

**START**

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**CASE**

**CASE # 579**

059

COURT OF GENERAL SESSIONS,

Part I.

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THE PEOPLE OF THE STATE OF NEW YORK : Before:

against

HON. JOHN W. COFF,

LOUIS M. ELMORE.

and a Jury.  
----- x

Indictment filed March 23d, 1906.

Indicted for burglary in the third degree.

New York, April 6th, 1906.

APPEARANCES:

For the People, Assistant District Attorney, Francis P.  
Garvan.

For the Defendant, Mr. Edward Hymes.

Peter P. McLoughlin,

Official Stenographer.

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C E L E S T I N E R N G E L M A N, a witness for the People,  
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q Where do you live? A 358 West 116th street.

Q You live there with your husband? A No, sir; I  
have no husband; I am a widow.

Q Do you remember the 2d of March of this year? A Yes,  
sir.

Q What is that, an apartment house? A Yes, sir; it  
is an apartment house, a single flat.

Q How many rooms do you occupy? A Seven rooms and  
bath.

Q That is your apartment? A Yes, sir.

Q On what floor? A The fourth floor.

Q How many doors lead into the hall? A Two doors  
leading into the hall.

Q Two doors leading into the hall? A Yes, sir.

Q Now, were ylu there on the afternoon of March 2d?

A No, sir; I was out.

Q You were there during the day? A Yes, sir.

Q Now, what time did you go out on that day? A Half  
past one.

Objected to. Objection sustained. Answer  
stricken out.

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Q Were you there at all in your apartment during the day?

A I was there in the afternoon until half past one.

Q Then where did you go? A I went downtown.

Q Now, did you leave anybody in the apartment when you left? A No, sir; I took the keys and I locked the door.

Q Which doors did you lock? A I locked the hall door, that leads to the private hall.

Q Were there any doors left unlocked when you left the apartment? A No, sir; there was no door left unlocked.

Q Did you leave any property there when you left?

A Yes, sir; I left all this property.

Q What was it? A It was three watches.

Q What kind of watches? A One gold watch, one gold plated watch, a silver watch and a nickle watch, a child's nickle watch.

Q Anything else besides the four watches? A Yes, sir; my wedding ring which I took off, it was too lose for me; a pair of opera glasses; two stick pins, one of which was in his necktie when I saw him on 121st street.

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

THE COURT: Motion denied.

Q Now, as I understand it, you have described four watches, a wedding ring and two stick pins? A Yes, sir; two

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pair of cuff buttons, a pair of opera glasses and a belt, a silver belt, and three lines of pearls with Rhinestones--

Q I show you People's Exhibit A for Identification?

A That is my watch.

(The article referred to is marked People's Exhibit A for Identification.)

Q I show you this article and ask you if you ever saw that before, that watch before? A I saw it for nineteen years.

Q Whose watch is it? A My husband's watch.

Q That was your husband's watch before he died? A Yes, sir; it was.

Q Who owned it after he died? A Who owned it? I owned it.

MR. HYMES: I move to strike that out.

THE COURT: Motion granted.

Q Do you know where that watch was on the 2d day of March? A Yes, sir; I know where it was.

Q Where was it? A In a box.

Q Where? A In the front--

Q Where was the box? A The box was in the parlor.

Q Of your apartment? A Yes, sir.

Q In this county? A Yes, sir.

Q Now, just tell us where, in that apartment it was?

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A It was in a little wooden box which I brought back from France, it was what they call a little secretary in French, and from there it was taken out.

Q How about the feb? A It don't belong to me.

Q Now, what time did you come back to your apartment?

A I came home at half past five.

Q What condition did you find your apartment in when you came back?

MR. HYMES: " I object to that as a conclusion.

THE COURT: Objection sustained.

Q Describe the condition that you found your apartment in? A When I came home all the drawers were on the floor; my clothes were on the floor and the boxes, everything was taken out, was on the floor, and the shades was drawn down in the bedrooms, all the shades were drawn down.

Q Now, were the doors locked when you got there?

A When I came back they was not locked; I wanted to put my key in, but I can't turn the key.

Motion to strike out granted.

Q Was the door open? A It was closed, but it was not locked, when I came back.

Q What property, if any, was missing?

MR. HYMES: I object to that as a conclusion.

THE COURT: I sustain the objection, but not on

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the grounds stated.

MR. HYMES: Then I change the ground to the ground that your Honor has in mind.

THE COURT: Objection sustained.

Q Was there any property missing?

MR. HYMES: I object to that.

A All this property was missing.

THE COURT: Objection sustained.

Q Now, did you see this watch? A Yes, sir.

Q When you came back to your room? A When I came back to the room, no, sir, I have not looked for it.

Q Well, that afternoon did you look for it? A I found that later out.

Stricken out.

Q When you came back, at five o'clock on the afternoon of the 2d of March, did you see this watch? A No, sir; I did not see it.

Q Did you see the other watches? A No, sir; I did not see them.

Q Did you search the apartment thoroughly? A So I did.

Q Were they in your apartment? A No, sir; they were not.

Q These four watches and the two stick pins, the proper-

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ty you described? A Yes, sir.

MR. GARVAN: I offer this watch in evidence.

MR. HYMES: Objected to.

THE COURT: Objection sustained.

Q I show you a stick pin, and ask you if you ever saw that before? A I saw it, yes, sir, it was on my pin cushion on my bureau--and the stone was taken out.

MR. HYMES: I move to strike that out.

THE COURT: Yes, the latter part.

Q Do you know who that belongs to? A Yes, sir.

MR. HYMES: I object to that.

THE WITNESS: That belongs to my son.

THE COURT: I think your question is inartificial, to say the least. On principle she may state in whose possession that pin was or whose property it was.

BY MR. GARVAN:

Q Did you see that pin on the afternoon, or on the day of March 2d? A No, sir.

Q Did you see it in the morning of March 2d? A Yes, sir.

Q Was that one of the pieces that you described? A Yes, sir.

Q That you could not find when you came back? A No, sir.

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Q Where did you next see this scarf pin? A In the court, 121st street.

Q In court in 121st street? A Yes, sir.

Q How long after the 2d of March? A Well, a week after I was subpoenaed, and I had to go in the court.

Q About a week after? A Yes, sir.

Q Where was this scarf pin? A Well, the officer showed it to me there.

Q Was it in the court room, stuck in the wall, or where?  
A No, sir; the officer showed it to me; I don't know where it was.

Q The officer had it in his hand? A Yes, sir; on account of it was from his necktie when he was arrested.

MR. HYMES: I move to strike that out.

THE COURT: Motion granted.

Q I notice that the stone has been taken out of it. Do you know how that happened? A No, sir; it was in when it was on my bureau.

MR. HYMES: I move to strike that out.

THE COURT: Motion granted.

MR. GARVAN: I ask to have this watch and this pin marked People's Exhibits A and B for Identification.

(The watch referred to is marked People's Ex-

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hibit A for Identification.)

(The pin referred to is marked People's Exhibit B for Identification.)

CROSS EXAMINATION BY MR. HYMES:

Q Mrs Engelman, I think it is-- A Yes, sir; Mrs Engelman.

Q You have been permitted to state that the watch which I hold in my hand, and which is marked People's Exhibit A for Identification, you have seen for nineteen years? A Yes, sir.

Q And that you saw it on the 2d of March in your own apartment? A Yes, sir.

Q Will you tell me now by what mark you identify the watch that I have in my hand? A I can't.

Q As the watch which you saw in your apartment on the 2d of March?

A On these flowers which are around on the watch, the middle flower which is in the center.

Q The case of the watch? A Yes, sir.

Q There is some marking which appears to be something like engraving on the case of that watch? A Yes, sir.

Q And just because you saw a watch in your apartment on the 2d of March which had markings similar to that, you say that this is the same watch? A That is my watch, yes, sir.

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MR. HYMES: I move to strike that out.

THE COURT: Motion granted.

BY MR. HYMES:

Q Isn't it a fact that because there was a watch in your apartment on the 2d of March that had a marking in the center, on the outside case, similar to the marking on the watch in my hand, you now say that on the 2d of March you had this watch in your apartment? A Yes, sir.

Q That is the reason? A Yes, sir.

Q That is the only reason, yes or no? A That is the reason that that is my watch.

Q Do you know what kind of a case this is? A No, sir; I don't.

Q Do you know manufactures or has manufactured cases exactly of that kind? A No, sir.

Q Do you know how many thousands or millions of identical cases, with identical markings, have been made? A No, sir.

Q You don't know anything about that and you don't pretend to know? A No, sir.

Q Do you know what kind of a movement there is in this watch? A I don't.

Q Do you know whether the movement in the case that I have in my hand is the movement that you had in the watch in your apartment on the 2d of March? A No, sir.

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Q You don't know what kind of a movement it is? A No, sir.

Q Do you know what number is on the movement or the number of the case? A No, sir.

Q Never did know, did you? A No, sir.

Q You never had any occasion to know the number, is that the fact? A No, sir; I did not.

Q You have said that you saw People's Exhibit B for Identification before? A Yes, sir.

Q On the 2d of March, in the morning, before you left the house? A Yes, sir.

Q Saw it in your apartment? A Yes, sir.

Q Describe People's Exhibit B for me now. What is it?

A That pin; I cannot describe that pin.

Q What is it? A What do you mean, what it is?

Q Tell me what is People's Exhibit B. You said that you saw that identical pin? A Yes, sir.

Q In your apartment on the 2d of March? A Yes, sir; it was there in the morning.

Q Describe it to me? A And not in the afternoon.

Q What is that? A I had it in the morning.

Q Describe it to me. Don't you understand the question?

A A little horseshoe with a little whip on it.

Q Where had it been before it was in your apartment, do

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you know? A I bought it myself.

Q You bought one like that yourself? A I bought that one myself.

Q A pin of that description? A This pin.

Q This pin particularly--what makes this different from the thousands of others of the same kind, made by the same manufacturers?

MR. GARVAN: I object. There is no evidence of that.

Q Do you know how many thousands of these were made?

A No, sir.

Q Where did you buy it? A At auction in 23d street.

Q Where? A Auction, in 23d street.

