

START

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CASE #2389

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART II.

----- x
T H E P E O P L E

-against-

GIUSEPPE FASULO,
BARNEY SMITH,

-and-

ISIDOR SCHWARTZ.
----- x

B e f o r e:

HON. CHAS. C. NOTT, JR.,

and a Jury.

2879

New York, December 26th, etc., 1917.

Indicted for grand larceny in the first degree.

Indictment filed November 19th, 1917.

A P P E A R A N C E S:

ASSISTANT DISTRICT ATTORNEY MORRIS EDER:

FOR THE PEOPLE.

MESSRS. K. HENRY ROSENBERG, J. D. C. MURRAY and

JOHN J. MC CAULEY: FOR THE DEFENSE.

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TRANSCRIPT OF STENOGRAPHER'S MINUTES.

-----oooOooo-----

Frank S. Beard,

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THE PEOPLE'S TESTIMONY:

(Mr. Eder opened the case for the People, after a jury was empaneled and sworn.)

MR. ROSENBERG: If your Honor please, I don't think, on the opening, there is anything that the District Attorney can go to the jury on in the case of Smith.

THE COURT: Well, I will hear the testimony as to him, and I will take that matter into consideration later.

MR. ROSENBERG: Very well, sir.

J A C O B G O L D N E R, of 10 East Second Street,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Goldner, what is your business? A Express business.

Q Are you an officer of the Goldner Express Company, Incorporated? A Yes, sir.

Q Where is your place of business? A 26 Bond Street.

Q Did you have a truck on the 2nd day of November, 1917?

A Yes, sir.

Q And what was your business there, at 36 Bond Street? Delivery of goods? A My business was to pick up and deliver packages, cases, packages and all kinds of goods.

Q And did you have men in your employ on that day? A Yes, sir.

Q Did you have Pasquale Brienza in your employ on the

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2nd day of November, 1917? A Yes, sir.

Q And what was he employed as? A Driver, in charge of the wagon.

Q Did you have any helper on that wagon? A Yes, sir.

Q And what is his name? A His name is Joseph Pizzolato.

Q Did you see Pizzolato and the driver, Pasquale Brienza, leave your place at any time on that day, November 2nd? A Yes, sir.

Q And what time of day did they leave? A In the afternoon, about half past four.

Q And did you give them a route? A They got always the same route. They go and collect packages, and bring them to the office.

Q Now, did you see them after they left your place that day, on November 2nd? A About ten minutes to six, the driver called me up --

MR. ROSENBERG: We object to that.

THE COURT: Sustained.

Q When did you see the driver? A About six or a little after six, and the helper about seven.

Q When did you next see your wagon and horses and harness? A About half past nine or maybe ten o'clock at night.

Q Now, the driver, you say you saw about six o'clock or a little after? A Yes, when he called me up I went over to 712 Broadway, and I didn't find the wagon, and he was downstairs on the sidewalk with a couple of packages, and we didn't find the

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helper or the wagon, and I reported it in the Mercer Street station house.

Q And after you went to the station house what happened?

A They told me I should go down to Headquarters, and Headquarters gave me officer Franklyn, and he come up to my place, and the helper just happened to come in then, and he took him down to Headquarters.

BY THE COURT:

Q Where did you see the horse and wagon? A Near the station house in Houston Street, or Stanton Street, near the station house. They called me up, the station house called me up and they said they found the wagon.

Q What time was it? A I couldn't tell you the time exactly. It was very late at night.

BY MR. EDER:

Q That was after you had met officer Franklyn? A Yes.

Q Now, did you go with officer Franklyn anywhere that night?

A We were looking around there.

Q Do you remember going to 70 Goerck Street? A Yes, sir.

Q Was that the same night? A No, sir; that was the next day about three o'clock or half past three o'clock in the afternoon. I got the information that they saw my wagon in Goerck Street.

MR. ROSENBERG: I object to that.

THE COURT: Objection sustained. Strike that out.

BY MR. EDER:

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Q On the next day you went to a certain place? A Yes, sir;
I called up Headquarters and they sent me an officer, and I went
down in Goerck Street and recovered some of the goods.

MR. ROSENBERG: I move that that be stricken out, that
he recovered some of the goods involved here, as a conclusion.

THE COURT: He may describe what goods he saw there,
subject to connection.

MR. ROSENBERG: Exception.

BY MR. EDER:

Q You went where? A To 70 Goerck Street.

Q What was there? A A store.

Q What kind of business is it? A In the back was somebody
living, and there was in the front room only a couple of empty
shelves, and some dirty chairs.

Q And did you see the defendant there then? A I saw the
defendant Smith and Fasulo there. It was a separate room they
were in, and three fellows was there.

Q Now, when you came in, you say they were in the rear room,
Smith and Fasulo? A They were in the back room.

Q Now, the front room, as you describe it, is it connected
with the rear room? A There is four rooms, there is four straight
rooms. You can go from one room to the other. I didn't see no
doors, because they weren't closed.

Q Now, did you have a talk with these three men that you
found there? A No, sir.

Q There was another man there besides Fasulo & Smith?

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A Yes, sir.

Q Did the officer have a talk with them? A No, sir.

Q Now, what first happened in the room? A There was goods laying in the room, and the three fellows was together, Fasulo, Smith and another fellow.

Q Was that Ciccarelli? A I don't know. It was the other man that was arrested, not the helper.

Q And you saw them in the rear room? A Yes, sir; standing by the goods.

Q And what were they doing? A I saw them near the goods, standing there, and as I come around and the officer come around -- OFFICER Trabucci, he come around there with me -- I recognized right away the goods.

MR. ROSENBERG: I object to that and ~~move~~ that it be stricken out.

MR. EDER: I consent to that.

THE COURT: Sustained. Strike that out.

BY MR. EDER:

Q Go on. A Under the bed was laying some bundles, and on top of the bed was some more goods, and I seen there wasn't the whole goods there, I seen that, and I asked the officer -- he says to me --

MR. ROSENBERG: I object to that.

THE COURT: Objection sustained.

Q Now, you saw goods there? A Yes, sir.

Q And you saw three men around or near the goods? A Yes,

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sir; by the goods.

Q And some of the goods you say you saw on the bed and some under the bed; is that right? A Yes.

Q And were they packed in packages or loose? A Some was packed in quilts and bedspreads, and some was repacked, and I found the empty papers with the names of my customers.

Q With names of them? A Yes.

Q Do you know the names?

MR. ROSENBERG: I object to that. The papers are the best evidence, your Honor.

THE COURT: Sustained.

BY MR. EDER:

Q And then did you go into any other portion of that building? A Yes; I says to the officer --

(Objected to. Sustained.)

Q Now, did you talk to the officer in the presence of the defendants? A Yes.

Q Did you say anything to the defendants? A No, sir; I got nothing to do with them.

Q Well, what did you do after that? A I went down in the cellar, and the woman from that house, opened with the key for me.

Q What woman? A That woman sitting back there (indicating).

Q She was in the same rooms? A No, sir; she was in the kitchen.

Q But in the same apartment? A Yes. And she took me down and opened the place, and I went down in the cellar and

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found a bundle of wrapping paper, with the name of my customers on them, and the goods for them wrapping papers wasn't there.

Q Then did you go back upstairs? A I go back upstairs with the bundle of wrapping papers, and give it to the officer, and they took it along to the Headquarters.

Q Now, will you describe the goods that you saw there?

A Clothing and caps, and overcoats, coats, children's coats.

Q And were the coats taken to Headquarters? A Yes.

Q Do you know Mr. Prechet? A Yes.

Q Were you in Headquarters when he took goods from there?

A Yes, two bundles of goods, he recognized the goods.

MR. ROSENBERG: I object to that.

THE COURT: Sustained. Strike that out.

BY MR. EDER:

Q He went over to Headquarters and you saw him there?

A Yes.

Q And he got some bundles there? A Yes. And I see six or seven of my customers recognized their goods.

MR. ROSENBERG: I object to that.

THE COURT: Objection sustained. Strike that out.

MR. EDER: That is all for the present, except the papers, when they came.

BY MR. EDER:

Q Oh, just one more question. Now, did you buy that horse and wagon? A Yes.

Q Now, you have bought horses and wagons and harness

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before? A Yes.

Q How many times? A Always when I need some horses, I buy them.

Q Now, what was the fair and reasonable market value of the horse and harness and wagon? A About \$400.

MR. MURRAY: I object to that and move to strike out the answer, because he is incompetent as a witness to testify to value.

BY THE COURT:

Q How long have you been in the express business? A Twelve years, your Honor.

Q And during all that time you have bought and sold horses and wagons and harness, have you not? A Yes, sir.

THE COURT: I will allow it to stand.

MR. MURRAY: Exception.

BY MR. EDER:

Q Was it worth that much on November 2nd, 1917? A The same amount.

BY THE COURT:

Q Were there two horses or only one? A Yes, sir; two.

CROSS EXAMINATION BY MR. MURRAY:

Q Now, on the 3rd day of November, you say you went into 20 Geerck Street, with officer Trabucci? A Yes, sir.

Q And when you first went into the premises, where did you see the defendant Fasulo? You didn't first see him in the store, did you? A I see then three men standing by the

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goods.

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Q There is a store there, is there not? A It looks like a store, but it isn't a store.

Q And there is a cafe, too? A No, it isn't a cafe. Only a couple of dirty chairs and empty shelves. It is nothing at all. There is only empty shelves and a couple of dirty shelves.

Q And you say you saw Fasulo there? A Yes, and a couple of other fellows.

Q Was there anybody in the store part? A No, sir.

Q Did you see anybody there, sitting down, and drinking coffee? A There is no coffee there to sell.

Q Now, you are sure that the first place you saw Fasulo in those premises was in the rear room where the goods were? A Yes.

Q Did you enter the place with officer Trabucci? A Yes.

Q Didn't you hear officer Trabucci hold a conversation with Fasulo, at the door of the store -- not with Ciccarelli -- and the other man, but before you saw the other two fellows at all?

A No, sir.

Q You say you didn't Trabucci have a talk with Fasulo in the store, at the door of the store? A No, sir; all three were together near the stuff.

Q And the stuff was in one of the living rooms? A The stuff was in a separate room. I found some stuff on the bed and some under the bed.

Q But the room that you say you found the stuff in was behind the store? A Yes, next to the store.

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Q You had to walk through the store, before you could reach that room, didn't you? A Yes.

Q And now you say that Fasulo wasn't in front, in the store, when you entered? A No, sir; I see the three of them standing there when I came in with the officer, in the room where the stuff was.

Q Did you hear Fasulo say anything to officer Trabbucci as to wherethe goods came from or how they came to be there? A yes, afterwards.

Q And did you hear officer Trabbucci talk in English or Italian to him? A In both English and Italian.

hear him
Q And did you/talking to Fasulo's wife? A Yes, sir.

Q And in what language did he speak to her? A In Italian.

Q And then you got the key from Fasulo's wife? A Yes.

Q And then Fasulo's wife took you and officer Traubcci down in the cellar? A No, the woman took the key and opened the cellar, and I told her she will go down first. Because I am afraid she will lock me up, maybe.

MR. MURRAY: I move to strike that out, if your Honor please.

THE COURT: Motion granted. Strike it out.

BY MR. MURRAY:

Q Now, who took you down into the cellar? A The woman.

Q Did the officer go down, too? A No, sir.

Q Then who was with you when you went down in the cellar?

A It was myself, with her.

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Q Now, did you and officer Trabucci ask her to take you down in the cellar? A Officer Trabucci told her to take me down in the cellar, and then she got the key.

Q And did Fasulo go down in the cellar at that time? A No, he didn't.

BY MR. ROSENBERG: (Cross examining on behalf of Smith and Schwartz)

Q What was the name of the man took the goods from Police Headquarters? You mentioned his name. A Some packages. I. Prechet. He took some goods.

Q And he took several packages of goods? A Yes, sir.

Q Were they wrapped up? A Yes, in paper.

Q Did you put your name on any of the goods? A No, I didn't need to put my name. I didn't took it to Headquarters.

Q Did you put your name on the packages he took? A No. Why shall I put my name?

Q Did you see Mr. Prechet take those goods, or did he only tell you he took them? Did you see him with your eyes take the goods? A Mein wagon went down and got it. I seen Prechet and I sent mein wagon down when he gets the goods.

Q Where did he get them? A From Headquarters.

Q Were you on the wagon when he got them? A No, sir; I don't need to be.

Q You were not? A No.

MR. ROSENBERG: Now, I ask that all the evidence as to Prechet taking goods from Headquarters be stricken out, as he says he was not present.

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BY THE COURT:

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Q You did not see Prechet take the goods from Headquarters?

A No, sir. The detectives give them out. He is here now.

THE COURT: Then strike that out.

BY MR. ROSENBERG:

Q And you never saw the goods after the time you say you sent the wagon to Headquarters? A After I didn't see it no more; no, sir.

Q Now, who was it that you sent the wagon by? A With the driver.

Q What is his name? A Andy.

Q Is he here? A He isn't here.

Q And when did you send the wagon to Headquarters? A Not long ago.

Q When? A Only a couple of weeks ago.

Q Can you tell us the date? A No, sir. I could tell it if I look it up in the books. I've got it marked down in the books.

Q Were you present when the goods were delivered to Headquarters? A Yes.

Q Well, who took them to Headquarters? A The patrol wagon.

Q Were you there on the wagon? A I didn't need to be there.

Q Were you? A No. I was there when they brought in the goods. I didn't went along with the patrol wagon.

Q All that you know is that you saw some goods being put

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on the patrol wagon? A Yes, and I helped to put it on myself.

Q And did you put any marks on the packages, your own marks, marks of identification? A I didn't need to put no marks on.

Q Did you? A No.

Q Now, all of the goods that you put on the police patrol wagon came from the premises 70 Goerck Street; is that correct?

A Yes, sir.

Q Did you open those packages, the packages which were wrapped up; did you open them? A Some of them was open.

Q I am asking you about the packages that were wrapped up; did you open them? A I didn't need to open them.

Q Did you open them? A No, sir; I didn't.

Q And the packages which you say were open, the police wrapped up and put on the wagon? A The police didn't wrap them up. We put them on the wagon as they was.

Q And that's the last you saw with your own eyes of any of the goods which were taken from those premises, and put on the wagon? Is that correct? A No, this isn't correct.

Q Is that the last time you ever saw them? A No, I see them after that. I see them when they called the people, and they recognized the goods.

MR. ROSENBERG: Now, I move to strike out what somebody else did, in the way of recognizing goods.

THE COURT: No. Motion denied. He is describing when he saw them, and how, later, in response to your question.

