

START

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Recross</u>
Charles Stern	1	6	—	—
Burdette Dineen	6	—	—	—
Robert Casper	11	16	17	19
Edward G. Doyle	20	24	—	—
Alexander Jones	24	31	33	—
Frank Mumford	35	39	—	—
Court's Charge	46			

CASE # 2735

COURT OF GENERAL SESSIONS OF THE PEACE

IN AND FOR THE COUNTY OF NEW YORK

PART THREE.

3222

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

B e f o r e

- against -

: HON. JOHN F. McINTYRE, J.

FRANK MUMFORD, indicted with :
Alphonso Hancock and Alexander Jones :

And a Jury.

-----X
New York, Tuesday, December 30th, 1919.

THE DEFENDANT IS INDICTED FOR GRAND LARCENY IN THE SECOND
DEGREE AND RECEIVING IN THE FIRST DEGREE.

INDICTMENT FILED DECEMBER 9th, 1919.

A p p e a r a n c e s :

OWEN W. BOHAN, Esq., Assistant District Attorney,

For The People.

J. FRANK WHEATON, Esq.,

For the Defendant.

(A jury is duly impaneled and sworn.)

THE PEOPLE'S CASE

(Mr. Bohan opens the case to the jury on behalf of

The People.)

C H A R L E S S T E R N, called as a witness on behalf

of The People, being first duly sworn, testified as

follows:

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MR. WHEATON: I respectfully ask your Honor to excuse all witnesses in this case.

THE COURT: Yes.

(All witnesses on both sides are accordingly excluded from the Court room.)

DIRECT EXAMINATION BY MR. BOHAN.

Q Mr. Stern, your full name ? A Charles Stern.

Q You live where, Mr. Stern ? A 302 Convent Avenue.

Q And what is your business ? A Manufacturer of women's coats.

Q And where is your place of business ? A 6 and 8 West Thirty-second Street.

Q That is in the County of New York ? A County of New York, yes, sir.

Q And is that a loft building ? A It is.

Q What floor have you your place of business on ? A The twelfth.

Q Do you occupy the entire floor ? A I do.

Q The elevator, does that connect with your loft ? A Yes, sir.

Q Do you know the defendant, Frank Mumford ? A I do.

Q Is he employed in your building ? A He was.

Q Was he on the 2nd of December of this year, 1919 ? A He was.

Q In what capacity ? A Running the large car on

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the freight side.

Q Where is the freight elevator ? A On the right hand side of the building facing south. As we stand here now, the building is on the south side.

Q Is it near the front of the building, the freight elevator ? A It is.

Q How many cars in the freight elevator, one, or two ? A Two.

Q The defendant operated one, did he ? A He operated the large one, facing the street.

Q And the co-defendant, Hancock, was he also employed in that building at that time ? A He was.

Q In what capacity ? A He ran the smaller freight car.

Q You say you are a manufacturer of cloaks ? A Yes, sir.

Q I ask you to look at certain articles that I have on the table here, and I ask you are you able to identify these articles ? A I am.

Q Do you know whose property those articles are ? A They are my goods.

Q And they were your coats on the 2nd of December, of this year ? A They were.

Q Are those coats manufactured by you ? A Yes, sir.

Q Were they in your place of business on the second of December, 1919 ? A They were.

Q Where were they ? A Hanging on an iron rack in

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an aisle leading right to the freight elevator.

Q What was the last time you saw them? A About 4:30.

Q In the afternoon of December 2nd? A In the afternoon, yes, sir.

Q How long are you in the business of manufacturing cloaks, Mr. Stern? A 30 years.

Q Are you familiar with the market values of the coats that you see there? A I am.

MR. BOHAN: I ask that the coats be marked for identification.

(Three coats marked "People's Exhibit No.1, for identification", of this date.)

Q What was the market value, fair market value of the coats, People's Exhibit number one for identification?

A \$57.50 each.

Q \$57.50 each? A \$57.50 each.

Q That would be a total of how much? A \$172.50, about.

Q When was the next time you saw those coats after 4:30 on the afternoon of December 2nd? A About six o'clock, in the West 30th Street station.

Q Who did you see there? A Three colored men.

Q Mumford? A Mumford being one, Hancock and Jones.

Q And police officers? A Yes, sir.

Q And you identified the property that you have just indicated; is that correct? A I did.

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Q Were those coats, People's Exhibit number one for identification, shipped out or sent out by you from your place of business in the regular course of business on the 2nd of December? A They were not.

Q Was either of the men, Frank Mumford, Alphonso Hancock, or Alexander Jones, entitled to possession of any of the coats belonging to you? A How do you mean?

Q Were they authorized by you to be in possession of any of those articles on that day? A No, sir.

Q Were those coats part of any shipment? A They were to be shipped.

Q But had they been started in the process of being shipped that afternoon? A No.

Q Prior to that, Mr. Stern, had you employed any detective agency? A I had.

Q A little louder; they can't hear you? A I had.

Q Had you been subject to considerable loss before that? A I had.

Q Did you employ Mr. Burdette Divers? A I did.

Q How long had he been in your employ as a detective?
A About three weeks.

Q And also Mr. Casper? A Casper, yes, sir.

Q Was he a detective also? A Yes, sir.

Q Mr. Campbell? A No.

Q Just Casper and Divers? A Yes, sir.

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MR. BOHAN: That is all. Your witness.

CROSS EXAMINATION BY MR. WHEATON.

Q Mr. Stern, you say at the time that you saw the package of goods this defendant, with two or three others, was in the custody of the arresting officers? A I saw them at the police station.

Q They were under arrest then? A They were.

Q At no time prior thereto had you seen this defendant in connection with these goods, had you? A I saw him on the car that day.

Q You didn't see him with the coats, did you?

A I did not.

MR. WHEATON: That is all.

BURDETTE DIVERS, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOHAN.

Q Where do you live? A 41 West Sixty-fourth Street.

Q Mr. Divers, what is your business? A I am a private detective.

Q And you are employed by whom? A By the Sale National Detective Agency.

Q Where is their place of business? A 55 Liberty Street.

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Q How long have you been a private detective ? A Oh, I have been in the business five or six years.

Q On or prior to the 2nd of December, were you employed by Mr. Charles Stern, of 6 West Thirty-second Street ?

A Yes, sir.

Q And how long had you been observing the premises 6 West Thirty-second Street prior to the 2nd of December ?

A Well, we were on the work about a week; then we discontinued; and we came back on the 2nd as the result of a telephone call from Mr. Stern.