Q Whereabouts, and at what time? A Before Christmas time.

Q Of last year? A Yes, sir.

Q How many pins, of exactly the same kind, were there at auction? A I don't know.

Q There were others? A I don't know.

Q Do you know how many of identically the same kind as this there were at the auction? A No, sir; I don't know.

Q Now, will you tell me what there is about this particular pin which makes you believe that that is the very one that was in your apartment on the 2d of March? A I had it

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on my bureau.

Q You had one like this; that is all you mean? A Yes, sir.

Q That is all you intend to tell the jury, you had one, which, to your mind and memory, seems to be like the one I have in my hand? A Yes, sir.

Q Just the same way as you say you had a watch? A Yes, sir.

Q Now, how long ago did your husband die? A Eight months ago.

Q Did your husband leave any will? A No, sir; he left no will.

Q Was there any administrator or administratrix appointed? A I am the only one.

Q (Question repeated.) A No, sir.

Q Nothing of that kind at all? A No, sir.

Q Did your husband also live in that house? A No, sir; he never lived in that house.

Q You never saw a watch like this, that had a flower like this? A No watch like this--this is my watch.

Q You don't mean to say that the watch that you saw in your house, on the 2d of March, is this identical watch?

A That is it.

Q You mean to say it is one like it? A No, sir; that

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is the watch.

Q Well, you tell me then--I ask you once more--by what mark you identify it? A By the flowers around it.

Q Do you want to swear to this jury that there is no other watch on God's earth of the same kind of marking? A On account of he took the pictures out--

Q What is there in this watch which makes you able to swear to this jury that it is your's? A I swear it is my watch.

Q What is that? A I swear it is my watch.

Q What is it, excepting these markings? A The flower in the middle and the flowers which are around the case.

Q You will swear to this jury that there is no other watch on earth that had marking of that kind excepting the one in your room on the 2d of March?

Objected to. Objection sustained. Exception.

Q Did you look at this watch on the 2d of March or another watch like it? A What do you mean?

Q Did you look for it? A Well, I looked for my property.

Q On the 2d of March, in the morning, before you went out did you look for it? A No, sir; I did not.

Q You didn't want any watch that morning? A No, sir.

Q You didn't have any occasion to look for it? A No,

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sir.

Q And that is true of the pin, which is People's Exhibit B for Identification? A Yes, sir.

Q That is true, isn't it? A Yes, sir.

Q You hadn't any occasion to look for it? A Yes, sir; I saw the pin in the morning.

Q Did you go looking for it? A It was on my bureau.

Q But the watch not? A No, sir.

Q How long before that time had you seen this watch--the time of which you are talking? A I saw it about a week before.

Q About a week before that? A Yes, sir.

Q You didn't look for it on the 2d of March? A No, sir; I did not.

Q And yet you swear to this jury there was a watch there on the 2d of March and you didn't see it or look of it?

A It was there all right.

Q So far as you know, you mean, it was there? A Yes, sir.

Q You did not look for it, and all you mean to say is that you had seen a watch like this a week before in your room and you believe it was there on the 2d of March when you left the house? A Yes, sir.

Q That is all you knew, isn't it? A Yes, sir.

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EUGENE F. FOX, a witness for the People, being  
duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q What precinct are you attached to? A The 32d.

Q What precinct were you attached to during the March,  
this year? A The 32d.

Q Do you know this defendant, Elmore? A I know him by  
sight.

Q How long have you known him? A I should judge about  
a year.

Q Did you arrest him in this case? A I did.

Q Under what circumstances? A I was standing at the  
116th street school at one o'clock--that is, I was coming from  
it--I should have said--and this man I seen running down Lenox  
avenue.

Q Now, go on? A He was running down Lenox avenue.

MR. HYMES: I object to the question. The ar-  
rest, as I understand it, in this case was made a  
number of days subsequent to the alleged crime, as  
set out in the indictment, and the question is too  
general.

THE COURT: Objection sustained.

Q Where? A at 115th street, between Fifth and

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Lenox avenue.

Q What time of the day? A About 1:15.

Q Afternoon or morning? A Yes, sir; afternoon.

Q What was he doing when you arrested him?

Objected to. Objection sustained.

Q What did you say to him when you arrested him? A I brought him back.

MR. HYMES: Won't you answer the question. What did you say?

THE WITNESS: I placed him under arrest; I told him he was under arrest.

BY MR. GARVAN:

Q What did you say to him and what did he say?

MR. HYMES: I object to that question because it is manifestly incompetent.

THE COURT: The question is in the alternative, put the precise question.

Q What did you say to him. Is that all that you said to him? A No, sir; I asked him why he was running, and before he had time to answer the women who were chasing him--

MR. HYMES: I object to this, and ask to have it stricken out.

THE COURT: Motion granted.

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BY MR. GARVAN:

Q Did he say anything to you?

MR. HYMES: I object to that. The officer's own statement was that he was under arrest, but he did not tell him he was under arrest, and yet this conversation is sought to be put in--

BY MR. GARVAN:

Q Have you stated all you said to him at the time?

A Yes, sir.

Q The question is did he say anything to you in response to what you said to him? A He did.

Q What did he say to you? A He said he was innocent of anything of which these people had charged him at the time.

Q Now, did you search him at that time? A I did.

Q What did you find on him? A On the street, do you mean?

Q Yes? A A jimmie dropped from his pocket.

Q What is that? A A jimmie.

Q Where is the jimmie? A Why, the jimmie is with the evidence, with the property there, I believe.

Q Where is that jimmie, do you know? A The detective had all the property.

Q Who? A The detectives had all the property, I believe.

MR. HYMES: I ask that that answer be stricken

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from the record, if the Court please. It is out now. I thought he was going to say that he found the watch on him, or some such thing as that.

MR. GARVAN: He finds an implement of crime on him.

THE COURT: The precise answer that is objected to is that "one of the detectives had all the property". Is that what you object to?

MR. HYMES: My motion goes further than that. Unless it is proposed to show some connection between the alleged crime of burglary and the jimmy, I ask now that the answer be stricken out.

THE COURT: I deny your motion for the present. Exception.

THE COURT: I cannot tell at this time what the proof of the District Attorney will be.

BY MR. GARVAN:

Q Now, what else did you find on him? A I merely searched him for weapons to protect myself. In the Station House that is where we searched him and found the pawn tickets and the pin in his scarf.

MR. HYMES: I object to this as not the best evidence, if the Court please. There is no reason why this officer should be permitted to testify to

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these things.

THE COURT: So far he has simply stated that he found pawn tickets on the defendant, and a pin.

BY MR. GARVAN:

Q What else? A A ring, I believe, that is there.

Q Anything else? A Well, not of any importance.

Q Did you find a watch? A No, sir.

Q You found pawn tickets? A Yes, sir.

Q I show you People's Exhibit B, and I ask you where you first saw that pin? A In his necktie.

Q Was there a stone in it at that time? A I did not notice.

CROSS EXAMINATION BY MR. HYMES:

Q You say you found pawn tickets on his person? A Yes, sir.

Q Where are they? A There is the goods, or some of them.

Q Can't you answer? A I say the goods are there for some of the pawn tickets.

Q Do you know where those pawn tickets are or not? A I don't know where they are now.

Q What did you do with them? A Turned them over to the detective.

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Q What did you do with them? A Turned them over to the detective.

Q What detective? A Officer Conway, at the time.

Q Where is Officer Conway? A In court here.

Q Did you take any memorandum of what you took away from this defendant? A Conway did.

Q Did you? A I did not.

Q You took it from memory? A No, sir.

Q Then you don't remember what you are talking about?

A I do.

Q Then what is it? A I took no memorandum.

Q What you are talking about, is it from memory? A Just take a little time, don't try to confuse me.

Q I am trying to get the truth from you? A I am telling you the truth in this case, positively.

Q Thank you. Now, won't you answer the question? A I am waiting for your question.

Q How many pawn tickets did you take from this man's possession? A I believe it was three, if I an't mistaken.

Q Then it was three if you are not mistaken. If you were mistaken, how many were there? A Three.

Q Even if you were mistaken. What did you do with the articles you took from his possession? A Gave them to De-

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tective Conway.

Q Get any receipt for them? A Detective Conway did.

Q Did you get any receipt for them? A I didn't have to have a receipt.

Q I didn't ask you that? A No, sir.

Q You were asked at what time of day and at what street you arrested this defendant. You have not told us what day of the month it was? A Well, the 13th day of March at 1:15 P.M., in the afternoon.

Q The 13th of March? A Yes, sir.

Q You have not told us the year, 1906? A Yes, sir.

Q And had you ever seen the complainant in this case before to-day to talk to? A Before, prior to the arrest?

Q Before to-day? A I had.

Q How soon after the arrest in this case did you see that complainant? A The following day.

Q Where did you see her? A In the court.

Q Did you see her after that? A In court.

Q That would be the 14th of March? A I did.

Q How often? A During the different trial days, in court, on this case.

Q About how often? A I should judge about three or four times.

Q Did you talk with her about this case? A No, sir.

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Q You did not? A No, sir.

Q Did you see her the first time at her house? A No, sir.

Q You did not see her until she came to court? A No, sir.

Q Had you ever seen her at her house? A No, sir.

Q Had not talked to her about this case? A No, sir.

Q Or any of its phases? A No, sir.

Q You know the pawn broker in this case from whose possession the watch was obtained? A I know where the pawnbroker's place is located.

Q Have you ever been there? A I have, the day that this lady was in there looking at the watch.

Q She was looking at a watch in the possession of the pawnbroker, is that correct? A Yes, sir.

Q You had gone there with the ticket, the pawn ticket, had you? A Yes, sir; I did not have the pawn ticket.

Q Who had the pawn ticket? A Detective Bresnan.

Q When was that with respect to the arrest? A Well, now, I am not quite sure.

Q The same day as the arrest or the day after, or two or three days after? A It might have been two or three days afterwards.

Q You didn't have the pawn ticket, but you went there with the lady? A Yes, sir.

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Q And a watch which corresponded to the pawn ticket was, at that time, in the possession of the pawnbroker, is that correct? A A watch--a ticket which he had in his possession corresponded with the watch in the pawnbroker's--

Q That is one of these tickets? A Yes, sir.

