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-: I N D E X :-

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

-----X

T H E P E O P L E

-vs-

THOMAS KILLEN, impleaded with:
Abraham Grobtuch and Hyman
Dines.

#1804

Before:

HON. JOSEPH F. MULQUHLEN, J.,

and a Jury.

-----X

Tried, New York, October 28th, 1912.

Indicted for Grand larceny in the first degree.

Indictment filed March 1st, 1912.

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

ASSISTANT DISTRICT ATTORNEY ROBERT E. MANLEY, for the
People.

M. A. SACHS, ESQ., for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

M I C H A E L C O R C O R A N, of 500 Canal Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Corcoran, on the 14th day of last February, what was your business? A Truck driver.

Q Now, keep your voice up. And you drove a truck for whom, at the time? A John J. Harkins.

Q And his place of business was where? A Corner of Canal and Church St.

Q How long had you been a driver for him before the 14th day of February? A About four months.

Q Now, did you have a truck-load of goods to take anywhere, some time on the afternoon of the 14th of February? A Yes, sir.

Q About what time did you start from the stand of Harkins with that truck-load of goods? A I should say about 5:20.

Q About 5:20? A Yes, sir.

Q Did you assist in loading the truck? A Yes, sir.

Q How many horses were on the truck? A One.

Q What kind of a truck was it? A A single truck.

Q Did it have anything on it to indicate who was the owner of the truck? A Yes, sir, it had the name on the side.

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Q What name did it have on the side? A J. J. Harkins.
And it also had the name in front.

Q What was that? A Frank & Bauer, a dry goods house.

Q What is Frank & Bauer? A It's a dry goods house,
but Harkins does their hauling.

Q Now, did the truck have on it the street address of
Harkins? A Yes, sir.

Q Canal and Church Streets? A Yes, sir.

Q And when you left, that day, at 5:20, did you have
any receipts with you? A Yes, sir.

Q And were those receipts from the people who had
shipped the goods, and were they to be signed by the
Morgan Line Steamship Co., to show that that line had
received the goods? A Yes, sir.

Q Now, you had started for what place when you left
your place of business? A I started for the Morgan Line
pier.

Q And that is where? A Foot of West 10th Street
and North River.

Q Foot of West 10th Street and North River? A Yes,
or West 11th Street.

Q Now, tell us just which way you went when you
started to the pier? A I went through Canal Street, right
through Canal Street, and stopped at the corner of Green-
wich, Greenwich and Canal.

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Q And that would be west on Canal Street; would it?

A Yes, sir.

Q And just tell us where on Greenwich and Canal you stopped, on what corner? A I stopped on the southwest corner of Greenwich.

Q So that your wagon was standing upon Greenwich Street or Canal Street when you stopped? A On Greenwich.

Q How far south of the southwest corner, that is, how far south of Canal Street was the wagon? A Oh, about three yards, three or four yards.

Q And the horses heads were towards what street?

A Faced down to the next street, which is Watts Street.

Q Watts is the next street to the south, is it?

A Yes, sir.

Q Now, did you go anywhere when you left the truck at that point? A Yes, sir, I went into a saloon on the corner.

Q Now, on which corner is the saloon? A The saloon is on the southeast corner.

Q And how long did you stay in the saloon? A I should say about three minutes.

Q And what did you see when you came out? A I saw the horse and truck had disappeared.

Q Then you didn't leave anybody in charge of the horse and truck, I suppose, when you went into the saloon? A No,

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sir.

Q Now, when you saw that the horse and truck had gone, where did you go first? A I looked a couple of blocks in each direction, north, south, east and west, thinking that the horse might have walked away alone.

Q Well, did you find it? A No, sir. Then I reported it to the officer on the post, and went down to the Leonard Street station.

Q And I suppose you reported it, that night, to the Harkins Trucking Co.? A Yes, I went back to the stand and reported it to Harkins.

Q Well, did you report it to Louis Joseph, in that firm of the Harkins Trucking Co.? A Yes, that night.

Q And what did you do with the receipts that you had in your pocket? Did you return them to Mr. Joseph?

A Yes, sir.

Q How many cases did you have upon your truck? A Eight cases.

Q Now, if you see these receipts that you had, that day, do you think that you can recognize them? Look those over, and take your time, and look at every one, and see whether those are the receipts? A Yes, sir, those are the receipts.

Q You recognize the firms, do you? A Yes.

Q Well, now, did you at any time after that, on any

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other day after the disappearance of the horse and truck again see the horse and truck? A Yes, on the day after.

Q And where was the horse and truck when you saw it on the day after? A Standing at Harkins' stand.

Q At the corner of Canal and Church Street? A Yes, sir.

Q How it got there, you don't know? A No, sir.

Q And what time of the day was that? A Well, about eleven o'clock.

Q In the morning? A Yes, sir.

Q And the truck which you saw then, the next day, at Harkins' stand, was that the truck with which you started, the day before, to go to the Morgan Line? A Yes, sir, the same truck.

MR. SACHS: Is the officer in court?

MR. MANLEY: No.

CROSS EXAMINATION BY MR. SACHS:

Q Where was the truck standing when you left it?

A At the southwest corner of Greenwich and Canal, on Greenwich.

Q On Greenwich? A Yes, sir.

Q And the horse was facing south? A Yes, sir.

Q But the truck was standing north of Canal Street?

A No, west of Greenwich.

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Q West of Greenwich? A On Greenwich, I mean, on the west side of Greenwich.

Q Yes, on the west side of Greenwich? A Yes, sir.

Q Now, Greenwich runs north and south; doesn't it?

A Yes, sir.

Q And Canal runs east and west? A Yes, sir.

Q And Canal has an uptown and a downtown side; hasn't it? A Yes, sir.

Q Now, was the horse north of the uptown side, or south of the downtown side? A On the south.

Q South of the downtown side? A Yes, sir.

Q Then how could you stop at the northwest corner of Greenwich and Canal? A I said the southwest corner.

Q Oh, I see. And the horse was facing south? A Yes, sir.

MR. SACHS: That is all.

MR. MANLEY: That is all. You may go, Mr. Corcoran.
You need not wait any longer.

LOUIS JOSEPH, of 127 North Ninth Avenue, Mt. Vernon,
a witness called on behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Joseph, what is your business? A Trucking.

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Q And what is the name of your concern? A John J. Harkins.

Q Is that a partnership? A Yes, sir.

Q And the partnership consists of whom? A Catherine A. Harkins and myself.

MR. MANLEY: If your Honor please, the indictment charges that this property belonged to a certain corporation called John J. Harkins Trucking Co., and I ask that that be amended to read the personal property of a partnership, the partners being Catherine A. Harkins and Louis Joseph.

THE COURT: Any objection?

MR. SACHS: No objection.

THE COURT: The amendment may be made.

BY MR. MANLEY:

Q Now, was your place of business in February, and is it still at the corner of Canal and Church Street? A Yes, sir.

Q Did you, in February of last year, have a driver named Michael Corcoran? A Yes, sir.

Q Did you have anything to do with a load of goods leaving your place of business some time in the afternoon, driven by Corcoran? A Yes, sir.

Q What did you have to do with that load? A I helped to load it.

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Q And what did you place on the truck? A Eight cases.

Q And that property was being shipped by whom, what firms? A S. Steinfeld & Co. J. T. Leonard & Co.

Q Where is Steinfeld's place of business? A 600 Broadway.

Q And how many cases did they have in the load?

A Four cases.

Q And J. T. Leonard & Co., where is their place of business? A 45 West 17th Street.

Q How many cases did they have in the load? A One.

Q Now, what other shippers were there? A Morris Brothers, 573 Broadway, one case. Everett, Heaney & Co., of 351 Canal Street, one case, and Widman & Kauffman, of 316 Church Street, one case.

Q Now, that load was bound for where? A The Morgan Line.

Q Did you have any receipts which you gave to the driver, to be signed by the people at the pier, showing that the pier people had received the goods? A Yes, sir.

Q About what time in the afternoon would you say that Corcoran left your place of business? A About half past five.

Q In the afternoon? A Yes, sir.

Q How long was it after that before you again saw Corcoran? A About seven o'clock.

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Q In the evening? A Yes, sir.

Q Did you have a talk with him? Just yes or no. You can't state the conversation. A Yes.

Q After you had a talk with him, did you report anything to the police? A Yes, sir.

Q The police of what station? A 8th Precinct, down in Leonard Street.

Q And how far is Leonard Street from your place of business? A Four or five --- five blocks.

Q Well, your place is in that precinct; is it? A Yes, sir.

Q Now, did you, some time the next day, the 15th of February, receive any word from the police to go anywhere? A Yes, sir. On the morning of the 15th, about nine o'clock, I was told to go over to 75 Ludlow Street.

Q Did you go there? A Yes, sir.

Q When you got there --- well, after you got to 75 Ludlow Street, did you go anywhere at any time? A From there I went to the police station house.

Q Right up here on Center Street? A No, sir.

Q Well, where did you go after that? A To the Leonard Street station house.

Q And now, when you got to the Leonard Street station house, did you see any police officers at any time while you were there? A Yes, sir.

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Q Do you remember who they were? A Why, Lieutenant Summers was there.

Q Well, who else? A Landrigan and Markey.

Q Now, did you have a talk with them? Now, just yes or no to that. A No, sir.

Q Did they say anything to you or you to them? A No, sir, all I was told ----

Q Well, did you have any conversation with anybody in that station house? A I asked ----

Q No, you can't say what you said. Did you say anything to anybody in the station house? Yes or no. A Yes.

Q Did you see any goods in the station house? A Yes, sir.

Q Did you take those goods anywhere that you saw there? A Yes, sir.

Q Where did you take them? A Around to 39 Lispenard Street, and left them there.

MR. MANLEY: Now, as I understand it, Mr. Sachs, you are going to concede the value of the goods mentioned in the indictment, and what they were?

MR. SACHS: Yes, I so concede.

MR. MANLEY: Well, now, it is conceded by the defense that the goods, the case of goods, from Everett, Heaney & Co. were cotton piece goods, consisting of fancy stripe waisting, and that the market

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value upon the day in question, the 14th day of February, was \$175.

It is conceded, further, by the defense that the case of goods shipped by J. T. Leonard & Co. consisted of miscellaneous goods, and that the fair market value, on that day, was \$300.

Also, that the case of goods shipped by Widman & Kauffman consisted of embroideries, and that the fair market value of those goods, on the day in question, was \$123.19.

Also, that the case of goods shipped by Morris Brothers consisted of suspenders, and that the fair market value of those goods, upon that date, the 14th of February, was \$72.

It is further conceded that the four cases of goods shipped S. Steinfeld & Co. consisted as follows: 66 hats, of the value of 50 cents each; 38 towels, of the value of 35 cents each; and 72 quilts, of the value of 67 cents each, and goods consisting of embroideries, laces, silks, cotton and dresses, of the value of more than \$500.

BY MR. MANLEY:

Q Now, did you at the Police Headquarters, upon the 15th day of February, see the goods that I have spoken of, and read into the record? A I seen them in two wagons

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in the street.

Q They were out in the street, in front of the station house? A In front of Police Headquarters.

Q And did you take these goods that I have read into the record to 39 Lispenard Street? A Yes, sir.

Q And did the various shipping clerks from these various firms come there and see those goods? A Yes, sir, all with the exception of one, Everett Heaney & Co.

Q And did those that came there identify the goods that were there? A Yes.

Q And you had these eight cases, as I understand it, in your custody as a truckman, to carry them to the Morgan Line, as I understand it; is that the fact? A Yes, sir.

Q Now, did you, some time upon the 15th day of February, receive any communication from the Police Department as to the recovery of your horse and wagon? A Yes.

Q Did you send anybody to get it? A Yes.

Q Whom did you send? A One of the drivers, named Sullivan.

Q One of your drivers? A Yes, sir.
do

Q And you recall to what part of the city you sent him to get the truck and horse? A Up in Second Avenue.

Q Second Avenue, near what street? A Near Second Street --- or, rather, Eleventh Street.

Q Near Eleventh Street? A Yes, sir.

Q And did you, at some time upon that day, the 15th of February, again see your truck and horse? A Yes, sir.

Q And where was it when you saw it on that day? A In front of the office.

Q It was brought there by Sullivan? A Yes, sir.

