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CASE

-: I N D E X :-

#1786

COURT OF GENERAL SESSIONS OF THE PEACE,

CITY AND COUNTY OF NEW YORK. PART IV.

THE PEOPLE -vs- WILLIAM CALLAN, impleaded with Joseph Muro.	Before: HON. JOSEPH F. MULQUEEN, J., and a Jury.

Tried, New York, October 9th, 1912.

Indicted for Burglary in the third degree.

Indictment filed August 20th, 1912.

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

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

FREDERICK A. WARE, ESQ., for the Defense.

-: TRANSCRIPT OF STENOGRAPHER'S MINUTES :-

Frank S. Beard,
Official Stenographer.

THE PEOPLE'S TESTIMONY.

P A S Q U A L E P A R A G I O, a witness called on behalf of the People, being duly sworn and examined through the official interpreter, Mr. Moustachi, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Paragio, what is your business? A Truckman.

Q And where is your place of business? A 2485 Belmont Avenue, Bronx.

Q And have you a stable anywhere? A I forget the number and the address of the stable.

THE COURT: Well, has he got a stable? That is the question.

A Yes, sir.

BY MR. MANLEY:

Q Well, whereabouts is it? Describe it as exactly as you can. A 2464 Belmont Avenue.

Q Well, do you have a building of any kind at 684 Fordham Road? A I used to have a stable there before.

Q Now, you had your stable at 684 Fordham Road, on the 17th of last August; didn't you? A Yes.

Q And is that in the City and County of New York? A Yes, sir.

Q And how long had you had your stable there before that day? A Two months.

Q Now, did you lock up that stable on the evening of the 16th of August last at 684 Fordham Road? A Yes, sir.

Q About what time was it when you locked it up? A About nine, or a quarter past nine.

Q In the evening? A Yes, sir.

Q What kind of a lock was there on that door? A A round lock. It cost me $1.

Q Well, is it what is called a padlock? A It was a padlock.

Q Now, how far back from the street was the stable? A About 40 feet.

Q What was there inside of the stable at the time when you locked it up, that night that we are talking about? A Horses.

Q How many horses? A Four.

Q Now, some time that night, were you called to go anywhere? A No.

Q Well, did you go anywhere that night or the next morning? A Inthe morning.

Q What time was it the next morning? A About half past in the morning.

Q Where did you go? A In Tremont Avenue.

Q Well, was it a police station? A Yes, sir.

Q Did you see anything there that belonged to you? A No.

Q Well, after you had gone to the police station, did you go anywhere else? A I went to work with the horses.

Q Well, did you find that any horses had been taken, that night? A About one o'clock in the morning, the police came and woke me up, and showed me the horses.

Q Well, where were the horses, on that night? A They brought the horses in front of my own house.

Q And it was police officers who did that; was it? A Yes, sir.

Q Have you found out the names of those police officers since that happened? A I know them by sight. I don't know their names.

Q Well, when they brought them to your house, was that to your house at 2485 Belmont Avenue? A Yes, sir.

Q Now, what was the color of those horses that the officers brought to your house, that night? A One was white, and the other one was dark.

Q Now, when you locked up your place, on the evening of the 16th of August, at nine o'clock, were those two horses which the officers brought to you, at about one o'clock in the morning, inside the stable? A Yes, they were in.

Q I call your attention to the gentleman standing in

the courtroom. Can you tell me whether he was one of the officers who brought your horses to your house, that morning, at one o'clock? A Yes, sir.

MR. MANLEY: The witness indicates Officer Landvoe.

BY MR. MANLEY:

Q Now, how longhave you had those horses, Mr. Paragio? A Two or three years.

MR. MANLEY: Will you concede that the value of those horses at that time wasmore than $25?

MR. WARE: Yes, I presume so.

MR. MANLEY: It is conceded by the defendant that the value of the two horses, on the night in question, the horses now described and talked of by the witness, was more than $25, the reasonable market value.

BY MR. MANLEY:

Q Now, when you were woke up by theofficers, that morning, did you go to the stable? A No; immediately the police came to call me, I went to the station house.

Q Well, did you, some time that night or the next morning, go to the stable? A Immediately after I had possession of the horses at the stable, I brought the horses back to the stable.

Q Now, when you got to the stable, was there anything

that attracted your attention about the door of the stable, or any part of it? A There was no padlock there, there was a scratch just where the eyelet of the padlock goes in.

Q And did you see any part of the door broken? A No, sir.

Q Now, when you left, that night, left that stable, and locked it up, was there a staple that went into the wood of the door?

MR. WARF: I object to that, as leading.

THE COURT: Well, I will allow himto lead, under the circumstances.

A Yes, sir.

BY MR. MANLEY:

Q Now, what was the condition of the staple when you saw the staple that morning? A That part was in, as I left it, except that there was in the ring part a little scratch.

Q Well, was the padlock still locked into the staple? A No.

Q Well, what was the condition of that? A There was no padlock at all left there.

Q It had gone; it wasn't there? A Yes, sir.

Q Now, are you acquainted with this defendant, William Callan? A Yes.

Q Did you ever see him before the 17th of August? A No.

Q Where was it that you saw him first? A That same night that I took the horses from the station house.

Q Where was he when you first saw him? A Right in front of my house, together with the horses and the police.

Q And was that the first time you had ever seen him? A Yes.

MR. MANLIY: You may examine.

CROSS EXAMINATION BY MR. WARE:

Q Mr. Paragio, hadn't you seen this young man in the neighborhood some years past? A No.

Q Now, have you ever seen the padlock since that night? A No.

Q Do you know who took that padlock off that door? A I don't know.

Q How many horses did you keep in that stable? A Four.

Q What was the condition of the other two horses? Were they there when you came to the stable? A Yes.