MR. ROSENBERG: And I still ask that it be stricken

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out.

THE COURT: No. Motion denied.

MR. ROSENBERG: Well, to be specific, I ask that the testimony concerning the other people recognizing their goods be stricken out, as irresponsible, and purely hearsay.

THE COURT: Denied.

MR. ROSENBERG: Exception.

BY MR. ROSENBERG:

Q Now, you went down to this store at 70 Goerck Street, on the afternoon of November 3rd, is that correct? A Yes, sir.

Q And you went down with a police officer by the name of Trabucci? A Yes, sir.

Q And you both went into the store together? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, when you got to the store, the store was open, was it not? The door was open? A We opened the door and went in.

Q It was an open store, wasn't it? The store was not locked, was it? A No, it wasn't locked. Sure it wasn't, but the door was closed.

Q And you opened the door? A Yes.

Q It was a cold day, wasn't it, November 3rd? A No, sir; not very cold. A medium day.

Q And when you got in there you saw what appeared to be a restaurant? A Yes, sure. But there was no restaurant there.

MR. ROSENBERG: Now, I object to that and move to strike that out, as the conclusion of the witness.

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THE COURT: Well, I will strike it out, because he has already described it, saying that there was nothing there but some bare shelves and a couple of chairs.

BY MR. ROSENBERG:

Q Was there a sign there? A No, sir; because half the letters was rubbed off. The sign wasn't right. There wasn't anything on the shelves. They were empty. And I saw that myself. There wasn't even an empty box there.

Q And the room that connects with the store, you say was where the three defendants were? A Yes, sir.

Q Is that a bedroom? A It looks like a bedroom. There is two bedrooms there and a kitchen.

Q I asked you whether the room immediately adjoining the store is a bedroom? A Well, there was a bed there, and a couple of chairs. It looked like a bedroom.

Q No. I am asking you whether the first room you go into from the street is a store? Is that correct?

THE COURT: He has already said that. And the next room, he says, had a bed in it.

BY MR. ROSENBERG:

Q And you say it was a bedroom? A Yes, there were two bedrooms and the kitchen.

Q No. I am asking you whether the room next to the store was a bedroom? A Yes, it was a bedroom.

Q And that's the room where Smith and the other two men were? A Yes; and then comes another bedroom, and then the

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kitchen.

Q But they all connect? A Yes.

Q You go from one to the other, without any doors between?

A I didn't recognize whether there were any doors or not.

Q But you had no difficulty in going from one room to the other, did you? A No, sir; I didn't notice no doors. I didn't have to open no doors.

Q Was there not a woman there? A She was in the kitchen.

Q Now, did you find all of the goods in the second room or the third room or fourth room? A We find in one room something, and in the other room something.

Q Now, what did you find in the first room, which was the bedroom? A I couldn't tell you what goods, because I was so excited, and I didn't look on them right away. We seen the empty papers, with the names on them.

Q And you couldn't tell what goods were found in the first room then? A No, sir.

Q Or the second room off the store? A Not exactly.

Q Can you tell us what goods were found in the third room from the store? A I couldn't tell you. All I can say is that I found all the goods there was my goods, my customers' goods.

MR. ROSENBERG: I object to the answer, the latter part of the answer, and move that it be stricken out.

THE COURT: Motion granted.

BY MR. ROSENBERG:

Q So that you can't tell what particular goods were found

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in any one of the rooms; is that right? A No, I couldn't tell you how much I find here or there, but I know all the goods belong to the wagon, my wagon.

MR. ROSENBERG: I object to that and move to strike it out.

THE COURT: Motion granted. The latter part of the answer is stricken out.

BY MR. ROSENBERG:

Q Now, when the wagon left your place on November 2nd, in charge of the driver, it left empty, didn't it? A Yes, sir; empty.

Q So that you don't know what particular goods the driver picked up on his route, do you? You weren't there, were you?

A We've got a list, how much he picked up.

Q But you were not there, were you? A No, sir.

Q And you didn't accompany the driver on his route to pick up the several packages that you say were on the wagon, and subsequently found on the wagon? A These goods were picked up, yes.

Q But you were not there? A No, the driver was there.

Q Now you speak of some pieces of paper, which contained names of your customers? A Yes, sir.

Q You mean by that you have some customers for whom you do trucking? A Yes.

Q And the names of those customers were on some of these pieces of paper; is that correct? A Yes.

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Q Now, those customers whose names appeared on the papers are large business houses in New York City? A Yes.

Q And they have other people doing trucking for them besides you? A Yes.

Q Now, was there any mark on any of those pieces of paper which indicated that the paper or package passed through your hands?

A (No answer.)

Q Did you understand my question? The paper that you say you found in the basement, did you pick up those pieces of paper and put your mark on them? A I gave them all to Headquarters.

Q Did you put your mark on them?

MR. EDER: I object to that as immaterial, irrelevant and incompetent.

THE COURT: He has already testified that he did not.
BY MR. ROSENBERG:

Q Did any of those pieces of paper have any mark made by you or any member of your corporation?

(Objected to. Allowed.)

A I didn't mark it. I got a whole bundle of paper, and delivered it in Headquarters. There was no goods there, only paper.

Q Now, how large was this second room that you speak of, where you say the three men were in? A Well, it was a little bedroom, about as big as here (indicating the space at the head of the jury box).

Q How many feet was the room? A I'm not a carpenter.

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I can't say that.

Q About ten foot square? A I don't know if it is eight or ten foot. I didn't measure it.

Q And you saw the three men at once, didn't you? A Yes, with the goods.

Q Did I ask you anything about the goods? A You asked me if I saw the goods, and I have to answer you.

Q When you opened the door of the premises 70 Goerck Street, and got into the store part, you say you could see the three men in the next room? A Yes.

Q Now, didn't you see the three men in the store? A No.

Q And didn't the officer speak to those men in the front room? A No, sir.

THE COURT: He has already said that half a dozen times.

Q Well, didn't you hear the officer ask Smith what he was doing there, and didn't you hear Smith say he was going to the toilet; did you hear that? A No.

Q What? A No. Maybe he asked him. I didn't hear.

Q Well, did you hear any talk? A The officer was talking, yes.

Q And what did he say to Smith? A I don't know. I didn't hear what he was talking.

Q Didn't he say to Smith, "Smith, what are you doing here?" And didn't Smith say, "I was just going into the toilet"? A No.

Q What did he say? A "I'm coming in there." That's what I heard. He says he always comes in here. He says, "I come in."

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Q Didn't the officer say, "What are you doing here?"

And didn't Smith say, "I came in here to eat some spaghetti"?

A There wasn't no spaghetti there. He was talking with them but I didn't hear what they said.

Q And didn't you hear the officer ask Schwartz where he got the goods from, and he told the officer, didn't he? A First he said --

Q Did he say that? A Now, if you want me to answer, you've got to listen to what I say.

Q No. I know what you want to say, and I don't want it. You must answer my questions. (Question repeated). A First he said he didn't know nothing about it, and, when they took him down to Headquarters he said, "I took goods out of there," but he wouldn't tell the officer where he took the goods to. He wouldn't say nothing after that.

Q Well, you were excited when you got into that place, weren't you? A No, sir.

Q Didn't you tell the jury a few minutes ago that you were excited? A No, I didn't say I was excited. I was looking on the goods.

Q Weren't you so excited that you didn't know what happened? A No, I wasn't excited. I'm never excited.

Q Were you just as excited then as you are now?

(Objected to. Sustained.)

A I'm not excited now at all.

Q Now, was Schwartz, the expressman, in that place when

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Smith was arrested? A No, he wasn't there -- Schwartz wasn't there. We took Schwartz in about half past eight. We took him out of his place.

Q Then when I asked you about the talk with the policeman, you were mistaken about that, weren't you?

MR. EDER: I object to that. That was counsel's misunderstanding that he was there, not the witness's.

BY MR. ROSENBERG:

Q Well, at any rate, Smith did go to the toilet, didn't he?

A I don't know.

Q Didn't he ask permission of the officer to let him go to the toilet? A I don't know.

Q Will you deny that he asked the officer that?

MR. EDER: I object to that. He answered that question at least five times, that he doesn't know.

THE COURT: Objection sustained.

BY MR. ROSENBERG:

Q Now, didn't the officer take all the men out into the front room, and have a talk with them? A No, he was talking with them inside there, in the bedroom.

REDIRECT EXAMINATION BY MR. EDER:

Q When was the first time you say you saw Shewartz?

A Schwartz?

Q Yes. A As soon as they took away the goods in Headquarters, and I come back -- then I took out the goods from there in the patrol wagon, I give them a hand to take them out

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from 70 Goerck Street, and I see that this fellow Schwartz is coming into Goerck Street from Rivington Street, driving a dapple gray horse; and as soon as he looks on that crowd there, and we were taking goods out on the patrol wagon, he turned around the wagon, and hit the horse and went away. Now, I see that. When we took the goods away to Headquarters, I took a buggy and went around looking for the horse and wagon, and I found him in Cherry Street.

And I said to him, "Schwartz, you just made a job in goods what belong to me, and I am willing you should tell me where the goods is, and I can get them". He came back, you see, to make the second trip after he takes away the goods, because he was only away half an hour.

MR. ROSENBERG: I object to that.

THE COURT: Objection sustained. Strike that out.

BY MR. EDER:

Q Go on. A And I said, "You just made a trip at 70 Goerck Street, and took out goods", and he said, "I don't know you and I don't know nothing about it".

And I said, "Now, you had better tell me where you put the goods", and he said, "I don't know you and I don't know nothing about it".

And I went over to Headquarters and went up with Franklyn, at half past eight, to his place, and he was sitting by his desk.

And Franklyn said to him, "You made a job from 70 Goerck Street," and he said, "I don't know nothing about it".

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And he said, to him, "You had better tell me the truth, because I know you just come out from doing a bit. You had better tell me the truth".

MR. ROSENBERG: I object to that and move to strike that out.

THE COURT: No, I cannot pick out a part of a conversation and strike it out. The entire conversation is being given. I will allow it to stand.

MR. ROSENBERG: Exception.

A (Answer continued) And he said, "You had better come across with where you took the goods," and he said, "Yes, I'll tell you the truth. I carted the goods from 70 Goerck Street," and then he said, "I carted them to the dock."

And he said, "How could you cart it to the dock?" And he said, "Well, that's all. I took it to the dock."

RE-CROSS EXAMINATION BY MR. ROSENBERG:

Q You say that you saw Schwartz coming in the direction of 70 Goerck Street, when you were putting the goods on the patrol wagon? A Yes, sir:

Q How many policemen were there? A There were two policemen, two officers and the detective was there. The detective was inside.

Q And you are sure that you saw Schwartz coming in that direction? A Yes.

Q And how far away was he? A Only he was about 15 or 20 foot away from me.

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Q Did you tell the policemen "There is Schwartz"? A I don't need to tell them. I didn't know he knows anything about the goods then.

Q Didn't you suspect that he was involved in this larceny, when you saw Schwartz coming towards you and hitting the horse up to get away? Didn't you suspect that Schwartz was mixed up in the larceny? A I was suspecting him, but I didn't tell nobody.

Q And you let him get away? A Yes.

Q And he was only 15 feet away from you? A Yes.

Q And then that night you went to a place where you knew Schwartz was? A An hour later I come back to him personally, and was talking to him personally.

Q And where did you find him? A I find him near his wagon, in Cherry Street.

Q That was where his place is? A Yes.

Q Sheriff near where? A 81 or 91, I think it is. I don't remember the number.

Q And you came back alone? A Yes.

Q Up to that time you didn't tell the police officers that you saw Schwartz driving towards the place? A I tried to get my goods back. I thought maybe I will get them back by another police officer.

Q Did you tell the police officers up to that time anything about what you suspected as to Schwartz? A No. After I did.

Q And then you had a talk with Schwartz alone? A Yes. And then, when he wouldn't tell me nothing, I told the officer,

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and went down with the officer.

Q And whom did you tell? A To Franklyn.

Q To Franklyn? A Yes.

BY THE COURT:

Q I do not understand. When you found him at Sheriff Street, did he have any goods on the wagon? A No, sir; he had an empty wagon.

BY MR. ROSENBERG:

Q When you say you found Schwartz on Sheriff Street, you mean that was his stand, where he gets people to hire him to do work? A Yes.

Q Now, you were examined in the Magistrates' Court, weren't you? A Yes.

Q And you were asked to tell your story, the same as you were asked here? A No, I didn't say nothing in the Magistrates' Court.

Q You didn't tell in the Magistrates' Court anything about the talk with Schwartz, did you?

MR. EDER: I object to that, if your Honor please.

A They didn't ask me.

THE COURT: Objection overruled.

BY MR. ROSENBERG:

Q Is that the reason why you didn't tell in the Magistrates' Court, because you were not asked? A They didn't ask me.

Q (Question repeated). A Yes.

Q Well, haven't you told this jury things that you were

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not asked; haven't you?

MR. EDER: I object to that, if your Honor please.

THE COURT: Objection sustained.

BY MR. EDER:

Q Now, will you please look at these wrappers, and tell us when and where you saw them last? I show you these two papers, and ask you when you saw these, if at any time? A On November 3rd.

Q Where? A It was downstairs in the basement. There was a whole bundle there.

Q Where? A In the cellar of No. 7 O Goerck Street. And the basement was locked, and I find it in the separate basement there. The front door was locked, and inside was another basement.

Q And who was there with you at the time? A That woman there (indicating a woman in the audience).

Q And she opened the basement for you with a key? A Yes.

Q MR. EDER: Now, I ask that these be marked for Identification.

(They are marked People's Exhibits 1 and 2 for Identification.)

BY MR. ROSENBERG:

Q Now, I show you a piece of pasteboard, and I ask you if you saw this piece of pasteboard on the same day that you say you saw People's Exhibits 1 and 2 for Identification? A I saw it. It comes in with the bundles of clothing in there. It has got

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no name on it.

Q (Question repeated). Is that the identical piece of pasteboard that you say you saw at the time you saw Exhibits 1 and 2 for Identification? A I see a whole lot of papers there.

Q I am asking you about that particular piece of pasteboard.

A I couldn't tell you that. There is no name on it.

Q I show you another piece of paper, which has been produced by the District Attorney, and ask you whether that piece of paper was part of the paper which you say you saw in the basement of those premises, on November 3rd. A I see a whole bunch of paper, and I could only recognize any piece by the names.

Q (Question repeated). A It was there a whole bunch.

I couldn't say on that piece, because I see it mostly with names on it. When you are packing goods, inside goes paper with no name on it, and outside goes the paper with the name on it. I see a whole bunch of papers there.

