. There was gasoline and this was dipped in  
 the end of it, into the tub.  
 Q. Now, taking this concrete wall, running from  
 the front of the house to the rear, dividing this first  
 floor into two apartments, please tell the jury how  
 many different tubs you found in the different  
 rooms on the north side of the building.  
 A. Five.  
 Q. How many tubs did you find on the south  
 30 side of the building?  
 A. Five.  
 Q. What distance was there between the tubs  
 on the north side, one to the other, if you recall?  
 Where were the tubs on the north side?  
 A. One tub was under the stairs. The next tub  
 was in the china closet. The next tub was in the  
 kitchen, and the next tub was on the landing that  
 went up-stairs.  
 Q. What was there, if anything, connecting the  
 40 tubs on the left side of the concrete wall?

*State's Witness, James McMillian, Direct*

- A. They were all connected with streamers.  
 Q. Newspapers, as you described?  
 A. Yes.  
 Q. Were they all saturated?  
 A. Yes.  
 Q. Now, on the south side, where were they?  
 A. They were almost an exact duplicate of the 10  
 north side.  
 Q. And what were they connected with, if any-  
 thing?  
 A. Paper streamers.  
 Q. Now, this china closet with the hole through  
 the wall, how far was that from the front of the  
 building?  
 A. The extreme outside door?  
 Q. Yes.  
 A. About twenty-two feet, I should judge. 20  
 Q. And how far from that hole on each side of  
 the concrete wall was there a tub?  
 A. Right close to it.  
 Q. So that there was a tub on the north side of  
 the wall where the hole was?  
 A. Yes.  
 Q. With a streamer coming out of the tub and  
 to this torch?  
 A. Yes.  
 Q. Or this fuse, and then this fuse went through 30  
 the concrete wall hole and then there was another  
 streamer on the south side and that went into a tub  
 nearby.  
 A. Right.  
 Q. And you say these two tubs on each side of  
 the hole were connected east and west with all the  
 tubs that were arranged on the north and south  
 sides, is that right?  
 A. Yes.  
 Q. Come down here and tell us if these are the 40

*State's Witness, James McMillian, Direct*

tubs you say employed as you have described, on both sides of that concrete wall, on the north and south sides of the wall of that building?

A. Those are the tubs.

Q. Now, will you kindly tell us if that tub (indicating) contained what is in there now?

10 A. Yes.

Q. What was done, if you recall, with the liquid that was in the tub?

A. Well, I left orders that nothing was to be disturbed and what was done by the police.

Q. They took the gasoline out?

A. They took the gasoline out.

Mr. Mott: Do you know whether they did or not?

20 Witness: They told me that they did.

Mr. D'Aloia: All right. We will strike it out.

Q. Now Chief, this (indicating) for the sake of argument will represent the concrete wall running through from the front to the rear dividing those two apartments on the first floor.

Mr. Mott: What are those?

30 Mr. D'Aloia: Those are base boards I am using to illustrate this wall with.

Mr. Mott: I object.

The Court: Sustain the objection.

Q. All right. Let's draw an imaginary line here. Will you please arrange those tubs on each side of the concrete wall as you saw them that night?

40 A. The building faces west, the north side of the

*State's Witness, James McMillian, Direct*

building, and the south side of the building, the hole in the concrete wall is here. This is the wall. The hole was underneath here and the fuse lies in between, in the hole.

Q. Now, show us where the other tubs were.

A. There was one tub about here (indicating) in the kitchen. There is another tub in here under the stairs. There is another tub back here on the landing that goes upstairs and comes in from the outside. 10

Q. That is all on the north side of the building?

A. Yes.

Q. Now, those four tubs you have illustrated and that one in the rear, were they connected with streamers?

A. They were all connected with streamers.

Q. Now, step to the other side of the concrete wall and tell us how many tubs you saw on that side? 20

A. This is the stairway coming up from the outside. Underneath the stairway, underneath what would be the living room, there was a tub and there was a streamer dipped in that tub, saturated with gasoline, goes to this tub. It goes from this tub into the kitchen and runs into another tub. Each end is dipped into a tub. That is in the kitchen, and then we come from there into the pantry or, I suppose you would call it a butler's pantry, and there was a small one in there, which is not here in evidence, and then we go around this corner into this landing and it goes in from the south side next to Mrs. Merklin's house, and you go up two or three steps on to a landing and you are on the first floor, and you turn here, and here is the stairs going to the second floor. This tub— 30

Mr. Mott. What are you looking at?

40

*State's Witness James McMillan, Cross*

The Witness. To see which tub was on the stairs.

Q Did you make those notes at that time?

A Yes.

Mr. D'Aloia. He can refresh his memory.

Mr. Mott. Let us see what you have there.

10 The Court. You can cross examine him and see whether or not I will allow it. You cannot take it from his hand.

Mr. Mott. To see whether it is calculated to refresh his memory.

Mr. D'Aloia. You can ask him.

Mr. Mott. Read what you have on that paper.

*Cross Examination by Mr. Mott.*

20 Q Will you please read that piece of paper or what the writing is on that?

A S-10 under stairs in the side of the building.

Q Did you write that on there?

A That is my writing.

Q S-10?

A That is my writing.

Q All right.

30 A S-11 under stairs, north side of building; S-12 in china closet, on north side of building; S-13, in china closet, on south side of building; S-14, in the dining room, on south side of building; S-15, on stairs, on south side of building; S-16, on stairs, on north side of the building.

Q And did you number those tubs at that time?

A No, sir.

Q What do you mean by S-10, then?

A S-10 is on those tubs.

Q Did you mark them?

A. No, sir, I saw them marked.

40 Q. Well, who did it?

*State's Witness, James McMillan, Direct*

A I don't konw. I take it for granted the police did.

Q Oh, then, how do you know that the marks on these tubs correspond to what you mean you recorded there as S-10?

A I have copied it after they were marked.

Q Well, how do you know where S-10, if you are 10 relying on a mark that you did not make yourself, came from?

A Because the tub was there when it was marked.

Q Well, you did not see it marked?

A The tub was there when it was marked.

Q Did you see it marked?

A I did not see it marked, no.

Q Well, then, how do you know that it was 20 marked correctly?

A I know the tub was there.

Q You know a tub was there?

A Yes.

Q But can you tell, of your own recollection which particular tub it was?

A Yes.

Q Then why do you want to look at that memorandum?

A Just to make sure I was right. That is all.

Q Well, but you did not mark the tubs? 30

A I did not mark the tubs, I will admit.

*Direct-examination (continued) by Mr. D'Aloia.*

Q Can you do it without the paper?

A Yes.

Q Put it in your pocket and come down and trace your memory. Pick out the tub you saw on the south side of the building.

A This tub was on the stairs.

Q Which one, the outside or inside?

A Outside. 40

*State's Witness James McMillan, Direct*

- Q What was in it?  
 A Gasoline, as near as I could make out, from the smell of it and the way it burned.
- Q Now, in conclusion, do you recall that there were five tubs on the south side of that wall and four tubs on the north side of the wall?  
 10 A And one in the cellar.  
 Q Making ten tubs in all?  
 A Yes.  
 Q And these are those tubs, so far as you recall?  
 A Yes.  
 Q Now, I show you these two boards and ask you what they are and where you saw them that night, the boards I tried to use for a concrete wall and couldn't?  
 A These boards were taken out from under the stairs in the closet; that is, under the stairs leading from the living room or parlor to the front room.  
 20 Q What are they?  
 A They are base-boards.  
 Q Now, I show you a photograph, Exhibit S-7, and I show you Exhibit S-5, where that hole was put through the wall, the concrete wall, was there any base-board there?  
 A No.  
 Q Had the base-boards been removed?  
 30 A No, the base-boards had been removed on the other side and the closet under the stairs.  
 Q Now, do you remember how thick that concrete wall was through the hole?  
 A Twelve inches.  
 Q Were there any marks on the west side of the hole through the concrete wall?  
 A There were.  
 Q What kind of marks?  
 A Well, they looked as if they were made by a  
 40 pick or such a hole as a pick would make.

*State's Witness, James McMillan, Direct*

- Q Were there marks on the other side?  
 A There were.  
 Q The same kind of marks?  
 A The same kind of marks.  
 Q Now, these newspapers, were they there?  
 A Yes, newspapers were running from one tub  
 to the other. 10  
 Q You mean the streamers were made of newspapers like these?  
 A Yes.  
 Q But these newspapers that were folded up, where were they?  
 A They were in the back room.  
 Q Now, all the streamers that you saw there were made of this same kind of newspaper?  
 A Yes.  
 Q And did you notice any particular name on a  
 bundle of papers? 20  
 A I did.  
 Q What was the name?  
 A McGuirk.  
 Q With the exception of this fuse, the tubs that you have described to the jury, were all connected with streamers made of this paper?  
 A Right.  
 Q When you arrived there, did you notice whether there was fire burning on both sides of the  
 wall? 30  
 A There was.

*Cross Examination by Mr. Mott.*

- Q Was this fuse on fire, burning, when you first saw it?  
 A It was out then, we put it out with the water.  
 Q It was not burning then?  
 A No.  
 Q You say you judged the liquid was gasoline 40

*State's Witness, James McMillan, Cross*

from the way it smelled and the way it burned. How did it burn?

A It burned in a curling form, the same as gasoline burns.

10 Q Well, what do you mean by that, was the liquid in the tub itself—was the liquid in the tub itself on fire?

A It was.

Q How did you observe it burning?

A Any particular tub?

Q No, in any tub, the one you saw burning the longest.

A The one I saw burning was the first one where we attacked the fire on the south side.

Q And how long did you see fire from that tub?

A Less than twenty minutes.

20 Q Less than twenty minutes?

A Yes.

Q Approximately twenty minutes?

A Approximately twenty minutes.

Q What?

A Approximately twenty minutes.

Q Then for twenty minutes that liquid was on fire in that tub?

A It was, I suppose. We found it on fire and we put it out.

30 Q Well, are you testifying to something you know or something that you suppose?

A I am testifying to something that I know.

Q Now, you have told me that you saw that liquid in that tub on fire for approximately twenty minutes?

A Well, it took us about twenty minutes to get the fire under control, yes.

Q And you saw that for about twenty minutes. Now, I want you to understand my question. You

4 saw the liquid in that tub in flames?

A Yes.

*State's Witness, James McMillan, Cross*

Q There were ten tubs altogether or eleven?

A Eleven.

Q And you said they were here, didn't you?

A I said those that are here were in the fire.

Q How many do you say are here?

A Seven, there.

Q Do you call this box a tub? 10

A One of them, yes.

Q Which one of these tubs wasn't there?

A They were all there.

Q Well, you say there are seven here that were there?

A There were seven there and they were all there.

Q Well, now, Chief, you want to be accurate about your testimony, don't you?

A Yes. 20

Q Well, won't you please come down and again see these tubs. You say there are only seven?

The Court: You asked the witness a question, "Point out the tubs that are not here." You did not mean that.

Mr. Mott: No, the tubs that are here.

Q Now, there is one, there is two, is that a tub?

A Yes.

Q That is three. There is four, five, six, seven, eight, nine. 30

A I didn't say this (indicating.)

Q I asked you if that box was one of the tubs?

A I beg to differ.

Q Well, you didn't mean to say that the box was one of the tubs?

A No.

Mr. D'Aloia: Ask him about this?

Q Is that one of the tubs?

A Yes. 40

State's Witness, James McMillan, Cross

Q Well, then, we have three, four, five, six, seven, eight. Well, you skipped one, did you?

A I skipped one. There was three more at the fire that are not here.

10 Q I don't know as you can, but could you tell me where the tubs that are not here were located in the building?

A One of them that was burned up was in the fire.

Q Well, one was burned up?

A Yes.

Q Well, was that one of the eleven, or did that make twelve?

A That was one of the eleven.

Q What became of the others, if you know?

20 A That I could not say. The police took charge of them.

Q Well, do you know where the others were?

A Yes.

Q Whereabouts were they located in the building?

A Yes. One that is absent there was located in the kitchen, on the side of the building; another one that is not here was located on the stairway on the north side of the building, on the landing coming from the outside.

30 Redirect Examination by Mr. D'Aloia.

Q And they were butter tubs?

A They were butter tubs.

Mr. D'Aloia: I offer in evidence the tubs that are here, just the tubs, not the box, as one exhibit.

Marked Exhibit S-10.

Mr. D'Aloia: And I offer in evidence the fuse as another exhibit.

40 Marked Exhibit S-11.

State's Witness, Frank E. McGuirk, Direct

FRANK E. MCGUIRK sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q What business were you in, in June, 1925?

A Newspapers, magazines, cigars, tobacco and stationery. 10

Q Where was your business located?

A 416 Main Street, Orange.

Q Where was that with reference to the corner of South Jefferson Street and Madison Street?

A Why, it is about four and one half blocks from there.

Q Now, do you remember the date of this fire, June 9, 1925?

A Yes.

Q How long before that date was it that you saw this defendant, Raimondi, in your place? 20

A He was there on Monday preceding the fire.

Q How many days would that be?

A I believe the fire was on Wednesday morning.

Q He was there on Monday?

A The ninth, I think he was there.

Q The ninth was the day of the fire?

A Yes.

Q Now, how long before that was he at your store? 30

A Two days before that.

Q What time of the day did he come in, about?

A About three o'clock.

Q Did he come in your store?

A Yes.

Q You recognize him?

A Yes.

Q That is, Mr. Raimondi, the defendant in this case?

A Yes. 40

*State's Witness, Frank E. McGuirk, Direct*

- Q Tell us what he said about newspapers?  
 A About three o'clock he came into my place and asked me if I sold old newspapers and I said, "What do you pay for it?" "Well," he said, "I don't want very much." I said, "How much do you want?" "Oh, not much," he said. I said, "You want to wrap things up in it?" He said, "Yes, put them under carpets."  
 10 Q And did you sell him the papers?  
 A I did.  
 Q That is your name, is it?  
 A Yes.  
 Q And that is put on by those who deliver newspapers to you from the newspaper office, the news company?  
 A Yes.  
 20 Q How many bundles did he buy?  
 A Three large bundles.  
 Q And that is your name, too?  
 A Yes.  
 Q And this name usually appears on the top paper of the bundle?  
 A Yes.  
 Q How many papers were in the bundle?  
 A Why, they average from fifty to seventy-five.  
 Q And he got three bundles?  
 30 A Three bundles.  
 Q How did he take them away from your place?  
 A In an automobile.

*Cross Examination by Mr. Mott.*

- Q Are you sure of the exact words he used?  
 A As near as I can remember, those are his exact words used at that time.  
 Q Would you be willing to say he did not say, "I would like to use them like a carpet."  
 40 A Under carpet.

*State's Witness, James Caronio, Direct*

- Q Well, I asked you didn't he say, "I would like to use them like a carpet?"  
 A Under a carpet.  
 Q Answer my question. He did not say he wanted to use them like a carpet.  
 A He did not say that.  
 Q You are sure about that? 10  
 A Positive.

Mr. D'Aloia: I offer in evidence these two newspapers with Mr. McGuirk's name.

Marked Exhibit S-12.

JAMES CARONIO sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

- Q Were you attached to the Orange Police Headquarters on the morning of June 10, 1925? 20  
 A Yes.  
 Q And were you placed in charge of this fire at South Jefferson Street and Madison Street?  
 A Yes.  
 Q After it had been extinguished?  
 A Yes.  
 Q Did anything go in or out of there?  
 A No, sir.  
 Q What time were you relieved?  
 A I was relieved at 11:30. 30  
 Q 11:30 the next morning?  
 A Yes.  
 Q Who relieved you?  
 A Patrolman Michael McDermit.  
 Cross examination waived.

*State's Witness, Michael McDermit, Direct*

MICHAEL McDERMIT sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

Q Were you attached to the Orange Police Department, June 10, 1925?

10 A Yes.

Q At 11:30 that day did you relieve the last witness at this fire?

A Yes.

Q While you were there, did anything go in or come out of there?

A No, sir.

Q Who relieved you?

A Officer William Read.

Q What time did you leave?

20 A I left—11:30 I went there and I left 2:30  
Cross examination waived.

MICHAEL GIORDANO sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

Q Were you attached to the Orange Police Department—

A I am.

30 Q As what?

A Lieutenant, detective.

Q Did you investigate this fire at the corner of Madison and South Jefferson Streets after it occurred on the 9th of June, 1925?

A I did, with Lieutenant Burns.

Q Did you and Lieutenant Burns go to the premises?

A Yes.

Q When did you get there?

0 A Between nine and ten o'clock on Wednesday, the 11th, in the morning.

*State's Witness, Michael Giordano, Direct*

Q And were these tubs there at that time?

A They were.

Q And did Burns, in your presence, take samples of the liquid from the tubs?

A I took the samples and Lieutenant Burns marked them.

Q You took the samples and Burns marked 10 them. What did you do with the samples?

A Brought them to Dr. Edel in Broad Street.

Q Who is Dr. Edel?

A The chemist.

Q Are these the bottles you put the samples of the liquids you found from these various tubs in?

A They are.

Q Now, can you step down and tell us what tub this liquid was taken from?

A This comes from this tub. 20

Q Now, this one?

A This was taken from this tub.

Q Now, take this one?

A I cannot find this.

Q These samples were taken from some of the other tubs and you cannot identify them because the tags are not on them?

A Yes.

Q What did you do with these samples?

