

START

1382

CASE

891 138

I n d e x.

	Direct.	Cross.	Redirect.	Recross.
Isidore Alexander,	2	5		
Hugh Cassidy,	7	10		11
Thomas Barry,	14	17		20
Hugh Cassidy, (recalled),	22			
Constance J. Mancini,	23	24		

138

COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part II.

#1585

----- X
THE PEOPLE OF THE STATE OF :
NEW YORK :
 :
against :
 :
THOMAS BARRY and JAMES CARSON, :
impleaded with DOMINICK :
DALESSANDRO. :
----- X

Before:
HON. OTTO A. ROSALSKY, J.,
and a Jury.

New York, May 22nd, 1911.

Indicted for burglary in the third degree, grand larceny in
the first degree and receiving.

Indictment filed May 15th, 1911.

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

For the People, ASSISTANT DISTRICT ATTORNEY WASSERVOGEL.

For the Defendant (No. 1) CHARLES J. CAMPBELL, ESQ.

(No. 2) THOMAS H. OSBORNE, ESQ.

A jury was duly empaneled and sworn.

James E. Lynch,
Official Stenographer.

138

I S I D O R E A L E X A N D E R, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence 1753 Third avenue)

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Mr. Alexander, what is your business? A Clothing.

Q And your place of business is where? A 1753 Third avenue.

Q That is in the county of New York, is it? A Yes.

Q Have you a store there? A Yes, sir.

Q Facing on Third avenue? A Yes.

Q Did you have that place of business on the 4th of May of this year? A Yes.

Q What time did you close up on the night before?
A About half past ten.

Q What was the condition of the doors and other parts of the building? A Everything was closed up that night.

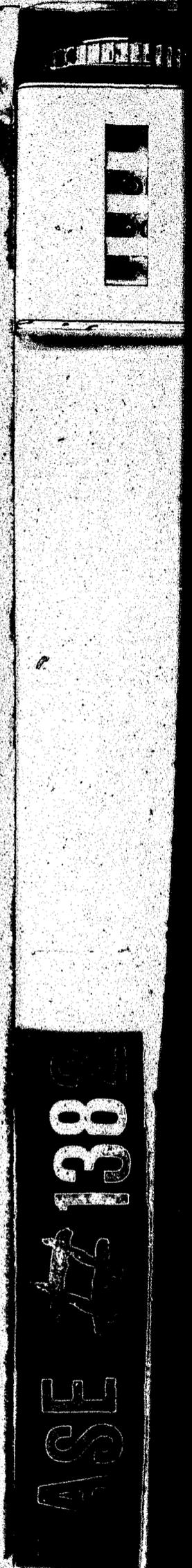
Q Everything was closed up? A Yes, everything was closed up. They broke in the wall, in the hall.

Q Wait, I am simply asking you what the condition was the night before when you left. You say everything was closed up? A Yes.

Q When did you next come to your place? A Next morning.

Q What was the condition that time? A A hole in the wall, they took off the whole goods.

Q There was a hole where? A In the hallway wall,



right in the wall of the hallway behind the stairs.

Q In the hallway leading into your store there was a hole in the wall? A Yes.

Q That hole was not in the wall the night before, was it? A No.

Q Was any of your property missing? A Yes.

Q Tell us what was missing? A There was over \$660.

Q Tell me what was missing?

MR. CAMPBELL: I move to strike that answer out.

THE COURT: Strike it out.

Q Tell me what was missing? A There was cloth missing.

Q Much? A About \$300.

MR. CAMPBELL: Objected to.

THE COURT: strike it out.

Q How much in yards? A The cheapest is \$1.50 a yard.

Q Will you listen to me.

THE COURT: Strike that answer out.

Q How many yards of cloth were missing? A I can't tell you how many yards. We counted them over and got the list in the station house.

Q Do you know how many suits of clothes were missing? A Yes, they took 55 vests and pants and left the coats.

Q Anything else? A Besides single pants, they took over four dozen single pants.

Q How long have you been in this business? A In that



store?

Q How long have you been in business as a tailor?

A About twelve years or more.

Q Do you know the market price -- A (Interrupting) Sure I know.

Q (Continuing) of trousers and vests? A Every ticket was market.

Q Do you know how much you can buy trousers and vests of the kind you say were stolen from you in the open market, how much they would cost? A Yes, the cheapest is \$2.50, the cheapest I buy them.

MR. CAMPBELL: I move to strike it out as not responsive.

THE COURT: Motion granted.

Q What was the market price, the market value, not the price, of a suit of clothes such as that which were stolen?