Q Did you know a boy named Muro? A First, I didn't know him. Afterwards I knew him.

Q He is an Italian, like yourself? A He is.

Q And had you given him permission to ride on those

horses of yours, if he wanted to? A No, I didn't know him.

Q Is there any market or any place near your store where they buy or sell horses, do you know? A No.

Q How much did you pay for these horses? A $450 for both of them.

Q For the two? A Yes.

Q And how long ago was that? A Two years ago.

Q Did you know the police officers in this case before they came to your house, that night? A No.

Q Had never seen them before? A I saw them on post, yes.

MR. WARE: That's all.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q Now, you say that you had seen the police officers before. Had you talked to any of them? A No.

Q You had simply seen them on post in that vicinity, I suppose you mean? A Yes, they were on duty there.

MR. MANLEY: That is all.

A [illegible] M. [illegible], of the 65th Precinct, being duly sworn and examined on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q You are a member of the police force of the City of

New York, attached to the 65th Precinct? A Yes, sir.

Q And were you in that precinct, so attached, on the 17th of August last? A I was.

Q To what branch of the service do you belong? A I am a mounted patrolman.

Q Is your post, or was it at that time, in the vicinity of 684 Fordham Road? A It was.

Q Now, were you, upon the night between the 16th and 17th of August, in the vicinity of 684 Fordham Road, in the City and County of New York? A I was.

Q Were you in the vicinity of a stable at that address? A I was.

Q Now, just answer this question, officer, yes or no, because you can't state your reason. Did you have any reason, on that evening, for being in the vicinity of that stable? A Yes.

Q Had you been in the vicinity of that stable on other days or nights just prior to that date? A Yes.

Q Was any other police officer with you on the night that we are talking about? A Yes.

Q And who is he? A Officer William Helmis.

Q Of the 65th Precinct? A Yes, sir.

Q Now, did anything, that night, attract your attention in the vicinity of that stable? A Yes, sir.

Q Now, just state what it was. A I saw the defendant

Callan, in company with another defendant, who, I learned it later, his name was Muro, break into the stable of Pasquale Paragio.

MR. WAIT: I object to that as a characterization. Let him tell what he saw the defendant do.

THE COURT: Objection sustained. Strike it out.

BY MR. MANLEY:

Q Now, what did you see them do? A Go in the stable, and take out a team of horses, and ride them down to the Southern Boulevard, and we placed them under arrest there.

Q And how far is the stable back from the street? A About 100 feet.

Q And what do you have to go through to get to the stable? A Through an alley.

Q And about how wide is that alley? A About six or seven feet.

Q Now, at the time when you saw what you have described, whereabouts were you? A In back of the stable.

Q In back of the stable? A Yes, sir, in a lot.

Q Now, where is the door going into the stable, with reference to the street, towards the street, ro away from it, or what? A It's towards the street.

Q Were you concealed in any way? A Yes.

Q By what? A By the fence and some of the bushes that were there.

Q Now, where is the fence with reference to the stable behind which you were concealed? A The fence is about three feethehind,and it is attached to the back part of this stable.

Q Does it run right up so that it touches the stable? A Yes, sir.

Q Well, how high is it? A Well, I should say about five or six feet.

Q And you and the other officer were behind the fence? A Yes, sir.

Q And how long had you been there before you saw the two defendants go to that stable door? A About an hour or an hour and a half.

Q Well, what was it that you saw these two men do at the door? A I heard some knocking at the door.

Q Was it loud? A It was.

Q And did it continue for any length of time? A For a short period of time.

Q And when you say knocking, what do you mean? A Well, as if someone was getting into the stable there, opening the door.

Q Well, it was a sound that you heard at the door? A Yes, sir.

Q Could you see the stable door distinctly from where you were? A Well, you could see the side of the stable door, yes.

Q Well, could you see the stable door distinctly enough so that you could tell at that time who it was, or did you afterwards discover who it was, when you arrested the defendants, the two defendants, with the horses? A I discovered afterwards who they were.

Q Now, how many persons did you see in front of the stable door, making the knocking noise? A Two.

Q And how long were they there at that door, making the knocking noise? A Maybe a couple of minutes.

Q And after the knocking noise at the door has ceased, did you notice anything in reference to the door after that? A Well, I couldn't notice anything on the door at the time, but I saw the two men go in.

Q Well, did you see the door open up? A Yes, I seen it open, I saw it ajar, and they passed in.

Q And when did they come out? A About two or three minutes after.

Q And what did they have when they came out? A Two horses.

Q Now, as I understand your testimony, you and the other officer followed and arrested them how far away from the stable? A About two blocks away.

Q Did you say anything or did your fellow officer say anything to the defendant Callon, at the time you arrested him? A Yes.

Q What did you say or what did the other officer say to Callan, if anything? A Well, I said to him, "Where are you going with this team of horses?" Andhe said, "We are going over to Farmer G."

Q What do you mean by that? The letter "G", or what? A I don't know. He said just "Farmer G," and I said, "Where is Farmer G?" And he said, "On the other side of Bronx Park."

Q Did he give you his address or street number? A No.

Q Did he say how he happened to go into the stable to get horses for Farmer G? A No, sir.

Q Did he give you any other explanation whatever? A No, sir.

Q Did he say that he would take you to Farmer G? A No, sir.

Q Now, was anything said by the defendant Muro in the presence of the defendant Callan, at that time? A No, nothing at all.

Q Was any other explanation given at any time by the defendant, besides what you have told us? A No.

Q Do you remember the color of those horses? A One was a white horse and the was a bay.

Q Now, after you had placed the two defendants under arrest, did you go back to the stable and look at that door, or did you first communicate with the owner of the stable, Paragio? A Communicated with the owner.