Q And was that the truck and horse with which Corcoran had started out, the night before, for the Morgan Line? A Yes, sir.

Q Have you purchased horses? A Yes, sir.

Q And you have had considerable experience in buying and selling horses; have you? A Yes, sir.

Q And you have been in the trucking business, and have had to buy horses for how long? A Well, I'm buying horses for the last five years.

Q What was the market value of that horse upon that day? A \$250.

Q What was the value of the wagon? A About \$100.

CROSS EXAMINATION BY MR. SACHS:

Q Mr. Joseph, you said that four of those cases belonged to S. Steinfeld? A Yes, sir.

Q And one to J. T. Leonard? A Yes, sir.

Q Another to Morris Brothers? A Yes, sir.

Q And another to Everett Heaney & Co.? A Yes, sir.

Q And the last one to Widman & Kauffman? A Yes, sir.

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MR. SACHS: That's all.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q Now, look at these receipts. Have you seen them before? A Yes, sir.

Q Are those the receipts that you gave to Corcoran when he started with his load? A Yes, sir.

Q And did you afterwards receive them back from Corcoran? A Yes, sir.

Q They are made out in duplicate, are they not? A Yes, sir.

MR. MANLEY: I offer these in evidence.

MR. SACHS: No objection.

(They are received and marked People's Exhibit 1).

MR. MANLEY: It is further conceded by the defense that, at about ten p. m., upon February 14th, of this year, Officer Peter Cassidy, of the 17th Precinct station house, discovered a bay horse, harness blanket and single truck, with the name John J. Harkins on it, Church and Canal Streets; and that this horse and truck was found by the said officer at the corner of Avenue C and Sixth Street; that it was kept over night at the Foss Stables, 431 East Houston Street, and returned to Mr. Joseph, of the Harkins Trucking Co., on the following day, as described by Mr. Joseph; and

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that at the time the truck was discovered by Officer Cassidy, no one was in charge of it; and that it had been there on the street for several hours. Do you concede that?

MR. SACHS: Yes, I concede it.

EDWARD J. MARKEY, of the Detective Bureau, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Now, your full name is Edward J. Markey? A Yes, sir.

Q And you are a police officer attached to the Detective Bureau of this city? A Yes, sir.

Q And what is your grade? A Second grade detective.

Q Second grade detective? A Yes, sir.

Q Now, you have been a detective, that is, attached to the Detective Bureau at Police Headquarters, how long?

A A year ago last March.

Q And how long have you been on the police force?

A Ten years.

Q Now, some time in February of last year, and prior to that time, had you been assigned by any of your superior officers to any particular line of duty? A In February of this year, looking up truck thieves along the river-front and

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in the trucking district.

Q And were you acting under the command of any superior officer? A Yes, sir.

Q Of what superior officer? A Lieutenant Summers.

Q Were there any other officers besides yourself acting under Lieutenant Summers in that line of work? A Well, there were different officers on different days. Occasionally Detective Michael Landrigan came down there, and worked for a few days.

Q And you did this work for how long? A Exclusively, for three or four months.

Q Now, state what district did you have? A All in the trucking district, principally along the river-front, I covered; that is, the North River from the Battery up to Gansevoort Street, or 14th Street, constantly walking along the river-front and the side streets.

Q And did you spend some of your time at the vicinity of Canal and the North River? A Yes, sir, from about four to seven o'clock at night, when there were great lines of trucks at the different piers.

Q And does that district include the Morgan Line of steamers? A Yes, sir.

Q Now, had your attention, prior to Wednesday, the 14th of February, ever been drawn to this defendant, Thomas Killeen? Just answer that yes or no. A Yes.

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Q On how many different occasions before this day that we are talking about had your attention been drawn to Killeen? A About three or four times.

Q And you had seen Killeen in what part of the city on those three or four times? A In the neighborhood of Canal and Spring, Houston, King, around that neighborhood.

Q Now, upon the 14th day of February, in the afternoon, where were you? A At the corner of Canal and Greenwich.

Q Where had you come from, a little while before that? A Maiden Lane and Broadway, after seeing Lieutenant Mike Summers, and I went to the Ninth Avenue L station, at Cortland Street, and I went north to Desbrosses Street, and got off.

Q And when did you get off at Desbrosses Street? A I should judge about 5:30 at night, or thereabouts.

Q About 5:30 in the afternoon, you mean? A Yes, sir.

Q And, when you got off at Desbrosses Street, what course did you take? A North, on the west side of Greenwich Street.

Q To where? A To in front of 478 Greenwich Street.

Q Where did you go from there, if anywhere? A Stood there.

Q What number on Greenwich? A 478.

Q That is between what streets? A Right two doors south of Canal Street.

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MR. SACHS: Pardon me, Mr. Manley. Have you got the minutes of the Police Court in this matter?

MR. MANLEY: I think I have.

MR. SACHS: May I see them?

MR. MANLEY: Well, I am conducting this examination just at the present time.

MR. SACHS: Well, I think that you might extend that courtesy to me, to save time when I examine this witness.

THE COURT: No, the jury will disregard the remarks of counsel, and also the interruption. Proceed.

BY MR. MANLEY:

Q And how long did you stay there? A About 15 or 20 minutes.

Q Was your attention drawn to anybody in that vicinity?
A Yes, sir; to Killeen and two unknown men, standing on Renwick Street, just one block east of Greenwich Street.

Q Is that a short block there at that point? A Yes, sir.

Q Renwick Street runs to Greenwich Street? A Yes, sir.

Q How many feet would you say? Can you form an estimate? A I should say about 200 feet or so.

Q How was your attention drawn to those three or four men standing there? A Having recognized both Killeen and

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this other unknown man, having seen them on other occasions along the river-front.

Q Why was it, upon this evening, that you had gotten off at Desbrosses Street? A Simply for the purpose of covering the district of Canal Street and thereabouts, along the river-front.

Q Was that the time when trucks were on the street, every evening, with loads? A Yes, especially on West Street, where there is always a ^{long} line of trucks in front of those piers, at that time in the night.

Q Now, what happened when you saw those men? A I saw the three men walk to Canal Street, until they came to about 50 feet from the corner of Greenwich, and took a south westerly direction, in the direction of a truck that had been left by Michael Corcoran in front of the building where I was standing.

Q You didn't know Michael Corcoran at that time, I suppose? A No, sir.

Q But you found out his name afterwards? A Yes, sir.

Q And did you see the truck before you saw these young men? A No, sir, after I saw them.

Q You saw the men first and then the truck? A Yes, sir.

Q Did you see the truck being driven there? A Yes, sir.

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Q Now, where was the truck left when it came there?

A Right directly in front of the building where I was standing. It was on the west side of Greenwich Street, facing south.

Q The horse facing south? A Yes, sir.

Q How far from the corner was the place where you were?

A Two houses from the corner.

Q Were you at that time standing on the street or were you inside the place? A I was standing right on the doorstep, with my back to the door.

Q Well, how were you dressed at that time? A Well, I was dressed about as shabby as anybody along the riverfront, I suppose.

Q Well, as a detective, you did not wear uniform, I suppose? A No, sir, I did not.

Q And you say you were dressed shabbily? A Yes, sir; I was dressed up for that purpose.

Q How were you dressed? A An old blue shirt and a pair of pants that were greasy.

Q And where did the truck come from before it stopped at that point? A Came from Canal Street. And I was standing in the doorway, and it pulled up to me, and I couldn't say whether it came from the east or west.

Q Now, when the truck stopped at the point you have indicated, where were the men? A Corner of Renwick and Canal.

Q And how long had the truck been at the point you have indicated before they started to walk west on Canal Street?

A Why, the driver had hardly got off the truck when they started to walk over.

Q And where did the driver go? Did you see? A Yes.

Q Where did he go? A To a liquor store on the southeast corner of Canal and Greenwich.

Q And did you stay where you were all the time? A Until they came close to the truck, and then I jumped into an office in the building there.

Q How close had they got to the truck before you went inside? A Maybe ten or fifteen yards.

Q From the truck? A Yes, sir.

Q And did they continue to walk all the time upon the north side of Canal, before you got inside of the place?

A Yes, sir.

Q So that the time that you got inside, they were on the north side of Canal Street? A No, sir; they had left the north side of Canal Street then.

Q And how far were they from the north side of Canal Street, when you got inside of the place? A Why, they were half way across the street.

Q About the center of Canal Street? A Yes, sir.

Q In what direction were they walking at that time?

A In a southwesterly direction.

Q And was that up in the direction of the truck?

A Yes, sir.

Q Now, what did you do when you got inside the place?

A Took off the coat I had on me, and picked up a broom that was alongside of me, and started to sweep the floor.

Q Did you take off more than one coat? A Yes, sir, I took off both coats, my overcoat and sack coat.

Q Did you see a broom standing there? A Yes, sir.

Q Before taking that broom --- you can't state what you said --- did you say anything to anybody inside? A Yes, sir.

Q And was it after that that you took up the broom?

A Yes, at the time I was picking up the broom, I passed that remark inside.

Q And you began to sweep, you say? A Yes, sir.

Q And are there windows looking out to Greenwich Street in the place where you were? A Yes, sir; three-quarters of the door was glass and there was a window in it.

Q Now, what did you see next? A I saw Killeen and this other unknown young man go towards the truck, and Killeen passed around the front of the horse's head, and walked south on the west side of Greenwich Street towards Canal. This other unknown man come to the doorway, and looked into the door.

Q What door? A The doorway of the office where I was

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standing.

Q And were you still sweeping? A Yes, sir, that's the time I started to sweep. This unknown man then walked to the truck, and jumped up on the shaft, and sat upon a case, one of the cases on the truck, and Killeen retracted his steps, and got in front of the truck, and handed the end of the blanket that was thrown over the horse to the unknown young man that was sitting up on the cases.

Q Was there a blanket on the horse? A Yes, sir, it had been thrown on the horse by Corcoran.

Q And did Killeen take the blanket off the horse? A No, sir; he lifted up the corner so that the unknown man up on the cases could lift it up, and put it under him, to sit on.

Q And did the unknown man do that? A Yes, sir. And then the off side line dropped out of the unknown man's hand, and Killeen handed the line to the unknown man, and then the unknown man drove the truck south to Watts Street.

Q Now, just a minute. At the time when the unknown man came, and looked in the door or window where you were, how close did he get to you, in feet? A About as close as that table, about four or five feet (indicating the District Attorney's table).

Q Now, go on with your story. A The truck was then driven south to Watts Street by the unknown man.

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Q And where is that street? A One block south of Canal. And Killeen, after it got around on Watts Street, about 75 feet, jumped upon the truck.

Q And in which direction did it go on Watts Street?
A East.

Q And is the southwest corner of Canal and Greenwich Street, where you saw the truck, in the City and County of New York? A Yes, sir.

Q Then what happened? A And the truck was driven east, over to Broome Street, to the Bowery, and north on the Bowery; and, a little south of Cooper Square ---

Q Now, just a minute. At the time when Killeen got on the truck, how far was the truck east of Greenwich, on Waats Street? A Maybe just about 75 feet.

Q Did the truck stop when he got on? A No, sir, it was going on, just the same.

Q And how fast was the truck going? A About as fast as the truck could go.

Q And where did Killeen get on the truck, what part of the truck, I mean? A The left hand side of the truck, and sat beside him, by the side of the man that was driving.

Q And then you say the truck got over to Cooper Square?
A Yes, sir. And Killeen got off and spoke to some well-dressed young man, and then hopped on the truck again.

Q Did the truck stop when he got off? A No, sir, Killeen got off the truck while the truck was in motion.

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And then it went east on Fifth Street to Second Avenue, and north on Second Avenue to Seventh Street, and east on Seventh Street until it got in front of 73 and 75 East Seventh Street, between First and Second Avenue.

Q On which side of the street is it, 73 and 75 East Seventh Street? A North side.

Q And what happened there? A There was a van in waiting there.

Q Did you see a van there? A Yes, sir.

Q And what happened there? A The two trucks were backed into one another, and the eight cases on the truck, that had been driven from Greenwich and Canal Street, was transferred into this van. The empty truck was then driven east on Seventh Street, to First Avenue, by Killeen, and then I followed the van to Second Avenue, and south on Second Avenue to First Street, and east on First Street, to Ludlow Street.

