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

-----X
: THE PEOPLE OF THE STATE OF NEW YORK: :
: :
: -against- :
: :
: G U I S E P P E S M E R A L D I. :
: :
: -----X

: Before
: HON. THOMAS C. T. CRAIN, J.,
: and a Jury.

New York, May 13th, 1910.

A P P E A R A N C E S.

For the People,

DEPUTY ASSISTANT DISTRICT ATTORNEY MILLARD H. ELLISON.

For the Defendant,

LONDON & DAVIS, ESQS., Attorneys,

A. M. DAVIS, ESQ., of Counsel.

Indicted for Grand Larceny in the ^{First} ~~Second~~ Degree and Receiving.
Indictment filed May 3rd, 1910.

A jury was duly impaneled and sworn.

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Mr. Ellison thereupon opened the case on behalf of the people.

LEONARD DINATALIE, sworn as a witness on behalf of the People, testified (through Official Interpreter Villamena), as follows:

DIRECT EXAMINATION BY MR. ELLISON:

Q Ask him what he does for a living? A Brick layer's helper.

Q Do you recall the 17th day of March, 1910?

A yes, sir.

Q How long had you been in New York preceding that day?

A Two months.

Q And where did you come from? A From West Virginia.

Q Had you been working there? A Yes, sir.

Q Doing what? A Coal mining.

Q On the 17th day of March, 1910, where did you live?

A 227 East 108th street.

Q Where were you the night of that day? A I was in the moving picture place.

Q Where? A Between 106th and 107th street and First avenue.

Q In the County of New York? A Yes, sir.

Q Was anybody with you? A Another friend of mine.

Q When you went in there, did you have any money in your

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clothes? A I had \$200.

Q Whereabouts, what part of your clothes? A In my side trousers pocket.

Q The right side, right trousers pocket? A Yes, sir.

Q What time did you go into that moving picture show?

A About quarter after nine.

Q Was anybody with you? A Another friend of mine.

Q What is his name? A Francesco Larizza.

Q Now just tell the jury what happened after you got into that moving picture show? A I went inside of the moving picture place and it was quite crowded there. There was pushing up and down. The crowd was pushing up and down, and I placed my right hand in my right trousers pocket, holding in my hand the \$200 I had. The crowd was too big, so I took my hand from my pocket, and at that very minute, this defendant, sitting at the table, put his hand in my pocket and took from it \$200.

Q At that time where were you standing? A In the back of the moving picture place.

Q Who was standing next to you? A He was standing next to me (pointing to the defendant) and after him my friend.

Q What side of you was the defendant standing, on your right or left hand side? A Right hand side.

Q Next to the pocket in which you had the money?

A Yes, sir.

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Q Well, after he put his hand in your pocket, what, if anything, happened; what did he do and what did you do?

A As I felt that he put his hands in my pocket, I caught hold of him by the hand, and I said, "Come outside, I want to talk to you." He said, "You got nothing to say to me, you don't come from the same place I come from. I come from Palermo, and you don't come from Palermo." Seeing that this defendant did not want to come out, I called another man, a man that come from Palermo, to whom I said --

Q Never mind, I don't want the conversation with the other man unless it was in the presence of the defendant.

A No, the defendant was not there.

Q Then you went to another man and had a talk with the other man. After you had the talk with the other man what happened? A I went outside, and the defendant come outside after me. Then I said to the defendant, "Now you better left me have my \$200 that you took away from me. You may keep \$20 or \$30, but I want the balance." And this defendant said to me after I told him that I want my money back, he said, "Is this your money" (the witness illustrates by putting his hand in his left pocket), and the defendant showed me about \$20 of money. I said, "That is not my money, I want my \$200." Then a crowd got around me and the defendant, and at that time the defendant ran away from me. That evening, I reported the thing to the police and they came there after a while.

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MR. DAVIS: I object to that.

MR. ELLISON: I consent to strike it out.

Q Prior to the time that the defendant placed his hand in your pocket, when did you feel the money there? How soon before he placed his hand in the pocket? A Why I had my hands right in my pocket and just took my hand out of my pocket, when the defendant put his hand in.

Q When did you see the defendant after that night?

A I could not exactly state how long after, I don't know if it was 15 days more or less, but I saw the defendant up at the 121st street court.

Q Was he in court alone? A No, he was not alone.

Q Was he standing in a group of men? A Yes, sir.

Q And were you requested to point out the defendant in that group of men?

MR. DAVIS: I object to that question.

THE COURT: Objection overruled.

A Yes, sir.

Q And who did you pick out in that group as being the defendant? A That man there (pointing at the defendant).

CROSS EXAMINATION BY MR. DAVIS:

Q What time was it that you went to the moving picture place? A About quarter after nine.

Q And where did you go, what part of the place did you

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stand in when you first went in? A Stand right back of the place because in front it was all full.

Q Do you mean behind the seats or behind the other people? A Behind theseats.

Q Were there other people behind you? A Yes.

Q Were there other people to your right? A Yes, sir.

Q Were there other people to your left? A Yes, sir.

Q And can you describe the appearance of that moving picture place. Let me ask you this question first. By what door did you enter, was it the left door or the right door leading from the street? A The right door.

Q You entered by the right door, and did you stand in the centre of the moving picture place or to the right or to the left? A Nearer to the right.

Q Nearer to the aisle or nearer to the wall? A Nearer to the aisle.

Q Were there any people in front of you? A Yes, sir.

Q When you entered, were there any people in front of you? A Why certainly there were people sitting in front of me.

Q I mean were there any people standing in front of you when you went in? A No, sir, I told you no.

Q When you went in where did your friend stand? A A little further from me.

Q To your right or left or in front of you, or in back of

you? A At my right.

Q Right next to you? A No, sir.

Q Well, were there any people between you and your friend when you went in? A That man there (indicating).

Q When you went in did he go right in between you and your friend? A When I got inside,,when I was standing.

Q When you first went in, Mr. Di Natalie, answer that question. When you first went in, did he come between you and your friend right away? A No, sir, he was inside of the moving picture place.

Q Did you see him when you went in? A Why certainly I saw him right in front there that he was, right alongside of me.

Q Where alongside of you? A Right over to my right (the witness illustrating by pointing).

Q Where was your friend? A After him.

Q Who far away from you? A About two paces.

Q Two places? A Two paces.