Q How many times did you visit the pawnbroker's with the lady? A Me?

Q Yes. A Once.

Q Would you recognize the man in charge of the pawnbroker's office, whom you saw at the time of your visit, if you saw him now? A If he is in court, the man who waited on us the day I was there, yes, sir, if he is in court.

Q At the time this man waited on you, was the watch shown to you? A It was.

Q Was it shown to the lady? A It was.

Q Do you know whether or not she visited the pawnbroker's shop after that? A I do not.

Q Only once with you? A Yes, sir; or with Detective Bresnan; I merely went there with Detective Bresnan.

Q You were there, too? A Yes, sir.

Q Is that the gentleman from the pawnbroker's (pointing to a man in the court room)? A No, sir; not at the time I visited the place.

Q Whether he was there afterwards or not you don't know?

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A No, sir; I don't know.

Q After leaving the pawnbroker's on that occasion, did you take the watch with you? A No, sir.

Q I mean on leaving the pawnbroker's shop did you take the watch with you? A The day I visited there?

Q Yes. A No, sir.

Q It was left there? A Yes, sir.

Q Now, how many days after you visited the pawnbroker's shop did you see the watch purporting to come from the pawnbroker's again? A How many days after that, I think it was about three days, three or four days after that.

Q Then you saw the watch in court? A I did.

Q Did you see the complainant in court at the time this watch was there? A I did.

J O H N T. C O N W A Y, a witness for the People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q What precinct were you attached to during the Month of March? A The 32d.

Q Where is the Station House? A East 126th street, between Lexington and Third avenue.

Q Now, do you know this defendant, Elmore? A I have

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seen him on March 6th, 1906, this year, the day of his arrest.

Q The other officer says the 13th? A It is a mistake on the part of the officer.

Q It was March 6th? A Yes, sir.

Q Now, where was he when you first saw him? A He was brought to the Station House by Officer Fox.

Q Were you present when he was searched? A Yes, sir; I searched him.

Q You searched him? A Yes, sir.

Q What was found on him? A Some pawn tickets.

Q How many? (No answer.)

Q I show you People's Exhibit C for Identification, and I ask you if these are the keys that were found? A Yes, sir.

MR. GARVAN: I offer them in evidence.

MR. HYMES: Unless it is proposed to connect these keys with some alleged crime I must object to them. This was the 6th of March, the alleged burglary was the 2d of March, are they going to try to prove that these keys were the means of the burglary?

MR. GARVAN: I offer them in evidence.

THE COURT: Do you intend to connect them in any way?

MR. GARVAN: I connect them with the defendant. These keys were found on him.

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THE COURT: Mark them for identification.

(The keys referred to were marked for identification People's Exhibit C.)

Q I show you People's Exhibit B, and ask you if you saw that at the time the defendant was searched? A Yes, sir; I removed that from his tie.

MR. GARVAN: I now offer that pin in evidence.

MR. HYMES: Let me have it. I object to that going in evidence, if the Court please.

THE COURT: This is one of the articles, if I remember rightly, claimed by the complaining witness in the case to have been in her apartment. Objection overruled.

Exception.

People's Exhibit B in evidence.

MR. HYMES: Your Honor will recall the testimony in that connection. My objection is two-fold, first, with regard to the indictment. There is no specific allegation in the indictment which I believe is sufficient to apprise the defendant of a charge with regard to a particular stick pin. That is the first point I make, that it is not within the issues. Secondly, if your Honor please, I call your attention to the testimony regarding this stick pin

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as regarded by this complaining witness. This complaining witness testified that she bought a stick pin at auction. How many were sold she does not know. All that she can do, as she stated to the jury, is to say that there was a stick pin of the same description of make in her apartment. It is common knowledge, without her own testimony, that there are others of the same description and that that is no identification-at all. Upon that ground as well as upon the formal technical ground I object.

MR. GARVAN: She said that it was hers. The question of whether she is to be believed or not is for the jury.

Objection overruled. Exception.

Q Did you have any conversation with the defendant at that time?

MR. HYMES: Do you mean before or after the arrest.

MR. GARVAN: After.

MR. HYMES: Then the answer will be yes or no.

THE WITNESS: I d'd have a conversation with him.

Q What was it?

MR. HYMES: I object to that, if the Court

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please, as incompetent.

THE COURT: At the time of the arrest?

MR. HYMES: After the arrest.

Objection overruled. Exception.

MR. HYMES: Unless it appears that certain preliminaries to which I shall not refer were gone through with it should not be admitted.

Exception.

MR. GARVAN: You object upon the ground that the defendant should have been warned of his rights.

MR. HYMES: Upon the arrest and taking into custody of a prisoner a conversation, if any, is not competent.

THE COURT: I think your exception is broad enough to cover all your rights.

Q What conversation did you have with him? A I tried to get the defendant--I wanted him to make a statement to me in reference to--

Q State the conversation? A I wanted to find something out about--

Q What did you say? A I asked him what place he was trying to break into in No. 77 West 117th street.

Q That is not this case? A No, sir; it is not.

THE COURT: Strike that out.

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BY MR. GARVAN:

Q Now, I show you People's Exhibit D, E and F, for Identification. I show you three pieces of paper, and ask you where you got these papers? A I got them from the person of the defendant, on the day of his arrest.

Q These are three pawn tickets that you refer to?

A Yes, sir.

MR. GARVAN: I now ask the Court's permission to have these three papers marked for identification.

(The papers referred to are marked for identification People's Exhibits D, E and F.)

Q What did you do with these pawn tickets? A I went to the pawn shops as indicated on the pawn tickets, and put what is known as a step--

MR. HYMES: I object to that as not binding upon the defendant.

THE COURT: Objection sustained.

Q What did you do, eventually, with the pawn tickets?

A I--

Q Did you turn them over to anybody? A No, there was an officer, Officer Bresnan of the 31st Precinct--

Q That is all you know about the case? A Yes, sir.

CROSS EXAMINATION BY MR. HYMES:

Q What mark did you put upon the pin which you say you

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removed from the tie of this defendant on the 6th of March?

A No mark.

Q None at all? A No, sir.

Q The pin shown to you now by Mr Garvan is a pin which resembles the pin that you removed from the tie of the defendant, is that correct? A That is the pin, yes, sir.

Q Do you swear there is no other pin like that in the world? A No, sir.

Q But you are swearing that is the identical pin? A I know it never left--

Q Has this been in your possession ever since? A Been in the possession of the police department.

Q Not in your possession? A The property clerk.

Q The reason I ask you this question is I want to see how far you are going? A I will only go as far as I should.

Q You swear that is the identical pin? A Yes, sir.

Q You told us you did not mark it with any mark of identification? A Yes, sir.

Q It has not been in your possession? A No, sir.

Q A pin is shown to you which looks like the pin which you took from this man's tie and you swear to the jury it is the same pin? A No, sir.

Q Is that true or not. Don't you swear it is the same pin? A Just a second.

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Q Don't you swear it is the same pin?

MR. GARVAN: What is your question. My objection is this, that counsel has asked a question without giving the witness a chance to answer.

THE COURT: Present your question.

BY MR. HYMES:

Q Don't you swear that is the same pin? A I will swear that that pin resembles the pin I removed from the defendant's tie on March 6th, 1906.

Q Of course that is all you swear to.

BY MR. GARVAN:

Q What did you do with the pin, who did you turn it over to? A We immediately turned it over to the possession of the property clerk, and got a receipt for the same.

Q Where, at Headquarters? A Yes, sir.

Q The property clerk at Headquarters? A Yes, sir.

Q It has been in his possession all the time? A Yes, sir.

MR. HYMES: I ask that that be stricken out for seven different reasons.

THE COURT: Motion granted.

JAMES L. BRESNAN, a witness for the People,  
being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q What precinct were you attached to during the month of

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March? A The 31st.

Q Did you see this defendant on the 6th of March?

A No, sir.

Q What day was it, what was the day of his arrest?

A Around the 6th, but I saw him in court a day or two afterwards.

Q You did not see him the night he was arrested? A No, sir.

Q All right. When was it that you saw him first? A At the Harlem Court, the Harlem Police Court.

Q In the court room? A No, sir; in the prison.

Q That is the pen of the court? A Yes, sir.

Q Had you prior to that received People's Exhibits D, E and F from Officer Conway, the last officer? A Prior to that.

Q Or after that? A After that.

Q Eventually you did receive these pawn tickets, D, E and F? A Yes, sir.

Q Now, did you have any conversation there with the defendant? A I did in the court, in the prison of the court.

Q Now, I want you to just begin at the beginning of that conversation and tell us everything that was said there?

MR. HYMES: I object to that as incompetent.

The proper preliminaries have not been shown to have been observed. The defendant was in custody. This

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was a police officer attempting, evidently, to get some alleged admissions, and I take it that the Court ought to use all of its discretion in favor of the objection which is now made, particularly when we consider what the law is in other jurisdictions.

THE COURT: Have you anything to say?

MR. GARVAN: This officer, in the discharge of his duty, went to see the defendant and had a conversation with him in which the defendant made certain admissions. It is upon the ground of admissions that I offer this testimony.

THE COURT: I have in this court ruled that where a prisoner is actually in prison after having been charged with an offence that it is against the spirit, as well as the letter, of the law that alleged admissions or confessions should be received in evidence unless after the observance of the preliminaries required by law. I draw a distinction between a conversation had with an accused person at the moment of his apprehension. The law attaches importance to such a conversation because it may be said that at that time, when he is confronted with an accusation of crime, what he may say may be useful

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in eliciting the truth; but after he is taken into custody, and while he is in prison in the custody of the authorities, I have held before and I will rule now that it is against the spirit as well as the policy of our law to permit alleged conversations or admissions in evidence, unless upon satisfactory proof that the formalities of the law have been complied with.

I sustain the objection.

MR. GARVAN: I think that before such a ruling is made, I should be heard. Let us assume that a man is in prison. A number of burglaries have taken place. An officer goes to him in an endeavor to find out where certain property is and the prisoner gives him a list of goods and tells where he has pawned them.

