

**START**

2720

**CASE**

**CASE #2720**

I N D E X

3223

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Dr.</u>	<u>Re-cr.</u>
Joseph F. Kirvin,	2	7	14	14
Lucy Murtha,	16	20	23	25
" " (Recalled)	--	63	65	--
Hank Adams,	26	29	44	44
Benjamin Mendelson,	45	51	61	62
Daniel Joseph Burns,	65	66	67	--
Court's Charge,		69		
The Sentence,		80		

CASE #2720



COURT OF GENERAL SESSIONS OF THE PEACE  
IN AND FOR THE COUNTY OF NEW YORK  
PART THREE.

3223

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

- against -

BENJAMIN MENDELSON and HANK ADAMS :

B e f o r e

HON. JOHN F. McINTYRE, J

And a Jury.  
-----X

New York, Thursday, December 11th, 1919.

THE DEFENDANTS ARE INDICTED FOR GRAND LARCENY IN THE FIRST  
DEGREE AND RECEIVING IN THE SECOND DEGREE.

INDICTMENT FILED NOVEMBER 14th, 1919.

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

JOSEPH D. EDDELSON, Esq., Assistant District Atty.,

For The People.

T. B. FRANKEL, Esq.,

For the defendants.  
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(A jury is duly selected and sworn.)

THE COURT: I am not going to permit this case to  
be opened now. Gentlemen of the jury, you may go  
until a quarter past two o'clock, when we will resume  
this trial, and while you are separate and apart the  
law requires me to say to you that you must not speak  
about this case, nor should you permit anyone to approach

CASE #2720

2  
you and speak to you of it, nor should you make up your minds concerning the guilt or innocence of the defendants until I have submitted this case to you. Please be in your seats at a quarter past two.

(The Court then accordingly took a recess until 2:15 o'clock P. M.)

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A F T E R                    R E C E S S

T H E                    P E O P L E ' S                    C A S E

(Mr. Edelson opens the case to the jury on behalf of The People.)

MR. FRANKEL: I request the Court to direct that all the witnesses be excluded.

THE COURT: Yes.

THE CLERK OF THE COURT: All witnesses on either side in this case retire to the corridor and remain there until called.

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J O S E P H        F .        K I R V I N, Police officer, shield No. 646, attached to the Detective Bureau, Main Office Division, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDELSON.

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

CASE #2720



Q Attached to the main office division ? A Yes, sir.

Q To what squad ? A Pick pocket squad.

Q And were you acting in that capacity on November 4th, 1919 ? A I was.

Q At about nine o'clock that night in what vicinity of the County of New York were you ? A Forty-fourth Street and Broadway.

Q Did you at that time see these defendants ? A I did.

Q When did you first observe these defendants ?

A About eight-fifty P. M.

Q Where did you see them ? A On the east side of Broadway between Forty-second and Forty-third Streets.

Q And were they walking in a northerly, or southerly, direction ? A Northerly.

Q And how long did you keep them under observation ?

A About twenty minutes.

Q And what were they doing ? A They followed two unknown women.

MR. FRANKEL: I object.

Q Were they walking, or standing ? A Walking.

Q They were walking ? A Yes, sir.

Q When you first observed them, you say they walked from Forty-second - A To Forty-third Street, on the

CASE #2720



cast side of Broadway.

Q And when they got to Forty-third which way did they walk ? A They crossed Broadway to the west side of Broadway and walked from Forty-third to Forty-fourth Street.

Q Now, at about nine twenty P. M. had you these defendants under observation ? A I had.

Q Both of them ? A Both of them.

Q Were they always together from the first time you saw them to about nine-twenty P. M. on the night of November 4th, 1919 ? A They were.

Q What happened around that time ? A About nine-twenty P. M. I observed the two defendants, Mendelson and Adams, standing on the south-west corner of Forty-fourth Street and Broadway, talking. While they were standing there talking the complainant, Lucy Murtha, and a lady friend, who were walking south on the west side of Broadway, passed the two defendants, at the corner of Forty-fourth Street and Broadway. As they passed the two defendants, I noticed the two defendants follow immediately behind. When about twenty-five feet below the corner of Forty-fourth Street, the defendant Adams walked directly in front of the complainant, Miss Murtha, while the defendant Mendelson walked behind. I followed immediately behind the defendant Mendelson.

Q Were you in uniform ? A No, sir.

CASE #2720

Q Was there anybody between the defendant Mendelson and Miss Murtha ? A No, sir.

Q Was there anybody between the defendant Mendelson and you ? A No, sir.

Q You were directly behind them ? A Directly behind them.

Q State what happened then, what you saw ? A About the middle of the block between Forty-third and Forty-fourth Streets I saw the defendant Mendelson put his right hand into the right hand coat pocket of the complainant, Miss Murtha, and take something out of the pocket.

Q What did he do then ? A They walked about ten foot further, when the defendant Adams turned around, walked back and joined the defendant Mendelson.

Q Where ? A About the middle of the block.

Q Yes. A The defendant Mendelson then turned around, and the two of them started to walk towards Forty-fourth Street. As they did, I saw the defendant Mendelson pass a pocket book to the defendant Adams. I stepped forward and stopped the complainant, Miss Murtha, and asked her if she had lost anything from her right hand coat pocket.

MR. FRANKEL: I ask that that be stricken out.

MR. EDLSON: I consent to that.

Q You said something to Miss Murtha ? A I did.

Q As a result of what you said to Miss Murtha, did

CASE #2720

Miss Murtha accompany you anywhere ? A She did.

Q Where did she accompany you to ? A She followed me back on Broadway to near Forty-fourth Street.

Q What did you do then ? A Where I stopped the two defendants and placed them under arrest. As I did, the defendant Adams dropped the pocket book on the sidewalk.

Q Is this the pocket book that the defendant Adams dropped (handing witness pocket book) ? A It is.

MR. EDELSON: I offer it in evidence, if your Honor please.

(Pocket book received in evidence and marked "People's Exhibit No. 1", of this date.)

Q Did you have a conversation with Miss Murtha, in the presence of these defendants, at the time you say Hank Adams dropped this pocket book ? A I did.

Q What did you say to her ? A I asked her if it was her pocket book. She looked it at and said that it was. I asked her if she could tell me what it contained. She said she could. I asked her what it contained. She said it contained one twenty dollar bill, two one dollar bills and some silver. In the presence of the two defendants and the complainant I examined the contents of the pocket book and found it to contain one twenty dollar bill, two one dollar bills and one dollar and twenty-six cents in silver. I then took the -

CASE #2720



Q Did you open it in the presence of the defendants ?

A I did.

MR. EDELSON: Now I offer the contents of the pocket book in evidence.

THE COURT: Received.

MR. EDELSON: If there is no objection, we will call it one exhibit.

(Money received in evidence, as part of "People's Exhibit No. 1", of this date.)

Q What happened then ? A I then took the two defendants, accompanied by Detective Burns, to the West Forty-seventh Street station house.

Q Did either of these defendants make any explanation to you regarding the pocket book ? A Adams -- When I asked Adams how long he had been picking pockets, he said --

Q No, no. A He said he didn't know anything about it.

MR. EDELSON: Now, one moment. I consent that that be stricken out. I didn't ask you that.

Q Any explanation regarding this particular pocket book ? A No, sir.

MR. EDELSON: Your witness.

CROSS EXAMINATION BY MR. FRANKEL.

Q Officer, you say that you were observing these defendants from eight-fifty until nine-twenty ? A I was.

CASE #2720

Q Is that right? A Yes, sir.

Q Up until the time of their arrest? A I was.

Q From ten minutes to nine until nine-twenty, half an hour? A I was.

Q That is, approximately half an hour. You didn't have your watch out? A About half an hour.

Q This was election night, wasn't it? A It was.

Q And will you state the condition of pedestrians on Broadway, as to whether it was crowded, or not, on Broadway and Forty-third Street, on election night? A Parts of the block were crowded, and others were not.

Q On Forty-third Street and Broadway there was a screen upon which was exhibited election returns, wasn't there? Do you remember that? A Not on the east side. Around the Times building there was.

Q And people were proceeding south, to observe the screen, and a great many people were standing there observing it, both on the north, east, west and south sides of Forty-third Street and Broadway? A On the east side of Forty-third Street and Broadway they were, but when I went to the west side there weren't so many people on that corner.

Q What I am trying to get at, Officer, briefly, is that Broadway was crowded, wasn't it, Forty-third Street, both sides of Broadway, was crowded at that hour of the night? A A pretty good crowd.

CASE #2720



Q And you were following these defendants up and down Broadway ? A I was.

Q Now, you were not following anyone else besides these defendants ? A No, sir.

Q You had your eye on them ? A I did.

Q And if possible to make an arrest of these defendants ? A How is that ?

Q I say, if possible to make an arrest of these defendants ? A If I got them taking anything.

Q You arrested them once before, one of these defendants ? A No, sir.

Q Didn't you ? A No, sir.

Q Did you ever arrest Mendelson before ? A No, sir.

Q You didn't know him ? A I knew him.

Q You were not engaged in any case where your partner arrested him before ? A One of my partners arrested him at one time.

Q And on what side of the defendant Mendelson were you when he proceeded south on Broadway from Forty-fourth Street ? A I was immediately behind him, my head to one side.

Q Immediately behind whom ? A Mendelson.

Q Which side, right, or left, side ? A Right in back of him, with my head to one side, where I could watch his hand.

CASE #2720



Q Well, there were a number of people walking around you and between you ? A We were close to the building.

Q And you say you were so close to him that you could observe everything that took place down to the centre of his body ? A I was.

Q And he didn't see you ? A Evidently not.

Q You were so close to him that you saw him, so close to him that you saw everything that was going on down to the centre of his body, and he didn't see you ? A I don't think so.

Q And you knew him and you knew he knows you ?

A I did.

Q And during all this walk from Forty-fourth Street down you kept your eye down towards the centre of his body, and you were the same distance from him all the way down ?

A I was watching his hand.

Q And behind you was Adams ? A Adams was in front of the complainant, Miss Murtha.

Q Did you observe Adams' conduct during this time ?

