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Writ of Error to Supreme Court.

NEW JERSEY, SS. :

THE STATE OF NEW JERSEY to the Chief
Justice and other Justices of our
(L. S.) Supreme Court of Judicature.

GREETING

FORASMUCH as in the record and pro- 10
ceedings, and also in the giving of
judgment, in a certain plaint, and which was in
our said Supreme Court of Judicature, before you,
between the State of New Jersey, Defendant-in-
Error, and Peter Churchill, Plaintiff-in-Error,
manifest error hath intervened to the great dam-
age of the said Plaintiff, Peter Churchill as it is
said: We being willing that the error, if any
there be, should in due manner be corrected, and 20
full and speedy justice done to the parties afore-
said in this behalf: Do COMMAND YOU, that if
judgment be thereupon given and confirmed, then
you distinctly and openly send, under your seal,
the record and proceedings aforesaid, with all
things touching the same, to our Judges of our
Court of Errors and Appeals in the last resort in
all causes, at Trenton, on the eighth day of March,
next, together with this writ, that the record and
proceedings aforesaid, being inspected, we may 30
cause to be further done thereupon, for correcting
that error, what of right and according to the law
and custom of the State of New Jersey, ought to
be done.

WITNESS, our Chancellor and President of our
said Court of Errors and Appeals, at Trenton,
aforesaid, the seventeenth day of February, A. D.,
One Thousand Nine Hundred and Twenty-Eight.

JOSEPH F. S. FITZPATRICK,
Clerk. 40

JOS. W. HENRY,
Attorney.

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

Writ of Error.

New Jersey Supreme Court

STATE OF NEW JERSEY,

vs.

PETER CHURCHILL.

10

NEW JERSEY, SS.:

To JOSEPH A. DELANEY, Esquire, Judge
of the Court of Quarter Sessions of
(SEAL) the County of Passaic; Because in 20
the record and proceedings, and also
in giving of judgment upon a certain
indictment against Peter Churchill, late of the
city of Paterson, for robbery.

Pro ut the said indictment and the several
counts therein, whereof, before you, he hath been
indicted, and is thereof convicted by a certain jury
of the county, taken between the state of New Jer-
sey and the said Peter Churchill, as it is said, man-
ifest error hath intervened to the great damage of 30
the said Peter Churchill, as from his complaint we
have received information, we being willing, in
this behalf, to correct the error in due manner, if
if any there shall be, and that speedy justice be
done to him, the said Peter Churchill, command
you that if judgment be thereon given, then that
you distinctly and openly send, under your seal,
the record and proceedings aforesaid, with all
things touching the same to our Justices of our
Supreme Court of the State of New Jersey, on the 40

Writ of Error.

16th day of Oct. 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 law ought to be done.

10 WITNESS, William S. Gummere, our Chief Justice, at Trenton, aforesaid, the 27th day of September, nineteen hundred and twenty-six.

EDWARD J. KELLEHER,
Clerk.

JOSEPH J. FELCONE,
Attorney.

FORMAN AND LEVY,
Of Counsel with the Defendant.

20

Return.

STATE OF NEW JERSEY.

PASSAIC COUNTY, to wit:

30 BE IT REMEMBERED, That at a Court of Quarter Sessions, held at Paterson, in and for the said County of Passaic, on the Eighth day of May, in the year of our Lord one thousand nine hundred and twenty-five, being the day on which the Grand Jury heretofore summoned to come before the Court of Oyer and Terminer and now sitting in and for said County, desires to present bills and no Justice of the Supreme Court being present at the Court House in said County, before the Honorable JOSEPH A. DELANEY, Judge of the said Court of Quarter Sessions in and for the said County of Passaic, according to the form of the

40

Return.

statute in that case made and provided; by the oath of

- 1. William Hand, Foreman,
- 2. Frank J. Hanson,
- 3. Carrie Rathbone,
- 4. Harry Izenberg,
- 5. Kassel Raff,
- 6. Gertrude Adams,
- 7. Charles Levy,
- 8. Harriet Sawtelle,
- 9. John Purce,
- 10. Dorothy Crawford,
- 11. Harry S. Gould,
- 12. William Greengrass,
- 13. James White,
- 14. G. Kell Cornelius,
- 15. Cyril J. McDermott,
- 16. William W. Ewan,
- 17. Florence Zwingli,
- 18. Hazel Lotte,
- 19. Alfred F. Meneve,
- 20. Thomas Lord,
- 21. Margaret R. Hal-
- 22. Ida Kaufman,
- 23. Frank A. Havlin.

10

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

20

The Bills herewith presented are true Bills.

WILLIAM HAND, Foreman.
J. WILLARD DE YOE, Prosecutor.

30

Court of Oyer and Terminer in and for the County of Passaic. April Term A. D., Nineteen Hundred and Twenty-five.

PASSAIC COUNTY, to wit.:

The jurors of the State of New Jersey, in and for the body of the County of Passaic, upon their oath, PRESENT, that James Meola, Harry Van Rosenberg, Frank Lombardo and Peter Churchill,

40

Return.

late of the City of Paterson, in the County of Passaic aforesaid, on the Eleventh day of April, in the year of our Lord, nineteen hundred and twenty-five, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one George Jackson, there being unlawfully forcibly and violently an assault did make, and him the said George Jackson in fear, then and there, did put, and one watch and chain of the value of \$43.00 of the moneys, goods and chattels of the said George Jackson, from the person and against the will of the said George Jackson, unlawfully, violently and forcibly, then and there, did rob, seize, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said James Meola, Harry Van Rosenberg, Frank Lombardo and Peter Churchill, on the Eleventh day of April, in the year of our Lord nineteen hundred and twenty-five in the City of Paterson aforesaid, in the County of Passaic aforesaid, unlawfully, wilfully and maliciously did steal, take and carry away, one watch and chain of the value of \$43.00 of the moneys, goods and chattels of the said George Jackson from the person of the said George Jackson, privily and without his knowledge or consent, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the jurors aforesaid upon their oath aforesaid do further present, that James Meola, Harry Van Rosenberg, Frank Lombardo and

Return.

Peter Churchill, late of the City of Paterson, in the County of Passaic aforesaid, on the Eleventh day of April, in the year of our Lord nineteen hundred and twenty-five, with force and arms at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one watch and chain of the value of \$43.00 of the moneys, goods and chattels of George Jackson unlawfully did steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said James Meola, Harry Van Rosenberg, Frank Lombardo and Peter Churchill on the Eleventh day of April, in the year of our Lord nineteen hundred and twenty-five in the City of Paterson aforesaid, in the County aforesaid, one watch and chain of the value of \$43.00 of the moneys, goods and chattels of the said George Jackson, before then unlawfully stolen, taken and carried away, unlawfully did receive and have the said James Meola, Harry Van Rosenberg, Frank Lombardo and Peter Churchill then and there well knowing the same to have been unlawfully stolen, taken and carried away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

J. WILLARD DE YOE,
Prosecutor of the Pleas.

Witness:

JAMES H. BROOKS.

THEREUPON the said Court of Quarter Sessions did receive such Indictment and the Clerk of the

Return.

said Court of Quarter Sessions did file the same in the said Court, and also did thereupon make entry thereof in the Minutes of said Court at the then session of said Court, and afterwards, to wit, at the next term of said Court of Quarter Sessions, holden at Paterson, in and for the County of Passaic aforesaid, to wit: on the Twenty-fifth day of September, A. D. Nineteen Hundred and Twenty-five, at a session thereof before the Honorable Joseph A. Delaney, Judge of said Court, in and for said County of Passaic, according to the statute in such case made and provided, comes the said Peter Churchill, in his own proper person, and now touching the premises in said Indictment above specified and charged against him, being him, being asked in what manner he will acquit himself, says, he is not guilty and of this he puts himself upon the country, etc., and J. Willard De Yoe, Esquire, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let a jury come here before the Judge aforesaid, at Paterson aforesaid, in the County of Passaic aforesaid, at a session of the Court of Quarter Sessions aforesaid, on the First day of March, being of the Term of January, A. D. Nineteen Hundred and Twenty-six, of twelve good and lawful persons, each of whom shall be a citizen of this State, and a resident within the County of Passaic aforesaid, above the age of twenty-one years, and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said Peter Churchill, to recognize upon their oaths whether the said Peter Churchill be guilty as in the said Indictment specified, or not guilty, because as well the said J. Willard De Yoe, Esquire,

Return.

Prosecutor of the Pleas for the said County of Passaic aforesaid, who prosecutes for the State of New Jersey aforesaid, in this behalf, as the said Peter Churchill have put themselves upon the said jury, and the same day is given to the parties aforesaid, at the same place.

AND THEREUPON, on the Second day of March, A. D. Nineteen Hundred and Twenty-six, being as yet of the Term of January, of said Court, before the Court of Quarter Sessions aforesaid, holden by the Honorable Joseph A. Delaney, Judge as aforesaid, come as well the said J. Willard De Yoe, Prosecutor of the Pleas, aforesaid, who prosecutes as aforesaid, as the said Peter Churchill, in his own proper person, and the jurors of said jury, by the Sheriff of the County of Passaic aforesaid, for this purpose empanelled and returned, to wit:

- | | |
|-----------------------|--------------------------|
| 1. Albert Donkersloot | 7. Walter C. White, Jr. |
| 2. Charles S. Eckert | 8. William Tice |
| 3. Charles Mosley | 9. Albert Barker |
| 4. Frank Weaver | 10. Mary E. Satten |
| 5. Albert Bonser | 11. William F. Dinnigan |
| 6. George K. Roome | 12. Charles S. Archibald |

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

AND THEREUPON, on the Fifth day of March, A. D. Nineteen Hundred and Twenty-six, it was demanded of the said Peter Churchill if he hath or knoweth anything to say wherefore the Court here ought not upon the premises and verdict proceed

Return.

to judgment against him, who nothing further says, unless as he has before said.

10 WHEREFORE, all and singular, the premises being seen and by the Court here fully understood, it is considered by the Court, and the sentence of the law is, that the said Peter Churchill shall be confined in the State Prison, at hard labor, for the maximum term of fifteen years, and the minimum term of ten years.

JOS. A. DELANEY,
Judge.

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

20 I, JOHN McCUTCHEON, Clerk of said County, and Clerk of the County Courts thereof, Do HEREBY CERTIFY, that the foregoing is a transcript of the record and proceedings in the case of Peter Churchill, convicted of Robbery, in our Court of Quarter Sessions, on the Second day of March, A. D. Nineteen Hundred and Twenty-six, as the same is taken from and compared with the original, recorded in Book of Records of the Court of Quarter Sessions, and now remaining on file and
30 of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Eighth day of October, A. D. Nineteen Hundred and Twenty-six.

JOHN McCUTCHEON,
Clerk.
by LLOYD B. MARSH,
Deputy.

40 (SEAL)

Stipulation.

NEW JERSEY SUPREME COURT.

| | | | |
|---|---|------------|----|
| STATE OF NEW JERSEY, Defendant-in-error, | } | On Appeal. | 10 |
| <i>vs.</i> | | | |
| PETER CHURCHILL, Plaintiff-in-error. | | | |

It is hereby stipulated by and between Joseph F. S. Fitzpatrick, Attorney for plaintiff-in-error, and J. Vincent Barnitt, Prosecutor of the Pleas of Passaic County, that the argument of the above entitled appeal be not argued until the October Term of the New Jersey Supreme Court, 1927. 20

JOSEPH F. S. FITZPATRICK,
Attorney for Plaintiff-in-error.

J. VINCENT BARNITT,
Prosecutor of the Pleas,
Attorney for Defendant-in-error. 30

40

Testimony.

PASSAIC COUNTY QUARTER SESSIONS.

| | | | |
|----|--|---|-------------|
| 10 | THE STATE, <i>vs.</i> PETER CHURCHILL. | } | INDICTMENT. |
|----|--|---|-------------|

Paterson, N. J., March 1st, 1926.

Before
Hon. JOSEPH A. DELANEY, Judge and a jury.

20 Appearances:

JAMES M. DUNN, Esq., Assistant Prosecutor,
for the State.

BERNARD L. STAFFORD, Esq., for the Defendant.

(A jury being empaneled and found satisfactory, they were sworn.)

30 (Mr. Dunn opens for the State.)

CHARLES MARY, SWORN for the State.

Direct examination by Mr. Dunn:

Q. Mr. Mary where do you reside? A. 406 Pacific Street, Paterson.

40 Q. Were you in business last April? A. Yes, sir.

Charles Mary—Direct.

Q. Where? A. 1003 Main St., Paterson.

Q. That was a saloon, was it not, Mr. Mary?

A. Yes, sir, it was.

Q. Was your place of business open on April 10th? A. Yes, sir.

Q. That was Friday, was it not? A. Yes, sir.

Q. Was it still open in the early morning after twelve on the morning of Saturday the 11th of April? A. Yes, sir.

Q. Who was in the saloon, if you recall Mr. Mary, in the early morning of April the 11th? A. The names of the patrons?

Q. Yes, all the people that were in there as you can recall it? A. Starting with my brother, Louis, some were Mr. Jackson, Mr. Kruger, Mr. McDermott, I guess that is all I can recall now.

Q. Did anything unusual happen Mr. Mary? A. Between two and two-thirty I should say I was just getting ready to go home when three armed bandits came into the place and ordered us to stick our hands up and we were held up and robbed.

Q. Describe them more in detail? A. They came in one at a time, the three of them came in together but one at a time through the door with guns in their hand, I was standing behind the bar facing the door, I was facing the door and looked up and saw the gun and arm and later these men in back of them.

Q. What did you say they said? A. Stick them up, get them up.

Q. Did the patrons including yourself comply with the request? A. Yes, sir, they did every one of them.

Q. How were they dressed? A. Who, the hold-up men?

Charles Mary—Direct.

Q. Yes. A. They all had overcoats on and sort of a shawl covering their faces instead of masks.

Q. Where did they go? A. One of them came behind the bar and robbed the register, and the other two covered the patrons of the place.

10 Q. What did the one that went behind the bar do, what did he get out of the register? A. About sixty-five dollars in money.

Q. What did he do to you? A. He kept covering me with his gun and I kept talking to him telling him to take what he wanted.

20 Q. What did he do? A. He indicated me to one of the others and said "Get these guys from behind the bar and line them up." So we did and they went through us, they took my watch and chain and five dollars, a five dollar gold piece for a charm and another one searched my pockets for my money and I didn't have any.

Q. What did you do while this was going on, or just before this did you have any money before this, did you have any money? A. Yes, sir, I had some money on me and when they came in I threw it underneath the bar.

30 Q. What was going on while this fellow was behind the bar cleaning out the register, what were the others doing? A. The patrons had their hands lifted up over their heads and they had them covered and were going through them.

Q. Go on and tell what you saw them do. A. At the time the one robber was cleaning out the register the other two had the rest of the patrons covered and immediately after one of them started to go through the rest of the patrons and relieve them of jewelry and watches and tried to take my brother's ring off his finger.

40 Q. Where was your brother? A. He was behind the bar, then one of them said, "Get these guys

Charles Mary—Direct.

from behind the bar," and we were forced to walk to one end of the room.

10 Q. How did he get this ring? A. While he had his hand lifted one of them saw the ring and tried to take it from him and it fitted so closely he couldn't take it off, so he told Slim, the man behind the bar, to get these guys in front of the bar, so he ordered us out and then it was, I believe it was Meola, who tried to get the ring off my brother's finger, and Bootsey said, "I will get it off," and he goes down with his teeth and tries to bite the stone out of the ring, and he couldn't do it, so he left it.

20 Q. Did you see your brother's finger after? A. Yes, sir, it was bleeding, that is the knuckles were bleeding.

Q. What happened after that? A. About that same time the other was going through me and Mr. Jackson and Mr. Kruger's clothes, taking out watches and jewelry and whatever money might have been in their pockets.

Q. What happened after that? A. After that when they got through trying to take my brother's ring they backed towards the door with their faces towards us until they left.

30 Q. During this time did you hear any noises outside or hear anything outside? A. No, I did not.

Q. Did you watch them as they went out? A. I did.

Q. Where did they go? A. Out of the front door.

Q. Is that as far as you could see them. A. Yes, sir.

Q. Did you look after they had gone, look out of the place? A. I did not, no.

40 Q. Subsequent to that time, did you recognize anywheres any of these people that had been in your place that night? A. Yes, sir, I did.

Charles Mary—Direct.

Q. Where was it? A. In the Paterson Police Station.

Q. Whom did you recognize? A. A man named Van Rosenberg.

Q. How have you described him? A. As the man that went behind the bar and robbed the till.

10 Q. Whom else did you recognize in the police Station? A. Meola.

Q. How have you referred to him? A. As the man that originally tried to take the ring off my brother's finger and who went through some of the others in the place.

Q. Whom else did you recognize? A. A man known as Bootsey.

20 Q. He is the one you described as working on the ring? A. He was also the man that worked on the ring with Meola around that time.

Q. Will you just step down from the stand a moment. Will you tell the jury who this man is? (Indicating Lombardo.) A. Bootsey.

Q. Tell the jury who this man is? A. Van Rosenberg (indicating the defendant, Van Rosenberg).

Q. Tell the jury who this is? A. Meola (indicating the defendant, Meola).

30 Q. Will you describe to the jury how you felt or rather your frame of mind when the hold-up took place. Do you understand the question? A. I will try to understand it. When I saw the gun come in and subsequently the men behind them and they ordered me to stick them up my sensation seemed to be that shortly prior to that time there had been a hold-up at the Wilkie Hotel—

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

40 The Court: Strike it out.

Charles Mary—Cross.

Louis Mary—Direct.

Q. I don't mean what thought went through your mind, were you elated, happy or sad? A. I was far from being happy my only idea was to let them have what they wanted and let them get out.

Q. Were you frightened? A. I won't admit I was frightened but I was far from happy. 10

Q. The location of your saloon that is in the City of Paterson, in the County of Passaic? A. Yes, sir.

Cross-examination by Mr. Stafford:

Q. You never on any occasion identified Mr. Churchill? A. No.

Q. You can't identify him now can you Mr. Mary? A. No, sir. 20

LOUIS MARY, sworn for the State.

Direct examination by Mr. Dunn:

Q. You are a brother of Charles Mary who was just on the stand? A. Yes, sir.

Q. Were you in this saloon located at 1003 Main Street on the night of April the 10th and the morning of the 11th? A. Yes, sir. 30

Q. Did anything unusual occur during the morning of the 11th? A. Yes, sir; there did.

Q. Just tell the jury what it was, describe it. A. About two o'clock or shortly thereafter I was sitting on a little stool all ready to close up and waiting for a few patrons to finish their sandwich or what they had before them when I noticed the door open. As I looked around three gunmen came in and ordered everybody to stick their 40

Louis Mary—Direct.

hands up which we all complied with. After we were ordered to stick our hands up one of them came around back of the bar and another came to face me at the corner of the bar and one kept me covered and I heard the register getting emptied and my brother told him to empty it out and get out and not to shoot. So that the one that had me covered noticed my ring on my finger and ordered me to take it off which I attempted to do and couldn't remove it. Not being satisfied with that he tried to get it off and didn't succeed and then he ordered me around the bar to get out from behind the bar and I stepped out in the center of the floor which I did so as I went around from the bar he started to threaten me and still attempted to get this ring off and I told him I hadn't had it off in two years and couldn't get it off myself, with that he shoved the gun into my ribs and told me to shut up or he would drill me. The other fellows says "Let me see it" so he attempted to get it off and couldn't pull it off so he put it to his mouth and tried to pull it off and in the scuffle I was minus some skin. After he seen he couldn't get it off, the other patrons in the meantime were relieved of their belongings and they decided they had all they could lay their hands on and went out.

Q. What did they take from you? A. A wallet and some things which I had in it, the few dollars I had were in the wallet and a driver's license and so-on.

Q. How much money in all did they take from you? A. About fifteen dollars.

Q. Do you know which one it was took the money from you? A. I don't know certain because there were two at me.

Q. Which of the two were at you? A. The one known as Boots and Meola.

Louis Mary—Cross.

Louis Mary—Re-direct.

Q. Go ahead and tell the rest of it, what went on after that. A. After that they just told us to stay where we were and backed out of the door. After they decided they had all they cared to take they backed to the door and went out.

Q. Did you observe which way they went when they left the place? A. No, I did not.

Q. Did you see anything after they left the door anything of them or hear anything after that? A. No, I didn't, I went to the telephone and called up the authorities.

Q. Did they take any jewelry from you? A. No, they did not.

Mr. Dunn: I ask to have this watch marked as Exhibit S-1 for identification.

Watch marked Exhibit S-1 for identification.

Q. Did you ever see this before (indicating Exhibit S-1 for identification)? A. Yes, sir; I believe I have seen this before or one similar to it.

Q. Just take a look at the watch. A. That looks like my brother's watch.

Q. What does this look like? A. His charm that he had on the other end of the chain.

Cross-examination by Mr. Stafford:

Q. You have never identified Churchill here as one of the men that entered your saloon. A. I have never seen him.

Re-direct examination by Mr. Dunn:

Q. There were only three in the saloon? A. Yes, sir.

Charles Mary—Recalled—Direct.

Fred W. Krieger—Direct.

CHARLES MARY, recalled.

Direct examination by Mr. Dunn:

10 Q. I show you Exhibit S-1 for identification and ask you if you know to whom these articles belong? A. This is my watch and that is my charm.

Mr. Dunn: I offer them in evidence.

Watch and charm admitted in evidence and marked Exhibit S-1 for the State.

FRED W. KRIEGER, sworn for the State.

20 *Direct examination by Mr. Dunn:*

Q. Where do you reside? A. At the present time I reside on Broadway.

Q. Paterson? A. Yes, sir.

Q. On the evening of April the 10th and the morning of the 11th last where were you? A. I was in Charley Mary's cafe.

Q. On Main Street? A. Yes, sir, 1003.

30 Q. Did anything unusual occur while you were there? A. While I was there we were sitting there we were all ready to go home and had our overcoats on and were all ready to go and would have been out of there in a couple of minutes and three men came in the door and hollered stick them up so of course the only thing we saw to do was stick them up, we didn't want to get shot. We all put our hands up. The fellows came in and relieved us of what we had, I lost my money and watch and chain and an Elk's tooth on it and they took the whole of them, just took it off and
40 said to get over against the wall so I did what

Fred W. Krieger—Direct.

they told me, I thought that was the best thing to do.

Q. Did they take any money from you? A. They took some money out of my pocket here.

Q. How much? A. I don't know just what I had I had some money in there some bills, I don't know what they were they felt in my pockets and didn't take the silver they took the bills and pulled them out and took my watch and chain. 10

Q. Did you afterwards recognize the men that did this to you? A. Down in the police station I picked out the fellow as near as I could recognize was the man that picked me out.

Q. Which one was that? A. I don't know what his name was they call him Bootsey that is the man I picked out. 20

Q. Is this the man to whom you refer? A. That is the man I picked out down in the Police Station as near as I could see (indicating the defendant Lombardo). 20

Q. What else did they do? A. I went over against the wall and waited until the operation was over, when you are held up that is the best thing. As soon as I thought they were far enough away after they got out of the saloon I got out and went home that is about all I saw when they were holding me up when they keep you busy my mind was on myself I couldn't see anybody else. I heard the story afterwards different voices said "My watch is gone my watch is gone and my money is gone." 30

Q. You said you obeyed them that you didn't want to get shot. A. If a man sticks a gun up to you and says hold up your hands the best thing I feel at any time is to hold my hands up I think that is the most sensible thing to do, anyway, he told me to put my hands up and I thought my life was worth more than my money. 40

Fred W. Krieger—Direct.

10 Q. What was the value of your watch? A. I don't know what the value of my watch was, it was a little gift in a place where my brother-in-law works, they had a little drawing over there and I took a chance on it and I happened to be the lucky man who drew the winning number. I couldn't get the works number of the watch but I have the watch-case—

Q. What kind of a watch was it? A. A little flat watch plain case, open-face and it was exceptionally thin you wouldn't find many thinner than that and I had a plain chain and an Elk's tooth on the end of the link and they didn't take it out of my pocket they just pulled it hard and snapped it off and this fell on the floor and I picked it up after they went out.

20 Q. May I see that bar? A. This fell on the floor after the men went out of the place.

Mr. Dunn: I offer this bar and ask that it be marked S-2 for identification.

Bar marked Exhibit S-2 for identification.

Mr. Dunn: I offer it in evidence.

Bar admitted in evidence and marked Exhibit S-2 for the State.

30 Q. Do you know the value of these articles you have just spoken of now, the tooth and chain? A. I imagine the tooth would be worth about eight or ten dollars and I think the chain cost me about twelve dollars and I don't know the value of the watch.

No CROSS-EXAMINATION.

William G. Jackson—Direct.

WILLIAM G. JACKSON, sworn for the state.

Direct examination by Mr. Dunn:

Q. On the evening of April 10th and the morning of the 11th were you in Charley Mary's Cafe on Main Street? A. Yes, sir. 10

Q. Did anything unusual happen at that time? A. A hold-up.

Q. Just describe to the jury your recollection of what took place. A. On the morning of the 11th I was sitting at the end of the bar, with Mr. Krieger by me sitting and Louis Mary behind the bar, the three of us talking and having a little conversation, when the door opened and I noticed three men coming through the door and we were ordered to stick them up, and we all complied with their request and I was ordered from the end of the bar and Meola stepped up to the bar I was ordered, as I say, from the end of the bar and my watch taken from my chain and they overlooked my money. 20

Q. Go on. A. We were then ordered to line up against the wall, toward the wall, and they backed out one at a time, the three of them, pretty well crowded together, backed out of the door. That is about all. 30

Q. How much money did they take from you? A. They overlooked my money.

Q. They took your watch? A. My watch and chain.

Q. What was the value of your watch and chain? A. Forty-eight dollars.

Q. How many were in the place, how many hold-up men were there? A. Three.

Q. When they left the place did you watch where they went? A. No, sir. 40

No CROSS-EXAMINATION.

Harry Van Rosenberg—Direct.

HARRY VAN ROSENBERG, SWORN for the state.

Direct examination by Mr. Dunn:

Q. Do you know Peter Churchill? A. Yes, sir.

10 Q. Would you mind coming down from the stand and picking out Peter Churchill, put your hand on his shoulder.

(Witness comes down and indicates defendant, Peter Churchill.)

Q. How long have you known Peter Churchill? A. I have only met him on several occasions, two occasions, but I know him from around the dance halls of Paterson.

20 Q. How long, how many years or months? A. About a year now.

Q. How long before April last were you acquainted with him? A. I didn't know him personally until April, I forget the date; I didn't know him personally until one night in April, on a Friday night, but the exact date I don't remember.

Q. On April 10th last did you own an automobile? A. Yes, sir.

30 Q. What kind of a car was it? A. A Moyer sedan.

Q. On that afternoon did you go out for a ride in it? A. Yes, sir.

Q. Whom did you go out with? A. Jimmy Meola, Boots Lombardo and a lad by the name of Walters.

Q. Where did you go? A. We took a ride up around Preakness.

40 Q. What happened? A. My car went dead, the magneto went dead on the car, and I had to leave it standing there and come back on the bus.

Harry Van Rosenberg—Direct.

Q. When did you get back to Paterson? A. I should judge after six o'clock.

Q. Who came back to Paterson with you? A. We all came back together, all the occupants of the car, Boots and Meola.

Q. Where did you go after you got to Paterson? A. I went home to supper. 10

Q. Who went home with you? A. Meola.

Q. Where did you live at this time? A. #77 Cedar Street.

Q. Did Meola have supper with you? A. Yes, sir.

Q. This was April the 10th was it? A. Yes, sir; well I just can't recall the exact date.

Q. Where did you go after supper? A. Came down town to the Palace Billiards.

Q. Where is that located? A. On Main near Broadway. 20

Q. Who came down? A. Me and Meola.

Q. What did you do there? A. Sitting around in there and talking.

Q. Then what happened? A. Meola wanted to go out for a walk and I said "No, it is pretty wet out", I says, "When I go out I am going to go home". So Jimmy got up and went out of the poolroom and was gone about a half or three-quarters of an hour and I came down and walked up the street and met Meola again on Main Street and proceeded on to Market Street until we met Frank Lombardo and then we went over to Westerman's Restaurant. 30

Q. That was the man you have described as Bootsey? A. Yes, sir.

Q. One of the other defendants? A. Yes, sir.

Q. You went to Westerman's? A. Yes, sir; and met Peter Churchill up there and said, "Take us to Passaic". 40

Harry Van Rosenberg—Direct.

Q. Is that the Peter Churchill whom you have just identified? A. Yes, sir; we says, "Take us to Passaic", so Churchill says, "I haven't got much time but get in I will run you down".

Q. What was he in? A. A Packard.

10 Q. What kind of a Packard? A. A seven-passenger Touring, so we went on to Passaic to a crap game. At this crap game there was another crowd of fellows and as we came back home Charles Nichols—

Q. This crap game is located in Passaic? A. Yes, sir.

Q. Whereabouts? A. The exact number I can't tell but on Main Avenue I know.

Q. Who went down with you to the crap game? A. Meola, Lombardo and myself and Churchill.

20 Q. Churchill drove the car down? A. Yes, sir.

Q. Who went up to the crap game? A. Three of us went up to the crap game, Meola, Lombardo and myself.

Q. Who was left in the car? A. Churchill.

Q. What time did you go up into the crap game about? A. The exact time I can't say it was pretty late around midnight.

Q. How long did you stay there? A. I should judge about half an hour.

30 Q. Then you came downstairs? A. Yes, sir.

Q. What did you say? A. Another car pulled up to the curb with McElwaine and Nichols another lad in it by the name of Silla, so we were coming back into the car and Churchill and Lombardo hollered to him, "jump in our car we're going back to Paterson". So they jumped into the car and we came on down past this saloon on Main Street.

40 Q. What saloon? A. Mary's saloon, and the drift of the conversation in the back of the car

Harry Van Rosenberg—Direct.

between Bootsey, Charlie the Pollock and McElwaine, they kept up a conversation and then Bootsey hollered, "Turn around".

Q. What was the conversation? A. From what I judge after awhile it must have been to knock this place off on Main Street.

10 Mr. Stafford: I object to it unless he states the conversation and ask that that be stricken out.

The Court: Strike it out. What was the conversation?

A. Charley Nichols says, "There is some money in this place here", and Boots hollered, "Turn this car around", and so we came back and pulled up on the side street so they called me and Meola out and handed me a gun and we walked in the place and held it up.

20 Q. When you stopped alongside of the saloon was the car running or the motor shut off? A. The motor was shut off I believe.

Q. Who was at the wheel of the car? A. Churchill.

Q. What conversation took place or what was said when you pulled up by the side of the street? A. Boots Lombardo and Meola and myself got out of the car and crossed around the back of the car.

30 Q. Did you have a gun at that time? A. I didn't have a gun when I was in the car and as I was out of the car on this side Lombardo handed me the gun.

Q. Did Meola have a gun at that time? A. That I couldn't see over there.

Q. Lombardo gave you a gun? A. Yes, sir.

40 Q. He had been sitting in the front seat at that time? A. If I am not mistaken I was in the front seat at the time.

Harry Van Rosenberg—Direct.

Q. Who else was in the front seat, if anybody?
A. I believe Meola was in front.

Q. When you and Meola got out of the car and Lombardo was there was anybody between you and Churchill? A. What do you mean in the back of the car?

10 Q. You received a gun from Lombardo at the side of the car? A. Yes, sir.

Q. Was there anything between you and Churchill when you got the gun from Lombardo? A. No, there was no one in the seat.

Q. What did you do after the time you got the gun? A. When I got the gun we walked in the saloon and I was the first in the saloon and I walked to the back of the bar.

20 Q. While you were going up to the front of the saloon you had a gun in your hand? A. Yes, sir.

Q. And Meola had a gun? A. Yes, sir.

Q. And Lombardo had a gun in his hand? A. Yes, sir.

Q. And in that manner you walked up to the front of the saloon? A. Yes, sir.

Q. And went in? A. Yes, sir.

30 Q. What happened? A. I walked to the back of the bar and took the money out of the cash register while Meola and Lombardo were going through and searching all the patrons of the place.

Q. When you went into the saloon was anything said? A. I said, "Hands up".

Q. Did anybody else say anything? A. I guess there was no need for a second invitation when we walked in.

Q. The hands were up? A. Yes, sir.

Q. And you went back of the bar to the cash register? A. Yes, sir.

40 Q. What did you do there? A. Removed the money from the drawer.

Harry Van Rosenberg—Direct.

Q. How much? A. The exact amount I can't say.

Q. About how much? A. Sixty or sixty-five dollars.

Q. What did you do after that? A. After that I came back out from behind the bar out of the saloon on the sidewalk and when the last one came 10 out of the door we all made a jump for the car.

Q. What was taking place while you were at the cash register? A. Lombardo and Meola were searching the patrons of the place and had some man laying over the bar trying to get a ring off his finger. There was a demonstration there at the end of the bar between Meola and Lombardo with this man hanging over the bar and this fellow behind the bar said, "Slim get them out before they hurt somebody". This fellow with the 20 glasses said, "Take all we could get but save us our life." I said, "Nothing will happen if you don't get rough".

Q. What did they continue to do? A. They went through the people in the place, searched their pockets and so forth.

Q. Did they take anything from them. A. Watches and a wallet and some things.

Q. When you got through with the cash register, where did you go? A. Out from behind the 30 bar to the door.

Q. Did you three then go out? A. Yes, sir, the three of us left the place.

Q. You still had your guns in your hands? A. Yes, sir.

Q. Where did you go? A. We all ran for the car.

Q. You went on a run? A. Yes, sir.

Q. Was the motor running when you got to the car? A. When we came back out the motor was 40 running, yes, sir.

Harry Van Rosenberg—Direct.

Q. You came on a run, did you? A. Yes, sir, we came on a run.

Q. What was the first thing said by any of you or anyone in the car. A. I came running to the running board of the car; I says, "Step on it." I says, "We just stuck the joint up"; with that I made a running jump for the running board and the rest of them hung on the back as the car started out.

Q. What was said after that? A. McElwaine, in the car, says, "How much did you get?" I says, "I got some money; I don't know how much it is." The car passed on this way and went over Madison Avenue toward Tenth Avenue, when we got out of the car. Churchill said, "You fellows better get out; you are going to get me in bad," and as McElwaine got out I took the money out of my pocket and he took something and went on his way, and as Churchill started away with the car Boots hollered, "I will see you with your share."

Q. Before Boots said that did Churchill say anything to Boots? A. He told us to get out of the car, because he said he might get in bad if we don't, and then Boots hollered, "Don't worry about your share; I will see you."

Q. What did Churchill say to that? A. I don't know whether he heard it or not, he hollered back something about all right.

Q. Then he drove away? A. Yes, sir, drove away his car.

Q. Do you remember seeing Churchill any time during the past month, the month of February? A. Yes, sir.

Q. Where did you see him? A. At my house.

Q. Did you have a conversation with him? A. Yes, sir.

Q. About this case? A. Yes, sir.

Harry Van Rosenberg—Direct.

Q. What was the conversation? A. He wanted me to sign a statement exonerating him from the case.

Q. Go ahead; tell us what it was? A. He asked me to sign a statement saying, so I said, "All right, I will sign a statement for you," so we came out to go over to his lawyer; so he couldn't find his lawyer and he came back in the car and said, "Let's go up into Jordan's office; we can have it fixed up there; I just seen Jordan, and it is all fixed up to make it out there," and I went up to Jordan's office and made out the statement.

Q. Did he say anything to you about—before you made the statement what did he say to you about making the statement, if anything? A. I will see you with some money and help you out of this case, out of this jam.

Q. How was he going to help you out? A. Help me out for money to get a lawyer, and if the case got bad and I wanted to blow I could go to him and get some money to blow.

Q. Did you know what he meant when he said blow? A. Yes, sir.

Q. You signed the statement? A. Yes, sir.

Q. Do you remember what was in the statement?

A. I don't remember exactly, but it was that I couldn't connect Peter Churchill and Peter Church as the same man in the car the night of the hold-up.

Q. Do you recall when it was that you signed that statement? A. Saturday night.

Q. Was that the Saturday immediately prior to the Monday on which the case was to be tried? A. Yes, sir.

Q. On that Monday you came into Court and plead non vult, did you not? A. Yes, sir.

Harry Van Rosenberg—Direct.

Q. On the way into Court did you meet Churchill? A. Yes, sir.

Q. Where? A. Out on the steps.

Q. Did you have a conversation with him? A. I asked him if he had any money, and he said, "I only have a few dollars; I will give you some of that if you want it," so he gave me about fifteen or sixteen dollars.

Q. Then what happened to you; you were out on bail at that time? A. I was out on bail, but I was turned in as I turned in to as I came up here to plead.

Q. Did you have a conversation with Churchill after that? A. No, sir.

Q. After you got to Madison Avenue and Tenth Avenue and Churchill left in the car, where did you go? A. He proceeded on past Lombardo's house and he left us for a couple of minutes and came back out and proceeded on to Meola's house, where we divided up what we had taken.

Q. Do you recall what or how the division was made? A. The three of us had a watch and twelve or fourteen dollars apiece, so Lombardo was talking to Meola and he says, "I am going to take Church's part out of this," and he took some money out for Church.

30 Mr. Stafford: I object to this testimony. This has not taken place in the presence of the defendant. I ask that it be stricken out.
The Court: Strike it out.

Q. When the division was made, without mentioning the conversation, in what proportion was it made between you, Lombardo and Meola? A. How much each one got?

40 Q. How much in money? A. We each got a watch and either twelve or fourteen dollars, the

Harry Van Rosenberg—Cross.

exact amount I can't state, twelve or fourteen dollars apiece and a gold watch. There was an argument over a five-dollar gold piece there.