Q How many feet? A About three or four feet, I was here, this man or this defendant here, and my friend next to him.

Q Was there any room to your left? A It was some people standing.

Q Was there anybody right next to you, to your left?
A Why certainly there was people there.

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Q Now, didn't you say, Mr. Di Natalie, to the District Attorney, that after you went in you became separated from your friend? A No, sir, I didn't say that.

Q When you went in did you have your hand in your pockets? A Yes, sir.

Q Your hand in both pockets? A Yes, sir.

Q And who paid for the tickets when you went in?

A I paid for them; I had small change in my left pocket here.

Q So you took your money out of your pocket with your left hand? A Yes, sir.

Q And you paid for it with your left hand; you paid for it with your left hand and kept that hand in the pocket? A Yes, sir.

Q And did you buy the tickets? A Yes.

Q Did you put the tickets in the box? A There is no box there, you just give the tickets.

Q Who went in first, you or your friend? A Well, together, we went in, me and my friend.

Q Did you see where your friend went? A Inside the moving picture place with me.

Q Who took a place first, you or your friend?

A I was a little in front of him, I was just in the position as I stated before.

Q Did you see where your friend went to? A Why, certainly, sure, he was inside there.

Q And you saw the place where he stood as soon as you entered? A Yes, sir, he was standing up, because it was no place to sit down.

Q Why didn't you go with your friend, why didn't you take a position near your friend? A People was pushing; I could not exactly stand near my friend.

Q Couldn't you have seen just as well behind your friend? A What could I see; I could see nothing.

Q Where ^{is} ~~was~~ your friend. Is he in court now? A Yes.

Q What is his name? A Francesco Larizza.

Q Now, if you stood behind him, couldn't you have seen just as well? A We could not see the moving pictures. It was no place to sit down and both of us was standing in the back.

Q Did you have your hand on your money all the time you were in that moving picture place? A Yes, I told you that before.

Q What kind of a day was it, Mr. Di Natalie, was it a cold day or a warm day? A Well, it wasn't warm; it was a little cool.

Q Were you wearing an overcoat, Mr. Di Natalie?

A No, sir, I had this coat on here, the coat I wear now.

Q The same coat? A Yes, sir.

Q Where did you buy that coat?

MR. ELLISON: Objected to as immaterial.

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THE COURT: I will allow it.

A 92 East Broadway.

Q How long ago? A Three years ago.

Q Have you been in the country all this time, in New York City all this time since you bought that coat? A No, I was 14 months in West Virginia.

Q Well now, Mr. Di Natalie, what kind of bills were those that you had in your pocket? A Nine bills of \$20 each, and two bills \$10 each.

Q And were they all in a roll inside of a pocketbook or were they tied, or in what shape were they when you had them in your pocket? A They were rolled, without a pocketbook, just put in my pocket.

Q Did you have a rubber band around that or were they tied together in any way? A No, it was nothing around it.

Q How long were you in the moving picture place before you took out your hand. After you entered and took your position, you took your hand out of your pocket? A About three minutes after I was in there.

Q You say when you entered the moving picture place, you had your hand in your pocket, is that right? A Yes, sir.

Q How long after that did you take your hand out of your pocket? A About two or three minutes.

Q And how long after that did you miss your money?

A The same moment.

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Q You say you got hold of the defendant's arm? A Yes, sir.

Q What part of the arm did you get hold of? A Right over here (pointing to the forearm).

Q Was it his right arm or his left arm? A His left arm.

Q And where was his hand when you got hold of his arm? A It was right alongside of me (pointing to his right side).

Q I thought you said you felt his hand in your pocket. Didn't you say before that you felt his hand in your pocket when you caught hold of his arm? A No, I got hold of him when he had his hands out of my pocket.

Q And you say that happened at the same instant that you took your hand out of your pocket. Is that right? A Yes, sir.

Q The same second, is that correct? A Yes, sir.

Q Did you look at his hand when you got hold of his arm? A Yes, when I got hold of the defendant's arm, he freed himself by pushing away from me. He said, "What do you want," and I said, "Come outside."

Q Did you see anything in his hand when you got hold of his arm? A No, sir, I didn't see, because he had his hand down like this (illustrating).

Q Why didn't you lift his hand up? A How could I raise his hands up when he freed himself right away? His right arm was like this (indicating).

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Q Did you follow him when he freed himself? A No, sir.
He was right alongside of me.

Q Why didn't you get hold of him? A Because it was
so men of his friends there.

Q Some men of his friends? A Yes, sir.

Q How do you know they were his friends? A Because
they all come from Palermo.

Q So they were his friends for that reason, is that
correct? A Because they were all right alongside of him.

Q Did you say anything to anybody when you got hold of
his arm? A No, sir.

Q Did you call for the police? A Outside, yes.

Q But when you got hold of his arm, did you yell
police or did you tell anybody that he stole any money from
you; did you make any outcry of any sort?

MR. ELLISON: Objected to.

THE COURT: Sustained.

Q Why didn't you say something to somebody around you,
Mr. Di Natalie, why didn't you tell ~~somebody~~ somebody your money
had been stolen? A I said to the police that were there, I
said -- "What is the matter with you", they asked me. I said,
"They stole \$200 from me."

Q Then you did say something to somebody? A Why cer-
tainly I said something.

Q Why did you say before that you did not say anything

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to anybody until you got outside? A Inside I says, a woman asked me, "What is the matter with you" and I said somebody stole \$200 from me.

Q You said, "Somebody stole \$200 from me", is that correct? A They took \$200 off me.

Q They took it, is that what you said? A Yes, sir.

Q Did you point to him, to the defendant? A Well, he was right alongside of me.

Q But you didn't point at him, did you? A Well, everybody heard it when I said to him, "Come outside here."

THE COURT: No, strike that out.

Q Did you say to anybody inside of the moving picture place that the defendant took \$200 from you?

MR. ELLISON: He said that before.

THE COURT: Yes, you have gone into that fully, Counsellor.

Q How long after you got hold of his arm did you go outside of the moving picture place? A Right after.

Q How long, two minutes, three minutes, five minutes? A About two minutes.

Q And when you went outside, where was the defendant? A Inside. I sent somebody inside to call him out.

Q You say you left him inside, is that correct? A Yes, sir.

Q Now, Mr. Di Natalie, do you know, or did you notice

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how many doors therewere inside of that moving picture place?

