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NEW JERSEY SUPREME COURT

THE STATE,
Defendant in Error
against

FRANK PIUS alias IGNA-
TIUS LANZETTA, MICHAEL
FALCONE and LOUIS DEL
ROSSI,

Plaintiffs in Error

IN ERROR
ASSIGNMENTS OF
ERROR

10

The above named Frank Pius alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, the plaintiffs in error, by their attorney, George R. Greis, say that in the record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error against them the said, Frank Pius alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, and say that the said judgment should be reversed and hereby assign the following reasons and causes for such reversal. 20

1. Chapter 155 of the Laws of 1934 for an al- 30
leged violation of which plaintiffs in error were in-
dicted, tried and convicted is unconstitutional and
void under the provisions of the Constitution of the
United States in that it is contrary to one or all of
the following provisions of the Constitution, namely,
Article IV, Section 2, the Thirteenth Amendment to

Assignments of Error

the Constitution and the Fourteenth Amendment to the Constitution.

2. That the said suit is in violation of one or all of the following provisions of the Constitution of the State of New Jersey, namely, Article 1, Section 15, Article 1, Section 18, Article IV, Section 7, Paragraph 3, and Article IV, Section 7, Paragraph 4.

3. Because the trial court refused to quash the indictment on motion duly made by counsel.

4. Because the trial court refused to direct a verdict of acquittal on motion duly made by counsel for the plaintiffs in error.

5. Because the verdict was against the weight of evidence.

6. Because the indictment failed to charge the commission or omission of any overt act within the jurisdiction of the trial court and because no crime had been committed.

7. Because the verdict of the jury was contrary to the court's charge to the jury and contrary to the evidence.

8. Because upon the whole record the judgment of conviction is contrary, to law.

Assignments of Error

9. Because the proofs submitted by the State did not prove the allegations of the indictment.

GEORGE R. GREIS,

*Attorney for and of Counsel with
Plaintiffs in Error.*

10

I have received a copy of the foregoing Assignments of Error this Thirty-First day of March, 1937.

FRENCH B. LOVELAND,

*Prosecutor of the Pleas of
Cape May County*

20

30

Writ of Error

THE STATE OF NEW JERSEY, ss:

The State of New Jersey to Palmer M. Way, Esq.,
Judge of the Court of Quarter Sessions of the
County of Cape May.

- 10 Because in the indictment record of proceed-
ings and also in giving judgment upon the certain
indictments against Frank Pious alias Ignatius Lan-
zetta, Michael Falcone and Louis Del Rossi, upon
charges of being enemies of the State and gang-
sters and with violations of the provisions of the
statute which is Chapter 155 Laws of 1934, of the
State of New Jersey, in the Borough of Wildwood
Crest, County of Cape May and State of New Jer-
sey, which said indictments and the several counts
20 therein were returned to the Court on the thirty-
first day of July, 1936, as having been found by the
Grand Jury of the County of Cape May, whereof,
before you they have been indicted and thereafter
were convicted by a certain jury of the County of
Cape May, taken between the State of New Jersey
and the said Frank Pius alias Ignatius Lanzetta,
Michael Falcone and Louis Del Rossi, as it is said,
manifest error has intervened to the great damage
of the said Frank Pius alias Ignatius Lanzetta,
30 Michael Falcone and Louis Del Rossi, as from their
complaint we have received information, we being
willing in their behalf, to correct the error in due
manner, if any there shall be, and that speedy jus-
tice be done to them, the said Frank Pius alias Ig-
natius Lanzetta, Michael Falcone and Louis Del
Rossi, command you that if judgment be thereon

Writ of Error

given, then you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same to our Justice of our Supreme Court of the State of New Jersey, on the 12th day of April next, and this writ with the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting 10 that error what of right and according to the laws of New Jersey ought to be done.

Witness, Honorable Thomas J. Brogan, Chief Justice of our Supreme Court at Trenton, New Jersey, this 23rd day of March, one thousand nine hundred and thirty-seven.

FRED L. BLOODGOOD,
Clerk. 20

GEORGE R. GREIS
Attorney

JUDGMENT RECORD

CAPE MAY COUNTY COURT OF
QUARTER SESSIONS

10

APRIL TERM A. D. 1936

BEFORE PALMER M. WAY, JUDGE.

THE STATE

VS

20 FRANK PIUS, alias FRANK
LANZETTA, alias IGNATIUS
LANZETTA, alias IGNATIUS
LANZETTO, alias IGNATIUS
A. LANZETTI, and MICHAEL
FALCONE, alias MICKEY
BRITT, and LOUIS DEL
ROSSI, alias FATTIE LOUIE

} Indictment for
Violation of Gangster
Act.

30 FRENCH B. LOVELAND, Prosecutor of the Pleas,
for State.

GEORGE R. GREIS,

A. J. CAFEIRO,

for Defendants.

Judgment Record

RETURN

The answer of Palmer M. Way, Esquire, President Judge of the Court of Common Pleas of the County of Cape May, holding the Court of Quarter Sessions in and for the said County within named, the record and proceedings of the plaint whereof 10
mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

PALMER M. WAY,
Judge.

And I further certify that returned herewith is 20
the record of the entire proceedings at the trial of the said cause.

PALMER M. WAY,
Judge.

CAPE MAY COUNTY, to wit:

BE IT REMEMBERED, that a Court of Oyer and Terminer, holden at Cape May Court House, in and for the said County of Cape May, on the second Tuesday of April in the year of our Lord one thousand nine hundred and thirty-six, before the Honorable Ralph Donges, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Palmer M. Way, Judge of the Court of Common Pleas, in and for the said County, according to the form of statute in such case made and provided, by the oath of Charles W. Haines, Gilbert Hughes, Raymond Adams, Edmund Glazier, John Castaldi, Frank Biddle, William Moncrief, Edward Kurtz, Ralph Johnson, William Jocher, Irvin Stevens, Harry Nickerson, J. Woodruff Eldredge, Bertrand Hillman, Irvin Loper, John Kaighn, Asa Colson, Mulford Stevens, Clair Faust, Charles Grace, Heath Norbury, Raymond Hall and William Lipman, good and lawful men of the said County of Cape May, duly summoned, and then and there sworn, affirmed and charged to inquire for the State of New Jersey, in and for the body of the said County of Cape May.

IT IS PRESENTED, in manner and form following, that is to say:

The bills herewith presented are true bills.

CHARLES W. HAINES,
Foreman.

Filed July 31, 1936.

STIRLING W. COLE,
Clerk.

Judgment Record

In the Court of Oyer and Terminer of Cape May County, April Term, in the year of our Lord one thousand nine hundred and thirty-six (1936).
CAPE MAY COUNTY, to wit:

THE GRAND INQUEST of the State of New Jersey, and for the body of the County of Cape May, upon their respective oath and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath. 10

PRESENT that FRANK PIUS, alias FRANK LANZETTA, alias IGNATIUS LANZETTA, alias IGNATIUS LANZETTO, alias IGNATIUS A. LANZETTI, and MICHAEL FALCONE, alias MICKEY BRITT and LOUIS DEL ROSSI, alias FATTIE LOUIE, late of the Borough of Wildwood Crest in the said County of Cape May, on the 12th, 16th, 19th and 24th days of July in the year of our Lord one thousand nine hundred and thirty-six (1936) at the Borough of Wildwood Crest in the County of Cape May aforesaid, and within the jurisdiction of this Court, they, and each of them, not being engaged in any lawful occupation; they, and all of them, known to be members of a gang, consisting of two or more persons, and they, and each of them, having been convicted of a crime in the State of Pennsylvania, are hereby declared to be gangsters. 20 30

To the evil example of all others in like case offending, contrary to law in such case made and

Judgment Record

provided, and against the peace of this State, the government and dignity of the same.

FRENCH B. LOVELAND,
Prosecutor of the Pleas.

10 Filed July 31, 1936.

STIRLING W. COLE,
Clerk.

Which said indictment was to wit, on the Thirty-first day of July in the year of our Lord one thousand nine hundred and thirty-six, at a Court of Quarter Sessions holden at Cape May Court House, in and for the County of Cape May, no Justice of the Supreme Court of the State of New Jersey nor
20 Judge of the Court of Quarter Sessions being present in the Court House, and the Grand Jury being desirous of making a presentment of sundry bills of indictment according to the form of the statute in such case made and provided, duly delivered here in Court by the Grand Jurors aforesaid, to Stirling W. Cole, Clerk of the County of Cape May, and impounded, pursuant to an order of the Court heretofore made, as here set forth, to wit:

30 CAPE MAY COUNTY COURT OF
QUARTER SESSIONS

In the matter of Reception of
Indictments of the April Term,
1936.

Judgment Record

It is on this 31st day of July, 1936, hereby ordered that Stirling W. Cole, Clerk of the County of Cape May, receive from the above Grand Jury such indictments or presentments as they may make at the conclusion of their scheduled session of July 31st, 1936, and impound said indictments and move in all particulars pursuant to Chapter 239 of the Laws of 1929. 10

PALMER M. WAY,

Judge, Cape May County Quarter Sessions.

Entered July 31, 1936.

STIRLING W. COLE,

Clerk. 20

And afterwards, that is to say on the Thirty-first day of July A. D. nineteen hundred and thirty-six, at the said Court of Quarter Sessions holden before Honorable Palmer M. Way, Judge of Cape May County Court of Common Pleas and Quarter Sessions, said indictments were released from impoundment by order of said Court on motion of French B. Loveland, Prosecutor of the Pleas.

And afterwards, to wit, on the said Thirty-first day of July in the year of our Lord one thousand nine hundred thirty-six, before Palmer M. Way, Esquire, Judge of the Court of Quarter Sessions of the County of Cape May, the defendants, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, 30

Judgment Record

and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, were ordered to be placed at the bar to plead and on being charged by French B. Loveland, Prosecutor of the Pleas, upon this indictment, plead not guilty thereto.

And afterwards, that is to say on the Twelfth
 10 day of August A. D. nineteen hundred thirty-six, to which day the trial of the aforesaid indictment was postponed, at the said Court of Quarter Sessions holden before Honorable Palmer M. Way, Judge of Cape May County Court of Quarter Sessions, comes French B. Loveland, Prosecutor of the Pleas, who prosecutes as aforesaid, and the said Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and
 20 Rossi, alias Fattie Louie, being set to the bar withdraw the pleas of not guilty heretofore entered by them to this indictment, for the purpose of making a motion to quash the indictment, and this motion being denied by the Court, the said defendants, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, were ordered to be placed at the bar to plead and on being
 30 charged by French B. Loveland, upon this indictment, plead not guilty thereto;

And Afterwards, that is to say on the Fourteenth day of September A. D. nineteen hundred thirty-six, to which day the trial of the aforesaid indictment was postponed, at the said Court of

Judgment Record

Quarter Sessions holden before Honorable Palmer M. Way, Judge of Cape May County Court of Quarter Sessions, comes French B. Loveland, Prosecutor of the Pleas, who prosecutes as aforesaid, and the Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, 10 and Louis Del Rossi, alias Fattie Louie, were set to the bar and being ready for trial, the trial of the said indictment was moved by French B. Loveland, Prosecutor of the Pleas, the Sheriff, Paul M. Scull, was then ordered to return a panel of jurors, and the following jurors not being challenged, were duly sworn by the Clerk of the Court:—

Mary Fox, Margaret Davis, J. H. Becotte, William Stockett, Sadie Herbert, Ruth Goslin, Abraham Levy, Frank L. Bennett, Reba Barber, Ellsworth 20 Somers, Walter Sherman and Edward Schlegel, upon that jury, who to speak the truth of and concerning the premises, and thereupon the trial of said issue was commenced and continued until the Fifteenth day of September A. D. nineteen hundred thirty-six, when the jury returned into Court in charge of the officers sworn to attend them, and then and there in the presence of Honorable Palmer M. Way, Judge of the Cape May County Court of Quarter Sessions, do say upon their oath, they find 30 the defendants, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, guilty in the manner and form as charged

Judgment Record

upon this indictment, with a recommendation to Court for mercy, and so say they all.

10 Afterwards, to wit, on the Twenty-third day of September in the year of our Lord one thousand nine hundred thirty-six, before Honorable Palmer M. Way, Judge of Cape May County Court of Quarter Sessions, at Cape May Court House, cometh the said Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, and having been set to the bar in their proper person to receive the judgment of the law; French B. Loveland, Prosecutor of the Pleas, then moved for the judgment of the law.

20 Whereupon, on the said Twenty-third day of September in the year of our Lord one thousand nine hundred and thirty-six, all and singular the premises being seen by the Court here fully understood, it was ordered and adjudged by the Court that the defendants, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, each, be imprisoned in the State Prison of this State for not more than a maximum term
30 of ten years and not less than a minimum term of five years, at hard labor, upon this conviction.

Judgment Record

STATE OF NEW JERSEY: }
 COUNTY OF CAPE MAY: } ss.

I, STIRLING W. COLE, County Clerk and Clerk of the Court of Quarter Sessions in and for said County, do hereby certify, that the foregoing is a true copy of the record and proceedings with all things touching and concerning the same, in the case of STATE vs FRANK PIUS, alias FRANK LANZETTA, alias IGNATIUS LANZETTA, alias IGNATIUS LANZETTO, alias IGNATIUS A. LANZETTI, and MICHAEL FALCONE, alias MICKEY BRITT, and LOUIS DEL ROSSI, alias FATTIE LOUIE, on Indictment for Violation of Gangster Act, as the same appears of record in my Office. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official seal of said Court, at Cape May Court House, this Thirty-first day of March A. D. nineteen hundred thirty-seven. 20

STIRLING W. COLE,
Clerk.

Motion to Quash Indictment

	THE STATE	} VIOLATION OF THE GANGSTER ACT	
	VS.		
10	FRANK PIUS, alias &c., MICHAEL FALCONE, alias, &c., and LOUIS DEL		} (Motion to quash indict- ment)
	ROSSI, alias &c.		

The above entitled Cause came up for Motion Wednesday morning, August 12, A. D. 1936, at thirty A. M., before the Hon. Palmer M. Way, Judge of the Common Pleas Court. French B. Loveland, Esq., Prosecutor of Cape May County, appearing for the State, and George R. Greis, Esq., and A. J. Cafiero appearing for the Defendants.

BY MR. GREIS: May it please the Court: At this time I would ask the Court's permission to withdraw the pleas of Not Guilty, entered in the indictment against Lanzetta, Falcone and Del Rossi, a joint indictment, for the purpose of making a Motion to quash.

BY THE COURT: For that purpose it may be withdrawn and so stated on the record.

BY MR. GREIS: If the Court please: I move to quash the indictment found in this case, for several reasons.

The first reason is that the indictment is insuf-

Motion to Quash Indictment

ficient in particulars, as to any offense, alleged to have been committed, to properly enable the defendants to prepare their separate defenses.

The second reason is, that the indictment sets forth no act alleged to have been committed in controversy of any Statute of the State of New Jersey. 10

The third reason is, that the indictment fails to charge a crime. Further, that it fails to set forth any date, place or tribunal of an alleged conviction in the State of Pennsylvania: And for these, and other reasons, is vague, uncertain and indefinite.

Also, If the Court please, upon various constitutional grounds, and we believe that the Statute, under which this indictment has been found, is unconstitutional for various reasons, which I will state to the Court. 20

The first of those reasons is that the particular section of the law, under which the indictment is drawn, does not charge any act, any overt act, of any kind or description. Under the division of crime it is neither an act of omission or commission, either contrary to the statute or contrary to precepts of the early Common Law. But this particular Statute charges only a status and state of being and condition, or set of conditions, existing, and attempts to make that state of things a crime. Section 4, under which this indictment is drawn, reads: "Any person not engaged in lawful occupation, known to be a member of any gang, consisting of 30

Motion to Quash Indictment

two or more persons, who has been convicted at least three times of being disorderly persons, or who has been convicted of any crimes in this, or any other State, is declared to be a gangster; provided, however, that nothing in this section contained shall in any wise be construed to include any participant
10 or sympathizer in any labor dispute." Also it is an added fact that the first paragraph of this law, any of the first five paragraphs, do not create a crime; they create a status or set of conditions. The first paragraph, that might be considered, states a gangster is hereby declared to be an enemy of the State of New Jersey and then the succeeding paragraphs go on to discuss the state of being, or conditions, as I have said, that create or dominate a person a gangster. But then having
20 been found a gangster the fifth paragraph ends up by saying:

"Any person convicted of being a gangster under the provisions of this act shall be guilty of a high misdemeanor, and shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment not exceeding twenty years, or both."

We can see the second reason for unconstitutionality of this particular section of the act, if not all of it, is the 13th Amendment to the United
30 States Constitution, which reads: "Involuntary servitude shall not exist within the United States or any place subject to its jurisdiction." Of course we know that was added to the Constitution for the purpose of stopping slavery: But here is a law which says: "A person not engaged in lawful occupation," with two or three added condition, or

Motion to Quash Indictment

conditions, in the United States, to be committed, but conditions already existing, shall be thus and so and guilty of a high misdemeanor.

The second constitutional ground, or third constitutional ground is, that it violates the 14th Amendment, which provides: "That no State shall 10
make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or shall any State deprive any person of life, liberty or property without due process of law, or deny to any person within the jurisdiction the equal protection of the laws."

The fourth constitutional reason is that it violates Article 1, Section 1, of the Constitution of New Jersey, which provides: "That natural and unalien- 20
able rights of enjoying and defending life and liberty, acquiring and possessing and protecting property and pursuing and obtaining safety."

Fifth, that it violates the New Jersey Constitution, Article 1, Section 18, which provides: "That the people have the right freely to assemble together, to consult for the common good." That refers to the particular paragraph of this Section in the Statute, in which these defendants are charged: 30
"Known to be a member of a gang consisting of two or more persons."

Six, that it violates Article 4, Section 7, Paragraph 3, which provides: "The Legislature shall not pass any bill of attainder or ex post facto law."

Motion to Quash Indictment

Seven, that it violates Article 4, Section 7, paragraph 4, which provides: "That every law shall embrace but one object, and that shall be expressed in the title, &c."

10 If the Court Please: Those are the general statements of the reasons for asking that the indictment be quashed.

(Argument follows)

BY THE COURT: Do you have anything you want to say, Mr. Cafeiro?

20 BY MR. CAFEIRO: Not at this time, if the Court please, I may decide to say something after the Prosecutor is through replying.

BY THE PROSECUTOR: If the Court please: The State asks that the Motion be dismissed, directed to quash the indictments.

30 One of the points in question was that the act was ex post facto. It is not ex post facto unless all these circumstances do not arise. First we have got unlawful occupation, members of a gang, convicted three times of being disorderly or one convicted of crime and that is the conditions of the arguments today, if the Court please.

As to the phrase saying that the Act on the part of the Legislature of the State of New Jersey is unconstitutional. In the immediate past, after the elimination of the Volstead Act, when rackets ceas-

Motion to Quash Indictment

ed to be able to secure their means by that unlawful occupation, then there rose up in our country a kid-napping epidemic. The State was unable to cope with the situation so Congress took notice of the situation and passed what is known as the famous Lindbergh Case or law and when those, who were participating in that obnoxious situation, were ap- 10
prehended they then granted an amendment and it is now in our constitution of the Country, and in this State, and does not violate any of the rights of the constitution. The Constitution, as found in the State of New Jersey, and through its Legislature, has deemed it advisable to pass an act, which at-tempts to, and I think does, control this situation, with reference to the evils to be confronted. That is what the State of New Jersey has done. They saw a state existing, which is obnoxious to Society, 20
and has passed an act dealing with that situation. The word Gangster has never been interpreted by any of the Courts of the State of New Jersey to date, so that the only thing to do is take the proper meaning as applied to all gangs. It describes a body of men associated together for matters entirely proper, labor and things of that sort, but gangs of men have improper purposes; take page 34, the word gangster, where it is used in a sinister sense. The Court of Errors has said that the purpose of 30
this legislature is to check evils in dealing with the act, which is acknowledged to this. The purpose is to check evils in the beginning and thus result in proper safety.

If the Court please: This is not the first time

Motion to Quash Indictment

this act has been attacked from constitutionality, there having been two other cases in the State of New Jersey; one in our neighboring County, Gloucester County, at which time a motion attacking the constitutionality of this indictment was made and the same argument offered today was presented at
10 that time. The Court in that County ruled and there was a conviction in that case. The only other case was in Passaic County and there was no appeal from that case.

BY MR. GREIS: The case just referred to was under a section other than the one we are working on.

20 BY THE PROSECUTOR: Section 2 and Section 4 both, and there were convictions on both sections.

BY THE COURT: Both sections?

30 BY THE PROSECUTOR: Yes. So if the Court please: Under all the attacks as to the constitutionality, I might say the Court has a precedent in the matter and although it is not a higher court, it is a court of record, and this matter has been passed on, and it can be an authority, and that is the only case that has been adjudicated in the State. So the State asks that the motion be dismissed. The State also asks that date be fixed for trial.

BY MR. CAFIERO: The Prosecutor has not

Motion to Quash Indictment

met the issue presented by my associate and I would limit myself to the things and matters, which he has mentioned, and I take it those matters, which have been in controvert, with exception of a frank denial, stand without controversion. None of the arguments, which was raised as to Ex Post Facto, the Prosecutor stated there was the conditions. We 10 submit the only matter, which is before the Court, at the present time, is the indictment. The indictment does not recite when that crime was alleged to be committed in the State of Pennsylvania. Besides the indictment being before the Court; the act, under which that said indictment is found, is likewise before the Court and that was approved in May, 1934. We are not required to meet any other issue, except those mentioned in the indictment, and it doesn't state when in Pennsylvania and we say it is insuf- 20 ficient and it would be difficult in the following of the charge and of any tribunal, which may have passed upon the validity in this section; the matter, of course, is unreported. We have no means of getting the records of the arguments having been advanced and I do respectfully state Your Honor is not bound by any other argument before the Courts but the argument raised today and this particular indictment today. We contain it is defective on one further ground. It sets forth the dates of the 12th, 30 and the 19th of July as the dates of the charge, when these people were not engaged in lawful occupation. If there is any reference to the calendar it will indicate those days are Sundays and as I know the law in our State as to working on Sunday, I don't see how anyone could possibly be charged with a

Motion to Quash Indictment

crime. The law says you should not work on Sunday and under this indictment it is a crime if you do and a crime if you don't. We maintain it is defective and does not sufficiently appraise us of the matters at all. I will not take more time to repeat the matters presented by Mr. Greis.

10

BY MR. GREIS: The case referred to is 31 New York supplemental, 926.

BY THE COURT: I can't feel I am sufficiently impressed by the proponents of the motion to grant it. I think, without any further statement, that I shall deny the motion.

BY MR. CAFIERO: Allow an exception?

20

BY THE COURT: Granted.

(Argument follows as to date for trial and September 14th, A. D. 1936 is set as the date of trial.)

BY MR. GRIES: I would like to have the plea entered again, the plea that was withdrawn.

(All plead not guilty)

30

BY THE COURT: Not guilty on behalf of all the indictments, and all three defendants, as now presented. They are familiar with the indictment in that they have already entered a plea of not guilty by counsel; and counsel, both counsel, con-

Motion to Quash Indictment

sent to that, and the defendants consent to that being entered on the record? (Affirmative)

PALMER M. WAY,
Judge.

After having been sworn in as stenographer the notes, and the transcribing of said notes, are a true copy of the above entitled motions, taken to the best of my ability. 10

BLANCHE BONNELL,
Stenographer.

Appearances

COURT OF OYER AND TERMINER
 CAPE MAY COUNTY

10	STATE OF NEW JERSEY	}	
	versus		
	FRANK PIUS alias FRANK		Before
	LANZETTA alias IGNATIUS		HON. PALMER M.
	LANZETTA alias IGNATIUS		WAY, J.,
	LANZETTO alias IGNATIUS		And a Jury.
	A. LANZETTI, and MICHAEL		
	FALCONE alias MICKEY		
	BRITT, and LOUIS DEL		
20	ROSSI alias FATTIE LOUIE, <i>Defendants.</i>		

Cape May Court House, N. J.

Monday, September 14, 1936.

Appearances :

30	FRENCH LOVELAND, ESQ., <i>Prosecutor of the Pleas,</i>
	and
	HERBERT CAMPBELL, ESQ., <i>Assistant Prosecutor,</i> For the State.

Jury Drawing

GEORE GREIS, ESQ.,

A. J. CAFEIRO, ESQ., and

SAMUEL KAGLE, ESQ., (Philadelphia),
For the Defendants.

10

(Virginia E. Moore, stenographer, sworn.)

MR. LOVELAND: The State is ready to
move indictment State versus Lanzetti and others.

THE COURT: Very well. The defense ready?

20

MR. GREIS: Defense is ready, if the Court
please.

THE COURT: The Sheriff may draw the
jury.

(Drawing of jury.)

THE COURT: Before you draw another jur-
or, these defendants are to be tried together, are 30
they? No severance has been applied for or asked
for?

MR. GREIS: That is right.

Jury Drawing

THE COURT: And you propose to try them all together?

MR. LOVELAND: Yes.

10 THE COURT: That will have something to do with your challenges. I am asking at this time so I will know. Go ahead.

(Drawing of jury continued.)

20 MR. CAFIERO: May it please your Honor, we would like to examine the jurors on the voir dire, individually rather than collectively, and if the clerk will swear the first juror we will propound several questions to her, and then we will proceed with 2, 3, and so forth.

MR. LOVELAND: If the Court please, I think we should have some specific and definite reason for this procedure.

30 MR. CAFIERO: Glad to give our reason. We feel we are entitled to know whether or not there have been any opinions formed, or matters of that nature, in order that we may avail ourselves of challenges for cause; and I thought my reason was obvious, otherwise I would have stated it when I was talking to the Court a moment ago.

THE COURT: There is not any objection, Mr. Prosecutor, to that procedure, if that is the extent of the inquiry to be made?

Jury Drawing

MR. LOVELAND: But, if the Court pleases, this is different from the ordinary procedure, and the procedure being attempted to be taken in this case is only taken in the trial of homicide cases. I believe it is a matter of discussion with your Honor.

THE COURT: Well, I take it that on account of the trial of the three defendants together, being a joint trial, that there are but ten peremptory challenges permitted in this trial. 10

MR. CAFIERO: For each defendant.

THE COURT: Not for each. For all. And since that would be so, I think I shall permit you to ask such questions as would probably indicate as to whether there might be challenges for cause. I think that is as far as you should go, Mr. Cafeiro. 20

MR. CAFIERO: May I have the jurors sworn?

THE COURT: Yes.

MARY FOX, called as a juror, being sworn on the voir dire, being questioned, answered as follows: 30

BY MR. CAFIERO:

Q. Mrs. Fox, have you read newspaper accounts in connection with the trial that is to take place here today?

A. I have not.

Jury Drawing

Q. You have not?

A. No.

Q. Have you formed any opinion as to the guilt or innocence of these defendants?

A. No.

10 Q. And will you discharge your duty as a juror in accordance with the evidence as presented during this trial?

A. Yes.

Q. Leaving out all extraneous matters or matters that are not presented here before the Court?

A. Yes.

MR. CAFIERO: Now, juror number two, please.

20 MARGARET DAVIS, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Q. Mrs. Davis, have you read the newspapers and account of this trial?

A. No, sir, nothing at all about it.

30 Q. Have you formed any opinion at all as to the guilt or innocence of these accused?

A. I haven't, for I haven't read nothing about it.

Q. Do you promise to deliberate in your judgment and in accordance with the evidence produced during the course of this trial?

A. I do.

Jury Drawing

Q. Leaving out all extraneous matters or matters that are not presented?

A. I do.

J. H. BECOTTE, called as a juror, being sworn, on the voir dire, being questioned, answered as follows: 10

BY MR. CAFIERO:

Q. Mr. Becotte, have you read the newspaper accounts of these defendants since their incarceration?

A. No, I have not.

Q. You have not read anything in the papers about them? 20

A. No.

Q. Have you formed any opinion as to their guilt or innocence?

A. No, I have not.

Q. Is there anything that might prevent you from deliberating fairly to these accused?

A. No.

Q. You agree to deliberate in your judgment in accordance with the evidence that may be produced, leaving out all extraneous matters? 30

A. No.

IRWIN STOUT, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

Jury Drawing

BY MR. CAFIERO:

Q. Mr. Stout, is there anything that would prevent you from performing as a juror in accordance with the evidence that may be presented during this trial?

10 A. No, sir.

Q. Have you read the newspaper accounts of it?

A. No, I have not.

Q. Have you formed any opinion?

A. Not at all.

MR. CAFIERO: That is all.

20 SADIE HERBERT, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Q. Mrs. Herbert, have you read the newspapers since these boys have been arrested?

A. Just the headlines.

30 Q. Have you formed any opinion as to their guilt or innocence?

A. No, I have not.

Q. And do you propose to arrive to your conclusion in accordance with the evidence as presented during the course of this trial?

A. Yes.

Q. Is there anything to prevent you from pass-

Jury Drawing

ing upon that evidence fairly and squarely without prejudice or bias?

A. No.

Q. There is not?

A. No, sir.

10

WILLIAM B. POWELL, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Q. You have read the newspapers, I presume, of these boys, newspaper accounts of their incarceration in jail, haven't you?

A. Headlines only, in one of the County papers. 20

Q. Headlines only in one of the County papers? Have you formed any opinion as to their guilt or innocence?

A. I have not. I don't know anything about the case.

Q. Is there anything to prevent you from deliberating on the evidence fairly and squarely without prejudice or bias?

A. Nothing whatever. 30

Q. You hold no prejudice or bias against these defendants yourself?

A. No, sir.

Q. Have you discussed the case with others?

A. Not to the best of my knowledge.

Jury Drawing

Q. Have not?

A. No, sir.

10 GEORGE MIXNER, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Q. Mr. Mixner, have you read the newspaper accounts of the arrest of these boys?

A. No, sir, I have not. Haven't seen the newspapers.

20 Q. Have you formed any opinion as to their guilt or innocence?

A. Don't know anything about it.

Q. Don't know a thing about it?

A. No, sir.

Q. Do you hold any prejudice against these boys or any people who are standing before the Court on trial?

A. I do not.

Q. Have you discussed the case with anyone?

A. No, sir.

30

SAMUEL CLARK, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Jury Drawing

Q. Mr. Clark, have you formed any opinion as to the guilt or innocence of these defendants?

A. No, sir, I have not.

Q. Have you read the newspaper accounts of their arrest?

A. Headlines in the County paper; that is all.

Q. Have you formed any opinion? 10

A. No.

Q. Are you prejudiced in any way or biased on deliberating fairly and squarely in this case, as the evidence presents itself?

A. No.

Q. And you do agree to deliberate in accordance with that evidence?

A. I do.

Q. Did you discuss the case with anyone?

A. I have not, no, sir. 20

REBA BARBER, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Q. Have you read the paper accounts since their arrest? 30

A. Only the headlines.

Q. Have you formed any opinion?

A. I have not.

Q. Do you agree to deliberate in your judgment in accordance with the evidence as presented?

Jury Drawing

A. I do.

Q. And to not consider any matter not presented?

A. I do.

Q. Have you discussed the case with anyone?

A. I have not.

10

BEATRICE FRENCH, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Q. Miss French, have you discussed this case with anyone?

20 A. I have not.

Q. Have you formed any opinion as to the guilt or innocence of these defendants?

A. None whatever.

Q. Have you read the accounts of their arrest and being in jail?

A. No.

Q. You agree to arrive at your verdict in accordance with the evidence as may be presented?

A. Certainly.

30 Q. And to hold no prejudice or malice or bias?

A. No.

HELEN W. MARCY, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

Jury Drawing

BY MR. CAFIERO:

Q. Miss Marcy, have you discussed this case with anyone?

A. No.

Q. You have not?

A. No.

Q. Have you read the newspaper accounts of it? 10

A. No.

Q. Do you agree to arrive at your verdict in accordance with the evidence as may be presented and that evidence alone?

A. Yes.

EDWARD SCHLEGEL, called as a juror, being sworn on the voir dire, being questioned, answered as follows: 20

BY MR. CAFIERO:

Q. Mr. Schlegel have you discussed this case with anyone?

A. I have talked it over, yes.

Q. Have you formed any opinion as to the guilt or innocence of these defendants?

A. No. 30

Q. You agree to arrive at your verdict in accordance with the evidence as presented alone?

A. Positively.

(Mr. Powell and Miss Marcy excused.)

Jury Drawing

RUTH GOSLIN, called as a juror being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

10 Q. Miss Goslin, have you read the newspaper accounts of these boys' arrest and remainder in jail?

A. No.

Q. You have not?

A. No.

Q. Have you discussed this case with anyone?

A. No.

Q. Have you formed any opinion?

A. No.

20 Q. You bear no prejudice or malice or bias to any of the accused?

A. No.

WALTER SHERMAN, called as a juror, being sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

30 Q. Have you discussed this case with anyone?

A. No, I have not.

Q. Have you formed any opinion as to the guilt or innocence of these accused?

A. Not at all.

Jury Drawing

Q. You bear no prejudice or malice toward people who stand before the bar accused?

A. No.

Q. Have you read the newspaper accounts of it?

A. No, I have not.

Q. Do you agree to arrive to your deliberations and judgment according to the evidence presented? 10

A. Positively.

Q. Leaving out all foreign or extraneous matters?

A. Yes, sir.

(Irwin Stout and George Mixner excused.) 20

(Ralph Taylor and Newton Townsend called as jurors.)

