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Writ of Error

New Jersey Court of
Errors and Appeals

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	10
and		WRIT OF ERROR
CANICE NEARY and WILLIAM FANNING, <i>Plaintiffs-in-Error.</i>	}	New Jersey ss.

The State of New Jersey to the Union County Court of Oyer and Terminer: 20

GREETING:

Because in the record and proceeding and also in the giving of judgment in a certain indictment pending before you, in which said indictment Canice Neary and William Fanning were defendants and which said indictment was for murder, and upon which indictment they are convicted, as we are informed, and as we are further informed, manifest error hath intervened in the said proceedings and trial to the great damage of the said Canice Neary and William Fanning, as by their complaint, we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire rec- 30 40

Writ of Error

ord of proceedings had upon the trial of the said indictment to our New Jersey Court of Errors and Appeals on the twentieth day of May, 1929, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

WITNESS, Edwin Robert Walker, Chancellor at Trenton, aforesaid, on the thirteenth day of April, 1929.

JOSEPH F. S. FITZPATRICK,
Clerk.

GEORGE E. CUTLEY,
Attorney for Plaintiff-in-Error.

30

40

Certificate of Chancellor

IN CHANCERY OF NEW JERSEY

STATE OF NEW JERSEY,
Defendant-in-Error,

and

CANICE NEARY and WILLIAM
FANNING,
Plaintiffs-in-Error,

Sur
Indictment
for Murder.

10

CERTIFICATE.

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for review of the judgment of the Union County Court of Oyer and Terminer in this State, convicting the said Canice Neary and William Fanning, who were tried and convicted of the crime of murder, and after exhibiting to me the assignments of errors and specification of causes of reversal, I have refused to order a writ of error for the review of said judgment.

20

Dated, April 30, 1929.

30

E. R. WALKER,
Chancellor.

40

Return

In obedience to the command of the Writ to me,
 ALFRED A. STEIN, Judge of the Court of Quarter
 Sessions of the County of Union, directed, I DO
 HEREBY under my seal and hereunto annexed send
 the Indictment against WILLIAM FANNING and
 10 CANICE NEARY alias CHARLES NEARY and the rec-
 ord and proceedings of the plaint whereof men-
 tion is made within, with all things touching and
 concerning the same, to our Supreme Court of
 Judicature at Trenton, within specified at the time
 and place within mentioned, as within I am com-
 manded as appears by the schedule hereto an-
 nexed.

ALFRED A. STEIN,
 20 *Judge of the Court of Quarter*
 (Seal) *Sessions of the County of Union.*

The execution of this Writ appears by the
 schedule hereto annexed.

IN WITNESS WHEREOF, I, WILLIAM B. MARTIN,
 Clerk of the Court of Quarter Sessions in and for
 said County, have hereunto subscribed my name
 30 and affixed the seal of said Court this 9th day of
 May, A. D., Nineteen Hundred and twenty-nine.

W. B. MARTIN,
 (Seal) *Clerk.*

Return

COURT OF QUARTER SESSIONS

THE STATE	}	Indictment No. 36 of Court of Oyer and Terminer.	10
vs.			
WILLIAM FANNING, CANICE			
NEARY alias Charles Neary			
and DANIEL GROSSO alias David GROSS, FRANK KIEKART and BENJAMIN HAAS.			

It appearing that the Justice of the Supreme Court is absent from this County and application being made by Abe J. David, Prosecutor of the Pleas, to return into this Court an Indictment of the Court of Oyer and Terminer, and the Court being willing: 20

It is on this 14th day of May, 1928, ORDERED, that Indictment No. 36 of the May Term, 1928, found in the Court of Oyer and Terminer are presented by the Grand Jury of the present term to the Court of Oyer and Terminer be handed up to that Court for trial. 30

ALFRED A. STEIN,
Judge of the Court of Quarter Sessions.

Indictment**UNION OYER AND TERMINER**

MAY TERM, A. D., 1928

10 UNION COUNTY, TO WIT:

THE GRAND INQUEST for the State of New Jersey, and for the body of the County of Union upon their oath

PRESENT, that WILLIAM FANNING, CANICE NEARY alias Charles Neary, DANIEL GROSSO alias David Gross, FRANK KIEKART and BENJAMIN HAAS, late
20 Union, on the fourteenth day of October in the year of our Lord one thousand nine hundred and twenty six at the City of Elizabeth in the said County of Union, and within the jurisdiction of this Court with force and arms one John Enz, then and there being in the peace of God and of this State, did willfully and feloniously and of their malice aforethought, kill and murder.

30

40

Judgment

UNION COUNTY OF OYER AND TERMINER

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">CANICE NEARY alias Charles Neary</p>	}	<p>Indictment No. 36</p> <p>May Term 1928</p> <p>MURDER</p>	10
---	---	---	----

TO: CANICE NEARY alias CHARLES NEARY

You are hereby notified that the Honorable Samuel Kalisch, Justice of the Supreme Court of the district of the Union County Court of Oyer and Terminer, did, on the 3rd day of November, 1928, request in writing, Honorable Alfred A. Stein, Judge of the Inferior Court of Common Pleas of the County of Union, sitting alone, to constitute and hold the Union County Court of Oyer and Terminer in the above entitled cause, and has caused said request in writing to be filed in this office. 20

And, you or your attorney are hereby required to file a written objection thereto within five days from the service hereof upon you, if you so desire, and upon your failure to file such written objection within said time, the Honorable Alfred A. Stein, Judge of the Inferior Court of Common Pleas of the County of Union will conduct all proceedings and trial in and of the above entitled cause. 30

WM. B. MARTIN,
Clerk of the Union County Court of
Oyer and Terminer. 40

(Seal)

*Judgment*UNION COUNTY COURT OF OYER AND
TERMINER

10	<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">CANICE NEARY alias Charles Neary</p>	<p style="font-size: 3em;">}</p>	<p>Indictment No. 36 May Term 1928</p> <p>MURDER</p> <p>Proof of Service.</p>
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STATE OF NEW JERSEY }
COUNTY OF UNION } ss.:

20 C. W. RUNYON, being duly sworn according to law, on his oath deposes and says, that on the 5th day of November I was deputized by William B. Martin, Clerk of the Court, to serve notice, copy of which is hereto attached, on the defendant Canice Neary alias Charles Neary.

30 Deponent further says that on the 5th day of November, 1928, he served personally on Canice Neary alias Charles Neary, notice in the above entitled cause, a true copy of which is hereto attached and made part hereof, by handing him the same.

C. W. RUNYON.

Subscribed and sworn to before me }
this 5th day of November, 1928. }

NEIL McLEOD, JR.,

Notary Public of New Jersey.

40

*Judgment*UNION COUNTY COURT OF OYER AND
TERMINER

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">CANICE NEARY alias Charles Neary</p>	}	<p>Indictment 10</p> <p style="padding-left: 2em;">No. 36</p> <p style="padding-left: 2em;">May Term</p> <p style="padding-left: 2em;">1928.</p> <p style="padding-left: 2em;">MURDER</p>
---	---	--

To: HONORABLE ALFRED A. STEIN, *Judge of the* 20

Union County Court of Common Pleas:

In accordance with Chapter 248 of the Laws of 1928, you are hereby requested as Judge of the Inferior Court of Common Pleas of the County of Union, sitting alone, to constitute and hold the Union County Court of Oyer and Terminer in all proceedings in the above entitled cause, including the trial thereof.

SAMUEL KALISCH 30
Justice of the Supreme Court.

Dated, Elizabeth, New Jersey, November 3, 1928.

*Judgment*UNION COUNTY COURT OF OYER AND
TERMINER

10

THE STATE

vs.

WILLIAM FANNING

Indictment
No. 36 May
Term 1928.

MURDER

20

To: WILLIAM FANNING

30

You are hereby notified that the Honorable Samuel Kalisch, Justice of the Supreme Court of the district of the Union County Court of Oyer and Terminer, did, on the 5th day of January, 1929, request in writing, Honorable Alfred A. Stein, Judge of the Inferior Court of Common Pleas of the County of Union, sitting alone, to constitute and hold the Union County Court of Oyer and Terminer in the above entitled cause, and has caused said request in writing to be filed in this office,

40

And, you or your attorney are hereby required to file a written objection thereto within five days from the service hereof upon you, if you so desire, and upon your failure to file such written objection within said time, the Honorable Alfred A. Stein, Judge of the Inferior Court of Common Pleas of the County of Union will conduct all pro-

Judgment

ceedings and trial in and of the above entitled cause.

C. W. RUNYON,
*Deputy Clerk of the Union County
Court of Oyer and Terminer.*

(Seal) 10

UNION COUNTY COURT OF OYER AND
TERMINER

THE STATE vs. WILLIAM FANNING	}	Indictment No. 36 May Term 1928.	20
		MURDER	
		Proof of Service	

STATE OF NEW JERSEY }
 COUNTY OF UNION } ss.: 30

C. W. RUNYON being duly sworn according to law, on his oath deposes and says, that on the 5th day of January I was deputized by William B. Martin, Clerk of the Court, to serve notice, copy of which is hereto attached, on the defendant William Fanning.

Deponent further says that on the 5th day of January, 1929, he served personally on William Fanning, notice in the above entitled cause, a true 40

Judgment

copy of which is hereto attached and made part hereof, by handing him the same.

C. W. RUNYON.

10 Subscribed and sworn to before me }
 this 5th day of January, 1929. }
 NEIL McLEOD, JR.,
Notary Public of New Jersey.

UNION COUNTY COURT OF OYER AND
 TERMINER

20

THE STATE

vs.

WILLIAM FANNING

Indictment
 No. 36 May
 Term 1928.

MURDER

30

To Honorable ALFRED A. STEIN, *Judge of the
 Union County Court of Common Pleas:*

In accordance with Chapter 248 of the Laws of 1928, you are hereby requested as Judge of the Inferior Court of Common Pleas of the County of Union, sitting alone, to constitute and hold the Union County Court of Oyer and Terminer in all proceedings in the above entitled cause, including the trial thereof.

SAMUEL KALISCH,
Justice of the Supreme Court.

40

Dated, Elizabeth, New Jersey, January 5, 1929.

Judgment

STATE OF NEW JERSEY }
 COUNTY OF UNION } ss.

BE IT REMEMBERED, That at the Court of Oyer and Terminer, holden at the City of Elizabeth, in and for the County of Union, on the second Tuesday of May in the year of our Lord one thousand nine hundred and twenty-eight, before the Honorable Samuel Kalisch, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Alfred A. Stein, Judge of the Court of Common Pleas in and for the County of Union, upon the oaths of

William B. Bragdon	H. Eugene Gerhart	
E. Eugene Hill	Julius Finkel	
R. J. Thompson	Eugene Mancini	
George W. Strickland	Mary V. Lynch	20
John Tucker	Percy A. McVoy	
John H. M. Dudley	Frank McCullough	
John J. Hasson	John Y. Broeck	
Eugene G. Hanford	John Reuter	
Helen S. Rutan	Harry S. Birch	
Frank J. Travers	Thomas J. Hastings	
John A. Dennis	Walter B. Timms	

William H. Curtis

good and lawful men and women of said County of Union, then and there sworn and charged to inquire on behalf of the State of New Jersey, in and for said County of Union, it is presented by at least twelve of said Jurors in the manner and form following, to wit:

The bills herewith presented are true bills.

WALTER B. TIMMS,
Foreman

ABE J. DAVID,
Prosecutor of the Pleas.

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Judgment

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth, in said County of Union, on Monday, the fourteenth day of May, in the year of our Lord, One thousand nine hundred and twenty-eight, before Honorable
 10 Alfred A. Stein, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union, according to the form of the statute in such case made and provided, the Grand Jury presented the Indictment aforesaid, which said Indictment was thereupon ordered by the Court of Oyer and Terminer of said County to be delivered to the Clerk of the Court of Quarter Sessions of said County who is directed to affile the same in the Court of Quarter Sessions according to the form of the statute
 20 in such case made and provided, and thereupon the said Indictment is delivered to the Clerk of said Court of Quarter Sessions of said County.

And afterwards, that is to say, at the same term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, on Saturday, the sixth day of October, in the year last aforesaid, comes the said Canice Neary, alias Charles Neary, in his own person and now here touching the
 30 premises in the said Indictment above specified and charged upon him, being asked in what manner he would acquit himself thereof, says that he is Not Guilty thereof, and of this he puts himself upon the Country, etc., and Abe J. David, who prosecutes for the State in this behalf doth likewise the same.

And afterwards, that is to say, at the October Term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid on Saturday, the
 40 fifth day of January, in the year One thousand

Judgment

nine hundred and twenty-nine, comes the said William Fanning in his own person and now here touching the premises in the said Indictment above specified and charged upon him being asked in what manner he would acquit himself, thereof, says that he is Not Guilty thereof, and of this he puts himself upon the Country, etc., and Abe J. David, who prosecutes for the State in this behalf doth likewise the same. 10

And afterwards, that is to say, at the January term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, on Monday, the twenty-eighth day of January, in the year last aforesaid, before Honorable Alfred A. Stein, the Judge aforesaid, the said Canice Neary alias Charles Neary and William Fanning being set to the Bar, Abe J. David, who prosecutes for the State moves the trial of the Indictment aforesaid. Wherefore let a jury thereupon come on this day last aforesaid, before this Court of Oyer and Terminer, aforesaid, of good and lawful men of the County of Union aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said Canice Neary alias Charles Neary and William Fanning to recognize upon their oaths whether the said Canice Neary alias Charles Neary and William Fanning be guilty of Murder as in the Indictment aforesaid specified or not guilty, because as well as the said Abe J. David, who prosecutes for the State in this behalf as the said Canice Neary alias Charles Neary and William Fanning have put themselves upon the said Jury and the Jurors of the said Jury by Samuel H. Tool, Sheriff of said County of Union for this purpose impanelled and returned agreeably 20
30
40

Judgment

to the statute in such case made and provided, to wit:

- | | | |
|----|-----------------------|----------------------|
| | 1. David G. Fables | 7. C. Elliott Barb |
| | 2. John M. Snell | 8. S. J. Stanshan |
| 10 | 3. Edward L. Kelly | 9. Albert R. Ferrel |
| | 4. Hyman Alpert | 10. John S. Peek |
| | 5. Charles C. Resnick | 11. Edward J. Keller |
| | 6. Frank D. Sullivan | 12. Frank H. Sprole |

who being chosen, tried and sworn to speak the truth of and concerning the premises, on the thirty-first day of January, in the year last aforesaid, returned into Court, in charge of the officer sworn to attend them and then and there upon their oaths say they find the said Canice Neary alias Charles Neary and William Fanning "Guilty of Murder in the first degree with a recommendation to the Court of Life Imprisonment" and so say they all.

And afterwards, that is to say, at the same term of the Court of Oyer and Terminer holden at Elizabeth aforesaid, in the County aforesaid, on Thursday, the thirty-first day of January, in the year of our Lord, One thousand nine hundred and twenty-nine, before Honorable Alfred A. Stein, Judge of the Court of Oyer and Terminer, in and for said County of Union, according to the form of the Statute in such case made and provided the said Canice Neary alias Charles Neary and William Fanning being set to the Bar, Abe J. David, who prosecutes for the State in this behalf moves for judgment on the said Canice Neary, alias Charles Neary and William Fanning.

Judgment

Whereupon all and singular the premises being seen and by the Court now here fully understood. It IS ORDERED and adjudged that the said Canice Neary alias Charles Neary and William Fanning having been convicted of the crime of Murder in the First Degree be imprisoned in the New Jersey State Prison for the remainder of their natural life, at hard labor upon this conviction.

10

And the said defendants in mercy, etc.

Judgment signed May 9, 1929.

ALFRED A. STEIN,

Judge.

20

30

40

Harold J. Seymour—For the State—Direct

HAROLD J. SEYMOUR, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Walsh:

Q. Mr. Seymour, where do you live? A. 1117 Bayway, Elizabeth. 10

Q. What is your business? A. Municipal engineer and land surveyor.

Q. How long have you been a civil engineer and surveyor? A. Twenty-three years.

Q. Did you make this map that is now upon the easel? A. Yes, sir, I did.

Q. Did you make the measurements from which you made the map? A. I did. 20

Q. And will you explain this map to the Court and jury, that is what it represents?

By the Court:

Q. First the scale of the map? A. This is a map drawn to a scale of one inch equals six feet. It shows the intersection of Elizabeth avenue and Sixth street, physical features such as the curbs, buildings, poles, property lines, type of pavement, trolley tracks, and the character of the buildings, and so forth at that intersection. 30

Q. Elizabeth avenue runs in what direction? A. In a northwesterly or southeasterly direction.

Q. That is a general north and south direction, is it? A. Generally, yes.

Q. Sixth street runs in what direction? A. General east and west direction.

Q. Calling your attention to the frame building and drug store and dwelling on what corner of Sixth street and Elizabeth avenue would that be? A. Northeasterly corner. 40

Harold J. Seymour—For the State—Cross

Q. Northeasterly? A. Yes.

Q. Or northwesterly? A. Northeasterly.

Q. Calling your attention to the building marked "Brick frame building bakery and dwelling?"

A. Southeasterly corner.

10 Q. You are not reversed on those things? A. No.

Q. The frame building with the board fence alongside of it would be— A. The northwesterly corner.

Q. And the brick store and building then would be the southwesterly corner? A. Southwesterly corner.

Mr. Walsh: Cross examine.

20 *By the Court:*

Q. The map also shows the kind of pavement on Elizabeth avenue? A. Yes.

Q. Does it show the same on Sixth street? A. Yes, sir.

CROSS EXAMINATION by Mr. Cutley:

30 Q. What is the width of Elizabeth avenue, Mr. Seymour? A. The full width between property lines?

Q. No, from curb to curb? A. Forty-eight feet.

Q. And on Sixth street? A. Thirty-six feet.

Q. And that garage where you have marked garage on Sixth street, how many feet from Elizabeth is that? A. Do you want me to scale it?

Q. I mean general, approximate it. A. Sixty feet.

40 Q. One inch equals six feet, is that your scale? A. Yes.

Henry F. Stiess—For the State—Direct

Q. More than that, isn't it? A. It is a little more than that. It may be one hundred feet.

Q. Just try it and give me that, will you? A. Between seventy-five and eighty feet.

Mr. Cutley: That is all.

Mr. Walsh: That is all. I offer the map in evidence. 10

The Court: Any objection to the map?

Mr. Cutley: No objection.

The Court: It will be admitted in evidence.

(Map entered in evidence and marked Exhibit S-1.)

20

HENRY F. STIESS, a witness called on behalf of the People, being first duly sworn according to law, on his oath, saith:

Direct examination by Mr. Walsh:

Q. Mr. Stiess, where do you live? A. 164 Phelps Avenue, Englewood, New Jersey.

Q. What is your business? A. Bank clerk. 30

Q. In which bank are you a clerk? A. Federal Reserve Bank of New York.

Q. Where were you employed on the 13th of October, 1926? A. Federal Reserve Bank of New York.

Q. Did you place any packages in the mail on that day?

Mr. Cutley: I object to that as a leading question. 40

Henry F. Stiess—For the State—Direct

The Court: Objection overruled. The answer is in.

Q. How many packages—were they addressed to Elizabeth? A. Yes, sir.

10 Q. How many packages? A. Six.

Q. What did they contain? A. Currency.

Q. To what amount? A. \$151,700.

Q. Were those packages given any special numbers? A. Yes, sir.

Q. Have you a record of those numbers? A. Yes, sir.

Q. Have you it with you? A. Yes, sir.

Q. What were the numbers of those packages?

A. M-2508, M-2509, M-2510, P-2837, P-2838, M-2733.

20 Q. To whom did you deliver those packages?

A. To Mr. Jordan.

Q. Of what place? A. In the post office.

By the Court:

Q. Where? A. Federal Reserve Building.

Q. Where? A. At the post office.

30 Q. Where? The post office where? A. At Maiden Lane and Nassau Street.

By Mr. Walsh:

Q. Is there a post office or branch of the post office connected with the Federal Reserve Bank? A. Yes, sir. There is a post office right in our building.

Q. And Mr. Jordan was the person to whom you delivered those packages? A. Yes, sir.

40 Q. Do you know what his full name is? A. Yes, sir.

Henry F. Stiess—For the State—Cross
Joseph A. Jordan—For the State—Direct

Q. What is his name? A. Joseph Jordan.

CROSS EXAMINATION by Mr. Cutley:

Q. Did you put the money into it yourself, Mr. — A. Yes, sir. 10

Q. And sealed and counted? A. Yes.

Q. And delivered it to him? A. Yes, sir.

Mr. Cutley: That is all.

Mr. Walsh: That is all.

JOSEPH A. JORDAN, a witness called on behalf of the People, being first duly sworn according to law, on his oath, saith: 20

Direct examination by Mr. Jordan:

Q. Mr. Jordan, where do you live? A. 65 Stuyvesant Avenue, Brooklyn.

Q. What is your business? A. Clerk in the Registry Division of the Federal Reserve Station.

Q. Of which post office? A. Federal Reserve.

Q. Of the New York City post office? A. Yes, sir. 30

Q. Where were you employed on the 13th of October, 1926? A. At the same station just mentioned, the Federal Reserve station.

Q. Do you know Mr. Stiess? A. Yes, sir.

Q. Did you receive on the 13th day of October six packages from him for mailing purposes? A. Yes, sir.

Q. Do you know what they contained? A. Well, 40

Joseph A. Jordan—For the State—Direct

the packages received and in view of the fact that he represents the Money Department, we believed it is money.

Mr. Cutley: I ask that that be stricken out.

10

The Court: It may be stricken out.

By Mr. Walsh:

Q. You don't know what was in the packages?

A. No.

Q. You received the packages? A. Yes, sir.

Q. What did you do with those packages? A. Why, they were—those five packages numbered M-2508, P-2837, M-2509, P-2838, and M-2510—
20 they were put in a pouch under registry lock number M-12,491, rotary number 90, and they were dispatched to the post office via the New York post office what is known as the direct pouch. It had an Elizabeth label in, so it was sent to the New York post office, not to be worked, but to be re-dispatched.

By the Court:

30 Q. Where was it sent? A. To the general post office.

By Mr. Walsh:

Q. Where? A. 33rd Street and Eighth Avenue. That is the general delivery place for the truck that takes all of our mail, but this particular pouch I just described had an Elizabeth label in it, which means that they just take that pouch

40

Michael T. Murray—For the State—Direct

and not work it, but forward it direct to Elizabeth.

Q. Those packages were put in that? A. Yes, sir, that is five of those packages.

Q. What became of the sixth one? A. The sixth one M-72123 that was put under a registry lock G-9675, rotary number 294 and followed to the same place. 10

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

MICHAEL T. MURRAY, a witness produced on behalf of the state, being duly sworn, according to law, on his oath, saith: 20

Direct examination by Mr. Walsh:

Q. What is your business, Mr. Murray? A. Post office clerk, Elizabeth.

Q. What was your position on October 14, 1926? A. I was working in the registry section of the local post office.

Q. On that day did you receive a shipment of money from the Federal Reserve Bank? A. Yes, sir. 30

Q. Directed to anybody? A. I received a shipment as it was delivered to the office from the train.

Q. To whom was that shipment of money directed? A. Included in the shipment were packages directed to the Elizabeth Port Bank as well as the Peoples Bank.

Q. Referring to the packages were those packages numbered? A. Yes, sir, they were numbered. 40

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Q. Referring to package P2837, P2838, M2508, M2509, and M2510, did you receive those packages? A. Yes, sir.

10 Q. What did you do with them? A. Why, I received them and took them from the pouch that they were enclosed in, checked them to the bill that was also enclosed.

The Court: Speak louder.

A. I checked them to be sure they were received as sent, checked them against the bill, and gave them what we call the inward number at Elizabeth.

20 Q. What were the inward numbers that you gave them? A. The inward number on M2508 was 15962; on P2837 was 15963; on M2509 was 15964; on P2508 was 15965; and on M2510 was 15966. On M2723 was 15961.

Q. After you had done that checking and re-numbering on these packages what did you do with them? A. I placed them in a vault and arranged them for delivery.

30 Q. Did you take them from the vault? Were they taken from the vault? A. No. I placed them in the vault. They were later taken from the vault.

Q. That was on what day that you did that? A. That was on the fourteenth of October.

Q. At about what time? A. They were received about eight o'clock.

Q. After that what did you do with them? A. Nothing further; placed them in the vault.

Q. Placed them in the vault? A. And that is all.

40 Q. Do you know whether they were taken from

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there at any time, to your knowledge? I mean, did you see anybody take them from there? A. Why, as I was going—I saw them taken from there at nine o'clock.

Q. By whom were they taken? A. They were taken from the vault and placed on the window for delivery. They were taken from the window by Patrick Quinn. 10

Q. Were they placed in any bag? A. That I didn't know.

Q. They were taken as packages by Patrick Quinn? A. They were taken as packages by Patrick Quinn.

Q. What was Patrick Quinn's position? A. He was also a mail clerk at the Elizabeth Post Office and acting as a guard at this particular mail. 20

Q. To whom was that money addressed, or those packages? A. Five were addressed to the Elizabethport Bank and one to the Peoples National Bank.

Q. What is the number of the one addressed to the Peoples National Bank? A. The one addressed to the Peoples was 15961.

Q. Was that given to Quinn? A. That was given to Quinn, the six were given to Quinn at the one time and signed for by him. 30

Mr. Walsh: Cross examine.

CROSS EXAMINATION by Mr. Cutley:

Q. Have you got the signature of Quinn on that paper which you have in your hand? A. Yes, sir.

Q. Is there any time mentioned as to when Quinn got that on that paper? A. Yes. There is a time on it placed there by the clerk delivering 40

Michael T. Murray—For the State—Cross

it to Quinn.

Q. What time was that? A. 9.10 it says here, A. M.

Q. Was that the time that you saw them that you previously mentioned as being nine o'clock?

10 A. Nine o'clock.

Q. So that they were there approximately ten minutes after you saw them? A. According to this they were.

Q. Well, I mean, how about your recollection? A. I left the office at nine o'clock going to lunch.

Q. As a matter of fact, don't you know those packages didn't leave until 9.20 from the Post Office? A. I don't know. I was out of the office, sir, at that time, at 9.20.

20 Q. When was Quinn's ordinary method of taking those from the vault to the addresses? A. Quinn didn't take them from the vault. He took them from the window, at the registry section, and in most cases—well, they were placed in a sack and carried to the truck. That was the regular procedure of handling the mail.

Q. What is that time you have mentioned to me? A. That is, I suppose, an approximate time. It is not minutes.

30 Q. Well, the post office don't have approximate time, do they? They have actual time? A. Well, we wouldn't put down like 906, or 907.

The Court: You will have to talk louder than that because I want to hear you, too.

Q. According to your explanation if it said 9.10 it might be 9.14? A. No.

40 Q. And the clock would only have registered five or ten minutes, is that it? I want to get it

Christopher A. Brokaw—For the State—Direct

clear if I can. A. Yes. I see what you mean. If he put down 9.10?

Q. Where is 9.10 on that? A. Right here (indicating), see here initials of delivery clerk, 9.10 A. M., J. J. C. That would show he delivered these six at 9.10 A. M. to Quinn at the registry window. I was out of the office at that time though or otherwise I would have probably delivered them to Quinn. I didn't know any— 10

Q. Quinn was at the registry window? A. Yes, sir.

Q. Who was the man you say delivered them to Quinn? A. That is Mr. Cale, another clerk in the office.

Q. Where did he take them from the vault? A. Took them from the vault where I had placed them. 20

Q. When you put them in a vault do you make some kind of a notation? A. No, sir.

Mr. Cutley: That is all.

CHRISTOPHER A. BROKAW, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith: 30

Direct examination by Mr. Walsh:

Q. Doctor, you are a regularly licensed and practicing physician of the State of New Jersey? A. I am.

Q. And have been for how long? A. About eleven years.

Q. Do you occupy any official position in the county of Union? A. I do. 40

Christopher A. Brokaw—For the State—Direct

Q. What position is that? A. County physician.

Q. Were you on October 14, 1926, occupying the position of County Physician? A. I was.

10 Q. Now, in the performance of your duties were you called upon to perform an autopsy on the body of one John Enz? A. I was.

Q. On what day did you do that? A. October 14, 1926.

Q. And where? A. At Martin's morgue, Elizabeth.

20 Q. Will you give us the result of that autopsy? And your determination? A. The body was that of an adult white male, age approximately 28 years; height about five foot ten; weight about 150 pounds, brown hair and gray eyes. There were evidences of bleeding from both nostrils. There was Echymosis or bruise of both eyes and left ear. There was dry blood smeared over the face. There was a ragged wound two inches by two inches in the mid line of the forehead two and one-half inches above the orbital region. There was a wound of exit in the back of skull three inches above the external occipital protuberance that is the prominence in the back of the skull. There was a crushing fracture of vault of skull. There was another bullet wound over the right forearm two and one-half inches below the elbow. In the chest the heart and lungs were free from evidence of disease or injury. In the abdomen the abdominal organs were also free from disease or injury. Cause of death: Compound comminuted crushing fracture of vault of skull. Laceration of brain substance.

30 40 Q. The compound fracture of the vault of the skull, where was that with relation to where the

Patrick F. Quinn—For the State—Direct

wound of entry was? A. The top of the skull beginning at the wound of entrance was simply blown apart. The whole top of the skull was crushed and the brains exuding from the wound.

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

10

PATRICK F. QUINN, a witness called on behalf of the People being first duly sworn according to law, on his oath, saith:

Direct examination by Mr. Walsh:

Q. Mr. Quinn, what is your business? A. I am a post office inspector. 20

Q. On October 14, 1926, what was your business? A. I was clerk at the Elizabeth, New Jersey, post office.

Q. Where do you live? A. 1010 Florida Street, Elizabeth.

Q. How long had you been connected with the Elizabeth post office? A. Since May, 1920.

Q. Do you remember October 14, 1926? A. I do. 30

Q. Where were you at about nine o'clock that day? A. Why, about nine o'clock or as near as I can remember it, I signed for registered mail at the registry division for delivery to the Elizabethport and the People's National Bank.

Q. You signed for it? A. Yes.

Q. As you signed for it, did you receive anything? A. Yes. I received six registered packages.

Q. What did you do with those packages? A. 40

Patrick F. Quinn—For the State—Direct

I placed them in a mail sack, a tie sack.

Q. I show you this sack and ask you if you recognize it. A. It was a sack like that. Of course I can't exactly say whether it was that one, but it was a sack similar to that, the same as that.

10

Mr. Walsh: I think this sack had better be marked for identification.

(The sack referred to was marked "State's Exhibit 2 for identification.")

By Mr. Walsh:

Q. After placing them in this mail sack, or one similar to the one shown you, what did you do?

20

A. Myself and John Enz carried it out to the clerk, Jim Barrie, who had another sack containing registered mail. We carried it to the back of the post office and placed it in a Ford truck which was waiting there.

Q. This Ford truck was one of the regular trucks? A. That was the regular Government-owned truck.

30

Q. Who was John Enz? A. John Enz was a letter carrier employed delivering mail on business trip and also driving this truck on days which it was necessary to have it driven.

Q. After you had placed your sack in the mail truck, and Barrie had placed his, what did you and Enz do? A. I locked the truck, and John Enz started the car and we both sat on the seat and Officer Christman who was waiting there, accompanied us as we left the post office, the rear of the post office.

40

Q. How did he accompany you? A. That is, he followed us on his motoreycle.

Patrick F. Quinn—For the State—Direct

Q. Do you recall the time that you left the post office? A. As near as I can remember it was not any later than nine, just about nine o'clock.

Q. Who was on the seat of the mail truck? A. I was on the seat and Clerk Barrie was inside the cage. 10

Q. Who drove the mail truck? A. John Enz.

Q. And this truck was what type of car? A. A Ford 3.8 ton truck with cages, a screened body.

Q. With screened body? A. Yes.

Q. When you say you locked the mail truck, what did you do? A. There is two doors in the rear of the truck which open, and there is a piece of iron goes across, and there is a regular trap lock, a snap lock, and this can't be opened then without a key, unless they are forced. 20

Q. I show you this lock and ask you if you know it? A. Yes, sir, that is the kind of locks used to lock all Government trucks.

Q. This lock is snap shut? A. Yes, sir, it is snap shut.

Q. After leaving the post office where did you drive to? Where did you next drive to? A. I left the rear of the post office and we drove south to Westfield Avenue, which is the driveway, and drove east out Westfield Avenue into North Broad Street, that is going to North Street, and turning south on North Broad Street into Broad Street and continuing south on Broad Street for approximately a block or a block and a half and stopped in front of the Union County Trust Company, and at the Union County Trust Company, Clerk Barrie, after the truck was opened got out and John Enz accompanied him into the bank, and delivered the registered mail and making the delivery, and John Enz coming right out. After he 40

Patrick F. Quinn—For the State—Direct

helped him carry the mail in, and I stayed on the truck, and Officer Christman was standing behind us on his motorcycle, and we proceeded then down Broad Street.

10 Q. How long did that take there? A. It didn't take any more than three minutes at the most, from about a minute and a half to three minutes. Just a matter of going into the bank and John Enz walking right out.

Q. From there you say "we" proceeded. Who proceeded? A. John Enz, myself and Officer Christman.

Q. Where were you sitting? A. I was sitting on the seat.

Q. Next to Enz? A. Next to Enz.

20 Q. As you proceeded, where did you go? A. We proceeded south on Broad Street to the intersection of Elizabeth Avenue and turned east into Elizabeth Avenue and continuing along until we got at the intersection of Sixth Street or close to it and as—

Q. How far is that? A. Well, I don't know the distance in miles.

Q. Is it approximately a mile? A. It is a full mile or close to it.

30 Q. When you got near to the intersection of Elizabeth Avenue and Sixth Street, will you please tell us what happened? A. As we got to the corner, a touring car shot out in front of us. We were proceeding easterly and this truck shot out in front of us and John Enz probably assuming that it was—

Mr. Cutley: I object to what John Enz assumed.

Patrick F. Quinn—For the State—Direct

A. (Continuing) Well, he was the driver and he made a turn of the car, thinking the car was crossing the intersection, and he turned his car, attempting a right turn of the wheel, and as he did, there were shots fired out of a car, and I got shot across the side of the head, and the car then ran about ten feet down in Sixth, eight or ten feet. 10

Q. Was it a car of— A. A Ford Government truck.

Q. Will you please take the pointer and illustrate on the map just how you were going and on what side of Elizabeth Avenue you were going and where the other car was? A. We were proceeding down Elizabeth Avenue on this side of the street (indicating). 20

The Court: Indicating—

Mr. Walsh: Indicating the right-hand side of Elizabeth Avenue.

The Witness: Yes, the right-hand side as you go down.

By the Court:

Q. Toward First Street? A. Yes.

Q. Meaning that you were driving in a general southerly direction on Elizabeth Avenue? A. Yes, on Elizabeth Avenue, and as we got about here (indicating), this car shot out from here (indicating). 30

Q. Meaning where? A. Shot out of Sixth Street going toward East Jersey Street in an easterly direction, and the Ford car, as we got about here (indicating), this car shot out in front of us and immediately opened fire, and as they did, John Enz before that turned the wheel in the 40

Patrick F. Quinn—For the State—Direct

right-hand direction, with the intention of going around the back of this car.

By Mr. Walsh:

10 Q. What did he do? A. He turned the car and made a right-hand turn and shot down into Sixth Street, and as he did, he was shot through the head and I was shot across the head, and the car ran about approximately over about here (indicating), just drove about here (indicating).

Q. Indicating the southerly side of Sixth Street? A. Yes, that is the southerly side, over in that direction. As he got there, I got out of the car and walked to about here (indicating), and started shooting.

20 Q. You walked about where? A. To the center, right—

Q. You mean the center of the street? West of Elizabeth Avenue? A. Yes, west of Elizabeth Avenue, and I started shooting at a man who was standing, I should judge about there (indicating).

Q. Indicating the center? A. Just about a little back in front of the mail truck, and I started—

30 Q. What did that man have? A. He had—it looked like a gun; it had a barrel about that long (indicating).

Q. Indicating about three feet? A. About that long, something like that, not a real rifle barrel. I started shooting at him, and as I did, I was shot through the side and in the leg and shot through here (indicating), the hand which I was holding the gun, and as I was shot through here, the gun fell out of my hand, and I staggered back and fell

40 in the gutter, and as I lay in the gutter, an auto-

Patrick F. Quinn—For the State—Direct

mobile ran over my body, and both legs and broke my ribs, and then after a little while somebody carried me over in the gutter, and that's the last I remember.

Q. That is all you remember until you woke up where? A. In the hospital.

10

Q. What hospital? A. Alexian Brothers Hospital.

Q. How many shots had you received? A. Four.

Q. And the first one before you had left the truck? A. Yes, across the side of the head.

Q. Do you know whether Enz had been injured at that time or not? A. No, I couldn't tell you, because it happened so fast. I have no recollection of it.

20

CROSS EXAMINATION by Mr. Cutley:

Q. You are a post office inspector now? A. Yes, sir.

Q. How long have you been such? A. Since June 27, 1928.

Q. How long was it before you recovered from your injuries? A. Well, I was only in the hospital about two weeks, but it was approximately about two and a half or three months before my arm was back in shape again.

30

Q. And when you recovered you were made a post office inspector? A. No, I went to work as foreman. I went back to my work and shortly after I was made a foreman in the Elizabeth post office, and a year ago I took the examination for post office inspector.

Q. From the time you took your examination, you have been working on this case? A. No, sir, I am working out of the St. Louis Division.

40

Patrick F. Quinn—For the State—Cross

Q. You testified at the trial of a man named Sweeney in this court? A. I did.

Q. You testified to substantially what you told now? A. Yes, as near as I can remember is what I am after saying.

10 Q. From the time that that automobile intercepted Enz's truck, and the truck upon which you were, what time elapsed, if you can remember? A. I don't understand your question.

Q. What was the actual length of time during—from the time that the automobile, the mail truck, was cut off until you passed out of the picture? What would you say? A. I couldn't say. I would not say it would be more than, well—twenty minutes or half an hour. I don't think it
20 was any more than that. I haven't any idea at all as to the time.

Q. You get my question? A. Yes, from the time the truck intercepted us until the time of my first recollection.

Q. That would be about twenty minutes? A. I would not say exactly, because I can't remember it.

By the Court:

30 Q. When did you remember coming to? A. Somebody turned me over.

Q. When? A. I remember when I was laying in the gutter and a person giving me a glass of water.

By Mr. Cutley:

40 Q. Do you think, Mr. Quinn, that you are able to give us an approximate recollection in minutes

Patrick F. Quinn—For the State—Cross

from the time that car was intercepted until you went out of business? A. No, I could not.

Q. Would you say it was ten minutes? A. I haven't any idea.

Q. Was it a minute? A. It was more than a minute, it was a minute or more, naturally.

Q. All these things you did, getting shot and getting down, all consumed time? A. Certainly.

Q. How did you get the information of twenty minutes or a half hour in your head? A. You asked me for the time, and that is what I figured out myself it would take. It happened so fast.

Q. You don't mean to say that all you described on the stand just now would take twenty minutes or a half hour to be enacted? A. Certainly. It would not take any more.

Q. Then can we proceed on the theory then that from the time the truck was intercepted at Elizabeth Avenue and Sixth street, twenty minutes had passed until you were rendered unconscious?

Mr. Walsh: Oh, no. That was not his testimony.

The Court: There is no objection before the court.

By Mr. Cutley:

Q. That has been objected to as not being the testimony.

The Court: Answer the question, if you can.

A. No, I would not say it would be that long.

The Court: The witness has already ex-

Patrick F. Quinn—For the State—Cross

plained on two or three occasions that he does not know the exact time that it took, that is, the whole thing took. His best recollection is that it probably took twenty minutes or a half hour.

10 Mr. Cutley: I will rest on that.

Q. What time did you leave the post office? A. Just about nine o'clock.

Q. Did you have the money in your possession at nine o'clock? A. I signed for it at approximately nine o'clock.

Q. What do you mean approximately nine o'clock? A. Well, I can't remember the exact time.

20 Q. Well, did you sign for it at nine o'clock or some time after nine o'clock? A. Right a little after nine, I would say.

-Q. Did Quinn have the money before you had it? A. I received the money from Clerk Cahill in the registry division.

Q. Do you know what that is, Mr. Quinn? A. Yes, sir, that is a record of a registered mail received for delivery.

30 Q. Do you know what this notation means? A. That notation is "9.10 J. J. C." It is evidently intended for the initials—

Mr. Walsh: I object to that unless he made it. The witness has been asked what something means, whereas it has not been shown that that entry of time was made by him or that he had any knowledge or ever saw it before.

*Patrick F. Quinn—For the State—Cross**By the Court:*

Q. Did you make those entries? A. No, sir.

By Mr. Cutley:

Q. Do you know who did? A. I know the initials, that is all. 10

Q. Whose are they? A. J. J. C., that is a clerk employed, James J. Cahill who was employed in the registry division.

Q. What is that notation 9.10 there?

Mr. Walsh: I object.

Q. If you know? 20

The Court: It speaks for itself unless you get somebody who made the notation. You might just as well ask me about it myself. I do not know.

By Mr. Cutley:

Q. You say you left at nine o'clock? A. About nine o'clock, yes, sir.

Q. How long did it take you to go down to that bank? A. Why, about two or three minutes. It is only three blocks, a little over three blocks from the post office. 30

Q. And you stayed there how long? A. About two minutes.

Q. How long did it take you to get to the corner of Elizabeth avenue and Sixth street? A. From the Union County Trust Company about four or five minutes.

Q. That would bring you up to about 9.10? A. 40

Jacob Christman—For the State—Direct

About 9.10 or a little after, or 9.12.

Q. Do you recall testifying at the trial of Sweeney, didn't you? A. Yes, sir.

Q. Do you recall whether or not you testified that you left the post office at 9.05? A. I don't recall whether I stated—

10

Q. Well, if you said that, that was to the best of your recollection? A. That was to the best of my knowledge.

Mr. Cutley: That is all.

JACOB CHRISTMAN, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

20

Direct examination by Mr. Walsh:

Q. Mr. Christman, what is your business? A. Policeman.

Q. Where? A. Elizabeth police department.

Q. To what squad are you attached? A. Motorcycle squad.

Q. How long have you been attached to that squad? A. About four years.

30

Q. Do you remember October 14, 1926? A. I do.

Q. What time did you go on duty that morning? A. Eight o'clock.

Q. And where did you go on duty? A. At Westfield Avenue and Cherry Street.

Q. How long did you remain upon that duty? A. A half hour.

40

Q. After leaving Westfield avenue and Cherry

Jacob Christman—For the State—Direct

street where did you go? A. To the motorcycle garage.

Q. Where is that? A. At West Scott Place or East Scott Place.

Q. How long did you remain at the motorcycle garage? A. About three minutes.

Q. From there where did you go? A. To the post office. 10

Q. Elizabeth post office? A. Elizabeth post office.

Q. What part of the post office building or grounds did you go? A. To the rear.

Q. What was your duty there that morning? A. Escort the mail truck.

Q. Do you know John Enz? A. I did.

Q. Did you see him there that morning? A. I did. 20

Q. How long did you remain at the rear of the post office? A. About three minutes.

Q. And from there where did you go? A. To Elmora State Bank.

Q. With whom? A. With the mechanic and I can't recollect whether it was Quinn or not.

Q. You went to the Elmora State Bank? A. Yes.

Q. How long did that take you? A. About seven minutes. 30

Q. Did you return to the post office at any time that morning? A. Right after we went to the Elmora State Bank we returned to the post office.

Q. What time did you get back to the post office? A. About five minutes to nine.

Q. Was Enz there then? A. Well, I didn't just see him but we changed drivers. That is all.

Q. Changed drivers? A. Yes.

Jacob Christman—For the State—Direct

Q. Who took the place of the driver? A. John Enz.

Q. Well, did you leave there? A. Yes, we left there.

10 Q. Who left? A. Quinn, John Enz, Barry and myself riding in the rear of the truck.

Q. You were riding in the rear? A. On my motorcycle.

Q. You were riding in the rear? A. On my motorcycle.

Q. Do you recall what time it was you left the post office? A. Not exactly. It was a little after nine o'clock.

Q. Where was your first stop? A. Union County Trust Company.

20 Q. When the truck stopped at the Union County Trust Company where did you remain? A. Well, I was in the rear of the mail truck sitting on my machine.

Q. Who went into the Union County Trust Company? A. Enz.

Q. Who else? A. Quinn.

30 Q. After they came out then where did you go? A. Quinn and Enz got on the seat and drove down Broad Street to Elizabeth avenue, down Elizabeth avenue to Sixth street.

Q. As you got to Sixth street was your attention attracted by anything? A. I noticed the mail truck turn to the right and as he turned to the right a black car, a sedan came out of Sixth street and I noticed as this car came out of Sixth street there was a man hanging out the side with a gun and I heard two shots and my right leg stiffened out. I went to turn to the left and I was hit again from the rear by a car which turned me over in
40 the middle of the car track; the handlebar broke

Jacob Christman—For the State—Direct

and caught me in the chest. After that I didn't know nothing.

Q. Now, you say you saw a man hanging out of the car that came out? A. Yes.

Q. And that is the man who shot you? A. That is the man.

Q. What did he shoot you with? A. Well, it was something like a machine gun. 10

Q. Did you get a good look at his face? A. I did.

Q. Do you know who the man was who shot you? A. Yes, I do.

Q. Who was he? A. James Cuniffe.

Q. I show you this picture and ask you who that is, if you know? A. Yes, James Cuniffe.

Q. That is a picture of James Cuniffe? A. Yes, sir. 20

Mr. Walsh: I offer this in evidence.

The Court: Any objection?

Mr. Cutley: Yes, sir; I object on the ground that this is an indictment for murder in which Mr. Cuniffe is not mentioned and he is not a party to it; it is incompetent, immaterial, and irrelevant.

The Court: Upon what theory do you think you can introduce this picture? 30

Mr. Walsh: It is part of the *res gestae*. That is, these defendants are on trial and Cuniffe is not on trial. I think, before the trial ends we can show good cause why Cuniffe is not a party to this indictment.

The Court: Why do you want the picture?

Mr. Walsh: I just want to lay all the facts before the Court and jury. 40

Jacob Christman—For the State—Direct

The Court: I sustain the objection.

Q. How many times were you shot officer? A. Five.

10 Q. Will you indicate to the jury where those five shots were? A. One on the back, one here, one here, and two underneath the knee.

Q. One in the back and one where, on the right thigh? A. The right leg, the right thigh.

Q. Just show where they were?

The Court: Mention where they were.

A. One right here.

Q. Where is that? A. That is on the upper right hip, right thigh.

20 Q. The upper right thigh? A. The upper right thigh. The upper left thigh and behind the knee.

The Court: Behind the left knee.

A. Behind the left knee two shots.

Q. I believe you said you became unconscious lying there in the street?

30 The Court: That is what he said. That is all he remembered.

Q. When did you come to? A. At Seventh street and Elizabeth avenue.

Q. And where were you then? A. I was on my way to the hospital.

Q. In an automobile? A. In an automobile.

Q. Did you notice how many persons were in the car out of which the man shot who shot you?

40 A. Only one.

Jacob Christman—For the State—Direct

Q. You only saw one? A. Only saw one.

Q. Was he the driver of the car? A. No, sir.
It was a man in the rear window of that car.

Q. But the man who shot you was not the driver? A. No, sir.

Q. The car was moving at the time? A. Yes, 10
sir.

Q. This was the car that came out of Sixth street? A. Yes, sir.

Q. Did you see any other cars there? A. I did not.

Q. Only the mail truck? A. Only the mail truck and this black sedan.

Q. Now, you say that you slacked down, you were going down the right-hand side of Elizabeth avenue, is that right, Officer? A. Yes, sir. 20

Q. And you slacked down just before you got to Sixth street? A. I did.

The Court: Can he mark on the map about where he was as near as he recalls when he was shot?

Q. Can you do that, Officer, this being First Street, Broad Street, Sixth Street, and Elizabeth Avenue (indicating)? Put a "C" there. A. 30
(Witness marks map.)

The Court: Where were you lying when you came to, if you know?

Q. When you came to you were at Seventh street in an ambulance or in a car? A. In a car.

Mr. Walsh: Cross examine.

