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

3626

----- X  
THE PEOPLE

: Before:

V.

: Hon. John F. McIntyre, J.

EVA GINDES

: and a jury.  
----- X

Tried, New York, January 5th, etc., 1922.

Indicted for Grand Larceny in the First Degree

Indictment filed December 8th, 1921.

APPEARANCES:

Assistant District Attorney Edward Weil, for the People  
Messrs. Fabricant & Collings, represented by Mr. Fabricant,  
for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES

Frank S. Beard,

Official Stenographer.

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## THE PEOPLE'S TESTIMONY.

EMIL BERNSTEIN, of 2140 Daly Avenue, The Bronx, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WEIL:

Q Now, Mr. Bernstein, please keep up your voice so that the twelfth juror may hear what you have to say, and then we will all hear you. A Yes, sir.

Q What is your business? A Manufacturer of ladies' silk waists.

Q And where is your place of business? A 3387 Third Avenue, the factory.

Q Now, do you know this defendant? A Yes, sir.

Q How long have you known her? A About nine months.

Q Was she ever in your employ? A Yes, sir.

Q When? A By the month of April and May.

Q What year? A This year, 1921.

THE COURT: Well, that is not this year. That was last year.

THE WITNESS: Beg pardon, I mean 1921.

BY MR. WEIL:

Q And how long had she been in your employ? A Six or seven weeks.

Q In what capacity? A As an operator.

Q And when did she leave? A Around the end of April, 1921 -- at the end of May, 1921.

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Q Now, when did you next see the defendant, after she left your employ, if ever, again? A She came up to my place about November first --

Q What year? A 1921.

Q Yes, and what happened at that time? A She asked me for a position, and I told her all my machines are taken, and I am sorry I haven't got no empty machine, and she said, "I was working until now as a sample hand for a designer, and I could make you a couple of nice styles if you will give me a piece of goods, and I'll make a nice design or two for you."

I told her to come back a day or two later, and I will give her a piece of goods and she can try to make some good styles for us.

She came up afterwards, after a few days, and she calls me aside, and she says, "Mr. Bernstein, I know some people very good, and I know their place of business, and one of the fellows is from my city where I am born, in Russia, and he wants to sell some silk very cheap", and she says she knows he is a legitimate merchant, and sells silks.

Q She told you all that? A Yes, sir.

Q Well, go on. A I told her, "Listen Eva", - I used to call her Eva because she worked for me - I said, "Do you know those people?" I don't want to buy anything wrong", and she said, "Oh, you are insulting me, Mr. Bernstein, when you ask me that question. I know they are legitimate silk mer-

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chants, and they need money very bad today, because they have got to meet some bills for cash".

I said, "Well, I don't know nothing about it. Show me the people, and I will talk with them, and see what kind of people they are, and what kind of goods they have".

She made an arrangement for Thursday morning -- that was the 25th she was there -- and she says she will bring these people up to my place, and these people will take me where they have the goods.

And next morning, in the morning, I received a call from Miss Gindes, that the people can't come up, this morning, but they will be up about four o'clock in the afternoon, and I waited until four o'clock in the afternoon, and she said they will surely be up that day.

Q This was on Thanksgiving Day? A Yes, sir. And they didn't come up at four o'clock, and I received a telephone call from her again, and she told me that the man can't come up today, because he has a Thanksgiving party tonight, but she will be up to see me, and I should wait half an hour for her, and she comes up, and she says, "Why, Mr. Bernstein, I brought you samples of the goods those people have on hand". They were crepe de chine, Canton crepe and pussy willow, goods that are usually used for my waists.

And I said, "Where are the people?" and she said, "Tomorrow you will see the people, but these are the goods they have", and I said, "Did they tell you the price?" and

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she said, "No, but I think you could buy them very reasonable".

And she said, "I'll call up tomorrow, Friday, the 26th, and tell you where you can meet those people". And, on Friday morning, the 26th of November, Miss Gindes comes up, about nine o'clock, and tells me, "Mr. Bernstein, I made an appointment for you to meet those people which have the goods, at the Broadway Central Hotel".

I've got my car outside, and I ride down with her to the Broadway Central Hotel. The appointment was made for half-past ten in the morning, and we reached there about twenty-five after ten in the morning, and we waited there about five or ten minutes, and the people didn't show up; and, about a quarter after eleven, they didn't show up, and Miss Gindes got nervous, and went over to the telephone booth in the Broadway Central Hotel, and called them up; and, as she called up, and she came out of the telephone booth, she said, "The people left and are due here any minute".

And it didn't take long, may be five or ten minutes, when a certain man comes in, with a yellow leather brief case, and the defendant goes right forward to him, and shakes hands with him, and brings me over and introduces me, "Mr. Bernstein, Mr. Schwartz". And I said, "Is this the gentleman that has the silk for sale?" and she said, "No, but this is his broker. Mr. Schwartz is supposed to be the broker of the man that has the silk for sale".

And I said, "What do I need brokers here, if I am to

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buy the silk?" and the broker said, "Because he don't want the people in the market to know that he is selling silk cheap. We will go into the grill, and talk it over".

And I and the defendant and Mr. Schwartz went in the grill, and sat at a table, and he asked me if I saw the samples, and I said, "Yes, Miss Gindes showed them to me, it's the goods I use".

And he said, "Listen, I'll tell you. I don't know nothing about silks, I am only an agent, but I will introduce you to the man, I want that man to see you before you see him, in order to know if he has ever done any business with you before, because, if he has done business with you before, he wouldn't sell you anymore silks, because he don't want the market to know he is selling silks cheaper".

And so I went out, and stood by my car, as he wanted me to do, and his car was across the street, a Cadillac limousine.

And he said, "That man that has the silks is sitting in that limousine over there, and he will look at you, and see if he knows you".

So Miss Gindes and I went over and stood by my car, and Mr. Schwartz went over to that limousine, and spoke something to the man in there, and he looked at me from his car. Meanwhile, while this man crossed over the street, that Mr. Schwartz, I saw that it was a very nice limousine, and

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I asked Miss Gindes if she knows that car, and she said yes, she knows it belongs to Mr. Schwartz.

And I waited there about a minute, and Mr. Schwartz came back to me and he said, "That man saw you, and he don't know you at all, and he will do business with you. Now, we will go over to the St. Regis, 43rd Street and Broadway. We will go first in our car, and you will follow in your car".

So I took Miss Eva Gindes in my car, and they went ahead in their car -- supposed to be their car -- and I kept following them until 30th Street and Broadway, and there their car stopped, and the man that was supposed to be the owner of the silk, I seen him going out of the car into the United States Bank.

And I waited a couple of minutes, and he came out of there and went back into his car, and went ahead, and I kept on following him until we reached 43rd Street, to go into the St. Regis.

There, Mr. Schwartz, and the man that was supposed to sell me the silk, went in there first, and I and Miss Gindes followed them, and we sat at a table.

Mr. Schwartz introduced to me the other party that was supposed to be the party that had the silk, as Mr. So-and-So -- he didn't want to give me his name.

Q Don't say he didn't want to, but that he didn't give you his name. A And I asked him, "Why do you introduce him

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as Mr. So-and-So?" and he said, "Well, you can't know his name until we are sure we are really doing business, and then you will know his name".

And we sat at the table, and supposed to be So-and-So said, "Did Miss Gindes give you the samples?" and I said, "Yes. They're goods that I can use", and I said, "Well, I would like to know where the goods come from", and he said, "No, don't worry about that. The goods are legitimate goods. I am in the silk business, and I sell much stuff, and now I need cash to meet some notes", and I said, "At what price are you going to sell the goods?" and he said, "I can't say now, because I want to sell it in lot quantities. Whatever I will be able to get for it, as a reasonable offer, I will sell it".

And I said, "I want to see the goods, to see if it is damaged by water or fire, and where it comes from, and then I will make an offer", and he said, "I'll tell you what it is. I will leave this arrangement to be made by Mr. Schwartz. He will meet you during the day, and he will make some kind of arrangement so that you will see the goods, and what money you need."

And Mr. Schwartz said I should meet him at 10 East 33rd Street, at my salesroom, my showroom, and I should wait for Mr. Schwartz, and he will call me up, and let me know if we should meet again, to make arrangements, and they will show me where the silk is.