(Newton Townsend and Beatrice French excused.)

(David Gidding and Coleman Stites called as jurors.)

(Ralph Taylor and Coleman Stites excused.)

(Curtis Corson and Everett Hand called as jurors.)

(Curtis Corson and Everett Hand excused.)

(Gladys Letzkus and Emerson Smith called as jurors.) 30

(Samuel Clark excused.)

(Frank L. Bennett called as a juror.)

(David Gidding excused.)

(Lester A. Harmer called as a juror.)

MR. CAFIERO: May I examine those jurors in the box that have not yet been examined?

10 THE COURT: Yes, I will admit of it providing you stay within the same bounds.

GLADYS LETZKUS, sworn on the voir dire being questioned, answered as follows:

BY MR. CAFIERO:

20 Q. Miss Letzkus, have you read the newspaper accounts of these boys' arrests and remainder in jail?

A. Just the headlines.

Q. Have you formed any opinion?

A. No.

Q. Do you bear any prejudice or malice or bias toward any defendant standing accused before the Court?

A. No.

30 Q. And agree to deliberate and arrive at your judgment in accordance with the evidence that may be presented, leaving out all extraneous and foreign matters?

A. Yes.

Jury Drawing

Q. Have you discussed this case with anyone, Miss Letzkus?

A. No.

LESTER A. HARMER, sworn on the voir dire, being questioned, answered as follows: 10

BY MR. CAFIERO:

Q. Have you discussed this case with anyone?

A. No.

Q. Have you read any newspapers since the arrest and remainder in jail of these defendants?

A. Yes.

Q. You have? 20

A. Yes.

Q. As a matter of fact, you write on a newspaper, don't you?

A. That is right.

MR. CAFIERO: If the Court please, I think Mr. Harmer should be excused for cause.

THE COURT: I don't think that is sufficient excuse. 30

MR. CAFIERO: I feel anyone writing a newspaper account gives his version of it as he hears it, and undoubtedly shows to the Court that he has some opinion, because one cannot write a story without forming his mind as to the facts.

Jury Drawing

THE COURT: I know, but, Mr. Cafiero, you know the law is that even if a man might have had a notion, unless it was formed with malice against the defendant, it is no cause for the excuse. Now, let's don't go too far on this ground. Just granting you this privilege as an unusual courtesy, because
10 I don't have to even let you do this. It is going too far.

MR. CAFIERO: I have a right to examine the jurors on the voir dire, and I don't wish to argue with the Court at all.

THE COURT: You say you do?

MR. CAFIERO: Yes.

20 THE COURT: Well, there are cases that say that you do not, and I am just permitting this.

MR. CAFIERO: We appreciate the kindness of the Court; and in this instance will the Court allow me an exception for refusal to strike this juror, as grounds for cause?

30 THE COURT: Mrs. Moore, will you please read the questions and answers?

(The examination of the venireman, Lester A. Harmer, was read by the stenographer.)

THE COURT: Yes, I will permit an exception.

Jury Drawing

MR. CAFIERO: May I continue to question this juror?

THE COURT: Well, now, what are we doing? As we go along here you are asking for the ruling on the status of this juror, and then you want to continue. Withdraw it and make your motion later. 10

MR. CAFIERO: I do that.

THE COURT: Will you clear the record by agreeing to do this later?

MR. CAFIERO: I thought there was sufficient in there to warrant the releasing of this witness, but I will withdraw the motion and present it later. 20

THE COURT: Suppose you do, and have the matter entirely and concretely before us.

MR. CAFIERO: All right.

Q. Mr. Harmer, have you written accounts of these defendants in the newspaper?

A. No, I have not.

Q. Oh, you have not?

A. No. 30

Q. Is there anything to prevent you from deliberating in your judgments fairly and squarely as the evidence may present itself?

A. No, there is not.

Q. Have you formed any conclusions as to their guilt or innocence?

A. No.

MR. CAFIERO: I have no motion to make now.

THE COURT: Very well.

10

FRANK L. BENNETT, sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Q. Mr. Bennett, have you formed any conclusions as to the guilt or innocence of these defendants?

20 A. No, I have not.

Q. Have you discussed this case with anyone?

A. No.

Q. Is there anything to prevent you from arriving at an opinion or the judgment fairly and squarely with the evidence as presented?

A. Nothing whatever.

Q. And you bear no malice or prejudice toward these defendants?

30 A. No.

EMERSON SMITH. (The Clerk starts to administer the oath to Mr. Smith.)

THE COURT: Can you hear, Mr. Smith?

Jury Drawing

MR. SMITH: Not so well.

THE COURT: Can you hear an ordinary question? Could you hear what I am saying now?

MR. SMITH: Sir?

THE COURT: Can you hear what I am saying now, and could you hear a normal discussion with a normal rise of the voice? 10

MR. SMITH: I don't understand what you are saying.

THE COURT: And that is because you cannot hear?

(No answer.) 20

THE COURT: I think we are somewhere with this juror—he may be excused for cause without any prejudice to either side. Do you want to challenge him? Or if the State does, it will not be charged against you as a peremptory charge.

MR. CAFIERO: This juror is to be excused?

THE COURT: Yes. 30

MR. CAFIERO: And are there any others in the box who have not been interrogated?

THE CLERK: No; all have been interrogated.

(Lester A. Harmer and Emerson Smith excused.)

(Ellsworth Somers and Abraham Levy called as jurors.)

10

ABRAHAM LEVY, sworn on the voir dire, being questioned answered as follows:

BY MR. CAFIERO:

Q. Have you discussed this case with anyone?

A. No, sir.

Q. Have you formed any opinion as to the
20 guilt or innocence of these defendants?

A. No, sir.

Q. Is there anything to prevent you from arriving at a fair and just verdict from the evidence as presented?

A. No, sir.

Q. Do you bear any malice, prejudice or bias against these defendants or any of them?

A. No, sir.

30

ELLSWORTH SOMERS, sworn on the voir dire, being questioned, answered as follows:

BY MR. CAFIERO:

Jury Drawing

Q. Have you discussed this case with anyone?

A. No.

Q. Is there anything that would prevent you from arriving at a verdict from the evidence alone?

A. No.

Q. Do you bear any prejudice or malice or bias against any of these defendants?

10

A. No.

Q. Have you read the newspaper accounts?

A. No.

Q. Have not?

A. No, I don't know that I have; I don't know that I have.

Q. Have you read the headlines?

A. I don't know that I have.

20

(Gladys Letzkus excused.)

(William Stockett called as a juror.)

(The jury was sworn.)

30

MR. LOVELAND: If the Court please, by consent between the State and the defense, we move that the jury be sequestered, and an officer sworn at this time.

THE COURT: Now do I understand that you

will desire the jury be sequestered at all times during the trial?

MR. CAFIERO: That is right.

10 MR. LOVELAND: That is the understanding between counsel.

THE COURT: Well, I think that I shall grant that request and, Mr. Sheriff, if you will select two officers to take charge of this jury during this trial, and have them presented to the clerk and sworn.

20 (Constables William Schellenger and Thomas B. Armstrong selected by the Sheriff and sworn as the officers.)

(Five-minute recess.)

30 MR. LOVELAND: With your Honor's permission, and members of the jury: You are going to be called upon to pass upon the guilt or innocence of these three defendants.

In 1934 the Legislature of the State of New Jersey passed an act dealing with crime. A portion of the act is as follows:

"A gangster is hereby declared to be an enemy of the State. Any person not engaged in any lawful occupation, known to be a member of any gang,

State's Opening

consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime in this or any other state, is hereby declared to be a gangster."

Then it goes on and says that this does not apply to any person participating in any labor dispute. 10

The April Grand Jury of your County found an indictment against these three defendants, and I will read a portion of it to you.

The Grand Jury charges that Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcione, alias Mickey Britt, and Louis Del Rossi alias Fatty Louie, in the Borough of Wildwood Crest, in the County of Cape May, on the 12th, 16th, 19th and 24th day of July, in this present year, within the jurisdiction of this court, they and each of them not being engaged in any lawful occupation, they and all of them known to be members of a gang consisting of two or more persons, and they and each of them having been convicted of a crime in the State of Pennsylvania, are hereby declared to be gangsters. 20

Your Grand Jury found the bill, as I have just read, against these defendants. 30

The State will offer to prove and will prove that in June of this year Lanzetti and Del Rossi, two of these defendants, came down to Wildwood Crest and there they—Lanzetti under a fictitious name rented a bungalow, a little house down there on one of the streets; that they remained there and were

visited on numerous occasions by the other defendant, Falcone. We will further show you that on the 24th day of July of this present year, certain Philadelphia police officers, in company with certain New Jersey State policemen, came down to our county and went into Wildwood Crest and there
10 apprehended and arrested these three defendants. We will further show the conversation which took place between these defendants and these police officers on the different occasions. The State will further show you that these—each of these defendants have previously been convicted of crime. We will show you that they are members of a gang. We will further show you that they have no lawful occupation.

And when the State shows you that these de-
20 fendants do not have any lawful occupation, they are members of a gang, and have been prior convicted, the State is going to ask for a verdict of guilty in this matter. And after all of these points, and you have heard all of the witnesses that the State of New Jersey is going to bring here to tell you the conditions and circumstances under which these defendants were found, and about their occupation, and the prior convictions, and members of a gang, the State will ask for a verdict of guilty.

30 MR. GREIS: May it please the Court and ladies and gentlemen of the jury: The defense of the three defendants that are here charged under this act is two-fold, so far as the facts are concerned. There are also matters of law which it will be the Court's particular province to rule upon and

Defendant's Opening

which does not concern the jury, because in these trials the Court passes upon the law and the jury finds the facts.

The defendants are charged under this new-fangled law, as the Prosecutor has read it to you, with three things—that is, three things are necessary in order that they be charged under the law. 10

The first is that they are not engaged in any lawful occupation. We will show you in defense that one of the defendants has not only one but two or three lawful occupations. We will show you that at the time of the arrest that each of these men was doing something that it was entirely lawful for him to be doing. That is the first thing, so far as the occupation is concerned.

The second requirement of this statute is that they are members of a gang of two or more persons. 20
The defense to that part of the charge will be that they are not members of a gang, and it will be brought out during the course of the trial that the defense, by order of the Court, has secured from the prosecution—they have furnished us with information as to the persons that constitute the gang complained of. We will show you by individuals that are named as members of that gang that there is no such gang, that the various individuals that they mention are not in a position—some of them— 30
many of them—to be members of any gang or anything else. And we will also show you by the defendants themselves that they are not members of a gang, and that some of the people that are mentioned as being members of the gang with them they don't know and never heard of.

10 The third proposition that is required under the statute is the conviction of a crime in the State of Pennsylvania. That will speak for itself as the trial goes on. Any matters in that particular will be of ancient date. There is nothing of recent origin, and are matters that have arisen long years before this law was ever thought of.

And if we show you these matters in defense, and you are satisfied of their truth as they will be presented to you by not only the defendants but by substantial witnesses, then we shall ask you for a verdict of acquittal.

20 In addition to that, the Court will instruct you as the trial goes on that these defendants come before you as innocent men until they are proven to your satisfaction guilty of the crime as charged, beyond a reasonable doubt. In other words, if you have a reasonable doubt, it will be resolved in favor of the defendants.

SERGEANT WILLIAM P. KELLY, called as a witness on behalf of the State, being sworn, testified as follows:

30 DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Sergeant Kelly, where do you live?

A. In Hammonton, New Jersey.

Q. And what is your occupation?

A. Sergeant of State Police.

Sergeant William P. Kelly—Direct

Q. Now, Sergeant, I ask you whether you recall your whereabouts on Friday, July 24th, of this year, about five o'clock in the afternoon?

A. I do.

Q. Where were you?

A. I was in Troop A Headquarters, in the Jersey State Police in Hammonton. 10

Q. And did you leave there shortly thereafter?

A. I did.

Q. And where did you start to?

A. About five P. M. on July 24th, Captain Ryan, in company with Sergeant Peltz, Detective Wallace, McClure and Steinberg—

MR. GREIS: That is objected to as not responsive. 20

THE COURT: Not responsive. Restate the question and strike out the answer.

(The question was read by the stenographer as follows: ("And where did you start to?"))

A. Started to go to Wildwood Crest.

Q. And who accompanied you, Sergeant?

A. Captain Ryan, Sergeant Peltz, Detective Wallace, McClure and Steinberg, and also Detective Ruggiero of our Department. 30

Q. And I ask you whether you arrived at Wildwood Crest?

A. We did.

Q. About what time?

A. About six P. M.

Q. After you arrived at Wildwood Crest, where did you go?

A. We went in the vicinity of Crocus Road, Wildwood Crest.

10 Q. Will you please go ahead and describe what you did?

A. We cruised in the vicinity of Crocus Road and Jersey Avenue. Upon arriving at Wildwood Crest we were joined by Captain Creeden. Captain Creeden got in the car with me, Detective McClure and Wallace, Captain Ryan and Detective Ruggerio in company with Sergeant Peltz and Steinberg in the other car. While cruising in the vicinity of Crocus Road and Jersey Avenue, we observed Ignatius Lanzetti in company with Mickey Britt
20 walking on New Jersey Avenue between Astor and Cardinal Avenue, walking in the direction of Crocus Road. We were later joined by Captain Ryan and notified him of what we had seen. He advised that we should continue to cruise in that vicinity in an attempt to learn who was living on Crocus Road. While watching 107 Crocus Road we observed, about eight-thirty P. M., we observed Mickey Britt come out of 107 Crocus Road, and about the same time he came out of the house or within a minute or
30 so, Captain Ryan drove up in his car and they started to get out of his car, and Mickey Britt walked on Crocus Road towards New Jersey Avenue, and apparently looked over his shoulder and saw these men entering 107, and he ran across the street.

MR. GREIS: Just a minute, please. This wit-

Sergeant William P. Kelly—Direct

ness is testifying to what other people saw. I object to it and ask it be stricken from the record, and ask the witness be cautioned in telling this story to tell what he knows of his own knowledge and what he saw himself.

THE COURT: Yes, you must be careful of your statements in that respect. Counsel for the defense is right. You will confine your narrative statements as to what you saw and not what somebody else might have seen. 10

THE WITNESS: Yes, sir.

THE COURT: Proceed.

THE WITNESS: We observed the car containing Captain Ryan— 20

MR. GREIS: If the Court please, I object to the statement "we". This witness is testifying not for the party but for himself.

THE COURT: That is quite right. Confine your remarks to what you have seen yourself.

THE WITNESS: I observed the car containing Ryan stop in front of the premises of 107 Crocus Road about two minutes after the defendant Mickey Britt had walked out of the premises. Mickey Britt walked on Crocus Road towards New Jersey Avenue, or Jersey Avenue. While walking towards Jersey Avenue he looked over his shoulder, turned his head and looked back towards Crocus 30

Road and then he darted across the street behind a Pontiac sedan which was parked there, which had a Delaware registration on, containing a woman. He crouched down behind this car while Captain Ryan and other detectives entered 107 Crocus Road. At that time we drove up in back of the car and
10 arrested Mickey Britt.

Q. And then did you go in this house, 107 Crocus Road?

A. We left the defendant Mickey Britt in our car in company with Detective McClure and we entered the premises 107 Crocus Road and found Captain Ryan had then Del Rossi and Ignatius Lanzetti under arrest in that house.

Q. And then I ask you did you search the house?

20 A. The house had been searched before I arrived in there.

Q. Now, after that where did you take the three defendants?

A. First took the three defendants to the Wildwood Crest police headquarters.

Q. And from there where did you take them?

A. Took them to our sub-station located here in Cape May Court House.

30 Q. And I ask you what conversations took place between you and these defendants at the Troopers' headquarters here at Cape May Court House.

A. They brought the three defendants into the office—rather, I did, in company with others—and sat them on a sort of a porch swing and proceeded to ask routine questions of them, for my arrest re-

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port. I asked Mr. Lanzetti his correct name. He told me his name was Ignatius Andrew Lanzetti. He told me that he was thirty-three years old.

MR. GREIS: This is objected to, if the Court please, until it be shown that the defendants were advised, if they were advised, that statements made might be used against them.

MR. LOVELAND: If the Court please, this is not a confession. This is just conversation that took place between these defendants and this police officer.

MR. GREIS: The defendants were under arrest, if the Court please, according to the testimony, and unless its competency be shown and that it be shown definitely that they were told that these statements were to be used against them, it is not proper testimony in this case.

THE COURT: I will hear you, Mr. Prosecutor.

MR. LOVELAND: If the Court please, here is the situation. Here you have a police officer entering into a conversation with these defendants and there is not any efforts or no intentions on the part of the State to prove this was in any wise a confession. This was a statement made at the time of the arrest and after they were arrested and by all the rules of evidence as I know them this is certainly admissible. If that were not true, then no statement that could be made by any defendant at any

time in circumstances such as these—there would never be any result. Now, in the case of their asking for a signed confession—but that is not our situation. This is a conversation taking place between these defendants—and it certainly is admissible.

10 THE COURT: And you think it is a voluntary conversation that is now being talked about.

MR. GREIS: Might I suggest, if the Court please, that no statement is voluntary when a defendant is under arrest. In other words, voluntary statements mean statements made before arrest or made to some person voluntarily when there is no thought of action for court or what not. A confession, on the other hand, is one—statement which
20 is made after the defendant is perhaps under arrest and with the definite idea that it is to be used in court against him. Here we don't have either—neither the voluntary statement, because they are under arrest, they are under compulsion, they are brought here against their will to the State Police barracks at Cape May Court House from their place in Wildwood and they say certain things. I say that they are not admissible under those conditions unless they are told that the statements are to be
30 used against them, or unless they were made in some voluntary manner prior to the arrest. It certainly is apparent that it was the intention to use these statements because they are now being produced the first thing, the first witness in the case.

MR. LOVELAND: If the Court please, that

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is just a deduction being drawn. The practical application in this manner is that if it is impossible for witnesses to state the conversation which took place between the defendants, the practical results are that not a conviction out of a thousand would be possible to obtain. These defendants were under arrest and in the usual procedure of the police they question all defendants and make a report therefrom. And this is what is happening in this case. It is part of the res—it is part of this—it is part, an integral part, of this present case. 10

THE COURT: Were these defendants that now appear here, were they under oath at the time of this discussion or was it just a conversation?

THE WITNESS: Just a conversation, sir, 20
conversation of routine—

THE COURT: Do I understand that no hearing had been opened?

THE WITNESS: No, sir.

THE COURT: I will allow the question to be asked.

MR. GREIS: Your Honor will allow me an 30
exception.

THE COURT: Granted.

PALMER M. WAY,
Judge.

Q. Proceed, Sergeant, and tell us the conversation between you and these defendants at the State Police headquarters at this time.

A. I first asked Lanzetti what his full name was, and he told me Ignatius Andrew Lanzetti. I asked him how old he was and he told me he was
10 thirty-three years of age. I asked him where he was born; he told me City of Philadelphia. I asked him where his home was, and he told me on some number on Pine Street in the City of Philadelphia. I asked him what his occupation was and he said he was a machine fixer. I asked him how long it was since he was employed and he said he had not been employed in over five years.

I next asked Falcone what his full name was, and he said Michael Falcone. I asked him what
20 nicknames he used or aliases he had, and he told me Mickey Britt. I asked him where he was born; he informed me he was born in the City of Philadelphia. I asked him how old he was, and he told me he was thirty-five years of age. I asked him what his occupation was and he told me he was a bricklayer. I asked him how long it was since he was employed; he said he had not been employed since he got out of prison four or five years ago.

I asked Mr. Del Rossi what his name was, and
30 he told me Louis Del Rossi. I asked him where he lived; he told me he lived on some number on Carleton Street, the City of Philadelphia. I also asked him where he was born; he told me Philadelphia. I asked him how old he was. He told me he was thirty-two years of age. I asked him what his occupation was, and he told me he was a chauffeur. I asked

Sergeant William P. Kelly—Direct

him how long it had been since he was employed, and he says he had not been employed in over two years.

Q. And then I ask you whether on the next day, on the following day, on July 25th, you had any further conversation with these defendants?

A. On the 25th, in company with Detective Ruggiero and Corporal Waldinger, we went to the County Jail to take these men to be arraigned, brought them out of the row of cells into the corridor, and Detective Ruggiero at this time held a conversation with them as to when they were last employed, and as to that subject they answered as they had to me the night before. 10

I also asked Ignatius when he had come to Wildwood Crest. He told me he had come down here about June 22nd. I asked Del Rossi when he had come down here, and he told me he came down with Ignatius. I asked Mickey Britt when he come down, and he said he had been down here since the previous Sunday. His words were he had been down since last Sunday. While in the jail corridor Detective Ruggiero asked—also asked the same questions, about when they had come down here, and when Ruggiero asked Mickey Britt he said he was down on several occasions. 20

Q. Prior to this particular time that he was mentioning? 30

A. That was his answer, that he was down here on several occasions, several times.

Q. Now asking you whether on that same day you heard any further conversation as to whether they had been convicted or not.

A. We arraigned the three defendants—

MR. GREIS: Now, I object to that. That is one of the material points to this charge. And I don't think the conversation is material because there is a best evidence rule. And that can be proven, and it should be admitted—

MR. LOVELAND: I will withdraw the question.

THE COURT: I think that is the correct thing to do. The question is withdrawn. You need not answer it.

MR. LOVELAND: Cross-examine.

20

CROSS-EXAMINATION

BY MR. GREIS:

Q. Sergeant, it was on the 24th that you went to Wildwood, was it?

A. 24th of July, yes, sir.

Q. Of July or June?

A. July.

Q. July. And had you seen or observed any of these three defendants prior to that day, prior to your arrival in Wildwood Crest that afternoon?

A. I had never seen any of the defendants prior to that date.

Q. And were any of the defendants in your presence that day at any time when you saw them

30

Sergeant William P. Kelly—Cross

engaged in any unlawful act of any kind? In other words, were they doing anything?

A. Mickey Britt and Ignatius Lanzetti were walking down the street, walking down the pavement on Jersey Avenue.

Q. Is that an unlawful act, to the best of your knowledge? 10

A. No, sir.

Q. Were they engaged in any unlawful act or doing anything unlawful in your sight during that day?

A. Yes, I considered that they were.

Q. What?

A. Violating the gangster act.

MR. GREIS: I ask that be stricken out as a conclusion, if the Court please. I asked for acts. 20

MR. LOVELAND: If the Court please, he asked for it.

THE COURT: Wouldn't any answer to your question be a conclusion?

MR. GREIS: No, sir.

THE COURT: Why not? Nobody is guilty until proven to be so. 30

MR. GREIS: This defendant is testifying they were violating this law.

THE COURT: You asked for it and he has answered.

MR. GREIS: I asked what act he was doing.

THE COURT: It may be I misunderstand the question. Repeat the question.

(The testimony was read by the stenographer
10 as follows:

“Q. Were they engaged in any unlawful act or doing anything unlawful in your sight during that day?

A. Yes, I considered that they were.

Q. What?

A. Violating the gangster act.”)

THE COURT: Allow the question to stand
20 and answer.

MR. GREIS: Your Honor will allow me an exception?

THE COURT: You may have it.

PALMER M. WAY,
Judge.

Q. Did you see Lanzetti's family when you
30 went in the house?

A. Yes, sir. I saw a woman in there that I was informed was Lanzetti's wife.

Q. Did you take part in the search of the house that you testified about?

A. No, sir, I did not search the house.

Q. No. Now you testified, and the Court has

Sergeant William P. Kelly—Cross

allowed the question to stand, that they were violating the gangster act. Upon what do you base that information? Where did you get your information that that was being done?

A. I have known the Lanzetti's for several years.

Q. I asked where you got your information. 10
You can answer the question.

A. From the Philadelphia Detective Bureau.

Q. Somebody told you, did they?

A. What are you referring to when you say did somebody tell me what.

Q. What is a violation of the gangster act?

A. Well, the paragraph which the defendants are indicted under, I think there is three or four different counts that comprise that specific violation.

Q. Right. Did you know at the time you went 20
to Wildwood that these men had no lawful occupation?

A. No, sir, I did not.

Q. Did you know they were members of a gang?

A. I had reason to believe that, yes, sir.

Q. But you didn't know it, did you?

A. Not of my own knowledge.

Q. Of your own knowledge. That is two of 30
the things, then, in the law, that you didn't know existed, but still you say they were violating the law; is that correct.

A. Yes, sir.

Q. And had you ever examined the record to

find out whether these men have been convicted of crime in the State of Pennsylvania?

A. I never examined any records.

Q. No. In other words, you didn't know any of the three things in the law that made them guilty of them, did you.

10 A. I knew of them, yes, sir.

Q. You knew of them through somebody's say so, did you?

A. Yes, sir.

Q. And you didn't know any of your own knowledge?

A. Not ---

Q. Yes or no?

A. No.

20 Q. And still you have sworn under your oath that they were guilty under this act; is that right?

A. That is what I arrested them for, for violation of this act.

Q. You didn't have any warrant at the time you made these arrests, did you?

A. No, Sir.

Q. Defendants came over with you voluntarily?

A. Yes, sir.

30 Q. When did you tell the defendants what they were being held for, if at all?

A. When we arraigned them before the Justice of the Peace.

Q. That was how long afterwards?

A. How long?

Q. Yes.

Detective Frank Ruggiero—Direct

A. They were arrested about eight-thirty P. M. on the 24th, and they were arraigned about one P. M. on the 25th.

Q. In other words, about eighteen hours afterwards, is that right?

A. Probably about eighteen hours, yes, sir.

Q. And the conversation that you have testified about with the defendants at the Police Headquarters was on the same day that they were arrested, was it not? 10

A. In the evening of the day they were arrested, yes sir.

Q. In other words, the day they answered the questions that you have put into the record in your testimony, they didn't know what they were being held for, is that right? Didn't know until the next day? 20

A. That is correct..

Q. They gave you their correct names, so far as you know?

A. As far as I know, yes, sir.

MR. GREIS: That is all

MR. LOVELAND: All right, Sergeant.

DETECTIVE FRANK RUGGERIO, called as a witness on behalf of the State, being sworn, testified as follows: 30

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Ruggiero, where do you live?

Detective Frank Ruggerio—Direct

A. I live in Vineland, but I am working out of Hammonton, New Jersey.

Q. What is your position?

A. Detective of the State Police of New Jersey.

Q. Detective of the State Police. Now, do you
10 recall the Friday, July 24th, of going from Hammonton to Wildwood Crest?

A. I do.

Q. Will you please tell us what you did on that day?

A. On Friday, July 24th, I accompanied Sergeant Detective Kelly from Hammonton to Wildwood Crest. Upon arrival at Wildwood Crest I shifted over in the car containing Captain James Ryan and Detective Sergeant Harry Peltz and Detective Steinberg, and we made a cruise of the vicinity of Crocus Road and Jersey Avenue, Wildwood Crest. About eight-thirty - - - prior to that time we had met Captain Creeden and Sergeant Detective Kelly, who advised us—
20

MR. GREIS: Just a moment.

Q. Not what they said.

A. About eight-thirty I had seen Louis Del
30 Rossi on the porch of 107 Crocus Road talking to a person who we later found out was Ignatius. We cruised around the corner, came back, on Jersey Avenue south of Crocus Road, we picked the defendant Louis Del Rossi and his wife. The question was put to him, "Where do you live", and he says, "Right around the corner." Asked him who was

Detective Frank Ruggiero—Direct

there. He said just Ignatius. So we went to the bungalow of 107 Crocus Road and we proceeded to search the bungalow for weapons and drugs.

Q. And did you find any?

A. No, sir.

Q. And then where did you go?

A. Why, we waited until Sergeant Detective 10 Kelly came, when they were placed under arrest, and went to Wildwood Crest in the Police Department there, and from there went to the barracks here in Cape May Court House.

Q. Were you present when Sergeant Kelly was talking to the defendants?

A. Yes, sir.

Q. And will you tell us what conversation took place then?

A. I was present when Louis Del Rossi was 20 being questioned as to his correct name, where he resided, and his occupation. When Mickey Britt and Ignatius were questioned I was in the room, but I didn't hear the conversation.

Q. I see. You did hear the conversation between Del Rossi and Kelly?

A. Yes, sir.

Q. Will you tell us what that was?

A. Why, he asked his name. His name was given as Louis Del Rossi. He lived on Carleton 30 Street in Philadelphia. His occupation he gave as a chauffeur. And how old he was.

Q. Then I ask you if you were present the following day in the County Jail and were present at a conversation that took place between these defendants and Kelly?

A. I was the one that questioned the three defendants.

Q. Oh, you were?

A. Yes.

Q. Tell us what was said and what was answered.

10 A. Why, I asked Ignatius Lanzetti when was the last time he was employed. He said he hasn't been employed for the last five years or more. Then asked Louis Del Rossi when he was employed, and he said it has been over two years. And I asked Mickey Britt the same question, and he said he has not been employed since he came out of jail.

MR. LOVELAND: Cross-examine.

20 MR. GREIS: No questions.

CORPORAL ALBERT J. WALDINGER, called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

30

Q. Corporal, where do you live?

A. Cape May Court House.

Q. Are you in charge of the barracks here?

A. Yes, sir.

Q. Directing your attention to July 25th, I ask

Corporal Albert J. Waldinger—Cross

you whether you were present with Sergeant Kelly and Ruggerio in the County Jail?

A. I was.

Q. When the defendants were questioned?

A. I was.

Q. Do you recall hearing the conversation?

A. I do.

10

Q. Will you repeat it?

A. Detective Ruggerio was talking to these three defendants. And he asked Del Rossi how long it has been since he has been employed, and he said it was over two years; and Lanzetti and Micky Britt he asked the same questions, and they both said it was a period of about five years. And he also asked their occupations. Lanzetti said he was a machine fixer. Del Rossi said he was a chauffeur. And Mickey Britt said he was a bricklayer by 20 occupation.

MR. LOVELAND: Cross-examine.

CROSS-EXAMINATION

BY MR. GREIS:

Q. Was Mickey Britt asked any questions about formerly being a boxer?

A. Not to my knowledge, no, sir.

30

Q. You knew he was, didn't you?

A. I heard rumors of it and remarks, but I didn't know definitely.

MR. GREIS: That is all.

MR. LOVELAND: That is all.

CAPTAIN JAMES P. RYAN, called as a witness on behalf of the State, being sworn, testified as follows:

10

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Ryan, where do you live?

A. 410 South 15th Street, Philadelphia.

Q. City of Philadelphia. What is your occupation?

A. Captain of Detectives in the City of Philadelphia.

20

Q. How long have you been a member of the Department?

A. Nineteen years.

Q. Do you know these three defendants?

A. I do.

Q. On Friday, July 24th, I ask you, Captain, whether you came to Wildwood Crest?

A. I did.

Q. And what did you do after you got there?

A. On—we received a letter on July 24th about four men we wanted in Philadelphia for a series of crimes. The letter give us a description and location—

30

MR. GREIS: Now, if the Court please, I object to that.

Captain James P. Ryan—Direct

THE COURT: Objection sustained.

MR. GREIS: I ask it be stricken from the record.

THE COURT: Yes, the part that is not responsive.

10

Q: What did you do this evening you got down to Wildwood Crest, Captain?

A. Well, we met—we met Ruggerio and Kelly in Hammonton and proceeded to Wildwood Crest, where we were met by Captain Creeden. And riding in Wildwood Crest, why, we noticed Louis Del Rossi walking along with his wife, and stepped out and put him in the car and left his wife go, and said, "Where do you live at?" He said, "Over here, 107 Crocus Road." Whom do you live with?" He said, "Ignatius Lanzetti." I said, "Who is there in the house with him?" He said, "His wife and kid", he says, "and Mickey Britt". So I taken him and put him in the car. We ride around the block, and drive around in front of the house. We got out, that is, Detective Peltz, Steinberg and Ruggerio and I step into the house, and take Ignatius—he is sitting reading a book—we take him upstairs and search the house. And during the course of the conversation I said to Ignatius, I said, "Where is the guns at?" He said, "You know I don't keep any of them things around where my family is." And at that time Kelly had—Kelly and McClure from our Department had Mickey Britt said that they caught them sneaking around an automobile.

20

30

MR. GREIS: That is objected to, "they said".

THE COURT: Yes, it will be stricken.

Q. Not what they said.

10 in." A. So they said, "Well, we will take them

Q. Captain, do you know of a gang called the Lanzetti gang?

A. I certainly do.

Q. How long have you known it?

A. I have known the family practically all my life.

Q. Will you name some of the members of the gang?

20 MR. GREIS: Now, just a moment. If the court please, I object to this question until the proper foundation be laid. In other words, it seems to me necessary for more proof of the existence of the gang than has been offered, before we start with any members of it.

30 THE COURT: Why, Mr. Greis? The statute has been very free in the use of the word, apparently.

MR. GREIS: It seems to me that the statute has been not free.

THE COURT: Depends on the point of view.