*Jacob Christman—For the State—Cross**CROSS EXAMINATION by Mr. Cutley:*

Q. What time did you arrive at the post office on the morning of October 14? A. The first trip about twenty-five minutes to nine.

10 Q. How long did you wait there? A. Oh, about five minutes.

Q. What time did you leave the post office when you came back from Elmora? A. A little after nine o'clock.

Q. About how much? A. About two or three minutes.

20 Q. How do you fix that? A. From the time I left Elmora State Bank it was about pretty near five minutes to nine by the time I got loaded up again, I am pretty sure it was more than five minutes to load up, we changed drivers.

Q. Well, it took you five minutes to get from Elmora State Bank, didn't it? A. Yes.

Q. A little more? A. No. When I ride, I ride.

Q. When you did ride that morning how long did it take you to get back from Elmora? A. About five minutes.

30 Q. Do you recall that particularly it took you five minutes that morning because you make it every time you go? A. No. I couldn't say that. I am just saying because it just takes me about five minutes to do that.

40 Q. And you have no particular recollection as to the time that morning other than because you rode over it and that is what you think it takes you? A. Well, that was about the first time I ever went to the Elmora Bank with money, or with valuables, and I didn't have my watch in my hand at all times to time myself, but I had plenty of time to do it.

*Jacob Christman—For the State—Cross**By the Court:*

Q. Well, that is your best recollection, is it?
A. Yes.

By Mr. Cutley:

10

Q. You say you left a couple of minutes after nine? A. Yes.

Q. You would not say it was five after nine?
A. No, not that late.

Q. You went down to the bank? How long did it take you at the bank? A. Oh, about two or three minutes.

Q. How long did it take you to go down to Elizabeth avenue and Sixth street? A. Well, about seven minutes, eight minutes. 20

Q. That would bring it up to about fifteen after nine you were at the corner? A. About that.

Q. How long, now, do you recall, this shooting went on before you were rendered unconscious? A. About two minutes.

Q. It wasn't twenty minutes or a half an hour?
A. No.

Q. What kind of a car was it? You say you saw two cars there, didn't you? A. One. 30

Q. That was the one— A. Well, there was two cars, the mail truck and this black sedan. The mail truck was turned right as I told you before and this black sedan came out of Sixth street.

Q. Wasn't there a car behind you too? A. I don't know.

Q. Didn't you say a car hit you and knocked you over? A. Well, something hit me. It was a car.

Q. Was it a car? A. It was. 40

Jacob Christman—For the State—Cross

Q. Did you see it? A. I didn't see it. I was told.

Q. How do you know it was a car? A. I was told it was a car.

10 Mr. Cutley: Then I ask all that testimony about what he alleged in regard to the car in back of him be stricken out.

The Court: I believe his testimony was as he lay on the street he was run over by a car.

Mr. Cutley: That is what I unedrstood it to be.

Q. Was it a car or not? A. It was.

20 Q. Well, did you have to be told that it was a car? A. Well, I didn't see it. I was crippled before I ever went off my machine.

Q. Well, now, isn't this the truth, Officer, you don't know what to do? A. Well, I didn't see a car but as I turned to the left I felt this thing knock me over. I knew it wasn't a trolley car nor a motorcycle.

Q. You didn't know what it was? You were pretty well done up, you had been shot terribly, hadn't you? A. Well, I was shot.

30 Q. And when you say you saw a car behind you that is only what somebody told you, isn't that the truth? A. Well, it is.

The Court: He didn't say he saw a car behind him. He said he was struck by a car because somebody told him so. Do you want that struck out?

40 Mr. Cutley: I am willing to leave it go in.

Jacob Christman—For the State—Cross

Q. On the trial of a man named Sweeney didn't you say this: Officer, in answer to a question: "Why, I noticed the mail truck turn to the right and a black car shoot out of Sixth street; I looked again and I seen a man with a rifle in his hand and I felt my leg stiffen out. I knew I was shot. I went to turn left over Sixth street and I was sideswiped from the rear by another car?" 10

Mr. Walsh: I object to that on the ground it is not cross examination here. He has not said that he was sideswiped here.

The Court: I will allow the question.

By the Court:

Q. Do you remember what counsel read you, Officer? A. I do. 20

Q. All right. Now, is that what you testified to then? A. Well, I don't recollect. I don't remember that far back. I know I turned to go to the left and I was struck from the rear.

By Mr. Cutley:

Q. Is your memory as to whether there was a car there or not as good on the time as it was of the car? In other words, do you recall the time with the same carefulness as you do the fact whether or not a car hit you? A. Well, I knew it was nothing else only but a car. 30

Mr. Cutley: That is all.

Walter H. Cole—For the State—Direct

WALTER H. COLE, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

10 Q. Mr. Cole, what is your business? A. I am a founder.

Q. Where are you in business? A. At Elizabethport, New Jersey.

Q. With what concern? A. The Moore Brothers Company.

Q. Do you occupy any official position with that company? A. I am the president and principal owner.

20 Q. Were you engaged in that line of business on October 14, 1926? A. And for thirty-five years past.

Q. Do you remember the fourteenth of October, 1926? A. I do.

Q. Where were you shortly after nine o'clock on that day? A. I left home at nine o'clock.

Q. Where is your home, may I ask? A. 211 Styles Street.

30 Q. You left home at nine o'clock to go where? A. To my place of business.

Q. What street did you go over on that morning in order to get your place of business? A. Over Cherry; down Rahway Avenue, down Elizabeth Avenue, past the intersection of Sixth and Elizabeth Avenue.

40 Q. As you got to the corner of Sixth and Elizabeth Avenue, did anything attract your attention that was out of the ordinary? A. When I reached two hundred feet short of that distance I heard heavy discharges of firearms.

Walter H. Cole—For the State—Direct

Q. And you were on the right-hand side of Elizabeth Avenue going down? A. On the right-hand side in a motor car going down.

Q. What did you do after you heard this heavy firing? A. Continued, and as I reached the intersection of Sixth and Elizabeth avenue in the exact middle of the four electric car tracks laid the body of the officer Christman, astride of his motorcycle which was still going at speed. 10

Q. Did you notice anything else there? A. Yes, sir. I noticed that as I flew past a mail wagon with wired sides stood there and one motor car besides.

Q. Well, did you stop at this Sixth street intersection or did you continue? A. I was going too fast. I rounded the officer to avoid running over him, went ahead one hundred feet, drew up to the tracks, I couldn't get to the curb because it was blocked by two small delivery wagons, and got out and ran back to help to pick up the officer. 20

Q. Now, as you ran back leaving your car parked on the tracks you say, Mr. Cole? A. Right off the tracks to the right.

Q. Now, as you came back then, as you went back this one hundred feet did you see anything else that was going on at the corner of Sixth street and Elizabeth avenue? A. As I reached within twenty feet of the officer I noticed two men standing on the walk, the paved walk from the lower to the upper side of Sixth street, shoulder to shoulder, both armed; the man facing me with a revolver, the man facing towards Dr. Funk's house or towards the Seventh street side with a magazine rifle, he was discharging his rifle at will, spraying the neighborhood. In the few seconds that I took to reach that point he probably dis- 30 40

Walter H. Cole—For the State—Direct

charged that rifle seven or eight times. The man facing me, when he saw me approach the officer, drew up his arm and fired. I immediately dodged behind a small delivery wagon and looked out at what was going on. At that moment my position was opposite this point. (Indicating.)

10 Q. Indicating? A. Indicating a brick building containing an auto shop, a barber shop, and a cigar store. At that moment, a woman pushed a small child of about eight out of this inset doorway, and then I jumped out from behind this car and pushed her and the child back and said, "Get back. This is a hold-up." She said, "What is the matter? What is the matter?" With that, I pushed her back. As I did that, the man facing me lifted his arm and fired a second time.

20 *By the Court:*

Q. In what direction? A. Towards me. I then looked around the corner and saw that there were two men with their back towards me, tugging at the rear enclosure of the mail truck, using some instrument that I could not see, because their bodies obscured my view.

By Mr. Walsh:

30 Q. After they had tugged at the rear of the mail truck, did you see what they or either one of them did? A. They succeeded in opening the doors. They flew open, and they took out two, and I think three mail sacks, which seemed to have very little in them. They were longish sacks with very little in them.

Q. Did you see what they did with those? A. Yes, sir, they threw them into a sedan.

Q. Where was that sedan? A. On the upper side of Sixth Street.

40 Q. Facing which way? A. Facing towards East

Walter H. Cole—For the State—Direct

Jersey.

Q. By the upper side of Sixth Street, you mean the northerly side of Sixth Street? A. The northerly side of Sixth Street.

Q. Facing East Jersey? A. Indicating a position about there. (Indicating.) I will say that the man who fired on me stood on a line with the sidewalk. The man who fired on me stood on a line with the sidewalk. The mail truck stood in possibly eight to ten feet. The cars—where I saw two later—stood further inward. As I looked around the corner, and they succeeded in taking out the bags, both sedans—I then saw that there were two—started, and the one towards me was a Packard with the characteristic disk wheels, and inset axles of the Packard type of that year, 1926, and the one on the upper side, I think, might be a Studebaker. 10 20

Q. That is the one on the northerly side of Sixth Street? A. Yes, sir.

Q. Did you see where they went? A. Yes, sir, they went in the direction of East Jersey Street.

Q. Proceeding easterly? A. Yes, sir.

Q. Do you know which car went first? A. They were almost abreast. The one on the upper side about five or six feet in advance and both at speed. 30

Q. Did you notice how many persons were in each of the cars or in either one of these cars? A. No, sir.

Q. How long after your attention was first called to it was this thing all over? A. From the moment that I arrived until the cars left, was approximately two minutes. I then ran forward. A man ran across the street and turned off the speed on the officer's motorcycle. I ran to the head of the truck and looked up at the man whom 40

Walter H. Cole—For the State—Direct

10 I now know as Mr. Enz, although I had never seen him before, and he had been shot clean through the temple. His whole body was covered with blood and he leaned over on his wheel. I ran around the front and saw the mail clerk, Quinn, lying on the ground. I picked him up in the cup of my arm, and took him. He had a sort of semi-circular cut on his right forehead. I asked him if he was hurt, and he said, "Yes." Then I said, "Do you want water?" and he said, "Yes." Then a young boy came up, and I sent the boy for water and a priest. And then I asked him where he was hurt.

20 Mr. Cutley: I object to this conversation with Quinn.

By Mr. Walsh:

30 Q. After that what did you do? A. I held Quinn in my arm and I saw a heavy revolver lying on the ground and picked it up and showed it to him, a heavy blue revolver, and I said, "Is this yours or theirs?" and he said, "Mine." Then I laid it alongside of him. In about two minutes an ambulance came and fifteen or twenty policemen, and we picked him up and carried him away.

Q. And then you left? A. I got into my car and drove to my office.

Q. You say that you saw two men. The one man spraying had what kind of a gun? A. He had something that I had not seen before, but I have seen pictures, a species of magazine rifle.

Q. I show you this gun and ask you if it was of that type? A. It resembled that. He held it—

40 Q. In what manner? A. Is that loaded?

Q. No. A. He held it thusly. (Indicating.)

Walter H. Cole—For the State—Cross

Q. He held it in that way? (Indicating.) A. Yes.

Q. Did you see any other armed men on that corner that morning or noticed any? A. Only the two.

Mr. Walsh: Cross examine.

10

CROSS EXAMINATION by Mr. Cutley:

Q. What time did this happen? A. I left home at nine o'clock. I left the scene at nine—I left the place at about 9:18. I picked up the man Quinn at 9:15.

Q. You drew out your watch to find out? A. Just that.

Q. Where is your home? A. 211 Stiles Street, and I looked at the clock as I left the front door, hanging in the hall, and noted it was just nine, which is my regular hour.

20

Q. That is what you do every morning, I suppose? A. Every day.

Q. You fixed it then about 9:15 when you arrived at the corner? A. No, sir, about 9:30 when I arrived at the corner.

Q. How long were you there? A. Two minutes until the motor cars disappeared, and two minutes after that, or three, until the officers and the ambulance came.

30

Mr. Cutley: That is all.

40

George L. Mack—For the State—Direct

GEORGE L. MACK, a witness called on behalf of the State, being first duly sworn, according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

10 Q. Mr. Mack, what is your business? A. Hospital attendant.

Q. Just talk out loud, if you will, please. A. Hospital attendant.

Q. You are connected with what hospital? A. The Elizabeth General Hospital.

Q. And with what hospital were you connected on October 14, 1926? A. The Elizabeth General Hospital.

20 Q. Were you on duty in the daytime at that time? A. Yes, sir.

Q. Were you called upon to take the body of John Enz anywhere? A. Yes, sir.

Q. At what time? A. About 9:45.

Q. Where did you take him? A. To the morgue of the Elizabeth General Hospital.

Q. And you did that? A. Yes, sir.

30 Q. Where did you take him from? A. From the emergency room at the Elizabeth General Hospital.

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

Geza Mihalkovitz—For the State—Direct

GEZA MIHALKOVITZ, a witness called on behalf of the State, being first duly sworn, according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

Q. Mr. Mihalkovitz, what is your business? A. 10
Funeral director.

Q. By whom were you employed on October 14, 1926? A. M. M. Martin and Son.

Q. On that morning did you go to the Elizabeth General Hospital and get anybody? A. I did.

Q. Whose body was it? A. The body of John Enz.

Q. Where did you get it? A. From the Elizabeth General Hospital at the morgue. 20

Q. In what part of the hospital? A. In the morgue room.

Q. And from there where did you take that body? A. Took it up to Martin's place.

Q. The public morgue? A. The public morgue.

Q. At your employer's public morgue, did you turn that body over to anybody? A. Yes, sir, I turned it over to Dr. Brokaw, and he performed an autopsy.

Q. And you were present at the autopsy? A. 30
Yes, sir.

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

Sergeant Martin Reitman—For the State—Direct

SERGEANT MARTIN REITMAN, a witness called on behalf of the State, being first duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

- 10 Q. Sergeant Reitman, what is your business?
A. Sergeant of police.
- Q. And you are connected with what force and what city? A. Elizabeth.
- Q. How long have you been so connected? A. For the last twenty years.
- Q. Do you remember October 14, 1926? A. I do.
- 20 Q. Where did you go that morning at about nine o'clock? A. Sent down to Elizabeth Avenue and Sixth Street.
- Q. When you got there what did you find? A. I found a mail truck there, and I found Officer Christman lying down there. I picked up one of the mail pouches and threw it in the truck. I also picked up the lock that was cut off the mail truck.
- Q. You say you found Officer Christman lying there? A. Yes, sir.
- 30 Q. And did you see these before? (Indicating the snips.) A. I seen them laying alongside of the truck.
- Q. Where? A. The mail truck, on the ground.
- Q. In front of or the rear of the truck? A. The rear of the truck.
- Q. What did you do with them? A. I haven't touched them. I picked up the mail pouch and threw that in the truck, and I picked up the lock that was lying alongside of the truck.
- 40 Q. I show you this lock. A. That is the lock I picked up.

Sergeant Martin Reitman—For the State—Cross

Q. That is the lock you picked up? A. Yes, alongside of the truck.

Q. In the rear of the mail truck? A. Yes.

Q. What did you do with it? A. I turned it over to Captain Ohrenberger of Headquarters.

Q. You say you saw the snips there but you did not touch them? A. I didn't touch them. They were lying right in back of the truck. 10

Mr. Walsh: I don't know whether it is necessary to mark this lock for identification, but I am going to follow with the proof.

The Court: It may be marked for identification.

Mr. Walsh: Cross examine. 20

CROSS EXAMINATION by Mr. Cutley:

Q. What time was this? A. I should judge around 9:15—9:16 or so.

Q. Did you take occasion to look at your watch? A. We did. We were in Headquarters when the call came in, and it was around that time, and we rushed right down.

Mr. Cutley: That is all. 30

The Court: Have you had the lock marked?

Mr. Walsh: Yes, sir.

(The lock referred to was marked "State's Exhibit 3 for Identification.")

Captain John Ohrenberger—For State—Direct

CAPTAIN JOHN OHRENBERGER, a witness called on behalf of the State, being first duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

10 Q. Captain, I show you Exhibit S-3 for identification, which is a lock. Have you seen that before? A. I have.

Q. Where did you get it from? A. Sergeant Reitman.

Q. When did you get it from him? A. On the morning of October 14, 1926.

Q. What did you do with it from that time on? How long did you keep it? A. I kept it that day and then put it in a closet.

20 Q. You kept it until when? A. Until the trial here some time ago. I kept it until it was brought to the Prosecutor's office at the previous trial.

Q. That was in April, 1927? A. I believe that was the date.

Q. Then you left it at the Prosecutor's office in the custody of Chief Galatian? A. Yes.

Q. Were the snips ever in your possession? A. They were not.

30 Mr. Walsh: Cross examine.
Mr. Cutley: No questions.

John Henry—For the State—Direct

JOHN HENRY, a witness called on behalf of the State, being first duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

Q. Mr. Henry, you are a member of the Elizabeth police force? A. I am. 10

Q. And you have been for how long? A. About nine years.

Q. On October 14, 1926, were you sent to the corner of Sixth and Elizabeth Avenue? A. I was.

Q. I show you these snips, and I ask you if you ever saw them before? A. I did.

Q. Where did you find them? A. Sergeant Martin turned them over to me at Sixth and Elizabeth Avenue. 20

Q. You mean Sergeant Hugh Martin? A. Yes.

Q. What did you do with them? A. Brought them to Headquarters and turned them in to Captain Manning.

Mr. Walsh: I ask that they be marked for identification.

(The object referred to was marked "State's Exhibit 4 for identification.") 30

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

Hugh Martin—For the State—Direct

HUGH MARTIN, a witness called on behalf of the State, being first duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

10 Q. Mr. Martin, I show you Exhibit S-4 for identification and ask you if you have ever seen this before? A. I have.

Q. Where did you see it? A. I found it lying near the mail truck at Sixth and Elizabeth Avenue.

Q. When? A. October 14, 1926.

20 Q. What did you do with them? A. I gave them to Ojcer Henry and told him to bring them to Headquarters and turned them over to Captain Ohrenberger.

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

Mr. Walsh: I now offer these clippers in evidence and ask that they be marked.

The Court: Is there any objection?

Mr. Cutley: No objection.

30 (The object referred to was received in evidence and marked "State's Exhibit 4.")

Mr. Walsh: I also offer the lock, which has been marked State's Exhibit 3 for Identification.

Mr. Cutley: No objection.

(The object referred to was received in evidence and marked "State's Exhibit 3.")

Captain Michael F. Manning—For State—Direct

CAPTAIN MICHAEL F. MANNING, a witness called on behalf of the State, being first duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

Q. Captain, you are a member of the police force of the City of Elizabeth with the rank of captain? A. Yes, sir. 10

Q. On October 14, 1926, what position did you occupy? A. I was acting captain at that time.

Q. I show you this gun and ask you if you have ever seen that before? A. Yes, sir.

Q. How did you come to get it? A. The morning of this mail hold-up, Officer Merrill brought it in to me from the scene of the hold-up.

Q. Had you produced that at the last trial? A. Yes, sir. 20

Q. It was in your possession in the meantime? A. Yes, sir.

Mr. Walsh: Is there any objection to this?

Mr. Cutley: Yes, sir, there is an objection to this gun. There is no proof in this case from any of the persons that the bullets, the calibre of which were adopted for that gun, were found in the body of Enz, or of any of the people. 30

Mr. Walsh: We will continue our proof on this, and then I will make the offer again.

The Court: Where are the bullets?

Mr. Walsh: The bullet that killed Enz—

The Court: The bullets. There were several bullets fired in the bodies of people. Have you got the bullets? 40

Kirkpatrick Merrill—For the State—Direct

Mr. Walsh: No. They went right through.

The Court: You could not find any of the bullets in any of the bodies?

Mr. Walsh: No, except—

10 The Court: The evidence, so far as I remember, by Mr. Cole, was that it was a gun like the one here shown. He showed the position in which it was held while it was being discharged. You may go on and make any further proof you have.

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

20 KIRKPATRICK MERRILL, a witness called on behalf of the State, being first duly sworn, according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

Q. Officer, you are a police officer and a member of the Elizabeth Police Department? A. I am.

Q. How long have you been such? A. Five and
30 a half years.

Q. Were you on duty on October 14, 1926? A. I was.

Q. In the performance of your duty, were you sent to the vicinity of Elizabeth Avenue and Sixth Street? A. Yes.

Q. I show you this gun and ask you if you have ever seen this before? A. Yes, I have.

Q. Where did you see it? A. Why, I saw it at
40 Sixth and Elizabeth Avenue in a grocery store there, a grocery store owned by McGovern.

Charles A. McGovern—For the State—Direct

Q. It was given to you there? A. Yes, it was.

Q. By whom? A. By McGovern—at least he pointed to the barrel where the gun was. It was in a barrel.

Q. And you picked it up? A. Yes, and brought it to Headquarters.

Q. And you gave it to— A. Turned it over to Captain Manning.

10

Mr. Walsh: Cross examine.

Mr. Cutley: No questions.

The Court: We will adjourn now. Everybody remain seated. The officers will see that no one of the audience rises. The prisoners will be removed first, and the audience will remain seated until the jurors are escorted out of the courtroom, and after that the audience may rise.

20

(A recess was had until 1:30 o'clock P. M.)

CHARLES A. MCGOVERN, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

30

Direct Examination by Mr. Walsh:

Q. Mr. McGovern, where do you live? A. 563 First Avenue, Elizabeth, New Jersey.

Q. Where did you live on October 14, 1926? A. Same place.

Q. At about nine o'clock in the morning or slightly after, between nine and half-past, where were you? A. Cleaning up the leaves on Sixth

40

Charles A. McGovern—For the State—Direct

street out of the gutter.

Q. Was your attention attracted to anything at that time? A. Yes, sir.

Q. What attracted your attention, just tell the Court and Jury what you saw at that corner at that time? A. Well, I was cleaning up the leaves
10 along Sixth street, an automobile come down First avenue and passed me pretty close and I looked it over and I made some remark and the car stopped. One fellow got out and he walked over towards Straus' drug store and stood up against it.

Q. Will you indicate on this map where you were first and then where Straus' drug store is?

A. Is this Sixth street?

Q. This is Sixth street and this is Elizabeth
20 avenue. This is north, south, east and west. This is a brick building and store. A. This is First avenue here? (Indicating.)

Q. This is First avenue. A. I was right about here. (Indicating.)

Q. Indicating a point on Sixth avenue on the southerly side of Sixth street, midway between the brick building store dwelling and grocery and the garage, is that right? A. Yes, sir.

30

The Court: Mark on the map with an "X."

(Witness marks map.)

By Mr. Walsh:

Q. Put your initials "Mc." A. (Witness marks map.)

Q. While there what did you notice? A. What
40 did I notice?

Charles A. McGovern—For the State—Direct

Q. Yes. A. Well, I took notice of this car stopping, one fellow got out.

Q. Where did the car stop? A. Right about, well, I should judge here. (Indicating.)

The Court: Indicating a point in Sixth street. 10

Mr. Walsh: Indicating a point in Sixth street.

Q. About how far from the corner, Mr. McGovern? A. I should judge about seventy feet.

By the Court:

Q. From the corner of Elizabeth avenue? A. Yes, sir. 20

By Mr. Walsh:

Q. You noticed that car stop. How many people were in it? A. Well, I seen three in it, but I didn't see the fourth man.

Q. Well, were there four? A. Yes, sir.

Q. There were four men in it? A. Yes, sir.

Q. What type of car was it? A. It was a dark-blue sedan. 30

Q. Closed in, was it? A. Yes, sir.

Q. Now, as that car came along there and stopped, what did you notice? How many people got out of it? A. Two people got out.

Q. Where did the first man, we will call him No. 1, where did he go? A. Well, he went over to Straus' drug store, there is a mail box over there.

Q. Frame building drug store and dwelling, is 40

Charles A. McGovern—For the State—Direct

that the place? A. Yes, sir. Right there. He stood at that box.

Q. No. 1, he went to the northeast corner of Sixth street and Elizabeth avenue at the point indicated on the map as "Mail box"? A. Yes, sir.

10 Q. And then what? What did he do? A. Another man got out, he walks over and stands up against the brick building.

Q. Against the brick building? A. Yes, sir.

Q. This being the sidewalk here? A. (Witness indicates.)

Q. Indicating a point against the brick building about how far from Elizabeth avenue? A. Well, from the corner of the building, a pane of glass, I should judge about three feet away from
20 the pane of glass.

Q. How wide is that pane of glass? A. I should judge about eight foot wide.

Q. Making eleven feet from the corner? A. Yes, sir.

Q. Now, he stood against this brick building that is Number 2? A. Yes, sir.

Q. What did No. 1 do after that, after you saw him go over and stand by the mail box what did he do? A. Well, he stood over there by the mail
30 box and was going up and down looking up the avenue towards Seventh street.

Q. After that what did you see him do? A. Well, after that when I seen them two I seen hi tip his hat like this and walk out in the street. (Indicating.)

Q. After he tipped his hat, he raised his hat and walked out in the street, what happened then? A. This automobile was parked on Sixth street shot right out and blocked off the mail truck.

40 Q. How far did it proceed into Elizabeth ave-

Charles A. McGovern—For the State—Direct

nue? A. I should judge, well, to the middle, right about the trolley track.

Q. So that the front of it would rest on the trolley tracks? A. No, it was over the trolley tracks.

Q. Did you see anything else at that time? A. Well, as soon as he came over, I heard two shots, bing, bang—and all of a sudden it was as if like a bunch of firecrackers—bing, bing, bang, bang, bing. 10

Q. You heard several shots? A. Yes.

Q. Could you see anybody doing that shooting? A. No, sir.

Q. I mean, did you see anybody with any fire-arms there that day? A. No, sir.

Q. You did not see any guns at all? A. No. 20

Q. What else did you see? You were still on Sixth street? A. Yes, sir.

Q. After the shooting started? A. Yes, sir.

Q. Did you leave there? A. No, sir.

Q. Did you stay there until the firing was all over? A. Well, I was ducking in and out while the shooting was going on.

Q. After you heard this volley of shots what did you do? A. I got there behind the garage, and I was looking out. 30

Q. Can you indicate on the map where you mean by behind the garage?

By the Court:

Q. Is the garage in the rear of your premises? A. Yes, sir.

By Mr. Walsh:

Q. Where did you go? A. This is the garage 40

Charles A. McGovern—For the State—Direct

and this is the driveway. (Indicating.) I got right on this corner here. (Indicating.)

Mr. Walsh: Indicating the westerly corner of the garage.

10 The Court: I suggest that counsel both stand back so that the jury can see where he is indicating.

By Mr. Walsh:

Q. That is where you stood? A. Yes.

Q. And then what did you see? A. What did I see? As I was standing there an automobile shot up—wait a minute. What I seen? I seen a young man back up like this, with his left hand. (Indicating.)

20

Q. What did he have in his hand? A. I didn't see nothing in his hand, but I seen that left mitt out backing up like this (indicating), and the first thing, he was near the ground, and an automobile came and give him a little hit, and it went down and over his leg and back again and over again and backed up and disappeared, I don't know where.

30 Q. Do you know who that man was? A. That got hurted?

Q. Yes? A. Mr. Quinn.

Q. You saw him in Sixth street? A. Yes.

Q. Did you see anybody else in Sixth street? A. Well, as soon as the car backed off, a fellow came with a pair of black nipper and opened the back of the truck and stole a bag and disappeared, the shooting going on, and they went over Sixth street.

40 Q. I show you this exhibit marked State's Ex-

Charles A. McGovern—For the State—Direct

hibit 4. Are those the snippers or are they similar to them? A. It looked like them.

Q. What did you see anybody with these? A. Saw them open up the back of the mail truck and get a hold of a bag and throw it in the car, and from Sixth street they went toward Jersey.

10

Q. They threw it on what car? A. A dark-blue sedan.

Q. Is that the one that had been waiting there?

A. Yes, sir, the one that had been waiting there.

Q. That car had gone out on the avenue? A. Yes, sir.

Q. And the man threw the mail bag into that?

A. Yes, sir, and he backed up again, you know.

Q. He backed up again, which way? A. About two feet away from the car.

20

Q. From what car? A. From the mail truck.

By the Court:

Q. And it went which way? A. It went right over Sixth street towards Jersey.

By Mr. Walsh:

Q. How many automobiles did you see there besides the mail truck taking part in this? A. I seen two.

30

Q. Two automobiles? A. Two automobiles.

Q. Were they both of the sedan type? A. No, sir.

Q. Did you remain where you have indicated at the rear of the garage until the cars drove away?

A. I ran right out as soon as they disappeared. I ran right out in the street watching for the police to come.

Q. You have told us what you saw the man do,

40

Charles A. McGovern—For the State—Direct

Number 1, who was at the mail bags. He walked toward the center of the street just before the shooting? A. Just before—just before the shooting he was standing and he lifts his hat, raised his hat.

10

The Court: You told us that.

By Mr. Walsh:

Q. He walked toward the street? A. Yes.

Q. Did you see him after that? A. No, sir.

Q. Did you see what became of the man who was standing by your store?

20

The Court: That is Number 2.

A. Number 2, just before the shooting occurred—I walked over to see what was going on. I thought it might have been—

Q. What did you do? A. I just walked past, walked around the corner and looked up the street, and I saw a moving van up there.

Q. You just saw a moving van? Then what did you do? A. I walked back.

30 Q. That was before any shooting? A. Yes, sir.

Q. As you walked back, what happened? A. I gets hold of my broom off the hedge, and as I looked around, a fellow that was up against the building walked up Elizabeth avenue.

Q. And it was then that you went back off the garage? Was it? A. No, I went over to do my sweeping up. After I went over to the corner—

40 Q. No. Listen. As you passed this man back, this was before any shooting, you saw that man, who has been numbered 2, who had been stand-

Charles A. McGovern—For the State—Cross

ing by the grocery store, you saw him walk away, is that right? A. Yes, sir.

Q. That was before any shooting? Where did you walk to then? A. I walked over to finish up my job in Sixth street.

Q. Was that on the sidewalk or in the street? 10
A. Right in the gutter.

Q. And you were engaged in that when you heard the first shooting? A. I was engaged talking to a man there.

Q. Who was the man? A. A man by the name of John Genz.

Q. When you heard the first shots— A. Yes, I was talking to him when I heard the first two shots.

Q. Did you see the deceased, the mail driver 20
Enz? Did you see Enz there? A. I seen him when I went over. He was all covered with blood. I seen him covered with blood.

Q. That was after you left the garage? A. Yes, sir.

Q. From behind the garage? A. Yes, sir.

Q. Where was Enz at that time? A. Sitting on the seat of the truck.

Mr. Walsh: Cross examine. 30

CROSS EXAMINATION by Mr. Cutley:

Q. Did you see anybody shoot Enz? A. I did not.

Q. Well, you were there before any shooting took place at all? A. Yes.

Q. Where were you? In Sixth street? A. I was on Sixth street right where I got that mark, sweeping the leaves up, when this automobile 40

Charles A. McGovern—For the State—Cross

came down from Elizabeth avenue where I got that mark.

Q. How many feet is that down from Elizabeth Avenue where you got that mark? A. I should judge it is about 125 feet.

10 Q. Did you watch those two men that you say got out of the automobile? A. I certainly did.

Q. And then you did not see any shooting of Enz? A. No.

Q. Where were you then when the shooting of Enz occurred? A. When this fellow went right over, it went bing, bing.

Q. And you went behind the garage? A. I started to run towards Sixth Street, and I heard bing, bang, bing, bang, bing, and I jumped behind the garage.

20 Q. What time was this? A. About a quarter after nine.

Q. It was not sixteen minutes after? A. It was about, well, I should judge about a quarter after nine. These fellows came there about five after nine.

Q. Who did? A. The bandits.

Q. Who did? A. Why, the bandits.

30 Q. How do you know that? A. Well, because I just after hearing the rising sun ring nine o'clock and it was just a couple of minutes afterward. I should judge between five minutes after.

Q. No doubt in your mind as to that, you heard the rising sun brewery clock ring? A. At nine o'clock.

Q. A couple of minutes after? A. After this truck come and passed on.

Q. So that would bring it to about five minutes after? A. About five after nine. •

40 Q. You are pretty positive about that? A. I

John Connors—For the State—Direct

wouldn't say positive.

Q. Well, to the best of your recollection? A. To the best of my recollection, yes.

Q. How long were they there? A. They were there ten minutes.

Q. They were there at least ten minutes? A. Yes, sir. 10

Q. You have been in court here this morning, haven't you? A. I was in court this morning, yes.

Q. So you would say then they went away about nine-fifteen? A. They left about nine-twenty.

Q. Nine-twenty? A. Yes.

Q. And you fix them getting there about five minutes after nine? A. Yes, sir.

Q. I mean, without being too exact about it? A. Well, yes. 20

Q. And they were there ten minutes? A. Ten minutes.

Mr. Cutley: That is all.

JOHN CONNORS, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith: 30

Direct Examination by Mr. Walsh:

Q. Mr. Connors, where do you live? A. 439 Maple avenue, now.

Q. In what city? A. Elizabeth.

Q. Were you in the vicinity of Elizabeth avenue and Sixth street on October 14, 1926? A. I was.

Q. Shortly after nine o'clock? A. Yes, sir. 40

John Connors—For the State—Direct

Q. Where were you? A. 559 Elizabeth avenue.

Q. That is on which side of Elizabeth avenue?

A. On the east side.

Q. Can you indicate with the pointer where it is? What number? A. Whereabouts is the bakery?

10 Q. Here is the bakery. Where were you? A. I was in this doorway. (Indicating.)

Q. Indicating brick building cafe and the dwelling on the easterly side of Elizabeth avenue. You were where? A. Inside of the building.

Q. Was your attention attracted to anything? A. Yes, sir. Shots.

Q. After you heard those shots what did you do?

A. I stepped out of the door to see what was going on.

20 Q. How far outside of the doorway did you step? A. Just got as far as the door itself.

Q. What did you see? A. Saw Officer J. Christman laying in the gutter, or in the car trucks, rather.

Q. Then what did you do? A. Well, I went to step down and go over and help him up, thinking it was an accident, and I hear a shot fired and some man said, "Get the hell in," and another shot was fired and hit over the window, and I did get in.

30 Q. Did you see anybody there? A. Nobody but the man in the car.

Q. Well, did you recognize any of the men in the car? A. Yes, sir.

Q. Who did you see? A. Cuniffe.

Q. James Cuniffe? A. Yes, sir.

Q. Where was he? A. He was in the car.

Q. In what car? A. Car facing Elizabeth avenue on Sixth street.

40 Q. What, if anything, did you see Cuniffe do?

John Connors—For the State—Direct

Mr. Cutley: I object to the question in relation to Cuniffe. He is not on trial here, he is not a party to this indictment. What he did does not bind the defendants.

The Court: What do you say about that, Mr. Prosecutor?

10

Mr. Walsh: I have this to say: That Cuniffe, I intend to show in almost our next question why Cuniffe is not on trial. And secondly my reason, rather, for showing this is this: That I am bound to show the entire *res gestae*. I am bound to show exactly what went on there, the actions of all of the persons who took part in this whole affair. This thing happened on the instant. I can show the reason that Cuniffe is not on trial, and I intend to lead up to that.

20

Mr. Cutley: I do not think it is material at all why Cuniffe is or is not on trial. It is not material why his name should be brought in here at this particular juncture. I press my motion.

The Court: Until you show that Cuniffe was with these defendants on this occasion it is very doubtful as to this testimony being competent.

30

Mr. Walsh: I intend to lead up to it.

The Court: Show it first.

Mr. Walsh: For that reason may I withdraw this witness at this time and produce him later?

The Court: Yes.

(Witness withdrawn from stand.)

40

John A. Galatian—For the State—Direct

JOHN A. GALATIAN, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

10 Q. Chief, what position do you hold in this county? A. Chief of County Detectives.

Q. How long have you been Chief of County detectives of Union County? A. About eighteen years.

Q. And prior to that time you were a county detective? A. Yes, sir, for about five years previous to that.

Q. I show you this mail bag, Chief, and ask you if you have ever seen that before? A. I have.

20 Q. Where did you see it? A. Found that in the first Packard sedan car that was recovered from Jeffery Place, Newark. That bag was in the car.

Q. And when was that recovered? A. November 18, 1926.

Q. In whose possession has it been since? A. Mine.

Q. You have produced it in court? A. Yes, sir.

30 Mr. Walsh: I will offer this bag in evidence.

Mr. Cutley: I object to it on the ground it has not been shown to have been in the possession of the defendants or either of them.

The Court: Objection sustained. You must identify that car further, Mr. Prosecutor. You must get that car into the possession of these men before you can offer this bag in evidence.

40

John J. McGovern—For the State—Direct

Mr. Walsh: I see. Well, I will withdraw this witness at this time.

(Witness withdrawn from stand.)

10

JOHN J. MCGOVERN, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

Q. Mr. McGovern, where do you live? A. 563 First avenue.

Q. And are you in business? A. Yes, sir.

Q. Where? A. Sixth and Elizabeth avenue. 20

Q. Were you in business at Sixth and Elizabeth avenue on October 14, 1926? A. Yes, sir.

Q. Do you remember the morning of that date? A. Yes, sir.

Q. Shortly after nine o'clock, where were you? A. In the grocery store.

Q. Was your attention attracted by anything? A. Yes, sir.

Q. What attracted it? A. Well, what I thought was a smash-up and back-firing of an automobile. 30

Q. Noise? A. Noise, yes, sir.

Q. What did you do after you heard this? A. Well, I went to the window and looked out and seen the police officer laying in the street, Elizabeth avenue and Sixth street, and his motorcycle on top of him.

Q. Anything else? A. I ran out to help him, and with that I seen the automobile parked there, an arm reach out shooting at him, and the next thing I heard two shots, and another one, and 40

John J. McGovern—For the State—Direct

when I turned an order to "Get the hell back in the store again."

Q. Who did that? A. I believe it was Cuniffe.

Mr. Cutley: I ask that be stricken out.

10 The Court: What he believes will be stricken out.

Q. Where was the man who ordered you back, if you know? A. Standing about the center of the crossing on Sixth street.

Q. On Sixth street? A. Yes, sir.

Q. Did you notice whether he had anything? A. A gun in his hand.

Q. What gun? A. Similar to that one.

20 Q. This one? A. Yes, sir.

Q. He had a gun similar to this one? A. Yes, sir.

Q. Did you see a gun similar to this one shortly afterward? A. Yes, sir.

(Gun marked S-5 for identification.)

30 Q. (Showing the witness S-5 for identification.) You say the man standing on the street had a gun similar to this one? A. Yes, sir.

Q. Did you see a gun similar to this shortly afterward? A. Well, when one was brought in the store.

Q. Who brought it? A. Some young man brought it in.

Q. Is this the gun? A. It resembles it, yes, sir.

Q. Well, what did you do with the gun that was brought in the store? A. Left it one side until called for later.

40 Q. Who did you give it to? A. Officer Merrill.

John J. McGovern—For the State—Direct

By the Court:

Q. What did you do with the gun when it was brought in the store? A. Put it one side.

Q. But where? A. In the store.

By Mr. Walsh:

10

Q. Whereabouts in the store? A. Well, just put it one side in the store in back of some coffee cans I have got there, so as to be out of the way.

Q. You gave it to Officer Merrill? A. He picked it up later.

Q. Did you give it to him or point it out to him? A. I pointed it out to him and he picked it up and took it out with him.

20

Q. Did you see anything else outside of the man standing with this in his hand? A. Well, when I turned my attention was attracted to him I also noticed another party trying to open the mail truck.

Q. Trying to open the mail truck? A. Yes, sir.

Q. In what way was he trying to open the mail truck? A. Using a pair of plyers similar to that.

The Court: When you say similar to that do you mean that which is now shown you as Exhibit S-4? 30

By Mr. Walsh:

Q. Are these the snippers he was using? A. Yes, sir.

Q. What was he doing with these? A. Trying to open the lock on the mail truck.

Q. Did he open it? A. I didn't stay long enough to see. 40

John J. McGovern—For the State—Direct

Q. What did you do? A. Backed in the store when I got orders to back in.

Q. Did you see anything else down there? Was that the same man who had the gun or another one? A. No, sir. Another man.

10 Q. Did you see anything else or anybody else? A. Well, no. I came back in the store then, and telephone to Police Headquarters and requested them to send down——

Q. Never mind what you requested. What did you do? A. Telephoned to Police Headquarters.

Q. What else did you see? A. Then stood up and watched out the side door and still seen the— watching the man that had this gun.

Q. Did you see any others? A. No, sir.

20 Q. See any drivers of any cars? A. No, sir.

Q. How many automobiles did you see there besides the mail truck? A. I only saw one, or at least only noticed one.

Q. Only noticed one? A. Yes, sir.

30 Q. Did you see anybody other than the man you have described with the gun in his hand, did you see anybody with anything in either hand there? A. Outside of the man that had the plyers in his hand, or nippers, but I have only seen his back. I did not see the face.

Q. What do you mean by that? Did you see the man who had the plyers in his hand have anything other than the plyers? A. Well, I seen him with a gun in his hand, as he held onto one side he had a gun in his left hand, if that is what you mean.

40 Q. That makes two men with a gun. Did you see any others with a gun? A. I seen a gun reaching out of the sedan car shooting at Officer Christman.

Benjamin Haas—For the State—Direct

Q. That made three, is that right? A. Yes, sir.

Q. Did you see any others? A. No, sir.

Q. Were you there when the cars went away?

A. No, sir; I was in the store. They got away shortly after I telephoned, before I got to the front again. They were already on their way over Sixth street. 10

Q. Did you see them go away? A. I didn't see them start. I saw them going.

Q. You saw them going? A. Yes, sir.

Q. Did you notice anything about the car as you saw it going or either of the cars? A. No, sir.

Mr. Walsh: That is all. Cross examine.

Mr. Cutley: No questions.

20

BENJAMIN HAAS, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

Q. Mr. Haas, where do you live? A. New York.

Q. How old are you? A. Thirty-two.

Q. Do you know Charles Neary, the defendant on the end of counsel's table? A. Yes, sir. 30

Q. How long have you known him? A. About eight years.

Q. How many years? A. Eight years.

Q. Did you see Charles Neary in the month of September, 1926? A. Yes, sir.

Q. Where did you see him? A. Down at his garage.

Q. And where was his garage at that time? A. I believe it was East 39th street, or 38th street. 40

Benjamin Haas—For the State—Direct

Thirty-eighth or Thirty-ninth.

Q. How did you come to go to see Neary there?

A. He sent a chap up after me and wanted to see me.

Q. When you saw him at the garage there did you talk with him? A. Yes, sir.

10 Q. Where was he, inside of the garage or outside? A. Outside of the garage.

Mr. Cutley: Kindly fix a date for that.

Q. Can you fix the exact date in September that that was, Mr. Haas? A. No, sir, it was around the latter part of September, around the twentieth or eighteenth or twentieth, somewheres around there.

20 Q. Well, what did Neary say to you at that time as his reason for sending for you? A. Well, I went to the garage inquiring for him, he had a foreman working for him, the foreman told me he was outside.

Q. Kindly talk a little louder, Mr. Haas. A. I went in and inquired for Mr. Neary and he had a foreman working for him told me he was outside. I hadn't seen Mr. Neary for a long while. He pointed him out to me. I didn't know him at the time.

30

The Court: You will have to talk louder, because counsel over here have to hear you, too.

A. He showed me Mr. Neary standing outside, and I said hello to him and he said hello to me; and he told me that Cuniffe would like to see me.

Q. Did you know James Cuniffe? A. Yes, sir.

40 Q. He said that Cuniffe wanted to see you? A.

Benjamin Haas—For the State—Direct

Yes, sir.

Q. Did he tell you where Cuniffe was? A. Yes, sir.

Q. Where did he say Cuniffe was? A. Told me he was out in Jersey.

Q. Did he mention, at that time, what particular part of Jersey he was? A. No, sir. 10

Q. Well, what was said further about your meeting Cuniffe by Neary and you at that time? A. He asked me did I want to go out to see him. I said certainly.

Q. And when did you arrange to meet Neary again? A. The following evening.

Q. Did you go there? A. Yes, sir.

Q. Where did you meet him the following evening? A. I went to his garage at eight o'clock that following night. 20

Q. And was he there? A. No, sir.

Q. Where was he, if you know? A. He was across the street in an apartment house.

Q. Did you go across the street? A. Yes, sir.

Q. And who did you meet at the door? A. There was a crap game going on and I knocked at the door and asked for Neary, and one of the doormen let me in.

Q. Did you see Neary there at the place? A. Yes, sir. 30

Q. What did he say to you? A. He didn't say nothing. He was playing dice.

Q. Did you wait for him? A. Yes.

Q. How long did he ask you to wait? A. Until he finished. I waited in there about an hour.

Q. So that after about an hour, which brings us up until what time? A. About nine o'clock.

Q. Then where did you go? A. Went over to his garage. 40

Benjamin Haas—For the State—Direct

Q. With whom? A. With Neary. Got his car—

Q. What kind of a car was his car? A. A Chrysler.

10 Q. After getting his car where did you go? A. Stopped down to a place down 20th Street somewhere, in along there. Some speakeasy.

Q. Did you talk to anybody there? A. No, sir.

Q. Did Neary? A. Yes, sir.

Q. Did you know whom he spoke to? A. A few of them in there. I don't know who they were.

Mr. Cutley: I can't hear you, Mr. Haas.

The Witness: No, I don't.

20 *By Mr. Walsh:*

Q. Do you know the name of the place that you went to on 20th Street, or who was the proprietor? A. I don't.

Q. From there where did you and Neary go? A. We went to Newark over the 23rd Street ferry.

Q. And then on to Newark? A. Yes.

Q. Do you know what place you went to in Newark? A. I believe it is Clinton Place.

30 Q. You know the number? A. I don't remember. It is right on the corner of Clinton Place.

Q. When you got there, who was there? A. Cuniffe, Crowley, Fanning, and a girl by the name of Harris.

Q. The Fanning that you mentioned is the man on trial here? A. Yes, sir.

Q. He was there with Frances Harris? A. Yes, sir.

40 Q. (Continuing) when you and Neary got there? A. Yes, sir.

Benjamin Haas—For the State—Direct

Q. What was said by anybody, any of you there, after you arrived? A. Well, I met them and we sat around and Cuniffe called me aside and asked me if I wanted to go in a job. I said, "What kind of a job is it?" He said, "A big pay-roll." He told me it was the Singer Sewing Machine pay-roll. I said, "Certainly." 10

Q. Did he tell you how much it would be? A. Well, he says it was in the—

Mr. Cutley: Just a minute. I object. I understand that he said that Cuniffe called him aside, and that this testimony, not being in the presence of Neary, it does not bind him.

The Court: I did not understand that anybody had left this room. 20

By Mr. Walsh:

Q. Where was Neary and Fanning as Cuniffe spoke to you regarding this pay-roll hold-up? A. We were all in the room, outside of the Harris girl.

Q. You were all in the room outside of the Harris girl? A. Yes.

Q. Did anybody other than Cuniffe discuss this pay-roll hold-up? I mean, did Neary say it, or did Fanning? A. Not that I can recall. 30

Q. It was just Cuniffe? A. Yes, sir.

Q. To you? A. Yes, sir.

Q. In the presence of Neary and Fanning? A. Yes, sir.

Q. And you consented to go in on it? A. Yes, sir.

Q. Was anything said at that time in reference 40

Benjamin Haas—For the State—Direct

to this pay-roll hold-up as to when it was to take place? A. Supposed to be taken the following Thursday.

10 Q. How long did you and Neary stay at Cuniffe's apartment? A. I guess we were there until about eleven o'clock.

Q. From there where did you go? A. Neary drove me back to New York.

Q. Did you leave Fanning at Cuniffe's apartment? A. Yes, sir.

Q. And Neary drove you back to New York? Where did he drop you in New York? A. 59th Street and Circle.

Q. And then he left you? A. Yes, sir.

20 Q. At the time you left, was there any agreement when you should meet again? A. Supposed to come out on the following Wednesday night.

Q. Who was supposed to come out? A. Well, all of us.

By the Court:

Q. Out where? A. Out to this Clifton Place apartment.

30 *By Mr. Walsh:*

Q. And then, getting out there on Wednesday night, what was the agreement to do? A. Sleep there during the night.

Q. On the next Wednesday night, did you go to Cuniffe's apartment at Newark? A. Yes, sir.

Q. When you got there, whom did you meet? Who was there when you got there? A. Fanning, Cuniffe, Crowley, Neary, and Gehrady, and Smith.