A Two doors, one at the left and one at the right.

Q Did you see a door to the left in the left wall of the moving picture place, in the centre, leading out into the hallway? A No, sir.

Q How long were you outside of the moving picture place before you sent somebody in to get him, the defendant?

A As soon as I got outside, I called a man and I says, "You call Natalie and tell him to come out", and he did come out.

Q What man did you call? A I don,t know his name, it was a man.

Q Did you ever see that man before? A No, sir.

Q Well, how did he know who the defendant was; how did he know whom to get?

MR. ELLISON: Objected to.

THE COURT: Objection sustained.

MR. ELLISON: Ask him whether the man was connected with the place.

Q Did you describe the defendant to the man that you spoke to? A The man that I told to call that man outside, he was right alongside of me when I did first talk to him and ask him to come outside. So I told the man, you better tell that man to come out.

Q Did that man follow you out as you went out? A Yes, sir.

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Q Did you notice that man when you were inside of that place? A Yes, sir, he was right behind me.

Q How do you know he was behind you, Mr. Di Natalie?

A Because I saw him.

Q When did you see him? A When he was right alongside of me when I got hold of this defendant and I turned around and I saw this other man that he was standing with his back to the wall.

Q He was behind you or alongside of you, did you say?

A Behind me.

Q When did you first see that man? A I saw him inside there.

Q When, when you first entered, or when you went out?

A When I was going out I told him to call that man out.

Q That is not my question, Mr. Di Natalie. When did you first notice the man whom you sent for that man, when you first entered the moving picture place, or when you were going out?

THE INTERPRETER: He answered that question by saying, when I was going out.

Q And how long after you sent this messenger in for the defendant did he return with the defendant? A He come right out.

Q Two minutes, three minutes, how long? A Well, right after. It didn't take long. I told this man to call

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Natalie. He went inside and he come out with him.

Q Do you know where that man is now that you sent inside for the defendant? A I do not know where he is.

Q I mean -- whom did you see outside when you came out of the moving picture place? A I, the defendant, and that man, and my friend.

Q Anybody else outside? A At that moment, no, but after a while yes, a crowd surrounded us.

Q Did you see Mr. Florimo (pointing to a man in the court)? A After, he came.

Q How long after? A The defendant was gone already when he came.

Q Did you see Mrs. Famiglio (pointing to a woman who stood up in the court-room)? A Yes, I saw that woman there; she was minding her business selling her tickets.

Q How long were you outside of the moving picture place before the defendant left you? A He went right away.

Q Did you speak to him at all? A Yes, sir.

Q What did you say to him? A I told him "Give me my \$200; you could keep \$20 or \$30, but I want my \$200."

Q What did he say? A He put his left hand in his left pocket of his trousers and pulled out some money and said, "Is that your money," showing me some money, and I said, "No."

Q Did he hold his coat open and say, "Search me?"

A No, sir.

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Q Did you get hold of him when he got outside? A No, sir.

Q Did you call a policeman while he was standing there; did you call for the police? A Yes, I called a policeman, but the defendant was gone already.

Q What did you do standing there, did you yell for the police or call for a policeman? A I found an American policeman at the corner of 107th street.

Q How long after that did you find the policeman; how long after he went away did you find the policeman? A About five minutes after.

Q Did you try to hold him when he went away, the defendant? A No, sir.

Q Well, why didn't you? A I didn't know how strong the gang was and I was afraid they would set on me.

Q What gang? A He knows better --

MR. ELLISON: I move to strike that out.

THE COURT: Strike it out.

A (Continued) Because I see them all together; they come along all together.

Q How many of them? A Three, four, five.

Q Were there three or were there four or were there five?

A Outside of the moving picture place there came about eight or ten, I could not state.

Q How many were there, first you say three then you said

ten; how many were there? A I did not mean to say that, there were eight or ten of his friends, I mean to say people who come around and crowded around to find out what was the trouble.

Q Where did they come from, from the moving picture place, or from the street? A From the street.

Q Now, when the defendant went away, did he walk away or run away? A He ran away.

Q He ran away, are you sure of that, Mr. Di Natalie?
A Sure.

Q Did he run very fast? A Not running very fast, but quickly; when he saw the crowd coming around he moved away quickly.

Q Which way did he go? A In the direction of 106th street.

Q Did any of the crowd go with him? A No, sir.

Q Did you make any effort at all to hold him, Mr. Di Natalie? A No, sir.

Q Did your friend make any effort to hold him?
A No, sir.

Q Did your friend follow him? A No, sir, my friend was with me.

Q Did you run after him? A Yes, sir, I went a little while after him, but I saw that I was followed by some people, and I stopped.

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Q How far did you go after him? A About 20 paces.

Q Now, after you got the policeman, what did you do?

A I told the policeman they stole \$200 off me and the policeman went inside the moving picture place and says to me, "Where is he" and I told the policeman he went away.

Q Did you go inside of the moving picture place after that? A Yes, sir.

Q Did you go in with the policeman? A Yes, sir.

Q Did your friend go in with you? A Yes, sir.

Q How long did you stay in the moving picture place after that? A About two or three minutes.

Q What did you do in there the two or three minutes that you were in there? A The policeman asked me if I could recognize anybody that was right alongside of me.

Q Where did he ask you that? A Inside of the moving picture place.

Q Did you look around? A Well, I did not look around; I told the policeman that the man is gone already.

Q Is the policeman in court now? A No, he is not in court.

Q Did you tell any of the detectives which policeman it was? A No, sir.

Q Now, when you first went into the moving picture place, did you see Mr. Florimo? A No, sir.

Q You didn't see him until after you got outside with

the defendant, is that correct? A Yes, sir.

Q When was the last time that you looked at your money, Mr. Di Natalie, looked at it and saw it, I mean with your own eyes? A In the morning.

Q That morning, is that correct? A Yes, sir.

Q And you never looked at it after that time, is that correct? A Well, I put the hands in my pocket.

Q Did you keep your hand in your pocket all day?

A Well, not all day, sometimes, yes.

The Court thereupon admonished the jury in accordance with Section 514 of the Code of Criminal Procedure, and took a recess until Monday morning, May 16th, 1910.

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New York, May 16th, 1910.

(The Court meets pursuant to adjournment)

LEONARD D I N A T A L I E, recalled, testified as follows:

BY MR. ELLISON:

Q On Friday, you testified that during the 17th day of March, you had your hand on that money in your pocket most of the day. Will you state to the jury whether you had any other money or property in the world outside of this money?

