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A

Opinion

NEW JERSEY SUPREME COURT

No. 6 October Term, 1927

The State vs. Frank Caruso, Walter Legenza and Frank Wunkowski,	Opinion

Error to Middlesex Sessions

Argued October Term 1927

Decided January Term 1928

Edward M. Salley,
George E. Cutley,
For Plffs. in error.

John E. Toolan,
For the State.

Argued before:
Parker, Minturn and Campbell, *J. J.*

Per Curiam: This case is before the court on a strict bill of exceptions, and also under the 136th section of the Criminal procedure act.

The three defendants were convicted in the Middlesex Quarter Sessions of robbery. The State's case disclosed that about 3 o'clock A M., July 6th, 1926, a number of masked men, one of

whom wore a policeman's uniform, entered the plant of the Castle Ice Cream Company, in Perth Amboy, cut the telephone wire, rounded up the watchman, and other employees, at the point of guns; bound them with copper wire; blew the safe open, and stole its contents, consisting of bonds, checks and cash amounting to $29,000. Two of the ice cream company's employees identified the defendant, Caruso, as one of the participants in the robbery, and Caruso does not join in this appeal.

The three defendants occupied a house in Woodbridge, during the month of June, which house had been rented by Wunkowski, under an assumed name. On July 2nd, the defendants moved up to a house in South Plainfield, which had been rented by the owner to a man for occupancy by himself and Wunkowski, but which in fact was occupied by the three defendants and others The defendant, Wunkowski and another man visited the ice cream company plant about a week previous to the robbery, and ordered ice cream sent to a fictitious address. The three defendants were at the Plainfield house on the evening of July 5th and also at noon on July 6th, at which time they expressed their disappointment in not getting as much cash as they had expected from the adventure.

In an automobile used by Wunkowski, and stored in a garage hired for him, were found a policeman's hat and coat. At the time of Wunkowski's arrest, there were found about his person $703 in cash, and keys fitting the house in Woodbridge, the house in South Plainfield, and the garage in which his car was found

The defendant, Legenza, threw the contents of a bag into the river, stating that they were checks.

On July 10th, a new Peerless car was sold to Legenza, his brother paying $1995.

At the Plainfield house the police found bags, one of which contained $429 in small coin; the bags were similar to those furnished by the bank to the ice cream company; the coin had a salty taste, as did also the coin collected by the drivers of the ice cream company. Several coils of wire were also found, the wire being similar to that used in tying the company's employees. There were also found in the house a revolver, fuse wire, torch tips and nitro-glycerine dynamite sticks. None of the defendants testified, nor did they produce any witnesses, in their behalf.

It is contended that the court erred in refusing to direct a verdict at the close of the State's case, and at the close of the entire case, and that the verdict was contrary to the weight of the evidence. This manifestly is without merit or substance.

It is next contended that there was error in the court's charge. A certain witness testifies that Wunkowski and Legenza were two of the conspirators who acted with Caruso. "There can be no doubt that a robbery took place, because it is not denied at all," etc. This obviously was a statement of undisputed fact, and we are at a loss to perceive why exception was taken to it.

The conviction will be affirmed.

B

Reason for Reversal

NEW JERSEY COURT OF ERRORS AND APPEALS

WALTER LEGENZA, *Plaintiff-in-Error,* *vs.* STATE OF NEW JERSEY, *Defendant-in-Error.*	On Writ of Error REASON FOR REVERSAL

And now comes WALTER LEGENZA by George E. Cutley, his attorney and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and the said Walter Legenza says that the said judgment should be reversed and assigns the following reason or cause:

1. Because the Supreme Court affirmed the judgment of the Middlesex County Court of Quarter Sessions though that judgment should have been reversed.

Respectfully submitted,

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

C

Joinder in Error

NEW JERSEY COURT OF ERRORS AND APPEALS

WALTER LEGENZA,
Plaintiff-in-Error,

vs.

STATE OF NEW JERSEY,
Defendant-in-Error.

In Error

JOINDER IN ERROR

And thereupon, afterwards, to wit, on the Eighth day of October, A. D., nineteen hundred and twenty-eight, the said State of New Jersey, by John E. Toolan, its attorney, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

JOHN E. TOOLAN,
Prosecutor of the Pleas.

D

Writ of Error (To Supreme Court)

NEW JERSEY, ss.:

(L.S.) To the Honorable, the Justices of the Supreme Court of the State of New Jersey:

Because in the entire record and proceedings and entire record of the proceedings and also in giving a judgment against WALTER LEGENZA, upon a certain indictment in the County of Middlesex, State of New Jersey, aforesaid, for burglary, and the said Walter Legenza as it is said manifest error hath intervened to the great damage of the said Walter Legenza, as from his complaint we have received information and we being willing in this behalf to correct the error in due manner if any there shall be and that speedy justice be done to him, the said Walter Legenza, command you that if the judgment be thereon given that you distinctly and openly send under your seal the records and proceedings aforesaid, with all things touching the same to the New Jersey Court of Errors and Appeals on the Ninth day of September, 1928, and this writ, that the record and proceedings aforesaid being inspected we may further cause to be done thereupon for correcting that error what of right and according to law ought to be done.

Witness, EDWIN ROBERT WALKER, Chancellor at Trenton, aforesaid, the twentieth day of August, A. D., Nineteen hundred twenty-eight.

JOSEPH F. S. FITZPATRICK,
Clerk.

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

Writ of Error.

New Jersey Supreme Court

THE STATE OF NEW JERSEY, Defendant-in-Error, *vs.* FRANK CARUSO, WALTER LEGENZA and FRANK WUNKOWSKI, Plaintiffs-in-Error.	New Jersey. ss.:

(SEAL) The State of New Jersey to the Court of General Quarter Sessions in and for the County of Middlesex:

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 Frank Caruso, Walter Legenza and Frank Wunkowski were defendants, and which said indictment was for burglary, and upon which indictment they were 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 Frank Caruso, Walter Legenza and Frank Wunkowski, as by his complaint, we are informed, we being willing that speedy justice should be done in their 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 record of proceedings had upon the trial of the said indict-

ment, to our Supreme Court, on the 9th day of April, 1927, 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, WILLIAM S. GUMMERE, Esq., our Chief Justice at Trenton, aforesaid, the 21st day of March, 1927.

EDWARD J. KELLEHER,
Clerk.

GEORGE E. CUTLEY,
EDWARD M. SALLEY,
Attorneys.

Return.

The answer of John P. Kirkpatrick, Esquire, Judge of the Court of Quarter Sessions within named, the record and proceedings of the plaint whereof mention is within, with all things touching the same. I certify to the Justice of our Supreme Court of the State of New Jersey, Trenton at the day and year within contained in a certain schedule to this writ annexed as I am commanded.

JOHN P. KIRKPATRICK,
Judge.

Judgment.

STATE OF NEW JERSEY, MIDDLESEX COUNTY, SS.:—
Be it remembered, that at a Session of the Court of Oyer and Terminer held at New Brunswick in and for said County of Middlesex, on the First Tuesday of April, in the year of our Lord one thousand nine hundred and twenty-six before Honorable Samuel Kalisch, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable John P. Kirkpatrick, Judge of the Court of Quarter Sessions in and for said County of Middlesex, the same being the April Term of the said Court of Oyer and Terminer in the year aforesaid, according to the form of the Statute in that case made and provided, upon the oaths of:

William G. Bearman, Foreman

James F. Creamer	Laurence Kenny
Philip Costello	Robert Vandenberg
Edward Burt	James M. Barkelew
Louis H. Hoagland	George H. Gordon
Walter Muller	Mrs. Ethel Dorsey
Frederick Mandsley	William J. Nelson
Ferdinand Stahlin	Peter H. Hendricks
Edward J. Heil	John P. Fenner
Solomon Slonim	Joseph E. Hornsby
Mrs. M. T. Campbell	Joseph J. Rooney
Joseph B. Dunigan	J. Joseph Connors

good and lawful members of said County of Middlesex, being summoned and then and there empanelled, sworn and charged to inquire in behalf of the State of New Jersey, and for the body of the County of Middlesex, it is presented in manner and form, to wit:

Judgment.

MIDDLESEX OYER AND TERMINER

April Term, A. D. Nineteen Hundred and Twenty-six.

Middlesex County, to wit:—The Grand Inquest for the State of New Jersey, and for the body of the County of Middlesex upon their oath present, That Frank Wunkoski, alias Frank Edward Spencer, alias William Dwyer, Walter Legenza, alias William Turner, Frank Caruso, Henry Goldberg, alias Dutch Goldberg, Joseph Beans, James Doe, Richard Doe, John Doe, Richard Poe, John Poe, Richard Roe, John Roe, William Doe, John Alchermis, alias George Martino, late of the City of South Plainfield, in the County of Middlesex aforesaid, on the sixth day of July in the year of our Lord one thousand nine hundred twenty six with force and arms, at the City of Perth Amboy aforesaid in the County of Middlesex aforesaid, and within the jurisdiction of this Court, the building, office and warehouse and plant buildings of Castle Ice Cream Company, a corporation of the State of New Jersey there situate, by night willfully and maliciously did break and enter with intent, the goods and chattels of The Castle Ice Cream Company, a corporation of the State of New Jersey in the said building, and office and warehouse and plant buildings, then and there being found, unlawfully to steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Jurors aforesaid, upon their oath aforesaid, do further present that Frank Wunkowski, alias Frank Edward Spencer, alias Wil-

liam Dwyer, Walter Legenza, alias William Turner, Frank Caruso, Henry Goldberg, alias Dutch Goldberg, Joseph Beans, James Doe, Richard Doe, John Doe, Richard Poe, John Poe, Richard Roe, John Roe, William Doe and John Alchermis, alias George Martino, on the sixth day of July in the year of our Lord one thousand nine hundred and twenty-six in the City of Perth Amboy in the County aforesaid, the building, office and warehouse and plant buildings of Castle Ice Cream Company, a corporation of the State of New Jersey, there situate, willfully and maliciously did enter without breaking the same, with intent, the goods and chattels of Castle Ice Cream Company, a corporation of the State of New Jersey, in the said building, office and warehouse and plant buildings, then and there being found, unlawfully to steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Jurors aforesaid, upon their oaths aforesaid, do further present that the said Frank Wunkowski, alias Frank Edward Spencer, alias William Dwyer, Walter Legenza alias William Turner, Frank Caruso, Henry Goldberg, alias Dutch Goldberg, Joseph Beans, James Doe, Richard Doe, John Doe, Richard Poe, John Poe, Richard Roe, John Roe, William Doe and John Alchermis, alias George Martino, on the sixth day of July in the year of our Lord one thousand nine hundred and twenty-six in the City of Perth Amboy, in the County aforesaid, One Green Tin Box containing five hundred dollars United States currency, one galvanized box containing nine thousand four hundred thirty-five dollars and seventy-two cents, United States Currency, one canvas bag

containing United States Currency and checks of the realm of the value of nine thousand three hundred thirty-one dollars and fifty cents, one canvas bag containing United States Currency and checks of the realm to the value of eight thousand eight hundred forty-eight dollars and forty-seven cents, One green tin box containing two fifty dollar Liberty Bonds and four one hundred Liberty Bonds all to the value of five hundred dollars, New York telephone stock of the value of five hundred dollars, in all of the total value of twenty-nine thousand six hundred fifteen dollars and sixty-nine cents, of the goods, chattels and property of Castle Ice Cream Company, a New Jersey corporation then and there being found, unlawfully did steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

Witness:

JOHN E. TOOLAN,
Prosecutor of the Pleas.

and the said Judge do order that said indictment be delivered to the Clerk of the Quarter Sessions in and for the County of Middlesex, and the said indictment was thereupon then and there delivered to and filed by the Clerk of said Court of Quarter Sessions and an entry of such order and delivery and filing was then and there by said Clerk made in the minutes of the said Court of Quarter Sessions, at the same term pursuant to the Statute in such case made and provided.

And afterward, that is to say, at a session of the said Court of Quarter Sessions, holden at New Brunswick aforesaid, in and for the County of Middlesex, on Friday, the seventeenth day of Sep-

tember in the year of our Lord one thousand nine hundred and twenty-six, as yet of the term of April, of the said Court of Quarter Sessions, before the Honorable John P. Kirkpatrick, Judge of the Court of Quarter Sessions in and for the County of Middlesex, here cometh, the said Walter Legenza, under the custody of Frederick Gowen, Esquire, Sheriff of the County of Middlesex in whose custody the said Walter Legenza was the said Walter Legenza being brought to the bar here in his proper person, by the Sheriff, and forthwith being demanded of and concerning the premises of said indictment above specified, and charged upon him how he will acquit himself thereof, he saith he is not guilty thereof and he puts himself upon the Country, and John E. Toolan, Prosecutor of the Pleas of the State for said County in this behalf doth the same.

And afterwards, that is to say, at a session of the said Court of Quarter Sessions, holden at New Brunswick aforesaid, in and for the County of Middlesex, on Friday, the twenty-fourth day of September, in the year of our Lord one thousand nine hundred and twenty-six, as yet of the term of September, of the said Court of Quarter Sessions, before the Honorable John P. Kirkpatrick, Judge of the Quarter Sessions, in and for the County of Middlesex, here cometh, the said Frank Wunkowski, under the custody of Frederick Gowen, Esquire, Sheriff of the County of Middlesex in whose custody the said Frank Wunkowski was, the said Frank Wunkowski being brought to the Bar here in his proper person, by the Sheriff, and forthwith being demanded of and concerning the premises of the said indictment above specified, and charged upon him how he will acquit himself thereof, he saith he is not guilty thereof and he puts himself upon the Country, and John

Judgment.

E. Toolan, Prosecutor of the Pleas of the State for said County in this behalf doth the same.

And afterwards, that is to say, at a session of the said Court of Quarter Sessions, holden at New Brunswick aforesaid, in and for the County of Middlesex, on Monday the first day of November in the year of our Lord one thousand nine hundred and twenty-six, as yet of the term of September, at the said Court of Quarter Sessions, before the Honorable John P. Kirkpatrick, Judge of the Court of Quarter Sessions, in and for the County of Middlesex, here cometh, the said Frank Caruso under the custody of Frederick Gowen, Esquire, Sheriff of the County of Middlesex in whose custody the said Frank Caruso was, the said Frank Caruso being brought to the bar here in his proper person, by the Sheriff, and forthwith being demanded of and concerning the premises of the said indictment above specified, and charged upon him how he will acquit himself thereof, he saith he is not guilty thereof and he puts himself upon the Country, and John E. Toolan, Prosecutor of the Pleas of the State for said County in this behalf doth the same.

Judge of our said Court of Quarter Sessions come as well the said John E. Toolan, Prosecutor of the Pleas, and the said Frank Wunkowski, Walter Legenza and Frank Caruso in their own person. And the Jury of the Jury of whom mention is before made and the Sheriff of the County of Middlesex, for the purpose unpaneled and returned to wit:

James C. Dorn	James F. Healy
William Teacham	James Barr
Nelson Orpen	Albert Weinraub
Sarah Ridgeway	Charles Forman
David Wilson	Michael Masterson
Joseph Kelly	Etta Bennett

being called and who being chosen, tried and sworn to speak the truth of and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury. And the said issue after a charge from the said Court, was submitted to the jury and said jury in charge of the officer of said Court duly sworn for the purpose, were taken to a private room to consider upon their verdict, and afterwards, that is to say, on the first day of November in the year of our Lord one thousand nine hundred and twenty-six, at the City of New Brunswick, aforesaid, the said jury returned into and before said Court in charge of said Officer sworn as aforesaid, and then and there in the presence of the said John E. Toolan, Prosecutor of the Pleas, and in said Frank Wunkowski, Walter Legenza and Frank Caruso, upon their oath say that the said Frank Wunkowski, Walter Legenza and Frank Caruso are guilty of the offense aforesaid, as charged in said indictment above specified, in manner and form as in the said indictment charged against them. Whereupon all and singular the premises being seen, and by the said Judge aforesaid, here fully understood;

Thereupon on the first day of November one thousand nine hundred and twenty-six the Court did thereupon order and adjudge as follows:

You Frank Wunkowski, alias Frank Edward Spencer, stand convicted of the crime of entering and larceny (Sec. 133 of the Crimes Act) a high misdemeanor, and the sentence of the Court upon that conviction is that you Frank Wunkowski be imprisoned at hard labor in State Prison for a term of seven (7) years and from thence until the costs of the prosecution are paid;

You Walter Legenza alias William Turner stand convicted of the crime of entering and lar-

ceny (Sec. 133 of the Crimes Act) a high misdemeanor, and the sentence of the Court upon that conviction is that you Walter Legenza be imprisoned at hard labor in State Prison for a term of seven (7) years, and from thence until the costs of the prosecution are paid;

You Frank Caruso stand convicted of the crime of entering and larceny (Sec. 133 of the Crimes Act) a high misdemeanor, and the sentence of the Court upon that conviction is that you Frank Caruso be imprisoned at hard labor in State Prison for a term of seven (7) years and from thence until the costs of the prosecution are paid.

Dated May 31st, 1927.

JOHN P. KIRKPATRICK,
Judge.

Petition for Habeas Corpus.

MIDDLESEX COUNTY COURT OF
COMMON PLEAS.

In the Matter *of* The Application of the State for a Writ of Habeas Corpus to Produce the Bodies of Frank Wunkowski, Walter Lagenza, and Frank Caruso for Trial under an Indictment Charging Them with Breaking and Entering.	Petition for Habeas Corpus.

The petition of John E. Toolan, of the City of Perth Amboy, County of Middlesex, and State of New Jersey, respectfully shows:

(1) I am the Prosecutor of the Pleas of Middlesex County, New Jersey.

(2) Frank Wunkowski, Walter Lagenza and Frank Caruso were indicted by the April term of the Grand Jury for Middlesex County, charged with the breaking, entering and robbery of the Castle's Ice Cream Plant, Perth Amboy, New Jersey. Said indictment is set down for trial on Monday, November 1, 1926.

(3) Said Frank Wunkowski, Walter Lagenza and Frank Caruso are now incarcerated at the New Jersey State Prison at Trenton, New Jersey, under sentence for certain crimes committed in Union County, New Jersey. One Joseph S. Hoff

is the principal keeper at the New Jersey State Prison and the person who is charged with the supervision and control of said Prison and the custody of the said Frank Wunkowski, Walter Lagenza and Frank Caruso.