Q That is, the wagon to which the goods had been transferred? A Yes, sir.

Q And where did that go? A It was driven into a stable at 75 Ludlow Street. I stood there on watch all night long.

Q Now, let us go back a little from that. I want to ask you some details. How fast did the truck go from the time it got into Watts Street until it got into Seventh

Street? A Well, a good gait, as fast as a horse could travel with a heavy load.

Q And did you walk or run to follow it? A I had to run occasionally.

Q Did you have it in view all the time? A All the time; never lost my view of it.

Q How close did Killeen get to you at any time when he walked in front of the truck at Canal and Greenwich Streets, and took hold of the off line, and did something to the blanket? A The width of the sidewalk.

Q Well, that's about how many feet? A About eight feet; eight or ten feet, I'm not sure.

Q How late was it at that time? A 5:30.

Q And how light was it? A Dusk.

Q It was just starting to get dark? A Yes, sir.

Q Do you remember whether the street lamps were burning at the time? A No, sir.

Q At the time when you saw Killeen get off the truck at Cooper Square, how close were you to the truck? A Just about 150 feet, or so, about that distance.

Q Well, now, when he got off, and saw this well dressed young man, did those two stand still, or did they follow the truck, which you said was in motion all the time? A Followed the truck.

Q Now about how long before Killeen got back on the

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truck? A Maybe half a block or so.

Q Now, this point, 75 --- what was the number on Seventh Street? A 73 and 75.

Q And where is that in the block? A About the center of the block, between First and Second Avenues.

Q Now, when that truck stopped at that point where that empty van was there, did you go anywhere when you first got there, or did you stay there? A I went to First Avenue, the northeast corner, the butcher shop.

Q And you went there for what purpose? A To discard my overcoat.

Q Did you have to pass by the truck and van when you went over there? A I passed by on my way back. I passed by the empty truck, which was being driven by Killeen and was as close to him as I am to you, almost, except the height in the air of the truck.

Q Now, you were following behind, I suppose, when the truck got into Seventh Street? A Yes, sir.

Q And, as I understand it, you went to leave your coat at Seventh Street and First Avenue? A Yes, sir.

Q Did you get to that point where you left your coat by passing the van or truck, or did you go through some other street? A By passing the van and truck.

Q And you say it was on the north side, the van?
A Yes, sir.

Q And did you pass on the south or north side when you went over to leave your coat? A The south side.

Q And how long were you gone before you came back, after leaving your coat? A About three or four minutes, I should judge.

Q When you came back, did you station yourself on the north side or south side of the street? A On the south side, diagonally across from the truck.

Q And at the time when you got back from leaving your coat, had they transferred the cases? A Practically all; nothing but the tying up of the cases then.

Q And how far were you from them when you got back, would you say? A Well, the width of the sidewalk, and the street, about 75 feet; I can't be sure.

Q Now, how many persons were in charge of or around the empty van; how many had charge of the van when Killeen and the unknown man drove up with the truck? A Two or three; I am not sure of that, Mr. Manley, because I didn't take particular notice of that.

Q Well, how many men did you see there, when they first came? A All told, about five people.

Q I'm not asking about those who had anything to do with the truck that was stolen, but about the empty van. Was anybody there when you drove up, near the van? A One man.

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Q And what became of the man to whom Killeen had spoken, down at Cooper Square, after Killeen got back on the truck? A Then I saw him next assisting in unloading the truck, in Seventh Street.

Q Did you see him follow after the truck from Cooper Square? A This unknown man?

Q Yes. Now, perhaps I don't make myself clear. Now, you say that, at Cooper Square, Killeen got off and talked to a well-dressed man? A Yes, sir.

Q And then got back on the truck? A Yes, sir.

Q And what became of the well-dressed man after that? A I didn't see him after that.

Q Could you tell how many were concerned or helping in the transfer of the goods from one truck to the other on Seventh Street? A There might have been five people.

Q Well, now, you say that, after the transfer, Killeen started east with the original truck, the empty truck, towards First Avenue? A Yes, sir.

Q Now, at that time, on which side of the street were you? A The south side of the street.

Q When he drove towards First Avenue, did he drive on the north side or south side of the street, Seventh Street? A About the center of the street.

Q And how far was he then away from you when he passed you? A The difference of the width of the sidewalk and

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the center of the street, about ten feet.

Q And did you get a good look at him at the time?

A Yes, sir.

Q And was there anybody else on the truck at that time? A No, sir.

Q And then you say that you followed the truck, the van, to which the goods had been transferred? A Yes, sir.

Q Now, that van, when it started away from Seventh Street, had how many people on it, would you say? A Well, I couldn't take notice of that. I saw one get up on the right side. I didn't see whether anybody else was in the van at the time, because I was in the rear of the van at the time.

Q Well, you saw Killeen drive the truck or wagon?

A Yes, sir.

Q And another man get on it? A Yes, sir.

Q And what became of the unknown man who was on the truck with Killeen, what became of him? A He walked west on Seventh Street.

Q And what became of the other one or two men who assisted in the transfer from one truck to the other? A I don't recall where they went, whether they went north or south.

Q What was your object at that time in doing as you did?

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MR. SACHS: I object to that.

MR. MANLEY: Question withdrawn.

BY MR. MANLEY:

Q You say you followed the truck to which the goods had been transferred? A Yes, sir.

Q And followed it to 75 Ludlow Street?

MR. SACHS: I object to that, or anything that transpired after Killeen supposedly drove away on Seventh Street.

THE COURT: Objection overruled.

MR. SACHS: Exception.

A Yes, sir.

BY MR. MANLEY:

Q And have you testified that the truck went in there, with a load of goods on it, 75 Ludlow Street? A Yes, sir, it went into 75 Ludlow Street.

Q Did you see that truck come out again? A Yes, sir.

Q Could you state whether or not it was driven by the same man who drove it in? A No, sir, I couldn't state that.

Q When the truck came out, was it loaded or empty?
A Empty.

Q How long did you stay there, at 75 Ludlow Street?
A I stayed there until about seven o'clock the following morning.

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Q Did other police officers assist you? A Yes, sir.

Q What happened on the morning of the 15th? A About seven o'clock, the following morning, a white horse came out, drawing a single wagon, covered over with white duck canvas, roped all around, and Dines, - the unknown man, drove the wagon out of the stable --- and he jumped on it just as it got out of the door. And it went east on Broome Street and Detective Landrigan and I --- I having obtained a wagon at four o'clock that morning to follow---

MR. SACHS: I object to this.

MR. MANLEY: Well, I will not go into this any further, into the details.

BY MR. MANLEY:

Q And to what place did you follow the truck? A 34th Street and East River.

Q And did you place the two men on it under arrest?

A Yes, sir.

Q Abraham Grobtuch and Hyman Dines? A Yes, sir.

MR. MANLEY: And it will be conceded, I suppose, that the goods were taken from 34th Street and East River to Leonard Street.

MR. SACHS: No, I will not concede anything now. I might as well concede your whole case.

BY MR. MANLEY:

Q Well, where were the goods taken from the 34th Street

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Ferry? A To the Leonard Street station house.

MR. SACHS: I object to that as immaterial, irrelevant and incompetent, and not binding on the defendant.

THE COURT: Objection overruled.

MR. SACHS: Exception.

BY MR. MANLEY:

Q And from the Leonard Street station they were taken where? A They were taken over to Lispenard Street.

Q And they were there examined by Louis Joseph; were they? A Yes, sir.

CROSS EXAMINATION BY MR. SACHS:

Q What time was it, Lieutenant, that you left Summers on the elevated, at Desbrosses Street, on the 14th?

A I didn't leave him at Desbrosses Street, on the elevated.

Q Well, what time did you leave the elevated? A Around 5:20 o'clock, or thereabouts.

BY THE COURT:

Q In the morning or afternoon? A Afternoon.

BY MR. SACHS: In the month of February? A Yes, sir.

Q How long have you been a member of the police force?

A Ten years.

Q Do you know at what time the lights are lit up in the winter time in this city? A Well, at different times

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in the year.

Q Well, during the month of February, as a rule, when are the lights lit? A Around 5:30 or 6 o'clock. It's according to the man who lights the lights.

Q Now, don't you know, as a matter of ordinance, that the lights must be lit at a certain hour? A Yes.

Q Do you know what that hour is? A I can't recall just now.

Q Is it as late as 5:30 o'clock in the winter time? A I don't think it is.

Q You said, in answer to Mr. Manley's question, that none of the lights were lit at the time you saw the wagon at Greenwich and Canal Street; is that right? A Yes, sir.

Q Now, you were assigned to look after these truck thieves in the month of February? A Yes, sir.

Q Of this year? A Yes, sir.

Q In February, of 1912? A Yes, sir.

Q By whom were you assigned to look after the truck thieves? A Lieutenant Michael Summers.

Q And was he your direct commander? A Yes, sir.

Q Is there any place where it can be found as matter of record that you were assigned to look after truck thieves?
not
A No, unless there is a verbal record.

Q And what day was that in the week? A Wednesday.

Q The 14th? A Yes, sir.

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Q And how long before that had you been directed to look after truck thieves? A About two months before.

Q You have just said it was in February? A And prior to that, also.

Q Didn't you say that it was in February, 1912, in answer to Mr. Manley? A That month and in other months.

Q And you didn't say that it was in that month that you were first directed? A No, sir.

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

Q And during the time that you looked after truck thieves, you spent that time along the river front? A Yes, sir.

Q At certain hours of the day, or certain particular times? A The principal time of the day was the trucking time, as you might term it.

Q After four o'clock in the afternoon? A Yes, sir.

Q And you covered the North River front? A Yes, sir.

Q From the Battery to Gansevoort Street, or 14th Street, you said? A Yes, sir.

Q Of course, during that time, you saw hundreds and thousands of persons; didn't you? A Yes.

Q And innumerable trucks? A Yes, sir.

Q Leaving Desbrosses Street at 5:20, where did you go? North or south? A North.

Q To what street? A Canal and Greenwich.

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Q How far is Canal and Greenwich Streets from Desbrosses Street? A Three blocks.

Q And how long about did it take you to go up there?

A Oh, three or four minutes, I suppose.

Q And you went along what street? A Along Greenwich Street.

Q Where was it you first saw the unknown man who, you say, afterwards jumped on the truck? A Where was it I first saw him?

Q Yes. A At Renwick and Canal.

Q How far is Renwick Street from Greenwich Street?

A One block.

Q East or west? A East.

Q Had you gone to the corner of Canal and Renwick Street at all, that afternoon? A No.

Q And where were you when you first saw the youngman at Renwick and Canal Street? A On Greenwich Street, a couple of feet south of Canal, on the west side of the street.

Q That is where you were standing at the time you saw the unknown man at Renwick Street? A Yes, sir.

Q Does Renwick Street run in the same direction in which Greenwich does? A Yes.

Q Well, if the unknown man was standing at the corner of Renwick Street, and you were on Greenwich Street, south of Canal Street, how could you see the corner of Renwick

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Street? A Because the southeast corner of Greenwich and Canal is very much more to the south than the southwest corner of Canal and Greenwich. I should say it was more than 75 feet to the south than the southwest corner, that is, where the curbing is.

Q Now, had you been standing at the corner of Greenwich Street for any length of time when you saw this unknown man? A No more than I got there, I saw him.

Q And at that time were there other persons going to and fro along Greenwich Street? A Yes. Very few, though.

Q And Canal Street as well? A Very few, walking in that vicinity at that time of night.

Q And were there trucks on Greenwich Street, going north and south? A Very few.

Q But were there trucks on Greenwich Street? A Yes, a few.

Q And on Canal Street? A Yes.

Q Going east and west? A Yes, sir.

Q And at the time you got to Greenwich and Canal Street, had any trucks stopped at that corner? A There were two empty trucks stopped in front of the liquor store, on Canal Street.

Q Was there any truck standing on Greenwich Street, facing south when you got there? A No, sir.

Q Now, after you got to Greenwich and Canal Streets,

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did you turn into Canal Street at any time? A No, sir.

Q But it was shortly after you arrived there that you saw the unknown person and a person who, you say, was this defendant, coming down towards Greenwich Street? A Yes, sir.

Q While they were walking down, had any truck stopped at Greenwich and Canal? A Yes.

Q Was this the truck driven by Corcoran? A No, sir.