Q. You got twelve dollars and Meola got twelve dollars? A. Yes, sir.

Q. How much did Bootsey get? A. He got about twenty-four. 10

Q. Have you ever been convicted of a crime?

Objected to by Mr. Stafford.

Cross-examination by Mr. Stafford:

Q. Have you ever been convicted of a crime? A. No, sir.

Q. You have not? A. No, sir.

Q. Were you not convicted in 1919? A. Oh, juvenile; you didn't ask me about that. 20

Q. How old are you? A. Twenty-one, just turned.

Mr. Dunn: I move to have that stricken out.

Mr. Stafford: He has not answered the question. I withdraw the question.

Q. Have you ever been convicted in any other court for crime? A. No, sir.

Q. Are you married? A. Yes, sir. 30

Q. What is your occupation? A. Chaffuer, bus driver.

Q. Where? A. Paterson.

Q. How long have you been working as a chauffeur? A. I should judge for the last two or three years.

Q. For whom have you been working? A. Frank Avolio.

Q. A private? A. No, a bus; Paterson, Hackensack and New York and Paterson, Garfield and Lodi and Paterson and Palisades Park. 40

Harry Van Rosenberg—Cross.

Q. Where were you working on this day? A. For Frank Avolio on the Paterson-Lodi bus.

Q. This was on Friday night? A. Friday night the exact date I can't state.

Q. Had you ever seen Churchill before? A. Pete Churchill?

10 Q. You call him Churchill? A. Yes, sir.

Q. Had you ever seen him before this night? A. In dance halls.

Q. Where and when? A. I don't carry a chart with me.

Q. Mention one occasion you ever saw or ever met Churchill before this night? A. I never met him but I have seen him.

Q. Mention one occasion you ever spoke to him? A. I didn't speak to him.

20 Q. As a matter of fact this night was the first occasion you ever came in contact with him with the man you call Pete Churchill? A. Yes, sir.

Q. Where was he when you first saw him? A. On Market Street.

Q. What time? A. The exact time I can't say.

Q. About what time? A. Between ten and twelve o'clock.

Q. Can't you make it more definite than between ten and twelve? A. No.

30 Q. Where had you been? A. On Main Street at the Palace Billiards.

Q. You were playing billiards from what time? A. I wasn't playing billiards I was sitting in the poolroom.

Q. From what time? A. From eight until ten thirty.

Q. Talking to whom? A. Jim Meola.

Q. Who else? A. A few other people in the poolroom.

40 Q. You left the poolroom at ten thirty? A. I didn't say exactly.

Harry Van Rosenberg—Cross.

Q. About ten thirty? A. About ten thirty.

Q. When you left the poolroom you were accompanied by Meola? A. No, sir.

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

Q. Did you leave Meola behind you? A. He went out ahead of me.

Q. What time did Meola leave the poolroom? 10
A. About a half an hour or three-quarters of an hour before.

Q. What were you doing after he left? A. Sitting down.

Q. Talking to whom? A. I can't exactly say to who.

Q. Aren't the facts in your mind very distinct in your mind? A. No, sir.

Q. Were you drunk? A. No, sir.

Q. Sober? A. Yes, sir. 20

Q. Do you use drugs? A. No, sir.

Q. Why are they so indistinct? A. I don't carry a diary everywhere I go Mr. Stafford.

Q. So you don't know to whom you were talking after Meola left? A. I could say three or four boys I can see them back there who was in the poolroom at the time.

Q. Who are they? A. Paul Wellman.

Q. Paul Wellman stand up. That him? A. Yes, sir. 30

Q. Who else? A. Paul Vegar.

Q. Who else? A. I don't see any more back there.

Q. Those boys were in this pool room between eight and ten-thirty on April 10th? A. Yes, sir.

Q. Where is the pool room? A. The Palace Billiards on Main Street and Broadway.

Q. While you were talking to Meola did you talk about business or what while you were there? A. General topics. 40

Harry Van Rosenberg—Cross.

Q. Did you tell Meola you would meet him afterward? A. No, sir.

Q. Did he tell you he would meet you? A. He wanted to go out to take a walk and I said it was too wet.

10 Q. Was it raining? A. It had been prior to that.

Q. Where were you going when you left the pool room at ten-thirty? A. I was on my way home.

Q. What way did you go home? A. I walked up Main Street to Market.

Q. Where did you live on this occasion? A. 77 Cedar Street in the Sandy Hill district.

20 Q. Where did you meet Meola? A. On Main Street just before Market.

Q. Did you have a conversation with him then? A. I fell in with him and walked on up to the corner and he said, "Come on up and have coffee and—"

Q. And you went to the Traveler's Lunch? A. Not the Traveler's, Westerman's.

Q. What time was that? A. Eleven o'clock.

Q. Who did you meet in there? A. Before I got to Westerman's I met Lombardo.

30 Q. Where did you meet Lombardo? A. At Market and Main.

Q. Where did you meet Meola? A. On Main Street just before Market.

Q. Did you know Lombardo? A. Yes, I knew him by sight.

Q. Had you ever spoken to him before? A. Yes, sir; I did speak to him.

Q. Had you been in his company? A. Never outside of Paterson.

40 Q. You were friendly, familiar with Meola? A. Yes, sir.

Harry Van Rosenberg—Cross.

Q. He was your pal? A. Not my pal.

Q. You used to associate with him a great deal? A. I seen him a great deal in the Palace and other pool rooms.

Q. With Meola and yourself and Lombardo did you have a conversation about anything? A. Yes, sir. 10

Q. What about? A. I needed money to pay my rent.

Q. Did you ask Lombardo for it? A. As I suggested that he said, "Let's go to Passaic to a crap game".

Q. Who said that? A. Lombardo.

Q. Was this on the street? A. Yes, sir.

Q. Before you reached the restaurant? A. Yes, sir. 20

Q. What did you say? A. Let's go and I might get some money there.

Q. Did you have a shawl with you that you had over your eyes? A. I didn't have any shawl on me. I just had my overcoat collar turned up.

Q. Did you have a gun with you when you went back to Meola? A. No, sir.

Q. Did you discuss with Meola at that time the holding up of the crap game? A. No, sir.

Q. Had you ever been down at the crap game before this night? A. In Passaic, no, not that I can recall. 30

Q. Where was this game, crap game? A. On Main Avenue, the number I don't know.

Q. What number? A. I don't know the number. I am not in the habit of going to this place.

Q. You only run to pool rooms? A. Yes, sir.

Q. But you needed your rent on this occasion, and you went to a crap game to get it? A. I went to a crap game to get it, I went with the people who were going to give me the rent to pay. 40

Harry Van Rosenberg—Cross.

Q. Were they going to use your money? A. I didn't have any to use.

Q. Where were you going to get the money to buy your coffee and— A. Meola was going to pay for that.

10 Q. Didn't you start out for the lunch room before you met Meola? A. No, sir.

Q. You had no intentions of going to the lunch room until after you met Meola? A. No, sir.

Q. Did Lombardo go in the restaurant with you? A. Yes, sir.

Q. How long did you stay in the restaurant? A. A few minutes.

Q. How few? A. About fifteen minutes.

Q. Did you have something to eat? A. A cup of coffee and a piece of pie.

20 Q. Did Meola have something? A. Yes, sir.

Q. Lombardo? A. Yes, sir.

Q. Who paid for that? A. I don't know whether it was Meola or Lombardo, but one of them paid for it coming out.

Q. What did you talk about when you were in the restaurant? A. What did we talk about?

Q. Yes. A. Nothing in particular that I can remember.

30 Q. Does this story strike you very funny? A. No, it doesn't strike me funny, but some of your questions strike me very funny.

Mr. Dunn: What are you going to do, argue with him?

The Court: Proceed with the examination.

Q. What did you talk about in the restaurant? A. That I can't recall.

40 Q. Did you talk about a crap game? A. I don't remember that I did or not.

Harry Van Rosenberg—Cross.

Q. Had you any idea where you were going when you left the restaurant? A. Yes, sir.

Q. Where? A. The Passaic crap game.

Q. You did talk about it? A. I talked about it before we went in the restaurant.

Q. Didn't you talk about it after the restaurant? A. No, sir. 10

Q. Who were you going to the crap game with when you came out of the restaurant, out of Westerman's? A. We were going down on a bus.

Q. Where did you make that arrangement? A. Outside.

Q. After you left the restaurant? A. Before we entered the restaurant.

Q. What time did you leave Westerman's? A. What time; that time I cannot recall.

Q. About what time? A. I should judge pretty 20 near midnight.

Q. Twelve o'clock? A. Yes, sir.

Q. On a Friday night? A. Yes, sir.

Q. When you left Westerman's, with your two friends, where did you go? A. We came out on the sidewalk.

Q. Yes. A. And Lombardo says, "Maybe I can get a car to go down for us," and he got hold of Churchill someway.

Q. Did Lombardo leave you and Meola? A. In 30 front of Westerman's restaurant, yes, sir.

Q. Where did you and Meola go? A. Stayed right there.

Q. How long was Lombardo away? A. Not very long; I should judge fifteen or twenty minutes.

Q. It was around half-past twelve when he came back? A. Around midnight.

Q. When he came back you say he had Churchill with him? A. Yes, sir.

Q. Did he come back alone? A. Yes, sir. 40

Harry Van Rosenberg—Cross.

Q. Where did the three of you go then? A. Walked down Market Street to meet Churchill.

Q. Where to? A. Down over Main Street toward the Public Service car barn.

Q. Down on lower Market Street? A. Yes, sir.

10 Q. You went to the car barns? A. No, sir; towards them.

Q. Where did you go to? A. The Victory Lunch on lower Market Street.

Q. Did you go in? A. No, we met Churchill.

Q. Inside or out? A. Out.

Q. You didn't know Churchill to speak to at that time? A. No, sir.

Q. You didn't salute him? A. No, sir.

20 Q. Were you introduced to him? A. No, I heard him called Pete, Pete Church and that is all.

Q. How long did you stand in front of the Victory Lunch? A. Not in front, right around the corner.

Q. What corner? A. Of Prospect Street.

Q. How long did you stand there at half-past twelve? A. A few minutes.

Q. Did you do any talking? A. No, sir; I got right into the car.

30 Q. Who told you to get into the car? A. Lombardo.

Q. Lombardo told you to get into some particular car? A. Yes, sir.

Q. What seat did you sit in? A. I don't know whether it was the front or one of the pull-ups from the floor.

Q. Who sat in front? A. Churchill was at the wheel.

40 Q. Who else sat in front? A. I don't know whether it was Luke Walters in the front seat or in the back.

Harry Van Rosenberg—Cross.

Q. Who sat in the back seat? A. Lombardo and Meola.

Q. From the time you met Churchill until you all got into the car did you hear any conversation with Churchill? A. No, sir.

10 Q. None at all? A. They spoke in Italian once in a while which I couldn't understand.

Q. You didn't hear anything did you? A. No, sir.

Q. Did you leave immediately and go to Passaic? A. We picked this Luke Walters up and took him home.

Q. Where did you pick him up? A. On Market Street.

Q. What part? A. At Westerman's restaurant.

20 Q. Who suggested picking him up and taking him home? A. That I can't recall.

Q. Was he a friend of yours? A. I have known him on a few occasions.

Q. Did you suggest it? A. No, sir.

Q. Did Meola suggest it in your presence? A. A. That I can't recall.

Q. Where did you leave Mr. Walters? A. We left him at his house.

Q. Where is his house? A. 77 Cedar Street.

30 Q. Next door to you? A. He lived in front and I lived in back.

Q. How long have you lived there together? A. He must have lived there three or four months before I knew him.

Q. Did Walters go to Passaic with you? A. No, sir.

Q. Sure of that? A. Yes, sir.

Q. He lived at 77 Cedar Street? A. Yes, sir.

40 Q. What time of the night did you get over there with Walters? A. I should judge it was pretty near half-past twelve or one o'clock.

Harry Van Rosenberg—Cross.

Q. Does his wife and family live there? A. His wife does.

Q. Why didn't you get out of the car and go to bed? A. I figured I could go to Passaic and get some money I figured if they came out ahead I am sure of a few dollars.

10 Q. Did Meola show you he had any money? A. No, sir.

Q. Did Lombardo show you that he had any money? A. He had a few dollars I believe.

Q. Did he show you? A. No, sir.

Q. Did you ask him? A. No, sir.

Q. That was the reason you allowed your fellow tenant to get out of the car at one o'clock and go into his home and you went to Passaic to gamble? A. Not to gamble myself, I went with people who were going down to gamble.

20 Q. To secure your rent money in a gambling house? A. Yes, sir.

Q. Were you working at the time? A. I was.

Q. How much did you make a week? A. I was making thirty dollars a week when I got paid.

Q. Weren't you paid for working? A. No, sir.

Q. Avolio didn't pay you? A. Yes, sir.

Q. How did he owe you? A. He owed me, I don't know whether I can be exact but around 30 fifty dollars for salary.

Q. And you continued to work as a bus driver without pay? A. He was giving me a few dollars a week.

Q. How much? A. Exactly I don't know, five or ten dollars.

Q. And you were a bus driver on what run? A. Garfield and Lodi.

Q. Was it still raining when you left 77 Cedar Street to go to Passaic? A. I believe it had let 40 up, stopped.

Harry Van Rosenberg—Cross.

Q. Did you change your seat then? A. I got into the front with Churchill.

Q. Is Walters here today? A. Yes, sir; I believe he is. Yes, sir; he is back there.

Q. Stand up Mr. Walters please. A. Yes, sir; that is him.

Q. What time did you arrive in Passaic? A. 10 I can't say the exact time.

Q. About what time? A. I should judge one or a little after one.

Q. Did you stop on the way from Paterson to Passaic? A. No, we didn't stop anywhere.

Q. At no place? A. No place that I can recall.

Q. Wouldn't you know for certain if you had stopped? A. I can't recall on that case if we did stop. 20

Q. You are in doubt? A. I am in doubt whether we stopped or not.

Q. Did you get out of the car for any reason on the way from Paterson to Passaic? A. No, sir.

Q. Did any of the other passengers in the car get out? A. Not that I know of.

Q. You won't say with certainty you didn't stop some place that night? A. That I can't say with certainty.

Q. Do you recall what time you arrived at the 30 crap game? A. I can't recall exactly.

Q. What time? A. One or a little after.

Q. Was it upstairs or downstairs? A. Upstairs.

Q. Who went upstairs to the crap game? A. I, Meola and Lombardo.

Q. How long did the three of you stay in the crap game? A. Fifteen or twenty minutes.

Q. Who played crap? A. I believe Lombardo was playing. 40

Harry Van Rosenberg—Cross.

- Q. Did Meola? A. I can't recall.
- Q. Were you there? A. Yes, sir.
- Q. Did you see who played? A. There was a big crowd in there and sometimes you got lost.
- Q. Don't you know the number of the street?
A. I don't know.
- 10 Q. Do you know the name of the man who runs it? A. Joe Brown.
- Q. Is he a Paterson man or a Passaic man? A. I didn't know the man. All I know is I heard his name.
- Q. Before you went up in the crap game did you hold any conversation with Churchill? A. I talked to him back and forth making remarks on this and that.
- 20 Q. About the weather? A. Sociable remarks.
- Q. Did you tell him you were coming to Passaic to get your rent money? A. I guess he knew we were going to a crap game.
- Q. Did you tell him? A. I didn't have to tell him.
- Q. Did you tell him? A. Not that I can recall.
- Q. Was there anything said from the moment that you met Churchill until the time the three of you left his car and went up into that crap game about holding up any place? A. No, sir.
- 30 Q. What time did you leave the crap game? A. I should judge about half-past one or a quarter to two.
- Q. Did you win any money? A. No, sir.
- Q. Did Meola win any money? A. That I don't know.
- Q. Did Lombardo? A. I couldn't say.
- Q. Did you get your rent money? A. No, sir.
- Q. When he came out of the crap game you still needed your rent money? A. Yes, sir.
- 40 Q. And you made up your mind you were going to get it? A. No, sir.

Harry Van Rosenberg—Cross.

- Q. When did you make up your mind you were going to get it? A. No mind was made up.
- Q. You didn't talk about it? A. No, sir.
- Q. Did you discuss needing the money so bad?
A. No, sir.
- Q. In holding up any place? A. No.
- Q. You never talked about that? A. No, sir. 10
- Q. You didn't talk about it? A. No, sir. I might have been mentioned in the back, but I didn't hear.
- Q. You were sitting next to Churchill? A. Yes, sir.
- Q. When you came downstairs was Churchill's car in the same place? A. It was parked on the curb, but I don't know whether it was in the same place or not.
- Q. Where was Churchill? A. At the wheel. 20
- Q. Was the motor running? A. Yes, sir.
- Q. Where did you sit after leaving the crap game? A. In the front seat.
- Q. And Lombardo and Meola in the back? A. No Meola in the front seat too I believe.
- Q. The three of you in front? A. Yes, sir, and four in the back.
- Q. Who were the extra two men in the back? A. McElwaine and Charlie Nichols.
- Q. They were in the crap game? A. I don't recall seeing them in the crap game, but they were in another car that pulled to the curb. 30
- Q. How did you leave Passaic to come back to Paterson? A. By Main Avenue.
- Q. From Passaic? A. Yes, sir.
- Q. Was there any talk at all about holding up people in the car with these men there? A. No, sir.
- Q. When you neared Mr. Merrey's saloon at 1003 Main Street, how did the car happen to stop? 40

Harry Van Rosenberg—Cross.

A. We rode past the place and Boots from the back said "Turn the car around and come back here on the side street" so Churchill turned the car around here on Main Street.

Q. Did he say why? A. He said "We're going to knock this joint off."

10 Q. Why didn't you state that on your direct examination to the Assistant Prosecutor? A. I did state it I believe.

Q. Didn't you just say Boots said "Turn the car around?" A. Yes, sir.

Q. Do you now say you told the Assistant Prosecutor "I want to knock that joint off?" A. I believe I did.

Q. You are sure of that are you? A. Yes, sir.

20 Q. Didn't you testify you heard some conversation, but what you said you couldn't distinguish because you were sitting in the front seat? A. You ask me.

Q. Didn't you say that? A. What?

Q. Didn't you testify you heard some conversation, but what was said you couldn't distinguish because you were sitting in the front seat? A. Yes, sir.

30 Q. Then you say now you did distinguish something that was said? A. He talked to them and I distinguished it when he stopped the car.

Q. You now say you did hear something in the back seat that you could distinguish?

Mr. Dunn: I object to the question, I don't think the witness understands the question.

The Court: If he does not he can say so.

40 A. I heard something in the back seat I could distinguish. Not while the car was moving I didn't hear it while the car was moving.

Harry Van Rosenberg—Cross.

Q. It was after the car stopped? A. After the car had stopped in the side street.

Q. You heard Boots say "I am going to knock the place off?" A. Yes, sir, I was on the running board of the car.

Q. Where was Boots? A. Opposite me.

Q. Where was Meola? A. Getting out behind me. 10

Q. Where were you sitting? A. I am sitting in the front seat.

Q. Weren't you sitting in the front seat with Lombardo and Churchill? A. No, sir.

Q. Who were in the front seat? A. Me, Meola and Churchill.

Q. You were out ahead of Meola? A. Yes, sir.

Q. How far was Boots away from you? A. Coming around in back of the car. 20

Q. Were the side curtains up? A. There were side curtains up in the back.

Q. That was the first time you heard anything about a hold-up? A. Yes, sir.

Q. When Lombardo said at the rear of the car as you were getting out with Meola following you? A. Yes, sir.

Q. Where was Churchill sitting on the left hand side at the wheel? A. Yes, sir, at the wheel.

Q. On the extreme left part of the seat? A. Yes, sir, on the left. 30

Q. What did you say when you got out of the car, did you say anything to Lombardo, when Lombardo handed you forty-five automatic? A. No, sir.

Q. Where were you? A. Out standing up.

Q. How far from the saloon? A. Right in front of the saloon, alongside of the saloon.

Q. How far was the automobile from the saloon? A. Alongside of the saloon. 40

Harry Van Rosenberg—Cross.

Q. On Main Street? A. No on a street running this way towards Getty Avenue.

Q. Alongside of it? A. Yes, sir.

Q. When he handed you the gun what did you say? A. I looked at it and said, "What is this for?"

10 Q. What did he say, for your rent money? A. He said "We're going to knock this joint off."

Q. That was the first time he said it? A. Yes, sir.

Q. When he handed you the gun, "I am going to knock this joint off?" A. Yes, sir.

Q. Where was the automobile? A. Standing at the curb.

Q. How far from you? A. Eight or ten feet.

20 Q. The side curtains were up? A. Yes, sir, at the extreme back of both seats.

Q. Who were there when Lombardo said, "I am going to knock the place off," and gave you the gun? A. Why, Meola and Lombardo.

Q. Did you say anything to Lombardo? A. I didn't say anything to him, no, sir.

Q. Didn't you say anything to him not to do it? A. No, sir, I just started to shake.

Q. Did you drop the gun in your nervousness? A. No, but I came near dropping it several times.

30 Q. But did you do or say anything to prevent anybody from carrying out the robbery? A. No, sir.

Q. You were still thinking of your rent money? A. I wouldn't say I was still thinking of that.

Q. You needed money badly? A. Yes, sir.

Q. You were going to get it no matter at what cost? A. No.

Q. Who went in the saloon first? A. I stepped through the door first.

40 Q. Were you still shivering with nervousness? A. Yes, sir.

Harry Van Rosenberg—Cross.

Q. You had your coat collar turned up? A. I pulled it up outside.

Q. Did you have a mask on? A. No, sir.

Q. Or a shawl? A. No, sir.

Q. Did you have you cap pulled down over your eye? A. I had a cap pulled down pretty well.

Q. Which one followed you in? A. I couldn't say which one, I saw one man at the bar with a shotgun. 10

Q. Did that make you nervous? A. That would make anybody nervous I think you would yourself if you stood in there.

Q. I don't doubt it for a moment. Did you make a rush over to the bar? A. After the rest of them came in and stood in back of me I walked over to the bar.

Q. As long as you had them to back you up you went to the bar, is that it? A. Yes, sir. 20

Q. Charley Mary was behind the bar? A. I believe the two of them were behind the bar.

Q. You were the man that put the gun up to Charley Mary? A. Everybody had their hands up.

Q. You had your hand on the gun? A. Yes, sir.

Q. Pointed in the direction of Mary's patrons? A. No.

Q. Where was it pointed at, the floor? A. I might have had it pointed at them or I might have had it pointed at the ceiling or I might have had it pointed at the floor. 30

Q. Then you rifled the cash register? A. Yes, sir.

Q. Then you robbed Charley Mary? A. No, sir.

Q. Who did you rob? A. I just took the cash register, I didn't take anybody else but the cash register. 40

Harry Van Rosenberg—Cross.

Q. You didn't go into the clothes of any of the patrons? A. No, sir.

Q. When you rifled the cash register what did you do with the gun? A. I held it in my hand.

Q. Pointed at the floor? A. I don't know where it was pointed, I was looking at the cash register.

10 Q. After you got the money what became of your gun? A. I was still holding it in my hand.

Q. How long were you in the saloon? A. Exactly I can't say, it happened pretty quick.

Q. When you came out of the saloon who came out first? A. I don't recall whether it was me or Lombardo.

Q. Don't you know? A. I can't state exactly.

Q. Did you still have your gun in your hand when you left the place? A. Yes, sir.

20 Q. Who got in the car first? A. The three of us made a jump to get on after I hollered "Step on it."

Q. Who got in the car first? A. That I can't exactly say.

Q. When you came back to the car, Mr. Van Rosenberg, you said to Churchill "Step on it, we just stuck the joint up," didn't you? A. Yes, sir.

Q. You wanted to notify Churchill that you had held up a joint and wanted to make a getaway, isn't that true? A. Yes, sir.

30 Q. And Churchill said, as you drove along, and came down to Paterson, "You fellows better get out of my car; this thing is liable to get me in bad." A. Yes, sir.

Q. He said that, Churchill did, on the way down from Mary's saloon? A. I believe I was in the front seat with Meola and I think—

Q. You were sitting with Churchill, the three of you? A. Yes, sir.

Harry Van Rosenberg—Cross.

Q. When you came back to Paterson who got out first? A. McElwaine when we were on Tenth Avenue.

Q. Who got out first? A. McElwaine, for that matter, we all got out of the car at the same time out of both sides.

Q. And Churchill went away? A. Yes, sir, 10 drove away with the car.

Q. And left you fellows with the watches and money? A. Yes, sir.

Q. He got nothing? A. I haven't seen him get a thing.

Q. Nothing in your presence, that is right? A. Yes, sir.

Q. You said you thought you heard Bootsey saying something about Bootsey getting his share, but you were not sure whether Churchill heard it or not? A. Yes, sir. 20

Q. Where was Bootsey when he made that statement? A. On the opposite side of the street.

Q. How far from the automobile in which Churchill was riding? A. The car was on this side and Lombardo was on this curb.

Q. What time was it then? A. After two.

Q. At what street corner? A. Tenth Avenue and Twenty-seventh Street, I think.

Q. Churchill made no response? A. Not that I 30 know of; just waved his hand and went away.

Q. I show you a piece of paper and ask you if that is your handwriting? A. Yes, sir.

Q. You wrote this in the office of Mr. Jordan, the lawyer? A. Yes, sir.

Q. And when you wrote it what did Mr. Jordan say to you? A. He didn't say very much to me.

Q. What did he say to you? A. Exactly I can't say what he said.

Harry Van Rosenberg—Cross.

Q. Didn't he ask you if what you put down in writing was the truth? A. Yes, sir.

Q. What did you say? A. I told him yes.

Q. Didn't he tell you if that is not the truth I refuse to be a witness to it? A. No, sir.

10 Q. What did he say? A. He didn't say anything I can recall.

Q. Nothing at all? A. We talked there; he said "What are you going to do?" I said "I am going to make out a statement exonerating Churchill from the hold-up," and he looked at me and said yes. I said that few words to him and then he gave me a piece of paper and a pen and I sat down and wrote one statement out and Churchill took the statement and looked at it and shook his head, and Jordan said "I will dictate some words for you," and I wrote the thing out that he wanted.

20

Q. It was after this statement was done that he said to you "Now, Rosenberg, is that the truth?" A. No, sir.

Q. What did he say? A. Nothing I can recall.

Q. Didn't you just admit he asked you if it was true? A. Yes, sir, I did. You brought that same question up before.

Q. What did I? A. I told you it was the truth.

30 Q. Was that statement the truth? A. No, it wasn't the truth.

Q. Why did you lie? A. Because I was promised help to pay my lawyer's fees and a few other things.

Q. Then you would lie for money? A. Who would lie for money?

Q. You. A. Certainly if I could help me out I would help him out because he came out to the front and was going to help me out.

40 Q. You would lie to help yourself? A. No, I wouldn't.

Harry Van Rosenberg—Cross.

Q. You wouldn't lie? A. No, I wouldn't.

Mr. Stafford: I offer the statement.

Statement admitted in evidence and marked Exhibit D-1 for the defendant.

Q. How did you happen to go to Jordan's office? A. Churchill came up to my house in a car. 10

Q. Was he alone? A. He had another fellow with him.

Q. Who was the other fellow? A. A friend of his.

Q. Is he in court to-day? A. Yes, sir.

Q. What is his name? A. Mooch.

Q. What is his last name? A. I don't know.

Q. Will you stand up. A. That is him.

Q. William Pescatore, you know him? A. I knew him as a bus driver. 20

Q. You are well acquainted with him? A. Yes, sir.

Q. You had no conversation with Mr. Pescatore about this case after you were let out on bail? A. I used to meet him once in a while and talk it over with him.

Q. Did you ever tell Mr. Pescatore to tell Pete Churchill you wanted to talk to him? A. No, sir.

Q. Never? A. No, sir.

Q. Didn't you send for Pescatore and ask him to come to jail? A. No. 30

Q. Did he ever go to the jail? A. Yes, sir, he came with him one afternoon.

Q. For what? A. To see Churchill.

Q. Why did you go to jail? A. To see him; why do you go visiting?

Q. Didn't you ask Mr. Pescatore to go up to the jail? A. I asked him to take me up in his car because I had to go to work that afternoon. 40

Harry Van Rosenberg—Cross.

Q. You had already made a statement to the police? A. I told the police that I had not signed any statement.

Q. Did you tell the police the same story as you are telling now? A. Yes, sir.

10 Q. Why did you want to go and see a man whom you had implicated in the statement to the police? A. That I had implicated?

Q. Can you answer that? A. I can't answer that; I don't get the question.

Q. Why did you want to go and see a man whom you had implicated in a statement to the police? A. I have not implicated him in any statement as yet.

20 Q. You had concealed that fact? A. No, the fact wasn't concealed, the police had found out about a Church.

Q. From you? A. Not from me.

Q. Didn't you make a statement to the police or the Prosecutor's detectives before you went to the county jail to see Churchill? A. No, sir, there was a slip with names on it I had signed.

Q. Did you read that slip? A. Yes, sir.

Q. Didn't you see Churchill's name on it? A. I put his name on.

30 Q. Why did you want to see Church in the county jail after you had given his name to the police? A. I don't remember whether or not his name had been given to the police at that time.

Q. Didn't you just say you put his name on the list of names? A. Yes, sir, but whether it was put down before I went to see him in the county jail I don't know. I don't take a diary and mark my name and every place I go every time I do something.

40 Q. What prompted you to go to see Churchill in the county jail with Mr. Pescatore? A. I didn't

Harry Van Rosenberg—Cross.

know whether Pete Churchill had received any money on this affair.

Q. You wanted to learn whether he had received any money in the affair so you could go back and tell the police? A. No, sir.

10 Q. What interest was it of yours? A. Because I had figured before Churchill didn't know a thing about this.

Q. What made you figure that? A. Because Boots had taken his share of the money and I had not seen Churchill get any of it in my presence.

Q. You figured he was an innocent party in the deal? A. Yes, sir.

Q. And you went up to the county jail after he was brought back to Paterson to find out whether he got the Twelve Dollars? A. Yes, sir.

20 Q. So you could then say he was in on it and knew all about it? A. Yes, sir.

Q. This is the same Mr. Pescatore you spoke to about making a statement? A. I never spoke to anyone outside of Pete Churchill about signing a statement.

Q. Do you deny it? A. I don't deny it; I call it a lie.

30 Q. Do you know what I am trying to ask you? A. Certainly; is this the man I told I would sign a statement.

Q. Yes. A. I said no; it is a lie.

Q. How many times did you talk to Pescatore about this alleged crime after you got out on bail? A. I used to meet him around—

Q. How many times did you discuss this case with him? A. I don't know how many times.

Q. About? A. I don't know.

Q. What? A. I don't know, it might have been one, it might have been ten.

Harry Van Rosenberg—Cross.

Q. On this one or ten occasions, didn't you insist that Churchill was not implicated in this thing? A. No.

Q. And that he was entirely innocent? A. No.

Q. But you did talk about the case with Pescatore? A. Yes, sir.

Q. Did you ever send for Pescatore? A. No.

Q. Did you ever send anybody to him to tell him you wanted to see him? A. No, sir.

Q. Never on any occasion? A. No, sir.

Q. But you did send for him to go to the county jail with you? A. I met him on the street and I said "Have they got Pete back yet?" and he said "I don't know," and I said "I am going up to see." I said "You want to run me up in your car?" and he said "Certainly."

Q. Where did you discuss this statement you made with Pete Churchill at the time he promised to give you money? A. In front of my house.

Q. At night? A. Yes, sir.

Q. What time? A. Between six and eight.

Q. Was anybody else present? A. I believe Mooch was in the car.

Q. Pescatore was there? A. I said Mooch.

Q. Didn't you tell Pescatore you wanted to see Churchill on this occasion? A. No, sir.

Q. What did Churchill say to you? A. I called Churchill up first.

Q. What about? A. They had been coming to my house telling my wife they had a job for me.

Q. You did call up Churchill? A. Yes, sir, I called Mooch.

Q. What did you say to Mooch? A. Mooch said "One minute, wait a minute," and Churchill came to the phone.

Q. What did you say to Mooch? A. I said "Hello, Mooch, is this you?" and he said "Yes."

Harry Van Rosenberg—Cross.

Q. Did you tell him who you wanted to speak to? A. I told him I wanted to speak to Mooch—

Q. Mooch? A. Yes, sir.

Q. What did you want to speak to him about? A. He wanted to see me; wanted me to call him up.

Q. Who told you that? A. My wife.

Q. Is she here in court? A. Yes, sir.

Q. When did she tell you that? A. Two or three nights in succession.

Q. What happened? A. Mooch spoke to me and then Churchill got on the wire.

Q. What did Mooch say? A. He said "Hello, just a minute, somebody wants to talk to you," and he put Church on.

Q. Had you talked to Churchill on the wire before this? A. No, sir.

Q. You don't know whether it was Churchill or not? A. In the beginning I knew it was Mooch and I heard him holler to Pete Church and Churchill got on the wire.

Q. You don't know whether Churchill got on the wire or not? A. No, I couldn't see over the telephone.

Q. You don't know who was talking to you? A. Yes, I do by the voice, but I couldn't see in two places at once; I am not invisible.

Q. Had you ever phoned to Churchill over the phone before? A. No, sir.

Q. Had you ever spoken to Churchill outside of this time of the alleged robbery and the time you went to the county jail? A. No, sir.

Q. And you knew his voice? A. Yes, sir.

Q. As a result of that conversation what happened? A. I signed a statement for Churchill.

Q. Do you mean this actual conversation about a statement took place over the telephone? A. No, sir.

Harry Van Rosenberg—Cross.

Q. As a result of this telephone communication what happened? A. What happened as a result of this telephone conversation, the wind-up was I would sign a statement for Churchill.

10 Q. Did you have any further conversations with Churchill? A. That Churchill was to come up to my house and he came up there and I rode back down town with him.

Q. When? A. Right after the phone call.

Q. You went down town? A. With Churchill in the Dodge Sedan.

Q. Was Pescatore there? A. Pescatore was there.

Q. Did the conversation you had with Churchill, was that in the presence of Pescatore? A. Yes, sir.

20 Q. All three of you were together? A. Yes, sir.

Q. Having made this statement you say Churchill promised you money? A. Yes, sir.

Q. In the automobile? A. Yes, sir.

Q. Was Pescatore there then? A. Yes, sir, Pescatore said to me after—

Q. Churchill promised you what? A. He promised me Fifty Dollars.

Q. For you to lie? A. Yes, sir, to exonerate him.

30 Q. To lie? A. You can call it lie if you like.

Q. It is indifferent to you whether it is a lie or not, is that it? What else did he promise you besides the Fifty Dollars? A. He promised me a whole lot of things I never got.

Q. What else? A. He promised me money.

Q. He didn't name a specific amount? A. He told me there will be some dough in it for me.

Q. He didn't say Fifty Dollars? A. He said I got Fifty Dollars here if you want it.

40 Q. Was that in Pescatore's presence? A. Yes, sir.

Harry Van Rosenberg—Cross.

Q. Did you take it? A. I didn't want it. Here is the idea—

Q. Why didn't you take it? Did you have any money in your pocket? A. I told you I didn't want to take it at the time—

Q. Why didn't you want to take it? A. You will have to go and pick up your own answer to 10 that question because I have no answer for it.

Q. Is it not a fact, Rosenberg, you can't answer it because it is not true? A. It is as true as I am sitting here and as true as you are standing there.

Q. What else did he offer you besides money? A. That's all he offered.

Q. That is all he said he was going to reward you with, the money? A. He said "I will fix you up."

Q. He was going to reward you with some 20 money if you made a statement? A. He said "I will fix you up."

Q. Are these the only words he used? A. He used a few more words. I have no diary here now of the exact words he used, but he told me he would give me some money to get me a lawyer. He said, help pay your lawyers' fees and help pay your bondman so you can stay out on bond.

Q. He said that in the presence of Pescatore? A. Yes, sir. 30

Q. Did you go to Churchill after the money he promised you? A. No, sir.

Q. Didn't you ever go near him? A. He was supposed to come to me.

Q. Did you ever go near him? A. No, sir.

Q. Why didn't you? A. Because I figured he was a man of his word and he would come up and see me.

Q. You figured if you lied for him he would tell the truth? A. Explain the question and I will 40 answer it.

Harry Van Rosenberg—Cross.

Q. Didn't you lie when you made an untruthful statement before Jordan? A. Yes, sir.

Q. Yet you felt he was telling the truth he was a man of his word when he promised you money? A. Yes, sir.

10 Q. And you never asked for it? A. He was going to come up with Pescatore in the car on Monday morning before the trial and was going to let me have the money.

Q. How long after you had made this statement, did you disclose the fact of the making of it to the Assistant Prosecutor or anybody in the Prosecutor's Office? A. I should say several weeks.

20 Q. Why did you make a false statement, and then immediately turn around and notify the Prosecutor's Office? A. They came over to me in the county jail, and asked me did I sign a statement for Churchill, and I said, "Yes I did."

Q. Did you notify them before that you had? A. No, sir.

Q. Now, you say you did receive some money off Churchill? A. Yes, sir.

Q. Was that after you had disclosed the facts in the county jail that you had signed a statement? A. I have been in the county jail ever since the first day this case was called.

30 Q. Did you get that fifteen dollars from Pete Churchill, after you had disclosed the facts to the Prosecutor's representative that you had made a statement in Jordan's Office? A. No, sir.

Q. Was it before that? A. Yes, sir.

Q. You received the fifteen before you told the Prosecutor about it? A. Yes, sir.

40 Q. Did you tell the Prosecutor's Detective or the Assistant Prosecutor, you had received the fifteen? A. After they came over and asked me if I had signed a statement for him.

Harry Van Rosenberg—Cross.