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So this defendant went up with me into my show-room, and we waited for a call. While she was in the show-room, I asked her over again, "Listen, Miss Gindes, do you know those people?" and she said, "My God, what a question you ask me? I know they are businessmen, and I know their place of business, and I know that Mr. Kaplan -- she mentioned the name, and she said, "Oh, I am sorry I told you that name, but I wouldn't tell you the partner's name. It is Mr. Kaplan and a partner".

And so I, for curiosity's sake, took the directory, to see, for curiosity, if there is such a man in the telephone directory, in the silk business, and I found the name of Kaplan & Rednick -- I can't remember the number in Madison Avenue, now -- and so, to find out better yet, I took my buyer, who buys for me the silks --

MR. FABRICANT: If your Honor please, I must object to this. I don't think this is proper.

THE COURT: Yes, objection sustained. Strike that out.

BY MR. WEIL:

Q Did you ever receive a card from this defendant, bearing the name of any person, in connection with this transaction? A Yes, Samuel Schwartz.

Q Where is that card? Did you get it from this defendant? A Yes, sir. And then the man that was introduced as Mr. Schwartz, gave me another card.

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Q And is that the card that you received from this defendant (indicating)? A This I received from Mr. Samuel Schwartz, that was supposed to be the agent.

MR. WEIL: I offer the card in evidence.

MR. FABRICANT: No objection.

THE COURT: Received.

(It is marked People's Exhibit 1)

BY MR. WEIL:

Q Now, I show you some samples of silk, and ask you whether those are the samples of silk that the defendant brought to your place of business? A Yes, sir.

Q As being samples of the silk that was to be sold to you? A Yes, sir.

MR. WEIL: I offer the samples in evidence.

MR. FABRICANT: No objection.

THE COURT: Received.

(They are marked People's Exhibit 2)

BY MR. WEIL:

Q Now, will you please go on from where you left off?  
A Mr. Schwartz told me I shall wait in my showroom until he will call me up, to make the arrangements how to get that silk, and he told me to wait with this defendant, in my showroom.

I went up -- he was supposed to call me by four o'clock in the afternoon, Friday, the 26th of November. I waited until four o'clock, and I didn't receive no call, and I

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waited another ten minutes, and no call.

And Miss Gindes said, "Call up Mr. Schwartz in his place of business by that card he gave you, and find out if he is coming to see you".

And I called up that place where the telephone number is on the card, and somebody answered the telephone, and said, "Mr. Schwartz is not in at present," but that I shall leave a message, because they expect him any minute.

And I left the message that I called him up; and, five or ten minutes afterwards, I had a call from Mr. Schwartz, or the man that said he was Mr. Schwartz, and he said, "They just told me you called me up", and I said, "Yes, I can't wait any longer, and the best place for us to meet is my showroom", and then he said, "No, the best place to meet is in front of the Hotel McAlpin.

Q Did you recognize the voice of the person speaking as that of the man Schwartz? A Yes, sir. And he made it up that, five o'clock, we shall be there, the defendant and me.

Q Did anyone else go with you, besides the defendant?

A No, only the defendant.

Q Go on. After you reached the Hotel McAlpin, what happened? A I waited there about five minutes, and Mr. Schwartz comes along with the same car that he was in in the morning, the same Cadillac limousine, and he said, "Now, Mr. Bernstein, we can make some arrangements. Let us go in the lobby of the Hotel McAlpin", and he said, "No. You leave your car

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in front of the Hotel McAlpin, and you and Miss Gindes come in my car, and we will have a ride on Fifth Avenue, and talk it over", and I did so.

Q And did Miss Gindes go with you? A Yes, sir. And he tells me, "Mr. Bernstein, this man wants to sell his goods for cash", and I said, "Won't a certified check do?" and he said, "No, because he don't want a check to pass through his bank for merchandise", and I said, "How much cash will be necessary?" and he said, "You will have to show ten thousand dollars cash, in order that the man will be able to talk to you business, and that's the only way the man will show you where the goods comes from". And I made arrangements with him, that, next day, Saturday, two days after Thanksgiving --

Q Was that the 28th? A No, the 27th, I think.

Q Was that the day the cash was passed? A No, sir. I had to show the cash on Saturday, by half-past ten; I must show that I have ten thousand dollars cash, to show I mean business, to buy the goods, and I produced the cash on Saturday morning.

Q Where did you get the cash from? A In the bank.

Q You drew it out of the bank? A Yes.

BY THE COURT:

Q To whom did you show the cash? A Miss Gindes was there.

Q (Question repeated) A Mr. Schwartz and the other man that was supposed to sell me the goods, Mr. So-and-So, as

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they give me his name.

BY MR. WEIL:

Q Well, what day of the week was it that the money was passed over? A The following Monday, the 28th.

Q Then Saturday was the 26th? A Yes. I must show them that I have money to buy the goods, and they were supposed to take me to the place where the goods is, and they held me off because they didn't want to take me where the goods was.

Q Now, who did all the talking? A Mr. Schwartz.

Q And was the defendant present during all this time?

A Yes.

Q I have understood you to state that this defendant was present during all the transaction that were had, from the beginning up to the present time? A Yes, sir.

Q Now, go on. A Now, on Saturday, when I showed them the cash in the lobby -- they also took me in the Alpine Restaurant, in 34th Street, near the Hotel McAlpin, and I showed them the cash at the table, and then I asked them what was to be done, that I wanted to see the goods, after I showed them the cash; and they said, "We can't show you the goods now, but we will send it up to your place of business, and you will see it there".

And I said, "No, I wouldn't give no money until I saw what kind of goods it is", and he said, "No, Mr. Bernstein, you don't need to give any money. Let's go up to your show-room, and we will place the money in an envelope."/

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BY THE COURT:

Q When was that? A Saturday, the 26th of November.

Q You showed the cash on the 27th; did you not? I so understood you to testify. A No, sir, I made a mistake in the date.

BY MR. WEIL:

Q Now, when was this money shown? A On a Saturday.

Q And was that the Saturday preceding the day on which the negotiations were concluded -- the Monday when the negotiations were concluded? A Yes, sir. And they were up to my showroom with me.

BY THE COURT:

Q Was that on the 26th? A Yes, sir, the same day. And Miss Gindes went along with us. And there they produced an envelope, similar to that one here, the yellow envelope (indicating).

BY MR. WEIL:

Q Who produced the envelope? A Mr. Schwartz.

Q And who was there at that time? A Miss Gindes, the defendant.

Q And who else? A And Mr. So-and-So, as he was introduced to me.

Q Was there any other person, other than those that you have mentioned, present at that time? A No, sir; only my bookkeeper was in the office.

Q Well, he was not present where this transaction was being had? A Nos, ir.

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Q Now, who produced the envelope? A Mr. Schwartz.

Q Have you that envelope here? A No, sir, Miss Gindes tore that up in pieces, afterwards, and took it back to them.

Q Now, what happened up in the showroom? A Mr. So-and-So and Mr. Schwartz made me count the money, and I placed it in the envelope that they handed me.

Q What denominations was the money in? A I know I had six thousand dollar bills and about thirty one hundred dollar bills, and the rest I had in fifties.

Q Any fifty dollar bills? A Yes, sir. I remember certainly the six thousand dollar bills, but I don't exactly remember just how many fifties and one hundreds I had, but I know fifty dollars was the smallest.

Q Now, then, from that point on, tell us what happened?  
A Mr. Schwartz, after I put the money in the envelope, took the envelope out of my hands, and put it right on the table, and took some of those red labels, and sealed the envelope all around.

Q Where did he get the labels from? A I don't know. He had them in his brief bag, and produced them.

MR. WEILL: These labels are offered in evidence, if your Honor please.

(They are admitted, without objection, and marked People's Exhibit 3)

Q Yes. Now, he produced these labels, you say, and then what did he do? A He pasted them around the envelope

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(illustrating), and I said, "What's the idea of pasting the envelope that way?" and he said, "I'll tell you. We'll send the truckman up with the goods", and I said, "What goods? I didn't buy no goods yet".

And he said, "Well, we'll send up the goods, and you can pick them out, and Mr. So-and-So will be right there, and he will sell you the different goods you pick out, to the amount of ten thousand dollars, and then the truckman will go away".

Q Were you all standing or sitting at the time this conversation took place? A Standing.

Q And how close was the defendant standing to you, when this was said? A She was right there, close up to us. And I saw my money placed in that envelope, I put it in there myself, and they handed me back the envelope, and I shall take this defendant to my place of business and they will come along in about two hours, about two o'clock, in the afternoon; they will come up with a truck of goods for me to pick out the merchandise.

