INDEX.

	PAGE
Writ of Error	1
Opinion	2
Rule Affirming Judgment	5
Assignment of Error	6
Specification of Cause for Reversal	7
Writ of Error	8
Return	9
Judgment	10
Certificate of County Clerk	23
The Court's Charge	148
Certificate of Trial Judge	160
Specification of Causes for Reversal	161
Assignment of Error	163
Joinder in Error	164

WITNESSES FOR STATE:

Victor White, Direct	25
William F. Cole, Direct	31
Rebuttal, Direct	131
Harry James Norton, Direct	32
George Gash, Direct	34

PAGE

Joseph Charles Rupprecht,
Direct 37
Cross 43
Rebuttal,
Direct 132, 138
Cross 133, 139

Lieutenant Cash,
Direct 68
Cross 68
Re-direct 69

WITNESSES FOR DEFENDANTS:

Dominic De Bellis,
Direct 70
Cross 82
Rebuttal,
Direct 145
Cross 147

Mrs. Rose George De Bellis,
Direct 97
Cross 100

Sam Rosen,
Direct 112
Cross 114

George Honeybloom,
Direct 121
Cross 123

Samuel Silverman,
Direct 126
Cross 127

Mrs. Minnie Booth,
Direct 133
Cross 137

Writ of Error.

New Jersey Court of Errors and Appeals

DOMINICK DEBELLIS,
Plaintiff-in-Error,

vs.

THE STATE,
Defendant-in-Error.

THE STATE OF NEW JERSEY, to wit:

(SEAL) *The State of New Jersey to the Chief Justice and Associate Justices of Our Supreme Court of Judicature of the State of New Jersey,*

GREETING: Because in the record and proceedings and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Dominick DeBellis, plaintiff-in-error and The State, defendant-in-error, manifest error hath intervened to the damage of the said Dominick DeBellis, plaintiff-in-error, as is said, and we being willing in that behalf, that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the plaintiff in error, do command you, that you distinctly and openly send under your hand and seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of the Court of Errors and Appeals in the last resort in all causes, at Trenton, on the 17th day of May, next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause

to be further done therein, for correcting that error, what of right and according to the laws of the State of New Jersey ought to be done.

Witness, Edwin Robert Walker, Esquire, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 13th day of April, nineteen hundred and twenty-seven.

JOSEPH F. S. FITZPATRICK,
Clerk.

WILLIAM A. KAVANAGH,
Attorney.

Opinion.

NEW JERSEY SUPREME COURT.

No. 97, MAY TERM, 1926.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

DOMINICK DEBELLIS,
Plaintiff-in-Error,

ON ERROR TO HUDSON COUNTY QUARTER SESSION'S COURT.

Before Justices KALISCH, KATZENBACH and LLOYD.

For the Plaintiff-in-Error, WILLIAM A. KAVANAGH.

For the Defendant-in-Error, JOHN MILTON, Prosecutor of the Pleas.

Per curiam:

The plaintiff-in-error was indicted together with John DeBellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, for having perpetrated four robberies committed at the same time and place on each of the complaining victims. A severance was granted as to John DeBellis; and the plaintiff-in-error, and Joseph Rupprecht were put on trial. After a jury was impanelled, counsel on behalf of Rupprecht stated to the court that Rupprecht desired to withdraw his plea of not guilty and enter a plea of guilty, which request was granted. The trial then proceeded against the plaintiff-in-error alone. Rupprecht appeared as a witness on behalf of the State. The plaintiff-in-error was convicted on all four indictments, which, by consent of respective counsel, were tried together. Judgment having been given on the conviction had, the plaintiff-in-error comes before this Court on strict writ of error and under the 136th Section of the Criminal procedure act.

The first ground relied on and argued in the brief of counsel of plaintiff-in-error for reversal, is, that the Court erred in allowing Joseph Rupprecht to plead guilty in the presence and hearing of the jury. This objection is substanceless, and needs no comment, except to say that at the time the offer was made to plead by Rupprecht, counsel of plaintiff-in-error sat quietly by and made no objection. But even if he had it could not have been of any avail, since the practice of taking pleas of guilty of co-defendants in the presence of the jury is a common one and its legal propriety has never been questioned. The second point argued and urged for a reversal is that the

Court erred in refusing to direct a verdict of acquittal at the conclusion of the State's case.

A fair reading of the testimony offered by the State makes it manifest that there was ample proof of the participation of the plaintiff-in-error, in the perpetration of the robberies. The insistence of counsel of plaintiff-in-error is, that, according to the testimony, the plaintiff-in-error was an accessory before the fact and hence could not be convicted on an indictment which charged him as a principal only. There was not only proof adduced by the State that the plaintiff-in-error had planned the robbery but that he drove his accomplices in an automobile, which was borrowed by him of his brother, to within 50 or 100 feet from the place where the robberies were committed, and where he stopped his car and his companions got out, to one of whom he handed a revolver, obviously to aid in perpetrating the robbery. It further appears that after the robberies, the proceeds thereof were divided, of which the plaintiff received his share. The third and last point argued in brief of counsel of plaintiff-in-error for a reversal is that the verdict is against the weight of the evidence and against the evidence. There is no merit in this contention. The testimony was ample to warrant a jury to convict the plaintiff of the robberies as a principal, as indicted.

Judgment is affirmed.

Rule Affirming Judgment.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant-in-Error, *vs.* DOMINICK DEBELLIS, Plaintiff-in-Error.	On Error to Hudson Quarter Sessions. Rule on Affirmance of Judgment and Order of Remittitur.

This cause having been duly argued before this Court at the May Term, A. D. 1926, by John Milton, Prosecutor of the Pleas of the County of Hudson, Counsel for the State of New Jersey, Defendant-in-Error, and William A. Kavanagh, Esquire, Counsel for Dominick DeBellis, Plaintiff-in-Error, and the Court having considered the same and having examined the records and proceedings of the Hudson Quarter Sessions, in the said cause, and finding no error therein:

IT IS HEREBY ORDERED AND ADJUDGED that the judgment of the Hudson Quarter Sessions in the above entitled cause be and the same is hereby affirmed with costs;

AND, IT IS FURTHER ORDERED that the record in the said cause be forthwith remitted to the said Hudson Quarter Sessions there to be proceeded with according to law.

Entered Mar. 19, 1927.

On motion of
JOHN MILTON,
Prosecutor of the Pleas,
Counsel for State of New Jersey,
Defendant-in-Error.

Assignment of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, Defendant-in-Error, *vs.* DOMINICK DEBELLIS, Plaintiff-in-Error.	On Writ of Error.

And now comes the said Dominick DeBellis, plaintiff-in-error, by William A. Kavanagh, Esq., his attorney, and says that in the record and proceedings and also in giving judgment thereon, there is manifest error, and for error assigns the following cause:

1. The Supreme Court gave judgment affirming the conviction of the plaintiff-in-error and of the judgment thereon, whereas it should have reversed the judgment of the Hudson County Court of Quarter Sessions and set aside the conviction of that Court.

WILLIAM A. KAVANAGH,
Attorney for Plaintiff-in-Error.

Specification of Cause for Reversal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, Defendant-in-Error, *vs.* DOMINICK DEBELLIS, Plaintiff-in-Error.	On Writ of Error.

And now comes the said Dominick DeBellis, plaintiff-in-error, by William A. Kavanagh, Esq., his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error, and for error assigns the following cause:

The Supreme Court gave judgment affirming the conviction of the plaintiff-in-error and of the judgment thereon, whereas it should have reversed the judgment of the Hudson County Court of Quarter Sessions and set aside the conviction of that Court.

WILLIAM A. KAVANAGH,
Attorney for Plaintiff-in-Error.

Writ of Error.

NEW JERSEY, ss.:

(SEAL) To the Hon. Robert V. Kinkead, Esq., Judge of the Court of Quarter Sessions of the County of Hudson.

Because in the record and proceedings, and also in giving of judgment upon certain indictments against Dominick De Bellis, late of the City of Newark, in the County of Essex, State of New Jersey, for robbery, on November 11, 1924, in the Town of North Bergen, in the County of Hudson.

Pro ut the said indictments and the several counts therein, whereof, before you, he hath been indicted, and is thereof convicted by certain pleas of not guilty, by a certain jury of the County, taken between The State of New Jersey and the said Dominick De Bellis, as it is said, manifest error hath intervened to the great damage of the said Dominick De Bellis, as from his complaint we hath received information, we being willing, in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Dominick De Bellis, command, if judgment be thereon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same to Our Justices of Our Supreme Court of the State of New Jersey, on the 28th day of March, 1925, 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, WILLIAM S. GUMMERE, Esq., Our Chief Justice, at Trenton, aforesaid, the ninth day of March, 1925.

EDWARD J. KELLEHER,
Clerk.

WILLIAM A. KAVANAGH,
Attorney.

Return.

The answer of Daniel O'Regan, Esq., Judge of the Court of Quarter Sessions and within named the record of the proceedings of the Plaint whereof mention is within made, with all things touching the same I send to the Justices of our Supreme Court of Judicature, at Trenton, N. J. at the day and year within named in a certain schedule to this Writ annexed as within I am commanded.

DANIEL O'REGAN,
Judge of the Court of Quarter Sessions.

Holden in and for the said County of Hudson.

Judgment.

STATE OF NEW JERSEY: HUDSON COUNTY, TO WIT: Be it remembered, that at a Court of Oyer and Terminer holden at Jersey City, in and for the said County of Hudson, on the Second Tuesday of December in the year of our Lord one thousand nine hundred and Twenty-four before Honorable JAMES F. MINTURN, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Robert V. Kinkead, and Honorable Charles M. Egan and Honorable Daniel T. O'Regan, Judges of the Court of Common Pleas in and for the said County of Hudson, according to the Form of the Statute in such case made and provided, by the oaths of

1. Alex F. Gillis, Foreman and
2. Fred Scmitt
3. Benjamin Lerner
4. James G. Murray
5. Frank Flynn
6. William Mayer, Jr.
7. Abraham A. Sarlett
8. Charles Borkholm
9. John S. Rath
10. John Campana
11. Daniel S. Schnebel
12. Joseph Schaeffer
13. Eugene Macchi
14. Morris J. Weiss
15. John J. Phelan
16. William Hill
17. Harry C. Greenfield
18. John Harris
19. Issac A. Canning
20. Louis Lange
21. Jerry J. O'Halloran
22. Henry Garfunkel
23. George W. Knoll

good and lawful men of said County, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it is presented in manner and form following, that is to say, that the Bills following are true Bills.

A. F. GILLIS
Foreman.

Judgment.

And the foregoing being presented to the said Court on the Nineteenth day of December, Nineteen Hundred and twenty-four, with Bills of Indictment Nos. 1 to 23 inclusive it is ordered by said Court that the said Bills of Indictment so as aforesaid included as Bills Numbers 17, 18, 19 and 20 for Robbery, as charged upon Dominick DeBellis, John DeBellis, Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, be handed to the Court of Quarter Sessions for trial and disposal according to law, and said Bills are in words as follows:

HUDSON OYER AND TERMINER

DECEMBER TERM, A. D. 1924.

HUDSON COUNTY, TO WIT:—The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath PRESENT, that Dominick DeBellis, John DeBellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, late of the Township of North Bergen in the said County of Hudson, on the twenty-first day of November in the year of our Lord one thousand nine hundred and twenty-four with force and arms, at the Township of North Bergen aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one Victor White, in the peace of God and of this State then and there being feloniously did make an assault, and from the person and against the will of him the said Victor White.

Two dollars in lawful money of the United States of America. The moneys, goods and chattels of him the said Victor White did then and there wilfully, unlawfully, forcibly and by vio-

lence and by then and there putting him the said Victor White in fear, take, steal 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 Grand Inquest aforesaid, upon their oath aforesaid, do further Present, That the said Dominick DeBellis, John DeBellis, and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, on the twenty-first day of November in the year of our Lord one thousand nine hundred and twenty-four, at the Township of North Bergen aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Victor White and in the peace of God and of this State then and there being, an assault did make and him the said Victor White then and there did beat, wound and ill treat and other wrongs to the said Victor White then and there did to the great damage of the said Victor White 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.

JOHN MILTON,
Prosecutor of the Pleas.

A true bill.
A. F. GILLIS, Foreman

Presented December 19, 1924 and handed down to the Court of Quarter Sessions,

JOHN J. MCGOVERN, Clerk.

HUDSON OYER AND TERMINER

DECEMBER TERM, A. D. 1924.

HUDSON COUNTY, TO WIT:—The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath Present, that Dominick DeBellis, John DeBellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, late of the Township of North Bergen in the said County of Hudson, on the twenty-first day of November in the year of our Lord one thousand nine hundred and twenty-four, with force and arms, at the Township of North Bergen aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one William F. Cole in the peace of God and of this State then and there being, feloniously did make an assault, and from the person and against the will of him the said William F. Cole.

Four hundred and ninety-seven dollars in lawful money of the United States of America,

Groceries and dry goods of the value of One hundred and twenty dollars, the moneys, goods and chattels of R. H. Macy and Company, a corporation did then and there wilfully, unlawfully, forcibly and by violence and by then and there putting him the said William F. Cole, in fear, take, steal 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 Grand Inquest aforesaid, upon their oath aforesaid, do further Present, That the said Dominick DeBellis, John DeBellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, on the twenty-first

day of November in the year of our Lord, one thousand nine hundred and twenty-four, at the Township of North Bergen aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one William F. Cole in the peace of God and of this State then and there being, an assault, did make and him the said William F. Cole then and there did beat, wound and ill treat and other wrongs to the said William F. Cole then and there did to the great damage of the said William F. Cole, 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.

JOHN MILTON,
Prosecutor of the Pleas.

A true bill.
A. F. GILLIS, Foreman.

Presented December 19, 1924, and handed down to the Court of Quarter Sessions.

JOHN J. McGOVERN, Clerk.

HUDSON OYER AND TERMINER,

DECEMBER TERM, A. D. 1924.

HUDSON COUNTY, TO WIT:—The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath Present, That Dominick DeBellis, John DeBellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, late of

the Township of North Bergen in the said County of Hudson, on the twenty-first day of November in the year of our Lord one thousand nine hundred and twenty-four, with force and arms, at the Township of North Bergen aforesaid, in the County aforesaid, and within the Jurisdiction of this Court, in and upon one Harry J. Norton in the peace of God and of this State then and there being, feloniously did make an assault, and from the person and against the will of him the said Harry J. Norton,

Twelve dollars in lawful money of the United States of America, the moneys, goods and chattels of him the said Harry J. Norton, did then and there wilfully, unlawfully, forcibly and by violence and by then and there putting him the said Harry J. Norton in fear, take, steal 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 Grand Inquest aforesaid, upon their oath aforesaid, do further Present, That the said Dominick DeBellis, John DeBellis, and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Rupprecht, on the twenty-first day of November in the year of our Lord one thousand nine hundred and twenty-four, at the Township of North Bergen, aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Harry J. Norton in the peace of God and of this State then and there being, an assault, did make and him the said Harry J. Norton then and there did beat, wound and ill treat and other wrong to the said Harry J. Norton then and there did to the great damage of the said Harry J. Norton 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.

JOHN MILTON,
Prosecutor of the Pleas.

A True Bill
A. F. GILLIS, Foreman

Presented December 19, 1924, and handed down to the Court of Quarter Sessions.

JOHN J. McGOVERN, Clerk.

HUDSON OYER AND TERMINER,

DECEMBER TERM, A. D. 1924.

HUDSON COUNTY, TO WIT:—The Grand Inquest of the state of New Jersey, in and for the body of the County of Hudson, upon their respective oath Present, that Dominick De Bellis, John DeBellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, late of the Township of North Bergen in the said County of Hudson, on the twenty-first day of November in the year of our Lord one thousand nine hundred and twenty-four, with force and arms, at the Township of North Bergen aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one William F. Cole in the peace of God and of this State then and there being, feloniously did make an assault, and from the person and against the will of him the said William F. Cole,

Eight dollars in lawful money of the United States of America, Ferry Tickets of the value

of One dollars, the moneys, goods and chattels of him the said William F. Cole, did then and there wilfully, unlawfully, forcibly and by violence and by then and there putting him the said William F. Cole in fear, take, steal 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 Grand Inquest aforesaid, upon their oath aforesaid, do further Present, That the said Dominick DeBellis, John DeBellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, on the twenty-first day of November in the year of our Lord one thousand nine hundred and twenty-four, at the Township of North Bergen aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one William F. Cole in the peace of God and of this State then and there being, an assault did make and him the said William F. Cole then and there did beat, wound and ill treat and other wrongs to the said William F. Cole, then and there did to the great damage of the said William F. Cole, 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.

JOHN MILTON,
Prosecutor of the Pleas.

A True Bill
A. F. GILLIS, Foreman

Presented December 19, 1924, and handed down to the Court of Quarter Sessions.

JOHN J. McGOVERN, Clerk.

Judgment.

And afterwards to wit: to wit on the Second day of March in the year of our Lord One thousand nine hundred and twenty-five, at a Session of the Court of Quarter Sessions of the County of Hudson aforesaid being now of the Term of December, one thousand nine hundred and twenty-four in the said year before the Honorable Robert V. Kinkead, Judge of the Court of Common Pleas in and for the said County of Hudson, who doth constitute and hold the Court of Quarter Sessions, in and for the County of Hudson here cometh the said Dominick DeBellis under the custody of his bondsman (Commercial Casualty Ins. Co.) in whose custody he had before been committed for the cause aforesaid, who being brought herein in his proper person by the bail, aforesaid, to whom he had been committed and having heard the indictments read and forthwith being demanded of and concerning the premises in the said indictments above specified and charged upon him, how he will acquit himself thereof, he says he is not guilty thereof, and therefore for good and evil he puts himself upon the country, and John Milton, Esq., Prosecutor of the Pleas of said County who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let said Indictments be continued until March 2nd, 1925, and let a jury come before the Honorable Robert V. Kinkead, Judge of the Court fo Common Pleas in and for the County of Hudson, constituting and holding the Court of Quarter Sessions for said County, being now of the Term of December (1924), One thousand nine hundred and twenty-four of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the

Judgment.

truth of the matter may be better known, and who are not of kin to the said defendant to recognize on their oath whether the said Dominick DeBellis be guilty of Robbery as in the indictments aforesaid are charged against him, or not guilty thereof, because as well the said John Milton, Esq., Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey in this behalf, as in the said indictments have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

At which time that is to say on the Second day of March, in the year of our Lord One thousand nine hundred and twenty-five, at Jersey City, aforesaid, in the County of Hudson aforesaid, before the Honorable Robert V. Kinkead, Judge as aforesaid constituting and holding the Court of Quarter Sessions as aforesaid, here come as well the said John Milton, Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well the said defendant under the custody of his bail aforesaid, to whose custody he had hitherto been committed and who being brought to the bar in his proper person by his bail and the Jurors of the Jury by the Sheriff of the County of Hudson aforesaid, for the purpose, chosen, empanelled and returned to wit: Conrad Brieby, John Beckman, Irving R. Troll, John Wadsworth, Wm. Meister, Henry Reinhardt, Lemuel S. Roberts, George J. Brown, Charles Gardner, Rudolph Husgager, Jr., Daniel Ambrose, Harry Millstein, being called, come, who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury at which days the evidence of the parties is submitted and the Attor-

neys were heard thereupon and the said issue after a Charge of the Officers of the Court, being duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit on March, 2nd, 1925, the last aforesaid, the said Jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said John Milton, Prosecutor of the Pleas as aforesaid and for the said defendant do say that the said defendant is guilty of Robbery.

SENTENCES ON EACH INDICTMENT.

ON INDICTMENT No. 17: Term of December, 1925.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the said defendant Dominick DeBellis be and is hereby sentenced to be confined in State Prison, at hard labor for a maximum Term (or period) of Fifteen (15) years and a Minimum period of Five (5) years and thence until the costs of prosecution are paid.

JUDGE KINKEAD.

SENTENCE ON INDICTMENT No. 18: Term of December, 1924.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the said defendant Dominick DeBellis be and is hereby sentenced to be confined in State Prison, at hard labor for a Maximum period of Fifteen (15) years and a

Minimum period of Five (5) years and thence until the costs of prosecution are paid.

This sentence to commence at the expiration of the sentence imposed on Indictment No. 17, December term, 1924.

JUDGE KINKEAD.

SENTENCE IMPOSED IN INDICTMENT No. 19: Term of December, 1924.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the said defendant Dominick DeBellis be and is hereby sentenced to be confined in State Prison, at hard labor for a Maximum period of Fifteen (15) years and a Minimum period of Five (5) years and thence until the costs of prosecution are paid.

This sentence to begin at the expiration of the sentence imposed on Indictment No. 18, Term of December, 1924.

JUDGE KINKEAD.

SENTENCE IMPOSED IN INDICTMENT No. 20: Term of December, 1924.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the said defendant Dominick DeBellis be and is hereby sentenced to be confined in State Prison at hard labor for a Maximum period of Fifteen (15) years and a Minimum period of Five (5) years and thence until the costs of prosecution are paid.

Judgment.

This sentence to begin at the expiration of the sentence imposed on Indictment No. 19, Term of December, 1924.

JUDGE KINKEAD.

Judgment entered and signed this Fifth day of March, A. D. 1925.

ROBERT V. KINKEAD,
Judge of the Court of Quarter Sessions in and for the County of Hudson.

Attest:
JOHN J. McGOVERN,
Clerk.

Certificate of County Clerk.

STATE OF NEW JERSEY.

(SEAL)

HUDSON COUNTY, ss.:

I, JOHN J. McGOVERN, Clerk of the County of Hudson, aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas, and Court of Quarter Sessions holden therein

DO HEREBY CERTIFY, That the foregoing is a true and correct copy of Indictments, Pleadings, Proceedings, Conviction and Sentences and Writ of Error in the Case of the State of New Jersey *vs.* Dominick De Bellis, on Sur Indictments Nos. 17-18-19 and 20 Term of December, A. D. 1924 for Robbery, as the same is taken from and compared with the original presented, filed and recorded in my office. This Certificate is issued so that said cause may be removed to the Supreme Court of Judicature of the State of New Jersey, for disposal therein according to Law:

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Courts and County, at Jersey City this twenty-fifth day of March, 1925.

(SEAL)

JOHN J. McGOVERN,
Clerk.

A true copy.
EDWARD J. KELLEHER, Clerk.

Testimony.

HUDSON COUNTY COURT OF QUARTER SESSIONS.

STATE OF NEW JERSEY

vs.

DOMINIC DE BELLIS, JOHN DE BELLIS and JOSEPH RUPPRECHT, alias CHARLES ANDERS, alias RED RUPPERT.

Before: Hon. ROBERT V. KINKEAD, Judge and a Jury.

JERSEY CITY, N. J., March 2, 1925.

APPEARANCES:

LEWIS G. HANSEN, Esq., Assistant Prosecutor, for the State.

WILLIAM A. KAVANAGH, Esq., for Dominic De Bellis.

THOMAS F. MEANEY, Esq., for John De Bellis.

THOMAS TUMULTY, Esq., for Joseph Rupprecht.

The Court: The Court has granted a severance in the cases of Dominic De Bellis, Joseph Rupprecht and John De Bellis, and the State will proceed now against Dominick De Bellis and Joseph Rupprecht.

I should say, Mr. Meaney, Mr. Hansen has consented to try the four indictments together in this case. The Court has appointed Mr. Thomas Tumulty to represent the defendant Joseph Rupprecht. You consent that all four indictments be tried together, Mr. Tumulty, do you?

Mr. Tumulty: Yes.

A jury was empanelled, declared satisfactory, and sworn.

Mr. Hansen: At this stage, if your Honor please, Joseph Rupprecht desires to withdraw his plea of not guilty and enter a plea of guilty. I have told him that will be taken into consideration by your Honor when you come to sentence.

Mr. Hansen opened the case on behalf of the State.

The Court: You will now be trying the case of the defendant Dominic De Bellis. The other defendant, Joseph Rupprecht, having just pleaded guilty, and the third defendant, John De Bellis, being out of the State.

VICTOR WHITE, sworn for the State, testifies:

Direct examination by Mr. Hansen:

Q. Where do you live, White? A. 157 East 26th Street.

Q. How old are you? A. Twenty years old.

Q. Do you work for Macy & Company? A. Yes, sir, at the time of the hold-up I did.

Q. When was that? A. November 21st, 1924.

Q. You were working for Macy's as delivery clerk on an automobile truck? A. Yes, on an automobile truck.

Q. Who was with you on that truck? A. William Cole and Norten.

Q. Who? A. The driver, Cole and another helper.

Q. And the other man's name is Norten? A. Yes.

Q. On that day did you have occasion to go up

to the place at 541 36th street, North Bergen? A. Yes, sir.

Q. To deliver some goods? A. Yes, sir.

Q. What time were you to make that delivery? A. About six o'clock at night.

Q. Was it dark or light that night? A. Pretty dark.

Q. Did the three of you go into the house? A. We had about nine bundles to deliver so the three of us went into the house.