40 Q. And a man you knew as Smith? A. Yes.

Benjamin Haas—For the State—Direct

Q. Did you sleep there that night? A. Yes.

Q. All of you? A. Yes, sir.

Q. All the ones that you have mentioned? A. Yes, sir.

Q. On Thursday morning, after you arose, what did you do? A. When we arose, we arose about six o'clock, and Cuniffe got up and made the breakfast. 10

Mr. Cutley: What date was that, Mr. Walsh?

Mr. Walsh: That was two weeks before the 14th. That would make it the 30th of September.

The Witness: Around that time.

The Court: You will have to talk louder, because I don't hear you, and I must hear what is going on. 20

The Witness: All right.

By Mr. Walsh:

Q. You got up in the morning at Cuniffe's apartment and then you say you did what? A. We got up about six A. M. and Cuniffe made the breakfast. 30

Q. After Cuniffe prepared the breakfast, where did you go or what did you do? A. Well, before we started a fellow by the name of Kiekart came in.

Q. Kiekart came in? A. Yes, sir.

Q. Do you know his first name? A. Frank. I know him as Charlie Miller.

Q. And he came into the apartment? A. Yes, sir. 40

Benjamin Haas—For the State—Direct

The Court: Is he here?

Q. Is he in the courtroom? A. Yes, sir.

Q. Where?

10 *By the Court:*

Q. Is he sitting next to the officer? A. Yes.

The Court: Stand up, Kiekart.

Q. Is that the man you spoke of as Frank Kiekart? A. Yes.

Q. And whom you know as Miller? A. Yes, sir.

20 *By Mr. Walsh:*

Q. After you got there what did you do? A. We had our breakfast, and we waited around until about eight o'clock or so, possibly ten after eight, and we split up and we went to two different garages.

Q. Who went with you? A. Cuniffe and Kiekart.

Q. You went to a garage where? A. I don't know the street. It is about five blocks away. I
30 think they call it Hawthorne Street.

Q. Was it one of a series of garages or was it by itself? A. It was a series of garages.

Q. After getting to the garage, Cuniffe, Kiekart and you, what did you do? A. Went to the garage and Cuniffe opened it. He had a key to the garage and he took the car out, a Packard car.

Q. Who drove it? A. I drive it.

Q. And from there where did you drive? A.
40 Pulled up about a block or a block and a half

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away from the garage and picked up Kiekart.

Q. Kiekart did not go to the garage with you?

A. No, sir.

Q. After picking Kiekart up where did you go to? A. We were on our way to Elizabeth.

Q. Did you meet the others on your way to Elizabeth? A. We met them on a certain spot. I don't know where it was. 10

Q. It was somewhere between Newark and Elizabeth? A. Yes.

Q. Did you come to Elizabeth? A. Yes, sir.

Q. You drove one car, is that right? A. Yes, sir.

Q. Who drove the other car? A. Neary.

Q. Is that the Canice Neary, the defendant here? A. Yes, sir. 20

Mr. Walsh: Stand up, Neary.

(A man stood up in the courtroom.)

Q. Is that the man? A. Yes, sir.

Q. The two cars came to Elizabeth, did they? A. Yes, sir.

Q. What part of Elizabeth did you drive to? A. I parked in Seventh Street, Elizabeth.

Q. This is the first time that you drove? You came out Seventh Street? A. Yes, sir. 30

Q. Do you know where Neary parked his car? A. I don't. I think he was on Elizabeth Avenue, but I am not sure.

Q. You split up after you got to Elizabeth? A. Yes, sir.

Q. What time did you get to Elizabeth? A. I should judge we got there around nine o'clock.

Q. Did you see a mail truck that morning? A. 40

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Yes, sir.

Q. What kind of a mail truck was being used that morning? A. A large truck.

Q. Was anything said about a large truck being used? A. No, sir.

10 Q. As the large mail truck passed Seventh Street, what did you do? A. Went after it.

The Court: What is that?

The Witness: We started to go after the mail truck.

Q. Was it going slow or fast? A. It was going fast.

Q. Did you overtake it? A. No, sir. It was going too fast.

20 Q. How far did you follow it? A. Went down as far as Sixth Street.

Q. Then what did you do? A. Then the car was going too fast, and they decided not to take it, so I shot through Sixth Street.

Q. Did you see the car in which Neary was driving? A. Yes, I did.

Q. Where was that with relation to the mail truck? A. He was following it down, too, but he was ahead of my car.

30 Q. Had there been any agreement over in Newark as to what you were to do with this mail truck between Cuniffe, Neary and the rest of you? A. Yes, sir.

Q. What was the agreement? A. Supposed to get it before it hit the railroad tracks.

Q. Get it in what way? A. If we could not stop it, to leave it pass.

Q. When you decided not to take it that morn-

40

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ing, did you convey that to Neary in any way?

A. No, sir.

Q. He was in front of you, was he? A. Yes, sir.

By the Court:

Q. He was in another car? A. Yes, sir. 10

By Mr. Walsh:

Q. You turned off Elizabeth Avenue, and did you see Neary's car again? A. No, sir.

Q. Did you see it all the way over from Newark to Elizabeth? A. Yes, sir.

Q. Or from Elizabeth to Newark? A. Yes.

Q. Where did you meet him? A. We met somewhere around the corner of a trotting track, between Elizabeth and Newark. I don't know where it is at. 20

Q. Did you have a talk there? A. No, sir.

By the Court:

Q. Is that trotting track in a park? Was it in a park? A. Yes, sir, near a park.

Q. Between Elizabeth and Newark? A. Yes, sir. 30

By Mr. Walsh:

Q. Then where did you go? A. We drove to Elizabeth.

Q. I mean on your way back? A. On our way back we did not meet.

Q. You did not meet? A. No, we went right back to the garages. 40

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Q. You went to the garage from which you had taken your car? A. Yes, sir.

By the Court:

10 Q. Was that where you met before you went to Elizabeth? A. Yes.

Q. In that park? A. Yes, sir.

By Mr. Walsh:

Q. After you went to the garage to put the car you were using in the garage, where did you go then? A. Back to Cuniffe's apartment.

Q. To his flat? A. Yes, sir.

20 Q. Did you see Neary, Fanning and the rest of them there? A. Yes, sir.

Q. Was there any discussion had at that time about this matter? A. Yes, sir.

Q. What was discussed?

By the Court:

Q. Who was there at that time? A. The same parties.

30 *By Mr. Walsh:*

Q. Who were they? A. Cuniffe, Crowley, Fanning, Neary, Kiekart, Garrity and myself.

Q. What was said in regard to this mail truck? A. Why, they said it was going too fast, and if we had took it, we would have to take it down below the crossing, where there is freight trains going by, and they said if a freight train went by they would be out of luck.

40 Q. What do you mean by "out of luck"? A.

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By getting away. We could not get away.

Q. Was anything said about coming here again?

A. Yes, sir.

Q. What was said? A. They decided getting a big Mack truck to cut it off first. Then they decided to cut it with one of these cars.

10

Q. How long did you, Neary, Fanning, Cuniffe, Crowley, Garrity and Kiekart stay there discussing the situation? A. About an hour.

Q. And when was it agreed that you were to meet again? A. The following week on Wednesday night.

Q. Did you see any of them in the meantime?

A. I believe I seen Neary, but I won't say sure.

Q. And the following Wednesday night where did you go? A. Went over to Cuniffe's flat.

20

Q. You went to Cuniffe's flat? A. In Newark.

By the Court:

Q. Where is that in Newark? A. In Clifton Place, I believe.

By Mr. Walsh:

Q. When you got there, who was there? A. Why, Neary—

30

Q. That is Canice Neary? A. Yes, and Cuniffe and Crowley.

Q. Was anything said by any of you at that time when you got there? Did you discuss the situation? A. Yes, we were supposed to go the following morning for it.

Q. Was Fanning there at that time? A. No, sir.

Q. Was his absence discussed by Cuniffe, Crow-

40

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ley, Neary and yourself as to why he was not there?

Mr. Cutley: I object to this as immaterial if Fanning was not there.

10

The Court: This is proof that is being offered of an arrangement between these defendants and the witness, and it is competent to show the arrangements that were made, even though one, for the time being, was not present, and it is binding on the others.

By Mr. Walsh:

20

Q. Was anything said? A. Yes, he was hurt in some kind of an accident and he would not show up.

Q. Did they say what kind of an accident it was? A. No, just an automobile accident, and Crowley was in with him.

Q. Was there any further injury other than an accident? A. I don't recall it all, see, so I can't say.

Q. But he was not there? A. No, sir.

30

Q. Did anybody else come in that night, of these people? A. Yes, sir.

Q. Who? A. Garrity was there.

Q. Anybody else? A. Kiekart came the following morning at six o'clock.

Q. After Kiekart came there, was the matter discussed? A. Yes, sir.

Q. That was Thursday morning? A. Yes, sir.

Q. Then, as I understand it, this was a week before the mail truck was taken? A. Yes, sir.

40

They decided not to go for it.

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Q. They decided not to go for it that day? A. Yes, sir.

Q. With whom did you leave the apartment? With anybody? A. Going home that morning? Yes, I stood around for a while and went back to New York.

10

Q. Did you go back alone? A. I believe I went back with Fanning—

Q. You went back with Fanning? A. Not with Fanning, but with Garrity.

Q. Did you meet Neary shortly after that? A. I believe I did.

Q. And with him did you go anywhere? A. Yes, sir.

Q. Where did you go? A. I went to a house on East 58th Street.

20

Q. Do you know whose house that was? A. A fellow by the name of Grosso.

Q. Was it Daniel Grosso? A. Yes, sir.

Q. When you got to Grosso's apartment, who was there? A. Grosso and a blonde girl that was just leaving the apartment.

Q. She was just leaving as you came in? A. Yes, sir, and Fanning.

Q. So that left Neary and Grosso and you and who else? A. Fanning.

30

Q. While there at Grosso's did Fanning explain anything about his condition? A. Not to me, no, sir.

By the Court:

Q. In your hearing? A. He explained it to Neary.

40

*Benjamin Haas—For the State—Direct**By Mr. Walsh:*

Q. What did he say to Neary? A. He says that Crowley was drunk and he shot him.

Q. He shot him? A. Yes.

10 Q. Did he say where he had shot him? A. In the shoulder.

Q. And this was a day or so after the Thursday that you were out at Newark? A. Yes, sir.

Q. What time did you get to Grosso's apartment? Do you remember? A. It was around in the evening some time, between six and seven.

Q. And you stayed there how long? A. I guess I was there about two or three hours.

20 Q. And when did you next see Neary or Fanning or any of the others? A. I seen Neary and Fanning the next following week out in Cuniffe's house.

Q. About what time in the evening did you go to Cuniffe's house? A. About ten o'clock.

Q. What day of the week was that? A. On Wednesday.

Q. This was on the 13th of October, the day preceding this happening? A. Yes, sir.

30 Q. And when you got to Cuniffe's apartment in Newark—the same apartment, was it? A. Yes.

Q. Who was there? A. When I got there there was Fanning and Neary, myself, Cuniffe and Crowley.

Q. Anybody else? A. Grosso.

Q. Where did you sleep that night? A. I slept right in the apartment.

Q. Did all the rest of them do it? A. No, sir.

Q. I mean the ones you have named? A. Yes, the ones I have named all did, yes, sir.

40 Q. What time, about did you get up the next

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morning? A. Around six o'clock.

Q. Did anybody come there after you got up?

A. Yes, sir.

Q. Who was it? A. Kiekart.

Q. Did he have breakfast there? A. Yes, sir.

Q. What time did you leave the apartment? A. 10
Around eight o'clock.

Q. And who left with you? A. Cuniffe and Fanning.

Q. Where did you and Cuniffe and Fanning go?

A. To the garage.

Q. What garage was that? A. Hawthorne Street. I don't exactly know the name, about five blocks from the house.

Q. The same one you had been to before? A. 20
Yes, sir.

Q. And you got the same car? A. Yes, sir.

Q. And after getting that same Packard car, where did you go? A. Why, we went around and we were on our way to Elizabeth.

Q. And on your way to Elizabeth, did you drive through a park? A. Yes, sir, we stopped there somewheres.

Q. You stopped at the same place you stopped before? A. Yes, sir.

Q. And while there, did you see the other car— 30
another car? A. Yes, sir.

Q. Who was driving that other car? A. Charles Neary.

Q. And in the car with Neary were whom? A. Grosso and Crowley and Kiekart.

Q. After you met, did you have any talk there out in this place where you met? A. No, sir, we just met. That's all.

Q. And after meeting, what did you do with the car you were driving? A. Went to Elizabeth. 40

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Q. What part of Elizabeth did you stop your car? A. On Elizabeth Avenue, near Seventh Street.

10 Q. In which way did you face? Toward Elizabethport or toward Broad Street, up or down the avenue? A. I was facing in the direction the mail truck was coming. I don't know what way it was.

Q. Did you shut off your motor? A. No, sir.

Q. How long did you wait there before you saw anything? I mean, what were you waiting for? A. We were waiting for this truck to come along.

Q. How long were you there before the truck came along? A. About seven minutes.

20 Q. As it came down in the opposite direction from which you were headed, what did you do? A. I waited until it passed me, and I turned around and followed it.

Q. That is, driving in the direction of Sixth Street? A. Yes, sir.

Q. That is, at Sixth Street did you see anything of the car that Neary was driving? A. Yes, sir.

Q. Where was his car? A. Parked in Sixth Street.

30 Q. What did he do as the mail truck approached? A. Cut the mail truck off.

By the Court:

Q. How? A. With the car.

Q. How? A. Pulled out and cut the mail truck off out of Sixth Street.

By Mr. Walsh:

40 Q. As the truck went down the avenue you were

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behind it? A. Yes, sir.

Q. Was anything else behind it or anybody else? A. There was a motorcycle officer behind it.

Q. How was the motorcycle officer riding with relation to the mail truck? A. He was riding on the left of the truck. 10

Q. And about how far away from it? A. Oh, about four foot.

Q. As you approached Sixth street did you hear anything? A. Sir?

Q. Did you hear anything? A. Yes, sir.

Q. What did you hear? A. Heard a shot fired.

Q. Do you know who fired it? A. Yes, sir.

Q. Who? A. Grosso.

Q. Do you know who he fired at? A. Yes, sir, 20 the driver of the truck.

Q. Driver of the mail truck? A. Yes, sir.

By the Court:

Q. Was Grosso in your car? A. No, sir.

By Mr. Walsh:

Q. What kind of a firearm did Grosso have? 30
A. Sawed off rifle.

Q. Now, at about the time that Grosso fired this shot at the mail driver or truck driver, do you know what Cuniffe was doing in the car with you? A. Yes, sir.

Q. What was he doing? A. He shot down the officer with a machine gun.

Q. I show you this gun and ask you if that is the gun he used? A. Yes, sir.

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Mr. Walsh: Showing the witness Exhibit S-5 for identification.

10 Q. After he shot the officer what happened to the officer? A. Why, he rolled down about four or five foot and he toppled over. He straddled his motorcycle.

Q. You were either abreast of him or right behind him, were you? A. Right behind him.

Q. What did you do with the car you were driving? A. Why, I just swung around the motorcycle cop and faced Sixth street, I believe it is east, across the car tracks.

Q. In the direction of Newark? A. Yes, sir.

Q. Did you get out of the car? A. No, sir.

20 Q. Where was Neary, did he get out of the car? A. No, sir.

By the Court:

Q. He was driving the other car, wasn't he? Neary drove the other car? A. Yes, sir.

Q. Let me ask you a question: What kind of a car was it you drove? A. Packard sedan.

30 Q. And the car Neary drove? A. Packard sedan also.

Q. Both Packard sedans? A. Yes, sir.

Q. After Cuniffe shot the officer what did Cuniffe do? A. He got out and got the plyers, these here big plyers in front of me here.

By Mr. Walsh:

Q. These plyers here? A. Yes, sir.

40 Q. Showing the witness Exhibit S-4. He got these plyers and what did he do with them? A.

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He cut the lock off the mail truck.

Q. And after doing that what did he do that you saw? A. He went inside the mail truck and pulled out a big mail pouch.

Q. After pulling the mail pouch out what did he do with the mail pouch? A. Threw the mail pouch in my car. 10

Q. Was that the first time that you had seen these bolt cutters, Mr. Haas? A. No, sir. Seen them before.

Q. On your other trip to Elizabeth did you have these bolt cutters in the car that you drove? A. Yes, sir.

Q. Did you see anyone drop this gun to the pavement? A. Yes, sir.

Q. Who dropped it? A. I didn't exactly see. 20

The Court: What gun?

Mr. Walsh: S-5 for identification.

Q. Who dropped it? A. Cuniffe dropped it.

Q. Where was Fanning after you brought your car to a stop there around the officer, did you see Fanning? A. Yes, sir.

Q. Where was he? A. Standing about six feet away from the car I drove. 30

Q. What, if anything, did he have in his hand? A. Revolver.

Q. Do you know whether he fired it or not? A. I couldn't say sure.

Q. He was standing about six feet from your car? A. Yes, sir.

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

Q. Did Fanning get back in your car? A. Yes, sir.

Q. Who got back first, Cuniffe or Fanning? A. 40

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Cuniffe and then Fanning.

Q. Then Fanning got in? A. Yes, sir.

Q. After they both got in and after the mail bag had been thrown in your car, what did you do? A. Started through Sixth street toward

10 Newark.

Q. Did you see Cuniffe with any other gun other than this one that he dropped? A. Yes, sir.

Q. What kind of a gun did he have? A. Shotgun.

Q. What did he do with the shotgun after he got in the car? A. Pushed the window through in the back of my car.

The Court: What else?

20 *By Mr. Walsh:*

Q. Did he do anything else with it? A. That is all.

By the Court:

Q. What did he push through the window? A. In case anybody followed us.

30 Q. What did he push through the window? A. The gun, the rifle.

By Mr. Walsh:

Q. Breaking the glass? A. Yes, sir.

Q. Did you see Crowley there in the street before you left? A. Yes, sir.

Q. What did he have in his hand? A. He had a revolver.

40

Q. On your way back to Newark did you fol-

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low the same line that you had come over? A. Yes, sir.

Q. And when you got back there where did you drive your car, or the car you were in? A. Back to the garage.

Q. Same garage? A. Yes, sir.

10

The Court: Where was that? I did not hear that.

Mr. Walsh: Hawthorne avenue.

Q. Was it one of a series? A. Quite a few garages there.

Q. Is it on a corner, Mr. Haas? A. Yes, sir.

Q. Corner of Hawthorne avenue? A. Yes, sir.

Q. Do you know the intersecting streets? A. Yes.

20

Q. What street is it? A. Hawthorne avenue.

Q. I mean the other street? A. Oh, I don't know the other. I didn't know the streets out there at all. I knew it was Hawthorne street or Hawthorne avenue. I don't just know.

Q. You, Cuniffe, and Fanning rode back to the garage? A. Yes, sir.

Q. As you got back to the garage what happened? A. Backed the car into the garage and locked the door, the garage door.

30

Q. With the three of you inside or outside? A. Inside.

Q. Now, after the door was locked what was done? A. Cuniffe pulled out a knife and slit the pouch.

Q. I show you this and ask you if you have ever seen that? A. It was a pouch similar to that.

Q. Similar to that? A. Yes, sir.

40

*Benjamin Haas—For the State—Direct**By the Court:*

Q. Was it Cuniffe that used the knife that slit the mail bag or not? A. Yes, sir.

10 *By Mr. Walsh:*

Q. A mail bag similar to S-2? A. Yes, sir.

Q. After he slit the bag what did he do? A. He pulled out—there was smaller pouches inside, canvas bags.

Q. And what did he do with those, if anything? A. Well, he took them out of this large bag.

Q. Yes? A. And said to us, "We each take one to the house."

20 Q. So you took one? A. Yes, sir.

Q. He took one? A. Yes, sir.

Q. And Fanning took another? A. Yes, sir.

By the Court:

Q. What was done with the large bag? A. The large bag was left in the garage with other pouches, other canvas bags in it, more currency in it.

30 *By Mr. Walsh:*

Q. You each took a bag or a package. Was that a canvas package? A. It was a canvas bag and we just put brown paper over it.

Q. You put brown paper on it there in the garage before you went out? A. Yes, sir.

Q. Then you carried these packages back where? A. To Cuniffe's apartment.

40 Q. The same apartment that you had met before? A. Yes, sir.

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Q. When you got back there or after you got back there did you see—was anybody there as you got back? A. No, sir.

Q. How long before anybody came in? A. I should judge about twenty minutes.

Q. And who came in? A. Neary, Grosso, Crowley and Kiekart. 10

Q. Did Cuniffe, Crowley and Neary leave that flat after you went in? A. Well, two of them left the flat, I don't know which one it was though.

Q. Two of them left? A. Yes, sir.

Q. And then they returned there, did they? A. Yes, sir.

Q. How many guns were brought from that flat in the morning, if you know, guns, rifles or anything else in the line of firearms? A. About twelve or fifteen. 20

Q. Now, that would be the gun S-5 for identification, this gun, and about eleven to fourteen others? A. Yes, sir.

Q. What were those other guns, what type? A. Well, different types.

Q. Well, I mean— A. Thirty-eights, forty-fives, rifles and shotguns.

Q. You could not recall now just how many of each? A. No, sir. 30

Q. They were taken from the flat in the morning? A. No, sir. Just the machine gun and revolvers were.

Q. Just the machine gun and the revolvers. The shotguns and rifles were where? A. In the car.

Q. Now, as you got back there the machine gun of course wasn't brought back to the car. Were the revolvers brought back to the flat? A. Yes, sir. 40

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Q. And what was done with those revolvers?
A. I couldn't say.

10 Q. When you got back there to the flat that is, after these two came back the second time, and they were all there together what was done? You have gone back to the flat and then you say Neary, Kiekart, Grosso and Crowley came there and then what was done when you were altogether there?

A. There was more money left behind; more pouches.

Q. Left behind in the garage? A. In the garage.

Q. All right. A. I don't recall who went over for them. Two of them went over for the rest of it.

20 Q. And after they came back? A. And brought it back to the apartment.

Q. What was done then? A. Then Cuniffe split it up.

Q. Cuniffe split it up? A. Cut the bags and he split it up.

Q. Will you describe in what shape this money was? A. Why, they were mostly ten-dollar bills.

Q. How was it packed up? A. Ten thousand in a package with wire around them.

30 Q. How were the bills held together? A. With a wrapper and pins.

Q. Now, where was the money laid in the house as it was split up? A. On the dining room table.

Q. And who was sitting at the table? A. All of us.

The Court: Now, who are they?

Q. Who were sitting at that dining room table?

40 A. Cuniffe, Crowley, Neary, Fanning, Kiekart,

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Grosso and myself.

By the Court:

Q. How much did you each get? A. A little over twenty thousand, about twenty thousand four or five hundred, I just can't recall. 10

By Mr. Walsh:

Q. The twenty thousand was in what kind of a package? Was it one package or two packages?

A. Two packages. Ten thousand in a package.

Q. Did you take it apart there? A. Yes, sir.

Q. What did you do with the wire or the pins?

A. Took the wires and pins and wrappers and left them in a glass fruit bowl in the center of the table. 20

Q. There was a glass fruit bowl there? A. Yes, sir.

Q. What did the others do with their pins and wires, do you know? A. Well, while I was there a few of them were taking their pins out also.

Q. Neary, for instance, did you see what he did?

A. No, sir.

Q. Or Fanning? A. No, sir.

Q. Did you see them take their packages? A. Yes, sir. 30

Q. Each of them. Who was the first one to leave? A. Kiekart.

Q. Who left next? A. I left.

Q. You left alone, did you? A. Yes, sir.

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

Q. I show you this shell. Did you see any of those there that morning in your car? A. Yes, sir. 40

Benjamin Haas—For the State—Direct

Q. Were there many of them? What part of your car were they? A. They were under the rear seat.

10 Mr. Walsh: I will ask that be marked for identification.

(Shell marked S-6 for identification.)

The Court: Do you want to offer it in evidence?

Mr. Walsh: I will offer it later. I want to connect it up. I asked that it be marked for identification.

20 Q. Now, when you left this apartment there Neary and Fanning were both there? A. Yes, sir.

Q. When you left the apartment to go to New York with your money? A. Yes, sir.

Q. They were there and had received theirs? A. Yes, sir.

Q. Did you see Neary after that? A. Yes, sir.

Q. Where? A. New York.

Q. Many times? A. Quite a few times.

30 Q. Where did you see him first after that? A. I believe I seen him in an office building.

Q. Did you later see him at your own office? A. Once.

Q. And later on did you see him at a place other than New York City or the borough of Manhattan? A. Yes, sir.

Q. Did you see him some place outside of the Borough of Manhattan? A. Yes, sir.

Q. Where did you see him then? A. Over on the island.

40 Q. At the island? A. Yes, sir.

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Q. What is the name of that island? A. Blackwell's.

Mr. Cutley: Just a moment. I object to that on the ground what transpired after the day of this murder is immaterial and incompetent in this case. 10

The Court: Some island to which they went afterward?

Mr. Walsh: I asked him if he saw Neary after the time that he left him in the apartment house in Newark. He said yes, he saw him one time at an office building other than his own and later on saw him at his, Haas' own office. Then I asked him if he saw him any place other than in the Borough of Manhattan, and he said yes, I saw him at the island. I asked him the name of the island and he said Welfare Island. 20

The Court: Well, what is the object of this?

Mr. Walsh: To show conversations had between Neary and this defendant.

The Court: Without the presence of these two defendants?

Mr. Walsh: Neary.

The Court: Neary one of the defendants? 30

Mr. Walsh: Yes.

The Court: Conversations had with him afterward? I do not know just what that would be, and I will allow it for the time being. It may be competent, it may not be. I will give you the right to move to strike it out and I will give proper instructions to the jury. Go on. 40

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Q. You say you did see Neary at the Welfare Island? A. Yes, sir.

Q. What kind of a place is that? What is it?

10 Mr. Cutley: I object on the same ground. What difference does it make what kind of a place it was? What if anything did he have to say?

The Court: Not a particle of difference whether it was a grocery store or a butcher shop. Go on.

Q. Was it in a building that you saw him? A. No, sir.

Q. It wasn't in a building? A. Oh, yes, inside of a building.

20 Q. What is that? A. I went inside of a building.

Q. What kind of a building was it? A. Welfare Island.

Q. Did you talk with Neary? A. Yes, sir.

Q. Did you talk to Neary in regard to what had transpired at Elizabeth here?

The Court: Yes or no.

30 A. Yes. At least I didn't talk to him. He spoke to me on it.

Q. What did Neary say to you in regard to what transpired at Elizabeth? A. He told me that Fanning was going around cabareting.

Q. Told you what? A. He told me Fanning was going around cabareting and doing a lot of talking; tell him to keep still, keep his mouth shut. That is all.

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*Benjamin Haas—For the State—Direct**By the Court:*

Q. Going around cabareting and doing a lot of talking? A. Yes, sir.

The Court: I wish you would speak a little louder. I do not want to strain myself to hear you. It is not necessary that I should do that. 10

By Mr. Walsh:

Q. Did you see Fanning after that? A. Once.

Q. Did you say anything to him? A. No, sir.

Q. That is, not in regard to the Elizabeth matter. Did you ask him anything about his condition of health or anything? A. I asked him how he felt. He said all right. 20

Q. Did you direct your inquiry to any particular part of him? A. I asked him how was his arm, was it stiff. He said all right.

Mr. Dolan: I object to any conversation had with Fanning after this occasion on the fourteenth.

The Court: The answer is in. He said he asked him about his arm, how he was getting along, and he said all right. Do you want it struck out? 30

Mr. Dolan: Yes, certainly.

The Court: That part will be struck out. That is, that part of the answer wherein the witness said he asked him how he was getting along with his arm and he said all right. That will be stricken out.

Mr. Walsh: Cross examine. 40

*Benjamin Haas—For the State—Cross**CROSS EXAMINATION by Mr. Cutley:*

Q. You have told everything, I suppose, Haas, that transpired haven't you? A. Everything that I could remember.

10 Q. Well, you have told everything you could remember anyhow, whether it happened or not? A. Yes, sir.

Q. How long did you know Neary?

By the Court:

Q. Do you mean that? Did you hear that question? A. What is that?

20 Q. Counsel asked you whether you told everything you could remember whether it happened or whether it did not happen? A. Oh, no. I only could tell what I remember.

Q. That happened? A. Yes, sir.

The Court: Go on. Pay attention to the questions.

By Mr. Cutley:

30 Q. How long did you know Neary before this thing happened or before the time you went to the garage? A. About eight years.

Q. When had you seen him prior to the time you went to the garage? When had you seen him before? A. Oh, about as near as about seven and one-half or eight years.

Q. Seven and one-half or eight years you had seen him? A. Yes.

Q. What kind of a garage did he have? A. Automobiles and truck store.

40 Q. Quite a big place, wasn't it? A. Yes, sir.

Benjamin Haas—For the State—Cross

Q. Occupied about one hundred feet front, didn't it? A. I don't know what it occupied. It was a big place.

Q. It was a very big place? A. Yes, sir.

Q. Stored about a couple of hundred cars, didn't it? A. Yes.

Q. He was engaged in business at the time you went to see him? A. Yes, sir.

Q. Who sent you to see him? A. John Doe.

Q. Who? A. John Doe.

Q. John Doe? A. Yes, sir.

Q. That is Mr. Haas? A. No, sir.

Q. Who is John Doe? A. I don't know. It was a chap that come up while I was playing cards at 145th street in a club and told me Neary wanted to see me.

Q. Neary a man whom you hadn't seen for seven and a half or eight years wanted to see you? A. Yes, sir.

Q. And John Doe told you? A. Yes, sir.

Q. Where was this club? A. 145th street and Broadway.

Q. What was the number of the street at 145th street? A. I don't know the number.

Q. Was it on the corner? A. Right off the corner, the entrance—there is a Schulte cigar store.

Q. Who ran the club? A. It is the Washington Heights Democratic Club owned by Joseph Curley.

Q. Washington Heights Democratic Club? A. Yes, sir.

Q. Joseph Hurley? A. Curley.

Q. Is he alive today? A. Yes, sir.

Q. He is over there? A. Yes, sir.

Q. He is still in that club as far as you know?

A. I don't know whether he is in that club but

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Benjamin Haas—For the State—Cross

he still owns it. He has got the lease of it.

Q. Who is this John Doe? A. I don't know. I can't recall.

Q. Did you ever see him in that club before?
A. Sir?

10 Q. Did you ever see him in that club before? A.
I don't remember who it was.

Q. Well, was it a little bird came up and flew?
A. No, sir. It was a man.

Q. What kind of a looking man was he? A. I don't recall.

Q. Was he a short man or a big man? A. I don't recall.

Q. What were you doing there? A. Playing cards.

20 Q. What kind of a game of cards?

Mr. Walsh: I object.

A. Rummy.

The Court: What is the difference?

Mr. Walsh: Just for the sake of expediting matters.

The Court: Go on.

30 Q. When did this man come to the Washington Heights Democratic Club and tell you that Neary wanted to see you? A. Sometime in the afternoon.

Q. Of what day? A. I don't remember.

Q. Of what month? A. In the month of September.

Q. You don't remember the day? A. I remember the month, though, it was in September.

40 Q. Was it near Labor Day? A. I don't remem-

Benjamin Haas—For the State—Cross

ber.

Q. Was it the latter part of the month? A. Around the eighteenth or twentieth, in around that.

Q. Was it on a Sunday? A. No, sir; it was a week day.

Q. In the middle of the day? A. It was a week day.

Q. In the middle of the day? A. Around noon-time.

Q. And you were playing card? A. Yes, sir.

Q. Do you know the name of anybody with whom you were playing? A. I don't recall.

Q. How many were playing? A. Oh, about three or four of us. One fellow would go broke and another fellow would come in.

Q. You have been thinking over this case for the last two years, haven't you? A. What do you mean thinking about it?

Q. Well, you were first trying to escape detection and then you have been in jail some time? A. Yes.

Q. You knew a man named John Doe sent you to Neary, didn't you? A. Yes, sir.

Q. You knew you were playing cards with people in the club which you frequented? A. Yes, sir.

Q. And still you cannot tell us a solitary name of the man who was playing with you? A. No, sir.

Q. What did you say to Neary when you went to his garage? A. I didn't say anything to him.

Q. You didn't know Neary then, did you? A. No, I didn't see him in a long while, that is why I didn't recognize him.

Q. You went in and asked somebody in the of-

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Benjamin Haas—For the State—Cross

Q. fice? A. Yes, sir.

Q. And they said the boss is outside? A. Yes, sir.

Q. Now, is that the truth? A. Yes, sir.

10 Q. Don't you know that you did know Neary and you did know him before that seven and one-half years had expired? A. I didn't know him.

Q. Didn't you go to his house in Astoria, Long Island, when the Bellmore murder was on? A. I did not.

Q. Don't get angry at that? A. I am not angry. I did not.

Q. Didn't you go to his house twice? A. No, sir.

20 Q. Didn't you and Kiekart go? A. No, sir. I didn't know Kiekart at the time.

Q. Aren't you under indictment for that very murder now?

Mr. Walsh: I object.

A. Not that I know of. I do not know. If I am I do not know about it.

30 Q. Don't you know there is a detainer lodged in the jail downstairs against you for that murder? A. I do not know it, no. If it is I don't know it. Nobody ever told me about it.

Q. Do you know a man named Di Martini? A. No, sir.

Q. Do you know a man named Horton? A. No, sir.

Q. Do you know a man named Ross? A. No, sir.

Q. Flannery? A. No, sir.

40 Q. When you talked to Neary outside of his garage what did you say to him? A. He was speaking to me.

Benjamin Haas—For the State—Cross

Q. What did he say to you? A. He said Cuniffe wanted to see me.

Q. About what, did you ask him? A. He didn't say about what.

Q. Neither one of you talked about what? A. No.

Q. You didn't think he was a thief and you didn't know whether he knew you were a thief or not? A. No.

Q. When did you go there to Newark first? A. I don't recall the date.

Q. How near after the first time you went to see Neary? A. The following night.

Q. What, if anything, happened then in Newark, what did Cuniffe say to you? A. He told me about this Singer Sewing Machine pay roll.

Q. And without any objection you said I am in? A. Exactly.

Q. That was your business? A. That was my business at that time.

Q. Robbing everybody? A. Not everybody.

Q. Killing people? A. I didn't kill nobody.

Q. You have been convicted of crime, haven't you? A. That is all right. Everybody makes a mistake. I made mine.

The Court: No. Just tell him how many times you have been convicted.

Q. You were convicted of crime, weren't you? A. No, sir.

Q. Never? A. Never.

Q. Never convicted in your life? A. Never.

Q. As soon as Cuniffe mentioned this robbery of Singer's you said I am in? A. Yes, sir.

Q. No more talking about you didn't want to do

Benjamin Haas—For the State—Cross

that thing or anything like that? You voluntarily and quickly accepted his proposition? A. Yes, sir.

Q. How many times did you go over to see Cunniffe? A. Four times.

10 Q. What were the dates? A. I don't remember.

Q. Well, you were there on the fourteenth? A. Yes.

Q. You were there Wednesday night on the thirteenth? A. Yes.

Q. You were there the Thursday on the seventh when you didn't go through with it on account of the big truck?

20 The Court: No. On account of the car going too fast, the mail truck going too fast. That is my recollection of it. Wasn't that it?

Mr. Walsh: No. I think counsel is in error—

The Court: Never mind.

Mr. Walsh: I object to the question on the ground there is no such evidence.

The Court: I will allow it.

Mr. Cutley: I will withdraw it.

30 Q. What was the night that Fanning wasn't there? What date, do you recall? A. Week before the fourteenth.

Q. That would have been the sixth, is that right? A. I guess so.

Q. Fanning wasn't there at all? A. No.

Q. You saw Fanning when, in New York, at Grosso's apartment? A. I don't remember the date.

40 Q. It was a couple of nights after the sixth,

Benjamin Haas—For the State—Cross

wasn't it? A. Couple of nights after the sixth?

Q. It was between the day— A. Well, we will say the eighth.

Q. No, we won't say any eighth to suit me. A. Well, I don't know the date.

Q. Well, was it the same day when you were in Elizabeth when the plan didn't go through? A. No, sir. 10

Q. Was it the day after? A. It was before that. Before I come over here that week.

Q. Was it before the Wednesday, the sixth? A. Yes, sir.

Q. Well, when Fanning didn't appear out in Newark you knew the reason why he didn't appear, didn't you? A. Yes.

Q. Because you had been to Grosso's apartment? A. Yes. 20

Q. Now, is that the way you want us to understand that? A. Yes.

Q. And that when these men were talking about Fanning's condition you knew about that? A. Yes.

Q. Because you had been to Grosso's place, is that so? A. Yes, sir.

Q. What part in this hold-up did you have if any at all? A. Driving the car. 30

Q. You had no gun? A. That is all right. I drove just the same.

Q. I mean you had no gun? A. No.

Q. You didn't do any shooting? A. No.

Q. All you did was brought the boys down and provided a real serviceable way in which they could rob the United States Government? A. Correct.

Q. And then get away? A. Yes, sir.

Q. And take the money? A. Yes. 40

Benjamin Haas—For the State—Cross

Q. And tell on everybody? A. Yes.

Q. And then come into Court and make a bargain with the Prosecutor? A. I made no bargain whatsoever.

10 The Court: One minute. Counsel, that question is improper.

Mr. Cutley: I will withdraw it.

The Court: Counsel knows that question is entirely improper. You are an old trial lawyer of great ability.

Mr. Cutley: I apologize to the Court.

20 The Court: You had no right to ask any such question. It does not make any difference if any bargains were made from here to Hanover with the Prosecutor, they do not affect this Court.

Mr. Cutley: I think your Honor will appreciate—

The Court: So that it is at once an improper question and a reflection upon me.

Mr. Cutley: I cannot assume by any interpretation that you consider that I would frame such a question which—

30 The Court: If the bargain was made with the Prosecutor you reflect upon the Court.

Mr. Cutley: I will withdraw it and offer whatever the apologies are in the record.

40 The Court: The apology is accepted but the question should never have been asked, Mr. Cutley. I can understand how counsel, in the heat of a trial, and endeavoring to serve his clients best, might lose his head, but an old able lawyer like you should not ask a question of that kind. Go on.

Benjamin Haas—For the State—Cross

Q. How did you get back to New York the day of the fourteenth? A. How did I get back?

Q. Yes. A. I went over through Clinton Place and got a bus and went over through the tubes.

Q. Whom did you go with? A. Myself.

Q. Didn't you leave the house of Cuniffe, go outside to a booth and telephone your own house to your own mother and sister and have them move—come over and meet you in Newark? A. No, sir. 10

Q. Didn't you tell the boys when you got back, that story? A. No, sir, I did not.

Q. Do you mean to say that your mother and sister were not in Newark to meet you? A. Yes, sir, I mean to say that.

Q. And carried the money with you? A. I mean to say that. 20

Q. And isn't that the very reason that is prompting you today to come in and turn state's evidence for the purpose of protecting your relatives? A. No, sir.

Q. That is not so? A. No, sir.

Q. Did you call up your house? A. No, sir.

Q. You are sure of that? A. Positive of it.

Q. Where is Grosso? A. I don't know. Do you know where he is today? 30

Q. Not unless you tell me. A. I don't know. I am here before Grosso—Grosso is out. I am here.

Q. You say Cuniffe did the shooting from your car, did he? A. Yes, sir.

Q. And Grosso did the shooting in the other car? A. Yes, sir.

Q. Cuniffe is dead? A. Yes.

Q. According to reports. And Grosso is not found? A. Yes.

Q. You did not shoot? A. No. 40

Benjamin Haas—For the State—Cross

Q. Kiekart did no shooting? A. Yes.

Q. Did he? A. I don't know whether he did or not.

Q. Did you see him do any? A. No, I did not.

10 Q. You were there all the time? A. That is all right. I couldn't see everybody. You might have been there and I might not have seen you.

Q. Yes you would, if I was there.

The Court: All you have a right to do is to answer the questions, Mr. Haas.

By Mr. Cutley:

20 Q. Did you see Grosso shoot this man Enz? A. Yes, sir.

Q. What car was Grosso in? A. Neary's car.

Q. And Neary's car was the sedan on Sixth street? A. Yes.

Q. Where was your car then? A. Mine was on Elizabeth avenue.

Q. Just get down and point out where your car was, please? A. I am not much on maps. I will do it if I can.

30 *By the Court:*

Q. Do you know that map? Do you understand it? A. I don't understand the map.

Q. You don't know the directions in which the streets go? A. No, I don't know any of the streets in Elizabeth.

40 Q. Down here toward the right of the map is toward First street, which goes down toward the railroad you were talking about. A. This here goes down to the railroad?

Benjamin Haas—For the State—Cross

Q. Yes. Sixth street runs east and west? A. That is the way the mail truck was going? I followed the mail truck down, and I turned around as the motorcycle cop went across the car tracks.

Q. Which way were you going? A. I was coming down Elizabeth avenue. My car was about here (indicating), when Cuniffe shot the motorcycle cop down, and he fell down around there (indicating), about the center of the street, and as he did, my car pulled right around and was faced towards Newark, across the car tracks. Neary's car was in here (indicating), parked in here on Sixth street. He pulled out and cut the mail truck off. The mail truck pulled in a cater-corner in here (indicating).

10

Q. After it was over, did you back up to turn and go over Sixth street? A. No, sir, I just went around the motorcycle cop and was facing Newark.

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Q. Your car is the one that ran over the motorcycle policeman? A. I did not run over him at all. I pulled right around him. He was shot down. He was not sideswiped.

Q. He was not hit with the car at all? A. No, sir.

Q. Did you see the shooting? A. Yes, sir.

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Q. Who shot him? A. Cuniffe.

Q. The dead man did everything, is that it? A. No, sir, he didn't do everything.

Q. After you left Cuniffe's house, with whom—who was there of the crowd? A. Fanning, Neary, Grosso, Cuniffe and Crowley.

Q. Did you and Kiekart go away together? A. Kiekart left about five minutes before I did.

Q. How long had you known Kiekart? A. Previous to the crime, a year.

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Benjamin Haas—For the State—Cross

Q. How long have you known Cuniffe? A. About ten years.

Q. How long did you know Crowley? A. About ten years.

10 Q. And how long did you know Fanning? A. Previous to the crime about eight months, I guess.

Q. And Grosso? A. About two weeks.

Q. About two weeks? A. Yes, sir.

By the Court:

Q. That is two weeks previous to the hold-up? A. Yes.

By Mr. Cutley:

20 Q. Was Grosso at the first meeting held out in Clinton Place? A. No, sir.

Q. When did he come into the picture? A. The night before the hold-up. That was the first time he came over.

Q. As a matter of fact, didn't he get in the hold-up to take the place that you say Fanning was going to have because Fanning was shot? A. No, sir.

30 Q. Had you ever talked to Grosso before the 14th of October? A. In over in his house I did. I might have said something.

Q. Did you say anything about Singer's to him? A. No, sir.

Q. You never talked to him about the crime at all? A. No, sir.

Q. But still you went in the job with him, is that right? A. Yes, I went on the job with him, yes, sir.

40 Q. Without ever knowing what he was or was

Benjamin Haas—For the State—Cross

not going to do? A. (No answer.)

By the Court:

Q. Without your knowing what Grosso was or was not going to do, you went on the job with him? A. Yes, sir. 10

Q. Was there any one in charge of this particular hold-up? A. What do you mean by "in charge?"

Q. Was there any one giving orders as to what should be done and when and how? A. I don't know as anybody got any orders. They are supposed to take their position and do it. That's all.

Q. Was there anybody to tell them what position to take? A. Cuniffe and Crowley did all the telling about the position. 20

Q. For instance, who told you to drive, if anybody did? A. I was supposed to drive.

Q. Who picked the other driver? A. I don't know. I guess Cuniffe did that.

Q. Each man, so far as you know, knew what he was to do? A. Yes, sir.

Q. Who gave those orders? A. Cuniffe.

By Mr. Cutley:

Q. Did you know Sweeney? A. Yes, sir. 30

Q. How long had you known him? A. Around something like eight or ten years.

Q. Did you know Purtell? A. No, sir, I heard of him, but I don't know him.

Q. Were Purtell and Sweeney with you fellows that day? A. They wasn't with me.

Q. Were they in the gang? A. No, sir.

Q. Are you sure about that? A. Positive.

Q. They are particular friends of yours, aren't 40

Benjamin Haas—For the State—Cross

they? A. They are not particular friends of mine; they are just acquaintances.

The Court: That will have to stop right there.

10 *By Mr. Cutley:*

Q. What time, if you can recall, did you leave Cuniffe's house after the robbery was over and you had the money? A. At about half past nine, I guess, a quarter to ten, something along there.

The Court: Speak a little louder, please.

20 The Witness: Between half past nine and a quarter to ten; in along there somewhere. I don't just exactly know where.

Q. Where was Neary then? A. He was in the flat.

Q. Talk so the jury can hear you. A. Yes, sir.

Q. How long did it take you to get up to the garage from Sixth street and Elizabeth avenue? A. I should judge about eight minutes, eight or ten minutes.

30 Q. And you stayed at the garage just long enough to slit the duck bags? A. That's all.

Q. And then how long did you stay in Cuniffe's house? A. About three-quarters of an hour—I just can't recall.

Q. What was the latest you saw Neary that morning? A quarter to ten? A. Around that time. I was out of the house by ten o'clock. I know that.

40 Q. What time was the latest that you saw Neary? A. What time was the latest that I saw

Frank Kiekart—For the State—Direct

Neary? I seen him when he was over there with me. I don't know the time. I didn't look at the clock.

Q. You say you were out before ten o'clock?

A. Yes, I was the second one out.

Q. What time did you go, if you recall? If you don't know, say so. A. I don't exactly know the right time. 10

Mr. Cutley: That is all.

FRANK KIEKART, a witness called on behalf of the State, being first duly sworn according to law, on his oath, saith: 20

The Court: Gentlemen, we will adjourn. The audience will remain seated until the prisoners are removed. Then the jury may pass out first. After that the audience may go. In the meantime, unless you want this other witness Haas—

Mr. Walsh: I don't think I will need him for anything further.

The Court: You may have the witness Kiekart come back in the morning. Let the prisoners be returned first. 30

(A recess was had until 9.30 o'clock Tuesday, January 29, 1929.)

Frank Kiekart—For the State—Direct

COURT OF OYER AND TERMINER

UNION COUNTY

10

STATE OF NEW JERSEY,

vs.

WILLIAM FANNING, CANICE
NEARY, alias Charles Neary,
DANIEL GROSSO, alias David
GROSS, FRANK KIEKART and
BENJAMIN HAAS.

Indictment
No. 36

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Transcript of stenographer's notes of evidence in the above entitled cause, taken before Hon. ALFRED A. STEIN, Common Pleas Judge, and a Jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the twenty-ninth day of January, A. D. 1929, at 9.30 a. m.
Appearances:

30

ABE J. DAVID, Esq., *Prosecutor of Pleas*,
JOHN I. WALSH, Esq., (Present) *Asst. Pros.*,
WALTER C. TENNEY, Esq., (Present) *Asst. Pros.*,
Attorneys for the State.

GEORGE E. CUTLEY, Esq., *Attorney for the
defendant Canice Neary.*

JAMES P. DOLAN, Esq., *Attorney for the
defendant William Fanning.*

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Frank Kiekart—For the State—Direct

FRANK KIEKART, recalled.

Direct examination by Mr. Walsh:

Q. Mr. Kiekart, where do you live? A. Long Island City.

Q. How old are you? A. Forty.

10

Q. Did you know James Cuniffe in his lifetime?

A. Yes.

Q. Did you know William Crowley in his lifetime? A. Yes.

Q. For how long had you known Cuniffe?

Mr. Cutley: I object to that, may it please your Honor, on the ground that James Cuniffe or Crowley or anybody else mentioned in this indictment, any evidence in relation to his knowing them, their activities, is incompetent, immaterial, and irrelevant.

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The Court: I do not know that they are going to show anything about activities.

Mr. Cutley: Well, even as to his knowledge, I object to the present question.