(4) The State cannot proceed with the trial of said Frank Wunkowski, Walter Lagenza and Frank Caruso unless they are personally produced at the Courthouse in the City of New Brunswick, Middlesex County, New Jersey, at 10 o'clock in the forenoon, on Monday, November 1, 1926.

Your petitioner, therefore, prays that a writ of habeas corpus may be issued by this Honorable Court, directed to Joseph S. Hoff, principal keeper of the New Jersey State Prison at Trenton, New Jersey, directing and commanding him to have and produce the bodies of said Frank Wunkowski, Walter Lagenza and Frank Caruso at the Courthouse in the City of New Brunswick, at 10 o'clock in the forenoon on Monday, November 1, 1926, for trial on the indictment aforesaid.

And your petitioner will ever pray, etc.

JOHN E. TOOLAN,
Petitioner.

Petition for Habeas Corpus.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } SS.:

JOHN E. TOOLAN, of full age, being duly sworn according to law upon his oath deposes and says that:

(1) I am the Prosecutor of the Pleas of Middlesex County, New Jersey.

(2) I have read the foregoing petition and know the contents thereof and the statements therein made are true to the best of my knowledge, information and belief.

JOHN E. TOOLAN.

Sworn and subscribed to before me this 28th day of October, 1926.

JAMES P. HANEY,
Notary Public of N. J.

Testimony.

COURT OF QUARTER SESSIONS,

MIDDLESEX COUNTY.

September Term, 1926.

THE STATE,

vs.

FRANK WUNKOWSKI, alias Frank Edward Spencer, alias William Dwyer, WALTER LEGENZA, alias William Turner, FRANK CARUSO, HENRY GOLDBERG, JOSEPH BEAN, JAMES DOE, RICHARD DOE, JOHN DOE, RICHARD POE, JOHN POE, RICHARD ROE, JOHN ROE, WILLIAM ROE, and JOHN ALCHERMIS, alias George Martino.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. JOHN P. KIRKPATRICK, Judge, and a Jury, at the Middlesex County Court House, in the City of New Brunswick, New Jersey, on the first day of November, A. D., 1926, at 10:30 A. M.

Appearances:

JOHN E. TOOLAN, Esq., Prosecutor of the Pleas, Counsel for the State.

EDWARD M. SALLEY, Esq., Counsel for the Defendants, Wunkowski and Legenza.

GEORGE E. CUTLEY, Esq., Counsel for the Defendant Caruso.

(A jury being empaneled and found satisfac-- tory, they were sworn.)

(Mr. Toolan opens the case for the State.)

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

Direct examination by Mr. Toolan:

Q. Where do you live, Mr. Casaleggi? A. Prior to my arrest I was living in 81 Roosevelt avenue. Now, I live at 80 Lincoln avenue, Carteret, New Jersey.

Q. Do you know the defendant Frank Wunkowski? A. Yes, sir.

Q. Where is he? A. The fourth man in the back seat with his hand on his mouth.

Mr. Toolan: Will you stand up?
(A man stands up in the court room.)
The Witness: Yes.

Q. Do you know Frank Caruso? A. Yes, sir.

Q. Will you point to him? A. He is sitting down next to him where he is standing up, next to Frank Wunkowski.

Mr. Toolan: Will you stand up?
(A man stands up in the court room.)

Q. Do you know Walter Legenza? A. Yes.

Q. Where is he? A. He is sitting down there, too.

Mr. Toolan: Will you stand up?
(A man stands up in the court room.)

Q. How long have you known Frank Wunkowski? A. I have known Frank Wunkowski quite a while because he used to live in Carteret.

Q. About how many years have you known him? A. Figure at least ten years or more.

Q. How long have you known Caruso? A. Maybe a year and a half or maybe a little more.

Q. How long have you known Legenza? A. About eight months, I figure.

Q. Now, did you ever live in Woodbridge or not? A. I did not live in Woodbridge.

Q. Did you ever occupy a house together with any other men in Woodbridge? A. Yes, sir, I did.

Q. Where? A. 242 Freeman Street, Woodbridge, New Jersey.

Q. Was that the house owned by Minnie Donovan? A. Yes, sir.

Q. Who was in that house besides you? A. There was Frank Wunkowski, Frank Caruso, and Walter Legenza.

Q. How long did you remain in the Woodbridge house? A. Pretty near a month.

Q. When you left the Woodbridge house where did you go? A. We moved to South Plainfield.

Q. Where in South Plainfield? A. On Park avenue.

Q. How long did you remain there? A. About two weeks and a half.

Q. And then what happened? A. The place was raided.

Q. By whom? A. By the police.

Mr. Cutley: Your Honor, I object unless it is shown that the raid was in connection with this alleged offence that we are called upon to meet here today.

The Court: Objection sustained.

Mr. Toolan: I am not going to show anything about the raid right now.

Q. Were you in the house at the time the police came in?

Mr. Cutley: I object to that.

The Court: Objection sustained.

Q. What men were in the South Plainfield house?

Mr. Cutley: I object on the same grounds I urged before.

(Argument.)

The Court: I will permit the question. You may have an exception.

JOHN P. KIRKPATRICK,
Judge.

Exception allowed, signed and sealed.

(Last question read by stenographer.)

Mr. Cutley: I object to that on the ground it is indefinite as to time.

The Court: I do not think you have fixed a time, Mr. Toolan.

Mr. Toolan: I will fix the time.

Q. Do you know of your own knowledge the date of the Castles Ice Cream Company robbery? A. It was the morning of the sixth of July, 1926.

Q. With reference to that date when was the South Plainfield house occupied? A. South Plainfield house was occupied on the first of July, and we moved in the second.

Q. And you were there until what date? A. Well, I was there, now—the last I was there was the sixteenth of July, Friday.

Q. Who occupied that South Plainfield house from July 2 until July 16, the last time you were there? A. Frank Wunkowski, Caruso, Legenza, and a number of other fellows.

Q. Prior to the Castle's robbery on July 6, did you ever go to the Castle's Ice Cream Company plant with anybody? A. I went with Frank Wunkowski and another fellow about a week before that. I can't remember what day it was, and Wunkowski got out and he went to the plant and ordered some ice cream.

Q. Do you know where that ice cream was sent? A. He told me he gave——

Mr. Cutley: I object.

Mr. Toolan: This is what the defendant told him.

Q. What did he tell you? A. He told me he gave a confectionery's name to deliver it in Metuchen.

Q. Who was in the car with you besides Wunkowski? A. A fellow that I know as George Martino. He ain't here.

Q. Did you go to the Castle's Ice Cream Company at any other time with anyone? A. No, sir.

Q. What date was it that you went to the Castle's Ice Cream plant with Wunkowski as you have just described? A. I could not really remember what date it was.

Q. I mean, how long before the robbery? A. Well, I should judge it was maybe a little more than a week.

Q. Where were you on the morning of July 6? A. On the morning of July 6 I went to the South Plainfield house, Park avenue, about twelve o'clock.

Q. Had you been there earlier in the evening of July sixth? A. I was there between eight o'clock and half past eight.

Q. Where did you go then? A. About half past eight I left there and I went home.

Q. Why did you leave there and go home? A. Because Wunkowski told me to be there at twelve o'clock noon the next day, so I went home.

Q. Twelve o'clock noon on what date? A. July sixth.

Q. Now, when you got there at twelve o'clock noon on July 6 who was in the house then? A. There was Frank Caruso, Wunkowski, Legenza, and then there was a number of other fellows.

Q. What did you do that day? A. First about quarter to one or so I brought Frank Caruso and another fellow to a train in Dunellen, New Jersey.

Q. What did you do after delivering them to the train? A. I came back to the house and I took three other fellows to the train in Netherwood about one-thirty or two 'clock.

Q. What did you do after delivering them at Netherwood? A. Then I went back to the South Plainfield house and I took Legenza and Frank Wunkowski and another fellow to Harrison, New Jersey.

Q. Then where did you go? A. Then I went home after I left them there.

Q. What, if anything, did you see around the house on the sixth of July? A. The sixth of July when I went there I brought a few newspapers, and in the newspapers was about the Castle's robbery, and I brought them upstairs and I was going to stay around to see how much money they got, and Wunkowski says I should go downstairs and sit down there until they got finished; and then in the meantime Legenza came downstairs and was talking to me.

Q. Was there anything said there by either Wunkowski or Legenza or Caruso about the Castle's job? A. The only thing was said that they got a lot of checks besides the cash. They didn't get as much as they thought they would get.

Q. Did you get any cash out of this job? A. Yes, sir. I got $250 in cash.

Q. After July 6 did you return to the South Plainfield house at any time? A. After that I returned, I believe it was the ninth, on a Friday night.

Q. Who was there then?

Mr. Cutley: I would like to fix what Friday night that was.

Mr. Toolan: July 9, he says, about the ninth.

Mr. Cutley: I object to any relation by him as to what happened on July 9 because it is absolutely remote in time.

The Court: It must be connected.

Q. Who was in the house at that time? A. There was nobody in the house. I went to Rahway station and I picked up a fellow and girl and brought them to the house.

Mr. Cutley: I ask that that be stricken out, your Honor.

The Court: It does not do any harm up to this point.

Q. Was the fellow that you picked up any one of these three defendants? A. No, sir.

Q. At any other occasion after that were you at the house with any one of these men? A. I can't remember what date it was, but it was the Thursday of that week that Wunkowski called me up and I hired a garage, and then I went to the house in

South Plainfield. I hired the garage in Carteret for him.

Q. Whose garage did you hire? A. I hired it off a fellow by the name Sam Brown. They call him chief.

Q. You hired that garage at whose instructions? A. Frank Wunkowski.

Q. Then what did you do after hiring the garage? A. After hiring the garage I brought the car to the garage over to the house in South Plainfield.

Q. Then what did you do after that? What I mean is, who was at the house that day? A. There was Frank Wunkowski and another fellow. He ain't here now.

Q. How long was that before the seventeenth of July? A. That was the Thursday just before the seventeenth. I believe it was on the fifteenth.

Q. On the seventeenth of July where were you? A. Well, I was in New York the night before that and coming back I was with Wunkowski, and I got picked up in South Plainfield—not South Plainfield, but Plainfield.

Q. At the same time Wunkowski was arrested? A. No, sir, before Wunkowski was arrested.

Q. With reference to this garage that you hired, did you with any one of these other defendants ever put anything in that garage?

Mr. Cutley: I object unless the question is directed to what came from Castle's, if anything.

Q. Yes, confine it to the Castle's job. A. I went with—I drove my car. It was late that night.

Q. What night is this you are referring to? A. Thursday night, the fifteenth of July. I figure it was around twelve o'clock. I drove my car to Car-

teret, New Jersey, and I had Legenza in the car with me, and Wunkowski and another fellow drove the Lincoln, the car we called the Lincoln, and they put it in that garage and then the four of us went back to the South Plainfield house.

Q. How many cars did you leave in the garage? A. There was only one car at that time.

Q. What kind of car was that? A. That was the Lincoln.

Q. Who had the keys to that garage there? A. I give them to Wunkowski that day.

Q. To your knowledge was there anything in that car belonging to the Castle's job? A. I could not tell you if there was.

Q. Now you mentioned something about checks before. Did you see any of those checks? A. No. Well, I didn't exactly see any of them checks, but I know he went down to the river in Sewaren, and they throwed them overboard down in the river in Sewaren.

Q. Who threw them overboard? A. It was Legenza that throwed them overboard.

Mr. Salley: You Honor, I object unless he was present or had some admission from Legenza about throwing them overboard. I would like to examine on that proposition. It is hearsay, I think.

Q. Were you there at the time? A. Yes, sir, I was there.

Q. Did he tell you what he was doing? A. Yes, sir.

Q. He did? A. Yes, sir.

Q. In what shape or condition were those checks? A. They were in like a small box, tin box. They were in a bag and he opened the bag up and dumped them in the river there. The river or the Staten Island Sound.

Q. Where is that? A. It is where that old Sewaren Hotel used to be, down where they bathe.

Q. Down near Hackett's Beach? A. Yes, sir.

Q. I show you a gun here and ask you if you ever saw that gun in anyone's possession, any one of the defendants?

Mr. Cutley: I object to that unless he fixes the time.

The Court: Of course he may answer yes to that, and then he may answer the question as to when it was.

A. Yes, sir, I did.

Q. Did you see that gun prior to the sixth of July, 1926? A. Yes, sir.

Q. When did you see it? A. Well, I could not really tell you what day it was, but it was in the house in Woodbridge, New Jersey, 242 Freeman Street, where the house was occupied. I seen it in the hands of Wunkowski and on the table there in the room.

Q. Did you see anybody use that gun prior to the Castle's job?

Mr. Cutley: I object to that on the ground it is immaterial as to what they did at any other time.

The Court: Objection sustained.

Q. I show you a bag here and ask you whether or not you ever saw that bag or one similar to it?

Mr. Cutley: I object to it unless it is that bag.

Q. (Continuing) In the South Plainfield house subsequent to the Castle's job? A. I seen a bag something like—I could not say if that was the

bag or not, but a bag like that. It seemed to have some money in it; in the house upstairs in a dresser. It was in one of the drawers. There was another bag alongside of it.

Q. Containing what? A. I couldn't tell what it was in it. It was a bag similar to that.

Q. Was there anything in them? A. They both had money in them, I guess.

Mr. Toolan: That is all.

Mr. Cutley: Your Honor, before my cross-examination I would like to make a motion that the Court direct that the bag, the pistol, and the bullets be removed from the rail, not having been marked for identification. There is no proof at all that they are connected with this case.

The Court: That may be done.

Mr. Cutley (Continuing): On the ground of a prejudicial atmosphere being created.

Mr. Toolan: I ask that both be marked for identification.

(Argument.)

(Pistol marked Exhibit S-1 for identification.)

(Bag marked Exhibit S-2 for identification.)

Cross-examination by Mr. Cutley:

Q. How old are you, Casaleggi? A. Twenty-seven years old.

Q. Where did you live prior to living in Carteret? A. I lived in Carteret for the last twenty-two years. I could not remember where I lived. I believe it was in Westfield.

Q. What was your business before the time you met either of these defendants? A. I was in the ice cream business with my mother.

Q. Where? A. Carteret, New Jersey.

Q. Have you got a place of your own? A. It was my mother's, but I was running the place for her.

Q. Is that how the question of the Castle's Ice Cream Company came up, because you were in the ice cream business? A. No, sir, not that I know.

Q. Don't you know that you were the man that suggested robbing Castle's Ice Cream Company because you knew how much money they had in their place at Perth Amboy? A. Why, who told you that I was the man?

Q. I am not going to answer any questions to you. But isn't that so? A. No, sir.

Q. You are not the man that brought two other men, not the defendants here, down to Castle's place and told them to order the ice cream? A. No, sir, I am not the man. I brought Frank Wunkowski and another fellow there because they told me to drive them here.

Q. What is the other fellow's name? A. The fellow's name I know is George Martino.

Q. How long did you know him? A. I only knowed him about a couple of months.

Q. Isn't it a fact you knew him for five years? A. No, sir, I did not.

Q. Didn't he live in Carteret? A. Martino never lived in Carteret.

Q. Where did he live; any place? A. I don't know even where he lived any place.

Q. Where did you meet him outside of Carteret? A. I met him in the Woodbridge house, and once in New York.

Q. How long had you known him prior to the time you drove to Perth Amboy? A. Maybe two months.

Q. Where did you meet him at those times? A. I met him in New York the only one time I met him.

Q. What place in New York? A. It was with Wunkowski, in his house.

Q. In whose house? A. The one that Wunkowski was staying at.

Q. That is where you met Martino? A. Yes, sir.

Q. Martino was an Italian, wasn't he? A. Yes, sir.

Q. And you are an Italian? A. Yes, sir.

Q. Was Martino the man that asked you to drive him down to Castle's? A. No, sir.

Q. Who was it? A. It was the two of them, Martino and Wunkowski.

Q. And what did you think they had in their heads, or did they tell you what they had in their heads at the time they asked you to drive down there? A. No, they didn't tell me. They just said, they told me to stop there at a grocery store and they took a walk.

Q. Did you deal with Castle's, or did your mother deal with Castle's? A. She used to deal with Castle's quite a few years ago.

Q. Did she deal with Castle's at the time of this alleged robbery or larceny? A. We didn't have no store at the time of the alleged robbery.

Q. What was your business at that time? A. My business was chauffeuring these fellows around in the daytime.

Q. You said before that time you were working for your mother. When had you got the store? A. Before I met them in Woodbridge.

Q. When did your mother give up the store before the time you met these fellows? A. My mother got the store in June.

Q. Of 1926? A. 1926.

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

Q. And you worked with your mother up to the time she gave up the store? A. Yes, sir.

Q. It was just an ordinary ice cream store, was it? A. Ice cream, confectionery, fruit.

Q. How did you come first to meet Wunkowski and Martino? A. I knowed Wunkowski. He used to live in Carteret.

Q. When did he first bring Martino to you? A. The first time that I seen him was in New York, but I can't exactly tell you what date it was.

Q. You can state that it was July 15 you went to North Plainfield. Tell me what was the date you first met Martino. A. I don't remember the date.

Q. Was it the first of June? A. It was before the first of June.

Q. Was it before your mother gave up the store, or after? A. Before.

Q. Then it must have been in May? A. It was around April, I guess, somewhere.

Q. Around April? A. Yes.

Q. Were you working for your mother at that time? A. Yes, sir.

Q. What were you doing for her? A. Well, I was taking charge of the store for her.

Q. Well, these fellows would come over, then, and hire you, and you would leave the store that you had charge of and go to New York with them, isn't that so? A. No, sir. Sometimes I took a day off or so, and I would go over.

Q. How many times, can you tell this Court and jury, did you see Martino from April 1st up to the date you drove him to Castle's Ice Cream Company's place in Perth Amboy? A. Well, now, I seen him once there in April, and then I seen

him in June when they hired the house. I could not tell you this exact date, whether it was the seventh day of June, or the eighth day of June, but from then on I seen them pretty near every day in the house.