Captain James P. Ryan—Direct

MR. GREIS: Exactly. But it has merely used the word.

THE COURT: All right.

MR. GREIS: Now, if we are to go by the definition that the cases have given the word, or that Webster's might give it, it seems to me we have a lot of things. And the statute has laid down no definition. 10

THE COURT: Now, in order to get down to the point—

MR. GREIS: Yes, sir.

THE COURT: —is it your thought that in laying this foundation, that there ought to be some testimony as to these men being in company with other men to the knowledge of the witnesses for a period of time and then let the jury determine as to whether a gang is formed or not? Or as to what is your objection? I want to see what you are getting at. 20

MR. GREIS: My objection is this. I don't know, and I don't think the Court can properly say, what the statute means by "gang", so that I think it is necessary for the Prosecutor to show a series of facts, whether it be congregating, or whether it be a man working on the section on the railroad that we used to know as a section gang, or whether it be the song, "That Old Gang of Mine"—what he means by "gang". In other words, a certain spe- 30

cific set of facts that create what the Court can define as a gang.

10 THE COURT: It seems to me, as the word "gang" is used, that the Prosecution, in order to make the situation clear, may or may not lead up to what we might all understand as a definition of "gang", but if he doesn't see fit to, the jury is the body in this trial that determines facts. Under our peculiar position—I call it peculiar because I think it is, when that word "gang" is used, perhaps put it that way—for the jury to determine as to whether from the testimony there is a gang as indicated in the statute.

20 MR. GREIS: The substance of my objection is just this: that I object to the form of the question and the proof and the question that the Prosecutor asks in that he asks, "Are they members of a gang"? In other words, I want him to show, that is, to say what constitutes a gang.

30 THE COURT: Well, isn't that a proper question, because it calls for his knowledge, and his knowledge can be gone into and supplemented by the Prosecutor, or you have the privilege of cross-examination, to bring out his knowledge as to whether he may or may not know.

MR. GREIS: It calls for a conclusion, and I object to it upon that ground.

THE COURT: Anything further to say?

Captain James P. Ryan—Direct

MR. LOVELAND: If the Court please, that is how we go about to prove this thing—whether I go all around and bring it in, or whether I ask a question direct,—the matter counsel is discussing is a matter for cross-examination if he wants to test this man's knowledge of what he thinks a gang is.

THE COURT: Do you want this question to stand? 10

MR. LOVELAND: Yes, your Honor.

THE COURT: I think it is a proper question, and we will allow it.

MR. GREIS: Your Honor will allow me an exception? 20

THE COURT: It will be granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

THE COURT: Now, then, at this time we will recess for one hour. We will be back at one-thirty. 30
In the meantime, ladies and gentlemen of the jury, you will be in charge of the officers, and they have instructions as to how to care for you during the noon hour. And everybody remain seated until the jury has been taken from the room by the officers.

Captain James P. Ryan—Direct

(Recess taken until one-thirty o'clock P. M.)

AFTER RECESS 1:30 o'clock P. M.

10 CAPTAIN JAMES P. RYAN resumed the stand.

DIRECT EXAMINATION (continued)

BY MR. LOVELAND:

MR. LOVELAND: Please read the last question.

(The question was read by the stenographer as follows: "Q. Will you name some of the members 20 of the gang?")

Q. Go ahead, Captain.

A. The best way I could do that, your Honor, is to produce records of arrest of associates of these different members here.

MR. GREIS: That is objected to.

THE COURT: Objection sustained.

30 Q. Captain, I wish you would go ahead from your own knowledge and tell us the members of the gang that you know.

MR. GRIES: If the Court please, I ask that this be fixed within the time charged in the indict-

Captain James P. Ryan—Direct

ment. I object to the testimony that goes outside of that.

THE COURT: Now, let me see what the force of your objection is here, Mr. Greis. You mean to state that to confine the proposition of the gang that existed at the date of the arrest.

10

MR. GREIS: Yes. And my authority for that is the case that the Prosecutor has cited in connection with this case a number of times, Levine against State, in which Justice Heher said:

“Of course, to justify a conviction in a case of this character, the proof must establish that status at the time of the defendant’s apprehension.”

THE COURT: What was the question?

20

(The question was read by the stenographer as follows: “Q. Will you name some of the members of the gang?”)

THE COURT: You may answer that—members of the gang that were existing at the time of the arrest.

MR. GREIS: My request was that the time be fixed. 30

THE COURT: I fixed it. As of the time of the arrest.

A. Why, five brothers, Pius, William, Lucien and Teo Lanzetti.

10 MR. GREIS: I object further that there are names now being brought in which are not served on us in the bill of particulars, and I ask that the prosecution be confined to the names that were given us in the bill of particulars on that particular question, and for that purpose ask that the names of Lucien and Teo be stricken from the record.

THE COURT: Just a moment until I see what has happened in the questions and the answers, in the request for bill of particulars and reply.

20 MR. LOVELAND: We are willing to confine ourselves to those which we submitted to the defense. If he has mentioned names that were not in the list which we furnished, why, we consent that they be stricken.

30 THE COURT: Of course those names will be stricken, but I am not familiar, of course, with the bill of particulars and the answers. For me to sit here and attempt to limit anything without any knowledge of what has taken place, I cannot very well do it.

Those two names will be stricken that you objected to, because it is quite apparent they were not included in the answers.

MR. GREIS: That is right.

Captain James P. Ryan—Direct

THE COURT: Proceed.

THE WITNESS: John Amato. Edward Di Alanzo, alias Cowboy.

MR. GREIS: That name was not in the list, if the Court please. I object to it and ask it be stricken. 10

THE COURT: That will be stricken.

MR. GREIS: Now, if the Court please, I think it is prejudicial to these defendants that this naming of persons not in here continue.

THE COURT: Well, now, how are we going to arrange it? This man is stating that he knows the members of this gang. He has given testimony in connection with it. He probably doesn't know anything about the bill of particulars, either. But the State is bound by what they give you, and let the issue run with that information. 20

MR. GREIS: I understand the situation.

THE COURT: Now, if you and the Prosecutor can straighten matters out, I will be glad for you to confer. If not, it will have to run; that is the only way of handling it. 30

MR. LOVELAND: That is, if counsel feels it desirable that I do it in another way, I will take the bill of particulars and ask him in particular each one. I am willing to do that.

Captain James P. Ryan—Direct

MR. GREIS: I won't make any further objection.

THE COURT: All right.

MR. GREIS: Except that I will ask that they
10 be stricken.

THE COURT: All right. Proceed. Give your names and Mr. Greis will check.

THE WITNESS: George Myers.

MR. GREIS: I ask that be stricken.

MR. LOVELAND: I am trying to get the original.

20 THE COURT: Do you want to wait for it?

MR. LOVELAND: Yes, I have sent for the original.

Q. You may proceed.

THE COURT: No; there is an objection to this last name. What was it?

THE WITNESS: George Myers.

30 MR. LOVELAND: We consent to that.

THE COURT: All right.

Q. You may proceed, Captain.

A. Mikey Mateo.

MR. GREIS: That name is not in the list, if the Court please. I ask it be stricken.

Captain James P. Ryan—Direct

MR. LOVELAND: All right.

THE WITNESS: Albert Salvatore Mateo.

MR. GREIS: That is objected to, and I ask it be stricken.

THE COURT: That is, this last one. 10

MR. GREIS: Yes.

THE COURT: Let me hear, Mr. Prosecutor, if you are consenting.

MR. LOVELAND: I am consenting.

THE COURT: Please respond each time. 20

MR. LOVELAND: All right.

Q. Proceed.

THE WITNESS: Your Honor, I have all these names on these records. Of course, going over these names right now, it is going to take time. The reason why I associate these names, we have the connection with each of these here names with the rest of these people mentioned here. 30

MR. GREIS: Now, if the Court please, if that is the basis upon which this witness is testifying, I ask all of his testimony be stricken.

THE COURT: No, he is apparently testifying from his memory so far.

MR. GREIS: He said he was testifying from arrests that had been made.

10 THE WITNESS: My knowledge—the names, I just gave them to you, I know them of my own knowledge.

THE COURT: Anyone else?

THE WITNESS: John Zokowsky, alias Socks.

THE COURT: That is apparently in the list.

20 MR. GREIS: Yes, sir.

Q. Yes, Proceed.

A. I am trying—Joseph Siai.

MR. GREIS: I ask it be stricken.

MR. LOVELAND: Consented to, your Honor.

30 THE WITNESS: There is quite a list of these names, but I just can't recall just now.

Q. I ask you, Captain, whether these three defendants are members of the Lanzetti gang?

A. They sure are.

Q. I ask you how long you have known these defendants are in the Lanzetti's?

Captain James P. Ryan—Direct

A. I have known the Lanzetti's as I said before, practically all my life. I have been familiar with the man mentioned here in the last eighteen years—last fifteen years. And Falcone, I have known him since 1923, 1924. And Fatty Louie, I have known him for about twelve years. I think that would cover it.

10

Q. How long has the gang been in existence, Captain?

MR. GREIS: That is objected to, if the Court please.

THE COURT: If he knows, I am going to admit it.

Q. Of your own knowledge.

20

MR. GREIS: May I state my objection upon the record?

THE COURT: If you want to.

MR. GREIS: I think the Court has already ruled that—upon my objection, that it be—the names of membership in the gang be limited to the period charged in the indictment, and this is based upon the same ground.

30

THE COURT: Well, he has spoken of the three members, the Prosecutor has, and he is referring to this gang consisting of the defendants and

these three additional members. Now I think that is your question, is it not?

MR. LOVELAND: Yes, I am asking how long he has known this gang to have been in existence.

10 THE COURT: This gang, consisting of the three people that have been mentioned, in addition to the three defendants. Is that right?

MR. LOVELAND: Yes, your Honor, I am just asking if these were members of the gang. He testified they were, and I have asked him how long he has known—

20 THE COURT: That is the way I understand it. I will admit the question.

MR. GREIS: Your Honor will allow me an exception.

THE COURT: It will be granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

30

PALMER M. WAY, (Seal)
P. J.

A. About five or six years. That is, this present gang I mentioned.

Captain James P. Ryan—Cross

Q. Can you tell us what kind of a gang it is, Captain?

A. Well, from our experience with them, none of them have any—

MR. GREIS: Just a moment, if the Court please. That answer apparently does not—is not responsive to the Prosecutor's question, so I object to it. Calls for a conclusion, and the witness prefaces his answer with "our experience". 10

THE COURT: I think you will have to keep within your proof, Prosecutor.

MR. LOVELAND: Yes, your Honor.

Q. Captain, I don't want you to testify to anything other than your own personal knowledge. Now I ask you from your own personal knowledge can you tell us anything of what kind of a gang it is? 20

A. The gang is connected with numbers, and at one time, your Honor, there were—unless—at one—they was connected with numbers and other rackets in Philadelphia.

MR. LOVELAND: You may cross-examine.

CROSS-EXAMINATION 30

BY MR. GREIS:

Q. Captain, where did all this take place that you speak of?

A. All what? Numbers?

Q. Yes.

A. In one—

Q. What place; that is all I want to know.

A. I just can't recall the address on Broad Street where they were arrested.

Q. What city?

10 A. Philadelphia.

Q. In the State of Pennsylvania, is that correct?

A. That is right.

Q. And you say that gang that you speak of is some five or six years ago?

A. Yes. From five or six years on, on to the present date.

20 Q. Yes. And when did you last see any of these three defendants as connected with any gang prior to the day of the arrest?

A. Well, I probably say nine months.

Q. About nine months before that?

A. Yes.

Q. And the things that you mention, numbers and other rackets—

A. Yes.

Q. Has there within five or six years been any conviction or charge against these men for that reason?

30 A. That numbers? Yes, sir—these men here?

Q. Yes.

A. No, sir.

Q. Captain, how long had it been prior to your visit to Wildwood on July 24th—is that the date?

A. That is right.

Captain James P. Ryan—Cross

Q. How long had it been prior to that time that you had seen any of these three men?

A. Why, I would say about nine months.

Q. About nine months?

A. Yes.

Q. And that was where? In the City of Philadelphia?

A. That is right. 10

Q. You knew that F'alcone was a prize fighter at one time?

A. Yes, I knew of it; yes, sir.

Q. And you know that he fought under the name of Mickey Britt; is that correct?

A. Yes.

Q. Will you tell us now what was the occasion of your visit to Wildwood on the 24th of July?

A. Yes. We had information—I spoke of a 20 letter we received, and it instructed us to go to—

Q. Was it connected with these defendants?

A. None whatever.

Q. Not connected with these defendants?

A. No, sir.

Q. But you just happened upon these men while you were in Wildwood; is that correct?

A. Location—give us the location of this here—of these people mentioned; but at the time, why, we were in search of men for the hold-up that hap- 30 pened in our city.

Q. And these were not the men, were they?

A. They were not the men it mentioned.

Q. You had no warrant at the time—for these men, at the time you made the arrest?

A. No, sir.

Q. And you had no warrant for a search of the premises?

A. No, sir.

Q. But you made a search of the house?

A. Yes. We thought we probably might find the people we were looking for, besides those men.

10 Q. You were a member of the Philadelphia Police Department?

A. Right.

Q. At whose suggestion were these men taken into custody on the date that you walked in on them there?

A. Well, I told Sergeant Kelly and—who these men were, and decided to take them in, and charge them with being gangsters.

20 Q. Did you know about the New Jersey gangster law?

A. I didn't at the time, no.

Q. Are you sure about that?

A. I say I didn't know at the time, no sir.

Q. Who sends out information from the Philadelphia Police Department that certain people are wanted?

A. The Police Department. We do.

Q. You do. Your department?

A. Yes.

30 Q. Are you in charge of that?

A. Not in charge of it, no. I am charge of the Detective Bureau.

Q. You mentioned only two names that were allowed by the Court in this list here, aside from the two brothers Lanzetti and the defendants. John Zokowsky was one of them?

Captain James P. Ryan—Cross

A. Yes, sir.

Q. Where is John Zokowsky?

A. In the death house, awaiting for the electrocution.

Q. How long has he been there?

A. Two years, I believe.

Q. How long?

A. A little over two years.

10

MR. GREIS: Now, if the Court please, on the limitation that was put on this defendant's testimony by the Court in the first place, the gang that existed on the date of the arrest, I ask that that name be stricken. He has been in the death house for two years. Certainly could not have been—

THE WITNESS: Hasn't been in the death house. He has been in jail in custody. 20

Q. He has been in jail in custody. He has not been a member of the gang in that time?

A. He has been a member up until the time of the arrest.

MR. GREIS: I understood the Court's limitation, it was on the date of the arrest.

THE COURT: I am permitting you to adduce such testimony as you can bring out on cross-examination. You may use it with the jury. I will let that testimony stand. 30

Q. Let me ask you this question, Captain: This

business you mention as numbers, is that an illegal proposition?

A. It is in our state, yes, sir.

Q. It is contrary to the laws of Pennsylvania?

A. Yes, sir.

Q. Now, have there been any arrests or conviction of these men in that connection, any of these three defendants, Willie Lanzetti or Pius Lanzetti?

A. Willie Lanzetti has been, yes, sir. Willie and Lucien both have been arrested for numbers and convicted.

MR. GREIS: I ask the testimony concerning Lucien be stricken out as not responsive. The name was stricken from the list.

THE COURT: Didn't you ask him a question and give the man's name?

MR. GREIS: I didn't ask for the brother who is not in here, not charged as a member of this gang.

THE COURT: Didn't you ask for Lucien? Let me have the question.

(The question was read by the stenographer as follows: "Q. Now, have there been any arrests or conviction of these men in that connection, any of these three defendants, Willie Lanzetti or Pius Lanzetti?")

John J. Creeden—Direct

THE COURT: Willie or Pius are the only ones used.

THE WITNESS: Willie Lanzetti is the one arrested and convicted for numbers.

Q. When?

A. 1934 or 1935, I believe.

10

Q. Don't you know?

A. I would have to consult this—these—this folder.

Q. There are no detainers nor warrants out for these men, are there?

A. No, sir.

Q. They are not wanted in the city of Philadelphia?

A. No, we don't want them in Philadelphia. 20

Q. If there had been any charges against them, you would have had them extradited to Philadelphia, wouldn't you?

A. I guess so.

MR. GREIS: That is all.

MR. LOVELAND: Captain Creeden.

30

JOHN J. CREEDEN, called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Captain Creeden, are you connected with the Philadelphia Police Department?

A. I am.

Q. And have been so connected for how long?

A. A little better than twenty-six years.

Q. Do you know the defendants here?

10 A. I do.

Q. Do you know of a gang called the Lanzetti gang?

A. I know some of them.

Q. Can you tell us whom you know of them?

A. Well, there is four of the Lanzetti boys. They are classified as the Lanzetti gang. They are constantly together and it very rarely you see—you meet them that there are not at least two together; and we classify those that are associated with them
20 as part of the Lanzetti gang.

Q. Now, do you know any other member?

A. Through police channels and police reports I know quite a few.

MR. GREIS: That is objected to, if the Court please.

THE WITNESS: Personally I know—

30 MR. GREIS: The source is hearsay.

THE COURT: Well, he has not named any-

John J. Creeden—Direct

one yet, Mr. Greis, and I am going to let it stand so far, unless something happens. Personally you what?

THE WITNESS: Personally I could call just a few of them off.

Q. Let's have those that you know personally, Captain. 10

A. Julius Fink.

MR. GREIS: That name is objected to, if the Court please. Not within the bill of particulars.

MR. LOVELAND: We consent.

THE COURT: Consented to. It may be stricken. 20

Q. Continue, Captain.

A. Michael Amateo.

MR. GREIS: That name has already been objected to once before, may it please your Honor.

THE COURT: That is objected to.

THE WITNESS: Tony Narcise. 30

THE COURT: Tony what?

THE WITNESS: Tony Narcise.

THE COURT: That is in the list. Anthony Narcisi.

Q. Continue, Captain.

A. Walter Zokowsky I think is the right name.

10 MR. GREIS: That is not in the list. There is a John Zokowsky in there.

THE COURT: What was the last name, Captain?

THE WITNESS: Zirkowsky I think is the last name.

MR. LOVELAND: If my memory serves me
20 as to the list—

THE COURT: What was the first name?

MR. GREIS: Walter.

THE WITNESS: Walter, I believe it is.

MR. GREIS: Walter. That is not in the list and I ask it be stricken.

30 MR. LOVELAND: Consented to.

THE WITNESS: Louis Campbell.

THE COURT: That is in the list apparently. Proceed.

John J. Creeden—Cross

THE WITNESS: That is all I can think of offhand.

Q. That is all you can think of offhand, you say, Captain?

A. Yes, sir.

Q. These defendantts are known to be a member of a gang? 10

A. We recognize them as a member of the Lanzetti gang.

MR. LOVELAND: Cross-examine.

CROSS-EXAMINATION

BY MR. GREIS:

Q. Captain, where is Louis Campbell? 20

A. Louis Campbell? I think he is imprisoned in this state. I am not sure.

Q. Do you know how long he has been there?

A. I couldn't tell you without looking at the records.

Q. When did you last see him?

A. Couldn't tell you that, without referring to police record.

Q. Well, that has not been in recent years, 30 has it?

A. I don't think I have seen Campbell for three or four years. I couldn't say definitely.

Q. How long since you have seen Tony Nar-cise?

A. Possibly four years.

Q. About four years?

A. Possibly four years. I have seen Narcise and Louis together, last time I seen them in the Bureau.

Q. Louis who?

A. Del Rossi.

10 Q. Saw them together four years ago?

A. I should judge that was four years ago.

Q. And is that what you base your conclusion on that he—that they are members of the gang?

A. No.

Q. That you saw them together four years ago?

A. Constant reports I get, written and verbal, from the men of the Bureau.

20 Q. I see; and it is not from your own knowledge, it is from the reports that you have from others?

A. I have formed my opinion from the knowledge I gained through police channels and police report.

Q. And you have told all that you know about it personally?

A. About whom?

Q. About Campbell and Narcise?

30 A. That is all I have heard from them, is the reports, is all. That is the last time I have seen them.

MR. GREIS: That is all.

RE-DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Captain, you say you have not seen Narcise for the past four years, approximately?

A. I may have seen him since then, but I am satisfied the last time I seen Narcise was the time of the arrest in the Bureau, brought into the Bureau. 10

Q. I ask you whether or not the Philadelphia Police Department want him?

MR. GREIS: That is objected to as not relevant or material.

MR. LOVELAND: I might explain the reason why. 20

THE COURT: You are on re-direct, Mr. Prosecutor.

MR. LOVELAND: But what I was getting at, the defense brought out the fact that the Captain has not seen this man during the past four years. I was trying to find out if there was any reason.

MR. GREIS: That doesn't make any difference, if the Court please. 30

THE COURT: Let me have the question.

MR. LOVELAND: I will not press it. I will withdraw it.

THE COURT: If you want it, we will see whether it is proper or not.

(The question was read by the stenographer as follows: "I ask you whether or not the Philadelphia Police Department want him?")

THE COURT: That does not seem to be in the—

10 MR. LOVELAND: I will withdraw that. I thought they opened it up far enough for me to question.

THE COURT: No.

MR. LOVELAND: That is all, Captain.

20 HARRY E. PELTZ, called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Peltz, you are connected with the Philadelphia Police Department?

A. Yes, sir.

30 Q. Do you know the defendants here?

A. I do.

Q. Do you know a gang called the Lanzetti gang?

A. I do.

Q. I ask you whether these defendants are a member of it?

Harry E. Peltz—Direct

A. They are.

Q. I ask you whether you know any other persons who are members of that gang?

A. I do.

Q. Will you please tell us who they are?

A. Jimmy Montello.

MR. GREIS: That name is objected to, if the Court please, and I ask it be stricken; not in the bill of particulars. 10

MR. LOVELAND: Consented to.

THE WITNESS: Joseph Siai.

MR. GREIS: That name has been through the same course once before, if the Court please. May I ask, if the witnesses have heard this testimony and heard these names stricken out, that they not repeat them? 20

THE COURT: If they have heard the testimony, don't repeat the same names.

MR. LOVELAND: Consented to.

THE WITNESS: Pius Lanzetti. Willie Lanzetti. Teo Lanzetti. 30

MR. GREIS: That is one of the names that is not in the list, and I ask it be stricken.

MR. LOVELAND: That is, the last one.

MR. GREIS: Teo Lanzetti.

THE COURT: Who?

MR. GREIS: Teo.

10 Q. Proceed.
A. Freddy Montello. John Amato.

MR. GREIS: I ask the name of Montello, or whatever it was, the previous one, be stricken. I think this witness mentioned it before, and the Court struck it.

THE WITNESS: No, I didn't either. They are two brothers.

20 MR. GREIS: I ask they both be stricken.

THE COURT: That was Freddy and who?

THE WITNESS: Freddy and Jimmy.

THE COURT: Their names don't appear, so they will be stricken.

MR. LOVELAND: Consented to.

30 THE WITNESS: John Amato. This outfit is known as a band of brothers. There is four brothers controlling the whole thing. They only have a few working for them now, but previous—

MR. GREIS: That is objected to. There is no question pending except to name the members he knows. I ask it be stricken as not responsive.

Harry E. Peltz—Cross

THE COURT: That part will be stricken. Just give the names, and then there will be another question. I think there is no question pending.

Q. Proceed and name those you know.

A. Zokowsky, known as Socks—alias Socks.

THE COURT: Apparently in the list. 10

MR. GREIS: That is the man that has been in jail two years.

THE WITNESS: That is about all I have known, say, in the past two years.

MR. LOVELAND: All right; cross-examine.

CROSS-EXAMINATION 20

BY MR. GREIS:

Q. The three Lanzettis that you have named, Pius, Ignatius, and William, or Willie, are brothers, are they not?

A. Pius is in the court room. Yes.

Q. They are brothers, are they?

A. Yes, they are.

Q. And the John Zokowsky, alias Socks, that you mentioned, is the same man that has been in jail in Pennsylvania for the last two years? 30

A. He is. That is the reason I stopped naming him.

Q. Do you know the Tony Narcise that was mentioned a while ago?

A. I do.

Q. Why didn't you name him as a member of this gang?

A. I just couldn't recall at that time.

Q. He is not, is he?

A. He was. He is a fugitive now.

10 Q. When?

A. Up until about two years ago.

Q. Do you have a gang in Philadelphia known as the 69th Street gang?

A. Yes, known as the New York Mob, yes.

Q. Was Narcise a member of that or was he supposed to be?

A. After this.

Q. After when?

20 A. After they left that outfit, he went with the 69th Street mob. That is what I am talking about.

Q. He left more than two years ago?

A. Yes.

Q. Then he is not a member?

A. Not now.

Q. At the time of this arrest, is he?

A. No; that is the reason I didn't mention his name.

MR. GREIS: That is all.

30 THE COURT: Have you finished?

MR. GREIS: All right.

Francis J. Dunn—Direct

FRANCIS J. DUNN, called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Dunn, you are a member of the Philadelphia Police Department? 10

A. Yes, sir.

Q. I ask you whether you made the arrest of Frank Pius Lanzetti in 1924?

MR. GREIS: That is objected to, if the Court please.

THE COURT: What was the question? 20

(The question was read by the stenographer as follows: "Q. I ask you whether you made the arrest of Frank Pius Lanzetti in 1924?")

THE COURT: Mr. Prosecutor, at this time, I don't see—

MR. LOVELAND: It is incumbent on the State to prove conviction of these defendants, and the State is endeavoring to do that, if your Honor please. 30

THE COURT: I see what you are getting at now. Don't you think you better go at that another way?

Q. Mr. Dunn, did you ever arrest Frank Pius Lanzetti?

MR. GREIS: That is objected to.

THE COURT: Objection sustained.

10 Q. Mr. Dunn, I ask you whether you were in court on April 3rd, of 1934, in the City of Philadelphia at the time Frank Pius was on trial?

MR. GREIS: That is objected to, if the Court please.

20 THE COURT: Question allowed. That probably will lead—no harm in the question itself. Must be followed up in order to permit me to admit it.

MR. GREIS: Withdraw the objection.

Q. Will you answer that question?

A. Yes, sir.

Q. I ask you whether there is anyone present here today who was on trial at that time?

A. Yes, sir. Lanzetti. Ignatius Lanzetti.

Q. Is he one of the defendants here?

A. He is, yes.

30 Q. I ask you whether you know the results of the trial?

MR. GREIS: That is objected to, if the Court please.

THE COURT: Objection sustained because of

Francis J. Dunn—Direct

the fact there is no indication of what kind of trial, whether a conviction or what not.

Q. I ask you whether you know, Mr. Dunn, whether this defendant, Frank Pius Lanzetti, was on trial at that time, and if you know what the charge was.

10

MR. GREIS: That is objected to.

MR. LOVELAND: He was present there, and I am asking whether he knows or not.

THE COURT: What the charge was. We will find out whether he knows.

MR. GREIS: If the Court please, I object to this, upon the ground that there is a proper way to prove this by the best evidence. That is, the announced purpose of the Prosecutor is to prove the conviction, and all we ask is he go about it in the proper way.

THE COURT: All he has to be asked, if the man is present in court, and what took place. Put it that way.

MR. LOVELAND: I have just asked that question.

30

THE COURT: It is not necessary to ask him any preliminary questions?

MR. LOVELAND: May we have that question again? (The question was read by the stenographer as follows: "Q. I ask you whether you

know, Mr. Dunn, whether this defendant, Frank Pius Lanzetti, was on trial at that time, and if you know what the charge was?"')

A. Yes.

Q. Do you know?

10 A. Yes, sir.

THE COURT: I will let that stand. But it will not remain standing unless I find that it is proper to admit it.

MR. GREIS: Your Honor will allow me an exception?

THE COURT: Granted.

20 (To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

30 Q. Now, I ask you whether or not Frank Pius Lanzetti was at that time convicted of the charge for which he was on trial?

A. No, sir. Plead guilty.

Q. Plead guilty. (Showing paper to witness.) I ask you to look at that and ask if that is the record of those proceedings?

A. Yes, sir.

Q. (Showing witness another paper.)

Francis J. Dunn—Direct

A. Yes, sir.

MR. LOVELAND: At this time I offer the record, exemplified copies of the proceedings in Philadelphia, covering the conviction against Frank Pius Lanzetti.

THE COURT: In the first place, we must know for what crime. 10

Q. Do you know what crime?

A. Yes, sir.

Q. What crime?

MR. GREIS: Just a moment. I object to that, if the Court please.

THE COURT: Object to what? 20

MR. GREIS: The question of what crime it was.

THE COURT: What?

MR. GREIS: The question of what crime it was. Absolutely incompetent, irrelevant and immaterial.

30

THE COURT: Let me get this man's qualifications. I don't know what position he is holding. I was busy with the clerk.

MR. LOVELAND: This witness testified that he was a member of the Philadelphia police depart-

ment, that he was in the court room at the time this trial took place, and you can't get better evidence than that. He says he knew what happened, and I am asking now whether he knew what crime this defendant was charged with.

10 THE COURT: Charged or convicted of?

MR. LOVELAND: He said he plead guilty. I have shown him the record of the proceeding.

THE COURT: I will permit the question, to find out if he knows what he plead guilty to, of what charge.

MR. GREIS: Exception.

20 THE COURT: Exception granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

PALMER M. WAY (Seal)
P. J.

30 A. He plead guilty to the unlawful possession and sale of narcotic drugs.

MR. LOVELAND: I renew my offer of the introduction of the exemplified copy of the proceedings.

MR. GREIS: If the Court please, while I was

looking at these papers I didn't get the answer to the last question. May I have it repeated?

THE COURT: Yes; Mrs. Moore will read it for you. (The answer was read by the stenographer as follows: "A. He plead guilty to the unlawful possession and sale of narcotic drugs.") 10

MR. GREIS: Now, if the Court please, the document here produced, the certified copies of the records, don't show that. The plea that was entered here by one Frank Pius, without any name "Lanzetti" being expressed in the documents, is for possession only.

MR. LOVELAND: I think that question is covered. I asked the defendant whether anyone 20 present here today was on trial in the court at that time; he said there was, and I asked him who it was, and he told us it was Lanzetti.

THE COURT: I think perhaps the identification is sufficient. The question has to be whether the testimony of having heard a confession or having heard a plea amounts to a conviction, is the same as that which you are attempting to show here by the exemplified copies. Apparently there is an inconsistency, Mr. Prosecutor, and you have no foundation for the presentation of something that you have not already spoken about. Do you understand what I mean? 30

MR. LOVELAND: No, I do not.

THE COURT: Well, your conviction sets forth one crime. The witness has testified that he was present at the time, and there was another crime committed in addition, as I recall the statements in the testimony. If that is so, of course the exemplified copies cannot go in.

10

Q. Now I ask you, Mr. Dunn, whether the defendant on trial who plead guilty on April, 3rd, 1924, under the name of Frank Pius, is the same person sitting here as a defendant in these proceedings, under the name of Ignatius Lanzetti?

A. Yes, sir. There is three brothers. He is one of them.

THE COURT: Just answer the question.

20

THE WITNESS: Yes, sir, He is the man. Three brothers.

Q. He is the man that plead guilty?

A. Yes, sir, They all plead guilty.

MR. GREIS: I ask that it be stricken out as a voluntary statement and not responsive, not material.

30

THE COURT: Yes; that may be stricken out, that latter part.

Q. Now I ask you whether or not these proceedings (showing paper to witness) set forth the results of what took place on that day?

Francis J. Dunn—Direct

A. Yes, sir.

MR. LOVELAND: Now, if the Court please, I renew my offer, and the records in these proceedings speak for themselves. And if there is any question about it, it is a matter for cross-examination, because our Evidence Act, Section 1—under the constitution you must give full faith and credit to the records and proceedings of the other states. Now this defendant—this witness has testified he was in court on this day and he said that they plead guilty to unlawful possession and sale of drugs. I think that was it. And if the records do not speak that, why, that is a matter for cross-examination. This is an exemplified copy of the proceedings and must be given full faith of what happened.

10
20

MR. GREIS: Now, if the Court please, the witness testifies to one thing and the evidence produced here just exactly contradicts that.

THE COURT: Well, Mr. Greis, now he says, after having looked at the exemplified copy, that that statement set forth in the exemplified copy is what transpired that day; so I think that has been cured, and I will admit it.

30

(The papers offered are received in evidence and marked Exhibit S-1 and Exhibit S-2.)

MR. LOVELAND: That is all. Cross-examine.

CROSS-EXAMINATION

BY MR. GREIS:

Q. MR. DUNN, when was the last time that you had seen Ignatius Lanzetti?

10 A. The last time I saw him was when he got out of jail.

Q. Out of jail?

A. Yes, sir.

Q. How long ago was that?

A. I believe 1925 or 1926.

Q. Yes.

A. 1925, I believe it was.

Q. Now, you saw him when he came back
20 from Detroit, didn't you?

A. No, sir. I think he only got out that day or the day after from the County Prison.

Q. How long have you been a member of the police department of Philadelphia?

A. Seventeen years.

Q. Still a member.

A. Yes, sir.

Q. Been continuously all this time?

30 A. Yes, sir.
Q. It has been since 1925 since you have seen this man before today, is that right?

A. See him in—outside of seeing him on the street, yes; that is, to see him anywhere where I would be looking for him.

Q. I asked you that question, when was the

Richard H. Anderson—Direct

last time you saw him; you said when he came out of jail in 1925.