A Outside of the fact that he was walking in front of Miss Murtha.

Q What was he doing all the way down ? A Why, he walked in front of Miss Murtha from Forty-fourth Street to almost Forty-third Street.

Q What was he doing with his hands or with his head ?

CASE #2720

A I couldn't see Adams, only in front of Miss Murtha, walking very slow, in front of Miss Murtha.

Q You didn't see his face ? A I could only see the back of him after he left Forty-fourth Street.

Q Now, you saw the defendant Mendelson take an object from her pocket book ? A I did.

Q This was at what place ? As exactly as possible, try to describe it ? A About the middle of the block between Forty-third and Forty-fourth Streets.

Q And then Miss Murtha proceeded down. She didn't know something had been taken from her pocket book, and she kept walking down south; is that correct ? A She did.

Q And then you stopped her ? A I stepped ahead and touched her on the arm and stopped her.

Q And you let these defendants turn around and walk away ? A They turned aside, and I walked right around them and stopped her.

Q You didn't attempt at that time to hold them ? A I had them under observation.

Q And tell us exactly what conversation - How long did you talk with her about this purse ? A Oh, I should say about a minute or so, long enough to ask her if she had lost anything from the pocket.

Q How far away was this purse from the defendant Adams ~~was~~ at the time you picked it up from the floor ?

CASE #2720



A Right alongside of him.

Q Isn't it true that some woman picked up the purse, and not you? A No, sir.

Q Some other strange woman? A No, sir.

Q Isn't it true that some other strange woman picked up a purse and asked Miss Murtha whether it was her purse, or not? A No, sir.

Q You didn't say to the defendants "I haven't got you right, but I am going to take you, anyhow"; you didn't say that to them? A No, sir.

Q Did you search these defendants, Officer, at Forty-fourth Street and Broadway? A I did. I started to search them when the pocket book was dropped.

Q How many people were around there at the time?

A I didn't notice. I was busy with the two defendants. A crowd gathered.

Q Was Miss Murtha standing right there? A I believe she was alongside of me.

Q Alongside of Adams? A Well, I had them standing by the building, and I don't know whether she was at this side or the left side of me. I know she followed me.

Q You were busy searching Adams and the other fellow, Mendelson? A I started to search them, when the pocket book was dropped alongside of Adams, and I was between the two of them.

CASE #2720



Q And was it, Officer, that you formed your conclusion that Adams dropped this pocket book because it fell alongside of Adams? Isn't that true? A Adams was alongside of me. Mendelson was on the inside, near the building.

Q That is your conclusion, isn't it, that Adams dropped this pocket book? A I seen him drop the pocket book. When I went to search Adams, he dropped the pocket book.

Q I ask you again, Officer, isn't it your conclusion that Adams dropped the pocket book? A I seen him drop the pocket book.

THE COURT: That is an answer.

Q From where did this pocket book come from? From Adams? A The direction of his hand.

Q And you were looking down towards the floor all this time? A Not at the time.

Q You were waiting for the pocket book to be dropped? A I wasn't looking at the floor. I started to search him, as I felt something hit me, and I looked, and the pocket book fell down between Adams and myself, and Mendelson was in near the building.

Q And Miss Murtha was standing there? A I don't know where Miss Murtha was; she was in back of me some place, to my right, or to my left.

MR. FRANKEL: That is all.

CASE #2720

RE-DIRECT EXAMINATION BY MR. EDELSON.

Q And how far away was the place that you say Adams dropped the pocket book from where you first saw Mendelson put his hand in the right hand pocket of Miss Murtha ?

A About half a block.

Q Did anybody assist you to take these defendants to the station house ? A Detective Burns.

Q When did he come along ? A After I had placed them under arrest and started, there was a uniformed man, and detective Burns came along and assisted me to the station house with them.

MR. EDELSON: That is all.

RE-CROSS EXAMINATION BY MR. FRANKEL.

Q From the time you had the conversation with this Miss Murtha about her loss, then you followed the defendants, didn't you, towards Forty-fourth Street ? A I did,

Q There were a great number of people between you and the defendants at the time, weren't there ? A The people were more to the outside of the street.

Q There were a great many people between you and these defendants on election night on Broadway ? A Quite a few people.

Q You don't know who was in between you and these defendants, whether there were other men or pick pockets that you might have known, you won't say that, will you ?

CASE #2720

A I don't know who was in between me.

Q You let these defendants get ahead of you half a block ? A They were not ahead of me half a block. They were only a few feet ahead of me, ten feet ahead of me. When I reached them, they were near Forty-fourth Street. As I turned to walk after them, when I stopped them -  
BY MR. EDELSON.

Q That was afterwards, going back ? A Yes, sir.

Q But at the time you say Mendelson put his hand in the pocket of Miss Murtha, you were directly behind them ?  
A Yes, sir.

Q There was nobody between you ? A No. Counsel asked me after they had taken the pocket book and started back.  
BY MR. FRANKEL.

Q Will you explain to the Court and jury, after you observed all this with your own eye sight, saw it happen, you asked the woman whether anything was taken from her, to try to convince yourself further as to the commission of this crime ? A I had seen Mendelson take something from the pocket book - something from her pocket, but I couldn't see what it was until he was joined by Adams, and the two of them started to walk towards Forty-fourth Street; it was then that I seen the pocket book pass. I knew it was a pocket book then.

CASE #2720



Q You didn't say that before, that you saw a pocket book pass ? A I did.

MR. EDELSON: He said it. It is in the minutes.

Q You were standing right alongside of Mendelson when he was committing this crime, right alongside of him, looking at the operation of his hands, and you didn't see what he took from this woman's pocket book - from this woman's pocket ? A Not at the time; he took something; I couldn't see what.

Q From the size of the pocket book, you couldn't see it was a pocket book ? A I couldn't see what he had in his hand.

Q And you let him go until you got further proof that he done it ? A I had him under observation.  
BY THE COURT.

Q What time did you say in the night it was that this pocket book was taken ? A About nine-twenty.  
BY MR. EDELSON.

Q And Broadway was well lit up that night, election night ? A It was.

L U C Y M U R T H A, called as a witness on behalf of  
The People, being first duly sworn, testified as  
follows:

DIRECT EXAMINATION BY MR. EDELSON.

CASE #2720

Q Where do you live ? A 138 Milford Street, Brooklyn.

Q Speak up so the last juror will hear you. Do you remember election night, November 4th, 1919 ? A Yes, sir.

Q Were you in the vicinity of Forty-third Street and Broadway at about nine-twenty that night ? A Yes, sir.

Q By the way, what do you do for a living ? A Nursing, professional nurse.

Q Where ? A Polyclinic Hospital, Fiftieth Street.

Q In what direction were you walking that night, about nine-twenty ? A South.

Q Where did you come from ? A Polyclinic Hospital.

Q And where is the Polyclinic Hospital ? A Fiftieth Street.

Q When you left the Polyclinic Hospital, did you go to any restaurant ? A Yes.

Q Who was with you ? A Another nurse.

Q Another nurse ? A Yes, sir.

Q And what time, if you remember, about what time did you leave that restaurant ? A Well, I didn't leave the hospital until eight o'clock.

Q And you went direct to the restaurant ? A Yes, sir.

Q Did you have occasion to look at your pocket book ?

A I did then.

Q After you left the restaurant ? A No, not after

CASE #2720

I paid the bill.

Q In the restaurant you paid the bill ? A Yes, sir.

Q I show you People's Exhibit number one in evidence and ask you whether that is your pocket book (handing exhibit to witness) ? A Yes, a pocket book with two compartments.

Q That is your pocket book ? A Yes, sir.

Q How much money did you have, if you remember, at the time you left the restaurant ? A There was a twenty dollar bill and two ones and silver.

Q A twenty dollar bill, two single bills and some silver ? A Yes, sir, I didn't know how much silver.

Q And where did you keep the pocket book and the money ? A The pocket book was in the right hand pocket of a long coat.

Q It was in the outside pocket of a long coat ?  
A Yes, sir.

Q Then you walked down Broadway ? A Yes, sir.

Q Which side of Broadway ? A Well, I am not very well acquainted in New York, but it was on the right hand side.

Q The westerly side going south ? A On the right hand side.

Q Now, at about nine-twenty did anybody speak to you ?  
A There was a man grabbed my arm and asked me if I had a pocket book -

CASE #2720



Q A man grabbed your arm ? A Touched my arm.

Q Is that the gentleman who spoke to you (indicating last witness, Officer Kirvin) ? A Yes, sir.

Q And he said something to you ? A Yes, sir.

Q As a result of what he said to you, did you do anything ? A Well, I put my hand to my pocket and noticed that it was gone.

Q And did you find your pocket book and money ?

A No, it was gone.

Q Did you then accompany Officer Kirvin anywhere ?

A He went right ahead of me and told me to meet him on the corner.

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

Q And did you see the two defendants there ? A The two were there.

Q Do you remember what the Officer said to you in the presence of these defendants ? A He asked me if I could identify the pocket book and what was in it, and I did.

Q He showed you a pocket book ? A Yes, sir, and I told him how much money was in it, and he looked and said yes, that was right.

Q Before he opened the pocket book, in the presence of these defendants, you told him what was in it ?

A Yes, sir.

Q And he opened it and found the twenty dollar bill

CASE #2720

and two single bills and the change ? A Yes, sir.

Q Did you notice where the pocket book came from when you were up there with the Officer ? A It was on the sidewalk when I got there.

Q And who picked it up ? A I did. I had to pick it up and tell what was in it before I was allowed to open it.

Q The Officer told you that ? A There was an Officer in uniform told me - asked me what was in it, and I told him what was in it, and I picked it up, I picked up the pocket book.

Q And did you hear what these defendants said at that time ? A No.

Q Did they say anything ? A They didn't say anything that I know of.

MR. EDLSON: That is all.

CROSS EXAMINATION BY MR. FRANKEL.

Q Now, when you reached Forty-fourth Street you were there, weren't you ? A (No answer).

Q Forty-fourth Street and Broadway ? A Yes, sir.

Q You were there ? A Yes, sir.