Q. Did anything happen when you came out? A. I got inside the car.

Q. How big a car was it? A. Just a little electric truck.

Q. Where did you get to? A. I was in back of the car, and, as I was standing around, the other helper was shoved in on top of me, and the light was out and I didn't see anything after that.

Q. Where was the driver? A. He was sitting on his seat.

Q. What happened then? A. Three fellows jumped in and told us to stick them up, and keep quiet.

Q. Did they do anything to you? A. They just told us to stick them up, and I had a gun against my stomach, that's all.

Q. And they told you to throw your hands up, did they? A. Yes, sir.

Q. What happened then? A. They told the driver to drive over to 36th street; he turned the car around, came down the place and turned over to 36th street between the block right of the boulevard.

Q. Down the hill west of the Boulevard? A. Yes.

Q. What happened then? A. They had already taken all the money out of our pockets, they

jumped out, took up the bundles and went down the street and got in a car.

Q. Did they take anything from you? A. Yes.

Q. What did they take? A. Twenty-five dollars.

Q. Did you have that in your pocket in cash? A. Yes, in change.

Q. Did they search you? A. They took everything we had in our pockets.

Q. Did they search you? A. Yes.

Q. How many men were there? A. Three.

Q. Did you see those men search the other two of you? A. Yes.

Q. Did they take everything they had also? A. Everything.

Q. What about the packages you had on the car? A. They took all they could take.

Q. Did they ask you what you had on the car? A. Yes, they asked us if we had any furs on the car, but we didn't have any at that time.

Q. Did you have any load on? A. We had about twenty-five packages on.

Q. How many of the twenty-five packages did they take? A. About eighteen packages they took.

Q. Have you any idea what was in the packages? A. They contained all kinds of things, dresses and furs, and all sorts of goods.

Q. What happened then? A. They jumped in the car and as soon as they got in the car they rode off.

Q. They had a car there? A. Yes, sir.

Q. Did you see that car? A. I saw it at 36th street.

Q. How close away were you to it? A. About fifty feet away from it.

Q. Were you able to see the license number on the car? A. They didn't have any reflector on the lights, so we could not.

Q. What sort of a car was it? A. It was a red, maroon, touring car.

Q. Was there any light there? A. No, it was pretty dark in that neighborhood.

Q. But you could distinguish that it was a red, maroon, car? A. Yes.

Q. And these three men got into that car, did they? A. Yes.

Q. What were you doing? A. We were still inside our car.

Q. Still being covered by these guns? A. Yes, sir.

Q. How many of the men had guns? A. They all had guns.

Q. How many men took the packages out of the car? A. One man took them out and one man stood in the back of the truck, and the two men carried them off while the other man stayed there, and when they got off he jumped off and ran down too.

Q. What happened after that? A. They just rode away, that's all. We jumped out but couldn't get the license number.

Q. And these fellows got in the other car and drove off, did they? A. Yes, sir.

Q. Now, a few days later you went to Newark with Lieutenant Cash, did you? A. Yes.

Q. And at that time do you know where you went to in Newark? A. Bank Street.

Q. To a restaurant there? A. Yes, sir.

Q. Did you see anybody at that place that you recognized as being one of the men that attacked you? A. Not at the time.

Q. What do you mean by not at the time? A. They went up there and they got John De Bellis and they took him down and they got into his car.

Q. Who was John De Bellis? A. The fellow that owned the restaurant.

Q. What did they do? A. They went down and got his car.

Q. What happened first when you got to the restaurant? A. They brought John De Bellis out.

Q. And did they ask you whether he was one of the men? A. Yes, they asked me, but I couldn't recognize him.

Q. Did you recognize any one that day as being one of the men that had attacked you? A. Yes, sir.

Q. Who? A. Jack Rupprecht.

Q. This man here (indicating Rupprecht)? A. Yes.

Q. Where did you see him? A. In the car when I was attacked.

Q. I mean where did you see him in Paterson or Newark? A. I didn't see him at all in Paterson; in Newark.

Q. Where did you identify him? A. In Newark.

Q. When did you see him in Newark? A. About twelve o'clock at night when they brought him in.

Q. Under what circumstances did you see him? A. As soon as they brought him in I could identify him. I could tell by the actions and his talk.

Q. Did you see an automobile out there that day? A. Yes, sir.

Q. Where? A. They took us down and showed it to us. I don't know what street it was.

Q. Did you recognize that automobile as being one you had seen before? A. Yes.

Q. One you had seen before? A. Yes.

Q. When had you seen it before? A. On the night of the attack.

Q. And you say that was the same car? A. Yes.

Q. Positive? A. Positive.

Q. And you made no other identification that day, did you? A. No, sir.

Q. How did you identify this man? Did you pick him out of a lineup? A. They brought him in there and all the detectives were all lined up against the wall.

By the Court:

Q. He was in the lineup, was he? A. Yes.

Q. And you picked him out? A. Yes.

By Mr. Hansen:

Q. Was this man, John De Bellis, there, that day? A. Yes.

Q. But you did not identify him? A. No.

Q. But you did identify Rupprecht? A. Yes.

Q. How did you identify him? A. By his actions.

Q. How by his actions? A. The way he talked as soon as he came in.

Q. Did you recognize his voice or anything? A. I couldn't very well recognize his voice, I knew he had a light complexion, that's all.

Q. You knew he was a blonde fellow? A. Yes, sir.

Q. Is that the reason you identified him? A. No, sir.

Q. You picked him out of that line? A. Yes.

Q. There was a bunch with him in the lineup? A. Yes, sir.

Q. How could you see he was the man and pick him out? A. I just knew by his actions and his talk.

By the Court:

Q. Do you mean by his voice? A. Yes.

Q. You recognized his voice? A. Yes, sir.

Mr. Kavanagh: No questions.

WILLIAM F. COLE, sworn.

Direct examination by Mr. Hansen:

Q. You are employed at Macy's? A. I was at the time.

Q. On November 21st of last year were you so employed? A. I was.

Q. And you were making deliveries up by Woodcliff, were you, North Bergen, about six o'clock that night? A. Yes.

Q. And something happened? A. Yes, sir.

Q. What happened? A. I was getting ready to go home and we went up Park avenue and noticed three men walking up in a peculiar way—the first time anything happened that way, anyway—and Jack Rupprecht jumped out and said, "Put them up."

Q. Did you know the man? A. No.

Q. Had you ever seen him before that? A. No.

By the Court:

Q. You mean the man you know now as Jack Rupprecht told you to put them up? A. Yes, and I put them up. The helpers had come, White was already in the car, and Norton got shoved in the car. Some one says, "Who is the chauffeur?" I said, "I am," and he said, "Turn around, no funny work for us," so I pulled around, and Rup-

precht punched me and took all my money, tobacco, license and everything.

Q. How much money did you have on you? A. About eight dollars and fifty cents of my own.

Q. Did you have any money on you belonging to Macy's? A. Yes, sir, I don't know how much.

Q. They took it all? A. Yes.

Q. How much did they take of Macey's? A. Something like three hundred dollars.

Q. Who robbed you? A. Jack Rupprecht.

By Mr. Hansen:

Q. At the time Rupprecht was talking to you where were the others? A. There were three on the truck and one driving the car.

Q. You did not see the man driving the car, did you? A. No; there was another I didn't see, either; I might have got a glance at him, but I didn't notice.

Mr. Kavanagh: No questions.

HARRY JAMES NORTON, sworn.

Direct examination by Mr. Hansen:

Q. You were employed by Macy Company on November 21st of last year? A. Yes.

Q. Do you remember being attacked by three or four men after delivering stuff up in Woodcliff? A. Yes.

Q. And you were all down at 36th street and West avenue? A. Yes, sir.

Q. Was anything taken from you? A. Yes.

Q. What was taken from you? A. My own personal cash, and also cash of Macy's.

Q. Did somebody hold you up with a gun? A. Yes, three of them.

Q. Was the gun held up against you? A. Yes.

Q. And you were ordered to hold your hands up? A. Yes.

Q. And searched? A. Yes.

Q. How many men did that? A. I was searched twice.

Q. How many men in the party? A. Three that I could see.

Q. You did not see the driver of the automobile? A. No, sir.

Q. Did he get out of the machine? A. I don't know.

By the Court:

Q. How far was the automobile from your car? A. Fifty to one hundred feet.

Q. And you were never closer to that man in the automobile than that distance? A. No, sir, I couldn't see them.

By Mr. Hansen:

Q. You went out to Newark some time later on? A. Yes, sir.

Q. With Detective Gash of the North Bergen Police Force? A. Yes, sir.

Q. And did you see the car out there that these men were in when they attacked you? A. Yes, sir.

Q. Did you recognize it as the same car? A. Yes, sir.

Q. Where did you see the car? A. In the street there, I don't know the number.

Q. You are sure that was the same car? A. Yes.

Q. Did you ever identify any of the men? A. No, sir.

Q. You did not see them good enough to identify them? A. No, sir.

Q. You did not recognize either of these two men as being implicated? A. No, sir.

Q. Do you mean you don't know whether they were in it or not? A. I am not positive.

Mr. Kavanagh: No questions.

Detective George Gash, sworn.

Direct examination by Mr. Hansen:

Q. You are a member of the North Bergen Police Force, are you? A. Yes, sir.

Q. And you received a report of this robbery November 21st of last year, did you? A. I did.

Q. Did you make any investigation? A. I did.

Q. Did you make any arrests? A. On December 3rd.

Q. You went to Newark at that time, did you? A. I did, and arrested John De Bellis, Dominic De Bellis and Joseph Rupprecht.

Q. Do you know whether John De Bellis had an automobile or not? A. John De Bellis had an automobile, yes.

Q. Did you see that automobile on the day when you were out there? A. I did.

Q. Whom did you have with you when you went to Newark that day, these three men that were on the stand? A. The three Macy men, two of Macy's detectives, and a couple of Newark detectives.

Q. Where was John De Bellis' restaurant,—at 183 Bank street? A. Yes, 183 or 185.

Q. And this automobile you say belonged to him? A. Belonged to John De Bellis.

Q. Did you show that automobile to the three Macy men? A. Yes.

Q. And asked them if that was the same car that had taken part in the robbery of those goods? A. Yes.

Q. Did they identify it? A. Two of them identified it.

Q. What kind of car is it? A. A red touring Willys-Knight, registration number 130263.

Q. Did either of them in your presence identify John De Bellis as being one of the hold-up men? A. Yes.

The Court: John De Bellis is not on trial here.

Mr. Hansen: No, sir.

Q. He was the brother of Dominic De Bellis? A. Dominic is the brother of John De Bellis, yes.

Q. Do I understand you to say two of them recognized John De Bellis? A. No; one of them recognized John De Bellis.

Q. And two of them recognized Rupprecht? A. Yes.

Q. Rupprecht was picked out of a lineup? A. Yes, of ten or twelve men.

Q. By one of Macy's men? A. Yes, sir.

Q. Did you see Dominic De Bellis that day? A. I arrested Dominic.

Q. Dominic runs a restaurant, does he, too? A. I think he has a restaurant.

Q. Where did you arrest him, in his house? A. No, I picked him up on the street.

Q. Where did you take him? A. To police headquarters.

Q. Did you find any of the stolen goods in the

house of John De Bellis? A. I found the stolen goods in the restaurant of John De Bellis.

Q. That is, you found some goods in the restaurant which you afterwards found out were part of the stolen goods? A. They were identified immediately we had Macy's people go there.

Q. Are these the goods that you found in John De Bellis' store (producing valise)? A. Yes; I found it in the store of John De Bellis, in a cigar case.

Q. And you say they were identified at the time? A. They were identified by Macy's people.

Mr. Hansen: I will have them marked for identification. I will offer them in evidence if there is no objection.

Mr. Kavanagh: I do not see how they can be offered in evidence as John De Bellis is not on trial here.

Mr. Hansen: I will offer them for identification then.

(Valise produced is marked S-1 for identification.)

Mr. Kavanagh: No questions.

The Court: You do not dispute that Macy & Company were robbed?

(No response.)

Mr. Hansen: Then it is admitted on the record, I understand, that R. H. Macy & Company, whose goods were in charge of these three men, were robbed and several packages were stolen from the wagon, which were the property of R. H. Macy & Company, New York.

The Court: And which approximately were of the value of what?

Mr. Hansen: $497, certain merchandise

of the value of $120 and with the cash that was taken from Cole, belonging to Macy & Company, making a total of $497.

JOSEPH CHARLES RUPPRECHT, sworn.

Direct examination by Mr. Hansen:

Q. Where do you live, Rupprecht? A. West New York.

Q. Do you remember this day, November 21st of last year, you remember the day of the robbery? A. Yes.

Q. You took part in the hold-up? A. Yes.

Q. You were one of the defendants in this case? A. Yes.

Q. How many men were with you on this occasion? A. Three.

Q. Who were with you? A. Dominic De Bellis and two of his friends.

Q. Was John De Bellis with you? A. No, sir.

Q. He was not with you? A. No, sir.

Q. What was Dominic De Bellis doing? A. He was driving the car and called for me.

Q. Where did he call for you? A. At my house on New street, I lived in Newark at the time.

Q. How long had you known Dominic De Bellis?

Mr. Kavanagh: What address on New street were you at?

The Witness: Either 116 or 118.

Q. How long had you known Dominic De Bellis, the defendant in this case? A. I judge about a month.

Q. How did you come to meet him? A. I was introduced to him.

Q. You say that he came to you at your home on New Street on this day? A. On the day of this robbery.

Q. What time did he come to you? A. About half past five, I should judge.

Q. What did he say to you? A. He said he had two friends in the car and he said they were going to some place, and he asked me to go along and do a job.

Q. And you were willing to take part in doing the job? A. I went along with them.

Q. Where did you go to, North Bergen? A. We rode from Newark over to Jersey City, and from Jersey City continued up the Boulevard, and there he picked up one of the boys he had with him, I don't know his name. One got off at the tube station, he had a bundle and was going to New York.

Q. Do you mean that you let one of the men off at the tube? A. Yes.

Q. So that left 3 going across the Meadows? A. Yes.

Q. And then you took up another? A. Then he took up another that he had an appointment with, and he continued.

Q. And you went to North Bergen? A. Yes.

Q. What did you do? A. We come across this wagon of Macy's, I think it was at Park Avenue, and we passed by and some of the boys suggested we should turn around, and we rode about a mile past there up to Nungesser's, and we turned around again and followed this up until it got dark.

By the Court:

Q. You followed Macy's wagon? A. Yes; and then we pulled into some dark street, where they were, and took this stuff from them.

By Mr. Hansen:

Q. Did you hold them up? A. Yes.

Q. Did you have a gun with you? A. I had.

Q. Did Dominic have a gun with him? A. I don't think; he had a gun but gave it to one of the fellows.

Q. Did three get out of the car? A. He didn't do anything about approaching them, he drove the car.

Q. And after you held them up you directed him to take them down to West and the Boulevard? A. Yes.

Q. And it was here that you searched them and took what they had? A. Yes.

Q. What kind of car was it? A. A maroon colored Willys-Knight, with a light top.

Q. Whose car was it? A. John De Bellis'.

Q. Did you know him? A. Yes.

Q. How long had you known John De Bellis? A. I met the two at the same time.

Q. You say John was not with you that day? A. No, he stayed home in his restaurant. He loaned the car for that purpose.

Q. How do you know that? A. He loaned it to Dominic.

Q. Did Dominic tell you why John loaned him the car? A. He said John loaned him the car, and also loaned him the car to do the job.

Q. And after you got through talking, did you go out? A. Yes.

Q. Where did you go? A. To Dominic's garage.

Q. Where is that? A. I think it is in East Orange.

Q. Dominic De Bellis, the defendant in this case? A. Yes.

Q. You went to his garage? A. Yes.

Q. Did you have the money with you? A. I had some and two of his friends.

Q. And did you divide it in the garage? A. Yes, and I think he took, he asked for $56 for his brother for the use of the car.

Q. Who asked for that? A. Dominic, he said: "You will have to give my brother something."

Q. Where is this garage of Dominic's? A. East Orange, about two blocks from his house.

Q. Did you give him the $56? A. Yes, I gave the money to Dominic, and he said he was to give it to his brother.

Q. Who was paymaster? A. I gave him that money out of the money that was in the stock.

Q. How much did you get? A. $100.

Q. How much did the other fellows get? A. $100.

Q. Each got $100? A. Yes.

Q. Do you know how much you got altogether? A. $456.

Q. You each $100, and the $56 to John De Bellis? A. Yes.

Q. What did you do with the packages? A. We gave most to John De Bellis and the rest we left in the garage.

Q. Did you take them to his place? A. We rode down to take him those packages in the car, and Dominic started to take them in the house.

Q. Into John De Bellis' house? A. Into the store.

Q. Did you get out of the car? A. No; John DeBellis was inside.

Q. You did not get out of the car? A. I got out and walked home.

Q. What was the arrangement as to the disposal of those packages? A. He was supposed to

get that besides the money, they were not coming to us.

Q. You only cared about the money? A. That's all.

By the Court:

Q. Did you ever see that suit case before?

Mr. Hansen: It is not the suit case, your Honor, it is the contents of the suit case; I do not suppose therefore he saw the suit case.

By Mr. Hansen:

Q. You did not look into any of these packages? A. No, they were shown me in Newark but I didn't notice them.

Q. You say you knew Dominic De Bellis about a month previous to this hold-up? A. Yes, sir.

Q. How many times had you seen him during that month? A. Four or five times.

Q. How often did you meet him? A. I used to meet him every day that month; I used to go and eat in his restaurant.

By the Court:

Q. Did he own that restaurant? A. I think his father owns the restaurant and he works there.

By Mr. Hansen:

Q. How about John? A. I think John owns his restaurant.

Q. Have you had any talk with Dominic since this affair? A. Well, only in the jail, that's all.

Q. He did not know at that time that you were going to plead guilty? A. Yes.

Q. You were talking over the affair? A. Yes, sir.

Q. And at that time you intended to go to trial and deny your guilt? A. I hadn't made up my mind then, but I knew I was identified, and Dominic De Bellis and John De Bellis had both made statements.

By the Court:

Q. To the police? A. Yes.

Q. Admitting their guilt? A. Well, practically that.

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

The Court: I don't know if he knows that of his own knowledge.

Mr. Kavanagh: The statements speak for themselves. I object to the question, and ask that the answer be stricken out.

The Court: It may be stricken out.

Q. How long in the jail was Dominic? A. I think he was in there three or four days.

Q. And he got out on bail? A. Yes.

Q. And you have been there ever since? A. I have been there three months.

Q. Before he got out did he say anything about this robbery? A. He asked me what he could do for me, and I told him there was nothing.

Q. Did he say anything to you about his having taken part in the robbery? A. He knew he was in the robbery.

Q. But did you talk about the details of the robbery? A. Certainly.

Cross-examination by Mr. Kavanagh:

Q. You have been convicted of crime? A. Yes.

Q. How many times? A. I don't remember.

Q. Well, approximately? A. I was convicted once.

Q. And you actually served time in States prison? A. Yes, sir.

Q. How many times? A. Once.

Q. What is your business? A. On the Erie Railway.

Q. What do you do on the Erie Railroad? A. Brakeman and conductor.

Q. Where did you run? A. In the yard.

Q. Which yard? A. Weehawken yards.

Q. Where were you working on November 21st of last year? A. I wasn't working at all.

Q. Where were you living? A. Newark.

Q. Whereabouts? A. 118 or 116 New Street.

Q. And is that near the restaurant kept by Dominic De Bellis? A. I should judge it was about three or three and a half blocks from there, the same street.

Q. Do you know where Dominic De Bellis' saloon is? A. New Street.

Q. The same street you lived on? A. Yes.

Q. About three and a half blocks from the street where you lived on November 21st last year? A. Yes.

Q. How long did you live at 118 New Street prior to November 21st of last year? A. I guess —the nearest I could judge was three weeks.

Q. Did you live there with your wife? A. Yes.

Q. At 118 New Street? A. Yes; it is either 116 or 118 New Street, I am not positive which.

Q. Did you have an apartment there? A. Two rooms furnished.

Q. What was the name of the boarding house landlady? A. I don't recall.

Q. You don't know here? A. I did know her name but I don't recall it now.

Q. When did you take those two rooms, you and your wife? A. Well, it was previous to this time, about three weeks.

Q. And at that time you were working as a brakeman for the Erie Railroad? A. No, at that time I was not working.

Q. When had you last worked for the Erie Railroad as a brakeman? A. I should judge it was four months before that.

Q. When did you quit the railroad, when did you quit your job as brakeman? A. About four months before this happened.

Q. Four months before November 21st, 1924? A. Yes.

Q. Why did you quit your job? A. I took leave of absence.

Q. For what reason, for your health? A. For my health, I was sick.

Q. So during those four months previous to November 21st, 1924, and up to that time, when you took part in this hold-up in Woodcliff, you were not doing anything at all, were you? A. No. sir, no work.

Q. You were out of work? A. Yes, sir.

Q. And you were living in 116 or 118 New Street, in two furnished rooms, with your wife, for about three weeks before November 21st? A. Yes.

Q. When did you meet this young man, Dominic De Bellis? A. About a month previous to the time of the hold-up.

Q. That is, you met him before you and your wife moved to the three rooms on 116 or 118 New Street? A. Yes, sir.

Q. Before you moved to Newark? A. Yes.

Q. Where did you live before you moved to Newark? A. Jersey City.

Q. So the first time you met Dominic De Bellis was approximately about October 21, 1924? A. Yes, sir, about that time.

Q. Where did you meet him? A. In Jersey City.

Q. Whereabout? A. In Wayne and Grove.

Q. On the street? A. He came with his brother in a car, and I met him on the corner.

Q. Did you know his brother before that time? A. No, sir.

Q. Did you know John? A. No, sir, I didn't know either of them.

Q. What were you doing that afternoon—was it afternoon? A. Yes.

Q. What were you doing that afternoon on the corner of Wayne and Grove? A. It was not afternoon, it was evening.

Q. What time? A. Eight o'clock.

Q. About eight o'clock in the evening of November 21st? A. Yes.

Q. Did anybody introduce you to the De Bellis boys? A. I knew a fellow in Newark who brought them over.

Q. What was the name of the fellow you knew in Newark? Had you an appointment with him that night at the corner of Grove and Wayne? A. Yes.

Q. What was his name? A. Louis.

Q. Louis, what is his last name? A. I don't know his last name; Lewis was his last name, I didn't know his first name, I had an appointment there and he came over from Newark with these fellows in the car, and I didn't expect to meet these fellows at all, and he introduced me to them, introduced me to these fellows and we took a ride.

Q. You took a ride with them that evening? A. Yes, and then they continued on home, where they lived, which I didn't know at the time.

Q. Where did Lewis live? A. I think at Newark, because he brought these fellows over.

Q. You said you had an appointment with him, that you had an appointment to meet Lewis that night? A. Yes.

Q. But not to meet the De Bellis boys? A. No, sir.

Q. When did you make your appointment with Lewis? A. In the afternoon.

Q. Where? A. At the tubes, Grove street.

Q. How long had you known Lewis before you made that appointment? A. About two weeks.

Q. What was his business? A. I don't know, he wasn't working at the time.

Q. Where did he live? A. I am not certain, I think in Newark.

Q. You want this court to believe that you had an engagement with a man named Lewis, whose first name you don't know, you do not know his business and don't know where he lives? A. Yes, sir.

Q. Will you tell us what the engagement was about? A. We had an appointment for the evening, we were going to a show.

Q. Tell us where you first met Lewis? A. In Jersey City.

Q. Who introduced you to him? A. Nobody.

Q. Where did you meet him? A. In a show.

Q. What show? A. In the State, I think.

Q. In the State Theatre? A. Yes.

Q. You just picked him up casually? A. I was introduced by a friend.

Q. What friend? A. One of the boys in the show.

Q. What was his name? A. Cole.

Q. And when you were introduced to Lewis by Cole, did you make this appointment to meet Lewis? A. No, I met him several times after that.

Q. In the State Theatre, Jersey City? A. Yes.

Q. Did you ever visit Cole? A. No.

Q. Did he tell you where he lived? A. No; he was going on to Newark.

Q. Did you ask him his business? A. No.

Q. Did you talk about where he lived? A. No, sir.

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

Q. How did you become so friendly with this man; you say you were introduced to this man by this Cole, how did you become so friendly with him? A. He seemed to be a gentleman, and I drove around with him for a week.

Q. And then came up the De Bellis boys? A. Yes.

Q. And he was the man who introduced you to the De Bellis boys about a month before? A. Yes.

Q. Now, isn't it a fact, Mr. Rupprecht, that no such person as Lewis ever existed and that it is purely a fiction of your imagination? A. No, sir.

Q. And isn't it a fact that neither one of those De Bellis boys was ever introduced to you by any man named Lewis, on the corner of Wayne and Grove Street, Jersey City, on October 21, 1924? A. No, they were introduced.

