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#1252

COURT OF GENERAL SESSIONS OF THE PEACE,
COUNTY OF NEW YORK, PART V, DECEMBER,
1909, TERM CONTINUED.

The People of the State of New York,

-against-

Rail Reiss,

Defendant.

BEFORE HON. JOSEPH F. MULQUHLEN, J.

AND A JURY.

New York City, January 31st, 1910.

Indicted for grand larceny in the second degree
and receiving.

Indictment filed January 21st, 1910.

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

For the People: Deputy Assistant District Attorney,
Robert C. McCormick.

For the Defendant: ROBERT J. HAIRE, ESQ.

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(A jury was duly empanelled and sworn.)

(Mr. McCormick opened the case on behalf
of the People.)

J O H N Z A N F T , a witness, sworn on behalf of the
People, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

- Q What is your occupation? A Superintendent of the
Merchants' Secret Service Bureau.
- Q Where is their place of business? A 320 Broadway.
- Q Did you see the defendant on the 27th day of November,
1909? A I did.
- Q Where did you see him? A At Fourth Avenue and 19th
Street.
- Q What time of day? A About ten minutes after one in
the afternoon.
- Q What did he do? A He appeared on the corner and
remained there a few minutes.
- Q Which corner? A The southwest corner of Fourth Avenue
and 19th Street.
- Q Describe his appearance when you first saw him, how he was
dressed? A He has on a black overcoat and a black
derby hat.
- Q What did he do? Did you see him do anything? A He
remained there for awhile, and he was joined shortly after

by another man, whom we knew to be a man by the name of Morris Ray.

BY MR. HAIRE:

Q That you knew to be Morris Ray? A Yes.

Q He met him where, on the southwest corner you say?

A Yes, sir.

BY MR. MCCORMICK:

Q Then what happened? A He talked with Ray a few moments, and left Ray on the corner, and he walked to No. 238 Fourth Avenue and entered into the hallway.

Q That was south or north of 19th Street? A North of 19th Street.

BY THE COURT:

Q The defendant did this? A Yes.

BY MR. MCCORMICK:

Q The defendant left him on the southwest corner of 19th Street and Fourth Avenue? A And walked north on Fourth Avenue.

Q Across 19th Street? A No, he did not cross. He walked up north and entered No. 238.

Q You say he was on the southwest corner? A Yes.

Q Then he crossed 19th Street? A No, he did not cross

Q The even numbers are on the west side? A Yes, sir.

Q He crossed 19th Street coming up, that is what I meant?

A That is right.

Q He went from the south side to the north side? A Yes.

Q But did not cross the avenue? A That is right.

Q How far north did he walk on Fourth Avenue? A About thirty feet.

Q From the corner? A Yes.

Q Then what did he do? A He went into No. 238 and came out ten minutes later and looked down the street, and beckoned to Ray to come up. Ray joined him and they both walked to 20th Street, turned and walked west on 20th Street, and the defendant entered No. 29 East 20th Street, and Ray remained directly opposite that number, on the other side.

Q On the south side of the street? A Yes.

Q What sort of a building is 29 East 20th Street?

A A little stoop house, two or three stories, I guess.

Q And he vanished from your sight in the hallway? A Yes.

Q How long was he in there? A About ten minutes.

Q Then what happened? A When he came to the door later, I could see him--

Q Where were you standing? A I was opposite, in ~~the~~ a store.

Q In a store? A Yes, and I was able to observe the defendant come to the entrance of 29 East 20th Street and he beckoned to Ray. Ray went across the street and went upstairs and disappeared for a moment and then came out

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again.

Q Then they both had gone in the entrance? A Yes.

Q Then they came out? A Both came out, and Ray carried a bundle.

Q Prior to that time, had there been a bundle? A None of them had anything before that.

Q How large a bundle was it? A About six inches by three.

Q Six by three? A Something like that.

Q Six inches long by three inches wide? A Well, I don't remember the exact description. I can't describe the size very well.

BY THE COURT:

Q It was that approximately? A Yes.

BY MR. McCORMICK:

Q Then what happened? What did they do? A They both walked west on east 20th Street, and when they got near Fourth Avenue, Officer Cooney and another officer grabbed both of them.

Q And during this time that you speak of, Cooney was with you? A There was several of us on the street.

Q Who was with you all the time? A Officer Cooney and Peabody and two or three of our men, and Mr. Harris.

Q And you went up the street after them? A We followed them from there through 20th Street.