THE COURT: That may all be. But there is the danger of manufactured admissions and confessions.

MR. GARVAN: There is a danger in every case of false testimony.

THE COURT: But where it is in the power of the authorities to prevent it--

MR. GARVAN: Then I will have to let this man go free? I have never seen any authority holding

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just as your Honor does.

THE COURT: Yes; there are authorities in this case, and I can name to you a case that was decided by the Supreme Court of Michigan where the principle was elaborately gone into and where the principle was upheld.

MR. GARVAN: I don't know whether this officer warned him or not.

THE COURT: Then the responsibility, you see, Mr Garvan, in such a case, the burden of proof is on the party who seeks to introduce such admission or confession, to show that the law has been complied with.

MR. GARVAN: The only way I can find out is to ask him what was said. I cannot ask him, "Did you warn him of his rights?"

THE COURT: I will rule upon the questions as they are presented.

BY MR. GARVAN:

Q What was the first thing you said to the defendant?

THE COURT: I will permit the District Attorney to ask the direct question.

Q Did you warn this man of his rights before you talked to him?

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MR. HYMES: I object to that.

THE COURT: Objection overruled, tentatively.

I overrule your objection for the purpose of coming to the direct question.

Q Do you understand the question? A Did I warn him of his rights?

Q To refuse to answer you any questions?

MR. HYMES: I object to that.

THE COURT: I will permit the question to be put: Did you warn him of his rights, knowing that he was a prisoner?

THE WITNESS: I did not warn him of anything; I did not know what he was there for.

BY THE COURT:

Q You knew he was under arrest and in prison? A Yes, sir.

Q You knew he must have been there under some accusation of crime? A Yes, sir.

THE COURT: My ruling will stand.

BY MR. GARVAN:

Q After your conversation with him in the pen did you go anywhere? A Yes, sir.

Q Where did you go? A Bruckheimer's pawnshop, 116th street and Third avenue.

Q Was it in consequence of the conversation which you had

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with this defendant, in the pen, that you went to that place?

A Yes, sir.

Objected to. Objection sustained. Answer  
stricken out.

Q Now, did you go back afterwards to see this defendant?

A Yes, sir.

Q Did you have a further conversation with him? A Yes,  
sir.

Q Then what did you do in consequence of that conversa-  
tion?

MR. HYMES: I objected to these words "in conse-  
quence."

Q After that conversation what did you do? A After that  
conversation, after coming back from the pawnshop--

Q Yes. A I recovered this watch.

Q Where did you get this watch? A In the pawnshop at  
116th street and Third avenue.

Q People's Exhibit A for identification. Is that the  
watch? A Yes, sir.

Q Was that the watch called for by People's Exhibit F,  
the ticket?

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

THE COURT: I sustain the objection.

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Q How did you get this watch from the pawnbroker's?

A Do you mean what brought me there to get it?

Q How did the pawnbroker come to give it to you? A By an order from the Magistrate.

MR. HYMES: I ask that that question and answer be stricken out.

THE COURT: Motion granted.

Q What did you do when you went to the pawnbroker's. Did you show him anything? A I showed him the order of the Court.

MR. HYMES: I ask that that question and answer be stricken out.

THE COURT: Yes.

Q The first time? A Yes, sir; I showed him the pawn ticket.

Q Which ticket?

MR. HYMES: If it is your purpose to prove that that pawn ticket corresponds with the watch which was delivered by the pawnbroker to this officer, or to whomever he swears he delivered it to, I will concede it.

MR. GARVAN: That is all I wanted to prove.

It is conceded that People's Exhibit F, this ticket, which calls for this watch--

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MR. HYMES: You assure me that this watch has been in continuous custody of the proper authorities since the time it was delivered by the pawnbroker to some officer?

MR. GARVAN: I do so assure you. Now, I offer the watch in evidence.

MR. HYMES: I object to the watch going in evidence, if the Court please, on the ground that it is not within the issue; it is not sufficiently proven. I again advert to the testimony of the complainant in this case. There is no evidence that this is the watch which she says was in her apartment on the second of March. In the second place, there is really no evidence that this watch was ever in her possession, no competent evidence. The complainant testified, of course, that she--

MR. GARVAN: The complainant testified that she had been seeing that watch for eighteen years; that it was her husband's watch; that she identified it and swore it was hers.

MR. HYMES: She said she knew it was that watch because it had a flower on the case; she didn't know its number; didn't know its make, the name of the maker or anything. Your Honor will bear in mind,

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in that connection, that she does not swear that it was her property at all. That watch was not her property. She said her husband had a watch. Your Honor will remember my questions as to what happened to her husband. There are only a few prescribed ways of getting property in or to any chattel, and she never got it to this chattel in any way. When I say this chattel, I mean the chattel to which she referred as having been in her house on the 2d of March of this year.

THE COURT: What difference does that make in a charge of burglary? What difference does the question of property make?

MR. HYMES: That is true, the question of title has nothing to do with it; but this other proposition I urge upon the Court, and that is her own testimony as to the identification of the watch. I say that the mere fact that she said she had that watch in her possession for nineteen years is no more proof upon which your Honor could base a finding than if she said, upon the larceny of the moon, that she had the moon in her possession for nineteen years.

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I make the extreme illustration to point out what I had in mind. It is as if she said, "I know this man is the man because he is white, because he belongs to the white race." She might give that as a reason for saying that he was the person who was in her house on a particular day.

Objection overruled. Exception.

(The watch referred to is admitted in evidence and marked People's Exhibit A.)

BY THE COURT:

Q I wish to ask when you saw the defendant in the prison, as you have described, did you have with you any of these papers called pawn tickets? A No, sir.

BY MR. GARVAN:

Q Did you, the second time you saw him? A Yes, sir; I had them then.

Q Did you have any conversation with him about these pawn tickets; did you show him the pawn tickets? A Yes, sir.

THE COURT: Now, you may go on and ask him what he said about these pawn tickets.

BY MR. GARVAN:

Q Did you have any conversation with him about these pawn tickets? A Yes, sir.

Objected to. Objection overruled. Exception.

THE COURT: These pawn tickets, having been

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found upon the defendant's person, when he was arrested, it takes the matter out of the ruling which I have made-- it is a continuing transaction.

MR. HYMES: Let me specifically object to any conversation as to any other pawn ticket than the one in question, the one which it is conceded represented the one.

THE COURT: You are right so far as that question is concerned.

BY MR. GARVAN:

Q I show you one of these tickets, the one which it has been admitted corresponds to this one. A Yes, sir.

Q Did you have that pawn ticket in your possession?

A Yes, sir.

Q Did you show it to the defendant? A Yes, sir.

Q Tell us what conversation you had with him then?

Objected to. Objection overruled. Exception.

A The defendant told me that this pawn ticket represented a watch that he stole out of a house in 358 West 116th street, Mrs. Engelman was the occupant of the house, and he said if I went down here to this pawn shop which this ticket represented, I could get this property and take it out for \$4 and whatever interest was on it, and dispose of it in a way that Mrs. Engelman would never be able to get it, and it could never be produced as evidence against him; he asked me if I would do

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that for him; he wanted me to dispose of all the property that he had stolen out of Mrs. Engelman's house, all the property that I had mentioned, some of it he could not return, he claimed he had disposed of in a way that he could not get it back, through some friend of his that was in the jewelry business.

Q Did he tell you what he had done with any of the other articles?

Objected to. Objection sustained.

Q Now, is that all? A He also told me about a lot of other property.

MR. HYMES: I ask that that be stricken out.

THE COURT: Motion granted.

Q I mean about this pawn ticket? A About this pawn ticket? He told me that the watch which this pawn ticket represented he had given to a friend of his who was in the jewelry business and that he had taken and removed two photographs from the case, brought it to a jeweler to have the movement repaired, put in good order, with the object of pawning it, and he said that the movement was too far gone, that the jeweler would not repair it, but cleaned up the case and then pawned it in Bruckheimer's.

CROSS EXAMINATION BY MR. HYMES:

Q Officer, this conversation which you have told us about in connection with this pawn ticket, occurred on the occasion

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of your second visit to see the defendant? A I am not sure of that; I could not be positive.

Q On one of the two visits? A Oh, I had more than two visits with him.

Q On one of the two visits you described to Mr. Garvan, you saw him once before going to the pawn broker and once after going to the pawn broker, that is true, isn't it? A Yes, sir.

Q Do you remember testifying to that? A Yes, sir.

Q Upon one of those two visits you had this conversation-- was that before or after you went to Bruckheimer? A Before I went to Bruckheimer.

Q He knew you were an officer at that time? A I don't think so.

Q You visited him in prison? A I was not in the prison, no, sir.

Q Where did you see him? A I was in the hall.

Q What hall? A The hall of the pen of the Harlem Court.

Q You did not tell him you were an officer, did you?

A Well, I had my shield on.

Q Yes or no, you know that you are a very intelligent officer and a very truthful one. A I did not tell him it.

Q You did not tell him you were an officer? A At first I did not, no, sir.

Q You had your shield on, did you? A No, sir.

Q You did not have your shield on? A No, sir, not at

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that time.

Q So far as you know, he never had seen you before, he was not acquainted with you, was he? A No, sir.

Q And didn't know whether you were a detective sergeant or an ordinary patrolman or an ordinary citizen, did he? A He did know from the conversation I had with him.

Q You must have told him you were an officer? A I told him I had a complaint for some different--

Q In other words, you were acting in the role of a person accusing him? A No, sir; I did not accuse him.

Q You were not accusing him? A No, sir.

Q Did not accuse him of anything? A No, sir.

Q He understood perfectly well that you were not interested in his behalf, that you were not there as a friend of his, were you? A I don't know what way he took it.

Q You did not tell him you were a friend of his? A No, sir; I did not.

Q What did you tell him you were doing there, won't you tell me that? A I was there on police business; I had a case in court.

Q You told him you were there on police business? A Do you want to know the conversation I had at the time I first saw him?

Q Did you tell him you were there on police business, or you were there to help him? A When I approached him, I did

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not tell him anything about what I was there for.

Q Do you know whether or not he knew you were a police officer? A Well, I don't know, but he should have known because nobody else but a policeman could be there.

