

**START**

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**CASE**

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CASE # 1163

COURT OF GENERAL SESSIONS OF THE PEACE  
CITY AND COUNTY OF NEW YORK - PART III.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK )

-Against- )

GENARO FOCCARI. )

) Before

) HON. JOSEPH F.

) MULQUEEN, J.  
-----X

And a Jury.

New York, May 13, 1910.

Indicted for Grand Larceny, First Degree.

Indictment filed April 20, 1910.

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

For The People, ASSISTANT DISTRICT ATTORNEY JACOBY.

FOR Defendant, COLONEL TOWNSEND.

A Jury is duly empaneled and sworn.

Mr. Jacoby now opens to the jury on behalf of the  
People.

GENARO FARR O, called as a witness on be-  
half of The People, being first duly sworn, testifies as  
follows (Through Official Interpreter Moustacki):

DIRECT EXAMINATION BY MR. JACOBY:

Q Where do you live? A 159 West Tenth street, City and

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County of New York.

Q What is your business? A Bootblack.

Q Have you got a sort of a bootblack stand or pavilion?

A A basement, three chairs in the basement - four chairs in the basement and three chairs on the sidewalk.

Q Where? A Tenth street and second avenue.

BY THE COURT:

Q Do you live in Tenth street or West Tenth street? Is that where you live, where the stand is? A Yes, that is where I live.

THE COURT: Then that is East Tenth street. Proceed.

BY MR. JACOBY:

Q Is it on the southeast corner of tenth street and second avenue? A Yes.

Q And you had that same place on the 18th of March of this year? A Yes.

Q What sort of a store was there there close to the basement? Was there a barber shop or some such store? A It was a barber shop upstairs and my basement is under the barber's.

Q What is the name of the barber that has the barber shop? A I have got it written down - wait a minute - the barber's name is Loebinger.

Q Do you know the defendant, Genaro Foccarì? A Yes, I know him.

Q How long before the 18th of March did you meet him,

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before? A He worked only a week and a half with me.

Q Did he work that week and a half without any interruption? A He worked a week and a half with me and I paid him for that week and the other half. a week was at the time of the robbery of one hundred dollars and I never saw him since.

Q What happened, if anything, on the morning of the 18th of March, of this year? A first of all I had this money which one of the defendant's relatives and he came in the morning in the basement.

Q Do you mean one of the relatives of this defendant had your money before the 18th of March? A I had my money which one of this defendant's relatives and I went to take it to deposit it in the bank.

Q What relative was that? A This defendant married a niece of my godmother.

Q Well, who was it that had the money before you got it on the 18th of March? A The 17th of March the aunt of this defendant had the money.

Q And that person is also some relative of yours, is that right? A She is my godmother.

Q Where was your bank book, if any, on the 17th of March? A I had the bank book and this relative of mine had the money.

Q When did you get the money from your godmother? A On the 17th of March I took the money.

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Q Where did you keep it from the 17th of March until the morning of the 18th? A On the 17th of March the bank was closed and I brought it where I worked.

Q Did you keep it there over night from the 17th to the 18th?

DEFENDANT'S COUNSEL: I object to the form of the question.

THE COURT: Well, the form is objectionable.

Q What was done with the money? What did you do with the money from the night of the 17th until the morning of the 18th? A I had it right between the mattress and a trunk.

Q Where? A In the basement where I reside.

Q What happened on the morning of the 18th? Did you have any talk with this defendant about this money? A In the morning when the defendant arrived, he says, "Have you deposited the money in the bank?" I said, "No, because the bank is closed, but I am going to deposit today."

Q When you said that state whether or not you got the money and the bankbook out from under the mattress?

DEFENDANT'S COUNSEL: I object to the form of the question.

THE COURT: It is leading.

Q State what if anything you did with reference to the bank book and money? A While we were standing there and I

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told him I was going to deposit today he said, "No, don't do that now, because it is too early yet. If you wait till half past ten that is the time the bank opens."

Q What time was it when this conversation took place?

A About a quarter to 10.

Q State whether or not the defendant was in the bootblack place in the cellar when you put the bank book and money under the mattress?

DEFENDANT'S COUNSEL: Objected to as leading.

BY THE COURT:

Q Was there anyone present when you put the money under the mattress? A Myself and the defendant.

Q When were you and the defendant together, on what day?

A 17th and 18th. On the 17th the defendant left between 9 and 10 o'clock.

Q In the morning or night? A Yes, morning.

Q When did he come back? A (No answer.)

BY MR. JACOBY:

Q What time was it on the 17th when you put your bank book and the money under the mattress? A On the 17th.

Q What hour of the day was it that you put your money under the mattress on the 17th? A At two in the afternoon.

Q Was the defendant in the place when you did that?

A No, sir, he was not, not on the 17th.

Q Did you take it out from under the mattress on the

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morning of the 18th? A Yes.

Q And was the defendant there then? A He was seated as I am now.

Q How close were you to him when you took the money out from under the mattress on the morning of the 18th? A (Witness indicates a distance of about ten feet).

Q In which direction was the defendant's face when you took the money out from under the mattress? A I couldn't tell you whether he was facing the money or facing me, I couldn't tell that. He had his back towards me because he was going away.

BY THE COURT:

Q Did you show that money to anybody on the 18th?

A Nobody.

Q Not even to the defendant? A On the 18th I wanted to get the money to the bank and he told me it was too early.

Q Did you show it to anybody on the 18th of March? A He ought to have known it.

THE COURT: Strike that out.

Q Answer yes or no. A No, I didn't show it.

BY MR. JACOBY:

Q Did you then put the money and bank book back under the mattress? A Yes, I did.

Q How far away was the defendant from the mattress when

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you put the bank book with the money under it--

DEFENDANT'S COUNSEL: I object to that on the ground that it is leading.

THE COURT: Objection overruled.

BY THE COURT:

Q Who was present when you put the money under the mattress on the 18th of March? A He was present --the defendant.

BY MR. JACOBY:

Q How far away was he from the mattress at the moment that you put the bank book containing the money under it?

DEFENDANT'S COUNSEL: Objected to on the ground that he has already answered it and said he was ten feet away and his back was turned; that was his testimony.

THE COURT: That question has been answered.

Q How much money was there in the bank book when you put it under the mattress, if you know? A \$100.

Q After you had put the bank book with the money under the mattress what did you do then? A I asked the defendant, "What are we going to do today?" and he said, "We will buy some fish."

Q Well, what did you do then? Did he stay there or did you go out or what did you do? A I left the money there under the mattress.

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Q Did you stay there or did you go away? A I went to the market.

Q How long was it until you got back again to the boot-black establishment? A About five minutes.

Q When you left who, if anyone was there in the boot-black place? A The defendant.

Q Anybody else? A Nobody else.

Q When you came back state whether or not there was any person in the bootblack establishment? A Nobody.

Q State whether or not you looked under the mattress when you got back? A I did.

Q How soon after you got back did you look under the mattress? A Immediately.

Q And what if anything did you find under the mattress?  
A Nothing.

Q Was the defendant supposed to work all that day for you?  
Objected to.

A Yes, because he had to end the week.

Q Was that the last day of his week? A No.