The Court: So far as showing that there was a conspiracy and agreement and arrangement, between a number of persons to commit a robbery, the State's claim is that as a result of that agreement and arrangement and in the perpetration of the robbery, a murder resulted. Among the persons named was one Kiekart, and you yourself yesterday, in cross examining one of the witnesses—I have forgotten which one—brought out the fact that Cuniffe was dead. Now, where this examination is to

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Frank Kickart—For the State—Direct

lead to I do not know from the present questions. I will permit a portion of it until we see what it is going to lead to.

10 Q. How long had you known Cuniffe? A. About four years.

Q. And for how long had you known William Crowley? A. About the same time. Got acquainted with both together.

Q. Do you know Canice Neary who sits at the end of the counsel table? A. Yes, sir.

Q. How long had you known him? A. About five or seven weeks before the job.

Q. And by the job to what do you refer? A. The mail robbery.

20 Q. The one that was spoken of here yesterday? A. Yes, sir.

Q. Do you know William Fanning? A. Yes, sir.

Q. How long had you known him? A. About the same time.

Q. And Benjamin Haas? A. Know him about eight months before the crime.

30 Q. Now, about six weeks prior to October 14, 1926, did you meet James Cuniffe? A. Yes, I met him in the latter part of August or around the first of September. I ain't sure.

Q. Where did you meet him? A. Broadway at 168th Street.

Q. Was that by appointment? A. Yes, sir.

Q. And was it on the street corner you met him? A. The subway station.

Q. And was it daytime or nighttime? A. Night-time.

Q. Did you talk with him at that time? A. Yes, sir.

40 Q. In regard to what?

Frank Kiekart—For the State—Direct

Mr. Cutley: I object. Now, may it please your Honor, I object to any testimony as to any conversations, activities of Kiekart, the witness, with anybody who is not named in this indictment, and I urged it on the ground that this is not a conspiracy indictment, but it is an indictment in which four men, Fanning, Kiekart, Haas, and Neary are named, and whatever was said in regard to—by any of them, if at all admissible, only binds the man who said it. Cunniffe is not on trial and the evidence is incompetent, irrelevant and immaterial. 10

The Court: The State's claim is that there is an unlawful agreement between these defendants and some others to commit a robbery in the city of Elizabeth, as the result of which this murder happened. My understanding of the law is that you are permitted to show an arrangement between the several parties, even without the presence of some of them, if the State connects it up and shows that thereafter all of them participated in the final carrying out of the unlawful agreement. Now I understand that to be the law. The State will not be able, I take it from the evidence thus far introduced, to show a coming together of all of the parties at one and the same time. But an arrangement on the part of some of them to meet all of them at some time, and so far the evidence discloses on the part of the State that Cunniffe and some others did meet out here in Elizabeth, including these defendants, to carry out this unlawful agreement. 20 30 40

Frank Kickart—For the State—Direct

10 Mr. Cutley: The point I am making—that law which you state there can be no dissenting from, but this is a straight indictment for murder, and not a conspiracy to commit murder, and the ordinary rule applicable to defendants in conspiracy cases is not applicable to joint defendants in an indictment. That is the distinction I make.

The Court: I will allow the question.

Mr. Cutley: Prays exception.

Mr. Dolan: May I have an exception?

20 The Court: I understand counsel are taking exceptions for both defendants. Whenever he objects he objects for both defendants. That has been the order of the trial so far and that is as I understand it. If I am wrong I want to be corrected now. That is right, is it?

Mr. Dolan: Yes. I wanted to be perfectly sure that was clear.

(Question repeated by stenographer.)

(Exception prayed, signed sealed and allowed.)

ALFRED A. STEIN,
Judge.

30

A. Singer payroll.

Q. What did he say to you? A. He asked me would I go over on it, and I says I wanted to look at it before I went over.

Q. After that what did you do? A. I met him that Thursday morning at Newark at the Pennsylvania station.

40 Q. That is the Market street station, the main depot in Newark? A. Correct, yes.

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Q. Who was with him? A. Crowley.

Q. And you and Crowley and Cuniffe went where? A. Took a taxicab and went to Fifth and Elizabeth avenue.

Q. In which city? A. Elizabeth.

Q. That you say was in the latter part of August or the first part of September? A. The early part of September. 10

Q. Do you remember the day of the week that that was? A. I couldn't say.

Q. And did you alight from the taxicab? Did you get out of it? A. The three of us got out and walked up Elizabeth avenue towards Seventh street.

Q. How long did you remain on Elizabeth avenue? A. We walked from Fifth to Seventh, and when we got near Seventh street, the Ford truck came down. 20

Q. What kind of a Ford truck was that? A. A Ford delivery truck.

Q. Do you know what that Ford delivery truck was being used for that morning?

Mr. Cutley: I object to that on the ground that so far as Neary and Fanning are concerned, they were not there, and what they did at that time does not bind them. 30

The Court: I think you have gone far enough with that, Mr. Prosecutor. You may proceed with the rest of the testimony.

The Witness: Have it stricken out anyway.

The Court: Mr. Kiekart, I don't want you to make any reply. You will simply answer the questions and nothing else. Do 40

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you understand what I said?

The Witness: Yes, sir.

The Court: Then you do that.

By Mr. Walsh:

10 Q. After this day that you have mentioned, did you meet Cuniffe and Crowley in regard to the matter of the Singer payroll as you refer to it? A. I don't understand what you mean. The day we left Penn station and came to Elizabeth in a yellow taxi?

Q. After that day did you meet— A. Yes, I met him the following Thursday.

Q. Where did you meet the following Thursday? A. The same place.

20 Q. Who was with them? A. Crowley and a chauffeur by the name of Jimmy. I don't know what his name is.

Q. Who else? A. Jimmy, I don't know the name.

Q. Crowley and this Jimmy? A. Cuniffe and this chauffeur.

Q. Did you meet Charles Neary or William Fanning? A. No—

30 Q. (Continuing) —with Cuniffe and Crowley after that? A. I met them Wednesday night.

Q. Where did you meet them? A. 112 Clinton Place.

Q. In Newark? A. Yes, sir.

Q. How did you go to 112 Clinton Place, Newark? A. Took a taxicab from the tubes.

Q. Did you go alone, Mr. Kiekart? A. Yes.

Q. When you arrived at the flat, 112 Clinton Place, who was there? A. Neary, Fanning, myself.

40

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Q. Neary and Fanning? A. Cuniffe and Crowley, and a fellow named Gerhity.

Q. Can you recall how many weeks before—this was Wednesday night, you say? A. Yes, sir.

Q. Can you recall how many weeks before the mail robbery this was? A. About a month before, I judge. 10

Q. That would be four weeks, do you mean? A. Yes.

Q. You met them at this flat on Wednesday night? Did you stay there that night? A. No, I didn't stay there that night.

Q. While there with Cuniffe, Crowley, Neary, Fanning, and Gehrity, was the matter of the United States mail at Elizabeth discussed by you? A. Yes, sir. 20

Q. Was it discussed by all of you? A. Everybody.

Q. And after discussing it, how late did you stay there that night? A. I stayed until around nine o'clock or so, I don't know.

Q. Then where did you go? A. I went to Brooklyn.

Q. As you left, was anything said about when you were to meet with these men again? A. Supposed to meet them the following morning at eight o'clock. 30

Q. Did you meet them? A. Yes.

Q. Where did you meet them? A. 112 Clinton Street.

Q. When you got to the flat, 112 Clinton Place, on Thursday morning—that would make it four weeks prior to the hold-up? A. About that.

Q. Who was at the flat? A. Me and Neary, Fanning, Cuniffe, Crowley and Gehrity.

Q. After you got there did you or any of you 40

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leave the place? A. Yes, we left it to come over to take the payroll.

Q. Who did you leave at the flat 112 Clinton Place with? A. Neary, Fanning, Crowley, Cunniffe and Gehrity.

10 Q. Where did you go from the flat first? A. From the flat down to the garage and from the garage to Elizabeth.

Q. The garage was where? A. I don't know the streets, but it is a couple of blocks away from the house.

Q. You know the location of the place? A. Well, I think I could, yes.

Q. And you all got in a car? A. Yes.

20 Q. Do you know what make of car it was? A. Well, I think it is a Packard.

Q. Who drove that morning? A. Neary.

Q. From the garage where did you go? A. Elizabeth and Sixth.

Q. That is, you were in one car, were you? A. Yes.

Q. And on that morning were you armed, did you have any firearms? A. Yes.

30 Q. Just tell the Court and jury what kind of firearms you or Fanning or Neary had. A. I couldn't say what kind of firearms was used. Everybody had the guns. That is all I know. I don't know what calibre they were.

Q. By guns what do you mean? Revolvers? A. Revolvers.

Q. You came to Sixth and Elizabeth Avenue in this car? A. Yes.

Q. What did you do with it that morning? A. The mail truck came along and we tried to take it, but we could not take it.

40 Q. When you say "tried to take it," in what

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manner did you try to take it? A. Well, we tried to cut the truck off, but the truck was too fast and we give up the chase. We returned back to Newark.

Q. Neary was doing the driving that morning?

A. Yes.

10

Q. How far did you chase that truck? A. About two blocks.

Q. You returned to Newark to the same flat, did you? A. Correct.

Q. And at the flat did all of you go in the flat then? A. Yes.

Q. Was the matter of the hold-up discussed after you got back to the flat? A. Yes, sir, yes.

Q. Discussed by whom? A. Cuniffe and Crowley. They judged using two cars.

20

Q. That morning they decided to use two cars the next time? A. Yes.

By the Court:

Q. Is that right? A. Yes, that's right.

Q. The first time you came out in one car? A. Yes.

Q. And then you decided to use two cars? A. Two cars.

30

By Mr. Walsh:

Q. Then that was Thursday, four weeks prior to the hold-up? A. Yes.

Q. Did you meet Cuniffe, Crowley, Neary and Fanning again? A. Yes, the following week. The following week Haas came over.

Q. That would be the following Thursday? A. The following Thursday. That would be three

40

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weeks previous to the crime.

Q. Where did you meet them Thursday morning? A. 112 Clinton place.

By the Court:

10 Q. That is the same apartment in Newark? A. Yes, sir.

By Mr. Walsh:

Q. Who did you leave the flat with that morning? A. Me, Haas, Cuniffe, Crowley.

Q. Did you all go to the same place? A. Well, we went down and there was some discussion. There was somebody missing, somebody sick in
20 the crowd. Fanning was sick.

Q. Was Fanning with you that morning? A. No, he was sick. He didn't show up that week, and we postponed it.

Q. Where did you go after that? A. Well, they went back to the flat. I left.

Q. And you went back to your home? Did you meet them again? A. The following week again.

Q. Do you remember the day of the week? A. No, I judge it was about the first week in October.

30 Q. Well, I mean the day of the week, the robbery was what day of the week? A. I couldn't say. It might have been the fifth or sixth or seventh; I don't know.

Q. Whether it was Monday, Tuesday— A. On Thursday. Every occasion happened Thursday.

Q. Two weeks before the robbery did you meet Cuniffe, Crowley, Neary and Fanning? A. Yes, sir.

40 Q. Was Haas there that day? A. Yes, he drove

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one of the cars.

Q. Who did you leave the flat with that morning, all of them? A. All left together.

Q. In which car did you travel, who was driving? A. Neary, Crowley and Grosso and myself.

Q. Neary, Crowley, Grosso were in the car with you? A. Yes. 10

Q. Who was in the other car? A. Fanning, Haas and Cuniffe.

Q. Where did you drive to, Mr. Kiekart? A. Elizabeth.

Q. On what street did you stop? A. Well, drove to Seventh street, one car drove to—both cars drove to Seventh, I believe.

Q. Neary was the driver of the car in which you rode? A. Yes. 20

Q. Were you or persons with you that morning armed? Did you have any firearms? A. Everybody was armed.

Q. After getting to Seventh Street what did you do? A. Well, we were there about five or seven minutes and a Ford delivery truck came down and they chased it and missed it.

Q. What was the truck being used for? A. Singer's payroll, for the delivery truck.

Q. Was it the mail wagon? A. Well, I wouldn't say it was a mail truck or not. I took it for a special cop on the seat. I don't know whether it was letter carrier or not, but I found later on it was a Federal. 30

Q. Then you chased it that morning? A. Yes.

Q. Which car? A. Both cars.

Q. Neary was driving one and who was driving the other? A. Haas.

Q. And what happened that morning as you chased it? A. Well, the Ford truck went too fast 40

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so we turned back to Newark.

Q. Where did you get? A. They went back to the garages, put the cars in the garages.

Q. And where did you go? A. I went up and took a cab and went to the tubes.

10 Q. On the following week that would make it Thursday, October 7, did you meet Neary, Fanning, and Haas? A. Yes.

Q. Who else was there, Cuniffe and Crowley? A. Cuniffe and Crowley, that was the fourteenth.

Q. No. The week before the fourteenth? A. Well, that is the time the two cars come over and chased it down.

Q. And the week before that? A. Somebody was sick the week before. Fanning was sick.

20 Q. Well, was Fanning there that day? A. What do you mean, two weeks previous?

Q. No. The week previous. A. Yes.

Q. He was there or not? A. Yes, he was in his machine.

Q. That gets it down to the day of October 14. On Wednesday, October 13, did you go to Newark? A. No.

30 Q. Will you tell us what you did on October 14, 1926? A. Well, I come over to 112 Clinton Place, we all left Clinton Place and went to the garage.

Q. What time was it that you got there? A. Why, it was around I should judge, about quarter to eight, ten minutes to eight.

Q. Who left the flat with you, all of you? A. Well, I went up and seen Cuniffe and Crowley was talking to him and I left and I told him to pick me up at the car barns in Newark.

Q. Who was at the flat that morning? A. Well, I didn't look around. They were all there.

40 Q. Did you see Neary? A. I didn't see Neary

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there that day but I seen him in the car. I didn't see him at the flat.

Q. Later on, at the car barns, did anybody come along in an automobile and pick you up? A. Yes, Neary, Grosso and Crowley.

Q. Who was driving? A. Neary. 10

Q. And from the point at the car barns where was the car driven, where did you go to? A. Went over to Wequahic Park and met the other car and both cars drove to Elizabeth.

Q. Who was in the other car that you met in Wequahic Park? A. Fanning, Cuniffe and Haas.

Q. Do you know who was driving that car? A. Haas.

Q. Both cars came to Elizabeth? A. Yes.

Q. The car in which you were riding driven by Neary, where did that go in the city of Elizabeth? A. Sixth street and Elizabeth avenue. 20

Q. Do you know which street it stopped on, Sixth street or— A. Sixth street.

Q. And which way did that car face? A. Towards Newark.

Q. After the car was brought to a stop what did you do? A. I got out of the machine and walked to the corner, I and Crowley got out.

Q. The nearest corner to where you were? A. Yes. 30

Q. What did Neary do? A. He stood in the car.

Q. And Grosso? A. He stood in the machine with Neary.

Q. That is, you left him there? A. Me and Crowley got out. I walked to one corner and Crowley walked to the other corner.

Q. To which corner did Crowley walk? A. Drug store corner. 40

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Q. And from where you were on the corner could you see the car that Haas had been driving? A. No. He was away up the street waiting up near Sixth street or Seventh street.

Q. Seventh street? A. Sixth or Seventh, yes.

10 Q. Now, as the mail truck came down the street did you see it? A. I seen it coming down, yes; I crossed the street.

Q. Crossed which street? A. Well, from the grocery store over towards, I don't know whether it is a butcher store on the other corner or not.

Q. In which direction? A. Towards Newark.

Q. Did you remain on that corner? A. I stood on the corner and the mail truck come down and Neary cut the mail truck off.

20 Q. You saw Neary cut the mail truck off? A. Yes, the mail truck went against the curb on Sixth street.

Q. Did you hear any shooting that day? A. Yes, a little.

Q. Did you do any shooting? A. No, I didn't do any shooting.

Q. Did you see a motorcycle officer there? A. Yes, I seen a motorcycle cop laying on the street.

30 Q. And you stood on the bakery corner? A. Stood on the bakery corner and when the shooting started I walked towards Marshall street.

Q. Had that been understood what you were to do? A. Yes.

Q. That had been talked over, had it? A. Yes.

Q. Why did you walk toward Marshall street? A. Well, when the machine started off, to watch the buses coming up and down the streets so that any of the cars wouldn't run into the buses.

40 Q. Did you see Fanning as you stood on the bakery corner? A. Yes, he was in the machine

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with Haas and Cuniffe.

Q. Did you see him out of the machine? A. Well, I couldn't judge, on account of me walking down the street, I don't know whether he got out or not, I couldn't exactly say. I guess they were all out as far as I am concerned. I wouldn't say. 10

Q. Did you see Cuniffe? A. Yes.

Q. Where was he? A. He was in the car with Haas.

Q. Did you see him out of the car? A. No, I didn't see him get out of the car.

Q. Did you see him do anything while he was in the car? A. Well, Haas drove the car and Cuniffe shot the cop out of the window, out of the rear of the car.

Q. You saw that? A. Yes. 20

Q. Did you see the mail truck there? A. Yes. I seen it when it got cut off.

Q. Did you watch the mail truck after that? A. Yes.

Q. What did anybody do to the mail truck? A. Cuniffe and Crowley cut the lock off the door.

Q. Did you see that? A. Yes.

Q. And with what did they cut it? A. A pair of bolt clippers.

Q. I show you Exhibit P-4 and ask you if those are the clippers used? A. Yes. A pair like that. 30

Q. Did you ever see them before they used them on the mail truck? A. Well, I don't know whether it is the same or not. They were in the machine, I guess they are.

Q. They were in the machine? A. Yes.

Q. Were they in the machine each occasion? A. Yes, every time they come over.

Q. Did you ever see this gun, showing you Exhibit S-5? A. Yes, sir. 40

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Q. What is that gun, or where did you see that?

A. That belonged to Cuniffe and Crowley.

Q. Did you see it? A. Yes.

Q. Where did you see it? A. 112 Clinton Place.

Q. They had it there? A. Yes.

10 Q. Did you see it in the car at all? A. Yes, I seen it in the car. Cuniffe took it with him.

Q. Did you have that with you each time that you came over? A. Yes.

Mr. Walsh: Showing the witness S-5 for identification.

20 Q. Now, after the lock was cut off the mail truck did you see anybody do anything else? A. No. We all— Cuniffe took the bag of money out and threw it in the car; we all drove over to Newark.

Q. Which car came over Sixth Street first to where you were? A. Over to Sixth street first from where?

Q. Which car came first over Sixth street where you were? A. Neary.

Q. Did he slow up for you? A. The first car do you mean after they left Elizabeth?

30 Q. As they started for Newark? A. No. Haas left first. Neary left second.

Q. Neary left second. Well, as Neary came toward Marshall street did he slow down for you? A. Yes, slackened down and I jumped on and got in the rear seat.

Q. Who was in that car coming back to Newark with you? A. Me, Neary, Crowley and Grosso.

40 Q. Did you meet the other car on the way over at all? A. No. Both cars followed one another.

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Q. When you got back to Newark where did the car in which you were going go? A. Went to a garage on Hawthorne avenue.

Q. You went with them? A. Yes.

Q. And from there where did you four go? A. Well, I left them in the garage I went to the apartment. 10

Q. Did you walk alone from the garage to the apartment? A. Yes.

Q. The same apartment you have mentioned? A. Yes.

Q. When you got to the apartment who was there? A. Well, was nobody there when I got there, I was the first one there. I opened the door and the rest come in.

Q. Now, by the rest you mean whom? A. Neary, Fanning, Haas, myself, Crowley, Cuniffe, Grosso. 20

Q. That apartment consisted of how many rooms? A. Oh, about five or six. I ain't sure.

Q. Was there a living room there? A. Yes.

Q. Was there a table in the living room? A. Yes.

Q. Where did you people stay with relation to that living room? Were you in the living room all of you? A. Yes, we all stood there.

Q. Did you bring any of the money to the flat? A. No, I didn't. 30

Q. Who did bring the money to the flat? A. Cuniffe and Crowley brought the money up.

Q. After bringing it there did you see anybody count it? A. Yes, Cuniffe was counting the money.

Q. After Cuniffe had counted the money what did he do with it? A. Well, he figured it all up, amounted to about \$20,500 apiece.

Q. After figuring it all out that each one's share was that, what did Cuniffe do? A. Well, 40

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he give each party there what was coming to them, and I took mine and left.

Q. Did he give Neary his? A. Everybody got the same.

Q. Everybody. How was this money done up?

10 A. Ten thousand dollar packages.

Q. Did you undo your package there? A. No.

Q. Did you see any of them undo the packages? A. Well, some of them did.

Q. Did you see what they did with the pins there? A. The pins were taken out and were thrown in the vase, I don't know, there was a bowl there, they were throwing them into the bowl. I don't know what they did with them.

20 Q. You were the first one to leave? A. Yes, I left first.

Q. You have spoken about revolvers that each one had as you returned to the flat that morning; do you know what was done with the revolvers? A. No. They were all put in a bureau drawer.

Q. As you came in? A. Yes.

Q. Did you see Grosso have anything other than a revolver? A. Where? In the apartment?

Q. In the car that you came over? A. No, only a rifle, that's all.

30 Q. Did you notice anything in the car? Did you notice shells or anything? A. Yes, I noticed shells in it, shot shells.

Q. Did you see Grosso use the rifle? A. He shot the driver out of the rear of Neary's car.

Q. Did you see him do that? A. Yes.

Q. "Yes" was your answer? A. He shot out of the rear of Neary's car.

40 Mr. Cutley: I move that that is not a responsive answer to the question.

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The Witness: He shot out of the rear of Neary's car.

Mr. Cutley: In the preceding question he asked, "Did he see Grosso shootENZ?"

The Witness: I didn't say I seen him. I said he shot out of the rear of Neary's car. 10

Q. Do you know which driver he shot? A. No. After the mail robbery was cut off, I couldn't see. He must have shot towards the front.

The Court: That portion of the answer where he says, "He must have shot across the front" will be stricken out as a conclusion on the part of the witness. It is not a fact. 20

By Mr. Walsh:

Q. I show you that shell? A. I don't know. I couldn't swear to it. It looks like it.

The Court: Gentlemen of the jury, whenever the Court directs the jury in language just as I have given you here, that something will be stricken out of the testimony, I also mean to convey to you that you are not to pay any attention to that part of the testimony. Obliterate it from your minds entirely. 30

By Mr. Walsh:

Q. Did you notice anything else in that car in which you were riding outside of the shells? A. 40

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No, just the sawed-off rifle. That was all.

Q. These garages, you say you don't know just what street they were on? A. No.

Q. Did you go with anybody to each of these garages since? A. Yes, before the job went off, I went to both garages.

10 Q. I mean since your arrest. Do you know Chief Galatian? A. Yes.

Q. Did you at any time go to both of these garages and point them out with anybody? A. Yes. I went over there once I think. I ain't sure.

Q. You ain't sure? What do you mean by that? You say you think you went over once? A. I went over there and I seen the two garages, where the garages were, yes.

20 Q. Was Chief Galatian with you at that time? A. Yes, postal inspectors.

Q. What is that? A. Yes, and some postal inspectors.

Q. Were those the garages? A. Yes, sir.

Q. (Continuing) In which the cars used in this mail robbery were stored? A. Yes.

30 Mr. Cutley: I ask that that be stricken out, because he does not know whether they were the garages or not.

The Court: Read the last question, please, Mr. Stenographer.

(The stenographer read the last question as follows):

“Question: Were those the garages? Answer: Yes, sir.

40 “Question (continuing): In which the

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cars used in this mail robbery were stored?

Answer: Yes."

The Court: What is the trouble with that?

Mr. Cutley: The trouble with that is that he asked him whether those were the garages, and he said he did not know whether they were or not. Will the stenographer please read the last two questions? 10

(The stenographer read the last two questions as follows):

"Question: You ain't sure? What do you mean by that? You say you think you went over once? Answer: I went over there, and I seen the two garages, where the garages were, yes. 20

"Question: Was Chief Galatian with you at that time? Answer: Yes, postal inspectors.

"Question: What is that? Answer: Yes, and some postal inspectors. 30

"Question: Were those the garages? Answer: Yes, sir.

"Question (continuing): In which the cars used in this mail robbery were stored? Answer: Yes."

The Court: What is the trouble with that?

Mr. Cutley: The trouble is, as I got it, 40

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that he did not know the garages where he went. However, I will find out.

Mr. Walsh: Cross examine.

10 *CROSS EXAMINATION by Mr. Cutley:*

Q. Kiekart, did you say a moment ago that you were not sure that the garages that you and Mr. Galatian and the post office inspectors went were the same garages from which these cars had been taken? A. I says I wasn't sure when it was that I went over there. I didn't say about the garages.

Q. Are you sure that those were the same garages? A. Yes, the same garages.

20 Q. Where are they? A. One is on Hawthorne Avenue, and one—I don't just know the name of the street, but I know the location of it, that's all.

Q. You brought the post office inspectors to it, did you? A. Yes.

Q. Who brought that money to Cuniffe's house? A. Cuniffe and Crowley.

Q. Did you see them? A. Well, they came in with two bags.

30 Q. Are you sure of that—Cuniffe and Crowley? A. Yes.

Q. Who else was with them? A. That's all I seen coming in with them.

Q. Who was in the car with Haas? A. Fanning and Cuniffe.

Q. What car had the money? A. Haas' car.

Q. Did you come into Cuniffe's house before Haas came in? A. Yes.

Q. You were there first? A. I was there first.

40 Q. There is no doubt about that in your mind?

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A. Yes.

Q. You say Crowley and Cuniffe brought in the money? A. Yes.

Q. Did Haas bring any money in? A. I didn't see him with any.

Q. Did you see Haas and Fanning and Cuniffe come in? A. Yes, I seen them all come in. I was sitting there when they all came in. 10

Q. Were you in before anybody else? A. Yes, I was the first one there.

Q. How much money did you get apiece? \$20,500.

Q. That was \$143,500? A. Well, around abo that.

Q. Was there \$151,000 taken? A. We got \$20,500 apiece. I don't know what was taken. That's all I know. That's all I got. 20

Q. Didn't you always have a kick coming that you were not getting a square deal on the co

A. Who?

Q. You? A. No.

Q. You were brought to Elizabeth, and on your way up to Elizabeth, you made a confession, didn't you? A. Yes.

Q. And in that confession you mentioned seven people? A. Yes. 30

Q. And you never mentioned Neary or Fanning? A. No, I didn't mention them.

Q. You have been convicted of crime? A. Yes, once.

Q. You live in Bellmore, Long Island? A. What? Never heard of it.

Q. Where did you live? A. Long Island City.

Q. How long did you live there? A. Born and raised there.

Q. How long did you know Neary? A. I knew 40

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him about five months—five or six weeks before the job, probably seven weeks.

Q. How did you become acquainted? A. Cuniffe and Crowley introduced me to both him and Fanning.

10 Q. How long have you known Haas? A. About eight months.

Q. A partner of yours? A. No.

Q. Just worked on odd jobs? A. Never operated with him at all.

Q. Never at all? A. No.

Q. You worked with Cuniffe and Crowley, didn't you? A. No.

Q. You worked alone? A. Yes.

20 Q. You got to that house about what time or the morning of the 14th? A. I judge around half past nine, probably 9.30 or 9.35, I would not say. Probably twenty to ten. I would not say exactly the minutes.

Q. Are you thinking about after the robbery? A. After the robbery.

Q. I mean before? A. What time did I get there? I got to the house about ten minutes to eight.

30 Q. Who was there when you got there? A. Cuniffe, Crowley, Fanning, and they were all there, Haas and them all there.

Q. Who was there? Tell me? A. Haas, Crowley, Cuniffe and me-self, Grosso and Fanning.

Q. Where was Neary? A. He was there, too.

Q. Why didn't you mention it? A. What the hell do you want me to say it? A half a dozen times? I told you he was there.

40 The Court: Kiekart, no more of that.
The Witness: I apologize to the Cour

*Frank Kiekart—For the State—Cross**By Mr. Cutley:*

Q. Didn't you in your direct examination say that you didn't see Neary when you got to the house? A. Who? I didn't say anything about that.

Q. Did you see Neary when you got to the house? A. When I got to the house there was nobody there. I was the first one in, and the rest came walking in.

10

Q. Did you see Neary walking into the house? A. Yes, yes.

Q. Had not they slept in the house that night? A. They slept there that night; I didn't sleep there.

Q. Where did they come walking into the house? A. After the job.

20

Q. I am talking about before the job? A. Before the job I wasn't there.

Q. Didn't you go to the house? A. No, not that night.

Q. The morning of the 14th? A. The morning of the 14th I went to the house.

Q. Did you see Neary there that morning? A. Not that morning, I didn't see him there. I was talking to Cuniffe and Crowley.

30

Q. You only saw Cuniffe and Crowley? A. The rest of them were in there, but I didn't go into the rear end and see who was there.

Q. You did not see Neary there and you did not see Fanning there? A. I didn't see Fanning in there, and I didn't see anybody there. The only ones I saw there was Cuniffe and Crowley.

Q. When did you first see Neary? A. When I got picked up at the car barn.

Q. Who picked you up? A. Neary, Cuniffe, 40

Frank Kiekart—For the State—Cross

Grosso—Neary, Crowley and Grosso.

Q. After you got to the house, who did you go with? A. Who did I go with? I told Cuniffe, I said, "When Neary comes, tell him to pick me up at the car barn."

10 Q. Whom did you go with? A. Myself.

Q. How? A. I took the trolley car over.

Q. What trolley car did you take? A. Hawthorne avenue.

Q. Where did you go to? A. I got off and walked over to the Boulevard.

Q. Then you did not go in any car at the garage? A. No, I didn't get into the garage.

Q. You did not get in the car at all? A. Not at the garage.

20 Q. Did you speak to Haas that morning when you got to the house? A. Before?

Q. When you got to the house, did you see Haas there? A. No, I didn't see him there.

Q. The two cars did not start out together? A. I don't know. I met one of the cars and hopped in and went to Wequahic Park and met the other car.

Q. Who was in the car that you hopped into? A. Grosso, Crowley and myself and Neary.

30 Q. Who drove it? A. Neary.

Q. Then Neary must have been in the car? A. I told you he drove the car, didn't I?

Q. But that is the car that you got after taking the trolley ride, isn't it? A. Yes.

Q. Did you get in the car at the garage at all? A. No, not at the garage, no. I told Cuniffe to let the other car pick me up across the way from the car barn.

40 Q. Why didn't you get in the car with them? A. Well, I went down to see somebody. I didn't

Frank Kiekart—For the State—Cross

want to get in the car.

Q. Who did you go to see? A. A friend of mine.

Q. Who was the friend? A. Nobody. Nobody in particular.

Q. So here you were going out on this mail robbery, and you were going out to see a friend. What is the name of that friend? A. That don't concern the case nothing whatsoever. 10

Q. Keeping a date, were you? A. Yes, keeping a date, sure.

Q. Did you see your friend? A. Yes, I seen him.

Q. What is his name? A. Mr. Doe.

Q. John Doe? A. Yes.

Q. The same fellow who told Haas? A. Yes.

Q. Where does John Doe live? A. He is gone. He is dead and buried. 20

Q. How long did you remain with John Doe?
A. A little bantamweight.

The Court: If there is any more mirth I will have to clear the court. This is a very solemn proceeding, and I do not see any humor in the whole situation. Men are being tried here on a very serious offense, and there is nothing at all in this case that would bring forth any laughter in murder. 30

By Mr. Cutley:

Q. Will you tell us now where the house of John Doe was that you went after leaving that garage? A. I didn't go to no house.

Q. What building, if any, did you go to? A. Across the way from the car barns.

Q. Is it some building? A. Across the way from 40

Frank Kiekart—For the State—Cross

the car barns. Met on the corner there.

Q. Who was it? A. John Doe.

Q. Who is John Doe? A. I don't know.

Q. When did you make the arrangement to meet him? A. The night before.

10 Q. Did you ever see him before that? A. Yes.

Q. What was his name? A. John Doe.

Q. Did you know him by any other name? A. No.

Q. Where did he live? A. Brooklyn.

Q. What part of Brooklyn? A. Huron street.

Q. What number? A. I don't know.

Q. Where did you see him? Opposite the car barns? A. Yes.

20 Q. How long did you talk to him? A. About ten minutes.

Q. Had you told Cuniffe where you would be? A. Yes.

Q. Where did you tell him you would be? A. Across the way from the car barns.

Q. Was this John Doe any one of the men engaged in this mail robbery? A. No.

Q. He had nothing at all to do with it? A. No.

Q. He was a perfectly legitimate fellow? A. Yes.

30 Q. And you had legitimate business with him? A. Certainly.

Q. And you made a date the night before with John Doe, knowing that you were going to hold a mail robbery the next morning? A. He didn't know anything at all.

Q. I mean so far as you are concerned? A. As far as I was concerned, it was my own business.

Q. What time did you make that date in the evening? At what hour did you tell him to meet?

40 A. I told him I would meet him between quarter

Frank Kickart—For the State—Cross

to eight and eight o'clock.

Q. Where did you tell him you would meet him?

A. In the car barns.

Q. In what city? A. In Newark.

Q. Are you sure of that? A. Yes.

Q. That is all the directions you gave him? A. 10
Yes.

Q. Had you ever met him there before? A. No.

Q. And you say he has since died? A. Yes.

Q. When did he die? A. He died here while I
was away.

Q. What kind of business did you have to talk
over with him?

Mr. Walsh: I object to that.

A. I had no business at all. 20

Mr. Walsh: I object to that as improper
cross examination.

Mr. Cutley: This is testing this man's
credibility.

The Court: How would that test it?

Mr. Cutley: I want to find out what busi-
ness he was in.

The Witness: We wasn't talking about 30
anything.

The Court: How does it concern—

Mr. Cutley: It shows utter improbabil-
ity of the story.

The Court: He says the discussion had
nothing to do with this case, and that the
man knew nothing about this case, and it
had nothing to do with the hold-up. He
has answered that several times. However,
I will allow it and you may ask the ques- 40
tion.

*Frank Kiekart—For the State—Cross**By Mr. Cutley:*

Q. What business did you talk about? A. It was no business talk. I just met him there. That was all.

10 Q. Why did you want to make a date the night before in Brooklyn to meet him there, if you had nothing to talk to him about? A. What I had to talk about don't concern anybody but myself and him. That's all.

Q. Didn't you think that that was a funny time to make a date with a man that you had nothing very important to discuss? A. I object.

20 The Court: Now wait. Let the jury think what they will about it. What you and I think does not concern them.

By Mr. Cutley:

Q. Did you say to Cuniffe, "When Neary comes, tell him to pick me up at the car barns?" A. Yes.

30 Q. Well, then, Neary wasn't there at that time? A. I don't know whether he was there or not. He might have been there. Maybe he wasn't there. I don't know.

Q. You didn't tell Neary himself where to pick you up? A. No, I didn't tell him.

Q. How long did it take you from the garage to get the car and get down to the place opposite the car barns? A. How long did it take me to the garage?

Q. Yes? A. I didn't go to the garage that morning.

40 Q. You went to the house? A. I went to the

Frank Kiebart—For the State—Cross

house and told Cuniffe, and Cuniffe says, "All right." And I hopped a trolley car at Hawthorne avenue and got off at Elizabeth avenue and walked over to the car barns.

Q. Hawthorne avenue runs from Newark? A. Yes, it runs into Newark.

10

Q. You were at Clinton Place when you spoke to Cuniffe? A. Yes, at the house talking to him.

Q. You went out to get the car? A. No, I got the trolley car.

Q. How long did it take you to get up to the point opposite the car barns? A. Altogether? I just about fifteen minutes.

Q. And you were there ten minutes with your friend? A. Fifteen minutes, yes.

Q. When did Neary come along? While you were talking with your friend? A. No, my friend had left when Neary came along.

20

Q. Up to that time of that morning, you had not seen Neary? A. No.

Q. In your confession to the authorities, did you mention the fact that you got off to meet this Mr. John Doe? A. Did I mention in the confession? No, I didn't mention anything about it, because it didn't concern the case any.

Q. Did you mention that you had talked to anybody that morning in front of the car barns? A. No, outside of getting picked up. That was all.

30

Q. What time did this hold-up occur? A. I don't know. I guess around 9.15 or .20. I don't exactly say—9.10 maybe.

Q. About how long did it take? A. About two or three minutes.

Q. You didn't see Enz get shot? A. No, I didn't see him shot.

Q. Did you have a gun? A. Yes, I had a gun.

40

Frank Kiekart—For the State—Cross

Q. What did you do? Did you shoot anybody?
A. No.

Q. Did Haas have a gun? A. I don't know whether they did or not. I don't know who had them. I didn't see. I didn't inquire.

10 Q. You were not interested? A. No, I wasn't interested at all. It didn't concern me.

Q. Now, Kiekart, what time do you figure you got to the house at Clinton Place where the money was divided? A. I don't know. It might have been around 9.30, 9.35.

Q. And how long did it take to whack up the money? A. Oh, it took about ten or fifteen minutes. That was all.

20 Q. And after the money was given to each of you, who went out first? A. I went out.

Q. About what time did you leave? A. I left quarter after ten. It might have been ten after or a quarter after or twenty after ten.

Q. And Neary was still there? A. Yes, they were all there.

Q. Neary particularly was there? Do you remember that? A. Yes, him, Fanning, and the rest of them were all there.

30 Q. When were you arrested Kiekart? A. What?

Q. When were you arrested and brought to Elizabeth Jail, the Union County Jail? A. About a year ago in November. I think it was November or December. I ain't sure what month.

Q. Do you know when Haas was arrested? A. No.

Q. How long has he been in the jail, to your knowledge? A. What's that?

40 Q. How long has he been in the jail with you?
A. About eight or nine months. I guess ten months

Frank Kickart—For the State—Redirect

or so.

Q. And during all that time you have been in the same tier and corridor? A. Yes.

Q. Daily communication and talking to each other? A. No. Don't talk much at all.

Q. But you are friendly? A. Well, not any too friendly. 10

Mr. Cutley: That is all.

REDIRECT EXAMINATION by Mr. Walsh:

Q. I show you this picture and ask you if you know that man? A. That is Cuniffe.

Q. That is a picture of Cuniffe? A. Yes. And that is Crowley. 20

Mr. Walsh: I offer these in evidence.

The Court: What is the object of the offer?

Mr. Walsh: Well, I intend to lead up, it will lead to other testimony in regard to these two particular men. They are participants in the crime and according to the testimony now in——

The Court: These two men are dead. There is no question about that, is there, Mr. Cutley? 30

Mr. Cutley: No question about that.

The Court: Everybody agrees to that.

Mr. Walsh: You will stipulate on the record that they are dead?

Mr. Cutley: I can't stipulate anything, but from what I read in the paper I know they are dead.

The Court: I think the Prosecutor can prove that if it is essential. Cuniffe and 40

Frank Kickart—For the State—Redirect

Crowley are dead. Why are these pictures offered?

Mr. Walsh: After that nothing. That is all.

10 Mr. Walsh: I offer in evidence now Exhibit S-5 for identification. Any objection?

20 Mr. Cutley: I object seriously against the admission of this gun. It is alleged to have been in the hands of Cuniffe. This is a joint trial of two defendants, and Cuniffe is not named in the indictment; it is not a charge of conspiracy. The actions of Cuniffe have nothing at all to do with these other men. If he had been named in the indictment there may be some semblance of substance for bringing it in. I say it is not part of the State's case and it is not relevant, competent, or material.

30 The Court: It has been identified by several witnesses as a gun similar to the gun which was used, and is positively identified by Haas as the gun that was used on that occasion. Who used it makes very little difference. They all were there for a common purpose, so far as the evidence now stands, and the purpose being robbery, wherein someone was killed. I think the gun has been sufficiently identified particularly by one of the witnesses, Haas, as the gun which was present on the scene and being used. I will allow it in evidence.

Mr. Cutley: I ask an exception.

The Court: Exception allowed.

John A. Galatian (Recalled)—For State—Direct

(Machine gun heretofore marked S-5 for identification entered in evidence and marked Exhibit S-5.)

(Exception prayed, signed, sealed and allowed.)

ALFRED A. STEIN, 10
Judge.

JOHN A. GALATIAN, recalled.

Direct Examination by Mr. Walsh:

Q. I believe you testified yesterday that you were chief of county detectives? A. I did. 20

Q. Chief, did you, in company with Frank Kiekart, go to the city of Newark? A. I did.

Q. After Kiekart's arrest? A. In company with Detective Tevlin and Wagner, Kiekart and myself went to Newark and he picked out two garages and led us to them.

Q. Where was the first garage he picked out—what was your object in looking at garages? A. Wanted to find out if he could identify the places where the two Packard cars were stored. 30

Q. Now, did he pick out a garage? A. He did. Two.

Q. Where was the first one picked out? A. First he led us to Seymour avenue and Hawthorne avenue, which there was possibly eighty—seventy-five or eighty private garages there, covering an area, well, it took up pretty near the whole block.

Q. Did he lead you to any one particular garage of those eighty? 40

John A. Galatian (Recalled)—For State—Direct

10 Mr. Cutley: I ask that question be stricken out on the ground that anything that was done in the absence of Neary, under this form of trial we are having on this indictment, is incompetent, irrelevant and immaterial unless Neary was present.

The Court: Do you think Neary must be present when they go to the garage where the cars were stored? Must find Neary and bring him there and have him present?

Mr. Cutley: No, sir.

The Court: I will allow the question.

Mr. Cutley: Prays exception.

The Court: I will allow you an exception.

20 (Exception prayed, signed, sealed and allowed.)

ALFRED A. STEIN,
Judge.

Q. In that particular garage what was there?

A. The main entrance from the street, from the Seymour avenue entrance he told us that this particular car was in the first private garage to the left as we entered from the Seymour avenue entrance.

30 Q. Did you go there? A. That garage was locked.

Q. Could you see in it?

40 Mr. Cutley: I desire to interpose another objection. The theory upon which the Court and State looks upon the case, or if this is part of a conspiracy, that at the time that the chief went, which was a year after that time, it is too remote in the first place.

John A. Galatian (Recalled)—For State—Direct

And then the conspiracy, if any existed, had been terminated, and anything said after the termination is not admissible as against these defendants.

The Court: Have you any idea what the Prosecutor is after just now, Mr. Cutley? 10

Mr. Cutley: No, I have not.

The Court: Neither have I.

Mr. Cutley: Unless they are after the bag.

The Court: You suspect they are after the bag, do you? So do I. Until such time as the evidence turns about where it is not proper, I will have to allow it to go on. He cannot prove everything at one time. If there comes a point in his questioning which is improper, you make your objection and I will rule, and if any evidence is to be struck out, it will be struck out on your motion, if you will make it. I will protect you in every way possible, but just now I cannot tell what this is all about. So I will allow it until we get somewhere. Go ahead. 20

Q. Did you enter that garage that day, Chief?

A. No. It was about one o'clock at night when we went there on the tenth, as I recall, on the tenth day of December, 1927. 30

Q. Was the garage such as you could see inside? A. No. It was closed doors and you couldn't look in.

By the Court:

Q. Any glass in the doors? A. No, there was no glass door. 40

John A. Galatian (Recalled)—For State—Direct

By Mr. Walsh:

Q. Did you ever make a search of that garage, that particular garage? A. I think it was either the next day or the following day the Newark police had occasion—

10

Q. Well, did you go to make a search of that?

A. No. They recovered the car.

Mr. Cutley: I ask it be stricken out on the ground it is an assumption.

A. And notified me.

The Court: That will be stricken out as a conclusion on the part of the chief, that they recovered the car. Or as hearsay, whatever it may be, and not proper.

20

Mr. Walsh: I will consent to that.

Q. Did you go from that garage to another? A. We did.

Q. And where was the other garage? A. The other garage was on Jeffrey Place, about half-way up the block from Bergen avenue on the left-hand side.

30

Q. Who pointed that garage out? A. Kiekart.

Q. Did you examine that garage? A. We did.

Q. That day? A. The following day. This was all at night time, about one o'clock that night.

Q. This garage on Jeffrey Place, did you examine it? You say you went in and examined it?

A. The following day.

Q. Did you find a car there? A. Yes, sir.

Q. What make of car was it? A. Packard car.

40

Q. Did you find anything in that car? A. We did.

John A. Galatian (Recalled)—For State—Direct

Q. What did you find? A. Some shells under the seat, those two caps and that mask.

The Court: Have those marked for identification.

Q. Did you take them out of the car, Chief? 10

A. I did.

Q. In whose possession have they been since?

A. They have been in my possession.

Q. I show you this slit mail bag and ask you if that has been in your possession at any time, showing the witness—

The Court: Why don't you wait and have those caps and the other things marked first? 20

(Three caps, mask, and fifteen shells marked S-7 for identification.)

Q. The mail bag showing you S-2 for identification, has that been in your custody, Chief? A. It has.

Q. From whom did you receive it? A. I received the mail bag and the car from Captain Seibold, receipted to Captain Seibold, Newark police. 30

Q. Chief, do you know the apartment, 112 Clinton Place? A. I do.

Q. Did you go there in the month of November, 1926? A. I did.

Q. Of what did that apartment consist? A. It was on the second floor over a drug store and it consisted, two bedrooms, a living-room, and a dining-room and a bathroom.

Q. Was it furnished at the time you went there? 40
A. It was.

John A. Galatian (Recalled)—For State—Direct

Q. And in the living-room on the table was there any vessel or other thing? A. There was a glass bowl.

Q. Known as a rose bowl, was it? A. Yes.

Q. Such a bowl as would be used for flowers?

10 A. Yes.

Q. In that bowl did you find anything? A. I did.

Q. What did you find? A. Pins.

Q. I show you these pins and ask you if those are the ones? A. They are the ones. They have been in my possession ever since I took them.

Q. And you produced them here in court? A. Yes, sir. There are 213 pins and one bar-pin.

20 A. Yes. 214 altogether.

Mr. Walsh: I offer these in evidence at this time.

Mr. Cutley: I object.

The Court: What is the objection?

30 Mr. Cutley: On the same ground I urged before that what was done unless it is proved by evidence that Neary was there and Fanning used those pins, and they were part of the *res gestae*, they are inadmissible.

The Court: They will be allowed.

Mr. Cutley: Prays exception.

(Package containing pins entered in evidence and marked Exhibit S-8.)

(Exception prayed, signed, sealed and allowed.)

40

ALFRED A. STEIN,
Judge.

*John A. Galatian (Recalled)—For State—Cross
Benjamin F. Birch—For the State—Direct*

CROSS EXAMINATION by Mr. Cutley:

Q. Chief, were you the party in authority to whom Kiekart made a confession either oral or written?

10

The Court: Is that cross examination? I do not want to go outside of the field of the direct examination.

Mr. Cutley: I will withdraw it.

BENJAMIN F. BIRCH, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

20

Direct Examination by Mr. Walsh:

Q. Mr. Birch, you are a member of the Newark Police Department? A. I am.

Q. What rank? A. Detective.

Q. And were you such in November, 1927, were you? A. Yes, sir.

Q. In the performance of your duties as a detective was your attention called to a garage at the corner of Seymour avenue and Hawthorne avenue, Newark? A. Yes, sir.

30

Q. That, I understand, is a collection of garages? A. There is about eighty or ninety garages there, yes, sir.

Q. Was your particular attention attracted to the first garage on the left as you get in from the corner? A. Yes, sir.

Q. Did you go there? A. I did.

40

Francis W. Johnson—For the State—Direct

Q. Who was with you? A. Detective Johnson and myself.

Q. Was the garage open or did you open it? A. I had Mr. Hill open it.

10 *By the Court:*

Q. Who is Mr. Hill? A. He is the owner of the garage, sir.

By Mr. Walsh:

20 Q. In that garage what did you find? A. Found a Packard sedan with a bullet hole in the fender, one in the door, and a mail bag inside of the car, a set of license plates in the car; there was none on the car.

Q. I show you Exhibit S-2 for identification. Is that the mail bag you found? A. I didn't mark the bag. Detective Johnson marked the bag for identification. I did not. It was a bag similar to that.

Q. You took it with you, you and Johnson? A. Yes, sir.

30 Mr. Walsh: Cross examine.
Mr. Cutley: No questions.

FRANCIS W. JOHNSON, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Walsh:

40 Q. Mr. Johnson, you are a member of the New-

Francis W. Johnson—For the State—Direct

ark Police Department? A. Yes, sir.