A. 1925. Yes. I might have seen him since then in passing him, and wouldn't remember.

Q. Yes. Unless you gave me that answer you couldn't say he had been in jail, could you; is that the idea? 10

A. That is—I gave you what answer?

Q. That the last time you had seen him was when he came out of jail in 1925?

A. I remember that specifically. If you want me to explain it, I will explain why I remember that.

Q. I want to know when you saw him last after that.

A. After that?

Q. Yes. 20

A. I don't know if I have ever saw him since.

Q. Don't know whether you have or not?

A. He might have been in the car with other ones; I don't know.

MR. GREIS: That is all.

RICHARD H. ANDERSON, called as a witness on 30
the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Anderson, are you connected with the Philadelphia Police Department?

A. Yes, sir.

Q. And were you so connected on March 2nd, 1927?

A. Yes, sir.

10 Q. I ask you whether or not you were in court on that day?

A. Not on the 27th.

Q. On the 2nd. On March 2nd, 1927.

A. Oh, yes. March 2nd.

Q. Now, I ask you whether anyone was on trial in the court that day who is present here in court today?

A. I remember one gentleman that is here.

20 Q. Who?

A. Why, Louis Del Rossi; Fatty Louie we calls him.

Q. Fatty Louie. And I ask you whether you were present when the defendant Del Rossi was convicted of unlawful possession of intoxicating liquor?

A. Yes, sir.

30 Q. (Showing paper to witness) I ask you to look at those proceedings, and I ask you if that was the record of what happened that day?

A. Yes, sir.

MR. LOVELAND: I offer it.

MR. GREIS: If the Court please, I have no objection to this for the purpose of the record. If

Martin Lyford—Direct

it will hasten matters any, I will admit that all of these defendants have been convicted of crime in the State of Pennsylvania.

MR. LOVELAND: If the Court please, I would rather put in the proof.

THE COURT: Very well.

10

MR. LOVELAND: I ask that be marked.

THE COURT: It may be marked.

(The paper offered it received in evidence and marked Exhibit S-3.)

MR. LOVELAND: That is all.

20

MARTIN LYFORD, called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Lyford, you are a member of the Philadelphia Police Department? 30

A. Yes, sir.

Q. And were you on November 30th, 1921, a member of that department?

A. I was.

Q. I ask you whether or not you were on

November 30th, 1921, in court when Michael Falcone plead guilty to murder?

A. I was.

Q. (Showing paper to witness) I ask you to look that over and see if that was the result of those proceedings?

10 A. Yes.

MR. LOVELAND: I offer it.

THE COURT: We will have a short recess for five minutes. And no one leave the room until the officers can have an opportunity to let the jurors go out if they want to.

(Short recess.)

20 MR. LOVELAND: I ask that record be marked.

THE COURT: It may be marked.

(The paper offered is received in evidence and marked Exhibit S-4.)

CHARLES STEINBERG, called as a witness on be-
30 half of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Steinberg, are you a member of the Philadelphia Police Department?

Charles Steinberg—Direct

A. Yes.

Q. Do you know the defendants here?

A. Yes, sir.

Q. Do you know of a gang called the Lanzetti
gang?

A. Yes, sir.

Q. Are these defendants members of it? 10

A. Yes, sir.

Q. Do you know others who are members of
it?

A. Yes, sir.

Q. Name them.

A. John Schiavo. John Amato.

THE COURT: Slowly, please.

Q. Just one at a time. 20

THE COURT: John Schiavo apparently is in
the list. Proceed.

THE WITNESS: John Amato.

THE COURT: Apparently is in the list.

THE WITNESS: Max Rothman. Willie Lan-
zetti.

THE COURT: Just a minute. 30

Q. What was that name?

A. Willie Lanzetti.

THE COURT: Rothman—oh, yes, I see it.

LOVELAND: William Lanzetti was the last one.

THE COURT: Yes. Proceed, unless there is an objection after a reasonably short pause.

10 THE WITNESS: Michael Mateo.

MR. CAFIERO: Not on the list.

MR. GREIS: I ask that one be stricken.

MR. LOVELAND: Consented to.

THE COURT: Proceed.

THE WITNESS: Frank Mateo.

20 MR. GREIS: I ask that the name be stricken; not on the list.

MR. LOVELAND: Consented to, your Honor.

THE WITNESS: I can't think of any more right now.

MR. LOVELAND: Cross-examine.

30 CROSS-EXAMINATION

BY MR. GREIS:

Q. When did you last see Max Rothman?

A. About eighteen months ago.

Charles Steinberg—Cross

Q. About eighteen months ago. Have you seen him since that time?

A. I can't say that—I don't recall.

Q. Don't you know for a fact that Herman Rothman is not friendly with any of these men?

A. He was in company—

Q. Just answer that yes or no.

10

A. What was that? How is that question?

Q. Don't you know that Max Rothman is not friendly with any of these men?

A. I don't know him not to be friendly with them. I know him to be friendly with them.

Q. You think he is friendly with them?

A. Yes, sir.

Q. How long ago was that that you know him to be friendly?

A. Since I seen him last, and I have never heard that he was not friendly with them. 20

Q. That is eighteen months ago?

A. I have never heard since that he was not friendly with them.

Q. Do you know anything about his connection with any of these men or with anybody else since that time, since eighteen months ago?

A. Not offhanded, I can't say.

Q. Now you mentioned John Schiavo?

A. Yes, sir.

30

Q. He is the clerk of a court for somebody?

A. That is not the Schiavo.

Q. That is not the one. What one are you talking about?

A. I am speaking of another Schiavo.

Q. John Schiavo, 811 South 11th Street, Philadelphia.

A. The gentleman you are referring to does not live there.

A. I am referring to a John Schiavo with a known criminal record that I know, that lives in
10 South Philadelphia.

Q. Doesn't live at 811 South 11th Street?

A. I can't give you the exact address now.

Q. Well, the John Schiavo at 811 South 11th Street is clerk of Magistrate O'Malley's court?

A. There is a John Schiavo, a clerk, I know.

Q. That is his address, isn't it?

A. Not as far as I know, no, sir. He lives on Franklin Street, as far as I know.

Q. Don't you know he has moved from Frank-
20 lin Street down to 811 South 11th?

A. Didn't know that, no, sir.

Q. Or has moved from this address to Franklin Street, one or the other?

A. The Schiavo I know lives on Franklin Street. I have known him for nine or ten years, and I know him to live down there. No, I wouldn't say that—I have known him six years, anyway, and known him to live on Franklin Street.

Q. Well, is the man that you are speaking
30 about the one who lives now or did live in the past at 811 South 11th Street?

A. I didn't know the exact address where he lived. I knew he lived down in that section.

Q. Is he the same man or isn't he?

A. No, sir, he is not the clerk of the magistrate's court.

Charles Steinberg—Cross

MR. GREIS: If the Court please, I ask that the testimony concerning that witness on this mistaken identification be stricken out, because our list has a name and address that is the name we refer to. Apparently it is some one else of the same name, who is not in our list.

10

THE COURT: What right do you think you have to strike it? You brought out facts stating the address of a John—what is he name?

MR. GREIS: Schiavo.

THE COURT: There is some confusion about the address. I think I will leave the matter stand.

MR. GREIS: Your Honor will allow me an exception. 20

THE COURT: Grant you an exception.

(To which ruling the defendants by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

30

Q. When is the last time before today that you saw these three defendants here?

A. The time of their arrest.

Q. You were here at the time of the arrest?

A. Yes.

Q. When prior to that did you last see them?
That was July 24th, I believe, wasn't it?

A. Yes, sir.

Q. When was the—how long before that?

A. Between then—numerous—Louis I have
seen about three times between the first of the year
10 and then, or latter part of January and then.

Q. Where at?

A. On the street.

Q. Where? What city? What state?

A. In Philadelphia.

Q. Philadelphia, Pennsylvania?

A. I don't recall seeing the other two defend-
ants.

Q. Haven't seen them for how long before—or
had you ever seen them before the day of the
20 arrest?

A. I seen Lanzetti about three or four years
prior to their arrest.

Q. Three or four years prior. Did you ever
see Mickey Britt?

A. I don't recall.

Q. Don't recall ever having seen him? Don't
recall ever having seen him?

A. I wouldn't say—I have seen him but I just
30 can't recall when it were.

MR. GREIS: That is all.

JOHN V. HARDY, called as a witness on behalf of
the State, being sworn, testified as follows:

John V. Hardy—Direct

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Hardy, you are a member of the Philadelphia Police Department?

A. Yes, sir.

Q. Do you know the defendants here?

10

A. Yes, sir.

Q. Do you know the gang called the Lanzetti gang?

A. Some of them, yes, sir.

Q. Are these defendants members of that gang?

A. Yes, sir.

Q. Do you know any other persons who are members of it?

20

A. Yes, sir.

Q. Will you name them?

A. John Amato, Tony Narcise, Frank Mateo.

MR. GREIS: I ask that that name be stricken.

THE COURT: Frank Mateo?

THE WITNESS: Frank Amateo.

MR. LOVELAND: Consented to.

30

A. Felix De Tullio. Mongone Brothers.

MR. GREIS: I ask that be stricken as not within the notice.

MR. LOVELAND: Consented to.

THE WITNESS: Montellis.

MR. GREIS: I ask that be stricken.

MR. LOVELAND: Consented to.

10 THE WITNESS: Di Orio. I know them better by their aliases.

THE COURT: He is not on the list, apparently.

THE WITNESS: Siai.

MR. GREIS: I ask that be stricken.

THE COURT: Which one?

20

MR. GREIS: Siai.

MR. LOVELAND: Consented to.

Q. Do you know any more, Mr. Hardy?

A. Yes, there is a group more that—that is about all I can remember at this point.

MR. LOVELAND: Cross-examine.

30

CROSS-EXAMINATION

BY MR. GREIS:

Q. Now, Mr. Hardy, you are giving us matters that are way back, aren't you?

A. Some are.

John V. Hardy—Cross

Q. Yes. You have mentioned Di Orio. He is a man who was shot and killed in 1933; is that correct?

A. That is right.

Q. And he is still a member of the gang, in your estimation?

A. He was a member.

10

Q. He was a member?

A. Yes, sir.

Q. In other words, all this stuff you are giving us is what existed some time ago; is that correct?

A. Existed during the time that I have seen any of the Lanzettis or their associates with these people whom I have mentioned, anywhere from 1932.

Q. Now, what does membership in a gang mean, in your estimation? The mere fact that they are seen together? Is that right? 20

A. The fact that some are arrested with one another, that they are seen together in different places of—where questionable characters congregate, and their association with one another, from observation.

Q. Association with one another. You mentioned the name Felix Di Tullio?

A. Yes.

30

Q. Where is he?

A. Right now I believe he is in jail.

Q. He is in New Jersey States Prison, isn't he?

A. Yes. I can't say what prison. If you want me to qualify where I have seen him—

Q. Where did you see him last?

A. Seen him at a stand-up.

Q. How long ago?

A. About, possibly a little over two and a half years ago.

Q. A little over two and a half years ago. And
10 he has been in jail since then, has he?

A. That I don't know, because I was other places from then on.

Q. How long has it been since you saw Tony Narcise?

A. About—not quite—maybe two years ago.

Q. Isn't it a fact that he has not associated with these men in probably that full length of time, the last two years?

A. I can't say that he has not associated with
20 them, because he is now a fugitive, and I wouldn't know whether he has associated or not.

Q. How long since—how long before the arrest did you last see Ignatius Lanzetti?

A. About fifteen months ago.

Q. About fifteen months ago?

A. Fifteen or sixteen months ago.

Q. Haven't seen him since about a year and a half ago?

A. No.

Q. Don't know what his activity has been, of
30 your own knowledge.

A. No.

Q. How about Michael Falcone? When had you seen him before last?

A. Maybe about the same time.

John V. Hardy—Re-Direct

Q. About a year and a half ago. How long has it been since you had seen Del Rossi?

A. Falcone I have seen since that. Falcone I have seen less than—less than a year ago.

Q. Less than a year ago. Where did you see him, do you know?

A. Yes. Place where they all used to congregate, Broad and Rodney, where I have seen the rest of them and their associates; Philadelphia. 10

Q. And were you there at the time?

A. Passed by.

Q. Passed by. When had you last seen Del Rossi before the day of the arrest?

A. I guess I haven't seen Del Rossi in a year prior to his arrest.

Q. Not for a year. And the last time you saw these men personally is the last thing you know of your own knowledge about them, isn't it? 20

A. Other than police reports.

Q. Other than police reports.

MR. GREIS: That is all.

RE-DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Just one question. You used an expression, referring to one of these members of the gang—"stand-up". Will you please explain that? 30

A. When the arrest was made in 1934, about Di Tullio—

MR. GREIS: If the Court please, I object to the statement volunteered by the witness, not in response to any question that I asked.

THE COURT: It was direct, in response to your question, as I recall it, Mr. Greis.

10 MR. GREIS: I asked him when he saw him last.

THE COURT: And he told you that he saw him in a stand-up.

MR. GREIS: Yes.

THE COURT: Now the Prosecutor—

20 MR. GREIS: That is where he saw him. But when. I asked him when he saw him.

THE COURT: The question was where. Even so, I don't think there is much distinction.

(The previous testimony was read by the stenographer as follows: "Q. Where did you see him last? A. Seen him at a stand-up.")

30 THE COURT: If that is a correct reply, I will permit the question to be asked of the prosecutor.

THE WITNESS: Di Tullio and Lanzetti and Louis were arrested.

John V. Hardy—Re-Cross

THE COURT: No, that is not responsive. The objection is proper.

THE WITNESS: After an arrest is made—

THE COURT: No. Please answer the question that the Prosecutor has asked.

10

MR. LOVELAND: Read the question.

(The question was read by the stenographer as follows: "Q. You used an expression, referring to one of these members of the gang—"stand-up". Will you please explain that?")

A. A stand-up is that which takes place in the Detective Bureau after the men who are arrested are brought in.

20

MR. LOVELAND: That is all.

RE-CROSS EXAMINATION

BY MR. GREIS:

Q. You mean where they parade them back and forth so that you can identify them?

A. For identification.

30

Q. In your police department?

A. Yes.

Q. They bring the men who are arrested and let the police officers and the detectives look them over?

A. Yes.

MR. GREIS. That is all.

MR. LOVELAND: That is all.

10 GEORGE MUHS, called as a witness on behalf of
the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Muhs, are you a member of the Philadelphia Police Department?

A. I am.

20 Q. How long have you been a member?

A. About twelve years.

Q. Do you know the defendants here?

A. I do.

Q. Do you know the gang called the Lanzetti gang?

A. I do.

Q. Are these defendants members of that gang?

A. They are.

30 Q. Do you know other members of the gang?

A. I do.

Q. Will you please tell us who are?

A. John Amata, Hyman Cohen, Daniel Falcone, Tony Narcese, Max Rothman, Felix DiTullio, and Teo Lanzetti.

George Muhs—Cross

MR. GREIS: That name was objected to, and I ask it be stricken.

MR. LOVELAND: Consented to.

THE WITNESS: Willie Lanzetti, and Pius Lanzetti.

10

MR. LOVELAND: Cross-examine.

CROSS-EXAMINATION

BY MR. GREIS:

Q. Do I understand you to testify that Hyman Cohen—

A. Hyman Cohen.

Q. —is a member of the Lanzetti gang? 20

A. He is friendly with that gang, yes.

Q. He is?

A. He is.

Q. What do you mean, that he is friendly with them?

A. Well, they are all associated together; you see them congregating together at times.

Q. And that in your mind means membership in the gang, does it?

A. Well, they don't have what you call a membership card, but they are congregated together. 30

Q. Are any of these names that you have stated here members of this gang?

A. They are all associates of one another, all work together.

Q. I asked you the word "member". Will you answer that, please?

A. Yes.

Q. They are all members, are they?

A. Yes.

Q. Is Hyman Cohen a member?

10

A. He is.

A. At the present time?

A. Well, can't say right at the present time, no.

Q. When can you say that he was a member of it?

A. Oh, about two years ago.

~~Q. About two years ago?~~

A. Yes.

Q. And you don't know anything about him
20 in the last two years?

A. No, I don't.

Q. Then you qualify your answer to my first question, "Is he a member of the Lanzetti gang?" and you say that he was two years ago; is that right?

A. Yes.

Q. How about Felix DiTullio; when was he a member?

A. Oh, around about two years ago.

30

Q. About two years ago. Since that time he has been in the States Prison, is that right?

A. He is in Trenton prison now.

Q. That is right. Do you know whether going to prison would terminate his membership or not in the gang?

George Muhs—Cross

A. Well, it all depends what you determinate membership.

Q. That is what I want to know. I want you to tell me. Is he a member of the gang if he is in States prison?

A. There is such a thing as helping a man out when he is in prison, yes. 10

Q. And you think he is still a member, is that it?

A. I would say yes.

Q. How about Daniel Falcone?

A. Yes.

Q. Where does he live?

A. Why, he lives around Catharine Street, South Philadelphia, somewhere; I just don't know just the exact place where any of them live, as far as that goes. 20

Q. And what leads you to believe he is a member of this gang?

A. See him associate with them.

Q. When?

A. Friendly with them.

Q. When last?

A. Oh, I haven't seen Daniel Falcone—about two years ago I guess I saw him.

Q. About two years ago. Do you know that Daniel Falcone is a relative of the defendant Michael Falcone? 30

A. His brother.

Q. It is his brother?

A. Yes.

Q. Are you sure of that?

A. Well, I stopped him and asked him, and he said he was his brother; he told me that.

Q. Said he was his brother?

A. That is what I am taking his word for it.

Q. What does he look like?

A. Well, he resembles Mickey Britt to a certain extent.

Q. Looks like Mickey, eh?

A. Yes.

Q. Where is the office of the Philadelphia Police Department?

A. City Hall—well, headquarters, City Hall.

Q. Headquarters in City Hall?

A. Yes.

Q. Would it surprise you if I told you Daniel Falcone is working right there in the City Hall?

A. Not the Falcone that I have reference to.

Q. Not the one you mean?

A. No, sir.

Q. Which one do you mean, then?

A. Well, the Daniel Falcone I am speaking of and classing as Mickey Britt's brother is a fellow hangs in the cigar store at Broad and Rodney at the time I used to go in there and see who was in there.

Q. And how long ago was that?

A. Two years ago.

Q. Two years ago?

A. About two years ago.

Q. There is only one Daniel Falcone, as far as you know?

A. Well, there could be others that I don't know of.

George Muhs—Cross

Q. How long ago did you see Tony Narcise?

A. Oh, better than two years, I guess.

Q. Over two years?

A. Yes.

Q. How long since you saw Max Rotherman?

A. About the same time; around two years

ago.

10

Q. Is that the last personal knowledge that you have concerning these men?

A. Yes.

Q. Outside of the reports by somebody else?
I mean your own personal knowledge, what has come to your personal attention.

A. What I have seen myself.

Q. Yes.

A. Yes.

Q. And that is the last?

20

A. Yes.

Q. When did you last see Ignatius Lanzetti before today or before the time of the arrest?

A. About a year ago.

Q. About a year ago?

A. About a year ago.

Q. And when did you last see Mickey Britt and Michael Falcone?

A. I haven't seen him in about eighteen months, I guess.

30

Q. Eighteen months. And how long since you saw Del Rossi before the time of this arrest?

A. About the same—last time I seen him. Del Rossi and Mickey Britt were together.

Q. About a year?

A. It is about a year ago; around in there.

Q. You said you did not know Daniel Falcone's address, did you?

A. No, I don't. I don't know any of these addresses, I see.

MR. GREIS: That is all.

10

JAMES HAMILTON, called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Hamilton, you are a member of the Wildwood Police Department?

20

A. Yes, sir.

Q. I ask you whether you have seen either of these defendants during the present summer?

A. These two gentlemen to my left I have, and I won't say about the Lanzetti boy, but I did see one of his brothers.

Q. Do you know when that was?

A. 12th of July, in the morning hour, and on the 19th of July this year.

30

MR. LOVELAND: Cross-examine.

CROSS-EXAMINATION

BY MR. GREIS:

Q. Which one did you see on the 12th, do you remember, Officer?

James W. Tracy, Jr.—Direct

A. Both of these gentlemen here.

Q. Where were they?

A. In the Victory Cafe at Montgomery and Park Boulevard.

Q. That is what kind of a place; restaurant?

A. That is a saloon. Tap room, as you call it.

Q. Tap room.

10

A. Cafe.

Q. Where did you see them on July 19th?

A. Same particular place.

Q. Same place. Both of those days were on a Sunday, weren't they?

A. I believe that would be Sunday morning. No, one date wasn't, I believe. Yes, they were both Sunday morning, I am pretty sure.

MR. GREIS: That is all.

20

JAMES W. TRACEY, JR., called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

30

Q. Mr. Tracey, you live in Philadelphia?

A. I do.

Q. Are you an Assistant District Attorney up there?

A. I am.

MR. LOVELAND: If the Court please I think that possibly the defense is going—I will make a statement here and see if they admit it. It is incumbent on the state to prove that these three convictions against these defendants were crimes in the State of Pennsylvania. If there is no objection, that
10 is all.

MR. GREIS: We will admit they were.

THE COURT: Each of the three records against each of the defendants with respect to crimes or charge indicated in those records.

MR. GREIS: That they were crimes in the State of Pennsylvania, yes.

20

FRANCES HARRISON, called as a witness on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOVELAND:

- 30 Q. Mrs. Harrison, where do you live?
 A. In the winter I am 107 East Crocus Road.
 Q. And during the summer time?
 A. 310 East Pine Avenue.
 Q. This summer did you rent 107 East Crocus Road to Andred Lanza?
 A. I did. Well, I didn't rent it. My real estate agent rented it. I had nothing to do with it.

Frances Harrison—Direct

Q. I see. Did you sign this lease?

A. I did.

Q. Is that your signature?

A. Yes, sir.

Q. And that calls for premises 107 Crocus
Road?

A. Yes, sir.

10

Q. Who was your agent, Mrs. Harrison?

A. Why, Mr. Richmond.

Q. And is he a real estate agent down in the
Crest?

A. Yes, sir.

MR. LOVELAND: Cross-examine.

MR. GREIS: No questions.

20

MR. LOVELAND: Now, the Court please, I have a witness on the way here from Wildwood at the present time. The State is ready to close except for this one witness. It is twenty minutes of four now.

THE COURT: Now I will make the announcement that all witnesses who have been subpoenaed for the defense in this case appear tomorrow morning at ten o'clock.

30

Do you want any announcement concerning your State witnesses?

MR. LOVELAND: No.

MR. GREIS: If the Court please, I have a request to make of the Court. There are three names that have been mentioned in this list that was served upon us and which have been testified to here by witnesses today as members in this gang, Louis Campbell, Felix DiTullio and John Zukorsky, all three of whom are confined to the penitentiary. Now, it is within the power of the Prosecutor to bring those witnesses here, and it is not within the power of the defense. And we respectfully request the Court to direct the production of those three witnesses who are, under the oaths of the various police officers, sworn to be members of this gang.

THE COURT: How are you going to do that in the trial, Mr. Greis? Are they listed in your bill of particulars?

MR. GREIS: They are listed in the bill of particulars.

THE COURT: Yes. Shouldn't you have made your request sooner? You knew that they were going to be talked about here.

MR. GREIS: We didn't know that they were not going to be here until today. We now know that the State is about to close the case without producing them. That is the first that we know.

THE COURT: Wasn't it your duty to look into that to see either they were going to be produced, or call it to the attention sooner? We can't stop trials.

MR. GREIS: We are not asking that the trial be stopped at all. There will be no difficulty or trouble. This case will go over until tomorrow. There will be no difficulty and no trouble, I believe, in the State producing these witnesses tomorrow. And I call the Court's attention that it is the duty of the Prosecuting Attorney to call all available witnesses and the Courts have so held repeatedly. 10

THE COURT: Let's see your case.

MR. GREIS: Whether those witnesses be for him or against him.

THE COURT: Have you a case?

MR. GREIS: 145 Atlantic, 761, is the case I have. 20

MR. LOVELAND: What is the nature of the citation? Is that a New Jersey citation?

MR. GREIS: No, that is not a New Jersey case.

THE COURT: The State's case is not closed now, and it will not be until tomorrow, and if the State thinks it is necessary they will have them. I will not tonight direct. I may later, if it is necessary. 30

MR. GREIS: I again call attention to the fact that it is impossible for the defense. We have taken this list, these names and addresses, and are

producing or will produce in the defense as many of them as it is possible for us to get and find. Here are three that are within the State's power to produce and are not within ours by any process or subpoena or anything else other than by an order of this Court, and that is what I respectfully request. I have not interviewed these people. I don't know
10 any more what they would testify to than the Prosecutor. They are mentioned as members of the gang. I think they are necessary witnesses. It is in the notice served on us.

THE COURT: What about all the other members named in the gang? Have you them here?

MR. GREIS: We have a lot of them, yes, sir.
20 Some of them that are electrocuted or dead, and one in the insane asylum, of course we have not been able to produce.

THE COURT: Naturally not. Any further instructions for the witnesses by either side? Court will stand adjourned today—

MR. GREIS: Does your Honor deny my request?
30

THE COURT: I think I completed what I had to say that I would not do anything tonight about it. The State has not closed its case yet; probably won't until tomorrow. I don't know when.

Now, ladies and gentlemen of the jury, there

has been a request, and counsel on both sides have consented to sequester—that is, keep confined the jury during the entire trial. Of course, in homicide cases it is obligatory upon the part of the Court to keep you separate and apart from everybody and every influence. In a case of this class it is not necessary. It is not—it would not be unlawful to let you go. As a matter of fact, the usual practice is to let you go home at night. 10

Now, this case apparently is of such importance and it has taken so much time, witnesses have come from a distance, that we don't want anything to happen, we want to complete this trial, and I am going to ask you—practically I will have to make it in the form of an order that you be kept together tonight. Now, there will be no more inconvenience about that as far as you are concerned than I can possibly help. I realize that there might be some inconvenience to some of you. You will be placed comfortably in the hotel here. If we cannot get immediate accommodations, we will see to it that you are placed comfortably in some other town. Your officers will be in charge of you. You will be given an opportunity now to communicate with your families or friends by phone, in charge of an officer, and if any members of your family desire to come here, or any exchanges, or anything of that kind, we will see that that is arranged for. The purpose for which you are doing this is that you will be protected and that you will not have anyone speak to you about this case, or that you will not discuss it in any way, that you will not—I particularly ask you 20 30

not to read any newspapers that would have any reports—any reports—some of them may have—a good many may have—you are asked not to read newspapers tonight at all. In other words, we are doing everything we can to preserve your present state of mind in connection with this case in order
10 that you may come back here tomorrow morning and have exactly the same state of mind concerning it that you now have. And the officers will show you every courtesy, and I will admonish you again not to talk to anybody about this case at all, even though you might have an opportunity at your hotel or wherever you may be placed. Keep clear of everyone, and discuss the subject as little as possible—practically shouldn't discuss it at all between
20 yourselves, because you are not ready for discussion. There is a defense yet to go in, and some more of the State's case. There will be a question that will be presented to you that when you deliberate will be time enough to discuss the case.

Now, if there is anything that anyone wants, if you will let me know we will arrange for it—perhaps you better just remain seated in the box until the rest of the court room is cleared—and the officers can carry such messages as you want between
30 yourselves and myself.

Now court is dismissed.

(Adjournment taken until Tuesday, September 15th, 1936.)

Richmond N. Richmond—Direct

Cape May Court House, N. J.

Tuesday, September 15, 1936.

Trial Continued.

RICHMOND N. RICHMOND, called as a witness on behalf of the State, being sworn, testified as follows: 10

DIRECT EXAMINATION

BY MR. LOVELAND:

Q. Mr. Richmond, where do you live?

A. 122 East Buttercup, Wildwood Crest, New Jersey.

Q. And you were living there on the 20th of June of this year? 20

A. Yes, sir.

Q. What is your business?

A. Real estate agent.

Q. I show you this paper and ask you what it purports to be?

A. It is a lease for the rental of the property.

Q. For what property?

A. 107 East Crocus.

Q. 107 East Crocus Road. Is this your signature here? 30

A. That is my signature.

Q. Were you present when Frances Harrison signed this instrument?

A. Yes.

Q. Were you present when Andrew Lanza signed this instrument?

A. Yes.

Q. I ask you whether or not the person who signed this instrument was Andrew Lanza is the person in court today?

10 A. Yes.

Q. Can you point him out?

A. Yes.

Q. Where is he?

A. This gentleman here.

Q. And were the terms of the lease complied with?

A. Complied with, yes, sir.

Q. And you act as agent for this Mrs. Frances Harrison?

20 A. I do.

MR. LOVELAND: I offer it.

MR. GREIS: May I ask the purpose or the materiality?

THE COURT: Yes, you may ask it.

30 MR. LOVELAND: If the Court please, the State's opening was that the State would show that the defendant, Ignatius Lanzetti, rented this property on a certain day under an assumed name, and that is what the State intends to prove, according to its opening of the case.

MR. GREIS: Now, if the Court please, if that

Richmond N. Richmond—Direct

is the purpose, I object to it upon the ground that it is incompetent, irrelevant and immaterial.

THE COURT: You mean the actual putting in evidence of the lease itself, or are you attacking the testimony that has already been adduced?

MR. GREIS: All of the testimony with relation to it. 10

THE COURT: I think I will permit it to stand as it is. If you are objecting to the actual marking of the lease in evidence, I will hear you on that. I will direct the testimony stand at this point, however.

MR. GREIS: You are leaving the rest of the testimony stand? 20

THE COURT: Yes.

MR. GREIS: And your Honor will allow me an exception.

THE COURT: It will be granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly. 30

PALMER M. WAY (Seal)
P. J.

(The lease offered is received in evidence and marked Exhibit S-5.)

Q. To clear up that point, I wish you would come down and point to the man that you rented that property to.

A. This man here.

Q. The man sitting next to Mr. Greis?

A. Yes.

10

MR. LOVELAND: Cross-examine.

MR. GREIS: No questions.

MR. LOVELAND: If the Court please, the State rests.

20 MR. GREIS: I wish to move at this time for a direction of verdict for the defendants. Does your Honor wish to hear it in the presence of the jury?

THE COURT: You want to present your argument on your motion at this time, Mr. Greis?

MR. GREIS: Yes, sir.

30 THE COURT: I think perhaps we had better hear that at side bar or in chambers. If counsel will agree to that I think we should do that.

MR. LOVELAND: Either way is satisfactory.

THE COURT: I think I shall hear it in chambers.

Defendant's Motions

Then we will recess for the length of time required to hear this motion—let us say to be back here in fifteen minutes. Now, the officers will note that period of time; that will be twenty-five minutes of eleven, and have the jurors all back in the box at that time—however long a time is required.

(In Chambers)

10

MR. GREIS: Now, if the Court please, I move for the direction of a verdict of acquittal for each of the three defendants, on the following grounds:

First, that in the indictment itself no act is alleged to have been committed that controverts any penal statute of the State of New Jersey.

Second, that the indictment fails to charge a crime, fails to set forth the date, place or tribunal of any alleged conviction in the State of Pennsylvania or elsewhere, and that the indictment is otherwise vague, uncertain and indefinite.

20

THE COURT: Is that all under number two, Mr. Greis?

MR. GREIS: Yes.

30

Third, that the charge laid under the indictment and, in fact, the indictment itself under which the charge is brought, violates Article IV, Section 2 of the Federal Constitution, to the effect that citizens of each state shall be entitled all the privileges and immunities of citizens of the several states.

(Discussion off the record.)

THE COURT: You might put in the record that I have asked Mr. Greis to state each reason separately and upon the statement of the reason argument will be immediately had and disposed of as we proceed. Then, of course, you will have a
10 right to go back over your ground.

MR. GREIS: In the three reasons that I have already stated.

THE COURT: Not only these three reasons, but any number of reasons that you have assigned.

MR. GREIS: In that case, if your Honor please, I will argue the second reason that I assigned.
20 I won't argue the first because the Court, as a matter of fact, has ruled upon each of these several reasons in the motion to quash before the plea, and overruled them.

On the second reason assigned, that is, that the indictment fails to charge a crime, I would like also to add that I question and suggest to the Court that it has no jurisdiction, and in my argument I will show your Honor what that is based on.

30

This indictment charges, after naming the parties, at the Borough of Wildwood Crest, on the 12th, 16th, 19th and 24th days of July, 1936, and within the jurisdiction of the court, they and each of them not being engaged in any lawful occupation, they

Defendant's Motions

and all of them known to be members of a gang consisting of two or more persons, they and each of them having been convicted of a crime in the State of Pennsylvania, are hereby declared to be gangsters.