Q You found the bundle on him, on the defendant? A No.

on Ray.

Q Did you open the bundle? A No, we did not; but Mr. Harris came along and the bundle was torn--one part was torn, and Mr. Harris looked at it, and said it was his.

Q This was after the arrest of the defendant? A Yes, sir.

Q Did the defendant say anything? A No word at all.

Q Did any conversation take place in his presence? A Yes.

Q Repeat what was said? A This man Ray said "What is this? A frame up?"

Q Who did? A Ray said it to Officer Cooney and myself. He said, "What is this? Is this a frame up? I sent him up to get some buttons. I do business with a button firm at this address, and I did not know that this stuff was in there."

Q What address did he refer to? A 29 East 20th Street.

Q That is all the conversation that was had in the presence of the defendant that you remember? A Yes.

Q Did you see the defendant since then? A Several times in the police court.

Q Did you have any conversation with him? A No, sir.

CROSS-EXAMINATION BY MR. HAIRE:

Q This No. 29 East 20th Street, there are different kinds of business carried on there? A It appeared that way to

me. There are several signs out.

MR. HAIRE: That is all.

OFFICER MICHAEL J. COONEY, sworn as
a witness on behalf of the People, testified as
follows:

DIRECT EXAMINATION BY MR. McCORMICK:

- Q You are a member of the police force of the City of New York? A Yes, sir.
- Q Attached to the Detective Bureau? A Yes, sir.
- Q Did you see the defendant on the 27th day of November, 1909? A I did.
- Q Where? A At 28th Street between Fourth Avenue and Broadway.
- Q Where? A On 20th Street between Fourth Avenue and Broadway.
- Q With whom were you? Were you alone? A I was with a man by the name of John Zanft, Mr. Samuel D. Harris, the complainant, an officer, and Lieutenant Peabody was with me.
- Q Tell the circumstances under which you saw the defendant, and what he did? A About 1:15 P. M. on November 27th, this man, Reiss, met a man by the name of Morris Ray on the corner of 19th Street and Fourth Avenue, on the southwest corner. They then walked about 75 feet or three or

four doors north, to No. 238, where Reiss entered the building, in the hallway, and Morris Ray stood in the door. Reiss was in there some eight minutes perhaps, came out again, and was joined by Ray, and both walked north to 20th Street, went west on 20th Street, towards Broadway. When in front of No. 29 East 20th Street, Ray stood on the opposite side, the south side of the street, and Reiss went into the building. He was probably in there some eight or ten minutes, and he came to the door and beckoned for Morris Ray. Morris Ray went across to the other side of the street and went in the hallway and probably within a minute or so both came out again, Morris Ray carrying a package of goods.

Q What kind of a package? A A package about two feet by a half a foot of three-quarters-- two feet long, doubled up.

Q Its length, what was its length? A About two feet long.

Q How thick? A Probably six inches.

Q How wide? A A foot and three-quarters, about that; about six inches thick.

Q Was anyone else with you at the time? A Yes, Detective Zanft.

Q Now tell what happened? A We followed them down the street and when they got near Fourth Avenue, we placed them

under arrest.

Q What did you do? A Placed them under arrest.

Q Who did? A I did.

Q What did you say and what did they say, if anything?

A I told this man he was under arrest, and asked Morris Ray where he got the package. He said "What is this, a frame up? I thought I had a package of buttons. I sent this man to get buttons for me." I then asked the defendant what he had to say; but he said nothing at all.

Q What became of the package? A The package is now here. I took the package to Headquarters.

Q Did you examine it? A Yes, sir.

Q You examined it. Then what happened? A I showed it to Mr. Harris, who was present.

Q Have you got the package now? A Yes, sir. It is No. 92,394.

Q What was done with the package? A I took it to Police Headquarters, the Detective Bureau.

Q Are you able to identify it if you see it? A Yes, sir.

Q Is this the package (showing a package)? A That is the package; yes, sir.

Q That is the very package? A Yes. It was not folded that way when I took it to Headquarters. The property clerks have folded it that way. It was more square than that when I took it there; but they put the number on it

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at Police Headquarters for to identify it.

Q Have you opened the package? A Not since the Property Clerk has it.

Q You have examined it and can identify it? A Yes, sir.

Q When did you see it after you arrested the defendant?

A I had it in the hearing in the police magistrate's court. It was there.

Q Just open it up and see if that is the same cloth? Is it the same cloth inside of it?