Q. And isn't it a fact that you simply made that up in order to incriminate an innocent man? A. No, sir.

Q. You don't know what you talked about when you met him, do you? A. No, sir.

Q. You never visited him?

Mr. Hansen: You are testifying now, I think.

Q. You don't know this man Lewis's business, do you? A. No.

Q. And you never visited in his house? A. No, sir.

Q. And yet you want this court and jury to believe that you and he became very close personal friends to the extent of going out together? A. Yes.

Q. Now when did you move to Newark, Mr. Rupprecht, to 116 or 118 New street? A. Previous to this hold-up about three weeks.

Q. How long after you moved to Newark was it that you say you were introduced by this man Lewis to Dominic and John De Bellis at the corner of Wayne and Grove street, Jersey City? A. How long after?

Q. Yes, how long after that alleged introduction did you move to Newark? A. I should judge about three weeks.

Q. About three weeks after that? A. Yes.

Q. Three weeks after the time you were introduced by Lewis to John and Dominic De Bellis? A. Yes, sir.

Q. I thought you said it was about a month before this robbery. A. I was introduced to him about a month before I moved to Newark.

Q. Then it was not a month before the time you held up those young men in North Bergen? A. I was living out there about three weeks when that took place.

Q. And you told the court a minute ago that you were introduced to the De Bellis boys about a week before the time you moved to Newark? A. Yes.

Q. So the first time you met the De Bellis boys was about a month before you held up this car in North Bergen? A. As near as I can remember.

Q. Where were you living when you say you met Lewis? A. 78 Wayne street, near Barrow, Jersey City.

Q. Why did you move to Newark.

Mr. Hansen: I object to that.

The Court: Objection overruled.

A. I thought I would get employment out there.

Q. Where did you seek employment in Newark?

Mr. Hansen: Objected to.

The Court: Let him answer.

A. I sought employment in the railroads and also traveling, I could do either one.

Q. You did not get any kind of a job at all, did you? A. No, sir.

Q. Did you ever frequent Mr. De Bellis's restaurant on this street? A. Well, yes, I took meals in there mostly.

Q. Do you remember the first time you went to his restaurant? A. Well, I do, yes.

Q. How long after the time you moved to Newark? A. It was previous to the time I moved out there.

Q. Then you were in Mr. De Bellis' Restaurant previous to the time you moved to Newark? A. Yes, sir.

Q. Why didn't you tell us that a while ago? A. You didn't ask me the question.

Q. Well, were you in Mr. De Bellis' Restaurant, prior to the time you met the De Bellis boys? A. Not prior to the time I met them.

New Jersey State Library

Q. Not prior to the time you say you were introduced to them at the corner of Wayne and Grove street? A. No; I wasn't in their restaurant prior to the time I met them.

Q. I thought you said you were in Dominic De Bellis' Restaurant in New street? A. I was in Dominic De Bellis' Restaurant.

Q. When? A. Before I moved to Newark and after.

Q. Was that before you met the De Bellis boys on Wayne and Grove street? A. No, it was after that.

By the Court:

Q. You mean you met the De Bellis boys down town, Jersey City? A. Yes, sir.

Q. Then you moved to Newark? A. Yes.

Q. And when you moved to Newark you went to the restaurant? A. Before I went there.

Q. Where did you go? A. To the De Bellis Restaurant on New street.

Q. Who brought you out there? A. Lewis; he went as far as New street and told me where to reach Dominic De Bellis, and Dominic had given me his address and telephoned over.

Q. How many times did you visit Dominic's Restaurant before you actually moved to Newark? A. About three times.

Q. And was Lewis with you each time? A. No, sir.

Q. Were you alone? A. Twice I was alone.

Q. And once you were with Lewis? A. Yes.

Q. And you don't know Lewis' last name? A. Lewis was his last name.

Q. But you don't know his first name? A. No, sir.

Q. And you don't know his business? A. No, sir.

Q. When you moved to Newark, you were in the habit of going into Dominic's Restaurant to buy meals, is that right? A. Well, I lived in the street and if I felt like having a cup of coffee or anything like that, I took it; I never took meals there regularly.

Q. Did your wife go into Dominic's Restaurant to get a meal? A. No, sir.

Q. Did your wife ever go into Dominic's Restaurant with you to get a cup of coffee? A. Not to eat, never; she went in with me, yes.

Q. She went in with you how many times? A. I don't know how many times; but I would go in and get a cup of coffee and something like that and I would stay in there and talk to Dominic.

Q. Now, when you say you were introduced to these two De Bellis boys at Wayne and Grove street, about a month before the time you held up the Macy wagon, what name were you introduced by? A. Jack Dunn.

Q. Lewis introduced you as Jack Dunn to the De Bellis boys at the corner of Wayne and Grove street? A. Yes, sir.

Q. What name did you go under when you first went into the De Bellis Restaurant in Newark? A. Jack Dunn.

Q. And did you tell Dominic De Bellis what your business was? A. No, I did not tell him what my business was.

Q. Sure of that? A. Positive.

Q. You did not say, "I am Rupprecht" did you when you went in there with your wife, as you say, to eat meals in Dominic's Restaurant? A. No, sir.

Q. Did you ever operate an automobile before

the time you got this automobile from John De Bellis on November 21st? A. No, sir.

The Court: He has not testified that he got it, he said Dominic got it.

Q. You never borrowed an automobile from anybody in Newark prior to November 21st?

Mr. Hansen: Objected to as immaterial.
Mr. Kavanagh: Question withdrawn.

Q. Did you say on this evening of November 21st, 1924, somebody came to your house, is that right?

Mr. Hansen: He did not say somebody, he said the defendant.

A. I said Dominic De Bellis came with two men in the car.

Q. Where were you at that time? A. In the house; he rang the bell of our house.

Q. Who rang the bell? A. I didn't see who rang the bell, but the Missus let them in.

Q. What is the name of the Missus? A. I can't recall the name.

Q. That was the lady of the boarding house, who lived there? A. She lived there?

Q. What was the name; do you mean to say you can't recall the name? A. I can't recall the name.

Q. Was she a young woman or an old woman? A. Middle age.

Q. And she was the one who admitted Dominic De Bellis and his two friends? A. Not two friends, Dominic De Bellis.

Q. Did he go up himself to your room? A. He came up, yes, sir.

Q. Is the woman here that let him in? A. I don't see the woman, she lived there.

Q. Did you tell the Prosecutor or any of the detectives that Dominic De Bellis on the evening of November 21st came to your home with two friends in an automobile, and took you away? A. I never said anything about that.

Q. Did you? A. I did not.

Q. And you did not tell the Prosecutor or detectives who are handling this case, that there was a certain woman, your boarding house mistress, who admitted Dominic De Bellis that afternoon when he came there to get you to go to Weehawken with him?

Mr. Hansen: He has testified he did not say anything.
Mr. Kavanagh: All right, question withdrawn.

Q. Did you tell the Prosecutor, Mr. Rupprecht, or any of the detectives that were handling this case and that are handling this case to-day, that Dominic De Bellis with two friends called for you on November 21st, at you home, 116 or 118 New street, in a car and took you to Jersey City, and then up to North Bergen?

Mr. Hansen: Objected to on the same grounds.
The Court: Question allowed.
Mr. Hansen: I take an exception.

A. I did not tell anybody that.

By the Court:

Q. When was the first time you changed your plea of not guilty to guilty? A. This morning.

Q. After the trial was on, wasn't it? A. I think so.

By Mr. Kavanagh:

Q. You told the jury a minute ago that Dominic De Bellis called at your house with a car at half past five? A. It was.

Q. Was it dark? A. Not quite dark.

Q. But as far as your recollection goes, it was about half past five.

Q. It was about five or half past five.

Q. Then he was let in by the boarding house mistress and went upstairs to your room, and what did he say to you? A. He told me they were waiting down there and they were going on a job, and would I come.

Q. He told you they were waiting downstairs? A. He said he had two friends.

Q. Did you ask him what he meant by a job? A. He often spoke about a job.

Q. You say he often spoke about a job? A. Yes.

By the Court:

Q. How far from the restaurant was 118 or 166 New street? A. I should judge three and a half or four blocks.

By Mr. Kavanagh:

Q. Did you ask him what the job was? A. No, I had no idea.

Q. Did you ask him what the job was and where he was going? A. Well, he says it was a hold-up.

Q. Did you ask him? A. Certainly.

Q. What did you say to him? A. I asked him what was the nature of the job there, and he said: "Just get a gun." I didn't have a gun, and he had another gun in the car and gave me a gun.

Q. In the car? A. Yes.

Q. When you got downstairs? A. Yes.

Q. Did you ask him where the job was to be pulled off? A. He told me in Woodcliff.

Q. Did he tell you what street in Woodcliff? A. Yes.

Q. Did he tell you what house it was? A. No, there was no house.

Q. Did he say it was a Macy wagon? A. Yes.

Q. Did he tell you he and his friends were going to hold-up a Macy's wagon in Woodcliff? A. Yes.

Q. Did he tell you what kind of wagon it was? A. He said it was a C. O. D. wagon, cash and parcels.

Q. Did he tell you the street it was on? A. No, sir.

Q. Did he tell you where he was to meet the wagon? A. No, sir; he did say he would pick it up in Woodcliff.

Q. Did you go then? A. I sat in the car and rode with them.

Q. What did you say to him before you left your room? A. I went along with him.

Q. What did you say to him before you left your room? A. I didn't say anything, I didn't have anything to say.

Q. You want this court and jury to believe that after De Bellis told you he was going on a job, going to hold up a Macy wagon in Woodcliff, that there were C. O. D. parcels in it and money, that you did not say a word to him but went downstairs and you want the court and jury to believe he did not say anything further? A. I want the court and jury to believe he did not say this to me in my house, he told it in the automobile.

Q. What did he say in the house? A. Simply that two fellows were down there in the automobile and they were going on a job.

Q. You did not have any appointment with De Bellis, did you? A. No; he called on me.

Q. Then what do you mean by telling the court and jury that these young men were waiting downstairs in the car? A. He came there and said: "They are waiting downstairs, are you coming along?"

Q. Did you ask him what he was going for? A. I wouldn't ask him in front of my wife.

Q. Is your wife in court today? A. I don't think she is, she is working.

Q. She is not in court here to bear out your story? A. No, sir, I don't need her.

Q. You intended to go to trial up to a short while ago, did you? A. No, sir.

Q. And your wife you knew was a material witness? A. My wife is not here because I didn't intend to stand trial.

Q. You were intending to stand trial, weren't you? A. No, I didn't know; I intended to give a plea of guilty.

Q. When? A. Before I entered on this trial.

Q. When the case was called why didn't you go to trial? A. Because I had no counsel yet.

Q. And that is the reason you did not plead guilty, is it? A. Yes.

Q. Did you make arrangements with your counsel on Thursday to plead guilty? A. No, sir, I didn't see my counsel previous to this trial.

Q. And you did not make up your mind to plead guilty until immediately this case was called to go to trial? A. No, sir, I made up my mind over in the jail.

Q. You sat in court an hour and a half this morning and had not told the Prosecutor you intended to plead guilty? A. I had no opportunity to speak to the Prosecutor; I had no opportunity to go and speak to the Prosecutor, I ain't you.

Q. Didn't you tell the Court Officer? A. I told the Court Officer to get me counsel.

Q. You sat here at the table, after a period of three months, before you pleaded guilty? A. I was here waiting for my counsel.

RECESS.

AFTERNOON SESSION, March 2, 1925.

JOSEPH CHARLES RUPPRECHT, resumes.

Cross-examination by Mr. Kavanagh (Continued):

Q. When he said he was going on a job, you did not ask what the job was, did you go immediately downstairs with him? A. Yes, sir.

Q. You did not have any conversation with De Bellis at all in your room? A. No, sir.

Q. Did your wife have any conversation with him? A. No, sir.

Q. And you left immediately, did you? A. Yes, sir.

Q. Without saying what you were going to get out of the spoils? A. No, sir, I didn't ask about that.

Q. Just put on your hat and coat and went right downstairs? A. Yes.

Q. That was about half past five on the evening of November 21st? A. About that time.

Q. Did you say a moment ago that it was not dark at the time you went down and got in this car? A. It wasn't quite dark.

Q. Was it light? A. Well, it was getting dark at the time.

Q. You know in November, Mr. Rupprecht, that it becomes dark at half past four, or even before half past four some days; you know that, don't you? A. No, sir.

Q. You want this court and jury to believe that when you went downstairs it was not dark, do you? A. It wasn't quite dark.

Q. Did you know the men in the automobile? A. I knew Dominic De Bellis and I knew this fellow Lewis.

Q. Outside of Dominic De Bellis? A. He had another man there who, I think, went as far as the tube.

Q. When you got downstairs you saw how many other men in the automobile? A. Two besides Dominic De Bellis.

Q. He came downstairs with you, didn't he? A. There were three when he got in, and I made four.

Q. Now, did you ever know those two men before you got in the car? A. One, Lewis.

Q. He was your particular friend? A. Not my particular friend, he was a friend of De Bellis.

Q. He was a friend introduced to you by De Bellis about a month before at the corner of Wayne and Grove streets? A. Yes.

Q. Who was the other man? A. I don't know; he seemed to be a friend of his, he rode in to the tube.

Mr. Kavanagh: I move to strike that out as not responsive.

Q. Were you introduced to him then? A. No, sir.

Q. Nobody introduced you to him? A. No, sir.

Q. Did you have a conversation with Lewis and the other men as to where you were going in the

automobile? A. Not just then, because we had this other party in the car and didn't want him to know our business.

Q. What party? A. The party they dropped at the tube.

Q. I thought you said there were only three in the machine besides yourself? A. There was.

Q. And the other party you dropped at the tube, was he in the car with Lewis when you came downstairs? A. Yes.

Q. And he was the man you were not introduced to? A. Yes, sir.

Q. Did you speak to him at all? A. No, sir.

Q. Did anybody speak to him on the journey from in front of your place to the tube in Newark? A. Yes; they were speaking about going over to New York on the tube, he was going over to New York on the tube and it would be better to ride with us.

Q. Who told him that? A. Lewis.

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

Q. And who was with you? A. Lewis and Dominic De Bellis and the other sat in the front.

Q. Who spoke to the other fellow? A. Dominic De Bellis.

Q. How could Dominic De Bellis drive the car if he was sitting in the back? A. I and Lewis were sitting in the back.

Q. And Dominic De Bellis was driving the car? A. Yes.

Q. Was anybody sitting in the front with him? A. The other party that had an appointment.

Q. What appointment? A. Some fellow making an appointment on the telephone to meet him in New York.

Q. You were in the car that left him at the tube? A. Yes, sir.

Q. How long did you stay at the tube after letting that man off? A. As soon as he left we went and took that ride across to Jersey City.

Q. Which ride was that? A. I don't know; the road takes you into Newark Avenue.

Q. You were where the tube is near the Robert Treat Hotel? A. Yes.

Q. The tube is about half a block from the Robert Treat Hotel? A. I don't know that it is half a block, I think it is more.

Q. But you do know the exact position of the tube in Park Place, Newark? A. I don't know the name of the place but there is a park there.

Q. And the tube is in front of the park, is that right? A. Well, the park is approximately, I should say, directly to the right in front of this tube.

Q. How long did you remain at the tube? A. We didn't remain there at all, just long enough to leave that party get off.

Q. Do you know how long it took the car to travel from in front of your boarding house to the tube? A. I judge about two minutes.

Q. Were there any hold-ups by traffic policemen? A. No, not until at the tube when we were letting that party off, an officer held us up, and while he was holding us up a fellow stopped there and gave us the right of way and we continued.

Q. Was it dark when you got to the tube? A. It was not dark then.

Q. What time would you say it was on this November afternoon, on the 21st, between five and half past five? A. I should judge around that time, as near as I can remember.

Q. It could not be any later? A. No.

Q. Couldn't it be six o'clock? A. No.

Q. Could it be a quarter to six? A. No, sir.

Q. Could it be four o'clock? A. No, it was after four o'clock.

Q. You say, according to your knowledge and belief, it was between five and half past five? A. I say about five o'clock because I generally get home about four.

Q. After the car had driven away from the tube, after depositing the other man, whom you did not meet, the man that you let off at the tube, what direction did the car go after that? A. Towards Jersey City.

Q. How many roads are there from Newark to Jersey City, automobile routes? A. I only know two.

Q. Do you know the names? A. Well, one goes into Newark Avenue and the other takes you into that park, I think it is Communipaw.

Q. Tell the court and jury what road the car drove, and in what direction after leaving the tube. A. It drove towards Newark Avenue.

Q. Did it travel east, west, north or south? A. I guess that is north, it traveled north until it came to this street which takes you from Newark to Jersey City.

Q. Where did you go after hitting Jersey City? A. We went up the Boulevard and continued up the Boulevard.

Q. How long did it take you from the tube in Newark to get to the Boulevard and Newark Avenue? A. I don't know; we stopped for gasoline and I don't know where the gasoline station was.

Q. The gasoline station in Newark? A. Not in Newark, but on the road from Newark over here, I think at Harrison, on the right hand side.

Q. Who suggested stopping the car for gasoline?

Mr. Hansen: I object.

The Court: Yes, that is immaterial.

Mr. Kavanagh: It is simply a question of testing this witness's veracity, and I think I have a right to go into minute details.

The Court: It seems to me we are wasting a lot of time on unessentials.

Mr. Kavanagh: Of course, your Honor, and I differ. This is a very serious case, as far as this young man is concerned, and I think I have the absolute legal right to go into the minutest details of this ride from Newark to the scene of the hold-up.

The Court: If his answer is going to admit that there was a car ride, in which he was driving on the road, you are bound by his answer.

Mr. Kavanagh: Absolutely. I will withdraw the last question.

Q. How long did you stop at the gasoline station at Harrison? A. Long enough to fill the tank, I guess.

Q. How long? A. About three minutes.

Q. Do you know how many gallons of gasoline were taken in?

Mr. Hansen: I object to that. Well, there is enough in it to object to, but I withdraw the objection.

A. I can't answer that question.

Q. Go on, answer it? A. The man paid for the gasoline, it was five gallons.

Q. And this is the man who paid for it? A. Yes, sir.

Q. Did you continue riding in the back of the car? A. Yes, sir.

Q. Did you have any conversation with Lewis and De Bellis when you were going across the meadows? A. Not with De Bellis; I was speaking to Lewis.

Q. Did he speak to you? A. No, sir.

Q. When he got to Jersey City did he say anything to you? A. He said he was going to pick up a man on the Boulevard.

Q. Did he pick up a man that day on the Boulevard? A. Yes, sir.

Q. Whereabouts? A. Between Jersey City and West Hoboken.

Q. What street? A. I don't know the streets.

Q. How long—you live in West New York, don't you? A. Yes, sir.

Q. And you used to hang out around the tube station in West Hoboken? A. No, sir.

Q. You are quite familiar with that neighborhood? A. No, sir.

Mr. Hansen: Which neighborhood?

Mr. Kavanagh: The neighborhood of West Hoboken and the tube.

Mr. Hansen: What has that got to do with this neighborhood?

Q. You can't tell us where this man was taken up, was it Jersey City, West Hoboken, or where? A. It was about two miles up Newark avenue, as near as I can judge.

Q. Were you introduced to this other man? A. No, sir.

Q. Did any one of you speak to him? A. Dominic De Bellis did.

Q. Did he hail the car or did the car stop for him? A. It stopped for him.

Q. Did Mr. De Bellis say he had a pre-arranged

agreement to meet a man on the Boulevard? A. No, sir.

Q. As you were coming across the meadows? A. No, sir.

Q. Where did you pick him up? A. When we got to the Boulevard.

Q. Whereabouts? A. After we turned north on Newark avenue.

Q. What did he say? A. He said he was going to pick up another man here up on the Boulevard.

Q. Did he tell you what street on the Boulevard? A. No, sir.

Q. Did you ask him who he was going to pick up? A. He told me another man for the job.

Q. Did you ask him who he was going to pick up? A. No, sir.

Q. Why not? A. Because I didn't, I didn't know nobody around there, I didn't care.

Q. You were going to participate in a hold-up; weren't you interested in whom he took? A. No, I wasn't interested, I thought whoever he took was O. K.

Q. So you did not bother to ask him who he was? A. No.

Q. And you weren't introduced to him, you were not introduced to the other man? A. No, sir.

Q. Was Lewis introduced to him? A. No, Lewis knew the other man.

Q. How do you know that? A. Because they spoke together.

Q. They spoke together in your presence? A. Yes.

Q. What did they say one to the other? A. They said, they just said they were going on a job, and he knew what they were going after.

Q. That is what the other man said to Lewis? A. Yes.

Q. And you were there hearing what he said to Lewis? A. Yes.

Q. And you did not join in the conversation? A. No, sir.

Q. And Lewis did not introduce you to the other man whom you did not know? A. No, sir.

Q. And you did not participate in the conversation at all? A. No, sir.

Q. What happened after they picked the man up on the Boulevard, between the Boulevard and West Hoboken? A. We continued up the Boulevard as far as North Bergen, then we cut over into Woodcliff.

Q. What street at North Bergen did you stop at? A. We didn't stop at any street, we continued through.

Q. Who told De Bellis to go to 36th street? A. One of the fellows suggested that, I don't know which it was.

Q. Was it Lewis? A. Lewis or the other fellow, I am not certain.

Q. And you heard Lewis or the other fellow tell Dominic to go to 36th street? A. Yes, I don't know which.

Q. Someone, one or the other told him? A. Yes.

Q. You didn't tell him? A. No.

Q. You did not have anything to say to him at all? A. Not then.

Q. When did you speak to the new man first? A. When we were following this Macy car around the street.

Q. That was the first time you said anything to him? A. Yes.

Q. So before you got to Macy's car, nobody said a word as to how you were going to stop it? A. Yes; Dominic De Bellis said: "I will drive

ahead of them and you can do it.'' So we continused with that car until about an hour or so.

Q. How long did it take you to go from the tube to where you first met this car in Woodcliff in North Bergen? A. At the most 30 minutes.

Q. You want this court and jury to believe that you left Newark, the tube station, Newark, between five minutes past five——

Mr. Hansen: He did not say that.

Mr. Kavanagh: Yes, he did.

Mr. Hansen: In the neighborhood of four o'clock.

Mr. Kavanagh: He said between five and half past five he left his boarding house, and Mr. Hansen knows that as well as I do.

The Court: I do not know what the testimony was as to the hour.

Mr. Kavanagh: Well, I would like to have the stenographer refer back to that part of his testimony.

The Court: I do not propose to take the time to do that. Ask him now what time it was.

Q. Well, what time was it? A. It was after five o'clock, as near as I can remember, it was near five o'clock because I usually got home about four, and it was after I got home.

By the Court:

Q. Well, it was shortly after four that you got home, was it?

(No response.)

Mr. Kavanagh: You are not fair in that, Mr. Hansen. I will have the stenographer turn back to his testimony of this morning.

The Court: I think he corroborates what he said as to what time it was.

The Witness: It was about four o'clock that I got home, so I guess it was between four and five o'clock.

Q. When you left the boarding house? A. Yes.

Q. Will you tell the court and jury how long it took you to get from the tube station at Newark to where you first saw this Macy wagon in Woodcliff? A. I should judge about three-quarters of an hour.

Q. That would bring you up from Newark to Woodcliff at about a quarter to six, would it? A. Pretty near that.

Q. Now, you told the court and jury that you followed this Macy wagon for about an hour? A. Almost an hour, I guess.

Q. So that the hold-up did not occur until nearly seven o'clock, is that right? A. It was about seven o'clock.

Q. Did you hear the young men testify this morning, Norten, White and Cole, that that truck was held up at six o'clock? A. I heard them testify.

Q. You heard them testify to that effect? A. Yes.

Q. You know Detective Cash, or Lieutenant Cash, do you? A. Yes.

Q. And you know the Newark detectives? A. No, sir.

Q. You know their names? A. No, sir.

Q. Do you remember the time you were confronted by this young man De Bellis? A. Yes.

Q. Do you remember the conversation that

occurred between Lieutenant Cash, the Newark detective, and yourself about De Bellis? A. I had no conversation in front of De Bellis.

Q. Didn't you tell the Newark detectives and this gentleman, Lieutenant Cash, that Dominic De Bellis was not there at that time? A. No, sir.

Q. And didn't you tell Dominic De Bellis in jail that if he did not testify that he never know you before, and if he did testify, not to say that you borrowed his car, or you would get him into trouble? A. No, sir.

LIEUTENANT CASH, sworn.

Direct examination by Mr. Hansen:

Q. Lieutenant, when you saw John De Bellis' car at Newark, did you examine it? A. Yes, sir.

Q. That is, you searched it? A. Not at that time.

Q. When did you search it? A. As soon as I got it into headquarters.

Q. (Two masks shown witness.) I show you two masks and ask you whether you ever saw those before? A. Yes, sir.

Q. Where were they? A. In the pocket of John De Bellis' car.

Mr. Kavanagh: Any objection to those?