Arguing together the question of the indictment itself as charging a crime and the question of the Court's jurisdiction, it is an absolute proposition of law and of statutory construction that a statute must charge acts that are committed within the jurisdiction of the Court. In other words, we know the well-settled rule that a crime committed in some other county aside from the County of Cape May, or in some other state, is cognizable under the government in that jurisdiction. For instance, if it were committed in Gloucester County, it would be charged and it would be tried there, and the Court in this county would have no jurisdiction. Likewise, if the matter were something arising in the State of Pennsylvania, that is a sovereign state, with jurisdiction and courts of its own, and with laws of its own, and we have no jurisdiction over matters not committed or charged within our own county.

The indictment, as a matter of fact, does charge that on these dates these set of circumstances or status of the defendants existed. But it charges no overt act of any kind or description having been committed within the jurisdiction of the court. In other words, a crime, as to all law up to the passage of this statute has always construed it, is the doing

or not doing of some particular act. In other words, it is an act of omission or commission. But here is an attempt made by statute under the fourth section of his so-called gangster act of 1934, Chapter 155, to make a person in a given status a criminal, chargeable under this act, indictable and punishable by a
10 fine of \$10,000 or twenty years in states prison, or both.

Now, if your Honor please, at a very early date our courts held, and held very decisively, in the case of State against Carter, 27 Law, 499, in an opinion by Justice Vredenburg, of the Supreme Court of this State, the salient part of which is on page 501:

20 “If the acts charged in this indictment be criminal in New Jersey, it must be either by force of some statute or upon general principles. There is no statute, unless it be the act to be found in Nixon’s Digest 184, Section 3. But this evidently relates to murder only, and not to manslaughter.

30 “But I cannot make myself believe that the legislature, in that act, intended to embrace cases where the injury was inflicted within a foreign jurisdiction, without any act done by the defendant within our own. Such an enactment, upon general principles, would necessarily be void; it would give the courts of this state jurisdiction over all the subjects of all the governments of the earth, with power to try and punish them, if they could by force or fraud get possession of their persons in all cases where personal injuries are followed by death.”

Defendant's Motions

And concluding the opinion, the Justice says:

“It is said that if we do not take jurisdiction, the defendant will go unpunished, inasmuch as the party injured not dying in New York, he could not be guilty of murder there. But New York may provide by law for such cases, and if she does not, it is their fault, and not ours. The act done is against their sovereignty, and if she does not choose to avenge it, it is not for us to step in and do it for them. 10

“I think that the Oyer and Terminer should be advised that no crime against this state is charged in the indictment.”

Now, I base the motion for direction on that ground, on the jurisdictional ground, upon the fact that each of the state's witnesses upon cross-examination have admitted that they know nothing of the defendants, of their personal knowledge, and, in fact, have not seen them for anywhere from nine months, eighteen months, two years, up to ten or twelve years, in each case, against each of the defendants, in the evidence of each of the Prosecutor's witnesses produced against these defendants. That is prior to the date of the arrest, and the date of the arrest, of course, the 24th of July, is one of the dates charged in the indictment, and the other dates being the 12th, 16th and 19th of the same month. In other words, there is before this court at the present time no evidence of any witness on the part of the State charging these defendants with 20 30

even the matters contained in the statute, which I say is not a crime and does not constitute a crime, but even the proof is lacking that any of this condition existed closer than nine months. The one witness that came closest to these dates was the witness Captain Ryan, whose testimony was nine months, and his time was the shortest. Every other witness gives a longer and further date in front of or before the dates charged in the indictment.

Under those circumstances, it seems to me that the Court not only should direct this verdict upon the ground that the State has failed to prove its case in that particular, but upon the additional ground that no charge as made in the indictment and during the periods covered in the indictment have been proven before the Court by any witness for the State.

MR. LOVELAND: If the Court please, the State asks that the motion be dismissed. The overt act set forth in the statute is membership in the gang. The State has proven the existence of the gang as stated by the defense in the City of Philadelphia, and the State has proved the existence of the gang at the present time. There is testimony to the effect that they were present, and the testimony is all the items in the indictment have been proved, that they were within the jurisdiction of this court. It has been so testified by several different witnesses. Ruggerio and Kelly and Ryan and Hamilton, all of them testified of the presence of these persons, and the entire line of State's witnesses have

Defendant's Motions

said that the defendants are members of the gang and continue so to be.

THE COURT: Without any further comment on my part, I will deny your motion, Mr. Greis, on that reason.

MR. GREIS: Your Honor will allow me the customary exception? 10

THE COURT: It will be granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

PALMER M. WAY (Seal)
P. J.

20

MR. GREIS: I would like to add the further comment upon that same subject, that we suggest that the existence of a gang, what was meant by a gang, what constitutes a gang, was not proven by the State, what kind of gang or what—just what they meant. They merely made the blanket statement that they were members of a gang, which I think is not sufficient proof of its existence.

THE COURT: Now, I assume that you make that statement in order that your record concerning your thoughts might be complete on this point. 30

MR. GREIS: Yes.

THE COURT: And that you probably desire

a re-statement of my ruling in order to have your exception cover that.

MR. GREIS: That is correct.

10 THE COURT: Very well, you will be permitted an exception, as my ruling will be the same, and is the same.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

20 MR. GREIS: I have already stated under the third reason, the constitutional ground, which I again reiterate to the Court. That is, that it violates the provision that citizens of each state shall be entitled to the privileges and immunities of the citizens of the several states. That point was argued to your Honor in the motion to quash, and I here repeat it, with the same line of reasoning.

30 THE COURT: Do you desire a ruling on that point at this time?

MR. GREIS: Yes.

THE COURT: Well, I will deny your motion.

(To which ruling the defendants, by their coun-

Defendant's Motions

sel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

PALMER M. WAY (Seal)
P. J.

MR. GREIS: I further move, your Honor for a direction of a verdict upon each of the several constitutional grounds that were named and argued in the motion to quash, namely, that the state violates—the statute and the indictment under it violate the Thirteenth Amendment of the United States Constitution providing against servitude; and the Fourteenth Amendment to the Federal Constitution which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States or of any state, deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

And also under Article I, Section 1 of the New Jersey Constitution, which provides natural and unalienable rights of enjoying and defending life and liberty, acquiring, possession and protecting property, and pursuing and obtaining safety and happiness.

And also that it is a violation of the New Jersey Constitution, Article I, Section 18, providing that people have the right freely to assemble together, to consult for the common good.

And also that it violates Article IV, Section 7, paragraph 3, of the State Constitution in New Jer-

sey, which provides that the Legislature shall not pass any bill of attainder or ex post facto law.

And also that it violates Article IV, Section 7, paragraph 4, of the New Jersey State Constitution, that every law shall embrace but one object and that shall be expressed in the title, et cetera.

10 I think that is all, if your Honor please.

THE COURT: I will deny your motion on those grounds, Mr. Greis, and your exception will be noted, of course.

MR. GREIS: Yes.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

(In open court.)

MR. GREIS: The defense will call Daniel Falcone.

30 DANIEL FALCONE, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS:

Daniel Falcone—Direct

Q. What is your full name?

A. Daniel Falcone.

Q. Where do you live, Mr. Falcone?

A. 1813 South Mole Street, Philadelphia.

Q. Do you know the address 1740 South 16th Street?

A. I used to live there some years ago. 10

Q. What is your business?

A. I am employed now by the Department of Revenue, Commonwealth of Pennsylvania.

Q. With your office where?

A. I am stationed in the Recorder of Deeds' office in Philadelphia, in the City Hall.

Q. How long have you been there?

A. I was put on the pay roll March 2nd, 1936.

Q. Prior to that where were you employed?

A. Why, at the time we was on the relief, right before. 20

Q. You were on relief?

A. Almost one year.

Q. What other employment did you hold prior to that?

A. Well, my father was a special officer for some thirty years, and he has been on the job, and it came to a time I always was with him, and he applied for private detective license.

Q. Were you employed by him? 30

A. I was always with my father, doing little odds and ends with him. Then he became very ill. At my request I told him to get out of it and that I would see that I would try to get a job.

Q. Did you get jobs after that?

A. That is when I come along—we were put on the relief, and then I got this job.

Q. Were you employed in the Philadelphia Navy Yard?

A. Yes, sir.

Q. When?

10 A. That would be around 1924, something like it, to the best of my knowledge. I am trying to help you out.

Q. Where else?

A. I worked B. & O. Railroad, 38th and Jackson Street, in the round house, as a machinist helper; Victor Talking Machine, woodworker's helper; Curtis Publishing, machinist's helper; as a temporary clerk in the County Commissioner's office in the City Hall, 1930.

20 Q. Are you a member of the Lanzetti firm?

A. That is not true. I am a member of the family. I am cousin through marriage, that is all.

Q. Who married your cousin?

A. William Lanzetti.

Q. Have you ever had any close associations or business dealings—

A. Never had nothing to do with them.

Q. —with any of the Lanzettis?

30 A. No, sir.

MR. GREIS: That is all. Cross-examine.

CROSS-EXAMINATION

BY MR. LOVELAND:

Daniel Falcone—Cross

Q. You were never a member of the Lanzetti gang?

A. Never.

Q. What were you doing on March 14th, 1929?

A. 1929? That is—I can't remember.

Q. Were you in court on that day?

A. I don't remember.

10

Q. Don't remember?

A. No, sir.

Q. Have you ever been in court?

MR. GREIS: That is objected to; not proper cross-examination.

THE COURT: I think it is. You have asked about—in your direct examination, if he was a member of the Lanzetti gang. Now I am going to let the Prosecutor follow into it on cross-examination.

20

MR. GREIS: As to his ever having been in court? I don't see the connection.

THE COURT: Well, if there is not any connection, I will strike it, Mr. Greis.

MR. GREIS: Your Honor will allow me an exception.

THE COURT: Granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

30

PALMER M. WAY (Seal)
P. J.

A. Maybe I can help you out; if I can recall,

it was a violation of liquor. It was about seven years—if that is what you recall.

Q. You were convicted of selling liquor?

A. I pleaded guilty and was put on a year probation.

Q. Who was convicted with you?

10 A. That is all; alone.

Q. Who else was arrested with you?

A. That is all.

Q. Wasn't John Amato arrested with you?

A. What is the name?

Q. John Amato.

A. No, sir.

Q. You were alone when this happened?

A. I was.

Q. You were alone when this happened?

20 A. Yes, sir.

Q. Whom were you working for?

A. Well, I went in there at the time to get a soda, and they come in and locked me up.

Q. You were in a drug store and got a soda?

A. No, I went to look for a job that morning, and got off at 12th Street, and went in this place and tried to get a soda, when these officers come in and locked me up.

30 Q. Got arrested for getting a soda?

A. I went in, thought I could get a soda.

Q. And you got arrested for that?

A. These people come in and locked me up.

Q. What did you plead guilty for?

A. Well, they pinned everything on me.

Q. This soda business?

Daniel Falcone—Cross

A. Said I was the proprietor, and it was not the truth.

Q. Pinned everything on you?

A. That is right.

Q. You went in to a place to get a soda and you plead guilty because they pinned everything on you; is that your story? 10

A. That is right.

Q. How long have you known these Lanzettis?

A. How long?

Q. Yes.

A. Well, this is the first time I ever knowed them, when William Lanzetti married my cousin.

Q. How long ago was that?

A. Well, I was—maybe four or five years, if I can remember well.

Q. You never associated with them or never had anything to do with them? 20

A. No, sir. I always tried to make a nice living.

Q. Always made a nice living?

A. Tried to make a nice living, a good effort.

Q. And the only time you got in trouble, you went to some place to get a soda and the cops pinned something on you?

A. That was the only thing that was against me, other than being taken in some house, but always being discharged in front of the magistrate. 30

Q. What do you mean, taken?

A. I was pinched one time with my cousin Michael.

Q. Michael who?

A. Michael Falcone.

Q. This defendant here?

A. That is my cousin. In a drug store, drinking a soda, when these people came in and locked us up, and in the morning we were discharged in front of the magistrate.

10 Q. When was that?

A. That was 1934, if I can remember.

Q. So you have associated with Falcone, your cousin?

A. Well, my cousin, yes, we always were together, because he always tried to ask to get him employment, and I always made a good effort.

Q. Now, you have associated with John Amato?

A. No, I never did.

20 Q. Do you know him?

A. I have seen him around, but I never had nothing to do with that fellow.

Q. How about Amato—you know who he is, don't you?

A. No, I don't. I have seen him around, but I never had nothing to do with them fellows.

Q. Why not?

A. Why should I, when—I don't know what them fellows are.

30 Q. You don't know? You associate with your cousin, Falcone, do you?

A. Well, he is no criminal.

Q. He is not?

A. As far as I am concerned. He always

Daniel Falcone—Cross

asked me for employment, and I always tried to follow it up, to try to get him a job.

Q. He is not any criminal?

A. As far as I am concerned, he always made an effort to come to me and try to ask for a job, and I tried to help him.

Q. Suppose I told you that your cousin committed murder, would you still say he was not any criminal? 10

MR. GREIS: That is objected to.

THE COURT: What is your ground?

MR. GREIS: It is an argumentative question.

THE COURT: Well, question sustained. 20

MR. GREIS: Your Honor will allow me an exception?

THE COURT: It will be granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal) 30
P. J.

Q. Who is John Amato?

A. I don't have nothing to do with them people.

MR. GREIS: I object to the question, that the witness has answered three or four times the questions that the Prosecutor has asked about this particular person. They have been answered freely, fully and frankly, that the man never had anything to do with him, didn't know anything except the man by
10 sight, and the pressing of this question can be for no other purpose than to prejudice the mind of the jury.

THE COURT: Do you insist on the question?

MR. LOVELAND: No; I withdraw the question.

Q. I want you to tell me, Falcone, whether or
20 not you were ever arrested in company with John Amato?

MR. GREIS: Objected to, if the Court please, upon the same grounds.

THE COURT: The question will be answered.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

30

PALMER M. WAY (Seal)
P. J.

A. At the time me and Michael was in the drug store he was already in there and they had took him in also.

Thomas Descano—Direct

Q. So they did take him in? Now, who is he, do you know?

A. I have seen him around, but I never had nothing to do with that fellow, I never asked him his business, who he was and what he done.

Q. Do you know whom he works for?

A. I do not.

10

Q. I ask you whether or not you have ever seen him driving the Lanzetti cars?

A. I never got around there much to see anything. I always tried to tell you I tried to make an honest living and tried to work. My record calls for that; I think it does.

MR. LOVELAND: That is all.

MR. GREIS: That is all.

20

THOMAS DESCANO, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS:

Q. Where do you live, Mr. Descano?

30

A. 1401 South Broad Street.

Q. What is your business?

A. Real estate.

Q. How long have you been in business there?

A. Twenty-five years.

Q. Do you know Daniel Falcone, the witness who preceded you?

A. Yes.

Q. How long have you known him?

A. Why, I know the family for forty years.

Q. Do you know anything about this young
10 man's reputation?

MR. LOVELAND: If the Court please, I am going to object.

THE COURT: Don't answer that.

MR. LOVELAND: I don't understand the purpose of this examination. They call a witness; now they call another witness to build up their own
20 witness. I don't see the purpose of it. I would like to know what the witness—

THE COURT: Is this a character witness for one of your witnesses?

MR. GREIS: Yes.

MR. LOVELAND: Character witness for one of his own witnesses.

30

MR. GREIS: And for a witness that is charged by the prosecution in his bill of particulars with being a member of the gang or supposed gang that the defendants are members of. And the cross-examination of the prosecutor of that witness as to other members who are named in here was of such a

class and character that I feel I am permitted to right an injustice both to that young man who has, as he testifies, a reputable employment, to show to the jury whether the suggestions—mere suggestions brought out in the Prosecutor's questions are proper or improper.

MR. LOVELAND: If the Court please, the defendants in criminal proceedings, their character is always a subject of proof. Now here is a witness who takes the stand. He is not on trial. If that was the situation this thing would be an endless parade, where somebody comes on the stand and makes some statement, then there would be a lot of people come along and say, "Well, he has always been all right, his character is good"—that is, I don't want to restrict the defense, but I don't see the purpose. 10 20

THE COURT: Well, Mr. Prosecutor, I will not permit any endless parade, but I will permit him to answer.

(The question was read by the stenographer as follows: "Do you know anything about this young man's reputation?")

A. Yes, sir.

Q. What is it?

A. Very good. Been in a little bit of trouble—I mean small things; nothing to it. But I met him mostly every two or three days, he would come in the office or I would go to his home, because I know 30

his father and all his brothers, the whole family.

Q. Is he known as being a member of a gang or anything of that sort?

A. Never heard of it.

MR. GREIS: That is all.

10

CROSS-EXAMINATION

BY MR. LOVELAND:

Q. That is, small things to you—you would say possession of liquor and conviction thereunder is a small matter?

A. Well, there has been so much of that going about, I didn't think much of it.

20 Q. You just don't pay much attention to those small things?

A. No.

MR. LOVELAND: That is all.

HYMAN COHEN, called as a witness on behalf of the defense, being sworn, testified as follows:

30

DIRECT EXAMINATION

BY MR. GREIS:

Q. Where do you live, Mr. Cohen?

A. 2429 Oakford Street, in Philadelphia.

Hyman Cohen—Direct

Q. Do you know the address 2728 Titian Street?

A. Yes, sir.

Q. Where is that?

A. That is just about one, two, three blocks from where I live now.

Q. Did you ever live there? 10

A. Yes, sir, for eight years.

Q. Are you a member of a Lanzetti gang?

A. No, sir. No member of any gang.

Q. Have you ever been?

A. No, sir.

Q. Have you been convicted of crime?

A. Yes, sir.

Q. What was that?

A. Illegal sale and possession of drugs.

Q. And was that along with this defendant, Ignatius Lanzetti? 20

A. Yes, sir.

Q. Were you a witness in that case?

A. Yes, sir.

Q. For whom?

A. For the City of Philadelphia.

Q. For the State of Pennsylvania, in the prosecution?

A. Yes, sir. 30

Q. Testified against these boys?

A. Yes, sir.

Q. And they were convicted?

A. Yes, sir.

Q. And how long ago was that?

A. Thirteen years ago.

Q. What is your employment?

A. I am a truck driver today.

Q. How long have you been a truck driver?

A. For eleven years.

Q. Whom have you worked for during that period of time?

10 A. My first position was with the Star Transport Company. Second position was for myself for five years. My third position, for Hunt's Motor Freight, for four years. And in the last six years I have held two positions, one due to a loss of contract and the firm that took the contract over re-employed me right over again. In other words, I held my same job under two different employers.

Q. Have you been a truck driver continuously for the last eleven years?

20 A. Yes, sir.

Q. And haven't been out of employment?

A. Well, I have been out of employment.

Q. Much time, I mean?

A. Maybe my last job I was out for four days, and when I gave up my own business I think I was out for about a week or so.

Q. But for no considerable length of time?

A. No; no length of time whatsoever.

30 Q. Did you ever live in this vicinity?

A. Yes, I lived here in Wildwood.

Q. How long ago?

A. Right before—about a month before I was arrested I came up here. About thirteen years ago, thirteen and a half years ago. I helped to grade some of the streets in North Wildwood.

Hyman Cohen—Direct

Q. You graded some of the streets in Wild-wood?

A. Yes, sir; I was a resident of North Wild-wood.

Q. Since the conviction that you have mentioned, have you ever associated with any of the Lanzettis?

10

A. No, sir.

Q. Ever been in any transactions of any kind or description with them?

A. No, sir.

Q. Or have you had contact or dealings of any kind or description with Michael Falcone?

A. I don't know him.

Q. Louis Del Rossi?

A. Don't know him.

Q. Pius or William Lanzetti?

20

A. No dealings whatsoever with him.

Q. Louis Campbell?

A. I don't know him.

Q. Antonio Di Orio?

A. I never heard that name before.

Q. Felix Di Tullio?

A. I don't know him.

Q. John Zokowsky?

A. I don't know him, either.

Q. Daniel Falcone?

30

A. I don't know him.

Q. John Amato?

A. I don't know him.

Q. Jack Silver or Max Roth?

A. Don't know him.

Q. John Schiavo?

A. Well, I know John Schiavo, but I have never had any dealings with him.

Q. You do know John Schiavo?

A. Yes, sir.

Q. Who is he?

A. Today he is a clerk in a court of the magis-
10 trate.

Q. Have you ever had any dealings with Tony
Narcise?

A. I don't know him.

Q. You are mentioned in this bill of particu-
lars as being a member of the Lanzetti gang. Is
that true or not true?

A. That is untrue. I am no member of any
gang.

Q. You are married are you?

A. Yes, sir.

Q. Have children?

A. Two. Girl thirteen yesterday.

MR. GREIS: Cross-examine.

CROSS-EXAMINATION

BY MR. LOVELAND:

Q. You were only convicted once?

A. I was arrested twice, and I was sentenced
30 to prison on one term. They brought me out of
prison and convicted me again. That is two sen-
tences at the same time.

Q. Now you say you do know John Schiavo?

A. Yes, sir.

Hyman Cohen—Cross

Q. He was arrested with you, wasn't he?

A. I don't recall any John Schiavo being arrested with me.

Q. Are you sure he was not arrested at the same time?

A. I am most positive he was not.

Q. How about Frank Pius Lanzetti? 10

A. Not arrested with me. I don't know Frank Pius.

Q. You know Frank Pius Lanzetti?

A. I know Pius Lanzetti. I don't know Frank Pius.

Q. Did you ever hear Ignatius called by that name?

A. Ignatius? Yes, I always called him Ignatius.

Q. Didn't you ever know that he went under the name Frank Pius, too? 20

A. No, sir, I did not.

Q. You say you were arrested alone the times you were?

A. Yes, I was arrested alone.

Q. Wasn't anyone mixed up in it besides you?

A. No.

Q. Do you know Henry Philips?

A. Yes.

Q. Now, do you know Frank Crisconi? 30

A. Frank Crisconi?

Q. Yes.

A. Yes, I know him.

Q. Now, do you know George Tuarto?

A. No, sir.

Q. Gurato?

A. No, sir.

Q. Probably you know him under a different name. Do you know George Quarta?

A. Yes, I know him.

10 Q. Now, you say they were not mixed up in this drug business the same time you were?

A. They weren't arrested with me. They were arrested and taken to the station house. But they wasn't arrested with me. I was arrested with me. They arrested me personally myself. They came up and picked me up. They didn't arrest any one at the time.

Q. Where were you, 11 Catherine, when you were arrested?

A. No, sir; 11th and Ellsworth.

20 Q. Eleventh and Ellsworth. Now, did they bring the other men in later, do you know?

A. They brought them in there. I don't know whether they brought them down behind me, or when. But I don't think they arrested them at the same time they arrested me. If I recall right, they whisked me right away from there.

Q. That was 11th and Ellsworth. And you were arrested 11 Catherine, too?

A. No.

30 Q. Where were you arrested the other time?

A. Eleventh and South.

Q. And were these men that we have talked about mixed up with that deal?

A. I don't know whether they arrested them the first time or the second time.

Hyman Cohen—Cross

Q. It was one of the times, wasn't it?

A. They arrested those men. Not with me.

Q. Do you know five of them that I called off?

A. I wouldn't call them by their names personally, and if I saw them—

Q. If you saw them?

A. Probably would.

10

MR. GREIS: Now, if the Court please, I object to this line of questioning, for the reason that the Prosecutor is attempting to prove on cross-examination from this witness the names of a least three persons who are in this list—properly in the list of—that was served upon the defense, but which he had not proven in the direct examination and in his primary case. In other words, he is using the ruse of merely asking whether this man knows the name, in order to help his main case, after his case is closed, and I think it is entirely improper and I ask it be stricken. 20

MR. LOVELAND: If the Court please, I think I should have latitude to find out if there is any association. Here is a man comes in here and says he is not a member, doesn't know anything about this thing. Then a list of names is called off and he is asked if he knows them. He doesn't know them. Then I ask him and he says he knows them. 30

MR. GREIS: I object. And the situation particularly I wish to call the Court's attention to is that I have checked each name on the list as we went along as to what the Prosecutor offered in his prim-

ary case, and he closed his case. Then he brings the name of Henry Philips, which he served on us, but offered no proof of it by any witness on the stand. And the same is true of George Quarto and Frank Crisconi. I think it is entirely unfair and improper.

10

THE COURT: Of course you will have to show that they were connected—attempt to show they were connected with this gang that has been indicated in the testimony. The only possible way you could use it, Mr. Prosecutor, is not for the purpose to show that this gang—I don't see how you can pursue this line.

20

MR. GREIS: This all dates back—if the Court will have the time fixed—to a matter of ten or twelve years ago, and I think it is highly improper in this case, anyhow. The only reason I carried this man back to the time of his conviction is to show he has been gainfully employed practically every day of his life since that conviction.

30

THE COURT: That is only in the direct testimony, and he made the general statement he is not a member of this gang that has been indicated, nor any other gang.

MR. GREIS: That is right.

THE COURT: And if these are questions concerning the existence of any of the gang that has

Hyman Cohen—Cross

been referred to by the witness on direct, it might be relevant.

MR. GREIS: Even though it be ten or twelve years ago?

THE COURT: The time should be definitely stated, no doubt about that, and fixed, in order to make it proper examination, because neither the jury nor counsel nor I nor the defendants can say anything about what the remarks might be. Tie it up. 10

MR. LOVELAND: Yes.

Q. I ask you whether—Mr. Cohen, whether you knew George Quarto, Henry Philips, Frank Crisconi and John Schiavo in 1923? 20

A. Yes.

MR. GREIS: That is objected to as irrelevant and immaterial, whether he knew them in 1923. Can have no part in this case. That is a matter of thirteen years ago.

THE COURT: Well, maybe it could, Mr. Greis. Cross-examination. I am going to permit the question. 30

MR. GREIS: Your Honor will allow me an exception.

THE COURT: All right.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

10 MR. LOVELAND: I think he has cleared it up now. He says he knew them, so it is not necessary for me to show the pictures. That is all.

RE-DIRECT EXAMINATION

BY MR. GREIS:

Q. How many years ago is it since these arrests?

20 A. Over thirteen years.

Q. Yes. You said you know Frank Crisconi?

A. Yes.

Q. And do you know where he is now?

A. No, sir.

Q. Did you ever know that he was in the hospital for the insane?

A. No, sir, I did not.

Q. Did not. How long since you have seen him?

30 A. I guess about thirteen years ago.

Q. Thirteen years ago. How long since you have seen Henry Philips?

A. I saw him about the same time that I was arrested.

Q. About thirteen years ago?

Hyman Cohen—Re-Direct

A. Yes, sir.

Q. And how about John Quarto or Quarta?

A. I guess he was there with him, if they said so. I don't know who was there.

Q. Are you sure whether they were there or not.

A. No, I am not sure whether they were there 10
or not.

Q. It is only because these names have been mentioned to you as probably run off of some police blotter; is that right?

A. That is right. I know there was some one arrested with me, but I don't just recall the names of them right now.

THE COURT: Mr. Greis, before you call your next witness, you will recall that last evening as we 20
closed our session, you had a motion pending concerning the direction to the Prosecutor to produce certain witnesses that might be wanted by you and under the custody of the State. In chambers we discussed the matter further, and you there stated you would withdraw your request.

MR. GREIS: That is correct.

THE COURT: Now I think, in order to have 30
our record so that it read properly, in the event it is necessary to read it, we should have your formal withdrawal of that.

MR. GREIS: I do, if the Court please, withdraw that request, believing that the testimony as

offered not being within a period of two years or more, in each of these cases, it will not be entirely necessary or essential.

EDWARD HUNT, called as a witness on behalf of
10 the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS:

Q. What is your full name, Mr. Hunt?

A. Edward Hunt.

Q. What is your business?

A. I am in the trucking business. If it pleases
20 your Honor, might I say something before I am examined. The only thing I know about this case, your Honor—

THE COURT: No. Please be seated and answer the questions that are directed to you by counsel.

Q. I only want to know whether you know the witness Hyman Cohen who just preceded you.

A. Yes, sir.

Q. How long have you known him?
30

A. About seven or eight years.

Q. Has he been employed by you?

A. Four years.

Q. How long ago was that?

A. He was employed by me till April past,
last April.

Edward Hunt—Cross *Pius Lanzetti—Direct*

Q. Last April. In what capacity?

A. Truck driver.

Q. Do you know what he is doing now?

A. I believe he is employed—in fact, I know he is employed by another trucking concern.

Q. You know he is driving a truck?

A. Yes, sir.

10

Q. Satisfactory worker in every way?

A. Four years we had him he was very good. We never had any complaint.

MR. GREIS: That is all.

CROSS-EXAMINATION

BY MR. LOVELAND:

Q. Where do you live?

A. 2631 Snyder.

20

MR. LOVELAND: That is all.

PIUS LANZETTI, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS:

30

Q. Mr. Lanzetti, are you a member of a Lanzetti gang?

A. No, sir.

Q. Is your name Lanzetti?

A. Yes, sir.

- Q. What relation are you to Ignatius?
 A. Brother.
- Q. Is there a gang in Philadelphia known as the Lanzetti gang?
 A. No, sir.
- 10 Q. Do you know Michael Falcone?
 A. I know Michael, yes, sir.
 Q. Has he ever been associated with you or with your brothers?
 A. No, sir.
 Q. In any business dealings or any other kind of transactions?
 A. No, sir.
 Q. Do you know Louis Del Rossi?
 A. Yes, sir.
 Q. The defendant here?
 20 A. Yes, sir.
 Q. Has he ever been associated with you in any business dealings or transactions?
 A. No; no, sir.
 Q. Do you know Louis Campbell?
 A. No, sir.
 Q. Don't know him?
 A. No, sir.
 Q. Do you know Antonio Di Orio?
 A. No, sir.
 30 Q. Did you ever know him?
 A. No, sir.
 Q. Do you know Felix Di Tullio?
 A. No, sir.
 Q. Did you ever confederate with any of the following men in—as a gang or anything of that sort: John Zokowsky?

Pius Lanzetti—Direct

A. No, sir.

Q. Henry Philips?

A. I know Philips.

Q. You know him?

A. Yes, I know Philips.

Q. Did you ever confederate with him?

A. No, sir.

10

Q. Ever been a member of a gang with him?

A. No, sir.

Q. How about Daniel Falcone?

A. I know Daniel in the same manner that I know Michael.

Q. Did you ever confederate with him?

A. No, sir.

Q. Or were you members in any gang together?

A. No, sir.

20

Q. Do you know Hyman Cohen?

A. Yes, sir.

Q. How long ago did you know him?

A. About thirteen or fourteen or fifteen years ago.

Q. Have you ever had any business transactions or anything of that sort with him since that time?

A. No, sir.

Q. Were you convicted of a crime?

30

A. Yes, sir.

Q. What was it?

A. Drugs.

Q. At the same time that your brother Ignatius was convicted?

A. That is right.

Q. And was Mr. Cohen a witness against you?

A. Yes, sir.

THE COURT: What was the charge?

10 MR. GREIS: Drugs.

Q. How many years ago was that?

A. Well, it has been about thirteen years ago.
The amount of years is correct.

THE COURT: Can the members of the jury
hear this witness? Everybody?

JURORS: Very faint.

20 THE COURT: If you have any difficulty, let
me know and I will have him speak louder. All right;
proceed.

MR. GREIS: That is all.

CROSS-EXAMINATION

BY MR. LOVELAND:

30 Q. Your first conviction was unlawful posses-
sion and sale of narcotic drugs?

A. That is right.

Q. And about the time that Detective Ritson
was shot, were you convicted there?

MR. GREIS: Objected to. This man is not

on trial. He is a witness. Improper question, improperly put.

THE COURT: Objection sustained.

Q. I ask you whether or not on April 7th, 1927, you were convicted, aggravated assault and battery with intent to kill, and carrying concealed deadly revolver? 10

A. Yes, sir.

Q. Now, you say you know Louis Del Rossi?

A. Yes, sir.

Q. And do you know Anthony Narcise?

A. Yes, sir.

Q. There is not any doubt that you know these—

A. Yes, sir, I know him. 20

Q. You were arrested with him, weren't you?

A. Yes, sir.

Q. How about John Amato?

A. I know John Amato.

Q. Did he work for you?

A. Until about some time back.

Q. Some time back?

A. Yes, sir.

Q. When was that some time back?

A. About six months ago. 30

Q. How long?

A. About nine months ago.

Q. Where is he now?

A. I don't know.

Q. How long did he work for you?

A. About a year.

Q. What did he do?

A. He drove around; drove me around.

Q. Drove you around?

A. Yes.

10 Q. What is your business?

MR. GREIS: That is objected to; not proper cross-examination.

THE COURT: I will allow the question.

MR. GREIS: Your Honor will allow me an exception.

20 THE COURT: Granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

A. Fertilizer. I am in the fertilizer business.

Q. Fertilizer?

30 A. Yes, sir.

Q. Where is your place of business? Now, you know where your place of business is, don't you?

A. I do know.

Q. Let's have it.

Pius Lanzetti—Cross

MR. GREIS: That is objected to, on the same ground.

THE COURT: Objection overruled.

MR. GREIS: Your Honor will allow me an exception.

10

THE COURT: Granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)
P. J.

A. I won't be in business any more.

20

MR. KAGLE: Pardon me?

THE WITNESS: I won't be in business any more.

MR. GREIS: If the Court please, I would like a conference with the Court and Prosecutor at side bar before the witness is compelled to answer this question.