Q. And have been for how long? A. About eight years.

Q. In the month of November, 1927, or thereabouts was your attention attracted in the performance of your duty to a set of garages on the corner of Hawthorne avenue and Seymour avenue in the city of Newark? A. In December. 10

Q. December? A. Yes, sir.

Q. Was your attention attracted particularly to a garage the first one on the left as you go in from the corner? A. Yes, sir.

Q. And you were with Detective Birch? A. I was.

Q. Were you there when Mr. Hill opened the garage? A. Yes, sir. 20

Q. For you? A. Yes, sir.

Q. What did you find in the garage? A. A Packard sedan. In the sedan we found a mail bag and found a set of license plates.

Q. Was there anything particular about the Packard sedan, did it have any distinguishing marks? A. Why, it had a hole through the fender, two holes, one where a bullet evidently went in, and one where it came out, and it had another one in the door on the left side. 30

Q. I show you Exhibit S-2 for identification and ask you if you have seen that before? A. The bag I had up there I put my initials on it. Yes, that is the bag.

Q. That is the bag that you found in this car? A. Absolutely. That is my identification put on the day I found it.

Mr. Walsh: I offer this bag in evidence.

Mr. Cutley: I object on the ground I 40

Francis W. Johnson—For the State—Direct

have urged heretofore in regard to those matters, implements, bags that were found in the absence of the defendant.

The Court: Objection overruled. Exception allowed. The bag will be admitted in evidence.

10

(Exception prayed, signed, sealed and allowed.)

ALFRED A. STEIN,
Judge.

(Bag heretofore marked S-2 for identification entered in evidence and marked Exhibit S-2.)

20

Mr. Walsh: That is all. Cross examine.

Mr. Cutley: No cross examination.

Mr. Walsh: I offer in evidence the shells, two caps and mask heretofore referred to in the testimony of the witness Galatian.

Mr. Cutley: I object first to the shells. There is no proof that the shells correspond with the rifle bore, or the revolver alleged to have been used by these men. There is no proof that any shells were fired, particularly. And as far as the caps and masks are concerned, there is no proof in this case that any man wore a cap, or how he was dressed, and there is particularly no proof as to any man having a mask on.

30

The Court: That is very true. But the proof is that these were found in the car, or one of the cars that were used on this occasion, which was placed in a garage in Newark, identified by Kiekart, as the place

40

James J. Cahill—For the State—Direct

in which the car was kept, and these things were found there. There is no proof that anyone wore a cap on this occasion.

Mr. Cutley: I make this point, too, further; they point out the fact that these caps and things were supposed to have been found about a year after the alleged hold-up, and there is no proof of the continuity, or sameness of the place from the time of the hold-up until the time of the finding. Proof by the landlord that nobody had come there, or nobody had access or entry or anything else. The doctrine of exclusive opportunity. 10

The Court: The State has not shown that these caps were used on that occasion by anybody, they have not been identified. 20

Mr. Walsh: No, sir.

The Court: I will sustain that objection. As to the caps and the shells.

Mr. Walsh: And the mask?

The Court: And the mask. They will not be admitted in evidence.

JAMES J. CAHILL, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith: 30

Direct Examination by Mr. Walsh:

Q. What is your business? A. Post office clerk.

Q. Were you such on October 14, 1926? A. Pardon me?

Q. Were you a post office clerk on October 14, 40

James J. Cahill—For the State—Direct

1926? A. Yes, sir.

Q. Connected with what post office? A. Elizabeth, New Jersey.

Q. What time did you go to work that morning? A. Why, six A. M.

10 Q. And in the course of your duties—what were your duties that morning? A. General duties. Distribution of mail, accepting it and delivering it, distributing it.

Q. Did you have access to the safe wherein the money was kept? A. Yes, sir.

Q. Did you, on that morning, see or have in your possession packages bearing— A. Probably I have the necessary credentials here.

20 Q. Did you see Patrick Quinn that morning? A. Did I meet him?

Q. Yes. A. Yes, sir.

Q. Did you deliver anything to Patrick Quinn? A. Yes, sir.

Q. What did you deliver to Patrick Quinn? A. Money, packages, registered packages.

Q. Did they bear numbers? A. Yes, sir.

Q. Have you a record of those numbers there? A. Yes, sir.

30 Q. Just read from your record there what the numbers of the packages were that you delivered to Patrick Quinn. A. 15962, 15963, 15964, 15965, 15966.

Q. Where did you get those packages from? A. Where did I get them from?

Q. Yes. A. From the safe or the vault.

Q. And you turned them over to Mr. Quinn, taking his receipt for them, did you? A. Yes, sir. His signature.

40 Q. Do you remember what time in the morning that was? A. Yes, sir.

James J. Cahill—For the State—Cross

Q. What time? A. When Quinn received them from me?

Q. Yes. A. About 9:03. Between 9:03 and 9:05.

Mr. Walsh: Cross examine.

CROSS EXAMINATION by Mr. Cutley:

10

Q. Mr. Cahill, have you the records of the post office showing all the transactions concerning these particular packages? A. Yes, sir.

Q. May I look at this, please? A. Yes, sir.

Q. I point out to you a notation. Will you kindly let me know what that is? A. "J. J. C.," that is my initials.

Q. And what is before it? A. "9:10 A. M." The first opportunity I had to place that number on there, the time. 20

Q. Why did you put it 9:10? A. That was the first opportunity I had when I looked at the clock.

Q. Well, you said before 9:03. A. When I gave it to the messenger, yes, sir.

Q. Why didn't you put 9:03 on it? A. Simply because I didn't complete my job at the time. was called away to the window.

Q. He signed a paper, didn't he? A. He signed the paper. 30

Q. What did he sign? A. For the articles he received.

Q. Where is his signature? A. The question of time didn't mean nothing.

Q. I mean where did he sign, where did Quinn sign? A. Isn't that his initials there?

Q. I don't know. A. It looks like it. P. Quinn.

40

*James J. Cahill—For the State—Cross**By the Court:*

Q. Mr. Cahill, you saw him sign? A. Yes, sir.

Q. Where did he sign? A. Right here.

Q. Is that his signature, just the initials? A.

This looks like it.

10 Q. That is what he signed is it? A. Yes.

By Mr. Cutley:

Q. What is this, "P-6"? A. The number of articles he took that morning. I presented him with those. He accepted them.

Q. How soon after he signed did that package leave the post office, do you know? A. How soon after he signed, pardon me?

20 Q. Did the package leave the post office? A. How soon after he signed?

Q. Yes. A. Why, as soon as they possibly could, right there in action ready to move.

Q. Well, what prompted you to put 9:10 on there when you know it was 9:03? A. Because it is only a matter for me. I done it when the opportunity presented itself. I was busy, called to the window to wait on the public. When I came back from the window I looked at the clock, it was

30

Q. Well, what did the signature mean that it was the time you thought about it that you put down the time? A. What his signature meant was for valuation received. That is our ruling. If you give an article away you have got to receive something for it. Their signature is binding.

Q. What is the significance of putting the time down at all? A. For my own particular benefit, because at the end of my tour I am compelled to balance that, and I don't want to get anything

40

James J. Cahill—For the State—Cross

confused with the afternoon.

Q. If you hadn't thought about this thing until twelve o'clock you would have put down twelve o'clock? A. As long as it was in the morning, yes, sir.

Q. But if you hadn't thought about it until twelve o'clock you would have put down twelve o'clock? A. I can put down any time I so desire, as long as it is A. M. That is as far as I was concerned. 10

Mr. Cutley: That is all.

Mr. Walsh: That is all, Mr. Cahill.

The Court: Do either of you gentlemen want these receipts in evidence?

Mr. Cutley: Yes, I want that last one. 20

The Court: In evidence?

Mr. Cutley: Yes, sir.

The Court: It is a United States Government receipt and I do not want it to be lost. If it is marked in evidence I want it left with me.

Mr. Cutley: That is satisfactory.

The Court: It can go to the jury if the jury wants it. Mark it in evidence. 30

By the Court:

Q. Is there anything there outside of the receipt for these packages, Mr. Cahill? A. The train it arrived on. Those sheets are there. Those are all necessary.

Q. So it is all together? A. They all belong to one.

Q. How many sheets altogether are there there? A. Well, I have not counted them there. 40

Motion to Dismiss

The Court: If you do not really require it I would just as leave not keep it.

Mr. Cutley: I think it will become important.

10 Mr. Walsh: Six sheets, that is counting the receipts as sheets.

The Court: Leave them here, Mr. Cahill, and I will see that you get them.

(Envelope entered in evidence and marked Exhibit S-9.)

Mr. Walsh: State rests.

20

THE DEFENDANTS' CASE.

Mr. Cutley: I now make a motion to strike out all the evidence of any conversations, activities and conduct of Cuniffe, Crowley, Grosso, in so far as they have been testified to here today on the ground that the charge under which the defendants are being tried is a joint charge of murder and that the evidence is incompetent, irrelevant and immaterial.

30

I further move to strike out the admission into evidence of the nippers, the shotgun, the mail bag, the shells, for the reasons heretofore stated, and also the additional reason that they are incompetent, irrelevant and immaterial in this case because of the fact that the mail bag was found at a too remote time from the date of the commission of the crime.

40

Motion to Dismiss

I further move for a dismissal of the case—

The Court: You are making a motion for a direction of a verdict?

Mr. Cutley: Yes.

The Court: And this motion is completed? 10

Mr. Cutley: Yes.

The Court: During the course of the trial you made certain motions pertaining to the evidence to which you now refer, which was proper, and at that time the Court made its rulings. As to any motions which you did not make as the evidence was offered to strike out, you are now too late.

Mr. Cutley: May it please the Court, I move that under the evidence so far adduced in this case, there is no proof whatever that anybody shot John Enz, and in addition to that, the proof adduced by the County Physician fails to show that the death of John Enz was caused as a result of any shooting of any bullet entering his head that might have been fired from a revolver on the 14th day of October, 1926. 20

I call your Honor's attention to that testimony of Dr. Brokaw, page 17, where he describes the result of his autopsy in which he said, "There was a ragged wound two inches by two inches in the mid-line of the forehead, two and one-half inches above the orbital ridge. That there was a wound of exit in the back of the skull three inches above the external occipital protuberance, that is the prominence in the back of the skull. That there was a crushing fracture 30 40

Motion to Dismiss

10 of the vault of the skull. There was another bullet wound over the right forearm, two and one-half inches below the elbow. In the chest, the heart and lungs, were free from evidence of disease or injury. In the abdomen the abdominal organs were also free from disease or injury. Cause of death: Compound comminuted crushing fracture of the vault of the skull; laceration of brain substance."

20 He does not say it was caused by these bullets. He does not say that if it were not for these bullets that the man would have lived. He does not say positively that as a result of these wounds that the man died, and therefore, the *corpus delicti* has not been proved, and I ask that the indictment be dismissed.

The Court: From what you have read from the testimony, he very thoroughly gave the cause of death. The motion will be denied.

Mr. Cutley: Exception.

May we have about ten minutes?

30 (Exception prayed, signed, sealed and allowed.)

ALFRED A. STEIN,
Judge.

(Mr. Cutley conferred with the Court at the desk.)

Mrs. Margaret Neary—For Defendants—Direct

MRS. MARGARET NEARY, a witness called on behalf of the defendants, being first duly sworn according to law, on her oath, saith:

Direct Examination by Mr. Cutley:

Q. You are the wife of Charles Neary? A. Yes, sir. 10

Q. On the night of October 14 or around that, where did you live? A. 244 18th Avenue.

Q. Where was that? A. Astoria.

Q. Have you any children? A. Two.

Q. Do you recall the night of the 13th of October? A. Yes, I do.

Q. Why do you particularly recall that? A. Because I had a party in my home. 20

Q. Who was there? A. Why, quite a few of our friends.

Q. Who, for instance? A. Well, I had a party for the Duffy boy.

Q. Which Duffy? A. Teddy.

Q. Is he in the courthouse today? A. Yes.

Q. What was the nature of the party? A. A birthday party.

Q. What time did the Duffys get there? A. About eight-thirty. 30

Q. What time did they leave? A. Late in the morning.

The Court: That was October 13?

Mr. Cutley: October 13.

Q. Was Jimmie Duffy there? A. Yes.

Q. What time did he leave? A. He stayed all night.

Mrs. Margaret Neary—For Defendants—Direct

The Court: How is that relevant?

Mr. Cutley: That is relevant as to the fact that the testimony has been given here that Neary was at the house of Cuniffe on the night before and slept there.

The Court: Go on.

10

By Mr. Cutley:

Q. What time did the party break up? A. About four o'clock.

Q. Where were you on October 14? A. I was home in my house.

Q. What time did your husband leave the house that morning? A. Well, between 8:30 and nine.

20 Q. With whom did he leave? A. My sister.

Q. What is her name? A. Mrs. Koster.

Q. Is she here? A. Yes.

Q. Where does your sister live? A. New Rochelle.

Q. Where did your husband go to then? A. He took her to the Grand Central.

Q. Was anybody else with him in the car? A. Yes.

Q. Who? A. James Duffy.

30 Q. Is he here today? A. Yes.

Q. Did you see your husband again that day on the 14th? A. Yes, I did.

Q. What time? A. About one o'clock.

Q. Where did you see him? A. At lunch hour.

Q. Where? A. At home.

The Court: That is on the 14th?

Mr. Cutley: Yes.

40

Mrs. Margaret Neary—For Defendants—Cross

By Mr. Cutley:

Q. Do you know where he had been that morning? A. He was home.

Q. On the 14th? A. He was home. He didn't leave the house until 8:30 with my sister.

Q. That was the last you saw him? A. That was the last I saw of my husband. 10

Mr. Cutley: That is all. Cross examine.

By the Court:

Q. I understand that was on October 14, 1926, is that right? A. Yes.

Q. What time did you say he left home? A. About eighty-thirty. 20

Q. In the morning? A. Yes.

Q. What time did he come back? A. About one.

Q. He returned at one o'clock in the afternoon? A. Yes, for lunch.

CROSS EXAMINATION by Mr. Walsh:

Q. How long are you married to Neary? A. Five years.

Q. How long have you known the Duffy boys? A. Since I have known my husband. 30

Q. Whose birthday was it? A. Teddy Duffy's.

Q. What is his first name? A. Teddy.

Q. Was he ever known as Willie Duffy? A. No.

Q. I show you this picture and ask you if that is a picture of the man whose birthday party you had? A. No.

Q. Was he at that party? A. No, no, sir.

Q. Where does this Willie Duffy live? A. Teddy Duffy, in Woodside. 40

Mrs. Margaret Neary—For Defendants—Cross

Q. You have known him since you knew your husband? A. Yes, sir.

Q. Where does he live in Woodside? A. I just don't know the street. It is about 68th Street. I don't know the address.

10 Q. How old a man is he? A. About twenty-eight.

Q. What was his business? A. Trucking.

Q. And this man that you spoke of as Jimmie Duffy, who is he? A. His brother.

Q. What other name are they known by? A. That is the only name they are known by.

Q. Are they married men? A. One is.

Q. Who is married? A. Teddy.

Q. You say it was his birthday? A. Yes.

20 Q. And he was twenty-nine? A. Twenty-eight or twenty-nine.

Q. Which was it? A. Twenty-eight.

Q. That was on October 13, 1926, is that right, that was his birthday? A. Yes, right.

Q. And your husband was at home? A. My husband was at home, yes.

Q. On that day? A. Yes.

Q. And on that night? A. Yes.

30 Q. And he left there the next morning with your sister? A. My sister, Mrs. Koster.

Q. What is her husband's name? A. Koster.

Q. What is his first name? A. Mario Valder Koster.

Q. What is his business? A. He is a musician.

Q. Where? A. In Proctor's.

Q. Where does he live? A. In New Rochelle.

Q. Whereabouts? A. 19 Maple Avenue.

Q. How many were at this party? A. There was about twenty couple.

40 Q. Can you name the people who were there?

Mrs. Margaret Neary—For Defendants—Cross

A. Well, there was quite a few strangers. There was my brother-in-laws, and the Duffy boys.

Q. Who? A. The Duffy boys.

Q. Are the Duffy boys known as "Van Brammer"? A. No.

By the Court:

10

Q. Are these Duffy boys here today? A. Two of them.

Q. They are both here? A. Yes.

By Mr. Walsh:

Q. You say your husband left the next morning with your sister at about half-past eight? A. Yes.

20

Q. And he came back to lunch about one? A. One o'clock.

Q. He has lived with you since over there at Astoria? A. No.

Q. I mean your husband? A. No.

Q. Where has he been? A. My husband has been on the Island.

Q. On the Island? A. Yes.

Q. When was he sent to the Island? A. About two years ago, the 9th of January.

30

Q. How long was he there? A. I don't know, about fourteen months I believe, fourteen or fifteen months.

Q. Fourteen months? A. I think so.

Q. Or seventeen? A. Well, I just can't recall.

Q. You do recall the night he left the Island, don't you? A. No, I don't.

Q. You do not? A. I was told about it later.

Q. When they came to your house, where were you? A. I was home.

40

Mrs. Margaret Neary—For Defendants—Cross

Mr. Cutley: I object to how he left the Island.

The Court: What are you objecting to?

Mr. Cutley: I object to the question of why he left the Island.

10 Mr. Walsh: I didn't ask that question.

The Court: Go on and ask your next question.

By Mr. Walsh:

Q. The night that your husband left the Island—

Mr. Cutley: I object. There is no proof that he left the Island.

20

The Court (to the witness): After the question is put, do not answer until counsel can object.

Mr. Walsh: I will withdraw all questions.

By Mr. Walsh:

Q. Did I understand you to say that you knew when your husband left the Island? A. No, I don't know, I told you.

30

Q. Didn't you say a few minutes ago— A. I said I was told about it. People from the Island came to my home.

Q. And when they came to your house to look for your husband, is that right? A. Yes.

Q. (Continuing) You met them? A. Yes.

Q. And you claimed to have been asleep and had your night clothes on?

40

Mr. Cutley: I object. It is immaterial

Mrs. Margaret Neary—For Defendants—Cross

what the conversation was with the people on the Island.

The Court: It is not cross examination. The objection is well-founded.

By Mr. Walsh:

10

Q. Mrs. Neary, were you fully dressed to the extent of having your jewelry on under your nightgown on the night that they came to look for your husband?

Mr. Cutley: I object to that as immaterial.

The Court: What night are you referring to, Mr. Prosecutor?

Mr. Walsh: The night in May. I only want to show—

20

The Court: Not what you want to show. Objection sustained. Anything of that kind that you want to show, you know how you can do it later on. At this time it is objectionable.

By Mr. Walsh:

Q. Your husband was the owner of an automobile in October, 1926? A. Yes, I believe he was.

30

The Court: I don't hear you.

The Witness: Yes, he was.

By Mr. Walsh:

Q. It was a Chrysler car, wasn't it? A. Yes.

Q. How long did he have that?

40

Mrs. Margaret Neary—For Defendants—Cross

Mr. Cutley: I object to that. This is incompetent on cross examination on a question of reputation.

The Court: Well, it is not reputation you are proving. You are proving an alibi.

Mr. Cutley: I mean an alibi.

10

The Court: The objection is well-founded, and it will be sustained. It is not cross examination. If you want to show these things later, you know how you can do it, but just now they are objectionable.

By Mr. Walsh:

Q. How many members of the Duffy family do you know? A. I know the whole family.

20

Q. How many brothers are there? A. There are about seven.

Q. Give us the names of them. You have given Teddy and James. A. William and Frank and Jimmie.

Q. You have given us Jimmie before. A. I don't know some of the boys by the names. The younger boys I don't know by the names.

30

Q. You only knew the sister? A. I knew the sister and I knew the mother.

Q. And you knew four of them by name? A. Yes.

Q. The names you have given us? A. Yes.

Q. And the others you do not know, is that right? A. I know them, but I don't know their names.

Q. Do they live in your neighborhood? A. They live in Woodside, not far from me.

40

Q. You say he has a brother Willie, and Willie is not the picture that I have shown you, is that

Mrs. Margaret Neary—For Defendants—Cross

right? A. That's right.

By the Court:

Q. Is it a picture of any brother of his that you know of? A. No, I don't know.

10

By Mr. Walsh:

Q. I show you this picture and ask you if that is Willie Duffy's picture? A. Yes, that is Willie Duffy.

Q. That is Willie Duffy? A. Yes.

The Court: Have it marked for identification.

(The picture referred to was marked "State's Exhibit 10 for Identification.")

20

By Mr. Walsh:

Q. How long have you known Willie Duffy? A. About four years I know Willie.

Q. Where does he live? A. He lives with his mother.

Q. Do you know where he lives now? A. In Woodside with his mother.

30

Q. Was he at your house that night? A. He was.

Q. Did you ever know him to be called by the name of Mulqueen? A. No.

By the Court:

Q. Is the Willie Duffy that you have just identified in that picture here today? A. No.

Q. What Duffy is outside that you spoke of? A.

40

Mrs. Margaret Neary—For Defendants—Cross

Teddy and Jimmie.

Q. And this Willie Duffy? A. Yes.

Q. He was at your house that night? A. Yes.

Q. Willie was there, too? A. Yes.

10 Q. The man you identified in this picture? A.
Yes.

Mr. Cutley: Your Honor, I was going to interpose an objection to the manner in which these post-cards are being handled by the Porescutor. I think it is prejudicial.

The Court: It will be if you keep talking about it. You will make it prejudicial.

By Mr. Walsh:

20 Q. I show you this picture——

The Court: I can't stop the Prosecutor from showing the picture——

By Mr. Walsh:

Q. I show you a picture and ask you if this is another member of the Duffy family.

30 Mr. Cutley: I object to that as immaterial.

The Court: As I understand it, counsel for the State is attempting to identify the Duffy boys who were in the party.

Mr. Walsh: Yes, sir.

The Court: And from the examination he is now showing another picture of some person he believes to be one of the three brothers who were there, Willie, Jimmie,

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Agnes Harrington—For Defendants—Direct

and Teddy. That is not one of the Duffy boys?

The Witness: That is not one of the Duffy boys.

By Mr. Walsh:

10

Q. Do you know him? A. No.

The Court: What difference does it make if it is not one of the Duffy boys, Mr. Prosecutor?

Mr. Walsh: That is all.

AGNES HARRINGTON, a witness called on behalf of the defendants, being first duly sworn according to law, on her oath, saith:

20

The Court: When a witness is being sworn, it is positively terrible to have people walking around. An oath is a solemn thing. It should not be permitted.

Direct Examination by Mr. Cutley:

30

Q. Agnes, where do you live? A. 4546 Lowry Street, Sunnyside, Long Island.

Q. Do you know Charlie Neary? A. Yes, sir, I do.

Q. On October 13, 1926, in the evening of that day, where were you? A. I was—I had received a telephone call from his wife in the morning at 9:30, asking me would I come over.

40

*Agnes Harrington—For Defendants—Direct**By the Court:*

Q. Where were you on October 13? A. At 244 18th Avenue, Astoria, Long Island, Mr. and Mrs. Neary's house.

10 *By Mr. Cutley:*

Q. What were you doing there? A. She called me up and asked me would I come over, that she wanted to see me, and I went over.

Q. What were you doing? A. She wanted me to prepare a dinner. She said she was having a birthday party.

20 Q. And you prepared the dinner and had the party? A. Yes, I prepared the dinner and we had the party, that evening.

Q. How long did the party last? A. Until the morning some time. I just don't recall the hour.

Q. Did you see Charlie Neary that night? A. Yes, he was there.

Q. What time was he there that night? A. He was there that night.

Q. You got there about what time? A. I got there at one o'clock at noon.

30 Q. At noon? A. At noon.

Q. Was he there between the hours of say five and twelve? A. He come in an automobile, I think it was around four-thirty or quarter of five, I won't be positive, but around that time.

Q. And you saw him there all night? A. Yes, sir, he was there.

By the Court:

40 Q. Whose birthday party was this? A. Teddy Duffy. I believe I have the first name right. I

Agnes Harrington—For Defendants—Cross

know it was one of the Duffy boys.

Q. Why was the party at Neary's house? A. Why, I couldn't say that. They just invited him over to give him a birthday party.

CROSS EXAMINATION by Mr. Walsh:

10

Q. What is your name? A. Agnes Harrington.

Q. A married woman? A. Yes, sir.

Q. What is your husband's name? A. Terrence.

Q. Yes. Terrence Harrington? A. No. Terrence Riley.

Q. Will you explain to the jury how your name comes to be Harrington and his Riley? A. Well, I am separated. I use my maiden name.

Q. You are not living with your husband? A. No, sir. 20

Q. How long since you have not been living with your husband? A. Going on fourteen years.

Q. Where is he? A. He is away.

Q. Where? A. Auburn.

Q. Auburn prison? A. Yes, sir.

Q. You have resumed your maiden name since? A. Yes, sir.

Q. Have you ever been convicted of crime yourself? A. No, sir, never. 30

Q. What is your business? A. I manage a restaurant.

Q. Where? A. 311 East Fifty-eighth street.

Q. In what city? A. New York.

Q. How long have you been manager of that restaurant? A. Just since, let me see, to be sure. Before Thanksgiving I believe. It was November some time.

40

*Agnes Harrington—For Defendants—Cross**By the Court:*

Q. Of the last year? A. Yes, sir.

By Mr. Walsh:

10 Q. What was your business prior to that time?
A. Well, I always was in the restaurant line. I worked as a waitress.

Q. Where? A. 698, I believe, Third avenue, between Fifty-second and Fifty-third. 697 or 698, I am not just sure of the address.

Q. How long did you work there? A. Two years.

Q. When did you stop working there? A. A year ago this month.

Q. That is in January? A. Yes, sir.

20 Q. In 1928. So that from January, 1928, to Thanksgiving you didn't do anything? A. I was home with my family.

Q. With your family? A. Yes.

Q. You worked there two years before? A. Yes, sir.

Q. You were working as a waitress in October, 1926, were you? A. Yes, sir.

Q. Were you? A. I was, sir.

30 Q. And when did you work as a waitress? What hours in the day? A. Well, I didn't go to work during the day. At night. But I got the night off on October 13. I didn't go in to work that night.

Q. You were working on October 13, 1926, as a waitress? A. Yes, sir.

Q. For whom were you working? A. The Pompey was the name of the restaurant.

40 Q. Where? A. Fifty-second, Fifty-third and Third avenue.

Agnes Harrington—For Defendants—Cross

Q. You didn't go to work that day? A. No, sir; I never worked in the day. I went to work from six to ten at night.

Q. Six to ten? A. Yes.

Q. Just two hours' work? A. No. Six and four is ten. Four hours. Six until ten.

10

Q. You just worked those four hours? A. Yes.

Q. At this restaurant known as the Pompey? A. Yes, sir.

Q. You didn't go to work that night? A. No, I did not.

Q. What night of the week was it? A. What is that?

Q. What night of the week? A. Well, I just don't recall.

Q. You don't recall? A. No, I don't.

20

Q. You don't recall the date, either, do you, the thirteenth of October? A. Let me think. I won't be positive.

Q. You don't know anything about it? A. But I think it was Wednesday.

Q. Where were you on Tuesday? A. On Tuesday?

Q. That week? A. I was home.

Q. What? A. Working and home.

Q. Didn't you go to work Tuesday, either, or did you take another night off? A. No, I did not. I worked Tuesday.

30

Q. You did? A. Yes.

Q. Are you sure about that? You have no exact recollection of this date except that Mrs. Neary has called to your attention, have you? A. I certainly have because it was a birthday party and I remember the date distinctly, the thirteenth of October it was.

Q. You remember that date distinctly? A. Yes.

40

Agnes Harrington—For Defendants—Cross

Q. How long have you known Duffy? A. Oh, I met Mr. Duffy a few times at the brother's, Teddy and Jimmy is all I know, the brothers.

Q. That is all you know? A. Yes.

10 Q. How long have you known Neary? A. About twenty years.

Q. You know him before your husband went away? A. I did, yes, sir. We were born and brought up together.

Q. Now you got to this house around noontime, you say? A. Yes, sir, around one o'clock it was.

Q. And you stayed there how long? A. I stayed until the next day.

20 Q. Oh, you stayed there all night? A. Yes. I helped to clean up the place after the party was over, and arrange the furniture and then I stayed. I went home at noontime next day. Mrs. Neary had a headache, she wasn't feeling well.

Q. You got there noontime one day and stayed until noontime the next day? A. Yes, sir.

Q. Where do you say you live now? A. 454⁶ Lowery street, Sunnyside, Long Island.

Q. With whom do you live there? A. Miss Kelly.

30 Q. Is she a relative of yours? A. No. Just friends.

Q. How long have you lived with her? A. Oh, I have been with her now about six months.

Q. Where did you live in October, 1926? A. 3724 Sixty-eighth street, Woodside, Long Island.

Q. Who did you live with there? A. My mother, sister and family.

Q. Now, you have left your mother, sister, and family, is that right, and gone to live with Miss Kelly? A. Yes, I am with Miss Kelly.

40 Q. Did you live with your mother, sister, and

Mary Anna Costa—For Defendants—Direct

family until you went to Miss Kelly's? A. Yes, I have.

Q. When you speak about mother, sister, and family who do you mean by the family? A. I mean my sister and three children and brother-in-law. My sister's children.

10

Q. You haven't any children? A. No, sir, I have not.

Q. You were known by another name other than Harrington or Riley, weren't you? A. Never.

Q. How long have you been Harrington? A. I have always had my maiden name. Never changed it.

Q. How long did you live with your husband? A. Three weeks and one day.

Q. Before he was sent away? A. Yes, sir.

20

Q. And you were never known as Mrs. Riley then? A. Never used the name, no, sir.

Mr. Walsh: That is all.

Mr. Cutley: That is all.

MARY ANNA COSTA, a witness produced on behalf of the defendants, being duly sworn according to law, on her oath, saith:

30

Direct Examination by Mr. Cutley:

Q. Mrs. Costa, where do you live? A. At 19 Maple avenue, New Rochelle, New York.

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

Q. Do you live with your husband? A. Yes, sir.

Q. What is his business? A. He is a violinist.

Q. Where? A. In Proctor's Theatre, New Rochelle.

40

Mary Anna Costa—For Defendants—Direct

Q. You are a sister-in-law of Canice Neary A. Yes, sir.

Q. On October 13, 1926, were you at his house? A. Yes, sir.

Q. At what time of that day did you go there? A. About three o'clock in the afternoon.

10 Q. What was the occasion of your going there? A. Well, I really went to visit my sister.

Q. Did you stay there that day? A. Yes, I did.

Q. Did you stay there that night? A. Yes, sir.

Q. What, if anything, transpired that night at that house? A. Why, they had a party at that house.

Q. Quite a few people there? A. Yes.

Q. And during that evening did you see Canice Neary there? A. Yes, sir.

20 Q. Did he go out that night? A. No, sir.

Q. Did you stay all night at that house? A. I did.

Q. Did you go away in the morning? A. Yes, I did.

Q. How did you go away, in what way? A. In a car.

Q. And where did you go in the car? A. To the Grand Central Station.

30 Q. What did you go to the Grand Central Station for, to take a train to go to New Rochelle? A. To go home.

Q. Did you go to New Rochelle? A. I did.

Q. About what time did you arrive at the Grand Central Station? A. About 8:30, I believe.

Q. Did you get a train that morning? A. Yes.

Q. What time did you get home? A. About 9:30, around that time.

*Mary Anna Costa—For Defendants—Cross**CROSS EXAMINATION by Mr. Walsh:*

Q. You are Mrs. Neary's sister? A. Yes, sir.

Q. How long have you been married? A. Five years.

Q. So that you were married at this time? A. 10
Yes, sir.

Q. In October, 1926? A. Yes, sir.

Q. Went there to visit your sister? A. Yes,
sir.

Q. And you say there was a party on that
night? A. Yes, there was.

Q. When did the party start and when did it
wind up? A. Well, that I can't tell you. There
was friends there when I went there.

Q. Who was there when you got there? A. 20
Well, Miss Harrington and Mr. Duffy, Mr. Ted
Duffy.

Q. You got there and Ted Duffy was there and
Miss Harrington was there, is that right? A. Yes.

Q. Who else was there? A. Well, my sister
and her family and her husband.

Q. Was her husband there at three o'clock in
the afternoon, too? A. Yes.

Q. Who else? A. Well, I don't remember.
There were some other people, I think Mrs. 30
Myers was there and that is all I remember.

Q. You got there at three for the purpose of
this social call and you found all those people
there, is that right? A. No, I didn't find them all
there just at that time. They came later, some
folks came. They weren't all there at that time.

Q. I am asking you and you said that they
were there when you got there, isn't that night?

A. I didn't say they were all there. I said they
came to the party. 40

Mary Anna Costa—For Defendants—Cross

Q. I am not asking you about the party. When you got there I ask you who was there? A. They were not all there.

Q. Who was there when you got there? A. Miss Harrington, my sister, and Mrs. Myers.

10 Q. Well, you said Mr. Neary was there at three o'clock, too? A. Yes, Mr. Neary was there.

Q. Mr. Neary was there, too? A. If I remember, yes, he was there.

Q. And Duffy was there? A. No, he wasn't there at that time. I don't believe he was there.

Q. Why did you say he was if he wasn't? A. He came—he was there later.

Q. At three o'clock when you got there? You said Ted Duffy was there. Wasn't he?

20

Mr. Cutley: He was there at the party.

Mr. Walsh: I object to Mr. Cutley—

The Court: It is entirely improper, Mr. Cutley. I will not allow the Prosecutor to interrupt you and I will not permit you to interrupt him. Go on with your examination.

30 Q. You said that Ted Duffy was there when you got there. Now, wasn't he? A. No. I said he came later.

Q. So you want to change that? A. Well, he was at the party, I said.

Q. No, I am not coming to the party. I am talking about the afternoon. A. He was there at the party, but he wasn't there at three o'clock.

Q. Was he there in the afternoon or not? Yes or no? A. Yes, in the afternoon later he was there.

40 Q. What time did Ted Duffy get there? A.

Mary Anna Costa—For Defendants—Cross

That I can't tell you. I don't know.

Q. What time did Jimmy Duffy get there? A. I cannot tell you.

Q. What time did Willie Duffy get there? A. I don't know.

Q. Did you know these people? A. Yes, I do. 10

Q. Do you know them as Duffy or Mulqueen?
A. As Duffy.

Q. You don't know them as Mulqueen? A. No, sir.

Q. What time did this party start? Did you have supper there? A. Yes, sir, I did.

Q. What? A. Yes, I did have supper there.

Q. Who was at the supper? Was that the birthday supper? A. Yes, it was a birthday supper.

Q. And what else? What time was that? A. 20
Well, that I really don't remember.

Q. You don't remember much about it, do you? Isn't that right? A. Yes, I remember very well.

Q. All right, now. What is it that you remember very well if you don't know what time you had this birthday supper? A. Well, because I didn't put attention to the time.

Q. No, nor you didn't put attention to the date?
A. We were enjoying ourselves. Yes, I did.

Q. Why? A. Because we talked about it and 30
I know it was that day that I was there.

Q. When did you talk about it? A. Well, I talked to my sister.

By the Court:

Q. Do you know the Duffy boy that the party was given for very well? A. Yes, sir.

Q. Know him very well? A. Well, no. I just met him there at my sister's and since that time 40

Mary Anna Costa—For Defendants—Cross

I have known him.

Q. Do you know where he was born? A. No, sir.

Q. What city? A. No, sir.

Q. Do you know which one of the Duffys the party was given for? A. Yes. Ted Duffy.

10 Q. I suppose his name is Edward, isn't that it? A. Well, that I don't know. I just know him as Ted Duffy.

Q. How old was he? A. That I don't remember.

Q. Didn't anybody mention his age at the party? A. No.

Q. Is Ted Duffy the man the party was given for out here now in this courtroom? A. Yes, he is here.

20 Q. He is here, is he? A. Yes.

By Mr. Walsh:

Q. Where were you on October 12? A. At my home.

Q. What time was that? A. Until about three o'clock—no. I left my home about two o'clock.

Q. Where did you go? A. Well, let me see, October 12. No, October 12 I was at home all day.

Q. How do you fix that? Is your recollection quite clear a year and a half or two years and a half back? A. Yes, it is quite clear.

30 Q. Where were you on November 15, do you know? A. No.

Q. You can't tell, can you? A. No, sir.

Q. You don't know anything about October 13, 1926, except what you and your sister and Neary had talked over since, isn't that right? A. Yes.

Q. You are living with your husband, I understand? A. Yes, sir.

*Mary Anna Costa—For Defendants—Redirect**REDIRECT EXAMINATION by Mr. Cutley:*

Q. On the night of the party whether it was October 13, did you have any conversation in regard to court?

Mr. Walsh: I object on the ground it is leading and improper redirect examination. 10

The Court: How do you make that competent?

Mr. Cutley: Your Honor, he said she does not know any reason why she remembers that date except conversations she had since with Neary and her husband. I am going to show, if I can, that she does. 20

The Court: About a court? You want to show a conversation about a court at the birthday party?

Mr. Cutley: Yes, sir.

The Court: I will not allow it.

Mr. Cutley: I will ask an exception.

The Court: No, you cannot, because you are simply questioning now at the suffrage of the Court, not by its permission. Your examination was completed, and you cannot ask any exception. You did not ask my permission for a further examination, as you should have, and obtained it first. The examination is closed. 30

I want both of you gentlemen to keep the trial within the confines of the issues. If we get wandering aside we will be trying everything that does not pertain to the case. That only confuses the jury and everybody else. 40

James J. Duffy—For Defendants—Direct

JAMES J. DUFFY, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Cutley:

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The Court: Counsel for the defense requested me earlier in the morning that when the Court adjourned, it adjourned for a little longer period; instead of an hour, to an hour and a quarter, or some such time as that. Is that sufficient?

Mr. Cutley: Yes, sir.

20

The Court: So we will adjourn, gentlemen, and you will return here at 1:35 P. M., so as to give counsel that extra time.

The prisoners will be remanded first, the jurors go out next, and the audience remain seated until allowed to go.

(Adjourned until 1:35 P. M.)

AFTERNOON SESSION, 1:35 P. M.

30

JAMES DUFFY, recalled.

Direct Examination by Mr. Cutley:

Q. Where do you live? A. 322 West Eleventh street.

Q. New York City? A. New York City.

Q. On October 13, 1926, where did you live? A. 208 West Eighty-fourth street.

40

Q. Did you know Charley Neary at that time?
A. I did, yes, sir.

James J. Duffy—For Defendants—Direct

Q. On the night of the thirteenth of October, did you see Charley Neary any place? A. I did.

Q. Where? A. At his home.

Q. Where is that? A. Eighteenth avenue, Astoria, Long Island.

Q. What was the occasion of your being at his home? A. A birthday party. 10

Q. In whose honor, if anybody? A. My brother Ted.

Q. Is your brother Ted in court here? A. He is, yes, sir.

Q. Who else was at the party besides you and Neary and Ted? A. Well, there was quite a few people there.

Q. Well, name some of them? A. Well, my brother John was there, Mrs. Neary, Mrs. Acosta, Mrs. Harrington, my brother Ted's wife, my girl friend, my brother John and his girl friend. 20

Q. A woman named Mrs. Myers there?

Mr. Walsh: I object on the ground it is leading.

The Court: I will allow it.

A. I don't recall the name. There were several other people there. 30

Q. During that night where was Neary? A. During the night?

Q. Yes. A. In the party.

Q. What time did you arrive at the house? A. About 9:30.

Q. He was there at that time? A. He was, yes, sir.

Q. Was he there all during the evening? A. Positive.

Q. What time did you go home, if you did go 40

James J. Duffy—For Defendants—Direct

home? A. I didn't go home.

Q. Where did you stay? A. At his house.

Q. Did you see Neary go to bed that night? A. I don't believe he went to bed.

10 Q. Did he sleep at all? A. Well, when I saw him in the morning he was asleep.

The Court: If he don't know whether he went to bed or not he don't know whether he slept.

Q. Did you see him in the morning? A. I did.

Q. Where was he? A. Laying on the couch.

Q. What time was that? A. about seven o'clock.

20 Q. At what time did you leave the house, the Neary house? A. I should figure just about eight, maybe a little before eight.

Q. And with whom did you leave? A. Charley Neary, myself, and Mrs. Acosta.

Q. Where did you go, where did you drive, if any place? A. I drove Mrs. Acosta over to the station.

Q. What station? A. Grand Central Station.

30 Q. Where did you go from there? A. To my garage.

Q. Was Neary with you all the time? A. Yes, sir.

Q. And where is the garage? A. East Thirty-eighth street.

Q. How long did you stay there? A. Oh, possibly an hour.

Q. During that time did you see Neary around, or go any place from that garage? A. Neary was with me at all times during the morning.

40 Q. Where did you go, if you left the garage?

James J. Duffy—For Defendants—Direct

A. I went down to—I don't know the name of the court, a big court downtown at Franklin street.

Q. Did you drive down? A. I did, yes, sir.

Q. Was Neary with you? A. Yes, sir.

Q. What was the purpose of being in court?
Did you have to go to court? A. No, sir. 10

Q. Who did? A. Neary had to go to court.

Q. Was Neary in court? A. With me, yes.

Q. Before whom, do you recall the name of the judge? A. I believe it was Knott. I am not positive.

By the Court:

Q. Who? A. Judge Knott.

Q. How do you spell it? A. K-n-o-t-t. 20

Q. What court? A. That is a big court down there in Franklin Street, Franklin and Centre Street.

Q. What is the name of it? A. The Criminal Court, I guess.

Q. What part? A. Well, I was down in the lobby.

Q. Part I or II or III or what? A. I don't know what business he had there.

Q. I mean the court. These courts are divided in parts over there, aren't they? A. Well, it is all in one big place. 30

By Mr. Cutley:

Q. What was the occasion of your going to court? Did Neary have a case? A. He had some business there.

Q. What was his business? A. About some case of his. 40

James J. Duffy—For Defendants—Cross

Q. You saw him in court? A. I was right in the court lobby with him, yes.

Q. What time were you there? A. About ten o'clock, maybe a little before ten.

Q. Was his case called during your presence?
10 A. Well, I left him there—he left me, at least.

By the Court:

Q. Was it called during your presence? A. It could not be called where I was, no, in the lobby. They don't call the case in the lobby.

By Mr. Cutley:

Q. Were you in the courtroom? A. I wasn't in
20 the courtroom, no.

Q. Did you see Neary go in the courtroom? A. I saw Neary go upstairs.

Q. What time did you leave that building that morning? A. About 10:30, quarter to eleven, I guess it was a quarter to eleven, maybe eleven o'clock.

Q. Was Neary with you then? A. I left Neary in the court, in the court lobby.

Q. Did you drive him back from the building?
30 A. I did not, no, sir.

Q. You left him there? A. I left him there.

Mr. Cutley: That is all. Cross examine.

CROSS EXAMINATION by Mr. Walsh:

Q. What is your name? A. James J. Duffy.

Q. What other name have you been known by?

A. That is my only name.
40

Q. What name have you been known by other

James J. Duffy—For Defendants—Cross

than Duffy? A. James J. Duffy.

Q. Have you been convicted of crime? A. Never.

Q. Do you know Louis Wolf? A. I do.

Q. Is that a picture of you and Louis Wolf? (Indicating.) A. It is.

Q. When was that taken, if you remember? A. I don't remember.

Q. Has Wolf been an associate of yours? A. No.

Q. How do you and he come to have your picture taken? A. It was taken by somebody, I guess.

Q. You know where it was taken. Out with it. Where was it? A. Police Headquarters.

Q. In where? A. New York City.

Q. Do you remember the occasion? A. I do.

Q. When was that? A. I don't remember the date.

Q. What year? A. I don't remember.

Mr. Cutley: Just a minute. I object. The fact that the picture is taken in Police Headquarters has no competency or materiality in the case of this character.

The Court: That of itself has not, but I don't know where it is going to lead to.

By Mr. Walsh:

Q. You don't remember when that was taken? A. No, sir.

Q. How many pictures have you had taken there at Police Headquarters? A. That is the only one.

Q. Then that did not impress itself upon your

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James J. Duffy—For Defendants—Cross

mind? A. None whatsoever.

Q. None whatsoever? A. No, sir.

Q. You cannot say whether that is five years ago or ten years ago, is that right? A. It could have been maybe five years—four years ago.

10 Q. Will you say it was? A. I would not say the positive date. I could not say, no. I don't want to lie.

Q. You don't want to lie? A. No, sir.

Q. What is your business? A. Truckman.

Q. Where? A. New York City.

Q. How many trucks have you got? A. Ten.

Q. What are the numbers of your trucks? A. I don't know.

20 Q. Have you got a memorandum with you that will show them? A. No, sir, I haven't.

Q. What kind of trucks are these? A. Do you mean the make?

Q. Yes. A. Different makes, Mack and Packard.

Q. How many Macks? A. Two.

Q. What tonnage? A. Five-ton.

Q. Two five-ton? A. Right.

Q. And what else? A. Two Packards.

Q. What tonnage? A. Two and a half and three and a half.

30 Q. How many of each? A. One of each.

Q. Two and a half and three and one-half? A. Right.

Q. What else? A. A White, five-ton.

Q. Yes? A. A Doan, two and a half, a baby Mack, two and a half, two Chevrolets, a Brockway.

Q. You have custom house licenses for these trucks? A. Yes, sir, two trucks.

Q. Which trucks? A. The Mack and the White.

40 Q. Which Mack? A. The big Mack.

James J. Duffy—For Defendants—Cross

Q. One of the big Macks and one of the Whites?
A. Right.

Q. Do you know the licenses of these trucks?
A. Custom house license is Number 485.

Q. Where is your place of business? A. 318
West 39th Street.

Q. West 39th Street? A. That is right. 10

Q. You have a garage there? A. No, sir.

Q. What is there? A. An office.

Q. Do you know where Neary's garage was?
A. Yes, sir.

Q. Where? A. 311 East 38th Street.

Q. Were you connected with that? A. I was.

Q. And you were connected with that in 1926?
A. I was.

Q. October? A. I was. 20

Q. You have been convicted of crime? A. Never.

Q. How old are you? A. Thirty-one.

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

Q. Where do you live? A. 322 West 11th Street.

Q. Who do you live there with? A. Mrs.
Keeley.

Q. Is she any relation of yours? A. Yes, sir.

Q. Is she? A. Yes, sir.

Q. What is she? A. Sister-in-law by marriage.

Q. Your wife does not live there, does she? A. 30
No, sir.

Q. How long is it since you have been living
with your wife? A. I haven't been living with
my wife.

The Court: How is that material?

Mr. Walsh: I won't press it.

The Court: There is a certain amount of
latitude allowed to counsel to show who the
witness is, but there is a limit to it. 40

*James J. Duffy—For Defendants—Cross**By Mr. Walsh:*

Q. Now, you say you got to this party at 9:30, is that right? A. Yes, sir.

Q. Didn't go home, stayed there all night? A. Yes, sir.

10 Q. Where did you sleep that night? A. Slept in a chair.

Q. You saw Neary in the morning? A. Yes, sir.

Q. You left there with Neary and Mrs. Acosta, his sister-in-law? A. Mrs. Acosta and Mr. Neary, yes, sir.

Q. And drove in your car? A. Yes, sir. Not my own car.

Q. Whose car? A. I had the car there. My brother's car.

20 Q. You say you drove downtown to some court? A. Yes, sir.

Q. And you didn't go in the courtroom? A. Not in the courtroom, no, sir.

Q. And you don't know the name of the judge? A. I couldn't truthfully answer it, and I don't think I should.

By the Court:

30 Q. Well, you should, if you can. A. I don't know. I said truthfully I don't know.

By Mr. Walsh:

Q. When you mentioned on your direct examination Judge Nott, that was a mere guess? A. I said it may be.

40 Q. It may be or it may have been some other judge? A. It could have been, yes, sir.

James J. Duffy—For Defendants—Cross

Q. What time did you get to the courthouse?

A. About ten o'clock.

Q. What time did you leave there? A. I was there possibly an hour or a little less than an hour.

By the Court:

10

Q. While you were there with Neary did you go into any courtroom with him? A. No, sir; I didn't go into any courtroom.

Q. Did he go into any courtroom that you saw? Did you see him go into a courtroom? A. Saw him go upstairs. He was headed for a courtroom.