Q He was engaged by the week, was he? A By the week.

Q And the week wasn't up then? A No.

Q How long was it till you saw the defendant again?

A Thirteen or fourteen days afterwards.

Q Did you look for him between those thirteen or four-

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teen days? A Yes, I went in his house.

Q And you knew his wife, didn't you? A Yes.

Q And do you know his wife's brother? A Yes.

Q What is the name of the wife's brother? A I think it is Carmin Marilla (indicating Carmine Marino).

Q Is that (indicating Carmine Marino) the brother-in-law of the defendant? A Yes.

Q You saw the wife of the defendant also? A Yes.

Q Did you see the defendant? A No.

Q Where was it that you first saw him when you say you saw him thirteen or fourteen days after? A I saw him when he was arrested.

Q Do you know the name of the officer that arrested him?

A Yes.

Q What is the name? A I don't know how his name is.

Q Is it Boneri? A Let me see the name of the policeman and I will tell.

Q Well, I will bring him in later. Did you look anywhere for the defendant? A Yes.

Q Tell us every place that you remember that you looked for him? A I went to his house.

Q Well, you told us that before. Now where else did you go, if anywhere? A Always in his house.

Q Well, you didn't find him? A No.

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Q Have you ever got your bank book back? A No.

Q Did you ever get the one hundred dollars or any part of it back? A No, sir.

BY THE COURT:

Q Did you hear anything of the defendant after you lost the money? A He sent me a letter.

Q Where is the letter? A The other judge took it down in the other court.

MR. JACOBY: He does not know the handwriting of the defendant, Judge. I will offer it in evidence.

Objected to.

MR. JACOBY: Of course I wanted to use it on cross-examination because I cannot identify the handwriting.

Q You don't know the handwriting of the defendant, do you?

A No, I never saw him write.

Q Do you know whether he could write? A I don't know, because I wrote a letter for him, for his sister - for his mother.

Q You wrote a letter to him for his mother? A No, I wrote it to oblige him, to his mother.

CROSS-EXAMINATION BY MR. TOWNSEND:

Q Your bootblack shop is in the basement, is it? A Yes.

Q And where do you sleep? Where is your bed? A I

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sleep in the same place, in the basement.

Q Where is your bed with reference to the bootblack shop?

A In the rear.

BY THE COURT:

Q How many rooms are in that basement? A One room.

BY DEFENDANT'S COUNSEL:

Q What divides the two rooms there, the place where you sleep?

THE COURT: He said there was only one room.

Q The place where you sleep and the bootblack shop?

A There is a something that separates it.

Q A curtain? A It is a fence.

BY THE COURT:

Q A wooden partition? A There is a cover, and kind of a tin and canvas.

BY DEFENDANT'S COUNSEL:

Q You pull it aside - not a locked door between? A No.

Q You can walk from the bootblack shop right into this place where you sleep without opening any door? A Yes, certainly.

Q And that is where your bed was, in this rear place?

A Yes.

Q So anybody who had access into the bootblack shop to have his boots blacked could walk into the rear place?

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THE COURT: That has been testified to. He has testified to that. If they had legs I suppose they could walk in there. He said it was open and no doors.

Q Now, when you were in there that morning, after you say you put the money under the mattress, you don't know whether anybody came into the shop or not between the time you were away and the time you came back, ~~and~~ when you went to buy fish? A No, the only one left was this defendant there-- he had to attend to his business there.

Q. That was Genaro. Answer the question. Do you know of your own knowledge while you were away after the fish--

MR. JACOBY: I will stipulate that he does not.

How can he?

DEFENDANT'S COUNSEL: Very well. Do it, please.

MR. JACOBY: How can he know what someone else did.

Q How long were you gone and where did you buy your fish?

A I bought the fish at 11th street.

Q Where is your shop? A Corner of 10th street.

Q How long were you away? A Five minutes.

Q How long had the boy, this defendant, been working for you? A A week and a half.

Q Hadn't he been working three weeks for you? A No, sir.

Q Wasn't the week up on that Saturday, the 18th? A No.

Q Didn't you owe him something when you went away?

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A I paid him one week and the other week which I owed him, but he had not finished the week.

Q Didn't you pay him during the week \$2 that last week he was there, and when he left you on that Saturday night you said you would bring the money around on Monday?

THE COURT: There is no evidence here that the 18th was Saturday night.

Q Do you know what day of the week the 18th was? A On a Friday.

THE COURT: That is right, too.

Q Didn't you meet this defendant with his wife at his home three different times before you had him arrested?

A I didn't see him.

Q When you called at his house did you meet anybody there?

THE COURT: You mean after the 18th?

Q After the 18th, yes. A I found the mother, the sister and the sister-in-law, the whole family.

Q Did you say anything to them about the brother--about this charge that you had against this defendant? A I told the whole family that he took a bank book with one hundred dollars.

Q Do you recollect what day of the month it was that he was arrested? A He was arrested on the 4th of April. On the second of April I got the letter. On the 4th he was

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arrested, it was on a Monday.

Q When did you make the complaint in the station house against him, what day? A On the 18th of March, the same day that the money was taken away by this defendant.

Q You say that you made the complaint on the 18th of March in the magistrate's court? A Yes. Lafayette street - the big station house in Lafayette street.

BY THE COURT:

Q That is police headquarters? A Police quarters.

BY DEFENDANT'S COUNSEL:

Q When did you go to the magistrate's court? A I went there the same day, between 12 and one o'clock in the afternoon.

Q Did you then and there sign a complaint against this defendant charging him with stealing \$100?

MR. JACOBY: I object to that. The best evidence of the complaint is the complaint itself which is right here.

Objection overruled.

A Yes.

DEFENDANT'S COUNSEL: I now offer in evidence the complaint as to its date.

MR. JACOBY: The complaint is verified on the 5th of April, after they arrested the man --

THE COURT: Do you want the complaint in?

DEFENDANT'S COUNSEL: Yes, just as to the date,

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the 5th of April.

THE COURT: Let it all go in.

Received in evidence and marked Defendant's Exhibit

A.

Q Are you a married man? A Yes.

Q How many children have you? A Two.

BY THE COURT:

Q Where do they live? A One is with my godmother, and the other one I have.

Q Where does she live? A One is with me and one with my godfather.

Q Is it a girl <sup>and</sup> ~~is~~ a boy that is with you? A Two girls I have.

Q How old is this boy that is with you? A Eleven years old.

Q And he sleeps in that cellar with you? A Yes.

Q You do not live with your wife there do you? A My wife went away with another man seven years ago.  
BY DEFENDANT'S COUNSEL:

Q This boy sleeps in the bed where you had the money, doesn't he? A Yes.

THE COURT: The oldest son, you mean?

Q You are looking for a wife, aren't you?

Objected to; objection sustained.

Q Didn't you want to marry this defendant's sister?

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A The defendant asked me to marry his sister but her private parts were too large; she was a fakir, a kind of prostitute.

Q Where is this sister living, do you know? A He made the sister return me a letter which the sister herself wrote to me.

Q (Repeated.) A In Italy.