30

THE COURT: All right. I will hear you.

(The attorneys and the Court confer at the bench.)

Q. I ask you, Lanzetti, whether you were ever arrested with Crisconi?

MR. GREIS: That is objected to, if the Court please. Arrests are not a matter of proper evidence. It is not proper cross-examination.

10 MR. LOVELAND: If the Court please, that is, Crisconi is one of those mentioned in the bill of particulars, and I am going—asking if he knows all these persons, and it would seem to be evidential as to the intimate acquaintanceship existing between these different parties. That all goes to the root of the question.

20 THE COURT: Has the testimony disclosed—I have forgotten for the moment—as to whether this defendant knew the party that you have just asked about?

MR. LOVELAND: I don't think so.

THE COURT: I will sustain the objection, then.

30 Q. I will ask you whether you know Frank Crisconi?

A. Yes, sir.

Q. How long have you known him?

A. Thirteen years back; fourteen or fifteen years back. Around the Hyman Cohen incident, it was around that time that I knew and met him.

Pius Lanzetti—Cross

Q. Now, I ask you whether or not you were ever arrested with him?

MR. GREIS: That is objected to, if the Court please. Too far removed. Too remote. Irrelevant and immaterial to the questions at issue.

THE COURT: I will allow the question. 10

MR. GREIS: Your Honor will allow me an exception.

THE COURT: Granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly. 20

PALMER M. WAY (Seal)
P. J.

A. Was I ever arrested with Crisconi? I really don't know whether I have been arrested with Crisconi. I don't remember whether I have been arrested with Crisconi.

Q. You don't recall?

A. No.

Q. You don't remember being arrested on May 4th, 1923, at 11th and Catharine Street in the City of Philadelphia? 30

A. I may have, but I don't remember.

Q. You say you are not a member of the Lanzetti gang?

A. Well, I am a member of the family.

Q. Are you the older brother?

A. Yes, sir.

MR. LOVELAND: That is all.

10 RE-DIRECT EXAMINATION

BY MR GREIS:

Q. Just one minute. Do you know where Frank Crisconi is now?

A. No, sir, I do not.

Q. Do you know whether or not he has been in Byberry Hospital for the Insane?

A. I can't say, Mr. Greis.

20 Q. You don't know.

A. I really don't know.

DOMINIC FALCONE, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

30 BY MR. GREIS:

Q. Where do you live, Dominic?

A. 731 South 12th Street, Philadelphia.

Q. And are you related to the defendant, Michael Falcone?

A. Yes, sir; my brother.

Dominic Falcone—Direct

Q. Where are you employed?

A. Philadelphia Record, Philadelphia.

Q. Where does your brother live?

A. 731 South 12th Street.

Q. At the same place you do?

A. Yes, sir.

Q. Do you know how long he has been living there? 10

A. Well, he has been with us—I have been living there eighteen years, and he has been with us for nine years.

Q. That is, when he was in prison?

A. Yes, sir.

Q. Has he been home ever since he came out of there?

A. Yes, sir.

Q. Who else lives at the same address with you? 20

A. Well, we have brothers and sisters, and father and mother; seventeen of us in the family.

Q. Seventeen in the family?

A. Yes, sir.

Q. And you all live at the same address?

A. Yes, sir.

Q. Was your brother Michael employed?

A. At the present time he was. 30

Q. He was?

A. Yes, sir.

Q. What efforts had he made, if you know, to get employment?

A. Well, he has tried to get a referee's license. He has been on the relief and I have helped him

plenty times. I have went out with him, kept him company; he has been a very good boy.

Q. You have been working yourself, have you?

A. Yes, sir.

Q. Where are you employed?

A. With the Philadelphia Record.

10 Q. With the Philadelphia Record?

A. Yes, sir.

Q. What line of work did your brother used to do?

A. He was a bricklayer.

Q. And what else? Used to be a boxer, didn't he?

A. Yes, sir, he used to be, five years ago.

Q. And when you speak of a referee's license, what do you mean?

20 A. Well, he tried to get a license so he could work as a referee in a boxing ring.

Q. In a boxing ring and sporting events?

A. Yes, sir.

Q. Whom did he make that application to?

A. He tried to get our ward leader, and there were so many ahead of him that he would have to wait a while before he could get the license.

30 Q. Do you know whether or not your brother made application to the WPA for employment?

A. Yes, sir.

Q. (Showing card to witness) I show you this card and ask you what that is?

A. That is Michael's card. Fifteenth and Cherry. Here is a letter from our doctor, reference

Dominic Falcone—Direct

of our family; and here is a letter from relief, one of the boys.

Q. Is this the card that he used to call at the relief for the job; is that correct?

A. Yes, sir.

MR. GREIS: I offer it. 10

THE COURT: It may be marked.

(The card offered is received in evidence and marked Exhibit D-1.)

Q. Since your brother was—first, your brother was on parole, wasn't he?

A. Yes, sir.

Q. From his former conviction? 20

A. Yes, sir.

Q. How long ago was that?

A. I believe about five years ago.

Q. He is still on that parole?

A. Yes, sir.

Q. Has he ever been up for any violations of that parole?

A. No, sir, he has always been a good boy.

Q. That is for the last five years?

A. Yes, sir. 30

MR. GREIS: That is all. Cross-examine.

CROSS-EXAMINATION

BY MR. LOVELAND:

Q. Falcone, do you work in the evenings?

A. Yes, sir; night work.

10 Q. You don't know what your brother is doing during that time you are working, do you?

A. Well, when I come home he is in bed. Sometimes I have day work, sometimes I have night work. It is a shift job; see, shift all the time.

Q. Do you know whether on June 17th, 1935, he was arrested with John Amato?

A. Well, he was pinched, I knew he was pinched that day, but he didn't do nothing. Just he was suspected, something like that. They let him go.

20 Q. On May 21st, 1936, do you know whether he was down in Atlantic City?

A. Yes, sir, he might have been down there. I can't follow him. I have to work.

Q. Do you know whether he was arrested or not down there?

A. I believe he was arrested.

Q. Do you know what the sentence was?

MR. GREIS: That is objected to.

30 THE COURT: If he knows, all right.

MR. GREIS: He was not there.

THE COURT: If he knows. If he doesn't know—

Thomas Paul—Direct

THE WITNESS: Don't know.

MR. GREIS: That is all.

THE WITNESS: Your Honor, may I make a statement to what the Prosecutor said about my brother?

10

THE COURT: No question pending, unless counsel wants to direct something.

THE WITNESS: Yes, sir, you see, a while ago—

MR. LOVELAND: No question.

MR. GREIS: That is all.

20

THE WITNESS: Yes, but he said something against my brother.

MR. KAGLE: Come down for a minute.

THOMAS PAUL, called as a witness on behalf of the defense, being sworn, testified as follows:

30

DIRECT EXAMINATION

BY MR. GREIS:

Q. You live in Philadelphia, Mr. Paul?

A. Yes, sir.

Q. What is your business?

A. Antiques and books.

THE COURT: What is the business?

THE WITNESS: Antiques and books.

10 Q. How many years have you been in that business?

A. Three years.

Q. Who was associated with you in that business, if anybody?

A. Ignatius Lanzetti.

Q. Is he a partner of yours in the business?

A. He is a partner of mine, he helped to finance the enterprise that I entered, eighteen months ago.

20 Q. Does he, when in the City of Philadelphia, take an active part in that business?

A. Only in the sense, counsellor, that I tried to interest him in it, to try to teach him the business, thinking he had sufficient intelligence.

Q. Has he, when he was there, taken—

A. Yes, sir, on numerous—with me—when he was there he has gone to public and private sales with me.

30 Q. Did he do that up until the time he came to Wildwood?

A. Yes, sir.

Q. What sales did he attend with you?

A. On several—

Q. Where, I mean?

A. Sir?

Thomas Paul—Direct

Q. Just where?

A. I had him in about half a dozen sales, at Samuel Freeman's, 808 Chestnut Street, a few sales at Novack's, Eighteenth and Locust.

Q. They are what, where you purchased your merchandise?

A. Public auction houses. 10

Q. Where you purchase your merchandise?

A. Yes, sir, which is only one source of purchasing merchandise.

Q. And then you sell that merchandise also?

A. Not all of it.

Q. Have a large stock of it, do you?

A. I would like to give my story. just as I should.

Q. No; just answer my question.

A. I sell only the merchandise which I think 20
could bring us a little profit. The good merchandise I keep.

Q. How much stock do you have on hand?

A. At the present time, between books, valuable books, and valuable fine antiques, we have a stock, I will judge, at store prices, will bring around up to ten thousand dollars.

Q. And what is the interest of Mr. Lanzetti in that business with you? How much; what percentage? 30

A. A half; fifty per cent.

MR. GREIS: Cross-examine.

CROSS-EXAMINATION

BY MR. LOVELAND:

Q. Where is this place of business, Mr. Paul?

A. I keep all my merchandise in my private
10 home, 1202 Master Street, Philadelphia.

Q. Just in your private home. You have buyers come to your home?

A. I do, yes, sir.

Q. How long have you been in business?

A. I have been in business about three years, since the fore part of 1933.

Q. What was your business before then?

A. Working for Mr. Lumpkin, at the Terminal
Commerce Building; furniture.

20 Q. How long ago did this business start between you and Mr. Lanzetti?

A. About eighteen months ago.

Q. About?

A. Yes.

Q. Can you tell me when it was?

A. I will say around the month of April, 1935, was when I first made my approach for financial assistance.

Q. Did you go to Mr. Lanzetti?

30 A. I went first to Pius Lanzetti, who rejected the proposition. He recommended that I go to Ignatius Lanzetti and make him familiar with my proposition, which I thought was a fine thing, one to build up a business for the future. It still has proven so.

MR. GREIS. That is all. You have answered the question.

Q. How much money did Ignatius put up?

A. Between sixteen and seventeen hundred dollars.

Q. Between sixteen and seventeen hundred dollars. And that was April? 10

A. No; at different periods when I needed money I went to him and he gave me money or advanced me money to do business with.

Q. This was a partnership or a corporation, or what was it?

A. A partnership, just between him and I, with a view of opening up a store in the future.

Q. Did you have a partnership agreement drawn up? 20

A. I did not, sir.

Q. How long have you known the Lanzettis?

A. All my life.

Q. This is the first time you have ever done any business with them?

A. Absolutely.

Q. And that seventeen hundred dollars now has grown to five thousand?

A. That seventeen hundred dollars, with the money I invested has grown to a capital stock at store prices when we open up our store to the amount of ten thousand dollars, in good, fine, easily sold merchandise. 30

Q. Is this the first time Ignatius Lanzetti has been in the antique business?

A. To my knowledge, yes, sir. He knew nothing about it when I first took hold of him.

Q. He didn't know anything about the business?

A. No sir. He knows not quite so much yet, but I have hopes that he will.

10 Q. Now, he comes around to your—around to the place of business every day?

A. No; he follows me around to numerous sales.

Q. He follows you around to numerous sales?

A. Yes, sir, and I try to make him familiar with purchasing and with antiques in general.

Q. And during this year and a half, how much time has he spent in your home, in your place of business, would you say?

20 A. I will say in my home he has come in to look over merchandise as I brought it in; whenever I brought in a fine lot of merchandise I would consult with him and ask him to come and look it over, which he did so. He has been to my home so many times, I can't help you.

Q. He was in this business and had his money invested, so he was around quite often?

A. I thought it was only fair to show him the business.

30 Q. Is he taking hold of the business and learning all about it?

A. I won't say he is learning all about it. Takes more than eighteen months to learn the antique business. I haven't learned it thoroughly myself, and I have been at it three years. I studied twenty-four hours a day.

Thomas Paul—Cross

Q. Twenty-four hours a day?

A. I have often studied twenty-four hours a day, stayed over night and lost sleep in order to learn my business.

Q. Are they in the loaning business or banking business?

A. I know nothing else about them. 10

Q. You don't know what kind of business they are in?

A. I do not, sir.

Q. How could it be that if you didn't know anything about them, that you would think they had the money to loan?

A. About eighteen months ago I met Pius Lanzetti on the street, and he greeted me with a familiar greeting as though he knew I was in the antique business. He said, "How is the antiques business?" 20
I said, "I am suffering with a lack of money. If I had money, I could make good money in the future. I have ambition to open up a store of my own, which I can do eventually. I am capable to deal in my line of business, I know I am efficient and a good worker, and if I had money to finance myself with, I could make something out of this thing." And he said, "Tommy", he said, "You come see me in a couple of days." Which he rejected it. He then referred me to Ignatius. He thought it would be an interesting thing to take hold of. I said, "You need not look for immediate returns because you have to build up, but it is a good thing for the future;" 30
which it has proven to be. It was the only thing, you could build, and I have built it.

Q. Is it paying a dividend?

10 A. It is paying me sufficient that I haven't had to go to him for money for a long period of time; I have been using that same money, relying on making little profits and still accumulating fine merchandise. In every day of my life I get fine merchandise, whether in books or fine china and porcelain, and antiques. There is not a day I don't purchase something of that sort and put in our stock.

Q. Have you rendered an account?

A. I have all the records, every purchase with the exception of some I have lost, and private sales all through Pennsylvania and New Jersey, which I am ready to produce, every purchase and every sale.

20 Q. Have you rendered any statement to Lanzetti?

A. I didn't find it necessary. He trusted me implicit. He said to me, "Tommy, you can juggle this money just as you see fit, I have full confidence in you, and as long as you can show me merchandise and show me you are doing the right thing you need not make account to me." So I didn't. If I had to take him on an account basis I wouldn't take him because, after all, I had the ability.

30 Q. You had the ability and he has the money?

A. I don't know how much he had, but he had enough to help me.

Q. And that makes the partnership?

A. Yes, sir.

Q. And it is very successful?

A. I have found it so.

Thomas Paul—Re-Direct

Q. You said you didn't have anything in writing about this, didn't you?

A. Excepting that in one book I made some notation of money that he loaned me from time to time. I have the book at present with me.

Q. Do you have a bank account?

A. Well, no, I don't have a bank account. 10

Q. Doesn't this firm have a bank account?

A. I have had a bank account in Gimbel's and one or two other places, but I couldn't accumulate sufficient money to carry a large bank account, because all the money was required to buy every day, business every day.

Q. Then the firm doesn't have any bank account? You just take care of it yourself?

A. I do, sir. As my return comes in each week I manipulate the money, I handle, to see fit. That is, I use my particular judgment in the matter, since he agreed to do that. 20

Q. And you don't know anything more about Ignatius other than he just loaned you this money; you don't know what business or anything like that?

A. No, sir, I don't.

MR. LOVELAND: That is all.

RE-DIRECT EXAMINATION 30

BY MR. GREIS:

Q. How long have you known the Lanzetti family?

A. Since we were children together. My sis-

ter and his sister Jennie were quite companionable in the early days. Since we were very young.

Q. You live in this same section in Philadelphia?

A. Yes, sir, in the same section.

Q. Known the boys all your life?

10 A. I have known them all my life.

MR. GREIS: That is all.

THOMAS SHEA, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

20 BY MR. GREIS:

Q. Where do you live, Mr. Shea?

A. 2231 South Roselyn Street.

Q. What city?

A. Philadelphia.

Q. Do you know the defendant here, Ignatius Lanzetti?

A. I do.

Q. Were you in business with him?

30 A. In the distributing of beer right after beer became legalized in Philadelphia.

Q. Well, for whom or for what beer?

A. You have a card there. The Lance Distributing Company.

Q. That was the name of your concern?

Thomas Shea—Direct

A. But I held the license.

Q. Whose beer were you selling?

A. Trainer Beer Company.

Q. How long did that business continue?

A. I will say six or seven months.

Q. It is not in existence now, is it?

A. No.

10

Q. What was the respective interest of yourself and Lanzetti?

A. What do you mean?

Q. What share did you have in the business?

A. We each had even money up; he had so much up and I had so much up.

Q. Fifty-fifty?

A. Yes.

Q. Why did you go out of business?

A. An official of the brewery sent for me one Monday, I believe, and told me that while I was in with him I couldn't get any more beer, and that the police—not the police of Philadelphia, but I think it was Inspector Driscoll at that time—

20

Q. Yes; police inspector?

A. —says that they—

MR. LOVELAND: I object to what some policeman said.

Q. You were compelled, however, to go out of business, were you not?

30

A. Yes.

Q. Did the police interfere in the business—Philadelphia police?

A. No, but it was just Inspector Driscoll at

that time that had charge of South Philadelphia division.

Q. He is a police officer, isn't he?

A. He was inspector of police at that time.

Q. What did he do?

A. He went to the brewery and told them that
10 they were—

MR. LOVELAND: I object.

THE COURT: Yes.

MR. GREIS: That is all right.

THE COURT: What do you mean by "all right"?

20 MR. GREIS: I don't care to have it answered.
Cross-examine.

CROSS-EXAMINATION

BY MR. LOVELAND:

Q. How long have you known Lanzetti?

A. Right after the repeal of beer.

Q. Didn't know him before?

30 A. No.

Q. Didn't know what business he was in at
that time?

A. No.

Q. Had anything to do with him since?

A. This is the first time I have seen him since
we split.

Pasquale Lettieri—Direct

Q. How much time did Lanzetti devote to that business?

A. How much time? He was there every morning. If they wanted forty halves of beer he was there to see the kegs came in, and empties came in, and I took the money up every day to settle.

Q. Did you have that partnership agreement? 10

A. No, we put four hundred dollars apiece in.

Q. Didn't have any papers in connection with it?

A. No; we settled up every day.

MR. LOVELAND: That is all.

PASQUALE LETTIERI, called as a witness on behalf of the defense, being sworn, testified as follows: 20

DIRECT EXAMINATION

BY MR. GREIS:

Q. Mr. Lettieri, where are you living now?

A. 814 South 7th Street.

Q. What business are you in?

A. Bottle business. Now I got a little place in Atlantic City. Then I was in the bottle business. 30

Q. Not so fast. You have a little place, little hotel in Atlantic City?

A. Yes, sir, in Atlantic City.

Q. How long have you been in Atlantic City?

A. About three months; three months and a half.

Q. What was the name of the bottle business you say you were in?

A. New York Bottle Supply.

Q. New York Bottle Supply. Where did it do
10 business—where was the place of business?

A. 801 South 6th Street, in Philadelphia.

Q. How long was that company in business?

A. About five years; five years and a half, something like this, five to six.

Q. Do you still have part of the stock of the business?

A. Yes, sir.

Q. Have you closed the store?

A. That is one year I closed the store; more
20 than one year—I think that is about fifteen months.

Q. Do you still sell bottles?

A. I got a few more bottles. Have still few more bottle.

Q. Did you have any partners in that business?

A. Yes, sir.

Q. Who was your partner?

A. Ignatius Lanzetti.

Q. That is the defendant Ignatius Lanzetti,
30 sitting here?

A. Yes, sir.

Q. How long was he a partner in your bottle business?

A. I think about '30, '31, like this, I think; '31; about 1931.

Q. For how long did he stay in it?

Pasquale Lettieri—Cross

A. Just—I got a few more bottle. By the time I sell, I give what belong to him.

Q. He is still a part owner of the bottles that you have on hand?

A. Yes, sir.

Q. Continued from 1930 or 1931, right on down to date?

10

A. Yes, sir.

Q. The business make money?

A. Well, not so—it is done now. Before it would be all right.

MR. GREIS: That is all. Cross-examine.

CROSS-EXAMINATION

BY MR. LOVELAND:

20

Q. How long have you known the Lanzettis?

A. About five or six years. My family know the Lanzetti about thirty years ago; my wife know, my mother-in-law knew the Lanzetti about thirty years ago.

Q. Did you ever have any business with them before this time?

A. No.

Q. Was this a partnership?

30

A. Yes, sir.

Q. Was it—have any papers in connection with it?

A. No.

Q. Just cash basis?

A. Yes, sir. That is about fifteen months ago.

I know I through everything, because I got no more stock. I got a few more bottles. By the time I sell, I give whatever I could to him, that is all.

MR. LOVELAND: That is all.

10 MR. GREIS: That is all.

THE COURT: It is so close to the recess that I think we will arrange for that now. I don't know I need to give the jury any further instructions. Remember what I said before. Constables will take care of the jury. Keep them together, of course. You will bring them back at one-thirty, just an hour from now. Everybody remain seated in the court room until the jury pass out of the room.

20

(Recess taken until 1:30 o'clock P. M.)

(AFTER RECESS 1:30 o'clock P. M.)

MR. GREIS: James C. Haines.

JAMES C. HAINES, called as a witness on behalf
30 of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS:

Q. Mr. Haines, where do you live?

James C. Haines—Direct

A. 425 East Emerald Avenue, Westmont, New Jersey.

Q. Where are you employed?

A. Samuel T. Freeman & Company, auctioneers.

Q. In what capacity?

A. I have charge of the basement. 10

Q. Have you ever seen any of these three defendants?

A. Seen this gentleman right here.

Q. Indicating the defendant, Ignatius Lanzetti?

A. I don't know his name, but I think it is Lanzetti, though I couldn't say Ignatius or what it is.

Q. When did you meet him before?

A. Never saw him before when Mr. Paul brought him into Freeman's one time and introduced me to him as his partner. 20

Q. Mr. Paul brought him in Freeman's?

A. Yes, sir.

Q. And introduced him?

A. And introduced him as his partner.

Q. How many times after that did you see the two of them in company at Freeman's?

A. Oh, I couldn't say. Maybe about four to six times.

Q. He and Mr. Paul, when they were together, were doing business in Freeman's were they? 30

A. The first time I got introduced to this man here, Mr. Paul brought him in, and he says, "I want you to meet my partner." I am so busy at work, I congratulate him and everything, and went on with

my work. And then Mr. Paul goes around the place and looks over things, that is all I remember that day. And the same thing any other time he come in there, Mr. Paul and he was looking at anything, if Mr. Paul seen anything he would like to buy, he would say, "If any time I am not at the sale, will you buy it for me, and leave the price?"

10 Q. How long ago was this when you were introduced to his partner?

A. I couldn't say exactly. Maybe about a year ago, something like that there.

Q. About a year ago?

A. About a year ago, I would say.

MR. GREIS: That is all. Cross-examine.

20 MR. LOVELAND: No questions.

THOMAS J. MURPHY, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS:

30

Q. Where do you live, Mr. Murphy?

A. I live 2242 South Hicks Street.

Q. In Philadelphia?

A. Yes, sir.

Q. What is your employment?

Thomas J. Murphy—Direct

A. I am employed by W. Wilcox, who has an office in the Samuel T. Freeman Company's building?

Q. What is the business of Wilcox?

A. Moving and hauling.

Q. Have you ever met any of these three defendants? 10

A. I was introduced to one of them.

Q. Which one?

A. Mr. Lanzetti.

Q. By whom?

A. By Mr. Paul.

Q. In what connection? What was said at the time of the introduction?

A. There was a sale going on one day, and Mr. Paul and Mr. Lanzetti were at the sale, and Mr. Paul introduced Mr. Lanzetti to me and says, "Partner". 20

Q. How long ago was that?

A. I would say somewhere in the neighborhood of nine months ago.

Q. And how often have you seen them together at your office or at Freeman's since that time?

A. I would say in the neighborhood of half a dozen times.

Q. Did you do the hauling for Paul and Lanzetti? 30

A. Yes, sir.

Q. Took care of the hauling—took care of hauling the goods which they purchased?

A. Yes, sir.

MR. GREIS: That is all.

CROSS-EXAMINATION

BY MR. LOVELAND:

- 10 Q. Did you see them purchase any?
 A. I saw Mr. Paul buy goods at the auction sale.
 Q. Whose name did he buy them in, do you know?
 A. Under his own name.

MR. LOVELAND: That is all.

-
- 20 ROBERT PRITSKER, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS:

- Q. Where do you live, Mr. Pritsker?
 A. 530 South Street.
 Q. And what is your business?
 30 A. Wholesale jeweler.
 Q. Ever have any business dealing with the defendant Ignatius Lanzetti?
 A. Yes, sir.
 Q. In what connection?

Robert Pritsker—Direct

A. Well, in 1932—the end of 1932 I went in business, in the cafe business for the Plantation.

Q. Where was that located?

A. 507 South Broad. I think it is that—503, possibly.

Q. South Broad Street in Philadelphia?

A. Yes, sir.

10

Q. And what was the connection with Mr. Lanzetti?

A. Well, I ran into some financial difficulties in the early part of 1933 and I was looking for a prospective buyer, and naturally when you look for a buyer you tell people to look around and see if they can get me one. He was introduced to me by a friend of mine, I think it is Jaffey, if I can recall, and he said he would be interested in it, and he gave me—we needed a certain amount of money to continue business, so he immediately advanced five hundred dollars, for the continuation of the business, and to pay me five hundred dollars subsequently. And for his investment he was to remain in the place with me to watch to see that everything was along.

20

Q. Was he a partner in the business?

A. He was buying my interest, yes.

Q. And you both stayed there, did you, until the balance of the consideration was paid?

30

A. We both, yes. He supervised, I gave him over the duties that I had, and I remained in the premises along with him.

Q. What did he do in connection with the business? What part of it?

A. Well, he did what I was supposed to do. He was to take care of the waiters and the cloak room and restaurant end of the thing.

Q. Was he here as an occupation—was that his business at that time?

A. Yes.

10 Q. How many hours a day did he spend there?

A. Well, usually a couple of hours during the day time, and say around from seven-thirty to four or three-thirty every evening.

Q. Every evening?

A. Yes, sir.

Q. How long did that business continue?

A. Well, it continued a long time. I don't know how long it continued. The only thing is, I stepped out just before the summer began.

20 Q. He stayed in the business after you went out?

A. Yes.

Q. He bought your interest out?

A. That is right.

MR. GREIS: That is all. Cross-examine.

CROSS-EXAMINATION

30 BY MR. LOVELAND:

Q. When was this and how long did it continue?

A. When was what?

Q. When did this business transaction take place?

A. In the early part of 1933.

Robert Pritsker—Cross

Q. Was that when he became your partner?

A. In—I would say yes.

Q. Under what name did you do business?

A. Plantation.

Q. Plantation. What was it, a cabaret?

A. A—sort of, yes.

Q. Sort of. Was it a club? 10

A. Well, what do you mean by a club?

Q. Was it a restaurant and—

A. Restaurant and entertainment and a dance.

Q. And a bar?

A. No.

Q. Didn't sell any drinks in this place, did you?

A. No, sir, not while I was there.

Q. What time was this?

A. '33. 20

Q. 1933?

A. Yes, sir.

Q. Didn't sell any drinks there?

A. He sold—sure, he sold ginger ales and everything else, and made up—well, if anybody wanted like a grenadine drink they took grenadine and put it in with ginger ale or White Rock; but no liquors.

Q. Just grenadine, and no liquors?

A. Beers. 30

Q. Sold beer?

A. Yes, sir.

Q. How long had you known Lanzetti?

A. Well, from the time he was introduced to me as a buyer until the time I left; and of course I know him now.

Q. As a buyer. He eventually bought you out, is that it?

A. That is it.

Q. When he loaned you money did he come to you and offer to loan you money?

A. He didn't loan me money.

10 Q. He didn't loan you money?

A. No.

Q. Bought an interest in the business?

A. Yes. The first five hundred dollars advanced went right into the business. That was for his own benefit. After all, he was buying me out. Whatever happened after that agreement we made, why, it was all his.

Q. But you did operate the business for a while together?

20 A. Yes, to protect the other five that was coming to me as a personal benefit.

Q. Have any papers in writing as to this?

A. We did make an agreement.

Q. Where is it?

A. I think at that time Rubinson, a Philadelphia representative, Benjamin L. Rubinson.

Q. What is the name?

A. Benjamin L. Rubinson.

Q. Where is he?

30 A. He is not living now, but his office is still continued at the Bankers Trust Building.

Q. Is he dead?

A. Yes, sir.

Q. You have no papers yourself in connection—

A. I didn't bring them.

Bessie Lanzetti—Direct

Q. Now, the time that you did business there, did the Lanzetti brothers, any of them, come around? Pius come around?

A. I was introduced to Pius once, yes.

Q. He was in there once?

A. Well, I couldn't say that. Of course, as a brother, he came in now and then, yes. 10

Q. How about Mickey Britt?

A. Don't know him.

Q. You don't know any of these other people here? Never seen them before?

A. I possibly may have seen them, but I didn't meet them.

MR. LOVELAND: That is all.

MR. GREIS: That is all. 20

BESSIE LANZETTI, called as a witness on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREIS.

Q. Mrs. Lanzetti, where do you live? 30

A. I live 4936 Pine, Philadelphia.

Q. Philadelphia. And your name is Lanzetti?

A. Lanzetti. Mrs. Lanzetti.

Q. What relation are you to Ignatius Lanzetti?

A. I am his sister-in-law.

Q. Will you speak just a little louder, please?

A. I am his sister-in-law.

Q. Who is your husband?

A. William, his brother.

Q. Are you related in any way to either of the
10 other defendants?

A. I am Michael Falcone's sister.

Q. Michael Falcone's sister?

A. That is right.

Q. Were you in Wildwood during the present
summer?

A. Yes.

Q. When?

A. I believe we opened the house June 20th,
and I have been living there until a month ago.

Q. Do you remember when Michael Falcone
20 came to Wildwood?

A. He came the Sunday before Friday, I believe that was the 19th, came down on an excursion.

Q. Nineteenth of July?

A. That is right.

Q. How did he happen to come to Wildwood?

A. Why, I called my sister up to send him
down, because he wasn't doing anything, so I told
him to spend a couple of days with me, and then I
30 would go up in the city with him.

Q. And the result of that—what was that, a
telephone conversation?

A. No; by letter.

Bessie Lanzetti—Direct

Q. Letter. And as a result of that letter, then he came down; is that correct?

A. That is right.

Q. And with whom was he staying?

A. He was staying with me.

Q. Who else lived in the house at the time?

A. Why, Ignatius's wife and two children. 10

Q. Do you have any children?

A. I have a baby.

Q. Did you have the baby with you?

A. Yes, I did.

Q. Do you know whether or not your brother Michael, the defendant in this case, was in Wildwood on either the 12th or 16th days of July?

A. Not that I know of.

Q. Can you say that he was not there?

A. I don't know. I didn't see him. 20

Q. The first time you saw him was when?

A. Was the 19th of July, the Sunday.

Q. And where did he come from that day?

A. He came from Philadelphia.

Q. And he stayed there until when?

A. Until that Friday that he was arrested.

Q. Friday, the 24th, when he was arrested?

A. That is right.

Q. Do you know the purpose of the Lanzetti family, Ignatius's family, his wife and children, being in Wildwood this summer? 30

A. Do I know the purpose?

Q. Yes.

A. Why, we came down for a vacation, to take a bath in the ocean.

Q. Have you done that before?

A. I have done it for five years, and the family has been coming down for seventeen or eighteen years.

Q. In Wildwood every summer?

A. Yes. Two summers ago they were in Mar-
10 gate.

Q. Other than that summer, they were always in Wildwood?

A. Always in Wildwood.

Q. Was Ignatius one of those that was present?

A. Yes.

Q. During these summer vacations?

A. Yes.

20 MR. GREIS: Cross-examine.

MR. LOVELAND: No questions.

MR. GREIS: Defense rests.

MR. LOVELAND: The State hasn't any rebuttal.

30 THE COURT: Very well; then we are ready to proceed with the argument. Before you do that, gentlemen, are there any requests as to charge that you are going to ask me to make? If so, I would like to have them submitted before your argument.

Defendants' Motions

MR. GREIS: May we have a few minutes recess?

THE COURT. Yes, we will recess for ten minutes. The jury be taken care of.

(Short recess)

MR. GREIS: I now move the Court for a di- 10
 rection for verdict of acquittal for each of the three
 defendants, upon each of the several grounds that
 have heretofore been advanced to the Court, first,
 on quashing the indictment and, secondly, upon the
 motion to dismiss at the close of prosecution's case,
 renewing the motion, and with the same grounds as
 there expressed. They are already in the record.

THE COURT: I shall hereby deny the motion
 and order the case to proceed to the jury on behalf 20
 of all defendants.

MR. GREIS: And I ask for an exception.

THE COURT: The exception will be noted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

PALMER M. WAY (Seal)

P. J. 30

(Mr. Greis sums up the case to the jury on behalf of the defendants.)

(Mr. Loveland sums up the case to the jury on behalf of the State.)

COURT'S CHARGE TO THE JURY

WAY, J.: Ladies and gentlemen of the jury:
10 The State of New Jersey has by action of the Grand
Jury of this County charged these three defend-
ants, namely, Frank Pius, alias Frank Lanzetta,
alias Ignatius Lanzetta, alias Ignatius Lanzetto,
alias Ignatius A. Lanzetti, and Michael Falcone,
alias Mickey Britt, and Louis Del Rossi, alias Fattie
Louie, with crime—charged them with crime, which
crime was alleged to have been committed on the
12th, 16th, 19th and 24th days of July of this year,
1936, in the Borough of Wildwood Crest of this
20 County, and generally within the jurisdiction of
this Court.