A I had nothing else in my pocket.

Q I want to know whether you had any other money or property outside of this \$200, or whether that was your entire fortune? A I had nothing else, with the exception of small change, about 50 cents.

Q You also stated that after the defendant ran away that you went back into the moving picture show with a policeman. Will you kindly state why you went back into the moving picture show with the policeman? A The policeman wants to see the place where I was robbed. He wants to see where I was robbed, just exactly where this thing happened.

BY MR. DAVIS:

Q You say you had some other change, and in which pocket was it, Mr. Di Natalie?

MR. ELLISON: He testified to that.

THE COURT: I will allow it.

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A Right here (witness pointing to his left trousers pocket).

FRANCESCO LARIZZA, a witness called on behalf of the People, being duly sworn, testified (through Official interpreter Villamena) as follows:

DIRECT EXAMINATION BY MR. ELLISON:

Q Where do you live? A 306 East 106th street.

Q were you with Di Natalie on the 17th day of March, 1910? A Yes, sir.

Q Did you go into the moving picture place with him at 2060 First avenue? A Yes, sir.

Q Did you see the defendant in that place that night? A Yes, sir.

BY MR. DAVIS:

Q Do you speak English? A No.

BY MR. ELLISON:

Q Where were you standing that evening, and where was Di Natalie standing, and where was the defendant standing in that picture show that evening? A Right alongside of the moving picture place. This is the door where you enter (witness illustrating in front of him) and right here was Di Natalie (pointing to left) and right here behind Di Natalie was this defendant.

Q Where were you? A I was about a pace away from them.

Q Was anybody between you and Di Natalie? A Well,

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there were a good many people around.

Q Where was the defendant standing with respect to Di Natalie, to his right or to his left?

MR. DAVIS: Your Honor, I object to that question on the ground that it has already been answered.

THE COURT: I will allow it.

THE WITNESS: On the right side.

Q What, if anything, did you see happen while the defendant and Di Natalie were standing there? A I saw that Di Natalie got hold of this defendant by his arm and said, "Come outside, I want to talk to you", and this defendant said to Di Natalie, "You don't know me."

Q Did you hear or see anything else after that?

A Yes, then he went outside with Di Natalie. This defendant was called outside by some one and he come out and Di Natalie says to him, "I want my \$200, you may keep \$20 or \$30 if you want of this money, but I want my \$200." This defendant took some money out of his pocket, I don't know whether it was \$20 or \$30, but there was some money, and said to Di Natalie, "Is this your money," and Di Natalie said, "No, I want my money."

Q What, if anything, did the defendant do after that?

A He went away. He went in the direction of 106th street.

Q Did you see the defendant again after that night?

A I saw him when he was in court at 121st street.

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Q State what happened while the defendant was in the court at 121st street and while the complaining witness Di Natalie was there? A Di Natalie pointed out this defendant and said he was the one.

Q At the time he pointed him out was he standing alone or was he standing with a group of men? A He was among a group of men.

MR. ELLISON: That is all.

CROSS EXAMINATION BY MR. DAVIS:

Q Mr. Larizza, how long had you been with Di Natalie on that day before you went into the moving picture place?

A All day long ~~before~~ because we lived at the same place.

Q Did you know before you went into the moving picture place that Di Natalie had \$200 in his pocket? A Yes, sir.

Q Had he told you that he had the money in his pocket? A Yes, he told me, I know it when he took that money away from the bank, I know he had it in his pocket, I know everything.

Q Did you see him put it in his pocket? A Yes, sir.

Q What time of that day did you see that money?

A About four o'clock he changed his trousers; then he put that money from the trousers he had to the ones he had on.

Q Did you see it after four o'clock? A Yes, I saw it.

Q Where did you see it after four o'clock? A I saw it when he put the money in his pocket when we went out of the

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room, and I know he had the money there. I know he had the money in his pocket.

THE COURT: Strike it out. Answer the question, or I will punish you.

MR. DAVIS: I move to strike out that part "I know he had it in his pocket".

THE COURT: Yes.

Q Answer this question, Mr. Larizza, after you saw him put the money in his pocket the first time, did you see the money again that afternoon or that evening? A No, sir.

Q Into what pocket did he put that money? A In this pocket (the witness illustrating by putting his hand in his right trousers pocket).

Q Did he keep his hand in that pocket all afternoon, Mr. Larizza?

MR. ELLISON: Just one moment. The witness can't testify to that.

THE COURT: If he knows.

A Well, sometime he had the hands in his pockets and sometime not. He could not go around with the hands in the pocket all the time.

Q Who bought the tickets when you went into the moving picture place? A Di Natalie.

Q Did he take his hand out of the right pocket when he bought the tickets? A No, from the left pocket he had the

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small change.

Q And when you went into the moving picture place, where did you stand and where did he stand? A He was in front of me and I was a little behind him.

Q Now, are you referring to where you went or where you stood. I want to know where you stood to see the show, to see the moving picture performance? A Di Natalie was in front of me, this defendant was right alongside of Di Natalie, and I was behind, between Di Natalie and this defendant.

Q Didn't you say before to the District Attorney that the prisoner was behind Di Natalie? A Well, I said that way, this Di Natalie was in front. I said that before, Di Natalie was in front; this defendant come after and I came after this defendant.

Q Do you mean that Di Natalie was standing here and the prisoner was behind him and you behind the prisoner, is that what you mean? A Yes. (The witness illustrates that Di Natalie was standing here, the defendant standing here) that this Di Natalie was in an oblique direction and I was standing in an oblique direction in back of this defendant.

Q Did you see the defendant when you went into the moving picture place? A No, sir.

Q Well, if you were right behind him, you must have seen him, isn't that so? A I saw him when Di Natalie got hold of him by the hand.

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Q Is that the first time you saw him? A Yes, sir.

Q You knew that he was in front of you when you stood behind him, didn't you? A Yes, I saw him when Di Natalie got hold of him and said, "Come outside."

Q Answer my question. Did you hear Di Natalie testify that he was standing right alongside of the defendant when you went in and that you were several paces removed from Mr. Smeraldi, the defendant?

MR. ELLISON: He didn't testify to that. He testified that he came first, that the defendant stood next to him and that this man, the witness said, came next. I object to the question.