Q How far was the defendant, as you say, and the unknown man from the corner of Greenwich and Canal Street, before Corcoran's truck drove up there? A They were standing at Renwick and Canal when the truck drove in front of where I was standing.

Q Well, now, that's what I asked you before. A I didn't understand your question that way, counselor.

Q Did the unknown man and the defendant start to walk towards Greenwich and Canal, or were they walking towards Greenwich and canal, at the time that Corcoran drove up with his truck? A Well, I wouldn't swear to that point, whether they were then walking or started to walk just then.

Q But you were watching them? A Yes.

Q And how far were you from the place where Corcoran stopped his truck? A The width of the sidewalk.

Q Did Corcoran's truck get off your view in any way?
A No, sir.

Q And when Corcoran's truck stopped there, you still had a full view of the unknown man and the person that you say was the defendant? A Yes, sir.

Q Coming down? A Yes, sir.

Q Now, how long was it after you stopped at the corner of Greenwich and Canal Street that Corcoran drove up with his truck? A About 15 minutes or so; it might have been ten.

Q And it was 5:20, you say, when you left the elevated station? A Yes, sir.

Q And then it took you about three minutes to walk there from the elevated station? A Yes, sir.

Q And then it was about 5:23 when Corcoran drove up with his truck? A Yes, sir, about that.

Q How long did Corcoran stop at the corner, before he got off his wagon? A Immediately after stopping, he got off the wagon; after throwing the blanket on the horse.

Q While the truck was standing on the corner of Greenwich and Canal Streets, you still had a view of the unknown person and the person you say was Killeen, coming down towards Greenwich Street? A Yes.

Q Had you ever spoken to Killeen before you placed him under arrest, or before he was placed under arrest? A Do you mean the day I placed him under arrest?

Q No. Had you ever, before Killeen was placed under arrest, spoken to him? A No, sir.

Q Did you know where Killeen lived? A No, sir.

Q Now, the unknown man got upon the truck; did he?

A Yes, sir.

Q And shortly after, Killeen joined him on the scene?

A Yes, sir.

Q How many men, are there, attached to the Detective Bureau? A There must be about 500 men.

Q Did you, from the time the truck left the corner of Greenwich and Canal, and went south to Watts Street, until it reached Seventh Street, see any other detective?

A No, sir.

Q Did you, from the time it left Greenwich Street, until it reached Seventh Street, see any police officer? A I might have. I don't just recall. I might have seen one, but don't just recall.

Q You don't know whether or not you saw a uniformed police officer from the time you left Greenwich and Canal Street, up to the time you reached Seventh Street? A No, sir; my mind was concentrated on that case, and that case only, and I had no eyes for anybody else.

Q You walked the streets after the truck; didn't you?

A Yes.

Q And sometimes you had to go a little faster than a walk; didn't you? A Yes.

Q And these two men were on the truck? A Yes.

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Q And you don't know whether, from the time you left Greenwich Street until you reached Seventh Street, you saw a police officer? A No, not positively, no.

Q Of course, you know the uniform of a police officer; don't you? A I should hope so.

Q And in the City of New York, at six o'clock in the evening, in February, you say you can't tell this jury whether you saw a single police officer? A I might have seen one, but I don't recall it, counselor.

BY THE COURT:

Q It made no impression on you, if you did see one?

A No, sir, it didn't, your Honor.

Q And you were not looking for a police officer; were you? A No, sir, no, your Honor, I wasn't.

BY MR. SACHS:

Q How long did it take from the time the truck left Greenwich Street until it reached Seventh Street? A Twenty or twenty-five minutes, or it might be thirty minutes.

Q From the time the truck left Greenwich Street, until the time it reached Cooper Square, did you follow behind the truck? A Yes, sir.

Q How far behind? A Sometimes a hundred feet and at other times 150 or 200 feet.

Q And on what side of the street were you while the truck was on the Bowery? A The left hand side of the

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street, the left side, going north.

Q And the truck was on what side of the street? A The right hand side of the street, the east side of the street, going north.

Q And you were 200 feet away on the opposite side?

A About that.

Q And it was rather dark at six o'clock in the evening; wasn't it? A Yes, just getting dark.

Q And it is your estimate that the truck got to Cooper Square about six o'clock; isn't it? A Yes, sir, about; five or ten minutes after, or thereabouts.

Q Now, how long a time did it take from the time the unknown man and Corcoran --- Killeen, I mean --- came to the truck, until it drove away? A That is, from the time Corcoran left the truck?

Q No, from the time the unknown man and the person you say was Killeen came to the truck, until it drove away?

A How long was it standing in that spot? I don't quite get you, counselor.

Q How long did it take from the time the unknown man and the person you say was Killeen came to that truck, before it drove away? A If I get you right, about three or four or five minutes; I don't know which.

Q And you say that Killeen and the unknown man came from Renwick and Canal Street? A Yes, sir.

Q Now, from the time they reached the truck until the unknown man drove away, how long did it take? A About two minutes, or two minutes and a half.

Q The truck was on the west side of Greenwich Street; wasn't it? A Yes, sir.

Q And you were on the west side of Greenwich Street? A Yes, sir.

Q In a store? A Yes, sir.

Q And you say that Killeen was on the right hand side of the horse, the off-side? A Yes, sir.

Q Not the near side? A No, sir.

Q He was on the off-side? A Yes, sir.

Q Was the horse and wagon between yourself and Killeen at any time? A No, sir.

Q Was the building in which you were north or south of the horse? A Directly in front of it.

Q Directly in front of the horse? A Yes.

Q How high did the horse stand? A About 15 hands, 3 inches; about that.

Q How high is that? A About up to my face (indicating).

Q Now, the horse was between a portion of Killeen's body and your view; wasn't it? A No, sir.

Q Now, you say that you followed it up, followed up the truck, to Greeley Square? A Cooper Square.

Q Cooper Square? A Yes, sir.

Q And there Killeen got off, and spoke to some man?

A A little south of Cooper Square, I said; not Cooper Square.

Q Did the truck go on? A Yes, sir.

Q It didn't stop; did it? A No, sir.

Q About how long did Killeen spend in talking to those well-dressed young men? A A youngman, I said, one young man it was. While the truck went about half a block or a block. I didn't pay particular attention to that. I stood at a safe distance away until Killeen got on the truck again.

Q At the time you were following the truck, and while Killeen was talking to this young man, a little south of Cooper Square, did you get any nearer to the truck than Killeen did? A I don't think I did, no.

Q Eh? A I don't think I did.

Q You don't think so? A No, sir.

Q In other words, at the time that Killeen stopped talking to the other young man, you were still south of Killeen? A Yes, sir.

Q And the truck was going ahead? A Yes, sir.

Q Now, at the time Killeen stopped talking to the young man, the truck, you say, was about a block away?

A About that. I don't just recall the distance exactly.

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Q And you were on what side of the street then?

A West.

Q And did Killeen stop and speak to the young man on the east side of the street? A They were running along, walking along, running along while they were talking.

Q And then they didn't stop to talk? A No, they were running along.

Q And at that time there was a distance of the Bowery separating you? A Yes, sir.

Q At least? A Yes, sir.

Q And the Bowery at Cooper Square is rather wide; is it not? A Yes, sir.

Q Wider than it is in its other parts? A Yes, sir.

Q And this was after six o'clock at night? A Yes, sir.

Q And you don't know now whether the lights were lit? A They might have been lit just then, on the Bowery. I will concede that.

Q I am not asking you for your concessions. I am asking you whether you know whether the lights were lit?

A I had no eyes, counselor, at the time, except for those men.

Q And didn't you think that the lights would enable you to identify the person who got off the truck, would

assist you in doing that? A Not necessarily with a truck, in following a truck, because a truck is pretty big.

Q Yes, a truck is pretty big, but an individual is not. Now, when ~~Killeen~~, or the person who you say was Killeen got off the truck to talk to this young man, this unknown young man, did you call upon any officer for aid?

A No, sir.

Q And the truck drove to Fifth Street? A Yes, sir.

Q And then turned east? A Yes, sir.

Q Now, when the truck stopped in Seventh Street, did you stop? A No, sir.

Q You were still going on? A Yes, towards First Avenue.

Q Did you reach the corner of First Avenue? A Yes, sir.

Q Were you standing at the corner of First Avenue, when the goods were being transferred from the truck to the van? A Not all the time; no, sir.

Q Part of the time? A Yes, sir.

Q How long did it take to transfer over the goods from the truck to the van? A About four or five minutes.

Q And during what part of that time were you at First Avenue? A About two minutes.

Q Did you look for an officer? A No, sir.

Q You didn't? A No, sir.

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Q Which drove away from that spot first, the truck or the van? A The truck.

Q Did it drive towards First Avenue? A Towards First Avenue, yes.

Q Did it go east of First Avenue? A When it got to First Avenue, I wouldn't make sure whether it drove east or south. I'm not sure of that point.

Q You lost sight of it after it got to First Avenue?
A Yes, sir, I lost sight of it. I didn't look for it any more.

Q How long after the truck drove away did the van drive away? A Immediately. They almost drove away together.

Q Did the van drive east or west on Seventh Street?
A West.

Q When the truck drove up to the wagon, was there a horse attached to the van? A Two horses.

Q Were they facing east or west? A Facing west, on Seventh Street.

Q West on Seventh Street? A Yes, sir. Two bay horses.

Q Were they on the north side or south side of the street? A On the north side of the street.

Q Now, it was dark there, wasn't it, at the time you passed the truck on Seventh Street, after you left your

coat in some shop? A Yes, sir.

Q Darker than when you saw the truck first at Greenwich and Canal Street? A Yes, sir.

Q And when you were passing it, you say the person whom you believe to be Killeen was sitting on the truck?

A No, sir, not sitting.

Q There was no seat? A Standing on the truck, on the floor of the truck.

Q And driving away? A Yes, sir.

Q And driving east on Seventh Street? A Yes, sir.

Q Did you place the defendant Killeen under arrest?

A Yes, sir.

Q Eh? A Yes, sir.

Q And where was it you placed him under arrest?

A Varick and Watts Street.

Q On what day? A The following day, the 15th.

Q About what hour? A About 12:30.

Q Were there other young men with him at the time?

A Yes, sir.

MR. SACHS: That's all.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q Just a minute. I forgot, on my direct examination, to question you about the arrest of Killeen. When was it that you started to look for Killeen? A The following morning.

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Q That would be on the 15th? A Yes, sir.

Q What other officer did you have with you?

A Detective Michael Londrigan.

Q Why did you go into that part of the city where you arrested Killeen to look for him? A Because that is the trucking district. I intended to go over to West Street.

Q And you have already testified that you had seen him several times before? A Yes, along the river-front, West Street.

Q And do you mean the North River when you speak of the river-front? A Yes, sir.

Q Mr. Sachs asked you, upon cross examination, whether at the time when Killeen was driving east upon Seventh Street towards First Avenue, whether at that time you looked for an officer, and you testified that you did not. Now, why didn't you look for an officer? A The reason was that we wanted eventually to get the receiver of these goods, to get the receiver of all the stolen property of the thieves that were taking stuff in that part of New York City.

Q And is that the reason you followed the van to which the goods had been transferred? A Yes, sir; and because I positively knew Killeen, having seen him several times before, and knew about the district that I could go and find him.

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RE CROSS EXAMINATION BY MR. SACHS:

Q Now, you say that the reason why you didn't look for an officer was that you wanted to get the man that received the property? A Yes, sir, the man or men that were receiving the stolen goods throughout the whole city.

Q And you could have called an officer, and have him watch Killeen, where he went to; couldn't you? A Yes, sir.

Q But you didn't do it? A No, sir.

MR. SACHS: That's all.

MR. MANLEY: The People rest.

MR. SACHS: If your Honor please, the District Attorney moved that the indictment be amended so that it would read that the property mentioned therein was the property of a certain partnership, and to that amendment I made no objection, but it has since been shown that the goods did not belong to the partnership.

THE COURT: They did not belong to the defendant; did they?

MR. SACHS: That has absolutely nothing to do with the matter, as far as my motion is concerned.

THE COURT: Well, it has all to do with it, as far as I am concerned.

MR. SACHS: However, your Honor will allow me to make the motion?

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THE COURT: Yes.