Q Were you in the - Where were you about 4:30 of the afternoon of December 2nd ? A I was across the street from the building.

Q Was your attention attracted by anything ? A Yes.

Q What is the first thing you saw ? A I saw a colored boy, whose name I afterward learned was Hancock, come from the rear of the entrance; there are two elevators in this building; one faces the street, the other faces the side, and you can't see the entrance of that elevator from the street. This boy Hancock came from the rear, and he had over his arm a coat, a yellow coat, wrapped around with paper; he brought it around and handed it to a colored boy on the freight elevator whose name I afterward learned is Mumford.

Q This defendant ? A Yes, sir. Then I saw the

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go into the car, into Mumford's car, and close the door. I couldn't see what they done in the car, but I saw them as they came out of the car again; I saw them open the door, and I saw Mumford hand a bundle to a man named - whose name I afterward learned is Jones. Jones left the building. Mumford came out and watched him going up the street. I followed Jones up the street.

Q In which direction did Jones go? A West on Thirty-second Street. I followed him to Thirty-second Street and Broadway, and at Thirty-second Street and Broadway designated him to Officer Doyle, who questioned him and then placed him under arrest.

Q At the time he was placed under arrest, did he have certain property in his possession? A Yes, sir.

Q And was that property afterwards identified by Mr. Stern? A By Mr. Stern.

Q In the Thirtieth Street police station? A Yes, sir.

Q I ask you to look at People's Exhibit number one and ask you whether that is the property that was found in the possession of the defendant Jones (handing witness exhibit)?

A Yes, sir, that is the property.

Q What is your answer? A Yes, sir.

Q It is? A It is.

MR. BOHAN: I offer that property in evidence.

THE COURT: Received.

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(People's Exhibit No. 1, for Iden., three coats, is received in evidence and marked "People's Exhibit No. one", of this date.)

Q When you arrested Jones, did you take him back to the building? A No.

Q You had a talk with him, did you? A I accompanied the officer who arrested him to the 30th Street station. I had no conversation with him.

Q What did he say? A He said that he had received those coats from a porter, didn't know who he worked for, but he was some porter in the building.

Q What else did he say? Anything else? A He wouldn't admit to anything. He said he didn't know they were stolen coats, and he said he was entirely innocent, he was just going to take them up town for this porter.

Q When was the defendant Mumford arrested? At the same time? A Mumford was arrested a short time later.

Q The same day? A The same day, the same evening, yes, Sir. Were you present at any time when the officer - You had a conversation with Mumford? A Yes, sir.

Q What did he say? A Mumford said he didn't know anything about it at all.

Q Who was present when you spoke to Mumford?
A When the officer spoke to Mumford?

Q Yes. A Detective Doyle, Casper, myself, and,

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I believe, Captain McQueenie was present.

Q How about Jones or Hancock, were they there ?

A They were there, yes, sir.

Q Tell us what Jones said concerning the possession by him of these articles, in the presence of Mumford ?

A Well, I will tell you, Counsellor, I wasn't there during very much of the conversation, after they were taken to the station house, I went over and got Mr. Stern -

Q Can you tell me anything that was said by either Hancock or Jones in the presence of Mumford concerning this transaction ? A The only thing I can tell you is that Jones stated that he had come to the building that afternoon as the result of a telephone call from Mumford which he had received through a pool room proprietor or a pool room employe called Bugger Red or something of that sort.

MR. WHEATON: I move that be stricken out, if your Honor pleases.

THE COURT: Strike it out.

Q Now you say that you recall the co-defendant Jones saying that he was called to this building by Mumford; is that right ? A By a telephone call from Mumford, yes, sir.

Q And that is how he accounted for his presence in the building; is that right ? A Yes, sir.

Q Now, what did Mumford say when Jones said that ?

A I had no conversation with Mumford at all.

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Q Please answer my question. When Jones said that to you, in the presence of Mumford, did Mumford make any reply? A Not that I recall.

Q Do you recall anything else that was said by Jones?
A No.

Q Was there anything said by Mumford as to whether or not he knew Jones? A I had no conversation with Mumford.

Q Will you answer my questions? A Surely.

Q Was there anything said by the defendant Mumford as to whether he knew the defendant, the co-defendant, Jones?
A Not in my hearing.

Q Did you have any other conversation, did you hear or take part in any conversation with the defendant Mumford?
A No, sir.

MR. BOHAN: That is all. Your witness.

MR. WHEATON: No questions.

R O B E R T C A S P E R, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOHAN.

Q Where do you live? A 1636 University Avenue, Bronx.

Q Mr. Casper, what is your business? A Private detective.

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Q You are employed by whom? A G. V. Sales Detective Agency.

Q On the 2nd of December of this year had you been observing the premises number 6 West Thirty-second Street?

A Yes, sir.

Q In the afternoon, about 4:30 o'clock, where were you standing? A At different intervals I was ^{as} nearly directly opposite as I could get.

Q Shortly before the co-defendant Jones was seen to come from the premises number 6 West Thirty-second Street, where were you standing? A Before he left there? Directly opposite, within a radius of ten feet, up and down.

Q On the same side of the street? A Opposite.

Q Opposite? A Opposite.

Q Did you see the defendant Mumford there? A I did.

Q Did you see the co-defendant, Hancock? A I did.

Q Had you known Mumford or Hancock before that time?

A I did.

Q What did you see the defendant Mumford do? A On that day, you mean?

Q Yes. A I noticed that Hancock left his elevator; I couldn't see the elevator, but there is a hall way that leads from the elevator which brings you to the front of the building; I noticed Hancock go into Mumford's elevator; Hancock had a package on his arm; it was not wrapped; there

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was some sleeves protruding, which I thought were garments. He got into Mumford's elevator. There was a vehicle passing at the time, and after the vehicle passed I couldn't see neither Mumford nor Hancock. They were in the elevator. That is, they got in before the vehicle passed. About two or three minutes later, I noticed that Mumford and Hancock came out of the elevator, and Mumford at that time had the package wrapped. He then walked to the front of the building, and Hancock and Mumford and Jones held a conference which lasted about two minutes. Mumford gave Jones the package. Jones then left the building and walked west on Thirty-second Street. When he did my partner, Divers, followed Jones west. I stayed there. Hancock and Mumford both came out of the building and watched Jones as he walked west on Thirty-second Street.

Q What did you do after that? A I then joined Divers and Doyle - Doyle had in the meantime arrested him - and went to the station house.