I waited until two o'clock, and nobody showed up. This defendant was with me all the time in my place of business, and also was my buyer, Mr. Gold. He was in the place, waiting for the goods, because he examines all the goods we buy.

Q Now, let me ask you this: Was Mr. Gold present at any of these interviews or talks? Did he know what had happened

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up to this time? Was he present at any time that you had any of these talks with Miss Gindes, or Schwartz, or So-and-So? A Yes, on Saturday morning, the same morning when I had the cash with me, I took him along as a bodyguard, also another man, Mr. Manny Goldberg, because I have so much money, I want a bodyguard.

Q Now, do you know where Mr. Manny Goldberg is now?

A He is on the road. He is a traveling salesman.

And I waited until two o'clock for the truck to come, and it didn't. Then, around half-past two, I received a telephone call from Mr. Schwartz. Mr. Schwartz called me up and said, "Mr. Bernstein, we are very sorry. The place is closed, and the truckman left, and we can't deliver you the goods, today. We will make the arrangement for Monday, to deliver you the goods for Monday. By the way, let me speak to Miss Gindes".

And she goes over to the telephone, and speaks to him, and then she comes out and tells me, "Open your envelope. Your money is there, but Mr. Schwartz told me to bring the envelope back to him".

And I took my money out of the envelope, and the full amount was there.

And Miss Gindes tore the envelope in very little pieces, and held it in her hand, as if it was diamonds. Wouldn't let go a piece of it.

MR. FABRICANT: I object to that characterization

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if your Honor please.

THE COURT: Yes. Sustained. Strike that out.

MR. FABRICANT: And I ask your Honor to instruct the jury to disregard it.

THE COURT: Yes. The jury will disregard it.

BY MR. WEIL:

Q She tore up the envelope, and held the pieces in her hand? A Yes.

Q Then what happened? A And I said, "Why do you do that?" And she said, "I have orders from the people, from Mr. Schwartz, on the telephone, to bring that envelope back in pieces", that she shouldn't leave any of the pieces in the place. And the matter was left over to be finished up the following Monday.

Q All right. Now, nothing more happened that Saturday? A No.

Q Now, what happened on Monday morning? A Now, something happened Sunday.

Q Something happened on Sunday? A Yes. This young lady called me up on Sunday at my house, and I wasn't at home, and my daughter was in, and she told my daughter --

Q You didn't hear her voice then on the 'phone? A No, sir. She called up my name, but not me.

MR. WEIL: I consent to have that stricken out.

MR. FABRICANT: No, I will consent that the conversation between the defendant and the daughter be admitted in evidence.

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THE COURT: Then it may be received, by consent of the counsel for the defendant.

BY MR. WEIL:

Q Go on now, and tell us what happened, after that happened. I don't want to know what was said to your daughter. A On Monday morning, the following Monday morning, about nine o'clock, this defendant comes up with Mr. Schwartz in my place of business, in 3387 Third Avenue.

Q Near what street is that? A It is corner of 186th St.

Q All right. Proceed. A She comes over to me and tells me, "Mr. Bernstein, we are ready we should go over to see where the goods is. All you got to do is to come along with us, and we'll finish the deal".

Mr. Schwartz was downstairs -- he was also upstairs with me, but his car was waiting downstairs, the same car that he had on Friday -- and I said, "All right, I'll go with you."

And I took my buyer along, Mr. Max Gold, to see the goods, and also Mr. Manny Goldberg -- which is a good friend of mine -- as we occupied the showroom partners with them.

And I and Mr. Gold and Mr. Manny Goldberg and the defendant and Mr. Schwartz went into his car, and the arrangement was made that we should go over again to the Hotel McAlpin, and we will meet Mr. So-and-So, and from there we will go to his place of business to show us the goods.

And, when we reached the Hotel McAlpin, Mr. Schwartz said, "Let's go into the Alpine Restaurant", and we went

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into the restaurant, and there we found Mr. So-and-So, sitting at a table, having a coffee, or whatever he did.

And he greets me, and he said, "Mr. Bernstein, are you ready to make the deal?" and I said, "I was ready on Saturday. You know I have the money".

And he said, "Listen, show me the money again", and I said, "Why is that necessary, to show it again?" and he said, "Well, He is selling for cash."

And I took out the money and showed it to him, and they produced an envelope, exactly like this one (indicating), and I put the money into the envelope, I put myself in the envelope the money.

The defendant was sitting next to me, and I put the money in the yellow envelope, and she saw me put it in the envelope; and Mr. Schwartz took it out of my hands, and put again those seals on, the red seals.

Mr. So-and-So took the envelope in his hands, and he said, "Let's paste those seals good on," and he puts it under a paper on the table, and presses it down.

And he said, "In order, Mr. Bernstein, to show that you mean business, we will give Miss Gindes this envelope to hold, and I will telephone my partner that we are going to see the goods."

And Miss Gindes put it in her bosom, and he went out to call up his partner -- he says that he is going to telephone his partner that he is coming with the people, and that they are ready to buy the goods.

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And Mr. Schwartz was left with me and Miss Gindes at the table.

A couple of seconds later, after Mr. So-and-So went out, Mr. Schwartz said, "Oh, my, I forgot to tell him something. I'll go and call him."

And he only took his hat, but left his coat and brief there, and went out.

And that looked a little suspicious to me, and I said, "Miss Gindes, I want you to give me that envelope rightaway," and she said, "No, no, those people will be back in a few minutes."

And I insisted, and she took it out of her bosom, and, just to show me that there is money, she cracked a little bit of the envelope, to show my money was in the envelope, and I had to force it out of her hands, and I found that there was dollar bills in there.

Q How much was therein the envelope? A I didn't even count them. I seen right away the sign of a dollar bill, and I know my smallest bill is a fifty, and I got a hold of her, and Mr. Gold, my buyer, was with me at the time.

Q I show you a brown envelope, with some single dollar bills in it, and ask you whether that is the envelope, and whether that is the money that was in the envelope at that time? A That's the envelope, sure, but I didn't count the money then, or even look at it, after I seen the dollar bills, until the detective took it out and counted it.

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MR. FABRICANT: To save time, if your Honor please, I will say now that there is no dispute that that is the identical envelope.

MR. WEIL: Very well then. With that concession, I will offer it in evidence.

(It is admitted in evidence, without objection, and marked People's Exhibit 4)

Q What next happened? A I began to holler, "Look what you done. You brought me in two thieves," and she said, "I don't know nothing," and I said, "Come on, I'll have you arrested, I've got to find out who it is," and I pulled her up to my show room, and Mr. Gold took along the brief case, with the coat that Schwartz had left.

Q Is that the brief case that was in the possession of Mr. Schwartz (indicating)? A Yes, sir.

(The brief case is offered in evidence, and admitted, without objection, and marked People's Exhibit 5)

Q Now, you took a hold of Miss Gindes, you say? A Yes. I took her up to my show room, and there I called up Police Headquarters, to make the arrest, and they sent up an officer, and they --

Q Was it Detective Finn? A Yes, sir. And there the arrest was made.

Q Did you ever again see any part of your ten thousand dollars, other than the money that was in People's Exhibit 4, the envelope? A No, sir.

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Q Did you ever see any merchandise thereafter, or at any time, in connection with this transaction? A No, sir.

MR. WEIL: You may examine.

CROSS-EXAMINATION BY MR. FABRICANT:

Q You say that Miss Gindes used to work for you as an operator? A Yes, sir.

Q On a machine? A Yes, sir.

Q About how much was she making a week while she worked for you? A Well, she worked in partnership with --

Q (Question repeated) A From thirty to thirty-two dollars a week.

Q And did you personally employ her when she came to work for you? A Yes, sir.

Q On the day when the transaction was arranged, in which you lost your ten thousand dollars, was Miss Gindes dressed as she is now? A Yes, sir, the same hat and the same suit, and also a raincoat she had on.

Q And Schwartz had a limousine? A Yes, sir.

Q A nice looking car? A Yes, sir.

Q And he was <sup>a</sup>prosperous-looking man; wasn't he? A Yes, he looked very prosperous. He wore nice diamonds.

Q He had on diamonds, and drove an automobile? A He didn't drive it. He had a chauffeur.

Q You thought he was a pretty prosperous man; didn't you? A Yes, sir.

Q And was in business, and had silks for sale? A That lady said so (indicating the defendant). I didn't know.

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Q Well, leaving out what the lady had said, didn't you think he looked to be rather prosperous? A Yes, sir.