Q You are all right. You showed him this pawn ticket that was in your possession? A Yes, sir; not at the first meeting.

Q At one of these interviews? A Yes, sir.

Q At one of these interviews you showed him a pawn ticket?  
A Yes, sir.

Q And he immediately told you that he had stolen the watch from Mrs. Engelman, that is correct? A Yes, sir.

Q And that you would find it at Bruckheimer's, and he wanted you to get it out of pawn and destroy the evidence that there might be against him? A Yes, sir.

Q He told you that? A Yes, sir.

Q You don't know why he told you? A I do.

Q He didn't tell you why he wanted you to do that for him, I suppose? A So that he could beat his case.

Q So that he would not be prosecuted? A So he would not be.

Q You don't know why he believed you were going to help him do an unlawful act? A Yes; I do.

Q Did you tell him you would? A Because he told me--

Q Did you tell him you would help him in that unlawful act?

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A No, sir; I did not.

Q Nothing of that sort? A No, sir;

Q He had no reason to believe that you would be guilty of an act of that sort? A He seemed to have a good deal of confidence in me somehow or other.

Q A good deal of confidence in you-- A I don't know whatever possessed the man to tell me anything; I didn't ask him.

Q It came like a thunderbolt upon you when this man took you into his confidence and asked you to be an accomplice in doing away with evidence of his crime? A Exactly.

Q You don't know why he did it? A I do not.

Q It came as a great surprise? A It certainly was.

Q Any other crimes he asked you to commit with him?

A Oh, in getting other property, yes, sir.

Q Did he offer to give you money? A Did he offer to give me money?

Q Yes. A Yes.

Q He offered to give you money which you indignantly repudiated? A I certainly did.

Q In spite of that, he continued to make offers to you?

A He continued to make offers that I can show--

Q But you refused, didn't you? A I certainly did.

Q Your dignity and your honesty was very much hurt by this improper proposition? A Positively so.

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Q Why didn't you tell the Judge of this awful crime this man wanted you to commit, why didn't you make a complaint?

A I did.

Q Against this man? A I did; I told the Judge.

Q But no complaint was made; why didn't you swear to a complaint? A It was his information that Mrs. Engelman complaint was drawn on.

Q I understand that you are swearing that he said he stole the watch? A Yes, sir.

Q I know that you have sworn to that-- A Excuse me--

Q How was it you didn't make any complaint about his attempt to get you to become an accessory after the fact? A Why, I had no occasion to make any complaint, getting such good information.

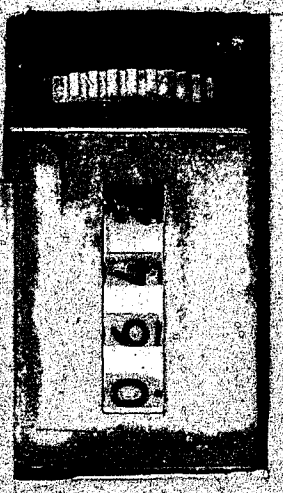
Q Even though he attempted to bribe you? A I knew he could not bribe me.

Q Though he attempted to bribe you, you didn't think that was reason for any complaint? A No, sir.

Q And as you indignantly told him you would not have anything to do with him, he continued to try to have you do so?

A As far as his bribe was concerned, I paid no attention to that; I told him I would not accept anything.

Q You told him you were a police officer and an honest man, didn't you? A Yes, sir.



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Q You would do only your duty and wouldn't do anything of that kind for anyone? A I told him I wouldn't do it for him.

Q Did you tell him for whom you would do it? A No, sir.

Q You are accentuating the "him". A I am only speaking of his particular case.

Q Only just one other thing. How many times were you in Bruckheimer's about that watch? A I was there on two occasions.

Q Two occasions? A Yes, sir.

Q Was the complainant with you each time? A Yes, sir.

Q Who was there besides you and her? A Three other ladies.

Q All trying to identify the watch? A No, sir; that watch and other property.

Q How about the watch? A Well, they were all there to look at the watch.

Q How about the other property, as a matter of fact, you have made or caused to be made another complaint against this boy upon which he was discharged, didn't you? A At my request he was; I asked the Judge to discharge the complaint on the ground that the lady refused to go any further with it, she did not want to be bothered.

Q You got this lady to identify that watch after two or three efforts? A The other lady didn't have anything to do

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with this watch.

Q Mrs. Engelman finally did identify that watch after several efforts? A (No answer.)

BY MR. GARVAN:

Q You say the other lady didn't have anything to do with that watch? A Yes, sir.

BY MR. HYMES:

Q You went there twice with Mrs. Engelman to the pawn broker? A Yes, sir.

Q Did she identify the watch the first time she saw it? A She got a glance at it.

Q Didn't you show it to her? A She didn't take it in her hand.

Q What did you take her there for? A To look at it.

Q To look at the property covered by these pawn tickets? A No, sir; not exactly.

Q What did you take her there for? A For the purpose of looking for any of her property that might be in the place.

Q It was shown to her for the purpose of identification? A This watch?

Q Yes. A Yes, sir.

Q She did not identify it the first time? A Not as the watch which she had supposed at that time was stolen.

Q In other words, you mean to say that you did not know at

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the time that you took her there first that a watch of this description had been lost by her, that is the point? A she did not know that this watch was stolen at that time.

Q Then she went home, found out that a watch of this description was missing, came again and identified it, is that correct? A Yes, sir; this watch was identified afterwards.

MR. GARVAN: I want to examine the witness on re-direct.

THE COURT: We will suspend her. Gentlemen of the jury, do not talk about this case or form or express any opinion concerning the guilt or innocence of the defendant until the case is finally submitted to you.

(The Court then adjourned the further trial of the case until Monday morning, April 9th, 1906, at 10.30 o'clock.)

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New York, April 9th, 1906.

TRIAL, RESUMED.

JAMES L. BRESNAN, a witness for the People,  
resumes the stand:

RE-DIRECT EXAMINATION BY MR. GARVAN:

Q Officer Bresnan, you have been asked on cross examination questions as to how this defendant came to talk to you in the pen. I wish you would tell this jury under what circumstances that conversation began and what led up to his making the confession to you that he had taken these things?

Objected to. Objection sustained.

Q How he came to make the statement to you which you have sworn to here?

Objected to; objection overruled; exception.

A Do you want me to explain exactly the conversation?

Q State what took place? A I was passing by the pen in the Harlem Court and saw the defendant; I stood there at a fence, you might call it, or the bars along the front of the prison. There were quite a number of prisoners in the pen there. The defendant was standing right at the front gate, holding the bars, and I looked at him, just grinned, asked him

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what was the trouble and he told me that so and so had him arrested.

Q He didn't say so and so? A He said that Conway and Fox had him arrested for an attempt at burglary in 118th street and he told me that they were digging up other information about some other stuff that he had on him.

MR. HYMES: I move to strike that out.

Motion granted.

THE WITNESS: So I asked him if any of the charges that he said that Conway and Fox were making against him were true.

MR. HYMES: I object to any further conversation in this direction, if the Court please.

THE COURT: Confine your conversation, or confine your narration, witness, to what was said about this case, this charge on trial, about these pawn tickets, if anything, and the recovery of the property which they represented. I wish you would confine yourself to that, and eliminate everything else.

THE WITNESS: He told me there was a scarf pin found, a little scarf pin taken from him when arrested and that there was somebody there to ---

MR. HYMES: I ask that the ruling of Friday be adhered to now. The defendant is in custody.

THE COURT: I ruled on Friday, Mr. Hymes, that

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insofar as the conversation relating to the pawn tickets were concerned that they were a part of the transaction -- the finding of the pawn tickets on the person of the defendant, and that anything relating to these pawn tickets would be admissible as part of the continuing transaction.

MR. HYNES: That is many days after the arrest and the finding of the tickets.

THE COURT: If the conversation related to a new subject altogether I would have to follow my own ruling of Friday. The conversation is on a continuing subject and the law permits evidence to be given as to incriminating documents or implements that may have been found on the person of a prisoner, and it follows, as a necessary consequence, that any conversation had with a prisoner in relation to such documents, articles or things, becomes competent in order to explain them, account for them, or give directions concerning them.

MR. HYNES: My objection goes to the situation under which the defendant is found, using your Honor's own reasoning than which there is no clearer exposition on the point.

THE COURT: If it related to new matter I should

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adhere to that ruling; but this is not new matter and I consider it pertinent and competent.

Exception.

Q. Go on and confine yourself to these pawn tickets, what occurred in reference to them. Don't go outside of them?

A. The defendant told me that one of the pawn tickets in the name of Davis, pawned on such a date, for so much money, \$4, I think it was, -- he said that that pawn ticket represented a watch, and on that watch he said there was a fob -- the pawn ticket did not call for a fob, just called for a watch, but that there was a fob on it, he attached it himself, and that this fob, he claimed, belonged to a Mrs. Becker.

MR. HYMES: I move to strike that out.

THE COURT: Motion denied.

Q. What else did he say? A. He said that this watch belonged to Mrs. Engleman in 116th street, 358 and the fob to Mrs. Becker,

MR. HYMES: I ask that that be stricken out, if the Court please.

Motion denied.

Exception.

THE WITNESS: He then asked me if I knew what complaint was drawn against him.

THE COURT: Strike that out.

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MR. GARVAN: I want to call your Honor's attention to the fact that the entire cross examination was on the improbability of this defendant making this alleged confession or statement to the officer in the pen. I thought then that it was my duty to show that this officer was acting efficiently and to show how he obtained the information.

THE COURT: There is no question of this officer's efficiency.

Q Now, what else did he state to you about it? A He told me if I went down to Bruckheimer's pawn shop on the date, I think it was the 6th of the month, -- the pawn ticket in the name of Davis, \$4, -- he asked me to get that watch; he asked me if I would not pay the \$4, the money loaned on it, and whatever little interest there might be and get the watch and the fob and he says "Dispose of the things, get them out of the way, so that they will not go down there, so that Conway cannot go down there" -- he mentioned the officer in the case -- "and get this fob and watch and use it as evidence against me."

Motion to strike out denied.