MR. SACHS: In view of the fact that the indictment reads that the property upon the truck was the property of a partnership composed of Louis Joseph and Catherine Harkins, and in view of the further fact that the evidence shows that the goods and property in question were not the property of that partnership, but the property of Steinfeld & Co., Leonard & Co., Morris Brothers, Everett & Heaney, and Widman & Kauffman, I ask your Honor to take the case from the jury, on the ground that the proof and the allegations of the indictment vary.

THE COURT: I deny the motion. There was a horse and truck belonging to Harkins, and he had a special property in this other property; and, if he had not, he owned the horse and truck.

MR. SACHS: Now, I except to your Honor's ruling.

THE COURT: The jury will be instructed in the degrees of larceny by the Court.

MR. SACHS: And I ask your Honor to take from the jury the indictment in this case, on the ground that it does not establish, does not charge, that the property was ever in the possession of the persons named as the owners in the indictment.

THE COURT: Denied.

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MR. SACHS: Now, I ask your Honor to take from the consideration of the jury the counts in the indictment ---- the count in the indictment charging grand larceny, on the ground that the People have not made out a case.

THE COURT: Denied.

MR. SACHS: Exception. And the count charging criminally receiving stolen property.

THE COURT: There is no objection to that, is there, Mr. Manley?

MR. MANLEY: I have no objection, no, sir.

THE COURT: It is claimed that this is the thief, but it is not claimed that he is the receiver, and he cannot be both the thief and the receiver.

MR. SACHS: And then does your Honor take that count from the jury?

THE COURT: I do.

MR. SACHS: And your Honor will grant me an exception to the motions that you have denied?

THE COURT: Yes.

(The Court then took a recess until two o'clock, having admonished the jury in accordance with Section 415 of the Code of Criminal Procedure).

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After Recess.

DELLIA KILLEEN, of 26 Desbrosses Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

- Q How long have you lived at 26 Desbrosses Street, Mrs. Killeen? A Two years, the 15th of July last.
- Q And with whom do you live there? A My husband.
- Q And your children? A And my children.
- Q How many have you? A Two boys.
- Q And is the defendant in this case one of your sons?
- A Yes, sir.
- Q How old is he? A 20 years of age.
- Q Do you know where he works, Mrs. Killeen? A Yes, sir.
- Q Where? A On the Clyde Steamship dock.
- Q How long has he worked there? A Something around five years. I won't be sure. Under or over.
- Q Do you remember the day on which he was arrested?
- A Yes, sir.
- Q Do you remember the date? A Yes, sir.
- Q What was the date? A The 15th day of February.
- Q At what time did you hear of his arrest? A Not until the next morning. I was looking for him to come in all the evening, and he didn't come in, and I didn't hear

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of it until the next morning.

Q Then you didn't hear of his arrest until the 16th?

A No, sir.

Q And how did you hear of his arrest on the 16th?

A A young man that was with him, Mr. Webber, came up and gave me the word.

Q That was on the 16th of February? A Yes, sir.

Q Do you know what time he left the house on the 15th of February? A He wasn't to work, that morning. He had no work.

Q What time did he leave the house? A Around eleven o'clock; a little after, I should think.

Q Now, on the 14th of February, do you know what time did he leave the house? A He worked that day, half the day or more.

Q Well, do you know what time he left your house on the 14th? A In the morning?

Q Yes. A He left my house between half past five and six o'clock, to be at work at six o'clock.

Q Now, did you hear at any time the charge upon which he was arrested? A Yes, sir.

Q And when was it that you heard the charge? A Well, I won't be sure of the date. When the hearing was downstairs here, in the courtroom here.

Q And was that long after the 16th of February? A I

won't be sure of that date. I forget.

Q Well, was your mind clear, was your recollection good, of the days that had preceded that? A Yes, because I was very worried over that.

Q And you say that he left at six o'clock in the morning, on the morning of the 14th? A Before six. He was to be at work at six.

Q Do you know what time he came home the first time on the 14th day of February? A Around two o'clock, some time. He said that he worked until one or after; I won't be sure which.

Q Do you know when he would leave the house in the morning, to go to work, before six o'clock, what time he would usually get through? A No, sir; his hours were unregular.

Q They were irregular, you mean? A Yes, sir.

Q And you say that he came home about two o'clock? A Yes, sir, about that time. I wouldn't be positive exactly by what time he came in.

Q And how long did he stay in, after he came in around two o'clock on the 14th of February? A Well, until after supper.

Q Until after supper? A Yes, sir.

Q And did he go out after supper? A Yes, sir; went out and bought two papers and brought them in with him. He

brought in two papers when he came in first off, at two o'clock.

Q And after he brought in the two papers, did he leave the house again? A No, sir.

Q And you are positive of that? A Yes, sir, I'm sure of it.

Q Did he leave your house at any time between half past five o'clock that night and eight o'clock, when he went out for the paper? A No, sir.

CROSS EXAMINATION BY MR. MANLEY:

Q Mrs. Killeen, you say that you heard of the arrest on the 16th? A Yes, sir, on Friday.

Q That was Friday; was it? A Yes, sir.

Q And you hadn't seen him from the day before then, that was Thursday? A No, sir, I was worrying over him.

Q What time was it on Thursday that you saw him last? A Around eleven o'clock.

Q In the morning? A In the forenoon. He slept all the morning, because he had no work, that morning.

Q Did he leave the house at eleven o'clock, on the morning of Thursday, the 15th? A Probably a little after, or around eleven o'clock.

Q And on the 14th you say he left the house before six o'clock? A Yes, sir, before six o'clock, to be at

work at six o'clock.

Q And on the Monday of that week when did he leave the house? A I can't recollect.

Q And when did he leave the house on Tuesday of that week? A I won't be positive of that. Whenever he went to work, he went about six o'clock; and sometimes in the afternoon, according to the way the work was there for him.

Q And you told us, awhile ago, that the hours of his working were irregular; is that so? A Yes, sir.

Q That is, there were no regular hours of work?
A No, sir; when they get through with the ship, they were through.

Q What was his work, unloading a vessel? A Yes, sir.

Q And the hours of work would depend upon whether there was any ship in, or when she came in? A Yes, sir.

Q Now, you say that he had no work on the 15th?
A In the morning, he didn't have.

Q Did he have any work to do upon Monday of that week?
A I think so.

Q Was it in the forenoon or afternoon that he had that work to do on Monday? A I think it was in the afternoon.

Q But your recollection isn't very positive as to Monday? A No, sir, because I didn't give it any attention.

Q Now, can you tell me what time he came in on Monday,

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in the afternoon, if he came in at all? A Oh, yes, he's always in for his meals, work or no work.

Q What time did you usually have your supper?

A Between six and seven; sometimes it runs later, if they aint in to it.

Q Can you tell me what time he came home in the afternoon of Tuesday of that week? A No, sir; I couldn't even tell you was he working that afternoon. I don't know which part of the day he worked. One day he worked in the forenoon, and the next day in the afternoon, and part of the night, probably.

Q Well, I suppose he worked in the forenoons about as often as he worked in the afternoons? A Yes, according to the way they unloaded the ships. I didn't pay much attention to that.

Q Now, you say he worked for a day on the 14th?

A Yes, sir.

Q Was that in the forenoon or afternoon? A Forenoon.

Q You say he came in, that day, at two o'clock that afternoon? A After two o'clock; between two and three, I said.

Q Did you stay home all that afternoon? A Oh, yes; I'm home most of the time.

Q And you say, after he had been there for some time,

he went out for two newspapers, or brought them in with him, which? A He brought them in with him.

Q At the time when he came in? A Yes, sir.

Q And what did you say about his going out afterwards? A After supper, when his father wants a paper, he always wants it to himself, and so he sent him out for two papers, and he brought in one for himself.

Q And did he go out that evening at all? A Around eight o'clock in the evening, for the papers.

Q Now, can you tell me, Mrs. Killeen, what time he came in on Tuesday of that week; whether in the forenoon or afternoon? A No, I couldn't exactly say.

Q Now, I ask you again as to Monday. Can you tell me what time he came in on Monday? A No, sir.

RE DIRECT EXAMINATION BY MR. SACHS:

Q But when he worked in the forenoon, he left home before six o'clock? A Yes, sir.

Q And when he worked in the afternoon, he left home generally before one o'clock? A Yes, sir, generally.

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J O H N S H E A, of 26 Desbrosses Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Mr. Shea, what is your work, what do you do?

A Wholesale grocery business, sir.

Q Wholesale grocery? A Yes, sir.

Q And for whom do you work? A R. C. Williams & Co.

Q Where is their place of business? A 56 Hudson Street.

Q And how long have you worked there? A About seven years.

Q Where do you live? A 26 Desbrosses Street.

Q With whom? A Mrs. Killeen.

Q How long have you lived there? A Over two years and a half.

Q Do you know the boy, Thomas Killeen? A Yes, sir.

Q Do you remember on what day it was that you heard of his arrest? A Yes, sir.

Q What day was it? A On the 15th of February.

Q The 15th? A Yes, sir.

Q Do you know the day of the week? A No, sir.

Q Now, how did you hear of his arrest? A Mrs. Killeen told me, when I come home at night.

Q Do you know whether that was on a Friday? A On a

Thursday.

Q And do you remember the day before that Thursday?

A Yes, sir.

Q What time did you come home from work, that day?

A Ten minutes after six.

Q And what time do you usually get home from work?

A About ten minutes or a quarter after six.

Q Did you have your supper at Mrs. Killeen's, that night? A Yes, sir.

Q And who had supper with you? A Thomas Killeen.

Q And anybody else? A No, sir, nobody else.

Q Well, were the father and mother home? A Oh, yes.

Q And when did you sit down at the table? A About twenty minutes past six.

Q How long did you stay at the table? A Until about ten minutes to seven o'clock.

Q And did you leave the house at all, that night? A Yes, about ten minutes to seven.

Q Who were there when you left? A Thomas Killeen and his father and mother.

Q And when you heard of the arrest, did you hear what it was for? A No, sir.

Q Well, but the occurrences of the day before were fresh in your mind; weren't they? A Yes, sir.

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CROSS EXAMINATION BY MR. MANLEY:

Q You say you have lived with the Killeen family how long? A Over two years and a half, sir.

Q Are you a relative of theirs? A No, sir.

Q But you have lived with them for two years and a half? A Yes, sir.

Q And you had a room and took your meals there? A I generally boarded with the lady.

Q Just took your meals there? A Yes, sir, took my meals there and sleep there, too.

Q Well, that's what I say, you boarded and lodged there? A Yes, sir.

Q And for whom did you work? A R. C. Williams & Co.

Q Where is their place of business? A 56 Hudson Street.

Q You drive a truck? A No, sir, I work inside, handling cases and canned goods, and such things as that.

Q And when do you get through work? A Every night at six o'clock.

Q You never have to stay overtime at all? A No, sir.

Q Always get out at six o'clock? A Yes, sir.

Q And where is their place of business? A 56 Hudson Street.

Q That is between what other streets? A Between Worth

and Thomas.

Q And do you then always go up to where you live, 26 Desbrosses Street? A Yes, sir.

Q You always do that? A Yes, sir.

Q And you have supper always at the same time up there? A Yes, sir.

Q Now, you say you sat down at 6:25, on Wednesday, the 14th? A About 20 minutes after six, sir.

Q How long had you been there before you sat down to your supper? A Well, just to take off my coat and sit down at the table.

Q Now, who lives there? A Well, there is more fellows there, that works on the docks.

Q Well, who lived there at that time, say the 14th of February? A Mrs. Killeen and her husband and her son and me.

Q And nobody else? A No, sir.

Q Didn't they have two sons? A Yes.

Q Didn't he live there, the other one? A Yes, but he wasn't in.

Q He wasn't in, that day? A No, sir.

Q Was he in upon Tuesday? A Yes, sir.

Q Was he there to supper on Tuesday? A Yes, sir.

Q Was he in upon Monday? A Yes, sir.

Q He was there at supper? A Yes, sir.

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Q And the week before that, on Thursday, was he there to supper? A Yes, sir.

Q And Friday, too, of the week before? A Yes, sir.

Q You can remember that very well; can you? A Yes, sir.

Q -And how about the Monday before this happened, was he in for supper? A Well, he is generally always in for supper.

Q And how long did it take you to eat your supper, on Wednesday, the 14th? A About 20 minutes or 25 minutes.

