

START

1161

CASE

CASE # 1161

INDEX.

	Direct	Gross	Re-direct	Re-gross
George N. Georgendonis	2	4		
Elefteros A. Manikas	5	6		
George N. Georgendonis(reold)	7			
John McSharry	8	15		
Daniel Hickey	18	19		
George N.Geongendonis (reold)	25	26		
Charles Pettlo	29	32		
Annie Sanders	40			
John Toney Lesendro	41	42		
Charles Pettlo (reold)	47	48		

CASE # 1161

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

-----X
THE PEOPLE, :

vs. :

JOHN TONEY LESENDRO and CHARLES
PETTLO. :
-----X

New York, May 6th, 1910.

Indictment filed April 19th, 1910.

Indicted for Burglary in the Third Degree and
Petit Larceny.

A p p e a r a n c e s :

For the People:

ASST. DISTRICT ATTORNEY WASSERVOGEL.

For the Defendant:

HANN TRICE, ESQ.

Tried before HON. JAMES T. MALONE, Judge and a
Jury, on the 6th day of May, 1910, &c.

Thomas W. Osborne,
Clerk of the Court.

CASE # 1161

Q Do you know what property was in the place at that time?

A Peanuts.

Q Anything else? A That was all.

Q Was there any cash there? A That I do not know about the cash.

Q Do you know anything about postage stamps being there?

Objected to as leading.

A Yes.

THE COURT: Yes, it is leading.

BY MR. WASSERVOGEL:

Q What else was there besides the fruit? A Dates and some dried figs.

Q Outside of the fruit, the dried fruit, what else was there? A There was a few stamps.

Q How many stamps were there that night? A 41 stamps, two cent stamps.

Q Do you know what kind of stamps they were? A Hudson-Fulton celebration stamps.

Q And are you sure they were there that night? A Yes.

Q Where were they, in which drawer? A The drawer of the office.

Q Did you open up the place the following morning?

A Yes.

Q What was the condition of the place at that time with

CASE # 1161

4
respect to the iron bars? A I found the iron bars bent,
a pane of glass broken and the window broken.

Q Was that glass broken the night before? A No, sir.

Q Was the window broken the night before? A No, sir.

Q Did you find the stamps there? A No, sir.

Q Who was with you when you opened up? A Nobody.

CROSS-EXAMINATION BY MR. TRICE:

Q How many stamps were there the night before? A 41.

Q How many were there the morning before? A 50.

Q How many stamps were there the night before that?

A We only bought those stamps two days before this burglary.

Q And when were these nine stamps used? A Five stamps
were used that very same night that I closed the place.

Q Five stamps were used -- when were the other stamps
used before that night? A The night before that.

Q Who used those stamps? A I used them and I put
them on the letters which I mailed myself.

Q Who were those letters addressed to? A Different
places.

Q Did you write the letters? A Yes.

Q What time did you mail those letters that afternoon?

A Half past seven at night.

Q What kind of postage stamps did you say they were, what
stamps were they? A Hudson-Fulton celebration stamps.

CASE # 1161

Q There were some stamps like those in New York at that time?

MR. WASSERVOGEL: We will concede there were other stamps of that kind in the city of New York at that time.

ELBERTOS A. MANIKAS, called as a witness in behalf of the People, duly sworn and examined, testified through the official interpreter as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 515 Tremont, Bronx, city and county of New York.

Q What is your business? A Dry fruits.

Q What time of day did you leave your place of business on the 7th of April? A Half past six.

Q And do you know what moneys you left in the place that night? A Yes.

Q How much? A \$125, good and lawful money of the United States.

Q Where was it? A In the safe.

MR. TRICE: I do not think the indictment charges the larceny of any money at all.

MR. WASSERVOGEL: I think that is right.

THE COURT: There seems to be nothing except the charge of postage stamps in the indictment.

BY MR. WASSERVOGEL:

Q What time did you arrive at your place the next morning?

CASE # 1161

6
A Half past eight.

Q In what condition did you find things then? A The iron bar bent, window broken, pane of glass broken and some planking which I had nailed the night before all broken.

Q Do you know anything about these postage stamps which were in your place the night before?

MR. TRICE: I object.

MR. WASSERVOGEL: I withdraw the question.

BY MR. WASSERVOGEL:

Q When you found that condition in your place, what if anything did you do? A The officer found the condition of the store before I did and left word with my clerk that when I came to come to court.

Q Did you do so? A Yes.

Q Did you there see these defendants? A Yes.

CROSS-EXAMINATION BY MR. TRICE:

Q Did you leave your store open when you left there on the 8th of April? A No, my clerk closed it. I do not close the store. He closed it at seven o'clock. I leave at half past six and seven o'clock the clerk closes it.

Q Did you take any mail out with you to mail when you left there that night? A No, sir.

Q Did you mail any letters the night before? A No, sir, the boy does all that.

Q How many letters did your boy mail that day, if he

CASE # 1161

7
mailed any?, A It is the boy's business. I could not tell that because he makes out the bills and everything and mails the letters.

Q You say you found your window broke, what window was that, the back or side or front window? A The rear window.

GEORGE W. GEORGE DONIS, recalled.
BY MR. WASSERVOGEL:

A Do you recognize these stamps? A Yes, sir.

MR. TRICE: I object, unless he states of his own knowledge.

THE COURT: " Yes, if there is any mark on the stamps.

THE WITNESS: Similar stamps, I know.

BY MR. WASSERVOGEL:

Q Hudson-Fulton? A Hudson-Fulton.

Q 41 stamps?

Objected to.

THE COURT: I think he has already testified to that.

MR. WASSERVOGEL: I ask to have them marked for Identification.

MR. TRICE: There has been no identification except similar stamps.