Q And Mr. So-and-So was a fairly prosperous-looking man; wasn't he? A Yes, sir.

Q And when they asked you whether you had the money, you hadn't any suspicion that anything was wrong? A No, sir.

Q And when they told you to produce the money on Saturday morning, and you went to the bank and got it, you still thought there was nothing wrong? A No, sir.

Q You had no suspicion in your mind on Saturday afternoon, when they put the money in the envelope, that there was anything wrong? A No, sir.

Q And then, when Mr. So-and-so, in the Alpine Restaurant, on Monday, told you that he wanted to see the cash, you thought there was nothing wrong? A No.

Q There was nothing that looked wrong in that transaction, from the beginning to the very end; is that right? A Not exactly.

Q Well, what thing did look wrong to you during the transaction? What was it? A Well, if something had looked wrong to me during the transaction, anything suspicious, I certainly wouldn't have had that transaction.

Q Well, you had some suspicion from the first moment she spoke to you about the transaction, approached you about this transaction; didn't you? A Well, no, I didn't have no suspicions, but I told her if the goods are legitimate

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I will handle them perhaps, but not if they are illegitimate.

Q Did you ever buy goods before, at 7:30 in the morning, for cash? A No, sir. And I never mentioned 7:30 in the morning.

Q Didn't you make an appointment to go to the McAlpin Hotel at 7:30 in the morning, to buy these goods? A No, sir; it was 10:30.

Q Oh, it was 10:30? A Yes, sir.

Q And Mr. Schwartz told you that he was a broker, and that the man he was to sell the goods for was a friend, who didn't want to have his name known? A Yes, sir.

Q And did he tell you why he didn't want to have his name known? A Yes, sir.

Q Because he was in financial difficulty? A No. He don't want his name known in the market, because he is in financial difficulty, and the market may get wind of it, and spoil his credit.

Q You only knew him as Mr. So-and-So? A Yes, sir.

Q And he impressed you as being a prosperous man? A Yes, sir.

Q Now, Miss Gindes was to get something out of the transaction from you; wasn't she? A Yes.

Q What did you say you were giving her? A Five per cent on the deal.

Q Now, when was that talk about compensating her? A While she was acting as introducer.

Q And she was acting as a sort of broker, too? A Yes;

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by telling me she knows the people, and knows their place of business.

Q Did you ask her where the place of business was? A I did ask her.

Q And what did she say? A She said she wouldn't tell me until I will be ready to buy the goods, because the people told her not to tell their place of business, in order that it will not hurt them.

Q And she was very anxious to make that five hundred dollars; wasn't she? A It wasn't a question of five hundred dollars. It was a question of five percent on the deal.

Q And you were willing to draw your ten thousand dollars from the bank to buy merchandise? A Yes. I am always ready to buy merchandise.

Q And you allowed Miss Gindes to hold the money --  
A Yes.

Q While the merchandise was to be produced? A No. I said the man went out with the excuse that he is going to call up his partner, to tell him that the people was coming to buy the goods, and I said, "I want to see the place where the goods come from."

Q What did he say when he gave the money to Miss Gindes to hold it? A Mr. So-and-So said -- he told her to keep the envelope, and he will be back, and he will take us to their place of business, and she should hold the envelope until he came back.

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Q And he told her that in your presence? A Yes, sir.

Q And, after Mr. Schwartz went out, the defendant had the envelope? A Yes, sir.

Q She had it stuck in her bosom? A Yes, sir.

Q And, when you asked her for it, didn't she say to you, "I've got to keep this until Mr. So-and-So comes back"? A Yes; she didn't want to give it to me.

Q Now, didn't you think it was very suspicious that the money should be given to her, to hold, as evidence that you were going through with the transaction? A To tell you the truth, it didn't strike me until after the man left the table.

Q And she held the envelope in her possession for about five minutes? A Yes, sir.

Q And then she gave it back to you? A No, sir. I told her I wanted it back, and she don't want to give it to me.

Q Ofcourse, she didn't want to. She said that she was going to hold it until Mr. So-and-So came back? A Yes, sir.

Q Now, did you tear the envelope, or did she? A She just tore a little piece, to show that there is money in it, and I said, "No, you must show me everything that is in it," and I took hold of the envelope, and she ripped it open, to show me there is money in it, and I seen there is dollar bills in it, instead of bigger bills.

Q Now, didn't you testify, in the Magistrates' Court, that she opened the envelope, or gave you the envelope, and

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you opened the envelope? A No, I don't remember such testimony.

Q Now, do you remember having given this testimony in the Magistrates' Court: "I said, 'Give me that envelope. I want to see what is in it,' and I got hold of her again, and she opened the coat, and gave me this envelope. Q Did you take that out from under her coat? A Yes; I opened this envelope. It is the same envelope they handed me before." Now did you testify that way? A That I asked her she should give me the envelope, and she refused a couple of times to give it to me, and then she opened her coat?

Q (Question repeated) A She opened a little piece of it, first, to show me there is money in it.

Q Now, did you testify the way I have read, in the Magistrates' Court? A Yes.

Q And you didn't say anything then about the defendant opening the envelope and showing you that there was money in it, and holding the pieces of paper in her hands, like diamonds? A No, sir.

Q As a matter of fact, you opened that envelope, after the money had been passed? A She opened it a little piece, and I tore open the rest of it.

Q But, in the Magistrates' Court, you did not say that she opened the envelope at all, didn't open a piece of it even? A Yes, I did.

Q You did? A Yes; I did say that she opened a little

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piece, to show me there is money in it, and then I tore the rest of it, to see whether my money was there.

Q And then you claim you made the same statement in the Magistrates' Court that you have made here? A Yes, sir.

Q And do you deny that that is the way you testified in the Magistrates' Court? A I would like to hear what it reads there.

Q Then I will repeat it to you: "I said, 'Give me that envelope. I want to see what is in it,' and I got hold of her again, and she opened the coat, and gave me this envelope. Q Did you take that out from under her coat? A Yes; I opened this envelope. It is the same envelope they handed me before." A I did say that, but I am sure I also said she opened a little piece of the envelope before.

Q Now, do you claim that that is an incorrect report of what you said in the Magistrates' Court? A No, I said that besides.

Q Then you say that she opened up a little piece of the envelope? A Yes, sir.

Q And you saw dollar bills, in it? A yes. And she wanted to put it back in her bosom, and I said, "No, I want to see what is in there," and I ripped it open, and found dollar bills.

Q And how much of this merchandise were you going to buy for this ten thousand dollars? A Well, he claimed that he had about three hundred and fifty pieces, but I am to pick

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out what suits me.

Q And three hundred and fifty pieces, can you give us roughly, what that would amount to, at the reasonable market price? A Yes, but I wasn't to buy three hundred and fifty.

Q (Question repeated) A They come on an average of fifty yards to a piece, and the value of them is from \$1.50 to \$1.75 a yard. That was the price then, \$1.75.

Q Well, in other words, they told you that they had goods worth considerable over twenty-five thousand dollars; didn't they? A Yes. They told me they got a lot of goods; not only this stuff, but other stuff, georgette.

Q And you believed them; didn't you, Schwartz and So-and-So? A I sure did

Q And Miss Gindes said she understood that they were in business, these men? A No, she said she knows them, they are in business, and she knows their place of business.

THE COURT: We will suspend here. The Grand Jury is coming in.

(The Court then admonished the jury, in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2:15 P.M.)

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## AFTER RECESS

EMIL BERNSTEIN, his cross-examination being continued, testified as follows:

CROSS-EXAMINATION CONTINUED BY MR. FABRICANT:

Q Mr. Bernstein, the transaction started on November 23rd, did it? A Yes, that is the first time.

Q That was the day before Thanksgiving Day? A Yes, sir.

Q And Miss Gindes had been to your place earlier in the month, looking for work? A Yes, sir.

Q She didn't ask you, at that time, whether you needed any silks; did she? A No, sir.

Q And you said nothing to her about buying silks? A No, sir.

Q When she did come up on November 23rd, was there any talk, that morning, about the amount of the commission she would get from you? A That morning, exactly, wasn't no talk. She said when she brought me the silks, she spoke of commission, if I buy.

Q Well, that was the time that you asked her whether the people had a place of business, too; didn't you? A Yes.

Q And she told you that one of the men was a person whom she knew from the old country? A Yes, sir.

Q And dis she tell you anything about the other man? A She tells me that she knows he has got a partner, and she knows his partner, too.