A Brought them to Dr. Edel's laboratory on 30 Broad Street to have them analyzed.

Q How many tubs did you remove from the premises to the station house?

A Eight.

Q And they are all here in evidence?

A Yes.

Q Subsequent to the removal of the tubs and subsequent to the fire, when you first were assigned to this investigation, did you have a talk with this defendant, Raimondi? 40

*State's Witness, Michael Giordano, Direct*

- A Yes.
- Q Now, during your talk with him, where was the talk?
- A At the Chief's office, Police Headquarters.
- Q What time was it and what date was it?
- A It was on Wednesday, between—shortly after  
10 ten o'clock.
- Q At the Orange Police Headquarters?
- A Yes.
- Q And what did you say or Burns say to him in your presence about tubs, if anything?
- A Burns asked him how did the tubs come to the house.
- Q And what answer, if any, did the defendant make?
- A I don't know anything about that.
- 20 Q Meaning the tubs?
- A The tubs.
- Q And was his statement taken in writing?
- A Yes.
- Q And did he sign it?
- A Yes.
- Q That particular reference or question put to him about the tubs by Burns—by you and his answer to it, was that put in a statement?
- A I do not recall.
- 30 Q Was the statement read to him?
- A Yes.
- Q And after it was read to him, did he sign it?
- A Yes, and I signed it as a witness and Lieutenant Burns.
- Q Now, I show you a statement dated June 10, 1925, is that it?
- A Yes, it is.
- Q Does that bear your signature as a witness?
- A Yes.
- 40 Q Does it bear Burns' signature as a witness?

*State's Witness, Michael Giordano, Direct*

- A Yes.
- Q And does it bear the defendant's signature?
- A It does.
- Q And did you see him sign it?
- A I did.
- Q Now, this is in the statement, "The police  
10 asked me if I owned—
- Mr. Mott: One minute. Is the statement offered in evidence?
- Mr. D'Aloia: Just as soon as I get through with this question.
- Mr. Mott: I object to his reading anything from the statement until he offers it.
- The Court: Well, let him ask the question which will bring out the answer as made by this defendant. 20
- Q You answered me and said you did not recall whether that statement made by the defendant about the tubs was in this statement or not?
- A Yes.
- Q But you remember the statement and you remember the question being put to him?
- A Yes, for I know it was put to him.
- Q And you remember his answer?
- A Yes.
- Q And his answer was? 30
- A I don't know anything about the tubs.
- Q Where were the tubs from the time you removed them from the building?
- A They were placed in one of the cells and locked.
- Q What was done with the rest of the liquid?
- A Those samples were taken out and we brought them to police headquarters; in police headquarters we dumped them into the sewer. 40

*State's Witness, Michael Giordano, Direct*

Q How many gallons of liquid were dumped?

A Well, as nearly as I could judge, about fifty gallons.

*Cross Examination by Mr. Mott.*

10 Q You were not able, were you, to identify the tub from which the contents of these bottles was taken, excepting by reference to the tag on the tub?

A That is right.

Q So, in identifying the particular tub from which the contents in this bottle was taken, you were assuming that the tag on there is the same as it was when you took this out?

A I do.

Q How many tubs did you see altogether?

A Eleven.

20 Q How many of those were in the cellar?

A One. You mean the cellar of the building or the police station?

Q The cellar of the building.

A One.

Q That one in the cellar of the building was pretty well burned?

A It was burned.

Q What do you mean by that?

30 A To the ground. The stakes were all burned up.

Q Practically destroyed?

A Yes.

Q Any others destroyed?

A Well, there was another one practically destroyed—no, another one was practically destroyed, and then there was one that was empty we did not take. We did not want it.

Q How many gallons would you say this tub taken from the hall leading to the Madison Street

40

*State's Witness, Michael Giordano, Direct*

entrance—how many gallons would you say was in that tub?

A That was filled almost to the brim.

Q How many gallons?

A I would say eight gallons; eight to nine; that is what I would judge it to be.

Q And was there any other tub that was filled 10 to the brim?

A Yes, that one there in front of you, that was filled to the brim.

Mr. D'Aloia: How many gallons would that hold?

The Witness: I would judge about the same.

Q Oh, now—

A Well, it has a wide top and narrow bottom 20 and the other has a narrow top and wide bottom.

Q Yes, one bottom is not as big as the top—well, all right, it is your judgment.

A My judgment.

Q This little fellow?

A The same with that. That was filled.

Q About the same quantity, approximately?

A The ones that were full of that size, I would judge to be the same.

Q Was there any other tub gull? 30

A There was liquid in every tub we took.

Q Well, were they filled?

A Yes. That one in back of you was filled, that small one, this one here in front of you was filled to where the burn was.

Q Now, was the liquid in this tub burning?

A No.

Q Only this one?

A No. That tub there.

Q Just a minute. Or in this one? 40

*State's Witness, Lawrence Burns, Direct*

A No, sir.

Q Or in the little one?

A What do you mean, was the liquid burning?

Q Burning.

A I didn't see none of the liquid burning in none of the tubs.

10 Q When you got there the fire was all out?

A Yes.

LAWRENCE BURNS sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

Q You were a Lieutenant of the Orange Police force on June 8, 9, 10 and 11, 1925?

A Yes.

20 Q And you were assigned with your colleague, Lieutenant Giordano, to investigate this fire on the morning of June 9, or June 10?

A Yes, I was.

Q Were you there when Giordano took these samples?

A Yes, I was.

Q After the samples were taken, where did you take them?

A Dr. Edel's on Broad Street.

30 Q For the purpose of doing what?

A To have them analyzed.

Q Now, do you recall the number of tubs you saw there when you got there that morning?

A At the fire.

Q Yes.

A I think eleven tubs.

Q How many of them were on the first floor?

A Ten.

Q How many of them were filled with liquid?

40 A They were all filled.

*State's Witness, Lawrence Burns, Direct*

Q What was done with that liquid?

A Except one. There was one empty one in the kitchen on the north side.

Q What was done with the liquid?

A Well, after we took samples of the liquid we poured it in the sewer in the cell room.

Q How many gallons would you say were 10 thrown in the sewer?

A I would judge about forty gallons; probably a little more.

Q Did you examine the wall dividing the north side of that first floor from the south side?

A Yes.

Q Will you step down here and look at these base-boards? Were those baseboards along the base of that wall or were they away from it?

A Why, they were away from it, standing up. 20

Q What did you notice of the boards through that wall?

A Why, there was a hole bored through; it was dug through by something. There were a lot of nicks all the way around the outer edge of the hole.

Q Could those nicks be made by a pick?

A Yes.

Q Did you see those nicks on both sides?

A Yes.

Q Now, you took the defendant into custody? 30

A No, sir; I didn't.

Q You were at the police station when he was there the next morning when you took his statement?

A Yes. I had a talk with him in the office.

Q Now, before taking the statement in writing you put the question to him about these tubs?

A Yes.

Q What did you say? 40

*State's Witness Lawrence Burns, Cross*

A I asked him how he got so many tubs up there.

Q And what did he say?

A He said, "I don't know nothing about no tubs."

Q Did you measure the thickness of that wall?

10 A I didn't measure it, but I estimated it to be about twelve inches.

Q The wall I mean is between the north side and south side, through which this hole had been picked.

A Yes.

Q You say you estimated it at twelve inches?

A About that.

*Cross Examination by Mr. Mott.*

Q What time did you get to the fire?

20 A Why, the day we made our investigation we got there about half past nine or a quarter to ten.

Q Of course, you don't know how much of this liquid that was in these tubs was water that the firemen poured in there?

A No, sir. I judged on the analysis for that.

Q You just took the contents of the tubs as they were?

A Yes.

30 Q Of course, Mr. Burns, when you said that you took forty gallons of gasoline, you meant that you poured forty gallons of the liquid that was in these tubs?

A Exactly.

Q Whatever it was?

A Whatever its contents was we emptied it out.

ALBERT E. EDEL sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

40 Q Doctor, did you receive these bottles contain-

*State's Witness, Albert E. Edel, Direct*

ing this liquid from Lieutenant Burns from the Orange Police force?

A I did.

Q Now, I will show you the first one. Did you make an analysis of the liquid contained in that bottle?

A I did.

Q Will you kindly tell the jury what that liquid is?

Mr. Mott: Is this gentleman a chemist?

Mr. D'Aloia: You ought to know. You used him oftener than I have. Do you want me to qualify him?

Q Will you please tell us, Doctor, if you made an analysis of that bottle of liquid that you have in your hand?

A I did.

Q And from your analysis, what does that contain?

A It is a sample of gasoline containing some water.

Q Did you make an examination of the second small bottle there?

A I did.

Q Now, what did your analytical examination show?

A That that is gasoline.

Q No water?

A Just a trace of water.

Q How about the other bottles, did you make an analysis of the one you are grabbing hold of now?

A I did.

Q What does that contain?

A My mark number four. That is water, containing a trace of gasoline.

*State's Witness, Albert E. Edel, Direct*

Q That is mostly water containing gasoline?

A Yes.

Q What is this?

A Number three, a complete analysis made. That is gasoline with a boiling point of .441 fahrenheit; residue one per cent. Flash point of room temperature.

10

Q Well, it is gasoline?

A Gasoline.

Mr D.Aloia: I offer these four bottles containing these four liquids as testified to by Detective Giordano and brought down to the doctor and analyzed in evidence.

The Court: Did you say the second and small bottle is all gasoline?

20

The Witness: Yes, with a trace of water.

Bottles offered in evidence and marked Exhibits S-13, 14, 15 and 16.

*Cross Examination by Mr. Mott.*

Q What do you mean by a trace?

A A trace of water.

Q Well, either water or gasoline?

A Right here it is, on the bottle.

30

The Court: What do you mean by a trace?

The Witness: A very small portion.

Q Sufficient so you can identify with certainty the liquid?

A Yes, I could.

MARION E. HEIM sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

Q You are in the office of Feist and Feist?

40

A Yes.

*State's Witness, Marion E. Heim, Direct*

Q I show you what purports to be a fire insurance policy and ask you to tell us if that was issued by your office?

A Yes, it is.

Q Who is the party insured?

Mr. Mott: I object. I think some evidence as to who is responsible for that policy being in existence— 10

The Court: Well, I will allow it subject to being connected up.

Q Who took this policy out?

A Mr. Oscar Block.

Q And to whom was it delivered?

A To Mr. Block.

Q Was it in force on June 9, June 10, 1925? 20

A It was.

The Court: What number is it?

Mr. D'Aloia: 194,517.

Q Now, I show you this policy that was issued and I ask you to tell us who the insured was.

Mr. Mott: I object. The policy speaks for itself.

The Court: Of course, the policy speaks for itself. Is there any doubt you are going to have difficulty to get Block here? 30

Mr. D'Aloia: No. We can get him here in the morning.

Mr. Mott: I will save all the time I can in this trial, but here is a point I want the exact proof.

Cross examination waived.

The Court: Is there any proof as to how you came into possession of those policies? 40

*State's Witness, Anna Freiman, Direct*

Mr. D'Aloia: We got them from this young lady.

The Court: Perhaps she can tell where she got them.

10 Mr. D'Aloia: Well, I think we can wait for Block. He is going to be here in the morning.

ANNA FREIMAN sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

Q Do you remember the 9th of June, 1925?

A Yes.

Q And do you remember the 8th of June, 1925?

A Yes.

Q Do you remember the 10th of June, 1925?

20 A Yes.

Q At that time where were you living?

A 512 Madison Street.

Q How far is 512 from the corner of South Jefferson Street?

A Four doors up.

Q Do you know this defendant, Raimondi?

A Yes.

Q Do you remember the date of the fire?

A Yes.

30 Q Now, how long before the fire did you see this defendant, Raimondi at or near his place on the corner?

A The day before—the same day of the fire.

Q That is the afternoon before the fire?

A Yes.

Q What time was it?

A Between two and three.

Q What, if anything, was the defendant doing when you saw him?

40 A He was carrying butter tubs in.

*State's Witness, Hattie Merklin, Direct*

Q In where?

A Into his building.

Q From where?

A His automobile.

Q How many did you see him carry in?

A About three.

Cross examination waived.

10

HATTIE MERKLIN sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.*

Q Where were you residing June 7, 8, 9, 10 and 11, 1925?

A 130 Jefferson Street.

Q I show you Exhibit S-1 and ask you if that is the corner of Madison Street and South Jefferson Street?

20

A Yes.

Q Now, which side of that particular building shown in the picture did you live?

A This lower side.

Q Right next door?

A Yes.

Q Is there an alley-way between your house and the house on the corner?

A Yes.

Q And did your house have a rear porch?

30

A Just the rear stoop.

Q You remember the night of the fire?

A Yes.

Q Now, the day before the fire were you well or were you ill?

A Well, I was not well. I had the doctor on Friday.

Q I mean the day immediately before the fire you were not well?

40

*State's Witness, Hattie Merklin, Direct*

- A No.  
 Q Where did you spend the afternoon?  
 A On the back stoop.  
 Q Did you know this defendant Raimondi?  
 A Yes.  
 Q The man who was building the house next  
 10 door?  
 A Yes.  
 Q Who owned the house next door?  
 A Yes.  
 Q Now, while you were on that back stoop, not  
 feeling well, that afternoon, did you see the  
 defendant?  
 A Yes.  
 Q Will you please tell the jury what time?  
 A I saw him between two and three in the after-  
 20 noon coming out of the side door with a pick in his  
 hand, facing my house.  
 Q Did you talk to him?  
 A No, sir; not at that time.  
 Q Did you see him again on that day or that  
 evening before the fire.  
 A Yes.  
 Q What time was it?  
 A Between six and seven.  
 Q Which door did he come out of?  
 30 A He came out of the same door I saw him com-  
 ing out of with the pick.  
 Q Now, what did he do, if anything, when he  
 came out of that door with a pick?  
 A He slammed the door and turned the key and  
 put it in his pocket.  
 Q Did you talk to him on that occasion?  
 A I talked to him in the morning.  
 Q Did you talk to him on that occasion?  
 A No, sir.

40

*State's Witness, Hattie Merklin, Direct*

- Q On both occasions—when he came out be-  
 tween two and three he had a pick?  
 A Yes.  
 Q Now, when he came out at seven P. M., you  
 saw him put the key in the door and lock it, did  
 he have a pick with him then?  
 A No. 10  
 Q During the day did you notice anything  
 about that place?  
 A No.  
 Q The day before did you notice anything about  
 that place?  
 A Well, all I do know I saw Mr. Raimondi com-  
 ing every morning in his machine.  
 Q No. I mean just before the fire, that after-  
 noon and morning, did you notice anything about  
 the place? 20  
 A No.  
 Q Was there any odor about it?  
 A Yes.  
 Q What?  
 A Gasoline.  
 Q When did you first notice this odor of gaso-  
 line?  
 A Well, on Friday, when I got home from the  
 doctors, Mrs. Tucker was sitting in the alley-way  
 and she told me— 30  
 The Court: No.  
 Q What day was it you saw him come out with  
 the pick at three o'clock in the afternoon?  
 A On Tuesday.  
 Q Between Friday and Tuesday, did you notice  
 an odor of gasoline?  
 A Well, we noticed it all along.  
 Q Until Friday?  
 A Yes, Friday was the strongest.

40

*State's Witness, Hattie Merklin, Direct*

- Q Did you see him come to his place on Saturday?
- A No.
- Q Did you see him come there on Monday?
- A Yes.
- Q And then you saw him come on Tuesday?
- 10 A Yes.
- Q And it was Tuesday afternoon you saw him leave between two and three with the pick and seven o'clock when he locked the door?
- A Yes.
- Q And at night, Tuesday morning, about one o'clock, what happened there?
- A Well, I heard an explosion and I said to my husband—
- Q Well—
- 20 A I said, "What is that?"
- Q Then what did you do?
- A Then we heard another explosion and it near threw me out of bed.
- Q Then what did you do?
- A I said to my husband, "What is that?" and he said, "It is an automobile back-fire," and I said, "No, it is not."
- Q What did you notice?
- A When I got up out of my bed and walked
- 30 from my bedroom to the dining room I saw a fire. It was a roaring furnace.
- Q Where?
- A In the kitchen and dining room.
- Q In what house?
- A In the house on the corner.
- Q And your bedroom was on the side near to the house which was burning?
- A No; my dining room. When I got in my dining room I saw the blaze.
- 40 Q What time was that?

*State's Witness, Hattie Merklin, Direct*

- A Well, that I could not say, because I was too excited.
- Q How long had you been to bed?
- A Well, we went to bed about nine o'clock.
- Q Was this after midnight or before midnight?
- A Well, I heard a party say it was twenty
- minutes to one. 10
- Q Well, you were excited?
- A I cannot recall the time.
- Q You were up at the time the firemen came?
- A Yes, I saw the fire.
- Q Now, just before I conclude your examination, when you saw him in the afternoon come out of that place, as you say, between two and three, and he had this pick was he alone or was anybody with him?
- A Nobody. 20
- Q He was alone?
- A Yes.
- Q When you saw him at 7:30 was he alone when he turned the key in the door?
- A Yes, alone.
- Cross Examination by Mr. Mott.*
- Q Did you have a talk with Mr. Raimondi on Sunday before the fire?
- A No, sir. 30
- Q Sure?
- A Sure.
- Q When did you last have a talk with him?
- A Why, Tuesday morning, on the night of the fire.
- Q About what time Tuesday morning?
- A Well, I should judge it was about half-past nine or ten o'clock.
- Q You saw Mr. Raimondi come there with his automobile to that house every morning? 40

*State's Witness, Hattie Merklin, Cross*

A Very near every morning.