Q. Did you tell them where you got it? A. Yes, sir.

Q. Where did you get it? A. Off Churchill.

Q. Where did you receive it? A. On the courthouse steps.

Q. Were you alone? A. My wife and Nick Holster stood by. 10

Q. Do you see Nick in court to-day? A. Yes, sir.

Q. Was Pescatore there? A. No, sir.

Q. When he handed you the money, what did you say? A. I said, "I need this and need it bad this morning," and he says, "That is all I got."

Q. Did you talk to him again about it? A. No, sir.

Q. Did you ask him "Why are you only giving me fifteen dollars when you promised me lots of money to pay my lawyer off, and to pay the professional bondsman?" A. No, sir. 20

Q. Why didn't you? A. I am taking a man's word I figured he is a man of his word, he is going to come and see me.

Q. How long after you got the fifteen dollars off him did you notify the detectives that you made a statement in Jordan's office? A. I didn't notify the Prosecutor or the detectives.

Q. Who came over to the jail to see you? A. Brooks and Herman. 30

Q. How long before Brooks and Herman came over to the county jail had you received the fifteen dollars? A. I answered that about three times, out on the court house steps the first Monday morning this case was called.

Q. Do you know the month and the date? A. You know the date you were subpoenaed to come up on the trial for Churchill. 40

Harry Van Rosenberg—Cross.

Q. That was on Monday, February eighth, wasn't it that the case was going to be tried? A. I don't know the exact date.

Q. How long before that did you tell this to the officers? A. It was two weeks after or a week after that.

10 Q. After having received the fifteen dollars and after telling the officers did you have a further conversation with Churchill? A. No, sir, I didn't have a chance to see him I was in jail.

Q. Did you discuss it with Pescatore? A. I was in jail.

Q. Couldn't you discuss things with people in jail? A. Not unless they came to see me.

Q. They don't permit visitors? A. They do absolutely.

20 Q. Did you discuss it with anybody while in the county jail? A. No, sir.

Q. After you returned to your home did you have any money with you on the night of the robbery? A. I had a few dollars.

Q. How much? A. Twelve or fourteen the exact amount I don't know.

Q. Did you go home and go to bed? A. Yes, sir.

30 Q. Did you give the money to your wife to pay the rent? A. I gave it to her the next day.

Q. Did you tell her to pay the rent? A. I gave it to her next day I didn't tell her what to do with it.

Q. Did you tell her where you got it? A. No, sir.

Q. Did she ask you where you got it? A. That I don't remember.

Q. You gave it to her all, did you? A. Yes, sir, gave it all to her.

40 Q. Then you were broke again? A. Broke again.

Harry Van Rosenberg—Cross.

Q. You went up to Churchill's mother's house? A. When?

Q. Did you go? A. Up to Churchill's when he first got arrested.

Q. Up where his mother and father live? A. Up to Hamburg Avenue.

Q. Didn't you tell the woman you talked to, he had nothing to do with this robbery? A. That I don't recall. 10

Q. What did you go up to mother's home for? A. I wanted to help Churchill out I figured he was innocent in the beginning.

Q. In the beginning? A. Yes, sir, when he first got arrested.

Q. Was there anything to make you change your mind since he has been arrested? A. No. 20

Q. You went up to tell the mother and father that Pete Churchill was innocent of any wrongdoing? A. I didn't see his father, I seen his mother. 20

Q. His mother then? A. Yes, sir.

Q. You told his mother Pete was innocent of any wrongdoing? A. I don't know whether I told her or not.

Q. Didn't you go up there for one particular purpose? A. Why did I go up there, I told you about three times, I wanted to help him. 30

Q. How? A. I will let you find out the way.

Q. How were you going to help him? A. How is he going to get out?

Q. How were you going to help him. Can't you answer that? A. I have answered it about nine times, that I figured Pete Churchill was innocent.

Q. How were you going to help Churchill out when you went up to his home and talked to his mother? A. I can't answer for his mother. 40

Harry Van Rosenberg—Re-direct.

Q. How long before that statement was made, did you pay your visit to his mother's home? A. I should judge about eight months.

Q. No money had been offered to you then? A. Yes, sir.

10 Q. Money had been offered? A. No, you didn't ask that.

Q. Nobody asked you to make any false statement when you went to his mother's home? A. No, sir.

Q. You did that of your own free will and of your own volition? A. Yes, sir.

Q. Because you thought Churchill was innocent? A. Yes, sir.

20 *Re-direct examination by Mr. Dunn:*

Q. You were quite surprised when you were informed by the Detectives and others that we had learned that you had signed a statement? A. Yes, sir.

Mr. Stafford: I object to that as a conclusion of the witness and not admissible, what his feelings are.

30 Q. When the car left Mary's saloon on the morning of the robbery. Did Churchill at any time say after you left the saloon that he didn't want to go along or make any protest that you noticed?

Mr. Stafford: I object to it as leading. Objection sustained.

40 Q. What course did the car take after you left Mary's saloon? A. To Getty Avenue to Madison Avenue, Madison Avenue to Tenth Avenue and Tenth Avenue to Twenty-seventh Street.

Harry Van Rosenberg—Re-direct.

Q. Who suggested the route or the way?

Objected to by Mr. Stafford.

Q. You said in answer to a question on cross examination you said Churchill was innocent? A. I understood Churchill to be innocent. 10

Q. What do you mean by that? A. That he didn't know anything about it at the time of the hold-up.

Q. But after the hold-up took place he knew—

Objected to as leading.

Q. After the hold-up what did he know?

Mr. Stafford: I object to that as a conclusion of the witness. 20

Q. Would you say he was innocent after the hold-up took place?

Mr. Stafford: I object to that as a conclusion of the witness.

Q. Do you think Churchill knew the place was held up after it was held up?

Mr. Stafford: I object to it as a conclusion of the witness. 30

Objection sustained.

Q. Did you think Churchill was innocent after the hold-up?

Mr. Stafford: I object to what the witness thinks.

Objection sustained.

James Meola—Direct.

JAMES MEOLA, sworn for the State.

Direct examination by Mr. Dunn:

- Q. How old are you? A. Twenty-five.
- Q. Where do you live? A. 157 Third Avenue.
- 10 Q. Paterson? A. Yes, sir.
- Q. On the evening of April 10th, were you out in an automobile, were you out riding in an automobile? A. It was in the afternoon five o'clock.
- Q. Did you meet Van Rosenberg in the evening of April 10th? A. He met me at my home.
- Q. Where did you go? A. I went to his home he told me he bought a car and wanted to—
- Q. Did you go out for a ride with him? A. Yes, sir.
- 20 Q. Who went with you? A. Van Rosenberg and I.
- Q. Did you meet anybody on the way? A. No, sir.
- Q. Later on did you meet Lombardo and Walters? A. Yes, sir.
- Q. Did they go for a ride with you? A. Yes, sir.
- Q. Where did you go? A. We went out for a ride towards Mountain View.
- 30 The Court: Did I understand you to say Lombardo and Walters went with you?
- A. Yes, sir.
- Q. What happened? A. Rosenberg's car broke, wouldn't run any more.
- Q. What did you do then? A. He parked it in some farm along the road.
- Q. Where did you go? A. Took a bus back to Paterson.
- 40 Q. Who did? A. Van Rosenberg, Luke Walters, Bootsey and I.

James Meola—Direct.

- Q. Who was Bootsey? A. Lombardo.
- Q. Had you known him for some time? A. No, sir.
- Q. How long had you known him? A. I meet him that night.
- Q. Where did you go when you got back to Paterson? A. I walked with Luke Walters as far as Westerman's on Market Street and stood there for a while. 10
- Q. Was Van Rosenberg with you? A. Yes, sir, but he left us.
- Q. Where was Bootsey? A. With Van Rosenberg.
- Q. What time was this? A. About nine o'clock.
- Q. Where did you go after that? A. I stood there. 20
- Q. Alone? A. With Luke Walters.
- Q. What happened after that? A. I stood there and a couple of young fellows came along there and stood there talking and then Van Rosenberg came with Pete Churchill and Frank Lombardo.
- Q. How did they come? A. In an automobile.
- Q. What kind of an automobile? A. I don't know what kind it was, but it was a big car.
- Q. Was it an open or closed car? A. Open.
- Q. Who was driving? A. Pete Churchill. 30
- Q. Who was in the car when they came to where you were? A. Pete Churchill, Van Rosenberg and Lombardo.
- Q. Who got in with you, if anybody? A. Luke Walters and I got in.
- Q. Who was this Pete Churchill, that you have spoken of, is he in court to-day? A. Yes, sir.
- Q. Would you mind coming down from the stand and putting your hand on his shoulder? A. Yes, sir. (Witness places hand on shoulder of Defendant Churchill.) 40

James Meola—Direct.

Q. How long had you known Churchill, before that time. That was April last, was it? A. Yes, sir.

Q. How long before that had you known Churchill? A. I didn't know him at all I seen him different times, but I didn't know him to speak to.

10 Q. What was said, if anything, when you got in the car? A. Van Rosenberg asked me to take a ride and Luke Walters asked him if he would take him home. I got into the car and a remark was made that there wasn't any gas in the car and this man Walters said, "Drive into the Alexander Hamilton, and I will buy gas."

Q. You are quite sure that was Walters? A. Yes, sir.

20 Q. And that he would buy gas? A. Yes, sir.

Q. Where did they go then? A. Then we took Luke Walters home and Bootsey and Van Rosenberg went to Passaic.

Q. Did you go along with them? A. Yes, sir.

Q. When was anything said for the first time about Passaic that you recall? A. I think it was when we was taking Luke Walters home, they were going to Passaic, so Luke Walters says, "Take me home."

Q. You went to Passaic? A. Yes, sir.

30 Q. Tell us what happened, did you get to Passaic? A. Yes, sir.

Q. Where did you go and what did you do? A. Went to Passaic and we parked on some side street there near the depot, near the Passaic depot.

Q. What happened? A. Van Rosenberg and Bootsey got out of the car and told me they was going up to the crap game and wanted me to go along, and I said, "No," and Pete Churchill and

40 Van Rosenberg and Bootsey went upstairs, no

James Meola—Direct.

Pete Churchill didn't go, Pete Churchill and I stayed in the car, I said that I didn't want to go I was too sick.

Q. How long were they up there? A. I don't know I fell asleep in the back of the car.

Q. About what time was it they got to Passaic? A. About ten or half-past ten. 10

Q. How long did they stay in Passaic? A. Until about two o'clock in the morning.

Q. What did you do next after the time they went upstairs to the crap game? A. I slept in the car, I fell asleep in the car and an officer came there and wanted to know what we were doing there parked so long and we told him we was waiting for a couple of friends of ours up in the club.

Q. What was the next thing? A. Van Rosenberg and Bootsey came downstairs with Charlie, Whitey and Bill. 20

Q. Where did they go? A. Some fellow from Passaic was with them who had a car and was going to take Whitey and Charlie and Bill to Paterson, so Bootsey invited them and Van Rosenberg too to get in our car that we was going to Paterson and they could go with us.

Q. Who was driving the car you referred to as your car? A. Pete Churchill.

Q. Did they all get in your car? A. Yes, sir. 30

Q. Where did you go? A. We were going to Paterson.

Q. On which road? A. Main Avenue or Main Street.

Q. Did anything happen on the way to Paterson? A. Yes, sir, they all pulled out guns—

Q. Who? A. All of them.

Q. Who do you mean by all of them? A. All that was in the car.

Q. Name who was in the car at that time? A. 40 Bootsey, Van Rosenberg, Bill, Charlie and Whitey,

James Meola—Direct.

pulled out guns and said, "If we ever got picked up there would be some write-up in the paper."

Q. Where were you sitting? A. In the back of the car.

Q. Did you see Van Rosenberg pull out a gun?

A. No, sir.

10 Q. What was said besides that, if anything, on Main Street? A. We were riding along Main Street, and all of a sudden Charlie and Whitey suggested about a hold-up at Mary's Cafe that he was open and that he always carried a lot of money.

Q. Who said this? A. Charlie.

Q. Charlie who? A. Charlie the waiter.

Q. Charlie the waiter says he carries a lot of money? A. That the Mary Brothers carried a lot

20 of money.
Q. Did he say anything else about what they had? A. That they had about Fifteen Hundred Dollars on them, no more than that was said and Bootsey tells Churchill to turn around we will stick the joint up and Churchill turns around and pulls up in front of the place and Van Rosenberg and Bootsey got out and looked into the place.

Q. How far from the front door did the car stop? A. About twenty feet.

30 Q. Could you see the front door from where the car was? A. You could see it sideways like.

Q. Bootsey and Van Rosenberg went up to the front door? A. Yes, and they looked in and said there was too many in the place.

Q. What did they do then? A. Came back.

Q. When they came back, did they have guns? A. Yes, sir.

Q. Where were they. The guns when Bootsey and Van Rosenberg came back up to the car do I understand you to say they had revolvers? A.

40 Yes, sir.

James Meola—Direct.

Q. Where were they? A. In their hands.

Q. Who was in the front seat at this time? A. There was nobody in the front seat only Pete Churchill.

Q. Where was he? A. In the car.

Q. Was he on the left side or right side. Was it a left or right hand drive? A. A left.

Q. Is that where he was sitting? A. Yes, sir.

Q. What was said by Lombardo and Van Rosenberg, when they came back to the car? A. That there was too many in the place and they needed another man to go in with them.

Q. How far were they away from the car when they said that? A. Right close to the car.

Q. Where were you sitting in the front or back? A. Back.

Q. How far away were you from them when they said that? A. I was sitting in the car about two or three feet.

Q. How far was Churchill away from them when they said that? A. About the same.

Q. Go on and tell us what was said? A. Charlie the waiter said the Mary Brothers knew him.

Q. Where was Charlie the waiter sitting with reference to the place you were sitting, were you sitting in the back seat? A. Yes, sir.

Q. Was he in the back seat? A. Yes, sir.

Q. On your right or left? A. He was on my right.

Q. Charlie the waiter was on your right? A. Yes, sir.

Q. Was anybody else in the back seat beside yourself? A. Yes, sir.

Q. Who? A. Bill.

Q. Was anybody else in the car beside Pete Churchill, Bill and Charlie the waiter? A. Yes, sir, there was Whitey, Charlie the waiter and Bill and I.

40

James Meola—Direct.

James Brooks—Direct.

Q. Where was Whitey at this time? A. He was on the left.

Q. Where was Bill sitting, was he on your left?

A. He was sitting in the back.

Q. Was anybody on those chairs that pull up?

10 A. Yes, sir.

Q. Who was on these chairs? A. Bill and Whitey.

Q. You were sitting in the back seat with Bill and Van Rosenberg? A. I was sitting in the back there was Van Rosenberg, Bill, Charlie and Whitey sitting on the seats, Charlie to the right and Whitey to the left.

20 Q. When Lombardo and Van Rosenberg came back to the car and they said what you said a moment ago then Charlie the waiter said something about them knowing him? A. Yes, sir.

Q. What did he say? A. That he was known and that he couldn't go in.

Q. Did you hear Charlie the waiter say that? A. Yes, sir.

Q. How far were you away from him? A. Right close to him in the car.

Q. Where was Pete Churchill? A. Sitting in the front of the car at the wheel.

30 Q. Was he the same distance away from him that you were? A. Yes, sir.

At this point a recess was taken until 2 P. M.

JAMES BROOKS sworn for the State.

Direct examination by Mr. Dunn:

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

James Brooks—Direct.

Q. In what capacity? A. Detective, Detective Bureau.

Q. Did you receive a report of a robbery that occurred at 1003 Main Street, during the month of April last? A. I did.

Q. Do you know the defendant, Peter Churchill? A. I do. 10

Q. When did you first see the defendant Peter Churchill after the robbery? A. The robbery was on April 11th; the first I seen him after that was September 3rd, 1925.

Q. Where did you see him? A. On the corner of Fourth and Christian Streets, Philadelphia.

Q. Did you have a talk with him at that time or what did you do? A. Detective Herman and I in company with a Philadelphia detective placed him under arrest there at 10 o'clock at night. 20

Q. Where did you go? A. To the headquarters in Philadelphia.

Q. Did you have a talk with him? A. A short talk, not very much; it was late at night and I wanted to get back.

Q. Did you later have a talk with him in Philadelphia, or is that all the talk you had that night? A. Why, it concerned a previous arrest of his in Philadelphia; the talk we had with him at that time was that he had been arrested for— 30

Mr. Stafford: I object to it as irrelevant, immaterial and incompetent.

Objection sustained.

Q. You had a talk with Peter Churchill on the night you arrested him in Philadelphia? A. Yes, sir, a few words.

No cross-examination.

James Meola—Recalled—Direct.

JAMES MEOLA, recalled for the State.

Direct examination continued by Mr. Dunn:

Q. That conversation was while the car was
10 alongside of Mary's saloon at 1003 Main Street,
Mr. Meola?

Mr. Stafford: I object to it as leading.

Q. Where was this conversation had that Mr.
Lee has just read to you, where was the car then?
A. Parked on the side street of Mary's saloon
there; that is where this conversation took place.

Q. What was said after that? A. After Lom-
bardo—

Q. Did you say Lombardo came back to the car?
20 A. Yes, and Van Rosenberg.

Q. What was said? A. That there was too
many in the place and they needed another man
to stick the place up.

Q. Just go on and tell us what was said? A. So
they asked Charlie, the waiter, to go in and he
said he was known and he couldn't go in; he
didn't have any mask and couldn't go in. So
Whitey had the same story; he couldn't go in,
and Bill couldn't go in, and they asked me to go
30 in, and when they asked me to go in, I told them
to cut me out, I didn't want to go in.

Q. Did they ask Churchill to go in? A. No, sir.

Q. What was he doing? A. He was at the
wheel.

Q. Do you recall whether or not the motor was
running at this time? A. That I can't remem-
ber, I am not sure if it was running or stopped.

Q. After this conversation what did you do?
A. They asked me to go in and I told him to cut
40 me out, I didn't want to go in; I told them I felt
too sick, I didn't want to go in.

James Meola—Recalled—Direct.

Q. Where were you in the car? A. Sitting in
the car in the back seat.

Q. Did you get out of the car? Or you told
them to cut you out? A. Yes, sir.

Q. After you said that did you later get out
of the car? A. Yes, sir; I got out of the car and
went into the place with them. 10

Q. Before you went into the place did anything
happen that you recall? A. I didn't have any gun,
so Bill handed me a gun and said, "Go ahead in,
what is the use of being yellow about it, go ahead
in."

Q. What was Churchill doing at that time? A.
Sitting at the wheel.

Q. You say Bill handed you this gun? A. Yes,
sir. 20

Q. Then what happened? A. Van Rosenberg
says, "Come on, Skinney, what is the use of being
yellow about it, come on in, let's take the joint."

Q. Where was Van Rosenberg when he said
that to you? A. Out on the curb close to the
car.

Q. How far away from you? A. About a foot
or two; he was right close to the car.

Q. How far was he away from Churchill? A.
About the same distance.

Q. Did you have any difficulty understanding
what he said or hearing what he said? Could you
hear what Van Rosenberg said? A. Yes, sir. 30

Q. Did you have any difficulty in hearing what
he said? A. No, sir.

Q. Then you got out of the car? A. Yes, sir.

Q. Where did you go after you got out of the
car? A. I went in Mary's saloon.

Q. Who went first? A. Van Rosenberg.

Q. Who was second? A. Bootsey.

Q. Who was third? A. Myself. 40

James Meola—Recalled—Direct.

Q. How did you go into the saloon, by what door? A. By the front door.

10 Q. What happened when you went in? Go ahead and tell us what happened from the time you went in and what you did. A. Van Rosenberg walks right in and Bootsey walks right in and I followed them, I kind of laid back and they walked in; Van Rosenberg went in there and shouted out, "Hands up," and Bootsey says, "Hands up," and they had them all up when I went in, and at the same time Van Rosenberg had the cash register open and was taking out the money.

20 Q. What was Bootsey doing? A. Bootsey had them lined up by the bar and there was some man in there, I don't know if he had a shotgun or what, and Bootsey told him to drop it, and counted one, two, three, and said drop it or I will shoot, and the man dropped it.

Q. What did Bootsey do? A. Lined them all up.

Q. After that what did he do? A. Commenced in searching them.

30 Q. What were you doing during this time? A. Before I went in there this here Whitey and Charlie told me the Mary brothers always carried a lot of money on them and had a diamond ring.

Q. Where did they tell you this? A. In the car before we stopped it.

Q. Before you got out? A. Yes, sir.

40 Q. All right, what did you do then while Bootsey was searching the others, what did you do with reference to that? A. The Mary brothers had their hands up and I noticed the diamond ring and tried to get it off and I couldn't get it off, and he said he didn't have it off for two years, so I tried it and couldn't get it off, so I gave

James Meola—Recalled—Direct.

it up as a bad job. I tried to get the ring off but couldn't and Bootsey and Van Rosenberg were standing there with their guns pointing at them and had them all lined up and Bootsey was going through them; then he asked me if I got the diamond ring off him. I told him no, I couldn't get it off. Then he said, "I will get it off if I have to bite his finger off," and he tried to get it off and couldn't get it off, and all of a sudden he says, "Come on, let's go." 10

Q. Was Bootsey taking anything out of the pockets of the men in the place? A. No, sir, I know he was searching them, but I don't know what he took out.

Q. You were working on the ring? A. Yes, sir.

20 Q. Then who went out of the saloon first? A. I couldn't exactly tell you who went out. I know I was the last one out. They said, "Come on, let's go," and I seen them run out and I followed them.

Q. Then where did you go when you went out of the saloon? A. Into the car.

Q. Was the motor running when you got into the car? A. Yes, sir.

30 Q. What was said when you got to the car, do you remember anything that was said there or what was said first? A. They asked me if I got the bankroll.

Q. Who asked you that? A. Charlie and Whitey and Bill.

Q. Was that before you got into the car or after you got into the car? A. After we got into the car, the car was going.

40 Q. Where was Charlie sitting when he asked you that? A. Charlie was sitting in the back seat.

James Meola—Recalled—Direct.

Q. The back seat or one of these pull-up seats?
A. The back seat.

Q. Where were you sitting? A. On one of these pull-up seats.

10 Q. What else was said? A. They asked me if I got Mary's bankroll and I told him I didn't have it, and Rosey said he didn't have it, and Bootsey said he didn't have it, and none of us had it, and Charlie he kinda searched my overcoat pocket and I told him I didn't get it. I couldn't even get the ring off him.

Q. Who was sitting in the front of the car at this time? A. Van Rosenberg was sitting in the front.

20 Q. You say they asked Van Rosenberg also if he got the bankroll? A. Yes, sir.

Q. What did he say? A. He said he just got the money in the cash register.

Q. Could you hear him say that? A. Yes, sir.

Q. Churchill was at the wheel then? A. Yes, sir.

Mr. Stafford: I object to the question as leading.

The Court: The question is answered.

30 Q. Do you recall anything that was said about the car starting or anything that was said before you got into the car? A. Before I got into the car? When we got into the car they told him to step on it and Charlie says, "Shoot right down, go right straight down," he says, "I will show you," and Charlie, the waiter, was directing Pete Churchill what streets to take to make our get-away.

Q. Did he say don't go on Main Street? A. He says, "Keep off the Main Street."

40 Q. Did Churchill step on it? A. Yes, sir.

James Meola—Recalled—Direct.

Q. Did the car go fast or slow? A. Fast.

Q. Where did you go from there? A. Around Tenth Avenue near Madison Avenue.

Q. Did the car stop there? A. Yes, sir.

10 Q. Do you remember anything that was said before the car stopped? A. The car stopped and we all got out.

Q. Do you remember anything being said before the car stopped up on Madison Avenue and Tenth Avenue. Well, do you remember anything that was said after the car stopped? A. The car stopped and we all got out and Pete Churchill told Bootsey to take care of his end.

Q. What did Bootsey say? A. He says, "Never mind don't worry I will take care of your end."

20 Q. What else was said at that time, if anything? A. The car was stopped and we all got out of the car and Pete Churchill said "I will leave you off here and then I will go by myself."

Q. Did he say why? A. So it wouldn't look suspicious.

Q. You didn't live near Tenth Avenue and Madison Avenue? A. No.

30 Q. Did anybody in the party live near there right around at that point? A. I don't know, but this Lombardo was supposed to be living there afterwards I found out he lived around there.

Q. What happened after that, you say Churchill went away with the car is that correct? A. Yes, sir.

40 Q. What happened to the rest of the members of the party? A. Van Rosenberg stood there counting the money he had some bills and he was counting them and Whitey said "How much you got there" and Van Rosenberg showed him and Whitey pulled some bills out of his hand I don't know how much he took and said "That is enough"

James Meola—Recalled—Direct.

for my bit'' and Charlie, Bill and Whitey, the three of them left together.

Q. Did they get any jewelry? A. I don't know.

Q. Charlie, Bill and Whitey then left you at that point? A. Yes, sir.

10 Q. That left you and Bootsey and Van Rosenberg? A. Yes, sir.

Q. Then where did you go? A. Bootsey left for a few minutes and then he came back again and then Van Rosenberg counted out the money and gave me around Ten or Twelve Dollars.

Q. Do you know how much he gave Van Rosenberg? A. Van Rosenberg had the money.

20 Q. Just tell us roughly how it was divided? A. I don't know, Bootsey and Van Rosenberg they done the dividing and they handed me between Eleven and Twelve Dollars in change, Eleven eighty or Twelve Dollars I know it was between Eleven and Twelve.

Q. Did each of you three get one-third of the money? A. Yes, sir.

Q. Or was there another division made? A. It was divided in four the way I understood it.

Q. What was the way you understood it? A. It was divided up between I—

30 Mr. Stafford: I object to this unless the defendant Churchill was present and participated in it.

Mr. Dunn: I think the division of the money may be stated in what way it was divided.

Q. Just tell us how it was divided in what share. A. The money was divided in four shares.

40 Mr. Stafford: I object to that unless the defendant was present.

James Meola—Recalled—Direct.

The Court: The question is what was the division how much did each one get, there were three of you that were dividing the money, how much did each of you get?

A. Twelve Dollars apiece.

Q. How much money did Lombardo get? A. 10 Lombardo got Twenty-four Dollars.

Q. You said a moment ago he got Twelve Dollars. A. Twelve Dollars and then he got Pete Churchill's.

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

The Court: Strike it out.

Q. You mean he got Twenty-four Dollars? A. 20 Yes, sir.

Q. What about the jewelry? A. I don't know anything about that.

Q. When did you see Churchill for the first time after that occasion? This was in April. A. Yes, sir.

Q. When did you next see Churchill what month? A. Around November and he told me our trial was going to come up on Monday.

Q. Did you see him between April and November, did you see him between that time? A. Yes, 30 sir.

Q. Did you see him before November from the time or the morning of the hold-up did you see him before November? A. No, sir.

Q. Did you have a conversation with him in November? A. Yes, sir, and he told me he had talked to Bill Drew and Bill Drew told him our trial was coming up on next Monday.

Q. Did you see him after that time in November when did you next see him? A. Up here in 40 court.

James Meola—Recalled—Direct.

Q. When was that? A. A few weeks ago.

Q. Do you remember having a talk with him at that time? A. Yes, sir.

Q. Did you ever see him at night? A. I met him once.

10 Q. Lately, at night? A. Yes, sir.

Q. When was that? A. When our case happened to be here.

Q. How long ago about? A. About three weeks ago.

Q. Do you remember what night of the week it was? A. I think it was on a Thursday night.

Q. Did you talk with him then about this case? A. Yes, sir.

Q. What did he say to you? A. He told me he was surprised at me pleading non vult.

20 Q. What else did he say? A. He told me to keep my mouth shut or otherwise if you open up Bootsey will get you down to Trenton he is going to make you suffer, I says "I don't care I am just going to tell the truth about it to be truthful."

Q. Was anything said about Van Rosenberg? A. He told me that Van Rosenberg was going to exonerate him he told me he was going to exonerate him.

30 Q. Did he tell you how? A. He was going to say that wasn't the Pete Churchill he meant.

Q. Did he say what Pete Churchill it was going to be? A. A Pete Church from Newark.

Q. Did he say anything about a statement to that effect or that he had made a statement to that effect? A. He told me he had seen a statement.

40 Q. Did he say where he signed it? Did he tell you whereabouts he had signed the statement? Whereabouts, what city or what place? A. I don't know he told me something about signing the statement but I can't just remember.

James Meola—Recalled—Cross.

Q. Remember anything else he said about Van Rosenberg? A. No, sir.

Q. Do you remember anything else he said about Van Rosenberg or what Van Rosenberg was going to do? A. He told me that Van Rosenberg wasn't going to identify him that is the way I understood it. 10

Q. Did you ever know any Pete Church from Newark? A. No, sir.

Q. Did you ever know anybody by that name? A. No, sir.

Q. Did you ever hear any mention of that name before Churchill mentioned it to you on that night? A. No, sir.

Q. Do you know whose car was used on this night of the hold-up? A. No, sir. 20

Cross-examination by Mr. Stafford:

Q. What kind of a car was it? A. I don't know what kind of a car it was.

Q. You drive cars don't you? A. No, sir.

Q. Have you got a driver's license? A. No, sir.

Q. Have you ever been convicted of a crime? A. I pled non vult to one crime.

Q. How many times have you been convicted of crime? A. Once. 30

Q. Where was that? A. Morristown.

Q. What was that for? A. Breaking and entering, robbery.

Q. Is that the only time? A. No, sir.

Q. Weren't you convicted in this county? A. No, sir.

Q. Weren't you convicted in February, 1918 for atrocious assault and battery?

Mr. Dunn: I object to it counsel knows it would be a juvenile record. 40

James Meola—Recalled—Cross.

- Q. How old are you, twenty-five? A. Yes, sir.
- Q. Weren't you? A. I don't remember.
- Q. Wouldn't you remember if you were convicted? A. I don't remember being convicted of atrocious assault and battery.
- Q. What is your name? A. Meola.
- 10 Q. What is your first name? A. James.
- Q. Were you not up in this court and convicted of atrocious assault and battery in 1918? A. I don't remember Mr. Stafford.
- Q. Did you know Churchill before this April 10th? A. No, sir.
- Q. You never associated with him? A. No, sir.
- Q. You were never introduced to him? A. No, sir.
- 20 Q. You never met him? A. No, sir.
- Q. Who is this Bill you have mentioned in your testimony, Bill who? A. All I know him by is Bill I know him for quite a while through Mac-Illwaine.
- Q. Where did he get into the car? A. In Passaic.
- Q. He came down that night? A. Yes, sir.
- Q. He didn't get into the car going up from Paterson? A. We picked Bill up in Passaic and came to Paterson.
- 30 Q. He didn't go to Passaic from Paterson? A. No, sir.
- Q. On this particular tenth day of April where did you first see Van Rosenberg? A. At my home.
- Q. What time? A. Right after five when I came home from work.
- Q. Did he call at your house? A. Yes, sir.
- 40 Q. Did he tell you why he called? A. Yes, sir.

James Meola—Recalled—Cross.

- Q. What for? A. He bought a car.
- Q. A new one? A. An old one.
- Q. What kind of a car did he have? A. I don't know a Homer Sedan or something like that.
- Q. Did he have it with him? A. Yes, sir.
- 10 Q. Did you go out riding immediately after that with him? A. He wanted me to go out right with him but I told him I just came home from work.
- Q. Where were you working on this day? A. At the Castle Silk Dyeing Co.
- Q. What time was it that you arrived home? A. Five o'clock.
- Q. Did you go right out with him? A. Yes, sir.
- Q. What time did you go out? A. He just gave me time enough to dress up.
- Q. What time did you go out? A. Right after 20 five.
- Q. A quarter after five? A. Something like that.
- Q. Where did you go? A. Down to his home, Van Rosenberg's home.
- Q. Did you stay there? A. Yes, sir.
- Q. For how long? A. Till he had supper.
- Q. Did you have supper at his house? A. Yes, sir.
- Q. Over at 77 Cedar Street? A. Yes, sir.
- Q. Did his wife cook the supper for you? A. 30 Yes, sir.
- Q. How long did you stay there? A. About an hour.
- Q. And you left at what time? A. After six.
- Q. Then where did you go after six? A. We went out.
- Q. Where did you go? A. Went out and met Luke Walters and Bootsey outside.
- Q. Outside of his house? A. Yes, sir.
- 40 Q. At 77 Cedar Street? A. Yes, sir.

James Meola—Recalled—Cross.

Q. You didn't meet Bootsey or Walters down on Market Street? A. No, sir.

Q. You didn't meet Bootsey down on Main Street with Rosenberg about twelve o'clock that night? A. I was with Luke Walters all the while.

10 Q. Did you meet Bootsey in front of your house that night at 77 Cedar Street or did you meet him when he was with Van Rosenberg at Market Street at twelve o'clock that night? A. Did I meet Bootsey at my house?

Q. Outside of Van Rosenberg's house. Did you leave Lombardo and Walters outside of Van Rosenberg's house at 77 Cedar Street, where you had had your supper there, or did you meet Van Rosenberg and Bootsey down town around twelve o'clock that night. A. I met them after we had supper.

20 Q. Then you, Van Rosenberg and Walters were together at your house at 77 Cedar Street right after you had your supper? A. Not my house, Van Rosenberg's house.

Q. How long did you all stay together? A. We all jumped in Van Rosenberg's car and went out for a ride.

Q. The four of you? A. Yes, sir.

30 Q. Where did you go? A. We went towards Midvale and Pompton.

Q. Did you have your gun? A. No, sir.

Q. Did Van Rosenberg have his gun? A. I don't know.

Q. Where did you pick up your gun? A. That gun was given to me at night.

Q. Who gave it to you? A. Bill.

Q. Bill who? A. I don't know his last name.

40 Q. You didn't have a gun then until after you had left the crap game and were on your way back to Paterson? A. Yes, sir.

James Meola—Recalled—Cross.

Q. That is the only time any gun came into sight or into your possession? A. Yes, sir.

Q. Where did the four of you go after you left Van Rosenberg's house? A. We went for a ride.

Q. You rode where? A. Toward Midvale and Pompton.

Q. Did you stop anywhere? A. The car stopped 10 on the way and wouldn't run any more.

Q. Where did the car stop? A. On the road.

Q. On what road or turnpike? A. That I don't know.

Q. Near what public building or hotel? A. I don't remember; it was dark.

Q. What time was it? A. I should judge around eight o'clock or half past eight.

Q. Do you know whether it was in Wayne Town- 20 ship? A. No, sir, I don't remember.

Q. Do you know whether it was in Pompton Lakes? A. No.

Q. Do you remember what road you took? A. All I know was the road going toward Midvale or Pompton that way, that is the way I understood.

Q. You know where the powder works are? A. No, sir.

Q. You are acquainted up in that neighborhood, are you? A. No, sir. 30

Q. When the car stopped, what did the four of you do? A. Van Rosenberg wanted us to push the car into the driveway of some farm there, and he parked it there, and he went and asked over to the house if he could park his car there for the night, and they told him yes.

Q. Where did the four of you go? A. Waited for a bus.

Q. When you got the bus where did you ride to? A. Paterson. 40

James Meola—Recalled—Cross.

Q. What time did you get back to Paterson?
A. I should judge about nine o'clock.

Q. Where did you get off the bus? A. At Broadway and Main Street.

Q. Where did you go when you got off the bus?
10 A. Walked up Main Street.

Q. The four of you? A. Yes, sir.

Q. Then where did the four of you go? A. Walked up on Market Street, across the street from Westerman's and stood there and all of a sudden Van Rosenberg and Bootsey disappeared and I was there with Luke Walters, and Petey White came along and a couple of other lads and stood there talking.

Q. How long did you stand there talking on Market Street opposite Westerman's? A. I should
20 judge about fifteen minutes.

Q. Then where did you go? A. This here Van Rosenberg came along with Pete Churchill and Bootsey.

Q. That was what time? A. About half-past nine or quarter to ten.

Q. Then it wasn't between ten and eleven when Churchill first came there, was it? A. No, sir.

Q. That is true, is it? A. No, sir.

Q. You didn't meet Churchill down around the Victory Lunch, did you? A. No, sir.
30

Q. You were not in a pool room with Van Rosenberg from nine to eleven, were you? A. No, sir.

Q. You didn't leave Van Rosenberg in that pool room that night and go out, did you? A. No, sir, I was with Luke Walters.

Q. Did you go in Westerman's? A. No, sir.

Q. You didn't see Van Rosenberg go in Westerman's and have a cup of coffee and a piece of pie? A. I did not.
40

James Meola—Recalled—Cross.

Q. Did you ever see Lombardo pay for coffee and pie for Van Rosenberg that night? A. No, sir, I don't think so.

Q. How long did you stand on the sidewalk opposite Westerman's that evening with Lombardo, Van Rosenberg, Churchill and yourself?
10 A. When we got off the bus we walked up Main Street and stopped across the street from Westerman's. Bootsey and Van Rosenberg left. I don't know where they went, and came back with Pete Churchill with the car about fifteen minutes later.

Q. What time was that? A. About half-past nine or a quarter to ten.

Q. What time did you leave Paterson for Passaic? A. Right then when they came.

Q. You didn't leave at twelve o'clock, did you?
20 A. No, sir.

Q. Did Van Rosenberg tell you he was, he had no money and he needed money to pay his rent?
A. No, sir.

Q. Did Lombardo ever in your presence tell Van Rosenberg he had money enough to pay for eats? A. No, sir.

Q. Who suggested you go to Passaic? A. Van Rosenberg and Bootsey said they were going to Passaic when I got into the car.

Q. Did they tell you where? A. I didn't know
30 where. They just told me they were going to Passaic.

Q. Did you hear any conversation about where they were going on your way to Passaic? A. They said they were going to a crap game.

Q. Did you have any money with you that night?
A. Yes, sir.

Q. How much did you have? A. I had thirty-eight dollars.

Q. When you arrived in Passaic who went up-
40 stairs? A. Van Rosenberg and Bootsey.

James Meola—Recalled—Cross.