Q And then you went out after supper; you say?

A Yes, sir.

Q And how long did it take you to eat your supper on Tuesday? A Oh, about the same thing always.

Q Now, I don't suppose that anything took place on Wednesday night there, at supper, anything unusual?

A No, sir.

Q And you simply ate what you had to eat, and went out to enjoy yourself after the day's work? A Well, I don't go very far. I might go down to the door, that is all.

Q Now, you say you heard of the arrest of the defendant on Thursday? A Yes, sir, after I come home from work.

Q Well, wasn't it Friday that she told you? A No, it was the day after the 14th, but I don't know whether that

was Friday or Thursday. She told me after I came home from work, after six o'clock.

Q And Killeen wasn't always in there at supper, was he, every night. A Well, some nights he might be working late, but more times he wouldn't work late at night.

J O H N J. C O U G H L I N, of 358 West 11th Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q What is your business, Mr. Coughlin? A Stevedore.

Q Where are you employed? A Pier 36, North River.

Q By whom are you employed? A Clyde Steamship Co.

Q How long have you been employed there? A 11 years.

Q Do you know the defendant at the bar? A Yes, sir.

Q Has he worked under you for the Clyde Steamship Co.? A Yes, sir.

Q For how long? A About four years.

Q What are the usual hours of employment there?

A There is none.

Q There are no usual hours? A No, sir.

Q Now, do people work there at six o'clock in the morning? A Yes, sir.

Q What time do they leave, generally? A Well, they

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leave at one o'clock in the afternoon, if they come on sailing day.

Q And do they ever start working at one o'clock in the afternoon? A Yes.

Q And do you know until what time they work? A Well, they might work all night.

Q That is, from one o'clock in the afternoon, they work until the work is completed? A Yes, sir, when the ship sails the next day.

Q Do you remember the 14th day of February for any particular reason? A Yes, sir.

Q What is the reason? A Because the 14th of February, the next day was my daughter's birthday.

Q How old was she on that day? A 14 years.

Q How long are you married, Mr. Coughlin? A 16 years and a half.

Q Did you, the day before your daughter's birthday, have any talk with young Killeen here? A Yes, sir.

Q Now, what did you say to him?

MR. MANLEY: I object to that.

MR. SACHS: The question is withdrawn.

BY MR. SACHS:

Q Well, did you have anything to say to him in relation to your daughter's birthday? A Yes, sir.

Q When did you hear of young Killeen's arrest? A The

night of the birthday party, the next night.

Q The next night? A Yes, sir.

Q Do you remember until what time young Killeen worked on Wednesday, the 14th? A Well, I always gave him the preference of making every hour; I always kept him up until the last minute.

MR. MANLEY: I object to the answer.

THE COURT: Strike it out.

(The question is repeated by the stenographer).

A One o'clock.

BY MR. SACHS:

Q Do you know what time he was to report to work, next day? A I couldn't say, but I think the orders were between 12 and 1 o'clock. Twelve o'clock was for the sailormen, to dock the ship, and one o'clock for all hands to go to work.

Q And he worked then on the 14th until one o'clock?

A Yes, sir.

Q And do you know what his hours of work were on the 13th? A No, sir.

Q Now, he didn't work from one o'clock, one day, until six o'clock, the next day, did he? A No, sir.

Q Now, if he worked from six o'clock in the morning until one o'clock on the 14th, what would be his hours on the 13th? A The same.

Q And how long would he work? A Until some time in

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the afternoon. Everything depends upon the time of the arrival of the ship and when she is going to sail.

Q Has he worked for you during the last four years each and every working day? A No, sir, I didn't have my position for four years, but I know he was working there for four years.

CROSS EXAMINATION BY MR. MANLEY:

Q What is your position there? A Assistant stevedore.

Q you are an assistant stevedore? A Yes, sir.

Q Do you have charge of any men? A 175 or 180.

Q And they are stevedores, are they? A No, they are all working men.

Q And the Clyde line employs how many men doing that kind of work? A Well, they have incoming and outgoing ships. I am on the outgoing ships, and I have about 180 men.

Q And how many on the incoming ships? A About 400.

Q I suppose you know Killeen the same as you know the other 175 men that you have something to do with? A Yes.

Q And, of course, the hours of work are irregular, depending upon whether there are ships there to be loaded or unloaded? A Yes, sir.

Q And you can't state whether or not this defendant was working on the afternoon of Wednesday, the 14th, can

you? A He, sir.

Q Had you state whether he was working on the afternoon of that day? A Yes.

Q But you know that he wasn't working in the afternoon?
A Yes, sir.

MR. MANLEY: That is all.

C H A R L E S W E B B E R, of 22 Hubert Street, New York,
a witness called on behalf of the Defense, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Webber, where is Hubert Street? A It's situated
about four blocks up on Canal Street, and is about three
blocks long.

Q It is in the old Greenwich Village; isn't it?
A Yes, sir.

Q And where do you work? A For the Clyde line.

Q And how long have you worked for them? A About
two years.

Q Do you know the defendant, Thomas Killeen?
A Yes, sir.

Q How long have you known him? A Since I've been
working down there, about two years.

Q Do you remember the 15th day of February last?

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A Yes, sir.

Q Where were you around 12 o'clock on that day?

A Walking through Watts Street, me and this defendant Killeen.

Q And at what time did you meet Killeen, that day?

A Well, I left the house, my house, about ten minutes to one, and walked through Hubert Street to Hudson, and met him at Hudson and Desbrosses, and I was going on an errand for my sister to my brother-in-law, to say she wouldn't be home for dinner.

Q You met him accidentally? A Yes, sir.

Q And he walked along with you? A Yes. And I asked him to take a walk over to Howard Street, where my brother-in-law was working, and he wasn't there, and one of men told me he was over at Broome Street, and we went over there, and waited about 20 minutes, and didn't see him. And so I had to go to work at one o'clock, that day, and I said to him, "We had better go over," because I didn't see him, my brother-in-law, and we walked over Broome Street to Watts, and, coming over Watts Street, we got as far as Watts and Vareck, when three or four men come up and grabbed us; and one man searched my pockets and then told me to get out of there, and then another man came over and grabbed me and he said, "We want you, too," and I said, "What for?" And he said, "For robbing a man," and I said,

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"I don't know nothing about robbing a man." And I was taken to the station house, and held there for half an hour, and then I was told to go home.

Q And you were with Killeen when he was arrested, then?

A Yes, sir.

Q When you were arrested did you try to run away?

A No, sir.

Q Did Killeen try to run away? A No, sir.

Q Did you hear anything said to Killeen? A No, sir.

CROSS EXAMINATION BY MR. MANLEY:

Q Just a minute.

MR. MANLEY: No questions.

T H O M A S K I L L E E N, the defendant, of 26 Desbrosses Street, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Now, Thomas, speak up loud so that the last gentleman can hear every word you say. How old are you?

A 20 years old.

Q Where were you born? A Oh, I was born in Dominick Street.

Q New York City? A Yes, sir.

Q And you have lived here all your life, haven't you?

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A Yes, sir.

Q And with whom have you lived? A Mother and father.

Q Can't you speak up louder? The jurors say they can't hear you. A Mother and father.

Q Have you any brothers and sisters? A I've got one brother.

Q One brother? A Yes, sir.

Q Who do you work for? A The Clyde Steamship Co.

Q Have you been working for them up to the present time? A Yes, sir.

Q How long have you worked there? A About four years or four and a half; between four and four and a half.

Q What are your hours of employment there? A There were no regular hours. The hours are not regular.

Q Well, is there any regular time at which you start work? A Six o'clock in the morning on some days.

Q And other days, what time do you start? A Probably in the afternoon. I go on at 12 or one o'clock.

Q And when you start at six o'clock in the morning, what time do you get through? A One o'clock, when the ship sails.

Q And when you start at one o'clock in the afternoon, when do you get through? A Maybe the next morning, or the next day at one o'clock.

Q You may work 24 hours at a stretch? A Yes, sir,

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when the ship is going to sail.

Q About what is your average earnings a week? A I average from \$14 to \$17 a week.

Q Do you know Mr. Coughlin? A Yes, sir.

Q He is the foreman of your section of workmen? A Yes, sir.

Q And when were you arrested? A On the 15th of February.

Q Where were you arrested? A At Watts and Varick Street.

Q And where were you bound for? A For work at the Clyde line.

Q And what time were you to report, that day? A One o'clock.

Q When were you told the charge upon which you were arrested? A When I reached the station house.

Q Where were you told that you were charged with having stolen a truck? A When I reached the station house.

Q And did they tell you when ^{you} were charged with having stolen the truck? A They said the night before.

Q The night before? A Yes, sir.

Q That was the 14th day of February, wasn't it? A Yes, sir.

Q Your recollection of the 14th of February, on the day on which you were arrested, which was the 15th, was clear;

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wasn't it? A Yes, sir.

Q At what time did you go to work on the 14th of February? A Six o'clock in the morning.

Q Is that the time that you reported at the docks?
A Yes, sir.

Q Well, what work did you do? A I worked along the lighters, unloading the ship.

Q That is, the cargo was taken from the hold of the vessel, and placed upon the lighters? A No, sir, just the other way.

Q And what time on the 14th day of February did you get through with your work? A One o'clock.

Q And where did you go then? A I stood around, outside of the dock for awhile, and then went home.

Q And how long did you stay at that particular dock?
A About an hour and ten minutes.

Q Do you know what time you reported for work on the 13th of February? A Six o'clock in the morning.

Q In the morning? And did you work that day until one o'clock? A Yes, sir, until the ship sailed.

Q And on the 12th of February, do you remember?
A I went to work at six o'clock.

Q The 12th of February was a holiday; wasn't it?
A It was Tuesday, and they send out a ship almost every day there, right along; the only day that ships don't sail.

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is Monday, Thursday and Sunday.

Q On other days ships sail? A Yes, sir.

Q Now, did you work on Monday, Thursday and Sunday?

A Well, if I went to work, it would be in the afternoon.

Q Now, on Wednesday, the 14th of February, you say you went home after remaining around the docks for awhile. And what time did you get home? A Two o'clock or a little after two.

Q And how long did you stay at home, that night?

A Until eight o'clock.

Q And then where did you go? A I went out to get a newspaper.

Q And where did you get the newspaper? A Canal and Hudson Street.

Q Now, is Desbrosses Street in the neighborhood of Canal? A It's two blocks down.

Q Now, after you got the newspaper, what did you do? A I returned right home again.

Q And did you stay at home that night? A I did.

Q Did you at any time on the 14th day of February, take a truck, or aid or assist in taking a truck from the corner of Canal and Greenwich Street? A No, sir.

Q Did you at any time before the day of your arrest see the officer in this case? A No, sir.

Q And then you were arrested on the 15th; were you?

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A Yes, sir.

Q Who was with you at the time of your arrest? A Why, a boy by the name of Charles Webber.

Q He was a witness in this case, was he not? A Yes, sir.

Q And did you meet him by appointment or accidentally? A BY accident. And he asked me to take a walk with him to Howard Street, and then to Broome Street, and then back to Watts Street.

Q And when you left Broome Street, what were you going to do? A Going to work.

Q And did the officers say anything to you when they arrested you? A Yes, sir; they told me that I was arrested for hitting and robbing some man, and I said, "I didn't rob anybody or hit anybody."

Q Was anything said on the way to the station house about the stealing of a truck? A No, sir.

Q And where was it and when was it that you heard for the first time that you were charged with stealing a truck? A In the station house.

Q After your arrest and when you were brought there? A Yes, sir.

Q Now, on the 14th of February, did you talk with anybody in Cooper Square, or near Cooper Square? A No, sir.

Q Did you ever see officer Markey except on the day

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you were arrested? A No, sir.

CROSS EXAMINATION BY MR. MANLEY:

Q The Clyde line pier is between what streets?

A Between Spring and Charleton Street.

Q How far from Canal? A Spring is one block up above Canal.

Q And whereabouts does Charleton Street come in relation to Canal Street? A It's two blocks above Canal.

Q Now, do a great many trucks come down to that line of steamers? A Yes, sir.

Q And they come there with cartloads of freight, don't they? A Yes, sir.

Q A great many trucks come there loaded; don't they? A Yes, sir.