Q And you found him at his house; did you? A Yes, sir.

Q And did you finally go back to the stable after that? A No, sir. Proceeded to the station house.

Q Did you at any time that night go to the stable again? A No, sir.

Q Or the next day? A No, sir.

Q Did you at any time take a look at the door at which you had heard that knocking? A No, I don't believe I went back at all to look at the stable.

Q Do you know whether the other officer, Helmis, did ever go back to the stable? A No, sir.

Q Is Helmis here to-day? A No, sir, he's sick; he is on the sick list.

Q Do you know how long he has been sick? A About a week.

MR. WAHL: I object to that, if your Honor please. We can't take that sort of testimony, I submit. It's immaterial, irrelevant and incompetent.

THE COURT: Well, it is merely trying to account for the absenceof a witness.

MR. WARE: I object, and I move to strike out the answer.

THE COURT: Strike it out, the last answer. You have accounted for his absence. He says that he is on the sick list.

MR. MANLEY: Very well. Then that's all.

CROSS EXAMINATION BY MR. WARE:

Q You say that you were watching the stable for about an hour and a half, that night? A Yes, sir.

Q And did you expect the stable to be entered? A Well, I didn't know whether it would be entered that night, or any other night. I had been watching around for about three weeks.

Q Well, why did you give an hour and a half to that stable, that night, why didyou stand in that field back of the stable for an hour and a half? A Because there had been a previous attempt to steal those horses from the stable, about three weeks before.

Q And had you received any compalint to that effect? A No.

Q Well, then, how do you know that? A Because we chased two fellows, on the previous occasion, and we found the team of horses on Crotona Avenue, just around the corner from the stable, and the stable door has been pried open,

that night.

Q Did you catch the two fellows that you speak of, on that previous occasion; did you arrest them? A Yes, sir, we grabbed them two blocks away, when they ran down the street.

Q But neither of those two fellows was Callan, the defendant? A No, sir.

Q Well, what became of those two fellows? A I don't know.

Q Well, you know that you grabbed them; don't you? A Yes.

Q Well, they weren't turned looseby you at once; were they? A No, sir; but we didn't have sufficient evidence, and they were discharged.

Q Weren't the horses in their possession at the time you arrested them? A They were on Crotona Avenue, and I didn't see these men take them from the stable. That's why they were discharged.

Q Now, which horse did Callan have? A The white horse, and the other boy had the bay.

Q Well, was either one of them riding the horses? A Yes, Muro was riding, and the other one was leading the horse, this defendant.

Q When you saw them break into the stable, as you have testified, and come out leading the horses, I presume, why didn't you arrest them then and there? A Because I

wanted to see where they were going with the horses.

Q The crime had been committed; hadn't it? A Yes.

Q When you came up to the defendant Callan, about how far away was he from the stable? A About a block and a half away from the stable, very near two blocks.

Q And he had the other young man with him? A Yes, sir.

Q And did you tell them that they were under arrest? A Yes, sir.

Q And after they were under arrest, this boy told you a story about "Farmer G"? A Yes.

Q After he was arrested and heknew you were a police officer? A Yes, sir.

Q You have known the defendant for some time; haven't you, officer? A No. I heard of him, though.

MR. WAHL: Now, I ask that that be stricken out.

THE COURT: Yes, strike it out.

BY MR. WAHL:

Q Now, when you put him under arrest, did you assault him? A No.

Q Didn't knock him down? A No, sir.

Q Didn't kick him? A No.

Q Do you know, as matter of fact, that he sustained a rupture, that night, from the treatment he received? A If he had a rupture, that night, if he had complained to me, I would

have called an ambulance, and had him examined.

THE COURT: Strike out the answer, and repeat the question.

(It is repeated by the stenographer).

A No, sir.

BY MR. WARE:

Q Did you examine the lock on that door, that night?

A No, sir.

Q And yet you were waiting for somebody to come along and commit burglary there?

MR. MANLEY: You mean whether he examined it before the burglary?

MR. WARE: Yes, that's what I mean.

A No, I didn't examine it before the burglary. I went on the statement of the owner that he had locked the horses in the stable.

BY MR. WARE:

Q But you said that you expected the stable to be broken into? A Yes.

Q And you know that there must be a breaking, officer, to constitute a burglary? A Yes, sir.

Q And yet you didn't examine the door, to see whether the door was fastenedor not? A No, I did not.

Q And did you examine the lock or the door afterwards?

A No, sir.

Q For all that you know the door may have been unfastened, is that right? A I don't know.

Q (Question repeated)

MR. MANLEY: Well, he says he doesn't know. I object to it.

THE COURT: I will allow it.

(The question is repeated by the stenographer).

A Yes, it may have been unfastened.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q How long was it before this night that we are talking about that you found horses, belonging to this man, on the street? A About three weeks.

Q How many different times do you believe that you have been in the vicinity of that stable, watching the stable, after that time, and during those three weeks? A Oh, fully ten times, if not more.

MR. MANLEY: The People rest.

MR. WARE: I understand, if your Honor please, that there is another police officer in the hall, and I will ask the District Attorney if he isn't going to call him.

MR. MANLEY: Another police officer in this case?

MR. WARE: Yes, I understand so.

MR. MANLEY: Which one, which one do you want me to call?

MR. WARE: I want you to call any witnesses you have got.

MR. MANLEY: Here is the list of the People's witnesses, if your Honor please, and if there are any that Mr. Ware wishes to call, he may call them.

MR. WARE: Now, if your Honor please, at this time I move your Honor to direct the jury to acquit, on the ground that there is no corroboration of the fact that any burglary was committed; in other words, that there was any breaking.

THE COURT: Denied.

MR. WARE: Exception.