(Witness examines)

A Yes, sir, that is the same cloth.

Q That is the same cloth this man had on him on the street, 29th Street, when you placed him under arrest? A Yes, sir.

MR. McCORMICK: I offer the cloth in evidence.

MR. HAIRE: No objection.

Marked People's Exhibit No. 1.

CROSS-EXAMINATION BY MR. HAIRE:

Q That is the package which he had in his possession?

A Yes, sir.

Q That is the first time you saw it in Ray's possession?

A Yes, sir.

S I M O N H A R R I S , sworn as a witness on behalf
of the People, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

- Q Where is your place of business? A 87 Fifth Avenue.
- Q Where do you live? A 51 East 97th Street.
- Q What business are you in, Mr. Harris? A Manufacturer
of rain coats.
- Q What name is your firm? A Under the name of Harris
Rubber Company.
- Q You are a member of that co-partnership? A Yes, I am
senior member.
- Q Where is your place of business? A 87 Fifth Avenue.
- Q Do you know the defendant? A I do.
- Q How long have you known him? A We engaged him, I think,
some time in the month of May.
- Q Was he in your employ from that time until the 27th of
November? A I think he was, until he was arrested;
yes, sir.

BY THE COURT:

- Q Your place of business is where? A 87 Fifth Avenue.
- Q Near what street? A Corner of 16th Street.
- Q What side, east or west? A East side.
- Q North or south of 16th Street? A North.
- Q The first door north? A Yes, sir.
- Q In what capacity was he in your employ? A As a stock

clerk.

Q What do you mean by "stock clerk?" A He had charge of the goods and gave it out to the men and had to check up what amount of goods they used, and put what they did not use back in stock, and take it from them, and carry it to and fro, and had charge of all the raw material.

BY MR. McCORMICK:

Q I show you People's Exhibit 1, and ask you if you ever seen that cloth before? A I did.

Q Where? A I seen it in my place of business.

Q When was it there? A It was there some time prior to November 27th.

Q And whose property is it? A That belongs to us.

Q And it was there in your store? A Yes, sir in our factory.

Q In your factory? A Yes, sir.

Q Prior and up to the 27th of November? A Yes.

Q What is the value of it? A That is 35 -- 98 $\frac{1}{2}$ cents a yard.

Q How many yards? A I don't know what particular piece that is. That is thirty-four yards, I should judge. It is a separate piece.

Q What do you mean by separate piece? A One piece I found in the possession of one Morris Ray at the time--

MR. HAIRE: I object.

THE COURT: Yes, strike it out.

Q How many yards of cloth werethere in the piece that was found on Ray on the 27th of November? A I think 35 yards.

Q What was thevalue of it? A 98½ cents a yard.

Q How much is that? A That is about thirty-four dollars; in the neighborhood of that.

BY THE COURT:

Q How can you identify it as your property? A By the pattern, and the way it is rubberized.

Q What particular marks are on there which makes you sure it is yours? Other manufacturers make coats, rain coats besides you? A Oh, yes.

Q Well, how do you know it is yours? A We have certain goods consigned to us from the manufacturer, when we place the orders, that won't conflict with competitors. I know that particular design to be ours.

Q Did you see the defendant on Novemver 27th? A 27th? Yes.

BY MR. McCORMICK:

Q Did you see him in the morning of the 27th of November? A Yes.

Q Where? A In themorning of November 27th, he was working in our place.

Q Do you know how late he worked there that day? A Until

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one o'clock.

Q Did you see him about one o'clock? A I seen him about a quarter of one or twenty minutes of one. That is the last time I seen him until he was arrested.

Q You saw him when he was arrested? A I did, yes.

Q Where did that take place? A That took place on 20th Street.

Q And how long before he was arrested, had you seen him?

A Well, I seen him going down on Fourth Avenue.

Q What time was this? A This was about ten or fifteen minutes past one. I was over on the other side of the street. He was supposed to meet a party by the name of Morris Ray. I saw him meet this man, and they both walked up to about No. 238 Fourth Avenue and the defendant went in the hallway and then came out again and they both had some conversation for a few moments and arranged to go around to 20th Street. The two officers were there and they told me to remain there. I was in a store there.

Q That was on Fourth Avenue? A On Fourth Avenue.

Q When did you next see the defendant? A I remained there about ten minutes in the store and then walked out and walked up Fourth Avenue and looked around on 20th Street, and seen the defendant and one Morris Ray under arrest, and I immediately run up and seen my bundle of

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goods carried by Mr. Morris Ray.