Mr. Hansen: No objection.

Mr. Kavanagh: I offer them in evidence.

(The two masks produced received and marked S-2, and fastened together.)

Cross-examination by Mr. Kavanagh:

Q. Do you remember when this man Rupprecht was arrested in Newark? A. Yes, sir.

Q. Do you remember when he was brought face to face with this young man Domonic De Bellis?

Mr. Hansen: You do not think that is proper cross-examination, do you?

Mr. Kavanagh: I am going to make him my own witness.

A. Yes.

Q. Will you kindly tell us what was said by this man Rupprecht in your presence and in the presence of the detectives from Newark and in this young man's presence? A. Rupprecht wouldn't answer.

Re-direct examination by Mr. Hansen:

Q. Rupprecht would not say anything to the effect of whether he was in the job or not? A. No, sir.

Q. In fact, your experience with Rupprecht is that he does not make statements? A. He never talks or makes statements.

Q. You have arrested him many times before? A. He never makes a statement.

Q. He always refuses to make a statement? A. Yes, sir.

Mr. Hansen: That is the State's case, if your Honor please.

Mr. Kavanagh: If your Honor please, I ask for a direction of a verdict in favor of the defendant Dominic De Bellis, on the ground that out of the lips of the State's own witnesses—and when I say the lips of the State's witnesses, I mean Rupprecht, who has turned State's evidence—out of his mouth, Dominic De Bellis never par-

ticipated in this hold-up; in other words, he never took any money from either of these young men, or took any goods or threatened any of the State's witnesses, White, Cole or Norton; in other words, that Dominic De Bellis, according to the testimony of Rupprecht, was not present when the robbery took place, and if he was not present when the robbery took place, he being, as Rupprecht says, some distance away, could not have robbed either Mr. White, Mr. Cole or Mr. Norton, or threatened them with force or took their property from them. For that reason, I would respectfully ask for a direction of a verdict of not guilty in favor of the defendant Dominic De Bellis, the only defendant now on trial.

The Court: You do not contend that the evidence is that Dominic De Bellis did not participate in this robbery?

Mr. Kavanagh: I do, your Honor.

The Court: I deny your motion.

Mr. Kavanagh: I ask an exception.

Mr. Kavanagh opens for the defense.

Dominic De Bellis, sworn.

Direct examination by Mr. Kavanagh:

Q. Where do you live? A. 336 Central Avenue, Orange.

Q. How old are you? A. 24.

Q. Are you married? A. No, sir.

Q. Whom do you live with? A. My people.

Q. At that address in Orange? A. Yes, sir.

Q. What business are you in? A. Restaurant.

Q. Where is the restaurant located? A. 28 New Street.

Q. What city? A. Newark, New Jersey.

Q. Who owns that restaurant? A. Why, my father.

Q. What is his name? A. John Dominic; he is the owner, and Rose George and myself, I am a shareholder and manager.

Q. Who is Rose George? A. The head owner

Q. Is she a relation? A. Yes, sister-in-law.

Q. How long have you carried on that business at 28 New Street? A. Three years or three and a half.

Q. Do you know this man Rupprecht, who was on the stand before you? A. Yes.

Q. How long have you known him? A. About a month.

Q. A month from what date? A. He began coming into my place.

Q. A month from what date? A. A month or three weeks before the loan of the car.

By the Court:

Q. A month before the hold-up of the Macy car? A. Before the loan of the car.

By Mr. Kavanagh:

Q. Was he in the habit of coming into the restaurant? A. Yes, often.

Q. How did you become acquainted with him? A. Introduced himself and was coming in quite often.

Q. What name did he introduce himself by? A. He told me Jack Dunn was his name, he and his wife.

Q. Did they come in often? A. Yes, quite often.

Q. How often? A. Almost every day for his meals.

Q. Did he tell you where they lived? A. Yes, up the street.

Q. Did he tell you the number he lived at? A. Not exactly, but I guessed it was about three blocks up.

Q. Did he tell you that? A. Yes.

Q. Did you ever have a conversation with him during the times he came in the restaurant? A. Well, not that I know of, during the times he came in the restaurant, just the conversation of his wanting to help around.

Q. What do you mean by just making conversation of wanting to help around? A. He used to come in and eat a meal now and then, and sometimes I would be mopping up the floor, and he would come in and want to help me mop up the floor. He told me he was a brakeman and that he was not working at the present time. That is how he made himself acquainted.

Q. Did you ever loan him any money? A. No, sir.

Q. Did he ever ask you for any money? A. No.

Q. Did you ever loan him any car prior to November 21st, 1924? A. Well, I believe on a Monday my car was standing, that is —my brother's car was standing covered and it had a flat tire, and he offered to assist in repairing the car, and I was tied up in business and I couldn't go out just then to attend to it, so I gave him the key and he went out, and he brought back the car an hour later in good shape, with the tire up and everything all right.

Q. Whose car was that? A. John De Bellis'.

Q. Your brother's car? A. Yes, sir.

Q. Now, coming down to November 21st of last year, did you see Rupprecht on that day? A. Yes, sir.

Q. When did you see him on that day? A. About one o'clock, he came into the restaurant.

Q. About noon? A. Yes, sir.

Q. Who was in the restaurant at that time? A. I think only a few customers were in.

Q. Did you have a conversation with Rupprecht then? A. He came up to me and asked me if I would do him a favor and loan him the car, because he had to go to Jersey City and get money to pay rent; and on some occasions when I have loaned my car out to customers, I have done it to make it good for trade.

By the Court:

Q. Do you make a practice of doing that? A. Not a practice, but when a man is in need and I know him, I do, I think it is a good deal to help him out.

By Mr. Kavanagh:

Q. Did you loan him the car that afternoon? A. Yes, sir.

Q. Was it your car or your brother's car that you loaned him? A. John's car.

Q. How did you happen to have John De Bellis' car? A. Mine was laid up; I had the Studebaker outside—I had my motor burned out—and I asked John to loan me his car for a couple of days to transport my people back home; I had loaned my brother my car several times and I thought it was nothing for him to loan me his car.

Q. Was John's car outside of your place of business this afternoon? A. Yes.

Q. Did you know this man by the name of Rupprecht at that time? A. No, sir.

Q. Did you ever hear of the name of Rupprecht

before that day? A. No. He looked to be a good fellow to me and I did not think it was any harm to lend it to him.

By the Court:

Q. What did he tell you he wanted the car for? A. To go to Jersey City to get some money, from his sister, if I recollect right, to pay his rent.

Q. How long had you known him before this? A. About three weeks or a month.

Q. Didn't you think you were taking some chances in loaning this car to this man? A. Not to me.

Q. Didn't you ask him to give any security or anything for it? A. No, just loaned it to him in this way.

By Mr. Kavanagh:

Q. What did you say to him before you loaned him John's car? A. I told him I would help him out if he promised to return the car before five o'clock; that I had to go out and get some wine for my brother John, and if he wouldn't be back I couldn't get the wine for my brother, and he would give me hell.

By the Court.

Q. Wine for your brother? A. Yes.

Q. What kind of wine? A. Italian wine for the spaghetti house.

Q. What kind of wine? A. I don't know what kind, just plain Italian wine, red wine.

Q. You have paid for it yourself, haven't you? A. No, sir.

Q. Have you ever tasted it? A. No, I have tasted what we have home.

Q. What makes you call it wine? A. Because I know it is wine.

Q. How do you know it is wine? A. Because we tasted it home.

Q. Well, you were breaking the law then, you knew that? A. Taking it home?

Q. Taking it for your brother? A. No, I had no idea I was breaking the law.

Q. You tell me you were getting wine for your brother, who ran a spaghetti house; you knew you were breaking the law, didn't you? A. I didn't know that I was breaking any law, I wasn't buying the wine, I was getting it because he sent me for it.

Q. Didn't you know that it was breaking the law if you were getting the wine for your brother or for anybody else? A. Not that I know of.

Q. You know what law, do you not? A. Pretty well.

Q. Have you ever heard of the Volstead Act? A. No, sir.

Q. You never heard of the Volstead Act? A. No, sir.

Q. How long have you been in this country? A. I was born here.

Q. You were born in this country? A. Yes.

Q. And raised here? A. Yes.

Q. And never heard of the Volstead Act? A. No.

The Court: Then you had better get Mr. Kavanagh or somebody to advise you about it.

By Mr. Kavanagh:

Q. Go ahead. A. I told him he had to bring it back by that hour.

Q. That is six o'clock? A. About five I told him; and he says he would gladly do it, so of course, I gave him the key of the car in the presence of a couple of witnesses who were around the counter at the time, and on he went, and after he went out I looked up and saw he seemed to be all right, and after he started on a bit I saw two fellows jump in.

Q. Where was the car when you saw two fellows jump in? A. It was almost to Broad Street; my place is about 100 feet from Broad.

Q. On New Street? A. On New Street.

Q. Go ahead. A. Well, that is as far as I can go.

Q. When was the car returned to you? A. That same evening. I was in agony all the time waiting for it. I thought some accident might have happened or something like that, and I was waiting because I had to go and get this stuff for my brother; and he brought the car back about half past eight that evening.

Q. Were you out of your store or restaurant between the time you loaned Rupprecht the car at half past one, and the time he returned the car at half past eight in the evening? A. I was in my store.

Q. Were you at any time in Hudson County, in the town of North Bergen? A. I have never been in that town, I don't know what it looks like now.

Q. Did you participate in a hold-up on any Macy's delivery wagon or in the robbery of these three young men, White, Cole and Norten? A. No, sir.

Q. Did you on that afternoon in the company of two other men drive an automobile up to Rupprecht's house, at 116 or 118 New Street, ring the bell and go upstairs, and in the presence of Rupprecht's wife, tell him you were on a job and you wanted him to come along? A. How could I do a thing like that when I was needed in the business?

Q. Did you do it? A. No.

Q. Were you ever upstairs in Rupprecht's house? A. No, sir.

Q. Were you ever in the house at 116 or 118 New Street? A. No, sir.

Q. On that evening of November 21st last year? A. No, sir.

Q. Were you ever in the house at 116 or 118 New Street? A. No, sir.

Q. Did you go there with two young men in the automobile that afternoon? A. No, sir.

By the Court:

Q. By the way, do you know what a bootlegger is? A. Yes.

Q. What does a bootlegger do? A. He handles whiskey.

Q. Does he do it lawfully or unlawfully? A. Unlawfully, I believe.

Q. You do know what it is, don't you, bootlegging? A. I never heard of anybody getting pinched for carrying wine.

Q. I didn't ask you that, I asked you if you knew what bootlegging was. You know what the Volstead Act is? A. I never heard of anybody getting pinched for it.

Q. I didn't ask you that, either. I asked you if you knew what the Volstead Act was, and you told me you did not, what did you mean? A. I meant I never got pinched for carrying wine.

Q. I did not ask you about carrying wine, I asked you if you knew what the Volstead Act was and you said you did not. What did you mean by that? A. Just what I've said.

Q. Then you did know? A. Yes, for the whiskey.

By Mr. Kavanagh:

Q. Did you drive a car from Newark up to Woodcliff that evening of November 21st? A. No, sir.

Q. Did you pick up a passenger on the Boulevard in any car that you drove to North Bergen that afternoon? A. No, sir.

Q. Did you take a passenger from in front of the boarding house where Rupprecht lived to the tube in Newark, and leave him there? A. No, sir.

Q. Did you stop for gasoline that afternoon at any replenishing station in Harrison, New Jersey? A. No, sir.

Mr. Hansen: I submit, your Honor, he is asking unnecessary questions.

The Court: I do not think you need to deny anything further brought out by the Prosecutor in regard to that, because he has denied any participation of any kind in this robbery, in any manner, shape or form.

Mr. Kavanagh: But this is such an important case, your Honor.

The Court: But it is not necessary to go into such minute details and ask him if he did not do acts in connection with what he has denied, he has denied being connected with the hold-up at all; he has denied being with the men at all that afternoon, and necessarily it follows he denies having been at Woodcliff or at the gasoline station and so on.

Q. Were you ever introduced to this man Rupprecht about a month before November 21st, 1924, on the corner of Wayne and Grove streets, Jersey City, by a young man named Lewis? A. No, sir.

Q. Did you ever know a man named Lewis? A. Never heard of him.

Q. Were you ever at Jersey City, at the corner of Wayne and Grove street, when this man Lewis came along and met you? A. No, sir, never.

Q. What conversation took place between you and Rupprecht when he returned the car that night at half past eight? A. I yelled at him because he did not bring the car back when he promised to bring it back, and he said: "I will make it all right for you. I had to wait for my sister and I have brought this for a present for you. I guess there are some curtains in there and you can use them for your restaurant." I told him, I says, "That is a fine how-do-you-do."

By the Court:

Q. What did you mean by "That is a fine how-do-you-do"? A. Because he had brought the car back at that hour.

Q. What hour? A. I think it was five o'clock he promised, and he didn't bring it back.

Q. Who was going to pay for the gasoline for the use of this car? A. Of course, he was.

Mr. Kavanagh: Answer the Judge, please.

Q. Who was going to pay for the gasoline for the use of the car? A. I guess he was.

Q. No guess about it, who was? A. If he ran short he had to put it in to go any further.

Q. I am not asking you about running short,

I am asking you about the gasoline that was in the car? A. That was on me, I had the tank filled up every evening.

Q. You had the tank of your car filled up the night before? A. Yes.

Q. And there was practically a full tank to go to work with that evening? A. Practically.

Q. What was your interest in allowing this man to use your car and use this gasoline, and put your car to the wear and tear, that a stranger would be apt to go to? A. I believe, your Honor, if that question was put up before you, you would do the same thing.

Q. Never mind about what I would do, you can answer my question directly, what was your motive? A. To help him out.

Q. Is that your answer? A. Yes, sir.

Q. You did not think you were taking any chance in loaning your car to a man who was out of work, and who told you he was out of work, and who came into your restaurant to do odd jobs and help in cleaning up the place? And who had stated that he was out of funds? A. No, sir; he acted pretty good around my place, I never heard anything about him.

Q. How was it in three or four weeks' time he had become your friend to the extent that you let him take out your car and spend your money by burning up your gasoline? A. I don't know that he was spending much money, a few cents, I guess.

Q. Didn't he spend your money by burning up your gasoline? A. I know, but a few cents, what is that?

By Mr. Kavanagh:

Q. Now, Mr. De Bellis, do you remember when this man Rupprecht was brought before you in

Newark by the detectives of Newark Police? A. Yes.

Q. Did any conversation take place between the detectives and Rupprecht in your presence?

Mr. Hansen: I would like to know who these detectives are.

Mr. Kavanagh: I don't know their names.

Q. Do you know their names? A. Yes.

Q. Tell the Court and jury their names? A. He brought me before this Jack Dunn and in a little room——

Q. Whereabouts in a little room? A. Of the police court.

Q. Police headquarters, you mean? A. Yes, sir. Sergeant O'Meley and Cabadona.

By Mr. Hansen:

Q. Are they here? A. They were here this morning.

By Mr. Kavanagh:

Q. All right. A. They said: "Is that the man?" and he, Jack Dunn, said he was never in my place. He says they brought him in the car in front of my place, and he said he was never in my place.

Q. He told them that in your presence? A. Yes.

By the Court:

Q. You knew that was a lie? A. Yes.

Q. And what did you do? A. I said it is the fellow.

Q. You told that to Cash, did you, the Lieutenant who was on the stand this morning? A. I don't remember that he was there or not.

Q. You won't deny that he was there, will you? A. I don't know, there was so many around there, I didn't really take a look.

By Mr. Kavanagh:

Q. What is the matter with you, anyhow. Will you speak up? Did you have a conversation with Rupprecht in the jail? A. Yes.

Q. Tell the Court and jury what the conversation was all about. A. He said if I would not give away on him that I had loaned him the car and he had brought to me the goods—he says if I would give away on him that I had loaned him the car and he had brought me the goods, he was going to bring me into position that I was in it, too.

Q. When was that? A. In the jail.

Q. When was it? A. Two or three days after.

Q. How long were you in jail before you were bailed? A. Four or five days.

Q. And he told you that during those four or five days? A. Yes.

Q. And he told you if you told that you loaned him the car and he brought you the package he would bring you into this also? A. Yes.

Q. Is there any question about that? A. No, sir.

Cross-examination by Mr. Hansen:

Q. How long have you known Rupprecht or Dunn? A. About three weeks.

Q. That is, three weeks before you were arrested? A. Yes, three weeks before I loaned him the car.

Q. By the way, this was not even your car, was it? A. No, sir.

Q. And you loaned somebody else's car? A. Yes, my brother's car.

Q. Were you in the habit of doing that? A. No, sir.

Q. You had borrowed that car from your brother, hadn't you? A. Yes.

Q. Your automobile was out of order at the time? A. Yes.

Q. When did you borrow that car, do you know? A. About two days before.

Q. Why did you borrow it? A. For taking the family back and forth; I have two brothers who worked in Broad street and I took them home at night.

Q. To whom have you loaned the car before loaning it to Rupprecht? A. I loaned it to him.

Q. To whom had you loaned it before loaning it to him? A. I didn't loan it.

Q. I thought you said you did loan it? A. No, my car.

Q. That Studebaker car belonged to your brother? A. Yes.

Q. Did you get your brother's permission to loan it to your customers? A. No, sir.

Q. Your brother did not know you loaned that car out, did he? A. Yes.

Q. He did not know it, did he? A. Yes, I could do what I pleased with the car.

Q. And you could do whatever you pleased with it and he would not hold you responsible? A. No.

Q. And if a man came to you and wanted to borrow it and you loaned it, your brother would find no fault with you? A. Maybe he would scold me, but I doubt it.

Q. You knew this man was not working, didn't you? A. Yes.

Q. You knew he had no money? A. He told

me he wanted to go to Jersey City and get some money off his sister, to pay rent.

Q. And you had only known him three weeks? A. Yes.

Q. And the only way you knew him was because, as you say, you saw him come in and out of your restaurant? A. Yes.

Q. You were not members of the same crowd, you did not pal around together, did you? A. No, sir.

Q. And were not members of the same gang? A. No, sir, I never hang out with any gang.

Q. What do you mean by that? A. I mean I am in business and when I close business I go home.

By the Court:

Q. You did not know where this man lived, did you? A. Yes, I knew he lived up the street.

Q. You only knew that from what he said? A. I have seen him go up there.

Q. You were not sure it was his home, were you? A. Well, I don't think a fellow will come up and down with a woman and not have a home.

Q. How many times have you seen him do that? A. Once or twice, I believe.

By Mr. Hansen:

Q. What did you think was Dunn's business? A. He told me he was from the railroad.

Q. Did he ever tell you he was a mechanic? A. Yes, he said he was quite acquainted with being around cars.

Q. He told you that, did he? A. Yes, and then the way he takes up my car, which had a flat tire and something wrong with the engine, it was not hitting right.

Q. You did not say anything about that in your statement, that you had anything wrong with the engine? A. Yes, I did.

Q. Didn't you say in your statement that it had a flat shoe, he comes up to me that it had a flat shoe,—that was in your central restaurant—"I was talking about having trouble with automobiles and one of my customers I knew as Jack said he would fix the flat for me, and I gave him the key and he took the auto with him for about an hour and a half, and when he came back the car was all right." Did you say anything in that statement about anything being the matter with your car except that it had a flat shoe; you say now there was something else wrong with the car? (Paper handed witness.) A. That's right.

Q. There is nothing in there about anything being wrong with the car, is there? A. No.

Q. You admit that don't you? A. Yes.

Q. And you said on the stand that you never said what I have read to you, and when you said that you were not telling the truth, were you? A. I never heard of what?

Q. Of the Volstead Act. A. I have heard of it all right.

Q. Didn't you say, in answer to the Judge's question, that you never heard of the Volstead Act? A. I never read it I meant to say.

Q. Do you draw a distinction about hearing about a law and reading the law? A. No, sir.

Q. Then what did you mean by saying you never heard about it? A. I never had any experience.

By the Court:

Q. By the way, when you had this talk with Rupprecht over in the jail and Rupprecht told you what he was going to do to you if you incriminated

him in this case, what did you say in response to that? A. Nothing, just kept quiet.

Q. Did you tell Rupprecht you had not made a statement? A. I told him just what I have in that statement about, and he knows it.

Q. You did not go before the Grand Jury to testify, did you? A. No, sir.

Q. You were charged with this crime of robbery yourself, you were in just as deep as Rupprecht was? A. Yes, I told him I made a statement of what happened.

Q. Were you in court the same day you were indicted? A. Yes.

Q. Did you see Rupprecht here in court? A. Yes.

Q. Did he hear you plead not guilty? A. Yes.

Q. Then Rupprecht knew you had—as far as you know, had Rupprecht any suspicion of any thought that you were going to make any statement incriminating him in this case? A. I told him I put in my statement, that I loaned him the car and he brought me the bundle.

Q. What was it you said to Rupprecht about doing what you could to help him, before going upstairs? A. I told him if I could get him some money to bail him out, I would do it, that is all.

Q. Why did you tell him that? A. Because he seemed a pretty good sort of fellow, never did any harm around the place.

Q. That was after he had talked about incriminating you in this robbery case? A. Yes.

Q. You did not think he was a very good fellow then, did you? A. No, sir.

Q. And in spite of that you offered to lend him money? A. I didn't offer to lend him, I told him; I never made no time.

Q. You were fooling him? A. Just made no time.

Q. Well, did you mean it or not? A. No, sir.

Q. Then you were fooling him, weren't you? A. Yes.

By Mr. Hansen:

Q. (Showing Exhibit S-1.) Dominic, this is the stuff that Dunn brought into your place? A. It was wrapped in a piece of yellow paper.

Q. Will you look at it, was it the same color as this? A. Yes.

Q. That is the stuff that Dunn gave you, you say? A. Yes, sir.

Q. When you got that stuff what did you do with it? A. Took it from him.

Q. Did you think it was all right for you to take it from him? A. In case Mrs. Rose George didn't like to have it in, I thought it better like that.

Q. I am not asking you about what your sister thought, I am asking you about what you did. A. I didn't think anything like that.

Q. You did not think anything like that when he brought that stuff in a bundle? A. No; he said he did that as a favor for my loaning him the car.

Q. You knew he was not working? A. Yes.

Q. And you knew he had not any money? A. Yes.

Q. And you never asked him where he got it? A. Yes, I asked him where he got it and he said: "I got it from my sister," and he got some money to pay rent.

Q. Why did you ask him where he got it? A. Because I think that is the usual question to ask.

Q. You have testified you were not suspicious about it? A. No, sir.

Q. You did not think it was stolen? A. No, sir.

Q. What was the reason for your asking him where he got it? A. You ain't going to take anything from anybody without saying that, I guess, are you?

Q. You said your sister-in-law was suspicious? A. That was so.

Q. She was there at the time, wasn't she? A. Yes.

Q. And she was suspicious? A. No, sir, she didn't like the idea, that's all.

Q. Why didn't she like the idea?

Mr. Kavanagh: What is the purpose of asking all these questions on something of which he cannot have personal knowledge?

The Court: I will rule on any objection you have to make.

Mr. Kavanagh: I say Mr. Hansen is asking this witness questions as to why she did not like the idea and things like that, when he knows they are incompetent.

The Court: Can you answer?

The Witness: Yes.

The Court: He says he can answer.

Q. When you took these goods were they in that valise or a bundle? A. A bundle.

Q. What did you do with them? A. Brought them to Johnny's place.

Q. Your brother's place? A. Yes.

Q. Why? A. I told him he could use them for curtains.

Q. Is that right? A. Yes, sir.

Q. What time did you take them up to Johnny's place? A. About a quarter to nine.

Q. What did you tell him when you went in there? A. I told him that Jack Rupprecht brought me that bundle, and I told him I loaned him the car.

Q. You told him Rupprecht had given you the stuff? A. Yes.

Q. At that time you did not know Rupprecht was his name? A. I know it now.

Q. What did you tell him then? A. Jack Dunn.

Q. So you did not tell him Jack Rupprecht? A. He knows him as Jack Dunn.

Q. Did you tell your brother that Jack Rupprecht had given it to you? A. No, Jack Dunn.

Q. You never knew his name to be Rupprecht? A. No.

Q. When did you find out his name was Rupprecht? A. In the jail, and I had seen the account about the stick-up, in the paper.

Q. Did anybody go up to Johnny's Restaurant with you? A. Yes.

Q. Who? A. A fellow by the name of Sammy Rosen, a customer.

Q. Is he here? A. Yes, sir.

Q. You have got him with you? A. Yes, sir.

Q. Who was the girl——

Mr. Kavanagh: I move to strike out the sarcastic question about Mr. Rosen.

The Court: You are the only one, I think, who seems to find anything sarcastic in it. He asks this witness if he has this man here to testify for him.

Mr. Kavanagh: Yes, but it must be apparent to everybody that Mr. Hansen's cross-examination savors of sarcasm.

The Court: Proceed.