THE COURT: I sustain the objection.

Q How long had you been in the moving picture place before you saw Mr. Di Natalie grab the defendant's hand?

A About three or four minutes.

Q And did you see Mr. Di Natalie take his hand out of his pocket? A No, sir.

Q Did you see Mr. Smeraldi's hand at the time that Mr. Di Natalie grabbed hold of his arm? A No, sir, I only saw his arm.

Q And when you went outside of the moving picture place, who was standing there? A I, Di Natalie and this defendant, and there was a man who came from Palermo that called the defendant outside.

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Q Did you see Mr. Florimo when you went outside (a man stands up in the court room)? A I saw him when we went into the moving picture place. Di Natalie gave him the tickets.

Q When you came out of the moving picture place ~~and~~ with Mr. Di Natalie, did you see him there? A Yes, he was in front of the door, after this defendant went home.

Q Was he in front of the door when you first came out with Di Natalie? A I did not pay no attention.

Q Did Mr. Di Natalie say anything to him? A Yes, I heard when Di Natalie asked that young man there if he knows this defendant and that young man says to Di Natalie, "No, I don't know him". I see him only when he comes here in the moving picture.

Q How long were you standing outside before the defendant walked away? A About three or four minutes, I could not exactly state the time.

Q After Mr. Di Natalie got hold of the defendant's arm inside of the moving picture place did he say anything to anybody inside of the moving picture place? A Yes, he says there "They stole \$200 of me."

Q Who did he say that to? A To the people around there.

Q He said they stole it, is that what you say? A Yes, they stole \$200 from my pocket.

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MR. DAVIS: That is all.

J O H N C A S E T T A, sworn as a witness on behalf of
the People, testified as follows:

DIRECT EXAMINATION BY MR. ELLISON:

Q You are connected with the Police department, City of
New York? A Yes, sir.

Q Did you arrest the defendant? Are you the officer
who arrested this defendant? A Yes, sir.

Q And when did you arrest him? A April 23rd.

Q Where? A At the Star Casino, 107th street and
Park Avenue.

Q New York County? A Yes, sir.

Q Where did you take him after arresting him?
A To Police Headquarters.

Q Was he subsequently arraigned in court? A The fol-
lowing day he was arraigned in the Police Court.

Q Did you see the complaining witness, Di Natalie,
there at that time? A No, sir.

Q Was he present in court when the defendant was there
after he was brought over by Officer Cassidy?

MR. DAVIS: I will concede he was pointed out in
court.

Q What occurred when Di Natalie and the defendant were
in court? A Well, this man, the defendant, was lined up be-

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tween twelve prisoners, and there was a line of twelve prisoners and Di Natalie picked the defendant out as one of the men that took the \$200 out of his pocket.

MR. DAVIS: I move to strike it out.

THE COURT: No, I will allow it to stand.

MR. DAVIS: No cross examination.

THE PEOPLE REST.

MR. DAVIS: I move to dismiss the indictment and ask your Honor to direct a verdict of acquittal for the defendant on the ground that there is no evidence tending to connect this defendant with the ~~money~~ money stolen from the complaining witness, and also upon the ground that there is not sufficient evidence to allow it to go to the jury.

(The stenographer thereupon read to the Court a portion of the complaining witness's testimony).

THE COURT: (After hearing testimony read) Motion denied.

MR. DAVIS: Exception.

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G U I S E P P E S M E R A L D I, the defendant, being duly sworn in his own behalf, testified as follows (through Official Interpreter Villamena):

DIRECT EXAMINATION BY MR. DAVIS:

Q Where do you live? A 308 East 106th street.

Q How old are you, Mr. Smeraldi? A I will be 23 years next July.

Q What is your business? A Baker.

Q Who do you work for? A Antonio Uzzo.

Q On the 17th day of March, 1910, were you working for Antonio Uzzo? A No, I was not working.

Q I am referring now to the day that you went into the moving picture place and saw Mr. Di Natalie? A No, I was not working that day.

Q were you working the day before that? A Yes, sir.

Q Why weren't you working on that day?

MR. ELLISON: Objected to.

THE COURT: Sustained.

MR. DAVIS: I want to bring out that this was his day off.

THE COURT: I will allow that.

A Because when I worked for three or four weeks in succession, I took a rest for two or three days.

Q That night, did you go into the moving picture place?

A Yes, sir.

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Q At what time? A Must be about half past eight.

Q Was this the moving picture place at 2060 First avenue between 106th and 107th streets? A Yes, sir.

Q And when you went in where did you go to, what part of the moving picture place? A In the back, on the right hand side.

Q Was it near the seats? A Yes.

Q You mean you were leaning up against the back row of seats, is that correct?

MR. ELLISON: It is not correct. Let him testify.

Q Was there anybody between you and the seats? A It was about five persons in front of me.

Q And did you see Mr. Di Natalie when you went in?

A No, sir.

Q And how long a time had elapsed between the time that you went in and the time you saw Mr. Di Natalie? A About 15 minutes.

Q And what happened at the time you saw Mr. Di Natalie?

A He touched me on the shoulder (witness illustrating by pointing his right hand to his left shoulder) and said, "Friend, I want to talk to you".

Q Where was he standing when he touched you on the shoulder? A On my left side.

Q And what did he say to you, "Friend, I want to talk to you".

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Q What did you say to him? A I said to him, "I don't know who you are; I don't you at all."

Q And then what did he say? A "Excuse me, I thought that you was a countryman of mine".

Q And what did you say to him? A I says to him, "What town do you come from, that you claim that I came from the same town you come from?"

Q And did you hear him say anything in response to that? A He said he came from the Province of Catana.

Q And did you say anything in response to that? A "And you claim that you are a countryman of mine?" I said, "I don't know you."

Q Did he say anything else? A No, sir.

Q Did you hear him speak to anybody around there? A Then I heard the complaining witness talk with another young man that came from the same town that he come from.

Q And what was said? A He said to him, "You know they stole \$200 out of my pocket."

Q Did you say anything? A I says to him, "That is why you claim you come from the same town that I come from, because they stole \$200 out of your pocket?"

Q And what did he say? A "Excuse me," "excuse me".

Q And then what happened?? A Then that show finished, the people went out; it was empty seats in there and I went in and sit down.

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Q And when did you next see the complaining witness, Mr. Di Natalie? A After five minutes that I was sitting.