REDIRECT EXAMINATION BY MR. JACOBY:

Q Was this eleven-year old boy of yours in the bootblack shop, or anywhere else in there, even in the bedroom part of it or in the front part of it at the time you went out to buy fish on the morning of March 18th? A He had gone to school.

Q What were his hours in school? A Half past eight in the morning.

BY THE COURT:

Q How many people did you leave in that place when you went out that day to buy fish? A Only the defendant.

BY MR. JACOBY:

Q Now I will show you this paper here and direct your attention to the signature at the bottom (showing defendant's exhibit A) and ask you whether you know whose signature that is? A That is my signature.

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Q That is the paper that the counsel for the defendant asked you whether you signed on the 18th of March. I ask you to look at the paper now and tell me whether you signed that on the 18th of March? A Perhaps they made a mistake. I signed when he was arrested, on the 18th of March.

BY THE COURT:

Q He wasn't arrested on the 18th of March, was he?

A I signed it at the station house when they brought the defendant to the court.

BY MR. JACOBY:

Q That wasn't on the 18th, but what date was it?

A And some of your people have swindled me and twisted me around and made me sign that paper that way .

BY THE COURT:

Q How long after you lost your money that way did you see the defendant that way? A Thirteen days after.

Q And that was the time you had him arrested? A Yes, sir.

Q And that was the time you signed the complaint against him? A I can't remember.

Q There has been a letter spoken about that you said you received from somebody. I show you this letter and ask you whether that is the letter you refer to in your previous testimony? A Yes, on the 2nd of April I received this letter.

(The letter is marked for identification People's

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Exhibit 1.)

Q Now here is a letter marked People's Exhibit 1 for identification which has been referred to by the complaining witness in his prior testimony--

MR. JACOBY: I offer the same in evidence.

Objected to; objection sustained.

I G N A T Z L O E B I N G E R, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q What is your address ? A 201 East 10th street.

BY THE COURT:

Q Are you an Italian? A No, sir; German.

Q Do you speak English? A Yes, sir, I speak--not much.

BY MR. JACOBY:

Q What is your business? A Barber.

Q Are you the proprietor of a barber shop here in town?

A 195 Second avenue.

Q Were you the proprietor of that barbershop on the 18th of March of this year? A Yes, sir.

Q And what floor of the building was your barber shop on on the 18th of March? A The same place where it is now.

Q Where is it now? Is it the ground floor or four flights up? A In the ground floor.

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Q Is there any place below the floor on which your barber shop is? A The basement.

Q Now on the 18th of March was there a bootblack place in the place? A (No answer.)

BY THE COURT:

Q What is the basement used for? A For a bootblack.

BY MR. JACOBY:

Q Who was the man that had that bootblack shop, do you know him? A Genaro Farro.

Q Is that the man (indicating the complainant)? A Yes, sir.

Q Do you know the defendant here? A Yes, I know him.

Q Where was he working up to the 18th of March? A He was working for that man.

Q For what man? A Gene Farro.

Q What sort of work was he doing? A Cleaning shoes, shining shoes.

Q How long had you noticed him working there? A About eight or nine days.

Q Did you see this defendant on the 18th of March?

A Yes, sir.

Q What time was it that you noticed him, if at all, on the 18th of March? A I saw him in the morning when I come.

Q What time in the morning when you first saw him?

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A I come down, it was about quarter to eight, and the second time I saw him it was about quarter to twelve, he come up from the--

Q Quarter to what? A Quarter to twelve. He come up from the basement.

Q You mean it was around 12 o'clock? A About quarter to twelve.

BY THE COURT:

Q The second time? A The second time, yes. He came up and he was looking around and he is going.

BY MR. JACOBY:

Q What did he do when he looked around? How did he look around? A He looked around and I didn't see anything after what has happened because--

THE COURT: He looked around and what did he do when you said, "He is going?" What do you mean by that? Do you mean he went away?

THE WITNESS: Well, I don't see him any more.

Q Did you see him go? A No, I didn't see him go.

Q What? A I didn't see him go away.

BY THE COURT:

Q If you saw him there, is he there yet? A No, he is not there yet.

Q How long did he stay there? A About a minute.

Q You saw him? A Yes, I saw him.

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Q And he stayed for a minute, looking up and down? A Yes.

Q What did he do then? A I don't know.

Q Did he go up in a balloon or down in a cellar or where?

A I don't see him go out downstairs at all .

Q Did you see anything at all? A No.

Q Did he disappear?

BY MR. JACOBY:

Q What did you tell me--

Objected to.

BY THE COURT:

Q Don't you understand? You saw him standing on the sidewalk, did you? A I saw him standing on the stoop. He came up from the basement all the way looking around, and after ~~xxxxxx~~ that I don't know what has happened to him.

Q You mean you turned away while he was standing there?

A Yes. Well, I got a customer and I have to work.

Q And the last time you saw him then he was standing on the stairs? A On the stoop, yes, sir. I saw him coming up and I have to attend to my business.

Q And then that is where you left him? A Yes.

Q You said, "He has gone away." What do you mean by saying he has gone away? He came up and looked around and he has gone away. That is what you said-- A I saw him

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coming upstairs afterwards. I didn't see him whether he went away or he didn't go away.

BY MR. JACOBY:

Q You don't know yourself what time it was in the morning that you saw him looking around, do you? A I used to come down in my shop about half past seven and eight--between half past seven and eight o'clock. It was about quarter to eight when I come down in the morning.

Q You were busy this time that you saw him looking up from the basement the second time, weren't you? A That time I saw him standing there on the sidewalk looking right to the left and then at that time a customer came in and then I went downstairs.

BY THE COURT:

Q You didn't go downstairs-- A Then I went inside.

BY MR. JACOBY:

Q Now at that time when you saw him standing on the sidewalk or coming up and looking in both directions, you didn't take any exact note of the time, did you?

(The Third Juror puts the above question <sup>to</sup> the witness in the German language.)

A It was about 15 minutes to 12, that was just the time I wanted to go for my lunch, and then I got a customer, and it might have been ten minutes to twelve.

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J O S E P H   Q U A R N I A R I (Detective Bureau),  
called as a witness on behalf of The People, being first duly  
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q   You are a detective?   A   Yes, sir.

Q   Connected with the municipal police force?   A   Yes, sir.

Q   How long?   A   About fourteen months.

Q   Do you know this bootblack shop of the complaining witness?  
A   Since the date of the arrest, yes, sir.

Q   Is that in the City and County of New York?   A   Yes, sir.

Q   Where is it, what corner and what street?   A   It is on--

THE COURT:   It is conceded it is on the southeast  
corner of Tenth street and Second avenue.

Q   When was the complaint made?   A   It was given to me on  
the 19th day of March.

Q   Did you do anything in the way of looking for the defendant?  
A   Yesk sir.

Q   Where did you go to look for him?   A   I went to 95  
Crosby Street.

Q   Is that where his wife lived?   A   Yes, sir.

Q   Was he there?   A   No, sir.

Q   How many times did you go there?   A   Twice.

Q   Did you ask about him?   A   Yes, sir.

Q   Is this the defendant here (indicating)   A   Yes, sir.

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Q Where did you find him finally, if you found him at all? A I found him at 95 Crosby street, in the hallway.