Q. You saw Martino? A. In the house, Woodbridge, New Jersey.

Q. Didn't you see him in your store? A. No, sir. I met him in the house in Woodbridge.

Q. Didn't you run a card game over there, and that is where you met all these fellows?

Mr. Toolan: I object, if the Court please.
The Court: Objection sustained.

Q. Would these fellows frequent this candy store of yours? A. No, sir, none of these fellows came to my store.

Q. Martino came to the store, didn't he? A. No, sir.

Q. He never went there? A. No, sir.

Q. How did you become interested with Martino? What was the conversation you had with him when you first met him? A. I can't remember no conversation, what the conversation was.

Q. Did you ask him what business he was in? A. No, sir.

Q. You didn't care, did you? A. Well, I didn't care, because it wasn't none of my business what he does.

Q. When they hired the house did you then become their chauffeur? A. Yes, sir.

Q. What weekly salary, if any, did they pay you? A. They didn't pay me no weekly salary.

Q. What were your terms? What were you to get? A. Well, I don't know what I was to get.

Q. You don't mean to say that you were going to drive around people in an automobile and act

as a chauffeur without getting paid for it, do you? A. Well, I know the fellows, so I didn't mind.

Q. They never paid you anything, did they? A. Yes, they paid me $250.

Q. That wasn't until July? A. Yes, sir.

Q. That wasn't until July, and you had met Martino two months before your mother gave up the business? A. Yes, but I never was in his company prior till I met him in Woodbridge again.

Q. That was the eighth of June, wasn't it? A. I could not tell you whether it was the seventh or eighth day of June.

Q. It was the first part of June anyhow? A. Yes.

Q. And from that time on you kept driving these fellows around, didn't you? A. Not exactly every day. I was down there.

Q. Don't you know you were there every day? A. No, I don't.

Q. Will you swear that you weren't there every day? A. Well, I don't know if I was there every day or not during that other month.

Q. Where would you drive them? Where would you bring these fellows? A. Well, I would buy some foodstuffs for them and bring them back to the house and drive them to the station in Rahway sometimes when they wanted to go to New York, sometimes.

Q. Didn't Wunkowski live in Carteret at that time? A. He did not.

Q. He did not. What kind of house did they have there? A. I don't understand your question.

Q. What kind of house was it, a frame house, or brick house, or seven-room house, or what? A. What house are you talking about?

Q. Oh, the one in Woodbridge, the one that you hired. A. That is different. I didn't hire it; Wunkowski hired it.

Q. It is hired, and you are the man that bought the foodstuffs. A. It was a wooden frame building. It had I think about seven or eight rooms and an attic.

Q. What day in June can you fix now as being the date upon which you brought them to Castle's in Perth Amboy? A. I can't exactly remember what day it was.

Q. Was it a week after the house was hired? A. No, it was a couple of weeks after the house was hired.

Q. Was it two weeks after the house was hired? A. I think it was about three weeks after.

Q. That would bring it—8, 15, 22, 29? A. It was during that week. It was around the twenty-fourth day of June, twenty-third, something like that.

Q. What part of Perth Amboy did you leave your car in? A. I left it on—now, I stopped my car on Smith street, near Smith street.

Q. How far away from Castle's was that? A. About four or five blocks.

Q. On the way up there did you or they talk about going to Castle's? A. Yes, sir.

Q. Well, then why didn't you stop near Castle's? A. Well, because they told me not to go up to Castle's.

Q. You were an honest young man, weren't you, at that time? A. Why, yes.

Q. And didn't you suspect anything ? A. No, sir, I did not.

Q. You thought they were just going up to get some ice cream for their place, is that so? A. Yes, sir.

Q. So that all your testimony as to ordering the ice cream, you thought in your mind that they were only doing something that was legitimate? A. Yes, sir.

Q. Is that so? A. Yes.

Q. You had no reason to suspect anything. Couldn't you give us the reason why you did not stop in front of Castle's? A. Well, they told me not to go up as far as Castle's, that they were going to walk there.

Q. How far was it that they would walk from where your car stopped? A. I can't tell you the exact distance, but I told you it was between three and four blocks.

Q. Did that create any suspicion in your mind? A. No.

Q. How long were they away from the time they left the car—you didn't see them go into Castle's at all? A. No, sir, I didn't see them.

Q. How do you know they went to Castle's? A. By them telling me.

Q. When? A. When I was driving. That is the reason why they were going, and when they came out of the place Wunkowski says that he give a fictitious name in Metuchen.

Q. After that time you thought they were going on a perfectly level mission, didn't you? A. Well, I didn't think nothing of it.

Q. Well, you thought that they were going to Castle's, they were going to buy ice cream, did you? Did you or didn't you? A. Well, I know they weren't going to buy no ice cream.

Q. That is what I want to get out of you. I want you to tell the Court and jury whether when you started out from Woodbridge with them to go to Castle's, whether you knew they were going to start off to plan for this larceny? A. Just was

going down there to give a fictitious name and look over the place, I guess.

Q. For what purpose? A. I don't know what purpose.

Q. Don't you know it was to rob it? A. No, sir.

Q. You want the jury to believe that you heard these people talking about going down to look over the place and give a fictitious name, and still you say you do not believe they were going to do anything wrong, is that so? A. No, sir.

Q. That is not so. Who told you they were in Castle's when they came back? A. Wunkowski and Martino both.

Q. Wunkowski and Martino. So Caruso wasn't there? A. No, sir.

Q. And Legenza wasn't there? A. No, sir.

Q. On July 4 did you see these men? A. July 4? No, sir.

Q. When did you move from Woodbridge to North Plainfield? A. Well, they hired the house, I think it was, on the first day of July.

Q. Were you with them when they hired the house? A. No, sir. South Plainfield it was. It wasn't North Plainfield.

Q. When do you know that you went there? A. Now, on that evening like, of the second, like in the afternoon it was. We went up there to get the house ready, to be ready to move in.

Q. And you did go up when? A. The second of July.

Q. When did you go again? A. When did I go to the house again?

Q. Yes. A. I helped move them.

Q. When was that? A. I think that was the morning of the second.

Q. But at the time you went to clean up for them, or the time you brought the goods in to them? A. To clean up it must have been before the second; the first, the evening of the first of July. That was the day they hired the house, and that afternoon was there cleaning up with them, and then that night it was after twelve, it comes at the second of July we moved.

Q. When you say they hired the house, were you there when they hired the house? A. No, sir.

Q. You know that from what someone told you? A. It was, now, I learned it, now, when Wunkowski and Martino in my car, they went up to see a party.

Q. You weren't with them? A. No, I wasn't with them.

Q. Are you telling about something that you don't know anything about? A. Didn't they come back and tell us they got the house all hired?

Q. How do you know they didn't walk into the the house and take it by force? You are trying to make it that they took everything. A. A day or so before that they went there they saw the fellow, and the first of July they were supposed to draw up the lease for a year.

Q. Were you consulted about all these things? A. I knowed everything was going on.

Q. As a matter of fact, you were part of the gang, weren't you? Go ahead and tell the truth about it. A. Well, maybe I was part of the gang.

Q. That is what I have been trying to get out of you. Don't you know you are the one that got them to move from Woodbridge to South Plainfield? A. No, sir, I don't know that I was the one.

Q. After the second when did you next go to South Plainfield? A. The afternoon of the third.

Q. What day of the week was that? A. Saturday.

Q. Who was there at that time? A. Well, there was Wunkowski, Caruso, Legenza, and a number of other fellows.

Q. Martino was there? A. Yes, sir.

Q. That was your friend? A. No, that wasn't my friend. They were all my friends.

Q. How many more were there? A. Six more besides them.

Q. Did you tell the Prosecutor their names? A. I don't know their names.

Q. Did you tell them Martino's name? A. Just the only name I know. I don't even know if that is his right name or not.

Q. Well, you didn't see them from the third of July until what time? A. I seen them the fifth, the afternoon of the fifth.

Q. The afternoon of the fifth where? A. It was eight o'clock that evening.

Q. Where? A. South Plainfield house, in Plainfield.

Q. What time did you get there? A. Around eight o'clock.

Q. What time did you leave there? A. Half-past eight.

Q. Whom did you see at that time? A. I seen Frank Wunkowski, Caruso, and Legenza, and a number of other fellows there.

Q. Where were all these fellows? A. They were in the South Plainfield house on Park avenue.

Q. Were they upstairs or were they downstairs? A. They were downstairs.

Q. Did you go upstairs? A. I didn't have to go upstairs when they were all down.

Q. Did you go upstairs at any time? A. Not that night I didn't go upstairs.

Q. What did you go over there that night for? A. Made arrangements to meet them there that night.

Q. To get your bit, wasn't it? A. No, sir, I couldn't get my bit. The job wasn't pulled yet.

Q. When did you get this $250? A. The afternoon of the sixth.

Q. That was the next afternoon? A. Yes, sir.

Q. Where were you at the time the robbery was pulled off, or the larceny? A. Home, sleeping.

Q. Did you know all about it? A. Well, I didn't know when it was going to be pulled off, but the next morning—I know there was a job going to be pulled off that night, but where I didn't know, but when I read the paper I knowed what job it was.

Q. You had never been in any trouble before, had you? A. No, sir.

Q. You had never received any money from these fellows for driving them around? A. I received some money before that.

Q. How much money did you receive? A. About $90, I believe, before that.

Q. That was $90 from the eighth of June up to July 5? A. Yes.

Q. You got $250 in cash, did you? A. That was in cash. Was no checks. Checks ain't no good.

Q. You were very business-like about it, weren't you? How long have you been in jail? A. What do you mean, how long?

Q. Weren't you arrested in this case? Weren't you the first man that was arrested? A. I guess I was the first man arrested.

Q. And you were arrested because you were seen near Castle's place on this day you said you saw him, Martino, and the other man down there? A. No, I wasn't. They had the number of my automobile.

Q. That is the reason, isn't it? A. My automobile was never seen at Castle's.

Q. Didn't the police get the number of your car that was right near Castle's place? A. No, sir, not near Castle's. It was on account of going to this house where these people seen all these men gathering around looked like suspicious characters.

Q. How soon after the sixth of July were you arrested? A. The seventeenth.

Q. What happened to you? Where were you put; in the Middlesex County Jail? A. No, I was locked up in Plainfield. I couldn't come from Plainfield here. It was in Plainfield.

Q. How long were you in jail in Plainfield? A. Couple of hours.

Q. How long were you in jail altogether since the time of your arrest? A. I got out Saturday.

Q. You were in about two days, weren't you? A. Who? I got out just this Saturday past. What date was Saturday?

Q. Last Saturday? A. Yes.

Q. The thirtieth. A. That is the day I got out. October 30.

Q. Do you know where Martino lives? A. No, sir, I do not.

Q. After the fifteenth you say you hired a garage for Wunkowski? A. Yes, sir, July 15.

Q. Where did you hire that garage? A. Carteret, New Jersey.

Q. Then what date were you arrested? A. The seventeenth of July.

Q. That is two days after you hired the garage? A. Yes, sir.

Q. Have any promises of protection been made to you by the Prosecutor of this county? A. What do you mean?

Q. For your aid to the State? A. What do you mean, protection?

Q. In other words, they are going to let you off if they convict the other fellows with your testimony? A. No, sir, I didn't have no aid from the State, but I consulted my attorney and I told my attorney how deep I was in it, and he says, "The best thing for you to do is to come clean."

Q. And you didn't come clean until you had consulted your lawyer about it, is that the idea?

Mr. Toolan: That is what he said, if your Honor please.

The Court: Yes.

Q. You knew yourself if you came clean you were going to get consideration, didn't you? A. Well, I don't know. Sometime you get consideration, and sometime you don't. How do I know what I am going to get?

Q. Has that been your experience heretofore, that sometime you get consideration and other times you do not?

Mr. Toolan: There is no testimony that he ever had any other experience.

Mr. Cutley: He just told me sometimes he got consideration.

Mr. Toolan: He did not use the first person.

Q. Were there any other Italian fellows in that mob that was in Plainfield? A. The other fellows

that were there, I didn't ask them what their nationality is.

Q. You know an Italian when you see one, don't you? A. No.

Q. You wouldn't think Caruso was an Irishman, would you? A. Lot of fellows look like Jews, don't they?

Q. You don't know what nationality these fellows were? A. Well, you don't know. Well, you have got to look over a few, that is.

Cross-examination by Mr. Salley:

Q. What is your name again? A. Charles Casaleggi.

Q. How old are you?

The Court: He says he is twenty-seven years old.

Q. Up to now what have you ever worked at?

The Court: Haven't we been all over that?

Mr. Salley: I don't know: I would just like to go into that.

The Court: He says that up until he got into this, or until the first of June, he was working in his mother's ice cream parlor.

Q. How much did your mother pay you a week? A. My mother didn't pay me no special rates.

Q. As a matter of fact, you lived there with your mother, and you did a little work, and she supported you, isn't that so? A. I was helping her.

Q. The only thing that you have done in the twenty-seven years of your life is that you lived there with your mother, worked in the ice cream

store, she supported you, and you made ninety dollars driving these fellows? A. I don't understand that question the way it was put to me there. The lawyer asked me prior to meeting these fellows where I was working at. I was working at the store, but that didn't go into my whole life's history.

Q. I will ask you now. Have you ever worked anywhere else outside of working and living on your mother and driving these men around as a chauffeur to them? Did you work anywhere else? A. Yes, sir, I did. I worked in the steel works.

Q. Why didn't you tell us that before? A. He has been asking me. Am I supposed to go back ten or twelve years? I ain't supposed to guess at what you fellows ask me.

Q. Where did you work outside of your mother's place and outside of acting as chauffeur for these men? A. Chrome Steel Works, Carteret.

Q. How long did you work there? A. I worked there five years, on and off.

Q. You didn't make your money as a gambler, did you? A. Not exactly.

Q. You did make some money gambling? A. Some money. Everybody gambles every once in a while.

Q. Didn't you make your money as a crap shooter? Wasn't that your occupation all along? A. No, sir.

Q. How much did you make shooting crap? You made some. A. I made some because I shot crap once in a while.

Q. How often did you shoot crap? A. Well, to tell the truth, I never marked it down every day I shot crap.

Q. But you shot it so many times you can't keep track? A. No, it isn't that.

Q. Your crap shooting has been a favorite occupation of yours during the twenty-seven years of your life, isn't that so? A. No, not the favorite occupation.

Q. But it has been an occupation, and you have made money with it, haven't you? A. I have lost money, too.

Q. Now, you spoke about living in this house in Plainfield and this house in Woodbridge. As a matter of fact, don't you know that you never lived in those houses? A. No, I didn't never live in them.

Q. Didn't you simply visit these houses off and on? Isn't that the way you got to the house in Plainfield and the house in Woodbridge? You never stayed in either house? You never stayed there overnight? A. One night I did, in Plainfield.

Q. You spoke about these men paying you money for driving you around. How much money did they pay you? I believe it was $90? A. $90 before the Castle's.

Q. And that extended over a period from April to some time in July, is that so? A. No, it wasn't from April.

Q. How long had you been driving them around? A. I only drove them around during the month of June.

Q. And they paid you for that $90, is that so? A. That is it.

Q. Did you earn any other money during the month of June besides this $90 that these men paid you? A. No, I did not.

Q. Did you earn any money shooting crap? A. I don't remember.

Q. You spoke a lot about seeing this gun that Mr. Toolan had up here. You spoke about Mr. Wunkowski having that gun. Don't you know as

a matter of fact that this gun was lying about in this house in South Plainfield for a long time? A. Could not have been very long.

Q. How long was it at that time? A. I can't tell you if it was over there every day or not.

Q. You used to handle that gun yourself? A. I took it apart in the house in Woodbridge.

Q. As a matter of fact, didn't everybody in the house at some time or other handle the gun besides Wunkowski? He wasn't the only man who handled that gun? A. I didn't see anybody else handle that gun.

Q. You took it apart? A. Yes, sir.

Q. Why did you try to pin the gun on him? It was lying the around the house. He didn't carry the gun around all the time, did he? A. No, sir, he didn't.

Q. Now, this day that you went down to the Castle's Ice Cream Company place you stopped, as I understand it, up on Smith street? A. Yes, sir.

Q. How many blocks from the Castle's Ice Cream Company was it that you stopped that day? A. I judge it was between three and four blocks.

Q. You have been arrested in this case and you made a statement to the Prosecutor's detectives; that is so, is it not? A. Yes.

Q. And you have been out of jail since last Saturday? A. Saturday that just passed.

Q. You were riding around Carteret yesterday in an automobile? A. I haven't got my freedom. I am only out on bail.

Q. But you are out, though? A. Yes.

Q. You got out after you made these statements that you told here on the stand today to the Prosecutor's detectives? You got out, isn't that so? A. Yes.

Charles Casaleggi—Re-direct.

Ernest Wadley—Direct.

Redirect examination by Mr. Toolan:

Q. You made the statements when, Charley? How long ago? A. The statements? Well, I signed a statement up in Elizabeth about—I believe it was on the thirteenth of August.

Mr. Toolan: That is all.

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

Direct examination by Mr. Toolan:

Q. By whom are you employed? A. Castle's Ice Cream Company.

Q. In what capacity? A. General manager.

Q. Were you in the plant on the morning of the sixth of July, 1926? A. Yes.

Q. At what time? A. About a quarter of six.

Q. Was that an unusually early hour or not? A. Yes, it was.

Q. And you came there for what reason? Why did you come there that early in the morning? A. They told me that the place had been robbed.

Q. When you got into the plant where did you go? A. Went right to the safe and saw that it had been blown open.

Q. Where was the safe? What part of the building? A. Right in the office.

Q. What was the condition of the safe when you got there? A. The drawers were blown off. In fact, one of them was laying down, and everything was more or less scattered around the office right by the safe.

Q. Do you know what was in that safe? A. Well, only the receipts that is paid, according to records.

Q. Do you know what the amount of those receipts were that were in that safe? A. Yes.

Q. Can you tell us what was in that safe when it was closed? When was it closed? A. On that night.

Q. The fifth? A. On the night of the fifth.

Q. Do you know what was in it then? A. Yes, there was currency and checks.

Q. I mean, have you got the amounts? A. Yes.

Mr. Cutley: I object unless he knows of his own knowledge. I object to his answer.

A. (Continuing) Well, in round figures, $25,000.

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

Q. Do you know of your own knowledge? A. Yes.

Q. Is it a part of your duty to know what is in the safe? A. That morning I went right over the books and made a report on just what was in the safe.