Q. Did you see him go into a courtroom? A. No, sir; I did not.

20

By Mr. Walsh:

Q. Then you left? A. Yes, sir.

Q. How long have you been a friend of Neary's? A. Five or six years.

Q. And associated in business with him about that time, too? A. No, sir.

Q. How long have you been associated in business with him? A. I had been about one year.

30

Q. You have been associated with him in business a year? A. Yes, sir.

Q. A year ago, do you mean? A. No, sir. One year since I know him, during the time I knew him.

Q. When was it you were associated in business with him? A. From about October, 1925, to—October, November, 1925, to around November, 1926.

40

James J. Duffy—For Defendants—Cross

Q. Shortly after this party? A. Beg pardon?

Q. Shortly after this party your partnership dissolved, is that it? A. We was in the garage business.

10 Q. Well, I mean shortly after this party you dissolved your partnership? A. We sold the garage, yes.

Q. Since then you haven't been associated with him? A. (No answer.)

By the Court:

Q. What do you mean garage business? What were you doing? What kind of business were you doing? A. We owned a garage.

20 Q. Maintained a garage? A. Maintaining a public garage.

Q. Maintained a garage where people could place their cars in storage? A. Yes, sir.

Q. What were you doing with all these trucks? A. That is my business.

Q. What were you doing with them? A. Trucking.

Q. Any particular houses? A. Surely.

30 Q. Name some of those? A. Certainly. Eye-light Printing Company.

Q. Go on. A. John C. Rogers, Madison Square Press, Dreger Shipping, Schneider Brothers, Cohen & Mann, Nat Dresser, Decorative Planting Company.

Q. These trucks bore your name? A. Yes, sir. Some more names?

Q. If you are not through, go on. A. Oh, I have got—I could think of one hundred of them or 150.

Theodore Duffy—For Defendants—Direct

Q. That is enough if you can't think of any more now.

Mr. Walsh: That is all.

10

THEODORE DUFFY, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Cutley:

Q. You are a brother of Jimmy Duffy who was just on the stand, aren't you? A. Yes, sir.

20

Q. On October 13, 1926, were you down at Neary's house in Long Island? A. I was.

Q. What were you doing down there? A. I was at a party.

Q. Whose party was it? A. It was given for me.

Q. For you? A. Yes, sir.

Q. What was it, a birthday? A. Birthday party.

Q. Did you see Charley Neary there that night? A. I did.

30

Q. What time did you get there? A. I got there around nine o'clock.

Q. When did you go home? A. I left about 1:30 or 2.

Q. Who was with you, if anybody? A. My wife was with me, and my brother John was with me.

Q. When you left at one o'clock or whatever time you did leave was Neary there? A. Yes, sir.

40

*Theodore Duffy—For Defendants—Cross**CROSS EXAMINATION by Mr. Walsh:*

- Q. You have got a brother Willie? A. Yes, sir.
- Q. Was he there? A. No, sir.
- Q. He wasn't at the party at all? A. No, sir.
- 10 Q. How old are you? A. Twenty-six.
- Q. Where were you born? A. New York City.
- Q. On what date? A. October 13, 1902.
- Q. 1902? A. That is right.
- Q. So that you were not twenty-nine years old on October 13, 1926, were you? A. No, sir.
- Q. The last witness on the stand was your brother? A. Yes, sir.
- Q. You got to Neary's house that night what time? A. Around nine o'clock.
- 20 Q. What time did you leave? A. Between 1:30 and 2.
- Q. How long have you known Neary? A. About two years, maybe a little over two years.
- Q. Well, how long? A. About two years.
- Q. About two years? A. Yes.
- Q. Well, when did you first become acquainted with him? A. When he was in partnership with my brother in the garage.
- Q. That is the first you knew of him at all? A.
- 30 Yes, sir.
- Q. How long have you known Mrs. Neary? A. Since the night of the party.
- Q. Since the night of the party? A. Yes, sir.
- Q. So that the night of the party was the first time that you ever met Mrs. Neary? A. Yes, sir.
- Q. Didn't know her for five years before that? A. No, sir.
- Q. Have you been convicted of crime? A. Yes, sir.
- 40 Q. You have been convicted? A. Yes, sir.

Canice J. Neary—For Defendants—Direct

Q. How many times? A. Once.

Q. Once? A. Yes, sir.

Mr. Walsh: That is all.

10

CANICE J. NEARY, one of the defendants, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Cutley:

Q. Mr. Neary, how old are you? A. Thirty-three years. 20

Q. Where were you born? A. May 16, 1896.

Q. Where? A. New York City.

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

Q. Got a family? A. Yes, sir.

Q. How many? A. Two children. One dead.

Q. On October 13, 1926, were you out in Cuniffe's house in Clinton Place, Newark? A. I don't know Cuniffe.

Q. Were you ever at Cuniffe's house? 30

The Court: Answer the question.

A. No, I wasn't.

Q. Were you ever out at Cuniffe's house at any time prior to that? A. No, sir.

Q. Did you ever meet Kiekart, Crowley, Haas, Fanning, or any one of those in relation to holding up a mail car in Elizabeth? A. No, sir.

Q. Did you have anything to do with that robbery? A. No, sir. 40

Canice J. Neary—For Defendants—Direct

Q. How long do you know Haas? A. How long do I know Haas? Well, to be candid with you I know Haas about three and one-half years; not personal.

10 Q. When did you first meet him? A. I first met him in my cabaret.

Q. Where was your cabaret? A. Exclusive Club.

Q. Where was that? A. One Hundred and Thirty-fourth street and Seventh avenue.

Q. Did you own that yourself or in conjunction with somebody else? A. I was in partners with a fellow by the name of John Mitchell.

20 Q. How did you come to meet Haas at the Exclusive Club? A. Well, how I come to meet Haas at the Exclusive Club, one night Haas and another fellow and a girl came down to my place and——

Mr. Walsh: I object to this.

The Court: Does it make much difference how he met him?

Mr. Cutley: I am going to use this to furnish the reason for his picking out Neary and his animous against Neary.

30 The Court: Why don't you ask him directly whether there is any animous between Haas and himself?

Q. Did you and Haas have any trouble? A. Yes, sir.

Q. What kind of trouble was it?

Mr. Walsh: I object to that as being too general.

40 The Court: I will allow it.

Canice J. Neary—For Defendants—Direct

A. Well, Haas came down to my place and told me I wasn't able to run my cabaret without giving him twenty-five per cent. of the business as all the cabarets in Harlem has been doing under his protection and his friends. So I told him when I would have to pay for protection to him I would go out of business. 10

By Mr. Cutley:

Q. Did he go away then? A. Well, he sat there and had a few drinks.

Q. When was the next you heard from him then in relation to getting a piece of the cabaret? A. Well, about two weeks after he pulled up in front of the door and sent a footman down for my partner. 20

By the Court:

Q. For your partner what? A. My partner John Mitchell.

By Mr. Cutley:

Q. What happened to Mitchell, if anything? 30

The Court: If you know.

A. Well, whatever words they had upstairs—

The Court: Now wait.

By the Court:

Q. Did you go down with your partner? A. My partner went upstairs. 40

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Q. Did you go down with your partner or upstairs? A. My place of business—

Q. Did you go down or up with him? A. I didn't go. He was sent for.

10 Q. That is all you know about that, he was sent for? A. My partner come down in a rush, I heard the shots upstairs and I asked him what seemed to be the trouble—

The Court: No.

Mr. Walsh: I ask that be stricken out.

The Court: Yes.

20 Mr. Cutley, I take it that you have gone over this matter with your client. Now, do not let us have incompetent evidence introduced and struck out. You know what you can have him testify to. Go on.

Q. As a result of Haas' visit to your place, what happened to the Exclusive Club?

Mr. Walsh: I object to that.

A. I closed my place of business up because I would not give them any money.

30 The Court: Wait a minute. That may be a conclusion, as a result of the visit, what happened. It may be concluding something and laying it to Haas' door that did not belong there. I am willing, and you should and you are permitted under the law to show any testimony, as you know, from which the jury might determine that Haas had some interest in telling the story which he told against this man. Now, confine
40 yourself to that.

*Canice J. Neary—For Defendants—Direct**By Mr. Cutley:*

Q. What, if anything, did Haas ever do to you personally that you know of, either of a threatening character or nature or any kind whatsoever?

A. Well, he tried to shoot me twice.

10

Q. Where? A. At Yonkers and in front of my house.

Q. In front of your house in Long Island? A. Long Island, yes.

Q. When was that? A. Well, one was in broad daylight on Thanksgiving Eve, 1925. The other time I was coming home, and up the street from where I lived there is a lot. Between where I lived, there is about two hundred feet space between houses. I seen the touring car with curtains all around. There is not many cars around that block—

20

Q. How do you know that Haas was in it? A. I didn't know it was Haas for the time being, until I noticed this car, and as I threw the lights on I seen heads ducking in the car, and as I went to pull over towards my door, Haas and another fellow stepped up from underneath my vestibule, and as soon as I could get a chance, I stepped on the gas and I went away, and they chased me all over Astoria, and what they were doing in my vestibule, I don't know, but they must have been waiting for me to come home.

30

Q. Did they shoot at you that night? A. There was no shots fired, no.

By the Court:

Q. Is this Thanksgiving? A. No, this was after that.

40

Canice J. Neary—For Defendants—Direct

Q. This time around Yonkers did you report that—

Mr. Walsh: I object.

10 *By Mr. Cutley:*

Q. Where was the other time that you had an altercation? A. In Yonkers.

Q. Were you arrested at that time and brought to the police station? A. I was arrested and had to explain my story.

20 Q. What happened there? A. I was driving down the main road in Yonkers, when I heard horn blown behind me, so, as I turned around, I was going to ask, "What's your hurry?"

Mr. Cutley: Never mind the conversation.

A. I didn't get a chance to say anything, but there was so many shots fired at me that it shot my car apart.

Mr. Walsh: I ask that be stricken out.

30 *By Mr. Cutley:*

Q. Who fired the shots?

The Court: Mr. Cutley, I take it that you are trying to show something that Haas did to this man in Yonkers.

By the Court:

40 Q. Is it Haas that did this to you in Yonkers?

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A. Yes, your Honor.

Q. You saw him? A. Benjamin Haas.

Q. You saw him? A. I seen him.

Q. What did you do? A. When I looked around, as I heard the horn blow, I turned around, and Haas was sitting in the front seat of a car with a gun in his hand. When I seen the gun, I fell over on the side, and the car went in towards the sidewalk, and there was so many shots fired that it shot every window out of my car and shot the inside of the roof out of the car and a piece off of the steering-wheel, and broke the mirror in front of me, and there was a bullet hole in between the two doors right by my head, and if that wasn't there, I would have got hit right in the head. There was a bullet hole underneath the side of the door. I jumped out of the car, and when I got the car stopped, I ran back on the road, and by the time I got myself together the people that was in the house in front of me—they didn't see the shooting, I don't think, but they heard so much noise, and they seen my car in the front of the door, and they reported my car, and as I got by Yonkers headquarters, I was arrested by the police there, and the police asked me what was the trouble.

The Court: Never mind that.

By Mr. Cutley:

Q. Since that time have you seen Haas?
Since that time?

Q. Yes. A. After that Haas come out to my house.

Q. Since the time at the house, did you see

Canice J. Neary—For Defendants—Direct

Haas? A. No, I didn't see Haas.

By the Court:

Q. When was this time he came at the house?

A. That was a few months after.

10 Q. After the Yonkers incident? A. It was after Christmas. It was in the winter time.

By Mr. Cutley:

Q. The Yonkers incident was Thanksgiving Eve, 1925? A. Yes, Thanksgiving Eve, 1925.

20 The Court: I don't so understand it. The Yonkers affair was after the Thanksgiving, 1925, affair.

The Witness: The Yonkers affair was Thanksgiving Eve.

By the Court:

Q. 1925? A. 1925.

By Mr. Cutley:

30 Q. The Astoria affair was a couple of months afterward? A. A couple of months afterward, yes, sir.

By the Court:

Q. What was the Astoria affair? A. Well, they were waiting at my house to come home.

*Canice J. Neary—For Defendants—Direct**By Mr. Cutley:*

Q. Did Haas ever come down to your place of business when you had the garage on 38th Street, and you asked him to go out to Cuniffe's? A. I never asked Haas to go out.

10

Q. Did you have any conversations? A. Never had any conversation with him whatsoever, outside of the time in the Exclusive Club, what I owned.

Q. And you have never talked to him since that time? A. Never talked to him, no, sir.

Q. On the night of October 13, 1926, where were you? A. I was home.

Q. What were you doing there? A. Just enjoying myself at the house with my friends.

20

Q. At a party? A. Yes, sir.

Q. That is the party that was described here today as Teddy Duffy's birthday? A. Yes.

Q. What time did you leave the house the next morning? A. Well, I could not say the exact time I left the house the next morning. I might have left between eight and half-past. I was in the habit of leaving between eight and half-past, any time between eight and half-past.

30

By the Court:

Q. Do you remember this day when you left? As nearly as you can remember? A. It was close to eight o'clock. It was a little after eight maybe.

By Mr. Cutley:

Q. Who was in the car with you when you left?

A. My sister-in-law and Jimmie Duffy.

40

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Q. Where did you drive to? A. I drove her to the Grand Central to go home to New Rochelle.

Q. Where did you and Duffy go? A. Jimmie and I went to the garage.

10 Q. From the garage where did you go? A. We had a little business to attend to, and we looked over the morning mail, and I told my bookkeeper that I was going to court.

The Court: Don't testify to what you told.

The Witness (Continuing): I went down to the Criminal Court Building, General Sessions.

20 The Court: Listen to the questions and answer them, and you will save yourself much trouble.

By Mr. Cutley:

Q. What kind of a garage was this you had at that time? A. It was a three-story garage.

Q. What were the numbers on the street? A. 307 to 313.

Q. That is a one-hundred-foot front? A. Yes.

30 Q. How many cars did you have in it? A. At that time I might have had 195 cars. It held 250 capacity.

Q. After you and Duffy left, you went down to the Criminal Court Building? A. Yes.

Q. Where is that? A. That is down at Franklin Street and Centre.

Q. What were you doing down there that morning? A. I had a charge down there to answer.

40 Q. What was it? A. Carrying concealed weapons.

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Q. How did you come to go there that morning? Was it on for trial? A. I was notified by the bondsman to go to court.

Q. Have you got the bondsman here? A. I don't know. I sent for him, but since I have been in court I haven't been able to connect with anybody. I don't know whether he is— 10

Q. Did you go to court? A. Yes, sir, I went to court.

Q. Did you see anybody in court that you knew? A. Yes, sir, certainly.

Q. Whom did you see? A. Why, I was talking to a fellow by the name of John Flaherty and Daniel Casey, and I seen a fellow by the name of Harry Bell there that morning. He was down by the lunch counter. 20

By the Court:

Q. Do you remember seeing any court officer there that you know of? A. Well, in fact, I knew all the court officers to see them, because I was in nearly every part of the court on that case.

Q. I mean that day? A. I seen the court officer there, but I didn't pay no attention which one it was. 30

By Mr. Cutley:

Q. Did you see the policeman that was interested in your case there? A. Yes.

Q. What was his name? A. Paul Weston.

Q. What happened to your case that day? Did it go on? A. No, there was another case on, so they postponed my case.

Q. There was a case being tried? A. There 40

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was a case being tried, and the judge postponed my case until I was notified by the bondsman again.

Q. What time did you leave the building that day? A. Well, about eleven o'clock, I guess.

10 Q. You went away with Duffy? A. No, I didn't go away with Duffy. Duffy left me in the building.

Q. Your name is Canice Neary? A. Canice J. Neary.

Q. And the charge against you at that time was carrying a revolver without a written license, is that it? A. Yes, I was carrying the revolver to protect myself from Haas.

20 Q. That was the charge against you? A. Yes, sir, that was it.

Mr. Cutley: Your Honor, I offer in evidence an exemplified copy of the record of the Court of General Sessions of the Peace of the County and State of New York.

The Court: Show it to the Prosecutor and let him examine it.

(Mr. Cutley handed a paper to Mr. Walsh.)

30 *By the Court:*

Q. While we are waiting, what did you do, if anything, about this shooting of Haas at you? A. What did I ever do? The only thing I could do was to protect myself. That's why I carried the gun.

40 The Court: I asked you what did you ever do about it. Did you ever have him

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arrested or make a complaint?

The Witness: I could not very well make any complaint.

Q. I didn't ask you that. A. I didn't make any complaint, no, sir.

Q. Here is a man who threatened your life, and you did not do anything about it? A. No, sir.

10

Mr. Walsh: Mr. Cutley, do you offer this in evidence?

Mr. Cutley: Yes, sir.

Mr. Walsh: I object to it on the ground that it is immaterial. It is evidence of nothing except two indictments.

The Court: Let me see it. I will hear your objection. What do you hope to prove by this offer of the copy of these indictments, Mr. Cutley?

20

Mr. Cutley: I offer to prove not only the copy of the indictments, but the annotations and the stamps of the Court on the back thereof on that first page that you have, showing the appearances.

The Court: Where?

Mr. Cutley: Here. (Indicating.)

30

The Court: What date was this?

Mr. Walsh: October 14, 1926.

The Court: What does this show about October 14, 1926? So far, I can't see anything on there about October 14, 1926. All I see there are two records of two copies of two indictments.

Mr. Cutley: Part VI, October 14, 1926.

The Court: What does it say?

Mr. Cutley: It does not say anything.

40

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The Court: That is what I was wondering at, what relation this has. All it says here is "Part VI." It does not show anything about any appearance or any adjournment. What is the object of the record?

10 Mr. Cutley: The object of the record, as I will prove by the different dates and by a New York lawyer the method of—

The Court: You cannot prove by a New York lawyer nothing that will change this record. The record offered by counsel is a record setting forth two indictments against Canice Neary, certified to by the clerk of the court as correct transcripts thereof, exemplified by the judge and clerk. On the back of each of these indictments there are certain notations, that is to say, dates, but only one of them refers to October 14, 1926, and it is on the back of indictment for violation of section 1897 of the Penal Law, misdemeanor, and simply says, "Part VI, October 14, 1926." It does not indicate anywhere thereon what that date means. There are also various other dates, marked "Part III, July 13, 1926," down to and including "Part III, January 7, 1927." I fail to see how this paper is in any way pertinent to the issue on trial or that it in any way shows the appearance of the defendant in Part VI on October 14, 1926. How do you make it competent?

30 Mr. Cutley: Your Honor, it seems to me that he has testified that he was in court on that day, and it certainly is corroborated.

40

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tive of the fact that there was at that time pending against him an indictment in the Criminal Courts of New York City. Now I am proving by him that on one of these dates he was there. I am going to prove the other times he was there, and then I am going to prove the method employed by the court in stamping upon the back of the indictments the various dates of continuance. I will offer it just to be marked for identification. 10

The Court: It will be marked for identification and I will rule later when you are offering it in evidence.

(The paper referred to was marked "Defendants' Exhibit 1 for Identification.") 20

(Paper marked D-1 for identification.)

A. I forgot to tell you about the bondsman seeing me in court, too.

The Court: Wait until you are asked the question.

CROSS EXAMINATION by Mr. Walsh: 30

Q. How old are you? A. Thirty-three years old.

Q. Been convicted of crime, have you? A. Yes, sir.

Q. You are married? A. Yes, sir.

Q. How many times have you been married? A. Twice.

Q. This wife who was on the stand here is your second wife? Isn't she? A. Yes, sir. 40

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Q. How many times have you been convicted of crime?

10 Mr. Cutley: I object as immaterial how many times he was convicted of crime. He was convicted once.

A. Once.

The Court: The proper question is have you been convicted of crime. The number of times makes no difference.

Q. How long have you known Haas? A. About three and one-half years.

20 Q. Didn't you know him when he was a taxicab driver? Some ten years ago? A. No, sir.

Q. Didn't know him then? A. No, sir.

Q. And haven't known him since? A. No, sir, not until three and one-half years ago.

Q. You spoke about being the proprietor of the cafe? A. Yes, sir.

Q. Known as the Exclusive Club? A. Yes, sir.

Q. And your partner in that was a man named Mitchell? A. Yes, sir.

30 Q. The name you gave was John Mitchell? A. John Mitchell.

Q. Known as "Linky" Mitchell, wasn't he? A. No, sir.

Q. What was his name? A. He was an Italian and his name was John Casico or Casoco, something like that.

Q. And he was murdered, was he? A. Yes, sir.

Q. When? A. He was taken out of his house—

Q. When? A. And driven—

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Mr. Walsh: I object.

A. And driven to a house and tortured and then shot.

Mr. Cutley: I admit it is immaterial, may it please your Honor. 10

The Court: This is the defendant, or one of them, and there is a wide latitude allowed in cross examining him. I am not disposed, however, Mr. Prosecutor, even though there is a wider latitude allowed with the defendant, to allow you to show that his partner was murdered or anything of the kind.

Mr. Walsh: I would not have touched that if counsel for the defence had not brought it out in the direct evidence. If it can be stricken from the record now, his testimony in answer to counsel's questions. 20

The Court: In reference to what?

Mr. Walsh: About shooting of his partner that he speaks about in his direct evidence. If your Honor will refer to the record Mr. Cutley brought that out on direct examination and it was strictly in cross examination that I was examining him on that point. 30

The Court: What was it that was brought out?

Mr. Walsh: It was brought out that his partner was killed downstairs, he says, by Haas.

A. Upstairs.

Mr. Walsh: He said by Haas. Or killed 40

Canice J. Neary—For Defendants—Cross

upstairs, he said, by Haas. It was rather along those lines I was examining. He said something in that testimony at that time about some shots that he heard. The direct evidence will prove that on that score.

10 The Court: What has that to do with the question you are asking? You are asking whether he was murdered or not.

Mr. Walsh: Or shot.

By the Court:

Q. At that time when these shots were fired?

A. No, not at the time these shots were fired.

20 Q. He was not murdered at the time the shots were fired, is that right? A. Yes.

By Mr. Walsh:

Q. You didn't see Haas at the time you heard these shots at all, did you? A. No, sir. My partner told me.

Mr. Walsh: I ask that be stricken out.

30 The Court: That will be stricken out and you, gentlemen of the jury, are warned that that is not proper evidence and you must pay no attention to it whatever. What anybody told this witness is not competent evidence. He can only testify to what he himself knows and saw.

Q. Was the time that you referred to before or after the time in Yonkers that you speak about?

A. That was before the time in Yonkers.

40 Q. How long before? A. Why, a few months.

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Q. A few months after? A. Yes, sir.

Q. Now, you went to Yonkers, you say? A. Yes, sir.

Q. Did you know the Diamond Brothers? A. No, sir.

Q. Didn't know anybody by the name of Diamond Brothers? A. I know of them. Don't know them. 10

Q. And you had a feud with the Diamond Brothers, didn't you? A. I didn't have no feud with them.

Q. Well, you went to Yonkers to get them, didn't you? A. I went to Yonkers?

Q. You? A. No, sir.

Q. Who was with you when you went to Yonkers? A. Why, a couple of friends of mine. 20

Q. Who were they? A. One fellow's name was Ryan.

Q. What was his first name? A. Roderick.

Q. What other name was he known as? A. I don't know any other name only Roderick Ryan.

Q. How long have you known Roderick Ryan? A. Five years.

Q. Who else? A. Well, he was the only one in my car.

Q. In your car? A. Yes. 30

Q. How many cars were there that went to Yonkers to get the Diamonds? A. To get the Diamonds?

Q. Well, where were the Diamonds, at Yonkers? A. They were in Yonkers, yes, sir.

Q. Well, how many cars did you leave New York to go to Yonkers to get the Diamonds? A. We didn't leave New York—they followed us up to Yonkers. I didn't know they were behind me.

Q. Who followed you up? A. Benny Haas and 40

Canice J. Neary—For Defendants—Cross

his friends.

Q. Who? A. That is impossible for me to say who, for the simple reason as I just got— —

Q. You don't know, that is the reason, isn't it?

A. I didn't know who was in the car outside of
10 Benny Haas.

Q. Well, you didn't see Haas, did you? A. Yes.

Q. When you went—the only one in your car was Ryan? A. Ryan, yes, sir.

Q. The Diamonds lived in Yonkers? A. The Diamonds lived in Yonkers.

Q. Or were in Yonkers, weren't they? A. They passed me on the road, they followed me.

Q. The Diamonds did? A. This crowd.

Q. No, diamonds I am talking about. A. I don't
20 know the Diamonds.

Q. You had a feud with them, didn't you? A. I did not.

Q. Well, Ryan had then? A. No, he didn't.

Q. Then why did you and Ryan carry a shotgun in your car that day? A. I bought the shotgun that day.

Q. You bought a shotgun? A. Yes, sir.

Q. So that when you got up to Yonkers you had a shotgun within the car you and Ryan? A.
30 It wasn't together, though.

Q. What? A. The shotgun wasn't together.

Q. Now, while up in Yonkers going along a street there somebody shot at you? A. Yes, sir.

Q. You don't know who? A. Yes, I do.

Q. Well, who did? A. My eyes didn't deceive me. Haas.

Q. You say that you ducked down under the seat the minute the first shot was fired? A. I didn't say I ducked down under the seat the minute
40 the first shot was fired.

Canice J. Neary—For Defendants—Cross

Q. What did you say? A. As the horn blew I looked around, I was going to ask him what was the hurry, and as I looked I seen Haas and I ducked then, because I seen the gun in his hand, he had a rifle or a shotgun in his hand.

Q. He had a shotgun? A. A rifle or a shotgun. 10

Q. And you had a shotgun? A. My shotgun wasn't together.

Q. That was the reason you were taken to Police Headquarters in Yonkers, isn't it? A. I was on my way to Police Headquarters to report the shooting.

Q. Were you there to report that you had a shotgun in your car? A. Why—

Q. Yes or no? A. It is not a law in New York to have— 20

The Court: Answer the question.

A. No.

Q. Were you arrested at Yonkers for having that shotgun in your car that day? A. No.

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

Q. How long were you detained at Police Headquarters in Yonkers that day? A. Why, about two to three hours. 30

Q. Why? Because somebody shot at you? A. Well, they had to question me on the shooting.

Q. It took them three hours to question you on the shooting? A. Yes, sir.

Q. For being shot at? A. Yes, sir.

Q. And when you left there you gave bail, didn't you? A. Yes, sir.

Q. So that there was a charge against you in Yonkers for being shot at, or for carrying a gun, now, which will you say it was? A. Why, it was 40

Canice J. Neary—For Defendants—Cross

for being shot at.

Q. A charge made against you for being shot at? A. Yes, sir.

Q. No charge against you for carrying a gun? A. No, sir.

10 Q. You ran your car to the side of the street, didn't you?

By the Court:

Q. You don't mean that, do you? A. Beg pardon?

Q. You don't mean there was a charge made against you for being shot at? A. I was discharged the next day. I was held for investigation.

20 Q. I didn't ask you that. You have just said there was a charge made against you. A. They made a charge and held me until Thursday.

Q. You have just said there was a charge made against you for being shot at in Yonkers. You don't mean that, do you? A. Well, they made a charge against me. I just don't know whether—I don't think it was the gun, because there is no law in New York against shotguns.

30 Q. You haven't answered me yet. You said there was a charge made against you in Yonkers because you were shot at. You don't mean that, do you? A. Well, not—they didn't put the charge against me that I was shot at, no, sir.

Q. What was the charge? A. I really don't remember, to tell you the truth.

By Mr. Walsh:

40 Q. Do you know Jack Diamond? A. No, sir.

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Q. Do you know Eddie Diamond? A. No, sir.

Q. Never knew them in your life? A. Knew of them. Never seen them.

Q. Never saw them at all? A. No, sir.

Q. Do you know Al Handle? A. Yes, sir. My friend.

Q. Do you know Happy Malloy? A. Yes, I do. 10

Q. Your friends? A. My friend.

Q. Do you know Louis Siegel? A. Louis Siegel? Yes, I think I do.

Q. Your friend? A. No, sir.

Q. Associate of Handle and Malloy? A. Am I associated with him?

Q. No. Was he an associate of Handle and Malloy? A. Not that I know of.

Q. Do you know Sheehan? A. Yes, sir. 20

Q. Do you know Shevlin? A. Yes, sir.

Q. Georgie Shevlin? A. George Shevlin.

Q. Both of them friends of yours? A. Yes, sir.

Q. Did you, in the Summer of 1926, visit 12 Denton Place, at Lincoln, New Jersey? A. 12 what?

Q. 12 Denton Place, Lincoln, New Jersey? A. I don't know where it is.

The Court: In the summer of when? 30

Mr. Walsh: 1926. I intend to lead up and make it material. It is proper cross examination.

The Court: Go on.

Q. Did you? Do you know where it is? A. I don't know where it is, no, sir.

Q. Well, perhaps I can help you. Do you know where Dunellen is in New Jersey? A. No, sir. 40

Canice J. Neary—For Defendants—Cross

Q. Do you know where Bound Brook is? A. No, sir.

Q. And you don't know where Lincoln is? A. No, sir.

10 Q. Well, perhaps—did you visit any place in New Jersey where you, Shevlin and Handle met? A. No, sir.

Q. At which place Handle had a plant? A. No, sir.

Q. Did Shevlin and Handle and Sheehan have a plant? A. No, sir.

Q. You never visited any place? A. No, sir; didn't have no plant when I knew them.

Q. Never visited any place in New Jersey and met them? A. No, sir.

20

Mr. Cutley: I think that is immaterial unless it has some connection with this case.

The Court: I cannot tell now, Mr. Cutley. I think this is entirely within the realm of proper cross examination of the defendant.

30 Q. I show you that picture and ask you do you recognize him? A. No, sir.

Q. You don't know him? A. No, sir.

Mr. Walsh: Mark this for identification. This is Crowley's picture.

(Picture marked S-11 for identification.)

By Mr. Walsh:

40 Q. Showing the defendant S-11 for identification you say you don't know that man and never

Canice J. Neary—For Defendants—Cross

saw him? A. I say I don't know him.

Q. Never saw him? A. Never saw him that I know of.

Q. Never had any dealings with him? A. I might have seen him personally, but the picture, I don't know the man.

10

Mr. Walsh: I ask this be marked for identification.

(Photograph marked S-12 for identification.)

Q. I show you S-12 for identification and ask you if you know that man?

Mr. Cutley: Just a minute.

20

Q. Or knew him?

Mr. Cutley: I submit that under the Rombolo case the introduction of pictures, whether they are the defendants in the case or anybody outside, they are immaterial and they are absolutely immaterial and inadmissible. That is the case in Hudson County where they attempted to put in a picture.

30

The Court: There are no pictures being put in here.

Mr. Cutley: Or any use of the pictures. They are immaterial.

The Court: You will have to show me that case. It has no application, I am sure, to what is transpiring now in this courtroom. The witness is simply shown certain pictures and asked if he knows certain

40

Canice J. Neary—For Defendants—Cross

men. If he says no I do not know what the State has in mind to prove. Thus far it does not mean anything, neither to the State nor to the defendant. It does not mean a thing so far. I cannot see where you are in any way injured. Go on.

10

Q. What is your answer? A. No, sir.

Q. Isn't it a fact, Neary, that you met those two men in company with your friend Handle, Shevlin and Sheenan in New Jersey in the Spring or early summer of 1926? A. No, sir.

Q. Several times? A. No, sir. Never.

Q. Did you at any time visit Handle, Shevlin and Sheehan in New Jersey? A. No, sir.

20 Q. They visited you at Blackwell's Island, didn't they? A. Yes, sir.

Q. And when they visited you in February, to be exact, on February 14, 1927, Haas was with them? A. Haas was with them?

Q. Yes. A. No.

Q. Yes, at Blackwell's Island. A. Haas was never with them.

30 Q. And came to Blackwell's Island and talked with you on the benches outside there in the outer office? You know the benches, the long benches? A. The long benches in the outer office?

Q. Yes? A. What do you mean, in what outer office?

Q. Well, you say he never visited you there? A. I said Handle and Sheehan visited me. I said Haas never visited me.

40 Q. I am saying do you recall a day in February, 1927, when Handle, Sheehan, Happy Malloy and Siegel and Haas visited you at Blackwell's Island? A. Haas and Siegel never vis-

Canice J. Neary—For Defendants—Cross

ited me at Blackwell's Island. Sheehan was by himself when he visited me. Malloy and Handle came by themselves.

Q. Haas was never there with Handle? A. Haas was never in Blackwell's Island to visit me.

Q. Your friends Handle and Sheehan and Siegel are around New York now, aren't they? A. Siegel I don't know very personal. 10

Q. Now, recalling your answer to—what kind of a car did you have in 1926? A. Sixty Chrysler sedan.

Q. Where did you buy it? A. I bought it in Steinway avenue and Jackson avenue, Lenoble Brothers.

Q. When did you buy that Chrysler car? A. Why, I really don't remember. I am not exactly—I don't know the date. 20

Q. Well, was it on August 4, 1926? A. Yes, it could be around that time, yes.

Q. It was, wasn't it? A. I won't say for sure. I am not positive.

Q. And prior to that time what car did you use and own? A. Why, I have owned cars—

Q. I am not talking about your vest business. I am talking about the ordinary car that you use for your personal traveling? A. Well, then I had the Hudson sedan. 30

Q. You had a Dodge sedan that you swapped in for this car, didn't you? A. I had a Dodge sedan, yes, sir.

Q. So that you swapped in a Dodge sedan when you bought this Chrysler, didn't you? A. Yes, I did.

Q. You got that Dodge sedan from William Crowley, under the name of Tierney? A. No, sir. 40

Canice J. Neary—For Defendants—Cross

Q. Where did you get that Dodge car from?
A. I bought it.

Q. From whom? A. I bought it off a man in my garage.

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

10 Q. Well, you owned your car. Don't you know who you got it from? A. Yes. I have owned one hundred cars through life. I can't remember one-quarter of the names.

Q. Well, there is something particular about this car. It came through a man named Tierney, didn't it? A. I won't say it did or I won't say it didn't.

20 Q. Have you got any papers relating to it in your possession now? A. How can I have any papers——

Q. Have you? Yes or no? A. I don't think I have any papers relating to that car, because I had to turn the bill of sale and everything to the Chrysler people when I bought the new Chrysler.

Q. Did you ever have any dealings with a man named Tierney? A. Well, the name is familiar.

30 Q. Yes. It is very familiar. And it is the man who gave you the Dodge sedan car and that is his picture, isn't it? A. That is not his picture, no sir.

Q. That is not his picture? A. No, sir.

Mr. Walsh: Showing the witness Exhibit S-11 for identification.

Q. When did you get this Dodge car? A. When?

Q. Yes. A. Well, I run it around for a week before I swapped it in——

40 Mr. Walsh: I ask that be stricken out.

Canice J. Neary—For Defendants—Cross

Q. When did you get it, prior to August? A. I don't know.

Q. You don't know? A. No, sir.

Q. Was it a week? A. A week, a week and a half, two weeks, maybe.

Q. Well, where did you get it from? A. I bought it off a man in my garage. 10

Q. And you can't remember the man's name? A. The man pulled the car into my garage and finally the man wanted to sell the car.

Q. Was that man— A. It was a cheap buy and I bought the car.

Q. Well, was that the man whose picture I hold in my hand? A. I said no.

Q. No, you are sure about that? A. I am positive that is not the man. 20

The Court: He has answered that four times now. Go on.

Mr. Walsh: All right, sir.

Q. You say your partner was John Mitchell and was not known as "Linky"? A. Positive.

Q. Positive? A. Yes, sir. The police records in New York will show that. The man was killed.

Q. In April or May, 1926, you say you didn't go to Denton Place, Lincoln? A. Yes, sir. 30

Q. You say you saw Haas at your Astoria home when? A. A short time after the shooting at Yonkers.

Q. In 1925? A. Well, it was after Christmas when this happened out at my house. It was in 1926, the beginning of 1926.

Q. Do you know Kiekart? A. No, sir.

Q. Did you ever see him before? A. First time I seen him was the 19th of November down com- 40

Canice J. Neary—For Defendants—Cross

ing to court here.

Q. Never saw him before in your life? A. Never seen him before and he didn't see me, and the warden called my name to show that—

10 The Court: Answer questions only, you will save yourself a lot of trouble and save time for us.

A. All right, your Honor.

Q. Did you ever see Fanning before you were arrested with him? A. No, sir.

Q. When was the first time you ever saw Fanning? A. Last week, when I was brought into court.

20 Q. That was the first time you ever saw him? A. First time I ever seen the man in my life.

Q. Now you speak about having a case on in court? A. Yes, sir.

Q. On October 14, 1926? A. Yes, sir.

Q. How many times was that case on? A. How many times was it on? Well, from May until January 7 it must have been on; well, let us say between eighteen and twenty-two times.

30 Q. Now, you were represented by counsel, were you? A. Yes, sir.

Q. Who was your counsel?

Mr. Cutley: I object as being immaterial.

Mr. Walsh: Oh, it is material.

Mr. Cutley: What is the materiality?

The Court: I think I will allow that.

Q. Who was your counsel? A. James Murray.

Q. The man who sits in the corner? A. Yes, sir.

40 Q. Assisting at the counsel table? A. Now?

Canice J. Neary—For Defendants—Cross

Q. Assisting you in your defense with your attorney? A. Now? Yes.

Q. Did this case go to trial eventually? A. January 7 I pleaded guilty, 1926.

Q. To one charge or two?

By the Court:

10

Q. 1926? A. 1927, I mean.

By Mr. Walsh:

Q. To one charge or two? A. To the gun.

Q. You were indicted on two charges, weren't you? A. I was indicted on two charges, yes sir.

Q. Did you plead to both charges? A. I pleaded to the gun. I was carrying the gun I pleaded.

20

Q. But you can't say whether that was one or two charges or one or two indictments? A. Well, the other indictment was thrown out, I understand.

By the Court:

Q. Did I understand you to say that you never saw Fanning until last week in the courtroom here? A. Yes, your Honor.

30

Q. Weren't you in the courtroom more than once? A. Why, your Honor, I have been in the courtroom, I was called four times.

Q. Up here? A. Yes, sir.

Q. Wasn't Fanning here every time? A. Why, no, sir. Fanning was here the first time, was last week I seen him.

Q. Fanning wasn't here each time you were up? A. No, sir.

40

William Fanning—For Defendants—Direct

The Court: All right.

Mr. Walsh: That is all.

The Court: Call your next.

10

WILLIAM FANNING, one of the defendants, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Dolan:

Q. How old are you, Mr. Fanning? A. Twenty-six.

20 Q. When were you arrested charged with participating in this mail robbery? A. January, either the end of January or the early part of February, 1927.

Q. 1927? A. Yes, sir.

Q. Where were you arrested? A. New York.

Mr. Walsh: I would object. This indictment wasn't found until 1928.

30 The Court: What difference does it make? Go on. What difference does it make when he was arrested or where he was arrested? He is here. Go on.

Q. Where were you arrested? A. Either one of those two months.

Q. Where? A. Over in New York.

Q. Where were you held at that time? A. Police Headquarters.

40 Q. For how long? A. Four days, if I can remember.

William Fanning—For Defendants—Direct

Q. Four or five days? A. To the best of my memory.

Q. And during that time were you in any line-up? A. Yes, I was in quite a few line-ups.

Q. About how many? A. About twelve.

Q. And after four or five days what happened? 10

Mr. Walsh: Well, now, I would object. It is not alleged this was a trial or anything.

The Court: What of it? What is the objection?

Mr. Walsh: I will withdraw the objection.

The Court: He was in a number of line-ups and finally he wound up here. 20

Q. What happened after four or five days? A. The postal authorities brought me to the Magistrate's Court and dismissed me.

Mr. Walsh: I object to what somebody told him.

A. Postal authorities brought me to court and discharged me. 30

The Court: Now he is arrested and he is here.

Q. That was when? A. That was either the latter part of January or the early part of February. I am not sure.

Q. 1927? A. Yes, sir.

Q. When were you subsequently arrested on this charge? A. Well, I was in State's prison 40

William Fanning—For Defendants—Direct

they come and took me out here about a month ago.

Q. And brought you here? A. Brought me here.

Q. Where were you living in January, 1927, when you were first arrested? A. For this crime? 417 West 56th Street.

10 Q. How long had you lived there? A. Ten years.

Q. Talk out loud so the jury will hear you. A. Yes.

Q. Were you in Newark on October 13, 1926? A. No, sir.

Q. Were you in Elizabeth on the morning of the fourteenth of October, 1926? A. No, sir.

20 Q. Were you in the apartment of Cuniffe in Newark on the Wednesday of the week preceding October 14? A. No, sir.

Q. Or on October 7? A. No, sir.

Q. Do you know Cuniffe? A. Didn't know Cuniffe.

Q. Did you ever meet him? A. Never met him.

Q. Did you know Crowley? A. Don't know him.

Q. Ever meet him? A. No, sir.

Q. Did you know Grosso? A. No, sir.

30 Q. Were you ever in Grosso's apartment in New York City? A. No, sir.

Q. Were you there in Grosso's apartment in New York City during the week preceding October 14, 1926? A. No, sir.

Q. Did you know Kiekart? A. No, sir.

Q. Ever meet him? A. No, sir.

40 Q. Did you ever participate in any conference out in the apartment at Clinton Place, Newark, of Cuniffe, at which meeting were present Neary, Kiekart, Haas, Cuniffe and Crowley? A. I was never in any apartment in Newark.

William Fanning—For Defendants—Direct

Q. Did you know Canice Neary? A. No, sir.

Q. Directing your attention to October 13, 1926, do you recall where you were on that night? A. I was at a wake that night.

Q. Where? A. Downtown in the village, Tenth street.

Q. What city? A. New York. 10

Q. Whose wake was it? A. Fellow named John Rowan.

Q. How long had you known Rowan? A. Five years.

Q. How can you fix now, as you look back, that you were at this wake on the thirteenth of October, 1926? A. How can I remember it do you mean?

Q. Yes. How do you recall that? A. Well, for the simple reason that the last time I was arrested for this crime, why, the postal authorities asked me where I was. 20

Q. Now, when was that? A. That was in '27.

Q. In January or February, 1927? A. Yes, sir. At that time I wasn't sure where I was, but when I was dismissed I made it my business to find out.

Q. Do you mean you recollected? A. I recollected. 30

By the Court:

Q. Your recollection got better afterward do you mean? A. Yes, sir.

By Mr. Dolan:

Q. You recall then that in January or February of 1927, you say? A. Yes. 40

William Fanning—For Defendants—Direct

Q. Went over it in your mind? And you brought it back—

Mr. Walsh: I object to leading.

10 Q. As the result of that recollection where do you now say that you were on October 13, 1926?

A. At this wake.

Q. At this wake?

Mr. Walsh: I ask that be stricken out. Counsel has asked the question. As a result of that recollection where do you now say you were, and the answer of the witness is yes, sir.

20 A. I said what I told him before that I was at the wake.

Mr. Walsh: I object to the leading.

Q. How long did you stay there? A. Until about half past two or three o'clock.

Q. In the morning? A. In the morning, yes.

Q. That would be the morning of October 14?

A. Yes, 14.

30 Q. Where did you go then? A. I went home.

Q. Where was your home at that time? A. 56th Street, 417 West 56th.

Q. What time did you arrive at your home? A. About half an hour after I left where the wake was.

40 Q. What time do you fix that at? A. I wasn't sure of the time. I realized it was between half past two and three o'clock that I left the wake, but it would take me about half an hour to get from there to my home.

William Fanning—For Defendants—Direct

Q. You got home some time between three and three-thirty? A. Yes.

Q. What did you do then? A. I went to bed.

Q. What time did you arrive that same day, October 14? A. About 12.30.

Q. As you left your house at 417 West-- A. 10
West 56th Street.

Q. (continuing) From three o'clock or some time between three and three-thirty on the morning of October 14 and twelve o'clock that same day, had you left your house? A. I got up and went out, yes, I had some business to attend to.

Q. You say you got up at twelve o'clock noon time? A. Between twelve and twelve-thirty, yes.

Q. Between the time you arrived home from the wake at three or somewhere between three and three-thirty on this morning of October 14, and noon time at that day, had you left your house? A. No, sir, I did not. I was in bed. 20

Q. Were you ever in Elizabeth at all in connection with this robbery that has been testified to here? A. The only time I was in Elizabeth was when I passed through there on the train.

By the Court:

Q. Were you ever there in connection with this hold-up, this mail robbery? A. Never, no. 30

By Mr. Dolan:

Q. Were you ever in the City of Newark? A. No, sir.

Q. Or did you ever participate in any conference with Cuniffe, Crowley, Neary and Haas and Kiekart? A. No, sir. 40

William Fanning—For Defendants—Direct

Q. And Garrity? A. No, sir.

Q. Do you know Haas? A. Yes, I know him, yes.

Q. When did you meet him? A. Around March, 1927, March or April, one of those two months.

10 Q. 1927? A. Yes.

Q. Where did you meet him? A. In a place of business there. He came up there.

Q. Where was your place of business? A. 66th Street and Amsterdam Avenue.

Q. What business was it? A. Saloon.

Q. That was in March or April, 1927? A. Yes, sir.

Q. What did he come to your place of business for? A. He wanted to buy some liquor off me.

20 Q. Did you sell him any? A. Yes.

Q. How often did he come there? A. He came there once after that.

Q. Did you sell him liquor then? A. No

Q. Did you ever have any trouble with Haas? A. Only that he owed me some money, and I tried to borrow it off him.

Q. He owed you some money? A. Yes.

30 Q. That he borrowed from you? A. He owed me money for the liquor he bought off me and some money he borrowed off me.

Q. Did you have any quarrel with him over this? A. Yes, certainly.

Q. When was that? A. That was in 1927, about three months after.

Q. Three months after you first met him? A. Yes, after I first met him.

Q. Which time you fix as March or April? A. Yes.

40 Q. Fixing that somewhere in June or July then? A. Yes.

William Fanning—For Defendants—Cross

Q. Did you see him any time after that? A. No, sir.

Q. That was the last time you saw him? A. Yes, that was the last time I saw him.

Mr. Dolan: Cross examine.

10

CROSS EXAMINATION by Mr. Walsh:

Q. Do you know Kiekart? A. No, sir.

Q. You never saw him before you saw him in court? A. Last week I saw him.

Q. Last week was the first time you ever saw Kiekart? A. When I was handcuffed to him, that's all, in jail.

Q. And Haas you only met in March, 1927? A. Yes, sir.

20

Q. That is the first time you ever knew him? A. Yes, sir.

Q. You say you lived around New York for years? A. Yes, sir.

Q. For how long? A. All my life.

Q. Is that quite true? A. Yes, sir.

Q. How many times have you left New York? A. To go to work here in Jersey, that's all, once.

Q. That was the only time you left New York? A. Working in Long Branch in hotels.

30

Q. When was that? A. 1925.

Q. What was the name of that hotel? A. Hollywood Hotel.

Q. That is the only time you left New York City in your life, is that right? A. That's all, yes, sir.

Q. Were you ever convicted of crime? A. Yes, sir.

Q. And you never left New York City? A. No, sir.

40

William Fanning—For Defendants—Cross

Q. Were you ever in Sing Sing? A. Yes.

Q. Then you did leave New York City? A. Well, New York State, that is—

Q. I am talking about New York City? A. Yes, sure, to go to Sing Sing.

10 Q. And you were arrested? A. I was doing a time in there when I was taken here.

Q. Was that the first time you had been in there? A. No, I was there before.

Mr. Dolan: If the Court please—

By Mr. Walsh:

20 Q. Is that the first time you left New York before—

Mr. Dolan: I object to whether he was in Sing Sing before or not or more than once as not being proper.

The Court: He may ask if he was convicted of crime, and he said yes, and that's all he can ask.

By Mr. Walsh:

30 Q. You have been shot on your left shoulder, haven't you? A. No, sir.

Mr. Dolan: I object. There is no evidence here of that even in the State's case, that anything was done in the perpetration of this alleged mail robbery.

40 The Court: That is true, but there was evidence on the part of the State that Fanning was not there on one of the meetings because he was sick, and it was to the ef-

William Fanning—For Defendants—Cross

fect that he was injured, and shot or some such thing. Do you recall that?

Mr. Dolan: I recall some such testimony.

The Court: This is in line with that. It is proper cross examination. I don't think I will allow him to ask that question. It was introduced in evidence here. Why emphasize it? 10

Mr. Walsh: This is my reason, if your Honor please. The witness on the stand has denied knowledge of Crowley and Cunniffe. If I can show that Crowley is the man who shot that left shoulder for him, I thereby bring myself right within the scope of cross examination.