THE COURT: The District Attorney is not asking to put them in evidence, but to have them marked for Identification.

1911
CASE # 1161

The stamps are marked for Identification People's
Exhibit 1.

JOHN Mc SHARRY, called as a witness in be-
half of the People, duly sworn and examined, testified as
follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you reside? A 48 Fifth avenue, Brooklyn.

Q You are a police officer in this city attached to
the Fifth Precinct? A Yes.

Q Did you make the arrest in this case? A Yes.

Q Of both defendants? A Yes.

Q When? A In company with Officer Hickey --

Q When? A On the 8th of April, about 1 a.m. in the
morning.

Q Where were these defendants?
A At 58 James street, in a hall-
way.

THE COURT: What date?

THE WITNESS: April 8th.

BY MR. WASSERVOGEL:

Q About one o'clock in the morning? A Yes, one o'clock
in the morning.

Q What attracted your attention to the defendants, if
anything? A A man told us there was somebody in the store--

Objected to.

CASE # 1161

9

THE WITNESS: Somebody told us --

THE COURT: You must not say anything that was said unless it was said in the presence of these defendants and their hearing.

BY MR. WASSERVOGEL:

Q As a result of a communication made to you by some one you went into that hallway? A Yes.

Objected to.

THE COURT: He said somebody spoke to him, but I excluded anything that was said. I think it is proper.

MR. TRICE: I except.

BY MR. WASSERVOGEL:

Q You went into the hallway? A Yes.

MR. TRICE: I object to the question and the answer, as the result of a communication, because, it is hearsay.

I have no objection to his stating what he saw and all that occurred.

MR. WASSERVOGEL: Then I will withdraw all that if you object to it.

BY MR. WASSERVOGEL:

Q You found these defendants in that hallway? A Yes.

Q And what did you do, if anything? A In company with Officer Hickey we entered the hallway after we looked through the door and saw the door was locked on the outside with a padlock. We entered the hall that leads upstairs to the tenement.

CASE # 1161

house. I guess it is about a six or seven story building and Lesendre was behind the door.

Q The first one? A The first one, he was behind the door and Officer Hickey got him. I passed him by. I had not seen him. Pettlo was further over in the rear of the hall walking towards me and I got him and Hicket got Lesendro.

MR. TRICE: This door, was this the store alleged to have been broken into?

MR. WASSERVOGEL: This is the hallway.

THE WITNESS: It is 58, all one number. 58 is the store and 58 is the hallway.

MR. TRICE: Is this a common hallway?

A Common hallway, leading upstairs.

Q An apartment house? A Yes.

Q This store that was burglarized is off to the left?

A Yes, sir, as you enter.

MR. PRICE: I object to what happened in this hallway, unless they show these defendants were in a part of the building ~~xxx~~ which was burglarized.

Objection overruled. Exception.

THE WITNESS (continuing): After we took hold of them we went to investigate to see if there was an entry made to the store. There was a water toilet in the hallway on the left. The door of the water toilet was open. A window leading from the water toilet to a window in the rear of 58,

CASE # 1161

the store that was -- that the safe was broken in, there was a bar pried open, and I took the two of them to the station house and Hickey remained there because the man--
Objected to.

THE COURT: Do not say that.

THE WITNESS: Hickey remained in the hallway. A man ran upstairs and we intended to search the house for the other party, when I returned from the station house. I went to see what the damage was done in the store after I came back, and went in through the window of the toilet and window in the rear of the store and found the safe broken. The door pried open of the safe; the drawers pulled out of the roll top desk, and I could not know what was taken. When I searched the prisoner at the station house after, I found 41 stamps on Pettlo.

Q Describe those stamps? A Hudson-Fulton.

Q Are these the stamps I now show you? A Yes.

MR. TRICE: I object unless he can identify the stamps.

BY MR. WASSERVOGEL:

Q Are they these stamps? A Yes, sir, those are the stamps. They were in the Property Clerk's office.

Q They have been in the Property Clerk's office ever since? A Yes.

MR. TRICE: I object.

CASE # 1161

BY THE COURT:

Q You found 41 Hudson-Fulton two cent stamps? A Yes, sir.

Q What did you do with those stamps? A Took them to the desk.

Q On whose person did you find them? A On Pettie.

Q And you turned them over to the Property Clerk?
A Yes, at the desk.

BY MR. WASSERVOGEL:

Q You received them from the Property Clerk to-day?
A No, yesterday -- I kept them out since yesterday.

Q Are these the same stamps? A Yes, sir.

BY MR. TRICE:

Q How do you know, have you any mark upon them? A The only mark upon them, my name on the envelope.

Q There is no mark on them to indicate they are the same stamp except Hudson-Fulton? A No, nothing more, but have the same envelope that they were in, and besides, three of them were stuck together with the perspiration in my pocket.

BY MR. TRICE:

Q You identified them from the fact that three were stuck together and there are 41 and they are Hudson-Fulton stamps? A They were all one piece at first, and perspiration in my pocket coming to court, they stuck together, some of them. I saw them this morning where they were stuck to-

CASE # 1161

gether.

BY MR. TRICE:

Q After you have looked at them I guess you can say.

THE WITNESS: Here they are stuck in the one piece.

MR. WASSERVOGEL: / I offer them in evidence.

MR. TRICE: I object.

THE COURT: I will exclude them at this time. There is a link in the chain that has not been completed. He says he found 41 stamps and he turned them over to the Property Clerk, and afterwards went to the Property Clerk and received a package. It is objected to and I will sustain the objection to the proof, unless there is some proof of the property clerk as to what happened during their possession -- the receipt of them.

MR. WASSERVOGEL: Mr. Trice, do you want me to produce the Property Clerk here?