Q Now, you say you got home on Wednesday about two o'clock in the afternoon? A Yes, sir.

Q And you stayed until seven o'clock? A Until eight o'clock.

Q And you were there all that time? A Yes, sir.

Q And what did you do during that time? A Well, I brought in some newspapers when I came in after two o'clock, and I read the papers.

Q What time did you get your dinner? A Before three o'clock.

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Q. You had had your breakfast when? A. Before six.

Q. And your next meal was between two and three?

A. Yes, sir.

Q. And when was your third meal, that day? A. At night, between six and seven.

Q. Did you eat again so soon after eating between two and three? A. Yes, sir.

Q. What time did you have your supper? A. I sat down to the table about ten minutes past six.

Q. Now, after you got through eating, what did you do in the house? A. I read the papers.

Q. Until what time --- I mean after eating between two and three o'clock? A. Well, from then, off and on, until supper time.

Q. And did you do anything else except read the papers? A. Well, I would take a little walk around the rooms occasionally.

Q. Now, upon Tuesday, did you work in the afternoon? A. No, sir.

Q. And you didn't work on the evening or night between Tuesday and Wednesday? A. No, sir.

Q. On Monday, when did you work? A. Monday afternoon. I went to work a little past one.

Q. Well, now, you say that, on Thursday, the day of your arrest, you got up at what time? A. About ten o'clock,

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or a quarter to ten.

Q And you were to go to work at one o'clock that afternoon? A Yes, sir.

Q Now, why did you, having had regular hours, and the full amount of sleep, why did you stay at home from two to eight o'clock in the evening? A Well, because I aint in the habit of going outside.

Q Well, don't you go out to take a walk, for instance? A Well, it was too cold to go out and I had no place to go to.

Q And there was no necessity for your staying at home, that afternoon; was there? A No; only I didn't have any place to go to.

Q Who was in your house besides your mother, that afternoon? A My mother and father. He wasn't working at the time, and he was home all the afternoon.

Q And was your brother there? A No, sir.

Q Was Mr. Shea there at that time? A No, sir, he didn't come home until late in the afternoon.

Q Now, how many men are you employed by the Clyde line in the work that you do? A About 200, most of the time.

Q And that work consists in moving freight; does it not? A Yes, sir.

Q And from the length of time you have been down there, and the character of the work, you get an opportunity to see

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a great many truck drivers, and get acquainted with them?

A No, sir.

Q Well, you see a great many trucks there; don't you?

A Yes, I do.

Q Do you want to tell me who the unknown man was with you, on the 14th of February?

MR. SACHS: I object to the question.

THE COURT: Objection overruled. It is a proper question on cross examination.

MR. SACHS: I take an exception. There is no proof that he was with any other man on that day.

THE COURT: Well, let him say so, then.

A I wasn't with any unknown man.

BY MR. MANLEY:

Q Were you always in the habit of taking your supper between six and seven o'clock in the evening, when you were not working? A Yes, sir.

Q For instance, when you went to work at six or seven o'clock, was there any fixed time of stopping, at one o'clock, or would you work until two or three o'clock?

A No, sir, regularly at one o'clock, because the ships sailed at one o'clock.

Q Then why didn't you get home before one on this day? A Because I stood outside of where I worked, talking to a few friends, for some time.

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Q And you hadn't had anything to eat from five or six o'clock in the morning? A No, sir.

Q Then why didn't you hurry home to get something to eat? A Because I wasn't hungry.

Q And, though you had something to eat in the afternoon, were you in the habit of eating at the regular time, between six and seven also? A Yes, sir.

Q Had you known that police officers were on duty on those piers at that time? A No, sir.

Q Had you ever known that Officer Markey was watching you there? A No, sir. I hadn't done anything to be watched.

Q Well, what are the names of the persons that you associated with during the month of January, February and March of this year? Did you have any particular cronies or persons that you spent your time with, after hours? A No, sir.

Q None at all? A No, sir.

Q For instance, didn't you, after the boat went away at one o'clock, didn't you stand around the vicinity of West Street, and talk with young men who worked also for the Clyde line? A I did, yes.

Q And who were the young men that you were talking with, on those occasions? A I couldn't call them by name, only I know them by sight, from working with them.

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Q Don't you know by name any of the young men that you associated with in working for the Clyde line? A I only know Charles Webber.

Q Can't you recall any others but Webber? A No.

Q Now, with between 100 and 200 men there, of different ages, and doing different kinds of work, did you stand around there usually talking to them when you got through work? A No, sir.

Q Or go to the saloon at the corner and have a drink with them? A No, sir.

Q Don't you drink? A No, sir.

Q Never did it in your life? A No, sir.

Q Can you tell us one person, the name of one person, with whom you stood talking after the work was done?

A No; only Tom and Jim and Morris. That's the only names I know.

Q Any others? A No, sir. I don't know their last names.

Q Haven't you ever, Killeen ----- I withdraw that. You have been quite often on West Street, have you not, between Canal and Spring? A I never stop there. I passed there.

Q I haven't said a thing about stopping there. I say, have you ever been there? A I've passed there.

Q Why did you say that you had never stopped there?

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A because I pass there frequently.

Q (Question repeated) A Because you asked me if I had ever been there, and I said no. I've passed there.

Q Now, then, you have passed there. And West Street is the street that runs right next to the river, the North River? A Yes, sir.

Q And Canal and Spring Street are how far apart, how many blocks? A One block.

Q And haven't you stopped there, in that block? A No, sir.

Q Now, that isn't very far from the Clyde line, is it? A Just half a block.

Q And haven't you ever stopped there? A No, sir.

Q Well, what would there be suspicious about your stopping on West Street, between Canal and Spring? A I don't know, sir.

Q Well, then, why did you want to tell me that you never stopped there? A Because I didn't.

Q Have you ever seen trucks on West Street, between Canal and Spring? A Yes, sir.

Q Yes, and a good many of them, too? A Yes, sir.

Q And haven't you very often watched the trucks at that point? A No, sir.

Q And you never had your eyes on any truck on West Street, between Canal and Spring? A I suppose I have, when

they were passing, but I didn't pay any attention to them.

Q Well, now, do you tell this jury that you have never stood at West and Spring Streets, and watched trucks, and that you have not done that with others, other young men? A No, sir, I haven't.

Q And wouldn't you often go and watch a truck, to see where the driver was, and then walk away from it, and go back to where you were standing? A No, sir.

Q Did you think that I was going to ask you if you had stopped at that point, when you said that you had never stopped at that point?

MR. SACHS: Objected to.

THE COURT: Objection overruled.

MR. SACHS: Exception.

A No, sir.

BY MR. MANLEY:

Q Did you, to your knowledge, see Officer Markey before the day of your arrest? A No, sir.

Q And there was another officer with Markey at the time of the arrest, was there not? A Yes, sir.

Q And where was that arrest made? A Watts and Varick.

Q And you were placed under arrest and charged with the larceny of this truck; weren't you? A Yes, sir.

Q And then the otherman was taken to the station house

with you, and let go; wasn't he? A Yes, sir.

Q Now, at the time you were arrested, did you tell Officer Markey where you were the day before, when this truck was stolen? A He didn't ask me.

Q I didn't ask you if he asked you. Did you tell him?
A No, sir.

Q Why didn't you tell him? A Because I wasn't asked.

Q But you knew that, if a truck was stolen when you were somewhere else, you knew that you were not the man, and why didn't you tell him where you were? A Because he didn't ask me.

Q Do you mean to say that you would allow a man to arrest you, when you had committed no crime, and you permitted him to arrest you without knowing who he was?
A Yes, sir, because I knew he was an officer; he said he was.

Q And you didn't tell him that you were home all the afternoon before, and up to eight o'clock in the evening, and from eight o'clock in the evening you didn't go out of the house again that night? A No, sir.

Q Now, how many men work for the incoming vessels, unloading them? A I couldn't say. I never worked among them.

Q How much are you paid a week? A I work by the hour.

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Q How much an hour do you get? A 30 cents.

Q And that is the regular rate of pay that you have had for some time; isn't it? A Yes, sir.

Q How many hours a day do you average? A Four days a week, about seven hours a day.

Q And the other three days, how many hours? A Well, I might work on the average a stretch of 24 hours.

Q How many times a week do you work an average of 24 hours at a stretch? A Once or twice a week.

BY THE FIFTH JUROR:

Q Were you going to work when you were arrested?

A Yes, sir.

Q And you were walking west on Watts Street, you say?

A Yes, sir.

Q But you allowed yourself to be carried over to Broome Street, instead of going to work? A No, sir. I met this boy Charles Webber at the corner of Hudson and Desbrosses Street. I was going around to get a paper, a few minutes before eleven, and he asked me to take a walk. He said that he was going to see his brother-in-law in Howard Street, and we walked over through Canal Street, to Howard Street.

Q And then you didn't neglect your work, or anything like that, and go and take a walk? A Oh, no, sir. I was to go to work at one o'clock, and I was arrested a little after

eleven o'clock.

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RE DIRECT EXAMINATION BY MR. SACHS:

Q Now, did you ever watch around that neighborhood for an opportunity to steal property from trucks? A No, sir.

Q Or from truckmen? A No, sir.

Q And how many thousands of trucks do you think go through West Street and Canal Street in a day? A I couldn't say.

Q There is a constant stream of them, is there not, going north and south? A Yes, sir.

Q And coming from the streets that run into West Street? A Yes, sir.

MR. SACHS: That is our case, your Honor.

MR. MANLEY: I will recall Officer Markey.

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R E B U T T A L.

EDWARD J. MAREY, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q You have already testified that, several times before the 14th of February, you had seen this defendant Killeen? A Yes, sir.

Q You also testified, as I recollect, in response to a question put by Mr. Sachs, that you did not know upon the 14th of February where the defendant lived? A Yes, sir.

Q And, according to my recollection, you testified that you didn't know at that time where he worked? A Yes, sir.

Q And, as matter of fact, if you did not so testify to that, though my recollection is that you did, did you know, as matter of fact where this defendant worked at that time? A No, sir.

Q Now, you have already testified that, on ^{the} three or four occasions when you saw the defendant, you had seen him on West Street, between Canal and Spring A Canal and Spring; a little north of Spring.

Q And how far is the Clyde line from Canal Street?

A A little north of it; half a block north of it.

Q So that the place where you say you had seen the

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defendant several times was in the vicinity of the Clyde line? A Yes, sir.

Q Now, did anything occur on these other occasions when you saw the defendant at that point to attract your attention to Killeen?

MR. SACHS: I object, on the ground it is immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. SACHS: Exception.

A Yes.

MR. MANLEY: I am not offering this as showing the commission of any other crime.

THE COURT: It is offered for the purpose of showing that he knew the defendant; is that it?

MR. MANLEY: Yes, sir, that is the only purpose, to show the strength of his identification of the defendant.

THE COURT: Yes; that is the only reason why it is admitted.

BY MR. MANLEY:

Q Now, state how your attention was drawn to Killeen, on these other occasions?

MR. SACHS: Objected to.

THE COURT: Allowed.

MR. SACHS: Exception.

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A By his irregular movements. There is a feed store on West Street, half a block from ----

Q What is that? A And there has been a number of thefts going on in that neighborhood.

MR. SACHS: Now, I object to that, and move that it be stricken out.

THE COURT: Objection sustained. Strike it out. And the jury will disregard it.

BY THE COURT:

Q Now, state how many times you saw the defendant before you arrested him and what you saw him doing; that is all?

THE COURT: So that the jury may pass upon the question of identity; whether you have made a mistake in arresting him or not. That is the only purpose for which this testimony is admitted.

A On several occasions.

BY MR. MANLEY:

Q Doing what? A Walking in among the loaded trucks in line, ready to ship their goods. They were in line for the Clyde and Savannah lines.

Q And where were the trucks at that time? A On "The Farm".

Q What is "The Farm"? A That's the open space beyond the car-tracks, west of the car-tracks, and running

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close up to the docks themselves.

Q Now, tell us everything that you saw him do?

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

THE COURT: Overruled.

MR. SACHS: Exception.

A He and several othermen I have seen on three or four occasions, in and about the trucks, especially when they came up to a truck that the driver had left.

BY THE COURT:

Q Well, tell what you saw him do?

THE COURT: Strike out all that the witness said about other men. And the jury will disregard it.