Q. As indicated by the books? A. Yes, the receipts for the previous days.

Q. And in round figures that was what, you say?

Mr. Cutley: I object to that, your Honor. He has no personal knowledge except through a secondary source.

Q. How do you know what was in the safe? A. I immediately took the cash in, went over the accounts of the previous days.

Q. Who was the one that had charge of putting money in the safe? A. Fred Daub, the cashier.

Q. Is he in court here? A. Yes, he is.

Q. And the information that you have as to that matter is that you know of your own knowledge by what information you have received from the cashier? A. It is more personal knowledge due to the fact that I went over the accounts, the records that were kept.

Q. Who received this money and put it in the safe? A. The cashier.

Q. And he is in court? A. He is in court.

Q. On the morning of the sixth when you got there did you find any receipts in the safe or not? A. I believe in one drawer there was a few dollars.

Q. Everything else was gone? A. Everything else was gone.

Q. Mr. Wadley, I show you a bag here and ask you whether or not that was a bag of the character used by the Castle's Ice Cream Company? A. Yes.

Q. Can you say whether or not that is one of your bags? A. I couldn't say, no.

Q. Was it a bag of that same kind? A. Very same kind of bag, yes.

Q. Where did you get those bags? A. At the First National Bank.

Q. Perth Amboy? A. Perth Amboy.

Q. You used them for what? A. Carrying silver to and fro from the bank.

Q. Will you open up that bag and look at the money inside?

The Court: You want it to appear on the record that you are referring to the exhibit.

Mr. Toolan: Yes, Exhibit S-2 for identification.

Ernest Wadley—Cross.

Q. Will you look at that money and tell me if there are any distinguishing marks on that money? A. It is a dirty job. Yes, tastes salty.

Q. What have you got to say about the money that you folks handle; that is, the man in the ice cream business? A. It gets salty from the driver's hand with its salt and ice, and then collecting money, it always is of a salty nature.

Q. Mr. Wadley, you have just sampled one of the coins in that bag marked S-2 for identification? A. Yes.

Q. Have they any distinguishing marks? A. It tastes salty.

Q. And did you, on July 18, 1925, examine the money in the possession of the police at South Plainfield? A. Yes, I did.

Q. What have you got to say about the character of that money? A. That was salty.

Q. Is that the money that is in the bag there? A. It looks very much like it.

Cross-examination by Mr. Cutley:

Q. You say it tastes salty, do you, Mr. Wadley? A. Yes.

Q. Did you taste each and every morsel in there? A. No, I did not.

Q. When did you first see it in the hands of the police? A. Why, on July 18, I believe, South Plainfield.

Q. Since the time you saw it in the hands of the police has that salty taste affected it so that it depreciated in number or value? A. I couldn't tell you that.

Q. Did you count them? A. No, not here.

Q. Did you count them? A. I helped count some over in South Plainfield.

Ernest Wadley—Re-direct.

Q. How much did you count? A. I wouldn't say.

Q. Did you make any record of it? A. I didn't, but a record was made.

Q. Now, in the first place you won't say that that was your bag, will you? A. No.

Q. You don't want to swear to something you don't know? A. No.

Q. In the second place you won't say that was your money? A. Only that it tastes salty.

Q. If anybody got a bag and got a lot of money and put some salt on it and you tasted it, you would say it was ice cream money? A. Yes.

Q. As far as what was in that safe that night and what was in it the next morning, you don't know whether there was anything in the safe the night before? A. I know what was in there of my personal stuff.

Q. I mean, do you know the amount of money? The defendants here are charged with stealing a certain amount of money. You don't want to swear that you actually saw in this safe the night before this larceny that certain amount of money, do you? A. No.

Q. As far as you are concerned it might have been an inside job and the money taken by somebody inside? A. I don't know. I left early, of course, the night before.

Re-direct examination by Mr. Toolan:

Q. How much of your personal money was in there that you know of? A. I had some stocks and Liberty Bonds and stuff like that that was gone.

Q. A total of what? A. I would say around $3,000.

Q. And that wasn't there either the next day? A. No.

Ernest Wadley—Re-cross.
Frederick Daub—Direct.

Re-cross-examination by Mr. Cutley:

Q. Did you see it the day before? A. Yes, I was there the day before.

Q. You had occasion to look at it the day before? You don't mean that, do you, Mr. Wadley? A. I didn't quite get you.

Q. You don't want to convey the impression that you looked at your personal matters that very day before this robbery? A. No.

Q. You hadn't looked at them for some time? A. No.

Q. You only assume that they were in the safe? A. Yes.

Q. That is so? A. Yes.

By Mr. Toolan:

Q. What is the cashier's name? A. Fred Daub.

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

Direct examination by Mr. Toolan:

Q. Mr. Daub, you are employed as cashier at the Castle's Ice Cream Company plant? A. Yes, sir.

Q. What are your duties as cashier? A. Why, checking up the drivers and having full charge of all cash and other matters received in the line of money.

Q. Were you employed in that capacity on July 5, 1926? A. Yes, sir.

Frederick Daub—Cross.

Q. Are you the gentleman that received all the cash that was turned in on the date of July 5 and up to the time of the closing the safe on July 5? A. Yes, sir.

Q. Did you close the safe? A. Yes, sir.

Q. How much money was in the safe when you closed it the night of July 5? A. Twenty-four thousand and some odd dollars. $25,000 in round figures.

Q. You personally put that money in there? A. I did, yes, sir.

Q. And made all the books to indicate that amount? A. Yes, sir.

Q. Were you there on the morning of July 6? A. Yes, sir.

Q. What was the condition of the safe then? A. When I got there the doors were blown off the safe and things scattered quite a bit about the floor.

Q. Was any of this money there? A. There was something like nine dollars in one drawer.

Q. Everything else gone? A. Yes, sir.

Q. With reference to Mr. Wadley's Liberty Bonds and securities, do you know whether they were in the safe that day or not? A. I am pretty sure they were.

Q. You didn't see them? A. I am not positive.

Cross-examination by Mr. Cutley:

Q. You didn't even look at them? A. At what?

Q. At Mr. Wadley's personal property. A. I haven't anything to do with it.

Q. That is what Mr. Toolan is asking you.

Mr. Toolan: He said he did not.

Q. What was the nature of that currency, the money, that was stolen down there? A. Bills and silver and checks.

Frederick Daub—Cross.

Q. Now, there was one green tin box, wasn't there? A. Yes.

Q. Containing $500? A. Yes.

Q. There was one galvanized box containing $9,435? A. I don't know if that was just the figures now.

Q. And seventy-two cents, is that right? A. I would not swear to that.

Q. You were before the grand jury. And you replied to the questions so as to give the Prosecutor all the data upon which this indictment could be found, isn't that so? A. Yes.

Q. There was a canvas bag containing currency and checks of the value of $9,331.50? A. Yes, sir.

Q. Another canvas bag containing currency and checks of the value of $8,848.47, is that right? A. Yes, sir.

Q. And a green tin box containing two fifty dollar Liberty Bonds? A. That is Mr. Wadley's, I believe.

Q. Four one hundred dollar Liberty Bonds, of the value of $500? A. I believe that is Mr. Wadley's.

Q. How much of Mr. Wadley's personal effects were in that safe to your knowledge? A. I don't know anything about it. He has his personal things in a strong box.

Q. Will you say that these Liberty Bonds, the two fifty dollar Liberty Bonds and the four hundred dollar Liberty Bonds, weren't the property of Castle's Ice Cream Company or Mr. Wadley's? A. They were Mr. Wadley's, I believe.

Q. In making up any data or information for the prosecutor have you included in this $29,000 the property of Mr. Wadley? A. No, sir.

Q. That is exclusive of it? A. That is exclusive.

Frederick Daub—Cross.

Q. You were the only cashier there? A. I had an assistant.

Q. How old is he? A. I imagine about twenty-seven years old.

Q. How long have you been working for Castle's? A. Three years.

Q. How long have you been working for them? A. Five years.

Q. You work on Sundays too? A. Yes, sir.

Q. This was an extraordinary large amount of money to have there? A. It was three days' receipts.

Q. Three days' receipts? A. Yes, sir.

Q. As a matter of caution or precaution did you notify the police of this large amount of money or not?

Mr. Toolan: I object, if the Court please, as utterly immaterial.

The Court: Objection sustained.

Q. You just treated this large amount as you would any amount that came in in the ordinary course of business? A. Yes, sir.

Q. You took no extra precautions with it? A. No.

Q. What time of night did you put this money into the safe? A. I just don't remember that. I imagine it was around seven o'clock, between seven and eight o'clock at night.

Q. What time did you get to the place the next morning, Mr. Daub? A. About quarter to four.

Q. Quarter to four? A. I was called up.

Q. And Mr. Wadley came about quarter to six? A. Yes, sir.

Q. Was that on the morning of the sixth? A. Yes, sir.

Mr. Cutley: That is all.

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

Direct examination by Mr. Toolan:

Q. Where do you live? A. 316 Watson avenue, Perth Amboy.

Q. By whom are you employed? A. Castle's Ice Cream Company.

Q. Were you employed by them on the morning of July 6, 1926? A. Yes, sir.

Q. In what capacity? A. Electrician.

Q. What time did you go to work that night? A. Eleven o'clock.

Q. Eleven o'clock you got to work? A. Yes, sir.

Q. What happened during the night? A. Well, between the hour of quarter to three and three o'clock—the car washer washes the electric trucks and also the gas trucks. He brought an electric truck up to me. I went outside and received the electric truck and put her on charge. I went back inside and got my flashlight and got another truck, and when I was going back inside, they had the firing engineer and the men lining up to one of our starting boxes. When they grabbed me——

Q. Who grabbed you? A. Caruso.

Q. Where is Caruso? A. In this room.

Q. Will you point to him? A. Yes, sir. Right there (indicating).

Q. Will you come down here and put your hand on him? A. Right here (indicating).

Mr. Toolan: May we have it for the purpose of the record that it was Caruso upon whom the witness just put his hand?

Mr. Cutley: Yes, sir.

Q. What did Caruso do to you? A. Why, there was a fellow stood in back of him with a handkerchief over him, with the gun, and he done the searching of me.

Q. Who did the searching of you? A. Mr. Caruso.

Q. Did Mr. Caruso have any handkerchief or not? A. He did not.

Q. Did he have a mask of any description? A. No mask. He had a brown suit and a cap on.

Q. Did he have anything else? A. No, he did not.

Q. What did they do with you then? A. Why, they lined me up against the pillar and he was the one that searched me.

Q. You say "He." You mean Caruso? A. Caruso, and after he got done searching he says, "Where is the fellow who has charge of the electric trucks?" Well, of course no one answered. We was all there inside. He says, "Who is the fellow has charge of the electric trucks?" I says, "I am." He says, "We have got them all," and with that he marches us to the oil house.

Q. What time was that about? A. That was between the hour of quarter to three and three o'clock.

Q. Then what did they do when they got to the oil house? A. They took us out of the place and took us to the oil house.

Q. What did you do there? A. He started to wire us up.

Q. Who did? A. Caruso.

Q. How many other men did you see there? A. I couldn't say. It was three or four that was there.

Q. In that particular room? A. In that particular engine room there when I walked in, when they grabbed me.

Q. Did you see any other men around? A. There was some in back of me with handkerchiefs on. He didn't have no handkerchief.

Q. How many men altogether could you see? A. I couldn't say. It was either three or four.

Q. Can you identify any of the other men? A. I did not.

Q. When you say they took you in the oil room and tied you up, what did they tie you up with? A. Copper strands of wire.

Q. Wire of that description? A. Yes, sir.

Q. Do you know what you did with the wire that you were tied up with? A. I have it home for a souvenir.

Q. You have it home for a souvenir. Did you or any of the men give a sample of that wire to Mr. Murray? A. Why, I didn't, but there was enough of it laying around there.

Q. You gave a sample to Mr. Murray? A. I didn't give none, no. Mine was home. There was enough of it lying around there. They might have picked it up.

Mr. Toolan: May I have that wire marked for identification?

(Wire marked Exhibit S-3 for identification.)

Q. How long were you tied up there? A. Well, it must have been around quarter to four when the cops came in and they had to get the keys to unlock us out of the oil house.

Q. You were released then? A. I was released then.

Q. Who notified the police? A. The watchman.

John Pirrong—Cross.

Cross-examination by Mr. Cutley:

Q. What time did you go to work, Mr. Pirrong? A. Eleven o'clock.

Q. What time did these men come in? A. Between the hour of quarter to three and three o'clock.

Q. How many were there? A. I couldn't say how many was there. There was one there, one of the fellows spoke about leaving, now, don't tie his hands up, that he wasn't going to run away, and Mr. Caruso says, well, you don't have to bother him with that. We have got eleven men outside.

Q. Did you see the eleven men? A. No, I didn't see them.

Q. How many men did you see at the time you say you saw Caruso? A. Two or three besides him. I couldn't just say, but he was the leading man that done all the talking down there.

Q. The other fellows had handkerchiefs on, or masks? A. Yes.

Q. Everybody but Caruso? A. That was in there.

Q. Did you see anybody else in there that had any part in it? A. There was two or three others, but I didn't recognize them as good as I did Caruso, but he done the talking.

Q. Where did you see these two or three outside of Caruso? A. In back of me holding the guns.

Q. So that Caruso went through you? A. Yes.

Q. And there were two fellows with the guns? A. Two or three with the guns in back of me.

Q. Were there two or were there three? A. I couldn't say. Anyone puts a gun up to you you could not see everything.

John Pirrong—Cross.

Q. You saw whether there was one man, didn't you? A. Sure. There was more besides.

Q. You said before there were two or three that put the gun up to you. Did they put the gun up going in front or in back? A. When I got into the door they put it in front of me. Then when he was searching me he put it in back and I could not see.

Q. When you came to the door how many men did you see? A. I seen two right in front of me.

Q. Was Caruso either of these two? A. I couldn't just say that moment.

Q. Where did the other man come from? A. I don't know where he came from.

Q. Was he in the place before you came into it? A. I couldn't say.

Q. At any time did you see more than two men, one of which was Caruso? A. Well, I seen two others, but I ain't sure the third man was there. Caruso was there.

Q. Why do you say there was a third man if you are not sure there was a third?

Mr. Toolan: He says he doesn't know.

A. I said there was two or three besides Caruso, but he was the only man I got a look at.

Q. Was there two or three besides Caruso? A. I could not swear to it.

Q. Why did you say there was two or three if you cannot swear to it? A. I just imagine there was.

Q. What do you want to imagine for in such a serious case, as to the number? Did somebody tell you to imagine? A. No, they didn't. When I get a good look at a fellow I can tell him once again.

Q. Where did you meet Caruso after this night? A. I never seen him before that night.

Q. Where did you see him after that night? A. After that night?

Q. Yes. A. Over in New York.

Q. Where? A. The time I went over to identify him.

Q. Who brought you over there? A. Detective Collins and McDermott.

Q. Did they show you any pictures before you went over? A. Yes, sir, they came to my house a week before that and laid nine pictures on the table.

Q. Did they show you Caruso's picture? A. They did.

Q. And Caruso was the only man under arrest at that time in New York, isn't that so? A. Under arrest?

Q. Yes. A. They already had Wunkowski and Legenza locked up.

Q. Was Caruso the only man under arrest at that time that you went to New York? A. I guess he was.

Q. They gave you Caruso's picture? A. I picked it out.

Q. Where did you pick him out? A. At my home, Perth Amboy.

Q. How many pictures did they bring with them? A. Nine pictures.

Q. Nine pictures? A. Yes, sir.

Q. How many pictures of Caruso did they bring with them? A. One.

Q. What was done when you picked out Caruso's picture? A. They just asked me was that the man, or, "You say that was the man?" I says, "Yes."

Q. There is no doubt in your mind as to that? They said to you, "Is that the man?" A. They

didn't say to me, "Is that the man?" They laid the pictures down and they asked me to look them over.

Q. I want you to just tell us what happened there.

Mr. Toolan: Let him tell.

Q. When I asked you a minute ago what was said and your answer was, "They said that is the man," did you answer that question properly or not? A. Did I answer it?

The Court: There is not any such testimony as that.

Mr. Toolan: The testimony before is that he laid out nine pictures on the table and he picked out one of them.

The Court: Let the witness tell just what happened. That is the way to get it.

Mr. Cutley: We will clear that up.

Q. Tell us what happened the day Mr. McDermott and the officer came in with the nine pictures. A. The afternoon they came in I was sleeping.

Q. What date was that, do you recollect? A. I couldn't say.

Q. How many days after the robbery? A. It was three or four weeks anyhow after the robbery.

Q. Three or four weeks? A. It was, and they came at the house there and the wife came to the door and let them in. They asked for me and she got me up out of bed and the both of them came in. They laid the nine pictures out on the table. I picks Caruso's picture out. I didn't know that was his name. I picked his picture out and they asked me was that the man, and I says, "Yes, sir," and away they went.

Q. Without any explanation they just laid out these pictures? When you picked out Caruso's picture what did you say? A. I told them that was the man. I says to them that was the leading man down there.

Q. Before either McDermott or whoever was with him said "Is that the man?" A. Yes, that was before. They didn't say a word to me.

Q. So all they did was just rip out these pictures? They didn't say good morning or good evening? A. They shook hands with me. They told me who they were.

Q. You had seen them before, hadn't you? A. If I seen them before?

Q. Yes. A. No, I hadn't seen them before that.

Q. You never saw these detectives before? A. No.

Q. You didn't know them? A. I didn't know them.

Q. Then they told you who they were? A. They told me who they were.

Q. Did they tell you what they were up to see you about? A. Yes.

Q. Did they tell you they were up to have you identify some pictures? A. Yes.

Q. And they said they had the pictures with them? A. They did.

Q. And they told you they had the pictures of the man with them, didn't they? A. They told me they had some pictures with them. They didn't say they had the man with them.

Q. Did they make any suggestion to you as to what one of these nine, or what three or four of those nine, were at that robbery? A. They didn't, not till I picked it out. I told them that was the man.

Q. That was all they said? A. That was all they said.

John Pirrong—Cross.