Q Now, Mr. Bernstein, when these men were dealing with you,

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you were under the firm impression that Mr. Schwartz was, in fact, a broker; weren't you? A Yes.

Q And he behaved in such a way that you felt you were dealing with a broker? A Yes.

Q You felt, of course, that you were buying legitimate property from legitimate merchants? A Yes, sir.

Q Was there anything in the conduct of either of those two men, at any time, that led you to think that they were imposing upon you? A No, sir.

Q They behaved like the merchants that you usually deal with; didn't they? A Yes, sir.

Q Now, Miss Gindes had been employed in your place as an operator? A Yes.

Q How long have you been in business, sir? A Ten months, since March, 1921.

Q Had you been in any business of that kind before? A I was employed as a designer and manager by the Empress Waist Company.

Q And then you had not been in business before March, 1921? A No, sir.

Q And you had never bought any merchandise, before that? A No, sir.

Q Now, this merchandise was brought to you in the form of samples by Miss Gindes? A Yes, sir.

Q Did she tell you anything about the price? A No, sir.

Q She told you that would have to be arranged with the men

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who owned the goods? A Yes, sir.

Q And, after that, you really dealt with Mr. Schwartz and Mr. So-and-So? A Yes; in the presence of Miss Gindes.

Q She was present all the time? A Yes, sir.

Q And, of course, she was going to get five per cent of the amount of the sale from you? A Yes, sir.

Q Was there any talk, in your presence, as to how much she was going to get from these other men? A No, sir.

Q Do you remember any talk about her getting six hundred dollars, three hundred dollars, from you, and three hundred dollars from the people on the other side? A No, sir.

Q But you say there was talk between you and her that you would give her five per cent of the amount of the sale? A Yes, sir.

Q And you figured that that would be about five hundred dollars? You expected to buy at least ten thousand dollars worth of merchandise? A Yes, sir.

Q And you were anxious to get the merchandise? A Well, I needed it; I wanted to buy the merchandise.

Q And that is the reason why you were willing to make it a cash transaction? A Yes, sir.

Q And you asked these gentlemen whether they wanted to take a certified check? A Yes.

Q And was that, on Saturday, before you drew the money, or on Friday? A On Friday.

Q And they told you it would be necessary to have cash,

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because Mr. So-and-So didn't want to have a check go through his bank? A Yes, sir.

Q And that did not arouse your suspicion either; did it?

A No, sir.

Q And Miss Gindes was there, at that time? A Yes, sir.

Q You had been buying merchandise before? A Yes, many times I bought merchandise.

Q And you bought most of your merchandise on credit; didn't you? A Yes.

Q And, when these men said that they wouldn't accept a certified check from you, there was nothing in that circumstance that aroused any suspicion in your mind? A No, sir.

Q And she didn't say anything about that to you; did she? A She only told me that she knows these people for a long time, and knows they are business men, and she knows one of them from the old country yet.

Q Did you testify in the Magistrates' Court, when you were telling your story there, that, on Saturday afternoon, Miss Gindes took the envelope, from which your money had been taken, and tore it up?

MR. WELL: One moment. That is objected to, if your Honor please, in its present form, unless he was asked that question in the Magistrates' Court.

THE COURT: I will let him answer it.

A I wanted to tell it in the Magistrates' Court, and they said it isn't necessary to say that, but only the facts about

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Monday.

Q What's that? A I wanted to tell this thing in the Magistrates' Court, but they stopped me off.

MR. WEIL: Just a moment. If he was not asked that question in the Magistrates' Court, this question is improper, because then there was no occasion for him to make a voluntary statement. If his attention was not directed to this particular question, there was no necessity for him to make any answer.

THE COURT: Well, I will let the answer stand.

BY MR. FABRICANT:

Q Now, do you remember, then, being asked the question in this way, and making the following statement: "Q (By Mr. Aranow) In what kind of an envelope, did you have it at that time?" (Meaning Saturday afternoon.) "A I didn't have any envelope at that time. They brought the envelope along, and they made me put the money in the envelope, and sealed it, and told me, while I have the envelope sealed, they are supposed to bring me over to their place of business, and see where the goods is. It was late Saturday, about two o'clock, or half-past two o'clock, and they said they can't bring me to their place of business, the place is closed-- Saturday afternoon-- supposed to be closed after twelve o'clock until the evening, or until Monday morning. As soon as they tried to get out, I opened the envelope, to make sure my money was there. I find my money-- it was Saturday." Now, is that

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the way you told the story of what happened on Saturday afternoon, in the Magistrates' Court? A I said that, yes.

Q But you didn't say anything about Miss Gindes tearing the envelope up, in small pieces? A No, sir; they wouldn't let me say that. They said, "It isn't necessary to say those things."

Q Who told you that, at the time you were testifying? A I don't remember. I think it was the District Attorney, but I don't remember who it was; but he stopped me off in this.

Q But you say Miss Gindes tore up the envelope, on Saturday afternoon, into extremely small shreds? A Yes.

Q And that was after she had gone to the telephone and had had some talk? A Yes.

Q And she told you that she had been instructed to tear up that envelope? A Yes.

Q And you believed she had been instructed that way? A Yes.

Q And, assuming she was instructed to do that, that did not create any suspicion in your mind, at that time; did it? A No, sir.

Q And Miss Gindes did not tell you then that it was suspicious to her? A No, she didn't tell me anything.

Q Now, will you please tell me just how this money was passed on Monday afternoon? You were given the envelope by one of the men? A Monday morning.

Q Monday morning? A Yes.

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Q Who gave you the envelope? Mr. Schwartz? A The other fellow, that was supposed to be Mr. So-and-So, took the envelope out-- I don't know from where he got it-- and put it right on the table.

Q And you had your money in the pocket? A Yes.

Q The same money that you had put in your safe, on Saturday afternoon? A Yes.

Q Did you yourself put the money in the envelope? A Yes, sir.

Q Did you seal the envelope? A No, sir; I just pasted the flap of the envelope.

Q And then you handed the envelope to one of these men?

A No, I didn't hand it to him. He says he wants to put seals on it, and he took it from my hand.

Q And he placed the envelope on the table? A Yes, sir.

Q And put a paper over it? A First, he pasted the red seals on.

Q And then he put the paper over it? A Yes, sir.

Q And squeezed down on the paper, as if he was pressing the red seals down? A Yes.

Q And then he took out an envelope from under the paper? A Yes.

Q You thought it was the same envelope that you had given him, with your money? A Yes, sir.

Q And Miss Gindes was standing right there, and watching the same operation? A Yes, sir; she was sitting there.

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Q And there was nothing about that, that aroused your suspicion; was there? A No, sir.

Q Well, then, what did Mr. So-and-So say, after he had taken out the envelope from underneath the paper? A He folded up the paper, and put it in his pocket, and he said, "I am going out to call up my partner, and tell him that I am coming with the people that want to buy the silk."

Q And who had the envelope, when he said that? A First, before that, he handed the envelope to Miss Gindes, and he said, "In order that we shall be sure that we are making the deal, let Miss Gindes hold the envelope."

Q He said that to you, did he? A Yes.

Q And he gave some instructions to her; didn't he? A Yes, that she is to hold the envelope until we reach the place where we shall see the merchandise. He said he is going over to call up his partner, and tell him that he is coming with the people.

Q Well, it didn't strike you at all strange, when this man said to you, "Let Miss Gindes hold it, so as to be sure that we are going through with the transaction"? A No.

Q So that, all ~~during~~ through this transaction, these various things didn't strike you as unusual or strange? A No.

Q And you had been in business for about six or seven months? A Since March, 1921.

What was Miss Gindes' appearance at the time you asked

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her for the return of the envelope? A After Mr. Schwartz left-- first, Mr. So-and-So left--

Q Now, I know all that. We have been told that. And who was left then, after Schwartz left? A Me, Mr. Gold,, my witness, and Miss Gindes.

Q Did Miss Gindes appear nervous to you at that time?

A Yes, she did appear a little nervous.

Q Did you think so? A Yes.

Q Well, you never said that before. A Well, I wasn't asked.

Q Well, anyway, do you say now that she appeared to be nervous? What do you say about her conduct at that time, when she had the envelope in her bosom? A She looked a little shaky, and I couldn't make out whether she is nervous or not nervous, but she looked a little shaky when I asked her to give me the envelope, and she said she wouldn't give it to me.

Q Well, you had heard Mr. So-and-So tell her not to give the envelope up to any one until he returned? A Yes, sir.