Q Now, I show you Exhibit 1, and will you first tell the jury the name on the paper which you saw in the basement of the premises at 70 Goerck Street on November 3rd? A I see the name of Pechter. It was a green label on it. And I see Lobel, 710 Broadway, a paper marked with pencil. And I see some other names there. I only recognize the papers with the names on them. We have a list of the goods with the names on the papers.

MR. ROSENBERG: I object to the last part of the answer, and move to strike it out.

THE COURT: Motion granted. Strike it out.

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BY MR. ROSENBERG:

Q Now, the only names that you say you can remember as being on the papers that were in the basement are Lobel and Pechter? A Yes. There was a whole buncle there, and I didn't open the whole bundle.

THE COURT: Now, answer the questions, and don't talk so much.

(The question was repeated by the stenographer.)

A I couldn't remember the names. There was a bunch of names and a bunch of papers.

BY MR. ROSENBERG:

Q Now, did you write the name of Lobel on the paper? A No. The firm writes it.

Q Was it written in your presence? A No, I am not there when they are packing the goods.

Q Did the paper have any other marks -- any ^{marks} / of your own or any of your corporation?

MR. EDER: Objected to, as already asked and answered.

THE COURT: Objection sustained.

MR. ROSENBERG: Exception.

Q Now, will you tell the jury what names are on these papers, People's Exhibits 1 and 2 for Identification.

MR. EDER: Objected to. They speak for themselves.

THE COURT: Objection sustained.

MR. ROSENBERG: But they are not in evidence.

MR. EDER: But you can offer them in evidence if

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you want to, and I will not object.

BY MR. ROSENBERG:

Q Have these papers, or either of them, the names of Lobel and Pechter on them?

MR. EDER: Objected to. The exhibits speak for themselves.

THE COURT: Objection sustained.

MR. ROSENBERG: Exception.

BY MR. EDER:

Q Let me ask you just one more question. All the wrappers of papers that were found there were put in one package and placed on the patrol wagon that went to Headquarters? A Yes.

Q And that is the last you saw of these wrappers? A Yes.

BY MR. ROSENBERG:

Q Now, when was the last time you saw these papers? A A couple of weeks, about three or four weeks after.

Q Did you open the packages? A I didn't need to open them. I got nothing to do with opening them.

Q Now, isn't it a fact that the last time you saw the package of paper was when it was placed on the patrol wagon?

A No, I see it again when I was there when the people recognized their goods.

MR. ROSENBERG: I object to that and move to strike that out, the latter part of the answer.

THE COURT: Motion granted.

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Q Isn't it a fact that the last time that you saw that package of paper was when it was placed on the patrol wagon; isn't that the last time? A (No answer.)

Q Do you understand the question? A I answered many times already.

BY THE COURT:

Q Answer the question. A Yes, sir.

P A S Q U A L E B R I E N Z A, of 36 East Fourth Street,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Now, is your business, Brienza? A Driver.

Q For whom are you driving? A Jacob Goldner.

Q And for how long have you been driving for him? A About two years.

Q Do you remember the 2nd of November, 1917? A Yes, sir.

Q Were you working for him on that day? A Yes.

Q Do you remember going out with a wagon on that day?
A Yes, sir.

Q What time of the day did you leave his place? A In the after noon.

Q Did you have any helper? A Yes.

Q Who was your helper? A Joseph Pizzolato.

Q Will you please tell us whether you got any packages from anybody on that day? A Yes, sir.

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Q From whom? A From Pretchet, three packages.

Q Who else? A Larry Liebman.

Q And who else? A Fechter, Glazaroff, and L. & M. System.

Q Anyone else that you can remember? A That's all I remember.

Q After you collected those packages from different places what did you do with them? A Put them on the wagon.

Q Now, did you leave that wagon that day for any length of time? A Yes, sir.

Q When? A The time I went up in the houses to get my packages.

Q Now, do you remember going to 712 Broadway? A Yes.

Q Did you have any customers in that house? A Yes.

Q What customer did you have in that house? A Philip & Sons.

Q Now, when you went up there, were there any packages on your wagon already? A Yes, a whole load.

Q You had made collections from those people that you have mentioned? A Yes, sir.

Q And they were on the wagon? A Yes, sir.

Q And who did you leave in charge of the wagon when you went upstairs? A Joseph Pizzolato.

Q And how long did you remain there? A About ten minutes I was upstairs, taking the goods.

Q And when you came down, did you find your wagon there?
A No, sir.

Q Or any of your merchandise? A No, only a paper box

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on the sidewalk.

Q And all the rest of the packages you had collected, and the horse and wagon were gone? A Yes, sir.

Q Was Joseph Pizzolato there? A No, sir.

Q When did you next see the horse and wagon? A The next morning.

Q After you found that your horse and wagon was not there, where did you go? A I didn't go nowhere. I stood there, and telephoned my boss that my wagon wasn't there.

Q You telephoned to your boss? A Yes.

Q And then you went to your boss? A No, sir; he came over.

Q He came to you? A Yes.

Q And did you see any of the goods after that anywhere?

A No, sir.

Q Never? A Never.

Q Have you got a customer at 751 Broadway? A Yes.

Q What is his name? A Glazaroff.

Q I thought you said Lazaroff? A No, sir; Glazaroff.

Q How many packages did you take from him? A Nine, that day.

Q I show you People's Exhibit 1 for Identification and ask you whether you recognize that as one of the packages that you took on that day. A Yes, sir.

Q Here is another one from Glazaroff? A Yes, sir.

Q And here is another one from Glazaroff? A Yes, sir.

Q Will you look at this package, Pretchet, and I ask you

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if you recall that this is one of the wrappings of the packages you took that day? A Yes.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, Glazaroff and Pretchet were your regular customers?

A Yes, sir.

Q And you went there every day for the packages, is that right? A Yes, sir.

Q Now, when you received packages from them, did you put your own marks on them? A No, sir.

Q So that there is nothing on the paper described here by Mr. Eeder as a package that would indicate that you received that on the 1st or 2nd or 3rd of November, or any other day?

A No, sir.

Q So that you don't know, as matter of fact, whether People's Exhibits 1 and 3 constitute the wrapping of packages that you received a week before November 2nd? A No, sir.

Q You understand what I mean, don't you? A Yes.

Q That there is nothing on the package or paper which -- well, nothing on the paper which has been produced here and described by Mr. Eeder, incorrectly, as packages, but was only paper -- there is nothing on either of these exhibits that would indicate that they were received by you on November 2nd, or October 2nd, 1917? A No, sir.

Q And you don't know of your own knowledge when you received them? A No, sir.

Q And when you look at those pieces of paper now, they

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don't refresh your recollection as to when you got the packages wrapped in those papers? A I only know the handwriting. I recognize the handwriting. But I don't know whether that is the paper of that day.

Q Of course not. And then you didn't intend to tell Mr. Edder that those papers were on packages which you received on November 2nd? A They were on packages.

Q But you don't know when you received the packages? A On November 2nd.

Q But you received packages on November 1st? A Yes.

Q And on October 30th, and every day during the month of October? A Yes.

Q Whether these papers were, these exhibits were, on packages that you received in November or October, or at any other time, you don't know? A No, sir.

Q There is nothing on the papers that shows your handwriting? A No, sir.

Q Or your mark of any kind? A No, sir.

Q Now will you swear now that these papers, People's Exhibits 1 and 2 were actually on your wagon on that day? A Well, I wouldn't swear it was that paper, but paper just like that, and names just like that.

Q And that would apply to every date during the month of October or November? A Yes, every day, for two years.

Q For two years? A Yes.

Q Now, you don't remember whether you went to Pretchet's

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before the wagon was lost on that day, or after; do you?

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A Before the wagon was lost.

Q Did you actually go to Pretchet's on that day? A Yes, sir.

Q Sure of that? A Yes, sir.

Q Or didn't your boss tell you that you went there, and that's why you are saying that you went there? A No, sir; I went there myself. I am supposed to go there every day.

Q And that's why you say you went there, because you go there every day? A No, sir. I got packages on that day, I know.

Q Well, aren't you saying that you know you got them because it was your duty to go there every day? A Yes.

Q And that same answer applies to the receiving of the packages from Glazaroff? A Yes, sir.

Q And only because it is your duty to go there every day, it is that you say you went there that day? Is that right?

A Yes.

Q And you have no present recollection of having gone there on that day? A No, sir.

Q Your answer is you have not? A No, sir.

Q When you say "No, sir", do you mean that you have no recollection of having gone to either of those places of business on November 2nd? A No, sir; I'm supposed to go there.

REDIRECT EXAMINATION BY MR. EDER:

Q Do you remember whether you went to Crane Brothers on that day? A Yes, sir.

Q Is this one of the wrappers that you took on that day?

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A Yes.

(It is marked People's Exhibit 3 for Identification.)

Q You say you remember being at Benny Fechter's? A Yes, sir.

Q And taking a package on that day? A Yes, sir.

Q And this is from Lobel (indicating)? A Yes.

Q Did you collect any syringes on that day, to be delivered anywhere on that day? A Yes.

Q And to whom were they to be delivered? A On University Place. I don't remember the name and address.

Q And is this one of the boxes that they came in? A I couldn't tell you about the boxes, because there is paper on the top.

Q But you remember that they were syringes? A Yes, sir; the firm manufactures syringes.

RE CROSS EXAMINATION BY MR. ROSENBERG:

Q Does your same answer apply to the question that I put to you about the first exhibits, as to these last three names?

A Yes.

Q That is, it was your duty to go to Crane Brothers, and Fechter and the University Place shop for two years, every day?

A Yes.

Q And that's why you believe you went there that day?

A Yes.

Q But you have no recollection of having gone there on that day? A I don't know what you mean.

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BY THE COURT:

Q The day you lost the wagon, can't you remember where you collect? A Yes, I do recollect.

Q Well, he has asked you about that, and you say that you remember you went there only because it was your duty to go there?

A No, I remember I collect those packages that day. I didn't know what he meant. It is my duty to go there every day, and take packages, if they have got any.

BY MR. ROSENBERG:

Q And there are some days when some of them haven't got packages? A Yes.

Q And don't you say that you went there on November 2nd, because it is your duty to go there every day? A I did go there on November 2nd. I started at four o'clock.

Q In the afternoon? A Yes, sir.

Q And what time was it that your wagon was missing? A About ten minutes to six.

Q Is there anything on the paper which has been produced here from Crane Brothers, from Fechter, or the University Place shop, having your handwriting on it?

MR. EDER: I object to that. He has answered that question already.

THE COURT: Yes. He has said that he did not put any marks on any of the wrappers.

BY MR. ROSENBERG:

Q Is there anything on the exhibits, 1, 2, 3, 4 and 5 in

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your handwriting? A No, sir.

Q Did you make out a slip as to the goods or packages that you had on your wagon? A Yes, I got slips, all right, and I turned them in at the office. Every time I get a package from one house, I get a slip, or two slips for two packages, and so on, and I turn them into the office at night, and he has somebody to put them on a big sheet at night.

Q Have you examined the slips since November 3rd? A No, sir.
BY MR. EDER:

Q What do you do with those slips? A I give them to Mr. Goldner's bookkeeper.

Q Did you do that, that night, November 2nd? A Yes, sir.

Q And did you see entries there as to every bundle that you had on that day? A Yes, sir.

Q And as to how many bundles you took on that day? A Yes, sir.

W I L L I A M F I N K E L S T E I N, of 262 Division Avenue, Brooklyn, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Finkelstein, what is your business? A Shipping clerk.

Q Shipping clerk for whom? A Y. Prichep.

Q And what business is he in? A Men's clothing.

Q Where is his place of business? A 708 Broadway.

Q Do you remember the 2nd day of November, 1917? A Yes, sir.

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Q Who was your truckman? A Jacob Goldner.

Q Do you know Pasquale Brienza? A Yes, sir.

Q And he was his driver? A Yes, sir.

Q Are you in the habit of delivering packages to him, consigned to your customers? A Yes, sir.

Q Do you remember whether on the 2nd day of November, 1917, you delivered any packages to him? A Yes, sir.

Q How many packages? A Three.

Q Three packages? A Yes, sir.

Q What did they contain? A Overcoats.

Q How many overcoats? A Well, in the three packages there was --

Q Well, can you tell, without looking at any paper? A No, sir. To one customer was consigned eleven coats.

Q And do you remember the name of the customer? A Mike Walker.

Q Where is his place of business? A 170 Bark Row.

Q What kind of coats? A Plaid back overcoats.

Q Now, what was the fair and reasonable market value of those overcoats that day? A Fifteen dollars.

Q Now, what else did you give him that day? A And there was two packages, which contained 25 overcoats -- one package 12, and one 13.

Q To whom were they consigned? A Zimmerman & Dunn.

Q And you sent those two packages to them? A Yes, sir.

Q What kind of overcoats were those? A Form fitting

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coats.

Q And what was the fair and reasonable market value of those coats on that day? A Well, there was one style, 13 coats, at \$13.25 each, and there were twelve at \$11.50 each.

Q Now, are you shipping clerk? A Yes.

Q Do you pack the packages yourself? A Sometimes.

Q Please look at People's Exhibit 1 for identification.

Is that your handwriting? A No, sir.

Q Do you know whose it is? A No, sir.

Q Now, did you yourself pack up those coats that went out to Mike Walker and Zimmerman & Dunn? A Yes.

Q And did you at any time after the 2nd day of November, 1917, see those coats or any of those coats? A Yes, sir.

Q When and where? A About November 7th, down at Headquarters.

Q Police Headquarters? A Yes, sir.

Q How many, if any, of your coats, did you find there?

A Twenty-three coats.

Q Now, did you recognize who was the consignee of those coats? A Yes; Zimmerman & Dunn. Those coats were consigned to them.

Q And did you take those coats away from Headquarters?

A Yes, sir.

Q And of course you reshipped them? A Yes, sir.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, those coats which you say you got from Head-

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quarters were coats apparently coming from your place of business; is that right? A Yes, sir.

Q They had your label on, I assume? A Yes.

Q And that's all they had, is that right? A Yes.

Q And it was because they had your label, the label of your firm, you assumed that they were your coats? A Well, I know --

Q Now, is that right?

MR. EDER: I submit he should be permitted to answer.

THE COURT: Yes, let him answer.

BY MR. ROSENBERG:

Q Well, the coats that you got from Headquarters consisted of 23 overcoats? A Yes.

Q And they had the label of your firm on them? A Yes.

Q Did they have anything else on them besides the label of your firm? A The lot numbers.

Q The lot numbers? A Yes.

Q Now, those lot numbers are not lot numbers made specially for Zimmerman & Dunn, are they? A No, sir.