Exception.

THE WITNESS: I then asked him about the other articles that were stolen from Mrs. Engleman the same complainant where the watch came from --

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MR. HYMES: Objected to. I move to strike it out.

THE COURT: I grant your motion to strike out as to what was said.

THE WITNESS: I asked him what had become, -- or what other property he had taken from Mrs. Engleman's house and how he had disposed of it.

Motion to strike out denied.

Exception.

THE WITNESS: He told me that on the day that he got into Mrs. Engleman's house he stole a solid gold watch, a gold plated watch, a silver watch and a silver belt and a pair of opera glasses and a wedding ring and two or three pairs of cuff buttons and several other articles that he could not recall at the time.

MR. HYMES: I move that that be stricken out.

THE COURT: Motion denied.

Exception.

THE WITNESS: I had a list in my pocket of the burglary as reported -- on the day it occurred.

MR. HYMES: I move to have it on the record that there was a report of the loss of goods on the 2nd of March. I am willing that that go upon the

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record.

THE WITNESS: I asked him of other things that had been reported to me as lost, I asked him if he hadn't stolen ---

MR. HYMES: I ask that all this be stricken out.

THE COURT: Motion granted.

THE WITNESS: I asked him if he took these different articles and he said he did.

Motion to strike out granted.

Q Did he say how he disposed of the belt. What did he say to you about the belt? A He told me that ---

Objected to; objection sustained.

Q When you went down to the pawn broker's office and got the watch represented by the ticket here did you find a fob on the watch? A Yes, sir.

Q I show you this exhibit, this fob, and I ask you if that is the fob? A Yes, sir.

Q Was that on the watch at the time? A Yes, sir.

MR. HYMES: I object to that as not within the issues.

Objection overruled; exception.

(The fob referred to is admitted in evidence and marked People's Exhibit G.)

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MR. HYMES: There is no claim that this belonged to the complainant in this case. It is not mentioned in the indictment.

THE COURT: But it appears from the witness's own statement that the watch the defendant claimed to have stolen had attached to it a fob; therefore it is part of the description which it is claimed the defendant gave to this officer.

BY MR. HYMES:

Q Where did you go Friday afternoon after you got through with your cross examination? A Last Friday that I was in this Court, do you mean?

Q That is what I mean. Have you any doubt about that?

MR. GARVAN: I object to that as immaterial.

THE COURT: Yes.

Q Won't you tell me where you went to?

Objcted to. Objection sustained.

Q Where did you go after your cross examination last Friday afternoon in this case?

Objcted to. Objection overruled.

A I went home.

Q Whom have you seen in connection with this case and your testimony of this morning since last Friday afternoon? A In connection with my testimony of this morning I have seen Mrs. Engleman between last Friday and to-day.

Q Whom have you seen representing this District Attorney's office? A Nobody.

Q You have not talked to a person, have you? A No, sir.

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Q About your testimony in this case? A No, sir ; nobody.

Q Since Friday afternoon? A No, sir.

Q And up to this morning? (No answer).

Q You remember your testimony to me, don't you, and to Mr. Garvan on Friday? A Yes, sir.

Q You remember your testimony to me was this, and also to Mr. Garvan, that you went to the Harlem Police Court, you saw this defendant, and that then the conversation between you and him was that he told you he had stolen a watch corresponding to that pawn ticket from Mrs. Engelman and that was the sum total of the conversation. I leave it to the records.

MR. GARVAN: Objected to.

MR. HYMES: Let the witness answer.

THE WITNESS: I would like to hear the question put again.

Q (Repeated).

Objected to; objection sustained.

BY MR. HYMES:

Q Do you repeat now what you told me on Friday that you, so far as you are now aware, had never met the defendant before the time that he had that conversation with you down in the Pen. Do you state that now? A That I had never met him prior to the time of the conversation; I said I met him three

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or four times in the Pen.

Q Ever spoken to him before this conversation?

A No, sir; I think it was the second time I ever spoke to him; he told me -- part of the conversation was one day and he told me on another day --

Q The time that he wanted you to destroy the evidence against him, was that the first conversation you had with him?

A I think it was.

Q Did you tell him you were an officer ?

Objected to; objection sustained.

Q So far as you know he was aware that you were an officer?

Objected to; objection sustained.

THE COURT: These questions have been asked and answered on Friday.

MR. HYMES: That was one of my grounds of objection to the re-direct examination.

BY MR. HYMES:

Q I ask you one general question: Do you now repeat what you told me on Friday that this defendant in a way that utterly surprised and amazed you asked you if you would not help him to conceal evidence of a crime that he committed and offered you money for that purpose, and continued to so solicit you after you had indignantly repudiated the notion?

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A I did not say he offered me any money; he asked me to help him and he would reward me for it.

Q He was trying to bribe you from the line of duty, is that correct? A I don't know whether he considered it a bribe or not, because he offered me nothing.

Q But he wanted you to destroy evidence? A He was going to give me his good will, that is about all.

K A T H E W I L L M A N N, called as a witness by the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q Mrs. Willmann, where do you live? A 358 West 116th Street.

Q Are you a widow, Mrs. Willmann? A I am.

Q You live there with your children? A Yes, sir.

Q What floor do you live on? A Top floor; I live on the top floor.

Q Is that the same house in which Mrs. Engleman lives?

A Yes, sir; in the same house; she lives below me; I live above.

Q Do you remember the afternoon of March 2nd?

A I do.

Q Did you see this defendant on that day? A I did; he rang my door bell and I answered him.

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Q What time of day was it? A Between the hours of one and two o'clock, very near two o'clock.

Q Just tell exactly what happened there? A As he rung my bell, I pressed the button and went out to the landing to see who was coming up; he came up and asked me if I had received a package from Siegel & Cooper's the day before, which was to have been delivered on East 116th Street.

MR. HYMES: I ask that this conversation be stricken out.

THE COURT: I deny the motion.

THE WITNESS: He did not say that to me, he simply asked had I received the package.

Strike out everything except the words he said.

Q Use his words? A That is what he asked me, did I receive a package from Siegel & Cooper the day before, I said "No". He begged my pardon for disturbing me and went and rang Mrs. Englemans bell and I paid no more attention to it as I thought she was at home.

MR. HYMES: Strike out what she thought.

THE COURT: Yes.

Q You did not pay any more attention to it? A No, sir; the following week of course I was --

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## CROSS-EXAMINATION BY MR. HYMES:

Q What time in the afternoon of March 2nd. was this?

A Very near two o'clock.

Q When he begged your pardon where did you go?

A Then he turned around.

Q Where did you go? A I beg pardon.

Q When this young man begged your pardon where did you go?

A After he asked me that question--

Q After he asked you the question to which you responded, where did you go? A I went back into my flat, closed the door. He rang the bell downstairs.

Q You answered my question when you say you went back into your room and closed the door? A I did.

Q You live on what floor? A On the top floor.

Q How many apartments are there on the floor?

A One.

Q This is a one apartment house? A A single apartment house.

Q Did you close your door after he begged your pardon?

A I gave myself time to walk back; I was at the head of the stairs.

Q Then you went directly back, walked into your apartment?

A I did.

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MR. GARVAN: The People Rest.

MR. HYMES: Before I address any motions to your Honor as to the indictment I desire to make a motion with respect to certain testimony. First, I desire to repeat a motion which has already been passed upon to some extent, by your Honor with respect to the testimony of the officer who was last upon the stand. I mean the alleged conversations between him and the defendant in the prison, when the prisoner was in custody. I think my motion is sufficiently specific as to the testimony to which it is directed.

THE COURT: Yes. I think it is sufficiently specific. I deny your motion.

Exception.

MR. HYMES: I desire first, to ask that the District Attorney elect upon which count he will go to the jury.

THE COURT: I shall not require him to do so at this stage of the case.

MR. HYMES: To that I except. I ask the Court to advise the jury to acquit upon each of the counts in this indictment. The first count is the

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burglary count, the second is the larceny count and the third the count for receiving stolen goods. I submit that there is no evidence in this case of burglary at all and, secondly, that there is no evidence of any guilty connection on the part of this defendant with any burglary, even if you should determine the question in the affirmative adversely to my contention on the first proposition.

THE COURT: I think there is room in this case for a decision by the jury on the question of fact. Assuming it to be true, for the purposes of this argument, that the defendant was seen in this house inquiring of one lady with regard to a package and then going to Mrs. Engleman's door. Take that in connection with the other evidence, that Mrs. Engleman locked her door, and that when she returned she found her door open and certain things in disorder, certain articles of property missing. It may be that the jury would be at liberty to infer, from these circumstances, the fact that some one entered that apartment by some means, whether by a false key or by picking the lock or other means, that some one did enter the apartment. There is a very great distinction, Mr. Hymes, between breaking in the popular

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sense and breaking in the legal sense. For instance the putting in of a false key or a piece of wire and in that way opening a door would be breaking in contemplation of law. I will deny your motion on that point.

Exception.

MR. HYNES: I make the same motion on the larceny count upon the ground that there is another variance between the allegation and the indictment and the proof regarding the title to this property.

THE COURT: Upon the lady's own testimony the watch was not her property but had been the property of her deceased husband. There is no evidence to show that she was appointed administratrix by any decree of court or that she was an executrix under a will. But there appears here the fact, if it be a fact, that it was in her possession and under her control. It may be that the indictment is susceptible of amendment to that extent, because even though it was the property of her husband, if it was in her possession, or under her control at the time it is claimed it was stolen, that defect of title, or lack of title, rather, would not protect an accused who stole the watch,

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who ever he may be. There are a number of articles mentioned in the indictment exclusive of the watch, any one of which would be sufficient to sustain a conviction for burglary, if a burglary had been committed I will deny your motion with regard to the count charging the crime of larceny and I will consider the necessities as well as the propriety of having the indictment amended with regard to that particular watch. It has been repeatedly held of late that a mistake in the indictment regarding ownership of property is not sufficient to vitiate the indictment. The indictment may be amended to conform to the proof. I deny your motion.

Exception.

MR. HYMES: Now, as to the receiving count.

THE COURT: I would not spend any time on that. I will properly instruct the jury on that point so as to protect the interests of your client.