Q And didn't she say, "I won't give it to you until Mr. So-and-So returns"? A Yes.

Q And about how many minutes would you say elapsed before you actually got possession of this envelope? A About five to ten minutes.

Q Not as long as fifteen minutes? A It may be fifteen. I didn't exactly look at the time, whether it is five or ten

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minutes.

Q Well, didn't you say, this morning, that the minute Mr. Schwartz left the place, your suspicions were aroused?

A Yes, that is so. But the other man left before Mr. Schwartz, about five minutes, and when Mr. Schwartz, the second man, left the place, I got suspicious, and asked her for the envelope.

Q Now, outside of your acquaintance with this defendant as an employee of your shop, you do not know her at all? A No, sir.

Q And, while she worked for you, she was industrious?

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

THE COURT: He may answer.

A She was working on a machine, like other girls.

BY MR. FABRICANT:

Q Yes. How many hours a day? A Sometimes, when I was busy, she worked an hour or so overtime.

Q What were the regular hours? A Eight hours a day; and certain times, when everybody was working overtime, she worked an hour or so overtime, too.

Q She was quiet and well-behaved? A Well, I didn't notice that. I have so many girls working there, I don't notice any girl particularly. I didn't see any bad action in her.

REDIRECT EXAMINATION BY MR. WEIL:

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Q Did you hear anybody instruct Miss Gindes to tear open this envelope, and show you that there was money inside? A No, sir.

RE CROSS-EXAMINATION BY MR. FABRICANT:

Q Well, that is something you didn't testify to in the Magistrates' Court?

MR. WEIL: Oh, that has been gone over, I submit, your Honor, and I object on that ground.

THE COURT: Yes, I will exclude it on that ground.

MAX GOLD, of 1498 Southern Boulevard, The Bronx, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WEIL:

Q How old are you, Gold? A Twenty-three.

Q Where do you live? A 1498 Southern Boulevard, the Bronx.

Q What is your business? A Taking charge of the silk in the shipping department.

Q Employed by whom? A Henry Bernstein and Brother.

Q The last witness on the stand is your employer? A Yes, sir.

Q And in what capacity are you employed by him? A Taking charge of the silks and the shipping department.

Q How long have you been with that firm? A Ten months.

Q That is, practically, since they have been in business?

A Yes, sir.

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Q Do you know Eva Gindes, the defendant? A No, I don't know her.

Q Well, did you ever meet her? A Yes.

Q When did you first meet her? A I met her in Mr. Bernstein's premises.

Q When, for the first time? A Between April and May.

Q Was that while she was employed there? A Yes.

Q Now, were you present when she left the employ of Mr. Bernstein? A No, sir.

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

Q When did you next see her, after she left the employ of Mr. Bernstein? A The next time I have seen her was Wednesday, the 23rd of November.

Q Where? A In the factory, Mr. Bernstein's factory.

Q What time of day was it? A I couldn't say exactly.

Q Morning, noon or night? A Morning.

Q Did you hear any conversation that took place at that time between Miss Gindes and any one else? A No, sir.

Q When did you next see her, after that? A On Friday, the 25th of November.

Q That was two days after the 23rd, when you first saw her there again? A Yes, sir.

Q Where did you see her? A In Mr. Bernstein's place.

Q Morning, noon or night? A Morning.

Q And did you hear any conversation between Miss Gindes and any one else at that time? A Yes, sir. I heard Miss

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Gendis tell Mr. Bernstein that she knows the people for quite a number of years, six ye ars, and she knows their place of business, and it is his own automobile.

Q Whose own automobile? A Schwartz, the broker.

Q You heard her say that to Bernstein at that time?

A Yes, sir.

Q, And is that all you heard at that time? A Yes.

Q And when did you next see Miss Gindes after that?

A I have next seen her that Saturday morning.

Q That was the following morning? A Yes, sir.

Q Where? A In front of the McAlpin Hotel.

Q And who was present at that time in front of the McAlpin Hotel? A Just Miss Gindes.

Q, Mis Gindes and you? A Well, we have seen her there.

/Q Where where you when you saw her? A I was with Mr. Bernstein.

Q How far away from her? A About fifteen feet?

Q What was she doing there? A I just seen her standing there.

Q And shortly after that, <sup>did</sup> you ~~see~~ speak to her or hear her say anything to anybody? A No, I did not.

Q Now, what followed on that Saturday morning? A On that Saturday morning I have seen Mr. Bernstein walk into the Alpine Restaurant, right next to the McAlpin.

Q Where were you? A Out on the sidewalk.

Q You didn't go in? A No, sir.

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Q And you don't know what happened inside? A No, sir.

Q And then, did Mr. Bernstein come out? A Yes, he did come out.

Q Did he come out alone or with anyone? A He came out together with Mr. Schwartz and Miss Gindes.

Q And then did you go anywhere? A Yes, I went up to the Bronx, to the factory.

Q With Mr. Bernstein? A No, sir. With a friend, Mr. Goldberg.

Q And so, you don't know what happened after you reached the Alpine Restaurant that day? A No, sir.

Q Now, when did you next see her, Miss Gindes. A Up at Mr. Bernstein's factory, that same afternoon, about two o'clock, and then I again saw her on Monday morning.

Q Where, on Monday morning? A At Mr. Bernstein's factory.

Q At what time? A Eight thirty in the morning.

Q Now, when did she leave there? A About a quarter to nine.

Q Who left with her, if any one? A Mr. Bernstein, Mr. Schwartz, Mr. Manny Goldberg, and myself, and Miss Gindes.

Q Now, where did you all go? A We all went down to 35th Street and Broadway.

Q By the way, how did you go down? A In the automobile.

Q Whose automobile? A Considered to be Mr. Schwartz's automobile, a Cadillac limousine, and we stopped at the curb, and I walked out of the car with Mr. Bernstein, Miss Gindes, Mr. Manny Goldberg, and myself.

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Q All right. You stepped out of the car? A Yes, sir.

Q And then where did you go? A From there we walked over to the McAlpin Hotel.

Q And where is the McAlpin Hotel? A Right there, at 34th Street, and from there Mr. Schwartz came along with his car, and he stepped out, and he told us to walk into the Alpine Restaurant, right next door to the McAlpin Hotel, and we walked in there, and I seen a stout man sitting at a table.

Q Was that the first time you saw him? A Yes, sir, and he was eating, but ofcourse, I don't know what he was eating.

And Mr. Goldberg and myself sat at the next table, right beside the table he was sitting at, and Miss Gindes, Mr. Bernstein and Mr. Schwartz sat down at the table with the stout man.

Q How far was the table at which you sat, from the table where the stout man and the others were? A About two feet, to the side of it.

Q Now, did you hear what was said at that table? A No, sir.

Q Did you see anything that happened there? A Yes, sir. I have seen. Mr. Bernstein took money out of his pocket, and I have also seen an envelope taken out by the stout man, and handed over to Mr. Bernstein, to place money in there; and I have seen Mr. Bernstein place money in the envelope, and seal it with his own lips -- that is, the flap of the envelope -- and I saw Mr. Bernstein turn the envelope over

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to the fat man.

Q The stout man you mean? A Yes, sir.

Q Go on. What did you see after that? A And I have seen the fat man put the seals -- I noticed they were seals -- on the envelope, and place them underneath a paper and press them down (illustrating). After he had pressed them down, he took the envelope from underneath and he gave it to Miss Gindes.

Q Did you hear him say anything at that time? A No, sir.

Q You couldn't hear, could you? A No, sir. And he gave her the envelope, and I noticed that she placed the envelope in her bosom, and then I noticed the stout man get up and put on his hat and start to walk out -- what he was supposed to do I don't know -- and as he went out, Mr. Schwartz, the gentleman sitting at the table, called Mr. Goldberg and me over to the table, because there was no room up there, and we sat down.

And about two minutes elapsed, when Mr. Schwartz, I noticed, stepped up to Mr. Bernstein over the table, stooped down over the table (illustrating) and whispered something in his ear -- I don't know what it was -- and I seen him put his hat on. And he left his brief and his coat there, and stepped out; and we were left at the table with Mr. Bernstein and Miss Gindes; and Mr. Goldberg and I were the only two other people at the table.

And then, about five minutes after that, Mr. Bernstein

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said to Miss Gindes, "Let me see the envelope", and she said, "No, because I was told to hold it until a certain party comes back."