MR. TRICE: I do not know what you will do, but I object to the testimony, all of it. We have pleaded not guilty, and our plea puts in issue every allegation in this indictment.

MR. WASSERVOGEL: Then we will have him here.

BY MR. WASSERVOGEL:

Q Where is this window?

THE WITNESS: I asked the defendant where he got those stamps and he told me he got them in the water closet.

CASE # 1161

BY THE COURT:

Q You found 41 stamps and then you took up a conversation with one of the defendants? A Yes.

Q which one? A The defendant I found them on, Pettlo.

Q Did he speak to you in English?, A Yes. He speaks English good.

Q Was the other defendant there also? A I believe he was in front of the desk at the time. I asked where he got them. He said he got them in the water toilet. I told him it was too dark, you couldn't see, the water closet was dark, and I asked him why he was in the hallways. He said he was sleeping on the roof. So after I seen Lesendro, I told Officer Hickey while he had hold of him, look out for him, he was--

THE COURT: You must not say anything that is outside of this case, officer.

BY MR. WASSERVOGEL:

Q Did the other defendant make any statement to you, did you have any talk with him? A No, I did not any more than he said they were on the roof, coming from the roof.

Q You spoke of a window before, in the hallway, where is that window? A The window is on the toilet, or in the toilet, leading outside of the toilet, that is to an air-shaft.

Q Is this toilet in the hallway? A Yes, in the hallway.

Q Does that window lead from the hallway into the store?

CASE # 1161

A No, it is leading to a window that leads into the store.

Q That leads into the store? A Yes. I entered the store by that way.

Q From the hallway? A From the hallway.

Q Is that the window which you say was broken? A Yes.

CROSS-EXAMINATION BY MR. TRICE:

Q Will you describe here, if you have a piece of paper, or something, or probably on this -- you might make a diagram -- this building is about in this position (indicating) -- is it 58 James street? A 58 James street is in the middle of the block, close to the middle.

Q There is a hallway between this building and a cafe that is over on the right? A I believe there is a cafe.

Q About 60 James street? A Yes, I believe there is.

Q This is a double tenement house, upstairs over the premises alleged to have been burglarized? A Yes, sir, that is right.

Q On the one side, and on the other side over the cafe that is on the corner? A Yes, sir -- not on the corner -- about in the middle of the block.

Q About in the middle of the block? A 58 James street.

Q There is a hallway -- the hallway door that you enter into this tenement house? A Yes.

Q And there is a stairway then that leads up to this

CASE # 1161

five or six story tenement house? A The story is away in the rear of the hall, close on 50 or 60 feet.

Q The stairway is back near to the entrance to the toilet? A Yes.

Q On one side is this Greek's fruit stand? A Yes.

Q And on the other side of the cafe? A Yes, I believe that is it -- I didn't take notice if it is a cafe or not. I would not swear to it.

Q This is a public hall between the two places? A Yes.

Q And entrance to the five or six story tenement house? A Yes.

Q And just off the stairway there is a water toilet?

A Yes.

Q You found that water toilet open that night?

A Yes, the door was wide open.

Q How was the hallway lit? A Well lighted.

Q The toilet was well lighted? A No, it was not.

Q The door was open?, A The door was open, yes.

Q The light from the hallway reflected into the toilet? A No, the light is close to the centre of the hallway and the water toilet is as far as the outside rail there (indicating).

Q From you? A Yes, I should think so.

Q Then the light in the hallway would reflect into the door of the toilet, it was perceptible, you could see it? A See

CASE # 1161

the toilet on the inside?

Q You could see the entrance, see the opening in the wall? A Yes, sir, you could see a little.

Q You could see a door was open there? A Yes, the door was a wooden door.

Q And it was open?, A Yes.

Q And light hanging in the hall? A ~~Yes~~ Yes, the hallway as I said, about 50 feet.

Q About 40 or 50 feet deep? A Yes.

Q Did you notice there were several places there, stools there, and urinal? A I had to light a match -- yes.

Q Was the toilet used by the tenement house?

A Yes.

Q Are you acquainted around that neighborhood? A I am on post there since the 1st of January, on James street.

Q The 1st of January? A Yes.

Q Did you ever see this boy there around that neighborhood, Charles Pettlo? A I would not swear that I did see him around. I wouldn't swear. I may have seen him.

Q Don't you know he has lived there all his life within 100 yards of where you arrested him? A He could have lived there without me knowing it. I don't know.

Q Do you know that people could go in and out and go to this water toilet at any time -- that is all.

CASE # 1161

DANIEL HICKEY, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 206 East 30th street.

Q You are a police officer of the city of New York attached to the 5th Precinct? A Yes.

Q Did you assist Officer McSharry in making the arrest in this case? A Yes.

Q When? A On April 8th.

Q Where was this? A 58 James street.

Q Where do you find the defendants? A In the hallway of 58 James street.

Q Did you have a talk with them or either of them? A Yes.

Q Which one? A Desendro.

Q Which is Lesendro? A The man that stands up.

Q The blode one? A The blonde haired fellow.

Q Go on, what was the conversation about, what did you say and what did he say? A I asked him what he was doing in the hallway and he claimed he was upstairs on the roof of the building. I asked him if he lived there and he said no he did not live there. I asked him what he was doing there at that time in the morning. He said he was upstairs on the roof. I asked him what for, and he said he was sleeping up there and

CASE # 1161

got too cold for him. We accused him of this burglary and he denied it.

Q What condition did you find the place in? A The rear window had been forced. The bars on the window had been forced.

Q Did you find anything broken? A The bars were broken.

Q What else? A And the glass.

Q The glass of what? A Of the window.

Q Why not talk up, you know what the condition was there?