Q What took place there? A Why, Officer Cooney says, "Is that your package of goods?" The package was torn open and I looked at it, and says "Yes, that is my goods."

Q Did the defendant say anything? A Not a word.

Q This property was not taken away from your place with your consent or with the consent of the firm? A Absolutely not.

Q This was in the County of New York? A Yes, sir.

Q Your place of business is at Fourth Avenue and 19th (sic) Street? A Yes.

BY THE COURT:

Q Do you sell that cloth to any one? A No, sir.

Q What do you sell? A We sell the coats.

Q You never sold any of that cloth to any one? A Not to my recollection. We might probably sell a manufacturer five yards that he may need for a sample coat. We do that to help one another out, but we never sell it at wholesale.

Q Or retail? A Or retail.

CROSS-EXAMINATION BY MR. HAIRE:

Q You sell that by the piece, don't you? A No, sir.

Q Don't you sell it by the piece to your brother-in-law?

A In the business?

Q Yes, sir. Didn't you sell it by the piece to him? A Never

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- Q You sell it to other manufacturers, do you? A No, sir, unless upon an occasion to help out another manufacturer where he wanted five or six yards to make up a coat.
- Q How could another manufacturer want five or six yards if those designs are all made for you? A He might want enough to make up a coat. If he was not so particular, it is immaterial to him whether it is one pattern or another.
- Q How many of these packages or rolls were in your place on the morning of the 27th, the day this defendant was arrested? A I should judge seventy or eighty.
- Q How many men were in your employ at that time? A In the stock room?
- Q Yes? A Emil Reiss was the only one.
- Q Who else was about the building; how many more people? A On the floor he was on?
- Q Yes? A Possibly about fifteen or sixteen men.
- Q And this stock room was all open, was it? A No, sir.
- Q Couldn't people go in and ~~out~~ out there? A Yes, but they have no right to.
- Q There was nothing to prevent them going in and out? A Yes.
- Q What? A Mr. Emil Reiss was in charge of that place.
- Q Did not these people ever go in there, any of these employees, except himself? A Not unless he had been so

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instructed, unless he had orders to do so.

Q While he was out at noon time, didn't they go in there.

A No, I don't think of any.

Q Nobody else was in charge of the room? A No, he always supplied the employees with work.

Q When did you last see this piece of goods in your place?

A Prior to November 27th.

Q How long prior? A It may have been two days. It may have been three days. I am not sure.

Q Did you see it there that morning? A I think so.

Q On the morning of the 27th? A I think so.

Q That is your best opinion? A I think so.

Q You did not see Reiss when he left the store that day?

A No, I left fifteen minutes ahead of time.

Q Was he in the habit of going to lunch at one o'clock?

A One o'clock; yes, sir.

MR. HAIRE: That is all.

BY THE SIXTH JUROR:

Q Was that Mr. Ray in your employ? A No.

BY THE NINTH JUROR:

Q How did you know he had an appointment? A We trailed him before this. We trailed him for two or three days.

Q How did you know he had an appointment with Ray? A We trailed him on November 24th, and we found out he had an appointment there with Morris Ray, and he gave him another

package. They met on November 26th, and we found he met Morris Ray, and he gave him a package.

MR. HAIRE: I object, your Honor, and ask that it be stricken out.

THE COURT: I did not ask it. The juror asked him about it. However, I will strike it out.

Are there any other questions?

MR. HAIRE: No.

MORRIS S. KONHEIM, sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

- Q What is your business? A Manager of the Harris Rubber Company.
- Q Where is it located? A 87 Fifth Avenue.
- Q Do you know the defendant? A Yes, sir.
- Q How long have you known him? A Since about May, 1909.
- Q He was employed there, was he? A Yes, sir.
- Q In what capacity did you say you were employed?
A Manager.
- Q Can you identify this silk (indicating)? Did you ever see this before? A Yes, sir.
- Q Where did you see it? A At our business place.
- Q How do you know this is the silk that you saw at your business place? A Because we use similar material.