Q. You didn't go upstairs, did you? A. No, sir.

Q. Just Van Rosenberg and Bootsey? A. Yes, sir.

Q. You got up into the crap game about what time? A. I don't know what time it was, I know it was after ten.

10 Q. Did you stay down in the car with Churchill?
A. Yes, sir.

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

Q. Was Churchill sleeping? A. I don't know, I know I fell asleep in the back of the car.

Q. Did you have any talk with Churchill at all when you were in the car? A. No, sir.

Q. Nothing was discussed at all? A. No, sir.

Q. You didn't know the man, did you? A. No, sir.

20 Q. Do you recall when Van Rosenberg and
Bootsey came down out of the crap game? A. Yes,
sir.

Q. What time was that? A. Around two o'clock.

Q. So they really stayed upstairs in the crap game from around half-past ten until two o'clock. They didn't stay up there for fifteen minutes? A. I didn't say so.

Q. That is not true, is it? A. No, sir.

30 Q. When they came down, were you awake as
they got into the car? A. When they came down,
yes, sir, an officer came—

Q. Was Churchill awake? A. Yes, sir.

Q. Who got into the car? A. Van Rosenberg,
Bootsey, Bill, Whitey and Charley.

Q. You were sitting on the small seat in the rear? A. The back seat.

Q. This man you call Charlie was sitting on the back seat with you? A. In the front on the side seat.

40 Q. Who was sitting on the back seat with you?
A. Bill, Van Rosenberg and I.

James Meola—Recalled—Cross.

Q. Who sat in the front seat? A. Bootsey.

Q. Who else? A. Pete Churchill.

Q. Who sat on the small seat? A. Whitey and Charlie.

Q. There were seven of you in the car? A. Yes, sir.

Q. When you all got in was any conversation 10
held about going home? A. Yes, sir.

Q. Did you say so? A. We was all going home.

Q. Did you go home? A. We was all going home.

Q. There was no talk about holding up any saloon then was there? A. No, sir.

Q. When you came down Main Street, the lights in Mr. Mary's saloon were going full blast? A. Yes, sir, the place was lit up.

Q. When you neared Mary's saloon who said 20
there is a saloon open? A. Charlie.

Q. Who said, "Let's go in and have a drink?"
A. Nobody.

Q. When Charlie said, "There is a saloon open," what did you say? A. I didn't say anything.

Q. Did anybody say anything? A. Yes, sir.

Q. Who? A. Charlie says, "the place is open there is a man always got a lot of money on him in there," he says, "We ought to stick the place up." 30

Q. Charlie is a man who is not in court to-day?
A. No, sir, he is not in court.

Q. Charlie is not being tried to-day? A. No, sir.

Q. Did Charlie say that to you? A. No, sir.

Q. He was sitting in front of you? A. No.

Q. Did he turn around and talk to you? A. I wasn't talking to him in the car everybody heard it.

Q. Was he facing you when he said it? A. No, 40
sir.

James Meola—Recalled—Cross.

Q. Was the car going fast when he said it? A. I don't know how fast it was going I know it was riding.

Q. Did it pull right up alongside of the saloon?

A. It kept on going past the place about three blocks.

10 Q. Then turned around and came back and stopped right at the corner? A. Yes, sir; certainly it stopped at the corner.

Q. When the car stopped at the corner where the saloon was did you have your gun then? A. No, sir.

Q. Did Bootsey say anything to you about sticking up the saloon in the car? A. No, sir.

Q. He didn't mention anything about robbing the place when he was in the car? A. Charlie?

20 Q. No. Bootsey, you know who I mean? A. Certainly.

Q. Did you hear him say anything about holding up anybody when he was in the car? Don't you understand my question? A. Yes, sir, I understand your question I can answer it in my way if you want me to tell you.

Q. All right go ahead. A. When we was riding Charlie—

30 Q. Bootsey not Charlie. A. I want to give you the answer if you want me to.

Q. Did you hear Bootsey say anything about holding up this place when he was sitting in that car. Not Charlie, Bootsey. A. I can give you the answer.

Q. Answer it, did you hear him? A. When Charlie—

Q. Can't you answer yes or no? A. I will answer it the way Bootsey came out with it.

40 Q. You can answer it yes or no. A. Yes, sir, I can answer it yes or no.

James Meola—Recalled—Cross.

Q. Then answer it yes or no. A. Bootsey told Pete Churchill to turn around and pull up in front of the place.

Q. Mr. Meola, is that answering my question. Is it? A. I will give you the answer, let me explain it to you.

The Court: If you have some explanation to give which the question suggests the Prosecutor will give you an opportunity to explain it. 10

A. Bootsey said, "Let's go back and stick the place up."

Q. Who said that? A. Bootsey.

Q. I thought Charlie said that? A. Charlie and Bootsey said that. 20

Q. They both said it? A. Yes, sir.

Q. What did you say when they said, "Let's stick the place up?" A. I didn't say anything. I just stayed there quiet.

Q. Were you on the sidewalk? A. I stood in the car.

Q. You were standing in the car? A. Sitting in the car, you couldn't very well stand in the car.

Q. Did this conversation you related about Bootsey take place after the car stopped and Rosenberg was out, and while you were getting out, or did it take place before the car stopped? A. Let me hear that again. 30

Q. This remark you attributed to Bootsey was that made before the car stopped or was it made by Bootsey after the car stopped and Van Rosenberg had gotten out and you were in the act of getting out. A. It was made right in the car.

Q. Before the car stopped? A. Yes, sir.

Q. Where was the car when Bootsey is supposed to have made this statement? A. Alongside of Mary's saloon. 40

James Meola—Recalled—Cross.

Q. Then it was stopped? A. Yes, sir.

Q. When did you get your gun? A. I got my gun off of Bill.

Q. He is another man who is not here to-day? A. Yes, sir.

10 Q. Did you ask him for it? A. No, sir.

Q. Why didn't you hand it back to him when he gave it to you? A. Hand it back to him he handed it to me.

Q. Why didn't you hand it back to him? A. They wanted me to go in with Van Rosenberg and Bootsey.

Q. Who wanted you to go in? A. All of them.

Q. Who were all of them? A. Bill, Whitey and Charlie.

20 Q. Then Bill handed you the gun? A. Yes, sir.

Q. Why didn't you say to Bill, "I don't want this gun I am not a hold-up man." A. I did tell him.

Q. Why didn't you force the gun back on him? A. I did try it, but they coaxed me to go in.

Q. You went in because they coaxed you? A. Yes, sir.

Q. You say they asked some of the others to go in, but they wouldn't go in? A. Yes, sir.

30 Q. They didn't ask Churchill to go in? A. No, sir, he was the driver.

Q. They didn't ask Churchill to go in, did they? A. No, sir.

Q. What became of your gun? A. I gave it back to Bill he took it back.

Q. After the hold-up? A. Yes, sir.

Q. Who did you hold-up when you got inside? A. The three of us were holding them all up.

40 Q. Did you know anybody by name that you held up? A. I didn't hold anybody up we held them all up.

James Meola—Recalled—Cross.

Q. You simply pointed the gun at them and told them to hold their hands up? A. Yes, sir.

Q. Did you go into the pockets of any of the men there? A. No, sir.

Q. Who went through the clothes of the men? A. Bootsey.

10 Q. You didn't see anything or do anything except point the gun at them? A. I pointed the gun and tried to get the ring off one of the Marys.

Q. When you came out, Mr. Meola, did you get into the car first? A. No, sir.

Q. Who got in first? A. I don't know either Bootsey or Van Rosenberg.

Q. You were the last one in? A. Yes, sir.

Q. And you were the last one out of the saloon? A. Yes, sir.

20 Q. What seat did you have when you got back into the automobile? A. One of the side seats.

Q. Who sat in front with Churchill? A. Van Rosenberg sat in front with Pete Churchill him and Bootsey.

Q. The three of them on the front seat? A. Van Rosenberg sat in front.

Q. Who else? Who were with him in the front seat? A. Pete Churchill.

Q. Just the two of them? A. Yes, sir.

30 Q. Bootsey wasn't in the front seat then was he? A. No, sir.

Q. Did you have any conversation with Churchill? A. No, sir.

Q. On this whole business expedition did you exchange any word with Churchill? A. What do you mean exchange?

Q. Did you talk to him at all? A. No, sir.

Q. At any time? A. No, sir.

40 Q. You are sure of that, are you? A. Not that I can remember talking to him having any conversation with him.

James Meola—Recalled—Cross.

Q. You don't remember saying a word? A. I might have said a word, but I don't remember.

Q. You sat down in the automobile from ten until two and all while they were up in the crap game and never said a word to the man? A. I fell asleep.

10 Q. You never said a word to the man? A. No, sir.

Q. Did you hear anybody else say anything to Churchill while you were in the car? A. I don't know what you mean Mr. Stafford by that.

Q. Did you hear anybody having a conversation with Churchill while you were in that car? A. No, sir, I don't remember anybody having a conversation with Pete Churchill.

20 Q. From the time you left Paterson until you got out of that car on Tenth Avenue, two or three o'clock in the morning you heard nobody have a conversation with this man Churchill? A. Only this I hear Charlie directing him how to get away.

Q. That is the only word you heard anybody mention to this Peter Churchill that is true isn't it? A. Yes, sir.

Q. Did you hear Van Rosenberg say anything to Pete Churchill while you were in the car? A. I don't know what he said.

30 Q. Did you hear him say anything? A. No, sir.

Q. Did you hear Bootsey say anything to Pete Churchill while you were in the car? A. No, sir.

Q. Did you hear Bill or Charlie or Whitey say anything to this Peter Churchill while you were in the car? A. No, sir.

40 Q. So as a matter of fact from the time the car left Paterson until it arrived at Tenth Avenue, after the hold-up there wasn't a man in the party that had a conversation with Churchill, except Charlie when he said he would direct the way back

James Meola—Recalled—Cross.

to Paterson? A. Direct the way back to Paterson.

Q. Direct the way from Marys saloon back to Paterson? A. Peter Churchill was driving and Charlie was telling him what street to take.

Q. That was the only conversation or words you heard uttered the whole evening to Churchill the Defendant, isn't that true? A. Yes, sir, there was several words spoken I don't know whether they were spoken to Pete Churchill or whether we were talking amongst ourselves. 10

Q. Did you hear Churchill hold a conversation with anybody that night? A. No he couldn't very well hold a conversation if he was driving.

Q. He never said a word to anybody that you heard the whole evening? A. No, sir.

Q. Did you hear Van Rosenberg say anything in Churchill's presence mentioning Churchill's name? A. No, sir. 20

Q. Did you hear anybody say anything about Churchill in Churchill's presence? Do you understand that? A. Yes sir, I understand that when the car stopped Pete told him to take care of his end.

Q. That is the only thing you heard? A. Yes, sir, I heard that.

Q. That was at Tenth Avenue that Pete Churchill said to Lombardo "Take care of my end?" A. When he drove up to Tenth Avenue he told us to get out and said it would be the safest way. 30

Q. He told you to get out? A. He drove up at Tenth Avenue and we got out of the car he told us that was the best way so he could go by himself and it wouldn't be suspicious.

Q. Didn't he tell you to get out and put you out? A. He didn't put us out. 40

James Meola—Recalled—Cross.

Q. Did you hear Van Rosenberg say when you came out of the saloon "Step on it we have just stuck up the joint?" A. I heard them all say "Step on it."

10 Q. Did you hear Van Rosenberg say to this driver? A. We all knew they were going to stick the joint up.

Q. Step on it we have just stuck up a joint, did you hear Van Rosenberg say that? A. I heard somebody say "Step on it" and they all knew we stuck the joint up.

Q. Didn't you hear the driver say "You are going to put me in bad?" A. No, sir.

Q. That is not true, is it? A. No, sir.

Q. Did the driver say anything? A. Only when we got to Tenth Avenue there.

20 Q. Outside of that did he say anything beside that the whole evening? A. No, sir.

Q. From the moment Charlie the waiter saw the light in Mary's saloon until the car stopped on the side of Mary's saloon who was the members of the party that spoke? Did you say anything? A. No, sir.

Q. Did the driver say anything? A. No, sir.

Q. Did Lombardo say anything? A. Yes, sir.

Q. Did Whitey say anything? A. Yes, sir.

30 Q. Did Bill say anything? A. Yes, sir.

Q. What did Bill say? A. Bill said when we pulled in front of the joint that he was known and he couldn't go in.

Q. I thought you said Charlie the waiter said that? A. He said that too.

Q. What about Whitey? A. He was known too he couldn't go in.

Q. The three of them said the same thing? A. Yes, sir.

40

James Meola—Recalled—Cross.

Q. But the driver never said a word? A. Yes, sir.

Q. Who mentioned it first, to hold the place up? A. Charlie.

Q. And when he mentioned that to whom did he direct his remark? A. Between him and Whitey and Bill they were talking together. 10

Q. Bill, Whitey and Charlie the waiter were the men who were talking about the hold-up? A. Yes, sir.

Q. You didn't say anything? A. No, sir.

Q. Lombardo didn't say anything? A. Yes, sir, when he heard it he said "Let's turn around" he told Churchill to turn around.

Q. Is that all he said to Churchill? A. And Churchill turned around.

Q. Are you sure the only thing Lombardo said to Churchill was "Turn around?" A. Yes, sir. 20

RAFAEL JORDAN, SWORN for the State.

Direct examination by Mr. Dunn:

Q. You are an attorney-at-law in this state? A. Yes, sir.

Q. Do you know of Mr. Van Rosenberg and Mr. Churchill? A. Yes, sir, I know of them. 30

Q. Do you know of Peter Churchill? A. Yes, sir, I know of him.

Q. Do you see him in court? A. Yes, sir, I do.

Q. Where is he in court? A. The defendant sitting with Mr. Stafford.

Q. By what name do you know him? A. I know him by the name of Peter Chirichella that is the name I know him by. 40

Rafael Jordan—Direct.

Q. Did you ever hear him called anything else?

A. I did not.

Q. You also know of Mr. Van Rosenberg? A. I only seen him once in my office and once in court today.

10 Q. What was the occasion of seeing him in your office? A. He came into my office on Saturday evening together with Mr. Peter Chirichella and two or three other young boys.

Q. Did they ask you to do some work for them?

A. I was requested to take a statement from Mr. Van Rosenberg and I refused to do so I told them I would witness it and he could write it himself.

Q. Did you witness it? A. Yes, sir.

20 Q. Are you able to tell us what the substance of the statement is? A. Yes I can't tell you verbatim but the substance of it was merely that this Van Rosenberg stated that Peter Church who drove the car on the night of a certain hold-up was not the Peter Churchill as he calls this young man who was there with him at the time I asked him if that was the absolute truth otherwise I wouldn't have witnessed it.

30 Q. Did he say who the Peter Church or Churchill was he had mentioned in connection with the hold-up? A. I recall he said it was someone from Newark he had only seen him a few times, once or twice.

Q. Of course you never heard of any Peter Church in any other way did you? A. No I did not.

Q. He paid you for your trouble? A. I was paid simply for the witnessing of it by Mr. Chirichella Peter Chirichella.

40 Q. Do you recall how many statements there were made? A. It was written twice the first time it was written it was very mixed up and

Rafael Jordan—Cross.

Ellen Van Rosenberg—Direct.

didn't mean anything and I asked Mr. — the gentleman who was on the stand before who wrote it to write it over and he says that he read it over and he said he couldn't exactly write it any better English and I told him to write it over again 10 and he did.

Q. Did Mr. Churchill say anything about the statement when it was first written? A. No I read it over myself.

Q. Did he make any remark about it when he heard it read? A. No he was present but he didn't say anything.

Cross-examination by Mr. Stafford:

Q. Is this the statement to which you refer? 20
A. Yes, sir.

Q. Were you present when he wrote this statement? A. I was.

Q. And present when he signed it? A. Yes, sir.

Q. It is in his own handwriting? A. Yes, sir, it is.

Q. Did you sign your name as a witness? A. I did.

(The above answers given by Mr. Jordan are with reference to Exhibit D-1 for 30 identification for the Defendant.)

ELLEN VAN ROSENBERG, SWORN for the State.

Direct examination by Mr. Dunn:

Q. Do you know Peter Chirichella? A. I know him now I know him since the 8th of February.

Q. Do you see him in the courtroom today? A. 40
Yes, sir.

Ellen Van Rosenberg—Direct.

Q. Where is he sitting? A. Next to Mr. Stafford there (indicating Defendant Churchill).

Q. On the eighth of February where did you see him? A. He was pointed out to me here in the courthouse out in the corridor.

10 Q. What was the day when you first saw him what was he doing? A. Just talking to some other people.

Q. After that did you see him talking to anybody else? A. I seen him before that talking to my husband downstairs.

Q. Whereabouts? A. Just on the steps before you come in.

Q. What did he say? A. He talked to him and handed him something what he handed him I don't know.

20 Q. Had you been with your husband that morning prior to that time? A. Yes, sir, we was over to the lawyer's office.

Q. Do you know how much money your husband had before that time? A. Yes, sir, he had fifty-one dollars.

Q. Do you know how much money he had when he got to the courthouse? A. Yes, sir, he had one dollar in his pocket.

30 Mr. Stafford: I object to that as a conclusion of the witness.

Q. On that morning what happened to your husband after he came into the courthouse? A. He met Pete Churchill just as he was coming on the steps and talked to him and stood there awhile and Mr. Churchill handed him something and he came upstairs, when he came up he said—

40 Q. Don't tell us what he said. Then what happened to your husband? A. He was arraigned.

Ellen Van Rosenberg—Direct.

Q. Was he confined to jail thereafter? A. Yes, sir.

Q. Did you see him on that same morning in the jail? A. No, sir, in the afternoon.

Q. What happened then when you saw him in the jail in the afternoon? A. He told me—

Q. Did he do anything? A. He couldn't do 10 anything when he was behind the bars.

Q. Did you receive anything from him? A. Yes, sir.

Q. What? A. Twelve dollars I didn't receive it from him but from the jailkeeper.

Q. That was the first day you knew who this defendant was on February 8th? A. Yes, sir.

Q. Do you remember ever having seen him before? A. Yes, sir.

Q. Where did you see him before? A. In a machine outside of our house on the Thursday before the trial came up. 20

Q. Who was with him at that time? A. A fellow called Mooch.

Q. Is that the man? A. Yes, sir.

Q. Who else was with him? A. Someone they called Ches.

Q. Were they in a machine? A. Yes, sir, all in a machine.

Q. Did your husband go out with them? A. No, 30 sir, he wasn't home, and when they were going Mooch told me he was going to get my husband a job.

Q. After that time did you see them again? A. Yes, sir, they came up the next night that was Friday night.

Q. Was Churchill there then? A. I don't know I didn't see him.

Q. Who came up that time? A. Mooch he was in the machine but I didn't see who he had with 40 him.

Ellen Van Rosenberg—Cross.

Q. When did you see him after that? A. Saturday about five o'clock.

Q. That would be the sixth of February? A. Yes, sir.

Q. Did you notice who was in the machine at that time? A. No, sir, he just said I was to tell Harry to call him up as soon as he got home.

Q. Who said you were to call up? A. Mooch.

Q. He said you were to call up who? A. He gave a number of the Blue Bird Taxi Co.

Q. Did you give that to your husband? A. Yes, sir.

Q. Do you know whether or not he called up? A. No, sir.

Q. Do you know whether or not he used the phone? A. Yes, sir, he went up to the drug store on the corner.

Q. And after he went out? A. I know he was outside there talking to them for fifteen minutes and he came into the house with Mooch and told me he was going downtown to Mooch's place and then afterwards said he was going downtown that Pete Churchill was going to give him fifty dollars.

Q. Did he go out? A. Yes, sir.

Q. Do you know when he came back? A. About an hour and a half later.

Cross-examination by Mr. Stafford:

Q. When you came into the courthouse when you say you saw Mr. Churchill give him something did you come all alone? A. No, sir.

Q. With whom did you come in? A. With my husband and Nick Holster.

Q. Did your husband come upstairs with you? A. No, sir, we waited just inside of the door until he got through talking.

Ellen Van Rosenberg—Cross.

Q. Where did he meet Churchill? A. In front of the courthouse.

Q. Did they stand outside talking? A. No, sir, between the outside and inside door.

Q. Were you inside of the inside door in the corridor? A. Yes, sir.

Q. Were you watching your husband? A. No, standing there waiting for him.

Q. Were you looking at Churchill and your husband talking? A. Yes, sir.

Q. How far away from them were you? A. I can't exactly say.

Q. You could see very plainly? A. Yes, sir.

Q. Through the closed door? A. Yes, sir, you could see.

Q. You were standing outside between the outer and the inner door? A. No, sir.

Q. You were not near enough to hear the conversation? A. I didn't listen.

Q. Were you looking at them? A. Yes, sir.

Q. How far away from you were they? A. I don't know exactly how far away.

Q. Measure it in the courtroom here. A. About the distance between myself and the Assistant Prosecutor (indicating about twenty feet).

Q. How long did they talk there? A. Only about five minutes.

Q. Then you saw Peter Chirichella give your husband money? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. Did you see what it was? A. No, sir.

Q. Did you try and find out? A. He told me afterward.

Q. Your husband told you? A. Yes, sir.

Q. What did he tell you? A. He told me he had talked to Churchill and wanted some money he promised him; he said he only had a few dollars but would give him some.

Ellen Van Rosenberg—Cross.

Q. Was that all the money he had? A. No, he had one dollar.

Q. Didn't you say he had fifty-one dollars? A. He gave fifty dollars to the lawyer when we went and saw him at his office.

Q. What lawyer? A. Lawyer Klenert.

10 Q. And he only had one dollar left? A. Yes, sir.

Q. Do you live at 77 Cedar Street? A. No, sir, not now.

Q. Did you live there last April? A. Yes, sir.

Q. Was your rent due in April? A. Yes, sir.

Q. Was it paid? A. It was paid before I left.

Q. Was it paid on April 10th? A. No, sir, we didn't pay by the month, we paid by the week.

Q. You paid by the week? A. Yes, sir.

20 Q. Do you know whether or not the week of April 10th was paid by the end of the week of April 10th? A. No, sir.

Q. How do you know? A. Because I paid the rent.

Q. Did you pay it in advance? A. We were always supposed to pay it in advance.

Q. Did you pay it in advance during the week of April 10th? A. We didn't always pay because they never bothered us.

30 Q. How much was the rent? A. Five dollars a week.

Q. Did you ever let it go more than a week? A. No, sir.

Q. The most you would pay on it would be five dollars? A. Yes, sir.

Christian Van Olst—Direct.

Christian Van Olst—Cross.

CHRISTIAN VAN OLST, sworn for the State.

Direct examination by Mr. Dunn:

Q. You are one of the keepers of the Passaic County Jail? A. Yes, sir. 10

Q. Do you recall when Harry Van Rosenberg was brought to the Passaic County Jail? A. Do I recall the day? Yes, sir, February 8th, about 12:35.

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

Q. Do you recall what his belongings were? A. Sixteen dollars in money, a handkerchief and a pack of cigarettes.

Q. Have you the record with you? A. Yes, sir, 20 I have the card here that I make out.

(Card marked Exhibit S-3 for identification for the State.)

Mr. Dunn: I offer the card in evidence.

Card admitted in evidence and marked Exhibit S-3 for the state.

Q. What does that \$2.00 on February 15th refer to? A. Some one left that there on that day for him. I don't recall who did, but some one 30 did.

Cross-examination by Mr. Stafford:

Q. Were you on duty when Van Rosenberg went to the jail to visit Churchill? A. What was that?

Q. When Van Rosenberg went to the Passaic County Jail accompanied by Pescatore when he went there to visit Churchill? A. It is pretty hard for me to recall that.

Q. You don't remember that at all? A. Too 40 many comes there, I don't remember that.

James Brooks—Recalled—Direct.

James Brooks—Recalled—Cross.

JAMES BROOKS, recalled for the State.

Q. I think you said you arrested Churchill in Philadelphia? A. Yes, sir.

Q. At that time did you have a talk with him?

10 A. A few words at the police station.

Q. What was said? A. Nothing about the hold-up at all, we were talking about a picture we seen there—

Objected to by Mr. Stafford.

Q. Did you later talk to him about the hold-up? A. Yes, sir, when we were bringing him back on the train about three weeks later.

Q. Did you talk to him then about the hold-up?

20 A. Yes, sir.

Q. What did he say? A. Denied any knowledge of it and said he had no part in it. He had a Ford coupe and I asked him when he had sold the Ford before or after he left and then we talked about other things and among them I asked him if he had money, he says certainly I got money, I ran Babe Sage's Tea Room without any interference; why wouldn't I have money? I think he said he still had five hundred dollars sunk away, but he wouldn't talk about the hold-up except to deny that he was there at the time and didn't know anything else.

30 Q. Did you ask him how long he was in Philadelphia? A. He said some months.

Q. Did you ask him where he was working? A. No, I didn't ask him that.

Cross-examination by Mr. Stafford:

40 Q. Did you warn him that anything he might say would be used against him at his trial? A. At that time, no, sir.

Nicholas Holster—Direct.

Peter Chirichella—Direct.

NICHOLAS HOLSTER, sworn for the State.

Direct examination by Mr. Dunn:

Q. Do you know the defendant Peter Churchill?

A. By sight only. 10

Q. Did you see him during the month of February? A. Yes, sir.

Q. Where? A. In front of the courthouse on the eighth.

Q. What was he doing when you saw him? A. Talking to Mr. Van Rosenberg.

Q. Where were you at the time? A. Just inside of the courthouse waiting for him.

Q. About how far away from him? A. About twenty feet. 20

Q. What happened while you were there? A. I couldn't see anything, they were just talking.

Q. Was Churchill talking to Van Rosenberg or Van Rosenberg talking to Churchill? A. I couldn't say, both.

Q. Did you see either one or the other give either one or the other anything? A. No, sir.

Q. How long did this conversation last? A. About four or five minutes.

NO CROSS-EXAMINATION. 30

STATE RESTS.

Mr. Stafford opens for the defense.

PETER CHIRICHELLA, sworn in his own behalf.

Direct examination by Mr. Stafford:

Q. How old are you? A. Twenty-five. 40

Q. Married or single? A. Married.

Peter Chirichella—Direct.

Q. Where does your wife live? A. She lives home with her people.

Q. Where did you reside on April 10th? A. I was living in Philadelphia.

10 Q. How long had you been living in Philadelphia prior to April 10th? A. About a year and a half I lived there all together.

Q. How often did you visit your mother in Paterson while residing in Philadelphia? A. Every week.

Q. Since April 10th and up until the time of your arrest did you pay your mother any visits in Paterson? A. Yes, sir.

Q. How frequently? A. Every week.

20 Q. When you visited your mother, where would you go to visit her? A. I would go home, and I went up to the hospital to visit her while she was in the hospital.

Q. How often did you visit her in the hospital between April 10th and the time you were apprehended? A. About twice, two times.

Q. Do you know James Meola, who testified in this case? A. Not to speak to.

Q. Prior to April 10th did you ever hold a moment's conversation with him? A. No, sir.

30 Q. Did you know him to say "How do you do?" to? A. No, sir.

Q. Did you ever meet him on any occasion? A. No, sir.

Q. Do you know Mr. Van Rosenberg? A. No, sir.

Q. On April 10th or prior thereto, did you ever have a moment's conversation with him? A. No, sir.

Q. Did you ever say hello to him? A. No, sir.

40 Q. Did you ever salute him? A. No, sir.

Peter Chirichella—Direct.

Q. On April 10th, Mr. Churchill, did you visit the city of Passaic with Meola and Van Rosenberg and Lombardo? A. Yes, sir.

10 Q. Will you explain to the court and jury how you met Meola and Van Rosenberg, and went to Passaic, with them in your own words. A. I was standing in front of the restaurant, and I seen a few boys standing there and they were talking about Passaic and I wanted to go down to Passaic too and they talked about a crap game which we all like, and I went up with that and I says, "I got a car you can jump in my car and shoot down, but I want to be home early," I had driven in from Philadelphia and I got down as far as Passaic and I fell asleep in the car.

20 Q. Who went upstairs into the crap game? A. I don't really know.

Q. Who left the car when you arrived at Passaic? A. They all got out of the car.

Q. Was Meola in the car with you? A. I don't think he did.

Q. How long did they stay out of the car? A. I fell asleep and I must have waked up an hour and a half or two hours after when an officer had come and woke us up.

30 Q. When you left Passaic, where were you going? A. We were coming straight home.

Q. Who were in the car? A. I should judge about seven or eight fellows that came out of the game, and who got in the car with me they said, "Jump in this car we are going down."

Q. Do you know this man Charlie the waiter? A. Not to speak to.

Q. Did you ever say hello or good-morning to him? A. No, sir.

40 Q. Do you know this man they call Whitey? A. No.

Peter Chirichella—Direct.

Q. Did you ever salute him on any occasion, McEllwain, I think his name is? A. I think I did see him before.

Q. Did you know him to speak to? A. To say hello, and how are you when I went in Sykes drug store.

10 Q. On your way from Paterson to Passaic was there a word said about holding up anybody? A. No, sir.

Q. All the way from Paterson to Passaic was anything said or done about it? A. No, sir.

Q. Was there any conversation about passing a gun? A. No, sir.

Q. After they got into the car and started back to Paterson, was there any conversation by anybody in that car about holding up or robbing anybody? A. No, sir.

20 Q. Did anybody talk to you personally all the way to Passaic? A. No, sir.

Q. Did you talk to any of them? A. No, sir.

Q. From Passaic back to Paterson, did you hold a conversation with any of them? A. No, sir.

Q. Did you speak to them or they to you? A. I didn't speak to any one at all I just wanted to get home in a hurry.

Q. When they neared this saloon at 1003 Main Street, what was said in the car that made you stop? A. One fellow suggested having a drink he says "turn around" I says, "If you want to go in for a drink all right," and I turned around and I got in front of the place and shut the car off and they went in.

Q. How long were they in there? A. About twenty minutes.

Q. When they came out did Van Rosenberg say anything to you? A. The three of them came out in a hurry and said, "We stuck the place up."

40

Peter Chirichella—Direct.

Q. What did you say to them? A. I wanted to throw them off right there, I didn't want to pick them up any more.

Q. What was done to you? A. Someone had put a gun to me and I started the car and pulled away and whoever got on got on.

Q. Was anybody left behind? A. I don't know. 10

Q. When did your car stop from the time they came out of that saloon until it reached Paterson? A. I got up to Madison Avenue, and some street and I threw them off.

Q. Did you order them out? A. I threw them out.

Q. Did you tell them why? A. Yes, sir, I was afraid of getting arrested for what they had done.

Q. Did you receive any money or jewelry taken in that place? A. No, sir. 20

Q. Did they discuss the robbery at all before they went in that saloon? A. No, sir.

Q. Had they given you any information whatever to indicate they were going to hold up that saloon? A. No, sir.

Q. Did you say to anyone after that to take care of your share? A. No, sir.

Q. You were finally apprehended in Philadelphia, and brought to Paterson? A. Yes, sir.

Q. The Defendant Rosenberg, visited you at the jail? A. Yes, sir. 30

Q. Did you ever send for him to come and visit you? A. Yes, sir.

Q. What did he say to you? A. He came into the County Jail, and said, "I mentioned a Pete Church, but you are not implicated in it at all," and I said, "What did you put my name in it for," he said the police had put my name in on it.

Q. The police did it? A. Yes, sir.

(At this point an adjournment was taken until ten A. M., March second, Nineteen Hundred and Twenty-six.) 40

Peter Chirichella—Direct.

PETER CHIRICHELLA, recalled.

Direct examination continued by Mr. Stafford:

10 Q. When court adjourned you were being examined on Mr. Van Rosenberg's visit to you while you were in the county jail. Tell the court and jury what he said to you and what you said to him.

A. He came into the county jail and told me I had nothing to do with it, I asked him how my name came to be in on it and he said the police put it on it and he told me I was innocent of it and I started hollering and he asked me for money.

Q. Did he say what he wanted the money for?

A. He didn't exactly say, but I do remember he did ask me for it.

20 Q. You were later released on a bail bond? A. Yes, sir, and a friend of his by the name of Mooch came and told me Van Rosenberg wanted to meet me he wanted to write a statement about my innocence, and I came up and seen him and he told me about it and I told him to go ahead and get the statement and to make it be signed by a lawyer, and then he asked me for money too.

30 Q. When he asked you for money on this occasion, did he say what he wanted to be paid for? A. To be paid for making a statement.

Q. Did you tell him what to put in the statement? A. No I didn't say a word.

Q. The statement was taken before Mr. Jordan? A. Yes, sir.

Q. Is that the statement to which you refer? A. Yes, sir.

Q. Is there anything in that statement you told Mr. Van Rosenberg to put in? A. No, sir.

40 Q. Were you present when he made this statement in his own handwriting? A. Yes, sir.

Peter Chirichella—Direct.

Mr. Stafford: I offer this statement in evidence.

(Statement admitted in evidence and marked Exhibit D-1 for the defense.)

10 Q. When this statement was signed and witnessed what did you do with this statement? A. I brought it up to you and gave it to you.

Q. Has that been out of your possession ever since? A. No, sir.

Q. Have you had it ever since? A. No, I haven't.

Q. After he had signed and delivered that statement to you at your attorney's request did you see Mr. Van Rosenberg again on any occasion? A. What do you mean? 20

Q. Did you have a conversation with him on any occasion after he signed that? A. Why no.

Q. Did you ever offer Mr. Van Rosenberg Fifty Dollars for making any kind of a statement? A. No, sir.

Q. Do you remember showing him Fifty Dollars for any purpose? A. No, sir.

Q. Did you pay Mr. Van Rosenberg Fifteen Dollars on February eighth the first day this trial was set down? A. No, sir.

30 Q. Did you give him any money on that occasion or on any occasion? A. No, sir.

Q. Did you promise him money on any occasion? A. I didn't promise and didn't give him any money on any occasion at all.

Q. Mr. Churchill at the time that this car left the saloon do you recall or did you hear Mr. Meola say anything about giving you any share of any money that was secured from that raid? A. No, sir. 40

Peter Chirichella—Cross.

Q. Did you hear your name mentioned at all about the proceeds? A. No, sir.

10 Q. When they jumped into the car and told you to step on it they had held up a joint what did you do? A. I started slowly I told them what did you want to do that on me for there was no reason you fellows should do that on me when I was driving the car.

Q. What was done from the saloon down to Madison and Tenth Avenue when you stopped the car? A. When we started off from there I done my best to get fast speed and get away from there and all of them got on the car and when I got to Tenth Avenue I threw them all out.

20 Q. Did they get out themselves or did you throw them out? A. No, sir.

Q. Did Lombardo make any statement to you about giving you money? A. No, sir.

Q. Did anybody offer you any money? A. No, sir.

Q. Have you received any reward or any part or share of the booty? A. No, sir.

Q. Did you see any guns in the car at any time prior to the robbery? A. No, sir.

30 Q. Was there any conversation in the car at any time within your hearing of going to hold up anybody or any place? A. No, sir.

Cross-examination by Mr. Dunn:

Q. Where do you live? A. I live at 150 West Broadway.

Q. How long have you lived there? A. Fifteen or sixteen years.

Q. Have you ever lived any other place? A. I lived in Philadelphia.

40 Q. Whereabouts? A. 1912 South 17th Street.

Q. In Philadelphia proper or is that a suburb? Is that the city of Philadelphia? A. Yes, sir.

Peter Chirichella—Cross.

Q. What kind of a building is there located at that address? A. It is a tenement house.

Q. How large? A. I guess it is four stories high.

Q. How many families live there? A. I can't exactly say.

10 Q. Is it brick or frame? A. It is brick it is made out of them large stones.

Q. Did you live there alone? A. No, I lived there with a friend of mine.

Q. What was his name? A. Frank Losczlo.

Q. Did you and Frank have an apartment there? A. Yes, sir.

Q. Were you working at that time? A. Yes, sir.

20 Q. Where did you work? A. I was working on the P. R. T. Bus Line.

Q. As a chauffeur? A. Yes, sir.

Q. When were you living at this address in Philadelphia? A. When?

Q. When? A. What do you mean when?

Q. What do you think I mean? A. I don't know.

Q. When infers time doesn't it? A. When I lived there what do you mean?

Q. A minute ago you said you lived at 150 West Broadway? A. Yes, sir.

30 Q. When did you live in Philadelphia? A. I lived there last week I was there.

Q. How long have you lived in Philadelphia? A. About a year and a half.

Q. At this same address? A. No a different address.

Q. At what other address did you live at? A. 707 Buttonwood Street.

Q. What kind of a building was you located at in that place? A. A brick building.

40 Q. Also in Philadelphia? A. Yes, sir.

Peter Chirichella—Cross.

Q. You lived at 1912 South 17th Street what period of time how long did you live there? A. About six or seven months.

Q. Before that you had lived at 707 Buttonwood Street? A. Yes, sir.

10 Q. How long did you live at Buttonwood Street? A. Six or seven months, five or six months.

Q. Where did you live before that? A. I been here in Paterson.

Q. During all the time you were in Philadelphia you only lived at these two addresses? A. Yes, sir.

Q. You don't want to change that, do you? A. No, sir.

20 Q. You are certain about that? A. Yes, sir.

Q. Who lived with you at the Buttonwood Street address? A. The friend of mine.

Q. Who is that friend? A. He owns the house.

Q. What is his name? A. Jos. Parrato.

Q. Is he related to you? A. No, sir.

Q. Was Frank related to you? A. No, sir.

Q. How do you pronounce your name? A. Chirichella.

Q. How do you spell it? A. Chirichella.

30 Q. Have you always spelled it that way? A. Yes, sir.

Q. You have never written it any other way have you? A. No, sir.

Q. Would you mind writing on this piece of paper the following words—Peter Churchill? A. Yes, sir.

Q. Did you ever write your name that way at any time? A. Not that I remember of.

Q. Under what name were you living in Philadelphia? A. Peter Chirichella.

40

Peter Chirichella—Cross.