Q. Who was the girl that went there with you? A. There was no girl with me.

Q. A girl did not go with you, did she? A. No, sir.

Q. And waited outside for you when you went in? A. No, sir.

Q. Did this man go in the store with you? A. Who?

Q. This man Rosen? A. No, he waited out in the car.

Q. He did not go in the store with you, did he? A. No, sir.

Q. And you say no girl went up there with you? A. No, sir.

Q. Did you go up in your auto? A. In John's auto.

Q. Well, that was the one he had loaned to you? A. Yes.

Q. Did you see John again that night? A. No, sir.

Q. Did you see him the next night? A. No, sir.

Q. You did not see John the next night? A. No, sir.

Q. You don't remember John going to your place that afternoon or the next night and asking you where you got the clothing from? A. No, sir.

Q. And you don't remember saying to him: "Don't ask me so many questions; if you don't want it, I will take it home." You don't remember telling him that? A. No, sir.

Q. Do you know your brother's signature? John's? A. I guess I do.

Q. There is no reason why your own brother should make a statement against you, is there? A. No, sir.

Q. And there is no reason why John should say you were there with a girl when you were not there with a girl that night? A. No, sir.

Q. You do not know why your brother should say you were there with a girl, do you? A. No, sir.

Mr. Kavanagh: I object to this sort of cross-examination. Mr. Hansen knows this is unfair, because he is trying to get testimony in of what John De Bellis said and I object to it as incompetent and not proper cross-examination.

The Court: I sustain that objection.

Q. You say your brother did not come to your place this night? A. No, sir.

Q. He did not ask you where you got the clothing? A. No, sir, he asked me the night I gave it to him.

Q. He did not come to you the next evening about seven o'clock? A. No, sir.

Q. And ask you where you got the clothing from? A. No, sir.

Q. And you did not say to him: "Don't ask me so many questions; if you don't want it I will take it away?" A. No, sir.

Q. Did he come to your house to eat next day? A. No, sir.

Q. Do you remember eating supper next night when John came in? A. No, sir.

Q. You don't remember him coming in at all, do you? A. No, sir.

Q. And do you remember going to his restaurant the next night? A. No, sir.

Q. You don't remember going to his restaurant next night? A. No, sir.

Q. And eating your supper at his restaurant? A. No, sir.

Q. And you don't remember him saying to you, when you left him that night: "Why don't you

cut out that gang?'' You don't remember his saying that to you? A. No, sir.

Q. As far as you know, he did not say that, is that so? A. It is not so.

Q. Your brother is not here? A. No.

Q. He was arrested charged with this same crime, wasn't he? A. Yes, sir.

By the Court:

Q. Where is he? A. I have no idea, your Honor.

Q. Has he disappeared? A. Yes.

Q. Did he sell his business in Newark? A. He sold it, yes.

Q. When did he disappear? A. I don't know, he is gone about a month.

Q. Was he ever in court to plead to this indictment? A. Yes.

Mr. Hansen: He plead to the indictment, your Honor.

Q. And he was released on bail? A. Yes.

Q. Did he say anything to you when he was about to disappear? A. No.

Q. And you don't know where he is? A. No.

By Mr. Hansen:

Q. Is he married? A. Yes.

Q. Where is his wife living? A. I don't know.

Q. Have you any idea? A. I see her once in a while around Newark.

By the Court:

Q. And you don't know where she lives? A. They broke up, they are going to get a divorce.

Q. Why did he go away? A. I don't know, I

believe it was about some trouble or foolishness he got in.

Q. He knew he was under bail in this case, didn't he? A. I guess he did.

By Mr. Hansen:

Q. Do you remember having an argument with your brother that night? A. No, sir.

Q. Do you remember saying to him: ''I don't go now with that gang?'' A. No, sir.

Q. You are in his restaurant every night, aren't you? A. No, sir.

Q. Or were when he had the restaurant? A. No, sir, I was not, only some time when he called me up to come down there and help him out or buy some groceries or things like that.

Q. And you did buy this wine for him? A. No, sir.

Q. I thought you said that you did. A. He asked me to do it this one night, I didn't do it usually.

Q. He asked you to do it but you did not do it? A. No, sir, because he didn't bring the car back in time.

Q. Is that the reason you did not do it? A. Yes.

Q. You say you don't know a man named Lewis? A. Yes.

Q. You know where 118 New Street is, where Dunn lived? A. Yes; I have seen him go in there.

Q. Where is it? A. About three blocks up from my restaurant.

Q. What kind of a house is it? A. I believe it is an old shack.

Q. How many stories are there? A. Two stories.

Q. What is downstairs? A. I have no idea.

Q. What is upstairs? A. I have no idea, furnished rooms I believe.

Q. What makes you believe there are furnished rooms upstairs? A. There is a sign upstairs.

Q. Keep looking this way, don't keep looking at Mr. Kavanagh all the time, he is not going to help you. You say there are furnished rooms upstairs? A. Well, I saw a sign.

Q. How did you know Dunn lived there? A. I saw him go upstairs.

Q. How did you see him go upstairs? A. When he passed.

Q. You in your restaurant busy writing and attending to things in the restaurant? A. I go out of the shop, don't I, once in a while?

Q. You go out of the shop, you say, once in a while? A. Yes.

Q. What for? A. Well, I had to do shopping sometimes.

Q. And when you were out shopping you saw Dunn go in his house? A. Yes.

Q. You know his landlady, don't you? A. No.

Q. Positive? A. Positive.

Q. How many times were you in the house? A. Never.

Q. Never in the house? A. Never.

Q. And you were not in there on the 21st of November? A. No, sir.

Q. And didn't meet Rupprecht down at Wayne street and Grove street? A. No.

Q. Where did you first meet him? A. In my restaurant.

Q. Are you in the habit of getting friendly with all your customers when they come in and sit down and have a bite to eat? A. They talk to me.

Q. And you get friendly with them? A. Why not?

Q. What is the depth of the place? A. Twice longer than this room.

Q. How many tables? A. I feed 50 people.

Q. And you get very friendly with your customers? A. Yes.

Q. And you say you met him when he came into the restaurant, that is when you met him first? A. Yes.

Q. How long did it take for you to get friendly with him? A. About a week.

Q. And you knew nothing else about him except that he had told you he lived in furnished rooms? A. Yes.

Q. And your brother John knew nothing against him, as far as you know? A. No, sir.

Q. And as far as you know, there is no reason why he should say anything about you that is not so? A. No; maybe to save himself.

Q. Maybe to save himself, what do you mean? Do you think he was in this robbery? A. I don't think.

Q. No? A. No, I don't think, I know he was not.

Q. You say you were not in it? A. Positively not.

Q. And you know you were not in it? A. That is the reason I brought the goods, because the goods were found in his store.

Q. Hadn't you ever taken things like that there before? A. No, sir.

Q. From your customers, your friends? A. None.

Q. That was the first time you had done that? A. Yes.

Q. And you thought it was all right? A. Yes.

Q. What color is this car of your brother's? A. A red car, touring.

Q. Are you a chauffeur? A. Yes.

Q. You drove a car, didn't you? A. No, sir.

Q. Do you know whether Rupprecht had a driver's license that day? A. No.

Q. You knew if he was out driving your car without a license you might have a lot of trouble? A. I never thought, and he would ask if he didn't have a license.

Q. How did you know he was not asked? A. He wouldn't ask me if he didn't have a license.

Q. Why? A. He never would ask me if he didn't have a license.

Q. Why did you know he would not ask you for the loan of the car without first having a driver's license? A. I haven't any idea.

Q. Could he drive it without having a license? A. Anybody can.

Q. If any of your customers come into your place and asked to borrow your car, you are good enough to loan it to them? A. Not everybody.

Q. Here is a man that you only knew for three weeks, and as soon as he wants to borrow your car you want to loan it to him. A. I like to help a fellow out, I like to do that now and then; you would help a fellow out, wouldn't you?

Q. Then you would help anybody out? A. Anybody that I think good of.

Q. Was there any reason you should think good of this fellow? A. Why not?

Q. What do you think was good about Dunn? A. He acted all right.

By the Court:

Q. In your whole course of friendship with Dunn, you have never done anything to him? A. No.

Q. You have never done any ill to him? A. No.

Q. Never earned his ill? A. No.

Q. All you have done has been to be kind to him and you took a chance on him? A. Yes.

Q. And in return of that, he comes here today and frames up this story against you, is that what you say? A. Yes, sir.

MRS. ROSE GEORGE DE BELLIS, sworn.

Direct examination by Mr. Kavanagh:

Q. Where do you live? A. 336 Central avenue, Orange.

Q. Are you related to the defendant, Dominic De Bellis? A. Yes.

Q. What relation? A. Sister-in-law, I married his brother.

Q. What is his brother's name? A. Dominico De Bellis.

Q. Is your husband dead? A. Yes, sir.

Q. How long has he been dead? A. 13 years.

Q. Do you and your father-in-law, Mr. DeBellis, the defendant, conduct a restaurant at 336 Central avenue? A. 28 New street, in the city of Newark.

Q. How long have you three been conducting that restaurant? A. I don't know exactly, but two and a half years or three years, something like that.

Q. Who minds the restaurant? A. I take care of all the things that go in and out, but De Bellis is the cashier and takes care of the management.

Q. Do you know this man Rupprecht, the man who testified on the stand just now? A. Yes.

Q. How long have you known him? A. About three months or a month or so before this trial came up.

Q. Before this trial came up? A. Before it happened, the 21st day of November, the hold-up.

Q. How did you come to know this man? A. He came into our restaurant the first day with his wife; he sat there and asked me for a cup of coffee, he did not feel so good, and I told him a cup of coffee would do him good; and he had a cup of coffee and he said he would take a chicken sandwich, and I made it, and he and his wife sat together.

Q. How often did he come into the restaurant on New Street? A. I could not say.

Q. Twice daily? A. Sometimes he comes twice, sometimes three, and sometimes doesn't show up.

Q. Did you become friendly with him? A. Not a bit, just handed him what he wanted.

Q. Did Dominic become friendly? A. Well, just to meet him in the business.

Q. What name did you know him by? A. Jack Dunn.

Q. How did you come to know him by that name? A. Because he introduced me to his wife as Mrs. Dunn.

Q. Do you know where he lived? A. He told me in the same block, two or three blocks off.

Q. The same street, you mean, New street? A. Yes, sir.

Q. Did you ever visit his home? A. Never.

Q. Coming down to November 21st, 1924, do you remember Mr. Dunn or Rupprecht coming into the restaurant that day? A. Yes.

Q. What time did he come in? A. About one or half past one.

Q. Do you know whether there was an automobile outside? A. Yes.

Q. Whose automobile? A. John De Bellis'.

Q. Your brother-in-law's automobile? A. Yes, sir.

Q. Do you know whether before November 21st, 1924, Dominic, your brother-in-law, had ever loaned this man Dunn or Rupprecht John's automobile? A. I believe in the same week he loaned him the car, because he fixed the wheel.

By the Court:

Q. What do you mean by you believe? A. I believe it was the same week.

Q. Do you know it was or are you guessing? A. No, I do know it but I don't remember the date.

By Mr. Kavanagh:

Q. Coming down to Friday, November 21st, you say Dunn or Rupprecht came in about half past one? A. Yes.

Q. And John's car was outside then? A. Yes, sir.

Q. Did you hear the conversation that took place between Rupprecht and your brother-in-law, Dominic? A. Yes, I heard he wanted the loan of the car.

Q. What did Rupprecht say to Dominic? A. He says, "Dominic, will you do me a favor?" He said: "If I can I will be glad to do it." He said "Will you please lend me the car because I want to go to Jersey City to my sister, as I must get some money for rent."

Q. What did Dominic do? A. He was glad to do it; he said, "As long as you return it here about half past five or six o'clock."

Q. Did you see Rupprecht take the car away? A. Yes.

Q. When? A. About half past one.

Q. Did you see him bring the car back? A. Yes.

Q. Were you in the restaurant when he brought it back? A. Yes.

Q. What time? A. About a quarter to eight.

Q. That same evening? A. Yes.

Q. Did he return the car any time between the hours of half past one and a quarter to eight? A. No, sir.

Q. Was the car there any time between those hours? A. No, sir.

Q. Was Dominic out of the restaurant that afternoon? A. No, sir.

Q. Was Dominic out of the restaurant any time between the hours of one and eight? A. No, sir.

Q. Dominic was not out of that restaurant that afternoon? A. No, sir.

Q. Were you there when Rupprecht came back at quarter to eight? A. Yes, sir.

Q. Did you see him give a bundle to Dominic? A. Yes; he said they were good for curtains.

Q. What did he say? A. I said I couldn't use the curtains.

Q. What did he say? A. He told Dominic, "Don't get sore at me, I couldn't help it."

Cross-examination by Mr. Hansen:

Q. How long have you been in that restaurant? A. About three years.

Q. You are married to a brother of Dominic's? A. Yes, I am a widow of De Bellis'.

Q. 13 years a widow? A. Yes.

Q. What do you do in that restaurant? A. I do the cooking, and I take the lunch to all the customers.

Q. You are back in the kitchen, are you? A. No, I am in front, and the back.

By the Court:

Q. You go also in the kitchen? A. Yes.

By Mr. Hansen:

Q. This is a big restaurant? A. Oh, maybe 100 to 150, and maybe 175 come in, maybe more.

Q. It is a real big restaurant? A. It is a sandwich place.

Q. How many waitresses are there there? A. It is only one, that is me; there are six people working in it, I take care of the counter.

Q. Who does the cooking? A. There is not much cooking to be done, because it is a sandwich place.

By the Court:

Q. You said you did the cooking? A. Yes.

Q. Where did you cook there? A. In the back.

By Mr. Hansen:

Q. If I went in that restaurant, I could not see the kitchen, could I? A. Yes, if you stand by the counter.

Q. You mean I could see through, through a door? A. Yes, through a door.

Q. And that door is closed? A. An open door.

Q. What time do you get to work? A. Seven or half past seven.

Q. And you get everything ready for the day? A. Yes, at ten o'clock everything is ready for the rush.

Q. And the rush starts about noontime? A. About eleven o'clock.

Q. And that is when you have 200 or 300 people come in? A. No, it is only 100 to 150 or so.

Q. I mean from that time on you have these people coming in there? A. Yes.

Q. Pretty crowded, pretty busy? A. Yes.

Q. And you have to keep going at full speed? A. Yes.

Q. And it was while everybody was in and things were going at full speed that this man came in, at full speed, and asked for the loan of the car? A. No, because when he came we were just nice.

Q. Wasn't that your busy time? A. Our busy time is around eleven to a quarter after twelve.

Q. That is your busy time? A. Yes, and——

Q. Do you mean——

Mr. Kavanagh: I object to Mr. Hansen interrupting the witness, he had not finished.

The Court: I will sustain your objections, if it is an objection. I will rule on any objection when it is properly taken. You may finish your answer, madam, if you have not finished.

The Witness: I was only saying eleven o'clock is our busy time up to a quarter after twelve, the busy hours are from eleven o'clock to a quarter after twelve.

Q. Do you mean to say it is around twelve o'clock when most people eat their lunch, that your restaurant is quiet at that time? A. No, from eleven to a quarter after twelve we are very busy.

Q. Well, what time did Red come in there? A. He came in about one or half past one.

Q. Who is Red? A. Jack Dunn.

Q. I asked you what time Red came in. A. I didn't understand, I don't know who is Red.

By the Court:

Q. What did you mean when you give that answer, when Mr. Hansen asked you what time did Red come in? A. I thought he meant Jack.

By Mr. Hansen:

Q. You did not hear me say Jack? A. I thought that is what you said.

Q. That explanation is good enough. He came in there what time? A. About one, a quarter after one, half past one, I can't exactly tell the time.

Q. Do you know whether it was not twelve o'clock when he came in? A. No, sir.

Q. It was not? A. No, sir.

Q. How do you know that? A. Because I know all the customers that come in at this hour; I have regular customers that come in every day and I know the hour they come in.

Q. That is what I asked you about, about what time Jack came in? A. He came in about one or half past one.

Q. On this particular day? A. He came in about one or half past one because when he took the car I looked at the time.

By the Court:

Q. Do you have waiters there, do you have a lunch hour, side tables? A. No, sir, no waiters, it is a self-service.

Q. Do you serve any food especially prepared? A. Yes, we have a different dish every day.

Q. Do you take the receipts? A. No, we have a lady takes care of that.

By Mr. Hansen:

Q. Do you know what the talk was when he came in there? A. All I heard him say was that he wanted the loan of the car off Dominic, would he do a favor for him by loaning him the car.

Q. What were you doing at the time he was there and said that? A. I was just handing out the meals to some customers, and I heard him say everything.

Q. How close was he to you? A. I couldn't say, maybe as close as you are.

Q. And he was talking with Dominic? A. Yes, like you and I are talking.

Q. A distance of 10 or 12 feet away? A. I couldn't say, like you and I are.

Q. And you could hear what he said? A. Yes.

Q. And you were attending to your duties? A. Well, at present I was just looking and just listening.

Q. Why were you listening? A. To see what he wanted.

Q. How did you know he wanted a favor? A. Because I heard him say so.

Q. You said the reason he wanted the favor was because he wanted to go after some money? A. Yes.

Q. You wanted to know what kind of favor he wanted, that was why you were listening? A. Because I heard him say: "Will you do me a favor?" I had nothing to do then.

Q. No customer in the place? A. They were all busy eating.

Q. And you were not serving? A. It was self-service.

Q. What were you doing? A. My dear man, when I give them an order this minute—I have large business, and this minute I have nothing—I stand at the counter.

Q. Oh, you stand at the conter? A. Yes, I punch the tickets, I am counter girl.

By the Court:

Q. Do you take the money? A. No; all they have to do is to take a plate and knife and fork, and I punch the tickets.

By Mr. Hansen:

Q. Dominic was in the cashier's cage, was he? A. No, sir.

Q. Where does he take this money? A. When they bring the tickets he collects the money.

Q. Where does he stand? A. It is like from here to that pole.

Q. From where you are to that pole? A. From where I am to the pole, but Dominic, he was working everywhere, he was up at the water fount.

Q. And you knew Jack Dunn? A. Yes, sir.

Q. And you knew he came in there every day? A. Yes.

Q. How many other customers do you know by their first name? A. I knew so many by the first name, and the last.

Q. You are very friendly with the customers? A. Well, not friendly particularly, but we respect our customers.

By the Court:

Q. Do you know where John De Bellis is? A. Where he is now, I couldn't tell you; I got a postal card.

Q. Where from, what was the postmark? A. I guess from California, I couldn't tell you.

Q. Show the postal card to Mr. Hansen. A. The postal card?

Q. Is that California? A. Yes.

(Witness hands postal card to Mr. Hansen.)

By Mr. Hansen:

Q. What is that on here: "Hello, Jimmie," who is that? A. I don't know, some friend of his.

Q. "If you know only where I am you would be the happiest man in the world and if you are good I will send for you." Who is that? Who is that, "Grace"? A. That is John's wife; he went ahead through.

Q. How did you get that card? A. His wife brought it to me.

Q. His wife brought it. "Sacramento, February 28th, 1925."

By the Court:

Q. Did he tell you he was going out to California? A. Well, I heard that from a friend, a girl he had, going in the same automobile, and he was afraid of her.

Q. He was not afraid of this case? A. No, sir.

By Mr. Hansen:

Q. Now, when this man Jack brought in the goods that night, you were there? A. Yes, sir.

Q. And you were suspicious? A. No; he told me they were curtain goods and I told him I didn't want any curtain goods.

Q. You did not get suspicious? A. No, I was only mad that he came late, that's all.

Q. Where is John De Bellis' Restaurant, or where was it? A. 183 Bank street.

Q. How far is that from your place, around the corner? A. About a mile from us.

Q. About a mile from your place? A. Yes.

Q. And John did have a restaurant there? A. Yes; a spaghetti house.

Q. And your brother did take this stuff out to John's place? A. Yes, he had the car there.

Q. And he took out these goods there? A. Yes, and I told him not to take it; I said: "Let Jack have it, this is his stuff," and he said: "I brought you something, I thought you could use it in your restaurant"; and Dominic said: "I will ask my brother if he can use it in his spaghetti house"; but if I could have seen the kind of goods I——

Q. What, what would you do? A. I don't know, I think I would have said: "Take it to your wife."

Q. Why? A. Because there are no curtain goods in a restaurant.

Q. Did you go with him to John's place? A. No.

Q. Who went with him? A. A friend by the name of Sandy Hughes.

Q. Did a girl go with him? A. No.

Q. Only one? A. No, none that I know of.

Q. He never drank? A. No.

Q. He never drank wine? A. No, unless once in a while.

Q. You are pretty sure this was the date, November 21st? A. Yes.

Q. What kind of a day was it? A. A Friday.

Q. Was it a clear day? A. Pretty clear.

Q. It was not raining? A. No, sir.

Q. A clear day? A. Yes, sir.

Q. Did you see Jack Dunn up there November 20th? A. 21st—November 20th, I guess he was.

Q. Did you see him? A. I guess he was in during the week.

Q. But you don't know what day during the week? A. No, sir.

Q. What you mean is—— A. I am pretty sure he was in during the week.

Q. What makes you so sure he was in there November 21st is that November 21st was a particular date? A. Because we were waiting that night for the car.

Q. How do you know it was November 21st that you were waiting for the car? A. I ought to know it, reading the paper.

Q. Oh, that is how you know? A. Sure, because I had nothing else to do.

Q. Do you mean to say you were reading the date on the paper? A. No, I was reading the paper, but could see the date.

Q. When was your brother arrested? A. I could not exactly say.

Q. How long after, next day? A. No.

Q. Two days afterwards? A. No, I think three weeks afterwards, if I am not mistaken.

Q. You don't remember that fact, do you? A. No, sir.

Q. You don't remember that date? A. No.

Q. Where was he arrested, in your place? A. No, sir.

Q. Where was he arrested? A. Out in the street.

Q. In front of your place? A. No, sir.

Q. And you don't remember the date of that arrest? A. No, sir; all I know is I heard it next morning.

Q. You talked with your brother about this case, of course? A. Yes, when he was arrested.

Q. And you talked about what your testimony

was going to be here today? You told him what you were going to say? A. Just what was the truth, didn't have to talk it over.

Q. You and he talked it over, didn't you? A. No sir, I just knew what I say.

Q. You were familiar with Rupprecht, weren't you? A. No, sir.

Q. You were familiar with Mrs. Rupprecht? A. No, sir; only seeing her come in and out and getting a cup of coffee.

Q. Whom did your brother lend this car to before? A. I believe to Mr. Stahl, one of our customers.

Q. Stahl? A. Starr.

Q. What is his first name? A. I don't remember.

Q. When did your brother loan him the car? A. When he first got the Studebaker.

Q. That is the Studebaker he loaned to Rupprecht? A. That is not a Studebaker, this is a Willys-Knight.

Q. Who else did he loan the car to? A. Nobody that I know of.

Q. Do you know if he ever loaned it to anybody else? A. No, sir.

Q. Did you ever know anybody else come in there and ask him for the loan of his car? A. No, sir.

Q. So far as you know, this is the first time you ever knew of it? A. The once it was the Studebaker and once the Willys-Knight.

Q. There was no other time? A. No, sir.

Q. I thought there was another time? A. No, sir.

Q. I mean when Stahl came in. A. That was the only time.

Q. Did he loan the car to Stahl? A. Yes.

Q. Who was Stahl? A. My customer that worked in Hahne's.

Q. Most of your customers were people who worked in Hahne's and people around there? A. Yes.

Q. And you are busy from eleven to a quarter after two, aren't you? A. Well, the most busy time is from eleven to a quarter after twelve.

Q. Why was it from eleven to a quarter after twelve? A. That I can't tell you.

Q. How is it that the rush lasts until a quarter after twelve? A. I don't know.

Q. How long does it last after? A. Maybe it depends how they eat.

Q. You close your restaurant right after the noon rush, don't you? A. No, sir.

Q. Around four o'clock, do you? A. No, sir.

Q. What time do you close up? A. Seven, half past six, half past seven, and eight o'clock; when we have the theatre people coming in, people working overtime, for sandwiches.

Q. You say they come in at that time? A. I couldn't exactly say, they come in during the hours——

Q. What——

Mr. Kavanagh: I object to Mr. Hansen interrupting and not letting the witness finish her answer.

Mr. Hansen: I thought she had finished.

Q. If you have anything further to say, you may say it; what time do you say they come in nights? A. Sometimes seven, sometimes half past seven, sometimes quarter to eight, but most of the time it is seven or a quarter after seven.

Q. Where do you go then? A. Go straight home.

Q. Where do you live? A. Up in Orange.

Q. You don't go to John De Bellis' Restaurant? A. No, sir, I have never been in it.

Q. Who takes you home, do you go home in this machine? A. Dominic De Bellis.

Q. You say he was in that place all afternoon on the 21st? A. Yes, sir.

Q. Was he in that restaurant all afternoon on November 16th? A. He is always in in the afternoons.

Q. I am asking you that, was he? A. Always in, he never goes out.

Q. Do you know whether he was in on November 16th? A. He goes no place; the only time I know when he goes out is in the morning, when he has to buy something, or else to get something in the market, but he don't take more than half an hour.