A Walking in among the trunks, and trying to observe whether the driver had gone away or not.

MR. SACHS: I object to that, if your Honor please.

THE COURT: Objection sustained. Strike that out. And the jury will disregard it.

MR. SACHS: And I ask for the withdrawal of a juror, on account of the statement of the witness that the defendant was trying to do something improper.

THE COURT: No, Motion denied. I will strike that out, and direct the jury to disregard that. You have no right, witness, to state what you think he was doing, but only what you saw him doing, what

physical acts impressed this man's personality on your memory; that is all.

MR. SACHS: I take an exception.

A. I saw him going up to the sides of the trucks that were loaded, and then retracting his steps, and going in front of trucks that he had originally looked at.

BY MR. MANLEY:

Q. How many times did you see him do that? A. On three or four different occasions in the month of January and the first part of February.

Q. And did you know the defendant's name then? A. No, sir.

Q. And how was he dressed at that time? A. Dark clothes and a blue shirt.

Q. Well, in what respect, if any, did his appearance differ when you saw him on the day in question? A. Little or none.

Q. He was dressed the same way? A. Yes, sir, about the same way.

Q. Now, you have testified that you stopped, on the day in question, the day of the larceny of this truck, at the corner of Canal and Greenwich Streets. Did you have a reason for stopping at that point?

MR. SACHS: I object to that.

THE COURT: I will allow it.

MR. SACHS: Exception.

A Yes, sir.

BY MR. MANLEY:

Q What was that reason?

MR. SACHS: I object to that.

THE COURT: Objection sustained.

BY MR. MANLEY:

Q You have testified that, at the time you stopped there, you saw the defendant at the corner of Canal and Renwick Street? A Yes, sir.

Q And that street you have testified is about 200 feet east of Greenwich Street? A yes, sir, about that.

Q Did you see the defendant at that point before you stopped at the corner of Greenwich and Canal?

MR. SACHS: Objected to.

THE COURT: Allowed.

MR. SACHS: Exception.

A I saw them, just as I got to 478 Greenwich Street. I saw him standing at Renwick and Canal.

BY MR. MANLEY:

Q Did that have anything to do with your stopping at Greenwich and Canal?

MR. SACHS: I object to that.

THE COURT: Objection sustained.

BY MR. MANLEY:

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Q Now, I ask you if you have any doubt at all that this defendant Killoen is the man who did the acts that you have described at the corner of Canal and Greenwich Streets?

MR. SACHS: I object to this, as calling for a conclusion of the witness, and for the workings of his mind.

THE COURT: I will allow it.

MR. SACHS: Exception.

A I wouldn't have a doubt on my conscience for the world, and identify a man, if I didn't recognize him positively.

MR. SACHS: I object to that, if your Honor please, and move to strike it out.

THE COURT: Motion granted. And the jury will disregard it.

MR. SACHS: And I ask for the withdrawal of a juror.

THE COURT: Motion denied.

MR. SACHS: Exception.

BY MR. MANLEY:

Q Have you any doubt as to the identity of this defendant? A No, sir, absolutely none.

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CROSS EXAMINATION BY MR. SACHS:

Q On the three or four occasions that you say you saw the defendant walking in and out of the trucks, did you arrest him? A No, sir.

Q Now, how many young men do you think there are in the City of New York of the same height and build of this young man? A There might be thousands of them. I'm no judge of that.

Q And how many men are there working on West Street, today, that are wearing blue shirts? A Thousands of them.

Q Now, when you say you saw the defendant walking in and among the carts, it was on "The Farm", as you say?

A Yes, sir.

Q And that is a big, open space; isn't it? A Yes, sir.

Q On the westerly side of the car-tracks? A Yes, sir.

Q And from the sidewalk to the first car-track is about 60 feet; isn't it? A Yes, sir, but I wasn't always on the sidewalk.

Q And how far is it from the car-track, the westerly car-track, to the pier line? A About 125 feet, I should say.

Q Isn't it nearer 300 feet from the westerly car-track to the pier line? And you were walking in and about the

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middle of the road, I suppose? A Not all the time walking.

Q Sometimes on the sidewalk? A Yes, and very often in a wagon.

Q And about how many young men were on West Street at the time you were there? A Very few in the vicinity where he would be.

Q But you saw some? A Yes, but very few.

Q Two or three? A Yes.

Q If not more? A Maybe four, yes.

Q There wouldn't be 40; would there? A No, sir.

Q Men getting on and off trucks? A No, not in the manner in which he acted.

Q And about how many men would you see in blue shirts on West Street? A I didn't pay any particular attention to that. There might be a couple of hundred.

Q Or a couple of thousand? A Yes.

BY THE COURT:

Q You don't charge a man with crime because he wears a blue shirt; do you? A Oh, no, sir.

BY MR. SACHS:

Q And that is one of the reasons why you are so positive of the identifications of the defendant, because he wore a blue shirt? A Oh, no, not at all. It is his features that I remember.

Q And you wouldn't say that there are not lots of men

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working along the piers there with features similar to him; would you? A. No, but his features impressed me very much.

MR. SACHS: That's all.

THE COURT: Any other witnesses?

MR. SACHS: No, sir. We rest.

MR. MANLEY: We rest.

MR. SACHS: And the defendant rests. The defendant, if your Honor please, respectfully renews his motions made at the close of the People's case, which your Honor denied.

THE COURT: Denied.

MR. SACHS: Exception. I make the motions now, by renewing my motions, with the same force and effect as though made now in full.

THE COURT: I understand. Denied.

MR. SACHS: And I except.

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THE COURT'S CHARGE.

MULQUEEN, J.,

Gentlemen of the Jury:

This defendant has been indicted by the Grand Jury of this County of the crime of grand larceny in the first degree. The Grand Jury charge that, on the 14th day of February, 1912, the defendant and two other persons feloniously did steal, take and carry away certain property, namely, a wagon, of the value of \$100, a horse, of the value of \$75, one set of harness of the value of \$25; a quantity of cloth, of an amount and description to the Grand Jury aforesaid unknown, and of the value of \$2,483.27, 66 hats, of the value of 50 cents each, 38 towels, of the value of 35 cents each, and 72 quilts, of the value of 67 cents each, which was the property of a co-partnership of Catherine Harkins and Louis Joseph, doing business under the name of John J. Harkins Trucking Co.

The indictment is the charge which is here before you for trial, and, as you see, it contains a very simple allegation, that the defendant and two other persons did feloniously steal, take and carry away the property that I have named.

The crime of larceny is defined in the statute as

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the taking of personal property, with intent to deprive the true owner of it, and to appropriate it to the use of the taker, or any person other than the true owner. There are two essential elements in larceny: First, a taking of personal property, --- if no personal property was taken by this defendant, he is not guilty of larceny --- that is the first element; and, secondly, the intent of the taker, taking it with the intent to deprive the true owner of its possession, or to appropriate it to the use of the taker, or any person other than the true owner.

If the defendant, either acting alone, or in concert with someone else, took that horse and wagon from the place where it was left by the driver, and drove off with it, or went with it to the place testified to by the officer, and then helped to transfer the property that was on the wagon to another wagon, for the purpose of depriving the true owner of that property, and appropriating it to the use of the taker or any person other than the true owner, he was guilty of larceny; and, if the value of the property was more than \$500, he was guilty of grand larceny in the first degree; and, if it was less than \$500, he would be guilty of grand larceny in the second degree; and, if it was less than \$25, it would be petty larceny.

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Now, you understand that there is a sharp division between the power and duty of the Court, and the powers and duties of the jury. It is the duty of the Court to instruct you as to the law, and it is your power and duty to pass upon the facts, and you are the exclusive judges of the facts, and you must determine from the evidence what facts, if any, are established by the evidence. After a careful and conscientious consideration of all the evidence in the case, you may say what impression that evidence has made upon your minds. Does the evidence, considered by you with the sole desire to reach the truth, if possible, convince you beyond a reasonable doubt that any property was taken in a larcenous manner; did anyone take any property with an intent of depriving the true owner of it, and appropriating it to the use of the taker or any other person other than the true owner, any of the property mentioned in the indictment?

If the defendant took it under the circumstances mentioned in the indictment, and the value of the property so taken with felonious intent was more than \$500, you may find him guilty of grand larceny in the first degree, or of grand larceny in the second degree, if the value of the property was less than \$500, or of petty larceny if the value of the property was \$25 or less;

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and if you are not convinced to a moral certainty, and beyond a reasonable doubt of his guilt of either of the crimes charged, you must acquit him.

You have heard all the testimony; and, incidental to your power of passing upon the facts, you have the right to determine the credibility of the witnesses. That is your great function and power, and you must exercise it honestly and fairly, without prejudice or passion, fully realizing that you are doing the most important work that citizens are ever called upon to do in time of peace, that is, to sit upon a jury in a criminal action. You have heard all the testimony, and it is for you to say what witnesses you will believe.

The basic principle of criminal trials in this State is that the defendant is presumed to be innocent, and unless his guilt is established to your satisfaction beyond a reasonable doubt, he is entitled to an acquittal. Weigh the evidence, therefore, fairly, dispassionately, conscientiously, and decide who told the truth; and, in making that decision, you may consider the manner of every witness who testified here, and the motives of the witness, if any; and if, after a careful consideration of all the testimony in the case, you are convinced to a moral certainty and beyond a reasonable doubt of the guilt of the defendant, you may convict him, and you may

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convict him of either grand larceny in the first degree, or grand larceny in the second degree, or petty larceny, or find him not guilty, if you are not satisfied beyond a reasonable doubt of his guilt. Any requests to charge?

MR. SACHS: I submit several requests to charge to your Honor.

THE COURT: The first request is: "If the evidence introduced to prove the alibi of the defendant, when considered of itself or in connection with all the evidence in the case, raises a reasonable doubt in the minds of the jury as to the guilt of the accused, he must be acquitted." I so charge.

The second request is: "The evidence in support of an alibi, in order to warrant an acquittal, need not be so perfectly clear and conclusive as to absolutely preclude the possibility of the presence of the accused at the scene of the crime at the time it was committed." I so charge.

The third request is: "An alibi is sufficiently established when a reasonable doubt is raised in the minds of the jurors as to the presence of the defendant at the scene of the crime." I so charge.

The fourth request is: The burden of proof rests on the prosecution throughout the trial and does not shift

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to the defendant, and this rule is the same even when the defendant puts in proof of an alibi." I so charge.

The fifth request is: "The presumption of innocence in favor of the accused is in no wise affected by the introduction of evidence in support of an alibi." I so charge.

The sixth request is: "In determining the question as to whether reasonable doubt of the defendant's guilt or innocence exists in the case, the jury must consider all of the evidence and not the evidence of the alibi alone, although proof of the alibi may of itself raise or create reasonable doubt." I so charge.

The seventh request is: "An attempt to prove an alibi followed by failure is no more unfavorable to the accused than a failure to prove any material fact in the defense." I so charge.

Any requests, Mr. Manley?

MR. MANLEY: The words "reasonable doubt" appear so often in those requests, that I ask your Honor to explain reasonable doubt to the jury.

THE COURT: Reasonable doubt, gentlemen of the jury, is a doubt based on or reason or reasons connected with the evidence in the case. If, for any reason connected with the evidence, you are not convinced to a moral certainty of the guilt of the defendant, your minds are in a state of

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reasonable doubt, and you should acquit the defendant. A reasonable doubt is a doubt, as I have said, based on reason, not on sympathy or prejudice, or a desire to avoid doing your duty, if it is not agreeable. But when a juror honestly makes up his mind to decide a case on the law and the evidence, without regard to any other consideration, and weighs the evidence with that determination, with that end in view, and finds himself unable to say that he is convinced to a moral certainty of the guilt of the defendant, then his mind is in a state of reasonable doubt. But, if he is satisfied by the evidence, as a reasonable, honest man, to a moral certainty, that the defendant committed the acts charged in the indictment, then his mind is not in a state of reasonable doubt, and then the guilt of the defendant has been proved beyond a reasonable doubt, and it is his duty to say so by a verdict of guilty. Any further requests?

MR. SACHS: No, sir.

MR. MANLEY: No, sir.

THE COURT: You may pass out, gentlemen.

(The jury found the defendant guilty of grand larceny in the first degree, with a recommendation to the mercy of the Court).

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