Q They are made for everyone to whom your firm sells?

A Yes, sir.

Q Now, before November 2nd you sold a number of similar coats to other firms, didn't you? A Yes.

Q With the same label on? A Yes.

Q And the same make? A Yes.

Q And the same goods? A Yes.

Q The same color? A Yes.

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Q And the same lot number? A Yes.

Q Now, there was no other mark, other than the name and lot number, on those coats? A No, that's all.

Q And there was nothing on them to indicate that they were the coats that you had sold to Zimmerman & Dunn, other than -- there was nothing on those coats to indicate they were sold to Zimmerman & Dunn except the label and lot number.

Q And you have sold the same labels and lot numbers to other merchants? A Yes.

Q And for how long? A About a week.

Q A week prior to November 2nd? A Yes.

Q And can you give the jury any idea as to how many coats your firm sold to other merchants, for a week preceding November 2nd, coats identical with the coats that you found in Police Headquarters? A About 25 of each style.

Q Other than those which you took from Police Headquarters? A Yes.

Q And in all, how many would they make up? Have you any idea? A Oh, about thirty of a style.

Q And you sold them in the City of New York, didn't you? A Yes.

Q On the East Side? A Yes.

Q Now, when you got those coats from Headquarters, you didn't get any package or wrapper around them, did you? A No, sir.

Q You got the plain coats, without any wrapper or paper? A Yes.

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Q Now, Mr. Eder referred to a piece of paper, which has been marked as an exhibit, and which is known now as the Prichep cover or wrapper. Is that in your handwriting? A No, sir.

Q Didn't you tell Mr. Eder that the coats which you shipped to Zimmerman & Dunn were shipped by you? A Yes.

Q And bore your handwriting on the outside? A Yes.

Q Is that correct? A Yes.

Q You are sure of that? A Yes.

Q And whatever goods you shipped to Zimmerman & Dunn, if they were in a package, would bear your handwriting, is that right? A Not all the time, but they bear the labels.

Q But on this particular day? A Yes.

Q Of November 2nd? A Yes.

Q That was in your handwriting? A Yes.

Q Do you know whose handwriting the Prichep wrapper is?

A No, sir.

Q Did you get any goods which you claim you shipped to any other person from Headquarters? A No, sir.

Q Only the Zimmerman & Dunn goods? A Yes.

Q Now, when you gave the goods to the young man whom you describe by a foreign name -- what was his name? A I don't know his name. I know he is the driver for Golderner.

Q The driver or the helper? A The driver.

Q Is he the young man who preceded you on the stand, just now?

A Yes.

Q You gave him the goods? A Yes.

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Q In your place of business? A Yes.

Q And you saw him put them on the wagon? A No, sir.

Q And that's all you know about it? A Yes.

REDIRECT EXAMINATION BY MR. EDER:

Q In packing up your goods, you sometimes use old paper that is contained in packages sent to you? A Yes.

Q On the inside? A Yes.

Q Will you look at that paper, and say whether that is a piece of paper taken from the inside of some bundle that was sent to you?

MR. ROSENBERG: Referring to what paper?

MR. EDER: Referring to the Prichep paper.

A I don't remember this.

BY MR. EDER:

Q Now, let me ask you this, Mr. Finkelstein: do you select the orders yourself? A Yes.

Q And the different sizes that the men require? A Yes.

Q Now, when you found the coats at Headquarters, did you find them the same sizes and the same color, etc., that you picked out for Zimmerman & Dunn? A Yes.

Q And the same color, style and sizes, and everything corresponded with those that you shipped to Zimmerman & Dunn? A Yes.

RECROSS EXAMINATION BY MR. ROSENBERG:

Q And doesn't that apply to goods that you sold during the week prior to November 2nd? A What do you mean?

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Q You sold identically the same goods, the same coats, the same sizes, the same color, the same style, the same buttons, the same workmanship, the same material, and made by the same people? A Yes.

Q And you couldn't tell one from the other? A No, sir.
BY MR. EDER:

Q But when twenty-three of these articles are together, with the same colors and sizes that you sent, you can say that this is the order that you sent to Zimmerman & Dunn, can't you?

(Objected to. Sustained.)

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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AFTER RECESS:

L O U I S T R A B U C C I, of the First Branch Detective Bureau, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Officer Trabuccci, how long have you been connected with the Police Department of the City of New York? A Thirteen years.

Q And how long have you been a detective? A Twelve.

Q Now, do you know this defendant Fasulo? A Not before November 3rd of this year; no, sir.

Q When did you first see this defendant Fasulo? A On November 3rd, about 4 P. M., in the store at 70 Goerck Street.

Q Anyone with you when you first saw him? A Yes.

Q Who? A Mr. Goldner, an expressman, of 26 Bond Street.

Q Did you have a talk with him when you saw him? A Yes.

Q Please state the conversation you had? A I asked the defendant Fasulo if he was the proprietor of the store, of the cafe, and a sort of restaurant, and he said he was. At that time he was standing in the doorway of the store, the street door.

Q Were there any other people in the store? A No, sir; not at that time.

Q Go ahead. A I told him that I was a police officer, and walked towards the rear of the store, and he walked with me; and in a room, a bedroom, in the rear of the store -- that is, immediately after the store -- there is a bedroom and in that bedroom I saw the defendant Smith, standing near the bed.

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And, as I got to the rear of the store the defendant Smith started to walk to the rear of these rooms. I told him to come back, and I asked where he was going and he said that he was going to the toilet.

And I said, "Where is the toilet?" And he said, "In the hallway".

And I said, "What are you doing in here?" And he says, "Why, I come around here once in a while."

And I said, "Where do you live?" And he said he lived somewhere on Ludlow Street, if I recall right.

And I asked Fasulo how he got the property, how it came in his place.

Q Now, you say you saw the defendant Smith near the bed?

A Yes, standing near the bed with another man.

Q What is his name? A Ciccarelli.

Q The other defendant in this case? A Yes.

Q And did you notice what was on the bed? A Some bundles, containing corduroy boys' suits, and some boys's coats, and baby's coats and caps, and some syringes.

Q And was Smith standing near the bed? A Yes; and Ciccarelli was standing right behind him.

Q And then you say you asked Fasulo some questions? A Yes.

Q What was said between you? A I asked him how the property got in there, and he said a man came around the night before, a truckman, and left it there.

And I asked him who the man was, and he said he didn't know

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his name, but he had seen him in the neighborhood.

And I asked him why he let him put it in there, and he said the man that bought the goods at auction offered him five dollars to let it stay there that night.

And he said that business was bad and he had five children, and he didn't see any harm in making five dollars that way.

And I asked him if he had any more property, and if he had a basement, and he said that he had a cellar; and his wife, whowas then present, said, "Yes, come on down and I'll show you that there is no more stuff here."

And she went downstairs with the complaining witness and the complaining witness came up with some wrappers.

Q You saw them go down? A Yes.

Q Did you go down with them? A No, sir; I didn't.

Q Now, look at People's Exhibits 1, 2, 3, 4 and 5. Are these paprt of the wrappers that he brought up? A Well, I didn't examine the wrappers on that day.

Q Well, you put them in Headquarters, didn't you? A Well, a bundle was made, and they had been in the custody of the Police Department since.

Q And this has been brought from the Police Department since?
A Yes.

Q And this is the same bundle that you put on the patrol wagon at 70 Goerck Street? A Yes.

Q And that bundle which you put on the patrol wagon was the bundle that he brought up from the basement and showed

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to you? A Yes.

Q And these are a part of that bundle? A Yes.

Q And this bundle was brought from Police Headquarters?

A Yes.

MR. EDER: They are offered in evidence, if your Honor please.

THE COURT: They may be received.

(They are marked People's Exhibit 1 in evidence, the five exhibits.)

Q Did you have any further talk with any one of them?

A No, that's about all that I can recall.

Q Now, you took some merchandise to Headquarters from there, some clothing? A I did, yes.

Q And some people came to Headquarters to look at the goods?

A Yes.

Q Were you present at the time? A Yes.

Q And do you remember taking some coats from Headquarters -- from 70 Goerck Street to Headquarters? A Yes, overcoats.

Q And did you see Finkelstein, the last witness on the stand here, from Pritchep's place? A Yes, sir.

Q Did you see him take certain coats from Headquarters?

A No, sir; detective Franklyn attended to that. I wasn't present at that time; no, sir.

Q You were not present when he took them? A No, sir.

Q When you took those coats and wrappers to Headquarters, did you mark them in any way? A They were simply put in the

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Property Clerk's office, a list was taken, and they were given a number.

Q But/coming from 70 Goerck Street? A Yes.

Q And do you know what number was given to this property?

A 31,932. That is the property clerk's voucher number.

Q And you say you were not present when any of the goods that you took there were given to any person? A No, sir. Detective Franklyn attended to that.

CROSS EXAMINATION BY MR. MURRAY:

Q Now, you went to the premises 70 Goerck Street at the instance of the complaining witness in this case, didn't you?

A Yes. That is, we went to that vicinity, and then we went into that cafe.

Q Now, did you hold your conversations with Fasulo and his wife in English or Italian? A With the wife in English and with the defendant partly in English and partly in Italian.

Q And when you and Goldner got to the restaurant premises, you saw Fasulo at the door; is that right? A Yes, sir.

Q Then did you tell him who you were? A Yes, I asked him if he was the proprietor, and told him I was a police officer.

Q And what did you tell him? That you were in search of any goods? A No, sir. I told him to walk with me to the rear, and he walked with me to the rear.

Q Did he make any objection to your going into the store? A Not in the least; no, sir.

Q And, as soon as you got into the rear of the store, and

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saw the property that you have described, did you ask Fasulo where he had gotten it? A No. I first spoke to Smith.

Q I see. Well, before you left the room where you say you found the property, did you hold any conversation with Fasulo?

A Yes, right there and then.

Q And you asked him where he got it? A Yes. ^Q And he said that a man that he had seen in the restaurant came in and asked him to leave it there, and he would give him five dollars? A He said -- he didn't say that he had seen him in the restaurant, but in the vicinity.

Q Didn't he tell you that that man came from Broome Street? A No, I don't recall that he did.

Q And didn't he tell you that he was known by the first name of Ike? A No, sir.

Q Did he offer to take you to Broome Street, and point the man out? A No, I don't recall him saying that he would take me there. He said that he would know him again, if he saw him.

Q Did his wife say that she knew the man, and would take you to Broome Street, and point him out? A No, sir; she said that the stuff was bought at auction, and she thought she could find the man that left it there.

Q Did she say that she could find him on Broome Street? A No, I don't remember her mentioning Broome Street at all.

Q And the defendant's wife told you there was a cellar to the house? A Yes.

Q How many stories is that house, officer? A Why, it

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is a five story tenement house.

Q Do you know whether or not the defendant's wife is the janitress there? A I understood that she was, yes.

BY MR. ROSENBERG:

Q Now, when you went to 70 Goerck Street, officer, was the door open or closed? A It was open.

Q It was open? A Yes, sir.

Q And you had no difficulty in getting inside? A None at all; no, sir.

Q Did you go in first or did Goldner go in first? A No; the defendant was ahead of me and I was behind the defendant.

Q You mean Goldner? A No. He was behind me. Fasulo was in front of me and the complainant was behind me.

Q No. I mean in going into the premises first. A No. I went in first, and Goldner was right behind me.

Q And you found Fasulo at the door? A Yes, sir.

Q He wasn't in the bedroom? A No, sir; at the door.

Q And how large is the store itself? A Why, I should judge it's about twelve foot wide, and probably 25 feet long, or 30 feet long possibly.

Q And what kind of a place is it? A It 's one of these Italian cafes, coffee houses.

Q And you had no difficulty in knowing what it was by going in there? A No, there were tables and chairs and cakes and pastry in the showcase?

Q Any foodstuff? A No, there was no foodstuff.

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Q Well, was there some china around? A Small cups and saucers, coffee cups.

Q Just like an ordinary, cheap East Side restaurant?

A Well, it struck me as being one --

Q I'll strike that out, East Side. I don't want to make any reflections on the East Side. It was like an ordinary cheap restuarant? A Well, it looked like a place where they might cook or serve meals, but it struck me as being one of these little coffee places.

Q Coffee places? A Yes.

Q You are sure you saw some dishes there? A Cups and saucers.

Q And you saw tables for people to sit down to eat? A Why, I should judge there were five or six round tables.

Q And chairs at each table? A Yes.

Q And salt and papper on the table? A Well, I can't say that I observed the salt and pepper. There may have been.

Q Now, you saw the name on the outside, didn't you? A I believe I did, yes.

Q And it clearly showed that it was a restaurant? A I believe it reads Cafe, or Coffee House.

Q Was there a name on the show window? A Yes, a name. I think it was Gorizio. I'm not sure.

Q The sign was plain, so that you could read it, that it was a coffee house or cafe? A Yes.

Q And when you got in there, you could see the room

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55
immediately to the rear of the store, couldn't you? A Yes;
it's a railroad apartment like.

Q Yes, a regular railroad flat, so to speak? A Yes.

Q And when you got in there you saw two or three boys in the rear rooms? A Yes, two.

Q And didn't you see Smith walking, as you came in, officer?

A He started to walk as soon as I got to the rear.

Q Well, didn't you see Smith walking as you came into the restaurant? A No, he wasn't walking then. He just started to walk as I came in. I first noticed him when I got to about the center of the store.

Q And wasn't he in the act of walking towards the closet?

A Yes, but afterwards.

Q Well, how long a time in all would you say it was from the time you first saw him until you spoke with him? A Well, it might have been a second or two. Just as I got there he started to walk, but it appeared to me that he was standing just before I got to the center of the store.

Q But you won't deny that he was in the act of walking as you came in? A Oh, no; he wasn't walking. I am almost positive of that. He was standing, and just as I got to the center he walked to the rear.

Q At any rate, the whole proceeding took about a second or two? A Yes, just a second or two.

Q Now, didn't you find out, and investigate as to whether or not there was a toilet back there?

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MR. EDER: I object to that as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

BY MR. ROSENBERG:

Q Did you find out, Mr. Officer? A Oh, yes, yes.

Q Exactly where he told you? A It's in the public hall, just as you come in from the yard entrance.

Q And the only way of reaching it is by going the way he was going? A Through the kitchen door. That's the only way you can get to it.

Q Is it not adjoining the kitchen, officer? A Well, probably two or three feet from the kitchen door.

Q But the point I want to make is, the only way of entering the toilet from the store is by going through the different rooms to the kitchen, and then going out of the door of the kitchen? A Yes, that's the only way.

Q The only way? A Yes.

Q And he told you that without any hesitation? A Yes, that was his answer as soon as I asked him where he was going.