A I did not enter the place. Officer McSharry entered the place.

Q Did you ever see these stamps or similar stamps?

Objected to.

THE COURT: You can say what you saw there and what you did.

BY MR. WASSERVOGEL:

Q What did you do with reference to the defendants after that? A I assisted Officer McSharry in detaining the prisoners. He brought them to the station house and I watched the place until he returned.

Q Did you search the defendants or either of them?

A officer McSharry, I presume.

Q Did he do that in your presence? A No, sir.

Q You were not there when he searched them? A No.

CROSS-EXAMINATION BY MR. TRICE:

Q What kind of premises are these, this hallway?

CASE # 1161

BY THE COURT:

Q What sort of a hallway is it? A It is a hallway of a tenement house building.

Q A store on either side and a hallway in between? A Yes.

BY MR. TRICE:

Q Store on either side and a hallway in between?

A Yes.

Q About what is the length of that hallway? A I should judge about 40 feet.

Q Where is the stairway located? A Is it about 30 or 35 feet from the street door.

Q Is there a toilet there in the place? A Yes.

Q Where is this toilet located, if you know, with reference to the stairway? A About opposite the stairway.

Q Where was the light, how was it light ed there, by electricity or gas? A Gas.

Q Gas jet right up over the entrance as you go upstairs? A No, sir -- not on the next floor above there was no light.

Q I speak about the ground floor? A There was a light on the ground floor.

Q Just over the entrance to the stairway, was there not, a gas jet there? A I would not be positive where it is situated.

Q Was there a gas jet anywhere in that hallway? A Yes, sir, in the hallway.

CASE # 1161

Q There was a light in the hallway? A Yes.

Q Now, there was a water closet about how far from the head of the stairway? A It was right opposite the stairway.

Q Now, how far from this water closet door was it to where the light in the hallway was located? A Of that I could not be positive.

Q You can approximate it? A No, I did not take particular notice.

Q Do you recall whether the light was in the centre of the hallway or one side of the hallway? A It was on the side.

Q Do you know whether there was any light in that hallway or not at all on that night? A Why, yes.

Q Was this toilet door fastened by a hook or latch?

A It was not fastened. It was unfastened when we got there.

Q It was unfastened? A Yes.

Q The toilet door was open?, A Yes.

Q That is right opposite the entrance to the stairway?

A Yes.

Q And you cannot locate the light around there? A What is that?

Q You could see very plainly that this door was open?

A Yes.

Q No trouble to see into the water toilet? A No.

Q The light was shining into the water toilet from the hall? A Yes, dimly, not very brilliantly.

CASE # 1161

Q But dimly, so you could see how to get in and go out ?

A Yes.

Q It was visible, it was not darkness, or anything of that kind? A No.

Q What is the size of that water closet, about how many people is it built to accommodate? A About one person only -- do you mean to use it?

Q Yes? A One person at a time.

Q A very small toilet? A Yes.

Q Give us about the dimensions of that toilet? A It stands about ten feet high.

Q About what is the depth of it? A About three feet or so, or three and a half.

Q If that is the case, Officer, this light in the hallway must have shown a very good light all over that toilet? A No, sir, the door was open, and it is a new building and the reflection --

Q A toilet three and a half feet deep and the light was being shed from the hallway into the toilet -- now how many windows or transoms were there to this toilet? A There was one window.

Q Out to the back? A To the back.

Q Fronting on the back alley? A Leading into the back.

Q Where was this store, this dried fruit store, with refer-

CASE # 1161

ence to that toilet, was it in the front or in the rear of the toilet? A The rear of the store.

Q The toilet was in the rear of the store and in the rear of the apartment house, that is a fact? A No, not exactly. The store did not extend any further than where the toilet is situated.

Q The toilet then cut off about a few feet of the back end of the store? A Yes.

Q And there was but one window in that toilet and that fronted back on the back alley or areaway? A Yes.

Q Have you seen these boys around here in that neighborhood before you made this arrest? A I cannot say that I have.

Q Do you know this Charles Pettie? A No, sir.

Q Don't you know he has lived in that neighborhood all his life?

MR. WASSERVOGEL: He says he does not know him.

BY MR. TRICE:

Q You say it is a double tenement house, about how many stories? A I could not be positive.

Q Four or five? A I presume so.

Q Good many families living in there? A Yes, sir, I believe there are.

Q And all you have to do to get into this water toilet is to open the hallway door and walk back there? A No -- to

CASE # 1161

the areaway, you mean?

Q No, into the water closet from the street? A Yes.

Q Do you remember officer, just across the hallway from this fruit store, what kind of a place of business is located there -- say this is the hallway, for instance (indicating). This is a double tenement house; here is the hallway; is there a place of business which is just across the hallway from the house that is alleged to have been burglarized, this Greek store? A The store is on the left hand side of the building as you enter.

Q And on the right hand side there is a store of some kind, on the right hand side, underneath this tenement house?

A I do not know.

Q How long have you been on that beat? A I did not have the beat that night at all.

Q Have you been there since? A Yes -- no, sir, not since -- I had it previous to that.

Q Is that the first time you ever visited these premises? A Yes.

Q Just went in there that night? A Yes.

Q Walked in the store and found these two boys behind the door? A One of the boys was in the middle of the hall. Lesendro, the man I took hold of, was crouched behind the door.

Q He was in the door, just as you opened it -- you shut the door on him? A Half the door was open and the other half shut.

Q You found it in that condition? A Yes.

CASE # 1161

Q When you walked in there? A Yes.

Q Door half open and half shut? A Yes.

Q And as you shut it, Lesendro was in behind the door as you shut it and you walked on in and discovered him and laid hands upon him? A Yes.

Q That is the truth of it? A Yes.