Q The defendants were there ? A Yes, sir.

Q Is this gentleman one of the defendants (indicating) ?

A No; the other one.

Q What ? A I didn't notice that gentleman there. There was two detectives, and the other two were there,

CASE #2720

besides the crowd.

Q Would you know the men if you saw them now ?

A Yes, sir.

MR. EDELSON: Pick them out.

THE WITNESS: These two (indicating defendants),  
those two and two detectives.

Q Who else was there ? A A large crowd.

Q And the detective was searching these two men ?

A Yes.

Q And then you saw a pocket book on the floor ?

A On the sidewalk.

Q Who observed the purse on the floor first - you ?

A Well, I can't just recall, but I remember picking it up;  
I picked it up myself, and as I picked it up it was taken -  
I don't remember now just who did take it; everything was  
done in such a hurry right there, and they decided to go to  
the station, and Detective Kirvin had the pocket book.

Q While you were standing on Forty-fourth Street and  
Broadway and while you were with the detectives and the de-  
fendants you observed a pocket book on the floor ? A Yes, sir.

Q And you picked it up ? A Yes, sir.

Q That is all you saw happen ? A That is all.

Q Were you standing very near to this defendant ?

A They both were there.

Q And you saw everything that was going on at that

CASE #2720



time ? A I don't know. I think I did.

Q You were anxious for your purse ? A Yes, very.

Q And you were looking on. Did you see what the detective was doing to these men ? A No, only they said they would go to the station house.

Q Who said that ? A The detective, and they started to the station house. In fact, I didn't know they were going to the station house until I got to the corner.

Q You don't know how the purse got on the floor there, do you ? A No.

Q You didn't hear anything said immediately before you picked up the purse as to how the purse got there ? A No.

Q So far as you know, that purse was dropped by you at Forty-fourth Street and Broadway as you were proceeding south; it is possible, isn't it ?

MR. EDELSON: I object to that.

THE COURT: That is for the jury to say.

Q Where was the purse, how far away from you ?

A Well, when I got to it it was right at my feet.

Q When you got to where ? A When I got back to where the detectives were with the two fellows.

Q Right at your feet there ? A Yes, sir.

Q How long was it laying there ? A I don't know; I didn't notice until I got right there.

CASE #2720

Q And they you stooped and picked it up ? A Yes.

Q And who did you give it to ? A The detective.

Q Was he surprised that you had picked it up and given him the purse ? A No, he asked me to do it.

BY THE COURT.

Q He asked you to do it ? A They asked me if that was my pocket book, and I said "Yes". He said "Please pick it up".

BY MR. FRANKEL.

Q When did you know that this money was in your pocket book before that - while you left the restaurant ? A Yes, sir.

Q Where is this restaurant ? A On Fiftieth Street.

Q About six blocks away ? A Yes; the pocket book was in my pocket I know at ten minutes past nine.

Q Ten minutes before that. You hadn't felt your purse or known whether it was there or not since ten minutes after nine ? A No.

Q Since which time you were walking down Broadway ?  
A Until the detective notified me and said it was gone.

MR. FRANKEL: That is all.

RE-DIRECT EXAMINATION BY MR. EDDELSON.

Q You didn't go right back with the Officer ?

A He walked right ahead of me.

Q He walked ahead of you ? A Yes, sir.

Q And told you to follow him ? A Yes, sir.

CASE #2720

Q So, when you got to the corner, he had been there before you ? A Yes, sir.

Q You don't know what happened with reference to the particular pocket book until after you got there ? He had been there ahead of you ? A Yes, sir.

Q He didn't escort you to the corner ? A No, sir.

Q He said "Follow me", and he went to the corner ? A Yes, sir.

MR. FRANKEL: I object to the leading questions.

THE COURT: Well, I will let it stand.

MR. FRANKEL: Exception.

Q And just as you got on the scene with the officer and the two defendants, there was the pocket book, and it was the Officer who said to you "Pick it up and see if that is your pocket book" ?

MR. FRANKEL: Just a moment, please. May I object to the question, the form, as a conclusion, and as leading ?

THE COURT: That is what she said, but if you insist on holding that it is leading I will let her state what occurred.

Q You didn't hear any statements made by these defendants at all ? A No, sir.

Q When the officer said "We will go to the station house" ? A No, sir.

CASE #2720



Q Not a word out of either one of them ? A No, sir.

MR. EDELSON: That is all.

RE-CROSS EXAMINATION BY MR. FRANKEL.

Q Do you remember all these facts - Question withdrawn. Was your memory refreshed by anything said since election day as to these facts ? A What do you mean ?

Q By anybody ? Did you discuss this case with anybody ? A Oh, naturally, yes, everybody around the hospital I was talking to about it, nothing more than that I said it was gone, and I had to go to the Court house to see if I could get it; that was the only thing.

Q Is there anything particular that kept your mind so fresh since November 4th, since election day ? Did anybody tell you what to say ? A No, no.

MR. FRANKEL: That is all.

-----  
-THE PEOPLE REST  
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MR. FRANKEL: If your Honor please, the defendants make the usual motions to dismiss, on the ground The People have failed to establish facts sufficient to constitute the crime alleged against the defendants.

THE COURT: Motion denied.

MR. FRANKEL: Exception.  
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CASE #2720

THE DEFENDANTS' CASE

HANK ADAMS, one of the defendants herein,  
called as a witness in his own behalf, being first duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRANKEL.

Q Where do you live ? A Hiko, Nevada.

Q What is your occupation, Adams ? A Musician, sir.

Q Have you been working regularly ? A Yes, sir, up  
to the time I left Boston.

Q You belong to the union ? A Yes, sir.

Q You have a union card with you ? A Yes, sir.

Q And you came from Boston ? A Yes, sir.

Q To New York ? A Yes, sir.

Q For what purpose ? A I wished to avoid a general  
strike being held in Boston at that time, the latter part of  
September.

Q And you were seeking work in New York ? A Yes, sir.

Q Have you ever been convicted of any crime before ?

A No, sir.

Q Do you remember election day and election night ?

A Yes, sir.

Q This year ? A Yes, sir.

Q Who were you with ? A Mr. Mendelson.

Q The other defendant here ? A Yes, sir.

Q And what were you doing prior to nine-twenty that

CASE #2720

evening ? A We were discussing the election. We were interested in LaGuardia, an ex service man, and all ex service men were discussing him.

Q Were you in the service ? A Yes, sir.

Q What branch of the service were you in ? A Navy, sir.

Q How long ? A I was in from the day before war was declared until the 7th of June.

Q What year ? A 1919 I left.

Q You received an honorable discharge ? A Yes, sir.

BY THE COURT.

Q What branch of the service were you in ? A Navy, sir.

Q I know, but what branch of the naval service ? A I was a musician.

Q You were a musician ? A Yes, sir.

BY MR. FRANKEL.

Q You were walking down Broadway, you say ? A Yes, sir.

Q On what side of the street ? A On the west side of the street.

Q Tell us just what took place, will you ? A Well, we were standing on the corner of Forty-fourth Street, and we couldn't get an unobstructed view of the screen; we were waiting for the returns of the election, at Forty-third Street and Broadway, in the middle of the street, it was on the Times Square building, and I suggested that we have a cup of

CASE #2720



coffee, and we left this congested crowd, which was very congested, and were on our way to the automat restaurant, when we were grasped by the arm and violently thrust into a door-way of the Weber & Heilbroner clothing establishment, on Forty-third Street and Broadway, and searched there.

Q Did they find anything on you? A No, sir.

Q What else took place there? A The only thing I heard the detective say was "I got you once and didn't get you right, and I am going to get you now". He meant this fellow here (indicating co-defendant, Mendelson).

Q Did you see a purse there? A No, sir, I never saw any purse.

Q Did you drop a purse? A No, sir, I was too far away to have dropped the purse from where the purse was picked up. I was inside the door-way leading into a clothing store, and the purse was found in the street.

Q How far away? A Oh, I should judge about five foot away.

Q Who picked up this purse? A I saw a lady pick up the purse.

Q Were there many people between the detective and this lady at the time that she picked it up? A I couldn't hardly say. I think the detective was between -

MR. EDLSON: I object to what the witness thinks.

THE COURT: Strike out what he thinks.

CASE #2720

MR. EDELMAN: It is what he knows.

Q About that time Broadway from Forty-third to Forty-fourth Street was very crowded, was it? A Very crowded.

Q Did Mr. Mendelson hand you a pocket book? A No, sir.

Q Such as you see on the table? A No, sir; I remember perfectly clear I made this statement, and the detective - the first thing he said was "I got you for picking pockets, the pair of you"; those are his exact words as I quote them.

Q What did you say? A I said "I got my hands in my pocket". He said "You are due for a frisk". He searched both of us, and nothing was found, and a period of three minutes elapsed before the pocket book was found.

Q Did you hand Mendelson a pocket book while you were walking up Broadway? A No, sir.

Q When was the first time that you observed the pocket book? A When the lad in the case here picked it up or showed it to the detective.

Q Brought it over to him? A Yes, sir.

MR. FRANKEL: Your witness.

CROSS EXAMINATION BY MR. EDELMAN.

Q How long are you from Nevada -

MR. FRANKEL: Just one question. Was Mendelson with you in the door-way together with you and the officer?

THE WITNESS: Yes, sir.

CASE #2720

Q How long are you from Nevada ? A Since March 17th, 1917.

Q Since March 17th ? A Yes, sir, 1917.

Q What have you been doing since 1917 ? A I was in the Navy from the 5th of April until the 7th day of June.

Q As a musician ? A Yes, sir.

Q Where were you assigned ? A Great Lakes Naval Training Station. I was wounded on the Montana.

Q What instrument do you play ? A Cornet, sir.

Q Where is that instrument, now ? A Pawn shop.

Q What ? A Pawn shop.

Q How long have you got it in the pawn shop ?

A Oh, about two months, I believe.

Q What ? A About two months.

Q Didn't have much money when you had to pawn your instrument ? A Yes, sir, I had money.

Q What did you pawn it for, then ? A To keep it out of the house.

BY THE COURT.