Q Now, do you remember that you asked his address? A Yes.

Q And didn't he say Allen Street, officer? Look at your book, if you want to. A No, I don't just recall, but he said it was somewhere in the vicinity there.

Q Well, you have his pedigree there, a record of his pedigree, his address that he gave you; haven't you? A Yes, it was Allen Street.

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Q Well, didn't he say the address was 128 Allen Street?

A No, not at that time.

Q Well, have you got your little book here? A No, sir.

Q Have you got the address that he gave you in your book? A Yes.

Q And wouldn't that show you the address was 128 Allen Street?

A No, sir. At that time he said, as nearly as I can recall, Ludlow Street. I had three people to look after, and I couldn't very well recall just everything that occurred there.

Q But if your book says Allen Street, he must have said Allen Street? A Yes, certainly.

Q At any rate, he said 128 Allen Street at the Police Station? A Yes.

Q And he gave his business as a pugilist, an athlete? A Yes, a pugilist.

Q Now, about these goods, officer, were you the only officer there at the time the goods were taken from the premises? A No, sir; there were two other officers in uniform, who arrived later; one in charge of the patrol wagon, and another officer on post.

Q But they assisted you? A Yes.

Q Now, goods were found in every room in that apartment; is that correct? A My impression is that they were all in one room, in the bedroom.

Q Weren't some found in the basement? A No, sir.

Q Weren't some found in the last bedroom? A No; as I recollect, they were all in that bedroom, that one bedroom.

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Q And were they all open or closed packages? A No, they were closed packages, but not perfect packages.

Q But they were all wrapped up? A Yes.

Q And they were on top of the bed, were they? A Yes, on top of the bed.

Q Now, in order to pass through that room, one would have to see those packages; is that correct? A Yes.

Q Is that what you mean when you say that Smith stood, or was near the property, that, in passing through there, he would have to see the packages? A Well, he couldn't help seeing them.

Q Well, that's what I mean. By saying that he was looking at the packages -- that is what you mean?

THE COURT: He didn't say he was looking at them.

BY MR. ROSENBERG:

Q Is that what you mean when you say he was near the property? A Standing alongside, facing the rear of the store. As I might say -- I could indicate it better by saying, "Here is the bed" (illustrating), and the property is on the bed here, and he was standing in this position (illustrating), facing the rear of these apartments.

Q That is, he had his back to you? A Well, that is he was standing in this manner, more in this manner (illustrating).

Q But he appeared as if he was moving, or about to move towards the rear of the premises? A No, sir; he didn't appear to be moving when I first saw him, but, as I got in the center of the store, he started to walk towards the rear.

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Q But, if he were walking he would be walking towards the rear of the premises? A Yes.

Q And how far away from the bed was the aisle that he would have to pass through to go to the rear of the premises?

A Why, the room is so small that it only leaves a passageway of three or four feet.

Q But he was in the passageway? A Yes.

Q So that you could see him when he-- when you came into the store? A Yes.

Q He was in full view? A Yes, in full view.

Q You didn't see where his eyes were looking, did you?

A Simply looking down towards the packages, the bed.

Q But his back was towards you? A No, he was standing sideways.

Q And half of the face was in the direction of the rear of the premises? A Yes.

Q So that you couldn't see where his eyes were directed to, could you, from where you stood? A Well, it appeared to me as if he was looking down at the packages.

Q And that is the extent of your testimony on that point, isn't it, that it appeared to you? A Yes, from where I was.

Q But whether he did or not, you can't swear? A Well, that's a question.

Q You won't swear to it, will you? Will you swear that his eyes were looking upon those packages?

MR. EDER: I object to that, if your Honor please.

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The witness testified as to what he saw.

THE COURT: I will sustained the objection. It is also immaterial where he looked.

MR. ROSENBERG: To which I except.

BY MR. ROSENBERG:

Q As matter of fact, didn't the defendant Smith actually use the toilet?

MR. EDER: That I object to as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

A He didn't use it there, but when we got to Headquarters, he insisted upon doing it. I wouldn't let him go at that time, in the place.

Q That is, he insisted upon using the toilet in those premises at that time? A Yes, and I wouldn't allow him to, but at Headquarters I allowed him to.

Q When was that? A Probably half an hour afterwards.

Q Officer, didn't you allow the defendant to use the sink in the kitchen of those premises? A No.

Q Are you sure about that? A I am positive.

Q Just think a moment, won't you?

THE COURT: Now, is it material whether he did or not?

MR. ROSENBERG: Very well.

Q Now then, about the goods. You say they were in that one bedroom? A Yes.

Q You don't know what goods were turned over to any of

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the persons, do you? A No, sir; I left that to Detective Franklyn, who was originally assigned to this investigation.

Q And he was not present when the goods were put in the patrol wagon? A No, sir.

Q Now, you have attempted to describe some goods that you saw there, which you subsequently opened, I imagine; is that correct? A Yes.

Q And you found some boys' overcoats? A I found boys' corduroy suits, some syringes, some caps, some youths' overcoats, babies' coats, long and short coats.

F R E D E R I C K F. F R A N K L Y N, of the First Branch Detective Bureau, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Franklyn, how long have you been connected with the Police Department of the City of New York? A Since April 30th, 1907.

Q About eleven years? A Pretty near.

Q How long have you been a detective? A Most all of that time, off and on.

Q Now, do you remember November 3rd, 1917? A I do.

Q Do you remember seeing either one of these three defendants? A I do.

Q Which one? A The defendant Schwartz.

Q Did you have a talk with him? A I did.

Q Who was with you when you saw the defendant Schwartz?

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A The complainant, Mr. Goldner.

Q About what time of the day or night was it? A About 8:15 P. M.

Q State the conversation that you had with the defendant Schwartz? A I went to his place of business at 91 Sheriff Street.

Q What kind of business has he got there? A An express office.

Q What was said between you? A He stated to me that he did not cart any of the property from 70 Goerck Street.

Q Later on, he said that he did cart some property from 70 Goerck Street to Pier 31 -- I think it was either East or North River -- I can't just recall now.

I asked him whom he carted it to, and he said he didn't know.

And I said, "Where did you leave it?" And he said, "I left it there."

And I said, "Did you get a receipt from the people you carted it to?" And he said, "No."

And I said, "And who were the people?" And he said, "I never seen them before."

And he couldn't give any more answers as to where the property was, any more than Pier 31.

MR. ROSENBERG: I object to that, that he couldn't give any more answers.

THE COURT: Yes, I will strike that out, that he couldn't give any more answers.

BY MR. EDER:

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Q What did he say about the property? A He said it was at Pier 31, it was left there, and he thinks a truck took them away.

And I asked him to give me a description of the truck, and he couldn't tell me whether it was open or closed, or a rack truck or a wagon, and he said he had no receipt for the property.

Q What did you say to him about a receipt? A I asked him if he got a receipt from the people that he carted this stuff for, and he said no. And I asked him if he knew who they were, and he said no.

Q And then what happened? A I took the defendant to Police Headquarters and locked him up.

Q Now, do you know the number that the Property Clerk gave to the package that was taken from the defendant Fasulo's place?

A I do.

Q What was the number? A I have the list here.

Q You can't remember without looking at the list; can you?

A No, sir; I can't, because we have so many of these things.

Voucher No. 31932.

Q And do you know what police officer brought that to Police Headquarters? A Yes, I do.

Q Who? Detective Louis Trabucci.

Q The last witness? A Yes, sir.

Q And were you present when there were some claimants for these goods at Police Headquarters? A I was.

Q And did you see any of them take any of those goods?

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A Yes, sir.

Q And did you see Mr. Finkelstein, representing Prichep, some down there and take some bundles? A Yes.

Q And do you know what he took?

MR. ROSENBERG: I object to that as not binding on Smith or Schwartz, and as immaterial, irrelevant and incompetent.

(Overruled. Exception.)

A He had his bill, and --

MR. ROSENBERG: One moment. I object.

Q Now, just tell what he took. A He took 23 overcoats.

Q And were there any other people that came and took some of the goods from there? A There were.

Q Please state who they were, and what they took. (Objected to, allowed, exception.)

A B. Fechter, 725 Broadway, eight overcoats. Fishman, six overcoats.

(Objected to. Allowed. Exception.)

A (Answer continued) Henry A. Deunders, 715 Broadway, 36 overcoats. Emanuel Lobel, 710 Broadway, 36 small baby coats,-- 34 long baby coats. And the first one which I have mentioned, Prichep, was 23 overcoats.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, the coats that Finkelstein took were men's overcoats?

A Yes, or youths', ranging from 18 years old. Boys' overcoats that would fit 34, 36 or 38 sizes. That's my recollection

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of it.

Q That is your recollection? A Yes, sir.

Q And were you present when Finkelstein took the overcoats?

A Yes.

Q Have you the pedigree of Smith that was taken? A No.

Q Well, haven't you got a little memorandum book, which the rules of the Department require you to keep?

MR. EDER: I object to that.

THE COURT: He did not arrest Smith. There is no reason why he should have a memorandum as to Smith's pedigree.

MR. ROSENBERG: But he arrested Schwartz.

THE COURT: But you asked him about Smith.

BY MR. ROSENBERG:

Q Have you your memorandum book, as required by the Police Department to be kept by you?

(Objected to. Allowed.)

A Yes.

Q Have you got a record of the pedigree of Schwartz in that book? A Yes.

Q Does that show anything as to the arrest of Smith? A It does.

Q Now, will you please state to the jury whether or not you got that memorandum about Smith from Smith himself? A I did not.

Q Who did you get it from? A I took it from the Aid and Arrest Book, which is a police blotter.

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of it.

Q That is your recollection? A Yes, sir.

Q And were you present when Finkelstein took the overcoats?

A Yes.

Q Have you the pedigree of Smith that was taken? A No.

Q Well, haven't you got a little memorandum book, which the rules of the Department require you to keep?

MR. EDER: I object to that.

THE COURT: He did not arrest Smith. There is no reason why he should have a memorandum as to Smith's pedigree.

MR. ROSENBERG: But he arrested Schwartz.

THE COURT: But you asked him about Smith.

BY MR. ROSENBERG:

Q Have you your memorandum book, as required by the Police Department to be kept by you?

(Objected to. Allowed.)

A Yes.

Q Have you got a record of the pedigree of Schwartz in that book? A Yes.

Q Does that show anything as to the arrest of Smith? A It does.

Q Now, will you please state to the jury whether or not you got that memorandum about Smith from Smith himself? A I did not.

Q Who did you get it from? A I took it from the Aid and Arrest Book, which is a police blotter.

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Q Now, will you give us the address that was given to you at the time of Smith's arrest?

MR. EDER: I object to that as immaterial, irrelevant and incompetent.

(Sustained. Exception.)

BY MR. ROSENBERG:

Q Didn't you ask Smith what his address was?

MR. EDER: I object to that, if your Honor please.

THE COURT: Objection sustained.

MR. ROSENBERG: Exception.

Q Now, about Schwartz. The object of that memorandum book was to keep a record, so that if the case was tried two or three months after the arrest, it would refresh your recollection; isn't that the object of the book? A In some instances, it is; but you don't put everything in the book. You put the complainant's name in there, and the time and date of the occurrence, and the nature of the crime, and the name and pedigree of the defendant, and the date and time of the arrest.

Q Well, don't you put the important things in that book, so that when the case comes up, months afterwards, you can refresh your recollection? A Yes, sir.

Q And if you get a confession from a defendant, do you put that in? A No, sir.

Q Don't you think that's important, if a man makes a confession?

(Objected to. Sustained. Exception.)

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Q Did you put in that memorandum book the statement that you say Schwartz made to you on the day of the arrest?

MR. EDER: Objected to.

THE COURT: I will allow him to say yes or no.

A No, I didn't.

BY MR. ROSENBERG:

Q And then you are relying entirely upon your memory?

A I am.

I R V I N G R O S E N B E R G, of 96 East Seventh Street,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Rosenberg, what is your business? A I am a cutter.

Q For whom? A E. Lobel.

Q And what business is he in? A Children's overcoats.

Q Do you remember the 2nd day of November, 1917? A Yes, sir.

Q Did you pack up certain goods for E. Lobel? A Yes.

Q He has also a shipping clerk; has he not? A Yes.

Q And you acted as shipping clerk on that day? A At that time, yes.

Q Who was the regular shipping clerk? A Ralph.

Q Do you remember giving any packages to an express company that day? A Yes, Goldner's Express Company.

Q Is that the man that you gave it to (indicating Brienza)?

A Yes.

Q How many packages did you give him? A Three.

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Q Do you remember what the packages contained? A No, sir; because I only packaed the boxes in the paper.

Q You put the boxes into the paper? A Yes, and I wrapped them up, and put the pasters on.

Q Do you remember where they went to? A Some to Fecheter.

Q How do you spell that? A F-e-c-h-t-e-r. And another one was Spielvogel.

Q And did you mark the packages? A No, sir; I just put the white pasters on them. I got them from the office.

Q Now, did you ever see those packages again? A No, sir.

Q You didn't see them again? A No, sir.

Q Did you see any bills go with those packages? A The bills went inside.

Q Inside of the packages? A Yes, sir. The box.

Q And do you know who made out the bills? A No, sir.

Q Did you see them put in the boxes? A No; we usually put the bills inside of the box.

Q And did you see them put in? A No, sir; I didn't.

MR. ROSENBERG: Then I move that the witness's testimony that the bills usually went in the box be stricken out.

THE COURT: Yes, strike it out.

(Cross examination: None:)

R A L P H S P E R O, of 168 Herzel Street, Brooklyn,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. EDER:

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Q Mr. Spero, what is your business? A I am a shipping clerk.

Q For whom? A EL Lobel.

Q Now, do you remember the 2nd day of November, 1917?

A Why, in the afternoon of the 2nd day of November I was out on business, and when I came back, I found that the man who was on the witness stand before had already shipped the packages.

MR. ROSENBERG: That is objected to.

MR. EDER: I consent that that be stricken out.

THE COURT: Strike it out.

BY MR. EDER:

Q On the 2nd of November you didn't give any packages to any expressman? A No, sir.

Q Do you make out bills? A I do make out bills.

Q And do you make out any bills for Ginsberg, and Spielvogel Brothers and for Fechter? A Yes, sir.

Q For goods to go out on November 2nd? A Yes.

Q And were you there when the goods were selected to go out to these concerns? A No, sir; they are selected in the factory, and they come into the shipping room that way.

Q And do you remember seeing certain goods at Headquarters? A No, sir; I wasn't there. Mr. Lobel himself was at Headquarters.

Q Do you remember Mr. Lobel bringing certain goods into the shop? A Yes.