Q. Then what did they say about going to New York? When did that happen? A. Well, a little later.

Q. The same day? A. No, wasn't the same day. I just couldn't recall when it was, but it was a week or two weeks later. I think some two weeks later when they came over to the house one night around nine o'clock looking for me, and they told the wife they wanted me to go to New York in the morning with them.

Q. Where did they take you? A. I don't know enough about New York to tell you.

Q. Was it to the police station or to Coney Island? A. It wasn't to Coney Island.

Q. Didn't you go to the police station? A. We was up, I think, in the judge's office. It was up on the twelfth floor, thirteenth floor.

Q. Where was Caruso? A. He was there.

Q. Was any one else with him? A. Lawyers was there.

Q. It was in a court room in which Caruso was, wasn't it? A. No, it was in no court room.

Q. Where was it? A. It was in the judge's office or his private offices, or the prosecutor's office at that time.

Q. Was Caruso at that time handcuffed? A. No, he was out on bail.

Q. He was out on bail? A. Yes, that was the first day of his trial over there.

Q. How did you know that? A. They told me they picked the man out after I identified him, his picture.

Q. The coppers had seen you in the meantime from the time they took the nine pictures down until they brought you to New York? A. Yes.

Q. And they said that they had Caruso in New York? A. I didn't know they had Caruso until the——

John Pirrong—Cross.

Q. And didn't they come into your household and talk to you about going to New York? Isn't that what they said? A. No.

Q. What did they say? A. They asked me to look over the pictures.

Q. The second time? A. No, the first time.

Q. I am talking about the second time. One time they came and you picked out Caruso's picture? A. Yes.

Q. The second time they came and you weren't around or something, and then you had to go to New York? A. The next morning.

Q. What did they tell you they were bringing you to New York for? A. To identify Caruso. They told me that they locked him up and he was out on bail, and he was going to appear that day.

Q. You were brought to New York? A. Yes.

Q. Over to some court room? A. Yes.

Q. And you identified Caruso? A. Yes, sir.

Q. He was the only person there, wasn't he? A. He was.

Q. And you had no difficulty at all? A. Well, he wasn't the only person there. Charley Casaleggi was there.

Q. You weren't going to identify Charley Casaleggi? A. No, I went there——

Q. When you went over to New York you knew from what the policemen told you that you were going to identify Caruso? A. I did.

Q. And you had no difficulty at all about it? A. No.

Q. You had seen the picture brought by the police, and from your own recollection of what happened that night? A. Well, I got a good enough look at him to tell him.

Q. That was so? A. Yes, sir.

Q. There was no suggestion by the officers at all? A. No.

Q. So that when you said before that the cops said, "That is the man," you made a mistake, when you said that they said, "That is the man" first?

The Court: The testimony is not that way, Mr. Cutley. There is not any testimony that the officers said, "That is the man."

Mr. Cutley: I am calling his attention to what I conceive to be my recollection of the evidence, may it please your Honor.

The Court: We had the testimony read once to us and it shows that that recollection is not the correct recollection of the testimony.

Mr. Cutley: I am asking it again.

Q. Did you understand here today in answer to a question of mine whether they said, "That is the man"? A. After identifying the picture they asked me, "Was that the man"? I says, "Yes".

Q. Did you, in answer to a question of mine, say that the policemen said, "That is the man"? A. What? Before they showed me the picture?

Q. Yes. A. No.

Q. As they showed it, the same time they showed it. A. No, they laid them out, and after I picked him out they asked me was he the man. I says, "Yes".

Q. What was the necessity of their question after you had picked him out? If you said, "That is the man", what was the necessity of their asking you again if that was the man?

Mr. Toolan: I object. That is argumentative. He doesn't know why.

A. They wanted to know.

Cross-examination by Mr. Salley:

Q. You cannot identify this boy sitting here as one of them?

The Court: No, he has not identified anyone except Caruso.

Mr. Salley: All right.

Redirect examination by Mr. Toolan:

Q. When you were in the court room in New York on the proceeding in the New York courts, did anybody point Caruso out to you in the court room? A. No, sir.

Q. When did you see him first; in the court room? A. I stood in the hall talking with Detective Collins when he first came by in the hall, and I says, "Detective Collins, that is the man", and that is the first time I seen his face outside of seeing it on the picture.

Q. In other words, you saw this man out in the corridor before you ever got in the court room? A. Yes, sir.

Q. Did Mr. Collins or anybody else say anything to you before you picked the man out? A. No, sir.

Q. You picked him out yourself? A. I picked him out myself.

Q. And pointed him out to Detective Collins? A. I did.

Re-cross-examination by Mr. Cutley:

Q. You don't mean to say that that was the first time you saw the man before you saw the picture in New York?

The Court: He has not said that. Wait a minute. I don't understand that. The ques-

tion does not make sense. The witness's testimony is that when he was standing in the hall in the corridor in the court house in New York this man passed through the hallway, and he said to Mr. Collins, "That is the man". Before that he had identified the picture in his own home at Perth Amboy, or wherever he lives. That is the way the testimony stands at the present time.

Mr. Cutley: May I ask your Honor to have the stenographer read that, what he said in relation to Collins passing through the hall in New York?

The Court: He didn't say anything about Collins. He said he and Collins were standing in the hall, that this man passed through.

Mr. Cutley: That is so. But he said that was the first time he saw him.

Q. That is not so, is it? A. Of course it would be the second time. I seen him in Castle's.

Q. Was that the first time you saw his face? A. Well, no, it would be the second time I seen his face.

Q. So then when you did tell counsel here that was the first time you saw his face, you meant to date it from the time you saw the pictures?

The Court: The objection is sustained.

Mr. Cutley: That is all.

Mr. Toolan: That is all.

Mr. Cutley: I would like an exception on that last question, if the Court please.

The Court: You are not entitled to it.

Mr. Cutley: Not entitled to it?

The Court: No, sir.

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

Direct examination by Mr. Toolan:

Q. Mr. Robovics, you are employed by Castle's Ice Cream Company? A. Yes, sir.

Q. And you were employed by them on July 6? A. Yes, sir.

Q. What time did you go to work on the night of the fifth? A. Eight o'clock the night of the fifth.

Q. Eight o'clock at night? A. Yes, sir.

Q. How long were you supposed to work? A. I work to eight o'clock in the morning.

Q. What is your job? A. I finished. I have to pull ice.

Q. You pull ice? A. Yes, sir.

Q. Were you there when some men came into the plant that morning? A. Yes, sir.

Q. Where were you at that time? A. I was just finishing pulling ice and I went to go in the engine room. The fellow come up. He holler, "Hands up". I look at him. I saw that handkerchief in his face, and was something—I can't tell this was a gun and maybe piece of pipe. Was coming close to me and holler, "Hands up". I hold my hands up, and the other fellow came through the other door and put a gun on my shoulder. He says, "Shut up. Don't holler. Turn around." As I turned around, grab me by the neck and pushed me in the yard. He pushed me in and I saw the rest of the fellows on the oil shanty.

Q. Who was in the oil shanty? A. There was electrician, engineer and his helper, and a fireman, and he pushed me up there on the shanty; the fellow, he tie my hands.

Steve Robovics—Cross.

Q. Who tied your hands? A. That fellow, Caruso.

Q. Which man do you mean? A. This black fellow.

Q. Will you step down and show us the man that tied your hands?

Mr. Toolan: May we have it on the record indicating Caruso?

The Court: Yes.

Q. How many men did you see there? A. Three men.

Q. Did any of them have any masks on? A. Two has got a mask. One has got a white one and the other got a black one.

Q. And one had no mask? A. None.

Q. Who? A. This is the guy.

Q. Caruso? A. Yes.

Q. Were you tied up? A. Tied by the wire.

Q. What kind of wire? A. Copper wire.

Q. Will you look at the copper wire marked S-3 and tell me if it was copper wire of that description? A. Yes, sir. I got home mine.

Q. You have got your souvenir home? A. Yes, sir.

Cross-examination by Mr. Cutley:

Q. How many men did you say were there, Mr. Robovics? A. What men?

Q. How many robbers were there? A. Three I saw.

Q. What time was this? A. Quarter to three, three o'clock, something like that.

Q. What was your job down there? A. Ice puller.

Q. How was Caruso dressed? A. They got eye glasses and cap, and I can't tell what kind of suit

because he said, "Don't look; no look at him." After I look at him he says, "Look at the wall. Don't look at me."

Q. What kind of eye glasses did he have? A. Heavy eye glasses.

Q. Heavy eye glasses? A. Yes, sir.

Q. Did you notice what kind of eyes he had? A. I can't tell his eyes because he has got glasses.

Q. Did he have the cap pulled over his eyes? A. Yes, sir, got cap pulled over his eyes.

Q. How were the other men dressed? How were the other two men there? A. I couldn't tell you that.

Q. Were they dressed in white or black or what? A. Black. I can't see that.

Q. You say one of them had a white mask and the other a brown mask? A. Black mask.

Q. What kind of hat did Caruso have on? Did he have a hat on at all? A. Who? Caruso?

Q. Caruso? A. Yes, he got a hat.

Q. What kind? A. A green—what do you call? I can't tell the colors. Who has got a cap here to show?

Q. A cap? A. Yes.

Q. A cap like that? A. Yes, sir.

Q. Was that cap pulled over his eyes? A. Yes.

Q. And he had heavy black glasses with black rims? A. Yes, sir.

Q. Were the glasses black? A. No, glasses wasn't black.

Q. Did he have anything on his face? A. No.

Q. You mean he had no handkerchief or mask or anything else? A. No, sir.

Q. How long were you talking to Caruso, or in front of him? A. I didn't talk to him.

Q. How long were you in front of him? A. How long was I in front of him? About three minutes.

Q. Three minutes? A. Yes, sir.

Q. How close were you to him? A. Close like to this man (indicating).

Q. How did you come to identify Caruso? A. What?

Q. How did you come to pick out Caruso? You picked him out in the court room too, didn't you? A. No, I never saw him since that night we were robbed until today.

Q. You never saw him before? A. No, sir.

The Court: That is not the testimony, and you know it is not the testimony. If you do not stop that voluntarily I will take means to stop you. What the witness said was that he had not seen him from that night until today, and you immediately say, "You never saw him before," which is not the truth, and you know it is not the truth.

(Argument.)

Q. Did you ever see this Caruso before the night of this robbery? A. No.

Q. Have you ever seen him since? A. No.

Q. Until today? A. Yes, sir.

Q. Is he just the same today as he was the night of the robbery? A. No, he is not dressed the same today because he no got no glasses; he no got no cap. He has all his hair cut. He is not the same like before.

Q. You didn't see him with no hair on, did you? A. No.

Q. Then why do you say that, whether he had hair before or not? A. I know he got hair before; got to be hair.

Q. Did you see him with his hair cut like that? A. He is got hair on the back, no like today.

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

Cross-examination by Mr. Salley:

Q. The only man, as I understand it, that you now identify is Caruso, is that so? A. That is it.

Q. You can't identify these other two men? A. No, sir.

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

Direct examination by Mr. Toolan:

Q. Mr. Mason, you were employed by the Castle's Ice Cream Company on the nights of July 5 and 6? A. Yes, sir.

Q. In what capacity? A. Watchman.

Q. Where were you on that morning of July 6 when anybody gained entrance into the plant? A. In the office.

Q. What attracted your attention? A. Knock at the doors.

Q. Did you see who knocked? A. Who knocks come to the door, and of course I generally go to the door because different ones come, you know, to come in.

Q. Did you go to the door that night? A. I went to the door.

Q. Did you see anybody near the door before you got to the door? A. No.

Q. When you got to the door what did you do? A. Just shoved a curtain one side, and there was four guns in my face. In the meantime there was a man with a uniform on. They all had masks on.

Q. What kind of uniform? A. Police uniform.

Q. Where did you see the man with the police

uniform? A. He stood on the outside of the other three men.

Q. You say everybody had masks on? A. All had masks on.

Q. How about the policeman? A. He had a mask on.

Q. What did you do? A. Well, the thoughts came right in my mind. The idea of a policeman holding you up, the thoughts, but by that time somebody grabbed me right on the back.

Q. And then what happened? A. Turned me right around and I didn't have a chance even to look who had a hold of me. One had one arm and one had the other.

Q. How many men had hold of you? A. Two, and there was four in the front there, the four guns shoved right in my face, and of course the ones I suppose grabbed hold of me opened the front door and let them in. One of them asked me the question where the man was that was just in here. That was the man works down in the garage. He washes the trucks, and he had just brought one in and left it for the electrician to charge, and came right through. He talked a few minutes and went down, and he asked me where this man was that was in the office, and I says, "He has just gone down to the garage." He says, "Whose hat is this?" I says, "That is mine." He say, "Don't say no more, Don't you turn your head and we won't hurt you."

Q. What did they do with you? A. Tied me and shoved me right up against the medicine chest about, I suppose, three feet from the safe; and then they commenced to blow it. There was only one man done the talking.

Q. What did they tie you with? A. They tied me with telephone wire.

Q. From what telephone? A. On the clerk's desk.

Q. That was cut, wasn't it? They cut that? A. They cut that, yes.

Q. Can you recognize or identify any of the men? A. I could not, no, because they all had masks on, and they were black masks.

Q. How many men did you see altogether? A. There was two had me in the back and four in the front of the door, front door.

Q. Six altogether? A. Six altogether.

Q. What did they do in that room that you were in? A. What did they do?

Q. Yes. A. The only thing I could see them blowing the safe. That is all. There was nobody done any talking but one man, and of course after they didn't say no more but they commenced to blow the safe, or hammer it first off; and when they commenced to blow it off one would say, "Haven't I got it off" every time it would go off. Finally it was all quiet once more. I heard them say, "Come, quick." You could not hear them. They walked very light. "Come quick." There was silence a few minutes. By and by they came back again. I says, "My," to myself, "are they coming back again?" I think it was five times they blowed on the safe, and of course they got it the last time, but in the meantime there was somebody come and laid his head on my shoulder. That was pretty close to three o'clock. And he says, "Don't be afraid. I know you. You know me." Well, I was tied, you know, and I thought that it was one of the guards all the time there, and I says, "If you know me, untie my hands." "No," he says, "wait a few minutes." Of course, I waited. After awhile he untied me After he untied me I looked out. I seen the front door

was wide open. Of course I did not know whether to give the alarm the first thing, and I was in the engine room, so I went out the back door. I looked at the safe there. That was open. So I goes down to the engine room. I goes to holler the engine was running; I could not get no word from nobody. So then I took out of there and went down Smith street and told a policeman staying there, and I told him please give an alarm to the police department, that we were blowed up and robbed; and then I went back to the engine room again and I commenced to holler again, and look for the men. I didn't know what had happened. So I goes around and I goes out the back door up at where the trucks are, and I happened to spy a light in the oil room and I says, "My, they are there now," and I ran over. I seen it was locked, so I goes back to the engine room and got a big Stillson wrench and commenced to pry on it. Then one of the men came up. I says, "How did you get out?" He says, "I crawled out of the window when I saw you. Knowed everything was all right when I saw the watchman."

Q. How were these other men tied? A. The other men?

Q. Yes, what were they tied with? A. They were tied with just copper wire. That is it (indicating).

Q. Similar to that? A. Yes, similar to that piece there.

Q. That piece marked S-3? A. Yes.

Q. Who was the man who spoke to you over your shoulder and said, "Don't worry. I know you and you know me"? A. He is a boss driver. He is here. I don't know his name.

Q. Was he the one that untied you? A. He was the one that untied me.

Cross-examination by Mr. Cutley:

Q. Mr. Mason, you could not identify Caruso as being there, can you? A. No, sir, I could not. They had masks on, you know.

Q. You had a good look at the six men that you saw? A. I didn't have a good look at them, no, only just saw their faces in the door.

Q. But all that you did see wore masks? A. All had masks, yes, sir.

Q. In what direction does the door open? I mean in what direction were you facing, north or south or east or west, when these men came to the door? A. Well, I should call it the northern, because that sets to the northern, the front door.

Q. How many of the men came in? Do you know, Mr. Mason? How many of those men came in? A. I couldn't tell you how many came in, but there was four at the front door, because there was four guns right in my face; and the two in the back there, that is the ones grabbed me so quick, you know, I didn't even see them at all. When I shoved that curtain out they had my hands.

Q. Where was Mr. Pirrong at that time? A. Who?

Q. The electrician. A. I didn't see him because he was away from the office. He is over in the engine room.

Q. You were in the office? A. I was in the office all the time.

Cross-examination by Mr. Salley:

Q. You can't identify any of these men as being present that night, can you? A. No, I could not.

Re-direct examination by Mr. Toolan:

Q. Mr. Mason, you were armed, were you? A. I was armed, yes. I had my gun in my left hand.

Q. What happened to that? A. They took the gun when they grabbed my hand.

Q. I show you this outfit, and ask you whether or not that is either the outfit or an outfit similar to that that you saw? A. That looks very much like the one. Of course I would not be positive, but this police uniform, it was a police uniofrm they had on.

Mr. Toolan: May I have this cap and coat marked for identification?

(Cap and coat marked Exhibit S-4 for identification.)

Q. Mr. Mason, I show you a crowbar and ask you whether—— A. That is the crowbar I saw in the office there where they used it.

Q. After the—— A. After the explosion, and that is the hammer too, or one like it.

Q. What was done with the crowbar and hammer; do you know? A. Well, I suppose that is what they done to knock the cover off that safe.

Q. Never mind what you suppose. Do you know whether the crowbar and hammer that were there were turned over to anybody? A. No.

Q. You don't know that? A. They laid there. That was all.

Mr. Toolan: May I have the crowbar and hammer marked for identification.

Mr. Cutley: I do object to them. Unless Mr. Toolan is going to connect them up I would say there is no justification for it.

Mr. Toolan: I only want to have them marked for identification.

(Hammer marked Exhibit S-5 for identification.)

(Crowbar marked Exhibit S-6 for identification.)

ADJOURNED UNTIL 2:00 P. M.

AFTERNOON SESSION 2:00 P. M.

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

Direct examination by Mr. Toolan:

Q. Mr. Bullwinkel, you are employed by the First National Bank of Perth Amboy, New Jersey? A. Yes, sir.

Q. And you have been so employed for how long? A. Well, probably about a year, about thirteen or fourteen months.

Q. Mr. Bullwinkel, are you familiar with the character of sacks or bags that the First National Bank apportions to its customers to send specie to the bank? A. I am, yes, sir.