Q When? A April 4th.

Q What time in the morning or night? A 10 P. M.

Q What was he doing there when you found him? A Going up the stairs.

Q Had you been waiting there before he came there?

A Yes, sir.

Q How long? A About half an hour.

Q When did you say to him when you got him, what language did you use? A American. I told him he was under arrest for stealing one hundred dollars belonging to Genaro Farro. He said could I prove it?

Q Did he say that to you? A "Could I prove it?" He said to me, "Can you prove it?" I told him, "We will try to."

Q What did he say then? A Well, he said all right.

Q What did you do then? A Placed him under arrest and took him to police headquarters.

Q Then the complaint was made against him? A Yes.

Q And the machinery of the law took him in? A Yes.

CROSS-EXAMINATION BY MR. TOWNSEND:

Q Now this place where you found him was in his home where he lived, No. 95-- A In the hallway.

Q He lives upstairs, doesn't he? A No, sir.

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Q What floor does he live on? A The first floor.

Q Well, he was going upstairs ? A He was in the hallway.

Q In the daytime? A Yes, sir, ten o'clock at night.

Q Well, going upstairs? A Yes, sir.

Q In the house where he lived? A Yes, sir.

Q Did you go upstairs? A I did.

Q Did you see his wife and child? A Yes.

BY THE COURT:

Q That night or on prior occasions? A One night and that night; twice, once before and that night.

BY DEFENDANT'S COUNSEL:

Q So the second time you got there you found him? A He wasn't there.

Q The third time you got there? A I never went <sup>there</sup> the third time.

Q But the second time you arrested him? A Yes, sir.

Q Not in his room but on his-- A On his way to his rooms. He was in the hallway. I suppose he was going upstairs.

BY MR. JACOBY:

Q You didn't know where he was going, did you? A No, sir.

BY DEFENDANT'S COUNSEL:

Q Well, that was the hallway of the house he lived in?

A Yes.

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Q When did you call the first time? A About two days after I received the complaint.

Q What time of day? A Morning, sometime around nine or ten o'clock.

Q And you found he wasn't at home? A He wasn't at home.

Q And the next time you found him in his house? A No, sir.

Q And the second time you called, when was that? A The same night of the arrest, ~~the~~ 4th of April.

BY MR. JACOBY:

Q You asked his wife where he was? A Yes, sir.

Q What did she say to you?

THE COURT: That is objectionable.

BY DEFENDANT'S COUNSEL:

Q You know this defendant? A Since the arrest, yes, sir.

Q Well, didn't you know him before? A No, sir.

Q Didn't you know he had a push-cart? A No, sir.

Q You found out nothing against him before, any charges against him?

Objected to; objection overruled.

Q He has got a good reputation in that neighborhood, hasn't he? A I don't know anything about any reputation.

Q You don't know anything against him, nor you have not found anything against him, have you? A No, sir.

BY MR. JACOBY:

Q Have you tried to find out anything against him?

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in reference to this case? A Well, I found he was arrested once before, or had two men arrested here about two years ago down at first District Court here. He was asked to make a complaint. He told Magistrate Barlow, who was the judge, that someone, some unknown person, had told him to do that so as to railroad two men to Sing Sing, and he told the magistrate that everything that he had said was a lie, so the magistrate ordered a complaint drawn up against him, and sent him to the work-house.

BY THE COURT:

Q Then you did know something about him? A Well, I only found this out about two weeks ago.

Q Well, he has asked, have you ever heard anything against him, and you said no. Now which is correct? A What I just told you.

BY DEFENDANT'S COUNSEL:

Q He never went to the work-house, did he? A Well, he was sent there.

BY THE COURT:

Q Were you in court when the magistrate committed him?

A No, sir.

G U I T A N O F A R R O, (eleven years old) called as a witness on behalf of The People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Are you the son of Genaro Farro? A Yes, sir.

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Q Have you ever known your mother? A No, sir.

Q Have you always lived with your father? A Yes, sir.

Q Did you live with him the day this one hundred dollars was stolen? A Yes, sir.

Objected to.

Q Did you live with him the day that his \$100 disappeared?

Objected to; objection sustained.

Q Did you live with him the day he said he said he lost \$100? A yes, sir.

Q What time did you go out that morning? A To school? Half-past eight.

Q Until what hour were you gone away from there? What time did you come back? A I came back at 12 o'clock.

Q And had you been back in the place any time between half past eight and twelve o'clock? A (no answer.)

BY THE COURT:

Q You were in school from half-past eight until twelve, weren't you? A Yes, sir.

DEFENDANT'S COUNSEL: No cross-examination.

MR. JACOBY: People rest.

DEFENDANT'S COUNSEL: I ask the learned Court to take the case away from the jury on the ground that there is no proof sufficient upon which to find a verdict; that a much stronger case in the way of defense, in the case of The People against Lesser, if your Honor is familiar with that

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case--

THE COURT: We haven't heard anything about this case yet. I am familiar with the Lesser case.

DEFENDANT'S COUNSEL: Well, supposing we don't put in any more testimony, but upon the People's case as made out--

THE COURT: In the opinion of the Court the People have submitted evidence which justifies this case being submitted to a jury. Unless other evidence is forthcoming, I will deny your motion.

DEFENDANT'S COUNSEL: Excpetion.

G E N A R O F O C C A R I, the Defendant herein, called in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY DEFENDANT'S COUNSEL:

Q Where do you live? A 95 Crosby Street.

Q Talk up loud so these gentlemen can hear you. What do you do for a living? A Anything.

Q Well, what were you working at on the 18th of March-- 17th and 18th of March--what were you doing? A I don't know how to speak.

THE COURT: Well, get an interpreter. Now don't say another word of English.

(The following questions are put and answers given

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through official interpreter Moustacki.)

Q (Question repeated.) A I was working with a push-cart.

Q Do you know the complaining witness here? A I know him for a short while.

Q Did you ever work for him? A Yes.

Q When? A In the month of December until the 12th of March--12th or 13th of March.

Q How many weeks did you work for him? What were you to get a week? A Five dollars.

Q And board? A I have got a wife. I don't need to eat in his place.

Q What did you do before you worked for him? A I was working with a push-cart.

Q When did you give up working with a push-cart? A Because it was too cold and I couldn't go out doors.

Q How long had you worked with a push-cart? A Eight years.

Q Now about the time you left the complaining witness--his employ--did you have a talk with him about the wages and about the fact that you were going to leave or anything--did you have a talk with him? A No, I did not,

Q What was said by you to him before you left? A I said to him "I receive five dollars. That is not sufficient for me to live with my wife together, so if you want to in-

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crease my wages all well and good. If not I will go back to the push-cart business." Then he handed me two dollars and he says, "Well, take that two dollars, and when I call in your house, I will give you the balance."

Q What time of the day was this? A It was on a Saturday, at half past seven.

Q At night? A Yes, sir.

Q Was that the end of your week? A Yes.

Q Then where did you go? A In my own house.

Q What did you do after that in the way of living?

A I would go around with the push-cart.

Q Did you go out every day with it? A Yes.

Q Did you again see the complainant? A I saw him again. He came in my house, and he offered me the three dollars and I never asked him for it.