Q And you saw some workmen come?

A While the house was being constructed I did.

Q Well, it was being constructed at the time of the fire?

A Well, it was completed then.

10 Q Oh you think it was completed?

A Well, I should think it was myself. I was through it. It was all completed.

Q It was all completed?

A Yes.

Q The floors were not cleaned up, were they?

A Well, no; that was to be done yet.

Q The varnishing was not all finished?

A Oh, yes.

Q All finished?

20 A Yes.

Q You are sure about that?

A Sure I am, because I was in the house with him looking at it.

Q Had you ever seen any people coming in and out of that house other than the workmen?

A No.

Q And you never said anything to Mr. Raimondi about it?

30 Mr. D'Aloia: I think that the time ought to be fixed.

Mr. Mott: Oh, shortly before

Mr. D'Aloia: Oh, shortly does not mean a thing. Do you mean that week?

Mr. Mott: Yes.

Mr. D'Aloia: Well, fix it.

Mr. Mott: All right.

Q Within ten days of the fire?

A In what way do you mean?

40 Q I asked you if you had ever seen any people

*State's Witness, Hattie Merklin, Cross*

other than the workmen coming out of that building or going in there?

A No.

Q And you did not say anything to Mr. Raimondi about it?

A No.

Mr. D'Aloia: If her answer is no, I object to this last question. 10

The Court: I am going to rule that that question is not proper cross examination.

Mr. Mott: That is the ruling, but no objection is made on that ground.

The Court: I have a right to.

Mr. Mott: I propose to show by this witness or lay the foundation that she had seen people coming in and out of that house and had reported that fact to Mr. Raimondi. 20

The Court: Do not you testify.

Mr. Mott: No.

The Court: Now, you are very familiar with the case of State against Moore, because you tried it and the Supreme Court reversed the case.

Mr. Mott: Does your Honor rule that it is collateral if I can show that people were coming in and out of that place? 30

The Court: Yes.

Mr. Mott: How can I show that? I couldn't show that people were coming in and out of that place and after having shown that I couldn't show what they did there?

The Court: Under the form of your question I so rule.

Mr. Mott: Then let me see if I can get my question right. I do not mean to go over the 40

*State's Witness, Dorothy Tucker, Direct*

ground your Honor has ruled on, but in order—  
The Court. Ask your specific question and I  
will rule on it.

Q Within a week or ten days prior to the fire  
had you seen persons going in or coming out of that  
house other than the workmen.

10 A No.

Mr. D'Aloia. I think she has already an-  
swered that and said no.

Mr. Mott. I know she has

Q Within a week or ten days prior to the fire  
did you have a conversation with Mr. Raimondi in  
which you said to him that you had seen some people  
going in?

A No, sir.

Q And coming out of that house?

20 A I never said anything like it.

Adjourned until tomorrow morning, Thursday,  
December 10, 1925, at 10 o'clock A. M.

Second Day.

Thursday, December 10, 1925.

Appearances as before stated.

Trial continued pursuant to adjournment.

30 DOROTHY TUCKER, sworn in behalf of the  
State.

*Direct Examination by Mr. D'Aloia.*

Q Mrs. Tucker, where were you residing on or  
about the 8, 9 or 10th of June, 1925?

A 130 South Jefferson Street.

Q Do you know this defendant, Mr. Raimondi?

A Yes.

40 Q Do you remember the fire?

*State's Witness, Dorothy Tucker, Direct*

A Yes.

Q When next before the fire was it that you saw  
him?

A The day before the fire.

Q What time the day before?

A Between two and three.

Q And where was he when you saw him? 10

A Coming out the side door with a pick.

Q What did he have with him?

A A pick.

Q Which way did he come?

A He came out with the pick toward the back  
of the house.

Q Was there anybody else around there with  
him?

A No.

Q What was it you noticed around that building 20  
two or three days before the fire, if anything?

A The smell of gasoline.

*Cross Examination by Mr. Mott.*

Q Did you say when he came out he went around  
toward the back of the building?

A Yes.

OSCAR BLOCK, sworn in behalf of the State.

*Direct Examination by Mr. D'Aloia.* 30

Q What business were you in in December, 1924?

A Coal, real estate and insurance.

Q At that time did you know this defendant,  
Raimondi?

A Yes.

Q Did you take out any insurance for him on this  
property corner of Madison street and South Jeffer-  
son street, Orange?

A Yes. 40

*State's Witness, Oscar Block, Direct*

Q How much?

A I think it was \$22,000.

Q What company?

A I gave it to Feist and Feist. They are the agents.

10 Q Then did you get a policy from Feist and Feist?

A Yes.

Q What did you do with the policy?

A Turned it over to Mr. Raimondi.

Q Is this the policy?

A Yes.

Q Did you pay the premium mentioned in there?

A Mr. Raimondi paid the premium to me and I paid it to the agent Feist & Feist.

Q When would that policy expire?

20 A December 9, 1925.

Policy offered in evidence and marked Exhibit S-17.

Cross examination waived.

THOMAS J. DOWLING, sworn in behalf of the State.

*Direct Examination by Mr D'Aloia*

30 Q Mr. Dowling, in 1924, in the month of October, were you the superintendent of buildings of the City of Orange?

A Yes.

Q I show you a record, page 227 of this book, and ask you if that record is yours?

A Yes.

Q And what does that record indicate as to a proposed building to be constructed on the corner of Madison street and South Jefferson street, Orange?

40 Mr. Mott. What is that?

*State's Witness, Thomas J. Dowling, Direct*

Mr. D'Aloia. A record of the building department of the city of Orange.

Mr. Mott. Well, that is not an official record. What is the purpose?

Mr. D'Aloia. I will bring the purpose out in a moment.

The Court. We may save time. It may be 10 admitted.

Mr. D'Aloia. It is an entry to show the building was to cost so much, and I want the cost given by the defendant to the City of Orange at the time he proposed to erect this place.

Mr. Mott. I do not think that record is competent to prove it.

Q Did you see the defendant at the time he came 20 to your department?

A No, sir; I did not.

*Cross Examination by Mr. Mott.*

Q That entry is not—

A Not in my own handwriting. There is, on the stub of the permit under my own handwriting, the same number as this.

Mr. Mott. There is not much dispute about this, but there is a little variance. 30

*Redirect Examination by Mr. D'Aloia.*

Mr. D'Aloia. All right. I will show him this document.

Q Do you recognize this particular document?

A Yes.

Q Is there any handwriting of yours on that?

A Not on this.

Q Well, did you receive it?

A I received it.

Q Now, from what you know, of your own know- 40

*State's Witness, Thomas J. Dowling, Recross*

ledge, Mr. Dowling, do you know what the cost of this building was to have been?

A \$20,000.

*Recross Examination by Mr. Mott.*

Q Well, how do you know that?

10 A Well, it is filed for that amount.

Q Did you ever inspect the building?

A Oh, yes.

Q What sort of a building was it?

A Why, it was a two and a half story, four-family building, with an eight inch cement block running through the center from cellar to roof, to take it out of an apartment.

Q Was it a well constructed building?

A Yes.

20 Q Do you know whether any changes in the plans were made after this application was filed?

A Why, I think we shortened the building up some and put front porches on on account of the building was taking up too much ground under the zone ordinance and it could not be put up unless they shortened the building.

Q And do you know whether and changes were made in the interior plan?

A No.

30 Q So that your statement of \$20,000 is what you understood the original cost was?

A Yes.

Q But what the actual cost was you don't know, whether changes were made which made it cost more or less?

A I would say it would not cost any more. That \$20,000 was a fair price for all that was done.

Q Did you see it after it was completed?

40 A Yes. I made a visit there myself on the 27th day of April.

*State's Witness, A. Sigmund Kaningieser, Direct*

A. SIGMUND KANINGIESER, sworn in behalf of the State.

*Direct Examination by Mr D'Aloia*

Q Mr. Kaningieser, do you know this defendant, Raimondi?

A Yes. 10

Q Did you take out any insurance for him?

A Yes.

Q On what premises?

A 124 and 126 South Jefferson street.

What city?

A Orange.

Q How much did you take out?

A \$16,000.

Q When?

v A \$13,000 on March 27, 1925; \$3,000 May 20, 20 1925.

Q And on June 9, 1925, and 10th, were those policies in force?

A Yes.

Q Who paid the premium?

A Deducted from a loan granted to Mr. Raimondi.

Q In other words, the defendant paid the premium?

Mr. Mott. I object to that. 30

The Court. We will withdraw that. It is a conclusion.

Q Who paid the premium.

A From the defendant's money.

Q At any time subsequent to the deduction of that premium, was there any protest made by this defendant?

A Not to me; no, sir.

Q Was there ever any application made to cancel those policies? 40

*State's Witness, A. Sigmund Kaningieser, Cross*

A No, sir.

*Cross Examination by Mr. Mott.*

Q I think, in response to the first or second question asked you, you said that you took out some insurance on this property for the defendant. What did you mean by that? Won't you explain that? 10

A Yes. The Grant Building and Loan Association granted a loan of \$16,000 upon the premises at a meeting of the board on March 12, 1925. As the search progressed and the title was reported perfect, on March 27, 1925, insurance was ordered by the solicitor, through me, to cover our loan. Through an error, \$13,000 insurance was placed instead of \$16,000, and on examination by our auditors in May, we discovered that we only had \$13,000 insurance instead of \$16,000. We ordered the additional \$3,000 to cover our entire loan of \$16,000. 20

Q What did Mr. Raimondi have to do with the taking out of the policies?

A Nothing, outside of the application on January 2, 1925, wherein we specify that the building and loan shall place the insurance on the loan granted.

Q Now, that is your custom, isn't it?

A Yes.

Q You took or supeirntended the taking of that insurance without consultation with him, isn't that so? 30

A Yes.

Q You placed it in the companies that the building and loan selected?

A Yes.

Q And with that he had nothing to do?

A Nothing, beyond paying the premium.

Q Well, placing it?

A No, sir; he had nothing to do with the placing. 40

*Defendant's Witness Rese J. Powell, Direct*

Q And subsequently you informed him that the association had taken out those policies and that the premium had been deducted from the amount of his loan?

A Yes.

Q That is the practice of all building and loan associations, isn't it? 10

A To the best of my knowledge.

Q It is of your association, anyway?

A With the few I am connected with.

Mr. D'Aloia. I do not think we are interested in the practice. What was done in this particular instance.

Q Were you one of the committee that appraised that property?

A Yes.

Q For the building and loan association? 20

A Yes.

Q What did you appraise it at?

A \$20,000 for the building and \$4000 for the land.

Policies offered in evidence and marked Exhibit S-18 and 19.

STATE RESTS.

Mr. Mott opens for the defendant. 30

RESE J. POWELL, sworn in behalf of the defendant.

*Direct Examination by Mr. Mott.*

Q Where do you live?

A 11 Brookside, West Orange.

Q What is your business?

A Hardwood floors, laying and scraping and finishing.

Q Do you know the defendant, Mr. Raimondi? 40

*Defendant's Witness Rese J. Powell, Direct*

A Through business.

Q Well, you know him?

A Yes.

Q Did you work on his building at the corner of Jefferson Street and Madison Street?

A I figured on his building to go to work at it.

10 Q Oh, you had not actually begun your work there yet?

A I went up and scrapped a small spot and told him he would have to clean up his floors before I started to work on them.

Q Did you give him any instructions what he was to do?

A I told him he would have to clean them up and put down paper so they would not track in the concrete working the floor.

20 Q You were there at the building?

A Yes. I was there to give an estimate on the building and I had been there three or four times after that to look in the same to see if I had an electric connection.

Q When were you there last?

A A few days before the fire.

Q You cannot locate it definitely?

A No, I do not remember definitely.

30 Q Do you recall when you were there whether you saw any tubs around in the rooms?

A I did not take notice.

*Cross Examination by Mr. D'Aloia.*

Q What time was it that you went there the day before the fire?

A It was in the morning.

Q What time?

A Why, I do not remember just exactly the time.

40 Q Before noon, was it?

*Defendant's Witness, Elizabeth Raimondi, Direct*

A It was right near the noon hour.

Q You went to the cellar?

A Yes.

Q Did you see anybody there?

A No.

Q Did you see Raimondi?

A No.

Q Nobody there?

A No.

Q You don't remember whether you saw any tubs around?

A I didn't go upstairs to see tubs. I was just down below.

Q You did not leave any tubs there?

A No.

Q You did not bring in any gasoline?

A No.

ELIZABETH RAIMONDI, sworn in behalf of the defendant.

*Direct Examination by Mr. Mott.*

Q Are you the wife of the defendant?

A Yes.

Q Where do you live?

A 417 Bloomfield avenue.

Q What family have you?

A What do you say?

Q What does your family consist of?

A I have eight children.

Q What is the age of the youngest?

Mr. D'Aloia: Is that material?

The Court: I do not think it is material.

Mr. Mott: Why, I think it is material to show that this man was building a home for his family and the size of his family and the needs of his family.

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*Defendant's Witness, Elizabeth Raimondi, Direct*

The Court: No, that is not a good reason. The preliminary question is sometimes allowed, but I do not see the materiality of going into the ages of all these children.

10 Q How many of your children were living home?

A Seven.

Q Do you remember the day of the fire, the night of the fire, the fact that there was a fire?

A Yes.

Q Do you know where your husband went on the night before the fire?

A He was home at four o'clock. Then he go to see my sister-in-law. All the family had a ride.

Q Did you go with him?

20 A Yes.

The Court: Did you ask the day before the fire?

Mr. Mott: I can see the confusion.

Q But the fire happened about one o'clock in the morning and I am talking about the evening before that?

A Yes.

Q Your sister-in law had been in the hospital?

A Yes.

30 Q And she had just gotten home?

A Yes.

Q And you and your husband went around there to see her?

A Yes, and a couple of my boys.

Q How long did you stay there with her?

A All night.

Q What time was it when you left there?

A I do not remember.

Q Well, about what time?

40 A When we left to go home?

*Defendant's Witness, Elizabeth Raimondi, Direct*

Q Yes.

A About half past nine or ten o'clock.

Q Did you go right home with him from your sister-in-laws?

A No. We had a ride with my brother-in-law, bringing my sister-in-law home, then he go right home. 10

Q What time did he get home?

A Half past nine or ten o'clock.

Q And after he got home, what did you do?

A All go to sleep, me and my husband go to sleep, and all my children.

Q Where was your husband?

A My husband was in bed, asleep.

Q And did anybody later on in the night come?

A No.

Q Later on? 20

A In the morning I heard the police department come upstairs. I was afraid.

Q And what time was it when they came up there?

A I don't know what time. I don't pay no attention. I was scared.

Q Well, they arrested your husband?

A He said he wanted to see my husband about the fire, and my husband said he didn't know nothing about it. 30

Q Well, from the time that you got home that night until the police officers came, where was your husband?

A He was in the bed with me, all upstairs asleep.

Q All the time?

A Yes.

*Cross Examination by Mr. D'Aloia.*

Q What time did you get home? 40

*Defendant's Witness, Elizabeth Raimondi, Cross*

- A The night of the fire?  
 Q That is the night?  
 A Half past nine or ten o'clock, and all went to bed.  
 Q And he went to bed and you went to bed?  
 A Sure.  
 10 Q Has he a brother by the name of Dewey?  
 A I don't know. One is named Charlie.  
 Q Who is Dewey?  
 A Dewey is the brother.  
 Q Dewey is your husband's brother, is that right?  
 A Yes.  
 Q Now, you are sure that you got home and he got home between half past nine and ten o'clock?  
 A Sure.  
 20 Q And you live at 417 Bloomfield avenue?  
 A Yes.  
 Q And you have an automobile, haven't you, or had an automobile at that time?  
 A Yes.  
 Q And it was a black automobile?  
 A I don't know whether it was black or red.  
 Q Well, it was not red or blue or pink; it was black?  
 A Yes.  
 30 Q Who drove that car?  
 A My husband and everybody.  
 Q Where was it kept, where did you keep the automobile?  
 A In the yard.  
 Q What yard, of that house?  
 A 417 Bloomfield avneue.  
 Q Newark?  
 A Yes.  
 Q There was a garage in the back, wasn't there?  
 40 A Yes.

*Defendant's Witness, Annie Raimondi, Direct*

- Q There is where the automobile was kept?  
 A Yes.  
 Q Then right next door to the garage is a stable, isn't there?  
 A Yes.  
 ANNIE RAIMONDI, sworn in behalf of the defendant. 10  
*Direct Examination by Mr. Mott.*  
 Q What relation are you to the defendant?  
 A Sister-in-law.  
 Q You married his brother?  
 A Yes.  
 Q In June, last, were you sick?  
 A Yes.  
 Q Were you in the hospital? 20  
 A Yes.  
 Q How long were you in the hospital?  
 A I was in the hospital four months. I came home, June 9th.  
 Q Do you remember what date you came out of the hospital?  
 A I was discharged June 9th.  
 Q Did you go home?  
 A Yes.  
 Q Where did you live? 30  
 A 181 South Essex Avenue.  
 Q During the evening of the day you got home, did you see Mr. Raimondi, the defendant?  
 A Yes, he and his family came to see me.  
 Q About what time was it when they came to see you?  
 A About seven or eight o'clock.  
 Q And how long did they remain there with you?  
 A Oh, we were home for a while and then I 40

*Defendant's Witness, Harper P. Nucciarone, Direct*

asked him to take me out for a ride and so he did.