Q And where did you see him? A When I was sitting down right in the moving picture place.

Q Did he come to you? A Yes, sir.

Q Did he say anything to you? A He said to me, "Come outside, because I want to talk to you."

Q And did you go out with him? A Yes, sir.

Q Who was out there when you went out? A I, Di Natalie, a friend of his that come from the same town where he come from, Miss Famiglio and her cousin.

Q Is this the lady who was out there (pointing to Miss Famiglio)? A Yes.

Q Is that the other young man out there (pointing to Mr. Florimo)? A Yes, sir.

Q Tell the conversation that took place after you got outside, with Mr. Di Natalie? A When he got me outside he says to me, "You took my \$200". I says to him, I says, "Are you crazy, search me," and I did like this (witness illustrating by opening his coat). "I have got this money in my pocket, \$24; is that your money?" He says to me, "No."

Q Did he say anything else then? A Yes, sir.

Q What did he say? A Then he took me a little distance from the place where they sell the tickets and he says to me, "If you know who took my money out of my pocket and you could

tell me, I will give you a present of \$20 to you".

Q What did you say to him? A I says to him, "I don't know anything; I was there watching that show; I didn't see nobody near you and I know nothing."

Q And what did he say then? A "Excuse me," "excuse me."

Q And what did you do then? A Well then I went home.

Q Where do you live? A 308 East 106th street.

Q Is that around the corner from the moving picture place? A Yes, sir.

Q Did you take \$200 from Mr. Di Natalie's pocket?

A No, sir, I know nothing.

Q After you got finished your conversation, did you run away? A No, sir, I walked slowly.

Q And on April 23rd, that is five weeks after, this is supposed to have happened, you were arrested, and where were you taken to? A They took me to Grand street.

Q While you were confined in prison, did you see Mr. Di Natalie? A Yes, sir.

Q Describe what took place at that time? A They put me in a group of men that were arrested, and Di Natalie come over and pointed to me and says that I was the man.

Q Did Mr. Di Natalie say anything to you while you were in court or in prison? A Yes, after he recognized me, we went through in the little corridor there and he says to me, "If you give me \$100, he will finish everything."

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Q And what did you say to him? A I said to him, "Are you crazy, I am innocent of this charge; I know nothing of this."

CROSS-EXAMINATION BY MR. ELLISON:

Q Now, when you were arrested you were not arrested for having stolen this money; you were arrested on another charge, weren't you? A Yes, sir.

Q And you were arrested in the ~~px~~ moving picture show by the Star Casino, weren't you? A Yes, sir.

Q And you were arrested for shoving and shuffling against people in that Casino, weren't you? A They arrested me inside of the Star Casino, when I was talking to a man that is a member of a society that had a parade that day.

Q And you were standing in a crowd of people shuffling against them, weren't you? A No, sir, I was going inside with the crowd, the same as the others go in.

Q And you were subsequently tried and convicted and sent to jail for that, weren't you? A I did not hear the sentence. They only give me a little yellow piece of paper, and said I was held in one thousand dollars.

Q But you went to jail for it; you served your time? A Yes.

Q Now, how often did you go to these moving picture shows? A Why, when I am not working, then I rest and then I go to those moving picture places.

Q You stated to the jury that after you worked for two or three weeks, you always take two or three days vacation, is that right? A Yes, sir.

Q And do you always spend those two or three days around moving picture shows? A Sometimes, I go; sometimes I don't.

Q You had been up in this place on First avenue very frequently, hadn't you? A Sometime I would go; sometime I would not go.

Q You admit you were there on the night of March 17th, 1910, don't you? A I don't remember if it was the 17th of March, but I was there in the month of March, yes.

Q You were admit you were there the night Di Natalie was there, don't you? A Yes, sir.

Q You admit that you were standing right next to him, don't you? A Yes, sir, that is right, alongside of him.

Q You admit that he took a hold of your arm, don't you? A No, sir.

Q Didn't you say on your examination by your attorney that he took hold of your arm or your shoulder?

MR. DAVIS: No, he testified he touched him on the shoulder.

THE COURT: I will allow the question.

A No, I didn't say that; I said that he touched me on the shoulder like this (illustrating).

Q You admit that he touched you while he was talking to

you? A Yes, sir.

Q You admit that he requested you to come outside, don't you? A Yes.

Q I am referring to that particular evening. You admit that he requested you to give back the \$200, don't you? A Yes, sir.

Q You admit that he said something to you about giving you \$20, don't you? A Yes, if I would tell him who was the man that took his money.

Q I am asking whether he didn't say something to you about giving you \$20? A Well, yes.

Q And you admit afterwards that you went away and left him outside, is that right? A Yes.

MR. ELLISON: That is all.

VINCENZA FAMIGLIO, sworn as a witness on behalf of the defendant, testified (through Official Interpreter Villamena) as follows:

DIRECT EXAMINATION BY MR. DAVIS:

Q You are the wife of the man who owns the moving picture place at 2060 First avenue? A Yes, sir.

Q And did you go to that moving picture place every night? A Yes, but now it is three weeks that I am not going there.

Q What do you do there?

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MR. ELLISON: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

A I sell the tickets.

Q And do you remember the night of March 17th, seeing Mr. Di Natalie in your moving picture place? A Yes, sir.

Q Where did you see him, at what part of the place?

A Outside.

Q At what time was it? A About half past eight or nine o'clock.

Q When was the first time you saw him? A That evening.

Q And how long after that did you see him again? A I did not see him no more.

Q Well, what happened when you saw him? A He went inside, and then he come outside, and he told me that they stole \$200 of him.

Q Did he tell you he stole \$200 from him? A No, sir, I asked him how did they steal those \$200 off you.

Q What did he say? A He says, to me, that they stole that money inside of the moving picture place, and I says to him, "Are you so cool after they stole \$200 from you?"

Q And what did he say to that? A He did not say nothing, and after a while he went inside.

Q And what happened after that? A He went inside,

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and then he took that young man there (pointing to the defendant) outside.

Q And what took place after they both came outside?

A He said to this defendant, "You stole my \$200."

Q And what did this defendant say? A He says to him, "Those are my pockets (witness illustrating by opening her coat); this is my money."

Q And what, if anything was said after that by either of these parties? A Nothing, only he said, "All right."

BY MR. ELLISON:

Q Who said "All right?" A Di Natalie.