CROSS EXAMINATION: None.

MR. EDER: The People rest, your Honor.

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MR. ROSENBERG: On behalf of the defendant Smith, first, I move that your Honor direct an acquittal of the defendant Smith, on the ground that the facts proved do not constitute a crime, and that there is no proof that Smith was in any way criminally involved in this transaction.

THE COURT: I will hear the District Attorney as to Smith.

MR. EDER: I will concede that ^{all} we have against him is that he was in the place looking at the goods, and his explanation at the time appeared to be rather unsatisfactory to the police officer.

THE COURT: Well, it is not proven that he was in possession of the goods?

MR. EDER: No.

THE COURT: Well, I do not think there is sufficient evidence to warrant the submission of the case as to Smith.

MR. EDER: I agree with your Honor.

THE COURT: And I direct an acquittal as to Smith.

MR. ROSENBERG: Now, then, as to the defendant Schwartz, I move for a direction of acquittal as to Schwartz, on the ground that the People have failed to establish the commission of the crime charged in the indictment against him, and that he isn't in any way legally connected with the larceny of the property described in the indictment. All that you have against him is that he carried some goods, but the identity of the goods that he carried, and brought down

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to Pier 31, hasnt been proven.

He did take some goods that an unknown man gave him, and took them to Pier 31.

However suspicious that may be, there is no legal connection between those goods and the goods described in the indictment as having beenstolen.

THE COURT: I will hear the District Attorney.

MR. EDER: I agree with counsel that all we have in this case against this defendant Schwartz is that he, at first, denied that he had taken any goods from 70 Goerck Street, and then admitted that he had taken them from 70 Goerck Street; and, I believe the testimony shows, he took them from Fasulo's place, and that he promised to return them to Goldner, but afterwards refused to tell him where the goods were.

THE COURT: Well, I think that there would be sufficient to submit his case to the jury, if there were any evidence as to what goods he referred to.

MR. EDER: I agree with your Honor. That is all the evidence we have.

THE COURT: Then I direct an acquittal as to Schwartz.

MR. ROSENBERG: Can the defendants leave the Bar now, your Honor?

THE COURT: The Clerk will ask the jury if they acquit Smith and Schwartz.

(The jury found them not guilty.)

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MR. MURRAY: If your Honor please, I move for the
direction of acquittal on behalf of Fasulo.

THE COURT: That motion I shall deny.

MR. MURRAY: Exception.

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THE DEFENSE:

D E L I A F A S U L O, of 70 Goerck Street, a witness
called on behalf of the defense, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q Mrs. Fasulo, you are the wife of the defendant? A Yes, sir.

Q How long have you been married? A Eleven years. This
is my second husband.

Q How many children have you altogether? A Seven children
altogether.

Q By this husband here? A By him I have three.

Q Does he support the seven children? A Yes, sir.

Q Now, how long have you and he lived at 70 Goerck Street?
A A year.

Q And during that time what part of the premises did you
occupy? A (No answer.)

Q What part of the building did you occupy? A In the same
place all the time, on the ground floor, back of the cafe.

Q Now, tell the jury just what part of the ground floor
you and your husband occupy. A Right in the back of the cafe,
we live.

Q Now, did you have anything to do with the cafe? A Why,
yes, I helped my husband there, once in a while.

Q Did he run a cafe? A Well, it is a kind of cafe and
candy store also, and sometimes people walk in and ask for a piece
of meat or spaghetti, and I make it for them.

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Q Now, where do you and your husband and the seven children live? A In the back of the cafe.

Q In the back? A Yes, sir.

Q Right in the back of the cafe? A Yes, sir; I have two rooms and a kitchen.

Q Now, what are those rooms used for? What do you use them for? Kitchen or what? A One is the kitchen and the other two are bedrooms.

Q The other two are used by your husband and you and your seven children as bedrooms? A Yes, sir.

Q Now, where is the toilet in that house? A In the hall.

Q Next to the kitchen? A Yes, sir; next to the kitchen.

Q And do you walk right into the bedroom from the cafe?

A Yes, right through.

Q You don't go up any steps? A No, sir.

Q Is there a door leading from the cafe into the bedroom?

A Yes, sir.

Q And is that door open? A Yes, sir.

Q Now, do you remember the 2nd day of November, any one coming to the cafe? A Yes.

Q Now, who came there that day? A The two young men.

Q And what time was it? A About half past seven or eight o'clock in the evening.

Q On the 2nd of November? A Yes.

Q Now, who was there besides you? Was your husband there?

A My husband was in the cafe, and I was in the back.

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Q Now, were you out in the cafe when those two young men came in? A No, sir.

Q Now, did you hear any conversation between those two young men and your husband? A My husband called me in after.

Q And what was said? A They asked my husband that they wanted rooms.

Q What is that? A They asked my husband if he was the janitor, and he said yes. And he said, "Have you got any rooms to let?" And he called me in, and I asked them what they wanted, and they said, "Have you any rooms to let?" And I said, "I have plenty, on the second, third and fourth floor."

And they said, "That's too high. Have you got any on the ground floor?" And I said no.

And he said, "I'll give you five dollars for one night to leave my load here in the store, because my horse is played out," and I told my husband if he wanted to take a chance he could, and I walked away.

Q Now, how much rent did you pay for the three rooms and the cafe? A \$16 a month.

Q Now, were you there when the men brought goods into the cafe? A No, sir.

Q Did you see any goods in the cafe? A I saw them afterwards, the same night.

Q They brought them in? A Yes; about an hour or two later.

Q And where were they left? A Laying in the cafe, in the corner.

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Q Do you know where they remained that night, the goods?

A For the night, they stayed in there.

Q Now, the next day was Saturday, wasn't it? A Yes.

Q November 3rd? A Yes.

Q Now, did you see the goods in the cafe, the next day?

A Yes, they were there in the morning.

Q Now, did anyone during the day come after any of the goods? A Yes; between ten and half past ten the two fellows came in, and they took a part of the goods away, and left the rest.

Q How did they take them? A They separated the goods. They looked over different bundles, and separated the goods, and they said, "Let these lay here. I'm going for an expressman." And I said, "Well, hurry up. It's Saturday and it is busy", and they said, "All right. You're paid for it", and they came with an express wagon and took a part of the goods.

Q How many times did they come with the express wagon?

A Only once.

Q Now, do you know how the goods got from the front of the cafe into the bedroom? A My husband usually goes down to Elizabeth Street every Saturday to buy things, and he said, "Keep an eye here until I return, and clean up everything".

And I thought the goods were in the way, and I shoved them into the other room, I throwed them into the bedroom to be out of the way, because I didn't want to be responsible for what was missing.

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Q Then the police came to the house on that Saturday, November 3rd? A Yes, sir.

Q In the afternoon? A Yes, sir.

Q And they arrested your husband? A Yes, sir.

Q Now, did you tell the detective at that time when he came about the man who came there and gave your husband five dollars? A Yes, sir; he asked me how the goods came there, and I said, "I'll tell you the whole story," and he said, He didn't want to hear it, and took my husband away.

Q Did the detective or the man that was with him ask you if you had a cellar? A No, sir; but I took them down and showed them the cellar, took him down, and showed him the cellar.
CROSS EXAMINATION BY MR. EDER:

Q How did you come to show the cellar? A Because he wanted to go down to see .

Q What did he tell you? A He told me on the way, "The goddam fool, I told him to let my goods go, and I would give them a thousand dollars, and they wouldn't do it".

Q Did you ask him who he meant? A No, I didn't.

Q Well, he told you these goods were stolen, didn't he?
A Yes.

Q And he asked you to show him the basement? A Yes.
He told me to go down in the basement with him and show him the cellar.

Q Are there separate bins there? A Yes, every tenant has a cellar there.

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Q And you have a cellar there, too? A Yes.

Q And those wrappings were found in your cellar? A Well, there is three or four empty cellars there.

Q Wasn't this one locked? A No, sir; it wasn't locked at all. There was a piece of wood stuck in the door.

Q And the outer door of the cellar you have a key to?
A Yes, the outside.

Q And you opened that? A No, sir; that was opened. It stays open in the daytime, all the time, and at night I close it.

Q And was every bin opened by this complaining witness?
Did Goldner open every bin? A I don't understand that.

Q (Question repeated). A He looked through every one with a match.

Q Every one that was open? A No, sir; the locked ones and the open ones.

Q Well, how did he get the keys to the locked cellars?
A Well, he looked into every cellar until he found something, from one to the other.

Q Well, he didn't open any of those that had locks on them, and were locked? A No, sir; he looked through the crack with a match. And he said, "Who threw these papers down here?" And I said I didn't know anything about it.

Q And what was the first thing that this man said to you, or your husband, that came there the night before? A They asked my husband if he had rooms.

Q Were you there when they first came? A No, sir; I was

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in the back.

Q They were strangers to you? A I only know one fellow by the name of Ikey. I don't know his second name.

Q Do you know what business he is in? A No, sir.

Q How many times have you seen this Ikey before? A Several times.

Q Where? A He comes in our place to drink a glass of soda, and smoke a cigarette, and play a game of cards.

BY THE COURT:

Q Well, how did you know that his name was Ikey? A Because I heard the other boys call him that.

BY MR. EDER:

Q How old is he? A About 23.

Q Is he married? A No, sir.

Q And when you came in, you heard him say to your husband, "Have you any rooms?" Is that correct? A Yes.

Q And then you said that you had some rooms, plenty of rooms?
A Yes.

Q And what did he say he wanted the rooms for? A He said that he had some bundles to leave there until the morning, because his horse was played out.

Q Did you ever rent a room to put bundles in, over night, before? A No, sir.

Q He told you that he wanted to hire a room to put bundles in? A Yes, a room.

Q And for how long did he say he would leave them there?

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A Until tomorrow, and then he would come back for it.

Q Did he tell you that he just wanted a room for the day?

A Yes.

Q Well, why did you say that you had rooms on the second, third and fourth floor? A Well, because at first I didn't understand him. Then he said it was for the night, and the rooms was too high, and he asked my husband to let him leave them there. And I said, "I have nothing to do with this place. If they want rooms upstairs I'll show them the rooms, but I have nothing to do with this place down here at all."

Q Now, your store is rather empty, isn't it? It is not well filled? A Well, I leave everything to my husband down there.

Q (Question repeated)? A No, there isn't much furniture there. There was plenty of room in the store.

BY THE COURT:

Q Well, you said before that you told your husband, if your husband wanted to take a chance, he could? A Yes, sir. And so I walked back and left him in the store with the fellows.

Q What do you get for the rooms upstairs? A Ten, eleven or twelve dollars.

Q That is, by the month? A A month.

Q And you got five dollars for the night? A Yes, sir; my husband did.

BY MR. EDER:

Q Now, you were not there when the bundles were brought in,

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were you? A No, sir.

Q They were brought that night, though? A Yes.

Q What time were they around inquiring about the rooms?

A Between half past seven and eight o'clock at night, something like that.

Q And what time did you first see the bundles in your store? A I saw them about an hour later, when my husband came in and told me about it.

Q Didn't you hear any noise when the bundles were brought in? A No, sir; because the doors were closed.

Q Have you a door for every room? A Yes, sir.

Q Now, when your customers wish to go to the toilet, do they open each door and go through the whole flat to the kitchen door?

A No, sir; they go through the hallway.

Q Then they don't go through each room, did they? A No, sir; because the store has two doors; one to the street and one to the hall.

Q But they don't go through your whole flat there, to get to the toilet, do they? A No, sir; they don't go through at all.

Q Now, when you next noticed the bundles, did you -- or, when you first noticed the bundles, did you ask your husband what kind of bundles they were? A I asked my husband, "What is it in those bundles?" And he said, "What do you care? They don't belong to us. Leave them there."

Q And what did you say to him then? A I walked away.

Q And you didn't inquire any more? A No, sir.

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Q And you didn't ask him how long he was going to keep them there? A No, sir; he told me himself.

Q And after that you say they were left there over night?

A Yes.

Q And the next morning somebody came to take the bundles out? A Yes, Ikey and the other one.

Q Did you see what they took out? A No, sir.

Q Your husband wasn't there then, was he? A No, sir; he was in Elizabeth Street.

Q How did you know those bundles belonged to these men? You didn't see when they were brought in? A They asked for them and I said, "I shoved them in the back to clean up for Saturday."

Q And didn't you say that they came in the morning and took out something, and then you cleaned up, and shoved them back into the next room? A No, sir; they were in the back room when they came to look at the bundles.

Q Did you ask them what those bundles contained? A No, sir.

Q Did you ask them when they were going to take the rest away? A I said to them to take the rest, and they said, "What do you care? You are paid for it. We'll be back right away." And then the detective come and found my husband in there, and Mr. Smith and Mr. ~~Seh~~ Ciccarelli.

BY THE COURT:

Q Did the men pay you when they took away part of the property? A No, sir; they paid my husband on Friday night.

Q And when did they unwrap those bundles? A The next

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morning.

Q Did you see them doing so? A No, sir; I was walking in and out from the store.

Q And the packages were in the room next to the store?

A Yes, sir. And of course I was in the kitchen.

Q And isn't the kitchen next to that room? A No, sir; there is another room between.

Q Well, weren't you walking back and forth in to the store, between the kitchen and the store? A Yes.

Q How did the wrappings of these packages get down into the cellar? A I don't know, because the cellar door is open all the time.

BY MR. EDER:

Q And you say when the police officer took some of the packages out, they were wrapped in a bedspread? A Yes, sir; because I threw the bedspread over them myself.

Q And wasn't one package tied around with a bedspread?

A I didn't notice that, because I didn't hardly go through then.

Q You hardly went where? A In the room, to see what they were doing. I heard the noise of paper and bundles, and things. But do I know what he was doing with them, that fellow?

Q When the detective came in and found the packages in your house, you were there? A Yes, in the kitchen.

Q Did you see the detective open a package that was wrapped around with a bedspread? A Yes.

Q Was that your bedspread? A No, sir.

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Q Do you know where it came from? A No, sir.

Q Wasn't it part of your bedding? A No, sir.

Q Some of the bundles were under the bed, were they not?

A No, sir. There was none of them under the bed at all.

Q Did you see some of the coats loose, not in a bundle at all? A No, sir; they weren't loose at all. Some were on the floor and some were on the bed.

Q And were there some of the coats loose on the bed? A No, sir.

Q Did you see this man Smith in your place? A Yes.

Q Did you see him look at the coats? A No, sir; he wasn't looking at no coats. He come in and asked me for some spaghetti.

Q He was in the back room, asking you for Spaghetti? A No, sir; he had one foot in the stoore and one foot in the bedroom there.