Mr. Dunn: I ask that this paper be marked S-4 for Identification.

Mr. Dunn: I offer it in evidence.

Mr. Stafford: I object to it until I find out what you are going to do with it.

Q. You gave me your address as 707 Buttonwood Street Philadelphia? A. Yes, sir. 10

Q. You never lived at 77 Buttonwood Street, Philadelphia? A. No, sir.

Q. You are sure about this are you? A. Yes, sir, positive.

Q. Did you ever tell anybody in Philadelphia that your name was anything but Chirichella? A. I never spoke to anyone to tell the truth but my friend who knew my name was Chirichella.

Q. Did you ever tell anybody that your name was anything but Chirichella? A. I never said anything to anyone. 20

Q. You wouldn't want to change that? A. Change what?

Q. What I just said. A. No I wouldn't.

Q. Your recollection of your stay in Philadelphia is quite distinct in your mind, you remember very well the time you spent in Philadelphia? A. Yes, sir.

Q. During that time you never told anybody your name was anything but Chirichella? Is that right? A. Yes, sir. 30

Q. Have you ever been convicted of crime? A. Yes, sir, I've been convicted of crime for poker and paid a fine of Twenty-five Dollars for playing poker.

Q. When was that? A. Over a year ago.

Q. Had you ever been convicted of any other crime? A. No, sir.

Q. No. Now do you mean that? A. Not that I can recall to my mind about it. 40

Peter Chirichella—Cross.

Q. Think about the year of 1920, 1921, 1922 and 1923. A. Well for fighting.

Q. Did you or did you not do anything with a girl by the name of Agnes Cummins? A. Yes, sir.

10 Q. May I refresh your recollection by asking you if it is not a fact that on March 3rd, 1923 you were convicted of assault and battery on a girl by the name of Agnes Cummins? A. Yes, sir.

Q. That does refresh your recollection somewhat? A. Yes, sir.

Q. Were you convicted in 1922 of anything? A. No, sir.

Q. The year before 1923? A. No, sir.

Q. How about 1920? A. Not that I remember of, nothing at all.

20 Q. Is it not a fact that on November 17th, 1920 you were convicted of petty larceny? A. No, sir.

Q. And that you were found guilty and fined? A. No, sir.

Q. That is not so? A. Not that I remember.

Q. This is 1926 that would be six years ago not quite six years ago.

Mr. Stafford: How old are you?

A. Twenty-five.

30

Cross-examination continued by Mr. Dunn:

Q. Does it refresh your recollection to ask you if you remember being convicted of petty larceny in November, 1920? A. Here in this Court?

Q. Either in this court or the Recorders Court of Paterson? A. Not in this court.

Q. In the Recorder's Court? A. I don't know I have been there a lot of times for getting drunk and for gambling and so forth.

40

Peter Chirichella—Cross.

Q. That explains why you cannot account for whether you was convicted or not this time? A. I can't remember.

Q. You have been down there a number of times? A. Yes, sir, for gambling twice I have been down there for gambling.

Q. Will you say you were not convicted of petty larceny in November, 1920? A. Will I say that?

Q. That is the question will you say that?

Mr. Stafford: I object to counsel's repetition of this testimony.

Q. What was your wife's name before you were married? A. Mildred Doremus.

Q. When were you married? A. I am not sure when I was married I think in 1920 or 1921.

Q. Do you know a girl whose first name is Jule? A. No, sir.

Q. Or who is called "Jule?" A. No, sir.

Q. Where did your wife live in 1920?

Mr. Stafford: I object to it as being immaterial and irrelevant.

Question withdrawn.

Q. Where does your wife live now?

Mr. Stafford: I object to it as immaterial and irrelevant.

Objection withdrawn.

A. Now she is living at 1912 South 17th Street, Philadelphia.

Q. Where do her people live? A. 42 North York or York Street I don't know which.

Q. 42 North York? A. Or either York.

Q. Paterson? A. Yes, sir.

40

Peter Chirichella—Cross.

Q. Did you say on your direct examination that your wife was home with her people? A. Did I say my wife was living at her people's house? Why I did yes.

Q. That is not true? A. She might be there now she might have come in.

10 Q. Didn't you just tell me she was living in Philadelphia? A. Yes, sir, I did.

Q. The statement that she was living with her people on North York Street is not true? A. I came in the other morning from Philadelphia and I wired her to be here to her mother's she may be here.

Q. Was your wife living at North York Street? A. She always did live there.

20 Q. When did she go to Philadelphia? A. We went both together two weeks ago.

Q. Where was she living yesterday morning? A. Yesterday morning she might have been on her way here.

Q. Have you an apartment at 1912 South 17th Street? A. Yes, sir.

Q. Do you call that home? A. Yes, sir.

Q. Do you live there with your wife? A. Yes, sir.

30 Q. Were you living there with your wife prior to this trial? A. What do you mean by that?

Q. Before. Before yesterday? A. Yes, sir.

Q. Did you leave your wife there when you came up to Paterson? A. Yes, sir.

Q. Then this story that your wife was living with her people on North York Street that you told yesterday is not true, is it? A. Yes, sir, it is true.

40 Q. How long did you work for the P. R. T. Bus Co.? A. I should judge about three or four months.

Peter Chirichella—Cross.

Q. What three or four months? The last three or four months? A. No, between the first part when I went there and then the latter part; now I am working on and off as an extra.

Q. When you first went to Philadelphia you worked for the P. R. T. Bus Co.? A. As an extra man. 10

Q. Then you stopped working for them? A. I didn't stop working for them, but that was nearer for me to—

Q. You worked for them more than three or four months? A. I stated I worked for them three or four months.

Q. During what three or four months? A. In the last year.

Q. Don't you understand the question? A. I understand your question pretty good, three 20 months in the early part of last year past.

Q. Which are they? A. November, December and January.

Q. November, December and January, November and December of 1925 and January of 1926? A. Right.

Q. Before that time you didn't work steadily with them? A. No, sir.

Q. How many days a week did you work with them? A. Two, one, maybe I wouldn't be on it 30 in a week and maybe I would put in three or four days a week.

Q. Did your wife live down at Philadelphia with you during the whole period you have been down there? A. No, sir.

Q. How long has she lived at 1912 South 17th Street? A. On and off she has been living there she would come in to see me and I would come in here to Paterson whenever I had no work to do; if I had work to do I would go out during the 40 week.

Peter Chirichella—Cross.

Q. How many rooms did you have at 1912 South 17th Street? A. Five rooms.

Q. You and Frank kept the five rooms, did you? A. Yes, sir.

10 Q. And your wife would occasionally go in to see you and you would entertain her? A. Entertain my wife?

Q. As a guest? A. Certainly.

Q. Did you have a cook? A. No.

Q. You and Frank took care of the cooking and the running of the house? A. Yes, sir.

Q. Who was in the car at the time you went to Passaic? A. At the time I went to Passaic?

Q. Yes. A. There was four men jumped in my car.

20 Q. When you went from Passaic to Paterson, who was in the car? A. There was three or four low fellows and one tall fellow.

Q. Who was in the car when you went from Passaic to Paterson? A. I did not know their names so good.

Q. Tell them to us as good as you know them. A. I could point them out to you.

Q. Tell them to us as good as you know them, as well as you know them. A. As well as I know them I have heard of the name of Meola.

30 Q. You have heard of Jim Meola? A. Yes, sir, I never heard of Van Rosenberg, until I got implicated in this, and this other gentleman you call Boots I never seen him before until I was implicated on this.

Q. Was anybody else in the car going down to Passaic? A. Going down?

Q. Yes. A. Not that I recall.

Q. Whose car was it? A. A friend of mine.

Q. What is his name? A. Jos. Virego.

40 Q. How do you pronounce it? A. Virego.

Peter Chirichella—Cross.

Q. Where did he live? A. He lives in Plainfield.

Q. In last April? A. He always lived there; he just came in for a visit.

Q. With you? A. Yes, sir.

Q. From Philadelphia? A. Yes, sir.

Q. Had he been visiting you down there? A. 10 Regular.

Q. Yes. A. On and off, once a month or twice every three months and so forth.

Q. What was his business? A. I do not know.

Q. A sort of a traveler? A. He must have been a traveler.

Q. Did he drive up from Philadelphia with you? A. He drove in from Philadelphia into Paterson.

Q. Who drove? A. He drove and then I would 20 drive.

Q. You were driving, too? A. Yes, sir, on and off.

Q. When did you get to Paterson? A. Previous to that night you are referring to the hold-up job.

Q. I am talking about the time you and he drove. A. He rode in lots of times with me.

Q. Where does he live? A. Buffalo.

Q. Where does he live in Buffalo? A. I do not 30 know.

Q. On this particular day, it was Friday, wasn't it, that you drove in? A. I can't tell you.

Q. It was the day before the hold-up and the hold-up took place in the early morning of Saturday. A. You are right, Friday.

Q. Good Friday? A. I think it was, I am not sure.

Q. What time did you get to Paterson on that occasion? A. Five or six or seven o'clock. 40

Peter Chirichella—Cross.

Q. Where did you go when you got to Paterson? A. We stopped off at Westerman's Restaurant and had something to eat.

Q. Just you and Joe? A. Yes, sir, my boy friend.

10 Q. About what time was it you had something to eat there? A. We seen a few friends of mine that stepped in and we sat there talking.

Q. Who was it that stepped in, do you recall anybody that stepped in? A. No, I do not.

Q. Any of these boys in the back seat there, Pete White or any of them? A. No, sir.

Q. Mooch? A. No, sir.

Q. Do you recall any of the names of the boys that stepped in this night? A. No, sir.

20 Q. You had something to eat, did you? A. Yes sir.

Q. What did you do after supper? A. After supper my boy friend was tired and I took him to my house and made him sleep.

Q. Up to Broadway? A. Yes, sir.

Q. By the way, how old was your boy friend? A. I couldn't judge his age.

Q. Well, guess. A. I should guess twenty-nine to thirty-three or thirty-four.

30 Q. When did you take him up and put him to bed? A. About seven or eight o'clock.

Q. Did you ask him for the car? A. Yes, sir.

Q. Weren't you tired? A. Yes, sir, but I told him I wanted to see some of my boy friends before I went to bed.

Q. You were pretty tired, too, weren't you, Mr. Churchill? A. Yes, sir.

40 Q. Where did you go with the car? A. I rode down to lower part of Market Street to see if I could see some of the boys and there was no one around.

Peter Chirichella—Cross.

Q. What part of Market Street did you look for the boys? A. Well, we have an Elm Club room down there.

Q. Yes? A. The place was closed.

Q. Where did you go then? A. I drove back to the restaurant again.

Q. Westerman's? A. Yes, sir. 10

Q. Where did you go then? A. I stayed in there, had some coffee in front of me and I stayed there waiting for some one to come in.

Q. You went in and had some coffee? A. Yes, sir.

Q. What time was this? A. I don't know.

Q. Was it early or late? A. The early part of the night.

Q. How long had you been down to the Elm Club room? How long did it take you to find out that was closed? A. I waited around to see if anybody was coming around to find out why it was closed. 20

Q. How long did you stay down there? A. I can't judge.

Q. An hour? A. No.

Q. Half an hour? A. I don't know how long.

Q. You haven't any idea? A. No idea at all.

Q. Then you went back to Westerman's. Stood in front of Westerman's for awhile? A. I sat inside with a cup of coffee talking to the manager of the place. 30

Q. Talking to the manager, how long were you talking to him? A. I don't know how long.

Q. Of course, you don't remember what you were talking about? A. Yes, sir, I do.

Q. Oh, do you? A. We always talk about books we transfer to one another he would have a book and give it to me and I would have one and I would give it to him. 40

Peter Chirichella—Cross.

Q. What is the manager's name in the restaurant? A. We just call him "Jim."

Q. The night man? A. Yes, sir.

Q. What is the day manager's name? A. I don't know his name, I know him, though, if I see him.

10 Q. You don't know his name? A. No, I do not.

Q. Do you know the night man, too? A. Yes, sir.

Q. But you don't know how long you stayed there? A. No, I do not.

Q. Who came into the restaurant then some of your boy friends? A. No.

Q. You went out? A. No, not then, but I walked out of the restaurant and I heard somebody speaking about a Passaic crap game.

20 Q. And you pricked up your ears when you hear that, did you? A. Yes, sir.

Q. You shoot crap do you? A. Yes, sir, I am fond of the game I love it very much.

Q. You love it? A. Yes, sir, I love the game.

Q. Who was it that was speaking about the crap game? A. I don't know.

Q. Were there many around? A. Three or four boys standing on the curb.

30 Q. Of course you don't remember who they were? A. Now I do remember.

Q. Who were they? A. The boys implicated in the case, the boys that sat up here a great part of yesterday.

Q. Who were they? A. The boy you call Van Rosenberg and Meola.

Q. That is two who else? A. Boots Lombardo.

Q. Yes, who else? A. That is all I remember getting in the car.

40

Peter Chirichella—Cross.

Q. You didn't know any of these boys? A. No.

Q. You never saw them before? A. I seen one at a time.

Q. Did you see one before? A. Yes, sir.

Q. Who? A. Meola but not to speak to.

Q. You never saw any of these to speak to before? A. No.

Q. You never saw Bootsey to speak to before? A. No, sir.

Q. Sure about that? A. Positive.

Q. Just what happened, you came out of there and you heard somebody say something about a crap game in Passaic, and what did you say? A. I said I am going down that way I expect to see some of my friends down there.

Q. Of course you had no intention of going down that way before you heard about the crap game in Passaic? A. No.

Q. Before you heard somebody mention the crap game? A. I had intentions.

Q. I thought you were tired and were going to bed early? A. Yes, sir, but figured I could stay up a little longer.

Q. "I am going down that way" that is what you said, did you? What else did you say? A. If you are going into the car jump in the car I am going down that way? Get into the car.

Q. To whom did you say that? A. To all of them.

Q. Did they get in? A. They all got in.

Q. You were driving were you not? A. Yes, sir.

Q. Who got into the front seat? A. The tall fellow.

Q. Which one is that? A. Van Rosenberg I think.

40

Peter Chirichella—Cross.

Q. You think so. Is there some doubt in your mind about what he is called? A. I can point him out to you.

Q. You know his name as well as you know your own, don't you? A. Now I do.

10 Q. It was Van Rosenberg wasn't it? A. That sat in the front seat.

Q. There is no doubt about it? A. Sure there is a doubt.

Q. Where did the others get? A. In the back.

Q. Was Wallace there? A. Wallace who?

Q. Well Walters was he there? You don't know him do you? A. No.

Q. Is Mr. Walters in court? Do you know that man? A. Not to speak to.

20 Q. You don't know that he got in the car in front of Westerman's restaurant? A. Not that I remember if he did.

Q. Where did you go when you left the restaurant? A. We picked up a fellow.

Q. Who? A. I think it was him.

Q. Where? A. On Market Street.

Q. Whereabouts? A. I don't remember whereabouts.

Q. Far from Westerman's? A. No on Market Street.

30 Q. Near Westerman's? A. I guess so.

Q. You know so, don't you? A. I don't know so.

Q. Where did you go then? A. Then we took that gentleman home I think.

Q. There is no doubt is there? A. Whether he got off or another man got off I don't know.

Q. Did you stop any where before you stopped at his home? A. Yes sir.

Q. You got gas, didn't you? A. Yes, sir.

40 Q. He paid for it, didn't he? A. Yes, sir.

Peter Chirichella—Cross.

Q. There is no doubt of that? A. No, sir.

Q. He got out of the car at his house? A. Yes, sir.

Q. Then where did you go? A. We went to the crap game.

Q. How did you go? A. Out Main Street.

10 Q. What time was it that you started for the crap game? A. About eleven o'clock.

Q. Did you see any of the boys you knew down in Passaic? A. I didn't go upstairs.

Q. What did you do? A. I felt tired and I went to sleep in the car.

Q. Why didn't you go home? A. Why didn't I go home I didn't feel like going up any more I figured I had money in my pocket and I didn't want to lose it any more.

20 Q. You wouldn't lose money at home? A. When I got to the crap game I figured I had money and wanted to keep it.

Q. Why didn't you go home? A. Then?

Q. Yes. A. I felt tired and they said they would be down in a couple of minutes that they would be right down and I could take them home I said "Fine" and I laid in the car and went to sleep.

Q. Yes but you were tired. A. Yes, sir.

30 Q. Why didn't you go home? A. I had promised to take them home.

Q. You knew how long they were likely to be in a crap game? A. Yes sir, I figured up staying up and maybe I could see my friends later on in the night too.

Q. Whereabouts did you expect to see them? A. Around Westerman's.

Q. Who were you expecting to see around Westerman's later on in the evening? A. Some of my personal friends.

Peter Chirichella—Cross.

Q. Would you mind telling us who some of your personal friends were that you expected to see when you got back? A. Yes, sir.

Q. Who were they? A. I wanted to see a fellow known as Red Sorentino.

10 Q. Also known as "Bill"? A. No.

Q. A fellow by the name of Louis Deacon? A. Yes, sir.

Q. Vigorito? A. No.

Q. Do you know these boys very well? A. Very well.

Q. Do you know what business they were in?

Mr. Stafford: I object to it as immaterial.

Objection sustained.

20 Q. How long did you sleep down in Passaic? A. About an hour and a half.

Q. You felt all rested after your sleep, did you? A. Not so good.

Q. What wakened you? A. Some fellow woke me up and says, "Let's go home."

Q. Of course, you don't remember who that was? A. It might have been an officer, it might have been one of the boys.

30 Q. You were not startled at that were you? A. No, sir.

Q. An officer waking you wouldn't surprise you, would it? Would it startle you? A. No, sir.

Q. That is rather a common occurrence?

Mr. Stafford: I object to it as being immaterial.

Question withdrawn.

40 Q. What happened after that? Did you go to sleep again? A. No, sir.

Peter Chirichella—Cross.

Q. What happened after that? A. We started on the way for home.

Q. You said somebody woke you up? A. Right.

Q. Who got in your car? A. About eight or nine fellows got into the car then.

Q. Do you know who the new fellows were? A. I only knew one. 10

Q. Who was that? A. A fellow by the name of MacIllwaine.

Q. What did they used to call him. A. Whitey.

Q. How long had you known him. A. Just from going into Sykes drug store.

Q. For sodas. A. Yes, sir.

Q. Did you ever see him in any crap games? A. No, I have not.

Q. Did you ever see Walters in any crap game, now that you know who he is? 20

Mr. Stafford: I object to it as being immaterial.

Objection overruled.

Defendant excepts. Exception allowed and signed and sealed accordingly.

JOS A. DELANEY,
Judge.

A. Now that I know him. I am not sure if I ever see him. 30

Q. MacIllwaine or Whitey got in; who else got in? A. The rest of the boys, I don't know who.

Q. You don't know who the others were? A. No, sir.

Q. By the way, where is this place located, exactly? A. This place?

Q. Yes. A. On Main Avenue.

Q. Whereabouts on Main Avenue, what number, do you recall? A. No, I don't recall. 40

Peter Chirichella—Cross.

- Q. Passaic? A. Yes, sir.
- Q. Near the station? You know where the station is? A. Yes, sir.
- Q. Near the station? A. I guess so.
- Q. On the right or left hand side of the street?
A. On the right.
- 10 Q. Do you know who runs it? A. No, sir.
- Q. It was the first time you were in it? A. No, sir.
- Q. You have been there before? A. Yes, sir.
- Q. And you don't know who runs it? A. No, sir.
- Q. Over a saloon? A. No, sir.
- Q. Was there a saloon connected with the premises? A. No, sir.
- Q. How did you go up to Paterson, by what road? A. Main Avenue.
- 20 Q. You, I think, said you were in a hurry to get back? A. Yes, sir.
- Q. You were tired? A. Very tired.
- Q. You stepped on the gas coming back, did you? A. Yes, sir.
- Q. How long did it take you to get back to Paterson, as far as the time you stopped and turned around, how long did it take you from the time you left the crap game to the time you arrived there? A. I can't exactly say how long.
- 30 Q. Ten minutes? A. More than that.
- Q. You had a Packard car? A. Yes, sir.
- Q. A twin-six? A. Yes, sir.
- Q. What time do you think you left the crap game? A. I don't know what time.
- Q. About twelve-thirty? A. Later than that.
- Q. About what time? A. I cannot exactly say.
- Q. Was there much traffic on Main Street as you came down? A. No, sir.
- 40 Q. Very light. Well, what occurred after you were on your way home; was anything said in the car? A. Yes, sir.

Peter Chirichella—Cross.

- Q. What was said? A. All of them were making a lot of noise about who made a lot of money and who won in the crap game.
- Q. Who won money in the game? A. No names was mentioned.
- Q. Didn't any of the parties say they won or lost money? A. No. 10
- Q. Nobody in your party said that? A. No.
- Q. None of them were bragging about how much they won? A. No one spoke about themselves; they were talking about someone else.
- Q. You don't know who they were talking about? A. No.
- Q. What else did they say on the way up? A. Nothing else was said.
- Q. Who was sitting with you on the way up in the front? A. That is, coming towards Paterson? 20
- Q. Yes. A. The tall fellow, that is, Van Rosenberg.
- Q. You mean that I call Van Rosenberg? A. Yes, sir.
- Q. Were you alone, you two, in the front seat? A. No, I think there was another fellow with me, too.
- Q. Who was that? A. I can't remember.
- Q. Are you sure there were three, you and two others, in the front seat? A. Yes, sir. 30
- Q. Who was sitting in the back? A. That I don't know. Meola, Whitey and the rest of the boys were sitting in the back.
- Q. Who were they? A. I don't know them.
- Q. Who else? A. I don't know the rest of them.
- Q. Have you since learned who the rest were? A. By name.
- Q. Who were they? A. One was called Charlie, the waiter.
- Q. Yes? A. That is all. 40

Peter Chirichella—Cross.

Q. Bill? A. I guess so, Bill.

Q. Bootsey? A. Bootsey, I think, was sitting in the front with me.

Q. Do you know Charlie, the waiter's, name?
A. No, I do not.

10 Q. You just knew him by that name, "Charlie, the waiter"? A. Yes, sir.

Q. What occurred as you came along Main Street; did anything unusual occur? A. One of the boys said, "Let's have a drink."

Q. You don't know who said that, do you? A. No, I do not.

Q. Of course, you don't drink, do you? A. No, I do not drink.

20 Q. Except soda? A. No, I drink, but I didn't drink that night on account of driving the car, and I was sleepy.

Q. Didn't you protest when they said, "Let's have a drink"? A. I said, "What do you want to stop for a drink; I want to get home," and they said, "We just want to have a drink."

Q. So you weakly yielded? Who got out for a drink? By the way, when they said this, what did you do? A. I turned around and pulled up to this place they called Mary's.

30 Q. How far apast the place were you when you pulled up? A. A block or so.

Q. Were you not two or three? A. A block or two, I am not sure.

Q. How did you pull up; what did you do? A. Turned around and went back.

Q. At this time nobody was putting a gun at your ribs? A. No, sir.

Q. You turned around on Main Street and went back? A. Yes, sir.

40 Q. And stopped your car on Main Street? A. No, sir.

Peter Chirichella—Cross.

Q. Where did you stop your car? A. Off of Main Street.

Q. Headed in which direction? Towards Marshall Street? A. The opposite of Main Street.

10 Q. Let's see. You were coming north from Pas-saic, then you turned south to go back; did you turn to your right or left? A. Alongside of the saloon, opposite Main Street.

Q. On what street was that you turned? A. I do not know.

Q. You came up and went south on the right hand side of Main Street until you got to Mary's Cafe, that is right, isn't it? A. Yes, sir.

Q. You didn't stop in front of the cafe? A. No, sir.

20 Q. But you turned your car? A. Yes, sir.

Q. Did you cross the tracks? A. What tracks is that, the Main Street tracks?

Q. Yes. A. Yes, sir.

Q. Then you went east, didn't you, when you went crossed the tracks? A. If it is east, yes.

Q. And pulled up on the left or right hand side of the street? A. The left.

Q. By the side of Mary's Cafe? A. Yes, sir.

Q. What did you say then? A. I said, "If youse are going in for a drink, hurry up out."

30 Q. Who did you say that to? A. To them all.

Q. Did they all get out? A. Not all.

Q. Who stayed in the car? A. Whitey, I know, stayed in the car.

Q. Who else? A. I don't know, I don't know the other boys' names, but there was Charlie, the waiter, stayed in the car.

Q. You know he stayed there, but you don't know that is his name; that is what you mean? A. Yes, sir.

40 Q. Who was the third one that stayed in the car besides yourself? A. Bill.

Peter Chirichella—Cross.

Q. You don't know Bill's last name, do you?
A. No, I do not.

Q. Who got out of the car first? A. I don't know who got out of the car first; they jumped right out of the car and they asked who was going in for a drink.

10 Q. They asked who was going in for a drink. They didn't know at that time who was going in for the drink? A. No.

Q. Who said they were going in for a drink?
A. I do not know.

Q. Someone said it? A. Yes, sir.

Q. Was it the fellow I call Van Rosenberg that said that? A. I do not know.

Q. You know he doesn't drink? A. I don't know.

20 Q. You don't know that? A. I don't know.

Q. Did Meola say it? A. I don't know.

Q. Did Bootsey say it? A. I don't know.

Q. One of them said it? A. I never heard any one of them; someone said it that was sitting in the car.

Q. I don't suppose you looked at them as they got out of the car? A. No, sir, they had got out already.

Q. In fact, you looked the other way? A. I didn't look the other way; just shut my car off.

30 Q. You didn't watch to see where they went?
A. They went into have their drink.

Q. How do you know that? A. Because they said they were going in for a drink.

Q. How do you know they went in; did you see them? A. No.

Q. Did they go in the front door? A. They must have went through the front door; if they went through the side door, I would have seen them.

40

Peter Chirichella—Cross.

Q. How long were they in there? A. I should judge about twenty minutes.

Q. Didn't you get anxious when it took them that long? A. For a drink?

Q. That is the customary time, is it? A. It must be.

Q. Did you fall asleep while you were waiting for them? A. I was about to fall asleep, yes.

Q. But you didn't? A. No.

Q. Of course, you didn't hear any conversation before they went in, did you? A. Conversations, no, I didn't hear any conversations whatsoever.

Q. You didn't hear anybody say anything except "Who wants a drink?" A. That is it.

Q. Then they went in and, of course, you didn't look into the saloon? A. No, sir.

Q. Did either of the other fellows get out of the car to look into the saloon? A. No, sir.

Q. What was the next thing you heard? A. I heard someone jump on the running board and say, "We stuck the joint up."

Q. Didn't you see them coming towards the car? A. As they were running, yes, sir.

Q. Certainly they were running. A. They must have been running or walking fast.

Q. Didn't you say yesterday, on your direct examination, they were running? A. Yes, sir.

Q. Now, there is no doubt about it? A. No, no doubt about it.

Q. Did you see the guns in their hands as they were running out? A. No, sir.

Q. When did you first see them? Where were they when you first saw them? A. When I first saw them?

Q. Yes. A. When I looked at them boys, yes, sir.

40

Peter Chirichella—Cross.

Q. Yes. A. It was on Tenth Avenue and Madison.

Q. That was the first time you saw them run where were they when you first saw them coming out of the saloon? A. Tenth and Madison Avenue.

10 Q. Go back to the saloon for a moment. You said you saw them running towards the car? A. Yes, sir.

Q. Where were they when you first saw them running? A. At Tenth and Madison Avenue. When they was first running they were by the car already where else could they be.

Q. Who got in the front seat? A. The tall fellow Van Rosenberg.

20 Q. That I call Van Rosenberg? A. The tall fellow Van Rosenberg.

Q. Who else got in the front seat? A. I don't think any one else got into the front seat.

Q. Where did Meola and Bootsey go? A. They must have stood on the running board until I got going because the car was shut off and he was standing on the running board with something sticking me in the back.

Q. Of course you didn't know what it was? A. It might have been his finger.

30 Q. You don't know whose finger it was? A. No, sir.

Q. Whereabouts in the back was it sticking you. In the small of the back? A. No between my two shoulder blades.

Q. Near your neck. A. No between my two shoulder blades.

Q. They didn't say anything? A. They said "we stuck the place up, start the car up and go".

Q. What did you say? A. I wanted to leave them there.

40

Peter Chirichella—Cross.

Q. But you gave in? A. When I felt the thing sticking me in the back whatever it was I don't know only I started the car up and blew.

Q. You waited until you felt something sticking you in the back before you started the car up? A. Yes, sir.

Q. Did anybody say "Step on the gas get away?" A. Yes sir the car couldn't go fast enough for him to get away.

Q. Yes. A. The car couldn't go fast enough for me to get away.

Q. I know that. A. So I could throw them out of the car.

Q. That was your object in getting away so fast? A. Yes, sir.

Q. I suppose you had some little discussion on that about whether you would take them, you said "Get out of the car" or something? A. No then I hollered at them.

Q. What did you holler? A. I said "What is the idea of doing this?"

Q. That is all you said? A. Yes, sir.

Q. Then you weakly yielded and stepped on the gas? A. Yes sir.

Q. Was the person who stuck you in the back where were they sitting in the car the person that stuck you in the back? A. After we got started and kept on going they had sat themselves in the back.

Q. This was just in starting? A. No, starting and after going.

Q. They didn't stick you in the back until you started? A. Before starting they did stick something to my back too.

Q. Before starting? A. After starting they all got in the car and kept on going.

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Peter Chirichella—Cross.

Q. Before starting somebody stuck you in the back? A. Yes, sir.

Q. Whitey, Bill and Charlie, the waiter, were sitting in the back seat when the others got out to go into the saloon? A. Yes, sir.

10 Q. It was a seven-passenger Packard Twin Six? A. Yes, sir.

Q. Was anybody sitting on the pull-up seats at that time? A. That I don't know.

Q. There was only you and Charlie, the waiter, Bill and Whitey in the car? A. Yes, sir. I rested my head on the wheel to get some rest.

20 Q. Your head wasn't on the wheel when they came on the run out of the saloon, because you saw them? A. No, I heard Slim and them holler, "We stuck the joint up," and looked to see what was going on, and one fellow jumped in the front seat and two fellows were standing on the running board and something stuck me in the back, and they said, "Start the car up."

Q. Who could stick you in the back? A. Who?

Q. Who? A. Between the two of them.

Q. There was three on the back seat, two on the running board and the other on the seat beside you who could reach your back? A. Who could?

30 Q. That is the question I would like to have you tell the jury? A. Either one of the men on the running board.

Q. Did they get into the car? A. After I got started.

Q. Did you slow up so that they could get into the car? A. Did I slow up? I haven't been started, even.

40 Q. When you started you said they were on the running board? A. Yes, sir.

Peter Chirichella—Cross.

Q. Did they stay on the running board? A. When I started they started getting into the car.

Q. They clambered in as you were speeding on? A. Yes, sir.

Q. Did this thing leave your back? A. Yes, sir.

10 Q. Why didn't you stop then? A. Stop then?

Q. Yes. A. I kept on going.

Q. When did it leave your back? How long after you left Mary's Cafe? A. I couldn't exactly say how far away; I have no idea.

Q. It was this side of Tenth Avenue and Madison Avenue? A. Yes, sir.

Q. When did your courage come back? When did your desire to throw them out of the car reassert itself? A. On Madison Avenue.

20 Q. That is when you came into your own? A. I wasn't my own all the while.

Q. What did you do at Madison Avenue? A. I pulled up the street and threw them off.

Q. Threw them off? A. Told them to get off.

Q. You threw this gang of men out? A. I didn't throw them out; I told them to get out.

Q. Who did you tell that to? A. All of them.

30 Q. Why didn't you take them over the car tracks so they could catch a car? To a street on which there were trolleys so they could get a car? A. My mind was to get rid of them fellows out of the car, that was my mind.

Q. After this awful experience, did you go down to police headquarters and report it? A. I had no business going down and reporting it, because I was innocent about it.

40 Q. Of course, you didn't think you had any information or knowledge that might be important to the police, did you? A. No, sir, I did not.

Peter Chirichella—Cross.

Q. Did you see or hear anybody talk about the watches, jewelry or money? A. No, sir.

Q. There was some discussion of that kind after the hold-up? A. No, sir.

10 Q. Did you see anybody pass back a gun? A. No, sir.

Q. Did you hear anybody say "Give me that gun?" A. No, sir.

Q. Anything of that kind? A. No, sir.

Q. So far as anything you heard it might have been the same conversation that would come off at a tea party? A. No.

Q. What were they talking about from the time they left Mary's Cafe? A. What they were talking about and what I was thinking is a different thing.

20 Q. Only one thing I am asking you? A. I don't know I was just doing all the hollering myself.

Q. What did you holler from the time you got away? A. I didn't say anything until I got to Madison Avenue.

Q. What were they talking about then? A. I don't know.

Q. They were all talking? A. They were all talking, yes sir.

30 Q. You don't know what they were talking about? A. No, sir.

Q. When you got up to Madison Avenue and Tenth Avenue and you threw them out what did they say? A. I didn't throw them out I told them to get out.

Q. You ordered them out? A. I ordered them out.

Q. Which way did they go? A. That I don't know.

40 Q. You immediately left? A. Yes, sir.

Peter Chirichella—Cross.

Q. Where did you go? A. Went down Broadway to West Broadway and went home and I slept.

Q. And the next morning you and Joe left for Philadelphia with the car? A. The following evening we left.

Q. You went with him? A. Yes sir.

Q. Did you go up to the Falls? A. No sir we went to Philadelphia. 10

Q. Did you go by way of Buffalo? A. No sir he was going to Buffalo though.

Q. I suppose Joe went on to Buffalo? A. I guess so.

Q. Did your wife accompany you home that week-end? A. No, sir.

Q. She wasn't living in Philadelphia then? A. Yes sir. 20

Q. Are you sure? A. I am not sure she might have been there.

Q. She wasn't living in Philadelphia in April 1925? A. Yes, sir.

Q. Where? A. At 707.

Q. Think now, April, was she living there? A. April what? 20

Q. April 1925 was your wife living in Philadelphia? A. No, sir.

Q. Of course she wasn't. A. She was here in Paterson. 30

Q. Did you ever tell anybody in Philadelphia that your name was Dirandy? A. I may have.

Q. Don't you know you did? A. No I don't know.

Q. What do you mean by that, no you didn't tell anybody, do you mean you didn't tell them or you don't remember? A. I don't remember.

Q. Do you remember what address you gave when you were brought to Paterson as the place where lived? A. When I was brought here to Paterson. What address have I given to who? 40

Peter Chirichella—Cross.

Q. To the police? A. I guess my home address.

Q. You wouldn't tell them anything but the truth? A. No, sir.

Q. Did you ever live on Cross Street? A. I had a business place there.

10 Q. Where? A. 74 or 83 Cross Street.

Q. Did you live there? A. I would make it my home at nights there.

Q. When? A. When I was too tired to go home I would sleep in the pool room.

Q. In September, 1925, you told me a few minutes ago, correct me if I am wrong, that you were living in Philadelphia and that you had lived there for eleven or twelve months? A. Yes, sir.

20 Q. That would embrace September, 1925? A. Yes, sir.

Q. That was your residence? Is that right? A. I used to live there.

Q. Were you living on Cross Street in September, 1925? A. No, sir.

Q. Now, you are sure about that? A. Positive.

Q. Did you ever live at 174 Cross Street? A. No, sir.

Q. You know there is no such number on Cross Street? A. Yes, sir.

30 Q. Did you ever tell the police in Paterson, when they asked where you lived in September, 1925, that you lived at 174 Cross Street, Paterson, N. J.? A. September, 1925?

Q. September 21st, when you were brought to police headquarters by Detective Brooks and Herman? A. I may have and may have not.

40 Q. You wouldn't tell them if it wasn't true, would you? You have nothing to conceal; you were innocent? A. 174 Cross Street, is that the address?

Peter Chirichella—Cross.

Q. That is the question. A. I do I used to live at 74 Cross Street.

Q. You are cute? A. No, I am not cute, but it sounds funny, that is all.

Q. You were innocent? A. Yes, sir, I was innocent.

10 Q. Can you explain to this jury why you told the police you lived at 174 Cross Street, Paterson? A. Yes.

Q. Did you tell the police you lived at 174 Cross Street, Paterson? A. I am not sure.

Q. Of course, you mentioned to Mr. Stafford about this statement you obtained from Mr. Van Rosenberg; you mentioned that to Mr. Stafford? A. Yes, sir.

20 Q. You told Mr. Stafford all about it? A. All about the statement?

Q. Yes. A. Yes, sir.

Q. You didn't mention to him the fact that Van Rosenberg wanted money? A. Yes, sir.

Q. Mr. Stafford didn't advise you to pay him money? A. He didn't advise me to give him anything.

30 Q. Do you mean to tell this jury that you told Mr. Stafford that this fellow wanted money to sign a statement and he said, "Go and get the statement signed and give him the money"? A. Yes, sir.

Q. He didn't say "give him the money"? A. He didn't say not to give him the money; he told me not to give him any money, but to get the statement and to have it signed by a lawyer, and I went to see Lawyer Jordan.

Q. You knew that statement wasn't true? A. Yes, sir.

40 Q. You knew it didn't you? A. Yes, sir.

Peter Chirichella—Cross.

Q. Yet you asked this man to lie for you? A. I didn't ask him anything.

Q. He volunteered it? A. Yes, sir.

10 Q. Why do you think he volunteered it? A. I don't know because he knows I am innocent about it.

Q. Who helped him to think you were innocent? A. He knows I am innocent or else he wouldn't volunteer.

Q. You know it too? A. Yes, sir.

Q. On the way back from Philadelphia did Officer Brooks and Herman ask you about this case? A. Yes, sir.

Q. Did they ask you what you knew about it? A. Yes, sir.

20 Q. Did they ask you if you were in it? A. I said "No" I wanted to see my lawyer first.

Q. You told them you didn't know anything about it? A. Yes sir I told them I didn't know anything at all about it.

Q. When for the first time did you ever tell anybody you were in that car? A. I didn't tell anybody.

30 Q. Your intention was to prove you were not in the car? A. No, my intention was to tell the truth, I was there in the car driving them to Passaic to do them a favor.