Now this accusation so made by the Grand
Jury does not in itself mean that the defendants or
either of them are guilty of the crime so charged.
Each of the defendants have plead not guilty. They
have plead separately to the charges that have been
allotted against them and by so doing have created
an issue in each instance, which issues are now be-
30 ing tried in this court together, - in order to deter-
mine the truth or the falsity of the charges which
have been made against them. And from the testi-
mony that has been adduced by the State and by
the defense you are to decide whether the defendants
or either of them are guilty or not guilty.

Court's Charge to the Jury

Thus, ladies and gentlemen, your part in this trial is of the utmost importance. Under the law, you and you alone are the sole judges of the facts and all questions of fact that come up in this trial. You are to decide and to settle who is telling the truth upon the witness stand, and you are to give the weight to the testimony or parts of the testimony as you in your sound judgment think should be given to it or any part of it. You have had the opportunity to note the demeanor of the witnesses as they have been presented to you for testimony and as they have testified. 10

Now my part in this trial has been to see to it that only proper and legal evidence or testimony should be given to you for consideration—for consideration after you retire. This, of course, I have tried to do, and I shall now not comment on the testimony or upon the evidence that has come from the witnesses' lips, as your memory concerning it is perhaps as good or maybe better than mine, and anything that I might say concerning it would probably tend to confuse you because, after all, as I have said and as has been indicated in the argument, you are the sole judge of the facts. 20

Now, it has been stated, too, in the argument, and I think perhaps it is well worth going over from the standpoint of the Court, that our State by an act of its Legislature did supplement our Crimes Act in 1934, and it was supplemented under Chapter Laws, 1934, Chapter 155, at page 394. It has been read to you, I believe, by counsel either in their 30

arguments or their openings, but now that I am giving you the instructions—about to give you the instructions, I think perhaps that I should go over it again and restate to you the part of that chapter that we are working under—that these defendants have been charged under.

10

Section 1 has a bearing upon this charge, and it reads:

“A gangster is hereby declared to be an enemy of the State.”

Section 2 and Section 3 we are not concerned in, because the charge has not been brought under those sections.

20

But the charge has been brought under Section 4 of the Act, and that reads:

“Any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime in this or in any other State, is declared to be a gangster, providing, however, that nothing in this Section shall
30 in any wise be construed to include any participant or sympathizer in any labor dispute.”

Of course, that is a proviso that does not in any way concern us.

Court's Charge to the Jury

Section 5 provides in general that any person convicted of being a gangster under the provisions of this Act shall be guilty of a high misdemeanor.

Now as to the punishment under this Act, if there is no guilt, if you so find it, obviously there would be no punishment. If there is, on the other hand, guilt, then the subject of punishment rests entirely with the Court. 10

As I have stated, the defendants have each been accused of the crime so described, and now that they have been so accused there is a presumption of innocence in favor of these defendants throughout the trial, and the defendants are presumed to be innocent until the State has established their guilt beyond a reasonable doubt. And a reasonable doubt has been defined to be not a mere possible doubt, but 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. That is a definition that is given to us in law. So, ladies and gentlemen, the State must prove to your satisfaction beyond a reasonable doubt that the defendants at bar, Frank Pius, alias as I have indicated, the Lanzetti defendant, and Michael Falcone, alias as I have indicated him, and Louis Del Rossie, as I have indicated him—I repeat that the proofs must be to the extent as I have indicated. 20 30

They must also prove under the elements

which are set up under the Act, first, that these defendants, each of them, had no lawful occupation and, second, that they were known to be members of a gang consisting of two or more persons; third, that they were convicted at least three times of being a disorderly person or that they were convicted
10 of crime in this or in any other state. You have heard this testimony. As I have said before, I am leaving the inferences to you.

Now if the State has established these charges or these elements as I have indicated, and by evidence beyond a reasonable doubt, then it becomes your duty to convict such person or persons as is here accused or charged. If, on the other hand, you are not satisfied to the extent that I have indicated
20 it is then in the course of your duty to acquit such person or persons as accused or charged. This case now rests with you to determine the guilt or the innocence of each of these defendants, and that you will indicate upon your return of your verdict. That is to say, you will find the guilt or innocence in connection with each of the defendants separately when your verdict is returned.

I have been requested on the part of the defense to charge you somewhat at length, and I shall
30 charge you in accordance with the requests that have been made, with such modifications as I shall indicate.

First: If the State has not proven to you beyond a reasonable doubt that Ignatius Lanzetti was

Court's Charge to the Jury

not engaged in a lawful occupation on July 12, 16, 19 and 24 of this year, 1936, the dates laid down in the indictment, then you must return a verdict of not guilty as to Ignatius Lanzetti.

I charge you the same as to Michael Falcone, and the same as to Louis Del Rossi. 10

The next one: If the State has not proven to you beyond a reasonable doubt that a gang generally and commonly known as the Lanzetti gang was in existence on the dates laid in the indictment—that is, July 12th, 16th, 19th and 24th of this year, then you must return a verdict of not guilty as to all defendants.

If the State has not proven to you beyond a reasonable doubt that any of these defendants were members of a gang generally and commonly known as the Lanzetti gang, then you must acquit those against whom the State has not satisfied you beyond a reasonable doubt. 20

I have been asked to define reasonable doubt, which I have already done. As a matter of fact, my general charge covered many of these things that will appear in these special requests. 30

This is another charge: As to Louis Del Rossi, the testimony is that he was walking with his wife. I charge you that standing alone, without any other circumstances involved, that is a lawful act.

Court's Charge to the Jury

As to Michael Falcone, the testimony is that he was entering a car occupied by a young lady. I charge you that standing alone, without any other circumstances involved, that is a lawful act.

10 As to Ignatius Lanzetti: Being at home on July 24, 1936, with his family is in itself a lawful occupation, and I charge you that it is in itself a lawful act.

Next charge: There is no evidence before you that any of the defendants were in this state on July 16th, 1936, one of the dates laid in the indictment, and you can disregard that date entirely.

20 Next charge: The laws of the State of New Jersey do not require anyone to pursue an occupation on the Sabbath and it is common knowledge and the Court takes notice that July 12th and 19th were Sundays and the defendants were not obliged to pursue an occupation on those dates.

I refuse to charge the rest as written, as the statement is too broad.

30 Next charge: The defendants are charged with a criminal offense. Fundamentally a crime is an act of commission or omission, but the offense charged must be specific and certain and established by the State by clear, convincing testimony beyond a reasonable doubt.

Next charge: If the State has failed to establish by competent evidence that defendants committed

Court's Charge to the Jury

an act of omission or commission prohibited by law against the State, you must return a verdict of not guilty.

Next charge: The State is relying wholly on circumstantial evidence to establish that defendants were known to be members of a gang on the dates charged in the indictment. Circumstantial evidence relied upon must be such as to exclude the hypothesis of innocence. The inferences to be found from such facts must be consistent with guilt and with guilt alone. 10

Next charge: Although the indictment is joint and includes all three defendants, you may acquit one, two or all of the defendants if the State has not proven all the elements laid down in the indictment to your satisfaction beyond a reasonable doubt. 20

Next charge: The burden of proof is upon the State, and the burden is never upon the defendant. If the State fails to carry the burden of proof, you must return a verdict of not guilty.

The State has requested me one charge to make: 30

Where the defendants make no effort to take the stand to testify each for himself on his own behalf, I want to say to you that if facts are testified to which concern the acts of the defendant, which could be by his oath denied, his failure to testify in

Court's Charge to the Jury

his own behalf raises a strong presumption that he cannot truthfully deny them.

I so charge.

10 Now you may take the jury and retire. Every-
body remain seated while the jury leaves.

MR. GREIS: I take a general exception to the charge.

THE COURT: Exception will be noted.

20 (To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

PALMER M. WAY (Seal)
P. J.

Defendants' Requests to Charge

DEFENDANTS' REQUESTS TO CHARGE

are as follows:

If the State hasn't proven to you beyond a reasonable doubt that Ignatius Lanzetti was not engaged in a lawful occupation on July 12, 16, 19 and 24 of this year, 1936, the dates laid in the indictment, then you must return a verdict of not guilty as to Ignatius Lanzetti. 10

Same as to Michael Falcone.

Same as to Louis Del Rossi.

If the State has not proven to you beyond a reasonable doubt that a gang generally and commonly known as the Lanzetti gang was in existence on the dates laid in the indictment, that is, July 12th, 16th, 19th and 24th of this year, then you must return a verdict of not guilty as to all defendants. 20

If the State hasn't proven to you beyond a reasonable doubt that any of these defendants were members of a gang generally and commonly known as the Lanzetti gang on July 12, 16, 19 and 24 of this year, then you must acquit those against whom the State has not satisfied you beyond a reasonable doubt. 30

Define reasonable doubt.

Define occupation.

Define members of a gang.

Define gang.

Define engaged.

10 As to Louis Del Rossi, the testimony is that he was walking with his wife. I charge you that standing alone without any other circumstances involved that is a lawful act.

As to Michael Falcone, the testimony is that he was entering a car occupied by a young lady. I charge you that standing alone, without any other circumstances involved, that is a lawful act.

20 As to Ignatius Lanzetta: Being at home on July 24, 1936, with his family is in itself a lawful occupation, and I charge you that it is in itself a lawful act.

There is no evidence before you that any of the defendants were in this State on July 16th, 1936, one of the dates laid in the indictment, and you can disregard that date entirely.

30 The laws of New Jersey do not require anyone to pursue an occupation on the Sabbath and it is common knowledge and the Court takes notice that July 12th and July 19th were Sundays and the defendants were not obliged to pursue an occupation on these dates. You may also disregard those dates from the indictment.

Defendants' Requests to Charge

The defendants are charged with a criminal offense. Fundamentally a crime is an act of commission or omission, but the offense charged must be specific and certain and established by the State by clear, convincing testimony beyond a reasonable doubt.

10

If the State has failed to establish by competent evidence that defendants committed an act of omission or commission prohibited by law against the State, you must return a verdict of not guilty.

20

The State is relying wholly on circumstantial evidence to establish that defendants were known to be members of a gang on the dates charged in the indictment. Circumstantial evidence relied upon must be such as to exclude the hypothesis of innocence. The inferences to be found from such facts must be consistent with guilt and with guilt alone.

Although the indictment is joint and includes all three defendants, you may acquit one, two or all of the defendants if the State has not proven all the elements laid down in the indictment to your satisfaction beyond a reasonable doubt.

30

The burden of proof is on the State and the burden is never on the defendants; if the State fails to carry that burden you must return a verdict of not guilty.

STATE'S REQUEST TO CHARGE is as follows:

The Court is respectfully requested to charge on behalf of the State that:

10 “Where the defendants make no effort to take the stand to testify, each for himself in his own behalf, I want to say to you that if facts are testified to which concern the acts of the defendant, which he could by his oath deny, his failure to testify in his own behalf raises a strong presumption that he cannot truthfully deny them.” (State v. Lennon, 107 N. J. L. 94, at 97.)

20

30

ASSIGNMENTS OF ERROR.

COURT OF ERRORS AND APPEALS.

<p>THE STATE, <i>Defendant-in-Error,</i> v. FRANK PIUS, alias, etc., <i>et als.,</i> <i>Plaintiffs-in-Error.</i></p>	}	<p>On Error to the New Jersey Supreme Court. Assignments of Error.</p>	10
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And now, on this day of October, 1937, comes 20
the defendants, by James Mercer Davis, Esq., their
Attorney, and say that in the record and proceedings
aforesaid, and also in the matters recited and con-
tained in the judgment thereon, as aforesaid, there
is manifest error in this, to wit:

1. Because the Court below adjudged that Chap-
ter 155 of P. L. 1934 of New Jersey, does not violate
the provisions of the Constitution of the United
States guaranteeing due process of law as set forth 30
in the fifth and fourteenth amendments of the Fed-
eral Constitution.

2. Because the learned Court below adjudged that
the defendants had not been subjected to double
jeopardy.

Writ of Error

3. Because the learned Court below adjudged that Chapter 155 of P. L. 1934, was not an *ex post facto* law.

4. Because the learned Court below affirmed the judgment of conviction of the Cape May Quarter Sessions Court.

10

JAMES MERCER DAVIS,
Of Counsel with the
Plaintiffs-in-Error.

 WRIT OF ERROR.

THE STATE OF NEW JERSEY, ss:

20

(L. S.) *The State of New Jersey to the Chief Justice and other Justices of the Supreme Court of Judicature of the State of New Jersey, Greeting:*

30 Because in the indictment, record and proceedings, and also in giving judgment upon certain indictments against Frank Pious, alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, upon charges of being enemies of the State and gangsters, and with violations of the provisions of the Statute which is Chapter 155, Laws of 1934, of the State of New Jersey, in the Borough of Wildwood, County of Cape May and State of New Jersey, which was in our Supreme Court of Judicature, before you, between the State of New Jersey and the said defen-

Writ of Error

dants, manifest error hath intervened to the great damage of the said Frank Pious, alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, defendants in said indictment, as by their complaint we are informed; we being willing that the error, if any there be, should in due manner, be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your hand and seal, the indictment, record and proceedings with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the eighteenth day of October next, together with this writ, that the indictment, record and proceedings, etc., being inspected we may cause to be done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done. 10 20

Witness our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton the 28th day of September, 1937.

THOMAS A. MATHIS,
Clerk.

JAMES MERCER DAVIS,
Attorney.

RETURN.

COURT OF ERRORS AND APPEALS.

10

THE STATE,

Defendant-in-Error,

v.

FRANK PIUS, alias, etc.,

*et als.,**Plaintiffs-in-Error.*

On Error to the
New Jersey Supreme
Court.
Return.

20

The answer of the Chief Justice and other Justices of the Supreme Court of Judicature of the State of New Jersey, holding the Supreme Court of the State of New Jersey, within named, the record and proceedings of the plaint whereof mention is made, with all things touching the same, I certify to the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this Writ annexed as I am commanded.

30

THOMAS J. BROGAN,
Chief Justice.

Opinion

OPINION.

(Filed May 18, 1937.)

NEW JERSEY SUPREME COURT.

No. 5, May Term, 1937.

10

THE STATE,
Defendant-in-Error, }
 v. }
 FRANK PIUS, alias, etc., }
et als., }
Plaintiffs-in-Error. }

20

Argued May 5, 1937; decided 1937.

1. Alleged errors of law at a criminal trial, not brought up by suitable assignments of error, will not be considered in review.

2. An assignment of error that the verdict below was contrary to the charge of the Court, points out no judicial action for review. 30

3. Supplement to the Crimes Act, Chapter 155 of P. L. 1934, held not unconstitutional on any ground argued in this case.

Error to Cape May Quarter Sessions.

Before BROGAN, Chief Justice, and JUSTICES
TRENCHARD and PARKER.

- For the plaintiffs-in-error: GEORGE R. GREIS and
ANDREW CAFIERO.
- 10 For the State: FRENCH D. LOVELAND, Prosecutor
of the Pleas, and HERBERT F. CAMPBELL, assis-
tant prosecutor.
-

The opinion of the Court was delivered by

PARKER, J.

- 20 The three defendants were convicted as "gang-
sters" under an indictment based on Section 4 of
Chapter 155 of the Laws of 1934 (P. L., page 394).
The section provides that "any person, not engaged
in any lawful occupation, known to be a member of
any gang consisting of two or more persons, who
has been convicted at least three times of being a
disorderly person, or who has been convicted of
any crime, in this or in any other State, is declared
to be a gangster;" with a proviso not here applicable.
Section 5 provides as to the penalty: "Any person
30 convicted of being a gangster under the provisions
of this act shall be guilty of a high misdemeanor,
and shall be punished by a fine not exceeding \$10,-
000, or imprisonment not exceeding twenty years,
or both."

The case is before us on strict writ of error only
and is of course considered in that aspect. The

Opinion

first principal ground for reversal now urged is based on the fourth assignment of error, that the Court refused to direct an acquittal when so moved. This motion was made when the State rested, and again at the conclusion of all the evidence. In the first case the granting or denial of the motion was discretionary, and not reviewable on strict writ of error. *Burnett v. State*, 62 N. J. Law, 510; *State v. Jagers*, 71 Id. 281, 283; *State v. Metzger*, 82 Id. 749. But the same reasons were invoked at the conclusion of the evidence. Those now argued are: 1. Failure to prove the existence of a "gang" at the time laid in the indictment. There was evidence for the jury on that point. With its weight we are not now concerned. 2. Failure to prove that defendants were known to be members of such alleged "gang." There was similar proof on that point also; as also: 3. That they were not engaged in any lawful occupation at the times laid in the indictment. The argument here is that the point is covered only by oral statements of the defendants at or shortly after the time of arrest, which were objected to and admitted over exception. But these rulings are not assigned as error, and therefore require no consideration at this time. 4. That four dates were charged in the indictment, and three were excluded from the consideration of the jury: hence, a general verdict of guilty was contrary to the charge of the Court. But if the conditions of the statute were met on one date, the crime was complete. Moreover, the assignment of error covering this point, that "the verdict was contrary to the Court's charge and contrary to the evidence" fails to point out any ruling by the Court.

The second main point is that Chapter 155 of P. L. 1934 is unconstitutional. For this four grounds are specified. Two are substantially the same, viz. due process of law, guaranteed by the fifth and fourteenth amendments of the Federal Constitution. As to these, we are content to rest on the very recent decision of this Court in *State v. Bell*, 15 Misc. 109, 10 188 Atl. 757. "Double jeopardy" is claimed; but no prior conviction or indictment was even suggested. It will be time enough to take up this point when there is a second indictment for the same offense. Further it is specified in the brief that "the vagueness and indefiniteness of the act would create concurrent jurisdiction in every county in the State." No doubt such concurrent jurisdiction would exist in every county where the act is violated; as indeed it should exist. Finally, that the act is *ex post* 20 *facto* in this case because the Pennsylvania convictions of crime that were proved as an element of the present statutory offence took place some years ago. But the statute is not aimed at punishing convicted criminals because they are convicted criminals, but because, being such, they become members of a gang organized to plot and commit further crimes, and neglect or refuse to engage in any lawful occupation. The act is therefore predicated on two present and voluntary acts of 30 the party, both of which must concur: voluntary membership in a gang; and voluntary abstention from work. We see no *ex post facto* legislation here.

Finding no legal error properly laid before us under this writ, the judgment of conviction is affirmed.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

STATE OF NEW JERSEY,
Defendant-in-Error,
v.

FRANK PIUS, alias IGNATIUS LANZETTA, MICHAEL
FALCONE and LOUIE DEL ROSSI,
Plaintiffs-in-Error.

ON APPEAL FROM THE NEW JERSEY SUPREME COURT.

BRIEF OF PLAINTIFFS-IN-ERROR.

The plaintiffs-in-error were convicted in the Cape May Quarter Sessions Court, on an indictment charging violation of the 4th section of Chapter 155 of the Laws of 1934, which is known as the Gangster Act. They were charged as persons not engaged in a lawful occupation, known to be members of a gang consisting of two or more persons and who had been convicted of a crime in the State of Pennsylvania. From that conviction a writ of error was taken to the Supreme Court and was there affirmed; from that affirmance, this appeal is prosecuted.

FACTS OF THE CASE.

These plaintiffs-in-error were arrested in Wildwood Crest, Cape May County, New Jersey. They were not together at the time of the arrest, but each was arrested at a different place in Wildwood Crest, New Jersey.

It is not charged nor proved that either of these men had ever committed any criminal offense in the State of New Jersey, nor were they charged nor proved to have been guilty of any disorderly conduct. So far as the evidence shows, each of the plaintiffs-in-error was a well behaved person at all times while within the State of New Jersey. The plaintiffs-in-error were arrested on July 24, 1936. They were in Wildwood Crest, as many thousands of other persons were, for the purpose of spending the summer months. They were what is frequently called "summer residents." They had been in the County of Cape May since June 22, 1936. This last statement applies to Lanzatta and Del Rossi. Falcone arrived in Wildwood Crest the preceding Sunday, the day of the arrest being on Friday, July 24, 1936 (S. C., p. 61).

The proof relating to the conviction of crime was to the effect that the convictions had occurred in the City of Philadelphia and State of Pennsylvania. Lanzetta was convicted on April 3, 1924 (S. C., p. 112); Del Rossi was convicted in Philadelphia on March 2, 1927 (S. C., p. 116); and Falcone was convicted on November 30, 1921 (S. C., pp. 117, 118).

Brief of Plaintiffs-in-Error

All of these convictions, therefore, were long prior to the passage of Chapter 155 of the Laws of 1934, which was approved on May 7, 1934. The testimony with respect to being members of a gang consisting of two or more persons, was as follows:

John J. Creeden says (S. C., pp. 97, &c.) that he knew them to be members of a gang four years prior to the time of his testimony.

Harry E. Peltz testified (S. C., pp. 103, &c.) that he knew them to be members of a gang up until two years prior to the time of trial.

Francis J. Dunn testified (S. C., pp. 114, &c.) that he had no knowledge of the Lanzettas since 1925 or 1926.

Charles Steinberg testified (S. C., pp. 121, &c.) that the plaintiffs-in-error were members of a gang, but on cross-examination he clearly exhibited the fact that he had not seen the plaintiffs-in-error for eighteen months prior to the time of the arrest.

John V. Hardy testified (S. C., pp. 128, &c.) that he had not seen the plaintiffs-in-error for probably a year and a half prior to the arrest and as to the plaintiff-in-error Falcone, he saw him not less than a year ago.

Captain James J. Ryan, of the Philadelphia police, testified (S. C., pp. 88, &c.) that he had not seen any of the plaintiffs-in-error for nine months prior to the arrest and consequently had no knowledge of membership in any gang during that period of time. It is clear that if he had any information during that time it would be hearsay and, therefore, incompetent. One of the members of the gang, concerning whom Captain Ryan testified, was John Zokowsky, who

had been in the death house in Pennsylvania for two years prior to the time of the arrest (S. C., p. 91), in fact, he is the only name mentioned as a member of the gang which was permitted to stand by the Judge. A bill of particulars had been furnished by the State as to the members of the gang and Zokowsky was the only member on the list furnished by the State that was mentioned by Captain Ryan, and, as he testified, he had been incarcerated in the death house in Pennsylvania for two years prior to the date of the arrest. The learned trial Court further limited the proof as to the membership in the gang, as of the date of the arrest (S. C., p. 79), following the decision of this Court in the case of *Levine v. State*, 110 N. J. L. 467; 166 Atl. 300.

George Muhs testified (S. C., pp. 132, &c.) that he had not seen any of the so-called members of the alleged "gang" for a number of years prior to the date of the arrest. His testimony, therefore, that the plaintiffs-in-error were members of the Lanzetta gang was pure hearsay and surmise. He had not seen Lanzetta for about a year prior to the time of his arrest; he had not seen Falcone for eighteen months prior to the arrest, nor had he seen Del Rossi for about a year prior to the time of the arrest (S. C., p. 137).

ARGUMENT.

I.

The Act is unconstitutional because it violates the guaranties of the fifth and fourteenth amendments to the United States Constitution.

The learned Court below said in its opinion:

“But the statute is not aimed at punishing convicted criminals because they are convicted criminals, but because, being such, they become members of a gang organized to plot and commit further crimes, and neglect or refuse to engage in any lawful occupation. The act is therefore predicated on two present and voluntary acts of the party, both of which must concur; voluntary membership in a gang; and voluntary abstention from work.”

We think the learned Court below did not give effect to the language of the statute. The statute does not make membership in a gang one of the essentials of the crime or status denounced, for the statute does not say—a person who is a member of a gang—but the language of the statute is: “Any person not engaged in any lawful occupation, known to be a member of any gang, consisting of two or more persons.” The essential feature of that phase of the sentence is knowledge that the man is a member of a gang. We do not think the Court can delete the word “known” from what is written in

the book, but must interpret the word "known" as an essential part of the language of the statute and an essential part of the essence of the crime. Under the language of this statute, a man might be a member of a gang, but unless he was known to be a member of a gang he would not come within the language of this statute. The statute, therefore, appears to be vague and indefinite and not susceptible of reasonable interpretation, for one would be lead to inquire at once—by whom is he to be known as a member of a gang; what person must possess that knowledge? Criminal statutes to be enforced are not so loosely and carelessly drawn. It is the misfortune of the State if its criminal statutes are so drawn that they cannot be reasonably interpreted. We think that the gist of this phase of the statute is not the fact that a man is a member of a gang, but that he is known to be a member of a gang.

Furthermore, the definition of a "gang" is left entirely to imagination. It is an attempt to write into the statute a slang word and to give it legal significance. A gangster is defined in the statute, but the word gang is not defined. A gang may be a wholly innocent combination of persons; in fact, it may be a highly praiseworthy collection of persons. So that the word "gang" is entirely without definition and leaves the odious acts denounced entirely to the imagination, caprice or whim of the person who is called upon to testify that the defendant is a member of a gang.

The punishment provided by the statute for a

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conviction of this offense, indicates that it was intended to be regarded by the legislature as a serious offense and we believe that the provision of the constitution, as well as the dictates of our common law, that an indictment shall be with such clarity and definiteness as to apprise the defendant of the nature and character of the kind of charges against him, is clearly violated by the indictment based upon this statute and that the statute is likewise equally vague and indefinite, with the result that the statute itself contravenes that sense of common justice which is exacted of every criminal statute.

This learned Court said in *Levine v. State*, 110 N. J. L. 467:

“The States, as a part of their police power, have a large measure of discretion in creating and defining criminal offenses. (Citing cases.) ‘Due process’ requires, *inter alia*, a law creating and defining the offense and an accusation in due form.”

In *United States v. Cohen Grocery Co.*, 65 L. Ed. 516, Chief Justice White stated the rule as follows:

“Therefore, because the law is vague, indefinite, and uncertain, and because it fixed no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against him, I think it is constitutionally invalid, and that the demurrer offered by the defendant ought to be sustained.

“The sole remaining inquiry, therefore, is

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the certainty or uncertainty of the text in question; that is, whether the words, 'That it is hereby made unlawful for any person wilfully * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities,' constituted a fixing by Congress of an ascertainable standard of guilt, and are adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. That they are not, we are of opinion so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary."

The rule was reaffirmed in *Connolly, Commissioner v. General Construction Company*, 70 L. Ed. 322:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement consonant alike with ordinary notions of fair play and the settled rules of law, and the statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

A law of Illinois provided:

"* * * all persons who, not being persons authorized by law to carry concealed upon their persons deadly weapons, are reputed to be habitual violators of criminal laws of this State or of the United States, or habitually carry concealed on or about their person or in motor vehicles or other conveyances, pistols, revolv-

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ers, or other firearms * * * and all persons who are reputed to act as associates, companions or bodyguards of such persons reputed as aforesaid—shall be deemed to be, and they are declared to be vagabonds.” *Ill. Rev. Stat.* (1935), Sec. 38, p. 606.

This statute was held invalid in *People v. Belcastro*, 356 Ill. 144; 190 N. E. 301, in the following opinion:

“* * * the amendment is unconstitutional, as it seeks to punish an individual for what he is reputed to be regardless of what he actually is.

“To say that certain acts shall constitute a crime and to fix the punishment therefor, is indisputably a part of the police power of the State. This power must be exercised, however, not as an unlimited authority, but at all times subject to the mentioned restrictions in the Federal and State constitutions.

“When we consider the phrases ‘reputed to be’ and ‘who are reputed to act,’ and the word ‘reputed,’ as used in the amendment to the act, we are dealing with something which lacks body or substance. The word ‘repute’ when used as a noun, is defined in Webster’s New International Dictionary as ‘opinion, estimation or judgment’. When used as a verb the same authority defines it as ‘to hold in thought, to esteem, to hold, to think, to attribute or to impute’. As used by the Legislature in the amendment, the word ‘repute,’ used alone or as a part of the phrases mentioned, is synonymous with the words ‘reputation’ and ‘opinion’. As the act now stands it is silent as to the degree or extent of reputation or opinion necessary to warrant action under the amendment. The

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Legislature has left this important question of reputation to be arbitrarily decided by individuals, without prescribing any rules, basis, or limitations to act as a guide in forming judgment.

“The ascertainment of a person’s reputation may, and generally does, mean only the collection of expressions of opinion from different people. Once collected you have something you can rarely demonstrate as an existent fact. One’s reputation might be good among one class of people or in one section of the city and bad among other classes or in other localities. Applying these observations to the amendment under consideration, it will be seen that the reputation of one charged with the crime of vagrancy may arise out of the collected opinions of law enforcement officers on the one hand and of his neighbors, business men, and friends on the other. So far as the amendment is concerned, these opinions will all be formed without the aid of rules, limitations, or restrictions to guide them. For such proof to be submitted means that a court is bound to say that a person is a criminal because of a reputation resulting from opinions which may or may not be true. The establishment of a reputation required under the amendment means that a witness will be testifying to opinions—not to facts. Here the corpus delicti must be proved by reputation, which might easily be based upon supposition or rumor rather than upon knowledge. Character is what a person is, reputation is what he is supposed to be. If the Legislature leaves to administrative officers the determination of what the law shall be, or to determine of what the law shall be, or to determine what acts are necessary to effectuate

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the law, such delegation of authority is void. 1 Sutherland on Stat. Const. (2d Ed.) p. 148.”

In *United States v. Armstrong*, 265 Fed. 683, the defendant was charged with a violation of a provision of the Food Control Act passed by the War Congress in 1917, which prohibited the destruction of necessaries by persons carrying on or employed in interstate or foreign commerce. The opinion is by Judge Anderson. On page 687, it is said:

“In general it may be said that a criminal statute, to be valid, must be so clearly and definitely expressed that an ordinary man can determine in advance whether his contemplated act is within or without the law. On the other hand, it must not be so broad and elastic in its terms as to compel a man to guess at his peril whether a jury may think his act is in violation of it, and, if deviation from a standard is prohibited, the standard must be definitely fixed. In *Railway Co. v. Dey* (C. C.), 35 Fed. 866, 1 L. R. A. 744, Justice Brewer said:

“‘No penal law can be sustained unless its mandates are so clearly expressed that any ordinary person can determine in advance what he may and what he may not do under it.’

“In *Tozer v. United States* (C. C.) 52 Fed. 917, the Court said:

“‘In order to constitute a crime, the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. There must be some definiteness and certainty.’

“In *United States v. Brewer*, 139 U. S. 278

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on page 288, 11 Sup. Ct. 538, on page 541 (35 L. Ed. 190) the Supreme Court said:

“ ‘Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. United States v. Sharp, Pet. C. C. 118. Before a man can be punished, his case must be plainly and unmistakably within the statute. United States v. Lacher, 134 U. S. 624, 628.’ ”

Judge Anderson, referring to the “due process” clauses of the fifth and fourteenth amendments, on page 689 of his opinion, said:

“By the simplest and plainest rules of construction, the words ‘due process of law’ must have the same meaning in the fifth and fourteenth amendments. This has been so stated in *Hurtado v. California*, 110 U. S. 516, 4 Sup. Ct. 111, 292, 28 L. Ed. 232. * * *

“The Supreme Court has repeatedly been called upon to decide whether certain classifications in State statutes were reasonable or arbitrary, and whether they were in conflict with the fourteenth amendment. In *Caldwell v. Texas*, 137 U. S. 692, 697, 11 Sup. St. 224, 226 (34 L. Ed. 816) the Court had before it the validity of a State statute under this amendment, and it said:

“ ‘By the fourteenth amendment the powers of the States in dealing with crime within their borders are not limited, but no State can deprive particular persons or classes of persons of equal and impartial justice under the law. Law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the constitutional requisition is satisfied. 2 Kent. Comm. 13.

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And due process is as secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice. *Bank of Columbia v. Okely*, 4 Wheat, 235, 244.'

"And in *Grozza v. Tiernan*, 138 U. S. 657, 13 Sup. Cr. 721, 37 L. Ed. 599, the Supreme Court said again:

"'Due process of law within the meaning of the amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.'

"*McGehee on Due Process of Law*, p. 60, says:

"'Purely arbitrary decrees or enactments of the Legislature, directed against individuals or classes are held not to be "the law of the land", or to conform to "due process of law".'

"Whenever the government undertakes to deprive a person of his liberty, as a punishment for crime, it must do it by virtue of a valid, constitutional statute defining the crime, and such a statute is required by the 'due process' clause of the fifth amendment. The statute upon which a person is deprived of his liberty is a part of the process of law which is used against him, and it must be 'due process of law' * * *."

A similar question was passed on in *United States v. Capital Traction Co.*, 34 App. D. C. 592, 18 Ann. Cas. 68, where a statute making it an offense for any street railway company to run an insufficient number of cars to accommodate passengers "without

crowding" was held void for uncertainty, the Court said:

"* * * What shall be the guide to the court or jury in ascertaining what constitutes a crowded car? What may be regarded as a crowded car by one jury may not be so considered by another. What shall constitute a sufficient number of cars in the opinion of one judge may be regarded as insufficient by another. * * * There is a total absence of any definition of what constitutes a crowded car. This important element cannot be left to conjecture, or be supplied by either the court or the jury. It is of the very essence of the law itself, and without it the statute is too indefinite and uncertain to support an information or indictment.

"* * * The dividing line between what is lawful and unlawful can not be left to conjecture. The citizen cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue * * *."