Q What time did you get back?

A We got home about half past nine.

Q Then what did they do?

A They went home; to their home.

Cross examination waived.

10 HARPER P. NUCCIARONE, sworn in behalf of the defendant.

*Direct Examination by Mr. Mott.*

Q Where do you live?

A 206 Central Avenue, Orange.

Q What is your business?

A Architect.

Q Do you know Mr. Raimondi, the defendant?

A I do.

20 Q Were you the architect for his house on Jefferson Street?

A Making the plans and specifications.

Q And did you superintend the erection of the building at all?

A No.

Q Did you go to the building at all during the course of its construction?

A No.

30 Q Have you seen it since it was finished?

A Yes. I passed by there once or twice.

Q Well, have you been in?

A No.

Q Did you see the contract—did you draw the contract?

A No.

Q Do you know who the contractor was?

A I don't know.

Q Did you draw the specifications?

A Plans and specifications.

40 Q And on the plans and specifications that you

*Defendant's Witness, Harper P. Nucciarone, Cross*

drew, did you make any estimate of the value of the building?

A I did.

Q What was the value of the building according to your specifications?

A About \$23,000.

Q Were any changes made in those plans and specifications? 10

A In passing by there I noticed the change in the porch, on the front of the building, which I did not have in my plans.

Q And what effect did the erection of that porch have on the cost of the building?

A About five or six hundred dollars.

Q More or less?

A More.

Q Did you observe any other changes that affected the cost of the building? 20

A No.

*Cross Examination by Mr. D'Aloia.*

Q Now, if the building was shortened by five or six feet, to make room for that porch, the shortening of the building, that would reduce its cost, wouldn't it?

A Of course.

AMIELLO RAIMONDI, defendant, sworn in his own behalf. 30

*Direct Examination by Mr. Mott.*

Q Mr. Raimondi, where do you live?

A 417 Bloomfield Avenue, Newark.

Q How long have you lived there?

A Nine years.

Q And what is your business now?

A Delicatessen store. I used to be a saloon-keeper. 40

*Defendant, Amiello Raimondi, Direct*

- Q And where is your delicatessen store?  
 A 417 Bloomfield Avenue.  
 Q How near is that to your house?  
 A Which house, the one in Orange?  
 Q No, on Bloomfield Avenue?  
 A That is right there.  
 10 Q In the same building?  
 A The same building.  
 Q What did you keep or sell in your delicatessen store?  
 A All the delicatessen line and all groceries and vegetables and a fruit store and all that kind of stuff.  
 Q Butter?  
 A Butter, yes.  
 20 Q Now, did you build this house on the corner of Jefferson Street and Madison Avenue?  
 A Yes.  
 Q Did you have an architect?  
 A Yes.  
 Q Who was it?  
 A Mr. Nucciarone.  
 Q Did you have a contractor?  
 A Yes.  
 Q Who was he?  
 A Frank Angellio.  
 30 Q Before the contract was made, did you start working there?  
 A After the contract was made, I started working there.  
 Q When about was the contract made?  
 A In October, 1924.  
 Q And how soon did you start working there after that?  
 A I started working there in November.  
 Q Well, what did you do there?  
 40 A I laid the concrete.

*Defendant, Amiello Raimondi, Direct*

- The Court: What did you do personally?  
 The Witness: I say I laid the concrete.  
 Q Where?  
 A Right in the house.  
 Q Well, you mean in the cellar?  
 A In the cellar, yes. 10  
 Q How long were you working at that?  
 A About three months.  
 Q And what else did you do?  
 A And I fixed up the sidewalk and all around the house and the alley-way, and I worked a couple of months there.  
 Q And did the contractor make you any allowance for that?  
 A Sure.  
 Mr. D'Aloia: I object to that. 20  
 The Court: I will allow that.  
 The Witness: Sure he did.  
 Q What did that allowance amount to?  
 A It amounted to about \$50 a week.  
 Q You had money, did you, to pay the expense of this house on the start?  
 A All my money.  
 Q I mean before you got a loan from the building and loan.  
 A That was my money. I put up the house 30 pretty near complete before I asked for a loan.  
 Q What was the condition of the house at the time you got the loan?  
 A The house had a roof on and cellar, and only a few things had to be done, and then I applied for a loan.  
 Q And was the loan granted you?  
 A Yes.  
 Q Previously to the time you got the loan had you taken out any fire insurance policy? 40

*Defendant, Amiello Raimondi, Direct*

A Certainly I did.

Q For what amount?

A \$22,000.

Q How did you come to do that?

A The contractor compelled me to get the policy out.

10 Q When you got the loan from the building and loan association, was anything said to you about their taking out fire insurance?

Mr. D'Aloia: I object to that as leading.

The Court: I will allow it. It is in evidence, anyhow.

A I told the secretary from the building and loan. I said, "I have \$22,000 on the building," and I said, "I will transfer my policy to you," and he said, "No, we have got to have our own policy." He said, "We won't accept that kind of policy."

20 Q Now, the fire was on the morning of the 10th of June, last, was it?

A Yes.

Q Were you in that building on the 9th of June?

A Yes.

Q What time did you go there?

A I got in there in the morning, about half past nine—eight or nine o'clock. Generally I used to go there every morning.

30 Q What time did you leave?

A I left there around about half past three or four o'clock.

Q And when you left did you have anything with you, were you carrying anything?

A No.

Q Did you have a pick with you?

A No. I left it in the building.

Q What?

40 A I left all of my tools in the building.

*Defendant, Amiello Raimondi, Direct*

Q What tools did you have there?

A All kinds of tools.

Q Well, that does not tell us much.

A Picks, rakes, brooms, pails and trowel and everything we had there; we cannot build a house without tools.

Q After you left the house at three or four o'clock, or whatever time you said it was—

A Between half past three and four.

Q —did you go back to the building again that day?

A No, sir.

Q Did you buy some newspapers of the newspaper man?

A Yes, I did.

Q How did you come to do that?

A The floor scraper told me to cover the floors, otherwise he don't take the job; in other words, he don't tackle that job at all.

Q What did you tell the newspaper man you wanted the paper for?

A I said, I wanted to cover the floor, to make it just like carpet.

Q Had you taken any tubs over to this building?

A Always I did.

Q Well, these tubs that are here, do you know whether or not they were in this building, in the house?

A They were always in the building, yes.

Q How did they come there?

A I bring them there.

Q What did you take them there for?

A To put the garbage in and dirt and everything. I had to put it in the tubs. I could not put it in the street.

Q How long had you had tubs there?

A Oh, a long time. I used to take tubs once or

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*Defendant, Amiello Raimondi, Direct*

twice a week and I always missed them, they take them away.

Q When was the last time you took any tubs there?

A Well, I do not remember exactly when I took in the last lot.

10 Q Well, did you take any there on the 9th, the day before the fire?

A No, I don't recall that.

Q You don't know whether you did or not?

A No.

Q Whereabouts were these tubs in the house? After you took them over there, where did you put them?

A I put them in the house. I do not know exactly the place I put them. I left them in the house. I never put a chalk mark where I left the tubs.

20 Q I show you exhibit S-1, and ask you if that is a picture of your house?

A Yes.

Q How high is it from the sidewalk up to the second balcony?

A About twenty-four feet high.

Q Did you ever take any gasoline into that building?

A No, sir.

30 Q When you left your house at half past three or four o'clock on June 9th, was there any gasoline in these tubs?

A No, sir, not a drop.

Q Do you know anything about a hole that was knocked through the wall from one side of the house in the partition?

A No, I don't know anything about it.

Q Do you know whether that hole was there when you left?

40 A There was no hole at all.

*Defendant, Amiello Raimondi, Direct*

Q Did you ever see this fuse before?

A I never did in my life.

Q Did you ever see it in the building?

A No, sir.

Q Did you make it?

A No, sir.

Q When you left this building between half past three and four o'clock on the afternoon of the ninth of June, where did you go? 10

A Home.

Q And how long did you stay home?

A Just had my supper and we went to see my sister-in-law who happened to come out of the hospital.

Q Who do you mean by we?

A I mean my wife and my son.

Q And how long did you stay with your sister-in-law? 20

A We only stayed in the house about fifteen or twenty minutes and took her for a ride.

Q What time did you get back from the ride?

A It was about an hour's ride, for an hour and a quarter; something like that.

Q What time was it when you left your sister-in-law's house?

A Well, around about nine o'clock, or half past nine, but I didn't look at the time that time. 30

Q Where did you go then?

A We went back home.

Q By we, you mean whom?

A The whole family that was in the automobile, my son, and my wife and myself.

Q And when you got home, what did you do?

A Went to bed.

Q Did you leave your house again that night before the fire—before the police came?

A No, sir. 40

*Defendant, Amiello Raimondi, Direct*

Q Did the police come there?

A Yes.

Q About what time?

A Around half past two or three o'clock, I should say, but I don't look at the time.

10 Q Did you have a talk with some of the police officers shortly after this?

A Sure, when they took me out of the bed. I said, "What am I doing?"

Q Well, after you got there to the police station, did you have a talk with Larry Burns? Do you know him?

A Yes, for years.

Q Did you have a talk with him?

A Yes.

Q And do you know Mr. Giordano?

20 A Yes.

Q Do you know whether they asked you anything about the tubs or not?

A Well, I misunderstood if they did.

Q Well, what do you mean by that?

A I misunderstood whether they asked me or not and I was kind of excited, the house burned, and I don't know what I said.

Q Do you know whether they asked you if you knew anything about the tubs?

30 A I misunderstood, I told you, if they did or not.

Q Did you say to the police officers that you did not know anything about the tubs?

A I misunderstood. I don't know if I did or not. I cannot guess the truth. A lie is a lie. I was excited and I don't know what I said.

The Court: Do you remember them saying anything to you about tubs?

The Witness: I do not remember very well, because I was all excited. The house

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*Defendant, Amiello Raimondi, Direct*

was burned and I don't know what I was going to say.

Q Did you make and sign a statement for Mr. Burns and Mr. Giordano?

A Yes.

Q Did you read it over before you signed it?

A No, sir.

Q Was it read to you?

A I don't think they did; I don't remember that.

Q Have you any knowledge at all as to how that fire was started?

A I don't know how the fire started.

Q What?

A I don't know anything about it.

Q Did you lay the streamers as they are called?

A No, sir.

Q And did you break the hole through the wall?

A No, sir.

Q And did you tear up the boards under the stairway in the closet that leads upstairs?

A No, sir.

Q Where were these newspapers when you left at 3:30?

A They were all bundled up, all tied up.

The Court: What was the hour that you left there the day of the fire, or, rather, 30 the day previous to the fire?

Witness: Around about half past three or four o'clock.

The Court: Did you speak to Mrs. Merklin there?

Witness: I don't think I did that day, no.

*Cross Examination by Mr. D'Aloia.*

Q You didn't take anything with you when you 40

*Defendant, Amiello Raimondi, Cross*

left about half past three or four o'clock—you didn't have a pick with you?

A No.

Q You didn't have a pick around about half past two or three o'clock?

A No.

10 Q There was a pick inside, though?

A Yes.

Q Do you know of any reason why Larry Burns—Lieutenant Burns and Lieutenant Giordano should ask you about the tubs?

Mr. Mott: I do not think the question is complete yet.

20 Mr. D'Aloia: I am asking this defendant, on cross examination, if he can tell us why, on the morning of the tenth, when Judge Mott asked him if he had a talk with both Giordano and Burns, why they should ask him—

Mr. Mott: I object.

The Court: Sustain the objection.

30 Q You didn't say anything about tubs, did you?

A I didn't say anything about tubs.

Q You did not say anything about tubs?

A No.

30 Q Well, what was said about tubs by Burns?

A He asked me something about tubs.

Q What did he ask you?

A He asked me something about tubs.

Q What did he ask you?

A I misunderstood the question.

Q What did he ask you?

A I don't remember what he asked me.

Q You signed your name, didn't you?

40 A Sure, I did.

*Defendant, Amiello Raimondi, Cross*

Q You were very much excited, you were very much excited. That is your signature, isn't it?

A Yes.

Q Now, can you sign it now? Aren't you excited now?

A No.

Q Will you write your name now? 10

A Sure thing.

Q Now, did you read this paper before you signed it?

A No.

Q Do you know how this information got in here, "And the police asked me did I own the tubs that were in the room, and I told them no." Do you know where this information came from?

A I don't know where that came from.

20 Q Do you know who told the police this—now, you are making this statement and you signed it—"When I left there there were no tubs in the house when I left the house." Do you know how that got into this statement?

A No, I don't know nothing about it.

Q Now, isn't it a fact that when you were asked by Burns and Giordano pointedly and specifically if you knew anything about the tubs that figured in the fire, you said no, and you also went on and said,

30 When you left that place the day before there were no tubs in the first floor at all. No, isn't that true, and you are trying to tell these jurors now, that you misunderstood the question and you don't know what the question was, and you do not remember what Mr. Burns asked you? Now, isn't that a fact? But you remember very well when Burns and Giordano asked you when you made this statement, "Whose tubs are those?" and you said, "They are not mine." "When I left there were no tubs there." And you signed that statement? 40

*Defendant, Amiello Raimondi, Cross*

A They didn't show me the tubs—

Q No, they showed you the tubs and talked to you about the tubs and you said when you left that place the day before, you did not know anything about tubs!

10 A I misunderstood the question.

The Court: Well, what was the question that was asked and where was the misunderstanding.

Witness: They asked me whether there were any tubs there.

Q And you did not misunderstand that, you answered it, No.

A No, I told you I didn't. I thought they said there were no tubs there.

20 Q Now, didn't Giordano speak Italian to you?

A No.

Q Didn't he speak Italian while he was taking this statement?

A No, sir.

Q You were in the saloon business before you went into the delicatessen business?

A Yes.

Q How long were you in the saloon business?

A About eighteen years.

30 Q How long have you been in the delicatessen business?

A Three years.

Q That is twenty-one years in business in Orange and in Newark?

A Yes.

Q And do you mean to tell this jury that you did not understand these officers when they were interested in finding out to whom these tubs belonged and how they got into your house which had

40 been burned up during the night, you didn't under-

*Defendant, Amiello Raimondi, Cross*

stand them when they asked you how about those tubs or whose tubs were those—you want this jury to understand you did not understand that simple question after being in the saloon business for eighteen years and the delicatessen business for three years? Now, why don't you want to look at them and tell them that you didn't want to be connected up with these tubs when Burns or Giordano were talking to you about this statement? Of course, you knew nothing about tubs and you said no, and today you are in the delicatessen business and they are your tubs?

A Yes.

Q You told Mr. Mott that a lady had seen you bringing tubs in there and that you learned of that

Mr. Mott: I object to the question as to what he told me. 20

The Court: He told you that he brought in the tubs.

Mr. Mott: I object as being a misstatement. He did not tell me. He has not testified on my examination that a lady saw him bringing in tubs.

The Court: No, but I take it, it is in the form of an interrogation put in an affirmative way; in other words, this is a cross examination and the Prosecutor is asking him if he did not learn of something and then said, as the result of that, this information. 30

Mr. Mott: You mean testified here?

The Court: Yes, and told the result of what he learned.

Mr. Mott: Well, that is not the question.

Mr. D'Aloia: Well, I will not press it.

Q What time did you get home that night? 40

*Defendant, Amiello Raimondi, Cross*

- A Long about half past nine or ten o'clock.  
 Q And you went to bed?  
 A Yes.  
 Q And you never got up again until the police came at three o'clock?  
 A They drug me out of bed.  
 10 Q And you did not want to get up?  
 A Naturally not.  
 Q At that time you had a black or dark automobile?  
 A No.  
 Q What kind of automobile?  
 A Maroon.  
 Q Well, it was kind of dark; nothing bright about that maroon, and you kept it in the rear of your house at 417 Bloomfield Avenue?  
 20 A That is my garage.  
 Q Now, you are telling this jury that you went to bed at half past ten, is that right?  
 A Yes.  
 Q And you did not get up, and you were not out of the house until the police arrested you about three o'clock in the morning?  
 A Yes.  
 Q Now, what time did you make this statement to Burns and Giordano?  
 30 A I told you once before, didn't I?  
 The Court: Answer it again.  
 Q When did you make the statement to Burns and Giordano?  
 A On the 10th.  
 Q What time was it?  
 A I was in jail. I didn't have no time with me.  
 Q But you remembered what you did the night before, didn't you?  
 A What I did?  
 40

*Defendant, Amiello Raimondi, Cross*

- Q Yes. You were asked where you were the night before and what house you had gone to and what time you left your house and what time you got home?  
 A Yes.  
 Q Beside being asked about the tubs?  
 A I don't remember about the tubs at all. 10  
 Q Never mind. You remember you were asked where you had been the night before?  
 A Yes.  
 Q And you told them this: "I went home to Bloomfield Avenue, Newark, and later, about 7:30 or 8 P. M. I returned to 101 Essex Avenue, Orange, to see my brother, Dewey," is that right?  
 A Yes.  
 Q You told them, that is correct?  
 A That is correct. 20  
 Q "Dewey's wife, my sister-in-law, was there, and I took them for a ride with her husband and my wife," that is right?  
 A Yes.  
 Q "And my brother Charlie came along and my son John and his friend, school chum, came along," that is correct?  
 A Yes.  
 Q "We rode to South Orange and we returned to 23 Washington Street, West Orange," that is right? 30  
 A Yes.  
 Q "To bring my brother Charlie home and then I took my brother and his wife to 181 South Essex Avenue, Orange," that is right?  
 A Yes.  
 Q "And I then went back home to Bloomfield Avenue, Newark, and we got there about 11:30 or 11:45 P. M." Now, how could you go to bed at  
 40

*Defendant, Amiello Raimondi, Cross*

half past ten, when you did not come home until 11:30?