Q. To do them a favor? A. Yes sir like a good fellow I took them and they gave me this.

Q. I will ask you again, did you ever tell anybody in Philadelphia that your name was Dorandy? A. I am not sure I am not positive about it yet I might have.

40 Q. May I refresh your recollection by asking you if you ever told that to an officer of the law in Philadelphia?

Peter Chirichella—Cross.

Mr. Stafford: I object to it. When and where was this?

Q. On August 21st, 1925 while under arrest in Philadelphia, Pa., did you tell Detective Cammetti that your name was Peter Durandy? A. I am not sure. 10

Q. Officer Cametti stand up. Do you know this gentleman? A. Yes, sir.

Q. Where did you see him before? A. In Philadelphia.

Q. Whereabout in Philadelphia?

Objected to by Mr. Stafford.

Q. Do you recall where you saw him?

Mr. Stafford: I object to that question if the purpose is to affect the character of the witness. 20

Q. How many times did you see this gentleman?

Objected to by Mr. Stafford.
Objection sustained.

Q. I ask you again, didn't you tell this gentleman Mr. Cammetti that your name was Peter Durandy? A. Not that I can remember of. 30

Q. And that you lived at 707 Buttonwood Street, Philadelphia? A. I did that is right.

Q. Do you remember that part? A. I am not so sure about it.

Q. Did this gentleman search you?

Objected to by Mr. Stafford.
Objection sustained.

Q. Did you have a license on your person on that occasion entitled "Peter Churchill" or in the name of Peter Churchill? 40

Peter Chirichella—Re-direct.

Peter Chiricella—Re-cross.

Mr. Stafford: I object to the State proving their case by this witness.

Objection sustained.

10 Q. Did you have a conversation on Aug. 21st, 1925 with Detective Cammetti in the Philadelphia Police Headquarters in which you said "my name is Peter Durandy, I live at 707 Buttonwood Street" and later informed this same officer that your name was Peter Churchill and that you lived in Paterson, N. J. after the officer had questioned you, did you have a conversation to that effect?

A. No sir, not that I remember of but I remember sitting at a table eating with the gentleman two or

20 three times.

Q. Do you know where the City Hall is in Philadelphia? A. Yes, sir.

Q. Did you ever see him there? A. I may have and I may have not.

Q. Did you have such a conversation with him in the City Hall in Philadelphia, Pa? A. No, sir.

Re-direct examination by Mr. Stafford:

30 Q. Who paid the bills in the restaurant? A. I did for a number of persons.

Q. How many times with Detective Cammetti?

A. Three or four times.

Re-cross-examination by Mr. Dunn:

Q. I guess you know Mr. Cammetti? A. I said I did.

40

Frank Lombardo—Direct.

FRANK LOMBARDO, SWORN for the defense.

Direct examination by Mr. Stafford:

Q. You are the Lombardo mentioned by Mr. Van Rosenberg and Meola in this alleged hold-up?

A. Yes, sir.

10

Q. Did you know Peter Churchill before this alleged hold-up? A. No.

Q. Will you just explain to the Court and Jury where this plot or scheme to hold up this saloon was arranged? A. Yes, sir.

Q. Where was it concocted? A. Up in the Passaic crap game.

Q. Who concocted it? A. Me and Jimmie Meola and Van Rosenberg.

Q. Did Churchill have anything to do with this hold-up? A. No, sir.

20

Q. Was this hold-up discussed at any time in the automobile while Churchill was driving it? A. No, sir.

Q. When this automobile arrived at Mary's saloon who said "There is a saloon lets have a drink?" A. Jimmie Meola.

Q. Who told Churchill to turn around? A. Jimmie Meola.

Q. Was there anything said at all before the automobile came to a stop about sticking up or holding up anybody? A. No, sir.

30

Q. Who got out of the car? A. Me, Jimmie Meola and Van Rosenberg.

Q. Was there anything said in the automobile about holding up or sticking up or sticking up a joint until after you got out of the car? A. No, sir.

Q. Was anything said in the hearing of Churchill at any time before you Meola and Van Rosenberg got out of his car about robbing or holding up anybody? A. No, sir.

40

Frank Lombardo—Cross.

Q. When you came out of that saloon Mr. Lombardo did you see anybody holding a gun to Mr. Churchill's back? A. Yes, sir.

Q. Who did you see? A. Jimmie Meola.

10 Q. What did he say? A. He said "We stuck the joint up and drive fast, if you don't drive fast I will drive your back out."

Q. Did you in that hold-up ever say "I will take care of Churchill's share?" A. No, sir.

Q. Did you ever mention Churchill's name in connection with it? A. No, sir.

Q. Did he receive any of the profits or bootey's from this thing? A. No, sir.

Q. Did you ever tell him you would give him any? A. No, sir.

20 Q. Did he ever ask you for any? A. No, sir.

Q. Did he know anything about it? A. No, sir.

Cross-examination by Mr. Dunn:

Q. He was just a good fellow wasn't he. You understand what I mean he was just a good fellow. A. What do you mean.

Q. Mr. Churchill had nothing to gain by this hold-up he just took you gang of men around for the pleasure of it? A. He didn't know about it.

30 Q. By the way, Mr. Lombardo were you ever convicted of crime? A. Yes, sir.

Q. When? A. In 1912.

Q. What kind? A. Second degree murder.

Q. What is your name? A. Ladino Moscardelli.

Q. You have gone under other names of course? A. Frank Lombardo.

Q. And what else? A. Frank Greco.

40 Q. You were convicted of second degree murder under which of the three names? A. Ladino Moscardelli.

Frank Lombardo—Cross.

Q. Have you ever been convicted under any name of any other crime? A. No, sir.

Q. Just murder? A. Yes, sir.

Q. Lets take Frank Lombardo. Have you been convicted under that name? A. No, sir.

10 Q. How about Frank Greco? A. I have never been convicted on that.

Q. Were you ever up in Yonkers? A. No, sir.

Q. You were never there in your life? A. No, sir.

Q. Were you not convicted of carrying a gun in Yonkers and didn't you pay a hundred dollar fine in July, 1925, under the name of Frank Greco? A. That was Mount Vernon.

20 Q. That is true is it? A. Yes, sir; but I have not been convicted when I paid a hundred dollars fine.

Q. You are now out on probation from Pennsylvania on a murder charge? A. Yes, sir.

Q. There is a parole warrant against you for that? A. Yes, sir.

Q. Do you recall speaking to me and Detective Brooks in that room the prisoners room yesterday at about two o'clock? A. I spoke with that guy there.

30 Q. To him and to me in that room? A. Yes, sir.

Q. Do you remember it? A. Yes, sir.

Q. Do you remember what it was about? A. You asked me if Pete Churchill was in this trouble?

Q. Was in the car I asked you if he was in the car? A. If he was on this robbery.

Q. Yes. A. Yes, sir.

40 Q. And didn't you say to me Peter Churchill went in the car to Passaic and there he left the car? A. No, sir.

Frank Lombardo—Cross.

Q. You didn't say that? A. I told you we was in the crap game upstairs and he was downstairs and was sleeping in the car.

Q. Didn't you say he didn't drive the car back but left the car in Passaic? A. No, sir.

10 Q. You didn't say that to me and Detective Brooks at two o'clock yesterday afternoon? A. No, sir.

Q. When I asked you if you wanted to go on the stand and tell the truth? A. Yes, sir.

Q. Do you mean that Frank? A. Yes, sir; if I say that I no say that.

Q. Didn't you think the defense was going to be an alibi? A. It is not an alibi at all I am telling the truth.

20 Q. That was before the defense opened up yesterday wasn't it? A. No, sir.

Q. Did you say in words or substance that Churchill left the car in Passaic? A. I says Churchill was downstairs in the car and I go upstairs to a crap game.

Q. Didn't you say that Churchill didn't come back with the car that he left the car in Passaic? A. No, sir.

Q. Where did you sit in the car after you left Mary's saloon? A. In the back.

30 Q. Whereabouts in the back? A. I sat in the back seat.

Q. On one of the pull-up seats? A. No, sir.

Q. When you got into the car Frank wasn't Whitey and Charlie the waiter and Bill sitting in the back? A. Yes, sir.

Q. And you and Meola sat on the pull-up seats didn't you? A. No, sir.

Q. Where did you sit? A. On the back seat.

40 Q. On somebody's lap? A. No, sir; somebody was sitting on my lap.

Frank Lombardo—Cross.

Q. Who was it? A. Charlie the Pollock.

Q. You mean Charlie the waiter? A. I call him Charlie the Pollock.

Q. What do you call MacIllwaine? A. Mac.

Q. What else? A. Whitey.

Q. What do you call Van Rosenberg? A. Slim.

Q. What do you call this fellow over here? A. Meola. 10

Q. This man here next to Mr. Stafford. A. Pete Church.

Q. What? A. Pete.

Q. What? A. Pete Churchill.

Q. When did you first meet Pete Churchill? A. I met him down here in Paterson.

Q. How long have you been in Paterson? A. Since July 4th, 1924. 20

Q. Since you got through working up at Mount Vernon? A. Since 1924.

Q. July, 1925? A. July, 1924, I have been in Paterson.

Q. Where do you live? A. 357 Market Street.

Q. Alone? A. No, sir.

Q. Who do you go around with? Who were your boy friends? A. I don't have any friends.

Q. No men companions or boy companions ever go out with you, do you ever go out with any of the boys? A. No, sir. 30

Q. On this night in April you were down at Westerman's were you not, Frank? A. Yes, sir.

Q. Who were you talking to down there? A. I was talking to Meola and Van Rosenberg when he came there and asked me if I was feeling lucky.

Q. Yes. A. And we could go by the crap game in Passaic that is the place I met them.

Q. Who drove the car? A. Pete Churchill.

Q. Then you went on down to the crap game? A. Yes, sir. 40

Frank Lombardo—Cross.

Q. Were you lucky? A. I was a little lucky, but luck played against me.

Q. How about Meola and Van Rosenberg were they lucky? A. They no were lucky they dropped about Twenty-five Dollars.

10 Q. How long were you up there? A. I think I was a couple of hours up there.

Q. Then you came down and who was in the car? A. There was in the car downstairs there was Pete.

Q. When you came downstairs who was in the car? A. There was Pete in the car he was sleeping in the car.

Q. Pete? A. Yes, sir.

Q. Was he asleep? A. Yes, sir.

20 Q. Did you wake him up? A. Somebody did.

Q. Who got to the car first? A. I can't remember.

Q. A few moments ago you told Mr. Stafford while you were up to the crap game you talked about this stick-up you and Meola and Van Rosenberg? A. Yes, sir.

Q. You talked it all over did you? A. Yes, sir.

Q. Laid all your plans? A. Yes, sir.

30 Q. Who said "lets have a drink here" when you got to Mary's Cafe? A. Jimmie Meola.

Q. Of course, he didn't know you were going to hold up the place? A. He was there up in the crap game and he said, "Don't say anything to Pete Churchill because if you tell something to Pete Churchill he no going to drive us down there."

Q. You left him at the wheel when you went to stick up this place? A. He don't know anything about it.

40 Q. Weren't you afraid Pete would fall asleep again you knew how tired he was? A. No, sir.

Frank Lombardo—Cross.

Q. You weren't afraid he would fall asleep at Mary's Cafe? A. No, sir.

Q. Although he fell asleep at the crap game? A. He was about two hours standing down there.

Q. How long were you in Mary's Cafe? A. Five minutes not even five minutes.

Q. Did you have a gun? A. Yes, sir. 10

Q. Did Van Rosenberg have a gun? A. Yes, sir.

Q. Did Meola have a gun? A. Yes, sir.

Q. How did you go in, who went in first? A. All three of us.

Q. What happened when you got inside? A. We said "Stick 'em up."

Q. Did they do it? A. Yes, sir.

Q. What did you do? A. Just stood near the door. 20

Q. What did you do just stand there? A. Just hold my gun in my hand.

Q. Did you go in any of their pockets? A. No, sir.

Q. Did you take any of their jewelry? A. Meola took it.

Q. Meola searched them? A. Yes, sir.

Q. You didn't take it? A. I was right in the door.

Q. Did you see one of the Mary boys have a ring on? A. No, I didn't, Meola he was fighting to get a ring off. 30

Q. And he couldn't do it? A. I don't know if he did or not.

Q. Didn't you try and get the ring off? A. No.

Q. Didn't you put Mary's finger in your mouth and try to get the ring off and bite his finger? A. No, there is Mr. Brooks he tell you when he fetch me back he tell this Mary if he can identify and he identified Jimmie Meola, he said, "Here is the 40

Frank Lombardo—Cross.

guy that bite my finger". Jimmie Meola he identified him and now he wants to put that in on me. I never bit him.

Q. You are strong and you can stand it, Frank?

A. I don't know.

10 Q. When you went out of the place, Frank, who went out first? A. I go out first.

Q. Because you were right near the door? A. Yes, sir.

Q. Who went out next? A. I don't know if Jimmie Meola followed or Van Rosenberg.

Q. Before you went out did you see anybody over the bar at any time or Meola working on this ring over the bar? A. Yes, sir.

Q. You didn't give him a hand? A. No, sir.

20 Q. He didn't say, "I can't get it off?" A. No.

Q. And you didn't say, "I will show you how to get it off?" A. No, sir.

Q. You wouldn't say that would you? A. No, sir.

Q. You didn't put your teeth on his finger? A. No, sir.

Q. And wouldn't, wouldn't do that, would you? A. No, sir.

Q. You don't think that much of a ring, do you?

30 A. No, sir.

Q. Then you went out of the place, you went out first and who followed? A. Jimmie Meola.

Q. Did you walk out? A. Yes, sir.

Q. You didn't want Pete to know it is that why you walked out? A. Yes, sir.

Q. Did you walk up to the machine quietly so as not to arouse Pete's attention? A. Yes, sir.

Q. Who walked up to the machine first? A. I did.

40 Q. On tip-toe? A. What do you mean?

Frank Lombardo—Cross.

Q. Quietly on your toes walking up quietly? A. No, sir.

Q. Who was with you? A. Jimmie Meola.

Q. Ahead of you or behind you? A. I was the first guy in the machine.

Q. Who was next? A. Jimmie Meola.

Q. Who was after that? A. Rosenberg he was on the other side of the car. 10

Q. Where did you go when you got to the car? A. Paterson.

Q. When you got in the car did you go in front or in back? A. In the same place.

Q. Where? A. In the back seat.

Q. And who got into the back with you? A. I don't remember.

Q. The car was standing there? A. Yes, sir.

Q. It had not moved? A. No, sir. 20

Q. You had no difficulty in walking into the back seat. You didn't have any trouble walking into the back seat? A. No, sir.

Q. The car stood still? A. Yes, sir.

Q. Charlie, the Pollock, got out and gave you his seat? A. Yes, sir.

Q. And you sat down and he sat on your lap? A. Yes, sir.

Q. Meola walked in? A. Yes, sir.

Q. Did you help Meola to his seat? A. No, sir. 30

Q. He sat down? A. I don't know whether he sat down or not.

Q. Who told Churchill to drive on? A. Meola.

Q. What did he say? A. He said "If you don't want to die you'd better drive that car fast as you can if you don't I will blow your back out."

Q. Didn't you do something to Meola when he said that to your friend Pete? A. No, I don't say anything. 40

Frank Lombardo—Cross.

Q. Didn't you say anything when he says that to Pete? A. I don't say anything.

Q. Weren't you afraid he would hurt Pete? A. I don't say anything.

Q. Did he have a gun in his hand when he said that? A. Yes, sir.

10 Q. Did you tell Pete he had a gun in his hand? A. He had the gun in Pete's back.

Q. And he told Pete he would use this gun? A. He say "If you don't step on the gas I will blow your back off."

Q. Did you tell him not to? A. No, sir.

Q. Did you snatch the gun out of Meola's hand? A. No, sir.

Q. You didn't think he was going to shoot Pete? A. No, sir.

20 Q. You couldn't drive the car, could you? A. No, sir.

Q. Meola couldn't could he? A. No, sir.

Q. Nobody in the car could drive a Packard Twin-Six? A. No, sir.

Q. Charlie the Pollock? A. No, sir, one could.

Q. Who? A. MacIllwaine.

Q. How do you know he could drive that car? A. He is driving a car.

Q. What car? A. I see him driving one car.

30 Q. Where? A. Over here in Paterson and he had a girl over here in his car.

Q. You don't know what kind of a car it was, do you? A. No, sir.

Q. So you think he might have driven the car if anything happened to Churchill? A. Rosenberg could drive a car.

Q. How did you go from Mary's saloon or where did you go? A. We leave the saloon and come back here to Paterson.

40

Frank Lombardo—Cross.

Q. What street did you go up do you know? A. Madison Avenue.

Q. Did Meola keep the gun up to Pete's back all the while? A. Until we got over here near the railroad station on Market Street between the railroad station and Market Street.

Q. Do you mean at the Erie Station? A. Yes, 10 sir.

Q. He kept the gun up to his back? A. Yes, sir.

Q. Don't you know they never went up Market Street at all? A. Yes, sir.

Q. Don't you know they picked all the back and side streets? A. We go through Market from Market we go up on East 27th from East 27th come back on Broadway and hit Madison Avenue and from Madison Avenue we go down between Nine and Tenth Avenues and Pete Churchill said 20 "Get off of this car."

Q. I got to take it back before it becomes suspicious? A. No, sir; he don't say that.

Q. You don't remember that do you? A. No, sir.

Q. Do you know whose car it was? A. No, sir.

Q. Did you ever see the car before? A. No, sir.

Q. Did you ever see Pete drive it before? A. No, sir. 30

Q. Who in this crowd did you know beside Whitey? A. What do you mean?

Q. In April, 1925, who did you know beside Whitey. You knew Whitey McIllwaine? A. Yes, sir.

Q. Who else did you know? A. Jimmie Meola.

Q. Who else? A. That is all.

Q. Didn't you know anybody else before April didn't you know anybody else in the party? A. The same party? 40

Frank Lombardo—Cross.

Q. Yes. A. I know Rosenberg, Jimmie Meola, I knew MacIllwaine and Charlie the Pollock and I don't know the other ones there is another in the car but I don't know.

10 Q. Besides those you mentioned who have you forgotten, Whitey, Charlie the Pollock, Bill, Van Rosenberg, Meola, yourself and who else, who have you forgotten? A. There was in the car Pete Churchill.

Q. When did you know Pete before April? A. I never knew him before.

Q. Who introduced you to Pete? A. Jimmie Meola.

Q. How did he introduce him to you, what did he say his name was? A. Pete.

20 Q. Pete what? A. Just Pete, he say I want to introduce a friend of mine Pete.

Q. You always call him Pete Churchill? A. I heard them call him for Pete Churchill but I never knew there was any other name he has got.

Q. Van Rosenberg got some money out of the cash register? A. Yes, sir.

Q. He gave some of the boys some of the money in the machine? A. He gave it to Jimmie Meola.

Q. Just to Jimmie Meola? A. No, in Jimmie Meola's house.

30 Q. How much did he give Jimmie Meola? A. He put everything on the table.

Q. How much did he give Jimmie? A. I can't remember.

Q. Did he give him a watch? A. I can't remember.

Q. Van Rosenberg got a watch? A. Yes, sir.

Q. Does this look like the watch Van Rosenberg got? A. I don't know.

40 Q. Was it a gold watch? A. I don't know; I can't remember.

Frank Lombardo—Cross.

Q. Did you get a watch? A. No, sir.

Q. What did you get? A. I got some money but I don't know how much.

Q. How much? A. I can't tell, I can't remember.

Q. Did you get a five dollar gold piece? A. No, 10 sir.

Q. Did you hear an argument about a five dollar gold piece? A. No, sir.

Q. Have you ever seen this before today? A. No, sir.

Q. You never saw it before? A. No, sir.

Q. Don't you know this was in your house? A. No, sir.

Q. Don't you know Detective Brooks found that in your house? A. No, sir.

Q. You don't know how much money you got? 20 A. No, sir.

Q. Are you sure you got some? A. Yes, sir.

Q. How much did Meola get? A. I don't know.

Q. And Van Rosenberg? A. I don't know.

Q. Did Charlie, the waiter, get some? A. I don't know.

Q. Didn't you say a moment ago Charlie got some? A. I don't say no.

Q. When you stopped at Tenth Avenue and Madison Avenue did you see Charlie, the waiter, and Whitey talk to Van Rosenberg? A. I don't 30 remember.

Q. Didn't you see any money in Van Rosenberg's hand? A. I don't remember.

Q. Do you know that Whitey and Charlie, the waiter, walked towards Broadway? A. I don't remember they walked away but I don't know which way they went.

Q. Where did you go from Madison Avenue and Tenth Avenue? A. We go to Jimmie Meola's 40 house.

Frank Lombardo—Cross.

Q. Who? A. Me, Jimmie Meola and Van Rosenberg.

Q. What for? A. To split up the money.

Q. Yet you don't know how much you got? A. No, sir.

10 Q. You don't know whether you got a gold watch or this fob? A. That is not mine.

Q. That goes right out of your mind? A. That thing don't belong to me.

Q. Where is one you got? A. I got mine in the hock shop.

Q. Where? A. Over here in Paterson.

Q. Where? A. On Washington Street.

Q. Under what name? A. Frank Lombardo.

20 Q. What hock shop? A. Between Broadway and Washington Street, I don't know if it is Washington Street; there is one down below there.

Q. Clement's is on Washington Street near Van Houten Street opposite the Police Station. A. Further down.

Q. On the corner of Washington and Broadway? A. I don't know if that is it or not.

Q. Did you hock a watch fob there? A. I hocked my watch, but I don't know if I have the ticket on the watch or not.

30 Q. Why? A. I don't remember.

Q. Since April? A. I can't say the date.

Q. Within about eleven months? A. I don't know.

Q. You do remember pretty well that somebody said to Churchill, "Let's get out of the car and have a drink"; you remember that don't you? A. Yes, sir.

40 Q. You can't forget that can you, Frank. Do you want this jury to believe you talked this thing over in the pool room in Passaic and came up to Mary's saloon and robbed these men and left this

William Pescatore—Direct.

man at the wheel of the car and he didn't know what you were going to do? A. Yes, sir; that is what Pete Churchill never know anything about this stick-up.

10

WILLIAM PESCATORE, sworn for the defense.

Direct examination by Mr. Stafford:

Q. You are the Mr. Pescatore referred to in this case as "Mooch"? A. Yes, sir.

Q. Did you have any conversation with Van Rosenberg about Pete Churchill? A. I did.

20 Q. What were they about? A. One day he met me on Market Street he was working for the Public Service and he said to me, "I hear they got Pete Churchill". I says, "I don't know, I don't know anything about it." I says, "I heard they got you, you are out on bond", and he says, "Yes". He says, "I heard he is up in the County Jail". He says, "What do you say we go up there and see him because I got to go to work". I says, "Yes, I can get a pass if you want to see him". So we gets a pass and goes up there and he gets near the bars and talks to Pete and I am just behind him and he says, "You ain't got nothing to do with this, you are not implicated in this here stick-up". He says, "You are not the Pete Churchill it is a Pete Church from Newark, this is not the Pete, you ain't got nothing to do with it". That is what he said, talking to him behind the bars.

20

30

40 Q. What did Churchill say to him when he made that kind of a statement? A. I don't know if Pete Churchill was trying to pump him. He says there was a statement signed that got his name

40

William Pescatore—Direct.

on it and he says, "I don't know anything about it, Pete"; that is what he says.

Q. Did you have any conversation with Van Rosenberg about being paid money? A. Yes, sir.

10 Q. Where was he when this conversation came up? A. He told me he got money for the lawyer; he says at that time I think he was working for Harris & Barton; he says he needed money for the lawyer, that was in the car he told me that and he asked Pete for money.

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

Q. In the jail? A. Once in the jail and once in the car.

20 Q. Do you know about how long Peter Churchill was in the County Jail before Van Rosenberg went up to him and said, "You are not the Pete Churchill in this thing it is Pete Church from Newark"? A. The first time we went up there he wasn't there the second time he talked to him, twice we went up there.

Q. How long had he been in the County Jail then? A. I don't know.

Q. You don't know how many days? A. I don't know.

30 Q. Did you have any further conversations with Van Rosenberg about making a statement? A. Yes, sir, he told me in the car he sat in front by him he said, "You are not the Pete Churchill". He says, "It is Pete Church from Newark". I seen the fellow once and that is the night he drove the car.

Q. Did he ask for money on that occasion? A. Yes, sir, he needed money for the lawyer.

40 Q. What did Pete say to him when he asked for money, did he give him any? A. He says, "I will give you money", but he didn't give him any.

*William Pescatore—Cross.**Cross-examination by Mr. Dunn:*

Q. How old are you? A. Twenty-three.

Q. What is your right name? A. Williams.

Q. You live in Paterson? A. Totowa.

Q. Do you know this man next to Mr. Stafford? A. Yes, sir. 10

Q. Who is he? A. He is Peter Chirichella.

Q. What do you call him? A. I call him Pete Churchill.

Q. You never call him anything else, do you? A. I never call him Churchill.

Q. What do you call him? A. Pete.

Q. Did you ever hear him called Pete Chirichella until you came into this courtroom? A. Yes, sir.

Q. Sometimes by his relatives? A. No, I know 20 where he lives.

Q. They call him Mr. Peter Chirichella where he lives? A. Yes, sir.

Q. How long have you known him? A. Three or four years.

Q. Do you go around with him a little? A. No; we work together on the buses.

Q. Once in awhile? A. We worked on the Singac Line.

Q. Do you like him? A. I like him as a friend. 30

Q. Do you shoot a little crap? A. No, sir.

Q. Play pool? A. No, sir.

Q. Do you ever go out with him? A. Do I ever go out with him?

Q. That is the question? A. On what occasion?

Q. On any occasion? A. I don't think so.

Q. Then you should not have been troubled when I asked you if you ever went out? A. If I went out with him that was my business. 40

William Pescatore—Cross.

Q. Now I want to make it my business and want you to tell this jury when you went out with him?

A. When I went out with him?

Q. That is the question. A. One night we went to Van Rosenberg's house.

Q. Yes. A. And Van Rosenberg told me—

10 Q. I didn't ask you what he told you, I asked you when you went out with him? A. That is all.

Q. You went down to the lawyer's with him? A. With who?

Q. Van Rosenberg. A. I went with Van Rosenberg?

Q. You went to the lawyer's office? A. Yes, sir, Van Rosenberg and I.

Q. And Pete Churchill? A. Pete Churchill didn't go with us.

20 Q. Did you go up in the lawyer's office? A. With Van Rosenberg.

Q. Didn't Pete go with you? A. Not with me.

Q. How did he go? A. He came up later on.

Q. You had seen him before that day? A. Seen who?

Q. Who are we talking about? A. We are talking about Van Rosenberg and Pete Churchill.

30 Q. I said you were with Van Rosenberg and you said Pete came up after and I said that you had seen him before you saw him in the lawyer's office. A. I seen him on Market Street.

Q. You saw him at Van Rosenberg's house? A. Saw who?

Q. Pete Churchill. A. Up at Van Rosenberg's house?

Q. Yes. A. I never seen him.

Q. What kind of a car did you come down in? A. A Dodge car.

40 Q. Who was in the car? A. Me, Pete and a fellow by the name of Rashdezen I think.

William Pescatore—Cross.

Q. Who is Pete? A. Over there.

Q. Where was Van Rosenberg? A. In the car.

Q. Where did you go? A. Went down Market Street.

Q. Where? A. To Prospect and Market Street.

Q. Did you stop there? A. Yes, sir.

Q. Who got out? A. Mr. Churchill. 10

Q. Where did he go? A. He went to see if he could see a lawyer.

Q. Did he come back? A. Yes, sir.

Q. Did he see the lawyer? A. I guess he did.

Q. Did he tell you he had? A. I think he did.

Q. What did you do then? A. Van Rosenberg and I went to Lawyer Jordan.

Q. Where did Churchill go? A. I don't know he came up afterward.

Q. Did he tell you to go up to the lawyer's? A. He didn't tell me to go up. 20

Q. He was talking to Van Rosenberg and he told you and Van Rosenberg to go up to the lawyer's first, didn't he? A. No, sir.

Q. Why didn't he go up with you? A. How do I know.

Q. You and Van Rosenberg already went up to the lawyer's office didn't you? A. Yes, sir.

Q. You understand that? A. Yes, sir, I do.

Q. Who was there when you got there? A. Jordan. 30

Q. Pete Churchill had told you when he returned to the car that he called up another lawyer first and couldn't get him? A. He didn't tell me that he called up another lawyer.

Q. Did he say that when he came back to the car? A. I do not remember.

Q. Did he say Mr. Stafford was out of town? A. I don't know. 40

William Pescatore—Cross.

Q. Of course you did know Mr. Stafford represented Mr. Churchill? A. I didn't know.

Q. Who told you to go to Jordan's office? A. Pete.

Q. What did he say? A. Rosenberg wanted to get it fixed up.

10 Q. What did Pete say? A. Just told me to go up there.

Q. Go where? A. To Jordan's office.

Q. What did he say to Van Rosenberg? A. He was tickled to death to go up there.

Q. I didn't ask you that did I? A. No.

Q. What did he say to Van Rosenberg? A. He didn't say anything to Van Rosenberg.

Q. When he said go up there, meaning Jordan's office, to whom did he say that? A. To me.

20 Q. What did you say? A. Let's go.

Q. To whom did you say that? A. I just said "Let's go" I meant it for everybody in the car.

Q. Who went? A. Van Rosenberg.

Q. And you? A. Yes.

Q. And anybody else? A. No.

Q. Where did you go to? A. Jordan's office.

Q. How long after that did Churchill come up? A. A couple of minutes after.

30 Q. Did you hear Churchill say to Van Rosenberg "You go up first it will look suspicious if I am seen with you" or words to that effect? A. No, sir, I didn't hear that.

Q. You don't want to say he didn't say that do you? A. I will tell the jury I didn't hear that.

Q. You won't tell the jury he didn't say that? A. If he said it I will tell the jury.

Q. If you heard it? A. Yes, sir.

Q. When you went up there what happened? A. I don't know they went in another room.

40

James Brooks—Recalled—Direct.

Q. And left you? A. Yes, sir, and I went out—

Q. How long were they in the other room? A. I don't know I came back and took up Van Rosenberg.

Q. Where? A. He says "Drive me home."

Q. Then what? A. I was in the car and Van Rosenberg says, "Wait for me", and then he comes back and he says to me, "Pete Churchill didn't give me any money" that is all he told me.

Q. You know Pete Churchill had told him he would give him some money you knew Churchill had told him that? A. Yes, sir, I do.

Q. There is no question about that? A. No.

Q. He was going to get a lawyer, too? A. He said he wanted money for a lawyer that is all I know.

Q. And Pete said he would give it to him? A. Yes, sir.

Q. Pete said, "If it gets too hot for you I will give you it to blow", didn't he? A. I did not hear that.

Q. You heard the rest? A. I certainly did. I don't think he ever said that.

Q. You think too much of Pete? A. I know Mr. Van Rosenberg as good as Pete Churchill, what do you know about that?

Q. I don't doubt that and I don't think that is very much for either party, do you? A. No, sir.

DEFENDANT RESTS.

JAMES BROOKS, recalled for the State.

Q. Yesterday at two o'clock or about that time at my request did you accompany me into the prisoner's room? A. I did.

40

James Brooks—Recalled—Cross.

Q. For what purpose? A. For the purpose of speaking to Lombardo or Moscardelli.

Q. Do you recall whether or not I spoke to him in your presence? A. You did.

Q. Do you recall what I asked him? A. I do.

10 Q. Tell the jury what I asked him and what he said? A. The Assistant Prosecutor asked him did he want to go on the stand as a witness and tell the truth and Lombardo said, "Well, what do you want me to tell", and he said, "Everything you know about this hold-up", and he said, "I will tell you Pete Churchill wasn't even driving the car, somebody else. We go down to Passaic and leave him there and he wasn't with us when we pulled the stick-up at all."

20 Q. Did he say what became of Pete Churchill? A. He said he left him there in Passaic.

Q. I show you part of Exhibit S-1 on the part of the State and ask you if you ever have seen that locket before? A. Yes, sir.

Q. Where? A. I seen it in the police station and also saw it in a house at 327 East 27th Street where Lombardo lives. I got it out of there searching the house and among his things I got the locket.

30 *Cross-examination by Mr. Stafford:*

Q. What did Mr. Dunn say? A. He asked him if he wanted to go on the stand as a witness for the State and tell the truth about the case.

Q. Is that all he said to him? A. That is all.

Q. Did you say anything to him? A. I didn't open my mouth.

Joseph Cametti—Direct.

JOSEPH CAMETTI, sworn for the State.

Direct examination by Mr. Dunn:

Q. What is your occupation? A. Detective.

Q. Connected with what city? A. The Philadelphia Police Department. 10

Q. Do you know a man by the name of Peter Churchill? A. When first I arrested him I didn't know him, now I know him.

Q. By what name do you know him? A. Peter Durandy.

Q. Do you see him in this courtroom? A. Yes, sir.

Q. Come down from the witness stand here and put your hand on the man whom you have referred to as Peter Durandy. A. Here (indicating the defendant Peter Churchill). 20

Q. Do you recall when this was? A. On August 21st, about one-thirty A. M., there was a round-up and he was in company with another fellow and girl.

Mr. Stafford: I object to this.

Objection sustained.

Q. Did you have a conversation with him? A. I did at the Detective Bureau. 30

Q. Did you in the course of that conversation ask him what his name and address was? A. He was searched at the Detective—

Objected to by Mr. Stafford.

Q. Did you have a conversation with him? A. I did.

Q. Did you search him? A. I did.

Q. Tell us what that conversation was you had at that time? 40

Joseph Cametti—Cross.

Mr. Stafford: I object to it as improper rebuttal.

Objection sustained.

10 Q. On August 21st, 1925, in the City Hall at Philadelphia did you have a conversation with Peter Churchill in the course of which conversation he said to you, "My name is Peter Durandy and I live at 707 Buttonwood Street, Philadelphia," and after several questions you learned from him that his name was Peter Churchill and he lived at Paterson, N. J.? A. That is right.

Q. On that occasion, did this defendant tell you his name was Peter Durandy and he lived at that address? A. First he gave us that name.

20 Q. What did you find as a result of your searching him?

Objected to by Mr. Stafford.

Objection sustained.

Q. Do you know the name of this girl you have spoken about?

Objected to by Mr. Stafford.

Objection sustained.

30 *Cross-examination by Mr. Stafford:*

Q. How long after he told you his name was Durandy did he tell you his name was Churchill?

A. About two or three minutes after.

Q. Then you both went out and ate dinner together? A. No, not at that time.

Q. Sometime after? A. There was a further hearing held and after the further hearing two days later he was discharged.

40 Q. And you celebrated by having a meal? A. Yes, sir.

Joseph Cametti—Re-direct.

Eugene Wilde—Direct.

Re-direct examination by Mr. Dunn:

Q. How many meals did you have with him?

A. Just one.

10

EUGENE WILDE, sworn for the State.

Direct examination by Mr. Dunn:

Q. You are a sergeant in the Paterson Police Department? A. Yes, sir.

Q. On September the 21st last were you on duty? A. Yes, sir.

Q. On that date was the Defendant Peter Churchill brought into the Police Station? A. Yes, sir. 20

Q. Did you interrogate him as to his name and address? A. I did.

Q. What are these papers you have brought with you? A. The records.

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

Mr. Dunn: I ask to have these marked for identification.

Records marked for identification Ex- 30

hibit S-5 for identification.

Q. I ask you if there appeared on that sheet which is marked for identification if there is an entry on that sheet in connection with this Defendant Peter Churchill?

Mr. Stafford: I object to it until I have an opportunity to examine the witness.

40

Eugene Wilde—Direct.

By Mr. Stafford:

Q. Is this in your handwriting? A. No, sir.

Q. Is there any on there that does belong to you? A. Yes, sir.

10 Q. What does belong to you Officer? A. Down to there.

Q. Who put these lead pencil marks on it there? A. The other man that entered them.

Q. Showing the witness Exhibit S-5 for Identification who put the red ink marks opposite Peter Churchill's name? A. I did.

Q. Why? A. Because they were brought in on a warrant.

A. I don't see any.

20 Q. Do you always put a red ink mark opposite a man's name when he is brought in on a warrant?

A. We do when it is brought in when it is a Justice of the Peace and Indictment Warrant we always do.

Q. Is there anybody on there whose name appears on this particular sheet that was brought in that way? A. Not on an indictment warrant or Justice of the Peace Warrant.

Q. These are the only two? A. These two.

Q. Both in your handwriting? A. They are.

30 Mr. Dunn: I offer the sheet in evidence.

Sheet admitted in evidence and marked Exhibit S-5 for the State.

Direct examination continued by Mr. Dunn:

Q. I show you this paper marked Exhibit S-5 for identification and ask you what this is? A. This is the Police Court Docket.

Q. Is that in your handwriting? A. Yes, sir.

40 Q. I call your attention to the word Peter Churchill and ask you if they are in your handwriting? A. They are.

Court's Charge.

Q I ask you to read from this paper marked for identification the writing accompanying the name Peter Churchill that is in your writing. A. Sept. 21st 7.15 P. M. Peter Churchill, 174 Cross Street, Chauffeur, born in U. S. twenty-four years of age, color white, read and write—yes, charge and complaint—robbery, arrested by Detective Herman, Complainant Charles Mary, 1003 Main Street, held on indictment Warrant for robbery. 10

Q. These papers refer to the very case we are trying to-day? A. Yes, sir.

Q. The same robbery case? A. Yes, sir.

STATE RESTS.