Q What ? A To keep it out of the house. I had a room mate at the time, and he was always monkeying with it.

BY MR. EDLISON.

Q A room mate ? A Yes, sir.

Q And he was monkeying with it ? A Yes, sir.

Q What do you mean by monkeying ? A He was trying

07127  
CASE #2720



to play music on it.

BY THE COURT.

Q So you put it in the pawn shop ? A Yes, sir.

Q Because he did that ? A Yes, sir.

BY MR. EDELSON.

Q How long are you in New York City now ? A Since about the 18th day of September.

Q Where did you live since the 18th of September, 1919 ? A 339 - or 329 West Fifty-fifth Street.

Q How long did you live there ? A About three weeks.

Q Three weeks at the time of your arrest ? A Three weeks prior to my arrest. I lived at 207 West Fortieth Street, an apartment, previous to that.

Q You didn't live at Fifty-fifth Street all that time ? A Not all the time.

Q You moved every two or three weeks ?

MR. FRANKEL: I object to this.

MR. EDELSON: This is cross examination.

BY THE COURT.

Q Do you move every two or three weeks ? A No, sir.

BY MR. EDELSON.

Q On September 18th you say you lived on Fortieth Street? A I wasn't in town on September 18th. I left Boston on September 18th.

Q I asked you how long you were in New York City, and

CASE #2720

you said since September 18th ? A I left Boston about September 18th.

Q When did you arrive in New York ? A September 19th.

Q Where did you live ? A Fortieth Street.

Q Where ? A 207 West Fortieth Street.

Q Care of whom ? A Care of myself. It was an apartment house.

Q You had one room, didn't you ? A I had two rooms.

Q A furnished apartment ? A Yes, sir.

Q Did anybody live there with you ? A Well, I had a fellow named Lee living with me, a salesman.

Q And you stayed there two or three weeks ? A I stayed there until about three weeks before I was arrested.

Q And for the three weeks immediately before you were arrested you lived on West Fifty-fifth Street ? A 329 West Fifty-fifth Street.

Q What kind of room was that ? A A boarding house, a rooming house.

Q You had a room there ? A Yes, sir.

Q Somebody shared the room with you ? A Yes, sir.

Q Two in a room ? A Yes, sir.

Q How many floors to that boarding house or rooming house ? A It is a private house.

Q I know. How many floors ? A About three.

Q How much did you pay a week for your room ?

CASE #2720

A Eight dollars a week.

Q No boarding, only the room ? A Yes, sir.

Q You and your friend paid half ? A Yes, sir.

Q When did you first meet Mendelson ? A Last February, when he was in the service club.

Q He was also in the service ? A Yes, sir.

BY THE COURT.

Q What service club ? A Forty-second Street, Y. M. C. A., Bryant Park.

BY MR. EDELSON.

Q You say you got a discharge ? A Yes, sir.

Q Have you got it with you ? A No, sir; the officer can verify it. He saw it.

MR. FRANKEL: May I say, in justice to this defendant, there was another counsel here yesterday, who has possession of these papers ?

MR. EDELSON: Oh, that is not my object in asking the question.

Q Is that your right name - Hank Adams ? A Yes, sir.

Q Did you see Mendelson's card ? Has he got a card ?

A What kind of a card ?

Q A discharge card ? A I didn't see it.

Q He didn't show it to you ? A No, sir.

Q How do you know he was in the Navy ? A I met him in uniform. He was in the army.

CASE #2720



Q He told you that ? A I saw him in uniform.

Q Did you see his discharge ? A No, sir.

Q Did he ever show you his discharge ? A No, sir.

Q When did you first meet Mendelson ? A Early part of February.

Q Where ? A In the Bryant Park Service Club.

Q That is around Forty odd Street ? A Forty-second Street.

BY THE COURT.

Q That is the Young Men's Christian Association ?

A Yes, sir.

Q Where they get something to eat ? A Yes, sir.

BY MR. EDELSON.

Q In case you wanted something to eat you can get it for nothing ? A No, sir, you don't get it unless you pay for it.

Q And that is where you met him ? A Yes, sir.

Q And how long did you see him after that ? A I didn't see him after that until the night I met him.

Q Which night ? A Election night.

Q When did you first meet him at the Service Club, as you call it ? A In February, 1919.

Q And then you didn't see him until November 4th ?

A Yes, sir.

Q What time did you meet him on November 4th ?

CASE #2720

A I believe between a quarter past eight and half past eight.

Q And where did you meet him ? A I met him on Forty-second Street.

Q And did you have a talk with him ? A Yes, sir.

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

Q Did you know anything about him at all ? A I knew that he was in the service, and he was a very agreeable fellow when I knew him.

Q You met him once ? A Once.

Q In February ? A Yes, sir.

Q You didn't make any appointment with him to meet him on November 4th ? A No, sir.

Q Did you ever have any trouble with Officer Kirvin ?

A Never in my life, sir.

Q He never had any trouble with you ? A No.

Q Never spoke to you ? A No, sir.

Q You never saw him before ? A No, sir.

Q There is no reason why he should go me here and testify that he saw you do an act when you didn't do it, is there ? A Well, I don't know <sup>about that.</sup> He said he had some

reason. He said he had this fellow and he is going to hand me with him.

Q He was going to hang you with him ? A Yes, sir.

Q And yet you never did him any harm ? A No, sir.

Q And he never saw you before, or you never saw him

CASE #2720

before ? A There is such a thing as he not liking my looks. He said that.

Q He said that he didn't like your looks ? A He said he didn't.

Q What did you say ? A I said that was a matter of opinion.

Q Have you a father and mother living ? A I have not, sir.

Q What ? A I have not.

Q How long have you been living by yourself this way ?  
A Well, not living with myself all the time. I lived with my folks down home.

Q What folks ? A I have an aunt in Las Vegas.

Q In Nevada ? A Yes, sir.

Q That was in 1917 you lived there ? A Yes, sir.

Q Since that time you didn't go back there ?

A No, sir.

Q At the time of your arrest, did you have a bank account ? A I had personally money.

Q Did you have any bank account ? A No, sir.

Q Had no jewelry ? A I had jewelry.

Q A stick pin ? A A chain and a stick pin.

Q Where is it ? A Pawned them both.

Q Oh, you pawned that, too ? A Yes, sir.

Q How much money did you have ? A Thirty-nine

CASE #2720



dollars, in a small pocket.

MR. FRANKEL: I object to this.

Q You had thirty-nine dollars? A Yes, sir; it was overlooked when I was searched.

Q Were you working at that time? A No, sir, but I had prospects.

Q I didn't ask you that. You were not working on November 4th? A No, sir.

Q How long before November 4th were you out of work?  
A Before November 4th?

Q Yes. A I was working the 16th day of September.

Q That is the last day you worked? A Yes, sir.

Q So that from September 16th to November 4th, a period of about, well, eight weeks, you were out of work?

A Yes, sir.

MR. FRANKEL: September 16th to November 4th would be less than six weeks.

MR. EDELSON: September 16th to the 30th is two weeks, and October I figure four and a half weeks.

Q Well, seven or eight weeks; you were out of work all that time? A Yes, sir.

Q Yet you were walking around with thirty-nine dollars in your pocket? A Yes, sir.

Q Just tell the Court and jury whether you were on the east side of Broadway going in a northerly direction when

CASE #2720

you first met Mendelson ? A I was on the east side of Broadway, walking north, when I met Mendelson, up to Forty-fourth Street, we walked up and crossed over.

Q And you walked south ? A No, we stood there a while, we stood on Forty-fourth Street.

Q You stood there talking until you saw Miss Murtha pass ? A Never saw Miss Murtha; never had any idea she was passing on the street.

Q And didn't you leave Mendelson for a while ?

A I don't remember leaving Mr. Mendelson.

Q You don't remember that ? A No, sir.

Q You remember everything else ? A I don't see why I should leave Mr. Mendelson, having been with him for an hour.

Q You remember everything else, but you don't remember whether you had occasion to leave him ? A I remember being with him.

Q And there were crowds there ? A Yes, sir.

Q And didn't you at times lose him in the crowd ?

A I don't think so.

Q But you are not sure about that ? A Well, I am pretty sure I didn't leave him, because if I had left him I couldn't be with him.

Q I don't say go away from him, but you became separated from him in the crowd, a few feet away from him ?

CASE #2720

A I am sure I didn't hold on to him, but I know I was with him.

Q You were in a hurry to go to the restaurant ?

A We were not in a hurry.

Q But you wanted to go to the automat ? A Yes, sir, we wanted to go to the automat.

Q Did you want to go to the automat, or did you want to see the election returns ? A We wanted to see the election returns.

Q And did you have to stand on the north-west corner of Forty-fourth Street and Broadway to see the election returns ? A We had to stand on the east side -

Q The Times Bulletin board ? A I didn't have to; that is why I went to Forty-fourth Street.

Q You saw the crowd at Forty-fourth Street and Broadway when you were in the middle of the street ? A The crowds weren't only on Forty-fourth Street, but they were all along Broadway.

Q You saw the crowd directly in front of the bulletin ? A I didn't pay much attention to the crowd. I remember the crowd was there.

Q You didn't pay as much attention to the bulletin as you did to the crowd or the people there ? A I paid more attention to the bulletin than the crowd.

Q You were interested in the election ? A Yes, sir.

CASE #2720



Q You are a voter here in New York ? A I was not a voter, no, sir.

Q Did you register ? A No, sir.

Q And you did not vote ? A No, sir.

Q And you were interested in the election. So that you do not remember whether you became separated or not from Mendelson ? A I didn't become separated.

Q A few feet away from him ? A I don't think I was a few feet away from him.

Q You were always close to him, shoulder to shoulder, like a couple of soldiers ? A Yes, sir.

Q A big crowd on Broadway ? A Yes, sir.

Q You walked as though you had the lock step, never separated from him at all ? A You don't have to separate in a crowd, I don't think.

Q Don't argue with me. You don't know whether you separated from him, or not, for a few feet ? A I am pretty sure I did not separate from him.

Q Don't you remember coming in front of a couple of ladies ? A Not to my knowledge.