Q. As I understand your testimony, the rush is over in this restaurant about a quarter after twelve? A. No—the rush, but people is coming in right along.

Q. But you have 6 people in the place to work? A. Yes.

Q. Do you mean to say those 6 people stay in the place in the afternoon, doing nothing? A. They go home half past three or four o'clock.

Q. And Dominic goes home too? A. No.

Q. He never left there before half past three or four in the afternoon? A. No, sir, never, unless the day before the hold-up, and he had to go to the market then, and he had to go and get some medicine, a tonic.

Q. And then he was not there at that time, while he was out? A. He was out 20 minutes.

Q. So he was not there then? A. I said, no. He is out when he goes to the market, of course,

but he don't take more than half an hour or three quarters of an hour to go to market.

SAM ROSEN, sworn.

Direct examination by Mr. Kavanagh:

Q. Where do you live? A. 241 Bank Street, Newark.

Q. What is your business? A. Confectionery line.

Q. Do you know the defendant Dominic De Bellis? A. Yes.

Q. How long have you known him? A. Eight months.

Q. What is his business? A. Light lunch.

Q. Where? A. 28 New Street.

Q. 28 New Street, Newark? A. Yes, sir.

Q. Do you know this man Rupprecht by some other name? A. I have seen him occasionally.

Q. Where? A. Before the hold-up and the day of the hold-up.

Q. What name did you know him by, if any? A. Jack Dunn.

Q. How did you know him by the name of Jack Dunn? A. Dominic De Bellis spoke of him to me.

Q. Did you know him by the name of Rupprecht? A. No.

Q. Or any other name besides Dunn? A. No.

Q. Do you remember Friday, November 21st, last year? A. Yes.

Q. Were you in Mr. De Bellis' restaurant that day? A. Yes, I was.

Q. What time did you go in the restaurant? A. I was in the restaurant about ten o'clock in the morning.

Q. What were you doing in there? A. I had an appointment with a party to meet me there, to close a business deal, to buy a store.

Q. What was his name? A. I cannot recall it, an Italian.

Q. Did you see Rupprecht or Dunn in the restaurant that day? A. Yes.

Q. What time? A. Between twelve and twelve thirty.

Q. Was that the only time you saw him in the restaurant that day? A. At that time, yes, sir.

Q. Did you hear him have any conversation with Dominic De Bellis at that time? A. The only conversation I heard was about the loan of a car.

Q. Who asked for the loan of the car? A. Jack Rupprecht, the name he goes by now.

Q. Of whom did he ask for the loan of the car? A. Dominic De Bellis.

Q. How do you know that? A. I was sitting alongside the showcase, where the showcase was at that time, the register.

Q. Did you see Rupprecht go out and take the car away? A. Yes.

Q. When did you next see him? A. About eight o'clock in the evening when he came back.

Q. Were you in the restaurant all afternoon? A. Yes, sir.

By the Court:

Q. What were you doing in the restaurant all afternoon? A. I was waiting for a party to call during the day to close a business deal for my father.

Q. Why do you remember that; you were not in the habit of making appointments for business in that restaurant, were you, for men to meet you there? A. Yes, the first time.

Q. You say you were in the restaurant all afternoon? A. Yes.

By Mr. Kavanagh:

Q. What time did Rupprecht bring the car back? A. Between eight and eight-thirty in the evening.

Q. Was Dominic De Bellis away from that restaurant any time during that day, while you were there? A. No, sir, he didn't leave the place at all, all day.

Q. You are positive? A. Yes.

Q. Were you there when Rupprecht brought the car back? A. Yes.

Q. Did you hear the conversation that took place between De Bellis and Rupprecht when Rupprecht brought the car back? A. The only conversation I heard was Dominic raised the devil with him for bringing it back so late.

Q. What did he say? A. He asked him why he brought the car back so late when he had to go to his brother with it.

Q. Did you see Rupprecht give Dominic a package? A. Yes.

Q. What kind of package? A. About that long (indicating) and in manila paper.

Cross-examination by Mr. Hansen:

Q. You are a friend of Dominic's aren't you? A. For the time, yes.

Q. What do you mean by for a time? A. For the time, I have known him.

Q. What business are you in? A. Confectionery, 130 Warren street, Newark.

Q. What business were you in on the 20th of November last? A. None. This party was to call at 28 New street to close a deal.

Q. What party is that? A. I couldn't tell you his name.

Q. Where did he live? A. He lived at 20 Warren street, but he has left now.

Q. What kind of deal was there to close out? A. A confectionery deal.

By the Court:

Q. Was he the man you took the place from? A. Yes.

Q. Where does he live now? A. Staten Island.

Q. What address? A. I couldn't tell you.

Q. Why don't you know? A. Because he didn't leave his address.

Q. Did you take his name? A. I don't remember it just now.

Q. How old are you? A. 22 in November.

Q. In business for yourself? A. Well, with my father.

Q. Who was putting up the money? A. My dad.

Q. Was your dad in the restaurant also? A. No, sir.

Q. Wasn't he there to arrange any of the details of this bargain? A. No, sir; he was over at the publication office.

Q. How long were you out of school? A. Close on six years.

Q. What have you been doing during that time? A. Working on and off for different people.

Q. Where did you work last? A. My last business was in Loew's State Theater.

Q. What were you doing there? A. Porter.

Q. Where were you before that? A. Machine shop one year.

Q. Where before that? A. Newkirk's.

Q. What is that? A. Manufacturing confectioneries.

Q. Do you mean candy? A. No, sir, ice cream dippers and spoons.

Q. Is that the same kind of business you are in now? A. No, we sell candies.

Q. How long were you working at Newkirk's? A. 18 months.

Q. Before you were working there at Newkirk's, where were you working? A. With a florist.

Q. How long did you work for a florist? A. About six months.

Q. Where did you work before that? A. I couldn't remember.

Q. The first job after you left school was with a florist? A. Yes, sir.

Q. You were arranging to buy out a candy business? A. Yes.

Q. And your father was the one who was to put up the money? A. Yes.

Q. Had your father had any business with candies before? A. No, sir.

Q. Nor you, neither? A. I had with my uncle, in that last place of business.

Q. Your father was putting up the money and relying on your 22 years old judgment to put the deal through? A. Yes.

Q. He was not there himself? A. No, sir.

Q. What time did you have the appointment for? A. We didn't have any exact time.

Q. What do you mean by that? A. Some time in the afternoon.

Q. What time did the man come? A. He didn't show up that day.

Q. How long did you wait for him? A. I waited until Dominic De Bellis closed the store.

Q. From what time? A. From ten o'clock in the morning until eight thirty, the time he closed the store.

Q. What were you doing from that time in the morning? A. I am there every morning at ten o'clock.

Q. Do you work there for him? A. No, sir.

Q. What is your interest in being there every morning? A. I go down and repair his machine for him.

Q. What kind of a machine? A. He has a Studebaker touring car.

Q. Are you a mechanic or in the candy business? A. I am in the confectionery line now.

Q. You said before you went down this restaurant every morning before ten o'clock. A. I did before I had the appointment for this man, a long time before.

Q. But since this hold-up you have not been going down there? A. I have in the meantime, yes.

By Mr. Hansen:

Q. Did you telephone to this man that you had the appointment with? And who did not show up? A. No, he had no phone.

Q. You bought the business from his later on? A. Yes.

Q. Did you get a bill of sale? A. Yes.

Q. Where is the business? A. 171 Warren street.

By the Court:

Q. Is that where he was in business at that time? A. Yes.

Q. How far is 171 Warren street from this

place on New street? A. Three blocks from John De Bellis' place, I think.

Q. When this man had disappointed you and kept you waiting, why didn't you go to his place of business? A. I made an appointment there to meet him down there.

Q. But you were only three blocks from his place of business? A. No, sir.

Q. I asked you, how far was he from that place? A. From John De Bellis' Restaurant; it is three blocks from John De Bellis' place, 171 Warren street is, but from Dominic De Bellis' place, a mile.

Q. Why didn't you go there? A. I told him I would meet him downtown.

Q. Apparently, when he was not keeping his part of the agreement, why didn't you find out why he was disappointing you? A. I made up my mind to see him next day.

Q. What time did you make up your mind? A. I made up my mind just before they closed up, that I would see him next day.

Q. That is why; why didn't you yourself visit him? Why didn't you go down to 171 Warren street and find out if he was going to see you and going to put it through. A. He is not home all the time, and his wife is there and I could not talk business with her.

Q. I am asking you about his place of business. A. That is why he is not up at his store, when he is not at his store he is home.

By Mr. Hansen:

Q. You went there to that restaurant every morning around ten o'clock, you say? A. Yes.

Q. Whether you had an appointment or not? A. Yes.

Q. So you had not gone there this particular

day because you had an appointment? A. This particular day, on the 21st of November, I went there on account of the appointment.

Q. What was your idea of hanging around there every day? A. I don't hang around every day.

Q. Well, what was your idea in hanging around there that day all day long? A. I didn't all day long, all the time, I went there for my breakfast.

Q. I said what is your idea of hanging around there this day in particular, all day long? A. I used to go in there, and then go to East Orange.

Q. What did you do in East Orange? A. I had a connection in business there.

Q. But this day you hung around all day? A. Yes.

Q. How long have you known Red? A. I have only seen him four or five times.

By the Court:

Q. You and Red are pretty friendly? A. Well, except for the six or eight times previous to that I haven't known him at all.

By Mr. Hansen:

Q. How long have you known Red? A. I have seen him six or eight times.

Q. Did you know him by the name of Red? A. No, sir, I never connected him with this company.

Q. Did you know him by the name of Red? A. No, sir.

Q. How do you know who I mean? A. Jake Rupprecht you mean.

Q. You knew that? A. Yes.

Q. You knew him as that? A. I never bothered to talk to him.

Q. And knew him as Red? A. No, sir.

Q. And you heard him addressed as Red? A. That one morning.

Q. What morning? A. The 21st of November.

Q. And they were very friendly? A. That was the first time I had ever spoken to him.

Q. I am not talking out the first time you ever spoke to him, but how many times had you ever heard Dominic call him Red? A. The first time.

Q. Didn't you think it strange? A. No, sir.

Q. How long had you known him, three or four weeks? A. Who?

Q. This man Red. A. I had seen him six or eight times.

Q. And you were in this restaurant nearly every day? A. Yes.

By the Court:

Q. What was there about his company you didn't like? A. I didn't like to get in bad company anyhow, I had been in there before.

Q. You knew he was bad company? A. Well, I didn't care to get in company with anybody I didn't know well.

Q. What was there about him you didn't like? A. He was dragging his brother into the poolroom day in and day out.

Q. Did Dominic know that too? A. Yes.

Q. Dominic knew he was a bad character? A. I couldn't tell you.

Q. You were satisfied he was not all right, that he was not a right man to go with? A. Yes.

By Mr. Hansen:

Q. You did not say anything to him when Dominic was loaning him this car? A. No, sir.

Q. And you knew he was a bad character? A.

I didn't know anything about his character but I didn't want to have anything to do with him.

Q. But I understood you to say he was trying to get John into a poolroom? A. Trying to lure his brother into a poolroom.

Q. And Dominic knew that? A. Yes.

Q. But Dominic you say was very friendly with him? A. Dominic was there——

Mr. Hansen: I will withdraw that question. I think that is all.

GEORGE HONEYBLOOM, sworn.

Direct examination by Mr. Kavanagh:

Q. Where do you live? A. 595 Stuyvesant avenue, Irvington, New Jersey.

Q. What is your business? A. Wallpaper.

Q. Where is your place of business? A. At 30½ New street, Newark.

Q. That is two doors away from the store of Dominic De Bellis's? A. Yes.

Q. How long have you known Dominic De Bellis? A. Approximately two years; in fact, since he started a hotel there.

Q. Did you see him every day? A. Yes, sir.

Q. Do you eat in his restaurant? A. I do.

Q. Do you know Mr. Rupprecht? A. I have met him there several times.

Q. Have you met him in the restaurant? A. Yes.

Q. Were you introduced to him? A. I never have been, I paid no attention to him.

Q. Did you know him by any particular name? A. No, sir, I did not.

Q. Coming down to November 21st, Friday, were you in De Bellis' Restaurant that day? A. I was during the day, morning, noon.

Q. What time were you in the restaurant? A. Usually every morning between eight and eight-thirty, and sometimes I have lunch sent into my store, it is only two doors away, between the hours of twelve and one.

Q. Were you in the store between the hours of twelve and one that day? A. I was.

Q. What hour were you in the restaurant? A. Between one and two.

Q. Did you see Mr. Rupprecht there? A. I paid no attention to him.

Q. What time did you leave your place of business? A. Usually——

Mr. Hansen: I object to usually.

The Witness: That night I left about half past seven at night. It is usual——

Q. That is November 21st? A. Yes.

Q. Did you have occasion to see Dominic De Bellis that night? A. I did going home.

Q. What doing? A. At half past seven I saw Dominic De Bellis, Mrs. De Bellis, standing outside with their clothes on, and I thought it kind of strange to see them outside with their outer garments on, and I asked them what they were waiting for, and they said their car was still out, and I paid no further attention.

Q. Whom did you speak to? A. To Rose and Dominic.

Q. Who answered that they were still waiting for the car? A. Rose. Pardon me, Mrs. De Bellis.

Q. What time was that? A. At half past seven, November 21st.

Q. That was Friday evening? A. Yes.

Q. Was there any car at the restaurant door? A. I paid no attention further.

Q. Excepting their own statements that they were waiting for the car, that is all you know? A. Yes.

Cross-examination by Mr. Hansen:

Q. Where do you live? A. 595 Stuyvesant avenue, Irvington.

Q. And your business is near this restaurant? A. Yes.

Q. What is your business? A. Wallpaper.

Q. How far away from this restaurant is your place of business? A. We are two doors beyond Mr. De Bellis' place.

By the Court:

Q. How do you know the night was the 21st? A. I recall that distinctly because, when I saw the article in the paper several days after, or a week after that, I said: "That is rather strange, that is the day I received a shipment that kept me on that night."

Q. How do you account for remembering that day that you received a shipment? A. Because I never leave the store later than seven o'clock, I am usually home by half past seven, and I recall the shipment.

Q. What shipment do you speak of now? A. During the fall season I carry lace curtains, and I received a shipment of curtains that day. Ordinarily I carry just wall paper.

Q. What is there that fixes the date in your mind? A. Because I was telephoned to get it on that day, because of Thanksgiving, because I was

preparing for the Thanksgiving rush, and being a Friday I considered mystelf fortunate, because Saturday is usually a big day, and I was already the following day to do the business I expected.

Q. For what—what time that afternoon had you seen Dominic De Bellis? A. I had met him that morning when I was there for breakfast, and met him at lunch time when I went over there after.

Q. But you did not see him between dinner time and half past seven? A. No.

By Mr. Hansen:

Q. I understood you to say you had your lunch taken over to your place that day? A. I said sometimes I have it brought over but often I go into the store.

Q. Do you remember you went into the store that day? A. Yes.

Q. Do you recall going to the store the day before? A. No, I do not.

Q. But you do recall that day? A. Yes, not only going in, but I got my mind relieved.

Q. How can you say now; you can't say whether you went in Wednesday or Thursday but you can say positively you went in Friday? A. I know it for a fact because I like my hot dishes, and they often sell good fish cakes on Friday.

Q. You are sure you were there Friday, then? A. Yes, I love their fish cakes.

Q. You never get fish cakes on Thursday? A. No, sir.

Q. Have you ever been convicted of a crime? A. I never have been accused of any, this is the first time in court.

Q. How long have you been in that place, how long since? A. The first time in months—I have had a concession with a friend——

Q. This restaurant is a pretty busy place around noon time? A. Yes.

Q. Lots of people in there from between twelve to one o'clock? A. Yes.

Q. That is their rush hour? A. Very likely, yes.

By the Court:

Q. Have you been there around a quarter to and after twelve? A. No, seldom at that hour.

Q. Have you been there until one and two, between one and two? A. Yes, very often.

Q. Are they busy between one and two? A. Sometimes I get better attention at that time, they are not so busy, not what we call really rushed.

Q. And you find you get better attention in there between one and two than between twelve and one? A. I do as a rule.

Q. You have been in there between twelve and one? A. I have when I get the opportunity.

By the Court:

Q. Why didn't you go in there until after twelve? A. I didn't have the opportunity to go out. In a place of business you don't have a chance to go out at a certain time.

Q. I asked you that because before answering my question you seemed to say you made a practice of going in between one and two because you could get better service about one than you could at half past twelve. A. Yes.

Q. In other words, they are pretty busy around a quarter to one? A. Yes.

SAMUEL SILVERMAN, sworn.

Direct examination by Mr. Kavanagh:

Q. Where do you live? A. 443 Elizabeth Avenue, Newark.

Q. What is your business? A. I am selling automobile bail bonds for the National Surety Company.

Q. How long have you been employed by the National Surety Company? A. About four months.

Q. What was your business in November of that year? A. Selling automobile bonds.

Q. Do you know the defendant, Dominic De Bellis? A. Yes.

Q. How long have you known him? A. Ever since he came into that restaurant of his; I know the man who sold it to him theretofor, I know the street, I don't know the number.

Q. Do you know this man Rupprecht? A. I have seen him in that restaurant, I don't know him.

Q. Were you ever introduced to him? A. Never.

Q. Do you recall Friday, November 21st, of last year? A. I recall Friday, November 21st.

Q. Were you in that restaurant of De Bellis' on that day? A. That day I tried to sell him an automobile bond for himself.

Q. How do you know it was Friday, November 21st? A. I was in there on previous occasions trying to work up a trade to sell him my automobile bond, and he said: "When I get some money I will buy it," so I kept coming in to lunch and talking to him about that automobile bond, and on the 21st I went with Mr. Honeybloom, and I couldn't do anything with De Bellis that day, so

I got hold of my father and I said to the old gent, "Let's eat," so I got on the jitney and went home.

By the Court:

Q. Who is the old man? A. My dad.

By Mr. Kavanagh:

Q. Did you see Mr. De Bellis on Friday November 21st between the hours of five and six in the afternoon? A. Yes.

Q. Where? A. In his restaurant.

Q. In his restaurant at 28 New Street? A. Yes.

Cross-examination by Mr. Hansen:

Q. Did you get him out on bail? A. No, sir.

Q. You did not do that kind of bail bond? A. No sir.

Q. You never arranged for bail for men charged with crime? A. I did not, no sir.

Q. What did you do about it? A. I didn't do anything.

Q. What did you do in connection with getting bail for persons accused of crime? A. I don't do a thing, I didn't do a thing that day, I don't even handle it.

By the Court:

Q. They furnish it, don't they? A. Yes, they do that.

Q. Will you tell us what you did on Thursday November 20th? A. Well——

Q. Or rather, I will ask you what your movements were on the 21st day of December, that is a month later than the 21st of November? A. As a general rule——

Q. Not as a general rule, what did you do? A.

On the 31st—I come downtown and go around to people and interview.

Q. What did you do on December 21st? A. I couldn't tell you exactly.

Q. Do you know what you did on January 21st? A. I couldn't tell you exactly unless I looked back on the book I put orders on.

By Mr. Hansen:

Q. Were you in the room back of this pool room that day? A. No sir, I never play pool.

Q. You never shoot pool? A. I may shoot a game or two, that's all.

Q. When did you meet Red Rupprecht? A. I never knew his name was Red.

Q. What did you call him? A. He was there when I was showing Dominic the bond, and he said, it is a good thing, he said the National Surety Company is the most reliable company in the world.

Q. When did he say that? A. On two or three different occasions when I was showing it to Dominic.

Q. Did he have his wife with him? A. I never saw him with any woman.

Q. How did you come to get into that restaurant every day for lunch? A. I had been coming around with Honeybloom for 20 some odd years, and he has a store in that neighborhood, and when he was slow I used to come to see him. I went to school with him.

Q. So you are so friendly with him that you neglected your business for him and go to see him every day? A. I didn't neglect my business.

Q. What is your business? A. My bond business.

Q. How many bail bonds have you sold during the last year? A. I haven't sold any.

Q. How many bonds in the last year? A. I couldn't tell you just now.

Q. Do you know the names of any people whom you sold bonds to? A. Yes; I sold Bullit and Harrison, for one of his chauffeurs.

By the Court:

Q. When did you do that? A. In the month of November.

Q. What date? A. The 21st, 18th, 19th, probably ten different dates I would go down and wait for the chauffeurs to go down. I went on purpose then.

By Mr. Hansen:

Q. You are not positive of being in De Bellis' store every day? A. Yes, I went there every single day.

Q. If you got there on the 21st, you got there for lunch, did you? A. Yes, around lunch time.

Q. Around twelve o'clock? A. Yes.

Q. Who went with you? A. Alone.

Q. Had you been in to see your friend Honeybloom yet? A. No; coming down I was going past his place first.

Q. But first you had your lunch? A. Yes; sometimes I relieved him and let him go in.

Q. What did you do all afternoon? A. I went around different places trying to sell bail bonds.

Q. What time did you get back? A. About 4:30.

Q. To where? A. To New Street.

Q. Why did you come back there? A. Because I wanted to see Honeybloom.

Q. Did you go in his place? A. Yes.

Q. Did you stay there? A. Yes, I think till about a quarter to six.

Q. Did you go home with him then? A. No, because he had to stay down late and I wanted to get home for dinner.

Q. Then you went in Dominic's Restaurant? A. No.

Q. Didn't wait for supper? A. No, I had never had supper in his restaurant.

Q. You saw Dominic when you were in at noontime? A. Yes, and I saw him standing at the door as I went by, and I waved my hand.

Q. You saw him standing in the doorway? A. Yes.

Q. When was that? A. I judge about between a quarter to and six o'clock.

Q. Did you see him in the doorway other nights? A. Yes, many evenings.

Q. And you don't know whether you saw him there Thursday night, November 20th, do you? A. I wouldn't say positively.

Q. You are not positive you saw him there November 21st, are you, you wouldn't swear to it, would you? A. I did swear to it.

Q. How could you swear to it? A. For this simple reason, that night Honeybloom said he was going to stay late, and I said it is Friday and I want to get home.

Q. Well, there are lots of Friday nights. A. But that particular night he was going to stay late and I had to get home in the jitney.

Q. How do you know this particular night was November 21st? A. I don't know that I could say.

Mr. Kavanagh: Defendant rests.

Mr. Hansen: I have another witness, if your Honor please, and I would like to call him, but the witness is not here at the present time, and I would like to have the privilege of calling that witness tomorrow morning.

(Before adjourning the court cautioned the jury, and informed them that accommodations had been retained for them at the Hotel Plaza for the night.)

Adjourned till tomorrow morning at ten A. M.

Jersey City, N. J., Mar. 3, 1925.

The hearing of the case was resumed pursuant to adjournment.

Mr. Hansen: You have rested your case, have you, Mr. Kavanagh?

Mr. Kavanagh: Yes, I rest unless there is something further after you are through.

The Court: For the time being you have no further evidence to offer?

Mr. Kavanagh: No.

HENRY COLE, recalled in rebuttal testifies:

Direct examination by Mr. Hansen:

Q. You testified yesterday, Mr. Cole, that you were in charge of this wagon? A. Yes, sir.

Q. These packages that you had on your truck, I suppose they were all marked, weren't they? A. They were all marked with markings of the different people.

Q. And addressed to different people? A. Yes, sir.

Joseph C. Rupprecht—Direct.

Q. Were the labels printed on or was a piece of paper pasted on? A. A piece of yellow paper about that big (indicating) placed on them with the name of the concern and the name of the people outside.

Q. The name of R. H. Macy was on that piece of paper? A. Yes.

Q. Was that pasted on? A. Yes, it is all on the label.

Q. And that was on every package, wasn't it? A. Yes, sir.

Mr. Kavanagh: Do not lead him, please.

Mr. Hansen: I do not want to lead him, but there is difficulty in having him testify in a roundabout way. That is all.

Mr. Kavanagh: No questions.

Joseph Rupprecht, recalled in rebuttal, testifies:

Direct examination by Mr. Hansen:

Q. It has been testified here, Rupprecht, that you borrowed this car on the 21st of November of last year, sometime after noontime, from Dominic De Bellis, and that you returned to his place about seven-thirty and gave him a package containing some material for curtains; is that so? A. No, sir.

Q. These packages that you testified about that you transferred from Macy's car to your car, did you notice whether they had any labels on them or not? A. Well, I didn't notice them in the dark.

Q. Did you take the labels off any packages? A. No, sir.

Joseph C. Rupprecht—Cross.

Mrs. Minnie Booth—Direct.

Q. Did you not change the characteristics of any package, did you? A. No, sir.

Q. And you did not borrow this car that afternoon? A. No, sir.

Q. And you did not tell Dominic De Bellis that you wanted to go over to see your sister to get some money or to pay her some money? A. No, sir.