The Court: No. 20

Mr. Dolan: If the Court please, I object to any such introduction of any evidence or any attempt.

The Court: Objection sustained.

Mr. Walsh: May I ask this question:

Q. Were you shot in the left shoulder on or about October 4, 1926?

Mr. Dolan: I object for the same reason. 30

Mr. Walsh: That leads up to the house of Grosso's at the time that Haas says he was there.

Mr. Dolan: I object on the ground that it is not proper cross examination. He says he does not know Haas.

The Court: I cannot listen to both of you. I am not a man of so many parts as that. I am trying to hear what you both say and trying to think at the same time. 40

William Fanning—For Defendants—Cross

Mr. Dolan: I object on the further ground that it is not a matter collateral to the issue before this Court.

The Court: Mr. Walsh, you put that in evidence on the State's case, didn't you?

10

Mr. Walsh: I put that in evidence on the State's case, that there was a visit to Grosso's place.

20

The Court: All this witness says is that he was not there. He sat here and heard that evidence. Why do you want to ask him again? He sat here and heard it and does not deny it. Why do you open up those things, except in a general way that he says he was not there at all. He does say that.

By Mr. Walsh:

Q. Did you know James Cuniffe? A. No, sir.

Q. Do you know Crowley? A. No, sir.

By the Court:

30

Q. Can you give any reason why Kiekart should testify that you were there at these meetings with Cuniffe and the rest, and that you were present at this hold-up? Why should he say that? A. Well, the only reason I can give your Honor is that for the simple reason that Kiekart has been known as a bad egg. He has been wanted by the police for a long time, and he has got—

Q. Why should he say that you were there? A. To try to save himself and put me in it.

40

Q. Why does he pick you? Have you any reason in your mind that you can give why he should

William Fanning—For Defendants—Cross

pick you, a man you say you do not know? Why should he pick you as having been present there? I am speaking of Kiekart. A. Because I was arrested for it once before.

Q. Why should Kiekart say that you were there? Can you give any reason? A. That is the reason I was trying to explain to you. He would put anybody in there to save himself. 10

Q. How do you know that? You don't know the man? A. I know that by reading in the papers up in the prison I just came from, there is a man by the name of—

The Court: Strike that out.

By the Court:

20

Q. I asked you one simple question. Is there any reason that you can give why Kiekart, a man you say you do not know and whom you say does not know you, should say that you were there? If you can't give any, it is all right? A. That's the reason.

Q. He is picking on you generally because he is a bad man? A. Because in order to save himself from going to the electric chair— 30

Q. He is picking on you? A. He put me in his place. That's the reason.

By Mr. Walsh:

Q. You say you were at a wake that night? A. Yes, sir.

Q. What is Rowan's name? A. Rowan, John Rowan.

Q. Where did he live? A. 148 West 10th street. 40

William Fanning—For Defendants—Cross

Q. You knew him for a long while? A. I did.

Q. How old a man was he? A. Twenty-four years old.

Q. Was he married or single? A. Married.

Q. And he lived at 148 West 10th street? A. Yes, sir.

10 Q. What kind of a house was that? A. I was only there at night. I couldn't tell you what kind of a house.

Q. Where did you go to find the dead man? A. I went to the third floor in the back.

Q. He lived on the third floor in the back? A. Yes, sir.

Q. When did he die? A. He died the day before.

20 Q. On October 12, 1926? A. At St. Vincent's Hospital, he died from tuberculosis.

Q. With whom did he live at 148 West 10th street? A. His wife, I guess.

Q. Do you know? A. That is the only way I know, as I met a friend that same day, a friend named Thompson, that was a friend of his and a friend of mine, and he told me that he was dead, and asked me would I go to the wake, and I told him I would go to the wake.

30 Q. So you went to this wake with Thompson? A. No, I went by myself and Thompson was there.

Q. Was Thompson there? A. Yes.

Q. Was anybody else there that you know? A. Not that I know of.

Q. What was Thompson's first name? A. James Thompson.

Q. You have known him for a long while? A. A few years.

40 Q. And you knew Rowan for a few years? A. Five years.

William Fanning—For Defendants—Cross

Q. Five years? A. About five years, yes.

Q. Where did you meet Mr. Rowan? A. I used to go around dancing, and I met him, school dancing, as a boy.

Q. As a boy? A. Yes.

Q. When was Rowan buried? Did you go to the funeral? A. No, I didn't go to the funeral. I left there that night, I told you and the lawyer, between half past two and three o'clock. 10

Q. Did anybody leave with you? A. No, I left by myself.

Q. Is there anybody in the courtroom here who was at that wake with you? A. No, I don't think so.

Q. Where is Thompson? A. I don't know.

Q. Did you tell your lawyer about Thompson? A. Yes, I told him. 20

Q. Thompson was a stable sort of citizen that you could find in New York at any time? A. Yes.

Q. Do you know where Thompson lived? A. No, I don't know where he lived, no. I don't know where he lived.

Q. You never knew where he lived? A. No, sir, but I know where he "bees" all the time, in the club.

Q. Where he hangs out? A. In the club, 49th and Eleventh avenue. 30

Q. You told that to your lawyer? A. Yes.

Q. How long ago? A. How long ago I told the lawyer?

Q. Yes? A. When he first came to see me.

Q. That was two or three months ago? A. No, in here, when he first came to see me about three or four weeks ago.

Q. What was Rowan's business? A. What was his business? 40

William Fanning—For Defendants—Cross

Q. Yes? A. I don't know. He done anything.

Q. Did he hang around this club? A. Who? Rowan? Rowan was a loader, a loader, a long-shoreman, bootlegger, anything to make money.

Q. That is the kind of a man Rowan was? A. Yes.

10 Q. Is that the particular profession which you were following, a loader? A. No, I worked in hotels, and then I was bootlegging for a while, and then I got a little place of my own, a saloon, selling beer and whiskey.

Q. You did not go to Sing Sing for that, did you? A. No.

Q. That was for— A. For carrying a revolver.

20 Mr. Dolan: I object. The Court has ruled out any evidence as to why he went to Sing Sing.

By Mr. Walsh:

Q. Are you married? A. No, sir.

Q. With whom did you live in 56th street? A. My mother and father.

Q. Your mother and father? A. And brother.

30 Q. This last time that you were brought to the County Jail here was the first time you had been arrested in New York City for this, wasn't it? A. Yes.

The Court: He says so, that is all.

Mr. Walsh: That is all.

The Court: Will counsel please step up here a minute, the Prosecutor and counsel for the defendant?

Lawrence F. Cantwell—For Defendants—Direct

(The counsel and the Prosecutor conferred with the Court at the desk.)

The Court: I want to consult the jury a moment. It may be possible for us to finish this case today, gentlemen. Would you care to take the case today? All those who would be willing to remain and finish the case, please put up their hands. 10

(Several jurors raised their hands.)

The Court: It looks like a very healthy majority, and if it does not take too long, we will try to finish it today. 20

LAWRENCE F. CANTWELL, a witness called on behalf of the defendants, being first duly sworn according to law, on his oath, saith:

Direct examination by Mr. Cutley:

Q. Mr. Cantwell, what is your business? A. 30
Record clerk of the Court of General Sessions,
County of New York, State of New York.

The Court: Is this record by him?

Mr. Cutley: No, sir, I don't think it is.

The Court: Do you want to explain that record by him?

Mr. Cutley: Yes.

The Court: The record will speak for itself, or it will not speak at all. 40

Lawrence F. Cantwell—For Defendants—Direct

By Mr. Cutley:

Q. Mr. Cantwell, are you familiar with the making up of records for the purpose of exemplification? A. Yes.

10 Q. I show you an exhibit marked D-1 for identification and point thereon to the third page thereof to certain notations, such as "Part III, July 13, 1926——"

The Court: Don't answer that yet.

Q. (continuing) "Part VI, October 14, 1926," and I ask you if that is the customary method of making notations on the indictments as to the progress of the cause.

20

The Court: What is the object of that? To explain that record?

Mr. Cutley: Yes, sir.

The Court: The record will speak for itself, or it will not speak at all. You can ask him, if you want, what he knows about this particular case without that record, if he knows anything about it. That is, the particular case mentioned in the record.

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Mr. Walsh: I object.

Mr. Cutley: Did your Honor overrule my question?

The Court: I am not going to permit you, as I note from what has transpired before me on this trial in my presence, to explain the record or what certain notations on it mean. If the record is competent, it will speak for itself without any explanation as to what certain dates and fig-

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Lawrence F. Cantwell—For Defendants—Direct

ures in it mean. Mr. Cutley, if the record of proceedings in this indictment were procured by you in the regular way, the minutes of that court would show, as they should show, the progress of this case. The paper which you hold there has on the back of it certain notations without explaining what they mean. The minutes of that court will certainly speak as to the progress of this case and what happened with it, and on any day in which it was adjourned, and those minutes should have been returned here certified and exemplified in the proper way under the Evidence Act. If you want to show what happened, that is the right way.

10

Mr. Cutley: I take it that your Honor overruled my question?

20

The Court: I am not going to permit you to show what certain dates on the record mean. They must speak for themselves or they will not speak at all.

Mr. Cutley: I will adopt the Court's suggestion.

By Mr. Cutley:

30

Q. As record clerk there, in making up a record of a criminal case, are there any minutes kept of the progress of criminal cases?

Mr. Walsh: I object. This man has not kept the record, nor does he make any minutes that would be material.

The Court: I am going to assume that this is a court of record, and if it is, it has

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Lawrence F. Cantwell—For Defendants—Direct

a record.

Mr. Cutley: Your Honor has suggested to me——

The Court: I have not made any suggestion.

10

Mr. Cutley: Well, in deciding the last question, your Honor said that the minutes would be the appropriate method exemplified to produce what you think I am intending to prove. I am asking him if they have minutes.

The Court: It is a court of record, and if they do not have minutes, they are not functioning right, are they?

20

By the Court:

Q. Mr. Cantwell, you have minutes of your court proceedings, don't you? A. Certainly.

Q. And those minutes show the adjournments of indictments and all that, do they not? A. Yes.

Q. And what day and all that? A. Yes.

Q. They show the changes of bail? A. The whole progress of the case.

30

By Mr. Cutley:

Q. I show you Exhibit D-1 for identification and ask you to look at that and from your observation to say if there is anything on that to show any continuances of that cause.

Mr. Walsh: I object.

The Court: I have seen the paper which the witness holds in his hand, and I know that it does not show any continuances of

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Lawrence F. Cantwell—For Defendants—Direct

the cause, so you need not ask him that. You have seen that, and it does not show anything.

Mr. Walsh: I object.

Mr. Cutley: Then that is overruled?

The Court: It is not overruled. It is impossible for him to find continuances on there. You have seen that record, and I have seen it. It does not show any such thing, and he could not see any more on it than you and I can. 10

By Mr. Cutley:

Q. Is there a minute book kept of adjournments of a cause in the Court of General Sessions of New York City? A. Just what do you mean by that? 20

Q. A minute book, a record? A. Yes, there is.

Q. There is a book which will disclose that? A. Yes.

The Court: There can't be any question about that.

Mr. Cutley: That is all.

Mr. Walsh: No questions.

Mr. Cutley: I offer in evidence Exhibit D-1 for identification first on the ground that in Mr. Walsh's questioning of Neary— 30

The Court: I am going to allow that paper that you have there in evidence, the paper which shows two indictments with some dates on the back of it.

(The paper referred to was received in evidence and marked "Defendants' Exhibit 1.") 40

*Daniel Joseph Casey—For Defendants—Direct
Cross*

DANIEL JOSEPH CASEY, a witness called on behalf of the defendants, being first duly sworn according to law, on his oath, saith:

10 *Direct examination by Mr. Cutley:*

Q. Mr. Casey, what is your business? A. Secretary to Elmer F. Quinn.

Q. Who is he? A. Senator of the State of New York.

Q. Do you reside in New York City? A. I do.

Q. On the 14th day of October, 1926, did you see Charles Neary in New York City? A. I did.

Q. At what time? A. Between ten and five minutes after ten.

20 Q. Where? A. On the ground floor of General Sessions Court Building.

Q. In New York City in Center Street? A. New York City, Borough of Manhattan.

Q. Did you talk to him? A. I did.

Q. With whom was he at that time? A. A little fellow that was on the stand here, I noticed with him—Duffy. He was talking to a bondsman and some other men there that I did not know.

30 Q. How long did you talk to him? A. I spoke to him for about twenty-five minutes.

Q. Did you know Neary before this time? A. I knew him since September, 1926.

Mr. Cutley: Cross examine.

CROSS EXAMINATION by Mr. Walsh:

40 Q. What is your business? A. Secretary to Elmer F. Quinn, State Senator.

Daniel Joseph Casey—For Defendants—Cross

Q. A State Senator of New York? A. Yes.

Q. And you are his secretary? A. I am.

Q. Secretary in his senatorial capacity? A. In his senatorial capacity.

Q. That does not keep you very busy, does it? A. Yes.

Q. Are you in any other business? A. Yes, he is an attorney. 10

Q. Are you? A. Yes, I am with him all the time.

Q. You work in his law office? A. In the law office.

Q. As an associate of Mr. Murray? A. No.

Q. Do you know Mr. Murray? A. No, I met Mr. Murray just once. I saw him in the court room down in General Sessions Court in this case. 20

Q. In this case? A. Not this case, but the case that I am speaking about in the General Sessions Court Building.

Q. Was this senator, Neary's attorney? A. No.

Q. How do you recall it? A. I recall it—at that time I was secretary to Senator Daniel Carroll.

Q. Another State Senator? A. Since died, and when he died, I went with Quinn.

Q. Were you in his law office, too? A. He wasn't a lawyer. In September Senator Carroll told me— 30

Q. I don't care what he told you. How do you recall that day nearly two years ago? A. I will explain it.

Q. Why did you pick that date up? A. Let me explain it to you, will you? I will tell it to the twelve men here—

Q. I am not going to let you make a speech. Where were you on the 10th of October? A. In 40

Daniel Joseph Casey—For Defendants—Cross

New York City.

Q. Where were you on the 15th? A. At New York City.

Q. At ten o'clock in the morning where were you? A. In New York City.

10 Q. How do you know? A. Because I came down to meet Canice Neary in the General Sessions Court Building at ten o'clock. I had an appointment there with him.

Q. You had an appointment to meet him? A. Yes, Mr. Neary.

Q. On this day? A. On that day.

20 Q. Was that the only day this case was up? A. I went to Albany for him to check up some records. It seemed that Mr. Murray asked the Senator while he was there in Albany, if he would go over to the City court house and check up a permit record, so I went up to Albany, and they asked me to go up on the 11th, and I said there is no use going up on the 12th, because it is a holiday, and I will go up on the 13th, and I will have the desired information back on the 14th.

Q. Who? Neary's record? A. Not his record; a record of a permit on file in the City Court of Albany County, New York.

30 Q. An appointment? A. A permit, p-e-r-m-i-t.

Q. For carrying a revolver? A. For carrying a revolver.

Q. It was filed in Albany? A. Filed in Albany.

Q. And there was no such record? A. There was a record there, but there was a discrepancy over it, and I brought down the voucher, a certified copy from the court, and gave it to Mr. Murray in that building.

40 Q. And you gave it to Mr. Murray on the 14th? A. No, I didn't give it to him on the 14th. I was

Daniel Joseph Casey—For Defendants—Cross
unsuccessful on the 14th. I went up there on the
13th, but I could not get it.

Q. Do you know what time the General Sessions
Court opens? A. 10.30.

Q. And then there is a list called, isn't there?
A. That is, I don't know the procedure.

Q. How long have you been around a law office
in New York and you don't know the procedure? 10

A. I mean about that court on that day. Some
have different procedures.

Q. That court all the time, they call the list,
don't they, at 10.30? A. They call the list at 10.30.

Q. And that takes to eleven or half past eleven?
A. No, it takes ten or fifteen minutes.

Q. Then, a quarter of eleven— A. It takes—
they don't have any more than ten or twelve men
on the calendar, and for that day in that part, 20
they just call the twelve men, and then they—

Q. Were you in that part that day? A. I was
down on the ground floor with Neary.

Mr. Walsh: I ask that that be stricken
out.

The Witness (continuing): Yes, I did, I
went up as far as the door and saw Neary
go in.

Q. What part? A. Part VI. 30

Q. You went as far as the door on Part VI? A.
Part VI.

Q. With Neary? A. Right behind Neary.

Q. And then you left him at the door? A. Left
him at the door. I thought I would see Mr. Mur-
ray there, but Mr. Murray was not there.

Q. Then you let Neary go in to adjourn his own
case? A. I don't know what happened. Some-
body must have represented him there. I seen 40

Daniel Joseph Casey—For Defendants—Cross

him walk in, and I heard the name called, Canice Neary.

Q. You heard that? A. I was standing right near the door.

Q. Even though you were standing outside—

10 A. No.

Q. You are a little hard of hearing? A. No, I can hear very well.

Q. You heard his case called? A. I heard his name called.

Q. Who answered? A. I don't know.

Q. You did not hear anybody else answer for him? A. I saw Neary walk up to the rail.

Q. Who was the lawyer? A. Some man there.

20 Q. A man that answered that case? A. Some man there from Murray's office, but I don't know the man.

Q. What judge was in Part VI on that morning of October 14? A. I think it was Judge Knott.

Q. Will you say that it was? A. I am pretty positive.

Q. You saw the man, did you? A. Judge Knott, yes, sir.

30 Q. Did you see the man who was occupying the bench? A. I didn't see him on the bench, but coming through the hall, I heard the attendants say, "Everybody stand aside, please."

Q. Did you see him? A. I seen Judge Knott go into that part, but I didn't see him sit on the bench.

Q. Then you do not know whether he was sitting on the bench? A. I saw him go into the court, and I take it for granted—

Q. Do you know? A. I don't know.

40 Q. Then say so. A. Common sense would tell me—

Daniel Joseph Casey—For Defendants—Cross

The Court: If you talk less and answer your questions more definitely, you will satisfy us more.

By the Court:

Q. How did you charge your memory with this thing? How and why do you charge your memory with this particular incident? A. Because in September the Senator said to me, "I want you to get"—— 10

Q. No, no. Why did you particularly charge yourself with this thing? You do this kind of thing right along off and on for your friends, don't you? A. No, that is the first time I was a witness in my life. 20

Q. I mean this thing of going down to General Sessions for men that are in trouble? A. No, I don't. 20

Q. Did the Senator ever send you down before? A. I went down quite a few times on errands, yes, to the courthouse.

Q. Why did you charge yourself with this particular thing? There was nothing very unusual about this? A. Yes, because Senator Carroll had asked me—I was working for the man. 30

Q. You are a lawyer? A. No, I am not a lawyer, your Honor.

Q. You are in a lawyer's office? A. I am in a lawyer's office.

Q. The question I am asking you, I am trying to make quite clear. What is it in particular that would make you remember now in 1929 that on October 14, 1926— A. Because——

Q. Wait a minute.

Daniel Joseph Casey—For Defendants—Cross

The Witness: I am sorry, Judge. I thought you were finished.

10 Q. (continuing) You were down to General Sessions Court for Neary? A. Because it was the first time that I came there. About the trip to Albany, I knew that they wanted me to go up there, and I told them that the place is closed, and I will go up on the 13th and get the certified copy and bring it back.

Q. Why on the 14th of October—Neary's case was up several times before that and afterward? A. Yes, but I didn't participate in it before.

20 Q. Did you know that it was up there several times before and afterward? A. Well, I knew it was on afterward.

Q. And before, too? A. I didn't know about before.

Q. Then what was it that made you remember the particular date? I want an intelligent answer on that, if I can get it? A. I knew from my trip to Albany—

30 Q. You had made many trips to Albany in 1926, hadn't you? A. Not for a certified copy in that case, and that was—it took me six hours looking for the judge. The judge had resigned, and—

Q. You didn't make that trip on the 14th of October? A. No, I made it on the 13th of October. I said that on the record, on the 13th of October.

By Mr. Walsh:

Q. How long have you known Neary? A. I knew him since September of that year, 1926.

40 Q. Can you see the judge sitting on the bench

Daniel Joseph Casey—For Defendants—Cross

at Part VI standing at the door? A. No, you cannot.

Q. So you did not see him that morning? A. No, I didn't see him.

Q. Nor nobody else could see him from where you stood? A. No, but you can see him come along the corridor and walk into the court. 10

Mr. Walsh: I ask that that be stricken out.

By Mr. Walsh:

Q. From where you stood, you could not see that he was occupying the bench? A. No, sir.

Q. You said a few moments ago that you saw Neary walk up to the railing. Did you say that or not? A. I heard the man's name— 20

Q. Did you see him walk up to the rail? A. I seen him walk over to the rail, yes.

Q. Did you see him? A. I saw him walk to the railing.

Q. You saw Neary walk— A. I saw him walk over to the railing, because there is on the other side—

Q. Could you see the railing from where you stood? A. No, you could not. 30

Q. So that you did not see Neary walk over to the railing, did you? A. Well, I heard Neary's name called, and he walked in the court.

By the Court:

Q. Why don't you answer the question? A. I did answer the question.

Q. You did not answer. The question will be 40

Daniel Joseph Casey—For Defendants—Cross

asked again, and you answer it.

By Mr. Walsh:

10 Q. A few moments ago you said you saw Neary walk to the rail? A. Yes.

Q. You did not see him because you could not, is that so? A. I said I saw him.

Q. Could you see him go to the rail from where you stood? Yes or no. A. Do you mean did I see him standing at the railing? Judge, I ask you to help me on this—

The Court: You don't need any help.

20 The Witness: I saw the man walk to the railing. I didn't see him stand at the railing. Is that what you mean?

The Court: You had better pay attention. This is the last time I will ask you to pay attention. The question is a simple one, whether you saw him walk to the railing. You answer that yes or no.

A. I said no.

30 *By Mr. Walsh:*

Q. From where you stood, you could not see the railing? A. I could not see the railing.

The Court: You might have said that a half hour ago.

Mr. Walsh: That is all.

Mr. Cutley: The defendants rest.

40 The Court: How long does counsel want to sum up?

Daniel F. Sheehan—Rebuttal—For State—Direct

(Counsel conferred with the Court at the desk.)

The Court: Gentlemen of the jury, after consulting you, it seems that we cannot finish this case tonight. We will try to close the case so as to sum up in the morning and charge the jury in the morning. We will try to close it so far as we can, but I am afraid you will have to remain over until tomorrow. 10

STATE'S REBUTTAL TESTIMONY 20

DANIEL F. SHEEHAN, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Walsh:

Q. Mr. Sheehan, you are the deputy warden or head keeper of Blackwell's Island, known as Welfare Island? A. I am. 30

Q. And have been for how long? A. Eight years.

Q. Do you know Canice Neary, the defendant, one of the defendants here? A. I do.

Q. Do you know Benjamin Haas? A. I do.

Q. The witness who was called? A. I do.

Q. Mr. Neary was asked on the stand if Benjamin Haas, Handle, Happy Malloy, and another party called upon him at Blackwell's Island, or 40

Daniel F. Sheehan—Rebuttal—For State—Direct

Welfare Island, in February, 1927, and he said that they didn't. Do you know anything about that meeting?

10 Mr. Cutley: I object to that on the ground that it is the bringing in of a collateral matter which is incompetent, irrelevant, and immaterial and has nothing to do with this case, and is getting it off in a side issue.

The Court: You do not think it affects, in any way, shape or form, or that it is evidence which the jury might take into account in affecting his credibility?

20 Mr. Cutley: No, sir. I think it is purely collateral and makes it inadmissible.

The Court: I think not. I will allow it.

Mr. Cutley: Prays exception.

(Question repeated by stenographer.)

(Exception prayed, signed, sealed and allowed.)

ALFRED A. STEIN,
Judge.

30

A. They had a meeting there. I don't know the date.

Q. Were you present at that meeting? A. I was on duty on the floor of the administration hall.

Q. What part of the institution was it that Neary talked with Haas there? A. It is a bench.

Q. A bench? A. Yes.

40 Q. A long bench? A. It is two benches. Four people can sit on each bench.

Daniel F. Sheehan—Rebuttal—For State—Cross

Q. Was Handle present at that meeting? A. Handle.

Q. If you know? A. Yes.

Q. Was Malloy there? A. I don't know.

Q. Do you know Malloy? A. No, I don't know him by name. I might know him.

Q. How many people were with Haas the day that he called on Neary in February, 1927? A. I think there were four. I think they filled one bench. 10

Q. And you were on duty on the floor and saw Neary talking to him? A. I was on duty around that section of the prison.

CROSS EXAMINATION by Mr. Cutley:

Q. Saw Neary talking to whom? A. Seen him —all of them. 20

Q. Who were they? A. Handle, this fellow here Haas, a little short fellow, Jewish, I don't know who the other one was.

Q. Did you ever see that fellow before in your life, Haas? A. Sure I did.

Q. Before that time? A. Sure, I did.

Q. Now, in getting into Welfare Island you have to have a pass, don't you? 30

Mr. Walsh: I object.

The Court: Why object?

Mr. Walsh: I will withdraw it.

Q. Is that so? A. If you come through the regular channels at half-past eleven you have a pass.

Q. You were a deputy warden of that institution? A. I am head keeper.

Q. You are head keeper? A. Yes, sir. 40

Daniel F. Sheehan—Rebuttal—For State—Cross

Q. Did those men, to your knowledge, come through regular or irregular channels? A. Irregular.

Q. To your knowledge? A. To my knowledge.

10 Q. And what time of day did they come if they came at all? A. Close on to the change of the watch.

Q. What time is that? A. Around four o'clock.

Q. So Handle or anybody else had to have a pass to see Neary, is that so? A. No.

Q. Haas had no pass? A. He did not.

Q. You have a regular visitor's book in which you keep records of the regular visitors who come through the proper channels? A. Yes.

20 Q. You knew that was wrong? A. I had nothing to do with it. He was passed in by the warden.

Q. When was this date, do you recall the date? A. I don't remember the date.

Q. Was it two years ago? A. I don't know.

Q. Well, don't you know? A. Half of the time in jail you don't know what day of the week it is.

Q. Well, did Haas ever come alone to see him? A. I think he was at the bridge without a pass to get down and I wouldn't pass him.

30 Q. Is not that the only time that Haas was ever there? A. Downstairs to visit Neary?

Q. Yes? A. Yes.

Q. And you didn't let him in? A. Yes, I did. No, I didn't let him in. He was let in by a keeper. I said before that he come at eleven o'clock and hadn't a pass and I wouldn't pass him.

Q. Well, was that the night of the— A. No.

Q. That was a different time? A. That was a different time.

40 Mr. Cutley: That is all.

*D. F. Sheehan—Rebuttal—For State—Redirect
Joseph L. Curcio—Rebuttal—For State—Direct*

REDIRECT EXAMINATION by Mr. Walsh:

Q. That is the time that he tried to get in you would not let him, he was alone, is that right, Mr. Sheehan? A. Yes.

Q. But the time that he did get in he had these others with him? A. Yes, sir. 10

Mr. Walsh: That is all.

JOSEPH L. CURCIO, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath, saith: 20

Direct examination by Mr. Walsh:

Q. Mr. Curcio, where do you live? A. Lincoln, New Jersey.

Q. I show you State's exhibit No. S-11 for identification and ask you if you know that man? A. I do.

Q. What was the name under which you knew him? A. Connolly. 30

Q. Do you know his first name? A. He went under the name of Bill Connolly.

Q. I show you Exhibit S-12 for identification and ask you do you know that man? A. Yes, sir.

Q. Under what name did you know him? A. Only knew him as Jim.

Q. Any last name? A. No, sir.

Q. Where did you meet these two men? A. Twelve Denton Place, Lincoln. 40

Joseph L. Curcio—Rebuttal—For State—Direct

Q. Were they living there at that time? A. Yes, sir.

Q. And in what year was that, what month? A. 1926, I should judge about August.

Q. About August? A. No. Earlier than that. July.

10 Q. Stand up, Neary.

Mr. Cutley: Don't you stand up at all. I object to that as self-incrimination.

The Court: Now, Mr. Cutley, do you object to the man standing up?

Mr. Cutley: Yes, sir.

The Court: Instead of giving orders, make your objection, and tell me why.

20 Mr. Cutley: I object on the ground that he is entitled, by his Constitutional right, not to be of aid in any self-incrimination whatsoever.

The Court: Your motion is granted.

By the Court:

Q. Now, if you see Neary in the room, and you say you know him, don't you, you say you know Neary? A. I don't know him.

30

By Mr. Walsh:

Q. That is, you don't know him by name? A. I don't know him by name, that is what I mean.

Q. Well, is there anybody in this room that you saw at this 12 Denton place in the summer of 1926?

40

The Court: What is this 12 Denton place, what about it?

Joseph L. Curcio—Rebuttal—For State—Direct

Mr. Walsh: Where he met Cuniffe and Crowley, where this witness met Cuniffe and Crowley.

The Court: Well, what about it?

Mr. Walsh: I asked the defendant Neary on the stand whether he visited Cuniffe and Crowley at this place, 12 Denton place, in the summer of 1926. Neary said he didn't. He didn't know where Lincoln was. 10

The Court: All right. Suppose he did? In the summer of 1926?

Mr. Walsh: I asked him in the summer—

The Court: Suppose Neary did visit Cuniffe and Crowley in the summer of 1926, what about it?

Mr. Walsh: It attacks his credibility as a witness and he says now that he never knew Cuniffe or Crowley in their lifetime. If I can show that they were together in the same room— 20

The Court: That is what I want you to tell me about.

Mr. Walsh: Yes, sir.

The Court: All right.

Q. Did you see the defendants that are on trial here? A. Yes, sir. 30

Q. Did you see Charles Neary at 12 Denton place, Lincoln, in company with Cuniffe and Crowley in the year 1926? A. I seen a man resembling Charles Neary in 12 Denton place.

Q. Well, can you take a look at that man? A. Yes, sir.

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

Mr. Walsh: Cross examine. 40

Joseph L. Curcio—Rebuttal—For State—Cross

CROSS EXAMINATION by Mr. Cutley:

Q. You have been in court here the last two days, haven't you? A. Yes, sir.

Q. And you saw Neary on the stand? A. Yes, sir.

10 Q. You seen him come into court? A. Yes, sir.

Q. You knew where he was sitting at the table? A. Yes, sir.

Q. Why did you say it resembles him? Wasn't your mind made up it was Neary before you got on the stand at all? A. Yes, sir.

Q. Why hesitate about it?

The Court: Is that an argument?

20 Q. Why did you hesitate about it?

Mr. Walsh: I object. I do not think he has hesitated at all. He is careful.

A. Why? I made identifications on pictures of Neary; that is why I hesitated.

By the Court:

30 Q. Before you saw him here do you mean? You made the identification of pictures of Neary before you saw him here? A. Yes.

Mr. Cutley: That is all.

Mr. Walsh: That is all. That is our case.

The Court: Anything further?

Mr. Cutley: Both sides rest.

The Court: How much time do you men want in the morning to sum up?

40 The Court: We will reconvene tomorrow

Joseph L. Curcio—Rebuttal—For State—Cross

morning at 9.30 for counsel to sum up and
 you will take the Court's charge after the
 summation is complete. Now, do not dis-
 cuss this case among yourselves. You have
 not heard the entire case until you have
 also heard the summation of counsel and
 the charge of the Court on the Law. It is
 not fair, and it is not the way to decide a
 case to discuss it until you go in the jury
 room after you have the whole case, testi-
 mony, summation, and charge of the court
 on the Law. That is the correct time for
 jurors to deliberate upon the case, and not
 before. So do not discuss it among your-
 selves. Of course, do not allow anybody
 else to discuss the case with you either. If
 anybody attempts anything of that kind
 you are in duty bound to report to the
 Court, because, as you are now function-
 ing, you are a part of this court. This
 Court and this Jury are sworn to admin-
 ister justice here in this matter. If any-
 one attempts to talk to you he offers an
 affront to the Court, because you are part
 of it. So now the prisoners will be remand-
 ed first. And the jurors will be allowed to
 go next.

(Adjourned until tomorrow, Wednesday,
 January 30, 1929, at 9.30 a. m.)

Motion for Direction of Verdict
 COURT OF OYER AND TERMINER
 UNION COUNTY

10

STATE OF NEW JERSEY,

vs.

WILLIAM FANNING, CANICE
 NEARY, alias Charles Neary,
 DANIEL GROSSO, alias David
 GROSSO, FRANK KIEKART, and
 BENJAMIN HAAS.

20

Transcript of stenographer's notes of evidence
 in the above entitled cause, taken before Hon.
 ALFRED A. STEIN, Common Pleas Judge, and a
 Jury, at the Union County Court House, in the
 City of Elizabeth, New Jersey, on the thirtieth
 day of January, A. D. 1929, at 9.30 a. m.
 Appearances:

30

ABE J. DAVID, Esq., *Prosecutor of Pleas.*
 JOHN I. WALSH, Esq., (Present) *Asst. Pros.*,
 WALTER C. TENNY, Esq., (Present) *Asst. Pros.*,
Attorneys for the State.

GEORGE E. CUTLEY, Esq., *Attorney for the*
defendant Canice Neary.
 JAMES P. DOLAN, Esq., *Attorney for the*
defendant William Fanning.

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Mr. Cutley: I desire to move for a direction
 of a verdict on the ground that in the whole case

Motion for Direction of Verdict

the State of New Jersey has not sustained the allegations in the indictment beyond a reasonable doubt.

The Court: The motion is denied.

Mr. Cutley: I ask for an exception. That motion I make on behalf of both defendants.

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(Mr. Dolan sums up the case for the defendant William Fanning.)

(Mr. Cutley sums up the case for the defendant Charles Neary.

(Mr. Walsh sums up the case for the State.)

The Court: Now, gentlemen, I am going to adjourn until quarter of two, in order to give you an opportunity to have your lunch, and then you will return here and you will receive the Court's charge. I want to warn you again, as I did yesterday, to keep your minds open. The case is not yet closed and will not be closed until you have heard the charge on the law and then you can retire and deliberate upon your verdict. The audience will remain seated. The prisoners will be remanded first and then the jury will be allowed to step out next.

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(Adjourned until 1.45 p. m.)

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Afternoon Session, 1.45 p. m.

The Court's Charge

Court's charge to the Jury by Honorable ALFRED A. STEIN, Common Pleas Judge, as follows:

10 Gentlemen of the Jury: The Grand Jury of
this county has sent to this Court and Jury for
trial an indictment for murder in which several
persons are named, in fact, five. The Court, at
the commencement of this trial, upon a motion
for that purpose made by the Prosecutor, has al-
lowed a severance; in other words, instead of all
of the persons named in the indictment being tried
at this time, you are trying only two of the de-
20 fendants named, to wit, William Fanning, and
Canice Neary. That is a perfectly proper motion
for the State to make and it is within the discre-
tion of the Court to grant that motion or refuse
it. The motion having been granted you are now
trying the two defendants I have just named.

At the outset let me say to you that it is the
function of the Court to instruct the jury upon
what is the law which applies to the case. On the
other hand, it is the function of the jury to decide
30 the facts. The law you must take from the Court
and from no one else. So you see we have two
separate functions to discharge; I am obliged to
tell you what is the law, and you are obliged to
find what are the facts, and then apply the law as
laid down by the Court to those facts. I have no
right to invade the province of your duty and you
have no right to invade the Court's province. If,
during the course of the charge, the Court should
40 refer to any testimony, that reference, if it is
made, is not to be understood as deciding any

The Court's Charge

facts, but merely as an attempt to elucidate the evidence for the convenience of you gentlemen on this jury, or to elucidate or explain the application of some principal of the law; and if, according to the recollection of the jury, the Court inadvertently has erred in its statement of any evidence, whether disputed or undisputed, or assumes or states the existence or presence in the case of any evidence which is not actually before the jury, you should disregard the recollection of the Court and be guided entirely by your own recollection of what was the evidence. 10

The law presumes that these defendants are innocent and that presumption continues until overcome by proof establishing their guilt beyond a reasonable doubt. 20

What is a reasonable doubt? You have heard discussion of that phrase used in the law, by counsel in their summation. It is a term that is often used and not very readily understood on the part of the layman. So I am going to read for you the definition laid down by our highest court, of the term reasonable doubt as it applies to the trial of this case. The upper court has said concerning reasonable doubt that it is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. From this you will see that reasonable doubt is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. The bur- 30 40

The Court's Charge

den of proof is on the Prosecution to satisfy you beyond a reasonable doubt that the defendants are guilty. If, upon such proof there be reasonable doubt remaining in the minds of you jurors, the accused are entitled to the benefit of that doubt by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding and the judgment of those who are bound to act conscientiously upon it. Which, of course, is this jury, you are the ones who are to act conscientiously upon this evidence.

You are engaged in the discharge of a very solemn and a very important duty. I know of no moment in a man's life that is so solemn as the time when he is called upon to decide between the life or freedom of a person who is accused of having committed a crime against the law of this State. I think you realize that when such an occasion happens to you in the course of your life, that you ought to bring your best judgment, your best experience, in deciding the facts which are involved in the case that is submitted to you; that you are to divest your minds of all prejudices, and all notions, or all impressions that might have been made by reason of the notoriety of this particular case, and to allow yourselves not to be influenced by any other consideration than the testimony in this case and the legal rules which I shall lay down to you in the course of this charge from time to time, which are applicable to the facts of the case as developed by the testimony. When you do that you discharge your full duty. Neither are you to be swerved from the performance of your full duty merely because it may be

The Court's Charge

in your mind a disagreeable one. In other words, you men are to be as big as the law assumes you to be. Whatever the result that the testimony may lead you to, you should have the courage to announce that result, whether your verdict means the acquittal or the electrocution of these defendants.

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The indictment in this case charges the defendants, in conjunction with others, of having, on the fourteenth day of October, 1926, feloniously and with malice aforethought killed and murdered one John Enz, a citizen of this county and State. The State claims that these defendants, together with some others (and we are not now trying the others, but just these two), at the time of this homicide, were engaged in the perpetration of a mail robbery, and so whether they did any shooting, I mean, these defendants did any shooting, if some of those engaged in this robbery did the shooting which resulted in the death of John Enz, then these defendants are both guilty of murder in the first degree. That substantially is what I understand the State claims in this case, and I will read you the statute on the subject enacted by the supreme law-making power of this State, the Legislature, so that you may know what the law is. I may not, in the course of my charge, trouble you very much with facts.

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The law reads thus: "Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery, or sod-

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The Court's Charge

omy, shall be murder in the first degree, and all other kinds of murder shall be murder in the second degree."

10 From this reading of the statute you will see that if the killing of John Enz occurred in the
perpetration of or an attempt to perpetrate a robbery, and these defendants at the bar partici-
20 pated therein with those who killed Enz, if the evidence establishes that beyond a reasonable doubt, these defendants would be guilty of murder in the first degree, and it makes no difference whether the defendants knew or consented to the killing of John Enz,—I repeat, it makes no difference if they knew or consented to the killing of John Enz, if they participated in the robbery which took place, and the death of Enz resulted in the perpetration of the robbery, they are both guilty of murder in the first degree.

30 The first thing you will do when you go into the jury room will be to decide whether there was a robbery. I know that the State's contention that there was a robbery has not been contested on the side of the defense, but, nevertheless, it is a fact which you must find and decide whether
40 there was a robbery, even though it is not contested. If the testimony satisfies you then beyond a reasonable doubt that there was a robbery, or an attempted robbery, then you take the next step and inquire who were the perpetrators of this robbery. If you come to the conclusion who were the perpetrators of the robbery, and that one or two, or any number of them killed John Enz in the perpetration of that robbery, and that these defendants aided, assisted, or abetted

The Court's Charge

the perpetration of the robbery, and you are satisfied from the evidence beyond a reasonable doubt as to those facts, then these defendants are guilty and you should convict them.

You have had the history of the defendants pretty well exploited; they both have been convicted before of crime, and that sort of evidence of previous conviction is admitted and is proper evidence in the law for the purpose of affecting their credibility; whether it will so affect that credibility is for the jury to say; how much, and if at all, and how far, or whether it affects their credibility at all, or not, are all questions for you to decide. Likewise, while I am on that point, I will say to you at this juncture that there was evidence of previous convictions admitted concerning several witnesses; in fact, I may say, that I do not recall a case, in all of my experience at the bar, both as a lawyer, and Prosecutor, and Judge, where there were so many witnesses who were obliged to admit, upon examination, that they had been previously convicted. That evidence is allowed for the purpose of affecting the credibility of those witnesses, if, in the minds of you men, it affects their credibility. In other words, you may say, from that evidence of previous conviction, how far these people are to be believed. You may conclude that their conviction does not discredit them in your minds at all; that is for you. You may consider their evidence and say how far, if at all, their previous convictions affect their testimony, and how far you will believe it, or not, or whether, regardless of the previous convictions, you believe all they say; that is all for you.

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The Court's Charge

This robbery which the State alleges happened on this occasion, on October 14, 1926, in broad daylight, in a prominent part of the city of Elizabeth, has been fully described to you; that is, I mean, the scene which certain witnesses beheld on that morning, has been detailed to you. There have been sworn in this case, certain men whose business brought them in the general neighborhood of this shooting and robbery, and they have told you what happened. The evidence, generally, is to the effect, on the part of those witnesses who described this whole situation, that it took but a few moments. The State's claim is that the defendants, together with a number of others, who are named in that indictment, and some others who are not named, and are now dead, planned this hold-up for several weeks; that on several occasions they came to the city of Elizabeth, by arrangement and by agreement, to carry out this robbery, and that for some reason, one and another, that they alleged here and gave, it was not carried out; but on the fourteenth day of October, 1926, the plan was put into execution. You might ask yourselves why it is that some of these people who were on the stand and who saw this thing happen, did not identify either of these defendants as being present. And you may answer that question for yourselves by asking yourselves how much, if anything, you would have seen of the persons, so that you might be able to identify them later, if this robbery took place as it was described, with suddenness and precision, machine-gun bullets flying in every direction, and then you might properly ask yourselves how much time would you have had to note the faces of

The Court's Charge

those who were engaged in this hold-up, note their faces to the extent where you could subsequently identify them. It is true that none of these witnesses who were on the stand attempted to identify these defendants as being present, but the State relies upon two of the participants in the crime, a man named Frank Kiekart, and another named Benjamin Haas, who are likewise named in this indictment for murder, and through the lips of these participants engaged in this crime, self-confessed participants, it offers to you and to this court proof that these two defendants were there and participated in this robbery. That sort of evidence of accomplices is good in law, but I am required to call your attention to the law which governs that particular class of testimony; I have said that that evidence is good and that it is competent in law, and my authority for so stating is the case of *State vs. Hyer*, reported in 39 New Jersey Law, and that which I am reading is found on page 601; in that case the upper court, speaking of the witnesses who were accomplices, as were these two, Haas and Kiekart, says that: "The legal competency of accomplices as witnesses is clearly established." In other words, they are legally competent. Then it goes on to say: "In deed, it is said to be the policy of the law to invite such persons to come forward and expose undiscovered participants in their guilt." Before I read further in this case I want to make this comment: If it were not the policy of the law to invite such men as these men, accomplices in crime, to come forward and expose undiscovered participants in their guilt, you can readily understand that there may arise situations in which no proof might be made except through the lips of that class of witnesses. So far as the

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The Court's Charge

evidence in this case is concerned, there seems to have been no one who could identify the persons engaged in this robbery, except these two men, that is, there is no other evidence in this case, but whenever, even though it be the policy of the law to invite these people to testify, they do so testify it becomes the duty of the court to charge you the further law concerning that kind of evidence. First I will charge you the language of a request on the part of these defendants with reference to the rule of law governing accomplices which reads: "While it is the rule of law in this state that a jury may convict a defendant on the testimony of an accomplice or accomplices alone, it is the duty of the jury to scrutinize closely the testimony of accomplices and unless such testimony is corroborated on material points the defendant ought to be given the benefit of any reasonable doubt arising upon the consideration of the accomplices' testimony. The corroboration which the jury is directed to look for must be upon matters material to the crime of the accused, not as to the facts of the crime merely, but upon matters which connect the prisoner with the crime committed and the number of accomplices testifying has no effect to lessen the need of supporting proof. Such proof of accomplices' testimony must come from sources untainted by the particular crime, that is, the homicide charged against the defendants and for which they are on trial."

I so charge you.

Our upper court, in the case from which I read to you a moment ago, *State vs. Hyer*, further

The Court's Charge

says with reference to the testimony of accomplices: "Yet tainted as they are with confessed criminality, and testifying, as they often do, under the strong motive of hope of favor or pardon, it is but natural to withhold from them that faith in their testimony which we accord to the upright, disinterested, and innocent. It was reasonable that courts should regard their testimony with suspicion, and look carefully into the secret motives that might actuate bad minds to draw in and victimize the innocent." So from the law as I have told it to you, there arose a custom and practice, quite universal, which is almost entitled in its observance to the reverence we have for law itself, to advise jurors, on the part of the Court, in proper terms, not to convict defendants on testimony of accomplices unless they can find corroboration in the testimony of other and unsuspected witnesses, upon such material circumstances as tend directly to establish the guilt of the accused.

These two witnesses, Kiekart and Haas, have described for you the scenes, and there have been witnesses in this case, according to the recollection of the Court, who have corroborated these two men as to the scenes, or some of the things that happened on this occasion. The machine-gun was found at the scene of this crime, or alleged crime; Kiekart, I believe it was he, or whether it was Haas, you will have to remember that, identifies that as one of the guns that was brought out there. Witnesses have described how these nippers, or whatever may be the right term to use, I do not know, that were employed, and that are here in evidence, were used to cut the

The Court's Charge

lock of the mail truck. A witness saw the mail bag, if my memory is correct, taken from the truck and put into a car in which these accomplices say Neary was riding, together with some others, and these witnesses, in so far as some of those things are concerned, corroborate these accomplices. These accomplices say that Enz was shot and that some others were shot, they do not say who did the shooting, which of them discharged the guns, but they are corroborated in that by witnesses who were on the stand, and the only thing that I recall in which they are not corroborated is the identity of these two defendants. Generally speaking, in most all particulars they have been more or less corroborated by citizens who were on the scene. You might ask yourselves the question, it is important, of course, what there is in this evidence that you can find that might prompt these two witnesses, Kiekart and Haas, to say that these two men who are now on trial were there and participated. Some evidence was introduced of some difficulty, some feeling between Neary and Haas. I do not recall any evidence that was introduced to show any feeling or difference between Kiekart and either of these two defendants. If there was any you will remember it; I recall none that would tend to show that there was any feeling between Kiekart and either of these two men so you may ask yourselves are they telling the truth, and you may ask yourselves, if they are not telling the truth, why should they say this—implicating themselves and these two men. Is there anything in this case which would lead you to believe that they were doing it from any motive except the motive of

The Court's Charge

coming forward and disclosing participants in the crime with them?

The defense is what is known in law as an alibi. That is a good defense, I mean, it is recognized in the law as a good defense, if established. In reference to that defense I will firstly charge a request handed me by the defendants, in this language: "The defendants having attempted to establish what, in the law is known as an alibi, the jury must give the defendants the benefit of any reasonable doubt engendered by even inconclusive evidence of the alibi." 10

I so charge you.

By this defense of alibi the defendants seek to prove that they were elsewhere, in another place, at the time of the commission of the alleged offence against them. By it they endeavor to show and prove that being at another place at the time, they could not have committed the offence charged. 20

It is important for you gentlemen to remember, in connection with this defense of alibi, that the State alleged that this hold-up and this robbery took place in the city of Elizabeth on the fourteenth day of October, 1926, somewhere in the general neighborhood of between 9:15 and 9:30, because in the defense of alibi the defendants seek to prove impossibility of presence at the time and the place charged, and so impossibility of presence at the time and place charged is the essential feature of this defense, and if the defendants prove to the satisfaction of the jury that it was impossible for them to have been present at the 30 40

The Court's Charge

time and place of the commission of the offence charged, then they have established the defense of alibi. Upon the interposition of the defense of alibi, anyone of three conclusions might be reached by the jury, and the first is, notwithstanding the defense of alibi, you gentlemen still can
10 conclude, if the evidence warrants, that the defendants were present; in other words, you need not believe that defense, if, in your rich judgment, from the facts as adduced, and the observation of the witnesses, and the law as applied, you conclude that the defendants were, nevertheless, present. Next you may conclude that the defendants were absent, that they were elsewhere than the scene of this crime, and if you so conclude they
20 must be acquitted. And third, the testimony offered in support of this defense of alibi may create such a degree of uncertainty in the minds of you gentlemen as to the whereabouts of the defendants that you would be not satisfied beyond a reasonable doubt of their guilt, in which case the jury must acquit.