A The suit of clothes is worth --

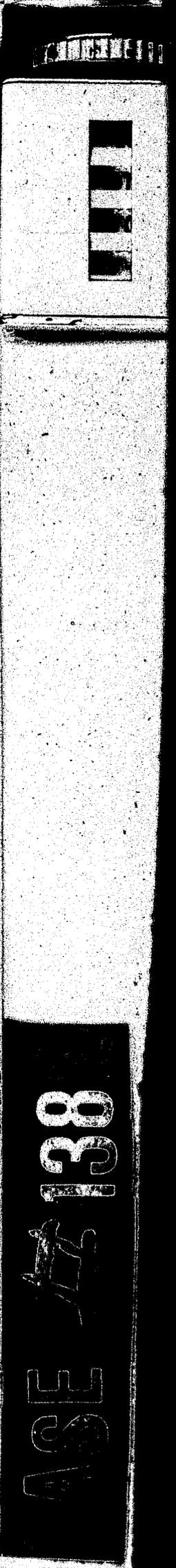
MR. CAMPBELL: Objected to, because there is not testimony here there was a suit of clothes.

THE COURT: Sustained.

THE WITNESS: (Continuing) The suit of clothes --

Q Wait. You say there were 55 vests and trousers stolen? A And the coats were left.

Q What was the market value of a vest and a pair of trousers such as that which were stolen? A Well, when the



coat is left the pants and vest isn't worth much when the coat is left.

MR. CAMPBELL: I will concede the value is \$250.

MR. WASSERVOGEL: All right. It is over twenty-five, anyhow.

THE COURT: And less than \$500?

MR. WASSERVOGEL: Yes, all right.

Q Do you recognize any of this property (indicating)?

A Yes, that is my mark (indicating)

Q What is your tag, is it? A Yes.

Q Your own handwriting? A My own handwriting.

Q How about these tags? A That is all my tag, it is in the same handwriting., right here (indicating), everything is in my handwriting.

Q All in your handwriting? A Yes.

Q This all belongs to you, does it? A Yes, I will show you the mark.

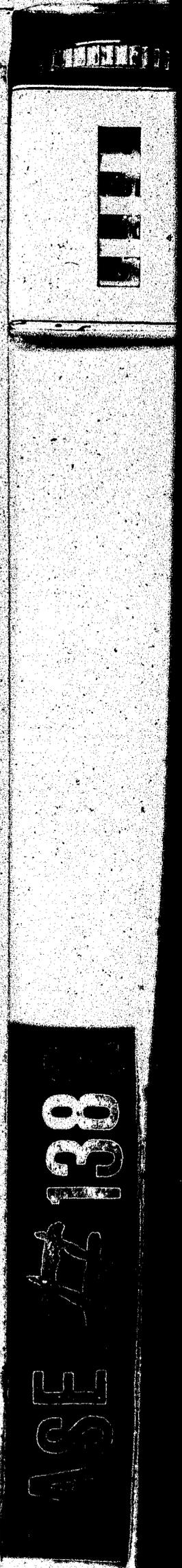
(Marked People's Exhibit 1 for identification)

CROSS EXAMINATION BY MR. CAMPBELL:

Q Are you able to identify that clothing on the table before you by any other means than the tag attached thereto?

A I know that is it.

MR. WASSERVOGEL: I object. No other means is necessary, if there is a tag attached to it.



Q Is that the only way you are able to identify it?

A Yes.

Q When did you first see any of the property after the burglary was committed, how soon after the burglary or your place was broken into did you see any of the property? A There was a detective found them.

BY THE COURT:

Q How many days after? A After they robbed me?

Q Yes? A It was three days. It was Thursday morning and Saturday they found it.

BY MR. CAMPBELL:

Q This property has not been in your possession since that time? A No, the detective found that in the house.

MR. CAMPBELL: I move to strike out the answer.

THE COURT: Motion granted.

Q This property has not been in your possession at any time since the burglary, has it? A Yes, before, yes.

BY THE COURT:

Q Since the burglary, where was this property? A Before it was --

Q Since the burglary where was the property? A It was in my store.

BY MR. CAMPBELL:

Q The police had that all the time? A Yes, that time it was in the police station.

138
CASE

BY THE COURT:

Q These gentlemen have got to pass upon the guilt or innocence of these defendants, and they can only do so if you make intelligent answers to questions. You were asked since the burglary where was the property? Now, if you would only stop and think you could answer it? A It was in the station house.

Q Well, that is an answer.

BY MR. CAMPBELL:

Q Now, the first time you saw these goods in the station house were these tags attached to them? A Yes.

Q The tags were on them? A Was on them, yes.

Q Had the police officers been up to your store before you saw the goods? A I only saw them in the station house.

Q Had the police officers been to your store before they showed you these goods? A No.

MR. WASSERVOGEL: That is all.