And Mr. Bernstein insisted upon her showing the envelope. About six minutes elapsed, when she pulled the envelope out of her bosom and showed it to Mr. Bernstein. And Mr. Bernstein was anxious to see the money, he wanted to see the money, or, rather, she, in order to show Mr. Bernstein --

MR. FABRICANT: I object to this.

THE COURT: Yes, sustained.

BY MR. WEIL:

Q Now, don't say, "In order to". What did she do?

A She ripped the signature of the envelope open about half an inch deep.

Q And what did she do with the envelope then? A She showed it to Mr. Bernstein, and he got half of the envelope in his hand, and ripped half of it open, and saw that he had only dollar bills in there.

MR. WEIL: No, strike that out. I consent to that being stricken out.

Q What happened then? A He asked her, "What have you done?" and grabbed her by the arm, and he took her out and took her to the show room at 10 West 33rd Street, where he kept her until he notified the police and a certain officer came up there.

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## CROSS EXAMINATION BY MR. FABRICANT:

Q Mr. Gold, you are employed by Mr. Bernstein, as the person in charge of his silk department? A Yes, sir.

Q When you say in charge, do you mean that you are engaged there as the buyer? A No, I was engaged to examine the silk and keep a record of the silk.

Q Did you ever, while you worked in the employe of Mr. Bernstein, buy any silk? A No, I did not.

Q Did you ever appraise the value of silk for Mr. Bernstein? A No, sir, I did not.

Q Did you know the prices of the silk that was being bought by Mr. Bernstein? A Yes. That's right.

Q That is, you learned those prices from the tags on the silk? A Yes, from the bills.

Q And you had charge of the stock of silk? A Yes, sir.

Q And Mr. Bernstein took you to the bank on Saturday morning, as a guard, to see that he was not robbed? A Yes, sir.

Q And did he tell you that he was going to have you examine any silks? A Yes, he told me.

Q You were going to examine some silks? A Yes, sir.

Q To look over them, to see what the value of them was? A No, sir. Just to see that they were perfect.

Q Now, you say, Mr. Schwartz rode in an automobile that you have characterized as his automobile? A Yes, sir.

Q But you don't know whether it was his automobile or not? A No, sir.

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Q You only say it was his because he was riding in it?

A Yes, sir.

Q And he had a chauffeur? A Yes.

Q And he wore diamonds, and he looked like a very prosperous man? A Yes, sir.

Q And you and Miss Gindes rode in Mr. Schwartz's car?

A Yes, sir.

Q And Mr. Bernstein also? A Yes, sir.

Q Who drove Mr. Bernstein's car? A Mr. Bernstein.

Q Well, did you notice that Miss Gindes was acting nervously when she had this envelope in her bosom? A No, I didn't see her act nervously.

Q And did you hear Mr. Fat Man, as you have called him, that is, the unknown person, say to Miss Gindes, "Don't give up this envelope until I return"? A No, sir; I did not.

Q Well, you were there? A Yes, but not at the same table.

Q But, at any rate, when Mr. Bernstein asked for the envelope, she had it in her bosom, and she said, "I can't give it to you until he returns"? A Yes.

Q And did Mr. Bernstein grab the envelope from her bosom, from behind her coat? A No, sir; he did not.

Q Then she took it out herself? A Yes.

Q And did she protest quite vigorously, before she gave it to him? A No, sir; she did not. She just held on to the envelope.

Q And then Mr. Bernstein grabbed it away from her; didn't he? A No, he didn't grab it away from her.

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Q Well, he asked her for it several times? A He did, yes.

Q And finally, she gave it to him, and he opened it up hurriedly? A He didn't. She opened it up first.

Q Now, you were in his place of business on Friday, and heard the conversation as to who these people were? A No, I only heard her say that she knew the people.

Q And that she was sure the merchandise was legitimate? A Yes.

Q And she was sure they had a place of business? A Yes.

Q And that conversation was going on between Mr. Bernstein and Miss <sup>Eva</sup> ~~Sindas~~ A Yes.

Q Where, in the factory? A In the cutting department of the factory.

Q You have your factory divided into departments? A Well, three-quarters of it is open and only a part of it is divided, and that is the office.

Q And you are in charge of the silks? A Yes, sir.

Q And when Miss Eva came in and talked to Mr. Bernstein, it was in the cutting department? A Yes, sir.

Q And not in the office where the bookkeeper was? A No, sir.

Q What were you doing then? A I was working on a cutting table, examining silk.

Q And this conversation was had very close to you; was it not? A Yes, sir. About two feet away.

Q Now, just tell us what else was said at that time?

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A That is all I heard her say.

Q You heard her say that she knew these men for six years, and that the goods were legitimate, and that they had a place of business? A Yes, sir.

Q Anything else? A And that Mr. Schwartz was the owner of the car. She said he owned that Cadillac car.

Q She knew that he was the title owner of that car? A Yes, that is what she said.

Q Did you hear any talk about commission, or how much Miss Eva was to get? A Nos, ir.

Q Did you hear Mr. Bernstein say to her at that time that he wanted to be sure that the goods were not stolen? A Yes, I heard that too. And I went on about my business, and put my piece of silk back on the shelf, after I had examined the first piece.

Q And you don't know anything else that was said in that conversation during that entire half hour? A No, sir.

Q And you didn't go any closer to them to hear what they said? A No. I was through with that particular work.

JAMES J. FINN, of the 23rd Precinct, detective bureau, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WEIL:

Q You are a police officer attached to the Municipal Police Department of the City of New York? A I am.

Q Assigned to the 23rd Precinct? A Yes, sir.

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Q And you were so attached and assigned on the 28th of November, 1921? A Yes, sir.

Q Did you put the defendant under arrest? A Yes.

Q Now, please state when and where you arrested her? A On November 28th, we received a telephone message that a robbery occurred--

MR. FABRICANT: I object to that.

THE COURT: Sustained.

Q No, don't say that. As the result of that telephone message, what did you do? A I went to the McAlpin Hotel.

MR. FABRICANT: May I ask your Honor that the term "robbery" be stricken out, as utterly immaterial to this case?

THE COURT: Yes, strike it out.

BY MR. WEIL:

Q Go on. A I went to the McAlpin <sup>Hotel and</sup> ~~Hotel~~ went back to the station house, and Mr. Bernstein, and Eva Gindes, and Gold and Goldberg came to the station house, and Bernstein explained to me--

Q Was the defendant present at that time? A Yes, sir; and Bernstein said--

BY THE COURT:

Q No. What did you do? A Just state that. A I questioned the defendant, Eva Gindes.

BY MR. WEIL:

Q Now, what did she say to you? A She stated to me that

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she had known a Mr. Kaplan, in Odessa, Russia, and he had met her, and explained to her that he knew a man who had considerable silk.

I asked her how long she knew Kaplan, and she said about ten years, and that he was in the silk business somewhere on Fourth Avenue.

I then said, "How about Mr. Schwartz?" He was mentioned by Mr. Bernstein. And she said, "He's got a place of business down ~~in Warren St~~ at 27 Warren Street."

I then questioned her as to how long she knew Mr. Schwartz, and she said she didn't know him very long, but she knew Mr. Schwartz was a friend of Mr. Kaplan, and he was all right.

I then took Mr. Bernstein and Mr. Gold, and went to the address on Fourth Avenue, between 26th and 27th Street, to a firm by the name of Kaplan and Rudnick. I asked Mr. Bernstein at the time--

Q Was the defendant present at that time? A No, sir. As the result of the investigation, I went to 27 Warren Street, and found that--

MR. FABRICANT: Objected to, what he found there.

MR. WEIL: If your Honor please, the defendant told him that this man, Schwartz, had a place of business at 27 Warren Street.

MR. FABRICANT: Objection withdrawn.

BY MR. WEIL:

Q Go on, Officer.

A And I inquired for Mr. Schwartz,

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and I was shown his desk there, in an office where there are about one hundred and fifty desk rooms, hired out to various people, and found a newspaper and a lot of slips of paper on the desk, with an old memorandum book.

And I went to the man who had charge of the place, and asked him if Mr. Schwartz had been there any period of time, and he informed me--

MR. FABRICANT: I object to that, what he was informed of, in the absence of the defendant.

THE COURT: Objection sustained.

BY THE COURT:

Q Just state what you saw and found. A I found that Mr. Schwartz had only had a desk there, and was there about a week. That is all that could be found out about him.

BY MR. WEIL:

Q And this defendant told you what about him? A That he was in business at 27 Warren Street, and had a big business, a big place there.