Q You are not sure about it ? A I am pretty sure I did not, not intentionally.

Q Well, whether you did it intentionally, or unintentionally, don't you remember coming in front of a couple of ladies ? A Well, it must have been done unintentionally

CASE #2720

if I got in front of anybody.

Q Did you, intentionally, or unintentionally, get in front of a couple of ladies ? A I don't remember.

Q You might have done it ? A I might not have, too.

Q You might, and you might not; you don't remember ?  
A I don't remember.

Q How far had you and Mendelson proceeded south on the west side of Broadway when you left Forty-fourth Street and Broadway ? How far had you proceeded south ? A I don't think we went more than twenty paces.

Q Well, what do you call a pace - three feet ?  
A About twenty-seven inches.

Q Twenty-seven inches ? A Yes, sir.

Q How many paces do you say you went, about ?  
A I don't think we went more than twenty paces.

Q Twenty paces ? A Yes, sir.

Q Why did you stop ? A Because the crowd was too congested, and I didn't wish to be mixed up in a crowd.

Q Oh, you didn't want to be mixed up in that crowd ?  
A No, sir.

Q It wasn't a Nevada crowd, so it was congested, and you went back ? A Yes, sir.

Q So, the reason you give to this Court and jury, after making up your mind, as you say, with Mendelson, to go and get something to eat in a restaurant, which required

CASE #2720

you to walk from Forty-fourth Street on the west side of Broadway south, you say you walked about twenty paces south, and then you saw a congested crowd, and you walked back again? A Yes, sir.

Q You didn't walk back again because Mendelson gave you the wink that he had the pocket book and slipped you the pocket book? A No, sir.

Q There was too much of a crowd? A Yes, sir.

Q Didn't you see that crowd before you commenced to walk south and to go into that restaurant? A I might have seen a crowd, but I didn't think of anything else. I had one look at the bulletin, and then made up my mind it was time for me to get a cup of coffee.

Q Do you know anything about pick pockets? A No, sir.

Q Do you know they work in crowds? A No, sir.

Q Do you know that is the way they work? A No, sir.

Q Because you saw a crowd - A I didn't want to get in the crowd.

Q So, when the officer says you were walking with Mendelson on the west side of Broadway south, it is so, is it not? You were walking south? A I was walking south, yes, sir.

Q And when the officer says both of you suddenly turned back, you both did turn back? A Yes, sir, we did.

Q But you say you turned back for a different reason

CASE #2720



than what the officer says ? A Yes, sir.

MR. EDELSON: That is all.

BY THE COURT.

Q Do you know what office Mr. LaGuardia was a candidate for ? A Yes, sir.

Q For what ? A President of the Board of Aldermen.

Q Were you interested in our local affairs here ?

A Yes, sir.

Q Did you ever meet personally Mr. LaGuardia ? A No, sir.

Q This place in which you state you first met the defendant Mendelson was in a place that is called the canteen, isn't it ? A No, sir, it is not exactly what they call a canteen. It is a place where you can write letters, and they have amusements there and lectures.

Q It is conducted under the auspices of the Young Men's Christian Association ? A Yes, sir.

Q People go there to eat ? A At times.

Q You went there to eat ? A I didn't go there for that reason.

Q Did you go there to eat ? A I ate when I got there, but my intentions was not to eat.

Q What did you see the defendant Mendelson doing there when you met him ? A I was introduced to him by a gentleman named Phillips.

Q Who was Phillips ? A He was a service man.

CASE #2720

Q What did you see Mendelson doing there ? A I didn't see him doing anything that caused me to remember.

Q Didn't you say that he worked there ? A No, sir, I didn't mention that.

Q What did you say he did there ? A I said he was in uniform.

Q What was he doing there ? A He was there on recreation, I suppose, on leave.

MR. EDELSON: Suppose ?

THE COURT: That is all.

RE-DIRECT EXAMINATION BY MR. FRANKEL.

Q What is the income of a musician today when they work ? A What do they pay ?

Q Yes. A About sixty to seventy dollars a week if they get steady work, providing they work about six hours a day.

MR. FRANKEL: That is all.

RE-CROSS EXAMINATION BY MR. EDELSON.

Q You couldn't find any work since September as a musician ? A Let me explain.

Q Since September, 1919, September 18th, did you find any work ? A No, I didn't find any, but here is the thing -

THE COURT: No; answer the question.

BY MR. FRANKEL.

Q Tell us why you came to New York and the efforts you

CASE #2720

made to find work ? A I went to a gentleman who conducts the jaz band of the army, at the St. Andrew Hotel, at Seventy-second Street and Broadway, and he said he had a jaz band that was going to Australia for twenty-six weeks' work, getting sixty dollars a week and our expenses both ways, and I agreed to go, but, some how or other, he was disappointed in the contract, and he promised me a chance of going to Canada with a jaz band which also was getting organized in a very short time.

Q And he asked you to wait for it ? A Yes, sir.

MR. FRANKEL: That is all.

MR. EDELSON: That is all.

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B E N J A M I N M E N D E L S O N, one of the defendants herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRANKEL.

Q Where do you live ? A 116 Cannon Street.

Q What is your occupation, Mr. Mendelson ? A I worked as a guard in the New York State Reformatory.

Q How long have you worked as a guard in the New York State Reformatory ? A I worked there for two years and eight months.

Q Were you in the service of the United States ?

A Yes, sir.

CASE #2720



Q Between what years ? A Well, I served three years, from 1909 to 1912.

Q Were you discharged honorably ? A Yes, sir; and I have been in during this war with Germany, for one year, just about a year, eleven months.

Q And were you discharged honorably from the Government service ? A Yes, sir.

MR. EDELSON: I object to that. That is not the best evidence. I object to it as incompetent.

THE COURT: I think you better produce some evidence of that.

Q During what year was that that you were in service ?

A From 1909 to 1912, and from 1918 to 1919.

Q And was it before that that you worked as a guard in the New York - A I worked before enlisting and I worked after being discharged.

Q You were in trouble with this officer, Officer Kirvin, before, weren't you ? A Yes, sir.

Q How long ago ? A Two weeks prior to the last time I was arrested.

Q And you were arraigned in the Magistrate's Court ?

A Yes, sir.

Q And what was the result of that case ? A Fined - days, five/dollars or a ten dollar fine.

Q And do you remember election night of this year,

CASE #2720

the night you were arrested ?     A Yes, sir.

Q Just tell us what you did immediately before your arrest ?     A Why, I had come up from my father's house, and I was on the corner of Forty-second Street and Broadway about, I should judge, about eight-fifteen, when I met Mr. Adams, and he and I stood around and looked at the returns on the Times Building bulletin board.

Q Then what did you do ?     A Well, we had been looking at the board for a while from the corner of Forty-third Street, and we walked up as far as Forty-fourth Street and crossed over, and we had been standing on the corner for a while, and started down toward Forty-third Street.

Q How far had you proceeded down towards Forty-third Street ?     A Well, I should judge not more than half a block.

Q Then what did you do ?     A Adams said "Let's go and have a cup of coffee"; it was a pretty chilly night; and we turned around to go back toward the automat.

Q And what happened after that ?     A It seems we got pretty close to the corner of Forty-fourth Street when the officer caught hold of both Adams and I, and he said to me "Well, I have got you again", and I told him I didn't know what he meant, and he searched us.

Q What did he do with you ? Did he take you anywhere on the sidewalk ?     A Just off the sidewalk, there

0212720  
CASE #

was an entrance into a store, Weber & Heilbronner's, I believe it is, a clothing store.

Q And what did he do with you then ? A It seems he started to search us.

Q Where did he search you - in this door way ?  
A Right in the door way.

Q Did you see any purse immediately under your feet or under the feet of Adams ? A No, sir.

Q Did you see who picked up this purse ? A I saw some woman pick it up.

Q How far away was the purse when it was picked up ?  
A I should judge five or six feet.

Q Did the officer say to you or Adams that he had passed that purse over to you at any time ? A He didn't say that then, but he had said it before, down at the station house, that I had passed the purse to Mr. Adams.

Q Did you pass a purse to Adams at any time ?  
A No, sir, I did not.

Q Broadway was pretty crowded, wasn't it, from Forty-third to Forty-fourth Streets ? A Yes, sir.

Q Anybody walking behind you as you were proceeding in a northerly direction could not see what was going on between you and Adams ? A Well, Broadway was pretty crowded.

MR. IDELSON: I object to that as incompetent, what somebody else could see. How can he judge that ?

CASE #2720



THE COURT: I will let him answer.

Q You were walking north alongside of Adams; is that correct ? A Yes, sir.

Q Up Broadway, when you went back towards the Automat ? A Yes, sir.

Q And a great many people around you walking up and down ? A Yes, sir.

Q Do you know whether anybody walking behind you could see what was going on between you and Adams ?

MR. EDLSON: I object to that.

THE COURT: Yes, I can't see how he can tell what anyone else can see. He might describe the conditions, and let the jury determine whether anyone could see.

Q A great many people were immediately behind or around you ? A I couldn't say. There were a great many people. The streets were pretty well crowded. I couldn't say how many.

Q Would you say it was an unusual crowd on Broadway ? A Yes, sir, a real big crowd.

Q And was there any room for pedestrians to walk, any space or room ? A Not very much space, not without brushing alongside of one another.

Q And that was the condition of all that block as you remember it ? A Well, as far as I had walked, yes, sir.

Q Did you take anything from this woman's purse in

CASE #2720

walking down Broadway ?     A No, sir.

Q ~~When~~ was the first time that you saw this purse or the money ?     A After the woman had picked it up and showed it to the detective, or handed it to the detective.

Q If this detective had been walking immediately behind you, would you have been able to see him ?

MR. EDLSON: I object to the form of the question.

THE COURT: Well, he can state if he was able to see him.

A If I had turned around, probably I would have seen him.

Q Well, the crowd was going fast and slowing down a bit ?     A Yes, sir.

MR. EDLSON: I object to counsel testifying.

THE COURT: Yes, you are testifying. Ask him what the conditions were.