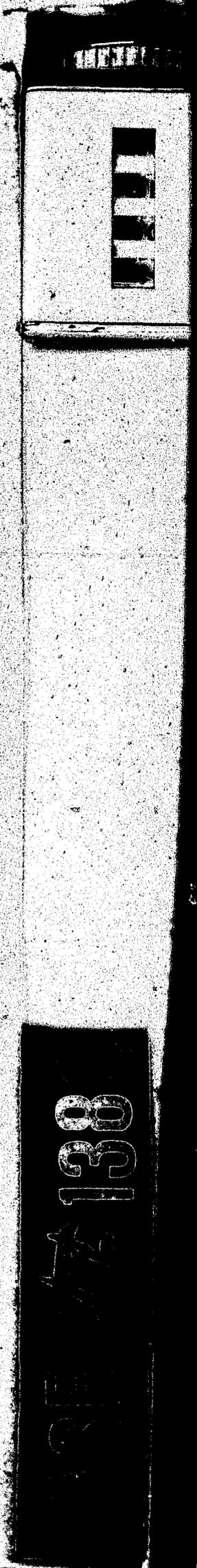
HUGH CASSIDY, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence 1106 East 179th street, Westchester)

DIRECT EXAMINATION BY MR. WASSERVOGEL:

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

Q When and where? A On May 6th, 1911 in the premises 209 East 97th street.



138
961

BY THE COURT:

Q What number? A 209 East 97th street.

BY MR. WASSERVOGEL:

Q Were you alone at the time or in company with another officer? A I was in company with Officer Mancini.

Q What floor of these premises did you go to? A The top floor on the east side of the building in the back.

Q State the circumstances of the arrest? A I went to the top floor in the premises 209 East 97th street and I found the defendant Barry there, not Barry, but Moran --

BY THE COURT:

Q Which is Barry? A The first one (indicating).

BY MR. WASSERVOGEL:

Q This is Barry, is it (indicating)? A Yes, sir. I entered the premises there and I searched around the premises and I found a lot of property there.

MR. CAMPBELL: That is objected to unless he is referring to the property that is here in evidence.

MR. WASSERVOGEL: Well, he will be directed to this property and nothing else.

THE COURT: Objection sustained.

MR. WASSERVOGEL: I simply want the officer to say whom he found there. I have not come to the property yet.

BY THE COURT:

Q Whom did you find there?

?

138

138

BY MR. WASSERVOGEL:

Q I want to know who you found in those premises, not what you found? A I found the defendant Barry and another man I arrested by the name of Dalessandro.

Q During the time you were in that apartment did you see the defendant Carson? A He came in later.

BY THE COURT:

Q The defendant Carson? A Yes, sir.

BY MR. WASSERVOGEL:

Q How much later? A I had been ten minutes then in the premises.

Q Did you ever see any of the property which is before us marked People's Exhibit 1 for identification? A Yes, sir.

Q Where did you see it? A I found that in the premises of the defendant Barry.

MR. CAMPBELL: I move to strike out "The premises of the defendant Barry".

THE COURT: Motion granted.

Q Did you find it in the premises where you found the defendant Barry? A Yes.

MR. BARRY: I now offer it in evidence.

MR. CAMPBELL: Objected to upon the ground that it has not yet been shown these premises were those of the defendant Barry.

Objection sustained.



921 138

Q What sort of place was it, officer? A There was three rooms there.

Q How many people occupied them? A Well, there were two people occupying it when I went there.

Q Who were those people? A The defendant Barry and Dalessandro.

MR. WASSERVOGEL: This property is now offer in evidence.

Q Did you have any talk with either of the defendants?

A I asked Barry if he occupied these apartments and he said he did, with another man by the name of Monahan, or not Monahan, but Delaney.

THE COURT: Received in evidence.

MR. CAMPBELL: Exception.

(Marked People's Exhibit 1 in evidence.)

BY THE COURT:

Q You say Barry told you he occupied the premises?

A Yes, sir.

CROSS EXAMINATION BY MR. CAMPBELL:

Q Did Barry tell you he hired a room there from the defendant, or from Delaney? A No, sir.

Q Did not Barry tell you that Delaney was the tenant of those premises, that Delaney leased the whole apartment?

A No, sir, he told me that him and Delaney occupied that

138

138

premises.

Q Didn't he tell you that he, Barry, paid rent to Delaney? A No, sir.

Q That Delaney hired the premises from the owner? A No, sir, he told me two of them hired it jointly.

Q Barry told you that? A Yes.

Q What else did Barry tell you about this property? A I asked him where he got that property, how he could account for it being in his premises. He said Delaney brought it there. I asked him whether "Did you know it was here?" and he said "Yes, what could I do with it?".

Q He told you, however, that Delaney brought the property there and that he, Barry, had nothing to do with the property? A He told me Delaney brought it there, yes, sir.

Q In what part of the premises did you find that property? A In, well, what is known as the front room. The extreme back room of the three apartments. It faces on the yard which is known as the front room, would answer as the front room, a parlor, like.

Q Did you look for Delaney? A I did.

REDIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What, if anything, did you find with respect to Delaney?

A I never could find any such person as Delaney.

MR. WASSERVOGEL: That is all, the People rest.

138
CASE

BY MR. OSBORNE:

Q Now, in regard to this man Carsons, you say he came in later? A Yes, sir.

Q Is it not a fact that he came downstairs and you arrested him in the hall? A No, sir, he came in the apartment himself. I arrested him there.