A I made a mistake there on that.

Q So the statement here signed by you and made to Burns the next morning which stated that you got home at 11:30 or 11:45—you cannot read numbers?

10

A My head was not clear enough.

Q But you went to bed at half past ten?

A Well, we went and had a few drinks and I was not clear enough.

Q Do you mean to say you were driving the automobile under the influence of liquor?

A When I got home I had a few drinks.

Q What time did you get home, 11:45 as you stated the next morning, or ten o'clock?

20

A About half past nine or ten o'clock.

Q And the next morning you were one hour and a half out of the way when you said you got in at 11:45, is that right?

A An hour and a half out of the way?

Q Yes, the difference between nine and ten and 11:45, is an hour and three quarters, or two times almost, if you take the outside. Now, did you tell Burns and did you tell Giordano that you got home at 11:30 or 11:45 P. M., and that is put in here in figures?

30

A I do not recall that.

Q Now, when you signed this paper, did you read it?

A No, sir.

Q Was it read to you?

A No.

Q Can you see that 11:30?

A Yes.

Q And the dash between the 11 and 30?

40

A Yes.

*Defendant, Amiello Raimondi, Cross*

Q And do you see the dash between the 11 and 4?

A Yes.

Q Now, you did not tell that to Burns?

A I tell you I don't recall that.

Q Now, you never went back to that house at Madison Street and South Jefferson Street when you were out that night?

10

A No, sir.

Q With your brother Dewey?

A No, sir.

Q Is Dewey here?

A No, he is not here.

Q You are sure that at half past nine you and your brother Dewey did not go into the house?

A No, sir.

Q In the evening?

20

A No, sir.

Q No?

A No.

Q You are sure about that?

A Yes, sir. I told you no.

Q You are sure there wasn't a conversation between you and Dewey after the fire where your brother Dewey was afraid his finger prints might be found on the nob, because he went in at half past nine the night before the fire?

30

A No, sir.

Q You are sure you got home between half past nine and ten o'clock?

A Positive.

Q You are sure you never left in the afternoon there before with a pick, about three o'clock?

A I left about three o'clock.

Q Did you have a pick with you?

A No.

Q Did you have anything with you?

40

A No, just the automobile.

*Defendant, Amiello Raimondi, Cross*

Q Did you have anything when you left the house?

A No.

Q Not a thing?

A No.

10 Q Who told Burns and Giordano this, "When I left there there were no tubs in the house, when I left the house I took some trowels and the tamper tools used to work with from the house," who told that to Giordano and Burns? You said—you just told us that you left the house and did not have anything and the next morning you made a statement and told Giordano and Burns this, "When I left the house I took some trowels and the tamper tools used to work with from the house," is that true or not?

20 A I do not recall that.

The Court: What is a tamper tool?

Witness: When you pound.

The Court: What is the shape of it.

Witness: It is round and has a handle on top so you can pound the ground.

Q Well, did you have that with you when you left the house?

A I don't remember that.

30 Q Did you go there at seven o'clock and come out the same way you came out about three o'clock and lock the door with a key?

A I locked the door, yes.

Q Yes, but was it seven o'clock?

A No seven o'clock; half past three.

Q When you locked the door about half past three there was nobody left in the building?

A No, I don't think so.

Q But, you know there was nobody?

A I know there was nobody there.

40 Q Now, didn't you come out of that same place,

*Defendant, Amiello Raimondi, Re-direct*

that same door about seven o'clock?

A No, I never go seven o'clock in the house.

*Redirect Examination by Mr Mott.*

Q When the police came at three o'clock in the morning, where did they take you?

A Well, he did not tell me he was taking me to the police station. He said, "Somebody wants to see you up in Orange regarding a fire." 10

Q Where did you go?

A Right to the police station, in the cell.

Q How long did you stay in the police station?

A About a couple of days.

Q And then you were bailed out?

A Yes. I was bailed out.

FRANK ANZELLIO, sworn in behalf of defendant. 20

*Direct Examination by Mr. Mott.*

Q Where do you live?

A 23 White Street, West Orange.

Q What is your business?

A Well, I am working with my father as a carpenter.

Q And what is your father's business?

A Carpenter and builder.

Q Did your father have the contract to build the house for Mr. Raimondi? 30

A Yes.

Q And were you there during the course of the construction of the house?

A Yes.

Q How much of the time were you there?

A Well, nearly every day from the start to the finish.

Q Do you remember about when you started? 40

*Defendant's Witness, Frank Anzello, Direct*

A Yes. We started November—right around November 4th or 5th, somewhere around there, the first week in November.

Q And were you still working on the house at the time of the fire?

A No.

10 Q When had you completed?

A Well, about the 20th of May; something around that time.

Q And after the 20th of May, did you have occasion to go there to the house?

A Well, I was going past there the 8th of June. I was going to the American Roofing Company and that is the shortest way to go there and I went past there.

Q Did you stop?

20 A Well, I stopped to look. I was interested in the electric.

Q But you didn't go in the building?

A No, I didn't

Q And during the progress of the work on that building, do you know whether or not Mr. Raimondi had any tubs collected in there?

A Yes. That there one with the handle. He used to cart water in that and there used to be smaller ones than that.

30 Q Well, what were those tubs used for?

A Well, we used to use them tubs to cart water and making mason stuff and white-washing stuff and pick up the dirt—well, I didn't do that; Mr. Raimondi cleaned up and put dirt into them. We did not have very much use for the tubs.

Q What did you see him doing with them?

A Well, we scraped up the floor, all the adamant. You see, it was cement and adamant stuff and a great deal of it was on the floor and he would scrape it

40

*Defendant's Witness, Frank Anzello, Direct*

with a trowel and put it in these tubs. That was a way back in April.

Q Do you know what the contract price for building this house was?

A Yes.

Q What was it?

A \$22,000.

10

Q Do you know whether after the contract was drawn any changes were made?

A Yes, there were changes and my father reduced on the contract. The original was—I don't know exactly how many feet, but they changed it, and then during the course of construction, Mr. Raimondi said if it was possible to the zoning of Orange, they ought to make the building shorter than the proposed plan.

Q How much did that reduce it?

20

A That reduced it \$2,000, and in that August, while we were putting up the frame, Mr. Raimondi told my father he rather have concrete cellar instead of the cement block, which was at an additional cost of \$500, to pay my father \$500, and then we had the whole house framed and almost finished outside and about to do the front part—that was about Christmas time, and Mr. Raimondi asked my father if it was possible to put a porch on it in order to have additional room.

30

Q Well, did you put it on?

A We did.

Q How did that affect the price?

A That cost \$1,500.

Q And do you recall whether any other changes than that were made?

A Yes.

Q What?

A The hallway was running all the way through, so we partitioned it off and made a pantry with two

40

*Defendant's Witness, Frank Anzellio, Direct*

French doors, which made eight doors, and from the dining room to the kitchen you had to go out through the hallway, so Mr. Raimondi told my father if it was possible to make doors directly into the kitchen, so we did make that change.

Q And what effect did that have on the cost?

10 A Well, that is—I could not quite estimate that, but it is over \$100 anyway.

Q What do you say of the materials used in this house all the way through?

A Well, it was all new lumber.

Q And of what grade?

A Well, the beams, there was fir, two by ten, for the first floor; the second was the same; we put rafters which the specifications called two by eight, we put two by ten bridging in order to hold a span  
20 of sixteen feet or eighteen feet.

Q Would you say it was a well constructed house?

A Yes. There was cross bridging in the rafters two by ten instead of eight.

*Cross Examination by Mr. D'Aloia.*

Q The last time you were there was on the 8th of May?

A Yes, in the building.

3) The Court. And you say the plastering was done then?

The Witness. The plastering was done during the month of April.

The Court. What else had to be done with the walls and ceiling.

The Witness. Well, the walls had to be pached up. They go over them first and then they have to fix them up, and then they had to be decorated, the painters had to decorate the  
40 rooms; the floors had to be scrapped; they were

*Defendant's Witness, Frank Anzellio, Cross*

in bad condition; in order to have the floors scrapped he had an electrical machine which would do it in half the time a hand scrapper would take and we were waiting for the electricity.

Q Just look at all those tubs and see if there is any adamant, mortar or plaster stains. There is not  
10 any there.

A This looks like cement. I cannot quite—

Q You cannot make it out. Look here. You don't see any stains around there, do you, calcimine and lime? You did not see any lime stains on any of them. Look at all of them inside. Is there any lime stain there?

A This here one.

Q That is the only one?

A Yes.  
20

FRANK ANZELLIO, Senior, sworn in behalf of the defendant.

*Direct Examination by Mr. Mott.*

Q Where do you live?

A 23 White street, West Orange.

Q What is your business?

A Contractor.

Q Did you have the contract to build this house for Mr. Raimondi?  
30

A Yes.

Q What, if anything, did Mr. Raimondi do there by way of work around on the place?

A Well, I was sick and I come to Mr. Raimondi to make the concrete in the cellar and to put the steps on the back and finish the white wash for the cellar.

Q How much time did Mr. Raimondi put in there working on that building?

A Well, mre than a month.  
40

*Defendant's Witness, Frank Anzellio, Sr., Direct*

Q Did you make any allowance to him for the work he did?

A Yes.

Q What did that allowance amount to per week?

A \$50.

Q Well, how much more than a month was it?

10 A About ten or twelve days after the month; about forty-two days. That is all.

Q Do you know what effect adamant has on wood?

A No. I remember when the wood is cleaned—when the wood is rough the adamant dries—when the wood is cleaned it does not dry.

Q How long have you known Mr. Raimondi?

A Seventeen years—eighteen years.

Q How well have you known him?

20 A He is a good man.

Q No, what relations have you had with him?

A Nothing, just I lived before on the street. The other Mr. Raimondi lived in the same street across from my street.

Q Do you know what his reputation in the neighborhood where he lives is?

A Yes.

Q For being a law abiding man?

A He is a good man.

30 Q Well, now, I am asking you this, do you know what his reputation is?

A Yes.

Q What is his reputation?

A He is a good man. He is is a nice fellow, a working man.

Q Well, tell me what his reputation is.

The Court. What do other people think about him?

40 The Witness. Well, the other people like him because he takes care of his own business and

*Defendant's Witness, Frank Anzellio, Sr., Cross*

takes care of a big family. This I know myself.

Q Well, what is his reputation, is it good or bad?

A It is good.

*Cross Examination by Mr. D'Aloia.*

Q He gave you this contract?

10

A Yes.

Q He was good to you?

A He paid me.

Q Yes, he was good to you, wasn't he?

A Yes.

Q He gave you a chance to make a little money?

A Yes. He paid me.

Q That is why you say he is a good fellow?

A I don't know. Everybody says he is a good man.

20

Q You would come down here and say everybody that gave you a carpenter contract who gave you money is a good man?

A Well, sometimes there is bad people, too.

RESE J. POWELL, recalled.

*Direct Examination (continued) by Mr. Mott.*

Q In the course of your trade as a floor polisher, have you discovered the effect of adamant on wood?

A Why, the effect of adamant on wood will clean off and brush off. It will not stain, but lime will cause a burning stain into the wood.

30

*Cross Examination by Mr. D'Aloia.*

Q So when the adamant is put up against any piece of wood, it dries right on?

A It dries right on.

Q Now, if the wood is clean it can be scrapped off?

A Yes.

40

*Defendant's Witness, Rese J. Powell, Cross*

Q Now, come down and look at these tubs. Supposing these tubs had been used for the purpose of containing adamant, wouldn't you find traces of it inside?

A No.

Q What would happen to it?

10 A It would brush off if was cleaned off with water.

Q What about lime?

A Lime would leave a stain.

Q How much lime was there?

A I don't know.

Q You do not know whether lime was there or not?

A Well, there was lime on the walls, a finishing coat with lime.

20 PASQUALE LONG, sworn in behalf of the defendant.

*Direct Examination by Mr. Mott.*

Q Where do you live?

A 424 North 11th street.

A Where?

A Newark.

Q What is your business?

A Why, automobile accessories and supplies.

30 Q Where is your place of business?

A Corner North 8th street and Bloomfield avenue, Newark.

Q You know Mr. Raimondi?

A Yes, I do.

Q How far do you live from him?

A Why, about a block, no, I live six or seven blocks away from him. My business is a block away from him, from his home.

Q How long have you known him?

40 A I would say in the thereabouts of seven years, I believe.

*Defendant's Witness, Pasquale Long, Cross*

Q Do you know what his reputation in the neighborhood where you and he live is for his being a law abiding citizen? Do you know what it is, yes or no.

A Yes.

Q What is it, good or bad?

A It is good.

*Cross Examination by Mr. D'Aloia.*

Q He has been in the delicatessen business only three years. Did you know him when he was in the saloon business?

A Yes.

Q Where did he keep the saloon?

A In the same building where the delicatessen is now.

Q He buys his gasoline from you?

A Yes, sometimes.

Q He buys his oil from you?

A Yes, sometimes.

Q And he pays his bills?

A Yes.

Q Did you ever visit at his house?

A No.

Q Did he ever visit you at your house?

A No.

THOMAS ILENA, sworn in behalf of defendant.

*Direct Examination by Mr. Mott.*

Q Where do you live?

A 21 Elmwood avenue, Bloomfield.

Q What is your business?

A Pharmacist.

Q Do you know Mr. Raimondi?

A Yes.

Q How long have you known him?

A About ten years.

*Defendant's Witness, Thomas Ilena, Direct*

Q How near is your place of residence to his place?

A About six blocks away.

Q Do you know what his reputation is in the neighborhood where you and he live?

A Yes.

10 Q For his being a law abiding citizen?

A Yes.

Q What is it, good or bad?

A Good reputation.

*Cross Examination by Mr. D'Aloia.*

Q Do you keep a drug store up there in Bloomfield?

A Yes.

Q And he deals in your drug store—his family does?

20 A No.

Q Do you visit him?

A No, sir.

Q Did you ever visit him at his house?

A No.

Q Did he ever come to see you at your house?

A No, sir.

DEFENDANT RESTS.

Mr. D'Aloia. Do you admit this statement in evidence?

30 Mr. Mott. I will admit that that is Mr. Raimondi's signature.

Mr. D'Aloia. How about the statement itself?

Mr. Mott. I do not know I will admit that it is his signature.

LAWRENCE BURNS, recalled in behalf of the State, in rebuttal.

*Direct Examination by Mr. D'Aloia.*

40 Q On June 10, 1925, did you take this statement

*State's Witness, Lawrence Burns, Direct*

in writing from the defendant?

A Yes.

Q Did you write that?

A Yes.

Q Where did you get the information therein contained?

A From Raimondi.

10

Q After it was written out by you did you read it?

A Yes.

Q After it was read by you, what did you say?

A I asked Mr. Raimondi if he wanted to read it and he said no, what is in there is all right, and I said, "I insist on reading it."

Q Did you read it?

A I read it.

Q Then what happened?

20

A He signed it and we signed it as witnesses, Giordano and I.

*Cross Examination by Mr. Mott.*

Q What time of the day did you take it?

A Around ten o'clock in the morning.

Q On the 10th?

A Yes.

Q Where?

A In the office of the Police Headquarters.

30

Q He was in custody then?

A Yes.

Statement offered in evidence and marked Exhibit S-20.

FLORENCS E. DONOHUE, sworn in behalf of the State, in rebuttal.

*Direct Examination by Mr. D'Aloia.*

Q What business were you in June 8, 9, 10?

40

*State's Witness, Florencs E. Donohue, Direct*

- A Horseshoer.  
 Q 1925, this year. Where were you working?  
 A McCarthy's on Bloomfield avenue.  
 Q What number?  
 A I don't know the number. It is near 12th—  
 between 7th and 8th.  
 10 Q At that time did you know this defendant?  
 A Yes.  
 Q What kind of business was he in?  
 A Delicatessen store next door.  
 Q Do you remember the night of Tuesday, June  
 9?  
 A I do.  
 Q 1925?  
 A I do.  
 Q Where were you about half past eleven that  
 20 night?  
 A That night about half past eleven I was in the  
 barn taking care of a sick horse.  
 Q In whose barn?  
 A McCarthy's.  
 Q How far is the barn away from the garage?  
 A About from here to that wall.  
 Q Now, about half past eleven you were in the  
 barn with the sick horse?  
 A Yes.  
 30 Q Did you go to sleep?  
 A Yes.  
 Q Did you stay with the horse during the night?  
 A I stayed with the horse until two o'clock in the  
 morning.  
 Q What happened after you got to sleep?  
 A Well, I woke up about one o'clock with a rat-  
 tle on the garage door and I thought somebody was  
 trying to break in and I looked out and saw the  
 defendant.  
 4) Q How did you see him?