Q Were you there when the package that was found on Jones was subsequently identified by Mr. Stern as his property? A I was.

Q Did you take part subsequently in the arrest of the defendant Frank Mumford? A Take part in it?

Q Yes. A Yes, I helped.

Q When was he arrested? A At what time? It was

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about half past five or a quarter to six.

Q After you returned from the 30th Street police station? A Yes, sir. First we arrested Jones, and then we came back and arrested Mumford and Hancock.

Q Did Officer Doyle place Mumford under arrest?
A Yes, sir.

Q What did Mumford say? A He said he didn't know anything about it, and that we were crazy, and we told him we had been watching him for a couple of weeks, told him we had him under surveillance and had followed him to the homes of former employes of Mr. Stern, former porters that he had, and we tried to make him believe that we knew what we were talking about.

Q What did he say in reply to anything you said to him? A He didn't know what we are talking about.

Q Do you remember anything else he said? A At the time of his arrest he just said he didn't know anything about it, didn't know what he was arrested for; that is the best of my knowledge.

Q Is that all you remember he said? A Yes, sir.

Q Did you ask him about the transaction of Jones taking these goods out? A He denied all that.

Q What did he say? Did you ask him whether he knew Jones? A I asked him whether he knew Jones.

Q And what did he say? A He said he did not.

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Q Did you ask him whether or not he had given the package to Jones ? A Yes, sir.

Q And what did he say ? A He did not. He didn't know anything about it; but Jones said -

Q Never mind. A All right.

Q Was Jones there when you were talking to Mumford ? A Yes, sir, at different intervals.

Q Where ? In the police station ? A In the police station.

Q What did the defendant Mumford say when Jones spoke ? A He just made a denial all evening.

MR. BOHAN: Your witness.

BY THE COURT.

Q You saw this defendant hand the package containing the goods, wares and merchandise in evidence here to Jones ?

A I did.

Q And at what hour was that ? A Between twenty minutes after five and about half past five, about that time.

Q And then Jones went where with the package ?

A He went west on Thirty-second Street.

Q And what did you do ? A I stayed there about a minute, to see what Mumford and Hancock would do. They came out of the building and watched Jones proceed west.

THE COURT: That is all.

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CROSS EXAMINATION BY MR. WHEATON.

Q Now, Officer Casper, you stated, as I understood you, that you were across the street during the time of your vigilance, were you? A Yes, sir.

Q From the building? A Yes, sir, across the street.

Q And all that you have testified to as having seen was from that point, was it not? A From different points.

Q Across the street? A Yes, sir.

Q Were there passers-by, were there pedestrians, going to and fro? A Plenty of them, yes, sir.

Q So, what you observed, you observed under the difficulty of your vigilance, notwithstanding the pedestrians passing? A Sometimes I was in the street, yes.

Q Did you see Jones before he entered this building?
A No, he was there when I arrived.

Q You didn't see him enter the building? A No, sir.

Q You didn't see him in conversation with a man on the outside, on the sidewalk? A I did not.

Q Before he entered the building? A I did not.

Q You don't know of any conversation he had with a man before he entered the building, do you? A No, he was there when we got there.

Q And his going in you can't testify to? A We knew he was there; we got the 'phone call that he was there.

Q But how he went there and under what circumstances

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you can't testify? A I can testify as to why he was there, through a 'phone call that we got.

Q That 'phone call, Officer Casper, that you are attempting to testify to was the result of the information you gleaned from Jones as information that was imparted to him by another man as coming from Mumford; is that right?

A No, I got a 'phone call from Mr. Stern that he got a 'phone call from an anonymous person that he was to be robbed, and we should come over immediately.

Q Oh, you are speaking of that 'phone call? A Yes, sir, that is the only one I know of.

Q But as to any other 'phone call to Jones, you don't know anything about? A Only what Jones told me after his arrest.

Q You know nothing except what Jones told you?

A After his arrest.

MR. WHEATON: That is all.

RE-DIRECT EXAMINATION BY MR. BOHAN.

Q Did Jones tell you how he happened to go there, in the presence of Mumford? A Yes, sir.

Q What did he say? A After Jones' arrest, he told me that he received a 'phone call at Bugger Red's pool room, up in One Hundred and Thirty-fifth Street, I believe, or One Hundred and Thirty-second Street, and a fellow at the pool room told him that Frank Mumford wanted to see him, at

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6 West Thirty-second Street; he didn't know why he was going there.

MR. WHEATON: Now, if your Honor pleases, I respectfully move that that answer be stricken out, as the other was, the other officer, pertaining to the same substance, was stricken from the record. It is purely hearsay.

THE COURT: I think you asked the question.

MR. BOHAN: I asked the question.

THE COURT: What is your objection, Mr. Wheaton?

MR. WHEATON: I ask that the answer be stricken out, on the ground it is purely hearsay. Jones says that the pool room keeper, according to the testimony, informed him that Mumford wanted to see him.

MR. BOHAN: That is not hearsay. I am asking what came -

MR. WHEATON: It is incompetent, irrelevant and immaterial.

MR. BOHAN: I am asking what came from the lips of the co-defendant in the presence of the defendant which called for a reply.

THE COURT: Now, that is the question.

MR. BOHAN: Whether it contains knowledge -

THE COURT: Was it something to which he was bound to reply? You see, the rule laid down in the Kennedy

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case was that anything said in the presence and hearing of the defendant was not necessarily competent evidence. It had to be something that necessarily called for a reply, or where a defendant volunteered to make a reply, after having heard a statement from another.

MR. BOHAN: Here is a conversation in which the co-defendant Jones says "I got this property from Mumford".

THE COURT: Yes, but concerning something that happened up in a pool room; I don't think that is competent.

MR. BOHAN: This is part of the same conversation.

THE COURT: No, Mr. Bohan, I want to be careful about that. Perhaps nobody knows the situation better than I. I prosecuted, when I was an Assistant District Attorney, the case of Dr. Kennedy. He was convicted of murder in the first degree, and the Court of Appeals said a mistake was made because we allowed a conversation of this kind to go in. It was rather unfortunate, because the conviction was reversed, and afterwards the jury disagreed, and we had all sorts of trouble. I will strike that answer out, the last answer, and the jury will disregard it.

MR. BOHAN: That is all.

RE-CROSS EXAMINATION BY MR. WHEATON.

Q Now, Mr. Casper, one question. You say that

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while you stood across the street from the premises in question you noticed a man, now known to you as Hancock, hand the defendant Mumford a coat, a yellow coat? A I didn't testify as to color. I said a sleeve, or some sleeves, protruded. I knew it was a garment.