Q What did he say he was doing there? A He didn't give me any explanation.

Q Did he say anything about seeing Delaney about pigeons? A No.

Q Don't you know as a matter of fact that Carsons lives next door on the top floor? A That is the address he gave, 207 East 97th.

Q On the top floor? A He did not specify which floor.

Q In the same house? A The next house.

Q The next house? Did you go there to see whether he lived there or not? A I did not.

Q Why note? A I had no occasion to.

Q Well, you say you were searching for stolen property; didn't you go there? Your partners went there with him and found out he lived there? A I don't know what they done.

Q Did they tell you so? A Sir?

Q Didn't they tell you so? A I didn't ask them.

Q You had no conversation with your partners about anything about Carson or where he lived or what he did?

CASE 138

A. Several times we did.

Q. And you do not claim that he occupied these premises, too, do you? A. No, sir.

Q. What? A. I do not.

BY MR. CAMPBELL:

Q. In answer to the district attorney's question you said you could not find there was any such person as Delaney?

A. Yes, sir.

Q. You mean by that you could not find Delaney, don't you? A. I could not.

Q. Where did you look for him? A. I inquired in that house for him.

Q. Did you inquire of the janitor? A. I did.

Q. You found out there was a person by the name of Delaney that lived in that apartment, didn't you? A. I did not.

Q. You did not find that out? A. No, sir.

Q. What was the name of the janitor whom you saw? A. I didn't ask her hername.

Q. You say "her"; was it a man or woman? A. It was a woman.

Q. And how soon after this defendant was arrested did you see the janitor? A. About two hours.

MR. WASSERVOGEL: That is all. The People rest.

MR. CAMPBELL: I move to acquit the defendant Barry, if your Honor please, upon the ground that there is no

138

evidence before this jury to prove beyond a reasonable doubt that the property, the proceeds of the burglary was found in the possession of said defendant.

Motion denied. Exception.

MR. OBSORNE: I ask your Honor to direct the jury to acquit the defendant Carson.

THE COURT: As to the defendant carson, Mr. District Attorney, I doubt whether you have made out a case against him.

MR. WASSERVOGEL: I agree with your Honor, as against Carson. He came in subsequently while the officer was there. I recommend that your Honor direct the jury to acquit Carson.

THE COURT: As against Carson, there being no legal case made out against him, I advise you, gentlemen of the jury, to acquit him.

THE DEFENCE.

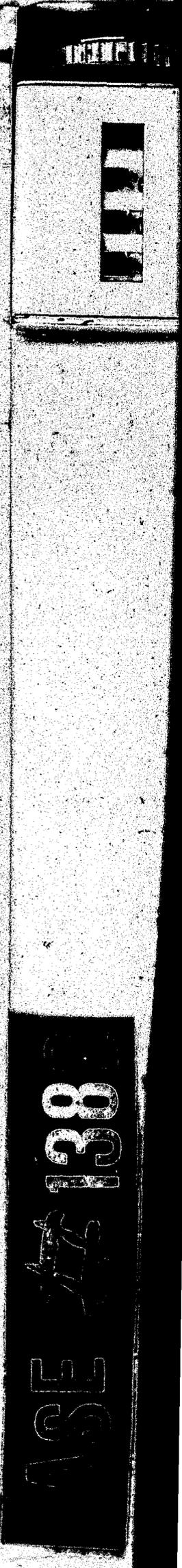
T H O M A S B A R R Y, the defendant, called and duly sworn as a witness on behalf of the defence, testified as follows:

(Residence 209 East 97th street.)

DIRECT EXAMINATION BY MR. *Conkell* WASSERVOGEL:

Q Barry, how long have you lived at 209 East 97th street?

A About two months.



Q With whom did you live there? A John Delaney.

Q What is your occupation? A I make a living on pigeons.

Q In what way do you make a living with pigeons? A I breed pigeons and I catch pigeons and sell them.

Q And was that your business that you were engaged in there? A Yes.

Q Did you have a place on the roof of these premises for catching pigeons? A Yes, sir.

Q On May 4th or about May 4th did you either alone or in company with anybody break into the premises 1753 Third avenue? A No, sir.

Q Did you on or about May 4th or at any other time steal any property from the premises 1753 Third avenue? A No, sir.

Q From whom did you hire your room that you occupied in 209 East 97th street? A From John Delaney.

Q You heard the officer testify that in those premises, he found in the front room thereof, certain articles of clothing which are now before you on the table. Well, you were present when he found some articles of clothing? A Yes, I was there.

Q Either that or clothing resembling that, is that right? A He took a light suit out of there but didn't take none of that clothes.

Q Well, he took some clothing out of there, did he? A Yes, sir.

138

OFFICE

Q And that time he had a conversation with you, didn't he, about the clothing that he found there? A Yes, sir.

Q Did you bring into those premises any of the clothing which the officer found there? A No, sir.

Q Who did bring it in? A There was no clothing in there found, nobody brought any clothing in those rooms there at all. All the things he found there he found in an empty room in the next house.