MR. HYMES: I make the general motion on the ground of the absolute lack of evidence.

THE COURT: For the present I will deny your motion with leave to renew at the close of the case.

Exception.

MR. HYMES: I make a general motion to advise the jury to acquit upon the ground that the People have failed to make out a case.

Motion denied. Exception.

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THE DEFENSE.

C H A R L E S M c G O V E R N, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HYMES:

Q What is your business? A I am in the pawnbroking business, not for myself, I am an assistant manager.

Q For whom? A M. E. Bruckheimer.

Q Their place of business is where? A 2108 Third avenue.

Q Have you been working for them all this year? A Six years.

Q Six years? A Yes, sir.

Q Do you know the complainant in this case, Mrs. Engelman?

A I do not.

Q Have you seen her before? A Yes; sir; I have seen her.

Q At your place of business? A I could not swear to that; I have seen quite a number of ladies there but I don't know whether she was there or not, but I seen her in the 121st street court.

Q Did you see her examine People's Exhibit A. Did you see her examine a watch which had been pledged in your place?

A Yes, sir.

Q When did you first see her look at that? A About the

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13th or 14th of March.

Q Whereabouts? A The 121st street court house.

Q With whom was she at that time? A Officer Brennan.

Q Will you just tell us what occurred? A The officer demanded the watch from me; I had it in my possession at that time, and he took it inside, in a room off the court room, and on the side of the court room and he brought in several ladies there. This lady, I believe, the complainant in the case.

Q Mrs. Engelman? A Yes, sir; and he asked her if it was her watch and she said "Yes"; he showed her the watch. I asked her if she had any mark of identification on it; she said she didn't have any mark of identification on it; she said she knew her watch; I asked her if it belonged to her personally and she says "No, it does not, it belongs to my husband's father;" I said, "You bring him forward and let him identify the watch" and she said "I cannot, he is dead." That is all I know of the identification. That is the identification that was made of the watch.

Q Did the office tell her anything about the identification? A That I don't know.

Q He took her in the side room first? A Yes, sir; but I was present when he brought her in; he took the watch of me and I went after him because I wanted to try and get possession of

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the watch and hold it until ordered by the Court to give it up; I followed him right up into this room; he showed the watch to different ladies that was there and to Mrs. Engelman, if that is her name, I believe she came over and she said "Is that your watch"; she said, "Yes, that's my watch."

Q You asked her for any mark of identification? A She said she had none.

Q She simply was positive in saying it was her watch?

A Yes, sir; she was positive in saying it was her watch.

No cross examination.

M O S E S J. J A C O B U S, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HYMES:

Q What is your business? A Jewelry.

Q Whereabouts? A 47 and 49 Maiden Lane.

Q With whom are you? A S. F. Meyers & Company.

Q Are they in the general jewelry business? A Yes, sir; general jewelry line.

Q Look at People's Exhibit A and tell me if you know what kind of a watch that is, the case particularly? A It is a Hamden watch made by the Hamden Watch Company, Camden, Ohio.

Q Both the case and the movement? A No, sir; it is

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a Hamden movement but it is not a regular Hamden case.

Q Have you seen cases like that before? A Yes, sir.

Q Look at the flowering on the outside of it and tell me whether or not that flowering is a staple flowering in the watch business? A That is a very ordinary design, a regular ordinary design.

Q Nothing peculiar about it? A No, sir.

Q I suppose there are thousands of these watches made?

A Yes, sir; thousands of them made for years.

CROSS EXAMINATION BY MR. GARVAN:

Q Who made it? A Well, the same design is made by twenty different concerns.

Q Who made that? A Hamden has made them and Wadsworth has made them.

Q You said you didn't know whether it was a Hamden case or not? A I said it was not a Hamden case; other people make the same designs.

Q You are able to swear that other people have made that exact design? A Yes, sir.

Q Describe it? A It is known as top and bottom engraving.

Q How engraved? A That is all that it is called in the jewelry trade, top and bottom engraving.

Q Are the top and bottom engraved the same? A Generally

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the same, vary very little, in fact half a dozen different makes, all engine turned, go by what are called engine turned cases.

Q The engraving on every one is different? A No, sir; not enough to notice it.

Q You don't notice any difference? A Still every engine turned case --

Q Aren't they all different, every one of them, look and see if they are not? A Where is the difference?

Q Take these and look at them yourself? A A slight difference in the spot, still some manufacturers make the same sized spots.

Q But you call these all the same design? A Yes, sir.

Q You don't mean to say that you have ever seen another watch with every line of this design the same as that? A I certainly have.

Q Where?? A In my own line of business.

Q Where is that? A I have handled watches for twenty-five years.

Q Who makes them? A Wadsworth makes them and the Brooklyn Watch Case Company.

Q Every line the same?? A Lots of them have the same designs throughout.

Q I mean an exact fac simile of that? A I won't swear

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to every line.

Q How long have you known this defendant? A I have never seen him.

J A C O B S A M U E L S, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HYMES:

Q Samuels, you are in what business? A In the wholesale jewelry business.

Q How long have you been in that business? A Pretty near fourteen years.

Q Will you please look at Exhibit B, this pin, and tell me what is peculiar about that pin, if there is anything?

A The horse shoe and the whip.

Q The horseshoe and the whip? A Yes, sir.

Q Is that a common design used by manufacturing jewelers?

A It is a common design, that is to say, for instance, you take 75 different manufacturers of scarf pins and perhaps 74 out of 75 make the same kind of goods, a horse shoe and a whip on it. I have been handling the same goods for years.

Q You have been handling the same goods for years?

A Yes, sir.

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## CROSS EXAMINATION BY MR. GARVAN:

Q Do you know what kind of a stone was in that? A Well, I could not tell that, there is no sone in it now.

Q What had been in it? A It might have been a cheap red stone or a green stone; there was a stone in it or there would not be the setting there.

MR. HYMES: The defense rests. I desire now to renew my motion.

MR. GARVAN: I shink I should recall the officer to put in one exhibit.

J O H N T. C O N W A Y, a witness for the People recalled in rebuttal, testified as follows:

## DIRECT EXAMINATION BY MR. GARVAN:

Q Now, you testified that you searched the defendant or were present when he was searched at the desk? A Yes, sir.

Q I show you this piece of iron and asked you if that is an article that you found on the defendant which you, in your testimony, designated as a jimmy?

Objected to. Objection sustained.

(On motion of defendant's counsel the complaint in the case was admitted in evidence and marked Defendant's Exhibit No. 1.)

MR. HYMES: I renew the motion made at the

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the close of the Prosecution's case. I have an additional ground, however, that I wish to state now because of the additional testimony. The only evidence, in my view of this case, implicating this defendant, is the alleged confession made by him to the officer, plus the statement made by Mrs. Engelman with regard to the property that she lost.

Motion denied.

Exception.

MR. HYMES: I ask that the District Attorney be compelled to elect upon what count he will go to the jury.

THE COURT: I decline to require the District Attorney to elect.

Exception.

THE COURT: I do not think the evidence here is of such a quality as to warrant a verdict of receiving stolen goods. I will withdraw that count from the jury for the purposes of this case only retaining in the count such matters of description, time and place, as may be necessary to give effect to the other counts in the indictment.

Exception.

During his summing up Mr. Garvan stated "The of-

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ficer said upon the stand that he had not spoken to any District Attorney since Friday. I say I have had charge of this case --

MR. HYMES: I say you are committing a gross impropriety in repeating that. The statement that you have had charge of this case is an improper statement.

MR. GARVAN: Do you think he would have sworn on the stand this morning that he had not spoken to an Assistant District Attorney if he had?

TESTIMONY CLOSED.

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## THE COURT'S CHARGE.

GOFF, R. Gentlemen of the Jury: The first count in the indictment charges the defendant with the crime of burglary in the third degree. In considering that charge and all other charges that may be submitted for your consideration, you will remember, of course, that you are the exclusive judges of all questions of fact. No one can interfere with your prerogatives in that department. You must accept the law of the case as I give it to you, and when you understand the law of the case, you will be in a position to pass upon the questions of fact and determine whether or not the defendant committed the acts which the law denounces as criminal.

The first count in the indictment, charging the crime of burglary in the third degree, substantially accuses him that on the 2nd of March in this year and in this county he did feloniously and burglariously break into and enter with intent to commit some crime therein the premises of one Celestine Engelman.

The law defining the crime of burglary in the third degree reads as follows:

"A person who with intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building, is guilty in burglary in the third degree."

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The essentials to that crime are, first, the breaking into a room or apartment; secondly, the entering into that room or apartment and thirdly, the intent to commit some crime in that room or apartment.

The word "break" in law has a somewhat broader meaning and signification than the popular acceptance of that term. A popular break may be construed as meaning something would have to be dislocated, broken or destroyed, but in law it has a broader signification. The Statute says that "the word break means and includes breaking or violently detaching any part, internal or external, of a building, or opening for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein, separately used or occupied, or any window, shutter, scuttle or other thing used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another."

So that, gentlemen, it is not necessary that a door or window should be broken in order to constitute a breaking in the eye of the law. If a handle be turned, even though the door be unlocked, or a catch shot back to its place, that would be a breaking. If a latch string hanging out of a door is pulled and the latch raised, and a person being there raises the latch with intent to enter that house or apartment to commit a crime therein, it would be a breaking.

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The passing of a person through a window or through a coal chute on the sidewalk, if done with intent to get into the building in order to commit a crime, would be a breaking. The insertion into a lock of a skeleton or false key, or any instrument whatever, that would shoot back the bolt,-- if that were done by a person with intent to enter therein for the purpose of committing a crime, it would be a breaking.

In this case the evidence of the Prosecution is, substantially, that the lady who appeared upon the witness stand, locked her apartments and went out to attend to some business. When she returned, she found the door of her apartment open and certain articles of household use strewn about in disorder. There is no direct evidence that the rooms were broken into. There is no evidence that any person was seen to enter those rooms, nor is there any evidence, any direct evidence as to how the door was opened. There is the circumstance that the door was opened in her absence by some means, by some person; whether it was opened by a person that went in there with intent to commit a crime is a question for you to determine-- or by what means it was opened. It is not necessary for you to determine the exact means. If you find that the door was opened, with the intent of entering the apartment and committing a

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crime in that apartment, that is a circumstance to be taken into consideration with the other circumstances in the case. She claims that several articles of jewelry were taken from her apartment.