Q Are you prepared to positively state to the gentlemen of the jury - and remember you are under oath in making this statement - that that garment or the article that was handed, that you saw handed to Mumford, was that identical coat? A No, I wouldn't state positively.

MR. WHEATON: That is all.

BY MR. BOHAN.

Q Did the co-defendant Jones have anything in his arms at the time Mumford handed him a package; "yes", or "no"? A He did not.

MR. BOHAN:: That is all.

E D W A R D F . D O Y L E, Police Officer, shield No. 880, attached to the Twenty-third Precinct, Detective Bureau, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOHAN.

Q You are a member of the Police Department of the City of New York? A I am, sir.

Q Attached to what bureau? A Attached to the

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Twenty-third Precinct, detectives.

Q That is in West 30th Street ? A It is.

Q Between Sixth Avenue and Seventh ? A Yes, sir.

Q On the afternoon of December 2nd, did you see the witnesses Mr. Burdette Divers and Mr. Robert Casper ? A I did.

Q Where did you see them first ? A I saw them for the first time at about five o'clock.

Q Where ? A At Thirty-second Street and Broadway.

Q Did you see the co-defendant Jones before you saw Mr. Divers and Mr. Casper ? A You mean - Let me get that straight again, Mr. Bohan.

Q Did you see Divers and Casper before you saw Jones ?
A Yes, sir, oh, Yes.

Q Was your attention attracted to the co-defendant Jones by Divers and Casper ? A Yes, sir, it was.

Q They said something to you ? A They didn't - They just indicated, pointed.

Q Where did you see Jones ? A I saw him for the first time at the south-east corner of Thirty-second Street and Broadway.

Q Did you go over and have a talk with him ? A I did, sir.

Q Did he have anything in his possession at the time ?
A He did, sir.

Q What did he have ? A He had a bundle.

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Q And the bundle contained what? A It later proved to be coats, the property of Mr. Charles Stern.

Q Did you have a talk with him about the package he had in his possession? A I did, sir.

Q What did he say? A I said "Where did you get this package?" He said "A fellow just gave it to me". I said "Where is he?" He said "Right behind you there, buying a newspaper"; and I looked around and brought him back to the stand and looked for the man but couldn't find him.

Q Did you take him to the police station? A We did, sir.

Q And subsequently did Mr. Charles Stern identify the property that was found in the possession of Jones?

A He did, sir.

Q After that, did you place the defendant, the co-defendants, Mumford and Hancock, under arrest? A Yes, sir.

Q Did you have a talk with the defendant Mumford when he was arrested? A I did, sir.

Q Where did you have a talk with him? A In the office of the Twenty-third Precinct detectives, also at the premises 6 and 8 West Thirty-second Street.

Q What did he say? A I said "Do you know anybody by the name of Jones, Mumford?" Mumford says "No, I don't know nobody". I questioned him further on it; I said "Did you have a fellow down here that you were going

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to get a job for?" He said "I know nothing about it", and refused to make any statements whatsoever.

Q In the station house did you have a talk with the defendant Mumford while Jones was present? A I did, sir.

Q What did the co-defendant Jones say in the presence of Mumford?

MR. BOHAN: I think your Honor has ruled on this subject before?

THE COURT: Yes, I will exclude it, under the ruling I made heretofore.

MR. WHEATON: Thank your Honor.

Q In the station house you had a talk with Mumford in the presence of Jones, didn't you? A I did, sir.

Q Now, don't tell us what Jones said. A No, sir.

Q In that talk what did Mumford say, in the station house? A "I know Jones", he said, something to that effect; whether it was those exact words, or not, I don't remember. I asked him "Why didn't you tell me that before?", and he replied to the effect that he didn't know who I was talking about. He said "I know that fellow"; that was it; he said "I know that fellow, but I didn't know who you were talking about before."

Q Was anything else said? A I said "Did you telephone for him at a pool room known as Bugger Red's?" He said "No"; he denied that.

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Q Was anything else said by him ? A That was about the substance of all he said.

Q Was anything said by Mumford concerning the coat ?
A He denied all knowledge of the coat; he said he knew nothing about it.

MR. BOHAN: That is all.

CROSS EXAMINATION BY MR. WHEATON.

Q Officer Doyle, attempting to refresh your memory, you said something as to words to the effect that he knew Jones. Didn't the defendant say that he saw Jones, saw that fellow, meaning Jones, in the building ? A That is quite right, Counsellor.

Q That was his expression ? A Yes, sir.

MR. WHEATON: That is all.

A L E X A N D E R J O N E S, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOHAN.

Q Where do you live ? A 111 West One Hundred and Thirty-seventh Street.

Q Jones, you were indicted and a co-defendant in this case, were you not ? A Yes, sir.

Q You were tried before Judge McIntyre and acquitted this morning, is that right ? A Yes, sir.

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Q Of the charge the grand jury filed against you ?

A Yes, sir.

Q I have not spoken to you about this case, have I ?

A No, sir.

Q How long do you know Frank Mumford ? A About a year.

Q Does he live in your neighborhood ? A Yes, sir.

Q Are you related to him ? A No, sir.

Q How long do you know Alphonso Hancock ? A About six months, sir.

Q On the 2nd of December of this year, were you employed ? A Yes, sir.

Q Where were you working ? A Bank's cabaret.

Q Bank's cabaret, where is that ? A Thirty-third Street, West, One Hundred and Thirty-third Street.

Q How long had you been employed before December 2nd ?

A About six months, I guess.

Q On the afternoon of December 2nd did you receive a telephone message ? A Yes, sir.

Q What time ? A About 2:15.

Q Where were you at the time you received the message ? A I was coming across One Hundred and Thirty-fifth Street and Lenox Avenue.

Q And as a result of that telephone message where did you go ? A I went to Rose's restaurant and got some dinner and from there I went to the barber shop and got a

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shave.

Q And after that where did you go? A From there I caught the train and came down town to find out what the message was that I had received.

Q Where did you go? A I went to 6 and 8 West Thirty-second Street.

Q 6 and 8 West 32nd Street? A Yes, sir.

Q Did you see Mumford there? A Yes, sir.

Q Did you see Hancock there? A Yes, sir.

Q Had you ever been in 6 and 8 West 32nd Street before that day? A No, sir, I had not.

Q Now, did you have a talk with Mumford? A When I got in the - When I entered the door?