Cross-examination by Mr. Kavanagh:

Q. What time did you return the car? A. I did not return the car.

Q. What time did you get back to Newark? A. About 9:30.

Q. About 9:30 that night? A. Yes.

Mrs. Minnie Booth, sworn for the State in rebuttal.

Direct examination by Mr. Hansen:

Q. Where do you live, Mrs. Booth? A. Newark.

Q. What street do you live on? A. 108 New Street.

Q. Do you know this man (indicating Rupprecht)? A. Mr. Dunn.

Q. He and his wife were living with you at that address? A. Yes.

The Court: Whom did she identify?

Mr. Hansen: Indicating Rupprecht.

Q. He was living at your house with his wife? A. Yes, sir.

Q. And you also know this man De Bellis, (indicating the defendant)? A. Yes.

Q. You have seen him? A. Yes, sir.

Q. And you are here this day under subpoena to testify on behalf of the state? A. Yes, sir.

Q. You knew Rupprecht as Dunn, didn't you? A. Yes, as Mr. and Mrs. Dunn.

Q. How long did they live at your place, at the same address you lived at? A. I couldn't tell exactly but nearly two months.

Q. Are you the landlady there or the owner? A. I look after the house for the lady and collect the rent for her.

Q. What kind of a house is it, a furnished room house? A. A furnished room house.

Q. And did Dunn and his wife have rooms upstairs or downstairs? A. Upstairs.

Q. How far, second floor—how many floors are there in the house? A. Two floors and a basement.

Q. Where did Dunn live? A. Up on the 2nd floor.

Q. And he lived there with his wife? A. Yes, sir.

Q. Do you remember when Dunn was arrested? A. Yes, sir.

Q. Do you remember the date? A. The third of December.

Q. Was he arrested at your home, where you live? A. Yes, he was arrested.

Q. Detectives came there and arrested him in the house, did they? A. Yes, early in the evening.

Q. Do you remember any day previous to that, when this defendant, Dominic De Bellis, came to your place, where you lived, and came into the house to see Mr. Dunn? A. Yes, sir.

Q. Do you remember that time? A. I remember.

Q. How did he come there, on foot or in an automobile? A. In an automobile.

Q. What was the color of the automobile? A. Red and tan.

Q. What kind of a car was it? A. Well, I am not a very good judge of cars.

Q. Was it a closed car or open car? A. It was closed, with side curtains, I think, and it has small windows.

Q. You say it was red and tan? A. Yes.

Q. Had you seen that car before? A. Frequently, it came to the house.

Q. Who came in the car with Dominic there? A. Well, I have seen different young men that called but I could only recognize one.

Q. Just stand up, Dominic.

(Defendant De Bellis stands up.)

Do you recognize that man? A. Yes, that is the man.

Q. You are sure that is the man that came to visit Dunn at your home, where you lived? A. Yes, sir.

Q. Is there any question in your mind about that? A. No.

Q. Do you know whether there is a restaurant at 26 New Street? A. A restaurant?

Q. Well, do you know whether there is a restaurant there? A. There are restaurants on New Street, but I couldn't tell you the number.

Q. Do you know whether this man Dominic De Bellis whom you have just identified, whether he had a restaurant in New Street? A. Well, I know he had a spaghetti house in New Street.

Q. You just heard that, did you? A. I heard that.

Q. Now, the day he came to your house what time of the day was it? A. Afternoon.

Q. Afternoon, about what time? A. Well, I couldn't tell exactly, but the middle of the afternoon, or probably a little earlier, I can't recall.

Q. Did you open the door for him? A. I opened the door for him.

Q. Did you have any talk with him? A. Yes.

Q. Did he tell you whom he wanted to see? A. Mr. Dunn.

Q. What did he do then? A. Went upstairs.

Q. Did you see him when he went out? A. Mr. Dunn went out with him.

Q. You saw them go out together? A. Yes.

By the Court:

Q. How many days was that before Dunn was arrested at your home? A. I can't tell you how many days.

Q. About how long? A. It seemed shortly after.

Q. You mean Dunn was arrested shortly after that? A. Yes, sir.

By Mr. Hansen:

Q. By shortly after, what do you mean by that?

The Court: I suppose that is probably as accurate as she can give it.

A. It may be a week or longer, I couldn't tell just exactly.

Q. Then he was arrested? A. Yes, sir.

Q. Did you see whether they got into the car on that occasion? A. Yes.

Q. You lived on the first floor, did you? A. The first floor, yes.

Cross-examination by Mr. Kavanagh:

Q. Now, Mrs. Booth, you told the court and jury a moment ago that you heard the man who visited your house to call on Dunn had a spaghetti house, is that a fact? A. Yes.

Q. Please tell us who told you that he had a spaghetti house? A. Mr. Dunn.

Q. Did he tell you the place in Newark where he had this spaghetti house? A. (No response.)

Q. You know that the man who visited at your house to call on Dunn, who lived at your house, was not this Dominic De Bellis but his brother John De Bellis, who had the spaghetti house on 170 Bank Street, Newark, you know that, don't you? A. No, I do not.

Q. Don't you know, madam, that the man who visited your house on many occasions to call on this man Dunn is the brother of Dominic De Bellis, a man who is not here to-day, who is not here for trial today, and who looks of course like this defendant there?

The Court: That is not your case, Mr. Kavanagh. You are assuming that and asking this witness to assume.

By the Court:

Q. Did you ever see the brother of this man? A. There has been different men coming but I never recognized only one.

Q. You are sure this is the man? A. That is the man, I never was mistaken.

By Mr. Kavanagh:

Q. You never were mistaken? A. I couldn't be mistaken.

Q. Did anybody tell you this morning that you were to identify that young man as the man? A. Did anybody tell me?

Q. Yes. A. I know him.

Q. But you don't know his brother John, the man who has this spaghetti house, the man that Mr. Dunn told you had this spaghetti house in Newark?

By the Court:

Q. Do you know John De Bellis, to the best of your knowledge? A. No.

By Mr. Kavanagh:

Q. There were other men who visited Dunn in your boarding house, weren't there, madam? A. Different ones.

Q. Quite a number of others? A. Yes, sir.

Q. Do you know who they were? A. No, sir.

Q. Do you know their names? A. No, sir.

Q. Did he tell you what their businesses were? A. No.

JOSEPH RUPPRECHT, recalled further in rebuttal.

Direct examination by Mr. Hansen:

Q. Did you make any effort, Rupprecht, to have your wife here this morning? A. Yes.

Q. You tried to get her here? A. Yes.

Q. And could not get her here? A. No.

Q. You have not seen her since you were arrested, have you? A. She came to see me several times in the jail.

Q. You don't know where she is living? A. I knew, but can't find it.

Q. What do you mean? A. I could not locate the number; I had a letter from her but do not have the letter any more that has the number.

Q. There was no way in which you could telephone, then? A. No.

Q. And no way you could send to her to be here this morning? A. No, sir.

Q. Do you know where she is employed? A. I don't know; I had the number, that's all.

Q. And you have not that number now? A. No.

By the Court:

Q. Did you ever say this John De Bellis had a spaghetti house? A. John De Bellis called one time and they objected to his entering the house, her husband did, and he told her he was all right, he was John De Bellis, and that he owned the spaghetti house.

Cross-examination by Mr. Kavanagh:

Q. What is your wife's maiden name? A. Matto.

Q. What is her first name? A. Matilda.

Q. When were you married? A. 1923.

Q. What day?

Mr. Hansen: I object to that as not proper cross-examination.

The Court: How would it be material.

Mr. Kavanagh: To test his credibility.

The Court: You are bound by it.

Mr. Kavanagh: I am.

A. The 11th day of June, 1923.

Q. By whom were you married? A. By Hopper, North Bergen.

Q. Where did you receive your license when you were married? A. From Union Hill.

Q. From whom? A. I don't recall the name, it was on the license, but I don't recall the name.

Q. Union Hill? A. Yes, sir.

Q. What day did you get a license from Union Hill? A. I don't recall the day, it was about a week previous.

Q. About a week previous? A. Something like that.

Mr. Kavanagh: Will your Honor give me ten minutes' adjournment, if you please?

The Court: I told you you were bound by his answer.

Mr. Kavanagh: I know, but I have a right to show what he is testifying to now is not true.

The Court: It is an extraneous matter and I told you you were bound by his statement.

Mr. Kavanagh: Does your Honor hold I have no right to contradict?

The Court: Yes, you have a right to contradict on any matter that is not extraneous to the examination, but you are bound by his evidence.

Mr. Kavanagh: I take an exception.

The Court: As far as that goes, you have not attempted to contradict his evidence. You are asking for ten minutes' adjournment, and I presume that is the purpose of your request.

Mr. Kavanagh: To bring the Clerk.

The Court: If you can have him here in ten minutes you can have the adjournment, and I will rule on your efforts at that time.

Q. What was the date on the license? A. The 11th day of June, about week previous; I got married on the 11th day of June, 1923.

Mr. Kavanagh: Your Honor will give me ten minutes' time?

The Court: You can telephone from my chambers and he can be coming down in the meantime while we are going on with the case.

Mr. Hansen: I am through, I don't know what Mr. Kavanagh has.

Mr. Kavanagh retires from the room and returns.

Mr. Kavanagh: He will be here in 15 minutes, your Honor.

The Court: Well, if the case goes on that length of time, Mr. Kavanagh.

Q. Are you sure, Mr. Rupprecht, that you received a marriage license from the register of vital statistics of the town of Union, a license for you, Joseph Rupprecht and Matilda Matto to be married under the laws of the State of New Jersey, is that right? A. Yes, sir.

Q. Around the middle of June, 1923. A. Yes, sir.

Q. No doubt at all about that? A. No, sir.

Q. And that license was issued to you and the young lady, Matilda Matto, and about a week after it was issued you were married by the Reverend Isaac Hopper of what church? A. I forget the name of the church.

Q. Can you tell the court and jury where the

church was located. A. I think they call it West New York, I don't think they call it North Bergen.

By the Court:

Q. Those North Bergen towns run into one another.

By Mr. Kavanagh:

Q. You think it is West New York? A. I think it is.

Q. Do you know what street it is in West New York? A. I don't know all the streets up there.

Q. You don't know what street it was on in West New York? A. No, sir.

Q. Where did you go to live after you were married to Matilda Matto? A. Jersey City.

Q. Did you take up housekeeping? A. We took furnished rooms.

Q. Whereabouts? A. On Wayne Street.

Q. What number? A. I think 78.

Q. 78 Wayne Street? A. Near Barrow.

Q. Who owned that house? A. I don't know who owned that house, we rented it from Jewish people, I don't know whether they owned it or not.

By the Court:

Q. They were the ones you paid the rent to? A. Yes, sir.

By Mr. Kavanagh:

Q. You don't know the names of the people who owned the house or the name of the people to whom you paid the rent? A. No, sir.

Q. How long did you live at 78 Wayne Street? A. About four and a half months.

Q. Now, Mr. Rupprecht, isn't it a fact that you are not married at all? A. No, sir.

Q. You are married? A. Yes, sir.

Q. And you were married about a week after this certificate was issued? A. About a week after.

Q. In June, 1923, by the Clerk of the Bureau of the Vital Statistics in Union Hill? A. Yes, if I got the license there.

Q. You got to Newark that night about half past nine, you say? A. About half past nine.

Q. Who came back with you? A. Dominic De Bellis.

Q. Who else? A. And two other fellows.

Q. What are the other fellows' names? A. Lewis and I never got acquainted with the other fellow, his name wasn't mentioned.

Q. Lewis and Dominic De Bellis, yourself and the other fellow whom you never got acquainted with? A. I don't recall hearing his name, just thought he was all right.

Q. Did he participate in the hold-up? A. Yes, sir.

The Court: Now, Mr. Kavanagh, this is a re-examination, and you are supposed to limit yourself to what was brought out when Mr. Hansen recalled him. I do not want to shut you off but you touched on all these matters on your cross examination yesterday.

Mr. Kavanagh; I do not agree with your Honor, if your Honor please.

The Court: I am sorry you do not, but fortunately I am the one to rule.

Mr. Kavanagh: I could not cross exam-

ine on the fact of his coming back to Newark at half past nine on that particular night because it was not brought out yesterday.

The Court: You are supposed to limit yourself to a re-examination on the testimony that the Prosecutor brought out.

Mr. Kavanagh: And what he brought out was that he returned to Newark at half past nine.

The Court: My recollection is that you brought it out.

Mr. Hansen: I know Mr. Kavanagh is stalling for time, for the Clerk to be down here from Union Hill.

Mr. Kavanagh: There is nothing wrong about that.

Mr. Hansen: No, I do not blame you for that.

Mr. Kavanagh: In the interests of justice, there is nothing wrong with it.

The Court: Well, we do not want speeches.

Mr. Hansen: The State has finished with its case, although I do not want to exclude any testimony Mr. Kavanagh wants to put in.

The Court: It does not make any difference so far as the issue in this case is concerned, whether this man was married or living in open lewdness with this woman. The question is, is this man De Bellis guilty of highway robbery or not guilty? At the proper time I am going to rule on that, and if Mr. Kavanagh has any proof to offer when this case is finished, I will rule on it then.

Mr. Hansen: I understand your Honor to say if the case was finished before he got here you would not wait.

Mr. Kavanagh: Do I understand your Honor that Mr. Greeley, the Clerk of Vital Statistics of Union Hill——

The Court: I told you I would rule on that at the proper time.

Mr. Kavanagh: I will assume the responsibility of telling the court at this time.

The Court: You can't tell the court at this time what you are going to prove, but you will put your proof in at the proper time and if you have anything to offer, the court will rule on it then.

Mr. Kavanagh: All right, your Honor, that is all.

DOMINIC DE BELLIS, recalled in rebuttal.

Direct examination by Mr. Kavanagh:

Q. What is your brother's name?

Mr. Hansen: I object to that. He has testified to that before, everybody knows his name is John.

By the Court:

Q. Have you more than one brother? A. Yes, sir.

By Mr. Kavanagh:

Q. What is your brother's name, the one who was indicted with you and the others in this case? A. John De Bellis.

Q. And he is the man who did not appear? A. Yes.

Q. What is his business? A. In the restaurant business.

Q. Where?

The Court: He was in the spaghetti house.

Q. Where? A. On Bank Street.

Mr. Hansen: I object to that.

The Court: Objection sustained.

Q. Do you know as a matter of fact, Mr. De Bellis, whether your brother John ever lived with this man Jack Dunn at 108 New Street, Newark? A. No, he never lived there, but he told me he visited the place.

Mr. Hansen: I object to what he told him.

The Court: Objection sustained.

Q. Did you ever visit this place? A. No, sir.

Q. Did you ever visit this place and did you ever see Mrs. Booth before you saw her in court on the stand this morning? A. Yes, I have seen her many times pass my restaurant.

Q. Did you ever go to her house and ring her bell at any time? A. No, sir.

Q. When you got out of the car to meet this Jack Dunn at her house? A. No, sir.

The Court: He has already denied that, he denied yesterday that he was over there.

Mr. Kavanagh: I have one more witness, if your Honor please.

Cross-examinatoin by Mr. Hansen:

Q. You have testified you knew Mrs. Booth, saw her pass your place? A. I have seen her pass my store.

Q. Do you know where she lives? A. No.

Q. Why do you hesitate? A. I say no.

Q. You say you don't know? A. She must have been living around there if I saw her pass my place.

Q. You are right in the same neighborhood? A. I believe so.

Mr. Kavanagh: Now, if your Honor please, I have another witness, a very important witness in this case. He is on his way down and I assure your Honor he will be here in 15 minutes at the latest, and I respectfully ask your Honor to adjourn court a few minutes in the interest of justice.

The Court: Why is not this witness here now, Mr. Kavanagh?

Mr. Kavanagh: I could not have had him.

The Court: You examined Rupprecht at some length yesterday afternoon, and Rupprecht testified he was married and was living with his wife, therefore the statement of his marriage is not a surprise to you, and if it is an afterthought to you this morning that he was not married and you have not got your witness here, it is your fault.

Mr. Kavanagh: I will answer your Honor by saying that I believed Rupprecht, when he testified yesterday afternoon, was married, but I receive information at a quarter to ten o'clock this morning that he was not

married, and I did the best I could in the very short space of time I had.

The Court: So you can get your position fully stated on the record, I assume you are asking the court to wait until the witness arrives with something from the Bureau of Vital Statistics?

Mr. Kavanagh: Mr. Greeley, the Register of Vital Statistics of Union Hill, yes.

The Court: And you expect to prove by him that he is not married?

Mr. Kavanagh: Yes, sir.

The Court: Then the court will pass upon your application, and the court will rule out this testimony on the ground that it is extraneous matter, and therefore not competent to this issue.

Mr. Kavanagh: For the purpose of contradicting the testimony of this witness Rupprecht?

The Court: For the purpose of contradicting the testimony that he was married in June, 1923, the court rules on that fact, that it is extraneous to this issue, and therefore not competent, and you can have an exception to my ruling.

Mr. Kavanagh: Then I take an exception, your Honor. That is the defendant's case.

The Court: You may proceed to sum up.

Mr. Kavanagh sums up for the defense.

Mr. Hansen sums up for the state.

The Court thereupon charged the jury as follows:

The Court: Gentlemen of the jury: The defendant, Dominic De Bellis, is on trial before you

charged with the crime of robbery. There have been four indictments returned against this defendant by the grand jury of our county. By consent of counsel for the defense, the defendant is on trial before you on the four indictments. Each one of those indictments charges a separate and distinct defense, and therefore you are going to decide the innocence or guilt of this defendant on four separate indictments, each offense being the offense of robbery.

Indictment number 17 substantially charges that on the 21st day of November, 1924, this defendant committed robbery on one Victor White, and robbed the said Victor White of two dollars, lawful money of the United States of America. That indictment is number 17, December Term A. D. 1924.

Indictment number 18, December Term 1924, substantially charges that on the same date, to wit, November 21, 1924, at the same place, that is, in the Township of North Bergen, in the County of Hudson, the defendant Dominic De Bellis committed robbery on one William F. Cole, of $497., lawful money of the United States of America, and groceries and dry goods of the value of $120., which were the goods and chattels of R. H. Macy & Company, a corporation.

Indictment Number 19, December term, 1924, substantially charges that the defendant Dominic De Bellis committed robbery on one Harry J. Norton by robbing him of twelve dollars ($12.) in lawful money of the United States of America, at the same place and on the same date.

And indictment number 20, December Term, 1924, substantially charges that the defendant committed robbery, on the same date, November 21, 1924, at the same place, in the Township of

North Bergen in said County of Hudson, upon one William F. Cole, by robbing said William F. Cole of eight dollars ($8.) lawful money of the United States of America, and ferry tickets of the value of one dollar, which were the property of said William F. Cole.

Now, gentlemen, you will notice there are two indictments herein which the name William F. Cole is mentioned. One of those indictments charges that the defendant committed robbery on William F. Cole by taking from said William F. Cole the property of R. H. Macy & Company. The other indictment charges that the defendant took from William F. Cole, eight dollars, lawful money of the United States of America, and ferry tickets of the value of one dollar.

Upon examining the indictments you will find that each indictment was returned against three defendants, Dominic De Bellis, John De Bellis and Joseph Rupprecht, alias Joseph Dunn, alias Charles Anders, alias Red Ruppert, but there is only one person on trial here, and that is Dominic De Bellis, John De Bellis not appearing on the trial of the case, and the defendant Joseph Rupprecht having entered a plea of guilty on each charge.

I shall read you so much of our statute as defines robbery:

"Any person who shall forcibly take from the person of another money or personal goods and chattels, of any value whatever, by violence or putting him to fear, and with aiders, procurers and abettors, shall be guilty of a high misdemeanor."

Now, gentlemen of the jury, this defendant is presumed by our law, as all defendants are in all criminal cases, to be innocent. The burden of

proof is cast upon the State in this case, as it is cast upon the State in all criminal cases, to establish the guilt of the defendant beyond a reasonable doubt.

A reasonable doubt is that state of the case which after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that state that they cannot say they feel an abiding conviction to a moral certainty of the guilt of the accused. If you have such doubt as that, gentlemen of the jury, after a comparison and consideration of all the evidence in this case, you will resolve that doubt in favor of the defendant, and you will find him not guilty.

Now, gentlemen of the jury, you will notice from my reading of the statute, that any person who shall forcibly take from the person of another money or personal goods and chattels of any value whatever, by violence or putting him in fear, and his aiders, procurers and abettors, shall be guilty of a high misdemeanor.

I stress that point, gentlemen of the jury, because the counsel for the defense, in his summing up, made a remark which might puzzle you. He made a remark about the testimony of Rupprecht incriminating the defendant, but at the same time saying that he was not involved in this robbery, and that he took no part in the sticking up of the guns against the employees of Macy & Company, who were robbed.

The State's contention, if the Court understands the testimony, is that the defendant Dominic De Bellis was not actually one of the men who used a gun and who robbed the employees of R. H. Macy & Company of their own property and the property of R. H. Macy & Company. The State contends, if the Court understands the

situation, that the defendant Dominic De Bellis aided and abetted that robbery by furnishing the motor car which was used by the robbers, by furnishing a pistol, and by driving the actual robbers to the scene of the robbery. If you believe that, gentlemen of the jury, if you believe that the defendant Dominic De Bellis did furnish this motor car or that he did furnish one of the guns, or that he was the driver of this automobile and drove these other robbers to the scene of the robbery, knowing that the robbery was to be perpetrated, then under those circumstances the defendant Dominic De Bellis would be aiding and abetting the robbery, and is just as guilty as the men who were actually using the gun and who separated the men, Cole, Norton and Whit. from their own property and from the property of R. H. Macy & Company.

Now, gentlemen of the jury, this case has taken quite some time to try, and it is a very important case. The defendant is charged with robbery, one of the most serious cases on our statute books. Therefore, in deciding this case you should really keep in mind the seriousness of it and you will approach and consider the evidence having in mind that your responsibility is a grave responsibility. It is grave not only so far as the defendant is concerned, but grave so far as the State of New Jersey is concerned, because this defendant is charged with a very serious crime. If he is not guilty you should not find him guilty, but if he is guilty, gentlemen of the jury, it is your duty equally to find him guilty.

Now, the facts are in rather a narrow compass. The State offers proof by the witness Rupprecht, who has taken the stand and who has admitted that he participated in this hold-up. He says that

he was one of the men, that he used the gun, that he put the gun up against the bodies of Cole, White and Norton, on the date in question, November 21, 1924; so that, apparently, gentlemen of the jury, the stories told by Cole, Norton and White, so far as the robbery is concerned, are the truth. Apparently, there is no doubt a robbery actually took place, and that it happened on the date in question, and that it took place at the place where these men say it did take place, in North Bergen in this county.

What you have to decide in this case is not whether Rupprecht is involved in this case. You have to decide in this case whether Dominic De Bellis is a person concerned in this robbery, and one of those defendants named in the four indictments.

De Bellis says he is not involved in this case; that he knew Rupprecht only a short time before this trouble happened; that he runs a restaurant in conjunction with his father, I believe the testimony was, in Newark, and that Rupprecht made a practice or habit of coming to his restaurant and taking his meals there. That after an acquaintance of three weeks or a month Rupprecht came in one day and asked him for the loan of his car, that thereupon he loaned Rupprecht the car and that Rupprecht was to have it back at his restaurant by five or half past five, if I recollect the testimony correctly, and that said Rupprecht did not bring back the car until about half past seven or eight o'clock, or half past eight, as you will recall the testimony; that when Rupprecht brought the car back he gave to De Bellis some curtains which were afterwards found in the restaurant of John De Bellis, and that he told De Bellis they represented a gift for the loan

of the car, that his sister gave him to give to De Bellis, or words to that effect, and also that his sister had given him money to pay his room rent, or words to that effect.

Now, gentlemen of the jury, it must be quite manifest to you that both Rupprecht and De Bellis are not telling the truth. Rupprecht says that he took part in this robbery, and that De Bellis also took part in it. He says that De Bellis did not use any one of the guns, and that De Bellis did not take a hand in separating Cole, Norton and White from their own property or from the property of Macy & Company, but he says that De Bellis came to him at his boarding place in Newark, and told him something about a job; that when he and De Bellis got down in a red automobile, which was then outside the house, De Bellis told him the job was on the R. H. Macy wagon, a C. O. D. wagon, I believe; that he then went with De Bellis, and, as the court recalls his testimony on that matter, he went into a lot of details as to how on the way from Newark to Jersey City, they got five gallons of gasoline, and that De Bellis paid for the gasoline, and that they arrived in Jersey City and picked up two men; the court forgets whether it was one or two, but you will remember that point—and that one of the men was called Lewis, and the other he never did ascertain his name; that after the four men were in the car they drove up to Woodcliff, which, as a matter of common knowledge, is part of the Township of North Bergen, and that they drove around up there for a while and finally spotted the R. H. Macy wagon, which was subsequently held up; that after seeing the wagon they followed, and finally, when they got it at a particular spot, De Bellis drove the car to within fifty feet or

one hundred feet of the wagon, and the other defendant, or rather, the witness Rupprecht and the other men, got out of the car and went over and actually perpetrated the hold-up. If the court recalls the testimony correctly, at no time did the car in which De Bellis was sitting get very close to the Macy wagon. One of the witnesses have testified that the car passed the Macy wagon, I believe, after the hold-up was perpetrated.