THE DEFENSE.

W I L L I A M C A L L A N, of 645 Rae Street, Bronx, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q How old are you, Callan? A I am around 20.

Q 19, going on 20? A Yes, sir.

Q And what do you do for a living? A I am a rock driller, steel driller.

Q And who have you worked for? A I workedfor Patrick J. Kane, and for McCabe.

Q Have you ever been convicted of a felony in your life? A No, sir.

Q Or charged with one? A No, sir.

Q Now, just tell this jury and his Honor what happened that night, as far as you recollect it. A Well, I just happened to drink a little bit more than I ought to have drank, and this friend of mine, Muro, was coming along, and there is a garage right alongside the stable, and there is a witness that is in the garage that says he often had to chase these horses away, because they wandered around, and we seen the horses, and I said, "Come on for a joy ride." And so I couldn't get on the horse's back at all, and I was going to get on a big stone, and get on his back, and I was leading him along to the stone, and the officer jumped out at me, and pointed the gun at my

mouth --- another officer did that ---- an officer in the Bedford Park precinct --- and told me to put up my hand.

And then this officer Helmis said to me, "You aint a bad fellow. I feel sorry for you."

And then this other officer here knocked me down and kicked me, and I'm ruptured, and I got a truss off Dr. Maguire, over in the Tombs, where he kicked me.

And I've got his own witness to show that he made him stop kicking me, and his own witness jumped in, and said, "Officer, let him up. There is one citizen, anyway, in this crowd."

And I didn't have no intention oftaking the horse or stealing it, or selling it. And Paracio says he don't know me, but he does know me, if he'll only admit it.

Q. Have you ever suffered from a fracture of the skull? A. Yes, I got hit on the head with a bseball bat when I was only nine years old, and the doctor said my head would neverbe the same again.

Q. And is there a deep indentation there where the fracture was made? A. Yes.

THE COURT: Well, what do you want to prove by that?

MR. WAKE: I wish to prove that his mentality was affected by the blow on the skull and the fracture.

MR. MANLEY: Well, is the defense insanity?

MR. WARE: No, not exactly. But, if you want to have it that way, you can.

BY MR. WARE:

Q Do you everhave fits of forgetfulness or dizziness?

A Yes, sir. I often have them, especially in the hot weather.

BY THE COURT:

Q Did you forget who owned these horses, that night?

A No, sir, I didn't. I didn't know who owned the horses.

Q You knew that you didn't own them; didn't you?

A Yes, sir.

BY MR. WARE:

Q You knew this Paragio; didn't you? A Yes. But I didn't know that he owned any horses.

Q Now, did you say anything about "Farmer G" when you were arrested? A No, sir, I never heard of that before.

Q Did you intend to steal these horses? A No, sir. And, moreover, this officer said that he was going to follow me to see where I was going to sell the horses, and he knew I couldn't sell them a block away from the stable, that there was no place for that.

Q And are there anyhorse markets or sales stables in that neighborhood? A No, sir, not that I know of.

Q Did you intend to steal or sell these horses?

A No, sir, I didn't. If I intended to steal them, I wouldn't put my friend on the horse's back. If we had any intentions to steal them, the horses, why not steal the harness with them, too.

CROSS EXAMINATION BY MR. MANLEY:

Q Well, didn't the horses have harness on in the stable? A No, sir.

Q It was pretty dark inthe stable, wasn't it? A No, sir. I wasn't inside of the stable at all, or on the man's ground at all. There is a witness in the garage next door to prove that.

Q Where were the horses when you first saw them, that night? A One of them was in the street, and the other was just coming out, and I took him out of the alleyway.

Q You mean they were coming through the alleyway? A Yes.

Q I don't suppose there was anybody with the horse that was coming out of the alleyway at that time in the morning? A No, sir.

Q Was that the white horse or the other horse that was just coming out of the alleyway? A Well, I couldn't just remember that.

Q Well, how close to the sidewalk in the alleyway was

the horse that was coming out the alleyway when you first saw the horse? A The horse was right at the gate. The gate is even with the sidewalk.

Q Well, then, the horse was right at the edge of the sidewalk, walking from the alleyway to the street? A Yes, sir.

Q And that horse was alone; was he? A Yes. Andhe had a rope around his neck.

Q And was the rope hanging down on the ground? A Yes, sir.

Q And where was the other horse? A Right in back of him.

Q In the alleyway? A Yes.

Q And then when you first saw them, both horses were coming out of the alleyway? A Yes; and one was half out, and the other was right behind him.

Q Were they going very fast? A No, they were walking.

Q Were you walking on the sidewalk at that time, callan? A Yes, I was walking on the sidewalk.

Q Was Nuro there, too? A Yes, he was there.

Q You were both walking together at that time? A Yes.

Q You just happened to pass by that alley at that time? A The alley leads right into the street. You have

to pass it.

Q (Question repeated) A Yes, I was coming from Kip'sHotel, and was going down to the Boulevard.

Q where is Kip's Hotel? A On the Boulevard, where I was locked up with the horses.

Q Now, you say there was nobody with the horses at the time? A Yes. And when I seen them, I said, "Come on for a joy ride," and my friend said, "How are we to get on," and I said, "Come on, and I'll give you a boost." And we didn't intend to steal the horses at all. We only wanted to take a ride.

Q Then you intended to take them for a joy ride; is that it? A Yes.

Q Did you know where the horses belonged? A No, sir; only I seen them coming out of the alleyway.

Q And did you see the stable there? A No, sir.

Q Didn't you know that there was a stable there belonging to Mr. Paragio? A No, sir; because you can't see it in the night. And it looked very funny to me how they should come out there, because there was a house right next to the alley.