Q Tell us whether people were walking continuously at one gait, or whether they slowed down and walked fast, intermittently ?     A They slowed down at times, because the crowd was so big they couldn't very well all keep going.

Q And you couldn't walk in one straight line south or north ?     A No, not very well, not with the crowd.

Q Would it have been possible for anyone to walk immediately behind you or alongside of you without you seeing him ?     A Well, not - Naturally, if he was alongside of me, it would be possible for me to see him, but I couldn't

0272720  
CASE #2720

very well see him if he was behind me.

Q This officer, Detective Kirvin, you knew him, didn't you ? A Yes, sir.

Q He was in this other case ? A Yes, sir.

Q And if he was alongside of you or immediately behind you, would you see him ? A If he was alongside of me I would see him, yes, sir.

Q As you were shifted in and out of the crowd, would you have seen him at any time ? A Well, if he had come alongside of me, I probably would have seen him. I couldn't see him if he was behind me.

Q What did the detective say to you immediately after your arrest ? Did you have a conversation with him ?

A He said "Well, I have got you again, but I have got you right this time".

MR. FRANKEL: That is all.

CROSS EXAMINATION BY MR. EDELSON.

Q What is your correct name ? A Benjamin Mendelson.

Q You say you live at 116 Cannon Street ? A Yes, sir.

Q With whom do you live there ? A My father.

Q What floor do you live on ? A First floor, one flight up.

Q That is between where ? A That is between Delancey - between Stanton and Houston Streets.

Q Now, you spoke about your record. How about your

CASE #2720



prison record? Were you known under the name of John Armstrong? A Yes, sir.

Q Now, which is your true name, Benjamin Mendelson, or John Armstrong? A Benjamin Mendelson.

Q And in 1907 you were convicted of what? A Petit larceny.

Q You went to the House of Refuge? A Yes, sir.

Q How long did you stay in the House of Refuge?

A About fifteen months.

Q Then, in 1908, you violated your parole. What did you do then? A I went back to the House of Refuge.

Q I know you went back to the House of Refuge, but what did you do that caused a violation of your parole?

A I left my cousin's home.

Q Wasn't it for larceny? A No, sir.

Q Then, in 1917, you were convicted of grand larceny in this Court, before Judge Wadhams; is that right?

A Yes, sir.

Q And you went to the Penitentiary? A Yes, sir.

Q How long did you stay in the Penitentiary? A Ten months - nine and a half months.

Q And you got a year in the Penitentiary? A Yes, sir.

Q Under the name of John Armstrong? A Yes, sir.

Q That was not your right name? A No, sir.

Q Now, on October 22nd, 1919, you were arrested - you

CASE #2720

were convicted in the Magistrate's Court for disorderly conduct ? A Yes, sir.

Q You got ten days in the Workhouse ? A No, sir.

Q Well, did you go to the Workhouse at all ? A No, sir.

Q What did you do then ? A I was given the preference of five days or a ten dollar fine.

Q What happened ? A I paid the fine.

Q Now, all these convictions were for stealing ?

A No, sir.

Q Larceny ? A No, sir, they were not.

Q Well, - A My last conviction was for disorderly conduct and jostling in the subway. I was arrested by Officer -

Q Jostling in the subway ? A Yes, Counsellor, for jostling.

Q Did you ask that the complaint be changed ? Did you read the complaint in the Police Court ? A I did not ask that the complaint be changed, no, sir.

MR. FRANKEL: That is objected to.

Q In 1917, when you were convicted of grand larceny, wasn't that stealing ? A I wasn't convicted of grand larceny.

Q You plead guilty ? A I plead guilty to petit larceny.

Q Before Judge Wadhams ? A Yes, sir.

CASE #2720

Q Petit larceny ? A Yes, sir.

Q And he gave you the limit ? He gave you a year in the Penitentiary ? A He gave me an indefinite sentence. BY THE COURT.

Q What was the indefinite sentence ? A I believe it calls for from three months to three years. BY MR. EDELSON.

Q And what was the stealing at that time, since you distinguish between a trial and a plea of guilty ? A Some automobile tires.

Q You stole automobile tires ? A I did not steal them, no, sir.

Q What did you do with them ? A Well, they were in my possession at the time.

Q You plead guilty ? A I plead guilty to petit larceny.

Q And in 1907 what did you go to the House of Refuge for ? A Petit larceny.

Q That was stealing, too ? A Yes, sir.

Q How long do you know Adams ? A I know him since February.

Q How many times did you see him since February ? A I haven't seen him until the night of election.

Q That is the story you both got up, didn't you, in the Tombs, while you both were in the Tombs here, in the

CASE #2720



City prison ? A No, sir.

Q To tell the jury "Oh, we haven't been together but once, and we happened to meet accidentally this night" ?

A No, sir.

Q You met him in February ? A Yes, sir.

Q And didn't see him until last election night ?

A No, sir.

Q What time did you meet him ? A About eight-fifteen, I should judge.

Q And then you took a walk on the east side of Broadway ? A Yes, sir.

Q From Forty-second Street to Forty-fourth Street ?

A At Forty-fourth Street.

Q And then you walked across to the north-west corner of Forty-fourth Street and Broadway ? A Yes, sir.

Q And then you both felt like going to the automat restaurant ? A No, sir.

Q What did you do ? A We had walked down about half a block.

Q On the west side of Broadway ? A Yes, sir, on the west side of Broadway, when Adams said "Let's go to the restaurant and have something to eat, or a cup of coffee", and it was a pretty cold evening. We turned around and went to the automat, started to go to the automat.

Q Did you go to the automat ? A We didn't have a

CASE #2720

chance to go there.

Q Why didn't you have a chance ? A Officer Kirvin arrested us.

Q So that the reason you didn't go to the automat restaurant was because Officer Kirvin arrested you ? A Yes, sir.

Q And it is not the reason assigned by Hank Adams, the co-defendant, that there was too much of a crowd and you made up your mind to go back ? A Well, when he had spoke of the restaurant, we were going in a south - the direction was south, and he said "Let's not go through this crowd; we will go back and go to the automat".

Q Which is it now ? Is it what Hank Adams says, that there was too much of a crowd and you went back, or because the officer arrested you ? A No, the crowd was so big he changed his mind and said "We will go back, instead of going through the crowd".

Q Were you working that night ? A No, sir, I was not.

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

Q How long had you been out of work ? A About a week.

Q Is that all ? A Yes, sir.

Q Were you working on October 22nd, when you were convicted in the Magistrate's Court, this year ? A At the time I was convicted ?

Q Yes. A No, sir.

Q You were not working then ? A No, sir.

CASE #2720

Q Then you were out of work longer than a week. This was on November 4th, and the other was October 22nd ?

A Yes, sir. I had only been out a week, because I had -

Q Where had you been working ? A I had been working in the House of Refuge, on Randall's Island.

Q When ? A I worked there up until July.

Q When ? 1907 ? A No, sir, July, 1919.

Q Who employed you there ? A E. C. Barber, Superintendent.

Q How long did you work there ? A I worked there between two and three months, at two different times.

Q Since you came out of the Penitentiary ? A I have worked there since I have been out of the Penitentiary.  
BY THE COURT.

Q Did you tell them you had been in the Penitentiary ?

A Yes, sir.

Q And they employed you ? A Yes, sir.

BY MR. EDELSON.

Q In 1907 and 8 you were in the House of Refuge ?

A And I had worked there after being honorably discharged from the army, in 1912.

Q In what capacity did you work there ? A I worked there as a guard.

Q What did you have to do ? A I was a military instructor.

CASE #2720



Q During the war ? A No, sir, not during the war.  
Before the war.

Q And he knew your record ? A Certainly, he knew  
my record.

Q And you quit working there in July of this year ?  
A In July of this year, yes, sir.

Q 1919 ? A Yes, sir.

Q And since July, 1919, you have not been working ?  
A I have been working.

Q Where ? A As a painter.

Q Where ? A For real estate dealers. I worked  
for a party named Zacharias. All the painters were out on  
strike at the time.

Q Where does he keep ? A I couldn't tell you where  
his office is, but his home is up in Cornelia Street, in the  
Bronx.

Q What is the number of his home ? A I have the  
number here.

Q Without that ? A I couldn't tell you.

Q Did you work in his home, or in his office ?

A I didn't work at his office, nor his home; I worked at  
different buildings.

Q Has he an office ? A I couldn't tell you.

Q Are you a painter by trade ? A No, sir, I am not  
a painter by trade.

CASE #2720

Q What are you ? A I have no trade.

Q Nothing at all ? A No, sir.

Q What kind of work did you do ? A I worked as a painter.

MR. FRANKEL: That is objected to.

Q You say you are not a painter ? A I didn't say I was a painter. I said I had worked as a painter.

Q For this man Zacharias ? A I don't understand that.

Q Zacharias, or whatever you call him ? A Zacharias, yes, sir.

Q How how long ? A I worked for him about four months.

Q From when to when ? A From July to about September.

Q And what jobs did you paint on ? A Well, we did most of the work there -

Q Not what "we" did. What did you do ? A I did most of the work up on the houses in Convent Avenue, two big apartment houses.

Q And in four months you painted that house ?

A We were painting inside in bad weather and outside in good weather.

Q Are you related to this man Zacharias ? A No, sir.

Q And you say you worked there every day for four months ? A Yes, sir.

CASE #2720

Q Where did you sleep ? A I lived at 3200 Broadway at the time.

Q With whom ? A With Burns.

Q You didn't live with your father at 3200 Broadway ?

A No, sir, I did not.

Q It is only when you get in trouble and are convicted of crime that you take your father's address on the east side, Cannon Street; is that right ?

MR. FRANKEL: I object to that.

THE COURT: I will exclude it.

A I have been with my father since my -

MR. FRANKEL: Just a moment. You don't have to answer that.

MR. EDELSON: Did your Honor rule on that ?

THE COURT: Yes.

Q When you were arrested you said you lived at 116 Cannon Street ? A Yes, sir.

Q You said you lived there three weeks ? A No, sir, I did not. I couldn't have lived there three weeks, for I was only discharged from the Magistrate's Court exactly one week from the day I was discharged to the day of my arrest.