Q Yes. A I told Mumford I received his telephone call, and asked him what he wanted with me. He said "Have a seat; I will be with you in a minute". He was busy with his express packages, bringing them down; and I took a seat over by the door.

Q What else did he say to you? A He was busy at the time, and - He didn't say anything to me until about a quarter past five.

Q How long had you been there then? A I had been in there about three quarters of an hour.

Q And what did he do then? A What he do to me?

Q Yes. A Didn't do anything to me.

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Q Did he come out and give you anything? A He came down in the car; he made a trip; somebody was moving in the building, I don't know who he was, he said somebody, some firm was moving in the building, and he came down, and after the last load he carried these tables up, and there was a fellow on the car with him, and this fellow had two packages in his arms. He gave one to Mumford and he gave one to Hancock; and at the time Mumford's bell rang. Mumford taken his package and gave it to Hancock; there was two packages, and Hancock taken the two packages and tied them together and gave them to me and asked me to take the packages up town to a pool room, up on One Hundred and Thirty-fifth Street; and after I taken the package, the fellow that brought the packages down in the car, I went over to the door, he was standing there, and I asked him were these packages his.

Q Who did you ask? A This fellow that came down in the elevator.

Q Where was Mumford? A Mumford was in his car somewhere; I don't know where he was. I asked this fellow, I said "Is this package yours?" He said "No, it is the elevator boys'." He said "Are you going up town?" I said "Yes". He said "Do you smoke?" I said "Yes". He said "Have you got a cigarette?" I said "No". He said "We will get some on the corner". We got to Thirty-second

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Street and Broadway. There was a paper stand on the north side of the street, and when we got about ten foot past this paper stand he said "I am going to get a paper"; and I was waiting for him; and I turned and I said "Get two papers"; and while I was standing waiting for him the Officer came up and asked me what I have in that package. I told him I didn't know what was in the package, that the fellow that was buying the paper had gave the package to Hancock and Mumford, and he said "Where?" I said "That fellow standing over there", and the fellow looked at me and started to go through the crowd. I said "There he goes"; and he says "That is all right; tell that to the twelve men." Then he carried me to 30th Street somewhere, I don't know, somewhere.

Q Let us see if we can get this right. Where were you standing at the time the package was delivered to you?

A I was sitting, sir, to the door, the entrance of this building.

Q Who was present at the time the package was given to you? A The fellow that brought them down.

Q A strange man? A Hancock and Mumford.

Q Hancock and Mumford? A Yes, sir.

Q Who brought the package from the elevator car?

A From the car?

Q Yes. A They was given - One was given to

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Frank, in his car, and this strange fellow had another package, and taken it around to Alphonso's car.

Q Gave it to Mumford? A Gave one to Mumford and one to Hancock.

Q Where were they given to - Where was the package given to Mumford? While he was in his car? A Yes, sir.

Q Then this man took another package and went to Hancock's car and gave him the other package? A Yes, sir.

Q And you stayed out in the front? A Yes, sir, in a chair, by the door.

Q And did Mumford and Hancock then come out to you?
A No, sir.

Q Who came to you? A Hancock came to me.

Q Did you see Mumford give his package to Hancock?
A Yes, sir.

Q And then Hancock did what? A It was two packages; he tied them together.

Q Who tied them? A Hancock.

Q Did Mumford help? A No, sir, Mumford went back on his car. His bell rang, and he went on his car.

Q And Hancock came over with the package and gave it to you? A Yes, sir.

Q Was there anything said by Mumford to you before you took the package? A No, sir, he didn't say anything to me.

Q The only thing said to you was about three quar-

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ters of an hour before this, "Wait here"; is that right?

A Yes, sir.

Q Did you know what you were waiting for? A No, sir, I did not. I thought he had seen somebody about a job. That is the reason I came down.

Q Did you ask him when you first came down about the job? A No, sir, I told him I had received his 'phone call, and what he wanted. He said "I will be with you in a minute; I am busy; have a seat".

Q Did he say he had telephoned for you? A Did he say - No, sir. I told him I received his telephone call. He said "I will be with you in just a minute; have a seat".

Q Was there anything said to you at any time while you sat near the elevator? A No, sir, there was express boys in the hall.

Q No; by him? A No, sir.

Q You didn't know what you were sitting there for that three quarters of an hour for? A No, sir; I was waiting on him.

Q And when you got the package, what instructions did you receive? A Who?

Q What instructions did you receive when you got the package? A I was told to take the package up town to the Idle Hour pool room, on One Hundred and Thirty-fifth Street, and wait for Mr. [redacted] and [redacted].

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Q And that is where you started to go to when you were arrested; is that right? A Yes, sir.

Q You made no inquiries at the time you got that package as to whom the goods belonged to, did you? A No, sir.

Q You did not? A I didn't know what was in the package.

Q Were they so wrapped up that you couldn't see what was in it? A Yes, it was wrapped up in nice packages.

Q Didn't I understand you to say when the packages were first separated they were wrapped up by Hancock?

A No, sir; I said when this fellow came down in the car with Mumford they were did up in two packages; he had two packages; and the two packages, he gave one to Hancock and one to Mumford, and Hancock tied the two packages together, just like you take these two pieces of paper and tie them together (illustrating).

Q The property that you see there, is that the property that was found in the package in the station house?

A I don't know exactly now, because it was night.

Q Does that look like it (People's Ex. No. 1)?

A Yes, sir.

MR. ROHAN: That is all.

CROSS EXAMINATION BY MR. WHEATON.

Q Jones, describe the man who disappeared at the news stand to the gentlemen of the jury? What kind of a man in

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appearance was he ? Just describe him as accurately as you can ? A This strange man ? This strange fellow ?

Q Yes. A He was a little fellow, brown skinned fellow, had on a felt hat.

BY THE COURT.

Q A colored man ? A A colored fellow, yes, sir.

BY MR. WHEATON.

Q Short, you say ? A Yes, sir.

Q About how tall ? A He looked to be about five feet two.

Q You are quite positive it was not this defendant, Mumford ? A Yes, sir.

Q It was not he, was it ? A No, sir.

Q Where did you see this man ? A When I first saw what man ?

Q The man whom you describe as being five feet two ?

A I saw him in Mumford's car.

Q Was that the very first time you had seen him ?

A Yes, sir, the first time I was in the building.

Q And when did you next see this man ? A After he gave the package to Hancock and Mumford, he didn't go outside the building, he was still standing there, inside the door, to the door.

Q You say Mumford did not hand you any package ?