BY MR. DAVIS:

Q Did Di Natalie say anything else? A I did not hear nothing else.

Q What happened after that? A After that, they remained outside about five or ten minutes. After five or ten minutes, this defendant went away and Di Natalie went and called a policeman.

Q Did he run away or walk away? A Yes, he walked slowly.

MR. DAVIS: That is all.

CROSS-EXAMINATION BY MR. ELLISON:

Q The defendant was a customer of your place, wasn't he? A Yes, I would see him once in a while.

Q How often did the defendant visit your moving picture

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show? A He would come every two weeks once, and that night I saw him.

Q That night you saw him come in with a friend, did you; he was with a friend of his? A No, sir.

Q Do you remember the defendant coming into the place that night? A Yes, I remember to see him when he bought the ticket off me.

Q How many people visit your place every day and night? A Sometimes 200, 300, 400, 600, 800.

Q Every day? A Yes.

Q Now, will you tell the jury what time on the 17th day of March, Di Natalie came into your place? A About half past eight or nine o'clock.

Q That was the first time you had ever seen him in your life, wasn't it? A Yes, sir.

Q And you state to the jury that you remember that on that night he came in about half past eight or nine o'clock, and you never seen him before in your life? A I never saw him before.

Q And you remember he came in there at 8:30 that night? A Yes, sure; there were two; he and another one.

Q Did he say anything to you when he went in there that night? A He bought a ticket and he went inside.

Q Do you remember anybody else that was there that night but this complaining witness? A No, sir.

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Q What is it that he said or did that makes you remember so particularly that he came in there at 8:30 that night?

A Because they came outside and they told about this thing. That is all; otherwise I don't pay any attention to it, who goes in or who comes out.

Q And he did come out and claim that \$200 was taken from his pocket, didn't he? A Yes.

Q And he accused this defendant of taking the money, didn't he? A Yes, sir.

V I N C E N Z O F L O R I M O, sworn as a witness on behalf of the defendant, testified (through Official Interpreter Villamena) as follows:

DIRECT EXAMINATION BY MR. DAVIS:

Q Where do you reside? A 2081 Second avenue.

Q Mr.. Florimo, are you employed at the moving picture place of Famiglio, at 2060 First avenue, the moving picture place in question? A No, sir.

Q Were you employed there on the night of March 17, 1910, the time when you say -- the time of the alleged larceny? A Yes, sir.

Q What were you doing there that night? A Receiving the tickets.

Q Are you related to Mr. Florimol, the owner of the place? A I am his cousin.

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Q And what time did you come there that night? A Six o'clock.

Q And what time did you leave the place that night?
A About quarter after eleven.

Q Did you see Mr. Di Natalie that night? A Yes, sir.

Q Did you see the defendant on that night? A Yes, sir.

Q And you took the tickets from Mr. Di Natalie on that night, is that correct? A Yes, sir.

Q And how soon after that did you see Mr. Di Natalie again? A About five minutes, he come out from the moving picture show.

Q Who did he come out with, alone or with somebody else?
A Alone.

Q Did you have any conversation with him when he came out? A I asked him "What did you come out so soon for, don't you like to see the show?" He says to me, "They stole \$200 off me."

Q Did you ask him who stole it? A Yes, sir.

Q And what did he say? A "I didn't see it."

Q And then what took place? A Then he asked me, "Will you let me go in?" I said to him "Yes," and he came out with this defendant and he said to him, "You stole \$200 off me." And this defendant says to him, "Search me," and he opened his coat (witness illustrating by opening his own coat),

I haven't got none of your money." And he pulled out some money and he said, "That is my money."

Q Then what was said by either of these parties?

A Then this defendant went away. This complaining witness and the other friend remained there about five minutes on the sidewalk and then they got a policeman and they go in with the policeman and search about half an hour, and then they went away.

Q Did the defendant walk away or run away? A No, he walked slowly.

Q Now, how long before that had you been taking tickets?

MR. ELLISON: I object.

MR. DAVIS: I want to bring out the description of the interior of the place.

THE COURT: I will allow it.

Q Mr. Florimo, are you familiar with the interior of that moving picture place? A Yes, sir.

Q How many doors are there in that moving picture place? A Two.

Q Describe the door in the centre of the left wall, an exit leading out into the hallway, and then into the street-- is there such a door? A Yes, sir.

Q And there are two doors on the other side in front of the moving picture place leading into the street, is that correct? A Yes, sir.

CROSS-EXAMINATION BY MR. ELLISON:

Q When the complaining witness first came out of the place, did he talk to you or did he talk to Mrs. Famiglia?

A He spoke to me first.

Q And what did he say to you? A I said to him first, "Why did you come out so soon; don't you like to see the show?"

Q What did he say? A He says to me, "They stole \$200 off me."

Q Did you ever see the defendant before that night?

A No, sir.

Q Do you remember his coming into the place that evening? A Yes.

Q Who was he with when he came in? A Alone.

Q The defendant? A Alone.

Q Did you see anybody with him during that night? A No, sir.

Q Had you ever seen him in there before that day?

A No, that was the first night I saw him.

Q How long had you been working there? A Six months.

A N T O N I O U Z Z O, sworn as a witness on behalf of the defendant, testified (through Official Interpreter Villamena) as follows:

DIRECT EXAMINATION BY MR. DAVIS:

Q Where do you live? A 1974 Second avenue.

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Q Do you know the defendant, Mr. Uzzo? A Yes, sir.

Q How long have you known him? A I know him from his birth.

Q On the 17th of March, 1910, was he in your employ?
A Yes, sir.

Q How long before that had he been working for you?
A Nearly two years.

Q And when did he stop working for you? A He works with me now, at the present time.

Q And you have never discharged him, is that what you mean? A No, sir.

Q Do you know Mr. Smeraldi's reputation for honesty and his character in the community in which he works, in which he resides? A Yes, sir, it is good. He comes from a good family.

Q And what is his reputation and character in the community in which he works and in which he resides? A If I know that he was not an honest boy, I would not have him in my employ, because I employ only honest people.

BY THE COURT:

Q Did you ever hear anything against him? A No, sir.

BY MR. DAVIS:

Q Have you ever spoke n to anybody about him? A No, sir.

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CROSS-EXAMINATION BY MR. ELLISON:

Q You state that he has been working for you for the last two years? A Yes, sir.