Q Well, when you came back from the joy ride, were you going to leave them in the alley? A Yes, I was going to tie them to the post at the gate there.

Q Now, did you say anything to the officer about

"Farmer G"? A. No, sir, I didn't. And it wasn't that officer there that locked me up. It was another officer on post. That officer askedme for a match, as I was leading the horse, and I stopped to give it to him.

Q Now, how far away were you from the alley at the time the officer placed you under arrest? A A block and a half.

Q Did you tell him you were going for a joy ride? A Well, he didn't ask me that question. He asked me for a match.

Q Did any officer ask you, at the time you were placed under arrest, where you were going with the horses? A Yes. He said "Where are you going with them horses?" And I said, I didn't know where I was going with them.

Q Well, if you were simply going for a joy ride, why didn't you say so? A Well, I said I didn't know where I was going with them. That's just the words I used to them.

Q And did you say anything else to them? A No, sir, I didn't, not one word.

Q And that was about 1:20 in the morning. I couldn't tell you the time. It was late.

Q Well, it was late at night? A Yes, sir.

Q Now, you hadn't been inside that alley, at the stable door at all; had you? A No, sir. I didn't know

that there was a stable there.

Q You hadn't then broken the lock off the door? A No, sir.

Q And you didn't see anybody else have anything to do with the horses except Mr. Muro, the man who was with you? A No, sir.

Q Nobody else at all? A No, sir.

Q And you don't claim that you were sent there by anybody else, do you? A No, sir, I wasn't sent there by anybody.

Q And you don't claim that anybody told you to take the horses anywhere; do you? A No, sir.

Q Now, is that the only explanation you want to make? A No, I want to say some more. As I come along with the horses, another officer was on post, in a different precinct, and he asked me if I had a match, and I said yes, and I stopped and gave him a couple of matches, and he put the gun in my mouth (illustrating), and then locked me up. And, as he was taking me down the road, this officer Helmis came up, and said to me, "You are not a bad fellow, I'm sorry for you," and then this officer here knocked me down and kicked me.

Q Now, is there anything that you have got to say bearing on the charge against you? A No, sir; only I didn't break the lock and didn't go near the stable.

Q Do you know who did? A No, sir, I don't. I wasn't in the premises at all, to break the lock; and, furthermore, I didn't knew that there is a stable there, from that day ro this. And Paragio knows me well, if he wants to admit it.

G E O R G E F E U L N E R, of the 65th Precinct, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Now, officer, do you know Officer Landvoe? A Yes, sir.

Q He is in court? A Yes, sir.

Q And do you know Officer Helmis? A Yes.

Q Is he in court this morning? A No, sir, not that I know of.

Q You haven't seen him? A No, sir.

Q Did you see Officer Nugent? A Yes.

Q Is he out in the corridor now? A I don't know.

Q Did you see him, this morning? A Yes.

Q He is a witness in this case? A I believe so. I don't know.

MR. MANNEY: He was here, but I found he knew nothing, and I told him he could go home.

BY MR. WARE:

Q Do you know anything about this boy after he was arrested? A Well, all that I know is that I seen him with the horses.

BY MR. MANLEY:

Q That is, this defendant, you mean? A Yes, sir. And another young man, Muro, and this defendant together, and they had the horses, and two officers were with them.

BY MR. WARE:

Q What officers were with them? A Landvoe and Helmis.

Q And did you see either one of those officers strike or kick the defendant, and knock him down? A No, sir.

Q You don't know that he was injured, that night; do you? A No, sir.

Q Did you go to the station house with him? A No, sir.

Q You were in uniform, officer? A Yes, sir.

Q You are a mounted officer? A Yes.

Q And did you notice the condition of the defendant, that night? A Well, no, I didn't. He wasn't drunk, or anything. He was sober, to my knowledge.

Q Well, did you pay any particular attention to his condition? A No, just what I seen of him there.

Q Well, how do you know then? A He didn't seem

drunk to me, or anything.

BY THE COURT:

Q What was he doing when you saw him first, officer? A Well, Officer Helmishad Callan and a grey horse.

Q But what were they doing? Standing still or walking, or what? A No, sir; walking towards us. Officer Helmis asked us to stay around, in case they needed assistance, and we stood off in the distance.

BY MR. WARE:

Q Did he ask you that before or after the arrest? A Before the arrest.

Q And did you know that somebody was going to get arrested? A No.

Q Did you see these defendantsbefore they were arrested? A No, sir.

Q And you were right there in the neighborhood? A Yes, sir.

Q The first you saw of them was after they had been arrested, and you saw the defendants and two horses? A Yes, sir.

Q And two officers? A Yes, sir.

Q Well, you are sure that you haven't seen Officer Helmis, this morning? A No, sir; I believe he's on the sick list.

BY THE COURT:

Q What time did Officer Helmis ask you to wait around there? A Well, when I relieved him.

Q When was that? A At twelve o'clock.

Q At twelve o'clock? A Yes, sir.

Q And it was your duty then to go back to the station house; was it not? A Well, no, sir, I was going on post.

Q You said he relieved you; did you not? A No, sir, I relieved Helmis.

Q Oh, you relieved Helmis? A Yes, sir.

Q And then Helmis was to go back to the station house? A Yes, sir.

Q But he did not go back? A I don't know, but he had to go back.

Q When did you see him next? A When he had this defendant.

Q When was that? A Around one o'clock.

Q And you relieved him at twelve o'clock, you say, and he told you to stay around there? A Yes, sir.

Q And he did not say how long you should stay around? A No, sir.

Q How long is your post? A Well, it is, I should judge about ---

Q Two or three miles? A Two miles, anyway.

Q And you stayed in this one place until one o'clock? A Oh, no, not all the while. We only went to this

particular place at one o'clock.