A No, sir.

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Q After Hancock, as you testified, handed you the package, did you still see the unknown man? A Yes, sir, he was syanding to the door when I got the package.

Q Standing in the door? A Yes, sir.

Q Did he walk with you up the street? A Yes, sir.

Q How far? A To Thirty-second Street and Broadway.

Q And there he stopped to purchase a paper, you say?

A Yes, he said "Wait a minute, I am going to get a paper", and I turned and said "Get two papers".

Q And at that time Officer Doyle appeared on the scene? A Yes, sir, Officer Doyle and three others.

Q And you thought this man was still at the news stand when the officer was talking to you? A Yes, sir, I looked over and saw him.

Q You had a conversation with Officer Doyle at that time? A Yes, sir, he asked me what was in the package.

Q And what did you say? A I told him I didn't know. I said the fellow at the news stand gave the package to Hancock and Mumford.

Q Who did you mean then? A The fellow that came up the street with me.

Q Not this defendant? A No, sir, not him.

MR. WHEATON: That is all.

RE-DIRECT EXAMINATION BY MR. BOHAN.

Q You told Officer Doyle that that was the man that

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handed the package to Mumford and Hancock, and they in turn handed the packages to you; is that right? A Yes, sir.

Q Are you sure and certain that this unknown man that you have described took one of these packages and gave it to Mumford? A Yes, sir.

Q And the other package he gave to Hancock? A Yes, sir.

Q And after both packages were wrapped up Hancock gave them to you? A They were already wrapped up. After they was tied together they was given to me.

Q During any of the time that you waited there, did you have a talk with Hancock? A Only through the express boys and Hancock and the boys was talking together, we wasn't speaking about anything serious.

Q Did you ride in the elevator at any time that afternoon? A Ride on the elevator?

Q Yes. A No, sir.

Q Were you present - When the officer spoke to Mumford in the station house, do you remember what he said about you? A The only thing I remember, he brought Hancock in there, and he asked Hancock did he know me.

Q No, Mumford I am speaking of? A He brought Mumford in there and said "Do you know Mumford?" I told him "Yes".

Q What did Mumford say? A I didn't hear Mumford say anything.

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MR. BOHAN: That is all.

THE PEOPLE REST

MR. WHEATON: Now, if your Honor pleases, I respectfully move the Court to instruct the gentlemen of the jury to acquit this defendant, on the ground that The People have failed to make out a case as charged in the indictment.

THE COURT: I will take from the consideration of the jury the charge of grand larceny in its second degree, but I will send this case to the jury upon the receiving count.

MR. WHEATON: Very well, your Honor. Thank you. Instead of consuming time in a formal opening, I will simply put the defendant on the stand and let him tell his story.

THE DEFENDANT'S CASE

FRANK MUMFORD, the defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WHEATON.

Q Where do you live? A 110 West One Hundred and Thirty-seventh Street.

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Q Now, Mumford, speak up loudly, so that Juror number twelve and all the gentlemen of the jury can hear you distinctly. Where were you on the second day of December,

1919 ? A 6 and 8 West Thirty-second Street.

Q What is that ? A It is a loft building.

Q Were you employed there ? A Yes, sir.

Q By whom ? A By Campbell - by Mr. Campbell.

Q How long have you worked there ? A Been working there since about June or July when I went there.

Q This year, 1919 ? A This year, 1919.

Q You were employed there on the second day of December, were you ? A Yes, sir.

Q You have heard the testimony here with regard to the loss of some coats by Mr. Stern, who is an occupant of that building, doing business there, and you have heard the testimony of the officers and of Jones. Now, tell the gentlemen of the jury, his Honor and the gentlemen of the jury, exactly what you know and all you know about the transaction in question ? A Well, during that day I was very busy bringing down express at that hour, and a man moving in, and Jones came down and said to me "Hello, did you call me up?" I said "No". I says "I am busy now; I have got to get my express down and get this man moved up before five o'clock". He says "All right, I will wait for you, then". So he sit down in the chair by the raddator, and I continued

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bringing my express down and moving the man up that was in the building, and after I got him moved up I was called up to the tenth floor, and after I went up to the tenth floor the twelfth floor was ringing, so I keeps on up to the twelfth floor, and this porter that works for Charles Stern got on my car with two packages in his hand. I didn't say anything to him, and in fact I wasn't interested, and so I stopped at the tenth floor, and a man got on there, and on my way down the basement bell was ringing, so I stops at the first floor and opened the door and the man that got on at the tenth floor gets off my car, and this porter gets off and stands at the door, and I says to him "I am going down, big boy", so he moves one side, and I closed my door and goes on down stairs. The elevator girl was down there. She says "I am going up, Frank". I says "All right, I will wait for you"; so I waited for her until she got ready to come on, so the car went up to the first floor, and there was nobody in the hall, so she goes on over to her side where she runs the car and ^Isits in the chair by the radiator, and after a while a man came in, and I ran him up to the fifth floor, and I comes back down and sits in the chair by the radiator, and in walks four men. At that time Hancock comes down with his car and stands opposite me. The four men walk in and ask me my name. I told them my name was Frank Mumford, and he asked Hancock his name, and

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he told them his name, and he asked me did I know Jones. Well, I said - I thought he was talking about some Jones in the building; so I says "No, I don't know of any Jones"? He says "He knows you, and he has told us all about you". I says "That's funny; no Jones knows nothing about me". He says "He is under arrest, and you are going to get under arrest, too". I says "For what?" He says "Jones says you handed him out a package". I said "I haven't handed Jones out no package". He says "Come on"; so he takes me right off the job and takes me down to Thirtieth Street, and he brings me there, and has a package with coats in it, and asked me did I know anything about it. I told him no, I didn't know anything about any coats.

BY THE COURT.

Q Did you hand a package to Hancock? A No, sir.

Q What? A No, sir. That is all I know about it.

BY MR. WHEATON.

Q Have you ever been convicted of any crime?

A No, sir.

Q Have you ever been arrested? A No, -sir.

MR. WHEATON: Your witness.

BY THE COURT.

Q How old are you? A Twenty-four years old.

Q Married? A No, sir.

Q Have you been in the army? A No, sir. I was

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rejected, for flat feet.

Q What? A I was rejected, fourth degree, flat feet.

Q Rejected because you had flat feet? A Yes, sir,
I was put in the fourth degree.

Q You were put in the fourth degree? A Yes, sir.

Q You mean the fourth class? A Fourth degree, flat
feet and broken veins.