- Q You know this is the silk that was there? A Yes, sir.
- Q When did you see that silk there last; I mean at 87 Fifth Avenue? A I could not testify to any particular piece of silk because we have probably hundreds of pieces of similar pieces of goods.
- Q Have you had any interview with the defendant since November 27th? A Yes, sir.
- Q Where? A At the prison pen of Jefferson Market Court.
- Q When was that? A It must have been about the middle of December.
- Q What was the conversation? A I says to Reiss, I says, "Emil, you will do me a great favor if you will tell me if you took any woollen goods," and he says to me that he did not, that all he took was silks. I also asked him whether any other employees in the place had helped him take goods. He said "positively not," and he also told me that he was repentant for what he had done.
- Q The property was under your supervision, was it? A Yes, sir.
- Q Did you miss any silk on the 27th, or after that? A We missed two pieces of silk on November 29th.
- Q What day of the week was that? A On a Monday.
- Q What did you miss on the 29th? A Two pieces of silk, about the average of these two particular pieces.

CROSS-EXAMINATION BY MR. HAIRE:

- Q What day did you say you missed the goods? A The 29th of November.
- Q Now, you asked him if he had taken woolen goods? A Yes.
- Q And he said "no?" A Yes, "no."
- Q Isn't that all he said? A No, sir.
- Q And then you asked him if any of the other employees helped him, and he said "no?" A Yes, sir.
- Q And that is all he said? A Yes; that is all he said in answer.
- Q You still mean to say that he said that he took silk? A Yes, he said he did take silk.
- Q Did you testify in Jefferson Market Court? A Yes, sir.
- Q Isn't it true that you testified that he said he had no accomplice? A He told me he had taken silk, and had not taken woolens.
- Q Did you testify to that in Jefferson Market? A I believe I did.
- Q Don't you know? A I am quite sure I did.
- Q Don't you know you did not so testify? A I don't.
- Q Will you say you did so testify? A Yes, sir.

MR. HAIRE: That is all.

MR. McCORMICK: The People rest.

MR. HAIRE: If your Honor please, I move that your Honor direct the jury to render a verdict of not guilty, on the ground that there is not sufficient evidence to establish the guilt of this defendant.

THE COURT: Motion denied.

MR. HAIRE: Exception.

MR. HAIRE: The defendant rests. I renew my motion again.

THE COURT: Motion denied.

MR. HAIRE: Exception.

Mr. Haire closed the case on behalf of the defendant.

MR. McCormick closed on behalf of the People.

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CHARGE OF THE COURT.

MULQUEEN, J.

Gentlemen of the Jury: The defendant has been indicted by the Grand Jury of this county for the crime of grand larceny in the second degree, and the indictment charges that he, Emil Weiss, in the Borough of Manhattan, County of New York, on the 27th day of November, in the year of our Lord 1909, at the Borough and county aforesaid, with force and arms, did feloniously steal, take and carry away thirty-five yards of cloth of the value of ninety-eight cents each yard, of the goods, chattels and personal property of Simon D. Harris and Mark Harris, co-partners in trade, then and there doing business in and by the firm name and style of Harris Rubber Company.

In order that you may be in a position to determine whether or not the defendant is guilty of the crime charged in the indictment, I will briefly call your attention to the statute defining larceny. Section 1290 of the Penal Law defines larceny as follows:

"A person who, with the intent to deprive the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, takes from the possession of

the true owner, or of any other person, personal property, steals that property and is guilty of larceny."

You will notice that the statute is very simple. It forbids the taking of personal property from the possession of the owner or of any other person with the intent of depriving the true owner of the property and appropriating it to the use of the taker, or of any one other than the true owner.

Now, you have heard the testimony in this case, and it is for you to say whether or not there was any taking of personal property in this case, whether it was taken from Harris & Company, as has been testified to, or from the Harris Rubber Company, whether it was taken by this defendant, and whether, if it was taken by this defendant, it was taken with the felonious intent of depriving the Harris Rubber Company of that property, and of appropriating it to the use of the taker or any other person other than the true owner.

If you find all these facts established beyond a reasonable doubt, it will be your duty to render a verdict of guilty of larceny. If you are not convinced beyond a reasonable doubt that a larceny was committed, render a verdict of not guilty.

Larceny is divided into degrees, according to the circumstances of the taking or the amount of property

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involved. Property, taken under circumstances alleged in this indictment, is grand larceny in the second degree if the value of the property is more than twenty-five dollars and less than five hundred dollars. If the value is not more than twenty-five dollars, then it is petit larceny. The owner of the property in this case has testified that the value of the property was thirty-four dollars.