Q And you say that you have never heard anything against him? A No, sir.

Q Well, don't you know that very recently he was serving a sentence in jail? A Yes, yes.

Q Well, don't you consider that that is hearing anything against him? A I would not consider that this is bad, because he was never arrested for anything like he is charged with now.

MR. DAVIS: Will you concede that he was arrested on a charge of disorderly conduct and sentenced to five days?

MR. ELLISON: If you will concede that he was arrested for shoving people, for jostling people, in the Star Casino.

MR. DAVIS: Yes.

BOTH SIDES REST.

MR. DAVIS: I renew my motion to dismiss on the same grounds stated at the close of the People's case.

THE COURT: Motion denied.

Mr. Davis thereupon summed up on behalf of the defendant.
Mr. Ellison thereupon summed up on behalf of the People.

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The Court thereupon admonished the jury pursuant to Section 514 of the Code of Criminal Procedure and took a recess until two o'clock.

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AFTER RECESS.- CHARGE OF THE COURT -

CRAIN, J.:

Gentlemen of the Jury: Guiseppe Smeraldi is charged in this indictment with the crime of grand larceny in the first degree, and also with the crime of criminally receiving stolen property. The count in the indictment which charges him with the crime of criminally receiving stolen property is taken from your consideration, and this case goes to you in order that you may determine from the evidence, as you recollect the evidence, whether or not the defendant is guilty of the crime of grand larceny in the first degree.

The law says that a person who, with the intent to deprive the true owner of his property, takes from the possession of the true owner, personal property, steals such property, and is guilty of larceny. Where the property is taken from the person of another in the night time, if a crime has been committed, the crime is that of grand larceny in the first degree, and that irrespective of the value of the property taken.

The defendant comes to the bar with the presumption of innocence. The burden of proof is upon the Prosecution. That ^{burden} ~~then~~ requires that before you can find the

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defendant guilty, you must be satisfied from the evidence beyond a reasonable doubt, of the defendant's guilt. There are two contingencies, in either one of which Guiseppe Smeraldi is entitled to a verdict of not guilty, namely, first, if, upon the evidence you believe him innocent, and, secondly, if upon the evidence you entertain a reasonable doubt respecting his guilt. A reasonable doubt is a doubt founded on reason, sustained by reason, not a whim, not a caprice, and not the action of unreasonable sympathy.

You will be uninfluenced by any disposition which the Court has made of any motion during the pendency of the trial, as that imports no opinion by the Court as to what your verdict should be. You are the exclusive judges of the facts.

Are there any requests?

MR. DAVIS: I ask your Honor to charge the jury that if the jury are not satisfied that the defendant took this money from the possession of the complainant, that the fact that he was previously convicted for disorderly conduct and sentenced to the Workhouse for five days, has no bearing in this case.

THE COURT: I charge that, and I charge specifically that you may only take into consideration the conviction of this defendant of any other charge, in determining

the degree of weight which you will give to the evidence of the defendant as a witness in his own behalf.

MR. DAVIS: I ask your Honor further to charge that the testimony of the witnesses as to what took place outside of the moving picture place, the two other witnesses, Mrs. Famiglia and Florimo, must be considered as bearing on the question whether the defendant, five minutes before, had taken this money.

THE COURT: You must consider all the evidence in the case, and ^{base} ~~place~~ your verdict upon the entire testimony.

Gentlemen, you may now retire.

(The jury retired at 2:15 p.m.).

(The jury returned at 2:40 p.m. and rendered a verdict finding the defendant guilty of grand larceny in the first degree).

MR. DAVIS: I move to set aside the verdict on the ground that it is contrary to law, and upon all the grounds stated in the Code.

THE COURT: Motion denied.

MR. DAVIS: Exception.

MR. DAVIS: Would your Honor care to look at the minutes on a motion for a new trial?

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THE COURT: No. If you want to get them out, I will take your motion under advisement.

The defendant was thereupon remanded until May 19, 1910.

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

-----X
The People of the State of New York, :
:

-against- :
:

Giuseppe Smeraldi. :
:-----X

Before:
Hon. Thomas
C.T. Grain, J.

New York City, May 19th, 1910.

Indicted for Grand Larceny in the ^{First} ~~Second~~ Degree and
Receiving.

Indictment filed May 3rd, 1910.

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

For the People: Deputy Assistant District Attorney
Millard H. Ellison.

For the Defendant: London & Davis, Attorneys
A. M. Davis, Esq., Of Counsel.

THE DEFENDANT IS ARRAIGNED FOR SENTENCE.

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THE COURT: I remember this case, and it is not necessary to hear witnesses.

MR. DAVIS: I make a motion to set aside the verdict of the jury, and ask your Honor if you care to see the minutes. I did not get the minutes until yesterday. I made a motion to set aside the verdict.

THE COURT: Counsellor, the complaining witness testified positively that he felt the hand of this defendant in his pocket and he seized the defendant's arm or hand as the defendant was withdrawing his hand from the pocket. Is that not so, in substance?

MR. DAVIS: No. He testified that the defendant put his hand in his pocket and he stated he caught hold of his arm when this defendant was standing alongside of him.

THE COURT: I recollect the evidence. He told the jury that, but the jury did not believe the defendant.

MR. DAVIS: I asked him later and he said he got hold of the defendant's arm, but whether he saw the defendant's hand or felt it in his pocket I do not believe he testified that way.

THE COURT: It presented a question of fact for the jury and they passed on it. The complaining witness has testified specifically and pointedly that he had \$200. in his pocket. This defendant put his hand into the com-

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plaining witness's pocket and withdrew from it the \$200.

MR. DAVIS: The woman testified that he entered the place only two minutes before, and there was a crowd of people around him.

THE COURT: I deny your motion.

MR. DAVIS: Exception.

MR. DAVIS: Now, if your Honor please, there are five or six letters which the defendant's brother asked me to present to the probation officer. They are from business men, and they state that they know the defendant to be a hard working honest man.

THE COURT: I will received the letters.

THE COURT: Guiseppe Smeraldi, you were indicted for Grand Larceny in the First degree and criminally receiving stolen property, and you were tried at this term of Court and convicted of Grand Larceny in the First Degree. I remember the case. The testimony warranted your conviction. So far as disclosed to the Court you have never been convicted of a felony. I sentence you to the Elmira Reformatory.

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