Court's Charge. 20

The Court then charged the Jury as follows:

The Court: Members of the jury, the State charges James Meola, Harry Rosenberg, Frank Lombardo and Peter Churchill in four separate indictments with the commission of the crimes of robbery.

We are not concerned in this inquiry with Meola, Rosenberg or Lombardo. They have each entered a plea of non-vult to the charges. So in this instance, we are concerned only with the guilt or innocence of Peter Churchill. 30

Members of the jury, you are the sole judges of the question of fact. You are to determine, from the evidence that has been produced the guilt or innocence of this defendant. So the Court will not attempt to detail the evidence for the reason I have indicated.

The defendant, as I have stated, is charged with robbery. It seems that on the eleventh day 40

Court's Charge.

of April last year, the cafe or saloon of one Louis Mary or his brother, or both of them located at, if my memory serves me right, at 1003 Main Street, this city, was entered after midnight of the tenth of April by the several persons mentioned in the several indictments for the purpose of robbery. That they actually accomplished their purpose and that this defendant Peter Churchill while not actually physically present in the cafe or saloon at the time of the perpetration of the crime I have referred to, was the driver of the car in which the several co-defendants I have named but are not now on trial, rode. That Meola and the others made their getaway in the car driven by Churchill, the defendant now being tried.

Robbery is a misdemeanor under the law. In misdemeanors all who aid, abet or participate are principals and are equally guilty. If one would escape the penalty, he must cease to act in complicity with those who seek to defy the laws of the land as soon as he has knowledge of the criminal character of their actions.

The burden of proof is upon the State. This defendant is presumed to be innocent of this charge and that presumption continues until the State establishes his guilt beyond a reasonable doubt.

Reasonable doubt is not a mere possible doubt it is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

You have heard the defendant's testimony.
You have heard his explanation of this incident

Court's Charge.

and what connection he had with it. It is for you to determine from the evidence that has been produced, I again repeat, whether he is guilty or innocent of the charges presented in the several indictments that have been returned against him.

You may convict him on each or all of the indictments that have been returned. I have been requested by counsel for the defendant to charge you specially as follows:

1. The jury in considering the evidence must start with the legal presumption of the defendant's innocence, which presumption must continue throughout all their deliberations, unless the evidence establishes the defendant's guilt beyond all reasonable doubt.

5. The defendant is not required to satisfy the jury of his innocence but the burden of proof is always upon the State, and the State must prove beyond all reasonable doubt, that the defendant is guilty of the crime charged.

6. The burden of proof never shifts from the State in a criminal trial, but throughout the entire trial, the burden of proof is always upon the State to prove the defendant's guilt of the crime charged beyond a reasonable doubt.

7. If there is in the mind of any juror a reasonable doubt of the defendant's guilt, fairly arising from the evidence in the case, the juror has no right to consent to a verdict of guilty in deference to or from respect to the other juror's belief or opinion. Such juror must stand by and abide by his own belief, formed in his own mind from the whole of the evidence in the case in which he believes, including the testimony of the defendant. But, such juror might discuss the case with the other jurors.

Court's Charge.

10 8. Each juror must reach a conclusion. Eleven jurors are not competent to reach a verdict in the case. All must reach that conclusion. No juror is relieved from responsibility by letting any number of the body agree upon a verdict, and then by consenting to it, because it is the judgment of the others. Each juror must reach his own judgment. But such juror might discuss the case with the other jurors.

20 9. If there is in the minds of the jury one or any number of theories consistent with the defendant's guilt, fairly springing from the evidence in the case, which the jury believe, and but one theory consistent with the defendant's innocence, fairly arising from the evidence in the case, including the defendant's testimony, which the jury also believe, the jury must disregard and put aside all those theories of his guilt and adopt that one theory of his innocence and render a verdict of not guilty. For in such condition of the case, there would be a reasonable doubt of the defendant's guilt, and the defendant should be acquitted.

30 11. If there is in the mind of the jury a reasonable doubt as to the truth of any testimony on the part of the State, such doubt must be resolved in favor of the defendant by rejecting such testimony. If there is a reasonable doubt as to the truth or untruth of any testimony on the part of the defendant, such doubt must be resolved in favor of the defendant by treating such testimony in his favor, as though unquestionably true and correct.

40 Numbers two, three and four the Court declines to charge for the reason that they have been sufficiently covered by the Court. I will now leave

*Exceptions by Defendant.**Requests to Charge—Refused.*

the matter in your hands for your determination. Swear the officers.

(The jury then retire.)

10

EXCEPTIONS BY DEFENDANT.

Except to the Court's refusal to charge Nos. 2, 3 and 4.

Except to that part of the Court's charge where the Court said, "You may convict on all or each of the indictments," inasmuch as the Court did not instruct the jury they might acquit or discharge on any one count of each indictment. 20

REQUESTS TO CHARGE—REFUSED.

2. The law presumes a defendant to be innocent until presumption of innocence is overthrown beyond all reasonable doubt, by evidence in the case.

3. The presumption of the innocence attaches to the defendant from the very beginning and such presumption of innocence must be carried by the jury into their final deliberations. 30

4. A reasonable doubt is not a mere possible doubt. It is that state of the case, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. 40

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

10 I the undersigned do hereby certify that I was the stenographer who took the testimony and proceedings in the cause entitled The State of New Jersey vs. Peter Churchill, before Hon. Joseph A. Delaney, Judge and a jury, on the Second day of March, Nineteen hundred and twenty-six, and that I transcribed the same and that the same is full, complete and correct.

JOHN F. LEE, JR.

20

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

30 I, JOSEPH A. DELANEY, Judge of the Court of Quarter Sessions of the County of Passaic, before whom the above entitled indictment was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the foregoing indictment of the above stated cause.

JOS. A. DELANEY,
Judge.

40

Assignments of Error.

NEW JERSEY SUPREME COURT.

| | | | |
|--|---|---|----|
| <hr/> THE STATE, Defendant-in-Error, <i>vs.</i> PETER CHURCHILL, Plaintiff-in-Error. | } | On Writ of Error. 10 ASSIGNMENTS OF ERROR. | 10 |
|--|---|---|----|

And now comes the said Peter Churchill, by Joseph F. S. Fitzpatrick, his attorney, and says that in the aforesaid record and proceedings and also in giving judgment aforesaid there is manifest error, and for error assigns the following causes: 20

1. The verdict is contrary to the weight of the evidence.

2. The Court charged the jury that the plaintiff-in-error might be convicted on each or all of the indictments that had been returned against him, but failed and refused to instruct the jury that they might acquit or discharge the plaintiff-in-error on any one count of each indictment or on all counts of each indictment. 30

3. The Court erroneously charged the jury that if one would escape the penalty he must cease to act in complicity with those who seek to defy the laws of the land as soon as he had knowledge of the criminal character of their actions, whereas the Court should have instructed the jury that 40

Assignments of Error.

such action must be voluntary on the part of the one accused of aiding and abetting.

10 4. The Court erroneously charged the jury as to accomplices in that it made it unnecessary for the State to prove that the plaintiff-in-error must have had the intent to aid and abet the principals in the commission of the crime and must have had knowledge that a crime was being perpetrated.

20 5. The Court erroneously charged the jury that in misdemeanors all who aid, abet or participate are principals and are equally guilty; whereas the Court should have charged the jury that all those who aid, abet or participate voluntarily without fear of and from threats to their lives and with a full knowledge of the character of the actions of those whom they are assisting.

6. The Court erred in charging the jury that the plaintiff-in-error was only charged with robbery, whereas he was indicted for robbery, larceny from the person, grand larceny and receiving stolen goods.

30 7. The jury erred in returning a general verdict finding the plaintiff-in-error is guilty of the premises in the within indictment named and specified, in manner and form as by the indictment is charged against him, when there was no evidence adduced as to his guilt on several of the counts in the indictment.

JOSEPH F. S. FITZPATRICK,
Attorney for Plaintiff-in-Error.

40

Specifications of Causes for Reversal.

NEW JERSEY SUPREME COURT.

| | | | |
|--|---|---|----|
| THE STATE, Defendant-in-Error, <i>vs.</i> PETER CHURCHILL, Plaintiff-in-Error. | } | On Writ of Error. | 10 |
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JOSEPH F. S. FITZPATRICK,
Attorney for Plaintiff-in-Error.

40 (1867)

Opinion of Supreme Court.

NEW JERSEY SUPREME COURT.

No. 10, Oct. T., 1927.

THE STATE

vs.

PETER CHURCHILL

10

ERROR TO PASSAIC QUARTER SESSIONS.

Argued before Gummere, Chief Justice, and Justices Black and Lloyd.

For Plaintiff-in-Error, MAURICE J. CRONIN.
For the State, J. VINCENT BARNITT, Prosecutors of the Pleas.

20

Per Curiam.

The defendant was convicted on an indictment charging him and three others with the crime of robbery in holding up one George Jackson and forcibly taking his watch and chain from him.

The first ground upon which we are asked to reverse the conviction is that the verdict against Churchill was against the weight of the evidence, the proofs not supporting the conclusion that he was a party to the hold-up. Our examination of the proofs satisfies us that the jury was entirely justified in finding him guilty of the charge laid against him in the indictment.

30

The next contention is that the court erred in charging the jury as follows: "You may convict on all or each of the counts in the indictment."

40

Opinion of Supreme Court.

10 The argument is that this was error because the court failed to instruct the jury that it might acquit the plaintiff-in-error on any or all of the counts. It is not suggested that the instruction was not proper, so far as it went. If counsel had desired the court to speak with relation to the acquittal of the plaintiff-in-error on any or all of the counts, he should have requested such an instruction. This he did not do, as appears from an examination of the case.

We find nothing of merit in any other of the grounds for reversal.

The judgment under review will be affirmed.

20

30

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Order on Affirmance of Judgment and Remittitur.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant-in Error,

vs.

PETER CHURCHILL,
Plaintiff-in-Error.

On Writ of Error to the Court of Quarter Sessions of Passaic County.

ORDER ON AFFIRMANCE OF JUDGMENT AND REMITTITUR.

10

This cause having been duly submitted on brief at the October Term, 1927, of this Court by Joseph F. S. Fitzpatrick, of Counsel for the Plaintiff-in-Error, and J. Vincent Barnitt, of Counsel for the Defendant-in-Error, and the Court having considered the same and finding no error in the record or proceedings in the Court of Quarter Sessions—

20

It is thereupon, on this 14th day of February, in the year of our Lord, One Thousand Nine Hundred and Twenty-eight ORDERED and adjudged that the judgment of the Court of Quarter Sessions, removed by the appeal in this cause, be affirmed with costs, and that the record be remitted to the Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

30

Entered Feb. 14th, A. D., 1928. On motion of

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

40

Order on Affirmance of Judgment and Remittitur.

I, EDWARD J. KELLEHER, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above-stated cause.

10 In testimony whereof I have set my hand and the seal of said Court at
(SEAL) Trenton, this twenty-first day of February, A. D. nineteen hundred and twenty-eight.

EDWARD J. KELLEHER,
Clerk.

20 **Certification by Chief Justice to Return of Supreme Court.**

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.

30 WM. S. GUMMERE,
C. J.

40

Assignments of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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

vs.

PETER CHURCHILL,
Plaintiff-in-Error.

On Writ 10
of Error.
ASSIGNMENTS
OF ERROR.

NEW JERSEY, SS.:

Afterwards, to wit, on return of said writ before the New Jersey Court of Errors and Appeals, came the said Peter Churchill, by his attorney, Joseph W. Henry and says: 20

That in the record and proceedings aforesaid and also in the giving of the judgment aforesaid there was manifest error to the prejudice and injury of the said plaintiff-in-error, and therefore assigns the following for cause of error:

1. That the New Jersey Supreme Court erred in rendering judgment affirming the verdict and judgment of the Passaic County Court of Quarter Sessions instead of giving judgment for the plaintiff-in-error and reversing the judgment of the Passaic County Court of Quarter Sessions, for the several reasons set forth in the assignments of error and specifications for reversal. 30

JOSEPH W. HENRY,
Attorney for and of Counsel with
Plaintiff-in-Error.

Due and legal service acknowledged this 15 day of March, 1928. 40

J. VINCENT BARNITT,
Prosecutor of the Pleas,
Atty. for Defendant-in-Error.

New Jersey Court of Errors and Appeals

THE STATE,
Defendant-in-Error,

vs.

PETER CHURCHILL,
Plaintiff-in-Error.

ON WRIT OF
ERROR.

**BRIEF OF JOSEPH W. HENRY, ATTOR-
NEY FOR PLAINTIFF-IN-ERROR.**

Statement of Facts.

The plaintiff-in-error, Peter Churchill, one of four defendants, was indicted and convicted on four separate indictments for the crime of Robbery.

It appears that about 2:00 A. M. on April 11th, 1925, the cafe or saloon of one Louis Mary, located at 1003 Main Street, Paterson, N. J., was entered and a robbery committed upon the several complainants mentioned in the several indictments.

In each indictment there were included four counts, *i. e.*, robbery, larceny, larceny from the person and receiving stolen goods.

The three other defendants mentioned in the indictment were admittedly the persons who entered the said cafe or saloon and committed the crimes charged in the several indictments, and to which indictments they each entered a plea of *non vult*. It is admitted, and the evidence shows

that the plaintiff-in-error was not physically present in the cafe or saloon at the time of the perpetration of the said crimes. The plaintiff-in-error was the driver of the automobile in which the three other defendants (and several other persons) rode away from the scene of the crime.

The plaintiff-in-error was indicted and convicted as a principal in the commission of the said crime because of his aiding and abetting the other three defendants in the completion of the crime.

The evidence shows that the plaintiff-in-error had driven the three defendants named in the indictments and three other persons from Passaic to Paterson; that he stopped his automobile and shut off his engine outside of the cafe or saloon in which the alleged crime was committed at the request of the other occupants of the car. The testimony of plaintiff-in-error, corroborated by two of the defendants, was to the effect that up to the time of stopping his automobile outside of said cafe or saloon he had no knowledge or information that a robbery was contemplated; that his first knowledge that a robbery was contemplated or committed was when the three other defendants indicted for this crime rushed from the cafe or saloon crying "step on it; we stuck up this joint"; that thereafter a revolver was thrust into his back to force him to aid the three other defendants to make their escape from the scene of the crime; that a short distance from the scene of the crime he compelled all persons to get out of his automobile.

Plaintiff-in-error testified, and he is corroborated by one of the defendants, that he did not share in any of the goods taken in this robbery, nor does the State offer any proof that he did so share.

Plaintiff-in-error was found guilty on all four indictments as charged, and was sentenced on one indictment—for the robbery of George Jackson—to serve a term of 10 to 15 years in State Prison, sentence on the three other indictments having been suspended.

POINT ONE.

The verdict was contrary to the weight of the evidence.

The plaintiff-in-error, Peter Churchill, was convicted solely upon the testimony of the State's witness Meola, one of the three defendants who pleaded *non vult*, since an examination of the testimony of the other two defendants, Van Rosenberg (who also testified for the State) and Lombardo (who testified for the defense) shows it to be entirely contrary to that of Meola and devoid of proof that plaintiff-in-error had any knowledge or information that a crime was to be committed; and further shows that the plaintiff-in-error aided the three other defendants to escape only under threat to his life.

Although the plaintiff-in-error was indicted as a principal for the crimes committed, it was the State's contention that he was an accomplice or accessory after the commission of the crime, to wit: being the driver of the automobile in which the three defendants and others made their escape from the scene of the crime. There was absolutely no evidence adduced, nor did the State contend, that the plaintiff-in-error planned or had anything to do with the actual commission of the crime.

In order, therefore, to find the plaintiff-in-error guilty of the crime as an accomplice or accessory

after the fact, it was necessary for the State to show that he had knowledge of the criminal character of the actions of the other defendants and that he co-operated with and aided them voluntarily with the purpose of saving them from the penalty for the offenses which they had committed. His presence outside the scene of the crime as driver of the automobile is not denied and that the defendants actually rode away from the scene of the crime in the automobile driven by him is proven by the testimony of the plaintiff-in-error.

The only witness produced by the State to show that the plaintiff-in-error had any knowledge of the crime was the defendant Meola, who testified that the crime was planned by occupants of the car other than those occupants who actually committed it, just prior to their arrival at the scene of the crime, i. e., by "Charlie the Polack", "Whitey" McEllwaine and "Bill" (S. C., p. 68, l. 11). That immediately subsequent to this suggestion, and after having passed the scene of the robbery, one of the defendants—Lombardo—requested the plaintiff-in-error to turn back and stop outside of Mary's saloon (S. C., p. 97, l. 17). That the defendants Lombardo and Van Rosenberg got out of the car and made an inspection of the premises for the purpose of holding up the place, returning to the car and requesting the said Meola to join them in the robbery. This Meola did only after considerable persuasion. Meola was furnished with a revolver by "Bill"—one of the uncaptured occupants of the car—and went with Van Rosenberg and Lombardo into the saloon and committed the robberies for which they were indicted; that upon leaving the scene of the crime all of the participants in the commission of the actual robbery jumped into the automobile of plaintiff-in-error shouting "make a quick getaway; we have held

the place up." Meola further testified that the plaintiff-in-error did not, of his own knowledge, participate in any of the spoils of the robbery.

This is the only direct testimony offered by the State which in any way connects the plaintiff-in-error with the accomplishment of the crime. It is true, however, that circumstantial evidence—such as the departure of the plaintiff-in-error from the city of Paterson the next day and his subsequent arrest in Philadelphia as testified to by the police officers, and also a statement exonerating him signed by the defendant Van Rosenberg, and which statement was alleged to have been obtained by bribery, together with some evidence of the opportunity to pay the bribe, might be considered as corroborative of the testimony offered by the State through the witness Meola.

On the other hand, according to the evidence adduced the first knowledge that the plaintiff-in-error could possibly have had of the contemplation of the crime, was after the three defendants had stepped out of his automobile at the scene of the hold-up, since Van Rosenberg—the other co-defendant offered as a witness by the State—in contradicting the entire testimony of Meola as to the time and place of the initiation of the crime testified: "This (meaning when they had gotten out of the car standing in front of Mary's cafe) was the first time that I heard anything about a hold-up" (S. C., p. 46, l. 10). Van Rosenberg further testified that these words were spoken 8 or 10 feet from the automobile and beyond the hearing of the plaintiff-in-error (S. C., p. 46, l. 17). Van Rosenberg further testifies: "When I got back (to the automobile) I stepped on the running board and said 'step on it, we just stuck the joint up' (S. C., p. 28, ll. 8-10) and when we arrived at Madison Avenue and Tenth Avenue Churchill said 'you fellows better get out, you are going to get

me in bad' ” (S. C., p. 28, l. 19). Van Rosenberg again testified that after they drove along subsequent to the hold-up that the plaintiff-in-error said “You fellows better get out of my car, this thing is liable to get me in bad” (S. C., p. 48, l. 33). Van Rosenberg in testifying with respect to the division of the spoils said “I haven't seen him (Churchill) get a thing” (S. C., p. 49, l. 13). Immediately following Churchill's arrest this witness—Van Rosenberg—visited the home of the plaintiff-in-error and in an interview with Churchill's mother told her that Churchill was innocent; and, when asked why he went on this trip replied: “I wanted to help Churchill out. I figured he was innocent in the beginning” (S. C., p. 61, l. 15) and that there has been nothing since to make him change his mind (S. C., p. 61, l. 20); and, in reply to a further similar question Van Rosenberg answered: “I have answered it about nine times, that I figured Pete Churchill was innocent” (S. C., p. 61, l. 36). It must be borne in mind that these statements of Van Rosenberg's as to the innocence of plaintiff-in-error were made eight (8) months prior to an admittedly false statement sworn to by Van Rosenberg in which he attempted to exculpate the plaintiff-in-error by denying he was the Peter Churchill mentioned as being a party to the hold-up. This statement, however, was made voluntarily, and long before any of the alleged promises of the plaintiff-in-error to Van Rosenberg for the payment of money for Van Rosenberg's assistance in exonerating the plaintiff-in-error.

Further proof that the plaintiff-in-error had no knowledge that a crime was about to be committed, and that his assistance in making an escape after its commission was under duress, is borne out by the testimony of Defendant Lombardo, who tes-

tifies that the robbery scheme was concocted at the crap game in Passaic by himself, Meola and Van Rosenberg (S. C., p. 149, l. 16); that the scheme to commit the robbery was not discussed at any time in Churchill's presence (S. C., p. 149, l. 22); and that in fact Meola at the Passaic crap game said to Lombardo “Don't say anything to Pete Churchill, because if you tell something to Pete Churchill he no going to drive us down there” (S. C., p. 154, l. 31). Lombardo further testified that Churchill drove the car with its occupants from the scene of the robbery under duress, that Meola had a gun placed to Churchill's back and said: “If you don't want to die you better drive that car as fast as you can—if you don't I will blow your back out” (S. C., p. 157, l. 35 and S. C., p. 158, l. 13); that Meola kept his gun to Churchill's back “until they got near the railroad station on Market Street” (S. C., p. 159, l. 7) and that, as to the distribution of the proceeds of the robbery “Pete Churchill didn't ask for any share and he didn't receive any” (S. C., p. 150, l. 15), ending his testimony by stating “Yes, sir, that is what, Pete Churchill never know anything about this stick-up” (S. C., p. 163, l. 15).

With the exception of the exact time of meeting and going to the crap game at Passaic, upon which no two of the witnesses exactly agree, the testimony of the plaintiff-in-error concurs with that of defendants Van Rosenberg and Lombardo in all principal details. He admits driving the car in which the defendants were riding but denies that he had any knowledge of the crime until after the hold-up, when the principal defendants rushed from the saloon, ordering him to drive to Paterson as fast as possible, one of them holding a gun to his back, which gun was so held until the automobile reached the railroad station on Market Street (see testimony of Lombardo, S. C., p. 159,

l. 7). Immediately thereafter, on reaching Madison Avenue and Tenth Avenue, the threat of the gun having been withdrawn, the plaintiff-in-error persuaded the occupants to leave the automobile, he stating "I told them to get out" (S. C., p. 141, l. 27). The plaintiff-in-error also denies receiving any of the watches, jewelry or money taken in the hold-up (S. C., p. 114, l. 23).

From the above analysis of the testimony, it will be seen that the State was forced to rely for a conviction upon the uncorroborated testimony of one out of three accomplices, notwithstanding the fact that the only testimony given by this witness—Meola—is not only uncorroborated, but emphatically repudiated by his companions in crime, whose unimpeached testimony is so strongly in favor of the innocence of the plaintiff-in-error that reasonable consideration thereof could not possibly have been given to it by the jury.

The only proof offered by the State to show knowledge on the part of the plaintiff-in-error of the criminal character of his companions' actions is the testimony of Meola, to the effect that the crime was discussed loud enough for the plaintiff-in-error to hear. That he did hear the discussion of the plans of the crime or know anything of the crime until after it was perpetrated is denied by himself, Lombardo and Van Rosenberg, and this denial is further corroborated by the fact that the three principals upon leaving the scene of the crime shouted that they had "just stuck up the joint—drive fast and get away". If the plaintiff-in-error had any knowledge of the crime about to be perpetrated there was no necessity or reason for his being informed that the crime had been committed.

The testimony of Meola to the effect that the crime was hatched and plotted spontaneously almost directly outside of the saloon is very im-

probable and unworthy of belief. The three other defendants on their own testimony had been associated together throughout most of the day. Lombardo testifies that the plan was conceived by these three defendants at the crap game in Passaic. The evidence further shows that these three defendants were armed and prepared for the commission of such a crime. The evidence further shows—and this is confirmed by the testimony of every one of the witnesses—that these companions were not known to the plaintiff-in-error, and that must certainly have been believed by the jury since it was not contradicted or impeached. From the evidence produced at the trial, therefore, it is reasonable to suppose that the jury was unwarranted in reaching any conclusion other than that the plaintiff-in-error was merely an unfortunate tool of these three conspirators; and further, on account of the prevalence of crime in Passaic County at the time of the trial, and the unusual newspaper publicity given thereto, the jury was inclined to convict on every flimsy evidence, as was done in this case.

It is clear that from the moment the three principal defendants (after leaving Mary's saloon) jumped onto the automobile driven by the plaintiff-in-error, he knew that a crime had been committed by them, and that from then on his actions helped accomplish their escape from the scene of the crime. The evidence conclusively shows, however, that his driving of the automobile was done under duress through actual fear for his own personal safety, as is testified to by himself and Lombardo, and which testimony was not rebutted by the State. The State has not shown that he did drive the automobile with the intent to aid their escape, but rather under duress through fear of himself being implicated because of an unfortunate association with the criminals when they

actually committed the crime. His conduct in driving away in the automobile under duress was certainly the following of such natural impulses as would sway any reasonable man under similar circumstances were he commanded by armed men to "step on it and get away". The proof, too, conclusively shows that he did not share in the proceeds of the robbery. We, therefore, contend that the jury must have improperly considered the weight of the evidence necessary to implicate the plaintiff-in-error in this crime, since there is absolutely no evidence from which the jury might have deduced that he had any part in the conspiracy antecedent to the crime; no testimony from which the jury might deduce that he had any connection with the actual commission of the crime, other than that he was physically present outside the scene of the crime, so that these facts, together with the testimony showing that he not only did not derive but did not seek to derive any profit from the hold-up makes it positive that the jury improperly considered the evidence necessary to find him guilty as an accomplice in this crime.

We further contend that the jury was misled through the proof of the commission of the crime by the perpetrators, their confessions as to the respective parts they played in the carrying out of the crime, and that the jury found the plaintiff-in-error guilty of being an accomplice merely because of his association with the men who openly admitted that they committed the crime, and because he drove the car in which they made their escape from the scene of the crime. As a matter of law, mere physical presence at the scene of a crime by one in the company of the perpetrators thereof is not sufficient to find that person guilty as an accomplice unless there is some evidence adduced to show that he actually and knowingly participated—and such evidence was certainly not presented to the jury in this case. We further

contend that the jury must have given improper consideration to the proof adduced by the State that the plaintiff-in-error was merely present at the scene of the crime and departed in the company of those who actually perpetrated the crime.

We further contend that the jury was so misled by the following portion of the Court's charge:

"If one would escape the penalty he must cease to act in complicity with those who seek to defy the laws of the land as soon as he has knowledge of the criminal character of their actions";

that the said jury erroneously considered that there was an immediate duty imposed upon this plaintiff-in-error to refuse to permit these admitted criminals to enter into his automobile and drive them away; and, that failing in this duty, he was then guilty as an accomplice in the commission of the crime, and further forced the jury to the unwarranted conclusion that as he had driven the three defendants away from the scene of the crime he was therefore guilty—thus depriving the plaintiff-in-error of the effect of an instruction that he was not bound to perform such duty until the duress through threat of physical violence to his person was removed.

We further contend that the weight of the evidence is (and this too by the testimony of the State's witnesses) that this plaintiff-in-error was the unfortunate and unwilling tool or victim of these criminal conspirators and that there was no evidence adduced from which the jury could infer or conclude that the plaintiff-in-error had at any time any criminal intent of aiding in the robbery, or in aiding those who had committed it to escape.

Furthermore we contend that a mere reading of the testimony will show that the entire record reeks with perjuries, contradictions and mis-

statements on the part of the State's witnesses, *all defendants*, who admitted they committed the crimes charged and who were implicating plaintiff-in-error by their testimony in the hope that the State would show them a degree of leniency which they could not look for on a plea of guilty. It is to be observed also that the most flagrant perjuries of these three defendants were committed in an effort to benefit themselves by shifting the blame for the initiation of and leadership in the crime. They had confessed, and wanted to pin the crime on this plaintiff-in-error. All their testimony was directed to that one object, but in their anxiety to perjure themselves for their own individual benefit, they testified unknowingly to the advantage of the plaintiff-in-error. Since an examination of the testimony shows conclusively that all three defendants committed perjury in the hope of impressing the Court and jury that they were attempting to aid the State, each charging the other with leadership in the commission of the crime, it is our contention that such obvious perjury is sufficient to have warranted the jury in dismissing any testimony given by these three defendants to implicate the plaintiff-in-error.

We therefore respectfully submit that the defendant was grievously wronged by reason of the jurors being adversely influenced by the admitted guilt of the other defendants involved in this case, and erroneously applied the overwhelming proof of their guilt to this defendant, and utterly disregarded the weight of the proof essential and necessary to make this defendant an accomplice in the commission of their crime. Therefore the verdict should be set aside as contrary to the weight of the evidence for the reason that the State did not prove by a preponderance of the evidence that this defendant was knowingly, intentionally and voluntarily aiding and abetting the co-defendants to escape justice.

POINT TWO.

The Court erroneously charged the jury that the plaintiff-in-error might be convicted on each or all of the indictments that had been returned.

The Trial Judge closed his instructions to the jury with the following sentence:

“You may convict him on each or all of the indictments that have been returned” (S. C. p. 177, l. 8),

to which instruction Trial Counsel at the close of the charge took exception on the grounds that the instruction should have been

“You may acquit or discharge on any one count of each indictment” (S. C. p. 179).

The instruction of the Trial Judge—“You may convict him on each or all of the indictments that have been returned” is manifestly erroneous and prejudicial to the plaintiff in error *as it was tantamount to an instruction to find a verdict of guilty on one or all of the indictments* and deprived the plaintiff in error of his inalienable right to be presumed innocent until proven guilty, inasmuch as it encouraged the jury to find a verdict of guilty.

In reviewing this point the New Jersey Supreme Court in its opinion (S. C. p. 185, l. 40) says: “The next contention is that the (trial) court erred in charging the jury as follows: ‘You may convict him on all or each of the counts in the indictment.’ The argument is that this was error because the court failed to instruct the jury that it might acquit the plaintiff in error on any or all of the counts. It is not suggested that the instruction was not proper so far as it went. If counsel had

desired the court to speak with relation to the acquittal of the plaintiff in error on any or all of the counts, he should have requested such an instruction. This he did not do, as appears from an examination of the case."

The Supreme Court erred in stating that trial counsel did not request such an instruction, for an examination of the State of Case (S. C. p. 179) shows that trial counsel took an exception specifically to that part of the Court's charge, and framed his objection in the language which he desired the Court to use in its charge, i. e.:

"EXCEPT to that part of the Court's charge where the Court said 'you may convict on all or each of the indictments,' inasmuch as the Court did not instruct the jury they might acquit or discharge on any one count of each indictment."

In so doing trial counsel exercised all of his duties at the time, and if his statement of the law was correct or was a necessary amplification of the Court's charge to which the plaintiff in error was entitled, then it was the duty of the Trial Judge to correct his charge as made—his error having been directly called to his attention.

Trial Counsel, in the absence of the preparation and requesting of a complete charge, could not have anticipated an erroneous statement of the law by the trial court; and, even in that event, could not have prevented such a statement if the trial court desired to state the law in such a manner. Having taken exception to the court's charge and having specifically stated wherein he deemed it incorrect counsel for the plaintiff in error availed himself of the only remedy he had, and it then became the trial judge's duty to correct his charge or not, as he deemed fit. The trial court in this instance did not amend its charge, and thereby abso-

lutely nullified and deprived this plaintiff in error of the benefit of that portion of the charge wherein the Court said it was necessary that the plaintiff in error be found guilty beyond a reasonable doubt.

We therefore respectfully submit that because this plaintiff in error was so grievously injured and militated against by the refusal of the Trial Court to grant request of counsel to charge that he might be ACQUITTED OR DISCHARGED ON ANY ONE count of each indictment or on all counts of each indictment, judgment of the lower Court should be reversed.

POINT THREE.

(Under this heading is argued Points 3, 4 and 5 of Specifications of Causes for reversal.)

The Trial Court erred in charging the jury:
"If one would escape the penalty he must cease to act in complicity with those who seek to defy the laws of the land as soon as he had knowledge of the criminal character of their actions."

This charge as rendered erroneously conveys to the minds of the jurors that an immediate duty was imposed upon this defendant to refrain from any further association with the other defendants in this indictment. We contend that the charge as given was erroneous, highly prejudicial to the defendant and not applicable to the peculiar facts and circumstances brought out by the evidence in this case. It is true that the charge as quoted would undoubtedly apply to the case of a defendant accused as an accomplice and who actively and voluntarily co-operated with his associates in a joint enterprise which might at the outset appear to be lawful, but which later

became manifestly unlawful. This, however, was not the present case. There was no proof adduced that these men were engaged in a joint enterprise—the evidence showing conclusively that they were merely returning to the point in Paterson from which they had journeyed to Passaic. It is true they were all travelling in the same automobile, but this of itself cannot be construed to be a joint enterprise in view of the proof adduced through the State's own two witnesses—Van Rosenberg and Meola, whose testimony was to the effect that this defendant was in relatively the same position to the other occupants of the car as would have been the driver of an automobile hired for the trip. As a consequence thereof, this charge placed a burden upon the defendant of not only explaining his presence at the scene of the crime, but of proving that his actions were not criminal in intent and in character. In driving an automobile, containing persons known to have violated the law, defendant had done nothing of itself which was *per se* sufficient to find him guilty of being an accomplice in the perpetration of the crime. This charge in effect, therefore, made it necessary for the jury to find the defendant guilty as an accomplice unless he showed that it was not his express purpose in driving the automobile to aid these confessed criminals to escape. It is true the Court did charge the jury upon the doctrine of the burden of proof resting upon the State, but the Court's charge was very meagre and vague. Other than the portion above quoted it did not explain to the jury what essential elements were necessary to constitute aiding and abetting in the perpetration of the crime, and the jury would necessarily infer from the above charge that any one who aided criminals in the furtherance of their acts would be guilty as accomplices whether they did so accidentally or involuntarily.

The Court's charge, without any further explanation, did not permit the jury to consider whether this so-called accomplice was acting under duress in driving the automobile and if your Honorable Court considers that the charge did permit the jury to consider whether this defendant was acting under duress, then the charge was erroneous in that it placed the burden upon this defendant of proving he was driving the automobile under duress, beyond a reasonable doubt.

We therefore contend that the charge prejudiced this defendant in that it relieved the State of proving beyond a reasonable doubt that this defendant's actions were done with criminal intent, were done voluntarily, were done with the purpose of aiding the actual robbers to escape from justice and placed the burden upon this defendant of proving beyond a reasonable doubt that his actions were lawfully done without any criminal intent and that he so acted because of fear for his own personal safety.

We therefore respectfully submit that because this defendant was so greatly prejudiced by the charge of the Trial Court, in that he was compelled to bear the burden of proving beyond a reasonable doubt that he unknowingly participated in this crime, without any criminal intent and because of duress through fear for his own personal safety, the judgment of the lower Court should be reversed.

Respectfully submitted,

JOSEPH W. HENRY,
Attorney for Plaintiff-in-Error.

MAURICE J. CRONIN,
Of Counsel.

New Jersey Court of Errors and Appeals

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

BRIEF OF DEFENDANT-IN-ERROR

STATEMENT OF FACTS

The Plaintiff-in-Error together with James Meola, Harry Van Rosenberg and Frank Lombardo were indicted in connection with a hold-up at 1003 Main Street, Paterson, in a cafe or saloon in the early morning of April 11th, 1925. The indictment contained four counts, being Robbery, Larceny from the Person, Larceny and Receiving Stolen Goods. The particular indictment made part of the State of the Case charged the defendants with the commission of the foregoing crimes as having been committed upon one George Jackson, that the goods and chattels removed were of the value of \$43.00. Meola, Van Rosenberg and Lombardo pleaded non vult and were sentenced as follows: James Meola, sentenced to State Prison for the maximum term of 3 years and the minimum term of 2 years; Harry Van Rosenberg, sentenced to State Prison for the maximum term of 15 years and the minimum term of 10 years; Frank Lombardo, sentenced to State Prison for the maximum term of 30 years and minimum term of 20 years; Peter Churchill, sentenced to State Prison for maximum term of 15 years and minimum term of 10 years. The

plaintiff-in-error having plead not guilty, he was placed on trial before a court and jury, and on the 2nd day of March, 1926, was found guilty and sentenced to be confined in State Prison, at hard labor, for a maximum term of fifteen years and a minimum term of ten years. From this conviction he sued out of the Supreme Court a writ of error to the Quarter Sessions court seeking a reversal of the conviction. The conviction was affirmed by the Supreme Court; Vol. 6, N. J. R. No. 10, page 158.

The facts substantially show that Meola, Van Rosenberg, Lombardo and Churchill, together with other persons, had left Passaic, New Jersey, late at night in an automobile driven by Churchill. While the automobile was being driven to Paterson by Churchill, containing the persons aforementioned together with other persons, and while the machine was proceeding along Main Street late at night towards Paterson, two of the occupants of the car suggested a hold-up at Mary's Cafe, and one of the occupants of the car told the plaintiff-in-error at the time he was driving the automobile to turn around after the automobile had passed Mary's Cafe, and the occupants of the car or some of them would "stick the joint up," after which request of the plaintiff-in-error he turned the car around and pulled up in front of the place, and, subsequently, and while the plaintiff-in-error was seated at the steering-wheel of the automobile, after the automobile had stopped, Meola, Van Rosenberg and Lombardo, the latter being also known as "Bootsey," alighted from the automobile each carrying a gun in his hand and all three entered this cafe. These three persons having entered the saloon with guns drawn, de-

manded of every one in the place to hold up their hands. They all had overcoats on with sort of a shawl covering their faces which might have been their coat collars from their overcoats turned up to hide their faces. Having entered the place, these three individuals or at least two of them, Van Rosenberg and Lombardo, shouted: "Hands up," and at the same time Van Rosenberg had the cash register behind the bar open and was taking the money out, and Meola tried to remove from Louis Mary a diamond ring from one of his fingers and finding he could not remove it he took the finger of Louis Mary and put it in his mouth and tried to pull the ring off, bruising the skin of the finger that the ring was on. They also took from Charles Mary a watch and chain, \$5.00 and a \$5.00 gold piece for a charm, and at the same time one of these defendants went through the clothes and pockets of Mr. Fred W. Krieger and a Mr. William G. Jackson, being the same man as the one referred to as George Jackson in the indictment. They took from Mr. Louis Mary a wallet and some things which he had in it including a few dollars and some other miscellaneous items, the money being about \$15.00, and from the cash register behind the bar they took about \$65.00 in money and from Mr. Fred W. Krieger, patron, they took some money that he had in some bills, having felt in the pockets of Mr. Krieger, not having taken the silver they took the bills and pulled them out and also took his watch and chain, and Mr. William G. Jackson being another patron, having heard the order to hold their hands up, his watch and chain were taken which he states was of the value of \$48.00.