Q. Will you look at the bag in front of you marked Exhibit S-1 and tell us whether or not that is the character of bag used by the First National Bank? A. It is that size. It is the same style of bag as far as I can tell.

Q. You can't tell whether or not that is one of their bags? A. That would be impossible, to verify that.

Q. A bag of that character? A. A bag of that character.

Mr. Toolan: That is all I have.

Mr. Cutley: No questions.

Joseph T. Azeck—Direct.

JOSEPH T. AZECK, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Mr. Azeck, you are a boss driver by occupation? A. Yes, sir.

Q. Were you in the vicinity of the Castle's plant on or near three o'clock in the morning of July 6, 1926? A. Yes, sir.

Q. Do you live right in that vicinity? A. Yes, sir, right in back.

Q. What happened to you that evening? A. I just happened to be going home at the present time.

Q. You mean at that time? A. Yes. I walked up as far as the office. As I got near there, why, three men came out. One of them walked right close to me and told me to walk right in and "We won't harm you". So I stood there for a minute. He says, "Walk in or I will blow your brains out". So when he said that I went in. All I was watching was the gun. The man that ordered me did not have no mask, but I could not recognize him on account of his cap being pulled down. I could not turn because he would not let me turn. He told me if I turned he would blow my brains out, so I walked right in.

Q. Are you the man that released the watchman? A. Yes, sir.

Q. Were you tied up? A. No, sir.

Q. Were you kept covered? A. The man back of me with a gun kept telling me not to turn back or he will blow my brains out.

Q. When they left you went out and released the watchman? A. Right after they left and

slammed the door, I untied the watchman, and we started out the back way and there was nobody in the engine room.

Q. You can't identify anyone, can you? A. No, I can't very well identify them.

Q. With reference to this crowbar did you see that there that night? A. Yes, sir.

Q. Where? A. Right by the safe. A man stuck this up as I walked in. The man who was masked pulled this here up. I noticed this bar, and after they were gone Detective Murray came up there and looked this over.

Q. How about this hammer? Did you see that? A. Yes, that was also there.

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

Direct examination by Mr. Toolan:

Q. Mr. Donovan, you live in Perth Amboy? A. Yes, sir.

Q. You own the house, do you not, on Freeman street, Woodbridge? A. Yes, sir.

Q. What number? A. 242, I believe.

Q. Did you rent that in the month of June, 1926? A. Yes, sir.

Q. To whom? A. Why, on June 5, fourth or fifth, I got a telephone message supposed to be from Elizabeth by a man by the name of Dwyer. He asked me if the place is for rent. I told him yes. He asked me when he could see it. I told him the next day, was either the fifth or the sixth, I wouldn't say for sure. And he asked me where I would meet him. I told him I would be at the

place, get there that afternoon. I waited for about half an hour and he came there.

Q. Who is the man that came there? Is he in the court room here today? A. Yes.

Q. Where is he? A. Mr. Wunkowski.

Q. What name did he travel under? A. Edward Dwyer.

Q. You rented that place to them? A. Yes, sir.

Q. At what rent? A. Eighty dollars.

Q. Was there anyone else with him? A. No, he was all alone.

Q. How long did they remain in that place at Woodbridge? A. I got a receipt for rent on the seventh of June, and when I went back on the seventh of July they were gone.

Q. Did they notify you that they were going? A. No.

Mr. Cutley: No questions.

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

Direct examination by Mr. Toolan:

Q. Mr. Sylvester, you live where? A. 23 Somerset street, Plainfield.

Q. Do you own a property in South Plainfield? A. Yes, sir.

Q. What street is it on? A. Park avenue.

Q. What number? A. There is no number.

Q. Did you rent that early in July, 1926? A. Yes, sir.

Q. To whom? A. George Martino.

Q. Is George Martino in court here today? A. No, sir.

Q. Is anyone here in court today that you know was in that building? A. Yes, sir.

Q. Who? A. White.

Q. Who is White? A. Dwyer there. I don't know what his name is.

Q. Which one is White? A. The one on the right.

Q. Will you come down here and put your hand on the one you say is White? A. (The witness indicates.)

Mr. Toolan: May we have on the record indicating the defendant Wunkowski?

Q. Did this man take a lease on your place? A. One man did.

Q. Who was that? A. George Martino.

Q. Is this the lease? A. Yes, sir.

Mr. Toolan: I want to offer that.

Mr. Salley: I object on the ground that it is incompetent, irrelevant and immaterial in view of the issue in this case. This man was indicted jointly. There is no conspiracy alleged.

Mr. Toolan: I won't press it, if the court please, if counsel objects to it.

Q. I show you a paper here and ask you whether or not that is the man you rented the place to? A. Yes, sir.

Q. That is Martino? A. Martino.

Mr. Toolan: I want to offer that.

Mr. Salley: I object to it on the ground it is not binding on anybody but Martino.

The Court: Objection sustained.

Q. When did this man rent your place? A. The lease was signed July 1.

Frank Sylvester—Cross.

Cornelius J. McCarthy—Direct.

Q. How long did they remain in that place? A. Until the seventeenth of July, I guess, somewheres about there.

Q. How many men were in the place; do you know? A. Two.

Mr. Cutley: No questions.

Cross-examination by Mr. Salley:

Q. You never saw that gun there, did you? A. No, sir.

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

Direct examination by Mr. Toolan:

Q. You are the chief of police at South Plainfield? A. Yes, sir.

Q. And you were on July 17, 1926? A. Yes, sir.

Q. And during the entire month of July, 1926? A. Yes, sir.

Q. Do you know any of the defendants, Chief? A. Yes, sir.

Q. How many? A. Three.

Q. And who are they? A. Caruso, Wunkowski, Legenza.

Q. When was the first time that you ever saw any of these men, and tell us whom you saw first and in what order you saw them after that, and where? A. July 14 was the first I saw Legenza. He drove in the yard to this house. That was on a Wednesday, and he was driving.

Mr. Salley: I object to this, your Honor, and ask that it be stricken out on the ground it is too remote, July 14.

The Court: I cannot tell what the connection is yet.

Mr. Salley: All right.

A. (Continuing) He was driving a new Peerless sedan with the license H-51994. That is when I first saw Legenza. Wunkowski I saw on July 6.

Q. Where? A. At this house. He was sweeping off the front porch. And on July 12 I saw him driving into the yard where this garage was in the rear of the house with New York license plates on the car, 5N-60-53; and Caruso, I didn't see Caruso at the house. I did see Caruso one afternoon. It was on July 16, about July 16. He was standing on the corner of Maple avenue and Park avenue just a short ways from the house, evidently waiting for a bus. He stood there alongside of a pole.

Q. Chief, did you, together with some other officers, visit the house on Park avenue in South Plainfield where you say you saw Wunkowski and Legenza? A. Yes, sir.

Q. Did you go in the house? A. Yes, sir.

Q. And who else was with you? A. Police officers and detectives from Perth Amboy, Rahway, Elizabeth, and South Plainfield.

Q. And New York? A. And New York, yes, sir.

Q. When you got in the house what did you find?

Mr. Cutley: Now, your Honor, I object to that questiton on the ground it is incompetent, irrelevant and immaterial to the is-

sue, and too remote from the time, as to what they found.

(Argument.)

The Court: I will permit it as far as it relates to what was taken from the ice cream plant.

Mr. Cutley: I ask an exception.

The Court: You may have it.

Exception allowed—signed and sealed.

JOHN P. KIRKPATRICK,
Judge.

A. We found eight fully loaded—

Mr. Cutley: Do I understand the Court has confined this to the Castle's Ice Cream Company?

The Court: Yes.

Q. What did you find? Confine yourself to the Castle's Ice Cream Company job that has been testified to. A. We found this bag of money, or bags similar to that.

Q. Containing what, Chief? A. Containing money, cash.

Q. Coins? A. Coins—half-dollars, quarters, nickels, dimes, and pennies.

Q. Was that counted? A. Yes, sir.

Q. By whom? A. Counted by Mayor Hamilton, mayor of South Plainfield, Mr. Wadley of Castle's, Detective Murray of Perth Amboy, and Detective Gutowski.

Q. What was the amount? A. $429.90.

Q. What else did you find there in the house with respect to the Castle's job? A. There is a bag in this bag here that was in when I turned it into your office; First National Bank of Perth Amboy.

Q. Will you look in to see if it is there? A. Yes, it is still here.

Q. Will you turn that out so it can be seen? What else did you find there from the Castle's job? A. I don't just recall.

Q. How about wire? A. Yes, we found several small rolls of copper wire the same calibre as this, about the same as that. Also torch tips for torches for burning safe, and about three gallons of nitro glycerine, three sticks of dynamite, about possibly twenty feet of fuse wire, and about two dozen sets of fuses.

Mr. Toolan: If the Court please, I think the State should be permitted to show that other things were kept in that house. I think it is justifiable on the theory that we have so far sufficiently connected these men with the robbery and the possession of this house and the responsibility for whatever might have been found in there.

The Court: I doubt its competency. I do not think it is necessary, either.

Q. Well, did you arrest anyone personally? A. No. I was close by when Wunkowski was arrested near the house.

Q. That is, you saw him arrested, did you? A. Yes, sir.

Q. Now, was there an automobile on the premises, chief? A. Yes, sir.

Q. What license number did that automobile bear? A. 5N-60-53 New York.

Q. Is that the automobile you have testified you saw Wunkowski drive in there? A. Yes, sir.

Q. That was found where? A. That was found in the garage.

Mr. Cutley: No questions.

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

Direct examination by Mr. Toolan:

Q. You are a police officer where? A. City of Rahway.

Q. Officer, on July 17, 1926, did you make an arrest in South Plainfield? A. Yes, sir.

Q. Whom did you arrest? A. Give his name as John Dwyer, but I believe it is Wunkowski now.

Mr. Toolan: Will you stand up, Wunkowski?

Q. Is that the man you arrested? A. That is he. I know him.

Q. Where did you arrest him, officer? A. Park avenue near Oak Tree avenue.

Q. How far is that from this house? A. I should judge about a half mile.

Q. Did you search Wunkowski, officer? A. Yes, sir.

Q. Did you, among other things, take from Wunkowski this key case and the keys shown there? A. Yes, sir.

Mr. Toolan: I want to offer those in evidence, if the Court please.

A. (Continuing) Also $700 in money.

Mr. Cutley: I object to that on the ground they have not been shown to be connected with the Castle's job.

The Court: They may be admitted subject to being connected.

(Bunch of keys entered in evidence and marked Exhibit S-6.)

Q. What else did you take off him? A. An automobile license which I think it said Spencer, the name Spencer and, and $703 in money, seven one hundred dollar bills and three single bills.

Q. Is this the license that you refer to, and the card case? A. Yes, sir.

Mr. Toolan: I offer that, if the Court please.

Mr. Cutley: I object to its admissibility as against the rules.

The Court: It may be admitted as against Wunkowski only.

(Articles referred to entered in evidence and marked Exhibits S-7.)

Cross-examination by Mr. Salley:

Q. You arrested this defendant Wunkowski, you say, a half mile away from this house? A. I should judge about a half a mile.

Q. Who was present with you, officer, at the time? A. Chief Murray from the Prosecutor's office, Patrolman Laportz from Rahway, the mayor of South Plainfield, and myself.

Q. That was all? A. Yes, sir.

Q. They are the only ones you saw there? A. That is all.

Q. You say that you took this automobile license from him at the time of his arrest, and some money. That is not exactly so, is it? A. Yes, sir.

Q. As a matter of fact, didn't you go back there and didn't you find this money on the ground near where the arrest took place? A. No, sir.

We found the money right in police headquarters in South Plainfield, but I will admit the driver's license was picked up after the second time.

Q. So you didn't take the money off the ground? A. Off the ground. I think he throwed a hat away when we arrested him.

By Mr. Toolan:

Q. Did you see him throw anything? A. Oh, yes, I seen him throw it.

By Mr. Salley:

Q. Did you make any search for it at that time when you say you saw him throw it? A. We went back the second time and found it.

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

Direct examination by Mr. Toolan:

Q. Where do you live, officer? A. Plainfield, New Jersey.

Q. You are a member of the Plainfield police department? A. Yes, sir.

Q. And you were during the month of July, 1926? A. Yes, sir.

Q. You arrested Legenza, did you not? A. Yes, sir.

Q. On what date? A. Why, July 18, Sunday afternoon.

Q. Where? A. In the city of Plainfield on Park avenue and Ninth street.

Q. What was he doing at that time? A. Why, evidently traveling in the direction of their headquarters.

Mr. Salley: I object to that, your Honor, and ask that it be stricken out on the ground it is a conclusion.

The Court: It will be stricken.

Q. Was he traveling in the direction of Plainfield? A. Yes.

Q. Was he on foot or driving? A. Driving a Peerless sedan.

Q. A new one? A. Why, I guess about two weeks old, I should judge.

Cross-examination by Mr. Salley:

Q. That was on a Sunday you arrested him, wasn't it? A. Yes.

Q. At the time that you arrested this boy Legenza, officer, who was in the car with him at that time? A. Why, there was another man that later proved to be his brother, his brother's wife, and his brother's mother-in-law, wife's mother, and a little girl.

Q. At the place of the arrest of Legenza, how far away from the house in South Plainfield that has been spoken of today was that? How far away was that? A. I should judge about a half a mile.

Q. A mile and a half, is it? A. Yes.

Re-direct examination by Mr. Toolan:

Q. Did you inquire of Legenza who these people were in the car? A. Not just then, no, sir.

Q. Did you subsequently? A. I did, the man because I had the man. I considered the man as

a suspect as well as Legenza, as I didn't know either one to tell the truth any more than description, and of course I took them over, both of them, over to headquarters.

Q. I mean, did you ask Legenza who they were? A. No, not then.

Mr. Salley: I object on the ground it is incompetent, irrelevant and immaterial.

Mr. Toolan: That is all I have.

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

Direct examination by Mr. Toolan:

Q. Mr. Johnson, what is your business? A. Service manager for the Peerless Motor Company.

Q. Where? A. Jersey City.

Q. Do you know Walter Legenza? A. Yes, sir.

Q. Where is he in the court room? A. Last man over (indicating).

Q. Did you sell Walter Legenza a Peerless automobile in the month of July or some time prior, 1926?

Mr. Salley: I object on the ground it is immaterial whether he did or not.

The Court: I will permit it.

Mr. Cutley: Exception.

Exception allowed—signed and sealed.

JOHN P. KIRKPATRICK,
Judge.

A. Yes, sir.

Q. On what date? A. I think it was on the 7th.

Q. Will you tell me how that car was paid for? A. It was a deposit of a hundred or two hundred dollars made by his brother, and Saturday it was paid, the rest of the money.

Q. How? A. By cash.

Q. What was the total amount? A. It was $1,995. It was either a hundred dollars or two hundred dollars paid as a deposit.

Q. On the 7th? A. Yes.

Q. And the following Saturday, which would be about what date? A. About the 10th.

Q. The balance was paid in cash? A. By his brother.

Mr. Cutley: I move to strike out that testimony on the ground it has no connection whatever.

The Court: I will let it stand. That goes to its weight, not as to whether it is admissible or not.

Mr. Cutley: May I have an exception? Exception allowed—signed and sealed.

JOHN P. KIRKPATRICK,
Judge.

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

Direct examination by Mr. Toolan:

Q. You are lieutenant of detectives, Perth Amboy Police Department? A. Yes, sir.

Q. And you were on July 6, 1926? A. Yes, sir.

John F. Murray—Direct.

Q. Did you visit the Castle's plant on that day? A. I did.

Q. What time? A. 3.30 in the morning.

Q. Officer, pointing to the crowbar before you marked for identification S-6, Iask you where you first saw that? A. The Castle's Ice Cream Company plant, in front of the safe.

Q. And likewise the hammer marked for identification S-4? A. The same place.

Mr. Toolan: I want to offer, if the Court please, the hammer and the crowbar.

(Hammer previously marked Exhibit S-5 for identification entered in evidence and marked Exhibit S-5.)

(Crowbar previously marked Exhibit S-6 for identification entered in evidence and marked Exhibit S-6.)

Q. Officer Murray, were you among the men who visited the South Plainfield house? A. Yes, sir.

Q. Did you see the character of the wire that was used to bind up the men at the Castle's job? A. I did.

Q. What kind was it? A. A piece of wire here, copper wire.

Q. That is a piece of it here? A. The piece I brought into court.

Q. What have you got to say about the wire that was found in the South Plainfield house? A. The same as this.

Mr. Toolan: I want to offer that wire in evidence.

Mr. Cutley: I will have to cross-examine on that question of what he meant by saying the same as this.

Mr. Toolan: All right, if you want to cross-examine on that.

Special cross-examination by Mr. Cutley:

Q. Where is the piece of wire that you took from the Plainfield house? A. Plainfield house, down there in the grip.

Q. What experience have you had in making any comparisons of wires? A. I worked in the cable works for about two years in Perth Amboy.

Q. Did you just make a casual inspection? A. No, sir.

Q. What was your trade in the cable works? A. Well, general all-around man, drawing wire, making telephone wires on machines.

Q. You would consider yourself an expert on wire? A. Absolutely not.

Q. Would you consider yourself an expert for the purpose of telling us that this wire that you found in the Plainfield house corresponded exactly to the one that was found? A. Not as an expert, no.

Q. What was the dimension of that wire; what was the diameter? A. I don't know.

Q. You were engaged in the wire business two years? A. I was.

Q. Didn't that length of time and that experience give you nothing? A. There is different sized wire, different strands, and you use a gauge when you gauge wire.

Q. Did you use a gauge on the wire that you got and brought here? A. No, sir.

Q. Would you consider the use of a gauge necessary to form an exact opinion on that? A. If you want to as an expert, yes.

Mr. Cutley: I submit he is not competent to testify as to the character of the wire.

John F. Murray—Direct.

Direct examination (continued) by Mr. Toolan:

Q. Mr. Murray, will you step down and pick up for us a piece of wire you found in the South Plainfield house?

Mr. Toolin: I will compare both of them, if the Court please, and the jury can draw their own conclusion.

Q. The wire that you now have in your hand was wire found where? A. This here was found in the Plainfield house.

Q. And the wire marked S-3 for identification was found where? A. At the Castle's Ice Cream Company plant.

Mr. Toolan: I want to offer both, if the Court please.