As a general statement, the first ten amendments to the United States Constitution are not operative on the States, but with the adoption of the fourteenth amendment, which is operative on the States, it thereby carried into operation on the States the provisions of the fifth amendment insofar as due process of law is concerned.

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- Connelly v. General Construction Company*, 269 U. S. 385;
International Harvester Company v. Kentucky, 234 U. S. 216;
Collins v. Kentucky, 234 U. S. 634;
American Seeding Machine Company v. Kentucky, 236 U. S. 660;
Waters-Pierce Oil Company v. Texas, 212 U. S. 86;
Fox v. Washington, 236 U. S. 273;
Omaechevarria v. Idaho, 246 U. S. 343;
Miller v. Strahl, 239 U. S. 426;
Tedrow v. Lewis & Son Co., 255 U. S. 98;
Weeds, Inc. v. United States, 255 U. S. 109;
Kinnane v. Detroit Creamery Co., 255 U. S. 102;
Cline v. Frink Dairy Co., 274 U. S. 445.

II.

The statute is discriminatory and violates the rights of the plaintiffs-in-error under the fourteenth amendment to the Constitution of the United States because it denies to them the equal protection of the law.

Three things must concur to bring a person within the purview of Chapter 15 of the Laws of 1934, Paragraph 4:

1. Not engaged in any lawful occupation;

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2. Known to be a member of any gang consisting of two or more persons;

3. Who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime, in this or in any other State.

We insist that what is denounced in this fourth paragraph of Chapter 155 of the Laws of 1934, is a status, which is not punishable under the law, but if we adopt the construction of this statute as placed upon it by the learned Court below, the result is not changed. The learned Court below said:

“But the statute is not aimed at punishing convicted criminals because they are convicted criminals, but because, being such, they become members of a gang organized to plot and commit further crimes, and neglect or refuse to engage in any lawful occupation. The act is therefore predicated on two present and voluntary acts of the party, both of which must concur; voluntary membership in a gang; and voluntary abstention from work.”

The learned Court below does not deny, but appears to acquiesce in the view that the words “known to be a member of any gang, consisting of two or more persons,” is a status. It is equivalent to saying “who has the reputation of being a member of any gang, consisting of two or more persons.” It may be argued, if we adopt the theory of the learned Court below, that this is merely a classification of the persons upon whom the statute was in-

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tended to act. We think we will show to this Court, however, that as applied to the facts *in this case*, this statute is unconstitutional. We think that we will show that the classification sought to be made by the statute violates the constitutional protection assured to every citizen of the United States by the fourteenth and fifth amendments to the constitution, and violates especially that provision of equal protection of the law. Mr. Justice Fuller, in *McPherson v. Blacker*, 146 U. S. 1; 36 L. Ed. 869, said:

“The inhibition that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.”

In *People v. Arcidiaco*, 199 N. E. 494, although the Court did not declare the act unconstitutional, it so construed its provisions as to nullify its uses for the purposes to which the Act had been put in that State, and to which it was attempted to be put in Illinois and Michigan. Chief Justice said:

“Persons who have been convicted of crime and served the sentence imposed are not thereafter barred from society or intercourse with other human beings; they are not outcasts, nor to be treated as such. The Legislature did not intend to close the doors to reformation, repentance, or a new try at life. Whom is a man to talk to if he cannot talk to the friends and acquaintances his position in life has thrown him in with? Perhaps his past life has limited the number and prevents many new ones.”

Is it a reasonable classification in a criminal statute to say that a person who has been convicted of any crime, no matter when or where or what the extenuating circumstances of the commission of that crime may have been, who does not chose to engage in any occupation, and perhaps who is not obliged to do so, but who does choose to be associated with other persons occupying similar situations in life with himself; to say that such a person is liable to a punishment by fine of \$10,000.00 and of imprisonment not exceeding twenty years, or both? Especially when that statute attaches no criminal intent to any act or status denounced by the statute, he may be ever so innocent of any criminal intent and yet, under this statute, he is liable to twenty years' imprisonment or \$10,000.00 fine, or both.

Let us consider for a moment whether this is a reasonable classification. Our constitution provides in Article I, paragraph 1:

“All men are by nature free and independent, and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.”

I submit that a man under our New Jersey Constitution is permitted to work or not as he sees fit. Under our State Constitution, cited above, he is guaranteed the right of pursuing and obtaining safety and happiness; of enjoying and defending life, liberty, acquiring and possessing property. This provision of our State Constitution, if not identical

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in language, is nevertheless identical in spirit with the provision of the first paragraph of the fourteenth amendment of the Federal Constitution, which provides that:

“Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

It has been said too many times by our Court to require repetition, that the pursuit of happiness includes the right of a citizen to follow his individual preference in the choice of an occupation. It is equivalent to—the right to pursue any lawful occupation not inconsistent with the rights of others. It includes the right of contract, the right to transact business, and it certainly means, although the question apparently has not arisen, that he has the right to follow no occupation or vocation if he sees fit. If a man is able to support himself and family without an occupation, I submit that there is no law in this United States that can compel him to do so. So that a man who has no lawful occupation is not violating any law; he cannot be compelled to work unless he has forfeited that right by an offense against the penal laws of the government or State, and to say that a man is a criminal because he is not engaged in any lawful occupation is to deny to such a person the guaranty of the very first paragraph of our constitution and to violate the provisions of the fourteenth amendment of the constitution of the United States and the fifth amendment of our constitution.

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It is submitted, therefore, that whenever a statute, penal in character, says that if a man does something, in which he is supported by the Constitution of the United States, and therefore is declared to be a criminal, is an unreasonable classification and the act becomes unconstitutional. To put it differently, the constitution says that a man is guaranteed the pursuit of happiness, to work or not to work, as he sees fit. That statute which would make the failure to work a crime would be in violation of that guaranty of our constitution. The right to enjoy property, guaranteed by our constitution, is the right to turn it to his happiness and to his leisure if he sees fit, so that it is insisted that the statute is unconstitutional in that it makes unlawful to do what the Constitution of the United States and the Constitution of New Jersey, has guaranteed to him, namely, the pursuit of happiness, in refraining from any lawful occupation.

Furthermore, inasmuch as this classification is in violation of his constitutional right, relating to following an occupation, it is, therefore, unconstitutional because it denies him the right under the fourteenth amendment in his pursuit of happiness and because the statute is so vague and indefinite as to deny to him the equal protection of the law. It is an unreasonable classification to say that the man who works has the approbation of the law, and the man who refuses to work and is able to support himself without working is to be denounced. Our constitution does not tolerate such an arbitrary and unreasonable classification. It is, therefore, not an

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equal protection of the law. The law is intended to protect in the pursuit of happiness, those who are engaged in a lawful occupation, as well as those who have no occupation.

III.

The statute is, as applied to this case, unconstitutional, for the reason that it attempts to make an act done by a person in a foreign jurisdiction, amenable to the law of New Jersey, because of something suffered or done in the foreign jurisdiction.

It is Hornbook Law that the jurisdiction of a State is limited to the territorial limits of the State. The State of New Jersey cannot punish a man for an act done in Pennsylvania, where the effect of that act does not take effect in New Jersey; or, it is stated elsewhere, that a man can not be punished for doing an act in another State, where the sovereignty of the State of New Jersey is not offended by the doing of that act.

1 Ency. of Criminal Law, Brill, Section 276, page 497, is as follows:

“A crime is essentially local and can be prosecuted and punished only in the sovereignty offended. The criminal or penal laws of a State or country have no extra-territorial effect and will not be enforced by the courts of any other State or country. * * * Ordinarily, therefore, the courts of a country or State have no jurisdiction to punish for offenses committed beyond

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its territorial limits, and statutes permitting them to do so are void and unconstitutional.”

In *State v. Carter*, 27 N. J. L. 499, the defendant was indicted on an indictment charging a felonious assault and battery in New York and that the party injured came into and died from its effects in New Jersey. The Court said that such an indictment charges no crime against this State. It further said that the statute cannot embrace cases where the act complained of has been wholly done within the territorial limits of another regular government.

State v. Wyckoff, 31 N. J. L. 65.

What is the application we seek to make of this statement of plain law? It is this: That it is alleged in the indictment that the plaintiffs-in-error, and each of them, having been convicted of a crime in the State of Pennsylvania, are hereby declared to be gangsters.

If it be, as the learned Court below said, that this is a status, or, in other words, a classification, then the Act is *ex post facto* as applied to these plaintiffs-in-error, for it clearly appears in the proof that the plaintiffs-in-error have been convicted of the offenses alleged against them in the indictment long before the passage of this Act.

If, however, this is not a mere classification, then it would result that the Act itself is unconstitutional, as attempting to punish the plaintiffs-in-error for matters and things that occurred beyond the territorial limits and jurisdiction of the State of New Jersey.

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There is nothing in the Act to support the opinion of the learned Court below in construing this Act, when it held that the Act was intended to punish, because being convicted criminals they become members of a gang organized to plot and commit further crimes, and neglect and refuse to engage in any lawful occupation. There is nothing in the Act to indicate that the Act was intended to punish those who *intended* to commit crime in the future, as under the Disorderly Persons Act. The intent is made a substantial element of the offense in that act, and it is submitted that the State is without power to punish a person merely because he occupies a status. The mere fact that a person has been convicted and served the sentence of the law, does not furnish reasonable grounds of a classification to impose further punishment upon him.

If it is because of the classification that he is denounced, then it is submitted that the Act in question acts as double jeopardy, because it subjects the defendant to an added punishment because he has theretofore been punished. The result would be that the defendant would never get out of the toils of the law, because as soon as he has performed one judgment of the law, he is immediately amenable to another.

In *State v. Mowser*, 92 N. J. L. 474, 106 Atl. 416, there was an indictment for murder in the commission of a robbery. Then the defendant was indicted by the same grand jury for the offense of robbery. He pleaded guilty to the charge of robbery and was afterwards put on trial for murder. To the charge of murder he pleaded *autre fois* convict. The Court

overruled the plea and the defendant was convicted. He appealed to the Supreme Court, who affirmed the conviction. On appeal to this Court, the judgment of the Supreme Court was overruled, holding that inasmuch as robbery was an incident of the crime of murder under the facts, and the defendant having been convicted of robbery, he should not thereafter be tried for the offense of murder, on the ground that it would be double jeopardy.

If the conviction of the plaintiffs-in-error is an element of this crime and they had served their sentences for conviction, then to indict them for the offense in which the former conviction was an element, would operate as a double jeopardy.

The learned Court below said that: "The Act (in question) is therefore predicated on two present and voluntary acts of the party, both of which must concur: voluntary membership in a gang; and voluntary abstention from work." The Act does not say anything about "voluntary membership" or "voluntary abstention"; the learned Court read those words into the statute; words which do not appear in the statute. A plain reading of the statute, it seems to me, no more includes the words "voluntarily becoming a member of a gang" any more than it does "being a person voluntarily convicted"; nor is it essentially in the Act that he be voluntarily not engaged in any lawful occupation. I do not wonder that the Court omitted these words, because the statute is not intelligent either with or without the words omitted by the Court.

The recent report of the commission employed by the President, reported to him that between seven

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and ten million persons in the United States are without employment, but seeking it. There is no evidence in the present case that the plaintiffs-in-error or any of them, were voluntarily without a lawful occupation. The presumption of the law is toward innocence and the presumption in the present case is that the plaintiffs-in-error were not voluntarily not engaged in any lawful occupation, in view of the fact that there was not one scintilla of testimony that they were voluntarily not engaged in a lawful occupation. The record shows that as to Lanzetta, the evidence was that he was in business and that testimony was uncontradicted. See S. C., p. 199, &c., Thomas Paul; S. C., pp. 208, &c., Thomas Shea; S. C. pp. 211, &c., Pasquale Lettieri; S. C., pp. 214, &c., James C. Haines; S. C., pp. 218, &c., Robert Pritsker.

IV.

The learned Court below erred in affirming the judgment of conviction of the Cape May Quarter Sessions Court, because:

1. The evidence adduced on the part of the State did not support the indictment.

The trial Judge affirmed the position that the State must show the essential elements of the offense charged existed on the day of the date of the arrest, namely, July 24, 1936.

All of the witnesses have shown an utter lack of knowledge as to whether the plaintiffs-in-error

were members of a gang as of the date of July 24, 1936. Reference to the testimony given by the State's witnesses appears earlier in this argument. The ruling of the trial Court was in line with the decision of this Court in *Levine v. State*. There was no evidence that on the day of the arrest the plaintiffs-in-error were members of any gang. One member of the alleged gang had been in the death house for two years; another was a fugitive and had been for a long time before the date of the arrest; none of the State's witnesses had seen any of the plaintiffs-in-error for at least nine months and many for several years. There was no competent testimony on this branch of the case, that the Court could properly submit to the jury for determination, because none of them spoke as of July 24, 1936. It should be said here, that although some of these witnesses spoke as of the present tense, it developed on their cross-examination that it was a mere matter of surmise or based entirely upon hearsay.

2. There was no evidence that the plaintiffs-in-error voluntarily abstained from labor.

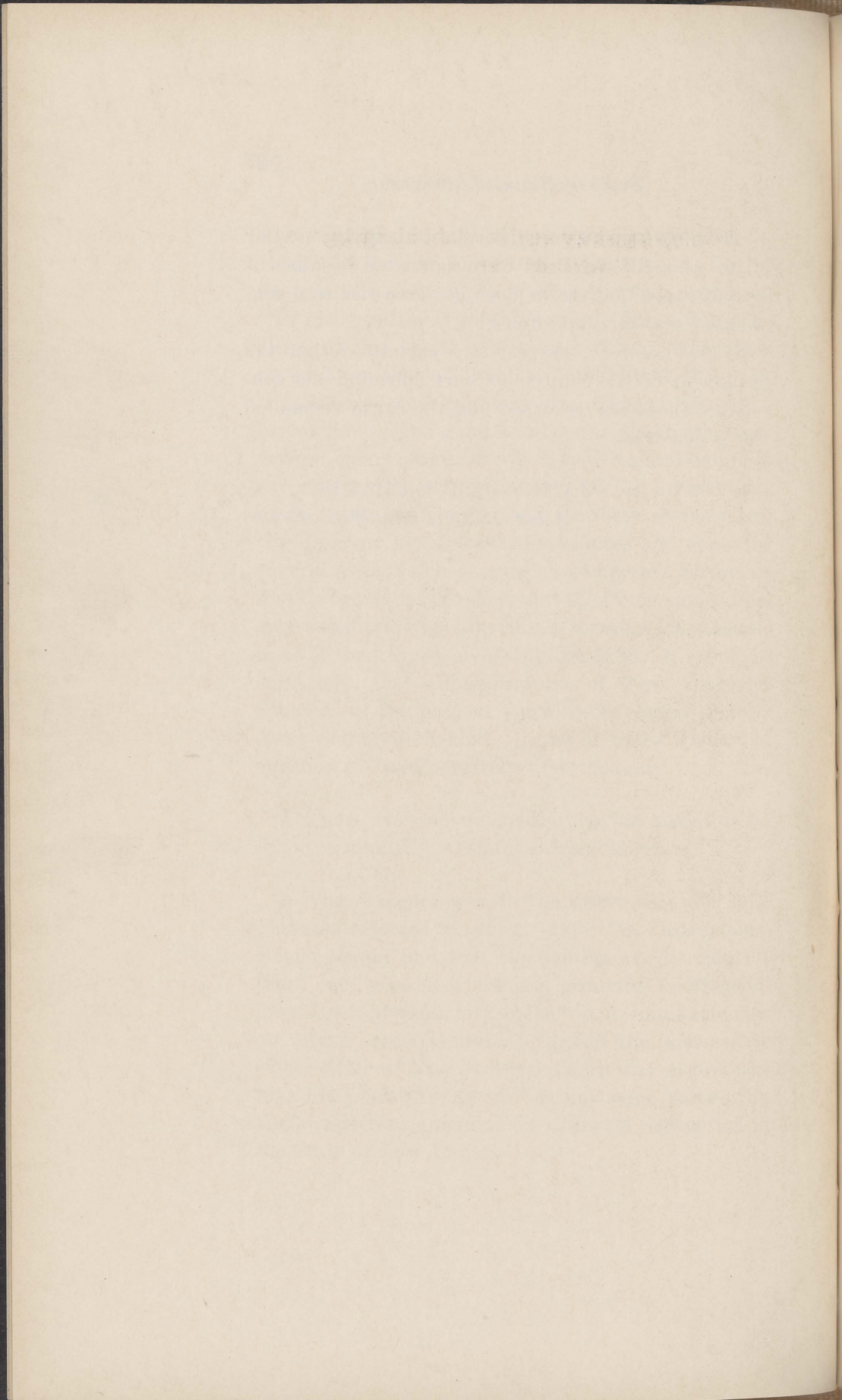
3. The evidence was to the effect that the gang that was referred to, was a "gang" in Philadelphia, Pennsylvania and that the joining of the gang, if there ever was such a thing, occurred in Philadelphia, Pennsylvania, and, therefore, in that particular no offense was committed against the sovereignty of the State of New Jersey. There was no evidence that the plaintiffs-in-error at any time voluntarily abstained from engaging in a lawful occupation in the State of New Jersey.

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We might just as well be plain about the matter—the plaintiffs-in-error were convicted because of a status and that status does not give rise to a conviction on a criminal offense.

It is, therefore, respectfully submitted that the judgment of the Supreme Court affirming the conviction should be reversed and the cause remanded for a new trial.

JAMES MERCER DAVIS,
Attorney of Plaintiffs-in-Error.



**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

THE STATE OF NEW JERSEY.

Defendant-in-Error,

v.

FRANK PIUS, alias IGNATIUS LANZETTA, MICHAEL
FALCONE and LOUIE DEL ROSSI,

Plaintiffs-in-Error.

ON APPEAL FROM THE NEW JERSEY SUPREME COURT.

BRIEF OF DEFENDANT-IN-ERROR.

STATEMENT.

The Cape May County Grand Jury of the April Term, 1936, in session on July 31, 1936, indicted the three plaintiffs-in error, Frank Pius, alias Ignatius A. Lanzette, etc.; Michael Falcone, alias Mickey Britt; and Louis Del Rossi, alias Fattie Louie; for violation of Chapter 155 of the Laws of 1934, commonly called "Gangster Act" or "Public Enemies Act." The pertinent section of said Act is as follows:

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“Any person, not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime, in this or in any other State, is declared to be a gangster; provided, however, that nothing in this section contained shall in any wise be construed to include any participant or sympathizer in any labor dispute.”

Said indictment was tried on September 14 and 15, 1936, and a verdict returned of “guilty, with recommendation for mercy.” Upon that judgment of conviction, plaintiffs-in-error were sentenced to a term of not more than ten years and not less than five years in State’s Prison. Following the conviction, a writ of error was prosecuted in the Supreme Court, and judgment affirmed. The present appeal alleges error in such affirmance.

FACTS.

Defendants were arrested, either simultaneously or within a few minutes of each other, at or in the vicinity of 107 East Crocus Road, Wildwood Crest, on July 24, 1936. The arrests were made by officers of the New Jersey State Police, in cooperation with members of the Philadelphia Police Department (p. 55, line 29; p. 68, line 29; p. 73, line 11). The association of the defendants at said address was proven (p. 54, line 17; p. 61, line 18; p. 68, line 29; pp. 224 and 225).

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When questioned at or about the time of their arrest, the defendants all claimed to have occupations, but the most recent work done by any one of them at his alleged occupation was more than two years before the arrest (pp. 60 and 61, and p. 71, line 12).

Detective Captains Ryan and Creeden and Detective Peltz, all of the Philadelphia Police Department, testified that they knew the defendants to be members of "the Lanzetti gang" (p. 84, line 32; p. 97, line 10; p. 100, line 32).

Prior convictions of crimes in the State of Pennsylvania were proven against the three defendants, both by the testimony of police officers who were personally present when such convictions were had, and by exemplified copies of the proceedings.

The defendants did not take the stand to testify, each in his own behalf.

ARGUMENT.

I.

The Act is a valid exercise of the police power, and as such, does not contravene the "due process clauses" of the fifth and fourteenth amendments to the United States Constitution.

In *ex parte Company* and *ex parte Irvin*, 106 Ohio St. 50, 139 N. E. 204, the Supreme Court of Ohio stated:

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“There is perhaps no provision of the federal Constitution that is more overworked than the Fourteenth Amendment. Counsel generally are apparently unanimous in thinking that any judgment or finding as against the client denies such client the equal protection of the laws, or is without due process of law. It has been so many times decided that the Fourteenth Amendment does not limit the states in the proper exercise of police power that citation of authority seems needless.”

The State perceived the existence of a menace to the safety and welfare of its people, and, in the exercise of its sovereignty, enacted appropriate legislation to curb the menace at its inception. To deny the existence of gangs and gangsters would be to emulate the fabled antics of the foolish ostrich in burying his head in the sand, or the three wise monkeys, who “hear no evil, see no evil, and speak no evil.” Having acknowledged the condition, it was entirely fitting that the legislature should act as it did. In *Hopper v. Stack*, 69 N. J. L. 562, it was held:

“The recognition by the legislature of the existence of conditions that, in its judgment, require regulation under its police power, is to be distinguished from the creation by the legislature of conditions that previously had no existence.”

The questions of due process and class legislation are interestingly discussed in *State v. Rheaume* (New Hampshire), 116 Atl. 758 at 759, as follows:

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“But this clause (the 14th Amendment) was not designed to interfere with the exercise of the police power of the states for the protection of the lives, liberty and property of its citizens or for the promotion of the public safety, peace and order. (Citing cases.) * * * The Fourteenth Amendment did not abridge the right of protection inherent in the states and reserved when the Constitution was adopted. (Citing cases.) * * * In *Mugler v. State of Kansas*, *supra*, it was said: ‘It cannot be supposed that the states intended, by adopting that amendment, to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community.’ For these purposes the Legislatures have a wide field of discretion in classification of subjects of legislation. * * * A statute is not objectionable as class legislation because it affects only the members of one class, if the classification involved in the law is founded upon a reasonable basis. * * * Every presumption will be entertained in favor of the reasonableness of the basis of classification adopted by a state under its police power against an attack based upon the equal protection clause of the Fourteenth Amendment.”

It is urged, on behalf of plaintiffs-in-error, that the language used in creating the crime is vague and indefinite, and that the Fourteenth Amendment is therefore violated because plaintiffs-in-error did not have due notice of the nature of the charge. It is respectfully submitted that this is not so. It is preposterous to contend that any other than a malevolent meaning can be applied to the word

“gang” as it is used in this statute. The legislature did not use the word “gangster” three times in the act, with the intent that its derivative, “gang,” should have or be susceptible of a perfectly innocent meaning. The only definition of the word in its legal significance that is disclosed by considerable research, is that contained in *Hatch v. Matthews*, 31 N. Y. Supp., 926 (Words and Phrases, Vol. 4, p. 3040), as follows:

“The word ‘gang’ is sometimes used to describe a body of men associated together for purposes entirely proper, as a gang of laborers; but is commonly used to describe a body of men banded together for improper or unlawful purposes, like a gang of thieves, a gang of robbers. * * *”

“The popular and generally accepted meaning of language will be applied to the construction of an act of the legislature in the absence of a legislative intent to the contrary.” *Conover v. Public Service Ry. Co.*, 80 N. J. L. 681.

“A court cannot nullify the enactment of the Legislature because the language used is indefinite in some particular, unless the purpose or intent of the Legislature cannot be ascertained. The intent of the Legislature is the essence of the law, and the function of the court in construing legislative enactments is to ascertain the legislative intent, and to enforce such intent when ascertained. * * * The cardinal principle in construing a statute is to seek the intention of the legislative will; and a rule of law equally as well grounded is that the enactments of the Legislature must be effectuated if possible. The intention of the lawmaker is the law. The court will not extend the meaning of

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the statute by construction but such construction will be given that, when practically applied, will aid in preventing the evil which the ascertained intent aimed to prohibit." *Hunt v. State* (Indiana Supreme Court), 146 N. E. 329 at 330.

There is no ambiguity in the use of the phrase "known to be." Webster's International Dictionary gives, *inter alia*, the following definition of "know":

"To have immediate experience of; to be acquainted with; to be no stranger to; to be more or less familiar with the person, character, etc., of * * *."

In this sense, it is easily distinguished from the use of the word "reputed" in similar statutes, where the latter word has been held to have the force only of opinion. The knowledge required by the statute appears to be quite plainly nothing more than the knowledge of any person, however acquired.

II.

The statute is not discriminatory, and does not deny to plaintiffs-in-error the equal protection of the law.

In order for the defendant to come within the statute, he must have been convicted at least three times of being a disorderly person, or convicted of a crime in this or any other State; must be not engaged in any lawful occupation; and must be a mem-

ber of a gang consisting of two or more persons. These elements must concur. (*State v. Pius*, 118 N. J. L., 212). The classification is a reasonable one, and it is not shown that the statute would not operate alike on all persons similarly situated.

“We start with a general consideration that a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. The state ‘may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.’” *Patson v. Pennsylvania*, 232 U. S. 138, 58 L. Ed. 539, 543.

In *Keokee Consol. Coke Co. v. Taylor*, 234 U. S. 224, 34 S. Ct. 856, 857 L. Ed. 1288, 1290, the Court said:

“But while there are differences of opinion as to the degree and kind of discrimination permitted by the Fourteenth Amendment, it is established by repeated decisions that a statute aimed at which is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up

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and enumerating other instances to which it might have been applied equally well, so far as the court can see. That is for the Legislature to judge unless the case is very clear.”

In *Miller v. Wilson*, 236 U. S. 273, 35 S. Ct. 342, 59 L. Ed. 628, 632, L. R. A. 1915 F, 829, in a discussion of classification, the Court, speaking by Mr. Justice Hughes, said:

“It (the Legislature) is free to recognize the degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may ‘proceed cautiously, step by step,’ and ‘if an evil is specially experienced in a particular branch of business’ it is not necessary that the prohibition ‘should be couched in all-embracing terms.’”

In *Baldwin v. State* (Supreme Court of Indiana), 141 N. E. 343, 345, the Court held:

“The classification cannot be arbitrary, but must be reasonable. However, the classification will be upheld unless it is so manifestly inequitable and unjust that it would cause an imposition of a burden on one class to the exclusion of another without reasonable distinction. It is primarily for the Legislature to determine the classification, and is never a judicial question unless the classification under no circumstances can be viewed as reasonable.”

Plaintiffs-in-error also contend that the statute is in violation of due process because it requires no intent, and because of some possible difficulty

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on the part of defendants in determining whether or not they come within the category proscribed by the statute. In *United States v. Balint*, 258 U. S. 250, 66 L. Ed. 604, it was held:

“The legislature may well consider that the intent or knowledge of the defendant is immaterial, in view of the widespread evil which his acts cause, equally whether done with or without knowledge.”

In discussing this proposition, Mr. Chief Justice Taft, speaking for the Court, said:

“While the general rule at common law was that the scienter was a necessary element in the indictment and proof of every indictment, and this was followed in regard to statutory requirements, even where the statutory definition did not, in terms, include it * * * there has been a modification of this view in respect to prosecutions under statutes, the purpose of which would be obstructed by such a requirement. It is a question of legislative intent, to be construed by the Court. It has been objected that punishment of a person for an act in violation of the law, when ignorant of facts making it so, is an absence of due process of law. But that objection is considered and overruled in *Shevlin-Carpenter Co. v. Minnesota*, 218 U. S. 57, 69, 70, 54 L. Ed. 930, 935, 936, 30 Sup. Ct. Rep. 663, in which it was held that in the prohibition or punishment of particular acts, the State may, in the maintenance of a public policy, provide ‘that he who shall do them, shall do them at his peril, and will not be heard to plead in defense, good faith or ignorance.’ Many instances of this are to be found in regulatory measures in the exercise of

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what is called the police power, where the emphasis of the statute is evidently upon achievement of some social betterment, rather than the punishment of the crimes, as in cases of *mala in se*."

Some emphasis is placed upon the contention that the statute attempts an unconstitutional definition of crime, in that it denies the defendant the right to choose between engaging and not engaging in a lawful occupation. In this connection, it is interesting to note the reaction of the Court to a Delaware statute enacted during the late war, requiring all able-bodied men between certain ages to be engaged in some "useful or lawful occupation." While it is conceded that we are not presently engaged in any war, as the term is generally understood, it is submitted that the Court may take judicial notice of the fact that at least a prolonged skirmish is in progress within our borders, between the forces of law and society on the one hand, and the forces of crime on the other. In the case above mentioned, which is that of *State v. McClure*, reported in 105 Atl., 712, the Court said:

"It is generally known that the demands of the national government in waging the present war have greatly curtailed the means of preventing crime and reduced the number of men available to protect the lives and property of the public. It was proper for the Legislature, having this in mind, to pass reasonable and just laws to *preserve order within the State and to protect the lives and property of those within its borders* (italics ours) by providing that male

residents between certain ages should be engaged in some useful or lawful occupation.”

Sir William Blackstone writes illuminatingly on the subject, in Book 4, at *169:

“The Court also of Areopagus, at Athens, punished idleness, and exerted a right of examining every citizen in what manner he spent his time; the intention of which was, that the Athenians, knowing they were to give an account of their occupations, should follow only such as were laudable, and that there might be no room left for such as lived by unlawful arts.”

It is not intended by these citations to constitute lack of lawful occupation, standing alone, as a crime; but they do illustrate the trend of thought and the fruit of human experience, in both ancient and modern times; and explain what the Legislature undoubtedly had in mind when the law was enacted. This line of reasoning also directs attention to the fact that appellants, in their argument, have fallen into the very obvious error of considering the component parts of this crime separately. Each of the elements set forth in the statute is belabored and excoriated as condemning an act or condition which is perfectly innocent in itself; but one might with similar logic contend that, because it is no crime for a man to marry, and no crime for a man to have a wife, it is no crime for a man to marry when he already has a wife.

A statute very similar to the one under discussion was held to be valid in *Levine v. State*, 110 N. J. L.

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467. In that case, Mr. Justice Heher, speaking for the Court of Errors and Appeals, said:

“The manifest purpose of this legislation is to check evil in its beginning and thus to insure the public safety. The statute is not arbitrary or unreasonable. It provides for the apprehension and punishment of a class that menaces the security of person and property.”

Another somewhat similar law, being a section of the Disorderly Persons Act, was upheld in the case of James McNeilly, Pros. v. State of New Jersey and Robert V. Kinkead, Judge of the Hudson County Court of Common Pleas, Respondents, decided on December 24, 1937, which is apparently unreported. In that case, the Supreme Court, by Mr. Justice Perskie, held that:

“The Act is a valid exercise of the police power of the State. It is well within the ‘large measure of discretion’ inherent in the legislature ‘in creating and defining criminal offenses.’ The language of the Act evinces a clear, definite and ascertainable standard of guilt. It shows a clear legislative intent to nip crime in the beginning.”

The statute under attack was found to be constitutional by the Supreme Court, not only in this case, but also in the case of *State v. Bell*, 188 Atl. 737.

III.

The Act does not attempt to confer jurisdiction over Acts committed in other States.

As set forth elsewhere in this brief, it is both impossible and unnecessary to sustain each of the elements of this crime as a crime in itself. As was so aptly stated by the Supreme Court in this case:

“But the statute is not aimed at punishing convicted criminals because they are convicted criminals, but because, being such, they become members of a gang organized to plot and commit further crimes, and neglect or refuse to engage in any lawful occupation. The Act is therefore predicated on two present and voluntary acts of the party, both of which must concur; voluntary membership in a gang; and voluntary abstention from work. We see no *ex post facto* legislation here.” (*State v. Pius*, 118 N. J. L. 212.)

Plaintiffs-in-error were not tried for the crimes of which they had previously been convicted, nor were they tried upon the same set of facts. Indeed, the circumstances of the crimes leading to their former convictions were not of particular moment in this case. Under these conditions, there can be no claim of double jeopardy.

Plaintiffs-in-error were not tried for any act done before the effective date of the statute in question. If they had severed their connection with the gang before or immediately upon the adoption of the act,

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it is conceded that any attempt to prosecute them would have been illegal. Since they did not relinquish their membership in the gang, it is conceivable that a valid indictment could have been returned against them for each day such membership continued, from the effective date of the act until the meeting of the Grand Inquest. The law is therefore not *ex post facto* as applied to this case.

IV.**The Supreme Court did not err in affirming the judgment of the Cape May Quarter Sessions.**

There was evidence to support each of the constituent elements of the crime charged in the indictment.

The Philadelphia police officers, Ryan, Creeden and Peltz, all testified positively that at the time of the arrest and continuing up to the time of the trial, there was in existence a gang known as the "Lanzetti gang," and that they knew the defendants as members of it (pages 84, 85, 97, 100 and 101).

It was proven by the defendants' admissions that they had not worked at any lawful occupation for two, four and five years respectively.

The fact that defendants had each been convicted of crime is not disputed.

The fourth point of argument in the brief of plaintiffs-in-error is directed to the weight of the evidence, which point may not properly be raised on strict writ of error.

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For the reasons above set forth, it is respectfully submitted that the judgment of the Supreme Court should be affirmed.

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