After the hold-up the three persons, with their guns, ran to the waiting automobile outside and the plaintiff-in-error was still seated at the driver's seat. All of this happened between 2:00 and 2:30 o'clock in the morning of April 11th, 1925. These three persons, Meola, Van Rosenberg and Lombardo having run from the saloon with their guns still in their hands, jumped on to the running board of the automobile. At the time, the motor of the automobile was running when they got back to the automobile after having run from the saloon. Then the automobile was driven through the streets of Paterson by the plaintiff-in-error at a fast rate of speed with all the same persons in it who had been in the car before the car had stopped in front of Mary's saloon and before the hold-up.

When the automobile reached the corner of Tenth Avenue and Madison Avenue at Paterson, all of the persons alighted from the automobile except the plaintiff-in-error and he, the plaintiff-in-error, told Lombardo to take care of his end of the loot. Subsequently, Meola, Van Rosenberg and Lombardo were arrested and having made statements to the police plead non vult. Churchill was arrested in Philadelphia, Pennsylvania, several months after, having left Paterson almost immediately after the night of the hold-up, he having been arrested by two detectives of the Paterson Detective Bureau at 10:00 o'clock on the night of September 3rd, 1925. When, upon being brought back from Philadelphia to Paterson, he told Detective Brooks that he was not at the place of the hold-up at the time it occurred and did not know anything else about it, although when the plaintiff-in-error testified in his own de-

fense, he admitted he was with the persons on the night of the hold-up and drove the car but claimed he knew nothing about the plans to hold-up the place, and that he was forced to drive the car after the hold-up, insisting that he was entirely innocent of all knowledge of the plans which were discussed in the automobile to hold-up the place and that the action of one of the persons who had held the place up in placing something in his back while he was driving the car created in his mind a condition of fear which prompted him, without any delay, to leave the scene of the hold-up and drive at a rapid rate of speed through the streets of Paterson until he reached Madison and Tenth Avenues in Paterson, when all of the persons alighted from the machine except himself.

The State maintains that the conviction of this plaintiff-in-error was proper, that the evidence produced against him was legal and that the jury were warranted in finding him guilty of the charges and that the conviction should be sustained.

POINT ONE

THE VERDICT OF GUILTY WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

In the case of State v. Karpowitz, 120 Atl. Rep., page 40, this case was decided by the Court of Errors and Appeals of New Jersey. In this case, the defendant was convicted by the Essex County Court of Quarter Sessions. The judgment was removed to the Supreme Court by writ of error. The entire record was certified to the Su-

preme Court under Section 136 of the Criminal Procedure Act (2 Comp. St. 1910, page 1863). One of the specifications of causes for reversal was that the verdict was contrary to the weight of the evidence. The Supreme Court reversed the judgment upon this ground. From the judgment of the Supreme Court the State took a writ of error and sought a reversal of the judgment of the Supreme Court and an affirmance of the judgment of the Essex Quarter Sessions. The Court of Errors and Appeals reversed the Supreme Court.

Justice Katzenbach, writing the opinion for the court of Errors said:

"In the case of *State v. Knight*, 96 N. J. Law, 461, 115 Atl. 569, 19 A. L. R. 733, this court upheld the constitutionality of the act of April 12, 1921 (P. L. 1921, p. 951), which provides that in criminal cases courts of appeal may review the question whether a verdict of guilty is against the weight of the evidence. In the case of *State v. Morehous*, 117 Atl. 296, this court said:

"This statute (referring to the act of April 12, 1921) requires that an assignment of error be made that the verdict is against the weight of the evidence. The effect of such an assignment is the same as that on a rule to show cause where the reason assigned is that the verdict is against the weight of the evidence. The competency of the evidence is not to be considered. The evidence is not to be weighed after eliminating such testimony as the court upon review may feel was improperly ad-

mitted, but to be weighed as it was presented to the jury in its totality.'

"The rule of weighing evidence has thus been pronounced in this court to be the same in a criminal case as in a civil case."

"To justify a court in setting aside in a civil case a verdict of a jury on the ground that it is against the weight of the evidence, it must so clearly appear as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality. *Floersch v. Donnell*, 82 N. J. Law, 357, 82 Atl. 733; *Queen v. Jennings*, 93 N. J. Law, 353, 108 Atl. 379.

"The fact that the witnesses for the defense outnumbered those of the plaintiff does not in itself establish the weight of the evidence. *Baumann v. Hamburg American Packet Co.*, 67 N. J. Law, 250, 51 Atl. 461; *Goldman v. Central Railroad Co. of New Jersey*, 79 N. J. Law, 205, 74 Atl. 261. The credibility of a witness and the weight to be given to his testimony involve the consideration of many other matters, such as his personal interest in the subject-matter in controversy, his opportunity of observation or knowledge of the subject about which he is testifying, the influence under which he may be testifying, his demeanor on the witness stand, etc., all of which are circumstances for a jury, who see the witness, to consider in determining what credit and weight should be given to the witness and his testimony. *Floersch v. Donnell*, supra."

"In the case of Clark v. Public Service Electric Co., 86 N. J. Law, 144, 91 Atl. 83, this court held that that credibility of witnesses was for the jury.

This court said, in Schmidt v. Marconi Wireless Telegraph Co., 86 N. J. Law, 183, 90 Atl. 1017, Ann. Cas. 1918B, 131, that the uncontradicted testimony of a man whose character for truth and integrity is universally known should nevertheless be submitted to the jury.

These cases establish that it is the province of a jury to pass upon the questions of the credibility of witnesses and the weight to be accorded to their testimony.

It is perhaps unnecessary to say that those who have the opportunity of personally seeing and observing the demeanor of witnesses are best qualified to judge of the credibility of witnesses and the weight to be accorded their testimony. Testimony which seems convincing in print would often be unconvincing if heard in court from the lips of witnesses.

Appellate courts should be cautious in setting aside a verdict of a jury upon the ground that the verdict is contrary to the weight of the evidence. It should only be done when it is clear that the verdict is the result of mistake, passion, prejudice or partiality." (The underscoring is mine.)

From the foregoing, the State feels that there is no question but that the judgment should be af-

firmed as it will clearly appear from the facts of the case that the verdict is not the result of mistake, passion, prejudice or partiality.

Harry Van Rosenberg, a witness for the State and one of those who had been indicted for this crime and who had pleaded non vult at the time he was a witness for the State, testified commencing on page 24 of the State of the Case and continuing over to page 25:

"Q. What did you say? A. Another car pulled up to the curb with McElwaine and Nichols another lad in it by the name of Silla, so we were coming back into the car and Churchill and Lombardo hollered to him, "jump in our car we're going back to Paterson." So they jumped into the car and we came on down past this saloon on Main Street.

Q. What saloon? A. Mary's saloon, and the drift of the conversation in the back of the car between Bootsey, Charlie and Pollack and McElwaine, they kept up a conversation and then Bootsey hollered "Turn around."

Q. What was the conversation? A. From what I judge after awhile it must have been to knock this place off on Main Street.

Mr. Stafford—I object to it unless he states the conversation and ask that that be stricken out.

The Court—Strike it out. What was the conversation?

A. Charley Nichols says, "There is some money in this place here," and Boots hol-

lered, "Turn this car around," and so we came back and pulled up on the side street so they called me and Meola out and handed me a gun and we walked in the place and held it up.

Q. When you stopped alongside of the saloon was the car running or the motor shut off? A. The motor was shut off I believe.

Q. Who was at the wheel of the car? A. Churchill." (The plaintiff-in-error.)

On State of Case, page 27, l. 32, this same witness testified:

"Q. Did you three then go out? A. Yes, sir, the three of us left the place.

Q. You still had your guns in your hands? A. Yes, sir.

Q. Where did you go? A. We all ran for the car.

Q. You went on a run? A. Yes, sir.

Q. Was the motor running when you got to the car? A. When we came back out the motor was running, yes, sir.

Q. You came on a run, did you? A. Yes, sir, we came on a run.

Q. What was the first thing said by any of you or anyone in the car? A. I came running to the running board of the car; I says, "Step on it." I says, "We just stuck the joint up"; with that I made a running jump for the running board and the rest of them hung on the back as the car started out.

Q. What was said after that? A. Mc-

Elwaine, in the car, says, "How much did you get?" I says, "I got some money; I don't know how much it is." The car passed on this way and went over Madison Avenue toward Tenth Avenue, when we got out of the car. Churchill said, "You fellows better get out; you are going to get me in bad," and as McElwaine got out I took the money out of my pocket and he took something and went on his way, and as Churchill started away with the car Boots hollered, "I will see you with your share."

Q. Before Boots said that did Churchill say anything to Boots? A. He told us to get out of the car, because he said he might get in bad if we don't, and then Boots hollered, "Don't worry about your share; I will see you."

Q. What did Churchill say to that? A. I don't know whether he heard it or not, he hollered back something about all right.

On page 29, l. 18, of the State of Case:

"Q. Did he (referring to Churchill) say anything to you about—before you made the statement what did he say to you about making the statement, if anything? A. I will see you with some money and help you out of this case, out of this jam.

Q. How was he going to help you out? A. Help me out for money to get a lawyer, and if the case got bad and I wanted to blow I could go to him and get some money to blow.

Q. Did you know what he meant when he said blow? A. Yes, sir.

Q. You signed the statement? A. Yes, sir.

Q. Do you remember what was in the statement? A. I don't remember exactly, but it was that I couldn't connect Peter Churchill and Peter Church as the same man in the car the night of the hold-up."

On page 30, l. 1, of the State of Case:

"Q. On the way into Court did you meet Churchill? A. Yes, sir.

Q. Where? A. Out on the steps.

Q. Did you have a conversation with him? A. I asked him if he had any money, and he said, "I only have a few dollars; I will give you some of that if you want it," so he gave me about fifteen or sixteen dollars."

State of Case, page 43, l. 39:

"Q. When you neared Mr. Mary's saloon at 1003 Main Street, how did the car happen to stop? A. We rode past the place and Boots from the back said, "Turn the car around and come back here on the side street" so Churchill turned the car around here on Main Street.

Q. Did he say why? A. He said, "We're going to knock this joint off."

State of Case, on page 45, l. 3:

"Q. You heard Boots say "I am going

to knock the place off?" A. Yes, sir. I was on the running board of the car."

State of Case, page 45, line 39:

"Q. How far was the automobile from the saloon? A. Alongside of the saloon.

Q. On Main Street? A. No, on a street running this way towards Getty Avenue.

Q. Alongside of it? A. Yes, sir.

Q. When he handed you the gun what did you say? A. I looked at it and said, "What is this for?"

Q. What did he say, for your rent money? A. He said: "We're going to knock this joint off."

Q. That was the first time he said it? A. Yes, sir.

Q. When he handed you the gun, "I am going to knock this joint off?" A. Yes, sir.

Q. Where was the automobile? A. Standing at the curb.

Q. How far from you? A. Eight or ten feet."

James Meola, a witness produced by the State and who also was another defendant charged with the commission of the same crime but who had pleaded non vult at the trial of the plaintiff-in-error testified, State of Case, page 67, lines 28:

"Q. Who was driving the car you referred to as your car? A. Peter Churchill."

On State of Case, page 68, line 10:

"Q. What was said besides that, if any-

thing, on Main Street? A. We were riding along Main Street, and all of a sudden Charlie and Whitey suggested about a hold-up at Mary's Cafe that he was open and that he always carried a lot of money."

State of Case, page 68, line 22:

"Q. Did he say anything else about what they had? A. That they had about Fifteen Hundred Dollars on them, no more than that was said and Bootsey tells Churchill to turn around we will stick the joint up and Churchill turns around and pulls up in front of the place and Van Rosenberg and Bootsey got out and looked into the place."

On the same page, line 38:

"Q. Where were they. The guns when Bootsey and Van Rosenberg came back up to the car do I understand you to say they had revolvers? A. Yes, sir.

Q. Where were they? A. In their hands.

Q. Who was in the front seat at this time? A. There was nobody in the front seat only Pete Churchill.

Q. Where was he? A. In the car.

Q. Was he on the left side or right side? Was it a left or right hand drive? A. A left.

Q. Is that where he was sitting? A. Yes, sir.

Q. What was said by Lombardo and Van Rosenberg, when they came back to the car? A. That there was too many in

the place and they needed another man to go in with them.

Q. How far were they away from the car when they said that? A. Right close to the car.

Q. Where were you sitting in the front or back? A. Back.

Q. How far away were you from them when they said that? A. I was sitting in the car about two or three feet.

Q. How far was Churchill away from them when they said that? A. About the same."

State of Case, page 70, line 18:

"Q. When Lombardo and Van Rosenberg came back to the car and they said what you said a moment ago then Charlie the waiter said something about them knowing him? A. Yes, sir.

Q. What did he say? A. That he was known and that he couldn't go in.

Q. Did you hear Charlie the waiter say that? A. Yes, sir.

Q. How far were you away from him? A. Right close to him in the car.

Q. Where was Pete Churchill? A. Sitting in the front of the car at the wheel.

Q. Was he the same distance away from him that you were? A. Yes, sir."

State of Case, page 72, line 19:

"Q. Did you say Lombardo came back to the car? A. Yes, and Van Rosenberg.

Q. What was said? A. That there was

too many in the place and they needed another man to stick the place up.

Q. Just go on and tell us what was said? A. So they asked Charlie the waiter, to go in and he said he was known and couldn't go in; he didn't have any mask and couldn't go in. So Whitey had the same story; he couldn't go in, and Bill couldn't go in, and they asked me to go in, and when they asked me to go in, I told them to cut me out, I didn't want to go in.

Q. Did they ask Churchill to go in? A. No, sir.

Q. What was he doing? A. He was at the wheel."

State of Case, page 73, line 1:

"Q. Where were you in the car? A. Sitting in the car in the back seat."

State of Case, page 73, line 12:

"Q. Before you went into the place did anything happen that you recall? A. I didn't have any gun, so Bill handed me a gun and said, "Go ahead in, what is the use of being yellow about it, go ahead in."

Q. What was Churchill doing at that time? A. Sitting at the wheel.

Q. You say Bill handed you this gun? A. Yes, sir.

Q. Then what happened? A. Van Rosenberg says, "Come on, Skinney, what is the use of being yellow about it, come on in, let's take the joint."

Q. Where was Van Rosenberg when he

said that to you? A. Out on the curb close to the car.

Q. How far away from you? A. About a foot or two; he was right close to the car.

Q. How far was he away from Churchill? A. About the same distance.

Q. Did you have any difficulty understanding what he said or hearing what he said? Could you hear what Van Rosenberg said? A. Yes, sir.

Q. Did you have any difficulty in hearing what he said? A. No, sir."

State of Case, page 74, line 27:

"Q. What were you doing during this time? A. Before I went in there this here Whitey and Charlie told me the Mary brothers always carried a lot of money on them and had a diamond ring.

Q. Where did they tell you this? A. In the car before we stopped it.

Q. Before you got out? A. Yes, sir."

State of Case, page 75, line 24:

"Q. Then where did you go when you went out of the saloon? A. Into the car.

Q. Was the motor running when you got into the car? A. Yes, sir."

State of Case, page 76, line 8:

"Q. What else was said? A. They asked me if I got Mary's bankroll and I told him I didn't have it, and Rosey said he didn't have it, and Bootsey said he didn't

have it, and none of us had it, and Charlie he kinda searched my overcoat pocket and I told him I didn't get it. I couldn't even get the ring off him.

Q. Who was sitting in the front of the car at this time? A. Van Rosenberg was sitting in the front.

Q. They say they asked Van Rosenberg also if he got the bankroll? A. Yes, sir.

Q. What did he say? A. He said he just got the money in the cash register.

Q. Could you hear him say that? A. Yes, sir.

Q. Churchill was at the wheel then? A. Yes, sir.

Mr. Stafford—I object to the question as leading.

The Court—The question is answered.

Q. Do you recall anything that was said about the car starting or anything that was said before you got into the car? A. Before I got into the car? When we got into the car they told him to step on it and Charlie says, "Shoot right down, go right straight down." He says, "I will show you," and Charlie, the waiter, was directing Pete Churchill what streets to take to make our get-away."

State of Case, page 77, line 11:

"Q. Do you remember anything being said before the car stopped up on Madison Avenue and Tenth Avenue. Well, do you remember anything that was said after the car stopped? A. The car stopped and

we all got out and Pete Churchill told Bootsey to take care of his end.

Q. What did Bootsey say? A. He says, "Never mind don't worry I will take care of your end."

Q. What else was said at that time, if anything? A. The car was stopped and we all got out of the car and Pete Churchill said "I will leave you off here and then I will go by myself."

Q. Did he say why? A. So it wouldn't look suspicious."

State of Case, page 79, line 23:

"Q. When did you see Churchill for the first time after that occasion? This was in April? A. Yes, sir.

Q. When did you next see Churchill, what month? A. Around November and he told me our trial was going to come up on Monday.

Q. Did you see him between April and November, did you see him between that time? A. Yes, sir.

Q. Did you see him before November from the time or the morning of the hold-up, did you see him before November? A. No, sir.

Q. Did you have a conversation with him in November? A. Yes, sir, and he told me he had talked to Bill Drew and Bill Drew told him our trial was coming up on next Monday.

Q. Did you see him after that time, in November? When did you next see him? A. Up here in court.

Q. When was that? A. A few weeks ago.

Q. Do you remember having a talk with him at that time? A. Yes, sir.

Q. Did you ever see him at night? A. I met him once.

Q. Lately, at night? A. Yes, sir.

Q. When was that? A. When our case happened to be here.

Q. How long ago about? A. About three weeks ago.

Q. Do you remember what night of the week it was? A. I think it was on a Thursday night.

Q. Did you talk with him then about this case? A. Yes, sir.

Q. What did he say to you? A. He told me he was surprised at me pleading non vult.

Q. What else did he say? A. He told me to keep my mouth shut, or otherwise if you open up Bootsie will get you down to Trenton, he is going to make you suffer. I says, "I don't care, I am just going to tell the truth about it to be truthful."

Q. Was anything said about Van Rosenberg? A. He told me that Van Rosenberg was going to exonerate him. He told me he was going to exonerate him.

Q. Did he tell you how? A. He was going to say that wasn't the Pete Churchill he meant.

Q. Did he say what Pete Churchill it was going to be? A. A Pete Church from Newark."

State of Case, page 81, line 6:

"Q. Do you remember anything else he said about Van Rosenberg or what Van Rosenberg was going to do? A. He told me that Van Rosenberg wasn't going to identify him that is the way I understood it."

James Meola on cross examination being questioned, State of Case, page 89, line 20:

"Q. When you neared Mary's saloon who said there is a saloon open? A. Charlie.

Q. Who said, "Let's go in and have a drink?" A. Nobody.

Q. When Charlie said, "There is a saloon open," what did you say? A. I didn't say anything.

Q. Did anybody say anything? A. Yes, sir.

Q. Who? A. Charlie says, "the place is open there is a man always got a lot of money on him in there," he says, "We ought to stick the place up."

Q. Charlie is a man who is not in court today? A. No, sir, he is not in court.

Q. Charlie is not being tried today? A. No, sir.

Q. Did Charlie say that to you? A. No, sir.

Q. He was sitting front of you? A. No.

Q. Did he turn around and talk to you? A. I wasn't talking to him in the car everybody heard it."

State of Case, page 91, line 1:

"Q. Then answer it yes or no. A. Bootsey told Pete Churchill to turn around and pull up in front of the place.

Q. Mr. Meola, is that answering my question? Is it? A. I will give you the answer, let me explain it to you.

The Court—If you have some explanation to give which the question suggests the Prosecutor will give you an opportunity to explain it.

A. Bootsey said, "Let's go back and stick the place up."

Q. Who said that? A. Bootsey.

Q. I thought Charlie said that? A. Charlie and Bootsey said that.

Q. They both said it? A. Yes, sir."

Following shortly thereafter, State of Case, page 91, line 33:

"Q. This remark you attributed to Bootsey was that made before the car stopped or was it made by Bootsey after the car stopped and Van Rosenberg had gotten out and you were in the act of getting out?

A. It was made right in the car.

Q. Before the car stopped? A. Yes, sir.

Q. Where was the car when Bootsey is supposed to have made this statement? A. Alongside of Mary's saloon."

State of Case, page 95, line 23:

"Q. Did you hear anybody say anything about Churchill in Churchill's presence?

Do you understand that? A. Yes, sir, I understand that when the car stopped Pete (Churchill) told him to take care of his end."

State of Case, page 96, line 1:

"Q. Did you hear Van Rosenberg say when you came out of the saloon "Step on it we have just stuck up the joint?" A. I heard them all say "Step on it."

Q. Did you hear Van Rosenberg say to this driver? A. We all knew they were going to stick the joint up."

State of Case, page 103: Ellen Van Rosenberg, testifying for the State, on cross examination—she being the wife of Harry Van Rosenberg, witness for the State, who was also a defendant and whose testimony has been heretofore referred to; line 37:

"Q. Your husband told you? A. Yes, sir.

Q. What did he tell you? A. He told me he had talked to Churchill and wanted some money he promised him; he said he only had a few dollars but would give him some."

James Brooks, a detective, connected with the Detective Bureau of the City of Paterson, who arrested the defendant in Philadelphia, Pa., in testifying, State of Case, page 106, testified that the plaintiff-in-error, Peter Churchill, denied that he was at the place of the hold-up at the time and didn't know anything else about the case. Commencing on line 20 and extending to line 32.

The plaintiff-in-error's testimony was in effect that he knew nothing about the hold-up until after it had been committed. Denied hearing any of the conversations in the automobile which he was driving and which had previously been referred to by the witnesses for the State as having taken place in the automobile before the car stopped in front of Mary's saloon. He further testified in effect that the first time he knew that a hold-up had occurred (S. of C., 110, line 38):

"Q. When they came out did Van Rosenberg say anything to you? A. The three of them came out in a hurry and said, "We stuck the place up."

Q. What did you say to them? A. I wanted to throw them off right there, I didn't want to pick them up anymore."

And further on page 111, State of Case, reference is made to the plaintiff-in-error's arrest in Philadelphia, to which place he had escaped shortly after the hold-up took place, line 28:

"Q. You were finally apprehended in Philadelphia, and brought to Paterson?
A. Yes, sir."

As a matter of fact, this defendant was not arrested in Philadelphia until several months after the hold-up took place. The hold-up took place on April 11th, 1925, and the defendant was arrested in Philadelphia by the two detectives of the Paterson Detective Bureau on September 3rd, 1925, (S. of C., page 71, lines 11-17).

The plaintiff-in-error in his testimony tried to

convince the jury that after the hold-up he was supposed to drive the car away because he felt something pressed against his back by one or some of those who had held the saloon up and because he was supposed to do so, he drove the car away at a rapid rate of speed until he reached a point in the City of Paterson known as the intersection of Madison Avenue and Tenth Avenue, where he was successful in having all of the occupants of the car alight leaving him alone in the car as the driver after which he sped away. He, at times, substantially told all of the facts as produced by the State by the witnesses Van Rosenberg and Meola except to deny that he knew of no hold-up which had been discussed in the car until after the three defendants, Van Rosenberg, Lombardo and Meola had run from the saloon with guns in their hands to the automobile, jump on to the running board of the machine, directing the defendant, Churchill, to drive away as fast as he could and to step on it.

The defendant placed on the stand as a witness for the defense, Frank Lombardo who attempted to back up the statement of the plaintiff-in-error Churchill, in that Churchill knew nothing about the plans to hold-up a place and in that he knew nothing about the actual hold-up until it had taken place.

State of Case, page 150, line 1:

"Q. When you came out of that saloon Mr. Lombardo did you see anybody holding a gun to Mr. Churchill's back? A. Yes, sir.

Q. Who did you see? A. Jimmie Meola.

Q. What did he say? A. He said, "We stuck the joint up and drive fast, if you don't drive fast I will drive your back out."

In this connection Lombardo is the only one who testified that a gun was placed to the back of Churchill. None of the other occupants of the car testified to this except Churchill and he did not say that a gun had been placed to his back, he said that after the three individuals who had held up Mary's saloon had come out and ran to the car where he was seated at the driver's seat, somebody placed something against his back, what it was he did not state. Lombardo apparently did not care whether he lied or not for it made little difference to him at the time of the trial whether he assisted the State after pleading non vult to the charge or not, because at the time of the trial he was out on probation from the State of Pennsylvania on a murder charge, he having previously been convicted of second degree murder in the year 1912 in the State of Pennsylvania, and at the time of the trial, there was parole warrant from the State of Pennsylvania against him for that conviction, and he knew it.

All of this will be observed from State of Case, page 150, commencing on line 30 and continuing over to line 24 on page 151.

In connection with Lombardo's testimony, he testified on cross examination, page 151, line 25:

"Q. Do you recall speaking to me and Detective Brooks in that room, the prisoners' room, yesterday at about two o'clock? A. I spoke with that guy there. (The Assistant Prosecutor is asking the witness

about a conversation which took place between him and Lombardo.)

Q. To him and to me in that room?

A. Yes, sir.

Q. Do you remember it? A. Yes, sir.

Q. Do you remember what it was about?

A. You asked me if Pete Churchill was in this trouble.

Q. Was in the car, I asked you if he was in the car? A. If he was on this robbery.

Q. Yes. A. Yes, sir.

Q. And didn't you say to me Peter Churchill went in the car to Passaic and there he left the car? A. No, sir.

Q. You didn't say that? A. I told you we was in the crap game upstairs and he was downstairs and was sleeping in the car.

Q. Didn't you say he didn't drive the car back but left the car in Passaic? A. No, sir.

Q. You didn't say that to me and Detective Brooks at two o'clock yesterday afternoon? A. No, sir."

The State wishes to bring out in this connection that Lombardo had previously and before the trial of the plaintiff-in-error informed Detective Brooks and the Assistant Prosecutor who was trying the case that Peter Churchill was not in the automobile at the time of the hold-up, and that he, Churchill, did not drive the car from Passaic to Paterson when the hold-up took place but that he, Churchill, had left the car in Passaic.

From the testimony of Lombardo as aforemen-

tioned, upon being asked about this conversation, he denied to the Assistant Prosecutor that he had made such a statement to the Assistant Prosecutor and to Mr. Brooks. Detective Brooks in taking the stand in rebuttal to Lombardo's testimony in this respect, State of Case, page 169, line 38:

"Q. Yesterday at two o'clock or about that time at my request did you accompany me into the prisoners' room? A. I did.

Q. For what purpose? A. For the purpose of speaking to Lombardo or Moscardelli.

Q. Do you recall whether or not I spoke to him in your presence? A. You did.

Q. Do you recall what I asked him? A. I do.

Q. Tell the jury what I asked him and what he said? A. The Assistant Prosecutor asked him did he want to go on the stand as a witness and tell the truth and Lombardo said, "Well, what do you want me to tell," and he said, "Everything you know about this hold-up," and he said, "I will tell you Pete Churchill wasn't even driving the car, somebody else. We go down to Passaic and leave him there and he wasn't with us when we pulled the stick-up at all."

Q. Did he say what became of Pete Churchill? A. He said he left him there in Passaic."

So, it can plainly be observed that Lombardo, who attempted to assist Churchill by making it appear that Churchill knew nothing about the

hold-up after it was committed, was conveniently lying and that the jury plainly observed from the testimony of this witness and his demeanor on the stand, having had an opportunity to observe such, was unworthy of belief, so that outside of Churchill's story, there is not a scintilla of evidence to check up his contentions as set forth in his defense. The jury could not have been misled to adjudge the plaintiff-in-error guilty of the crime charged against him by any mistake, passion, prejudice or partiality, and, as stated by the Court of Errors and Appeals in the case of State v. Karpowitz, supra; 120 Atl. Rep., page 40:

"Appellate Courts should be cautious in setting aside a verdict of a jury upon the ground that the verdict is contrary to the weight of the evidence. It should only be done when it is clear that the verdict is the result of mistake, passion, prejudice, or partiality."

POINT TWO.

THE CHARGE OF THE COURT, AS A WHOLE, COULD NOT REASONABLY HAVE MISLED THE JURY, EVEN THOUGH THE TRIAL JUDGE INCLUDED IN HIS CHARGE THE WORDS ATTRIBUTED TO HIM UNDER THIS POINT.

The contention of the plaintiff-in-error is that the jury must have been misled by the Judge's having included in his charge the following words:

"You may convict him on each or all of

the indictments that have been returned."
 (S. of C., page 177, line 8.)
 and that the Judge was in error in making the
 statement attributed to him as stated in the ex-
 ception referred to on State of Case, page 179,
 line 18:

"In as much as the court did not instruct
 the jury that they might acquit or dis-
 charge on any one count of each indict-
 ment."

In the Judge's charge, State of Case, page 176,
 line 27, it is stated:

"The burden of proof is upon the State.
 This defendant is presumed to be innocent
 of this charge and that presumption con-
 tinues until the State establishes his guilt
 beyond a reasonable doubt."

"Reasonable doubt is not a mere possible
 doubt; it is that state of the case which
 after the entire comparison and considera-
 tion of all the evidence, leaves the minds of
 the jurors in that condition that they can-
 not say they feel an abiding conviction to a
 moral certainty of the truth of the charge."

"You have heard the defendant's testi-
 mony. You have heard his explanation of
 this incident and what connection he had
 with it. It is for you to determine from the
 evidence that has been produced, I again
 repeat, *whether he is guilty or innocent of
 the charges* presented in the several indict-
 ments that have been returned against
 him. (The underscoring is mine.)"

Then again, the request of the plaintiff-in-error
 to the court to charge as charged by the court,
 clearly indicated to the jury in addition to the
 court's charge itself what the rights of the de-
 fendant were in so far as an acquittal could be
 decided upon by the jury. Particularly is this
 evident from a reading of the ninth request to
 charge of the plaintiff-in-error which was charged
 by the court on State of Case, page 178, line 15.

In the case of State v. Timmerari, 115 Atl. 394,
 Court of Errors and Appeals of N. J., it was
 pointed out that

"If in his charge to the jury the judge
 uses a word or phrase the very opposite of
 which he intends, and his true intent and
 meaning are to be gleaned from the other
 parts of the charge, and, if upon the whole
 charge the jury cannot reasonably be
 thought to have been misled, there is no
 error."

There is no question but that the Judge's
 charge was very plain as to the rights of the
 plaintiff-in-error to be acquitted, if the jury was
 satisfied of the innocence of the defendant on
 each or all of the indictments that had been re-
 turned or on any one count of each indictment as
 pointed out by the plaintiff-in-error.

The Supreme Court did not err, as the plaintiff-
 in-error claims in his brief on page 14, where
 reference is made to that part of the opinion of the
 Supreme Court which reads as follows:

"The next contention is that the court erred in charging the jury as follows: 'You may convict on all or each of the counts in the indictment.' The argument is that this was error because the court failed to instruct the jury that it might acquit the plaintiff-in-error on any or all of the counts. It is not suggested that the instruction was not proper, so far as it went. If counsel had desired the court to speak with relation to the acquittal of the plaintiff-in-error on any or all of the counts, he should have requested such an instruction. This he did not do, as appears from an examination of the case."

The plaintiff-in-error also makes mention on page 14 of his brief that an examination of the State of the Case, page 49, shows that trial counsel took an exception specifically to that part of the Court's charge, and framed his objection in the language which he desired the Court to use in its charge. It will be observed that the exception to which counsel has reference appears on page 179, commencing on line 16:

"Except to that part of the Court's charge where the Court said, 'You may convict on all or each of the indictments,' inasmuch as the Court did not instruct the jury they might acquit or discharge on any one count of each indictment."

Then plaintiff-in-error further states on page 14 of his brief that the defendant had framed his objection in the language which he desired the Court to use in its charge. This, of course, is not a

true statement of the fact. The record is silent of any request that the defendant made of the Court to charge the jury on the point that he makes particular reference to, and the Supreme Court rightfully disposed of the point in question which was also raised in that Court, that an examination of the case fails to disclose that counsel for defendant had requested the Court to instruct the jury in its charge with relation to the acquittal of the plaintiff-in-error on any or all of the counts, and that if he did desire the Court to make mention of such, he should have requested an instruction of the Court to that effect.

In the case of Lieberman vs. Drill, 94 N. J. L., 387, the Supreme Court, Justice Minturn writing the opinion, states on page 391,

"The charge of the learned trial Court properly presented the case to the jury, under the rules to which we have adverted. In one respect only is it challenged, because the court did not directly refer to an alleged admission of the infant plaintiff to one of defendant's witnesses, that the accident was due to the minor plaintiff's own misconduct. The court charged generally upon the respective rights of the parties, and so far as the particular excerpt objected to is concerned, it contains a correct statement of the legal rule applicable to the general status of the parties as the court conceived it. *Defendant simply excepted to it as not sufficiently comprehensive, without any request to charge otherwise, upon the subject, from the viewpoint of defendant's concep-*

tion of the case, and therefore the legal question attempted to be raised for defendant is not legally before us, and cannot be considered as presenting any specific practical proposition of law which the court refused to charge, and which therefore is subject to review. (The underscoring is mine.)

Baer v. L. & H. Ry. Co., 93 N. J. L., 85; Id. 446; Carver v. Jackson, 4 Pet. 1; White v. McLean, 57 N. Y. 670.

See also Mazzei v. Bennett and Nucar Forwarding Corporation, Vol. 6, N. J. A. R. No. 15, page 317. The Supreme Court by a per curiam opinion refers on page 319 as follows:

"Next, it is argued that there was error on the part of the trial court in refusing to charge the jury on the subject of proximate cause or to define the meaning thereof. There was no such refusal. Counsel for Bennett took an exception to the charge for the alleged failure of the court to instruct the jury upon this point, but did not submit any request for such instruction. The defendant, therefore, cannot now take advantage of such failure on the part of the court, even if it existed." (The underscoring is mine.)

POINT THREE

THE STATE INSISTS THAT THE PLAINTIFF-IN-ERROR WAS A PRINCIPAL, AND THAT THE ACTIONS OF THE PLAINTIFF-IN-ERROR WERE VOLUNTARY BOTH BEFORE AND AFTER THE COMMISSION OF THE CRIME.

There is no question but that the plaintiff-in-error was a principal, and as such, a party to the pre-arranged plan to rob the persons in Mary's Cafe. It is quite evident from a reading of the entire testimony but that the plaintiff-in-error knew in advance of the time when the automobile driven by the plaintiff, pulled up in front of Mary's Cafe that a robbery was to take place. It will be remembered that there was considerable testimony to show that conversations took place in the automobile while the plaintiff-in-error was driving such and while automobile was being driven from Passaic to Paterson before the robbery was committed. That the robbery was intended even after the automobile stopped in front of Mary's Cafe and considerable discussion took place in and about the automobile and within the hearing and in the presence of the plaintiff-in-error, that three persons, Lombardo, Meola, and Van Rosenberg were going in to hold-up the persons in the Cafe, but as they were leaving the automobile they all had guns in their hands, clearly within the vision and viewpoint of the plaintiff-in-error.

After the robbery was committed there was plenty of evidence to show that the plaintiff-in-

error voluntarily drove the automobile from the scene of the robbery for a considerable distance in Paterson. He, of course, claims that he was driving the automobile at that time under threats by one of the occupants of the car placing something to his back but then there is considerable other evidence that at about the time that all the occupants except the plaintiff-in-error left the automobile at Tenth and Madison Avenues, Paterson, a promise was made by one or some of the three persons who had gathered the booty to see to it that the plaintiff-in-error received his share or proceeds of such and it will be further noted from a reading of the testimony that the plaintiff-in-error even called out that he would expect his share when he saw the occupants of the car at some later time.

The State insists that the plaintiff-in-error was a principal in the robbery and that his presence during the entire time rendered him a principal, and by reason of such there was no error of the trial court in charging the jury in the manner pointed out by the plaintiff-in-error under this point.

"In *Roesel v. State of New Jersey*, 41 Atl. 408 Ct. Errors and Appeals, N. J., it was stated by Justice Depue, writing the opinion for that Court, by the common law, all who were present, aiding and abetting in a felony are principals, *Coal-Heaver's case*, 1 Leach 66: *Fost Crown Law*, 428.

With regard to what will constitute such a presence as will render a man a principal; it is said by Justice Foster that if

several persons set out together, or in small parties, upon one common design, be it murder or other felony or for any other purpose unlawful in itself, and each takes the part assigned him, some to commit the fact, others to watch at proper distance to prevent a surprise, or to favor, if need be, the escape of those who are immediately engaged, they are all, provided the fact be committed, present at it."

It is respectfully submitted from all of the foregoing, that the conviction of the plaintiff-in-error was proper and that he had a fair trial and there was nothing in the case which in any way prejudiced the plaintiff-in-error in maintaining his defense on the merits, and for the reasons pointed out, the State maintains that the conviction of the plaintiff-in-error should be sustained.

Respectfully submitted,

J. VINCENT BARNITT,

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

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