CROSS EXAMINATION BY MR. BOHAN.

Q Mumford, what was this porter's name? A I
don't know him.

Q Employed by Stern? A I don't know him. He
has only been working there about two weeks.

Q A colored man? A Yes, sir.

Q Did you ever speak to him? A No, sir.

Q How did you know he was employed by Stern?

A Because he worked in there, bringing packages down,
bringing them down to the expressmen, and taking them out
and doing errands.

Q You took him from the Stern loft, on the twelfth
floor, on your elevator car? A I beg pardon?

Q You took him out of Stern's loft, on the twelfth
floor? A Yes, sir.

Q And he had how many packages? A Two.

Q How many people were in the car? A Three with
myself.

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Q Did you take him to the ground floor ? A Yes, sir.

Q What did the porter do with those packages ? A He stopped in the front of the door with them, and I said to him "Going down".

Q He took them out ? A Taken them outside and stopped in front of the door, and my basement bell was ringing, and he moved one side, and I went down stairs.

Q Where was Jones ? A Jones was sitting in the hall, by the radiator.

Q Did the porter give them to Jones ? A I don't know. I was down stairs.

Q In the basement ? A In the basement.

Q You left the porter, Stern's porter, off on the ground floor, and he went out with the two packages; is that right ? A I don't know where he went.

Q You went to the basement ? A I went to the basement.

Q And when you came up did you see the porter ? A When I came up there was nobody in the hall.

Q Did you see Jones ? A No, sir.

Q Did you see Hancock ? A No, sir, Hancock was up with his car.

Q How long after that did the police come there ? A Well, about fifteen or twenty minutes.

Q Did they come back with Jones ? A No, sir.

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Q You heard what Jones said here today, did you ?

A Yes, sir.

Q He says that this man gave you one of those packages.
Did you hear him say that ? A I did.

Q Is that true ? A No, sir.

Q He also said that this porter gave Hancock one of
those packages. Is that true ? A I don't know, sir.

Q Did you see this porter give Hancock one of the
packages ? A No, sir.

Q Did you see Hancock give any of these packages to
Jones ? A No, sir.

Q Now, how long have you known Jones ? A I know
Jones about a year or a little over.

Q Do you live in the same neighborhood with him ?
A Yes, sir.

Q How long - Do you see him every night ? A No, sir.

Q Do you know where he lives ? A No more than I
heard him say 111 West One Hundred and Thirty-seventh Street.

Q Do you know where he worked ? A Yes, sir.

Q What did he do for a living ? A Worked in a
cabaret.

Q Bank's cabaret ? A Yes, sir.

Q Do you go to Bank's cabaret ? A Sometimes.

Q Spend some of your time there ? A Well, may be
once a month. I only have been around there about three

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times.

Q Where is Bank's cabaret ? A Thirty-seventh Street - Thirty-third Street.

Q One Hundred and Thirty-third Street ? A One Hundred and Thirty-third Street, yes, sir.

Q Did you telephone for Jones that afternoon ?

A No, sir.

Q You knew, however, that Jones worked there ?

A Beg pardon ?

Q You knew that Jones worked there ? A I knew that he worked at Bank's.

Q You knew how to get in touch with him if you wanted him, did you ? A No, sir, I did not.

Q Do you know whether Hancock knew where Jones worked ?

A I do not.

Q Were you ever in Bank's cabaret with Hancock ?

A No, sir.

Q Were you ever in Jones' company with Hancock ?

A Not as I know of.

Q When the officer came there and asked you about Jones, did you tell him that you knew anybody by the name of Jones ? A I thought he was taking about somebody in the building named Jones, and I told him no, I didn't know anybody named Jones.

Q When you got to the station house, when Jones was

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called out, did you say you knew that man? A Yes, sir.

Q When Jones came to the building that afternoon, he said to you "I got your telephone message", did he?

A Well, I -

Q Did he say that; "Yes", or "no"? A He said something about a telephone message.

Q What did you say? A I told him I was busy at that time, and to wait around a little while until after I got my express down, and I would see him.

Q Did he say what he wanted to see you for? A No, sir.

Q What time did he first get there? A Well, I guess at about 4:30, 20 minutes to five, something like that.

Q Did you talk to him after that? A No, sir.

Q How long was he waiting about there? A I guess about 40 or 45 minutes.

Q Where was he standing or sitting? A Sitting in the hall with a bunch of boys there, with the express.

Q Do you know what he was waiting there for?

A No, sir, I do not.

Q Did you ask him? A No, sir.

Q Did he tell you? A No, sir.

Q Did you talk to Hancock? A No, sir.

Q Did Hancock tell you why Jones was there? A No, sir.

Q What time do you get finished at night? A 6:30.

Q Was he going to wait for you until you were fin-

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ished that night - Jones ? A I don't know; I didn't ask him.

Q Did you see him before he left ? A No, sir.

Q Do you know whether this strange porter that worked for Stern knew Jones ? A No, sir.

Q Do you know what that porter's name is ? A No, sir, I do not.

Q Did you talk to Jones at any other time during the time he was sitting near the door-way ? A During the time Jones was sitting near the door-way ?

Q Yes. A No, sir.

Q The only thing you said to him was "Wait until I am not busy and I will talk to you" ? A Yes, sir.

Q Did you ever talk to him after that ? A No, sir.

Q Did you see any person talk to him ? A No, sir, not personally. There was a bunch of boys in the hall, and they all was sitting down; I don't know what they was talking about.

Q When you brought this porter, Stern's porter, down, when he went toward the street, did you see him talk to Jones ? A He didn't go towards the street. He only stepped off the elevator and stood in the door.

Q And you went right down ? A And I told him I am going down.

Q When you came up, did you look out ? A No, sir.

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Q Did you see Jones there ? A No, sir.

Q Do you know what became of him ? A No, sir.

Q Have you been back into 6 or 8 West Thirty-second Street since you have been arrested ? A Yes, sir.

Q You have been out on bail ? A Yes, sir; went back for my pay.

Q Jones was in jail ? A Yes, sir.

Q So you don't know how Jones came to go there that afternoon ? A No, sir, I do not.

Q Have you ever seen this porter that was employed by Stern since that day ? A Have I ever seen him since then ?

Q Yes. A No, sir.

Q Did you see these men Casper or Divers there that afternoon ? A What, on December 2nd ?

Q Yes. A No, sir.

MR. BOHAN: That is all.

THE COURT: Is that your case, Mr. Wheaton ?