BY THE COURT:

Q He did not find it in the room where you were? A No, sir, he didn't find it in the room at all. He found it in the empty room.

BY MR. CAMPBELL:

Q Was there an empty apartment? A Right alongside of us, in the back.

BY THE COURT:

Q In other words, he did not see these goods in the apartment where you were arrested? A No, sir, they was not taken out of there for me to see them.

Q When was the first time you saw them? A When he brought them in from the empty rooms in the back where I live. They stopped me in the hall. They didn't catch me in those rooms.

Q Did you tell the officer that Delaney brought the goods there? A No, sir.

ASE 138

BY MR. CAMPBELL:

Q What did you tell the officer with regard to the light suit they took out of there? A He didn't ask me about that. That was hanging up in the closet. They didn't ask me that, they just took the clothes and put it right away.

Q And these dark clothes you say were found next door?

A They were found next door. They was not found in those rooms.

Q Do you know who placed them there? A No, sir.

Q Did you ever see them before the officers found them?

A No, sir.

Q Do you pay any rent? A Well, I help to pay it.

MR. CAMPBELL: Pardon me, I withdraw that question.

Q Did you pay any rent for the apartment next door where these things were found? A No, sir.

Q Have you anything to do with that apartment? A No.

Q Have you a key to it? A No, he even took my keys and tried to open that door and he couldn't open it.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q How many apartments are there on the top floor of the building? A Four.

Q In which apartments did you live, the front or back?

A The back on the east side.

Q Where was the apartment in which you say this property

Q 138

was found? A In the back on the west side.

Q When did you see the officers for the first time?

A I met them in the hall. They asked me where did I live. I told them I lived right in the back here and they says "Can we come in and search the house?" I says, "Sure".

Q Did they have the property in their possession at that time? A In the empty room, they took it out of there.

Q Did they have it in their hands when they asked you that question? A No.

Q Did you go into your place with them? A I opened the door and let them in.

Q And how long after you let them in did you see any of this property? A They searched my rooms; they went over and brought it there and says "Where did this come from, who put this in here?" That's when I saw it.

Q Then you saw it in your room? A After they brought it in.

Q How long have you known John Delaney? A About three months.

Q Is not John Delaney's real name Dominick Dalessandro?
A No.

Q Sure about that? A I am sure about it.

Q Have you been living with John Delaney all this time?

A All this time.

Q Wasn't there some other property found there, too, in

891
138

your place?

Objected to. Objection sustained.

Q When did you last see him, John Delaney? A The last I seen of John Delaney was that morning, Saturday morning, the morning. I got locked up in the afternoon.

Q Did you tell the officers where they could find Delaney?
A I couldn't tell them that because he was not in the house.

Q Well, did you tell them? A No, they didn't ask me. They says, "When will he be in?" and I says "I don't know".

Q You have not seen Delaney since? A No.

Q How long altogether have you been living there? A Me and Delaney?

Q Yes? A Two months.

Q Had you ever lived together with him elsewhere? A No, I never lived before.

Q When did you live in June, 1908? A June, 1908?

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

THE COURT: Objection sustained.

Q Were you ever convicted of any crime? A Yes, sir.

Q When? A June 13th.

Q What year? A 1908.

Q Of what? A Receiving stolen goods.

Q Was it not burglary? A Receiving stolen goods.

Q Sure about that? A Sure about it.

138

Q Well, the indictment was for burglary, wasn't it, and you pleaded guilty to receiving stolen property knowing it to have been stolen? A Yes.

Q And upon that conviction what sentence did you receive? A Thirteen months in Sing Sing for it.

Q That's all.

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q Now, on that occasion you pleaded guilty? A Yes.

Q And you were guilty? A Yes.

Q And you served your full time? A Yes, sir.

BY THE COURT:

Q What have you done for a living since your release from prison? A Well, I have got 64 pigeons up there and I raise out of them and sell them. Then I catch stray pigeons and sell them in the store.

Q How much rent did you pay for this flat? A I only used to give him \$3 a month. I never ate there.

Q How many persons occupied it? A There was me and Delaney occupied it. He had it before I went there. I was living there for two months. There was a fellow by the name of Dominick Dalessandro was only there five days.

Q What room did you occupy? A The bedroom.

Q What room did Delaney occupy? A He slept in the bedroom, too.

ASE 138

Q What room did Dalessandro occupy? A He slept in the bedroom, too.

Q All in one room? A Well, this Dalessandro --

Q (Interrupting) All in one room? A All in one room.

Q Where did you keep your pigeons? A In the kitchen.

Q In the kitchen? A Yes, sir.

Q 64 pigeons? A Yes, sir.

Q What did you keep in the other room? A There was just furniture in there.

Q What did you keep there? A In the front room, the furniture.

Q And in the second room you kept the pigeons? A In the kitchen the pigeons was in.

Q And the third room you three shared? A Yes.