Q When did he come to your house? A Three times.

Q Who was there? A The whole family was present.

Q What time of the day or evening did he come? A About half past eight or nine o'clock at night.

Q How long did he stay? A One hour. Either one hour or less than one hour.

Q Before you went to work for this man as a bootblack did you know him? A No, I didn't know him.

Q Had you ever seen the complainant? A He called at my house before I worked for him, and he said, "If you like to

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work for me you can come to work for me."

Q Was he not connected with the family in some way--  
related to your wife's family? A Only friends, that's all.

Q Now the night you were arrested, what were you doing at  
the time of your arrest? A I went to see that night some  
countrymen of mine who arrived from Italy.

Q Where were you arrested? A In the house.

Q What time? A About half past eight or nine o'clock.

Q Was that the first time you had heard you were charged  
with stealing any money from the complainant? A That is  
the time.

Q Was that the first time? A The first time.

Q Do you recollect what you said to the officer or what  
the officer said to you at the time of your arrest? A He  
said to me, "If you don't give up the one ~~hundred~~ hundred dollars  
and the bank book I will break your head." I said to the  
officer, "You can break my head and you can do as you like  
and you can bring me to the station house, I am not guilty  
of any such behavior as to steal it, because I never stole  
in my life."

Q Did you see a bank book or one hundred dollars in bills  
in the hands of the complainant witness upon the morning  
that you left, or upon the day that you left, or at any  
other time? A No, I didn't see anything.

Q Did you have a talk with him that day about making a

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deposit in the bank? A I am not his wife for him to confide his private affairs to me.

Q Did you take or steal any money from this place or from him? A No.

Q From the time that you left him until you were arrested, where did you spend every night between the night you were arrested and the time you left? A In my own house.

Q Did you go and hide any other place--did you go and hide away anywhere at any time? A No.

Q How long have you been married? A Twenty months.

Q Got any children? A One.

CROSS-EXAMINATION BY MR. JACOBY:

Q Do you know a lady or a woman named Rosalya? A No.

Q Rosalya Carpola? A No, sir,

Q Have you got an aunt named anything like that? Or anything like it? A I got an aunt.

Q Has she got a name something like Rosalya Carpola?

A Rosalya Carpola is the name of the husband of my aunt.

Q What is the name of the aunt? A Rosaria.

Q Now, isn't that lady the godmother of this complaining witness Farro? A Yes.

Q And didn't you know that she had one hundred dollars or some money or some sum of money belonging to Farro that she was keeping or saving up for him? A No.

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Q You say that you worked for Farro three months? A Three weeks.

BY THE COURT:

Q You said from the 12th of December to the 12th of March? A I said I worked from February up to March.

Q No, December you said. A I can't very well speak in these matters and in this case and I get mixed up.

BY MR. JACOBY:

Q Well, you know you worked three months? A Yes.

Q And the last day you worked was Saturday, the 12th of March, yes or no? A Yes.

Q And how much a week were your wages? A \$5.00.

Q You got \$5.00 for the first week? A Yes.

Q When did you get that \$5.00 -- on the Saturday night that it was due? A Saturday night.

Q You got \$5.00 for the second week you worked? A Yes.

Q And you got that on the Saturday night it was due?

A He gave me two dollars at first on Saturday and then he said he would give me the balance, three dollars, on Monday.

Q I am not talking about the first week, Mr. Witness.

A Yes, the second week I got paid.

Q You got your five dollars the Saturday night it was due, didn't you? A Yes.

Q And did you work the third week right up to the end of Saturday? A Yes.

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Q And you claim that that Saturday night after you had finished your work that this man paid you for the first and second week and refused to give you your full five dollars but made you take two dollars? A That's all he paid me, two dollars.

Q And after that you never went near the bootblack place again, yes or no? A On the following Monday I went there to ask for the three dollars.

Q Did you see the complainaing witness Farro then? A Yes.

Q That would be the 14th of March? A It was on A Saturd day that the week ended and on Monday I went there, whatever date you mean to make it.

Q Well, the Saturday the week ended, you said six or eight times, was the 12th of March, wasn't it? A Yes.

Q You are sure of that? A Yes.

Q Two days later you went there to get your three dollars? A Yes.

Q You asked for three dollars? A Yes.

Q And did he refuse to give it to you? A He says he hasn't got it, but he says he will bring the three dollars home.

Q Do you claim that he came to your house that week, the week beginning March 13th, the week after you left him?

A He came on Monday night.

Q That was the same day that you had been there to get

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your three dollars? A Yes.

Q Did he at that time offer to give you the three dollars?

A No, he didn't offer it to me and I was ashamed to ask him for it.

Q Did he come there to pay a social call or for what purpose, if you know? A He is a friend of my mother-in-law and he came there?

Q Did he come any other time that week after that Monday?

A He came on Tuesday and on Friday of that week.

Q Did he at either of those occasions offer to pay you three dollars? A No.

Q Did you have any trouble with him either on Monday, Tuesday or Friday of that week? A Yes. We had a few arguments because he wouldn't give me the three dollars.

Q When did you ask him for the three dollars? A On Friday I asked him for the three dollars.

Q What did he say? A He said, "I don't owe you three dollars."

Q What did you say? A I said, "Why don't you pay me the three dollars?" "My arms are paining me working for you and you will not pay me the three dollars."

BY THE COURT:

Q What was that three dollars for? A For to finish the week.

Q What ~~xxx~~ day did you leave? A On a Saturday.

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Q Did that finish the week?

A I finished the week but he didn't pay me the five dollars. He paid me only two dollars on account.

BY MR. JACOBY:

Q Now I show you People's Exhibit 1 for identification and ask you whether you saw that letter written--whether you saw it written? A No.

Q How do you know so quickly? You cannot read or write?  
A I can't write nor read. If I could write or read I would.

Q Didn't you ~~take~~ dictate a letter confessing the fact that you stole this money, and sent your brother-in-law with it to deliver it to the complainaing witness?

Objected to, objection overruled.

A I don't know anything about that.

BY THE COURT:

Q Well, did you do that, yes or no? A No.

Q What do you mean by saying you don't know anything about it? A The reason I say I don't know anything about it is because somebody may write a letter saying I have killed somebody. Is that the reason why I should go to the scaffold for it?

Q If you were asked whether you killed somebody would you say you didn't know anything about it? Did you ever kill a man? A No.

Q You say no right away. You do know something about it,

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don't you? You do know that you never killed anyone?

A No.

Q You do know that, you are sure of that? A Yes.

Q Then why do you say you don't know anything about this letter? A Because I don't know anything about it.

Q Well, you were asked whether you wrote it or not. Don't you know anything about that? A I can't write.

Q Did your brother write it for you? A He can't write Italian.

Q How long are you in this country? A Eight years.

Q How old are you? A Twenty-two.

Q Did you go to school in Italy? A No, sir.

Q No schools in Italy? A No.

Q What part of Italy were you born in? A Calabria.

Q What town in Calabria? A Schilli.

BY MR. JACOBY:

Q You were not back at the bootblack establishment of Farro any day after Saturday the 12th of March, until you were arrested? A No.