MR. WHEATON: I suppose Mr. Bohan will concede the good character of this defendant ?

MR. BOHAN: The People can't concede anything that is not proven.

THE COURT: I think he has testified that he has never been in trouble before.

MR. WHEATON: Well, with that exception, we rest, Your Honor.

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THE COURT: Five minutes each.

MR. WHEATON: I am willing to submit.

MR. BOHAN: I am willing to submit.

THE COURT'S CHARGE

McINTYRE, J.:

Gentlemen of the jury, the defendant in this case was indicted by the grand jury of this County for the crime of grand larceny in its second degree and for the crime of criminally receiving stolen property in the first degree.

The Statute obligates me to say that this defendant is presumed to be innocent until his guilt is established to your satisfaction beyond a reasonable doubt, and then that presumption is destroyed, it falls; and the indictment in this case carries with it no presumption of guilt.

I think perhaps it is proper for me to state at this time that this is a very close case, and I am going to ask you to give cautious and serious consideration to all the facts. The crime with which he stands charged now is serious, and it carries with it sometimes a very heavy penalty.

I will not, however, read this case to you upon the charge in the indictment charging grand larceny in the

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second degree. I will take that from your consideration and simply send the case to you on the question of criminally receiving stolen property knowing the same to have been stolen and ask you to pass on that question only.

Now, the facts are very simple. There is no question raised by counsel for the defendant concerning the perpetration of a larceny. Before you can convict in this case, you will have to find that a larceny was committed, and I will not define to you again what amounts to larceny, because I have done that so many times during this term.

If this defendant did take the goods in question, the merchandise which is in evidence, from the possession of anyone, it matters not whom, and at that time if he knew that the goods, wares and merchandise were stolen property, appropriated by means of a larceny, under our law he would be guilty of criminally receiving stolen property. It matters not in what manner he got the goods, if the goods came into his possession at any time, and they subsequently passed into the possession of another, he would be guilty nevertheless of the crime of criminally receiving stolen property. That is a question for you to determine.

The Statute is very simple, and I think I have

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had occasion to read it to you on several occasions during this term of Court, but I will read it briefly and only a part of it:

"A person, who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this article, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withholds, or aids in concealing or withholding any property, knowing the same to have been stolen", is guilty of criminally receiving stolen property.

The degrees are fixed by the value of the goods. Where it is under fifty dollars, it would be receiving stolen property in the second degree. Where the value of the goods exceeds the sum of fifty dollars, it would be receiving stolen goods in the first degree.

Mr. Wheaton, counsel for the defendant, makes no question here as to the value of the goods. According to the testimony of Mr. Stern, the goods are worth upwards of one hundred and seventy dollars, and if this property were of that value at the time it was said to have been in the possession of this defendant that would make the crime receiving in the first degree.

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The defendant has taken the stand in his own behalf, and he said, among other things, that he did not know the property was stolen, and he denies having it in his possession. He says he was an elevator operator in the place from which the goods were taken; that he did not give the goods to Hancock or to Jones.

Jones, on the other hand, says that the goods were given to Mumford, and that the goods subsequently were passed by Mumford to Hancock, and Hancock afterwards passed them to Jones. Now, these are all questions for you to pass upon.

It does not make any difference who had the goods, if, directly or indirectly, these goods were ultimately passed into the hands of the defendant, and this defendant at that time knew that the property was stolen property, that it was the subject of a larceny, he stands just as guilty in the eye of the law as the man who last passed the property into the hands of Jones.

Under the facts in this case, you may find this defendant guilty of criminally receiving stolen property in the first degree, if you believe the evidence, the facts, beyond reasonable doubt.

If that which the defendant says is true, he has committed no crime, and he should be acquitted.

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The defendant here is entitled to the benefit of a reasonable doubt arising out of the evidence. As you have had occasion to hear me define a reasonable doubt many times during this term, I take it that you understand it now just as well as I do, but, to sum it up in a few words, a reasonable doubt is such a doubt as that for which a juror can assign a reason for entertaining, a substantial reason; so in this case you will apply that rule.

The evidence is very close, and if you find that it is evenly balanced, such a condition may create a reasonable doubt. Now, where evidence is evenly balanced, so the scales neither incline to the one side or the other, the jury may find a reasonable doubt from that condition.

If you have a reasonable doubt in this case, it becomes the property of the defendant, and he is entitled to an acquittal at your hands.

The defendant must not be judged with any bias or even with any favor because the gentleman who lost the goods is here and says that goods have been taken from his premises. That there was an asportation of property belonging to him by someone else can be no doubt, but it does not follow that this man must be found guilty, unless you feel that the evidence in this case justifies the conviction beyond a

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reasonable doubt.

Now, the case being a close one, I ask you to look at the evidence with care and with caution. There was just enough in the case to justify me sending it to the jury; hence it was that I did not feel that I should take the responsibility on my shoulders of turning this case out of Court. I am going to leave it to you twelve gentlemen to say whether this defendant is guilty, or not.

You must, as I said an instant ago, resolve all the facts against him to such a degree that you feel that his guilt has been established beyond a reasonable doubt before you can convict him. If you do not feel that his guilt has been established beyond a reasonable doubt, it will be your duty to acquit him.

Your verdict in this case will be either guilty of criminally receiving stolen property knowing the same to have been stolen in the first degree, or not guilty.

You may take the case, gentlemen.

(The jury then retired, at one o'clock P. M.)

(The jury return, at 1:25 o'clock P. M.)

THE CLERK OF THE COURT: Gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN OF THE JURY: We have.

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THE CLERK: How say you, do you find the defendant at the bar guilty, or not guilty?

THE FOREMAN: Guilty of receiving stolen property in the first degree.

THE CLERK: Hearken unto your verdict as it stands recorded, gentlemen of the jury. You say through your foreman that you find the defendant guilty of criminally receiving stolen property in the first degree, knowing the same to have been stolen, and so say you all.

(The defendant is duly sworn and his pedigree taken.)

MR. WHEATON: If your Honor pleases, I desire to move at this time that the verdict be set aside, on the ground that it is contrary to law and against the evidence in this case, and upon all the grounds enumerated in the Statutes, and that the defendant be granted a new trial.

THE COURT: Well, I will not pass on the motion today. I want to examine the record, and I may grant your motion. What I mean by that is this: that I fear that the Appellate Division might say that the verdict is against the weight of evidence. However, I will have to take the whole thing under consideration, and I shall ask the Stenographer to furnish me with a copy of the minutes, and I will render a decision on the 5th of January.

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