Q The other boy was standing down the hallway? A Yes.

Q Did you go into the door there first, you or the other officer? A Officer McSharry went in first, passed this man by, did not see him.

Q Passed this man by? A Yes, he evidently did not see him.

Q You discovered him as you went in there? A Yes.

Q Had no trouble to walk in there, the hallway/^{door}was half open when you went there? A Yes.

GEORGE N. GEORGENDONIS recalled:

BY MR. WASSERVOGEL:

Q What was the condition of the safe the night you looked up? A Intact and locked.

Q The next morning what was its condition when you opened up? A Broken.

Q What was the condition of the drawers the night before?
A The writing desk was locked and everything was intact.

CASE # 1161

Q And the next morning what was its condition? A The next morning found the desk open and doors taken and thrown under the writing desk.

CROSS EXAMINATION:

Q What is the size of this water closet back there in the rear of the house? A About 5 feet in length and about 7 feet in height.

Q How far is that door of that closet from the hallway in this apartment house -- the stairway in the apartment house; the foot of the stairway? A About 4 feet.

Q Is there a light right over the entrance to the stairway? A I did not notice it. I do not know.

Q Is there any light in that hallway at all? A Only in the toilet there is a light.

Q There was a light in the toilet? A Yes.

Q That burns there all the time? A Yes, about until 9 or 10 o'clock at night it is lit.

BY MR. WASSERVOGEL:

Q After 10 o'clock there is no light in the toilet?

Objected to unless he knows of his own knowledge.

Q Do you know of your own knowledge? A I do not know.

MR. WASSERVOGEL: If your Honor please, I have notified the property clerk to be here, and I expect him here within five minutes. With the exception of him the

CASE # 1161

People rest their case.

THE COURT: Mr. Trice, the People will rest their case, but they have asked to be permitted to call the property clerk to show the possession of the stamp and the guardianship over the stamp until they were turned into the hands of the officer yesterday morning, and I am inclined to permit them to introduce that proof later, unless there is an objection.

MR. TRICE: I will assume that the property clerk will testify that these stamps are the same.

THE COURT: Our Police Department keeps very good records, as counsel knows of property that comes into its possession. The proof could be made.

MR. TRICE: I will concede that the property is regular.

MR. WASSERVOGEL: Then I offer the stamps in evidence.

Received and marked People's Exhibit 1.

MR. TRICE: I object to it upon the ground the stamps have not been identified any more than in a general way, that they are Hudson-Fulton stamps.

THE COURT: You do not object that the proof has not been made complete so far as the possession goes. The evidence is that 41 Fulton-Hudson stamps were found on

1911
CASE # 1161

the person of Pettlo, one of the defendants, by the police officer, and put into the custody of the Police Department and maintained in their custody until returned. You do not question the chain of proof, as I understand?

MR. TRICE: I question that these are the same stamps that came out of this store. I deny that most emphatically. There is no identification upon that point, and therefore I object to it.

THE COURT: I will allow the jury to pass upon that question. I will receive them.

THE PEOPLE REST.

MR. TRICE: I move to dismiss this case upon the ground that the People have failed to establish the essential elements set forth in this indictment; that is, the offence of burglary in the third degree. They have wholly failed to prove the defendants or either one of them were ever inside of the premises alleged to have been burglarized. They have simply shown that they were in the hallway there of a double tenement house, and springing out of the case from the People's testimony there is a doubt that no sensible man, it occurs to me, could overlook.

THE COURT: I feel that I am constrained to deny your motion and you may take an exception. I will with-

CASE # 1161

draw, however, the third count charging criminally receiving stolen property.

MR. TRICE: I except.

THE DEFENDANT'S CASE.

CHARLES PETTLO, one of the defendants, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRICE:

Q Where do you live? A 35 Oak street.

Q How far is this from the premises charged to have been burglarized in this case? A I don't understand you.

Q How far do you live from 58 James street, the building charged to have been burglarized? A About six buildings away from there.

Q How long have you lived there? A 17 years.

Q How old are you? A 17.

Q Have you ever been convicted of a crime? A No.

Q Are you familiar with the premises 58 Oak street?

A Yes.

THE COURT: 58 James street, Mr. Trice.

BY MR. TRICE:

Q 58 James street -- describe to the jury what kind of building that is, how it is located and situated? A It is

CASE # 1161

one big building about six or seven stories high. There is two big front doors there, you turn the knob and walk right in, and then there is another glass door and you turn the knob and walk in there and walk right in the back, and there is a big light on the side of the wall. While I went in there I knocked on the door to see if I could find my friend and could not find him, and my friend Lesendro went to the toilet.

BY MR. TRICE:

Q Did you have any trouble in getting into that hallway that night? A No.

Q Was the door locked or unlocked? A Unlocked.

Q Have you been accustomed to going in those premises?

A Yes.

Q Did you ever use that toilet before? A Yes.

Q Is it open there for anybody to walk in? A Yes.

Q Nobody has any trouble to get in there at any time?

A No trouble at all.

Q Did you enter the store of this man, this complainant, this Greek, the dried fruit store man that night? A No, I never was near the place.

Q You were back in this toilet? A I was in the hallway.

BY THE COURT:

Q Did you say you never had been in the place? A I have been in the hallway.

Q I mean in this Greek's store? A No, sir, never was

CASE # 1161

in his office.

BY MR. TRICE:

Q Now, there is a stairway there that leads up to the floor above, how far is the head of that stairway from this water closet door? A This the toilet right here and here is the stairs right here (indicating).

Q You say there is a big light in the hall? A Yes, right on the side.

Q The opposite side? A Right on the side of the toilet.

Q Did you find this toilet door open there that night?
A Yes.

Q What was its condition there with reference to light, was it light or dark? A Light.