Q You want this jury to understand you paid \$3 a month although you used two of the rooms? A I was there more for the pigeons, that's all.

Q Yes, but you had one room to yourself for the pigeons?

A Yes, sir.

Q You shared a second room? A Yes.

Q What was the rental of that flat? A \$8 a month.

Q Howmuch did Dalessandro contribute? A He didn't pay anything yet that I know of.

Q Did you and Delaney occupy that place? A Yes, sir.

Q That is all.

73E 138

BY MR. CAMPBELL:

Q To whom did you pay your \$3? A Delaney.

Q Dalessandro had only been there five days? A Five days. He was sleeping in the day. He works in the night. He is working on an ash cart.

MR. CAMPBELL: The defence rests.

REBUTTAL.

H U G H C A S S I D Y, a witness for the People, recalled in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Officer Cassidy, did you hear the evidence of the defendant Barry? A Yes, sir.

Q He says that he met you in the hallway of these premises, 207 East 97th street? A 209.

Q 209 East 97th street, and you brought this property into his apartment, did you? A No, sir.

Q Where did you find these goods? A In a closet which we would call the front room of his premises. The goods that I brought from the empty apartment were identified --

Objected to. Objection sustained.

Q You were asked simply with reference to these goods?

A These were found in his apartment, in a closet which would be known as the front room of the apartment.

Q And there was another officer with you at that time?

138

A Officer Mancini.

Q Is he in court now? A Yes.

BY MR. CAMPBELL:

Q Was there a bed in that apartment? A There was no bed. There was one of those iron couches.

Q There was a bedroom in that apartment, wasn't there?

A There was one bedroom which Dalessandro was in at that time.

Q And did you go in the kitchen? A Yes, sir.

Q Did you see pigeons in the kitchen? A I did.

Q That is all.

C O N S T A N C E J. M A N C I N I, called and duly sworn as a witness on behalf of the People, in rebuttal, testified as follows:

(Residence 226 West 4th street)

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Officer Mancini, were you present at the time this defendant was placed under arrest? A Yes, sir.

Q When Officer Cassidy was there? A Yes, sir.

Q Did you ever see any of these articles, People's Exhibit 1? A Yes, sir.

Q Where did you see them for the first time? A In the parlor of the rooms occupied by Barry.

Q Were these goods brought from another apartment into this apartment by any person? A No, sir, they was in a closet.

138

BY THE COURT:

Q That is not the question? A No, sir.

BY MR. WASSERVOGEL:

Q You say you saw them in a closet in the room occupied by the defendant Barry? A Yes, sir.

CROSS EXAMINATION BY MR. CAMPBELL:

Q Where was Barry when you found these goods in the closet? A In the apartments.

Q And in the same part or apartment at the time? A Yes, sir.

Q In the same room? A Yes, sir.

Q Was the closet locked? A No, sir.

Q Did you see Cassidy at any time borrow the keys of this defendant? A I did not.

Q That is all.

BY THE COURT:

Q Was Dalessandro in the apartment at the time? A Yes, sir, he was in the bedroom.

Q Asleep? A Well, he was on the bed.

Q Did you have any talk with Dalessandro in the presence of this defendant? A I asked Dalessandro what was he doing there.

MR. CAMPBELL: Pardon me. I object to that as not responsive.

138

CASE 47-138

THE COURT: Yes.

BY MR. CAMPBELL:

Q Did you have any conversation with him in the presence of this defendant? A Yes, sir.

THE COURT: Proceed.

BY MR. WASSERVOGEL:

Q Tell us what it was? A I asked Dalessandro, I says "Who occupies this flat?" He says "Barry". I asked Barry "Is this your flat" and he says "Yes". That's all the talk I had with him.

BY MR. CAMPBELL:

Q Cassidy was present at the time? A Yes.

Q That is all the defendant said? A That's all.

Q That is all.

MR. WASSERVOGEL: The People rest.

MR. CAMPBELL: I renew the motion.

THE COURT: Motion denied. Go to the jury on both counts, burglary and larceny.

MR. CAMPBELL: I make a formal motion that your Honor take from the jury the count charging burglary.

THE COURT: Motion denied. Exception.

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

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a

CASE 138

recess for five minutes.

AFTER RECESS.

TRIAL RESUMED.

THE SEVENTH JUROR: Will your Honor allow me to ask the defendant a question?

THE COURT: If counsel is willing.

MR. CAMPBELL: Yes, what is the question?

THE SEVENTH JUROR: I wish to ask the defendant when he last saw Delaney?

MR. CAMPBELL: He may answer that.

BY MR. CAMPBELL:

Q (Addressing defendant) When did you last see Delaney?

A That morning when I went out of the house I left him up in the house.

BY THE SEVENTH JUROR:

Q How long have you known Delaney?

MR. CAMPBELL: He already answered that, about three months, but I will let him answer again.

THE DEFENDANT: About three months.

Mr. Wasservogel then closed the case on behalf of the People.

CASE 138

THE COURT'S CHARGE.