Q Didn't he come all the way in the back until the officer called him back? A He was going to the toilet. While I was making the spgahetti for him, he asked me to please give him the key, and I gave it to thim.

Q You said they went to the toilet through the public hallway? A Yes, but I was in the kitchen, and he asked me to give him the key, and I did.

Q Did you see the other man, Ciccarelli, there? A Why, he is over in ourhouse all the time. We know him for five or six years.

Q Was he one of the men that brought the packages there?

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A No, sir.

Q Was he standing there with Smith? A I couldn't tell you if he was standing there with Smith.

Q What is that? A No, sir.

Q Your husband was there at the time, wasn't he? A Yes, just came back.

Q And did you see when your husband came in? A No, sir. I heard him talking and I knew he was in there, and I didn't care to go in the front any more.

Q When a customer comes in, do you hear him? A Yes, because all the doors are open.

BY THE COURT:

Q I thought you said you kept them shut? A I keep them shut when my husband is in there. When he is out, I keep them open, to keep an eye in there.

BY MR. EDER:

Q Did you say to the police officer that Ikey lived in Broome Street? A No, sir. He asked me if I knew who it was, and I said I only knew his name was Ikey, and the policeman asked me how he came to have the goods there, and he told him the whole thing as I am telling you now.

V I T O V I C A R D O, of 38 Broome Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q What is your business? A I work for the City, Street

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Cleaning Department.

Q How long have you been working in the Street Cleaning Department? A Three years.

Q Where do you live? A 38 Broome Street.

Q Married man? A Yes, sir.

Q Live with your family? A Yes, sir.

Q Doyou know where the cafe is at 70 Goerck Street? A (No answer.)

(The question is repeated through the Official Interpreter, Mr. Villamena.)

A Yes, sir.

Q Have you ever been in that cafe? A Yes, I went there sometimes to buy some tobacco.

Q Were you there on November 2nd of this year? A Yes.

Q Were you there when this defendant held a discussion with a couple of men about some bundles? Yes or no? A Yes, I was there.

Q And did you hear what was said between the defendant and men about the bundles? A Yes, I heard this man say to the defendant, "Joe, will you please let me have a loan of five dollars? I will leave this bundle as security, and tomorrow when I bring you the five dollars, I will take the bundles away."

Q Is that what you heard? A Yes.

Q And when was that? A I don't remember the date, but I believe the 2nd of November.

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CROSS EXAMINATION BY MR. EDER:

Q What did you say you heard, that you heard a man say that he is leaving some bundles there as security for five dollars?

A Yes, sir.

Q And this defendant gave the man five dollars; is that right? A Yes, sir.

Q And these bundles were left there? A Yes, sir.

Q How many bundles were left? A I don't know. I didn't pay now attention. I think five or six, or two or three or four.

Q But you saw the defendant give those two men five dollars?

A Yes, sir.

REDIRECT EXAMINATION BY MR. MURRAY:

Q Now, how far away from the defendant and those two men did you stand? A About two paces distant.

Q What language did the men speak? A American.

Q And what language did the defendant speak? A The same.

Q Now, you saw bundles brought in and you saw money passed between this defendant and two men; is that right?

MR. EDER: I object to that, if your Honor please. He has testified to what he saw and heard.

THE COURT: Yes. In the first place, it is leading.

I S I D O R S C H W A R T Z, of 801 East Sixth Street,
a witness called on behalf of the defense, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q You were one of the defendants in this case, weren't

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you? A Yes.

Q And you were one of the defendants who was just acquitted by the difection of the Court, weren't you? A Yes.

Q Now, what is your business? A I am in the express business.

Q Trucking business? A Yes, sir.

Q How long have you been in the trucking business? A Oh, about eight months.

Q Do you know where 70 Goerck Street is? A Yes, sir.

Q Now, at any time before the 3rd day of November of this year, did you go to 70 Goerck Street? A Yes, sir. There came over two men and hired me to take over a load from 7 0 Góerck Street to Pier 33.

Q Now, what was the nationality of those men who came and hired you to take stuff from 70 Goerck Street? Were they American or Jewish or Italian, or what? A They spoke to me English.

Q In English? A Yes.

Q Well, do you know whether they were Jewish, or Italian, or Amercan descent? A I don't know.

Q Now, you did go to 70 Goerck Street, did you? A Yes, sir.

Q Do you remember what day you went there? A It was on the 3rd of November.

Q Do you remember what time of the day you went there?

A It was between twen and twelve o'clock, noon time.

Q And you took the goods away? A Yes.

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Q And you brought your express wagon there? A Yes.

CROSS EXAMINATION BY MR. EDER:

Q You have been convicted of crime, haven't you? A Yes, I have been.

Q You have been convicted of grand larceny before? A Yes.

Q And you have served two and a half years in State Prison, haven't you? A Yes.

Q Now, you say that you came to 70 Goerck Street, and took some packages away from the defendant? A No, sir; the two men that hired me, they put the stuff right on my truck.

Q How many trucks have you got? A One machine and one truck.

Q An automobile and one truck? A Yes, sir.

Q How many help have you got? A Sometimes I use two and sometimes one.

Q Now, you go around collecting packages and delivering them; do you not? A Yes, sir.

Q Haven't you got a driver? A No, sir; I drive myself, all the time myself. On the machine I keep one chauffeur.

Q And you say you drove up to 70 Goerck Street? A Yes, sir.

Q And did you go into the store? A No, sir; I stood on the truck.

Q Do you remember talking to Goldner, the complaining witness? A He came over to me, about half past four.

Q Do you remember talking to him? A When?

Q That same day. A Yes, that same day.

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Q Did you tell him that for a certain amount of money you would tell him where the goods were? A No, sir; he told me.

Q Did you ever send your wife to his house? A No, sir.

Q Do you know whether your wife was four times in his house?

MR. MURRAY: I object to that.

THE COURT: I will allow it. It is cross examination.

MR. MURRAY: Exception.

A No.

BY MR. EDER:

Q Do you know that your wife was in his house four times?

A No, sir; I didn't know it. When I was discharged in Jefferson Market Court --

(Objected to. Sustained.)

Q Now, when the two men came out and put bundles on your wagon, they told you where to take it? A Yes.

Q And they remained on the wagon with you, didn't they?

A Yes, sir.

Q Is it customary for you to take men on the wagon to deliver stuff, to the depot, or pier? A No, they are not my customers.

Q Did anybody else ever go along on your truck to take goods to the depot or pier? A Many times, but not these same fellows.

Q Did you ever see them before? A No, sir.

Q And you didn't see this defendant, that day? A No, sir.

Q You never saw him until he was arrested? A No, sir.

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Q You were never in his place? A No, sir.

Q You don't know how those bundles got there, or where they came from? A No, sir. They walked out with the bundles, out of the hall.

BY THE COURT:

Q Did you drive back to 70 Goerck Street, from the pier?

A I drove to 55 and 57, to a stable man.

Q After you delivered these goods? A Yes.

Q Then you came back to Goerck Street? A Yes.

Q And when you saw some people there at 70 Goerck Street, did you drive off again? A No, sir; I went to 75 Goerck Street, and I took a bag of oats for the horses.

Q Goldner says he saw you come driving down the street, and then you drove away again. A No, sir. It ain't true.

Q Well, who did you deliver the goods to at Pier 32?

A The man came over to me and hired me --

Q I am not asking you that. (Question repeated). A They thrown the goods on another truck.

Q Where was the other truck? A I didn't pay attention, Judge.

Q Were you on the pier or on the street? A In front of the pier, on South Street.

Q And they transferred the goods from your truck to the other truck? A Yes, sir.

Q How much did they pay you? A Three dollars.

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G I U S E P P E F A S U L O, of 70 Goerck Street, the
defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q What is your business? A I run a little coffee store.

Q At 70 Goerck Street? A Yes, sir.

Q How long have you been in that business? A One year.

Q What did you do before you went into that business? A I
worked in the Street Cleaning Department, and at Hoe & Company's
in Grand Street.

Q And how long did you work as a street cleaner? A About
seven months.

Q Now, are you a married man? A Yes, sir.

Q And is the woman who testified here this afternoon your
wife? A Yes, sir.

Q And you live at 70 Goerck Street? A Yes, sir.

Q With her? and how many children? A Seven.

Q How much rent do you pay there? A \$16.

Q \$16 a month? A Yes, sir.

Q And you have a cafe and three rooms behind your cafe?
A Yes, sir.

Q Have you ever been convicted of any crime? A (No answer.)

(The question is repeated through the same official
interpreter.)

A No, sir; never.

Q How long have you been in the United States? A Eighteen
years.

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Q Are you a citizen? A Yes, sir.

Q And a voter? A Yes, sir.

Q Now, what kind of a business do you do in the cafe?

A Well, I sell soda water, cigars and cigarettes, and sometimes we have a bunch of fellows, friends of mine, comes over there, and they give me a chance to make a dish of spaghetti or something like that, and I make a living.

Q Now, were you in your cafe on the 2nd of November?

A Yes, sir.

Q In the evening? A Yes, sir.

Q And do you remember holding a conversation with any men about any goods? A Two fellows come in the store, and they tell me, "Please, can you rent the store or some rooms for today, until tomorrow?"

MR. MURRAY: Now, will you please talk Italian to him, Mr. Interpreter? We don't understand him here at all. The jurors can't understand him.

(The witness continued through the same official interpreter.)

A (Answer continued) About seven o'clock in the evening, two men come in, and they had a truck outside of the door.

And they asked me if I wanted to rent the store to them for that evening, because their horse was tired, and they wanted to leave some stuff in the store, and they would pay me.

And I said, "No, I'm afraid," and they said, "No; don't be afraid," and they offer me five dollars to keep those things

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there over night." And I've got a large family, and I took the five dollars, and I give them permission to leave the stuff there in the store.

But I said to them, "I am afraid that something will happen to me", and they said, "No, you don't need to be afraid."

They told me it was some stuff bought at auction sales.

Q Now, had you seen either one of those men before that night? A Yes, one I saw several times around that neighborhood.

Q Did he ever come into your cafe before? A Yes, sir; he come in there two or three times, to buy cigars and cigarettes. The name of one of those men was Ike.

Q Did you know where Ike used to hang out? A In Broome Street.

Q Do you know whereabouts in Broome Street? A No.

Q Now, after you held the conversation with them, did they take the bundles into your store? A Yes.

Q Where did they leave them? In what part of your store? A Right in front, in the store.

Q And did they remain there that night? A Yes.

Q Now, the next day did you leave the store? A Yes, I went out to buy some confectionery and some candy.

Q What time of the day? A About nine or ten o'clock. I couldn't say exactly the time. It must be nine or ten o'clock.

Q And when did you return? A About half past one or two o'clock.

Q Now, did either of the men or anyone else, come back

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for the bundles while you were there? A No, sir.

Q And did you see the men again? A No, sir.

Q Now, do you remember the police officer coming to the store and arresting you? A Yes, sir.

Q And what did you tell him about the bundles being in your store? A I told the officer that two men came in and rented the store from me for five dollars, and I took the five dollars because I needed it.

And I told the officer that I knew one of those men, that his name was Ikey, but I didn't know the name of the other one.

Q Did you tell the officer where Ikey could be found?

A Yes, sir; I told him that could find him Broome Street.

Q Now, did you know that any of the bundles taken into your store were stolen? A No, sir; I wouldn't take that chance for a hundred thousand dollars.

Q Did you know that any property that was in the care and custody of Jacob Goldner, on the 2nd day of November, was stolen?

A No, sir.

CROSS EXAMINATION BY MR. EDER:

Q How did you know where Ikey lived? A I knew that he lived in Broome Street, but I didn't know the number of the house. I saw him two or three times.

Q How did you know that he lived in Broome Street? A He told me that he lived in Broome Street.

Q Was he a hebrew, a Jew? A He looked like a Hebrew, but I couldn't exactly say.

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Q Now, you say he was in your place two or three times?

A Yes, sir.

Q And he had some coffee in your place? A Yes.

Q And how long before the time he left the bundles in your place do you say he was there? A I don't think I see him for three or four weeks before that evening.

Q Now, when they offered to hire your store from you for five dollars, you said you would take the bundles, but you were afraid; is that right? A Yes.

Q What were you afraid of? A I took the five dollars because I needed it, and he said, "Don't be afraid," and then I took the five dollars.

Q But you said to this jury, you told this jury that you said to him, "I'm afraid." What were you afraid of? A Well, you know I said I was afraid because sometimes those things put you in trouble.

Q Well, but what were you afraid of? A Well, he told me that the horses were tired, and, if I could let him have my store to put the stuff in, that he would be obliged to me; that he could trust me because he saw me two or three times before, but he couldn't trust any body else.

MR. EDER: I ask that that be stricken out.

BY THE COURT:

Q Now, the question is, what were you afraid of? That is a plain question. A Nothing.

BY MR. EDER:

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Q Well then, why did you tell his Honor and the jury before that you said you were afraid to let them put their bundles in your place, although you were paid \$5 for allowing them to do it? What did you mean when you said you were afraid? What were you afraid of? A Because I've got a large family, and sometimes a man gets in trouble for nothing, the same way that I am in trouble now, and that's why I was afraid.

Q Now, if those bundles were honest, were not stolen, you didn't have to be afraid, did you? A No, sir.

Q Is that right? A Yes.

Q And because you did not believe the bundles were honest, is that why you were afraid? A No, sir; I had believed those people is honest and those bundles is honest, and I believed sometimes a man is put in trouble for nothing.

Q Now, who was there when they came to ask you to hire the store to them? A Only the two fellows.

Q Your wife wasn't there, was she? A No, sir; my wife was in the back.

Q Was the street cleaner there? A Yes.

Q He was there? A Yes.

Q You spoke English to those men? A Yes, a little bit.

Q You speak in English to Ikey, didn't you? A Yes.

Q And he was standing close by you, your friend the street cleaner, the last witness on the stand for you, wasn't he? A Yes.

Q He was standing right by you and heard everything that was said? A Yes, sir; but he don't understand what I say,

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because he don't talk very good English.

Q He didn't understand what you said; is that right?

A Yes, sir.

Q Did you ever ask him if he understood and knew what was said on that occasion? A No, sir.

Q You heard him tell us here that he is twelve years a street cleaner, didn't you, right here in the city for twelve years?

A yes, sir.

Q And how long have you been in this city? A Six years.

Q Six years? A Yes, sir.

Q And when those men came in there and asked ^{you} ~~them~~ to hire your store for five dollars, you said "All right" afterwards, didn't you? A Yes, sir.

Q Nothing was said about rooms, was there? A He wants a room before.