Q Light in the toilet? A Yes.

BY THE COURT:

Q How many families in that house? A I couldn't tell you.

Q What is the height of it, a five or six story house?
A I think it is about six.

Q And different families living on the different landings? A Yes.

Q Three families on a floor, were there? A Four.

CASE # 1161

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say you live six houses away from 58 James street? A Yes.

Q You frequently go into this house to use the toilet? A Yes.

Q That is 58 James street house? A Yes.

Q Why didn't you go to your own home? A I didn't go there because I go in here to this cafe to play cards and checkers with friends of mine.

Q You don't use the toilet in your own home? A No, only when I go home to bed.

Q There is a toilet there? A Where?

Q In your own home? A Yes.

Q And that is also in the hallway? A Yes.

Q Nevertheless you prefer the toilet in No. 58 James street? A Yes.

Q And so does your friend Lesendro? A Yes.

Q He prefers that hallway? A Yes.

Q Where does he live? A 90 and 92 Roosevelt street.

Q How far is that from 58 James street? A About two blocks away.

Q Your arrest took place about one o'clock in the morning? A I don't know what time it was, it was before one o'clock in the morning.

Q How long before one was it? A It was about quarter

CASE # 1161

9
after twelve.

33

Q Were you employed at that time? A Sir?

Q Were you employed at that time? A I went there to see my friend there.

Q Were you employed on that particular day?

MR. TRICE: I object to whether he was employed or not.

Objection overruled. Exception.

Q Were you employed anywhere? A I don't know what you mean.

Q Were you working for anybody? A Yes.

Q For whom? A My cousin.

Q What is his name? A Paul Loona.

Q What was his business? A Pool parlor.

Q What were your duties in the pool parlor?

A Spotting up balls.

Q How long had that been your business? A For the last few weeks.

Q What were you doing prior to that? A I don't know what you mean.

Q What were you working at before that time? A Packer.

Q For whom? A 72 Beekman street.

Q Who is that, what did you pack? A Jewelry boxes.

Q What was the name of the firm? A I don't know the name of the firm.

CASE # 1161

Q Don't know the name of the firm? A No.

Q How long were you working there? A Two weeks.

BY THE COURT:

Q Were you packing or did you take out the packages?

A I used to pack them.

Q Pack jewelry? A Not jewelry, only the boxes. I can tell you the name of the firm, Ludwig Lorman.

BY MR. WASSERVOGEL:

Q Have they a sign outside? A Yes, there is a sign outside.

Q You can read? A Yes.

Q You never looked at the sign? A No.

BY THE COURT:

Q You know the number? A 72 Beekman street.

BY MR. WASSERVOGEL:

Q How did you obtain that employment? A There was a sign outside.

Objected to. Objection overruled. Exception.

Q You were employed in this pool parlor three weeks and two weeks ~~xx~~ in this jewelry packing house? A Yes.

Q And prior to that were you employed anywhere -- were you working for anybody? A I used to sell papers before that.

Q That was all you ever did? A That was all.

Q Now what time did you get through with your work?

CASE # 1161

A Where?

Q On the night in question, April 7th? A April 7th?

Q The night you were arrested? A The night I was arrested about half past nine.

BY THE COURT:

Q You got through your work at half past nine? A Yes.

BY MR. WASSERVOGEL:

Q That pool parlor was open longer than half past nine?

A I got let off at that time. My cousin takes care of the place then.

Q What are your hours or were they? A From eight in the morning until half past nine.

Q At half past nine where did you go? A Went to the Windsor Theatre.

Q At half past nine? A Yes.

Q You went to the Windsor Theatre? A Yes.

Q How far is the Windsor Theatre from your place?

A About five blocks.

Q The Windsor Theatre? A Yes.

Q Where is the Windsor Theatre? A On the Bowery.

Q Near Canal street? A Near Canal street.

Q What sort of a show do they have there?

A Vaudeville.

Q They have Jewish shows there? A No.

CASE # 1161

Q Sure about that? A Yes.

Q They had a vaudeville show there that night? A Yes.

Q You arrived at half past nine and stayed how long?

A Until about half past eleven.

Q The show was not out until half past eleven? A No.

Q Where did you go then? A Into Rankin's restaurant.

Q Where is that? A Right across the way from the Windsor.

Q With whom were you then? A My friend Toney Lesendro.

Q Did he also go to the theatre with you? A Yes.

Q How long did you remain in the restaurant? A About a half an hour.

Q That brought you down to 12 o'clock? A Yes.

Q Where did you go then? A Then went down to James street.

Q Where did you go? A When I went down James street I walked into this hallway and knocked at the cafe door and while I was knocking at the cafe door my friend Toney Lesendro went into the toilet. Then I knocked again and my friend Toney Lesendro was coming out and I went to the toilet and then I was coming out and one of the officers grabbed Toney Lesendro and while I was coming out another officer grabbed me.

Q Where is this cafe you speak of? A Right in the middle of the hallway, on the right hand side.

CASE # 1161

Q Has not that cafe an entrance on the street? A Yes.

Q Why didn't you enter the cafe by the entrance on the street? A They close the front door and have it open in the back.

Q That is a sort of a side door? A Yes.

Q The front door was locked? A Yes.

Q That is not a drinking place, it is simply a coffee saloon? A Yes, coffee saloon.

Q Isn't that open all night? A No, sir, it is closed.

Q There is no special reason why it should be closed at quarter past twelve? A I don't know.

Q They keep open all night? A No, they never keep open all night.

BY THE COURT:

Q Was this Saturday night? A No, sir, it was Sunday night.

BY MR. WASSERVOGEL:

Q Was the place lighted up? A The cafe?

Q Yes. A There was a little light in the back.