CROSS-EXAMINATION BY MR. FABRICANT:

Q Well, you did find a big place down there? A Yes, a big loft, with about one hundred and fifty desks in it.

Q And you found that he had been there for a week? A Yes, sir.

Q Did they describe him to you? A Yes.

Q What was the description? A A man five feet, six or seven inches, very sallow complexion, apparently a Hebrew.

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Q Well, anything about his dress, whether he wore jewelry or anything of that kind? A No, sir, I didn't ask anything about that.

Q Now, all that Miss Gindes said was that she understood he was down there in business, and had a place of business there? A Yes, sir.

Q Did you ask Miss Gindes if she had actually gone there at the time? A I believe I asked her if she knew he was there, and she said that she had telephoned to that address for Mr. Schwartz.

Q Did she say that she had gone there actually? A No, sir.

RE DIRECT EXAMINATION BY MR. WEIL:

Q Now, Mr. Fabricant asked you whether Miss Gindes said that she understood Mr. Schwartz was down there, had a place of business there. Now, did she say she understood, or thought he had a place of business down there? A She said that he had a place of business down there.

RE CROSS EXAMINATION BY MR. FABRICANT:

Q Was that the time when you were shown the card with his name and telephone number? A No, sir; that was prior to finding the card in the brief case.

Q Have you got that card here? A No, I haven't. The card which was found in the brief case is there (indicating).

Q Is this the one that I now show you, People's Exhibit 1, that you found in the brief case? A The card that I found in the brief case, had a memorandum about a man named Slevin.

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Yes, that is the card that was in the brief case.

MR. FABRICANT: That is all. I would like to recall Mr. Bernstein for a moment.

MR. WEIL: There is no objection.

THE COURT: You may do so.

EMIL BERNSTEIN, being recalled for further cross-examination by counsel for defendant, testified as follows:

CROSS-EXAMINATION CONTINUED BY MR. FABRICANT:

Q This card, People's Exhibit 1, was that given to you by Mr. Schwartz? A A card like it, yes.

Q Then it is not the identical card that Mr. Schwartz gave you? A A card exactly like it.

THE COURT: Is that the identical card, you are asked. Answer the question.

BY MR. FABRICANT:

Q Yes, the one he actually gave you? A No, not that he gave me. The card that he gave me wasn't marked with those things (indicating).

Q I see. Just a blank business card? A Yes, sir.

Q And it had the same printing on it (reads)? A Yes, sir.

Q Was that the telephone number that Miss Gindes called up when she telephoned to Mr. Schwartz, do you know? A I don't know.

Q You tried to reach Schwartz down there; didn't you? A Yes.

Q At that same telephone number? A Yes.

Q And they told you he was out? A Yes, at present.

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Q And a few minutes afterwards, you got a call from Mr. Schwartz? A Yes.

Q And that was Friday afternoon? A Yes.

Q Mr. Gold was present in your factory at the time Miss Eva came up, on Friday morning? A Yes, he was around the factory with the other employees. I know he was in the factory.

Q Do you remember that he was standing near you when Miss Eva told you that the goods was legitimate, and that she knew these men were businessmen, and that she had known Schwartz in the old country? A I think he did hear it.

Q Have you spoken about this case with Gold, at all? A No, sir; only I told him I shall buy the goods and he shall go with me to examine the goods.

Q Since the defendant was arrested, have you talked with <sup>he</sup> Gold about what ~~you~~ should testify ~~here~~ to here? A No, sir.

Q You haven't talked about the case at all; have you? A Yes, we have talked about the case, not exactly the way it happened, but he knew I was robbed.

Q Oh, yes, he was there when you put your money in this envelope, and it disappeared? A Yes.

Q Now, what did the fat man say to you -- or, rather, what did Mr. Schwartz say to you, when he leaned over the table, in the Alpine Restaurant, and whispered in your ear?

A I don't remember him whispering in my ears. He said he was going out to tell the other man something, but he only bent over the table and told me that he is going after the

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ather man, to tell him something.

MR. FABRICANT: That is all.

MR. WEIL: That is the People's case.

MR. FABRICANT: If your honor please, I respectfully move to discharge the indictment against the defendant upon the ground that the evidence shows that the larceny was committed by other persons, and that at the same time, it shows that the circumstances, as far as the defendant is concerned, are equally consistent with her innocence as with her guilt; and, there, the charge is not substantially established according to law.

THE COURT: No, if she was acting in concert with the other two persons, she would just as guilty as they were.

MR. FABRICANT: Of course, I concede that. But my motion is based on a question of law, that, where the circumstances are equally consistent with her innocence as with her guilt, and where one conclusion may be drawn as well as another, of innocence instead of guilt, the benefit of the doubt should be given to her, and she could be acquitted. And I submit that her conduct throughout was just as consistent with innocence as with guilt.

THE COURT: The theory of the People is that there was a larceny, by trick and device, of ten thousand dollars, and that the defendant participated in the scheme by which the complainant was parted from his money. Motion denied.

MR. FABRICANT: May I have an exception, your Honor?

THE COURT: Yes.

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## THE DEFENSE.

ANNIE GOLDSTEIN, of 206 East 9th Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. FABRICANT:

Q How long, have you been living at the address you just gave the court? A Nine years.

Q And you lived there with your family? A The house that I live in belongs to me.

Q You are the landlady of the home? A Yes.

Q Now, do you know the defendant, Eva Gindes, here (indicating)? A Yes, sir.

Q How long have you known her? A For many years, in the block.

Q Well, for about how many years? A Well, about four years.

Q Does she live in one of the apartments in the house?  
A A little further.

Q A little further away? A Yes.

Q Not in your house? A No, sir.

Q And do you know some of the other people in the neighborhood there that know Eva? A Yes, there are several women with me here.

Q Now, during the time that you have known her, have you ever heard her character talked about, as to whether she was an honest girl, or dishonest girl? A I always heard that she is an honest girl; in fact, many times I employed her in

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making waists for my daughter, when she didn't have work, and I had her in my house for weeks long, when she was out of work.

Q And during that time, you never heard anything against her honesty? A No, sir; always she was a perfect little lady.

CROSS EXAMINATION: None.

REBECCA SIMONS, of 233 East 9th Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q Is that the same house, 233 East 9th Street, that Mrs. Goldstein lives in? A Yes - no, I live in the same house where Miss Gindes lived.

Q And how long have you lived there? A <sup>Three</sup> ~~Seven~~ years.

Q And do you know Miss Gindes? A Ever since she moved into this house.

Q And how long ago was that? A About three years ago, or so. I don't remember very well.

Q And you know her; do you not? A Yes, very well.

Q And you have spoken to her frequently? A Yes, sir.

Q Has she an apartment in that house, of her own? A Yes, sir.

Q And does she let out any part of those rooms? A Yes.

Q And since you have known her, have you spoken to other people about her character, as to her being honest or dishonest? A Yes; nobody said anything bad about her. She is a quiet woman, yes; very respectable. All the tenants say

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that.

Q All the tenants, as far as you know, say her reputation is good? A Yes, sir; that she is an honest woman.

CROSS- EXAMINATION: None.

EVA PARTNER, of 233 East 9th Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q How long have you lived at that address? A Ten years.

Q And do you live in the same house that Miss Eva lives in? A Yes, the same house.

Q How long have you known Eva? A Several years.

Q And do you know some of the other people there that know her? A Yes.

Q And what is Eva's reputation for being a quiet, honest girl? A The finest, the most decent girl that ever existed.

MR. FABRICANT: All right. I guess that is quite enough.

CROSS-EXAMINATION: None.

MR. FABRICANT: I have a character witness, Rose Naftalovitch, here, your Honor. She is a character witness, but if you will concede, Mr. District Attorney, that she will testify to the same effect as the other character witnesses, I will not examine her. However, I think I will swear her, and then <sup>if</sup> you will concede that she will give the same kind of testimony as to character, as the preceding witnesses, I will not examine her.

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MR. WEIL: Yes, I will concede it, to save time.

EVA GINDES, of 233 East 9th Street, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q Now, Eva, how old are you? A Thirty-four.

Q When did you come to this country? A I am six years here, over six years, because I came when the war started in the old country.

Q Where did you come from? A Odessa, Russia.

THE COURT: Mr. Fabricant, a matter of importance has arisen, that requires my immediate attention, and I do not think we will go any further today, and the case will be adjourned until tomorrow morning, at eleven o'clock.

(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 Friday morning, January 6th, 1922, at eleven o'clock)

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