Q Well, did you know that anything was going to happen at one o'clock? A Well, only what Helmis told me, to stay around there, that they might need some assistance.

Q At one o'clock? A Yes.

Q When did he tell you that? A When I relieved him.

Q At twelve o'clock? A Yes, sir, at twelve.

Q Well, isn't that a very strange thing, officer? How do you account forthat, that he would tell you that he wanted you to be at one o'clock at a certain place, an hour later? A I don't know. He just asked me to stay around there, and at one o'clock he might want some assistance.

Q Well, did you ask him what was going to happen at one o'clock? A No, sir; he didn't tell me.

Q Now, wasn't that a curious statement for a police officer to make to you, at twelve o'clock at night, that he would want you at one o'clock in that neighborhood? A He said, "We might want some assistance." That's all he said.

Q And did you know what would happen that would make assistance necessary? A No, sir, he didn't say.

Q Well, did you have any idea that this stable was going to be entered, that night? A No, sir.

Q Well, why did you think that he asked you to wait in the vicinity of that stable? A Because he askedme.

Q You don't think, at all, is that it? A What do you mean, your Honor?

Q Why, if an officer asked you to wait in one place for an hour, or to be at a certain place in an hour, wouldn't you ask him why? A I didn't ask him why, and he said, "We might want you," he says.

Q And you didn't go any further in your inquiry? A No, sir.

Q You were not at all curious? A No, sir.

Q He was not your superior; was he? A No, sir.

Q He had no right to give you anyorders? A No, sir.

Q And he had no right to tell you how to patrol your post? A No, sir.

Q And you didn't ask him why he wanted you to be, at one o'clock, at that particular place? A I did, but he didn't tell me why; for what he wanted me.

Q And you didn't press it? A No, sir.

BY M . WALL:

Q Officer, had this Officer Helmis asked you, on any other night prior to this night, to stay around there? A No, sir.

Q You are sure of that? A Yes, sir.

Q Just picked out this one particular night? A When I relieved him.

Q Haven't you been on that post for the three weeks prior to this night A Well, not every night.

BY THE COURT:

Q Every alternate night; is it not? A Yes, sir.

BY MR. WARE:

Q But had you been on that post before? A Yes.

Q During the three weeks prior to that night? A Yes, sir, occasionally.

Q Now, did you hear any conversation between the officers and the defendants, when you came up to them, that night? A No, sir.

Q Not a word? A No, sir. They come along with the two defendants and the horses, and they says, "We have them."

BY THE COURT:

Q Did you notice them going into the stable, or into the place where the stable was? A Well, I walked down to the other end of my post with them.

Q With whom? A And asked them if they wanted me to go in with them, and they said no, they don't need me to go in with them.

Q And you walked down to the other end of your post? A Yes, sir, about ten blocks.

Q Well, you mean you walked your horse down, don't you; you are a mounted officer; are you not? A Yes, sir.

Q And when did you walk your horse down to the other end of your post? A After the arrest was made, with the defendants and the officers.

Q And so, when you say you asked them if they wanted you to go in with them, you mean what? A To go into the station house with them. But the stable and the station house is next door to each other.

Q No, we are not talking of the police stable, but the stable where the burglary is said to have been committed. How far was that from the station house? A About two miles, I shouldjudge.

BY MR. WALE:

Q Now, did Officer Landvoe or Officer Helmis tell you the explanation this defendant had given for having the horses? A No, sir.

Q Did you hear the defendant say anything? A No, sir.

Q Did Officer Landvoe tell you anything about where the defendant was taking the horses? A Yes.

Q Where did he say he was taking them? A It's on Fordham Road, between ----

BY THE COURT:

Q No. What did Officer Landvoe tell you? That is

the question. A Landvoe told me that they said they were going to take them to a man in Westchester, by the name of G.

Q Did you ever hear of G before? A Yes, I've heard of G.

BY MR. WARE:

Q Didn't you say before that you onlyheard the officers say, "We have got them"? A Yes, that's what they told me.

Q Or did Officer Landvoe tell you that out in the corridor here? A No, sir, he said it that night. And these defendants told me that, too.

Q What did they tell you? A All that I said to them was, "Where was youse going to take them?" And they said they were offered ---- I forget how much --- to take them to Westchester.

Q And you were in full uniform, on horseback, and an officer of the law, and they told you that? A Yes, after they were placed under arrest by Officer Landvoe and Officer Helmis; they were in the custody of the two officers.

Q But they had been placed under arrest before you got there? A Yes.

And then, after having been placed under arrest, they told you, an officer in uniform, that they were going to seel the horses? A No, sir, they didn't say they were

going to sell them.

Q Well, that they were going to take them to Westchester, to a farmer named G? A Yes.

Q Did you ever find out whether there is a Farmer G in Westchester? A Yes.

Q How far is that from where they were arrested? A Three or four miles. He did live on Eastchester Road.

Q Did you make any attempt to find out whether he had offered to buy these horses from the boys? A No, sir.

Q Did you ever go up there to find that out? A No, sir.

BY THE COURT:

Q Was it your duty to go up there and find that out, without an order from a superior officer? A No, sir.

Q Well, were you ordered to go there to find out? A No, sir.

CROSS EXAMINATION BY MR. MANLY:

Q How close to the premises 684 Fordham Road is the nearest part of your post? A It's on my post.

Q As I understand it, those other two officers, after the arrest of the two defendants, Muro and Callan, they came by where you were on the street? A Yes, sir.

Q And Officer Helmis had told you to stay around,

because you might be needed, that night? A Yes, sir.

Q Well, did that mean on that particular part of the post which was near the stable, or don't you know?

A Yes, he said, "Stay around Crotona Avenue."