Now, gentlemen of the jury, it is for you to decide whether Rupprecht is telling the truth in this case or whether De Bellis is telling the truth. One of those two men is lying. You, gentlemen of the jury, are the judges of the facts and the sole judges of the facts in this case. Which of those two men who have taken the stand have told the truth? In that consideration you may ask yourselves whether or not you believe that Rupprecht has any motive in involving De Bellis in this case. Rupprecht, as you will recall, has taken the stand and has admitted his own guilt. Has he any motive in involving Dominic De Bellis in this case and trying to put some guilt on Dominic De Bellis' shoulders? If you decide that he has a motive, that he is not telling the truth, that he has come here and has told all about De Bellis for some ulterior purpose of his own, you will, of course, reject his testimony. In that consideration, there has been some testimony to the effect, as the court recalls the testimony, that De Bellis and Rupprecht were not exactly enemies, but De Bellis has said, that to the best of his knowledge, he has always treated Rupprecht with consideration, and that he knows of no motive which would prompt Rupprecht in taking the stand and in trying to connect him with the case.

Irrespective of that, gentlemen of the jury, you

are the judges of the facts, and although no motive has been advanced in this case explaining why Rupprecht would try to involve De Bellis in this case, nevertheless, if you decide that Rupprecht did have a motive, if you decide that his testimony is not true, you will reject his testimony, and if you reject Rupprecht's testimony it will be necessary for you to find the defendant De Bellis not guilty, because the State's case practically rests or falls on the testimony of Rupprecht.

Now, gentlemen, you will have to decide whether the witnesses called by the defendant, who have testified as to his presence in this restaurant on November 21st were telling the truth or whether they are mistaken. Those are facts for you and for you alone, to decide. You will have also to decide whether or not Mrs. Booth, who took the stand here this morning, and who said Dominic De Bellis was the man who called in a red automobile at her house about a week or more before Rupprecht was arrested at her house, and who came in and saw Rupprecht—he says that she cannot be mistaken that De Bellis is the man—it is for you to decide whether or not she is telling the truth or whether she is mistaken.

The Court should emphasize to you that when it becomes a question of fact in this case, you gentlemen are the judges, and you alone. The Court's duty is to help you on the law and leave you to decide the facts, and you alone.

Now, gentlemen of the jury, if I have neglected to mention any portion of the evidence that does not mean to say that you are only to consider the brief summary of the evidence I have made for you, but you are to consider all the evidence in this case, and you are to decide the case on all the evidence in it, and therefore, if I have misstated

any portion of the evidence, if my recollection does not accord with your recollection, you must take your own recollection of what the evidence is; and if the counsel for the defense or the Assistant Prosecutor, in their summations, have mistaken or mistated any portion of the evidence in the case, which is at variance with your recollection, you are to disregard what they have said, and take only your own recollection of it.

Now, gentlemen of the jury, you took an oath at the outset of this case that you were going to decide this case upon the testimony, as the law was given to you. Therefore, gentlemen of the jury, that oath that you took is just as sacred and just as binding on you as the oath of the Prosecutor of this county took to do his share in the administration of justice in this county, and is just as sacred and just as binding as the oath that this court himself took to carry on the administration of justice in this county, according to the best of his ability and understanding. The court trusts that you are going to be mindful of that oath, and that you are going to decide this case on the evidence in the case, and upon the evidence alone. When the jury does that, gentlemen, the people of the county and the people of this state can have no fault to find, because a jury has been found conscientious and the jury has been honest. That is what we all are here for, you as jurors, the Prosecutor representing the State, and the Court representing the law. We are all here to do our share in the carrying on of justice in this county, that the defendant should not be convicted in this case unless the State has satisfied you beyond a reasonable doubt of his guilt.

On the other hand, if the State has satisfied you

beyond a reasonable doubt of the guilt of the defendant the defendant should be convicted at your hands, because of his participation in a very serious crime.

Now, gentlemen of the jury approach this case and the consideration of it without any passion or prejudice of any kind, and without any sympathy. You should not convict this defendant because of any passion or prejudice of any kind, and you should not acquit him because of any sympathy. If he is guilty, he is guilty upon the evidence that has been produced before you, and if he is guilty he is not entitled to any sympathy.

Now, gentlemen, you will find that each one of the indictments contains a second count alleging that the defendant committed an assault and battery, on the same date in question, November 21, 1924, in the township of North Bergen, upon the respective complaining witnesses.

An assault and battery is any unlawful application of force, exerted by one person upon the body of another. You will not have to consider the second count of the indictment, gentlemen of the jury, unless you determine that no robbery was committed. If you determine that a robbery was committed on the date in question, you will concern yourselves only with the first count of the indictment, which charges robbery; and if you determine that a robbery was committed, then you proceed to the next step and determine whether or not Dominic De Bellis, the defendant on trial was involved in that robbery. If you determine that he was, you will find him guilty. If you determine that he was not, you will find him not guilty. If, on the other hand, you determine that no robbery was committed on this day you will then determine the second count of the indictment, and determine

whether or not the defendant is guilty of assault and battery. But it must be quite manifest to you, gentlemen of the jury, that the defendant in this case is either guilty of robbery or he is not guilty of any offense, because neither White, nor Cole, nor Norton say that the defendant De Bellis used a weapon, or that he made any threats or put them in fear, in any manner, shape or form; nor does Rupprecht say that. Rupprecht says that De Bellis furnished the car, furnished one of the guns, drove Rupprecht and the other defendants to the scene of the robbery, and afterwards shared in the proceeds of the robbery. Of course, if that is true De Bellis is guilty of robbery. On the other hand, if that is not true, I do not see how you can find this defendant guilty of assault and battery, because there is no testimony that he committed an assault and battery in the case. The allegation is that he committed and abetted this robbery. If that is true, find him guilty; if not true, find him not guilty.

Now, gentlemen of the jury, I say to you again, that this is a very serious case, not only from the standpoint of the defendant, but from the standpoint of the State of New Jersey. A wagon belonging to one of the leading merchants of the City of New York has been apparently held up and robbed in our county. There is one way to stamp that out, one way to wipe that out, and that is to convict where the evidence warrants a conviction, where the evidence satisfies the minds of the jury beyond a reasonable doubt as to the guilt of the defendant on trial. If the evidence has done that in this case, gentlemen of the jury, if you are convinced by the evidence beyond a reasonable doubt that the defendant was involved in this robberty,

then it is your duty, under your oath, to find him guilty.

Mr. Kavanagh: I take a general exception to the whole of the Court's charge.

The jury thereupon retired in custody of an officer.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.:

I, ROBERT V. KINKEAD, Judge of the Hudson County Court of Quarter Sessions and the Judge who presided over the aforesaid cause, certify that the above book contains the entire record of the proceedings had upon the trial of the said cause and that the same is returned by the plaintiff-in-error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

ROBERT V. KINKEAD,
Judge,
Hudson County Common Pleas,
Quarter Sessions, etc.

Specification of Causes for Reversal.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant-in-Error, *vs.* DOMINICK DE BELLIS, Plaintiff-in-Error.	On Writ of Error.

Sir:

PLEASE TAKE NOTICE that the following is a specification of the causes relied upon by the plaintiff-in-error for a reversal of the judgment of conviction had in the Court below:

1. The Court below refused to direct a verdict of acquittal at the conclusion of the State's case, tho moved to do so on the ground that the State's case demonstrated that plaintiff-in-error was not at the scene of the robbery and that he did not participate in any way in the commission of the crimes charged in the indictment.

2. The verdict is against the weight of the evidence.

3. The Court below erroneously charged the jury as follows:

"A reasonable doubt is that state of the case which after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that state that they cannot say they feel

an abiding conviction to a moral certainty of the guilt of the accused."

4. The Court below allowed Joseph Rupprecht, indicted with plaintiff-in-error to plead guilty in the presence and hearing of the jury, to the crime for which plaintiff-in-error was on trial, altho Joseph Rupprecht was not on trial before said jury, to the prejudice of plaintiff-in-error.

Respectfully,

WILLIAM A. KAVANAGH,
Attorney for and of Counsel with
Plaintiff-in-Error.

To:

JOHN MILTON, Esq.,
Prosecutor of the Pleas.

Assignments of Error.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, *vs.* DOMINICK DEBELLIS, Plaintiff-in-Error.	ON ERROR.

Afterwards, to wit, in the Supreme Court of Judicature of the State of New Jersey, comes the said Dominick DeBellis, the Plaintiff-in-Error, by William A. Kavanagh, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and sustained in the entire record of the proceedings had upon the trial, bringing up the exceptions as signed and sealed in the cause, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

1. The verdict is against the weight of the evidence.

2. The verdict is against the evidence.

Plaintiff-in-Error prays that the judgment may be reversed for the aforesaid reasons.

WILLIAM A. KAVANAGH,
Attorney for and of Counsel with
Plaintiff-in-Error.

Joinder in Error.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, *vs.* DOMINICK DEBELLIS, Plaintiff-in-Error.	ON ERROR.

And thereupon the State of New Jersey, defendant-in-error, by John Milton, its attorney, comes into court and says, that there is no error either in the record and proceedings aforesaid or in the giving of judgment aforesaid, and it prays here, that the court here may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and the judgment aforesaid, in the manner aforesaid, given, may, in all things, be affirmed, etc.

JOHN MILTON,
Attorney for Defendant-in-Error.

28MAY.I.1927

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, Defendant-in-Error, *vs.* DOMINICK DEBELLIS, Plaintiff-in-Error.	ON WRIT OF ERROR.

BRIEF FOR DEFENDANT-IN-ERROR.

DOMINICK DEBELLIS was convicted by a jury in the Hudson Quarter Sessions of the crime of robbery. The salient facts in the case are that on November twenty-first, Nineteen hundred and twenty-four, DeBellis in company with three other men started from the City of Newark to do a "Job" in Hudson County. One of Macy's delivery wagons in the Township of North Bergen was held up by DeBellis and his pals and the driver and helper were robbed and a considerable quantity of goods was taken from the Macy wagon. The holdup was done with drawn guns.

POINT I.

There was no error in allowing Rupprecht to change his plea in the presence and hearing of the jury.

DeBellis was jointly indicted with Rupprecht and another DeBellis, a brother of the plaintiff-in-error, who was a fugitive from justice at the time of the trial (S. C., p. 100, l. 20). After the

case was moved for trial the defendant Rupprecht changed his plea to one of guilty. Surely no manifest wrong or injury was done the plaintiff-in-error by permitting such a plea. That the Assistant Prosecutor indicated to the Court the desire of Rupprecht to change his plea did not harm DeBellis. DeBellis' defense was an alibi, and such a defense could not be affected by Rupprecht pleading guilty. Furthermore, no objection was made to this proceeding by the plaintiff-in-error at the time it was done.

POINT II.

The Court properly refused to direct an acquittal at the close of the State's case.

The specifications of cause for reversal relied upon to sustain DeBellis' contention under Point II of his brief reads:

> "The Court below refused to direct a verdict of acquittal at the conclusion of the State's case though moved to do so on the ground that the plaintiff-in-error was not at the scene of the robbery and that he did not participate in any way in the commission of the crime charged in the indictment."

That there is abundant testimony to show, in the State's case, that DeBellis participated in the robbery is very evident from a reading of the testimony of Rupprecht (S. C., p. 30 *et seq.*). Under this point counsel tries to argue that DeBellis at most could only be an accomplice. This cannot be; the testimony shows that DeBellis was actually at the scene of the robbery, drove himself and the other robbers to the scene of the crime in a car which he provided, and carried away

the loot and the robbers, remaining at all times within fifty feet of the robbery in the car, and provided a gun for one of the other robbers (S. C., p. 32, l. 33). This testimony shows DeBellis to be a principal and not an accessory. One of the participants, the driver of the car who remained at the wheel, no doubt to afford a better get away in case of some surprise or unlooked for circumstance, a lookout.

POINT III.

The verdict was in accordance with the evidence.

There is no error in the charge of the Court cited in plaintiff-in-error's brief under Point III. He submitted the question of DeBellis' guilt to the jury as a principal as the evidence showed he was.

The conviction should be affirmed.

Respectfully submitted,

JOHN MILTON,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

(1090) Pandick Press, Inc., 22 Thames St., New York, U. S. A.

New Jersey Court of Errors and Appeals

The State of New Jersey, Defendant-in-Error, *vs.* Dominick DeBellis, Plaintiff-in-Error.	On Writ of Error to Supreme Court.

BRIEF FOR PLAINTIFF-IN-ERROR.

Dominick DeBellis, plaintiff-in-error, was convicted in the Hudson Quarter Sessions for robbery. He brought error to the Supreme Court and the case was before that Court on Assignments of Error and Specifications of Causes for Reversal, under section 136 of the Criminal Procedure Act. The Supreme Court affirmed the conviction of the Hudson Quarter Sessions. The case comes to this Court on a Writ of Error to review the judgment of the Supreme Court.

Statement.

The evidence given by the State's witnesses tended to show: On November 21, 1924, an automobile delivery truck belonging to a New York department store was making deliveries in the Township of North Bergen. The time was about six o'clock at night, and the driver and his helpers had just returned from making delivery of several packages when three men jumped into the

truck with drawn revolvers and called upon the occupants of the truck to throw up their hands.

Thereupon the driver of the truck was ordered to turn the car around and to drive to 36th Street, North Bergen. The money in the pockets of the driver and his two helpers had then been taken, together with the bundles. The three men then jumped out of the truck, went down the street and got in a car.

The automobile in which the escape was made was a red, maroon touring car.

Several days later one Joseph Rupprecht was taken into custody by the police and was identified as one of the guilty men.

No witness identified plaintiff-in-error, but at the trial Joseph Rupprecht withdrew his plea of not guilty, pleaded guilty and turned State's evidence against plaintiff-in-error, testifying that plaintiff-in-error was an accessory in that he drove the maroon automobile.

The Jury found plaintiff-in-error guilty of robbery.

The assignments of error are two in number (Case, p. 160) and question the evidence and the weight of the evidence.

The specifications for reversal (Case, p. 158) are four in number and question the weight of the evidence, the refusal of the trial judge to direct a verdict of acquittal at the conclusion of the State's case, and the action of the Court in allowing Rupprecht to plead guilty in the presence of the Jury.

POINT ONE.

The Court allowed Joseph Rupprecht to plead guilty in the presence and hearing of the Jury.

[This point is covered by specification one (Case, p. 17).]

The record discloses that the court first exercised its discretion by way of granting a severance as to the brother of plaintiff-in-error, and then announced the appointment of counsel for Joseph Rupprecht. A jury was empanelled, declared satisfactory and sworn, whereupon the Assistant Prosecutor said (Case, p. 18): "At this stage, if your Honor pleases, Joseph Rupprecht desires to withdraw his plea of not guilty and enter a plea of guilty. I have told him that will be taken into consideration by your honor when you come to sentence."

The court will notice that the plea of guilty was not offered by counsel for Rupprecht and that the offer of the plea came rather swiftly after the jury had been sworn. We submit that thereby plaintiff-in-error was prejudiced in his defense by the action of the court in accepting the plea, and the action of the Assistant Prosecutor in announcing Rupprecht's capitulation.

POINT TWO.

The Court refused to direct a verdict of acquittal at the conclusion of the State's case.

[This point is covered by specification one (Case, p. 158).] At the conclusion of the State's case (Case, p. 64), counsel for plaintiff-in-error moved for the direction of a verdict on the ground

that the evidence showed that plaintiff-in-error did not participate in the robbery, as a principal.

Plaintiff-in-error was named in four separate indictments (Case, pp. 4-10) each of which indictments charged him in its first count with the commission of the crime of robbery. But the testimony of Rupprecht, for the State (Case, p. 32, l. 37) showed that plaintiff-in-error was at the most, under the evidence for the State, chargeable as an accessory.

Indeed, the learned trial court in its charge to the jury recognized this situation (Case, p. 151) and charged the jury that De Bellis was not an active participant in the robbery. Said the Court (Case, p. 152, l. 3) "De Bellis drove the car to within 50 feet or 100 feet of the wagon and the other defendant, or rather, the witness Rupprecht and the other men, got out of the car and went over and actually perpetrated the hold-up. If the court recalls the testimony correctly, at no time did the car in which De Ballis was sitting get very close to the Macy wagon. One of the witnesses testified that the car passed the Macy wagon, I believe, after the hold-up was perpetrated."

The cases in New Jersey uniformly hold that an accessory in felony cannot be convicted on an indictment charging him as the principal felon.

State vs. *Wyckoff,* 31 N. J. L. 65.
State vs. *Wilson,* 79 N. J. L. 241, at page 243.
State vs. *Spence,* 81 N. J. L. 265, at page 266.

We submit that the court should have granted the motion for the direction of a verdict, on the ground that the evidence of the State showed him to be at the most an accessory, and not a principal felon, as alleged in the indictment, and that the

denial of this matter of discretion caused plaintiff-in-error to suffer manifest wrong and injury.

State vs. *Jaggers,* 71 N. J. L. 281 (Errors and Appeals).

POINT THREE.

The verdict is against the weight of the evidence and against the evidence.

[This point is covered by specification two (Case, p. 158) and assignments one and two (Case, p. 160).]

We have previously charged that the trial court's refusal to direct a verdict of acquittal at the conclusion of the State's case was the denial of a matter of discretion that caused plaintiff-in-error to suffer manifest wrong and injury, and we now charge that in the alternative the verdict is against the evidence and the weight of the evidence.

Plaintiff-in-error was indicted solely as a principal and was convicted as such although the evidence discloses that at the most he was an accessory (*ante,* point two).

Said the late Chief Justice Beasley:

> "The crime of the accessory being dissimilar from that of the principal in its fundamental characteristics, must be distinctly charged in the pleadings. It has never been supposed that a count containing a statement of facts evincive of the fault of the party accused as a principal in a felony, was sufficient to warrant the conviction of such party as an accessory. 1 Chit. Crim. Law 271, 2 Id. 4; Wharton's Prac. of Indict. 97; State *v.* Seran, 4 Dutcher 519. In the case of Rex *v.* Plant, 7 Car., p. 575, it was expressly held

that one indicted as principal in a felony could not be convicted of being an accessory before the fact. See also Whart. C. L. 115."

State v. *Wyckoff,* 31 N. J. L. 65, at page 66.

We believe that the verdict probably resulted from the charge of the court, wherein the court said (Case, p. 149), "If you believe that, gentlemen of the jury, if you believe that the defendant Dominick De Bellis did furnish this motor car or that he did furnish one of the guns or that he was the driver of this automobile and drove these other robbers to the scene of the robbery, knowing that the robbery was to be perpetrated, then under those circumstances the defendant Dominick De Bellis would be aiding and abetting the robbery and is just as guilty as the men who were actually using the guns and who separated the men, Cole, Norton and White, from their own property and from the property of R. H. Macy & Company."

We submit that as far as the punishment for such an offense goes that the statute makes an accessory the equal of a principal in felony, but we urge that a man indicted as a principal should not be convicted when the evidence shows that he is no more than an accessory.

POINT FOUR.

In re opinion of the Supreme Court affirming the judgment of the Hudson Quarter Sessions.

The objection of the defendant-appellant, to the opinion of the Supreme Court affirming the judgment of the Hudson Quarter Sessions in that part of the opinion where the Supreme Court said that

there was no merit in the contention of the defendant-appellant that the verdict was against the weight of the evidence and against the evidence is set forth by the defendant-appellant as follows.

In the first place defendant-appellant most respectfully contends that the evidence adduced by him and corroborated by numerous witnesses for him to show that he was innocent of the charge of robbery made against him and that he did not or could not have participated in the crime by reason of the fact that he never left his store on the afternoon of the alleged crime, November 21, 1924, far outweighed the testimony of the co-defendant Rupprecht who, alone testified for the State that the defendant-appellant participated in the crime with him.

In addition to the testimony of the defendant-appellant and all of his witnesses corroborating him that he did not or could not have participated in the robbery, we also have the testimony of three witnesses for the State, namely, Messrs. Cole, Norton and White, who were present at the scene of the robbery, and who were the occupants of the truck and the men who were robbed; all of these State's witnesses positively swore that the defendant-appellant DeBellis was not near the scene of the robbery nor was he one of the men who confronted them with guns and took from their possession their money and the bundles from the Macy truck. This positive testimony of three of the State's witnesses that defendant-appellant was not present and did not participate in the robbery, coupled with the testimony of defendant-appellant himself, corroborated by four disinterested witnesses, surely must show to and impress the minds of this Honorable Court that the verdict found against this defendant-appellant was clearly against the weight of the evidence and against the

evidence itself, in as much as the only one that testified against said defendant-appellant was Rupprecht, who had heretofore been convicted of the crime of robbery, as shown by his testimony and therefore whose testimony should have been subject to great scrutiny.

It is, therefore, most respectfully and earnestly urged that the Supreme Court should have considered the whole case of the defendant-appellant and the strength of the defendant-appellant's case as compared with that of the State pursuant to P. L. 1921, page 95.

From the following resume of all the testimony adduced by the defendant-appellant and corroborated by his different witnesses that the said defendant-appellant did not or could not have participated in the robbery, and that the verdict of the jury was clearly against the weight of the evidence.

It is very respectfully contended that the Supreme Court after a careful comparison of all of the overwhelming testimony introduced by the defense to prove the innocence of the defendant with the testimony of Rupprecht alone, who even admitted that the defendant did not participate in the actual holdup and robbery, should have reversed the judgment of the Hudson Quarter Sessions on the ground that the verdict was clearly against the weight of the evidence and against the evidence introduced by the State.

Defendant, Dominick DeBellis, testified (Case, pp. 67-71) that Rupprecht had borrowed his automobile once before and that on November 21st, 1924, at 1 P. M. Rupprecht came into defendant's restaurant and asked for a loan of the car as he wanted to go to Jersey City and borrow money from his sister to pay his rent. DeBellis allowed him to have it on the promise that he would re-

turn it at five o'clock. As Rupprecht started away in the car, DeBellis saw two men jump in. Instead of returning the car at 5.30 P. M. as he promised, Rupprecht brought it back at 8.30 in the evening, defendant all during said time not having left his restaurant. When he returned at 8.30 P. M. Rupprecht handed DeBellis a package as a present for the use of the car and DeBellis upbraided him for keeping it out for so long a time.

On cross-examination DeBellis testified (Case, p. 90) that he had always known Rupprecht as Jack Dunn, but had never been in his house at 118 New Street.

Then there was the testimony of Mrs. Rose George DeBellis who swore (Case, pp. 93, 94, 95) that she knew Rupprecht as Jack Dunn and that she was in the restaurant on November 21st, 1924, around one o'clock, when Rupprecht came in and asked her brother-in-law if he would lend him his car to go to Jersey City. That DeBellis loaned the car asking him to have it back at 5.30 P. M. and that Rupprecht did not return it until 8.30 P. M., at which time Rupprecht handed DeBellis a bundle for the use of the car. She also swore that DeBellis was not out of the restaurant that afternoon between the hours of 1.30 P. M. and 8 P. M.

On cross-examination she testified (Case, p. 107) that DeBellis had not left the restaurant the entire afternoon.

Then there was the testimony of Sam Rosen, who testified (Case, pp. 108, 109, 110) that he saw Rupprecht in the restaurant around 12.30 P. M. and he heard him ask DeBellis for a loan of his automobile and that it was not returned to DeBellis until eight o'clock that evening when he saw Rupprecht hand DeBellis a package.

Again there was the testimony of George Honeybloom who testified (Case, pp. 117, 118) that he had a place of business two doors from the DeBellis restaurant, and was accustomed to eating in the restaurant. He testified that on November 21st, he was eating in the restaurant and noticed Rupprecht there; and that at 7.30 P. M. while on his way home he saw DeBellis and Rose DeBellis, his sister-in-law, standing outside the restaurant with street clothes on; that he spoke to them and they told him they were waiting for Rupprecht to bring back the car which had been loaned to him earlier in the afternoon.

Then there was the testimony of Samuel Silverman, salesman for the National Surety Company (Case, pp. 122, 123), that he was in the restaurant on November 21st, eating his lunch, and after six o'clock in the evening he came back into the restaurant, after leaving Mr. Honeybloom's Shop, when he saw DeBellis standing in the doorway and saluted him and spoke to him.

The testimony of Rupprecht was that the robbery took place some time around 6 P. M.

It is respectfully submitted that the judgment under review should be reversed and a new trial granted.

WILLIAM A. KAVANAGH,
Attorney for and of Counsel
with Plaintiff-in-Error.