Q Do you know that the witness Ignatz Loebinger, says he saw you coming out of the stairway on the 18th of March and looking around like this (indicating) and he didn't see you any more? A What did he see?

MR. JACOBY: That's all.

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BY THE COURT:

Q He didn't see you take the money, did he? A Of course if I had stolen the money I would not have been foolish enough to go and tell the barber that I did.

Q And you wouldn't be foolish enough now to tell us that you did, would you? A If he thinks that I stole the money, this barber, why didn't he go straight to the boss to have me arrested.

Q How do you know he didn't go straight to the boss?

A Why is it possible that he came in my house, the complainant so often, and that he never had me arrested if I had stolen his money?

Q When did he come? A He came there on a Monday night, he came there on a Wednesday night and on a Friday night.

Q After this money was lost? A Yes.

Q How do you know when the money was lost? A I don't know anything about the robbery except that after I was arrested I was charged with the robbery. That is the way I know about it.

Q And you would not be foolish enough to admit it to us--that was my question--yes or no? A I didn't steal it.

A I didn't ask you that. You said you would not be foolish enough to tell the barber. Didn't you say that?

A You don't understand me, you don't understand what I mean. If I had stolen the money I would not have gone back to the

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house that night.

Q And you would not be foolish enough now to tell us that you did steal ~~xxx~~ it, is that the point? A If I had stolen this money I would have accused myself outright. I don't know anything about the robbery of this money.

Q You would make a clean breast of it here now, wouldn't you? A Yes, if I had stolen it I would, but as I am innocent--

R O S E F O C C A R I, called as a witness on behalf of Defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY DEFENDANT'S COUNSEL:

Q What is your address? A 95 Crosby street.

Q You are the wife of this defendant? A Yes, sir.

Q How long have you been married? A Two years, September

Q You have children? A Yes, sir.

Q Where do you live now? A 95 Crosby street.

Q What does your husband do for a living? A Push-cart peddler.

Q How long have you known your husband?

THE COURT: She knew him long enough to marry him.

Q Along in March where was your husband working? A Along in March he was working with a bootblack.

Q Do you know when he left the bootblack's--what day of the month it was? A I don't know, I don't remember.

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BY THE COURT:

Q When did he go to work for that bootblack? A I think it was in the month of February.

Q You think it was? A I think so.

Q Do you know a bout how long he worked for him?

A About fifteen days.

Q What was he paid? A \$5.00 a week.

BY THE COURT:

Q That is what he told you. You never saw him get the five dollars, did you? A No, sir.

BY DEFENDANT'S COUNSEL:

Q Did he bring you home the five dollars? A Yes.

Q He brought you home five dollars? A Yes, sir.

Q Do you recollect the time he gave up working for the bootblack? Do you recall the night that he gave up and told you that he wasn't going to work there any longer? A Well, three days before he left the place he told me he didn't want to work with him any more.

Q Why?

Objected to.

A Because it was too little bit a week,- he couldn't support his wife and child.

Q Then did he say anything about how much money he got when he left?

Objected to.

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A we said he was going to get three dollars more. He told me he was going to get three dollars more, and that's all.

Q And how much did he get when he left? Do you know how much was he paid that night when he left? A Five dollars.

Q Five dollars? A Yes, sir.

Q Do you know that, did you see the five dollars?

A Yes, sir.

Q Well, did the bootblack owe him any money when he left, ~~did~~ do you know? A Yes.

Q How much ? A Three dollars.

Q After he left work for the bootblack did you see the bootblack again? A Yes, sir, he come three times over to my house.

Q How long had you known the bootblack? A Oh, two or three years I know him.

Q How often had you seen him during that time? A Oh, he always used to come up to my house.

Q And he was a godfather for some of your family?

A Yes, sir, an aunt of mine.

Q And these nights that he called after your husband left his employ, was your husband home? A Yes, sir , every night.

Q And he spent an evening there, did he? A Yes, sir.

Q The same as on other evenings? A Yes, sir.

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Q Did he ever tell you about losing one hundred dollars?

A No, sir.

Q When did you first learn that he had been robbed of one hundred dollars? A After he complained of it, and my husband was arrested, seventeen days after.

Q Do you recollect the time your husband was arrested?

A It was on a Monday night.

Q About what time? A About half past nine, eight or ten.

Q Where was your husband when he was arrested? A He was out seeing some of his relations.

Q Where was he when he was arrested? A Well, they locked him up in the hallway downstairs.

Q In the hall? A Yes, sir.

Q Your hall there? A Yes, sir.

Q And you live what floor? A First floor.

Q And during the day what had your husband been employed at? A At a push-cart, peddling with a push-cart.

Q Was he ever away from home during your married life?

A No, sir.

Q Any night? A No, sir, always home.

BY THE COURT:

Q He was home every night while they were looking for the thief, was he? A Yes, sir.

Q Why did they suddenly pick him up as the thief, if

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they hadn't been looking for him before?

DEFENDANT'S COUNSEL: Objected to.

Q If you know?

THE COURT: You have opened the door for it.

DEFENDANT'S COUNSEL: No, sir, I object to it.

Q Do you know why they didn't arrest him before this time?

A No, sir.

Q You don't know? A No, sir.

Q Now, isn't your ememory a little bit bad on this question of where he was? A No.

Q Do you mean to tell these men that he was out every day with a push-cart while the police were looking for him?

A Yes, sir.

Q Didn't any police officer go to your house and ask for him? A No, sir, only the night they came there and looked him up, and they locked him up in the hallway--no one was up before.

Q That is the first you knew of it? A Yes, sir.

BY MR. JACOBY:

Q You said he was arrested on a Monday night? A Yes, sir.

Q Are you sure of that night? A Yes, sir.

Q You said it was seventeen days after? A Yes, sir.

Q After what? A After he left the place.

Q Now then, he was arrested seventeen days after he left the place? A Yes, sir.

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Q What day of the week would that be that he left the place? A I don't remember.

Q It would be a Friday, wouldn't it? A On a Friday, yes, sir.

Q You are sure it was seventeen days after he left the place that he was arrested? A Yes.

Q It was not sixteen? A Oh, I don't know now.

Q Why did you say seventeen?

THE COURT: Why do you cross-examine? She said seventeen.

MR. JACOBY: Well, I want to be fair to the witness.

THE COURT: Well, I know.

Q You said that Farro was at your house three nights a week after your husband left the place? A Yes.

Q Is that right? A Yes, he was over to my house three times.

Q You say your husband left the place on the 12th of March? A Yes, sir.

Q Sure about that? A Yes.

THE COURT: She didn't say the 12th of March; he said the 12th of March, on a Saturday.

MR. JACBOY: She says he left on a Friday.

Q Now you remember that the three times that Mr. Farro came there all the week after your husband stopped working for him-- A Yes, sir.

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Q And then Mr. Farro didn't come any more? A No, he come three times.

Q Three times the week after your husband left? A Yes, sir.

Q That is the week after your husband left? A Yes, sir.

Q And after that he didn't come any more? A No, sir.

Q Until your husband was arrested, is that right?

A Yes, sir.

Q And the last ~~XXXXXX~~ of those three times he came was on a Friday?

A yes, sir.