Q Well, was Officer Helmis off duty after twelve o'clock, that night? A Yes, I believe he was.

BY THE COURT:

Q Well, you relieved him and he was to go back to the station house; wasn't he? A Yes, sir.

Q Did he say to you whether he was going back or not? A Oh, I knew he had to go back, your Honor, because he had his horse. He had to take that back to the stable.

Q Well, didn't he have his horse when he arrested these boys? A No, sir.

RE DIRECT EXAMINATION BY MR. WARE:

Q Where was his horse? A In the stable, the police stable.

Q Was he a mounted policeman? A Yes, sir.

BY THE COURT:

Q You are all mounted officers up there; are you not? A No, sir, not all of us. There is 15 up there in that station house.

M A R Y P O W E R S, of 645 Rae Street, Bronx, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Now, Mrs. Powers, you are the mother of this boy? A Yes, sir.

Q And you have married the second time? A Yes, sir.

Q And he has a step-father, Mr. Powers? A Yes, sir.

Q And did that boy live at home with you? A Yes, that boy lived at home with me.

Q Has he worked for a living? A Yes, he worked for a living.

Q Well, Mrs. Powers, did this boy ever have an accident of any kind to his skull?

MR. MANLEY: I object to that. I don't see the competency of that.

MR. WARE: Well, we will put his head in evidence then, and show he has a big dent in it.

THE COURT: Well, I will allow her to testify to facts within her knowledge, if you are going to set up insanity as a defense.

MR. MANLEY: Yes, sir, if he states that insanity is to be the defense, I have no objection to it. I withdraw any objection.

MR. WARE: I don't state that. But I do state that this blow, having fractured his skull, may have affected his reason and his memory.

THE COURT: Well, I will sustain the objection to that question.

MR. WARE: I except.

BY MR. WARE:

Q Has your son got a fractured skull?

MR. MANLEY: I object.

THE COURT: Objection sustained.

BY MR. WARE:

Q Has he always been a good boy?

MR. MANLEY: Objected to.

THE COURT: Allowed.

A Yes, sir.

MR. WARE: She is your witness.

MR. MANLEY: No questions.

MR. WARE: We rest. Now, if your Honor please, I renew the motion that I made at the close of the People's case, that the People have not presented evidence which would warrant this jury in convicting the defendant of the crime charged, which, I think, is burglary in the third degree, or in finding a conviction, beyond a reasonable doubt.

THE COURT: Denied.

MR. WARE: Exception. And I will go to the jury now.

MR. MANLEY: Have you finished your case?

MR. WARE: Yes, I am afraid so.

REBUTTAL.

A L L E N C. L A N D V O E, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q. Officer, were the two persons that came out of the stable door, with the two horses, out of your sight at any time from the time they came out of the stable up to the time you arrested them? A. No, sir.

Q. When was the last time before the night that we are talking about that you had been there, watching that stable; how many days before, would you say? A. Maybe two nights before, or the night before that.

Q. How many times would you say, roughly speaking, between the time you found this man's horses in the street before, up to the time you arrested the defendants, had you been at that stable, watching?

MR. WARE: Objected to.

THE COURT: Objection sustained.

BY THE COURT:

Q. Were you on duty or off duty, that night, the night in question here? A. I was off duty.

Q. Well, one officer testified, to-day, that he was asked to be there, to remain in that neighborhood, that he might be needed. A. Well, I don't know anything about the conversation with the other officer, but I know I was off

duty, that night.

Q Well, what are you supposed to do when you are off duty? What are the police regulations as to what you are to do, after your tour is finished? You have got to go back to the station house, and report; have you not?

A Yes, sir.

Q And haven't you got to go upstairs then, and go to bed, and rest for the next tour of duty? A No, sir, not unless I'm in reserve. But I wasn't in reserve, that night, and I didn't go on again until the next evening at ten o'clock, the next night. I was going to be free from four o'clock that afternoon until ten o'clock the next night. It was my thirty hours off.

Q Then you were thirty hours off? A Yes, sir.

Q And not required to do any duty at all? A No, sir.

Q Well, why did you do this duty? How could you tell that something was going to happen there, that night, at one o'clock? A I couldn't tell whether anything was going to happen there, that night, or not.

Q Well, when did you go to that stable? A About eleven o'clock.

Q And when were those horses taken? A Between one and one-twenty, about that time.

Q Well, you said on your direct examination that you

were there about an hour and a half? A Yes, sir, about that.

Q And now you say you went there about eleven o'clock? A Yes, about that time. About an hour and a half I was there altogether.

Q Well, you didn't prepare a plan for anybody to go to that stable, that night; did you? A No, sir; because I had been there on previous nights.

Q And nothing happened on those nights? A No, sir.

Q You don't think it is right for a police officer to induce a man to commit a crime; do you? A No, sir.

Q And no such thing happened here? A No, sir.

Q Well, that is what I wanted to know. A Oh, no, sir.

CROSS EXAMINATION BY MR. WARE:

Q And you had seen those same two horses wandering around that neighborhood, and nobody near them, on another night; hadn't you? A Yes.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q And was it three weeks before that you saw them in that neighborhood on the street? A Yes, sir.

Q Did you take them anywhere when you discovered them

on the street? A Yes, sir, I brought them back to the stable.

Q Did you go to the stable then? A Yes, sir.

Q And did you discover anything at that time in regard to the stable door? A Yes, it was open.

Q Did you see any marks on the door? A I didn't examine the door, that time.

Q Was there anybody in the stable at that time, three weeks before? A No, sir.

Q Did you see a lock on the door? A No; there was a broken lock on the ground.

Q Onthe ground? A Yes, sir.

Q Was that the same door that you had seen these two men knocking at, on the night we have been talking about? A Yes, sir.