The Court: They may be admitted.

(Wire previously marked Exhibit S-3 for identification entered in evidence and marked Exhibit S-3.)

(Wire entered in evidence and marked Exhibit S-8.)

Q. I show this key case and the keys, Officer Murray, and ask you where did you get it? A. South Plainfield police headquarters immediately after the arrest of Wunkowski. It has been in my possession up until it was produced here in court this morning.

Q. Have you examined those keys for the purpose of determining what locks they fitted? A. Yes, sir.

Q. What locks did they fit? A. Two of these keys on July 17, two of these keys fit the door at South Plainfield house; these two keys here (indicating).

Q. The South Plainfield house? A. The South Plainfield house. These two keys fit the house of Donovan, Woodbridge, Perth Amboy.

Q. Officer Murray, as a result of information that you received did you go to a garage in Carteret? A. I did.

Q. What did you find in that garage? A. In that garage——

Mr. Cutley: I object on the same ground, may it please your Honor. This is eight or nine days after.

The Court: It may be admitted.

A. In that garage at Carteret, garage No. 8, we found a Peerless car. In garage No. 9 we found a Lincoln sedan. In the Lincoln sedan—do you want to know what was in it?

Q. I want to know, officer, whether or not in the Lincoln sedan you found this policeman's hat and coat marked S-4 for identification? A. I did.

Mr. Toolan: I want to offer that hat and coat if the Court please.

Mr. Cutley: I object to it. It has not been shown whose car the Lincoln was.

The Court: The testimony of Casaleggi is that there was a Lincoln sedan put in that garage by Wunkowski. It may be admitted.

(Hat and coat previously marked Exhibit S-4 for identification entered in evidence and marked Exhibit S-4.)

Q. I show you a lock here and ask you where you found that lock? A. That lock was on garage No. 9 at Carteret.

Q. What car was in that garage? A. The Lincoln sedan.

Q. What does the other key that you had there fit? A. This lock.

Q. Do you know where this gun was obtained, officer? A. I seen that gun in South Plainfield house.

Mr. Toolan: I want to offer that, if the Court please.

Mr. Cutley: I object to it as against Caruso and Legenza.

The Court: It may be admitted as against Wunkowski.

Mr. Salley: Your Honor, I object. I object as against Wunkowski on the ground that the only evidence as far as connecting him up with the gun is that the first witness, the Italian who was on the stand, says that he saw him handle that gun many times and he admitted that he also handled it.

The Court: That is a question of the weight of the testimony, and it goes to the jury to determine that.

Mr. Salley: Will your Honor permit me an exception?

Exception allowed, signed and sealed.

JOHN P. KIRKPATRICK.

(Gun previously marked Exhibit S-1 for identification entered in evidence and marked Exhibit S-1.)

Mr. Toolan: I desire at this time, if the Court please, also to offer the bags and their contents. I claim they have been suf-

ficiently identified and established by the testimony at this time.

Mr. Cutley: We object to it on behalf of all three defendants.

The Court: They may be admitted.

Mr. Cutley: Exception.

Exception allowed, signed and sealed.

JOHN P. KIRKPATRICK.

(Two bags previously marked Exhibit S-2 for identification entered in evidence and marked Exhibit S-2.)

Cross-examination by Mr. Cutley:

Q. Officer, would you say that the wire that you found at South Plainfield house was the same as and corresponded to the sample you found at Castle's? A. To my ability, yes.

Q. As a layman you would say it was? A. Yes.

Q. As an expert you would not care to give an opinion? A. I am not an expert.

Q. As a man having probably a year and a half or more experience? A. I would say it is the same wire.

Q. Have you ever had time since the time you acquired it to gauge the wire? A. No, sir.

Q. You relied upon your sense to indicate it was the same? A. Yes, sir.

Mr. Toolan: The State rests.

Mr. Cutley: Before the State rests I would like to have permission to ask the witness Mr. Pirrong one or two more questions.

JOHN PIRRONG, recalled.

Cross-examination (continued) by Mr. Cutley:

Q. Mr. Pirrong, did all these men whom you did see that night have caps on? A. No, one fellow had a straw hat on.

Q. A hat? A. A straw hat.

Q. What did Caruso have on, a hat or cap? A. Cap.

Q. Anything else? A. Had a cap and a brown suit on.

Q. Did he have glasses on? A. Tortoise shell glasses.

Q. Black? A. Black, yes.

By the Court:

Q. You mean the rims? A. Black rims.

Direct examination (continued) by Mr. Toolan:

Q. Do you know whether they were white or colored glasses? A. I think it was colored glasses.

Mr. Toolan: That is all I have. State rests.

Mr. Cutley: May it please your Honor, I move to strike out any testimony given by any of the witnesses in this case in relation first to whatever happened in regards to the leasing of the house at Woodbridge, New Jersey; second, as to whatever happened at the time of the leasing of the house at South Plainfield; third, as to what took place at the time that the policemen went down to the South Plainfield house, and also all evidence as to any testimony as to what was found in that house unless

at the time it was found some one of the defendants was in possesion of that house.

I further move at this time to ask for a dismissal of the second count of the indictment which alleges that on the sixth day of July these defendants with others in the city of Perth Amboy entered the building, office, and warehouse, and plant building of the Castle's Ice Cream Company without breaking the same. I ask that on that particular count.

And I further ask for a dismissal of the indictment as on the whole case as made so far against Legenza, that the only evidence in the case as I perceive it is the alleged throwing away of some papers into the river down at Sewaren or wherever the river was, as far as Legenza is concerned.

The Court: The motion will be denied.

Mr. Cutley: I ask an exception.

Exception allowed—signed and sealed.

JOHN P. KIRKPATRICK,
Judge.

The Court: Yes.

Mr. Cutley: Your Honor, the defense rests. I make a motion for a direction of verdict on the same grounds as were urged in the motions for the dismissal of the indictment.

The Court: Denied.

Mr. Cutley: I ask now that your Honor order the Prosecutor to elect as to which of the counts in the indictment he will proceed upon. I ask for an opening.

The Court: Denied.

Mr. Cutley: I ask for an exception.

The Court: You say you ask for an opening?

Mr. Cutley: Yes.

The Court: You may have an opening of the Prosecutor if you want.

Mr. Cutley: I ask for an opening and an election, your Honor.

Mr. Toolan: If counsel wants me to open I will open.

Mr. Cutley: Go ahead.

(Mr. Toolan opens the case as to the claims on the part of the State.)

(Mr. Salley sums up the case for the defendants Frank Wunkowski and Walter Legenza.)

(Mr. Cutley sums up on behalf of the defendant Frank Caruso.)

(Mr. Toolan sums up the case on behalf of the State.)

Court's Charge.

COURT OF QUARTER SESSIONS,

MIDDLESEX COUNTY,

September Term, 1926.

STATE OF NEW JERSEY,

vs.

FRANK WUNKOWSKI, alias Frank Edward Spencer, alias William Dwyer, WALTER LEGENZA, alias William Turner, FRANK CARUSO, HENRY GOLDBERG, JOSEPH BEAN, JAMES DOE, RICHARD DOE, JOHN DOE, RICHARD POE, JOHN POE, RICHARD ROE, JOHN ROE, WILLIAM DOE, and JOHN ALCHERMIS, alias George Martino.

Court's charge to the jury by Honorable JOHN P. KIRKPATRICK, Judge, as follows:

Members of the Jury: On the morning of July 6 of this present year the plant of the Castle's Ice Cream Company at Perth Amboy was entered by persons, and a quantity of money and other valuables were taken from the safe after it had been blown open by the persons who entered the plant. The employes who were working at the time that their plant was entered, and the watchman, were bound, and the robbery or the larceny took place after the workmen and the watchman had been bound.

Two of the persons bound have identified Caruso as one of the persons who was in the plant

that night. There has been no identification by any of the persons who were either present as employes or as a watchman of the plant of either of the other two defendants.

One Casaleggi, who I think it is possibly fair to say from the testimony here appears to have had some connection with at least two of these men prior to the time of the robbery on July 6, testifies that Wunkowski and Legenza were two of the confederates who acted with Caruso.

There can be no doubt that a robbery took place because it is not denied at all, and the problem which you have to confront you this afternoon is this: Are these three of the men who took part in that robbery, and did they break into the plant by force, or did they get in without the use of force?

There is no testimony as I recall it here as to just how they got into the plant. They apparently walked in, so far as the testimony here discloses, as their method of ingress. So I take it you will probably find that the evidence points to their guilt under the second clause of the indictment, but that is for you to say under the testimony. The defendants have not denied their participation. They have not taken the stand in their own behalf. That raises no presumption, however, of their guilt. They are, as all defendants are, presumed to be innocent until the State has borne the burden of proving them guilty beyond a reasonable doubt. That is the policy of our law, and while many have said recently that it ought not to be the policy, nevertheless it is the law of New Jersey at the present time. Whether it should be changed or whether it should not be changed is not for you or me to say. That is for the legislature. The law at the present time is

that the State must bear the burden of proving every defendant guilty beyond a reasonable doubt.

Reasonable doubt is that state of the case which, after the entire consideration and comparison 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. As I have already said, the burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it 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 satisfies the reason and judgment of those who are bound to act conscientiously upon it.

That is the definition of reasonable doubt, and if after you have taken this case and considered all of the evidence that has been produced here, there is in your mind a reasonable doubt as to the guilt of these defendants or of any one of them, it is your duty to resolve that doubt to the benefit of these defendants or of any one of them by an acquittal.

When you come to consider your verdict you may find all three of these defendants guilty; you may find two of them guilty; you may find one of them guilty; and you may acquit such a one as in your opinion is not proved to have participated in this robbery. If you have a reasonable doubt as to the participation of anyone you will resolve that doubt to the benefit of such one by an acquittal. If on the other hand you are satisfied by the testimony that these three men were three of the men who were there that morning and participated in the robbery, it does not make any especial difference to what extent, then they

are all guilty, and your verdict will be guilty either under the first or second count. The first count, you will remember, is that they broke and entered the plant by force. The second count is that they got in there without using force. That I think is the only distinction between the two counts.

Mr. Toolan: The second is entering without breaking; the first is breaking and entering.

The Court: The only distinction is the use of force, as I understand it, in getting in, not after they got there, but the actual breaking in.

You may retire and consider your verdict.

Mr. Cutley: A general exception on behalf of all three defendants.

Exception allowed, signed and sealed.

JOHN P. KIRKPATRICK,
Judge.

Certification of Record.

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

This is to certify that the foregoing record consisting of pages one to one hundred and eighteen inclusive contains a true, accurate and full transcript of the testimony given under oath by the witnesses on the trial of the issue of traverse joined between The State and Frank Wunkowski, *et al.*, before Hon. JOHN P. KIRKPATRICK, Judge of the Quarter Sessions of Middlesex County, on November 1, 1926; that the said testimony was reported in court by one of my assistants and transcribed by him and subsequently compared with the notes so taken by him, by myself and found to be an accurate transcript of the said notes; that the said assistant has been associated with me for the past several years and in that association I have found his work uniformly painstaking, accurate and complete and I have every reason to believe that his work in this instance was of the like character.

In testimony whereof I have hereunto set my hand this twenty-sixth day of May, 1927.

GEORGE D. ZIRGLER,
Official Stenographic Reporter.

COURT OF QUARTER SESSIONS,

Middlesex County.

The State of New Jersey, *vs.* Frank Wunkowski, alias Frank Edward Spencer, alias William Dwyer, Walter Legenza, alias William Turner, Frank Caruso, Henry Goldberg, Joseph Bean, James Doe, Richard Doe, John Doe, Richard Doe, John Poe, Richard Roe, John Roe, William Roe, and John Alchermis, alias George Martino, Defendants.	On Indictment.

I, John P. Kirkpatrick, Judge of the Court of Quarter Sessions in and for the County of Middlesex, before whom the above stated 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.* Frank Wunkowski, alias Frank Edward Spencer, alias William Dwyer, Walter Legenza, alias William Turner, Frank Caruso, Henry Goldberg, Joseph Bean, James Doe, Richard Doe, John Doe, Richard Poe, John Poe, Richard Roe, John Roe, William Doe, and John Alchermis, alias George Martino.

John P. Kirkpatrick,
Judge.

Dated: June 8th, 1927.

Assignment of Errors.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, *vs.* FRANK WUNKOWSKI, alias Frank Edward Spencer, alias William Dwyer, WALTER LEGENZA, alias William Turner, FRANK CARUSO, HENRY GOLDBERG, JOSEPH BEAN, JAMES DOE, RICHARD DOE, JOHN DOE, RICHARD POE, JOHN POE, RICHARD ROE, JOHN ROE, WILLIAM DOE and JOHN ALCHERMIS, alias George Martino, Plaintiffs-in-Error.	In Error. Assignment of Errors.

Afterwards, to wit, before our Justices of our said Supreme Court at Trenton, comes the said Frank Wunkowski and Walter Legenza, by their attorney, Edward M. Salley, and say that the record and proceedings aforesaid, and also in the giving of the judgment upon the indictment there is manifest error, in this:

1. Because the trial court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the trial court refused to direct a verdict of not guilty at the close of the whole case.

3. Because the verdict of the jury was contrary and against the weight of the evidence.

Assignment of Errors.

4. The court in charging the jury erred in that it charged the jury as follows:

> "One Casaleggi, who I think is possibly fair to say from the testimony here appears to have had some connection with at least two of these men prior to the time of the robbery on July 6, testifies that Wunkowski and Legenza were two of the confederates who acted with Caruso."
>
> "There can be no doubt that a robbery took place because it is not denied at all, and the problem which you have to confront you this afternoon is this: Are these three of the men who took part in that robbery, and did they break into the plant by force, or did they get in without the use of force?"

WHEREFORE, said plaintiffs-in-error, Frank Wunkowski and Walter Legenza, pray that the judgment and sentence aforesaid, by reason of the aforesaid errors in the record and proceedings aforesaid and the giving of judgment and passing of sentence aforesaid be reversed, cancelled and held for nothing and that the said Frank Wunkowski and Walter Legenza may be restored in all things by them lost on occasion thereof.

EDWARD M. SALLEY,
Attorney for and of Counsel of
Plaintiffs-in-Error.

Specification of Causes of Reversal.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, *vs.* FRANK WUNKOWSKI, alias Frank Edward Spencer, alias William Dwyer, WALTER LEGENZA, alias William Turner, FRANK CARUSO, HENRY GOLDBERG, JOSEPH BEAN, JAMES DOE, RICHARD DOE, JOHN DOE, RICHARD POE, JOHN POE, RICHARD ROE, JOHN ROE, WILLIAM DOE, and JOHN ALCHERMIS, alias George Martino, Plaintiffs-in-Error.	**In Error.** **Specification of Causes of Reversal.**

The plaintiffs-in-error set forth the following specifications of causes for reversal of the judgment heretofore entered against the plaintiffs-in-error herein in the Middlesex County Court of Quarter Sessions wherein the plaintiffs-in-error claim that they have suffered manifest wrong and injury in the admission and rejection of testimony in the charge of the Court and the denials of matters of discretion by the Court, to wit:

1. Because the Trial Court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the Trial Court refused to direct a verdict of not guilty at the close of the whole case.

Specification of Causes of Reversal.

3. Because the verdict of the jury was contrary and against the weight of the evidence.

4. The Court in charging the jury erred in that it charged the jury as follows:

> "One Casaleggi, who I think it is possibly fair to say from the testimony here appears to have had some connection with at least two of these men prior to the time of the robbery on July 6, testifies that Wunkowski and Legenza were two of the confederates who acted with Caruso."
>
> "There can be no doubt that a robbery took place because it is not denied at all, and the problem which you have to confront you this afternoon is this: Are these three of the men who took part in that robbery, and did they break into the plant by force, or did they get in without the use of force?"

5. The verdict, judgment and sentence was in many respects illegal and contrary to law and should be set aside.

EDWARD M. SALLEY,
Attorney for and of Counsel of
Plaintiffs-in-Error.

137 1926 Oct. 1. 1926

New Jersey Court of Errors and Appeals

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

vs.

WALTER LEGENZA,
Plaintiff-in-Error,

ON WRIT OF ERROR

BRIEF OF PLAINTIFF-IN-ERROR

Facts

Walter Legenza, plaintiff-in-error was convicted of robbery on November 1st, 1926, in the Court of Quarter Sessions of Middlesex County. A writ of error was sued out to review the legality of the conviction and the plaintiff-in-error has taken advantage of Section 136 of the Act concerning criminal procedure and has filed specifications of causes for reversal in addition to alleging error on the record. This conviction was affirmed by the Supreme Court and from that decision the plaintiff-in-error now appeals.

The assignments of error used in the lower court are found at page 104 are four in number and are as follows:

1. Because the trial Court refused to direct a

verdict of not guilty at the close of the case made by the State.

2. Because the trial Court refused to direct a verdict of not guilty at the close of the whole case.

3. Because the verdict of the jury was contrary and against the weight of the evidence.

4. The Court in charging the jury erred in that it charged the jury as follows:

> "One Casaleggi, who I think is possibly fair to say from the testimony here appears to have had some connection with at least two of these men prior to the time of the robbery, testifies that Wunkowski and Legenza were two of the confederates who acted with Caruso.
>
> There can be no doubt that a robbery took place because it is not denied at all, and the problem which you have to confront you this afternoon is this. Are these three of the men who took part in the robbery, and did they break into the plant by force or did they get in without the use of force?"

Facts

The State alleges that on the 6th day of July, 1926, several men entered the premises of the Castle Ice Cream Company in the City of Perth Amboy and stole a large sum of money. The State produced a number of witnesses who testified to the happening of various events on that night, but none could identify Legenza. John Pivrong at page 62, ll. 1-10:

"Q. You cannot identify this boy setting here as one of them?

The Court: No he has not identified anyone except Caruso.

Mr. Salley: All right."

Steve Robovics at page 68, ll. 1-10:

"Q. The only man as I understand it, that you now identify is Caruso, is that so? A. That is it.

Q. You can't identify these other two men? A. No, sir."

John W. Mason, at page 72, ll. 35-40:

"Q. You can't identify any of these men as being present that night, can you? A. No, I could not."