*State's Witness, Florencs E. Donohue, Cross*

- A With a light.  
 Q What did he go into the garage with?  
 A An automobile.  
 Q The next morning did you hear about a fire?  
 A I did not hear about a fire until about ten  
 o'clock in the morning.  
 Q What did you hear about a fire? 10  
 A I heard it in the shop. Somebody came in the  
 shop and told it to Mr. McCarthy.  
 Q What fire was it?  
 A Well, some fire up on Bloomfield or—I don't  
 know where the fire was.  
 Q But sometime around ten o'clock the next  
 morning you heard about some fire?  
 A Yes.  
 Q Now, you saw this defendant go into that  
 garage and saw him turn on the light? 20  
 A I did.  
 Q And when the light went on you recognized  
 him?  
 A I did.  
 Q What time was that?  
 A I should judge about one o'clock in the morn-  
 ing.  
 Q And then ten o'clock the next morning you  
 heard of the fire?  
 A I heard of the fire. 30  
*Cross Examination by Mr. Mott.*  
 Q What time did you go to take care of the sick  
 horse?  
 A Half past eleven.  
 Q And what time did you go to sleep?  
 A Oh, I should judge I went to sleep about  
 twelve o'clock, after I gave the horse the medicine.  
 Q Who did you first tell what you saw that  
 night? 40

*State's Witness, Florencs E. Donohue, Cross*

A I said to McCarthy in the morning—

Q Who is McCarthy?

A The boss I was working for that runs the horse-shoeing shop.

Q And who else did you tell it to?

A I didn't tell it to nobody else. It did not interest me at all.

Q Well, how did you come to be down here today to testify? Who told you to come down here?

A Well, I was subpoenaed here.

Q When were you subpoenaed?

A Last week.

Q Well, did you ever tell the prosecutor that you knew anything about this?

A No.

Q Or the police?

A No.

Q Have you any idea how they came to serve a subpoena on you?

A I have not.

Q You did not tell anybody except your boss?

A I did not.

Q Where is your boss now?

A I suppose he is in the shop. I ain't worked up there since July.

Q You know, don't you, that your boss has had some trouble with Mr. Raimondi?

Mr. D'Aloia: I object to that.

The Court: I will allow that.

A I know he had trouble with his son. I didn't know he had trouble with him.

Q Well, he had trouble with his son. How long ago did that trouble take place?

A I don't know. I wasn't there at the time.

Q Did your boss tell you to come down here?

A No, sir, I have not seen my boss since last July.

*State's Witness, Florencs E. Donohue, Cross*

The Court: That is, you have not seen McCarthy since last July.

Witness: I have not seen McCarthy since last July.

Q Was that a two car garage, or, a one car garage?

A I was never in the garage. I do not know whether it is a two or one. I know they have one entrance.

Q What light was there around there?

A Electric light, I think it is; I am not sure.

Q Well, now, is it or not?

A Sure there is a light there.

Q Where is the light?

A The light is inside the garage.

Q Where did you say Mr. Raimondi was when you first saw him there?

A He was knocking on the door with a stone, on the lock. That is what brought my attention around there.

Q Of his garage?

A Of his garage, yes.

Q Where was the light with which you could see him?

A I could not see him plainly then. That is why I went outside and then he went in the garage and lit the light.

Q You did go outside?

A I come out of the barn door, yes.

Q Where do you live?

A 337 Mt. Pleasant Avenue.

Q Who do you live with?

A I live in the Rescue Mission.

Q How long have you lived there?

A About a year and a half, off and on.

Q Where were you living at the time you are speaking of?

*State's Witness, Florencia E. Donohue, Re-direct*

A In the Rescue Mission.

Q Have you any family?

A No, sir.

Q Have you a trade?

A Yes.

Q What is it?

10 A Horse-shoer.

*Redirect Examination by Mr. D'Aloia.*

Q When did you leave McCarthy's employ?

A In July.

Q Who are you working for now?

A Billy Morehead on Oliver Street, right around  
from Mulberry.

Q As a horse-shoer?

A Yes.

20

TESTIMONY CLOSED.

Mr. Mott sums up for the defendant.

Mr. D'Aloia sums up for the State.

30

40

*Charge*

State vs. Raimondi.

12-9-25.

CAFFREY, J.:

Gentlemen of the Jury: This indictment is made  
up of two counts. You are only concerned with the  
second, which reads as follows, charging that the  
defendant on the tenth day of June, in the year  
1925, in the city of Orange, willfully and maliciously  
did set fire to and burn and aid, procure and con-  
sent to the setting fire to and burning of the  
building known as 128 South Jefferson street, in  
the city of Orange aforesaid, which building was  
then and there insured by the New Brunswick Fire  
Insurance Company and the American Eagle In-  
surance Company of New York, corporations,  
against loss and damage by fire, with intent to  
prejudice said corporations, said corporations hav-  
ing theretofore underwritten certain policies of  
insurance on said building, the said policies being  
then and there in full force and effect.

The word prejudicial, referred to in this indict-  
ment, and also in the statute upon which this  
indictment has been predicated, relates to harm or  
damage to the company. So the test, insofar as  
prejudice is concerned, does not necessarily mean  
that the defendant will be benefited by it. The  
word prejudice, as I have said before, indicates its  
relation to the company and the courts have defined  
it to mean harm or damage or loss to the insurer.

Under this indictment and under the statute  
which has been framed, it makes the wilful or  
malicious setting fire to or the burning or aiding,  
counseling, procuring or consenting to a fire, and  
offense, and it is also an offense to aid, counsel or

10

20

30

40

*Charge*

procure or consent to the fire. So, you see, under the statute, it not only relates to the actual setting of the fire, but also covers situations as enumerated specifically in the indictment. The indictment will be taken by you to the jury room.

10 Under the statute, the act, if done, must be done wilfully or maliciously, and it is necessary for the State to prove not only was there a fire, but there was an attempt to burn it.

Under the law you may infer the facts of setting fire from the proof before you; that is, you may infer that the defendant did it, if there was sufficient evidence to justify that inference. You cannot infer merely that because there was a fire that the defendant started it.

20 However, if the facts in the case are such from which to draw inferences or if you may take the evidence, which is wholly circumstantial, and test it out according to certain rules which I will relate to you, you may find that the defendant is guilty; that is, of course, if the evidence warrants it.

30 Our upper courts have said that an accused may be convicted by circumstantial evidence. The first inquiry in an issue resting upon circumstantial evidence is whether the facts proved are satisfactorily proved, which involves a consideration of the credibility and the accuracy, observation and memory of the witness by whom such facts are testified and, in the next place, assuming the facts sworn to by the witness are satisfactorily proved.

40 Then the further inquiry arises whether the facts proved are explained or are explainable on any other rational conclusion than that the prisoner is the guilty person, whether the inference of guilt

*Charge*

from such facts is, in the judgment of the jurors, sufficiently strong to justify a conviction that the prisoner is the guilty person, tested by the considerations whether the facts proved are capable of being reconciled with the hypothesis of innocence. Taking that premise as a basis for your consideration, if you conclude that the defendant is guilty and circumstantial evidence is the basis of it, such convictions have been held to be proper verdicts.

10 It is not my province to mould your verdict, nor do I wish to, nor do I wish by any of my expressions to indicate what your verdict ought to be. This is a fact question and, as triers of facts, it is your duty to consider all of the evidence and weigh it and give such effect to it as you see fit.

20 There are certain facts in this case I might say are not disputed. There is no dispute that there was a fire. I think the testimony of the firemen was to the effect that on the morning in question about 12:47 an alarm was received and the firemen responded. I think Captain Kircher said that upon his arrival he observed flames coming through the window and that his examination showed that the windows and doors on the first floor were locked and that on the second floor there were no doors at all. I think the Chief testified—Chief McMillan—30 that he entered the place and discovered various tubs containing liquid and that in his judgment these various tubs contained gasoline. The police officers testified about their removing some of the contents of the tubs and turning it over to Dr. Edel, who testified that the contents in two instances, at least, showed gasoline and, I think, with reference to two other exhibits, the doctor said they bore traces of gasoline. The State contends that the defendant is guilty and the defendant enters a gen- 40

*Charge*

eral denial. The defendant said that he left the premises in question about three o'clock in the afternoon; that he went to his home and some time thereafter, with his family and his brother, visited a sister-in-law, who had just come from the hospital. He testified that he arrived home about nine-thirty and said he went to bed about ten-thirty. He said the tubs were his, that he brought them from his place of business for the purpose of cleaning the floors or using them for whatever purpose the occasion required. He further testified that he was not at the house after three o'clock in the afternoon, at which time he went home. He said he knew nothing about the torch which has been referred to in the evidence; that he knew nothing about the gasoline nor the streamers; that at the time he left the building there was no gasoline, and he said the wall was intact, that there was no breaking through either the partition or the concrete wall. He said he purchased the newspapers which have been offered in evidence, some of which have been burned. He said that he purchased them from Mr. McGuirk and he told Mr. McGuirk he was going to use them like a carpet. Mr. McGuirk said that he told him that he wanted to use them to put under the carpets. The defendant says he knows nothing about this fire, that he did not cause anybody to put the place on fire, nor did he do it himself. The State has offered testimony by two women, a Mrs. Merklin and a Mrs. Tucker. Mrs. Merklin lived next door to the place in question and she said that she saw the defendant leave on the afternoon previous to the fire at three o'clock. She said he had a pick in his hand. The witness further testified that she saw Mr. Raimondi at the building at seven o'clock that evening. This he denied. She said that she noticed the odor of gasoline some few days prior to

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*Charge*

the burning. I think Mrs. Tucker testified that she, too, noticed the odor of gasoline and, if I recall her testimony, she said that on the Friday preceding the day or the morning of the fire the odor of gasoline was the strongest.

You have a right, as I said before, as triers of the facts, to give such weight to the testimony as, you see fit. You can accept that which you believe credible and you may reject that which you believe unworthy of consideration and decide this case upon all of the evidence as you recall. In measuring the value of testimony, it is very proper for you to take into consideration the interest that a witness might have in a trial such as this. You may ask yourselves, very properly, what interest has Mrs. Merklin in the outcome of this case, what interest has Mrs. Tucker and, I might say, too, what interest have the police. You may, too, ask yourselves what interest the defendant has in the outcome of this trial. The defendant, of course, has an interest. Your verdict is going to determine whether or not he shall be acquitted or convicted of this charge.

The defendant, like all other persons, is presumed to be innocent, and the burden of establishing his guilt rests upon the state, and it is the duty of the state to establish his guilt beyond a reasonable doubt.

When we speak of reasonable doubt, of course, we do not mean beyond any possible doubt, nor do we mean a fanciful doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they have an abiding conviction to a moral certainty of the truth of the charge. If, after considering all the evidence, that is your state of mind,

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*Charge*

10 you ought to acquit. On the other hand, if you have an abiding conviction to a moral certainty of the truth of the charge, that the state has made out a case to that degree, it is your duty to convict. This matter is not between the defendant and any insurance company. It is a matter between the State of New Jersey and the defendant. The state contends that the defendant violated one of its laws, and you, as jurors, have that one function to consider, whether or not the state has made out a case. If you believe that the evidence warrants a conviction, it is your duty to convict. On the other hand, if you are not satisfied that the state has made out a case, it is your duty to acquit.

The jury retires.

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*Defendant's Request to Charge*

Mr. Mott: I desire to take an exception to what your Honor said by way of definition of the offense charged in the indictment. I understood your Honor to say that the essential elements of the crime was that the fire should be wilfully started or set without the condition that under this indictment it must be with intent to prejudice the insurance companies. 10

Exception allowed. Let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY

Judge.

Defendant's counsel prays a general exception to the charge of the court.

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

EDWIN C. CAFFREY

Judge.

Mr. Mott: I ask for an exception to your Honor's failure to charge the doctrine relative to good repute.

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

EDWIN C. CAFFREY

Judge.

The Court: I am inclined to think that Judge Mott is right. I think I limited the jury as to intent.

(The jury returns into court.)

CAFFREY, J.: Gentlemen, in charging you, I referred to two elements. As to one, the act, if done, must be done maliciously or wilfully; second, it is neces- 40

*Defendant's Request to Charge*

sary to prove that the defendant set fire to the building with intent to burn it. Probably that was rather a limited expression concerning the statute. I will read the statute to you in its entirety so there will be no misunderstanding, and I will withdraw from your consideration my reference to the elements and ask you to follow the statute. "Any person who shall wilfully or maliciously set fire to, or burn, or aid, counsel, procure, or consent to the setting fire to or burning of any building, ship, vessel, or any goods, wares merchandise, or other chattels, which shall at the time be insured by any person or corporation against loss or damage by fire, with intent to prejudice any person or corporation that has underwritten or shall underwrite any policy of insurance thereon, whether the same be the property of such person or any other, shall be guilty of a high misdemeanor.

Defendant's counsel prays an exception to the supplemental charge of the court.

EDWIN C. CAFFREY  
Judge.

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

EDWIN C. CAFFREY  
Judge.

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*Certificate of Court Stenographer*

ESSEX COUNTY COURT OF GENERAL  
QUARTER SESSIONS

STATE OF NEW JERSEY, Defendant-in-Error, vs. AMIELLO RAIMONDI, Plaintiff-in-Error.	}	On indictment No. 1, Sept., T, 1925.  for ARSON.	10
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I, Herold T. Cook, official stenographer of the Essex County Court of Oyer and Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the above entitled cause which was held before the Hon. Edwin C. Caffrey, presiding judge of the Essex County Court of Oyer and Terminer, and a jury, on at Newark, N. J.

HAROLD T. COOK

Dated at Newark, N. J.

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*Certificate of Judge*

ESSEX COUNTY COURT OF GENERAL  
QUARTER SESSIONS

10	STATE OF NEW JERSEY, Defendant-in-Error,	}	On indictment
vs.	No. 1, Sept., T, 1925.		
AMIELLO RAIMONDI, Plaintiff-in-Error.	for ARSON.		

I, Edwin C. Caffrey, presiding judge of the Essex County Court of Oyer and Terminer, and the Judge who presided over the aforesaid cause, 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 therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

EDWIN C. CAFFREY,  
Presiding Judge of the  
Essex County Court of  
Oyer and Terminer.

Dated in Newark, N. J.,

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*Assignment of Error*

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant-in-Error,	}	In Error.	
vs.		Assignments of Errors	10
AMIELLO RAIMONDI, Plaintiff-in-Error.			

New Jersey, ss.:

AFTERWARDS, that is to say, on the 1st day of April, 1926, before our said Supreme Court of the State of New Jersey comes the said Amiello Raimondi by Harold Simandl, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1. That the verdict rendered by the jury in the above entitled matter did not find the defendant guilty of the crime charged in the indictment and therefore was contrary to law and illegal for the jury found as follows:

"We find the defendant guilty of burning a building to defraud insurers and recommend same to the mercy of the court and so they say all."

2. That the judgment rendered by the trial court in the above entitled matter was founded upon an illegal verdict rendered by the jury, and therefore was contrary to law and illegal for that the judgment was founded upon the verdict of the jury as follows:

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*Assignment of Error*

"We find the defendant guilty of burning a building to defraud insurers and recommend same to the mercy of the court and so they say all."

10 3. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Amiello Raimondi aforesaid erroneously charged the jury as follows:

20 "Under this indictment and under the statutes which has been framed, it makes the wilful or malicious setting fire to or the burning or aiding, counseling, procuring or consenting to a fire, and offense, and it is also an offense to aid, counsel, or procure or consent to the fire. So, you see, under the statute, it not only relates to the actual setting of the fire, but also covers situations as enumerated specifically in the indictment. This indictment will be taken by you to the jury room."

30 4. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Amiello Raimondi aforesaid, erroneously charged the jury as follows:

"Under the statutes, the act, if done, must be done willfully or maliciously, and it is necessary for the State to prove not only was there a fire, but there was an attempt to burn it."

40 5. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Amiello Rai-

*Assignment of Error*

mondi aforesaid, erroneously charged the jury as follows:

10 "Assuming the facts sworn to by the witness are satisfactorily proved, then the further inquiry arises whether the facts proved are explained or are explainable on any other rational conclusion that that the prisoner is the guilty person, whether the inference of guilt from such facts is, in the judgment of the jurors, sufficiently strong to justify a conviction that the prisoner is the guilty person, tested by the considerations whether the facts proved are capable of being reconciled with the hypothesis of innocence. Taking that premise as a basis for your consideration, if you conclude that the defendant is guilty and circumstantial evidence is the basis of it, such convictions have been held to be proper verdicts."

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6. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and Amiello Raimondi aforesaid, erroneously charged the jury as follows:

30 "This is a fact question and, as triers of facts, it is your duty to consider all of the evidence and weigh it and give such effect to it as you see fit."

7. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Amiello Raimondi aforesaid, erroneously charged the jury as follows:

40 "In measuring the value of testimony it

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*Assignment of Error*

10 is very proper for you to take into consideration the interest that a witness might have in a trial such as this. You may ask yourselves, very properly, what interest has Mrs. Merklin in the outcome of this case, what interest has Mrs. Tucker and, I might say, too, what interest have the police. You may, too, ask yourselves what interest the defendant has in the outcome of the trial. The defendant, of course, has an interest. Your verdict is going to determine whether or not he shall be acquitted or convicted of this charge."