Q He came on a Monday. Then when did he come? A He come three times before locking him up.

Q Monday, Wednesday or Driday, or Monday, Tuesday and Friday? A No. He come far apart. He come like once on a Friday, then he come the week after - he come another time.

Q Are you positive? A Yes, sir.

Q Are you positive that Farro didn't come to your ouse three times during the week following the day that your husband left his job? A Yes, sir.

Q He didn't come three times? A He come three times and once he come with the policeman to the house, that is four times.

Q He didn't come three times in one week? A Not in one week.

Q You are sure he didn't come three times in one week?

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A No, sir.

Q So if your husband said that the week following his leaving the job Farro called at your house on Wednesday, or Monday, Tuesday and Friday, your husband is mistaken, is that right? A He didn't come all in one ~~big~~ week.

Q He didn't come three different nights in the week following the week your husband left? A No.

Q You knew when he came that your husband claimed that he owed him three dollars? A Yes, sir.

Q Did you ask him for the three dollars? A No, sir.

Q Did your husband ever ask him? A No, sir.

Q Was there every any trouble between your husband and him about the three dollars, in your presence? A No, sir.

Q Was there any trouble between your husband and him at all that you noticed? A No, sir.

BY THE COURT:

Q And you say your husband saw him these three nights when ~~xxxxxxxxxxxx~~ Mr. Farro came there? A Yes, sir.

Q You understand that question? A Yes, sir.

Q Your husband was in the house? A Yes, sir.

Q When Farro came there three times? A Yes, sir, came in the house, shook hands with him and spoke with him and never spoke about anything.

Q How many times had he been there before your husband left his employ? A Oh, before? He used to come and find

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my aunt--used to come nearly every Sunday night.

Q What happened to disturb these friendly relations?

A I don't know.

DEFENDANT'S COUNSEL: A witness as to character that has been here four or five times, where this defendant worked for two years, failed to answer the call of the officer. This case has been six or seven times on the calendar, the defendant has been forty-three days in the City prison, and it is hard to keep these witnesses in attendance.

THE COURT: Have you any other witness present?

DEFENDANT'S COUNSEL: No, sir.

THE COURT: Well, you had better go ~~the~~ to the jury unless you have. Is there any rebuttal, Mr. Jacoby?

MR. JACOBY: No, sir.

Case closed.

DEFENDANT'S COUNSEL: Now I renew my motion, if the Court pleases, on the case of The People against Lesser. In that case, there was the case where the woman was five minutes right in the room where the watch was, and as I recall the case--

THE COURT: I recall the case, but here there is positive testimony that the defendant saw this money and told the complainant not to put it in the bank, and when the complainant came back the defendant and the money were

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gone. Now, it is a question for the jury to decide. There is an entirely different state of affairs here. This defendant, if the complainant's story be true, was under obligations to stay there and watch that property and shop. When the complainant came back his employe and the money were gone. That is the story to submit to the jury. The defendant denied it.

DEFENDANT'S COUNSEL: He says his back was turned towards him.

THE COURT: Well, the jury saw him on the stand and they can tell whether he had eyes in the back of his head or not.

DEFENDANT'S COUNSEL: The German gentleman, the barber, testifies that ~~at~~ it was a quarter to twelve when this boy was there at the place.

THE COURT: Well, those are facts for the jury. This complainant tells a very positive and clear story. If it is believed by the jury it warrants a conviction of grand larceny in the second degree. If it is not believed then it does not warrant a conviction. It is for them to take his story and all the circumstances of this case into account.

In the other case you are talking about, there wasn't anything to connect the defendant Lesser with the loss of

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that watch.

DEFENDANT'S COUNSEL: What have we got here but strong suspicious circumstances? Nobody ever saw him take it or saw him with it. We have not anything at all.

THE COURT: If the jury believe the testimony of this complainant they cannot do anything else but find a verdict of guilty.

DEFENDANT'S COUNSEL: Here is an open shop, with a curtain between, where people can pass in and out--

THE COURT: And this defendant left in custody of that, and he disappears before the owner comes back, with the owner's one hundred dollars.

DEFENDANT'S COUNSEL: That is his testimony.

THE COURT: Exactly. I am not passing on the truth or falsity of the testimony. That is why I am letting it go to the jury for them to decide.

DEFENDANT'S COUNSEL: And defendant denies it.

THE COURT: It is for the jury to say how much weight they will give to his denial. They pass on the credibility of witnesses. I am merely telling you why I let this case go to the jury.

DEFENDANT'S COUNSEL: You have only the testimony of the complainant against the defendant, and no corroboration.

THE COURT: I will let the case go to the jury and I have given you my reasons why.

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DEFENDANT'S COUNSEL: Well, won't you allow me to produce some witnesses as to character on Monday? It is 5 o'clock.

THE COURT: No, we will sum it up while the testimony is fresh in the minds of the jury.

DEFENDANT'S COUNSEL: We have been ready five or six times. We can produce witnesses to good character.

THE COURT: No, we are going to finish this case.

DEFENDANT'S COUNSEL: Well, I ask your Honor--

THE COURT: Your motion is now on the record and denied. I am going to finish this calendar while I can.

DEFENDANT'S COUNSEL: I have been anxious to do it. Here we have been forty-three days locked up and we have been seven times ready and answered the call here, had our witnesses here seven times, and they are all poor people--

MR. JACOBY: I told Colonel Townsend we would try his case today and to have his witnesses here.

THE COURT: We have been trying to try it. We cannot try two cases at once.

DEFENDANT'S COUNSEL: I think on second thought you will give us until Monday. I won't be five minutes summing up.

THE COURT: Sum up now.



DEFENDANT'S COUNSEL: It is 5 o'clock now. It is a very serious situation for this young man and I believe he ought to have a little opportunity--

THE COURT: What character witness can you produce?

DEFENDANT'S COUNSEL: People he worked for.

THE COURT: He ran a push-cart.

DEFENDANT'S COUNSEL: Well, the man who supplied him with the push-cart--a very reputable man that supplies thirty or forty.

THE COURT: Any more reputable than this barber who says he was working down in this basement?

DEFENDANT'S COUNSEL: All men who know this boy. He has lived here seven or eight years and always borne a very good reputation.

THE COURT: You will have to go to the jury today.

Counsel now close to the jury.

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CHARGE OF THE COURT, MULQUEEN, J.

THE COURT: Gentlemen of the jury, the defendant has been indicted by the Grand Jury of this county of the crime of grand larceny in the first degree. The indictment alleges that in the Borough of Manhattan, County of New York, on the 18th day of March, in the year 1910, with force and arms, the sum of one hundred dollars in money, lawful money of the United States of America, and of the value of one hundred dollars, one written instrument and evidence of debt, to wit, a certain savings bank book, so-called, the same being a certain instrument and book showing a deposit to the credit of one Genaro Farro of the sum of seven hundred and fifty dollars in money in a certain savings bank, there known as The Manhattan Savings Institution, the said instrument and the bank book then and there being an evidence of an indebtedness of the said savings bank to Genaro Farro to the amount of the said sum of seven hundred and fifty dollars in money, and of one hundred and twenty-one dollars and fifteen cents interest thereon, and which said evidence of debt and bank book was then and there of the value of eight hundred and fifty-one dollars and fifteen cents, and one book of the value



of twenty-five cents, of the goods, chattels and personal property of one Genaro Farro then and there being found, then and there feloniously did steal, take and carry away, against the form of the statute in such case made and provided and against the peace of the people of the state of New York and their dignity.