THE COURT: Gentlemen of the jury, you will consider two of the counts laid in the indictment against this defendant; the first count charging the defendant with the crime of burglary in the third degree, and the second count charging the defendant with the crime of grand larceny in the second degree.

Ordinarily, under our law, a jury can convict, if they believe a defendant guilty, of only one charge laid in the indictment, but the Legislature of this State has provided, in a case where burglary is committed and where in the same premises an additional crime is committed,--a larceny,-- that the Grand Jury is empowered to indict the defendant upon the two charges. The Legislature has seen fit to make this exception to the general principle of our law that a person may be tried upon a single charge only.

Now, in this case, you are to consider two of the charges against this defendant, burglary in the third degree and grand larceny in the second degree.

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 of burglary in the third degree.

Mr. Isidore Alexander, who was engaged in business in the Borough of Manhattan, County of New York,

CASE 138

testified that he securely locked his place of business and left property therein. It was discovered that the premises were broken into and entered by somebody, and property belonging to this merchant was feloniously stolen, taken and carried away.

The important question for you to determine is, did this defendant commit the burglary? Was he concerned in the commission of the burglary? If he committed the burglary, or was concerned in the commission of the burglary by aiding and abetting another, then did he further either personally steal or aid some other person in stealing the property belonging to this merchant?

If you find that he did, if the evidence in the case satisfies your minds beyond reasonable doubt, you should convict the defendant of the crime of burglary in the third degree and the crime of grand larceny in the second degree.

A person who, with the intent to deprive or defraud 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, steals such property, and where the value of the property is more than \$25 and less than \$500., he is guilty of grand larceny in the second degree.

CASE # 138

Now, what evidence do the People present to you, in order to fasten guilt upon this defendant? It is not claimed that there was any eye witness who saw this defendant commit the burglary. It is not claimed that there was any eye witness who saw this defendant feloniously steal, take and carry away property belonging to the complaining witness; but the People do claim in this case that there is evidence, if you find that this defendant was found in the recent possession of the stolen property, which raises a presumption of guilt which may be considered by the jury, and, in the absence of an explanation as to how he became possessed of the property, authorizes it to infer his criminal connection with its acquisition. This presumption applies to the person charged with the commission of the burglary as well as to the person charged with the commission of the larceny.

Now, the officers visited certain premises and found this defendant therein, and according to their testimony, he stated that he occupied the premises, or that he and one Delaney occupied them. He said, according to the officers' testimony, or one of the officers, that Delaney brought the goods there and that he had nothing to do with the goods; that this apartment consisted of three rooms, one of which was used by the defendant for keeping his pigeons, and another of which was occupied by the defendant, Delaney and Dalessandro.

CASE # 1382

The defendant, on the other hand, denied that the goods offered in evidence by the District Attorney were found in the apartment which was shared or occupied by him and Delaney. He stated that the goods were brought into the apartment by the officers.

So here you have, gentlemen, a very sharp issue of fact, the officers testifying that the property was found in the premises where the defendant was found, and the defendant on the other hand, testifying that the property was taken from the adjoining flat or apartment.

Of course, if this defendant was not in the possession, -- in the exclusive possession of the property, the case of the People must necessarily fail. If the goods were in the adjoining apartment, over which this defendant exercised no dominion or control -- and there is no evidence that he did -- the case of the People equally fails.

The People claim that this defendant and another, Delaney, if there be in fact a Delaney in existence, were occupants of this flat and that both of them had possession of the property. In order to determine whether this defendant had possession of the property, it is absolutely essential and indispensable, before you can find the defendant guilty, to find that he had exclusive possession of the property. That is to say, if he and Delaney had

ASE 138

possession of the property, then if both of them acquired the fruits of the crime shortly after its commission, that raises a presumption of guilt that both were possessed of the goods, the fruits of the crime. Now, if Delaney in fact brought the goods into the place, even though this defendant was the occupant of the apartment, you cannot under these counts in the indictment, convict the defendant, because the charge of the People must rest upon the proposition that this defendant, either himself or with another, was concerned in the commission of the burglary in the premises in question, and while engaged in the burglary committed another crime therein, the crime of larceny. On the other hand, if you should conclude that both were concerned in the commission of the crimes, in the absence of a reasonable, natural and probable explanation as to how they acquired the property, it authorizes you to infer that they criminally acquired it.

The burden of explaining the possession of stolen property is not upon the defendant. The burden never shifts from the People to the defendant. If the explanatory evidence creates a reasonable doubt in the minds of the jurors, the defendant is entitled to the benefit thereof and to an acquittal.

The defendant in this case denies he was in possession of the property. He denies that the property

ASE 138

was brought there by Delaney; the witnesses for the People, however, testified that this defendant told them that he occupied the house and that Delaney brought the property there.