Of course, gentlemen, you will have to determine whether there was a burglarious entry or not. If you shall find that there was a burglarious entry, the next thing you would have to find would be what intent actuated the person who burglarious entered the rooms. If the intent was to steal then the crime would be complete, the breaking, the entering and the intent. How are you going to determine the intent? That is a question of fact to be decided upon the evidence before you, and it may be inferred from all the circumstances of the case.

If you find that the door was burglariously opened and that the person who opened the door did it with an intent to steal from that apartment, and that the person did steal, then you are confronted with the question, who is that person? The Prosecution claims that the defendant is the person.

Now, the evidence against the defendant on that point, substantially rests upon the testimony that he was searched when arrested and that upon his person was found what has been called a stickpin. This stickpin was identified

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by the complaining witness, to construe her testimony in a fair manner, as a pin similar in appearance to a pin that was taken from her apartment on this day. It would be unfair and unjust to the defendant to hold that her identification of an article of such common use and manufacture as this pin should bind the defendant as a positive identification. That is not the case, but that can be the case. All that can be fairly testified to under these circumstances is that a pin similar to the one in question that was found upon the defendant's person had been taken from her apartment. Also upon his person was found a pawn ticket. It is claimed that subsequent to his arrest he stated to a police officer certain matters in relation to this pawn ticket; that the police officer went to the pawn shop indicated and procured the articles called for by the pawn ticket, and one of those articles was a watch. This watch the complaining witness identifies as having been in her apartment, and as having belonged to her deceased husband.

With regard to the value of the articles taken from these apartments, if they were taken feloniously-- in burglary, it is immaterial as to the value, and, in fact, it is immaterial as to whether anything at all is taken except in so far as the taking of articles and the identification of those articles furnish a clue to the taker; for if a man breaks and enters into a building; with intent to

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steal in the building, even though he does not steal anything, he commits the crime of burglary. If he does take anything away, whether the article he takes is worth one cent or one thousand dollars, makes no difference. The gravamen of the crime is the breaking and entering into a building with intent to commit a crime.

If you shall find that the defendant had this pawn ticket in his possession, and that he stated to the police officer the matters in relation to which the police officer has testified, and that the article or articles were found in the pawn shop, and that this article or these articles were those that had been taken from the complainant's room on the day in question, then you are confronted with the question: Did the defendant take those articles? If he took those articles, is he the person that broke into the place?

It is a rule of law that where there has been a burglary committed and the proceeds of that burglary are found in the possession of an accused, shortly after its commission, that such possession may, in the jurors' minds, raise a presumption that he is the person who committed the burglary. That, of course, is a question of fact for you to determine. The responsibility is thrown upon the defendant, if it be proven to the jury's satisfaction, that he had in his possession stolen property, to explain to the jury, give them such satisfactory statement as to how he came into the possession of the stolen property as shall satisfy them that his position was innocent and not felonious.

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Of course, gentlemen, as a fact you will have to find first, that a burglary was committed. If you find the fact that there was a burglary committed, the next question is, who committed the burglary? That brings you to the second question which I have adverted to in regard to the finding of stolen property in the possession or under the control of an accused person. If you find, as a fact, that there was a burglary committed in these rooms, that there was property stolen from these rooms, and that the defendant had in his possession, or under his control that stolen property, you may, in the absence of any satisfactory explanation as to how he came into the possession of that stolen property, find that he is the one who committed the burglary.

Of course, if you find that there was a burglary committed that will dispose of all subsequent questions before you.

If you should find that there was no burglary committed, or if you should entertain a reasonable doubt that there was a burglary committed, you may then proceed to consider the questions presented by the second count of the indictment.

The second count in the indictment charges the defendant with the crime of Grand Larceny in the second

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degree, and the law defines the crime of larceny to be "a person who with intent to deprive or defraud the true owner of his property, takes it from his possession, steals that property and is guilty of larceny." In that case, if there were property stolen from these rooms, it may have been stolen by artifice, by stealth, it may have been stolen while the door was open; but, at all events, if you find that the door was opened, by the person who stole that property, as I have already instructed you, that would constitute the crime of burglary. If you find there was no burglary, but that the property was stolen, then the stealing of the property would constitute the crime of larceny. The degree of larceny charged against the accused in this case is that of the second degree. I instruct you that there is not sufficient evidence here to warrant the finding of a verdict of guilty of grand larceny in the second degree, even though you should find that the defendant committed the crime of larceny, for there is not sufficient evidence here as to the value of the property taken. I will, therefore, submit that question to you as one of petty larceny. Petit larceny consists in stealing property of any value whatever. If you shall find that there was property stolen from these apartments, even though it was

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of the value of one cent, and the defendant is the person<sup>88</sup>  
who stole that property, he would be guilty, under those  
circumstances, of petit larceny. The rule as to an accused  
being found in the possession of stolen property shortly  
after a crime has been committed, which I have already  
instructed you upon under the head of burglary, applies  
with equal force to the subject of larceny --- that is  
the recent possession of stolen property. The jury may  
infer from that recent possession that the person in  
whose possession it was, or under whose control it was,  
is the person that stole the property, in the absence  
of any satisfactory explanation as to how he came by the  
property.

I do not wish to confuse your minds by giving you  
any further or more elaborate instructions than I have.  
I think the rules of law have been stated to you with  
sufficient plainness to enable you to understand them,  
and their application to the facts before you.

To recapitulate, --- before you can render a ver-  
dict of guilty against the defendant of the crime of  
burglary, you will have to find, first, that there was a  
breaking into these rooms by some means, with intent to  
commit a crime, that there was property stolen from

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these rooms, that the defendant had that property in his possession or under his control, that he is the person who committed the burglary. You will have to find all these facts in the affirmative before a verdict of guilty of burglary can be sustained.

If you find that there was no burglary committed, or if you have a reasonable doubt about burglary being committed, you will then consider the question of the defendant's guilt or innocence of the crime of petit larceny. I am sure I need not repeat to you the rules I have laid down relating to that crime.

Upon all the evidence and lack of evidence the defendant is entitled to the benefit of a reasonable doubt. As contemplated by law that reasonable doubt is not a mere guess or a surmise; it is a reasonable doubt which springs from the evidence in the case and from no other source. A reasonable doubt implies its own best definition, a reasonable doubt is a reasonable doubt. It must be based upon the evidence in the case, and jurors cannot go outside of the case and speculate upon mere possibilities or probabilities; they must confine themselves to the evidence in the case. If that evidence a reasonable doubt arises, it is the property of the defendant and he is entitled to an acquittal. If

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upon the whole case, beyond a reasonable doubt, you believe that the defendant committed the crime of either burglary or petit larceny, you should declare him guilty of the crime.

Your verdict will be <sup>either</sup> guilty of burglary in the third degree, guilty of petit larceny, or not guilty.

I submit the case to you.

MR. HYMES: I except to that portion of the Court's charge wherein, in substance, it says that if an entrance were made by any one through a window or coal chute for example, that in that event there would be a breaking and entering under the law.

THE COURT: Those were simply illustrations to enable the jury to distinguish between the popular acceptance of the word "break" and the legal meaning attached to the word.

MR. HYMES: Our exception will be noted.

THE COURT: I did not mean to say --- and I don't think the jury apprehended I meant to say --- that there was any charge against the defendant that he went through a coal chute or through a chimney.

MR. HYMES: We except to that portion of the Court's charge where it states that there is no direct evidence as to breaking and entering, and as the Court,

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in that connection, charges that there is no indirect evidence as to that fact.

THE COURT: I decline to charge in the language requested.

MR. HYMES: I take an exception to the declination of the Court to so charge. We except to that portion of the Court's charge where it states, in effect, that there is no direct evidence as to how the door or doors were opened, and I ask the Court, in that connection, to charge

MR. HYMES: I ask the Court to charge the jury in this case, that unless the jury is convinced, beyond a reasonable doubt, of the accuracy of the identification by the complainant of the two articles said to have been found in the possession of the defendant --- I mean the watch and the pin --- unless they conclude, beyond a reasonable doubt that her identification is accurate and to be depended upon that then there is no recent possession of the stolen goods as to which the rule just laid down by the Court is applicable.

THE COURT: I decline to charge in the language requested. The matter of identification, gentlemen, is purely a question of fact for you to determine, and it is

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for you to say whether or not the watch in evidence, as described by the complaining witness and procured from the pawnshop on the ticket found upon the person of the accused, is the watch which was in her apartments before she left there on that day. That is a question of fact for you to determine.

MR. HYMES: I ask the Court to charge that unless the jury believe beyond a reasonable doubt that the alleged confessions or admissions were made by the defendant to the detective as recited by that detective, unless they believe that beyond a reasonable doubt, there must be an acquittal upon all the charges here.

THE COURT: I decline to charge in the language requested.

MR. HYMES: Exception. We ask the Court, in that connection, to charge that outside of the alleged confession in this case, there is not sufficient on which to base a conviction on either of the counts submitted by the Court.

THE COURT: I decline to charge, because the whole case must be considered, in its entirety, by the jury. It would be manifestly misleading and improper for me to segregate them and give specific charges as to each specific portion.

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MR. HYNES: We ask the Court to charge in connection with that and in regard to the burglary count that there is no evidence in this case whatsoever showing the number of persons who had or might have had legal and proper access to the apartments of the plaintiff between the hours mentioned in her testimony, to wit, half past one in the afternoon and about five o'clock in the same afternoon.

THE COURT: I decline to charge in the language requested. The matter as testified to is before the jury, and it is for them to determine whether or not anything took place in the absence of this woman that would interfere with the integrity of that door or entrance to the apartment, until it was opened --- and if it was opened with burglarious intent, who opened it?

MR. HYNES: I take an exception to ~~the~~ the declination of the Court to charge as requested, and as to the modification as charged.

The jury returned a verdict convicting the defendant of burglary in the third degree.

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