Q Were there any people there? A No, sir, nobody at all.

Q Nobody at all at that time? A No.

Q And then you say you went to the toilet? A Yes.

Q How long were you in there, in that hallway before

CASE # 1161

the police came? A About ten minutes.

Q Did you see a window broken in the toilet? A No, the window was closed.

Q It was not broken? A No.

Q You heard the testimony of the officer? A The toilet window was not broken.

Q Was there any window broken in there? A I couldn't see any other window but the toilet window.

Q You say that was not broken? A No, the toilet window was not broken.

Q Could you see the window leading to the fruit store? A Couldn't see it. This toilet window was closed.

Q Did you see any iron bars twisted there? A No, couldn't see no iron bars or nothing.

Q You saw them afterwards on the outside when you went out with the officer? A No, the officer just took us to the station house right after.

Q The officer asked you what you were doing there? A Yes.

Q He told you a burglary had been committed in that house? A Yes.

Q And he showed you the evidences of the burglary, didn't he? A Did not show us nothing, just took us in the hall and kept us talking, he was talking to ^{me and} my friend about five

CASE # 1161

minutes in the hallway and then two more men ran up out of the toilet and ran to the roof, and I said to the officer, "There is the man you want," and he turned around and punched me in the stomach.

Q How did you know they were the men he wanted?

A Because we were in the toilet and nobody was in there when we were in there.

Q How do you know they were the men he wanted?

A I don't know if they were the men or not, but I told him.

Q Did you know what they had done? A No, sir.

Q Why should you refer the officer to some other men?

A Because I seen them coming out of the toilet and I didn't see nobody in the toilet while I was there.

Q You saw whom coming out of the toilet? A When I was talking to the officer I see these two fellows run out of the toilet and ran upstairs, and I told the officer to run for them because they were the ones he must have wanted.

Q What did the officer want those men for; what did you assume? A What did he want us for -- we didn't do nothing.

Q You say you went into the toilet? A Yes.

Q First your friend went in? A Yes.

Q And then you went in? A Yes.

Q Did you see two other men go in there? A No, we came out and while we were talking to the officers in the hallway

CASE # 1161

two more men came out of the toilet, but they were not in the toilet when we were in there.

Q Did you see them go in? A No.

Q How did they get in? A I don't know.

Q You were in the hallway all that time? A Yes.

Q You had just left the toilet? A Yes.

Q And still you want the jury to believe that you saw two men coming out of that same toilet? A Yes.

ANNIE SANDERS, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRICE:

Q Where do you live? A 24 Charlton street.

Q Do you know this boy Charles Pettlo, the one who was on the stand a few minutes ago? A Yes.

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

Q Do you know other people who know him? A Yes.

Q Do you know what his reputation is for honesty and integrity? A Good as far as I know.

No cross examination.

CASE #1161

41

JOHN TONY LESENDRO, one of the defendants,
called as a witness in his own behalf, being duly sworn
and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRICE:

Q Where do you live? A 90 and 92 Roosevelt street.

Q You remember the premises where you were arrested,
58 James street in this city? A Yes.

Q On the morning of April 8th? A Yes.

Q Tell how you got into that building and where you
were arrested? A Around half past nine I met my friend
coming out of the pool parlor, and we said, come on we will
go to the Windsor, and I said all right, and we goes up to
the Windsor.

Q You went to the Windsor Theatre? A Yes.

Q I don't care about that, the District Attorney may
ask you about that -- I want to know about this hallway, how
did you get in this hallway, did you find the door open or
locked? A Open.

Q Did you have any trouble in getting in there?

A No, sir.

Q Did you see any light in the hallway? A Yes.

Q Could you see how to get into this water closet that
was in the rear? A It was open.

Q Light shining in the door? A Yes.

CASE # 1161

Q Now, what kind of a building is this? A Six story tenement.

Q Double tenement house? A Yes.

Q That is a public hallway there? A Yes.

Q Where people can go up and down and in and out of this tenement house? A Yes.

Q A lot of families living in there? A Yes.

Q Had you ever been in those premises before -- do you know anything about that water closet? A Yes.

Q Familiar with it? A Yes.

Q Used it before? A Yes.

Q You heard the testimony here which charges you with burglarizing the premises of this Greek who testified here, this dried fruit store, were you ~~xxxx~~ in that fruit store that night? A No.

Q Or at any other time? A No.

Q Not in there at all? A No.

Q Never entered through the door or window or came down the chimney or got in there by any manner or means?

A No.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Have you ever been convicted of any crime? A No.

Q At any time? A No, sir.

Q Whom do you live with? A With my people.

CASE # 1161

Q What? A Father and mother.

Q What do you work at? A Driver.

Q For whom? A For Michael Stone.

Q Were you working at that time? A No, sir.

Q How long had you been out of employment? A Around a week.

Q How long were you working for Mr. Stone?

A Around two years and a half.

Q You say you met your friend Pettlo at half past nine?

A Yes.

Q Then you went to the Windsor Theatre? A Yes.

Q What time did you arrive at James street? A I don't know exactly the time.

Q About what time was it? A It was around quarter to one, something like that.

Q You say this was a public hallway? A Yes.

Q Is that right? A Yes.

Q It was not a public toilet? A Usually go in there and use it.

Q You lived only two blocks away? A Yes.

Q There is a toilet in your own house? A Yes.

Q In the hallway also? A Yes.

Q Still you prefer this toilet in 58 James street -- answer me? A Yes.

Q How long had you been in the hallway before you were

CASE # 1161

arrested? A I was in there around three or four minutes.

Q Is that all? A I couldn't exactly say -- around five --

Q Was that your only object in getting in the hallway to use the toilet? A We just went in there to look for that friend that owed him money.