There was some testimony by the State that the defendants occupied a house in South Plainfield from about July 1st, 1926 to July 16th, 1926, in which certain articles were found which the State alleged was part of the money and articles taken from the Castle Company. Appropriate motion was made (page 95) to strike out all testimony in regards to evidence found in the South Plainfield house on the ground that none of the defendants were found in the house at that time. The defendants were arrested about ten days after the robbery. None of these defendants took the stand relying on their right that the State had not made out a case against them.

ARGUMENT

POINT I.

Assignments of Error 1 and 2 and Specification of Causes of Reversal from pages 104 and 106 may well be argued under one head.

At the close of the case made out by the State a motion was made by counsel for the defendants (page 96) for a dismissal of the indictment against the defendants, basing the argument on the ground of lack of identification of the defendants because at the close of the State's case there was no identification of these two defendants, the only scintilla of evidence to connect these two defendants with the case was from the testimony of one Charles Casaleggi who had also been arrested and charged with participation in this crime. Casaleggi had no direct knowledge that these defendants were implicated in this robbery because he testified at page 35, ll. 18-20:

> "Q. Where were you at the time the robbery was pulled off or the larceny? A. Home, sleeping."

He also testified that Legenza threw checks overboard but when questioned whether he saw any he answered "No." At page 22, ll. 18 to 42:

> "Q. Now you mentioned something about checks before. Did you see any of those checks? A. No. Well, I didn't exactly see any of them checks but I know he went down to the river in Sewaren and they throwed them overboard in the river in Sewaren.

Q. Who threw them overboard? A. It was Legenza that throwed them overboard.

Mr. Salley: Your Honor, I object unless he was present or had some admission from Legenza about throwing them overboard. I would like to examine on that proposition. It is hearsay I think.

Q. Were you there at the time? A. Yes, sir, I was there.

Q. Did he tell you what he was doing? A. Yes, sir.

Q. He did? A. Yes, sir.

Q. In what shape or condition were those checks? A. They were in like a small box, tin box. They were in a bag and he opened the bag up and threw them in the river there. The river or the Staten Island Sound.''

It is clear from this testimony that Casaleggi was lying or the victim of void imagination when without seeing checks of any description he can describe them and tell what the defendant Legenza did.

This case is analogous to the situation in *State* v. *Connolly,* 136 Atl. Rep. p. 603, where at the close of the State's case the complaining witnesses failed to identify the defendant but introduced witnesses who testified that sometime previous the complaining witness picked out the defendant as the one who perpetrated the robbery. The Court said in that case: ''It is entirely apparent therefore that the State was entirely without proof of the commission of the alleged crime by the plaintiff-in-error and the judgment under review cannot be sustained.''

In the case at bar there was no identification of the two defendants nor was there any legal evi-

dence to charge them with anything except the statement of Casaleggi who was not present nor did he know of any robbery until the following day, even the Court in his charge said: "There has been no identification of any of the persons who were either present as employees or as a watchman of either of the other two defendants."

Appropriate motion having been made for dismissal and the same having been denied it is urged that the defendant Legenza suffered manifest wrong and injury and they were entitled to a verdict in their favor directed by the Court.

POINT II.

Because 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 the evidence as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality.

State v. *Karpowitz,* 98 L. 546.

It is contended in this case that the verdict came within the category above indicated.

POINT III.

There was error in the Charge of the Court.

The Court charged at page 99 ll. 8 to 15:

> "One Casaleggi, who I think it is possibly fair to say from the testimony appears to have some connection with at least two of these men prior to the time of the robbery on July 6, testifies that Wunkowski and Legenza were two of the confederates who acted with Caruso."

It is contended that there is some analogy to the situation presented in the case of *State* v. *Noll* (4 N. J. Advance Reports 854), where the Court held that citing *Smith & Bennett* v. *State*, 41 N. J. L. 370, a misstatement with relation to a fact of moment, that is, that it was proved, when there was no testimony to support it, was held to constitute reversible error. In the present case we are of the opinion that upon this ground the judgment should be reversed. Casaleggi nowhere testified that Wunkowski and Legenza were confederates of Caruso, nor could he do so because as he testified at the time of the commission of the robbery he was home sleeping.

The Court also charged:

> "There can be no doubt a robbery took place because it is not denied at all, and the problem which you have to confront you this afternoon is this. Are these three of the men who took part in that robbery and did they break into the plant by force or did they get in without the use of force?"

There was a dispute whether or not a robbery had been committed, and we think it was error to say it is not denied at all. Because the burden of proving every essential element of the crime beyond a reasonable doubt was upon the State and could not or should not be eliminated by the Court's charge.

For the reasons above set forth, it is respectfully urged that the conviction should be set aside and a new trial ordered.

GEORGE E. CUTLEY,
Attorney for and of Counsel with Plaintiff-in-Error.

Jamaica Law Ptg. Co.—Jamaica 3928 - Montgomery 4292

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

vs.

WALTER LEGENZA,
Plaintiff-in-Error.

On Writ of Error

BRIEF OF DEFENDANT-IN ERROR

STATEMENT.

The plaintiff-in-error, together with a number of others, was indicted (see indictment pp. 4, 5, 6, State of Case), for breaking and entering the plant of the Castle Ice Cream Company of Perth Amboy, New Jersey, on the 6th day of July, 1926, and stealing money and other valuables in the amount of $29,615.69. The case was tried in the Middlesex Quarter Sessions on November 1, 1926, and the jury returned a verdict of guilty against the plaintiff-in-error and two other defendants tried with him. At the trial none of the defendants (p. 97, State of Case), took the stand in their own behalf, nor did they produce any witnesses. All of the defendants rested at the conclusion of the State's case.

The identical argument and reasons are used in this Court as were submitted to the Supreme Court. It is respectfully submitted that no proper reasons are assigned for reversing the Supreme Court. See State vs.Verona, 93 N. J. L. 389, at page 391:

> "On behalf of the defendant, who is plaintiff-in-error, counsel filed in the Supreme Court sixteen assignments of error, and sixteen causes for reversal under the statute. These assign-

ments and causes are identical; and the same identical assignments and causes were filed in this Court. This is an improper method of assigning errors and causes for reversal on the removal of a judgment of the Supreme Court into this Court, when the Supreme Court sat as a court of review on appeal or on certiorari, etc. A proper assignment would be that the Supreme Court erred in giving judgment for the plaintiff-in-error, or that it so erred for one or more of the assignments of error and causes for reversal filed in the Supreme Court and brought up with the record."

To like effect is State vs. Andres, 96 N. J. L. 437. In this case there was an appeal from the Essex Quarter Sessions to the Supreme Court under the 136th Section of the Criminal Procedure Act. The Supreme Court affirmed and an appeal was attempted to the Court of Errors. The appellant, however, failed to file any assignment of error alleging the Supreme Court judgment to be erroneous, but reassigned in the Court of Errors and Appeals the alleged errors of the trial court which resided in the record brought up from the Supreme Court. It was held:

"That as plaintiff in error in the Court of Errors and Appeals filed no exception attacking as erroneous the judgment of the Supreme Court which he sought to review, there was nothing before the Court of Errors and Appeals to pass upon, its power to review and adjudge not being invoked, and, therefore, the present writ of error must be dismissed."

See also

State vs. Verona, 93 N. J. L. 389.
State vs. Belkota, 95 N. J. L. 416.
State Vs. Metzler, 94 N. J. L. 418.

We will, however, meet the argument made in counsel's brief.

ARGUMENT.

Counsel presents his argument under four headings as follows:

1. Because the trial court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the trial court refused to direct a verdict of not guilty at the close of the whole case.

3. Because the verdict of the jury was contrary and against the weight of the evidence.

4. The court in charging the jury erred in that it charged the jury as follows:

> "One Casaleggi, who I think it is possibly fair to say from the testimony here appears to have had some connection with at least two of these men prior to the time of the robbery, testifies that Wunkowski and Legenza were two of the confederates who acted with Caruso."

We will argue the proposition under two headings, embracing the arguments set forth in paragraphs 1, 2, and 3 above under our first point, and the fourth proposition under our second point.

POINT ONE.

The Court Committed no Error in refusing to direct a verdict at the close of the State's Case nor at the close of the entire case nor was the verdict of the jury contrary to the weight of evidence.

This case is before the Court on strict bill of exceptions (pp. 104-107, State of Case) and also under the 136th section of the Criminal Procedure Act (see pp. 102, 103, State of Case).

With reference to counsel's argument that the Court was in error in refusing to direct a verdict at the conclusion of the State's case and at the conclusion of the entire case, we direct the Court's attention to the fact that counsel for the defendants, Wunkowski and Legenza, who are prosecuting this appeal, failed to take any exception to the Court's refusal to direct a verdict (pp. 95-97, State of Case).

About three o'clock on the morning of July 6th, 1926, a number of men broke and entered the ice cream plant of Castle Ice Cream Company, blew the safe and stole the contents thereof (State of Case pp. 68-69). At the time there was approximately Twenty-nine Thousand Dollars in the safe, all of which was taken by the highwaymen (pp. 42, 43 &c., State of Case).

One of the witnesses produced by the State was one Charles Casaleggi, who testified (p. 16, State of Case) that he knew the defendant, Wunkowski, for about ten years, the defendant, Caruso, for about a year and a half, and the defendant, Legenza, for about eight months. All three defendants, together with witnesses, occupied a house at No. 242 Freeman Street, Woodbridge, New Jersey, during the month of June, 1926 (p. 16, State of Case). The house at Woodbridge was rented by the defendant, Wunkowski, from a man named Dennis Donovan (pp. 76-77, State of Case). On July 2, 1926, the defendants moved from the house in Woodbridge to a house in South Plainfield (p. 16, State of Case). The house at South Plainfield was rented by the defendant, Wunkowski, and a man named George Martino (p. 78, State of Case). Reference is made to these houses because the defendants

were all seen about the Woodbridge and South Plainfield houses and were actually arrested in the vicinity of the South Plainfield house. Numerous articles taken from the Castle Ice Cream Plant were found in the South Plainfield house after the defendants were arrested.

The witness, Casaleggi, (p. 26, State of Case), acted as chauffeur for the defendants and the other members of the gang. He testified (p. 18, State of Case), that about a week prior to the robbery of the Castle's Plant, the defendant, Wunkowski, together with one George Martino (the man who leased the South Plainfield house with Wunkowski) went to the plant of the Castle Ice Cream Company, presumably with a view of looking the place over preparatory to the robbery, and ordered some ice cream which they had shipped to a fictitious address. The witness also testified (p. 18, State of Case) that the South Plainfield house was occupied by the three defendants, Wunkowski, Legenza and Caruso, "and a number of other fellows."

Casaleggi did not actually take part in the robbery of the Castle Ice Cream Plant. He testified (p. 19, State of Case) that he was at the South Plainfield house until about 8.30 on the evening of July 5, 1926; that Wunkowski sent him home and told him to return about 12 o'clock noon the following day, July 6, 1926. He returned as instructed and drove the defendant, Caruso, to a train in Dunellen about a quarter to one. He returned to the house and took the defendants, Legenza and Wunkowski, to Harrison. The witness was asked (p. 19, State of Case):

> Q. What, if anything, did you see around the house on the sixth of July?
>
> A. The sixth of July when I went there I brought a few newspapers, and in the newspapers was about the Castle's robbery, and I

brought them upstairs and I was going to stay around to see how much money they got, and Wunkowski says I should go downstairs and sit down there until they got finished; and then in the meantime Legenza came downstairs and was talking to me.

Page 20:

Q. Was there anything said there by either Wunkowski or Legenza or Caruso about the Castle's job?

A. The only thing was said that they got a lot of checks besides the cash. They didn't get as much as they thought they would get.

Q. Did you get any cash out of the job?

A. Yes, sir. I got $250 in cash.

Casaleggi was not actually present at the Castle Ice Cream Company robbery. He was around the house at South Plainfield on the evening of July 5, 1926, before the robbery and he returned there the following day at noon. All three defendants were present at the South Plainfield house on the evening of July 5, 1926, and when he returned the following day. The only one of the three defendants who was actually identified by men working in the plant was Caruso (see testimony of witness John Pirrong, pp. 51-52). This witness as well as the other witnesses who identified Caruso, testified that he did not wear any mask. All the other men in the robbery wore masks. Caruso was also identified by Steve Robovics (p. 65, State of Case).

It was proven beyond question, and there was no testimony to the contrary, that all three of the defendants occupied the house at South Plainfield, nor can there be any question that the men who occupied the house at South Plainfield were actually the ones who broke and entered the Castle Ice Cream Plant.

When the police entered the house at South Plainfield on July 16 and 17, 1926, (p. 81, State of Case) they found a bag containing currency in the amount of $429.90. Casaleggi testified (pp. 23-24, State of Case) that he saw similar bags containing money. These bags were marked S2 (p. 24) for identification and were subsequently admitted in evidence (p. 94, State of Case). The money in these bags had a salty taste (p. 45, State of Case). Mr. Wadley, the manager of the Castle Ice Cream Company, testified (p. 45, State of Case) that all of the currency handled by the drivers for the Castle Ice Cream Company had a salty taste because the drivers were required to handle salt and this in turn would be transferred to the money. The bags in which the money was found, Mr. Wadley testified (p. 44, State of Case), were furnished by the First National Bank. Mr. John Bullwinkel, an employee of the Bank, testified (p. 74, State of Case) that the bag taken from the South Plainfield house containing the money was a bag of the same character as that furnished by the Bank to the Castle Ice Cream Company.

The employees of the Castle Plant were tied with a copper wire (p. 53, State of Case), marked S3 for identification. Both John Pirrong, an employee (p. 53) and Steve Robovics, an employee, (p. 65) were tied with copper wire of the type marked S3 for identification. When the police entered the house at South Plainfield they found copper wire of the identical nature used to tie the employees at the Castle Plant (p. 91, State of Case). Both samples of wire, that taken from the employees of the Castle Plant and that taken from the house at South Plainfield, were admitted in evidence (p. 91, State of Case) and marked respectively S3 and S8.

One of the witnesses, John W. Mason, was the watchman about the plant. He testified (p. 68) that one of the group that broke and entered the plant

wore a policeman's uniform. This policeman's uniform was later found in an automobile used by the defendant, Wunkowski, and stored in a garage at Carteret. Casaleggi testified (pp. 21-22, State of Case) that he hired a garage at Carteret for the defendant, Wunkowski; that on or about the 15th day of July Wunkowski drove his car, a Lincoln, over to Carteret and placed it in the garage. Officer John F. Murray testified (pp. 92-93, State of Case) that after the defendants were arrested he located the garage in Carteret in which the Lincoln sedan was stored and in the Lincoln sedan he found a policeman's hat and coat, indicating that these defendants were the same ones who appeared at the Castle Plant on the night of the robbery with one of their men dressed in a policeman's uniform in order to gain access and admittance to the building. Surely, these defendants had no legitimate use for a policeman's uniform.

Officer James Thompson (p. 83, State of Case) testified that he arrested Wunkowski on July 17, 1926; that at the time Wunkowski gave his name as Dwyer and had in his possession an automobile driver's license issued to him under the name of Spencer. At the time he took from Wunkowski $703.00 in cash and a bunch of keys. The keys were marked in evidence as Exhibit S-6. Officer Murray testified (p. 91, State of Case) that the keys taken from Wunkowski would fit the house at Woodbridge occupied by these defendants, the house at South Plainfield, and the lock on garage No. 9 in which the Lincoln sedan above mentioned was stored.

The witness, Casaleggi, testified (pp. 23-24, State of Case) that he saw a certain gun in the possession of Wunkowski while Wunkowski occupied the Woodbridge house. This same gun (p. 93, State of Case) was found in the South Plainfield house and marked in evidence S-1.

Mr. Wadley, the manager of the Castle Plant, testified (p. 43, State of Case) that there were a number of checks as well as currency taken from the safe. To like effect is testimony of Frederick Daub (p. 48, State of Case) who had charge of the cash and checks that were placed in the safe. Casaleggi testified (p. 22, State of Case) that the defendant, Legenza, threw a number of checks overboard into the river at Sewaren. He was asked (p. 22):

Q. Were you there at the time?

A. Yes, sir; I was there.

Q. Did he tell you what he was doing?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. In what shape or condition were those checks?

A. They were in like a small box, tin box. They were in a bag, and he opened the bag up and dumped them in the river there. The river or the Staten Island Sound.

The defendant, Legenza, apparently had considerable cash money shortly after the date of this robbery, because he purchased a Peerless automobile on July 10, 1926, and paid $1,995.00 cash. See testimony of Charles Johnson (pp. 87-88), State of Case).

Can it possibly be said in light of all this testimony that the jury was not justified in returning a verdict of guilty especially in view of the fact that the defendants failed to take the stand to deny any of this testimony or to submit any evidence whatsoever in their behalf?

POINT TWO.

The Court Committed no Error in Its Charge to the Jury.

The excerpt from the Court's charge, about which appellants complain, was certainly justified under the evidence. Surely, there could be no doubt that a robbery took place. There was clear, positive, convincing and uncontradicted evidence of the robbery given by the watchman, James Mason (pp. 68, 69, &c., State of Case). This witness stood in the room while the cracksmen worked on the safe and blew it apart in order to get at the money. The only other witnesses who were actually present were Steve Robovics and John Pirrong who were held up at the point of a gun, tied by copper wire and locked in the engine room (see pp. 51, &c., State of Case). See also the testimony of Mr. Wadley, the manager of the Plant (p. 42, &c., State of Case); Frederick Daub, the clerk who placed the money in the safe (p. 47, State of Case), and the testimony of Officer John F. Murray (pp. 88, &c., State of Case), all of whom were present shortly after the robbery and saw the condition of the safe which had been blown open.

The Court was certainly justified in stating that Casaleggi testified that Wunkowski and Legenza were two of the confederates who acted with Caruso. The Court did not say that these men were actually confederates of Caruso, but simply called the jury's attention to the fact that Casaleggi so testified. There can be no doubt about the Court's justification for this statement. Casaleggi repeatedly testified that all three defendants were parties to the preparation for this crime and furnished positive evidence of their connection with all the evidence used by the State to identify them with the crime.

It is respectfully submitted that the conviction should be affirmed.

Respectfully submitted,

JOHN E. TOOLAN,

Prosecutor of the Pleas
of Middlesex County.