So, therefore, you gentlemen must determine whether the People have established the guilt of the defendant beyond a reasonable doubt. If Delaney brought the property to that place and if either had access to the goods, it cannot be charged to this defendant that he had exclusive dominion and control of the property. That is to say, if other persons had equal right and facility and access to the apartment or trunk or closet where the stolen goods were discovered, possession not being proved to have been exclusive or personal, it is of no value as evidence. However, if you should conclude that there is no such person as Delaney in existence,-- and you are not obliged to accept as evidence the mere fact that a person testifies to a certain thing; you may accept it or reject it, if you believe that a witness has testified falsely in any material particular, and what weight you will attach to the testimony of a witness rests with you -- so that if you should conclude that Delaney is a myth, that he does not exist, that he did not occupy the place, that he did not bring this property there, but that this defendant had control and dominion over it and was in possession of the apartment and that the police officers in fact found the

CASE # 1382

property in that place, it is for you to say whether the defendant was exclusively in the possession and control of the property.

It is claimed that a man named Dalessandro was found in the apartment. This defendant told you that Dalessandro was asleep and that Dalessandro simply remained there for a certain period of time. It is not claimed by this defendant that Dalessandro brought the goods there, so it is a question for you to determine whether or not Dalessandro figures in this case.

If you should conclude that a burglary was in fact committed within a short period of time before the goods were found in the apartment, and that the goods were found in the apartment that this defendant stated he occupied, as testified to by the police -- and according to his own testimony he had one room exclusively for his use and a second room which the three of them shared, and in the room where the property was found they were all there -- if you should conclude that this defendant was in possession exclusively of the stolen property, it is for you to say what interpretation you should put upon such possession.

You must bear in mind that crime is committed in secrecy, and the law, for the purpose of reaching those who violate it, has provided certain rules of evidence for the

1382
CASE

guidance of the jury. The recent possession of stolen property by a person raises a presumption of guilt which may be considered by a jury, and in the absence of an explanation by such person, authorizes them to infer a criminal connection with its acquisition. It is a rule of evidence to aid a jury in determining the circumstances under which a person came into the possession of the fruits of crime.

This defendant was heretofore convicted of crime. I have repeatedly charged you that that fact must not militate against a defendant. For that offence he has paid the penalty to the State by serving his time. You are only to consider his past conviction in determining what weight you will give to his testimony; that is, what weight and credit you will attach to the testimony of a person heretofore convicted of crime; not that a person heretofore convicted of crime is incapable of telling the truth. He may or may not tell the truth; but you have a right to consider the past conviction in determining what weight and credit you will attach to his testimony. The past conviction is no evidence that he committed this crime. It is not introduced for any such purpose. Every person charged with crime is entitled to a fair and impartial trial at the hands of a jury. You must not be moved by prejudice or sympathy for or against any person.

CASE # 1382

The defendant is presumed to be innocent until the contrary be proved. He is entitled to the benefit of every reasonable doubt arising from the evidence in the case. It must be a reasonable doubt, and not a guess. It is such a doubt as a reasonable man may entertain after a careful and honest review and consideration of the evidence. It must survive the test of a reasonable examination and the mental process of reasoning. If there be a reasonable doubt as to the defendant's guilt on both counts, he is entitled to the benefit of the doubt and to an acquittal. On the other hand, if you find that the People have made out a case against the defendant, on both the crimes of burglary in the third degree and grand larceny in the second degree, you may convict him on both counts. If you find they have not made out a case against the defendant, you may acquit him on both counts, or you may convict him of the one of which you believe him to be guilty, and acquit him of the one of which you believe him to be not guilty.

Any requests to charge?

MR. CAMPBELL: No, sir.

MR. WASSERVOGEL: One of the jurors wishes to ask a question.

THE COURT: Is there any objection?

MR. CAMPBELL: No, sir.

CASE # 1382

THE SIXTH JUROR: Was that hallway, he did not state the relation of this defendant's hallway to that room. There was no relation of the hallway that was broken into, the entrance from the hallway into the store, was that hallway the hallway to this defendant's home?

THE COURT: Why, no, that is a different place altogether, is it not?

MR. CAMPBELL: The burglary occurred at 1753 Third Avenue.

THE COURT: Between 97th and 98th streets on the east side of Third avenue, and this defendant lived on East 97th.

MR. WASSERVOGEL: No. 209, right around the corner.

THE SIXTH JUROR: Did you make the remark that Delaney said he brought that property into the room?

THE COURT: The officer said that the defendant told him that Delaney brought the property into the room and the defendant denies that he made any such statement to the officer. Is that clear to you?

THE SIXTH JUROR: Yes, sir.

MR. CAMPBELL: I do not know whether the officer referred to this particular property.

MR. WASSERVOGEL: Your Honor limited him to this property.

THE COURT: I limited him to this property.

USE 138

MR. CAMPBELL: There was testimony as to a light suit.

MR. WASSERVOGEL: That was stricken out.

THE COURT: Gentlemen, you may retire.

The jury found the following verdict:

We find the defendant guilty on both counts, burglary in the third degree and grand larceny in the second degree.

CASE # 1382