RE CROSS EXAMINATION BY MR. WARE:

Q Did you notify Mr. Paragio that you had found his horses wandering around the streets, on the first occasion? A Yes, sir; and I took them to his door, and notified him that I had seen them wandering in the street and then took them to the stable.

P A S Q U A L E P A R A G I O, being recalled by the District Attorney, and being examined through the same official interpreter, Mr. Moustachi, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Paragio, I am going to ask you about the night of the 16th and 17th of August, the night we are talking about here.

MR. WARE: I object to the District Attorney leading the witness.

THE COURT: Overruled.

MR. WARE: Exception.

BY MR. MANLEY:

Q I call your attention --- I withdraw that. I call your attention to the night that we are talking about, between the 16th and 17th of August, and I ask you if there were any other entrances to that stable besides the one that you told us you had locked up with a padlock, at nine o'clockat night? A That,s the only entrance.

Q Was that the only way of getting in and out of the stable.

Q Was anybody left in the stable when you locked up at nine o'clock, that night? A No, sir.

BY THE COURT:

Q Did you know that anybody was going to your stable,

that night, about one o'clock, to take the horses? A No; if I had known it, I would have been there myself.

CROSS EXAMINATION BY MR. WARE:

Q Mr. Paragio, were you waiting, that night, sitting up, dressed, waiting for the officers to come along with the horses? A Before the police arrived, another boy came and called me.

Q Another boy? A Yes, sir.

Q Do you know who that boy was? A I don't know him.

Q How often is your stable broken into that way? A That's the second time.

Q Have you ever lost any horses? A No.

Q Did you put the same lock on the door, each time?

THE COURT: Well, what difference does it make? If there was any lock on the door and it wasbroken on this occasion, and the stable was entered with felonious intent, it was burglary.

MR. WARE: That's all.

RE DIRECT EXAMINATION BY MR. MANNIX:

Q How long before the night that we are talking about was it that you had found the door broken open before?

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

THE COURT: Sustained.

BY THE COURT:

Q Your horses were out of the stable only once before this night; isn't that so? A Yes, sir.

Q And there was an arrest made at that time? A Yes, sir.

THE COURT: And the officer said the persons arrested were discharged for lack of evidence. Any further questions?

BY MR. WARD:

Q And, as matter of fact, you don't know how often your horses go out of the stable; do you? A My horses never go out of the stable. They were taken out twice. That's what I know.

Q Well, how do you know that they were taken out? You haven't been at the stable at night; have you? A I always found the stable door locked.

BY THE COURT:

Q In the morning? A Yes.

Q And your horses inside? A Yes, sir.

G E O R G E F E U L N E R, being recalled by the District Attorney, testified as follows:

MR. MANLEY: Of course, this question may be incompetent, but it having been asked, I should think there would be no objection to it now.

DIRECT EXAMINATION BY MR. MANLEY:

Q Was any time specifid by Officer Helmis, that night, when you relieved him at twelve o'clock, as to what time he might need you? A He said around one o'clock.

Q Now, how near one o'clock didhe say? A He said around one o'clock.

Q And what did he say? A He said that then he might need assistance.

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

Q And, as I understand it, he didn't explain to you where he was going at that time? A Well, I knew he was going in, at twelve o'clock.

BY THE COURT:

Q You mean you knew he was going into the station house, at that time; don't you? A Yes, sir, into the station house.

BY MR. MANLEY:

Q Did you know that he was going to make any police investigation at that time? A No, sir. He only said,

"Stay around here. You may be needed."

Q And was Officer Landvoe present at the time of the conversation between you? A No, he wasn't.

BY THE COURT:

Q And you were responsible for the safetyof that stable; were you not? A Yes, sir.

Q That night? A Yes, sir.

Q It was on your post? A Yes, sir.

Q And so Officer Helmis could have gone home and gone to bed, after he was relieved by you, and had gone to the station house to report? A Yes, sir.

Q You never went back on post after you were relieved; did you? A No, sir.

Q But the point is this. You are under oath, and you said that you didn't know that anything was to come off, that night? A I didn't know what was coming off.

Q You knew that something was coming off? A Yes, because he said to me to stay around there; that he might need assistance.

Q Well, did that ever happen to you before in your whole police experience? A No, sir.

Q And you don't know how he knew that something would be doing around there, at one o'clock; do you? A No, sir.

Q And you didn't ask him? A No, sir. I did ask him, but he says, "Be around there. We'll let you know after

awhile."

Q Well, didn't you ask him why he wasn't going home, to go to bed? A No, sir.

BY MR. WARE:

Q And it was just about one o'clock, just as predicted, that they made the arrest? A I don't know exactly what time it was, but it was about one o'clock.

MR. MANLEY: Now, if your Honor please, I would like to obtain an adjourment, to procure, if possible, the presence of Officer Helmis. This is a case that I got from Part II.

THE COURT: I understand that. There is no reflection in any way upon the District Attorney, Mr. Manley, but the police are expected to be vigilant, and there is no statement that they were not vigilant here. My questions were merely intended to find out from the officers whether the crime had been inspired or not. That the law doesn't contemplate, and the People will not tolerate it. There is no evidence of that here. That is all.

MR. MANLEY: Oh, no. The defendant admits that they were in possession of the horses.

THE COURT: Yes, and the defendant does not set up any claim that anyone told him to go there, but that they found the horses coming out of the alleyway.

MR. WARE: And I don't think that we ought to make two bites of an apple, and put this case over to another day; and I don't think that this case is important enough to delay the trial now.

THE COURT: Well, I think that the case is important enough to justify an adjournment, so that the officer may be here, to-morrow morning, and I will adjourn the case until to-morrow morning.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Thursday morning, October 10th, 1912, at 10:30 o'clock).