You know the principle upon which American trials are based, upon which our criminal procedure is founded. You understand that the defendant is presumed to be innocent. That is our law. It is unlike the laws of some other countries. We do not say to a defendant, "You are guilty; now, prove your innocence." Our law takes the other point of view, and in effect says to the People of the State of New York, who make the charge, that the defendant committed a crime, "You must prove the truth of your charge." The defendant is entitled to be believed innocent until the crime charged is proved against him beyond a reasonable doubt. He is entitled to the presumption of innocence.

Now, the District Attorney is elected to represent the People in these criminal actions. The People are the complainants. The People claim that this man has violated a law made by the Legislature for the protection of the People, and I have said the People must prove

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it beyond a reasonable doubt.

You have to take the law as it is laid down to you by the Court. But you must decide the facts. If the defendant took personal property of the value of more than twenty-five dollars and less than five hundred dollars, personal property, from the owner or from his custody, with the intent to deprive him of the use of that property, and of appropriating it to his own use or to the use of some one other than the true owner, he is guilty of grand larceny in the second degree. The duty of determining whether or not this defendant is guilty is for you. It is for you to say. You are the exclusive judges of the facts, and of the credibility of the witnesses.

You have heard all the testimony, and the burden is on the State of removing every trace of reasonable doubt from your minds. Now, reasonable doubt does not mean unreasonable doubt. A reasonable doubt, as its name implies, is one that is based on reason. It is a doubt that reasonable men, honestly striving to seek the truth, would have under all the circumstances of the case as disclosed by the evidence. Reasonable doubt is based on reason, not on prejudice or sympathy.

You have heard all the evidence, and I not think it necessary to review it. But I think I ought to refer to the statement made by counsel that there is no evidence

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that the defendant took the goods. The testimony of Officer Cooney, as I recall it, was that the defendant was charged by Ray with having given him the goods. Ray, as I recollect the testimony, said "What is this? A frame up? I thought I was getting buttons. I sent this man to get buttons. I did not know I had silk there in that package at all." Cooney said that the defendant remained mute, when this was said. Now, it is for you to say whether you believe this testimony or not. If you do believe it, and also believe the testimony that the defendant had been with Ray prior to that time and that Ray was caught with the goods in his possession, that statement together with all the circumstances under which it was made may be considered by you in determining whether or not the property was taken by the defendant; and also on the question of his intent in taking the goods, if you find that he did take them. As I said before, you are the sole and exclusive judges of the facts in this case, and it is your duty to decide the case on the evidence. You must not go outside of the evidence that has been presented.

You are to apply your reason and judgment to the consideration of the testimony. If from such consideration of the evidence you are convinced beyond a reasonable doubt, if your minds are fully made up and you are

satisfied to that extent that the defendant is guilty, it is your duty to say so. If you have a reasonable doubt as to whether this defendant committed this crime, you must bring in a verdict of not guilty.

Are there any requests?

MR. HAIRE: No requests, your Honor.

THE COURT: Gentlemen, you may pass out.

The jury retired at 4:47 P. M.

The jury returned at 4:57 P. M., and rendered a verdict of guilty as charged in the indictment.

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Emil Reiss.

THE DEFENDANT HAVING BEEN CONVICTED BY A VERDICT OF
A JURY OF THE CRIME OF GRAND LARCENY IN THE
SECOND DEGREE, IS ARRAIGNED BEFORE THE HON.
JOSEPH F. MULQUEEN, J.

THE COURT: Well, I will remand you for a week, but make up your mind to go away this time. I gave you two chances. I suspended sentence on you. After you had been out for a year or two,-- you promised to be a law-abiding citizen, and after you had been out, you start all over again and commit crime. I made an investigation about the other complaints and let you go; but, on this charge, there is not the slightest doubt of your guilt. A man who is out on a suspended sentence must so conduct himself that the Court may be commended for giving him a chance. Instead of becoming a law-abiding citizen, you go out and prey on honest people.

Now, instead of telling the truth in this case, you tried to beat it, and I am going to give you the extreme limit. You can make up your mind to settle all your affairs in one week. If you had owned up this time, I might have sent you to Elmira, but when you have the temerity and audacity to try and beat a case of this kind, after you have three times received a chance, I am going to send you to State's Prison for every day I can give you. We are bound to deal with you just the way you deserve to be dealt with. I tried to save you, and you are now entitled to all you are going to get.

MR. HAIRE: This defendant has all along claimed that he was innocent, and he claims it to the finish.