Q Do you read and write English ? A I can, yes, sir.

Q Do you remember your formal being taken in the Police Court ? Isn't this your signature - "Benjamin

CASE #2720



Mendelson\* (handing paper to witness) ? A Yes, sir.

Q Do you remember the question "Where do you live ?

A 116 Cannon Street, three weeks" ? A I didn't say three weeks, no, sir.

Q You see it there, though ? A I see it there, yes, sir.

Q Didn't you read that before you signed it ?

A No, sir.

Q You signed it in blank ? A I was told to sign a paper, and I signed it.

Q It was not the first time you were in Court ?

A It is the first time I had to sign a paper that I didn't know what I was signing.

Q They forced you to sign something ? A I was forced to sign a paper.

Q You have been in Court several times before ?  
You have been convicted four times, and this was all new to you. You were told to sign a paper ? You want to tell the jury it was all new to you; you didn't know what you were doing ? A (No answer).

MR. MENDELSON: That is all.

RE-DIRECT EXAMINATION BY MR. FRANKEL.

Q What is written immediately above your name on that paper which you signed (handing paper to witness) ?

A "Where do you live, and how long have you resided there?"

CASE #2720

Q No; immediately above your name ? A Oh, "I am not guilty".

Q Before you signed ? A Yes, sir, he asked me whether I was guilty, or not guilty, and I said "Not guilty". He said "Sign this", and I signed it.

MR. EDELSON: You say the same thing here, or you wouldn't stand trial.

RE-CROSS EXAMINATION BY MR. EDELSON.

Q Did you ever see this woman, Miss Murtha, before ?

A No, sir.

Q And is it your contention that you were arrested by Officer Kirvin because his side partner had arrested you two weeks before ? A It was not his side partner; it was both of them had arrested me, and he had told me when I left the Court, he said "You got away with it this time", he said, "but you wont get away with it now".

Q It was detectives Smith and Brant that arrested you last time ? A No, sir, it was detectives Smith and Kirvin.

Q Well, did you know Detective Brant ? A No, sir.

Q Isn't it a fact that this pocket book was at the feet of Hank Adams ? A I wont say that it was at the feet of Hank Adams.

Q When was the first time you saw this pocket book ? A I couldn't say whether that is the pocket book I saw,

CASE #2720

or not.

Q Oh, you are fencing. You don't know whether that is the pocket book, or not? A No, sir.

Q Did you see a pocket book opened? A I saw a pocket book opened in the police station.

Q Did you see the bills? A I did not. I saw some money.

Q How much money did you have in your pocket? A I had a little over five dollars in my pocket.

Q Do you know what Hank Adams had? A I do not, no, sir.

Q You had no bank account? A No, sir.

Q Did you have any jewelry? A I had a watch and chain.

Q That has been pawned, too? A I had to have money to eat on since I have been in the Tombs.

Q All you and Hank Adams had was in your clothes? A Yes, sir.

Q In your pocket? A Yes, sir.

MR. EDLSON: That is all.

LUCY MURTHA, being recalled, testified as follows:

BY MR. FRANKEL.

Q Miss Murtha, will you tell us exactly where you

CASE #2720



picked this pocket book up from ? Was it in the street, in the centre of the sidewalk ? A Really, I couldn't tell you. I remember picking it up, but I don't know how close -

MR. EDELSON: I object to that as not proper in rebuttal. We have been all through that before.

THE COURT: She is recalled for re-cross examination; is that correct ?

MR. FRANKEL: Yes.

THE COURT: You may ask her.

THE WITNESS: I remember the pocket book being on the sidewalk, but I don't know how close to the building it was, if it was in the middle of the street, or not, I can't recall that.

Q You can't recall that ? A No.

Q Where were the detectives with the defendants ? Were they in the lobby, or on the street ? A They were in the door-way of the building.

Q About how far away from you ? A Well, I doubt if it was a hand's reach - an arm's reach; I think it was closer than that.

Q But you say you picked the pocket book up from the sidewalk ? A Yes, sir.

Q And these boys were in the lobby of the store ? A Yes, sir.

Q An inclosure ? A Yes, sir.

CASE #2720

Q And you don't know how far from the building line the pocket book was when you picked it up ? A No.

Q You can't say ? A No, sir.

MR. FRANKEL: That is all.

BY MR. EDELSON.

Q You know the difference between the sidewalk and the street ? A Yes, sir.

Q The sidewalk is that part from the building line to the gutter, and the street is where the vehicles go ?

A Yes, sir.

Q You were on the sidewalk ? A Yes, sir, I was on the sidewalk, but how far from the sidewalk where I was standing to the building I can't recall that, for I don't recall.

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THE DEFENDANTS REST  
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REBUTTAL TESTIMONY

DANIEL JOSEPH BURNS, Police Officer, attached to the Detective Bureau, called as a witness on behalf of The People, in Rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDELSON.

Q Officer Burns, did you assist Officer Kirvin in arresting these defendants ? A I did.

Q On the night of November 4th, 1919 ? A I did.

CASE #2720

Q Did you see anything that these defendants did ?

A I did not.

Q What attracted your attention ? A At Forty-fourth Street and Broadway I was coming down.

Q And what did you see ? A I saw Officer Kirvin and a traffic officer standing there.

Q And it was then that you assisted to take them to the station house ? A I did.

Q Did you search either one of the defendants ?  
A I did.

Q Which one ? A Hank Adams.

Q What did you find on Hank Adams when you searched him in the police station ? A I found a postal card. That is all that I took from him.

Q What kind of postal card ? A picture postal card ?  
A A picture postal card.

Q Did you find any money on him ? A I did not.

Q Did you find thirty-nine dollars ? A I did not.

MR. EDELSOHN: That is all.

CROSS EXAMINATION BY MR. FRANKEL.

Q Just describe how you made this search, will you ?

A How I made the search ?

Q Yes. A Went through his pockets.

Q How did you go through his pockets ? Just feel them like this (illustrating) ? A No, no, went through his

CASE #2720



pockets, felt into his pockets, put my hands in his pockets, and found the postal card on the inside of his coat pocket.

Q You went through every pocket ? A Yes, sir, every pocket.

Q Did you go through a little watch pocket he had in his trousers ? A Yes. Oh, about the watch pocket ?

Q Yes. A Yes, I went through every pocket I saw.

Q You are sure you went through that pocket ? A I went through that pocket, too.

Q That is very clear in your mind since election day ? A I do.

Q How many people have you searched since that day ?

A How many ?

Q Yes. A Oh, since November 4th up to the present time I searched may be four or five.

Q You remember particularly that you searched his watch pocket ? A Yes, sir, every pocket that he had.

Q You went swear that he did not have thirty-nine dollars on his person, would you ? A I couldn't say that he had thirty-nine dollars on his person, but not in his pockets.

MR. FRANKEL: That is all.

RE-DIRECT EXAMINATION BY MR. EDELSON.

Q But you didn't take any money from him, and didn't find any money in his pockets ? A Didn't find any money,

CASE #2720

nor did I take any money from him.

Q. Whatever you did find you retained, this picture and other things? A The only thing I found was a picture, and I gave it to Officer Kirvin.

MR. EDLSON: That is all.

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TESTIMONY CLOSED.  
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THE COURT: (To the jury) Gentlemen, you will be in your seats tomorrow morning at half past ten o'clock. Do not speak about this case, permit no one to speak to you of it, and do not make up your minds concerning the guilt or innocence of these defendants until I have sent this case to you. The case will be summed up by counsel tomorrow and I will charge you. You may go until half past ten o'clock tomorrow morning.

(The Court then accordingly took a recess until tomorrow, Friday, December 12th, 1919, at ten-thirty o'clock A. M.)  
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CASE #2720

THE PEOPLE, etc. vs. BENJAMIN MENDLSON and HANK ADAMS.

New York, Friday, December 12th, 1919.

TRIAL CONTINUED

(Mr. Frankel summed up the case to the jury on behalf of the defendants.)

(Mr. Edelson summed up the case to the jury on behalf of The People.)

THE COURT'S CHARGE

McINTYRE, J.:

Gentlemen of the jury, the grand jury of this County on the 17th day of November last caused to be filed in this Court an indictment against these defendants charging them with the crime of grand larceny in its first degree.

As I have had occasion to say to you during this term of Court, you are the sole judges of the facts; you are the arbiters of the evidence; you exercise supreme control and province over the evidence, over the facts introduced.

The defendants are presumed to be innocent until their guilt is established to your satisfaction beyond a reasonable doubt. That presumption then is destroyed. The presumption of innocence follows them all through

CASE #2720



the case.

The particular crime with which they are charged is grand larceny in its first degree. Larceny, generally defined under our law, gentlemen, is as I will read.

"A person who, with the intent to deprive or  
"defraud the true owner of his property, or of the use  
"and benefit thereof, or to appropriate the same to the  
"use of the taker, or of any other person, takes from  
"the possession of the true owner, or of any other  
"person; or obtains from such possession by color or  
"aid of fraudulent or false representation or pretense,  
"or of any false token or writing; or secretes, with-  
"holds, or appropriates to his own use, or that of any  
"person other than the true owner, any money, personal  
"property, thing in action, evidence of debt or  
"contract, or article of value of any kind; steals  
"such property, and is guilty of larceny."

Now, larceny is divided into three parts. We have grand larceny in its first degree, grand larceny in its second degree, and petit larceny.

These defendants, as I stated to you an instant ago, are charged by the grand jury with the commission of the offense called grand larceny in its first degree, and grand larceny in its first degree is defined by the Penal Law of the State of New York to be as follows:

CASE #2720

"A person is guilty of grand larceny in the first degree, who steals, or unlawfully obtains or appropriates, in any manner specified in this article: 1. Property of any value, by taking the same from the person of another in the night time."

You will remember that the evidence in this case discloses that the time of the commission of the alleged offense was about nine o'clock in the evening.

The provision of the Code then states, among other things, that "a person is guilty of grand larceny in the first degree who takes property of the value of more than fifty dollars by taking the same in the night time from any dwelling house, vessel, or railway car, or property of the value of more than five hundred dollars in any manner whatever."