It would be difficult to prove, and there was no attempt made to prove that the savings bank book was worth the sum of eight hundred and seventy one dollars. Although it was the evidence of the debt it was not a negotiable instrument and the payment on the book could be stopped, so the question whether the book was worth any money or not is not before us. It is sufficient if any one of the items here charged to have been stolen is proved to have been stolen; and it is set out in the indictment that one hundred dollars in lawful money of the United States of America was stolen by this defendant, and if you find that to be so, you will be justified in finding a verdict of guilty of grand larceny in the second degree and not grand larceny in the first degree; so I am going to submit the case to you on grand larceny in the second degree.

You will notice the allegations of the indictment that concern you. First, that Mr. Genaro Farro, on

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the 18th of March, in the county of New York, had one hundred dollars in a bank book, and, secondly, that this defendant feloniously, wilfully and wrongfully, did steal, take and carry away that one hundred dollars in that bank book; and the indictment declares that that conduct of his was against the form of the statute in such case made and provided.

You understand what an indictment is. It is a charge made by the Grand Jury--the Grand Inquisition, as it is sometimes called, which investigates alleged crimes. When charges are presented to it, if testimony approved by the Grand Jury, if the evidence seems sufficient to show that a crime has been committed, the Grand Jury find what is called an indictment. Now an indictment itself is nothing more than a charge. The indictment itself gives no proof of his guilt or innocent. It is intended to let you gentlemen of the jury before whom the case is tried know what the charge is, and to bring the defendant to trial.

Now, keeping the elements of the charge in mind, I will read to you the statute concerning larceny.

Section 1290 of the Penal Law defines larceny as follows:

"A person who, with the intent to deprive or defraud the true owner of his property or of the

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use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, takes from the possession of the true owner, any money, personal property, thing in action or contract, or article of value of any kind, is guilty of larceny!

Please keep in mind the words of the Statute:

"takes from the possession of the true owner with the intent of depriving the owner of it and of appropriating it to the use of any person other than the true owner, is guilty of larceny." That is what larceny is, under our law. That is a very simple statute and you can keep that in mind.

The question arises as to the proof. The defendant is not obliged to establish his own innocence. You understand that theory of our law. The fundamental presumption of our law is that the defendant is presumed to be innocent and, therefore, the other party to the controversy, - the People - organized society - have their representative, elected by the People, to present the People's side in these cases; and the law is that since the People make the charge the People must prove it. The law goes further and states the amount of proof required. The law says that there must be credible evidence enough presented before you to remove from your minds every reasonable doubt of the guilt of the defendant. When that is

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done then the People are entitled to a verdict. If that is not done then the defendant is entitled to an acquittal.

What is meant by reasonable doubt? It is a doubt that is founded on reason. It is a doubt for which the person who entertains it can give a reason, and that reason is connected solely with the evidence in the case, or the lack of evidence in the case. It is not a doubt that is founded on prejudice or on sympathy or on a desire to avoid doing your duty. A juror must honestly seek with all his might and main to find the truth from the testimony. When he has made that effort, if his mind is in such a state that he cannot say, "I am firmly convinced, I have an abiding conviction that the defendant did what he is charged with doing," then his mind is in a state of reasonable doubt. If the evidence merely creates suspicion of guilt, no matter how strong that suspicion is, that is not enough; the proof must go beyond suspicion and must be conclusive--must satisfy you beyond a reasonable doubt and must not be consistent with any theory of the innocence of the defendant.

You have heard the testimony in this case. There is a sharp conflict in the evidence. You have heard Mr. Townsend, the counsel for defendant, that this case is one which is known as "exclusive opportunity" and that the

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People have not proved that.

What the People have produced is Mr. Farro who testified that he had a bootblack establishment in the basement of a store, and that on the 18th of March he had only one workman in his employ, to wit, this defendant; that this defendant knew of his own knowledge and had seen him have one hundred dollars in his possession; that then Farro went out leaving that money in a mattress and that he came back shortly afterwards and that the defendant was gone and the money was also gone. Mr. Farro said that this defendant was working for him on the 18th of March, and it is claimed by the People that that was shown also by the testimony of Mr. Loebinger, who is said to be a distinterested witness and who had a barber shop there. Now, are those people entirely wrong, or do you believe their story?

On the other hand, you have the statement of the defendant that he left the employ of the complainant on the 12th of March, that he was not in Farro's employ on the 18th and that he never heard anything about this money until he was arrested--never heard of the loss of the money. You have heard the testimony of defendant's wife. You have heard all the testimony in this case. All the testimony of both sides must be considered by you and you

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must decide who has told the truth. You must notice the manner of the witnesses on the stand and find out who told the truth and who did not tell the truth. If a witness made misstatements through inadvertence, of course you will disregard any statement that you believe to be false, and if the statement was made purposely and wilfully on a material point in this case, you may disregard all the testimony of such witness.

The State must prove beyond a reasonable doubt that this defendant was working there on the 18th of March and that he knew that this money was there and that the defendant took the money with felonious intent. If he was employed by the complainant on the 18th of March, and if he was left in charge of the property, it was his duty to protect that property. At least that testimony would raise the presumption that he knew something of the disappearance of this money that must be explained away by him. His testimony is a general denial that he was there on the 18th of March, that he ever knew anything about the money, or that he heard anything about it until he was arrested. You have to decide the facts from the conflicting statements what effect the facts produce on your mind. If you are satisfied beyond a reasonable doubt that he stole that one hundred dollars on that day then render a verdict

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of guilty. If you have any reasonable doubt that he did then render a verdict of not guilty. If guilty, the verdict should be grand larceny in the second degree. Otherwise, not guilty.

DEFENDANT'S COUNSEL: I ask your Honor to charge the jury that it is a case of circumstantial evidence, that there is no direct evidence as to the larceny.

THE COURT: I so charge.

DEFENDANT'S COUNSEL: All the circumstances must point to the guilty conclusion to the exclusion of every other thing.

THE COURT: And must exclude every theory of innocence.

DEFENDANT'S COUNSEL: There is also some testimony showing that he bore a fair reputation and the jury should take that into consideration.

THE COURT: What testimony was there on that point?

MR. JACOBY: There is none, your Honor.

DEFENDANT'S COUNSEL: The police officer.

THE COURT: The police Officer testified he was sent to the work house.

DEFENDANT'S COUNSEL: Because he would not make a charge.

THE COURT: Well, he had made a charge, he said, and afterwards--

DEFENDANT'S COUNSEL: He said for seven years he was working with a push-cart--for seven years--in the neighborhood.

THE COURT: That is his own testimony. They have heard all that. The jury will consider all the testimony in the case. You may pass out, gentlemen.

The jury now retire.

The jury upon their return render a verdict of guilty of grand larceny in the second degree.

(Defendant remanded one week, Mr. Conway to investigate.)

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