20 8. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and Amiello Raimondi aforesaid, erroneously charged the jury as follows:

"If you believe that the evidence warrants a conviction, it is your duty to convict. On the other hand, if you are not satisfied that the state has made out a case, it is your duty to acquit."

30 9. Because the trial court before whom, &c., at and upon the trial of the said issue so joined erroneously failed to charge the jury the doctrine relative to good repute.

10. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and Amiello Raimondi aforesaid, erroneously charged the jury as follows:

"You have a right, as I said before, as triers of the facts, to give such weight to the testimony, as you see fit."

40 There are divers other errors in the record and

*Assignment of Error*

proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

10 WHEREFORE the said Amiello Raimondi prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

HAROLD SIMANDL  
Of Counsel with Plaintiff-in-Error.

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Reasons for Reversal

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error,	}	In Error.
vs. 10 AMIELLO RAIMONDI, Plaintiff-in-Error.		Reasons for Reversal

20 And now comes the said Amiello Raimondi, by Harold Simandl, attorney for and of counsel with plaintiff-in-error, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said writ of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error, and the said Amiello Raimondi says that said judgment should be reversed and assigns the following reasons or causes:

1. That the verdict rendered by the jury in the above entitled matter did not find the defendant guilty of the crime charged in the indictment and therefore was contrary to law and illegal.

30 2. That the judgment rendered by the trial court in the above entitled matter was founded upon an illegal verdict rendered by the jury, and therefore was contrary to law and illegal.

3. Because the trial court charged the jury as follows:

40 "Under this indictment and under the statutes which has been framed, it makes the wilful or malicious setting fire to or burning or aiding, counseling, procuring or consenting to a fire, and offense, and it is also an offense to aid, counsel, or procure

Reasons for Reversal

or consent to the fire. So, you see, under the statute, it not only relates to the actual setting of the fire, but also covers situations as enumerated specifically in the indictment. This indictment will be taken by you to the jury room."

4. Because the trial court charged the jury as follows: 10

"Under the statutes, the act, if done, must be done willfully or maliciously, and it is necessary for the State to prove not only was there a fire, but there was an attempt to burn it."

5. Because the trial court charged the jury as follows: 20

30 "Assuming the facts sworn to by the witness are satisfactorily proved, then the further inquiry arises whether the facts proved are explained or are explainable on any other rational conclusion than that the prisoner is the guilty person, whether the inference of guilt from such facts is, in the judgment of the jurors, sufficiently strong to justify a conviction that the prisoner is the guilty person, tested by the considerations whether the facts proved are capable of being reconciled with the hypothesis of innocence. Taking that premises as a basis for your consideration, if you conclude that the defendant is guilty and circumstantial evidence is the basis of it, such convictions have been held to be proper verdicts."

6. Because the trial court charged the jury as follows: 40

*Reasons for Reversal*

"This is a fact question and, as triers of facts, it is your duty to consider all of the evidence and weight it and give such effect to it as you see fit."

10 7. Because the trial court charged the jury as follows:

20 "In measuring the value of testimony it is very proper for you to take into consideration the interest that a witness might have in a trial such as this. You may ask yourselves, very properly, what interest has Mrs. Merklin in the outcome of this case, what interest has Mrs. Tucker and, I might say, too, what interest have the police. You may, too, ask yourselves what interest the defendant has in the outcome of this trial. The defendant, of course, has an interest. Your verdict is going to determine whether or not he shall be acquitted or convicted of this charge."

8. Because the trial court charged the jury as follows:

30 "If you believe that the evidence warrants a conviction, it is your duty to convict. On the other hand, if you are satisfied that the state has made out a case, it is your duty to acquit."

9 Because the trial court failed to charge the doctrine relative to good repute.

10. Because the trial court charged the jury as follows:

40 "You have a right, as I said before, as triers of the facts, to give such weight to the testimony as you see fit."

*Reasons for Reversal*

WHEREFORE because the aforesaid reasons or some of them constitute error prejudicial to the said plaintiff-in-error, he, the said Amiello Raimondi prays that the said judgment and sentence be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

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HAROLD SIMANDL  
Of Counsel for Plaintiff-in-Error.

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*Opinion*

NEW JERSEY SUPREME COURT.  
No. 105, May Term, 1926.

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

vs.

AMIELLO RAIMONDI,  
Plaintiff-in-Error.

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On error to Essex County Court of Quarter Sessions.  
Before Justices Kalisch, Katzenbach and Lloyd.  
For the plaintiff-in-error, Harold Simandl  
for the defendant-in-error, John O. Bigelow

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PER CURIAM:

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The plaintiff was indicted on two counts charging him with the burning of a dwelling house in the City of Orange on the 10th of June, 1925. It appears there was insufficient proof with respect to the first count on the first trial of the case and a verdict of not guilty was directed for the defendant on this count. At the second trial the jury was instructed to disregard the first count and the state's evidence was directed only, to the establishing the allegations of the second count. This count charged, that the plaintiff in error did "wilfully and maliciously set fire to and burn and aid, procure and consent to the setting fire of and burning of the building, known as number 128 South Jefferson Street, in the City of Orange, aforesaid, which building was then insured by the New Brunswick Fire Insurance Company and the American Eagle Insurance Company of New York, corporations, against loss and damage by fire,

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*Opinion*

with intent to prejudice the said corporations, etc." There was no direct evidence submitted by the state of the commission of the act charged against the plaintiff in error, the evidence being purely circumstantial.

10 The count of the indictment on which the accused was tried, is founded upon section 126 of the Crimes Act. The court in charging the jury obviously, by oversight, disregarded the section of the act on which the accused stood indicted, and was being tried. In substance, the Court instructed the jury that the gist of the indictment was the wilful and malicious setting fire to or burning or aiding, counseling, procuring or consenting thereto and that the plaintiff in error could be convicted for a violation of the section of the statute for which he stood indicted; of course, if the testimony adduced warranted a conviction. This was clearly an erroneous view of the situation present and counsel of plaintiff in error took an exception..

20 After the jury had retired the trial Judge's attention having been directed to the criticized statement of the law, he recalled the jury and said: "Gentlemen, in charging you, I referred to two elements as to one, the act, if done, must be done maliciously or wilfully; second it is necessary to prove that the defendant set fire to the building with intent to burn it," and he goes on to say: "I will read the statute to you in its entirety so there will be no misunderstanding and I will withdraw from your consideration my reference to the elements and ask you to follow the statute", and thereupon he read the statute in its entirety. To this supplemental charge an exception was taken and allowed.

40 We think the Trial Judge had cured the error

*Opinion*

into which he had fallen. He specifically instructed the jury to follow the statute.

The circumstances alluded to seems to be the principal ground urged in the brief of counsel of plaintiff in error for a reversal of the judgment, and as to this ground, we have reached the conclusion that it is without merit. 10

Next, it is urged, that the Court erred in charging the jury, as follows: "Assuming the facts sworn to by the witness are satisfactorily proved, then the further inquiry arises whether the facts proved are explained or are explainable on any other rational conclusion than that the prisoner is the guilty person, whether the inference of guilt from such facts is, in the judgment of the jurors, sufficiently *strong* to justify a conviction that the prisoner is the guilty person, tested by the considerations whether the facts proved are capable of being reconciled with the hypothesis of innocence." 20

We find no harmful error in this instruction, especially since it was followed by the Court's instruction that the defendant like all other persons is presumed to be innocent and the burden of establishing his guilt rested upon the State, and it is the duty of the state to establish his guilt beyond a reasonable doubt. 30

Lastly, it is argued that the verdict of the jury is illegal and void. The jury brought in the following verdict: "We find the defendant guilty of burning building to defraud Insurers and recommend him to the mercy of the Court, and so they say all."

The criticism made on the verdict is that the statute required the burning to be done with intent to prejudice the insurance companies or other per- 40

*Opinion*

sons, and that the finding of the jury that the intention to defraud was not the criminal act alleged in the indictment and as set forth in the statute.

10 We find no merit in this contention. In *State vs. Caporole*, 85 N. J. L. 495, this Court held, that an indictment charging the setting fire to a building with intent to *defraud* an insurer is sufficient to charge the statutory offense denouncing the setting of such fire with intent to prejudice an insurer.

20 At page 497, the Court said: "It is equally plain that the word "Prejudice" is used in its generic sense, as to cause any harm or damage or loss to the insurer. That such insurer would be prejudiced by being defrauded is of course obvious". Clearly, the finding of the jury of the intent to defraud fully designated the intent to prejudice the insurance companies.

Judgment is affirmed.

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*Remittitur*

## NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant-in-Error,	}	On Error.	
vs.		Remittitur.	10
AMIELLO RAIMONDI, Plaintiff-in-Error.			

This cause having been submitted at the May Term, nineteen hundred and twenty-six, of this Court, by John O. Bigelow, Esquire, Attorney for the defendant in error, and Harold Simandl, Esquire, Attorney for the plaintiff in error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions; 20

It is thereupon ordered and adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court. 30

Entered March 1, 1927.

On motion of  
Joseph L. Smith,  
Prosecutor of the Pleas,  
Attorney of Defendant-in-Error.

A true copy,

EDWARD J. KELLEHER,  
Clerk. 40

*Writ of Error*NEW JERSEY COURT OF ERRORS  
AND APPEALS.

NEW JERSEY, ss.

(SEAL)

The State of New Jersey to Our  
Supreme Court,

10 GREETING:—

Because in the record and proceedings and also in giving of judgment in a certain plant which was in our Supreme Court before you, between State of New Jersey prosecutor and defendant in error, and Amiello Raimondi, defendant, and plaintiff in error, in error to the Essex County Quarter Sessions Court, manifest error hath intervened to the great damage of the said defendant as by its complaint we are informed; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the party aforesaid, do command you that if judgment be thereupon given, then you distinctly and openly send, under your seal, the record and proceedings and plaint aforesaid with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, at Trenton on the 25th day of March, 1927, together with this writ and the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error what of right and according to the law and custome of the State of New Jersey ought to be done.

30 WITNESS our chancellor and President Judge of our said Court of Errors and Appeals at Trenton, aforesaid, the fifth day of March, 1927.

JOSEPH F. S. FITZPATRICK,  
Clerk.

40 HAROLD SIMANDL,  
Attorney.

*Return to Writ of Error*

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.

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WM. S. GUMMERE,  
C. J.

A true copy

EDWARD J. KELLEHER,  
Clerk.

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Assignment of Error

Filed March 30, 1927

NEW JERSEY COURT OF ERRORS AND APPEALS

10 THE STATE OF NEW JERSEY, Defendant-in-Error, vs. AMIELLO RAIMONDI, Plaintiff-in-Error.

In Error.

ASSIGNMENTS OF ERROR.

20 Afterwards, to wit, on the return date of said writ of error before the Court of Errors and Appeals at Trenton, comes the said Amiello Raimondi by Harold Simandl his counsel and says that in the record and proceedings aforesaid and also in the matters recited and contained in the bill of exceptions and also in the giving of the judgment aforesaid, there is manifest error in this, to wit:

30 1. That the Supreme Court erroneously entered a judgment in favor of the State of New Jersey whereas it should have been entered in favor of the said Amiello Raimondi.

2. That the Supreme Court erroneously affirmed the judgment of the Essex County Court of Quarter Sessions, whereas it should have reversed the same.

WHEREFORE the said Amiello Raimondi prays that the said judgment and sentence may be reversed

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Assignment of Error

and annulled and all together held for nothing and that he may be restored to all things which he has lost by occasion thereof.

HAROLD SIMANDL, Of Counsel for Plaintiff-in-Error. 10

Service of a copy of the within Assignments of Error is hereby acknowledged this 29th day of March, 1927.

Joseph L. Smith

Prosecutor of the Pleas Counsel for Defendant-in-Error. 20

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*Reasons for Reversal*

*Filed March 30, 1927*

NEW JERSEY COURT OF ERRORS  
AND APPEALS

10	THE STATE OF NEW JERSEY, Defendant-in-Error,	}	In Error.
	vs.		
	AMIELLO RAIMONDI, Plaintiff-in-Error.		REASONS FOR REVERSAL.

20 And now comes the said Amiello Raimondi by Harold Simandl, of counsel with plaintiff-in-error, and says that in the record and proceedings aforesaid and also in the matters recited in the said writ of exceptions and also in giving the verdict and judgment aforesaid, there is manifest error, and the said Amiello Raimondi says that said judgment should be reversed and assigns the following reasons or causes:

30 1. Because the judgment of the Supreme Court in said cause was in favor of the State of New Jersey, whereas it should have been entered in favor of Amiello Raimondi.

2. Because the Supreme Court affirmed the conviction of the said Amiello Raimondi, whereas it would have reversed the same.

WHEREFORE, because the aforesaid reasons or some of them constitute error prejudicial to the said plaintiff-in-error, he the said Amiello Raimondi prays that the said judgment and sentence be reversed and annulled and altogether held for nothing,

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*Reasons for Reversal*

and that he may be restored to all things which he has lost by occasion thereof.

HAROLD SIMANDL,  
Of Counsel for Plaintiff-  
in-Error.

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Service of a copy of the within reasons for reversal is hereby acknowledged this 29th day of March, 1927.

Joseph L. Smith

Prosecutor of the Pleas of Counsel for Defendant-  
in-Error.

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## New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	} In Error
<i>vs.</i>	
AMIELLO RAIMONDI, <i>Plaintiff-in-Error.</i>	

BRIEF OF PLAINTIFF-IN-ERROR.

### STATEMENT OF FACTS

The defendant was indicted on two counts, the first of which charged him with the burning of a dwelling house in the City of Orange on the 10th day of June, 1925. There were two trials. At the first trial, a verdict of not guilty was entered for the defendant on the first count, and there was a disagreement on the second. At the second trial, there was a conviction on the second count which charged that the defendant did wilfully and maliciously set fire to and burn and aid, procure and consent to the setting fire to and burning of the building known as number 128 South Jefferson Street, City of Orange aforesaid, which building was then insured by the New Brunswick Fire Insurance Company and the American Eagle Insurance Company of New York, corporations, against loss and damage by fire with intent to prejudice said corporation, etc.

The evidence in the case was wholly circumstantial. The trial resulted in a conviction and the Court sentenced the defendant to a term of not less than two and one-half years nor more than five years at hard labor in State's Prison, from which judgment the defendant sued out a writ of error to the Supreme Court which affirmed the judgment,

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(a copy of the opinion is found on page 129 of the State of the Case). Thereupon, the defendant sued out this writ of error.

All of the assignments of error are addressed to the Court's charge to the jury, which is found on pages 109-116 of the State of the Case.

#### POINT I.

#### ASSIGNMENT OF ERROR and REASON FOR REVERSAL 3 AND 4 IN THE COURT BELOW.

The Court in its charge to the jury after repeating in a general manner the wording of the indictment stated as follows:

"Under this indictment and under the statutes which has been framed, it makes the *wilful or malicious setting fire to or the burning or aiding, counseling, procuring or consenting to a fire, an offense, and it is also an offense to aid, counsel or procure or consent to the fire.* So you see, under the statute, it not only relates to the actual setting of the fire, but also covers situations as enumerated specifically in the indictment. The indictment will be taken by you to the jury room."

"Under the statute, the act, *if one, must be done wilfully or maliciously, and it is necessary for the State to prove not only was there a fire, but there was an attempt to burn it.*"

It must be conceded that the instructions complained of are erroneous. The guilt of the defendant is, by the instructions complained of, predicated upon a wilful and malicious *attempt* to burn. It should be noted there is nothing contained in the instructions with respect to the *intent* with which the criminal act was alleged to have been committed. Under the Statute which is herein set forth at length,

the two essential elements of the crime, namely, *that the premises must be insured*, and the act committed *with intent to prejudice the insurance company* were not submitted to the consideration of the jury. Counsel called the Court's attention to this significant error, and thereupon the Court recalled the jury and said:

"Gentlemen in charging you, I referred to two elements. As to one, the act, if done, must be done maliciously and wilfully; Second, it is necessary to prove that the defendant set fire to the building *with intent to burn it.* Probably that was rather a limited expression concerning the Statute.\*\*\*\*\*" (Italics mine)

At this point, I desire to call the attention of this Court to the fact that not one word had been said by the Court in his main charge with respect to an "intent to burn it." The Court continued by referring the jury to the statute.

In the case of State vs. Brand, 72 New Jersey Law 267, 69 Atlantic Rep. 1092, Justice Swayze says on page 1093:

"We think that this statute denounces two distinct crimes—one, wilfully or maliciously setting fire to, or burning the insured property *with intention to prejudice the underwriter; the other,—*" (Italics mine).

The sole question to be determined is whether or not the court cured the error into which it had fallen.

The Court in his explanation of the elements of the crime, in the main charge, did not instruct the jury with respect to the *intent* mentioned in the statute, and when the jury were recalled *did not inform them that the main charge was erroneous in that particular*, but contented himself with say-

ing "probably that was rather a limited explanation concerning the Statute."

The Court was under the belief that he had used the word "intent" when as a matter of fact the charge discloses that he used the word "attempt." The jury were left to vaguely determine in what particular the instruction was limited or erroneous.

Thus, when the Court referred the jury to the statute having already erroneously defined and explained its terms to them in his main charge, he left the jury in such confusion that they had no clear perception of the correct law applicable to the case.