The learned District Attorney contends here that the crime of grand larceny in its first degree was committed by these defendants, and he bases that upon the fact that there is evidence here tending to show that these defendants took a pocket book containing upwards of twenty-nine dollars in the night time. Hence he says they are guilty of grand larceny in the first degree.

The contention of the learned District Attorney is that these defendants were acting together, acting in

CASE #2720

concert, with the same felonious intent; that they were conspiring to take from the person of the woman who testified here her property. The District Attorney contends that one aided and abetted the other.

If they were acting together, if they conspired, if they aided and abetted, and they were both actuated by criminal intent, they would be guilty of grand larceny in its first degree.

The evidence in this case is with you, and I say to you, as matter of law, if you believe the testimony that has been adduced by The People of the State of New York in this criminal litigation, you may find these defendants guilty of grand larceny in its first degree.

You will first have to find that they acted together, acted in concert, with the same felonious intent; next, that they took from the person of the woman who testified in this case the pocket book about which evidence has been given, that pocket book containing a certain amount of money, on the night in question; that they took that pocket book from her person with a felonious intent, and that it was their purpose to appropriate that property to their own use.

If you find all these things to which I have just alluded affirmatively, you may convict these defendants of the crime of grand larceny in its first degree.

CASE #2720



This is commonly called a pick pocket case. The officer states that he saw these defendants in close proximity to the woman in question; that he saw one insert his hand in the pocket of her clothes; that subsequently he took something from it and that something he passed to his co-defendant, who was then preceding the woman in question; that subsequently he apprehended him; that he found the pocket book; that the woman identified the pocket book as hers. These are facts for you to weigh.

The defendants state, among other things, that they were simply on Broadway upon the night in question seeking out election returns. In that manner they account for their presence at the particular place. Each denies that he took from the person of the complainant the pocket book and money in question, and each asserts that he committed no crime whatever.

If that which they have said in their own behalf is true, I state to you that they have not done an act such as would bring them within the meaning of the section of the Penal Law defining grand larceny as I narrated it a little while ago, and they should be acquitted.

One of the defendants has been convicted on several occasions; that is to say, the defendant Mendelson

CASE #2720

admits that he was heretofore convicted. The fact that he was heretofore convicted does not amount to evidence tending to establish the truth of the accusation lodged in the indictment against him. When you come to consider his testimony, the testimony given by him upon the stand, you may take into consideration his previous conviction only as bearing upon his credibility. In other words, you may ask yourselves whether a man who has heretofore been convicted of crime is worthy of belief, or should much credence be attached to that which he may say or has said in his own behalf?

The other defendant says that he has never heretofore been convicted. He comes from a sister State. Just what he was doing there we have heard from his own lips.

However, all the testimony in this case given by these defendants must be and should be considered in connection with all the evidence in the case.

If these defendants' story is correct, as I said a little while ago, they have done nothing that amounts to a violation of our law.

On the other hand, I wish to say that if that which has been asserted by the State of New York through the lips of the learned District Attorney has been established, and you believe it beyond a reasonable

CASE #2720

doubt, you may convict these defendants of the crime of grand larceny in its first degree.

Picking pockets, following people in the City for the purpose of taking from them their property, entering large crowds at times when the public thoroughfares are congested and crowded, for the purpose of obtaining the property of others, is a heinous crime.

If these defendants be guilty of grand larceny in the first degree, perpetrated in the manner testified to here, they have committed a serious offense against the laws of our State.

Mark you, I don't say that they are guilty. I do not say that they did that which the officer in the case says he saw them do. That will be the question for you to determine, not me.

These defendants are entitled to the benefit of a reasonable doubt arising out of the evidence. I think you gentlemen by this time understand what is meant by a reasonable doubt. I know that I have told some of you what the law means when the words "reasonable doubt" are employed. It is not a guess, as I have said frequently to you; it is not a surmise; it is not caprice. It is a doubt which must grow out of the evidence.

You must analyze the evidence, look into it con-

CASE #2720



scientifically and cautiously, and then determine for yourselves whether there is a reasonable doubt concerning the guilt of these defendants, and if you have a reasonable doubt it then becomes the property of these defendants, and the law says that when there is such a doubt present a defendant should be acquitted.

So in this case, if you have a reasonable doubt concerning the guilt of the accused now arraigned at this bar, you will vote them not guilty.

Now, gentlemen, let me admonish you once more by stating that this is an important case. People in our City are entitled to protection. The law is created and made for the protection of society. In the wisdom of our Legislature, it is said that such an act as was described by the District Attorney in his opening, supported by the evidence in this case, is grand larceny in its first degree.

Now, if you believe that which was said in support of the contention of the State, that these defendants committed grand larceny in its first degree on the night of the 4th of November last, you should convict. I do not, however, direct you to convict. I say to you now that upon the evidence that has been given here, all the evidence in the case, you may find these defendants guilty of grand larceny in its first degree.

CASE #2720

77

On the other hand, if you disbelieve that which has been said against them, if you have a reasonable doubt concerning the guilt of these defendants, it is your duty to acquit them.

You may take this case.

MR. FRANKEL: May I respectfully request the Court to charge the jury that any motion made by the defendants' counsel for the dismissal of the complaint should not be taken by them as a view by the Court at any stage of the trial or at the present moment?

THE COURT: Any decision made by the Court upon a question of law, favorably or adversely to these defendants, should not be considered by you. As I have told you before, I am the sole judge of the law of this case, but you are the sole judges of the facts. I think you gentlemen understand that.

MR. FRANKEL: I ask the Court to charge the jury that if they find - if they ask themselves the question of the probabilities of the case, those probabilities must resolve themselves in favor of the defendants.

THE COURT: No; they may take into consideration all the probabilities, but because they ask themselves concerning the probabilities it does not follow, as a matter of law, that the probabilities must be resolved in favor of the defendants. The jury may consider all

CASE #2720

the probabilities. They may consider, too, that many times probabilities are the approaches to truth. They may also, in considering the evidence here, apply their own experience in the course of human affairs.

MR. FRANKEL: May I further ask the Court to charge the jury that if the jury find the weight of evidence is evenly balanced as to which way their minds tend towards a conclusion, they must resolve it in favor of the defendants ?

THE COURT: No; I will charge in this wise: Gentlemen, if the evidence is so evenly balanced so that the scales neither incline to the one side nor to the other, from such a condition you may say that there is a reasonable doubt; but that is for you, not for me.

MR. FRANKEL: May I ask the Court to charge the jury that if they find that any of the witnesses, either for The People or for the defendant, have erred in any material part of their testimony, they may disregard in whole the entire testimony of such witnesses ?

THE COURT: Do you mean "erred" ?

MR. FRANKEL: Yes.

THE COURT: Oh, no, the law does not say that. If a witness goes on the stand and falsely testifies, wilfully so, the jury may disregard all or a part of that testimony. That is the law that I charge you.

CASE #2720



MR. EDIELSON: No requests.

(The jury then retired, at 11:50 o'clock A. M.)

(The jury return, at 12:28 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.

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

THE FOREMAN: Guilty as charged.

THE CLERK: Both defendants ?

THE FOREMAN: Yes, sir.

THE CLERK: Grand larceny in the first degree ?

THE FOREMAN: Yes, sir.

THE CLERK: Hearken unto your verdict as it stands  
recorded, gentlemen of the jury. You say you find the  
defendants at the bar, each of them, guilty of grand  
larceny in the first degree, and so say you all.

MR. FRANKEL: Will your Honor permit counsel for  
the defendants to make any motions he deems advisable  
at the time of sentence ?

THE COURT: Yes.

(The defendants are duly sworn and their pedigrees  
taken.)

THE COURT: Monday next for sentence.

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CASE #2720

THE PEOPLE, Etc., vs. BENJAMIN MENDELSON and HANK ADAMS.

New York, Monday, December 15th, 1919.

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

JOSEPH D. EDELSON, Esq., Assistant District Atty.,  
For The People.

(No appearance on behalf of the defendants.)

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THE DEFENDANTS ARE ARRAIGNED FOR SENTENCE BEFORE

HON. JOHN F. MCINTYRE, J.

THE CLERK OF THE COURT: Benjamin Mendelson and  
Hank Adams, what have you now severally to say why judg-  
ment should not be pronounced against you according to  
law ?

THE COURT: Well, what do you want to say, if  
anything ?

DEFENDANT ADAMS: I ask for the mercy of the Court,  
and give me a suspended sentence.

THE COURT: Give you what ? Give you a sus-  
pended sentence ?

DEFENDANT ADAMS: Yes, sir.

THE COURT: A crook like you ? What have you  
to say, Mendelson, anything at all ?

DEFENDANT MENDELSON: Nothing, sir.

THE COURT: Both of you are notorious pick pockets.

CASE #2720

You are the lowest kind of thieves. You follow women and take their pay envelopes. You were a crook in San Francisco; you were doing it there; you were a crook in Goldfield, Nevada; you were a crook in Wisconsin; I know your record from beginning to end; you have been a thief all your life. And the other fellow, he has got a criminal record; he has been a jostler and a pick pocket all his life. You plied your trade on Long Acre Square for nights and days, walking upon one side of Broadway and then upon the other, picking pockets. You would walk from Forty-third to Forty-fourth Streets on the west side and then cross to the east side and walk in a southerly direction, picking pockets.

I am going to rid this community, if I can, of thieves like you. You are the lowest kind of a thief. You lied when you gave your pedigree in this Court, and I know it. The other fellow could not escape, because the police knew his record.

I am going to give you all that the law will permit me to give you. You stole a poor girl's money at nine o'clock in the night time. You were convicted of grand larceny in the first degree. Now, I hope that that which I say to you will be a warning to the countless pick pockets and thieves that are infesting this City in the subways and on the elevated trains and on

CASE #2720



82  
Broadway during crowded hours.

The sentence of the Court is that each of the  
defendants be confined in State prison for a maximum  
period of ten years and a minimum period of five years.

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Amos G. Russell,

Official Stenographer.

CASE #2720

**START**

2721

**CASE**

CASE #2721