Q Looking for whom? A His friend that owed him money.

Q Somebody owed him money? A Yes.

Q You went into a hallway to find him? A We went into the cafe to a side door there.

Q Did you go into the cafe? A No.

Q Did you expect to find him in the cafe? A Yes.

Q Was the cafe open? A Well no, it was not open.

Q Who was this man? A His name Rocco Russo.

Q Is he employed in the cafe? A No.

Q You did not go into the cafe at all? A No.

Q You went into the toilet? A Yes.

Q And then how long did you remain in the toilet?

A Around a minute, something like that.

Q Did the other man go into the toilet then? A After I went out.

Q How long after that was it that the officer came?

A It was just after my friend came out of the toilet.

Q Did you see the broken window in that toilet? A No.

CASE # 1161

Q Did the officers tell you a burglary had been committed, did he tell you that, did the officer tell you why he was arresting you and your friend Pettlo? A Yes.

Q He told you a burglary had been committed? A I don't know.

Q What did he say to you? A He told us what are you doing in this hallway.

Q Didn't he say some one had committed a burglary?
A Yes.

Q He told you that -- did he tell you that or not?
A Yes, he did.

Q Also showed you the bars that had been bent for the person to get into that place? A No.

Q Simply arrested you? A Yes.

Q That was all? A Yes.

BY THE FOREMAN:

Q Do you know what time they generally close that cafe every night? A Usually close around quarter to one, something like that.

Q Quarter to one? A Yes.

Q You were there at what time? A I was there -- I didn't notice the time when I went ~~in~~ in there.

Q You know they close at quarter to one, and you were there at what time? A It was around quarter of one.

CASE # 1161

BY MR. WASSERVOGEL:

Q You heard your friend say that you were there at quarter past twelve?

(No answer)

BY THE FOREMAN:

Q How about the stamps -- where did you buy them?

A I did not have the stamps.

Q You did not have any? A No.

Q Did not find them in your possession? A No.

Q In your pocket? A No.

Q Was it with the other party? A I did not know he had any stamps.

BY MR. WASSERVOGEL:

Q You did not know he had stamps in his possession?

A No, sir.

Q Did not know anything about that at all? A I knew he was going to run a birthday party.

Q Didn't you see the officer take from him 41 stamps.

A He took them at the station house.

Q You did say that -- where did he get those stamps?

A I don't know.

Q You don't know anything about that? A No.

Q Did you hear him tell the officer he found those stamps in this toilet? A No, sir.

Q Did he say that to the officer? A I did not hear him.

CASE # 1161

Q You went with him when he bought these stamps?

A No.

Q What was this birthday party you were telling us about? A What birthday party?

Q You said something about a birthday party he was going to run? A He told me the same day.

Q What? A The day we went to the Windsor.

Q He never mentioned anything about postage stamps to you? A I do not know.

Q Did he mention postage stamps to you? A No.

Q You did not see the officers take them away from him at any time? A No.

CHARLES PETTLO recalled to the stand:

BY THE FOREMAN:

Q Can you tell me where you got those 41 stamps, where you bought them? A I bought them in the post office.

Q In the post office? A Yes.

Q What time? A About half past two.

Q How many did you buy at the time? A 41.

Q Are you sure? A Yes.

Q Why did you buy them? A I was going to run a birthday party.

BY THE SEVENTH JUROR:

Q You were going to have 41 guests? A Yes.

CASE # 1161

BY THE NINTH JUROR:

Q How many times were you in the habit of going into this cafe every week? A I used to go in there every night.

Q Every night regularly? A Yes.

Q What time? A About half past seven or eight.

Q But you were employed until eight or nine? A Before I was employed I used to go in there about half past seven or eight.

BY MR. TRICE:

Q Were you ever in there later than that at night?

A Yes, about quarter of twelve and nine o'clock I used to go in there.

Q Did you ever see the place open there after twelve, between twelve and one? A Yes.

Q And find people in there? A Yes.

RE-CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Your friend was there at the time you were searched?

A Where?

Q In the station house? A No, sir, they took him aside.

Q These stamps were taken from your coat? A Yes, from this here pocket.

Q 41? A 41 stamps.

CASE # 1161

Q That was just the number you bought? A Yes.

Q You bought 41? A Yes.

Q You did not buy 50? A No.

Q 41? A Yes, 41.

Q Didn't you tell the officer at the time you found them, you found them in the toilet? A I never told him anything of the kind.

Q The officer is mistaken when he says that? A Yes.

BY THE FOREMAN:

Q When did you buy those postage stamps? A April 7th.

Q Judson-Fulton celebration was last fall, in October, and after that the post office never sold any stamps of the Hudson celebration? A That was where I bought them.

Q Whereabouts, what post office? A Down near the City Hall.

Q General post office? A It is a big post office, yes.

BY MR. WASSERVOGEL:

Q The main post office you went to? A Yes.

Q In the afternoon of that day? A Yes.

Q You were employed in the afternoon in the pool parlor?

A I was not working -- I was let off half an hour to go and buy them. I could get off any time I wanted to.

Q You were allowed to get off for half an hour to buy postage stamps? A Yes.

Q Had to go all the way from James street down to the

1911
CASE # 1161

main post office? A Yes.

Q You could not go into any drugstore in the neighborhood? A No.

Q There were lots of drugstores on the Bowery?
A Yes.

Q They sell postage stamps? A I don't know if they do or not.

Q You have bought postage stamps before? A No, never bought them.

Q This is the first time you ever bought postage stamps in your life? A Yes, sir.

THE DEFENSE RESTS.

THE PEOPLE REST.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal procedure and takes an adjournment until Monday morning next, May 9th, 1910, at 11 o'clock.

CASE # 1161