And this is true, even though it appears that the Court did withdraw what he said with respect to the "elements."

The trial court had not pointed out why the charge had been withdrawn from them, or in what particular the same was faulty or erroneous. The trial court had not stated to them that he had failed to charge them with respect to two necessary elements of the crime as laid in the statute.

*The trial court did not tell the jury that the statute denounced two separate offenses. State v. Brand, supra.*

Under the law, the Court was required to point out the error and withdraw it from the consideration of the jury in clear unequivocal terms, and then proceed to outline the elements of the crime clearly and concisely, and failing to do this, it is contended the Court did not cure the error.

State vs. Tapack, 78 N. J. Law, 208, 72 Atl. Rep. 962.

"The Court charged generally on the subject of reasonable doubt, but without specific application of the doctrine to the question of alibi,

and, after concluding, said, in reply to a request by defendant's attorney for a charge as to burden of proof, "The burden of proof is upon the state to prove all the essential facts necessary to constitute the crime, and the burden continues from the beginning to the end and is never shifted." But, even in view of these instructions, it cannot be said that the jury must have regarded the previous instructions as to alibi as having been modified or withdrawn. *The probability would seem to be that they paid heed rather to the specific instructions which were erroneous, than to the general ones, which were correct.* The rule is well settled that an erroneous instruction followed or accompanied by a correct one is not cured by the latter, unless it is also expressly withdrawn, as the jury is left at liberty to adopt either, and it cannot be said which one was in fact adopted. Burnett v. State 60 N. J. Law, 255, 37 Atl. 622; State v. Fitzgerald, 72 Vt. 142, 47 Atl. 403; 12 Cyc. 656, 657." (Italics mine.)

In Burnett v. State 60 N. J. Law, 255, 37 Atl. Rep. on page 623, Chief Justice Magie says:

*"This error, I think was not cured by the subsequent explanation to which I have alluded, for the jury were still left to find that the refusal, if they believed it, established in law, a fraudulent conversion; and it was useless to tell the jury that they must be satisfied that the refusal was with the intent to convert the money to his own use, if the refusal did, in law, make a fraudulent conversion. Upon this ground, I think this judgment must be reversed."* (Italics mine.)

See also State v. Lang 87 N. J. Law, 508, 94 Atl. Rep. 631, where this Court lays down the rule thus:

"Certainly, when sentences, that is to say, parts of a charge, are erroneous and no proper qualification of them is to be found in the context or in the entire charge, then there is error; and this is so when, as in this case, the part of the charge pointed out as erroneous is, in and of itself, a particular qualification and limitation of language which without such qualification and limitation is objectionable." (Italics mine.)

The statement of law in the case of *State vs. Tapack*, supra, "*the probability would seem to be that they paid heed rather to the specific instructions which were erroneous, than to the general ones which were correct*" (Italics mine) is peculiarly pertinent to the situation under consideration.

The Trial Court failed to cure the error into which it had fallen which was harmful to the defendant, and therefore the judgment under review should be reversed.

ASSIGNMENT OF ERROR and REASON FOR REVERSAL 5 IN COURT BELOW.

In a case depending for its proof wholly or substantially upon circumstantial evidence the courts of not only our own state, but almost universally have attempted to safeguard the rights of a person on trial by requiring even without a request therefor, that the trial court charge the jury specifically upon the law of circumstantial evidence.

See *Allen v. State*, 80 S. E. Rep 215 Syllabus by the Court.

"Where in a criminal case, the evidence relied upon for conviction of the accused is wholly circumstantial, it is error requiring the granting of a new trial to omit to charge the jury upon the law of circumstantial evidence

even though no request so to do be made by the accused. *Riley v. State*, 1 Ga. App. 61, 57 S. E. 1031; *Harvey v. State*, 8 Ga. App. 660, 70 S. E. 141; *Weaver v. State*, 135 Ga. 317, 69 S. E. 488. *Stata v. Salmon*, 115 S. W. 1106 on page 1125."

The Court in his charge to the jury in this case says:

"\*\*\*\*\*assuming the facts sworn to by the witness are satisfactorily proved, then the further inquiry arises whether the facts proved are explained or are explainable on any other rational conclusion than that the prisoner is the guilty person, whether the inference of guilt from such facts is, in the judgment of the jurors, sufficiently strong to justify a conviction that the prisoner is the guilty person, tested by the considerations whether the facts proved are capable of being reconciled with the hypothesis of innocence. Taking that premise as a basis for your consideration, if you conclude that the defendant is guilty and circumstantial evidence is the basis of it, such convictions have been held to be proper verdicts." (Italics mine.)

The law of circumstantial evidence is not vague, nor are the authorities at variance in any phase of its elements.

"See *Wharton's Criminal Law*, Volume 2, 10th Ed. page 1643:

"However, circumstantial evidence is limited by, or rather should be tested by, the following rules, which, while they may be differently phrased, are fundamental rules in all jurisdiction; *first*, it should be acted upon with caution; *second*, all the essential facts must be consistent

*with the hypothesis of guilt, as that is to be compared with all the facts proved; third, the facts must exclude every other theory but that of guilt; fourth, the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense."*

The Court in his charge to the jury *does not state to them that the proof must exclude any other notion but that of guilt, but informs them that they must search to find out whether they can find that the facts introduced in the evidence are "capable of being reconciled with the hypothesis of innocence."* And further whether the "facts proved are explained or are explainable on any other rational conclusion than the prisoner is the guilty person."

Such clearly is not the law on circumstantial evidence. *The jury must not seek out whether the facts are explainable with any hypothesis of innocence for that presumption rests with the defendant at the outset and continues with him until it is overcome by evidence proven beyond a reasonable doubt.*

The instruction given by the court in this case clearly made an erroneous impression upon the minds of the jury as to what was the burden of the state in order to make out its case beyond a reasonable doubt and the charge as set forth above is contrary to the rules of law laid down in our own State.

See *State vs. Burke*, 81 N. J. Law, 93, 79 Atl. 882.

"The first contention requiring consideration is that the Learned Trial Judge erroneously instructed the jury as follows: 'It is not essential

to overcome the presumption of innocence that there must be direct evidence indicating the guilt of the defendant. If the circumstances incident to the situation admit of drawing an inference excluding any notion than that of guilt, it must be such to maintain the contention of the state that the presumption of innocence had been overcome.' That instruction was erroneous. According to it 'if the circumstances incident to the situation' admit of drawing two inferences, one 'excluding any notion but that of guilt and the other leaving the question of guilt in doubt, the fact that the circumstances admit of drawing an inference excluding any notion but that of guilt is sufficient to overcome the presumption of innocence. Such is not the true rule."

"The presumption of the defendant's innocence continues until overcome by proofs establishing his guilt beyond a reasonable doubt. The instruction being erroneous and prejudicial to the defendant in maintaining his defense on the merits must be set aside."

Nowhere in the Court's charge is there any statement that in order to convict on circumstantial evidence the jury must find that the proof is consistent with the hypothesis of guilt and that facts must exclude every other theory but that of guilt. Quite the contrary, the court starts out by allowing the jury to assume *that the facts show that the defendant is guilty and in order to be certain that he is guilty they must then apply the test to find out whether they can explain away that guilt by any reasonable hypothesis of innocence.* Beyond question this is not the law on circumstantial evidence, for the defendant is deprived of that presumption which the law so zealously guards for him, to wit, the presumption of innocence until the state makes

out a case beyond a reasonable doubt, and for this reason it is respectfully urged that the judgment of the lower court be reversed.

The Trial Court in the case of *State vs. London, et al*, 1 N. J. Misc. Report, 89 on page 91 instructed the jury as follows:

"If the facts proved are, in the opinion of the jury, explainable on any reasonable hypothesis other than that the prisoner is guilty, than the accused is entitled to an acquittal, but if they are not, in the opinion of the jury, explainable on any reasonable hypothesis other than that of guilt, then they are sufficient to warrant a conviction."

The court on review said:

"The vice of this instruction, it is argued, is that it permits the jury to convict unless they are able to discover a reasonable hypothesis arising out of the facts upon which the innocence of the defendants of the charge laid against them might be rested, and so deprives them of the right to be acquitted unless the jury, after a consideration of all the proofs, are satisfied beyond a reasonable doubt of their guilt. It is true that the court in another part of the charge properly instructed the jury upon the question of reasonable doubt but whether the effect of that instruction was to wipe out the impression which the portion of the charge under consideration may have made on the minds of the jury is quite uncertain." (Italics mine.)

The Supreme Court was of the opinion that the instruction under attack was not harmful by reason of the subsequent instruction with respect to reasonable doubt.

It is noticed in the case of *State vs. London*, supra that the Court was quite uncertain as to whether or not the instruction in another part of the charge with respect to reasonable doubt wiped out the impression which the portion of the charge under consideration made upon the minds of the jury.

ASSIGNMENTS OF ERROR and REASONS FOR REVERSAL 6 & 10 IN THE COURT BELOW.

Both of these assignments are argued together for the reason that the error complained of in each is founded upon the same errors of law. The court in both instances gives the jury, as the triers of the fact, the right to make any inferences whatsoever without regard to reason or probability, but guided only by whatever whim or caprice, by which each juror felt he might be urged, in order to arrive at some conclusion.

The case depended wholly upon circumstantial evidence and the considerations to be given to such evidence by the jury is clearly set forth in 2 Wharton's Criminal Evidence, 10th Ed. Sec. 871 on page 1632.

"Circumstantial evidence is more clearly defined from its results than by a definition of the phrase itself. It is that evidence that tends to prove the facts in issue, by proof to the facts or circumstances that, according to the common experience of mankind, usually attend the facts in issue, affording basis for a reasonable inference by the court or the jury that the facts actually occur." (Italics mine.)

See also 2 Wharton's Criminal Evidence 10th Ed. Sec. 874 on page 1636.

"Hence, where circumstantial evidence consists in reasoning from the minor facts to establish the main fact, the process is fatally vicious,

*if the circumstances from which we seek to deduce the conclusions depend themselves upon conjecture. In a case depending upon circumstantial evidence, the finding of one fact inconsistent with the guilt of the accused is such to create a reasonable doubt of his guilt." (Italics mine.)*

*The jury are not the sole masters of what inferences may be drawn from the facts presented or not presented in a case.*

True, they are the sole judges of what facts have been proved, but as judges they are limited by our well founded principles of law, and in their consideration of the evidence, they are bound by the rules laid down by the courts.

See *North Chicago Street Railroad Co. v. Rodert*, 67 N. E. 812, on page 813.

"What inferences as to the truth of a fact affirmed are logically and reasonably to be drawn from other facts which have been proven must be committed to the judgment of discretion of the jury. The law has no rule by which such inferences may be declared, but the jury must by the exercise of the mental process commonly called 'thinking' or 'considering' determine what inferences reasonably and rationally arise from facts and circumstances which have been proven." (Italics mine.)

Though, as we said before they are the sole judges of the fact, it must be remembered in this state and in all jurisdictions that the verdict of juries have been set aside time and again because they have allowed unlawful considerations to enter into their minds when trying to determine whether the defendant was guilty of the facts alleged, or whether a party to a civil suit had a cause of action against

the other or does not have a cause of action against the other. Our courts have recognized the fact that there are certain frailties in the makeup of human beings and that they must be guided in some manner, in order to determine whether a person is guilty and for that reason have laid down certain fit principles by which a jury is to be guided in its consideration of evidence that is presented to it.

Can there be any doubt that the jury were misguided in their considerations when they were told "it is your duty to consider all of the evidence and weigh it *and give such effect to it as you see fit*" and again "you have a right, as I have said before, as triers of the facts, *to give weight to the testimony as you see fit.*"

By requiring the jury to give "*such effect as they see fit*" to the evidence, is not the defendant's right to the benefit of the reasonable doubt entirely removed?

Their inference may have been illogical. Their inferences may have been groundless. Their inferences may have been unreasonable and founded purely upon conjecture. They may *see fit* to convict regardless of the benefit of the reasonable doubt which the defendant is entitled upon a consideration by them of the evidence.

Is this court willing to say that such considerations of the jury are legal or in accord with the precedents of our state?

See *Hobbs v George W. Blanchard & Sons Co.* (N.J.) 70 Atl. Rep. page 702, on 1084, the court citing *Cole v. Boardman*, 63 N. H. 580, 581 4 Atl. 572 575 says:

"This would be an inference from an unauthorized inference—one presumption, resting on another that rests on nothing. The law of

evidence requires an open, visible connection between the principle and evidenciary facts and the deduction from them, and does not permit a decision to be made on groundless inferences.

This court is respectfully urged that the charges set forth above are clearly contrary to the authorities and decisions and therefore ask for this reason that the judgment of the lower court be reversed.

For the divers reasons herein argued it is respectfully urged that the judgment under review should be reversed.

HAROLD SIMANDL,  
*of Counsel with Plaintiff-in-Error.*

## New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,

*Defendant-in-Error,*

*vs.*

AMIELLO RAIMONDI,

*Plaintiff-in-Error.*

*On Error.*

### BRIEF FOR THE STATE.

Raimondi was convicted in the Essex Sessions of burning a building with intent to prejudice the insurers. The Supreme Court affirmed the conviction.

#### I.

##### The charge as to the elements of the offense.

The Court charged the jury that the indictment and the statute make a wilful or malicious burning an offense. The Court did not mention *in the same sentence* the intent to prejudice the insurers. Counsel for the defendant contends that this is reversible error.

#### A.

If this was error, it was harmless.

The jury returned a verdict of "guilty with intent to defraud the insurance company."

The only insurance company mentioned in the case was the one which insured the building in question.

The word "defraud" is narrower than, and is included in the word "prejudice." "That

such insurer would be prejudiced by being defrauded is, of course, obvious."

*State v. Caporale*, 85 N. J. L. 495.

The jury therefore specifically found that the defendant had burned the building with intent to prejudice the insurer, and the defendant was not injured by any failure of the Court to instruct them that such an intent was an essential ingredient of the crime.

#### B.

Furthermore, the Court read to the jury the count in question, including the allegation of intent to prejudice the insurers, and fully explained the meaning of "prejudice."

Later, the Court recalled the jury, read the section of the statute on which the indictment was based and said:

"I will withdraw from your consideration my references to the elements and ask you to follow the statute."

As pointed out in the *Per Curiam* of the Supreme Court, the trial judge thereby cured the error into which he had fallen.

#### II.

##### Charge as to circumstantial evidence.

The Court charged on this point as follows:

"Assuming the facts sworn to by the witness are satisfactorily proved, then the further inquiry arises whether the facts proved are explained or are explainable on any other rational conclusion than that the prisoner is the guilty person, whether the inference of guilt from such facts is, in the judgment of the jurors, sufficiently strong to justify a conviction that the prisoner is

the guilty person, tested by the considerations whether the facts proved are capable of being reconciled with the hypothesis of innocence."

As I analyze this sentence, the Court propounded to the jury these questions:

"Are the facts explained or explainable on (by) any other rational conclusion than that the prisoner is the guilty person?"

"Are the facts capable of being reconciled with the hypothesis of innocence?"

And finally, using the answer to the last question as a test,

"Is the inference of guilt from such facts sufficiently strong to justify a conviction that the defendant is the guilty person?"

The Court, toward the end of the charge, further instructed the jury that the defendant was presumed to be innocent and that the burden of establishing his guilt beyond a reasonable doubt rested upon the State, and that if, after considering all the evidence there remained in the minds of the jurors such a doubt, they ought to acquit.

The Court did not attempt to lay down specific rules for the use of circumstantial evidence, and, in the absence of a request, the Court was under no duty to do so.

*State v. Geltzeiler*, 127 Atl. 322, 128 Atl. 240.

The portion of the charge to which objection is made consisted of the suggestion to the jury of certain considerations which they might use with respect to circumstantial evidence. The Court did not tell the jury that these were the only considerations, and did not indicate that if their answer to the first two questions was in the negative, they should convict.

It was certainly proper for the jury to consider whether the facts were explainable by or capable of being reconciled with an hypothesis of innocence.

The implied suggestion in the charge, that the jury should attempt to explain away the incriminating circumstances by reconciling them with the innocence of the defendant, was favorable to the defendant.

The Court made clear that, in order to warrant a conviction, the evidence as a whole—circumstantial or otherwise—must demonstrate the defendant's guilt beyond a reasonable doubt.

There was no error in the charge as to circumstantial evidence.

### III.

**Charge as to inference to be drawn from the evidence.**

Counsel for defendant complains that the Court allowed the jury to draw such inferences as they saw fit without regard to reason or probability but guided only by whim or caprice. This criticism is not justified by the language of the charge.

The parts of the charge in question are as follows:

“Under the law you may infer the facts of setting fire from the proof before you; that is, you may infer that the defendant did it, *if there was sufficient evidence* to justify that inference.

“This is a fact question, and, as triers of facts, it is your duty to consider all of the evidence and weigh it, and give such effect to it as you see fit.

“You have a right, as I said before, as triers of the facts, to give such weight to the testimony as you see fit. You can accept that which you believe credible and you may reject that which you believe unworthy of consideration, and decide this case upon all of the evidence as you recall.”

There is nothing in this language that would lead the jury to decide the case upon mere caprice.

**The Judgment of the Supreme Court should be affirmed.**

Respectfully submitted,

JOSEPH L. SMITH,  
Prosecutor of the Pleas.

J. O. BIGELOW,  
Of Counsel.

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