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THE COURT: He has swindled himself now. That is the worst thing he could do, when he begins to swindle himself. He has swindled other people long enough.

MR. HAIRE: I understand, if your Honor please, but I do not think the proof was very convincing.

THE COURT: Well, now, he may have thought he was innocent; but I think the proof was very clear. He has had a fair trial. That is all. I might have admitted all the previous acts. They might have been received as showing intent on his part to deprive the owners of their property, but I gave him every benefit; and when his friend, Ray, said that he thought this man was giving him buttons, that in itself, in my opinion, was enough to convict him. From the experience he had before he knew enough to keep still. The evidence was that he stood mute. That was the time he was called upon to speak, if he was innocent.

MR. HAIRE: He was not a lawyer.

THE COURT: He was not quite as clever as he thought. There is no question about his guilt. He is a crook and he has to be punished. I was severely criticised by some merchants for giving that boy a chance, but I gave him the chance, and then letters were written about him, and I brought him up and examined him and in-

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vestigated the matter, and let him go again. Is not that so?

THE DEFENDANT: Your Honor, I did not know about the letters.

THE COURT: I had you brought up and re-paroled you last June. I let you go in January, and in June I let you go again. You were up in my room on the reports I received; why, certainly. There is a whole history of your case downstairs. When Judge Rosalsky issued a bench warrant for you, I was angry because I thought you were being persecuted.

MR. HAIRE: His neighbors think he is the best boy living.

THE COURT: He will have a change of neighbors, and the change will probably do him good. I am sorry for him, but I cannot help it any longer. Just let Dr. Stern know he is over in the Tombs.

Remanded for one week.

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COURT OF GENERAL SESSIONS OF THE COUNTY
OF NEW YORK.

-----X
The People of the State of New York, :
: :
-against- :
: :
EMIL REISS. :
-----X

New York City, January 28th, 1910.

Indicted for Grand Larceny, Second Degree, &c.

Indictment filed January 7th, 1910.

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

For the People: Deputy Assistant District Attorneys,
E. Crosby Kindleberger and
Robert C. McCormick.

For the Defendant: R. J. Haire, Esq.

THE DEFENDANT IS ARRAIGNED FOR SENTENCE BEFORE THE
HON. JOSEPH F. MULQUEEN, J.

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MR. HAIRE: I move for a new trial and move that your Honor set aside the verdict of guilty heretofore rendered by the jury, upon the ground that the verdict was contrary to law, contrary to the evidence, and against the weight of evidence, and further upon the entire record of the trial.

THE COURT: Motion denied.

MR. HAIRE: I take an exception.

THE COURT: A man upon whom sentence has been suspended is in a different position from other people in the community. In 1906, he was convicted of some crime, and Judge Rosalsky suspended sentence on him. In 1908, I think, he pleaded guilty before me, and I strained the law to give him another chance. He impressed me then as having been the victim of circumstances, and I gave him that chance. I received constant complaints about him afterwards, and I had an investigation six months after I let him go, and he was warned then that he must lead a straight life--not to keep on the edge like a criminal, but to walk in the broad daylight as an honest man, and to let the people see that he appreciated the chance which the law gave him. Now, the testimony was convincing, and his conduct in this case was simply one of defiance. He relied on the inability of the People to get the proper evidence on him, and he tried to escape by a technicality, or on the

stupidity of some juror, and it is useless now for him to ask for mercy or sympathy. The testimony brought out concerning him in this case was clearly inconsistent with the obligation that he was under to me personally. I risked the criticism of the people and of merchants who pay taxes to be protected in this community. I risked their displeasure and criticism, and I told them I was going to give him a chance.

Now, his conduct on this day was a violation of law, whether he was guilty or not in this case. I have made up my mind that there is no chance for him. He has made up his mind to be a crook, and he will get all that is coming to him, which is five years in State Prison-- no-- I will have to give him an indeterminate sentence. This is the first time he has been sentenced.

Now, on this conviction the other day, I am going to send you to State Prison for not less than two years and six months; and not more than four years and six months; and, at the expiration of that sentence--I am going to revoke the suspension of sentence of January 29th, 1909, on indictment No. 70516--and sentence you to two years and six months in the State Prison, to begin at the expiration of the other sentence. You think our suspension of sentences don't mean anything. You are getting all that is coming to you.

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Two years and six months on the suspension, to begin at the expiration of the other sentence. If you pleaded guilty, you might have got off with Elmira. You took your chances and that is all there is to it.

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