Q Where did he say he wanted the room? A He said, "You got empty rooms?" And I said, "For what?" And he said, "I want to put some stuff for the auction sale in the room". That's all I know.

Q Well, why didn't you give him one of the empty rooms upstairs? A Because it is too high.

Q You had some rooms one floor up above the store, didn't you? A Yes, but I didn't know anything about the house. My wife attends to the house.

Q You didn't know anything about the house? A No, sir. She's got a sign outside, "Rooms to let," and that's all

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I know.

Q But you don't take care of that? A No, sir.

Q Did you give any money to those men? A No, he give me five dollars.

Q He gave you five dollars? A Yes, sir.

Q Do you remember when the police officer came the next day?

A Yes, sir.

Q You were there, weren't you? A Yes, sr.

Q You were in your store? A Yes, sir.

Q Do you remember that Smith was there? A Yes, sir.

Q You were standing in the doorway? Do you remember that?

A I was standing in the store.

Q Where was Smith? He stood close to me, and another fellow, Ciccarelli, was standing close to me, too.

Q And did the police officer talk to you and Smith at the same time? A Yes.

Q You are sure of that? A Yes.

BY THE COURT:

Q What was Smith doing there? A (No answer.)

Q (The question is repeated through the interpreter).

A Smith come over because he likes Macaroni, and he comes over there to eat a plate of macaroni.

BY MR. EDER:

Q And he gave you the order, didn't he? A Yes.

Q And you gave the order to your wife; is that right?

A Yes.

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Q Are you sure of that? A Yes.

MR. MURRAY: I think it will be much better, if your Honor please, that an interpreter be used. I don't think he understands what he is answering.

THE COURT: Yes, let him answer through the interpreter.

MR. EDER: And I am entirely willing that he should answer through the interpreter.

BY MR. EDER:

Q He gave you the order and you gave it to your wife? A Yes, I told my wife to prepare a plate of macaroni.

Q And then the police officer came in, and you were standing there talking with Smith? A Yes, sir.

Q What did the office say to you? A He came in and he showed me his badge, telling me that he was a policeman; and he asked me, "What are you doing here?" And I said, "I stay right here in the coffee house," and he went right thourhg.

Q Did you go with him? A I went after him, yes.

Q Did Smith go along with you? A No.

Q Did Smith remain in the store? A Yes.

Q Smith remained in the store, while you and the officer went to the back; is that right? A Yes, Smith asked me for the key of the toilet, and I give him the key of the toilet; and while Smith was going to go to the toilet, the officer come in, and the two was right there.

Q Now, when the police officer came in, you saw him find goods on the bed, didn't you? A Yes.

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Q And some of the goods were tied up in a bedspread, weren't they? A I didn't see it. I didn't look at it.

Q Didn't you see them opening up a bedspread, and find certain men's coats in it? A I didn't see nothing.

Q Well, did you watch? A No, sir.

Q You were not interested at all in what they found, were you? A No, sir.

BY THE COURT:

Q Who put the goods on the bed? A My wife.

Q When did she do that? A When I wasn't there.

BY MR. EDER:

Q That is, you were not in the store when your wife put the goods in the bedroom? A No, sir; I was out. I went out to buy some confectionery for the store.

THE COURT: Have you any other witnesses?

MR. MURRAY: Yes, several character witnesses.

THE COURT: Well, it is so near the time of adjournment that we will not take them up now. You may call them in the morning.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Thursday morning, December 27th, 1917, at ten-thirty o'clock.)

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TRIAL RESUMED:

New York, December 27th, 1917.

A N T H O N Y P R E N Z I N O, of 36 Cannon Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q What is your occupation? A Tailor.

Q Where is your place of business? A 129 Chrystie Street.

Q Are you employed there, or have you a tailor shop of your own? A I am working for some one else.

Q Are you a married man? A Yes, sir.

Q Now, are you acquainted with the premises, 70 Goerck Street?

A Yes, sir.

Q Do you remember being in those premises, on the 2nd of November? A Yes, sir.

Q What time of the day or night was this? A I don't remember the day of the week, but it was between 7 and 8 o'clock in the evening.

Q What were you doing in there? A I was in there passing my time, with some friends of mine.

Q Were you eating or drinking? A We were eating and drinking.

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

Q How long have you known him? A Well, I know him from the old country, of course.

Q Well, did you see anyone come into the cafe, while you were there? A Yes, I seen two gentlemen come in.

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Q Yes. A And so they asked for the janitor.

Q Talk a little louder, please. A He asked for the janitor, and Mr. Fasulo said, "I am the janitor here," and these two gentlemen, asked for -- they wanted rooms, and he said, "There is no empty rooms."

And they said, "Will you kindly, please let me put in here, some stuff from the truck, over night, and I will pay you for that."

And he said, "Well this is a cafe. This isn't no private house, and I won't be responsible for anything. I don't care to do anything like that."

Then those two gentlemen said, "We'll pay you for it," and he said, "I won't take no chance, and I won't take no responsibilities for it," and that's all I heard.

Q Well, did you afterwards see the bundles come in? A Yes.

Q But you didn't see any money pass? A Yes, I seen the two gentlemen hand him a five dollar bill, to Mr. Fasulo.

Q And the last of the conversation that you heard, was when the defendant, Fasulo, said that he would not be responsible for the goods? A Yes, I heard that.

CROSS EXAMINATION BY MR. EDER:

Q Were you at 70 Goerck Street, last night? A Last night?

Q Yes. A No, sir.

Q Did Mrs. Fasulo go to see you last night? A No, sir.

Q Well, how did you know you were to come here, this morning? A Well, she come up in the house, this morning.

Q And she told you what she wanted you to say? A No, sir;

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she said, "I want you for a witness, for that night, what you see, that night".

Q What day was it that you were there? A I don't remember the day.

Q How then, do you know that it was the second of November that you were there? A I know it was last month.

Q And how many times were you there last month? A Pretty near every night. I don't remember exactly the day, but I'm sure I was there every night.

Q What is that? A I don't remember exactly what day it was, but I know I was in there every night.

Q Well, do you know what night the lawyer was talking to you about? A No, sir.

Q Well, who else was in the store, that night? A There was a lot of people there.

Q And there was a lot of people there, when these two men came in; and spoke to this defendant? A Yes, sir.

Q Mention some of the people that were there? A Well, I could mention you one, by the name of Petro Spalba.

Q What business is he in? A I don't know his business, I know him as a friend.

Q He is a friend of yours? A Yes, sir.

Q Did you go in there with him? A No, sir; I find him in there.

Q Is he in Court, this morning? A Yes.

Q He came here this morning, with you, didn't he? A Yes.

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Q Anyone else, you saw there that night? A And there was another gentlemen.

Q What is his name? A Angelo -- what is his name? -- Angelo Castellano.

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

Q Is he here in Court? A Yes, sir.

Q He came here to Court, with you, this morning, too, didn't he? A No, sir; I find him here.

Q Where did you meet the other gentleman, who came here with you, this morning? A I meet him in the car.

Q What car? A The Delancey Street car.

Q And you met him by accident, on the car? A Yes, sir.

Q You had no appointment with him? A No, sir.

Q And, on that night, you say you saw two men come in?

A Yes, sir.

Q And they asked whether there were any rooms to rent? A Yes.

Q And this defendant said, "There are no rooms to rent"? A Yes.

Q You are sure he said that? A Yes, sir.

Q You are certain of it? A Yes, sir.

Q And they spoke in Italian? A English.

Q How close were you to them? A Well, about four feet away from them.

Q You understood everything that was said? A Yes, sir.

Q Everything was said in a loud tone of voice? A Well, no.

Q Well, loud enough for you to hear it? A Yes.

Q And, when he said he didn't have any empty rooms, what did

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either of the men say? A They said, "Will you let me put some stuff in the store, for over night, and we will pay you five dollars for it," and Mr. Fasulo said, " I won't be responsible, and I won't let you put any stuff in the store".

And he said, " Well, my horses are tired, and they have to go to Brooklyn, and I'm afraid they will fall on me," and he said, "If you put anything in here, I won't be responsible for it".

Q He said, that he wouldn't be responsible for it? A Yes.

Q How many people were there? A About fifty-seven.

Q What were you doing at the time? A Sitting, and eating and drinking, with my friends.

Q Had you ever seen any of those people before, that were there? A Yes, some of them.

Q Do you know Mr. Smith? A No, sir.

Q Mr. Schwartz? A No, sir.

Q Mr. Ciccarella? A Yes.

Q Was he there, that night? A Yes.

Q Was he in the store, or the rear room? A No, sir; in the store.

Q Do you know Mr. Victor Vicara? A Yes.

Q Was he in the store, on that night? A Yes, he was together with us, at the same table.

Q At the same table? A Yes, sir.

Q And he was sitting there with you? A Yes, he was sitting there, eating and drinking with us.

Q And did you see the defendant's wife, that night? A No.

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Q You did not see her at all? A No, sir.

Q You didn't see her come into the store at all? A No; I'm sure I didn't.

Q Now, then you say, that you saw the two men give the defendant five dollars? A Yes, sir.

Q And did you see the bill that they gave him? A Yes, sir.

Q You looked at it? A Yes, sir.

Q You say that it was a five dollar bill? A Yes.

Q Did you ask him to let you examine it? A No, sir.

Q Well, how did you know that it was a five dollar bill?

A Well, it wasn't very far from me, when they handed it to him.

Q And how long did you stay in there after that? A About ten minutes, and then we all went away.

Q You say you stayed only ten minutes after that? A Yes.

Q Did you see any bundles brought in? A Yes.

Q How many did you see? A Well, I didn't count them; ten or twelve bundles.

Q You didn't count them? A No, sir; but it could be ten or twelve bundles.

Q And you are sure they were brought in within the ten minutes that you remained there, after he gave the defendant the five dollar bill? A Yes, sir.

Q Were you there the next day? A No, sir; I didn't go there in the day time, at all. I come there in the night time.

Q And you played cards there? A Yes, sir; to pass away the time.

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Q Well, did you know the defendant in the old country?

A Yes, sir.

Q And you are a friend of his? A Yes, sir.

Q And would like to help him? Yes or no? A Well, I'm here for a witness.

Q Would you like to help him? A Yes.

J O S E P H R I C C I A T I, of 26 Broome Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q What is your occupation? A I am a special agent of the State Commissioner of Excise.

Q And are you now employed by the State Commissioner of Excise? A Yes.

Q In what capacity? A As a special agent.

Q Do you know this defendant? A I do, sir.

Q And how long have you known him? A Over five years.

Q Do you know other people who know him? A I do.

Q Do you know what his reputation is for truth and veracity?

A Very good.

Q And do you know what his reputation for honesty is? A Good.

Q Very good? A Yes.

CROSS EXAMINATION BY MR. EDER:

Q Where do you know him from? A In the neighborhood.

Q Do you live in that neighborhood, yourself? A I do, sir.

Q How long have you lived there? A Fifteen years.

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Q And did you ever frequent his place? A Often.

Q As a customer? A As a customer-- that is buying cigarettes.

Q And did you ever inspect his place, by reason of your being an excise inspector? A He sells no liquors.

Q Did you ever go in there, and find out? A I am in there, and I know it.

Q Isn't that how you made his acquaintance? A No, sir.

Q How long have you lived in that neighborhood, do you say?
A Fifteen years.

Q And how long have you known him? A A little over five years.

Q From the neighborhood? A Right in the neighborhood.

Q Where did he live in those five years? A I lived in Broome Street.

Q But where did the defendant live, in those five years?
A In Broome Street.

Q What is the number? A 14 Broome Street, I think was the number.

Q What business was he in there? A Why, he lived there.

Q Was he in any business there? A I know him to be in the billiard business, before he went into this business?

Q You mean billiards, and pool parlor? A Yes.

Q And he had a billiard and pool room, on Broome Street?
A No, in Lewis Street. He lived there.

Q Did you frequent his billiard parlor, in Lewis Street?
A Yes, sir.

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Q And where else did you meet him from? A That's all the places.

Q And how long has he lived in the place where he is now?

A Oh, about a year; around a year.

Q And how often have you visited his place? A Oh, I guess I've been in there four or five times, within the last year.

Q Did you ever discuss his character, with anybody? A I know his character.

Q (Repeated?) A Why should I?

Q (Repeated?) A Why, there was no necessity for it. I knew him to be an honest man.

THE COURT: Just answer the question. You were not asked whether it was necessary, or not.

A No.

Q Do you know other people that know him? A I do.

L U I G I B A R B A N O, of 326 Delancey Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q What is your business, Mr. Barbano? A Barber.

Q And where is your place of business? A 326 Delancey Street.

Q And do you know this defendant? A Yes, sir.

Q How long have you known him? A I know him about five years.

Q And do you know other people who know him? A Yes, I know them.

Q And do you know what his reputation for truth and veracity is? A Good.

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Q And what is his reputation for honesty? A Yes, sir.

Q What is it? Good? A Good.

(Cross examination: None)

M I C H A E L C L E M E N T E, of 12 Mandin Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q What is your occupation, Mr. Clemente? A Band master.

Q Do you know this defendant? A I do.

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

Q Do you know other people who know him? A Yes, sir.

Q Do you know what his reputation is for truth and veracity?

Is it good or bad? A Very good character.

Q And do you know what his reputation is for honesty? A Yes.

Q Is it good or bad? A Very good.

(Cross examination: None)

L U I G I G R A Z I A N O, of 68 Goreck Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MURRAY:

Q Do you know this defendant, Fasulo, Mr. Graziano? A Yes.

Q How long have you known him? A Over five years.

Q Do you know other people that know him? A Yes.

Q What is his reputation for truth and veracity? A What?

Q What is his reputation for being truthful? A I don't understand that.

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Q (The question is repeated through the same Official Interpreter). A I know him. I know his family. I know that he is a good man.

Q What is his reputation for honesty? A Good.

Q What is your occupation, Mr. Graziano? A Undertaker.

(Cross examination: No questions)

MR. MURRAY: The Defense rests.

MR. EDER: The People rest, your Honor.

THE COURT: Go to the jury.

MR. MURRAY: If your Honor please, I ask your Honor to eliminate from the consideration of the jury, the first count in the indictment, of grand larceny in the first degree because the People have failed to prove facts sufficient to sustain sending that count to the jury.

THE COURT: Yes, I shall submit this case, on the receiving count.

MR. MURRAY: And I ask your Honor to dismiss the indictment, and direct a verdict of acquittal, as to the charge of receiving stolen goods, because the People have failed to prove facts sufficient to sustain the count in the indictment.

THE COURT: Motion denied.

MR. MURRAY: Exception.

(Mr. Murray then summed up for the defense, and Mr. Eder closed the case for the People.)

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