What was the evidence of the alibi? Please understand me, I am not endeavoring to cover all
30 of the testimony, because I probably would not remember it all. With reference to Neary, a part of the defense of alibi was founded upon evidence of an exemplified copy from the Court of General Sessions of the County of New York. This you will take with you in the jury room, and you will examine it, look at it, read it. It was introduced upon the theory that it proves that the defendant Neary was in this Court of General Sessions in
40 New York on the fourteenth day of October, 1926. The exhibit, which I hold here in my hand, con-

The Court's Charge

tains a certificate from the clerk, certified to by the Court, and sets forth a copy of what is certified to be an indictment against Neary for carrying a pistol, revolver, without a written license, on May 13, 1926. And another indictment, which seems to be one for carrying a forged and counterfeit written communication, which pretends to be, or is alleged to be a license to carry a revolver on the twenty-fifth of June, 1926. Endorsed on the back of the first indictment there are certain notations of bail fixed, and renewals of bail, and then there appears a column in which are a number of dates, including the date October 14, 1926, which dates, as you will see when you inspect this document, are not explanatory of anything. What they mean I do not know and I cannot help you; whether they mean adjournments of the case, or what, I do not know, but there is nothing that I can see, and you will take this with you and see for yourselves, which indicates that Neary was present in the courtroom in the General Sessions Court of New York on October 14, 1926. There is his own testimony that he was there. There is testimony, I think, of some one other witness, or possibly two, that he was there. That is as near as I recall the testimony upon which the defense of alibi rests with reference to Neary.

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Fanning says he was at a wake that night, or that day, and that he was not here.

I cannot help you good men in determining those questions of fact. They are for you to decide; but it may be helpful for me to say to you that there are certain things which you may call

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The Court's Charge

to your aid in determining the credibility, the amount of credibility, and so forth, which you will give to the various witnesses. First, you have a right to consider the manner and the appearance of all of the witnesses on the stand, whether they were for the prosecution or for the defense. You have a right to recall, as you recall their testimony, wherein any of them testified as to what they saw, the means which they had to observe that which they say they saw. You have a right to determine and recall the manner of testimony as bearing upon the accuracy of memory and capacity which they displayed on the stand, and their power to tell what they saw, and all such other things as may be helpful to you in determining the truthfulness and the credibility of the witnesses.

Then there is another rule that you might apply, and that is to ask yourselves, in the case of each witness, when you recall his testimony, no matter whether for the State or for the defense, what interest, if any, the particular witness had, or may have had, in telling the story which he or she told. You may ask yourselves whether these defendants, in applying that rule, have any interest in telling the story which they have told on the stand, about their being elsewhere, their defense, what interest they have in telling that story. By that I do not want to be understood as meaning that because they are charged with murder that they would not tell the truth, but you have a right to consider the fact that they are here on trial for a very heinous and a very grave offence, when you consider those stories, which you have a right to consider. You also have a

The Court's Charge

right to consider and apply that to the witnesses Kiekart and Haas, and to all of the witnesses.

So you apply those rules in weighing the testimony, in determining what credibility you will give to the various witnesses.

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I do not know that I can say anything more to you good men that might be helpful to you in the discharge of your duty, but I am bound to say to you that if you conclude, upon the consideration of the evidence, that these defendants are guilty, then you are to determine what punishment there shall be, and let me impress upon you this, in this case, there can be no verdict of murder in the second degree; your verdict must either be murder in the first degree or an acquittal. There is no middle way.

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The Legislature, in 1919, passed this Act: "Every person convicted of murder in the first degree, his aidors, abettors, counsellors, and procurers, shall suffer death, unless the jury shall, by their verdict, and as a part thereof, upon and after consideration of all of the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed. If you good men conclude, from the evidence in this case, that there should be a recommendation of life imprisonment and a conviction of murder in the first degree, say so. If you should determine there should be an acquittal, say so. If you determine there shall be a conviction of murder in the first degree, without any recommendation, say so. If you come to the conclusion that the defendants are guilty of the crime

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The Court's Charge

charged against them in the indictment, then your verdict would be murder in the first degree. And if you intend that they should not be executed, then you must say murder in the first degree with a recommendation of life imprisonment, because,
10 unless you do that, and intend life imprisonment, and come in without that recommendation, it will become the duty of the Court to pass upon them the judgment of death, or, in other words, the death penalty. If you recommend life imprisonment then they would be confined in the State Prison during the terms of their natural lives.

This is an important matter both from the standpoint of the government and the dignity of this State, and of these defendants.
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There is no way in which law and order can be maintained, there is no way in which the peace and quiet of communities can be assured unless through the right arms of our courts and the right arms of our courts are the juries. No community was ever better than the people in it. You are not to be swayed by sympathy, you are not to be deterred from the path of plain duty as you see it under your sworn oaths because of temerity; you
30 are to do your duty as you see it under your sworn oaths. Now, such is your position, and I know that you men will give this case your proper consideration, and that your verdict will be one prompted by a sense of duty both to the State and to these defendants.

Now you may retire.

40 Mr. Cutley: In relation to talking about the

The Court's Charge

effect of convictions, you mentioned the defendants, in the first part of your charge. That is also applicable to the witnesses.

The Court: I charged that with reference to the witnesses.

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Mr. Cutley: I want to note a general exception.

The Court: On the part of Neary or both?

Mr. Cutley: Both.

(Exception prayed, signed, sealed and allowed.)

ALFRED A. STEIN, 20
Judge.

(Jury returned to courtroom.)

(Jury called by the Clerk.)

The Court: I wish now noted on the record that Judge Dolan, representing Fanning, is present, and Mr. Carlin, representing Mr. Cutley's office, who represents Neary, is also present. 30

Gentlemen of the Jury: You have sent a note to me in which you ask something which cannot be complied with; you are asking for the record of the examination of Neary, Haas, and a witness named Curcio, and the warden of Blackwell's Island. The testimony taken by the stenographer is not available; it was taken by the stenographers alternately. At any rate, you have heard the tes- 40

The Court's Charge

10 timony. To read any particular witness's testimony to you would be to emphasize that testimony. The jury are required to recall the testimony which was offered on the trial and to recollect what it was. I do not see how I can help you. Is there anything else you would like to know? If there is anything I can do for you I will be glad to do it. Is there anything else, Mr. Foreman?

The Foreman: Not if we can't get that information.

20 The Court: We cannot read all that testimony to you now again, or portions of it as you request. The trial has consumed only just two days; counsel have summed up before you and gone over all of the testimony; the Court has referred to some of it; you will have to rely upon your recollection of what it was.

You may retire.

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Certificate

NEW JERSEY COURT OF ERRORS AND
APPEALS

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> and CANICE NEARY and WILLIAM FANNING, <i>Plaintiffs-in-Error.</i>	}	On Appeal.	10
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I, ALFRED A. STEIN, Judge of the Court of Oyer and Terminer in and for the County of Union, before whom the above indictment was tried, do certify that the foregoing is the entire record of the proceedings including the testimony of the witnesses had and taken upon the trial of the indictment in the above stated cause, in the State of New Jersey vs. Canice Neary and William Fanning. 20

ALFRED A. STEIN, 30
Judge.

Dated: May , 1929.

To the Honorable Judges of the New Jersey Court of Errors and Appeals at Trenton, New Jersey:

I return herewith, as I am commanded, the en- 40

Certificate

tire record in the case of The State of New Jersey vs. Canice Neary and William Fanning, for murder, May Term, 1928, with all things touching the same.

10 In testimony whereof, I have hereunto set my hand and affixed the seal of said County this 8 day of May, 1929.

ALFRED A. STEIN,
Judge.

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Assignment of Errors

NEW JERSEY COURT OF ERRORS AND APPEALS

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center; flex-grow: 1;"> <p>STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p>and</p> <p>CANICE NEARY and WILLIAM FANNING, <i>Plaintiffs-in-Error.</i></p> </div> <div style="font-size: 4em; line-height: 1; padding: 0 10px;">}</div> <div style="text-align: right; vertical-align: middle;"> <p>10</p> <p>On Appeal.</p> </div> </div>
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Afterwards, to wit, before our Judges of our said New Jersey Court of Errors and Appeals at Trenton, comes the said Canice Neary and William Fanning by their attorney, George E. Cutley and says that the record and proceedings aforesaid and also in giving the judgment upon the indictment there is manifest error in this:

1. Because the trial Court allowed the prosecutor to ask the following question:

“For how long had you known Cuniffe?”

2. Because the trial Court refused to sustain defendants’ objection to the following question:

“Did you talk with him at that time and in regard to what?”

3. Because the trial Court allowed the prosecutor to introduce in evidence gun S-5 and mail bag S-2.

Assignment of Errors

4. Because the trial Court refused to strike out all the evidence of any conversations, activities and conduct of Cuniffe, Crowley and Grosso.

10 5. Because the trial Court refused to sustain the defendants' objection to the following question:

Mr. Neary was asked on the stand if Benjamin Haas, Handle, Happy Malloy and another party called upon him at Blackwell's Island or Welfare Island in February, 1927, and he said that they didn't.

20 "Do you know anything about that meeting?"

6. Because the trial Court erred in its charge to the jury when he charged as follows:

30 "It is important for you gentlemen to remember in connection with this defense of alibi that the State alleged that this hold-up and robbery took place in the City of Elizabeth on the fourteenth day of October, 1926, somewhere in the general neighborhood of between 9:15 and 9:30 because in the defense of alibi the defendants seek to prove the impossibility of presence at the time and place charged, and so impossibility of presence at the time and place charged is the essential feature of the defense and if the defendants prove to the satisfaction of the jury that it was impossible for them to have been present at the time and place of the commission charged

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Assignment of Errors

then they have established the defense of alibi.”

7. Because the trial Court refused to direct a verdict of acquittal at the close of the entire case.

8. Because the verdict was contrary to and against the weight of the evidence.

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GEORGE E. CUTLEY,
Attorney of Plaintiffs-in-Error.

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Specification of Causes of Reversal

NEW JERSEY COURT OF ERRORS AND
APPEALS

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STATE OF NEW JERSEY,
Defendant-in-Error,

and

CANICE NEARY and WILLIAM
FANNING,
Plaintiffs-in-Error.

} On Appeal.

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The plaintiffs-in-error set forth the following specification of causes for reversal of the judgment heretofore entered against the plaintiffs-in-error herein in the Union County Court of Oyer and Terminer wherein the plaintiffs-in-error claim that they have suffered manifest wrong and injury in the admission and rejections of testimony in the charge of the Court and the denials of matters of discretion by the Court, to wit:

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1. Because the trial Court allowed the prosecutor to ask the following question:

“For how long had you known Cuniffe?”

2. Because the trial Court refused to sustain defendants’ objection to the following question:

“Did you talk with him at that time and in regard to what?”

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Specification of Causes of Reversal

3. Because the trial Court allowed the prosecutor to introduce in evidence gun S-5 and mail bag S-2.

4. Because the trial Court refused to strike out all the evidence of any conversation, activities and conduct of Cuniffe, Crowley and Grosso. 10

5. Because the trial Court refused to sustain the defendants' objection to the following question:

Mr. Neary was asked on the stand if Benjamin Haas, Handle, Happy Malloy and another part called upon him at Blackwell's Island or Welfare Island in February 1927 and he said that they didn't. 20

“Do you know anything about that meeting?”

6. Because the trial Court erred in its charge to the jury when he charged as follows:

“It is important for you gentlemen to remember in connection with this defense of alibi that the State alleged that this hold-up and robbery took place in the City of Elizabeth on the fourteenth day of October, 1926, somewhere in the general neighborhood of between 9:15 and 9:30 because in the defense of alibi the defendants seek to prove the impossibility of presence at the time and place charged, and so impossibility of presence at the time and place charged, and so impossibility of presence 30
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Specification of Causes of Reversal

10 at the time and place charged is the essential feature of the defense and if the defendants prove to the satisfaction of the jury that it was impossible for them to have been present at the time and place of the commission charged, then they have established the defense of alibi."

7. Because the trial Court refused to direct a verdict of acquittal at the close of the entire case.

8. Because the verdict was contrary to and against the weight of the evidence.

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GEORGE E. CUTLEY,
Attorney of Plaintiffs-in-Error.

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Joinder in Error

UNION COUNTY COURT OF OYER AND
TERMINER

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	10
and		} In Error.
CANICE NEARY and WILLIAM FANNING, <i>Plaintiffs-in-Error.</i>		

And thereupon the State of New Jersey, de-
 fendant-in-error, by Abe J. David, its attorney,
 comes into Court and says that there is no error
 either in the record and proceedings aforesaid
 or in the giving of judgment aforesaid, and it
 prays here that the Court here may proceed to
 examine as well the record and proceedings afore-
 said, as the matters aforesaid assigned for error
 and the judgment aforesaid, in the manner afore-
 said given, may in all things be AFFIRMED, etc.

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ABE J. DAVID,
 Attorney for Defendant-in-Error.

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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CANICE NEARY and WILLIAM
FANNING,
Plaintiffs-in-Error.

ON WRIT
OF ERROR.

BRIEF OF PLAINTIFFS-IN-ERROR

On the thirty-first day of January, 1929, in the Union County Court of Oyer and Terminer, Canice Neary and William Fanning were convicted of murder in the first degree with a recommendation of imprisonment for life at hard labor and sentenced on the same day by the presiding Judge, Honorable Alfred A. Stein, Judge of the Union County Court of Oyer and Terminer. A writ of error has been sued out of this Court to review the legality of this conviction and the plaintiffs-in-error have taken advantage of Section 136 of the Act concerning criminal procedure and have filed specification of causes of reversal in addition to alleging error in the record.

The assignments of errors found on page 313 of the printed case and the specification of causes of reversal on page 316 consist respectively of eight allegations. The assignments of errors are as follows:

“1. Because the trial Court allowed the prosecutor to ask the following question:

‘For how long had you known Cuniffe?’

2. Because the trial Court refused to sustain defendants’ objection to the following question:

‘Did you talk with him at that time in regard to what?’

3. Because the trial Court allowed the prosecutor to introduce in evidence gun S-5 and mail bag S-2.

4. Because the trial Court refused to strike out all the evidence of any conversations, activities and conduct of Cuniffe, Crowley and Grosso.

5. Because the trial Court refused to sustain the defendant’s objection to the following question:

Mr. Neary was asked on the stand if Benjamin Haas, Handle, Happy Malloy and another party called upon him at Blackwell’s Island or Welfare Island in February, 1927, and he said that they didn’t.

‘Do you know anything about that meeting?’

6. Because the trial Court erred in its charge to the jury when he charged as follows:

“It is important for you gentlemen to remember in connection with this defense of alibi that the State alleged that this hold-up and robbery took place in the City of Elizabeth on the fourteenth day of October 1926 somewhere in the general neighborhood of between 9:15 and 9:30 because in the defense of alibi the defendants seek to prove the impossibility of

presence at the time and place charged, and so impossibility of presence at the time and place charged is the essential feature of the defense and if the defendants prove to the satisfaction of the jury that it was impossible for them to have been present at the time and place of the commission charged then they have established the defense of alibi."

7. Because the trial Court refused to direct a verdict of acquittal at the close of the entire case.

8. Because the verdict was contrary to and against the weight of the evidence."

and the specifications of causes of reversal which contain the same numbers are practically identical with the assignments of errors.

Facts

At the May, 1928, Term of the Union County Court of Oyer and Terminer an indictment was found by the grand jury of the County wherein William Fanning, Canice Neary, Daniel Grosso, Frank Kiekart and Benjamin Haas on the 14th day of October, 1926, at the City of Elizabeth, did wilfully and feloniously and of their malice aforethought, kill and murder one John Enz. Of the defendants named in the indictment, Daniel Grosso, as it appears from the testimony, has not been apprehended.

A motion for severance in the cases of Frank Kiekart and Benjamin Haas was granted by the Court prior to the trial of Canice Neary and William Fanning.

The State alleged that about nine o'clock or nine fifteen A. M. on October 14, 1926, Patrick Quinn, a helper on a U. S. government mail truck in the company of one John Enz, a letter carrier employed delivering mail on business trip and driving back this day (case, p. 32, ll. 20-32) started from the post office in this Ford truck accompanied by Officer Christman on a motorcycle, that they made a stop in front of the Union County Trust Company (p. 33, ll. 35-37) then proceeded south on Broad Street to the intersection of Elizabeth Avenue and turned east into Elizabeth Avenue and continuing along until they got to the intersection of Sixth Street when a touring car shot out in front of them (p. 34, ll. 20-37); that John Enz turned the car, made a right hand turn and shot down into Sixth Street and as he did he was shot through the head, and Quinn was shot across the head (p. 36, ll. 10-15) and through the leg and hand (p. 36, ll. 35-37).

Officer Christman testified in detail to the same as Patrick Quinn as to the route of the mail truck and what happened at Sixth Street and also that he heard two shots and his right leg stiffened and he went to turn to the left and was hit from the rear by a car which turned him over in the middle of the car track (p. 44, ll. 30-40); that he was shot by a man whom he identified as James Cunniffe (p. 45, ll. 15-20).

The State called several other witnesses to establish that this truck was held up and robbed and that John Enz, the driver of the mail truck was shot and killed during the perpetration of the robbery.

The other witnesses produced by the State were

two alleged accomplices, one Benjamin Haas and Frank Kiekart, who obtained a severance and testified against the defendants and plaintiffs-in-error. Haas testified that on October 13, 1926, the day preceding the hold-up he went to Cuniffe's apartment and that he slept there that night (p. 100, ll. 25-40) and that the plaintiffs-in-error did likewise, and that they left the apartment the next morning about eight o'clock in the company of Cuniffe and Fanning and that they went to the garage and were on their way to Elizabeth (p. 101, ll. 10-23), and that the defendant Neary was driving the other car (p. 101, l. 32) and they went to Elizabeth and at Sixth Street stopped the truck and Cuniffe cut the lock off the mail truck and pulled out the mail pouch and started back to Newark (p. 105, ll. 1-10) and divided the money in Cuniffe's apartment. Frank Kiekart also an accomplice testified along similar lines as Haas that Neary and Fanning were participants.

The defense was an alibi that on October 13, 1926, the defendant Canice Neary was home and was at a party there given to a friend of his (p. 185, ll. 20-30). This was testified to by Margaret Neary, defendant's wife and also by four other witnesses who were at the party (pp. 196, 202, 209, 219) that he didn't leave the house until 8:30 the next morning with Mrs. Neary's sister (p. 187, ll. 8-10).

Mary Costa a witness for defendant Neary testified that she was there at the party and went away in the morning and the defendant Neary drove her to Grand Central Station at 8:30 (p. 202, ll. 20-37).

James Duffy another witness produced by de-

defendant Neary testified that he was at the party and left at 8:30 next morning and drove with defendant Neary to Grand Central Station (p. 210) together with Mrs. Costa and then drove to his garage and then down to a Court downtown on Franklin Street (p. 211, ll. 1-3).

Defendant Neary testified that he didn't know Cuniffe (p. 221, l. 39) that he wasn't at Cuniffe's house on October 13, 1926 and that he never met Kiekart, Crowley, Haas, Fanning or anyone in relation to this hold-up (p. 221, ll. 33-40) that he had nothing to do with the hold-up; that Haas tried to shoot him twice (p. 225, ll. 8-10) once in Yonkers and in front of his house in Long Island that since that time he never saw Haas; that on October 13, 1926, he was at home with his friends (p. 229, ll. 19-20) that he left the next morning and drove to the Grand Central Station and then to the Criminal Court Building, General Sessions (p. 230, ll. 30-35), that he did not know Kiekart (p. 249, ll. 39-40) and that the first time he saw him was on November 19th in Court; that he never saw the defendant Fanning before until he was brought into Court (p. 250, ll. 10-15).

Defendant William Fanning testified that on October 13, 1926, he was at a wake of a man named John Rowan in New York City (p. 255, ll. 2-10), that on October 14, 1926, he was not in Elizabeth, that he didn't know Cuniffe, Crowley or Neary; that he never knew Kiekart, nor did he ever visit any apartment in Newark (p. 254, ll. 20-40) that he got home about three o'clock or three-thirty on the morning of October 14, 1926, and went to bed and remained there until 12:30 o'clock; that he knew Haas only since March, 1927, and that he had a quarrel with him (p. 258, ll. 2-30).

Kiekart in his statement to the authorities did not mention either of these defendants.

The claim of the State was quite accurately set forth in the charge of the Court, p. 295, ll. 11-33:

“The indictment in this case charges the defendants, in conjunction with others, of having, on the fourteenth day of October, 1926, feloniously and with malice aforethought killed and murdered one John Enz, a citizen of this county and State. The State claims that these defendants, together with some others (and we are not now trying the others, but just these two), at the time of this homicide, were engaged in the perpetration of a mail robbery, and so whether they did any shooting, I mean, these defendants did any shooting, if some of those engaged in this robbery did the shooting which resulted in the death of John Enz, then these defendants are both guilty of murder in the first degree. That substantially is what I understand the State claims in this case, and I will read you the statute on the subject enacted by the Supreme law-making power of this State, the Legislature, so that you may know what the law is. I may not, in the course of my charge trouble you very much with facts.”

For the purpose of convenience and with the consent of the Court the plaintiffs-in-error will argue those assignments of errors and specifications of causes of reversal which necessarily relate to the same subject matter of the complaint.

POINT I.

The trial Court erred in admitting evidence of prior conduct, activities and statements by the defendants Daniel Grosso, James Cuniffe and William Crowley which statements were made in the absence of the defendants.

For the purpose of this motion the testimony in this case is that William Crowley and James Cuniffe were dead (p. 165, ll. 20-40).

Argument

Assignments of errors 1, 2 and 4 may properly be argued together under this head because assignment of error 4 and specification of defense 4 deal with the refusal of the Court to strike out the evidence of conviction, activities and conduct of William Crowley, James Cuniffe and Daniel Grosso. This line of questioning began with the testimony of Frank Kiekart (p. 133) wherein upon objection being made to the question "For how long had you known Cuniffe?" the Court stated what seemed to be the theory upon which the State's case was summarized, namely, p. 133, l. 29:

"So far as showing that there was a conspiracy and agreement and arrangement, between a number of persons to commit a robbery, the State's claim is that as a result of that agreement and arrangement and in the perpetration of the robbery, a murder resulted. * * *"

At page 134 the following question was asked at l. 27; to p. 136, l. 30:

“Q. Now, about six weeks prior to October 14, 1926, did you meet James Cuniffe?

A. Yes, I met him in the latter part of August or around the first of September. I ain't sure.

Q. Where did you meet him? A. Broadway at 168th Street.

Q. Was that by appointment? A. Yes, sir.

Q. And was it on the street corner you met him? A. The subway station.

Q. And was it daytime or nighttime? A. Nighttime.

Q. Did you talk with him at that time?

A. Yes, sir.

Q. In regard to what?

Mr. Cutley: I object. Now, may it please your Honor, I object to any testimony as to any conversations, activities of Kiekart, the witness, with anybody who is not named in this indictment, and I urged it on the ground that this is not a conspiracy indictment, but it is an indictment in which four men, Fanning, Kiekart, Haas and Neary are named, and whatever was said in regard to—by any of them, if at all admissible, only binds the man who said it. Cuniffe is not on trial, and the evidence is incompetent, irrelevant and immaterial.

The Court: The State's claim is that there is an unlawful agreement between these defendants and some others to commit a robbery in the city of Elizabeth, as the result of which this murder happened. My understanding of the law is that you are permitted to show an arrangement between the several parties, even without the presence of some of them, if the State

connects it up and shows that thereafter all of them participated in the final carrying out of the unlawful agreement. Now I understand that to be the law. The State will not be able, I take it from the evidence thus far introduced, to show a coming together of all of the parties at one and the same time. But an arrangement on the part of some of them to meet all of them at some time and so far the evidence discloses on the part of the State that Cuniffe and some others did meet out here in Elizabeth, including these defendants, to carry out this unlawful agreement.

Mr. Cutley: The point I am making—that law which you state there can be no dissenting from but this is a straight indictment for murder, and not a conspiracy to commit murder, and the ordinary rule applicable to defendants in conspiracy cases is not applicable to joint defendants in an indictment. That is the distinction I make.

The Court: I will allow the question.

Mr. Cutley: Prays exception.

Mr. Dolan: May I have an exception?

The Court: I understand counsel are taking exceptions for both defendants. Whenever he objects for both defendants. That has been the order of the trial so far and that is as I understand it. If I am wrong I want to be corrected now. That is right, is it?

Mr. Dolan: Yes, I wanted to be perfectly sure that was clear.

(Question repeated by stenographer.)
(Exception prayed, signed, sealed and allowed.)”

The statement of the Court (p. 135) summarized the judicial standard by which the Court permitted subsequent evidence to go into the record regarding activities even without the presence of some of the defendants on trial, the Court ruling that it was permitted to show an arrangement between the several parties showing that all of them participated in the carrying out of an unlawful agreement. See also p. 97, ll. 10-15, wherein the Court said in relation to Fanning:

“This is proof that is being offered of an arrangement between these defendants and the witness, and it is competent to show the arrangements that were made, even though one, for the time being, was not present, and it is binding on the others.”

See in the testimony of John A. Galatian (p. 167, l. 23) where John A. Galatian in company with other detectives went with Kiekart to Newark and Kiekart picked out two garages. Objection was made to what was done by Frank Kiekart in the company of John A. Galatian who (p. 167, l. 31) on the tenth day of December, 1927, went to a garage and picked out a car which Frank Kiekart said had been in the mail robbery in October, 1926. Objection was made (p. 168, ll. 1-10) that the evidence was incompetent, irrelevant and immaterial.

On page 168, ll. 34-40 and page 169, ll. 1-4 objection was made as follows:

“I desire to interpose another objection. The theory upon which the Court and State looks upon the case, or if this is part of a conspiracy, that at the time that the chief went, which was a year after that

time, it is too remote in the first place. And then the conspiracy, if any existed, had been terminated, and anything said after the termination is not admissible as against these defendants.”

See case of *State vs. Catania*, 134 Atl. at page 112, Judge Katzenbach said:

“* * * Articles found upon the person of a defendant are admissible in evidence, although of no materiality in the State’s case. *State v. Laster*, 71 N. J. Law, 586, 60 A. 361. We think the same rule applies to an article found in the residence of a defendant where the defendant admits that the article belonged to him.”

It is submitted to the Court that it was improper to introduce evidence ascertained a year later under the circumstances described in the testimony of Kiekart and Galatian. Attention is called to the admission of finding two hundred thirteen pins and one bar-pin (p. 172) against the admission of which exception was taken and duly allowed.

The general purpose of the objection made to the testimony of what was done in the absence of Neary and Fanning is set forth on pages 133, 134, 135 and exception appears on page 136 of the state of the case. These objections are set forth supra in this brief.

Plaintiffs-in-error contend that the charge upon which they were tried was a joint indictment for murder. What anybody did in the actual carrying out of the alleged robbery October 14, 1926, and the actual disposition of the spoils was evidential but what happened on various occasions prior thereto in the absence of the defendants or

either of them was not binding except upon those defendants who participated in the conferences prior thereto. It is the plaintiffs-in-error's contention that the Court below and the State conceived that the case was one of conspiracy to commit murder, that once the conspiracy had been established every party thereto was an agent for the other and the acts of one or the statements of one bound all. This, we respectfully submit, is not the law of this State in a joint indictment for murder. In regard to what happened after October 14, 1926, the plaintiffs-in-error submit is not germane to the case.

POINT II.

Assignment of Error 3 and Specification of Causes of Reversal 3.

Objection was made to the admission of S-5, which was the gun, in evidence. This gun was alleged to have been Cuniffe's gun. Cuniffe was not named in the indictment (p. 167).

In regard to Exhibit S-2 (p. 176, l. 25) the mail pouch (S-2), was in the custody of Galatian, who said he received the mail pouch and the car from Captain Siebold of the Newark Police Department. He said he went to an apartment at No. 112 Clinton Place in November, 1926, and in a rose bowl used for flowers he found some pins. No proof is made connecting Fanning or Neary with the possession of the pins, nor is proof made as to how the mail pouch and the car were found, except as in the testimony of Francis W. John-

son (p. 175, ll. 8-9) who said that in the month of November, 1927, or thereafter he went into a garage on the corner of Hawthorne Avenue and Seymour Avenue in the city of Newark. Objection was made to this testimony (p. 175, l. 40) and exception sealed (p. 176).

Attention of the Court is called to these happenings which occurred a year or thirteen months after the alleged crime.

POINT III.

Daniel F. Sheehan a witness produced on behalf of the State, in rebuttal testified he was the deputy warden of Blackwell's Island, known as Welfare Island and knew Neary, the defendant, and Haas. On examination by the State the following questioning took place:

“Mr. Neary was asked on the stand if Benjamin Haas, Handle, Happy Malloy, and another party called upon him at Blackwell's Island, or Welfare Island, in February, 1927, and he said that they didn't. Do you know anything about that meeting?”

Objection was made on the ground that the attempt to connect Neary was the bringing in of a collateral matter and was inadmissible. Exception was duly taken (p. 282, l. 27). See case of *State vs. Bullock*, 65 N. J. Law, 574. The objection by the plaintiffs-in-error to this evidence and the evidence of Curcio is that the evidence was incompetent, irrelevant and immaterial and the State was bound by the answers of Neary. The

fact that the State was permitted to prove that Neary was a prisoner at Blackwell's Island and the presentation of the Deputy Warden of that institution necessarily were calculated to impress upon the minds of the jury a conviction of the natural propensities of Neary as a law breaker.

Clark v. State, 18 Vroom, 556;

Meyer v. State, 30 Id. 310;

State v. Sprague, 35 Vroom, 419.

In the *Sprague* case at page 425 the Supreme Court said:

“It is doubtful if it was legal upon cross examination, but conceding it to be so, he answered the questions, and the rule of evidence is that such facts being irrelevant and immaterial his answers must be conclusively accepted. He, like any other witness, is entitled to have his cross examination limited to the subjects originally opened by his examination-in-chief. He subjects himself to the same liabilities, and he is entitled to the same privileges of any other witnesses. Whart. Cr. Evid. (9th ed.) par. 430.”

POINT IV.

Assignment of error 6 and specification of causes 6 are founded upon what the plaintiffs-in-error contend to have been an injury sustained by the plaintiffs-in-error in the Court's definition of the burden imposed on the plaintiffs-in-error in regard to the proof required by law in the presentation of a defense of alibi. The Court in this

connection, and about which complaint is now made, spoke at p. 303, l. 28 and p. 304, l. 3, as follows:

“It is important for you gentlemen to remember, in connection with this defense of alibi, that the State alleged that this hold-up and this robbery took place in the City of Elizabeth on the fourteenth day of October, 1926, somewhere in the general neighborhood of between 9:15 and 9:30, because in the defense of alibi the defendants seek to prove impossibility of presence at the time and the place charged, and so impossibility of presence at the time and place charged is the essential feature of this defence, and if the defendants prove to the satisfaction of the jury that it was impossible for them to have been present at the time and place of the commission of the offence charged, then they have established the defense of alibi.”

Attention is preliminarily called to the fact that in the defense of alibi there is no burden upon the defendant to prove the impossibility of his presence. The burden at all times remains upon the state to prove beyond a reasonable doubt the presence of the defendant. The various cases in this State to which reference will be made later have demonstrated that the impossibility of presence is not a matter which must be proved by the defendant but the actual presence of the defendant is part of the burden of the State. Not only do the plaintiffs-in-error object to the term “impossibility of presence” as mentioned in the Court’s charge (p. 303, l. 37), but calls attention to the sentence wherein the Court said, “* * * and, if the defendants prove to the satisfaction of the jury that it was impossible for them to have been present at the time and place of the commission

of the offense charged, then they have established a defense of alibi," is a depravation of the defendants' right to be convicted beyond a reasonable doubt by the State under its burden of proof.

The plaintiffs-in-error conceive that there are two fundamental matters set forth in the judge's charge (p. 303), namely, the fact there must be proved the impossibility of presence and the extent to which that impossibility must be proved, to wit, to the satisfaction of the jury. The defense of alibi as laid down in the Judge's charge is out of harmony with the judicial declaration on this subject by our Courts. Taken in another way, the Court said that the jury could find that the defendants have established the defense of alibi only when they prove the impossibility of presence at the time and place charged and they prove it not by the weight of evidence, not by engendering a doubt as to the truth of the State's case, but prove to the satisfaction of the jury that it was impossible for them to have been present at the time and place of the commission of the offense charged. In one aspect, if these defendants had been in Elizabeth on the day in question, under this charge and the burden of proving their impossibility of presence at the actual scene of the crime, the jury would have been justified under the present charge, in convicting them. This charge, it is respectfully insisted, not only transposes the burden of proof but made the defendants the bearers of the burden of convincing the jury not only that it was physically impossible for them to have been at the scene of the crime but they must establish that impossibility to the satisfaction of the jury, before the defendants were entitled to be acquitted.

The cases in our courts are replete with application of the general rule relative to alibi and in the case of *Sherlock vs. State*, 37 Atl. 435, the opinion written by Justice Garrison is somewhat illuminative upon the present discussion. In the *Sherlock* case, Justice Garrison, writing the opinion spoke as follows:

“These instructions are erroneous, and rest upon a misconception of the nature and effect of the line of evidence offered. In a case where the presence of the defendant at the commission of the crime is essential to the conviction the state must establish that fact beyond a reasonable doubt.

Testimony tending to break the force of the state's prima facie case, by testimony that the defendant was ‘alibi’ is not the offer of an affirmative issue advanced by the defense; it is merely showing a state of facts inconsistent with an essential element of the indictment.”

In the *Sherlock* case the Court said that the charge of the trial court deprived the defendant absolutely of the benefit of such reasonable doubt and hence was prejudicial in the extreme.

In the case of *State vs. MacQueen*, Atl. Rep. 55, p. 209, the trial Court gave the jury to understand that while a defendant establishing an alibi is not bound to prove it beyond a reasonable doubt, he must establish it beyond a clear preponderance of evidence. The impression left upon the jury, in the *MacQueen* case, Judge Pitney said:

“* * * must have been that the evidence tending to show the absence of Grossman, was to be disregarded, unless it outweighed that which tended to prove his presence

at the scene of the riot. But, whatever goes toward proving an alibi (although it falls short of establishing it) at the same time tends to throw doubt upon the commission of the crime, where the presence of the defendant is essential to guilt. And if a reasonable doubt of guilt is raised, even by the inconclusive evidence of an alibi, the defendant is entitled to the benefit of that doubt. *Sherlock v. State*, 60 N. J. Law, 31."

In the case of *State vs Parks*, 115 Atl., page 305, Justice Parker said:

"* * * and that by putting the burden on him to prove his absence by preponderance of evidence he is deprived of the benefit of that reasonable doubt."

In the case of *State vs Sahazian*, 119 Atl. 780, Judge Katzenbach in writing the opinion of the Supreme Court spoke as follows:

"(1) The first point argued for the plaintiff-in-error is with reference to that portion of the court's charge which dealt with the subject of reasonable doubt. The court said:

'The law requires that the state before it can claim a conviction in this case, as in all criminal cases, shall produce before you such evidence as convinces you beyond a reasonable doubt that these men are guilty as charged. If the testimony that has been presented to you satisfies you to that degree that you can say you have no doubt or a reasonable doubt of their guilt, it is then, of course, your duty to find them guilty as charged.'

The first sentence is a correct statement but the second sentence is erroneous in that it required the jury to convict the defendants if they had a reasonable doubt of their guilt. This sentence deprived the defendants of the right to which they were entitled. This case is similar to the case of *State v. Sandt*, 95 N. J. Law, 49, 111 Atl. 651. In that case the judge charged:

‘If these men are convicted they must be convicted on testimony which leaves in your minds no reasonable doubt of their guilt. If, after a consideration of all the testimony, you are satisfied that the men are not guilty beyond a reasonable doubt, you should acquit them; but if you have no such reasonable doubt you ought to convict them.’

(2) The Supreme Court held that this was error because it put on the defendants the burden of showing that they were innocent beyond a reasonable doubt when by law they are to be assumed innocent until the state overcomes that presumption and established the guilt of the defendants beyond a reasonable doubt. The State contends in the present case that taking the whole paragraph, the jury could not have gotten any other meaning than that the court was in fact saying that the jury must have neither a reasonable doubt nor any doubt if it would convict these defendants. The case of *State v. Sandt*, *supra*, this court pointed out that while other parts of the charge, on the subject of reasonable doubt, were correct, this did not cure error for the jury is not required to determine what part of a contradictory charge is correct. This part of the charge is in our opinion unsound in law and was prejudicial to the defendants.”

In the *Sahazian* case at page 781 Atlantic Reporter 119, an excerpt from the charge of the trial court appears as follows:

“On the question of alibi, I will state to you what I conceive to be the law on that subject, the true doctrine seems to be that where the state has established a prima facie case and the defense has relied upon its defense as an alibi, the burden is upon it to show it by the production of proof not beyond a reasonable doubt, but by preponderance of evidence, but by evidence of such character and of such a degree of certainty as will, when taken together with other testimony in the case leave in the minds of the jury still a question of doubt and certainty as to whether the defendants were at the place where the crime was alleged to have been committed at the time of its commission. If that is the effect of the testimony produced on the part of the alibi, it is said to be established and the defendant is entitled to a verdict of not guilty.”

It may perhaps be said that at lines 7 to 26, page 304, where the Court instructed the jury as to the proper mental operation that the jury may go into in regard to the evidence of alibi, the part of the charge complained of on page 303 if harmful at all was cured by the subsequent commentary of the Court.

Answering this possible objection upon the question of neutralization of any harmful error that may have occurred in the Court's charge on page 303, it is the view of the plaintiffs-in-error that what the Court said at page 304 is entirely separable from what the Court said on page 303. In other words the question of the quality of the proof and the quantum of the proof and the ex-

tent to which the proof must satisfy the jury, are in the opinion of the plaintiffs-in-error entirely distinct from the effect of the proof on the minds of the jury as set forth in the part of the charge on page 304.

From these cases it is evident that testimony of an alibi is not the offer of an affirmative issue advanced by the defendants and as was said in the *Sherlock* case it may be showing a set of facts inconsistent with the essential element of the indictment.

In the case of *State v. MacQueen*, where the Court said the defendant must establish it "the alibi" beyond the preponderance of evidence, the Supreme Court, Justice Pitney speaking, said that this norm of evidence was an illegal one. In the case of *State vs. Parks*, 115 Atl. 305, Justice Parker said that by putting the burden on the defendant to prove his absence by preponderance of evidence, he is deprived of the benefit of that reasonable doubt. In this case, the phrase "impossibility of presence" cannotes in the opinion of the plaintiffs-in-error something more than mere physical absence.

In the case of *State vs Sandt*, 95 N. J. Law, 49, the Court said that while other parts of the charge of the court on the question of reasonable doubt were correct, the correct part of the charge did not cure the error as the jury is not required to decide what part of a contrary charge is correct.

See also *State v. Clayton*, 83 N. J. Law, 675, wherein the Court said:

"* * * Our theory of jury trials proceeds upon the fundamental assumption that the

jury will take the law from the Court, not that they shall be judges of its correctness or that as between two conflicting statements of the law they will unerringly single out the correct one.”

It is further submitted to the Court that the criterion which the trial judge set up in the *Sherlock* case regarding the proof of alibi by the preponderance of evidence is as a matter both of law and fact a lighter burden than proving to the satisfaction of the jury in this case that it was impossible for the plaintiffs-in-error to have been present at the time and place of the commission of the offense charged. It is respectfully contended that by reason of the transposition of the burden of proof as contained in the language of the court on page 303 and 304, the subject of the assignment of error numbered 6 and the specification of causes of reversal numbered 6, the jury did not have before them the legal rule declared and followed by our courts. The defendants were deprived of the possibility of a reasonable doubt to which they were entitled. It was necessary for the State to prove beyond a reasonable doubt the presence of the plaintiffs-in-error at the place of the alleged crime. Under the Court's charge in this case the defendants were compelled to exculpate themselves and to exculpate themselves by presentation of proof which must be satisfactory to the jury. They practically had to prove their own innocence. This we submit was an improper criterion which deprived the plaintiffs-in-error of the substantial right to have the State at all times assume and maintain the burden of proving them guilty beyond a reasonable doubt and the instructions herein complained of rendered their conviction inevitable under the law laid down in the Court's charge.

POINT V.

The verdict of the jury was contrary to and against the weight of the evidence.

To justify a Court in setting aside a verdict in a criminal case under P. L. 1921, page 951, on the ground that it is against the weight of the evidence, the verdict must so clearly appear that it is against the weight of evidence as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality.

State v. Karpowitz, 98 N. J. L. 546;
State v. Mosley, 3 Adv. Rep. 1972.

For these reasons the plaintiffs-in-error respectfully pray for the reversal of the judgment of the Union County Court of Oyer and Terminer.

GEORGE E. CUTLEY,
Attorney for Plaintiffs-in-Error.

JAMES P. DOLAN,
of counsel.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CANISE NEARY and WILLIAM
FANNING,
Plaintiffs-in-Error.

ON WRIT
OF ERROR

BRIEF OF DEFENDANT-IN-ERROR

The facts in the case are set forth in the brief filed on behalf of the plaintiffs-in-error in this cause, from Page three to and including Page seven and the State does not deem it necessary to repeat those facts in this brief.

POINT I.

The trial Court did not err in admitting evidence of the conduct, activities and statements by the defendant Daniel Grosso, and James Cuniffe and William Crowley who are dead. They participated in the common scheme and design to hold up and rob the mail truck and shot and killed John Enz, the driver. In this robbery, \$151,700 was stolen from the mail pouches.

The participation in this hold-up and robbery by Neary, Fanning, Haas, Kiekart, Grosso, Cuniffe and Crowley, was all part of the *res*

gestae. The use of them of automobiles, machine gun, revolvers and rifles was part of the *res gestae*. The recovery of the automobile, the mail pouch, the pins and other articles was evidence to establish the commission of this crime, and part of the *res gestae*.

In *Roesel v. State*, 62 N. J. L., Page 216, Court of Errors and Appeals, at Page 222, the Court said: "By the common law, all who were present, aiding and abetting in a felony, are principals. *Coal Heaver's Case*, 1 Leach C.C. 64, Fost. 428. With regard to what will constitute such a presence as will render a man a principal, it is said, by Mr. Justice Foster, that if several persons set out together or in small parties upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each takes the part assigned him, some to commit the fact, others to watch at proper distances to prevent a surprise or to favor, if need be, the escape of those who are immediately engaged, they are all, provided the fact be committed, present at it. Fost. 350." "If divers persons come in one company to do an unlawful thing, as to kill, rob or beat a man, or to commit a riot, or to do any other trespass, and one of them in doing thereof kill a man, this shall be adjudged murder in them all that are present of that party abetting him and consenting to the act or ready to aid him, although they did but look on." 1 Hale C. L. 441.

All these men were principals and equally guilty for the acts done by either of them. Cuniffe and Crowley were dead and it was not

necessary for the State to indict them because the Supreme Law of God had intervened. *State v. Nugent*, 77 N. J. L., P. 80.

In *State v. Young*, 67 N. J. L., P. 223, Court of Errors and Appeals at P. 232, it is stated that the four persons agreed to go to Riverside where Hunter lived, to rob him. Also that Keller afterward introduced the plaintiff-in-error to Brown and Miller. Accordingly an agreement had been made and all of the parties were not present at the inception of the making of the agreement and the common design to rob. The evidence in question in the case at Bar is clearly within the case of *State v. Young*.

In *State v. Catania*, 134 Atl. Rep., P. 110 at P. 112, the Court said: "the articles were admitted in evidence because they had some bearing upon whether or not De Francesco was in Vineland. A trial court in such matters is vested with a discretion. It is impossible to lay down any general rule that will be sufficiently definite to solve each question which may be presented. We think the trial judge acted within the latitude of the discretion with which he was vested in admitting the can in evidence."

POINT II.

The gun, the mail pouch, the pins were all admissible in evidence as part of the *res gestae*. *State v. Catania, supra*.

POINT III.

In the State of case, P. 114, Benjamin Haas testified on direct as follows: P. 114 L. 1.

Q. You say you did see Neary at Welfare Island? A. Yes, sir. P. 114, L. 20 to 40.

Q. Did you talk with Neary? A. Yes, sir.

Q. Did you talk to Neary in regard to what had transpired at Elizabeth here? A. Yes. At least I didn't talk to him, he spoke to me on it.

Q. What did Neary say to you in regard to what transpired at Elizabeth? A. He told me that Fanning was going around cabareting.

Q. Told you what? A. He told me Fanning was going around cabareting and doing a lot of talking; tell him to keep still, keep his mouth shut. That is all.

The defendant Neary, when on the stand, denied the visit and conversation testified by Haas.

David F. Sheehan, a witness produced on behalf of the State, P. 281, L. 20, was produced to verify the fact that Haas did visit Neary at Welfare Island, as was testified to by Haas in the preceding questions. Sheehan was produced to contradict Neary on rebuttal and was not produced to prove any other crime at all.

State v. Bullock, 65 N. J. L., P. 574, is not in point as this case concerns an effort to prove another crime of a like nature.

Counsel for the plaintiffs-in-error cross-examined Daniel F. Sheehan, Page 283, L. 20 and Page 284 and brought out in evidence that Haas did call on Neary at the time stated, all

of which did contradict Neary and affect his credibility.

POINT IV.

Counsel for the plaintiffs-in-error cites an excerpt from the Court's charge and does not set up the entire paragraph of the Court's charge regarding this excerpt. The Court's charge on this excerpt begins on Page 303, L. 29 and ends on Page 304, L. 27. The whole charge in this respect is not severable and should be read as one charge on the law regarding alibi. The Court in this charge at top of Page 304, expressly charged the existing law regarding any one of three conclusions that might be reached by the jury. This is the law as laid down in *Sherlock v. State*, 60 N. J. L., Page 31 and the charge was exactly in accordance with this established law.

In the case of *State v. MacQueen*, Atl. Rep. 55, Page 1006, 69 N. J. L., Page 522, the Court charged the law as laid down in this case at the request of Counsel for the plaintiffs-in-error on Page 303, L. 10.

The case of *State v. Parks*, 96 N. J. L., P. 360, is not in point, because the Court in that case improperly defined "reasonable doubt."

The case of *State v. Sahazian*, 98 N. J. L., P. 430, is not in point, because the Court in this case improperly defined "reasonable doubt."

On the other hand, in the case now under review, the Court did properly define "reasonable doubt" at Page 304, L. 20, when the Court said: "And third, the testimony offered in support of this defense of alibi may create such a degree of uncertainty in the minds of you gentlemen as to the whereabouts of the defendants that you would be not satisfied beyond a reasonable doubt of their guilt, in which case the jury must acquit." This charge follows the law as laid down in *Sherlock v. State*, 60 N. J. L., P. 31, *supra*.

The case of *State v. Sandt*, 95 N. J. L., P. 49, is not in point, because it concerns an erroneous definition of reasonable doubt.

The case of *State v. Clayton*, 83, N. J. L., P. 675, is not in point, in that the jury could not agree, but the judge was not willing to discharge the jury and gave them an additional charge, the result being that the jury was mis-instructed by reason of this additional charge.

POINT V.

The State proved by a number of witnesses, the commission of the crime charged in the indictment. Two eye witnesses identified the defendants as two of the participants in the robbery and murder. Corroboration of the testimony of the two accomplices was made in the case and under instructions of the Court, as to the law, the jury had ample evidence on which to base its verdict. The jurors saw the witnesses both for the State and the defense and had a

right to determine which witnesses they would believe. The number of witnesses is immaterial. *State v. Grace*, 98 N. J. L., P. 341.

We respectfully submit that the verdict of the jury was justified by the evidence adduced.

It is respectfully submitted that no error was committed either in the charge of the Court or in the entire proceedings had upon the trial by which the plaintiffs-in-error suffered manifest wrong or injury.

We respectfully submit that the conviction should be sustained.

ABE J. DAVID,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error,
Of Counsel.

WALTER C. TENNEY,
Assistant Prosecutor of the Pleas,
Of Counsel.

In the Court of the
County of ...

vs.
The ...

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