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CASE

CASE # 2376

- : I N D E X : -

<u>WITNESSES:</u>	<u>Direct:</u>	<u>Cross:</u>	<u>Re-Dir.:</u>	<u>Re-Cro.:</u>
Louis Rosenblatt,	2	15		
Sam Wasserspring,	18			
Samuel Metrick,	21 72	34	62	65
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- : I N D E X : -

November 26, 1917.

<u>WITNESSES:</u>	<u>Direct:</u>	<u>Gross:</u>	<u>Re-Dir.:</u>	<u>Re-Wro.:</u>
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- : I N D E X : -

November 27th, 1917.

<u>WITNESSES:</u>	<u>Direct:</u>	<u>Cross:</u>	<u>Re-Dir.:</u>	<u>Re-Cro.:</u>
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VS.

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James E. Lynch,
Official Stenographer.

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All witnesses are excluded from the court room by order of the Court.

Mr. Mancuso opened the case on behalf of the People.

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

(Residence, 219 East 12th street).

DIRECT EXAMINATION BY MR. MANCUSO:

Q What business are you engaged in, Mr. Rosenblatt?

A Ladies' hat manufacturer.

Q Where is your place of business? A 65 Suffolk street.

Q Where was it on the 4th of October, 1916? A What is that?

Q Where was your place of business on October 4, 1916? A 65 Suffolk street.

Q How many rooms or floors did you occupy? A Five lofts.

Q And you manufacture hats there? A Yes, sir.

Q What material did you use in connection with the manufacture of those hats? A Well, different materials. Velvets, silks.

Q What kind of velvet?

BY THE COURT:

Q One minute. Put your coat and hat away. Now, go on!

BY MR. MANCUSO:

Q Go ahead? A Cotton velvet and silk velvet. All

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kinds of velvet.

Q On the 4th of October did you have any black velvet stored in your rooms? A On the 3rd I received a shipment from Wimpfheimer Brothers, 100 pieces.

Q 100 pieces of what? A Black velvet, and the man unpacked on the street and brought the boxes upstairs. I checked them and I put them away on the side.

Q Whereabouts did you put this velvet? A On the shelves.

Q You put them there yourself? A Yes.

Q And you checked them? A Yes.

Q Did this velvet have any marks? A Yes, sir.

Q What marks did it have? A Printed inside on the velvet. A private man cannot know that.

MR. MOORE: Well, I object to that as a conclusion.

THE COURT: The last part may be stricken out, "A private man cannot know that."

Q Will you tell us what mark was on the velvet?

BY THE COURT:

Q One minute. This velvet was cloth, was it, material?

A Yes.

Q Velvet cloth, you mean? A Yes, sir.

Q Not yarn? A No, regular velvet.

Q Yes, cloth, goods for making dresses and clothing, and so forth? A Yes, sir, exactly.

BY MR. MANCUSO:

Q Did you put it in the shelves? A In the shelves.

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Q "Purposely made for keeping this velvet? A Yes, sir.

Q Now, did you have any other velvet on these shelves in addition to the one hundred pieces you had received that day?

A About three o'clock another shipment came in of twenty-three pieces, from M. Bruckefeld, Broadway. That was not checked at all. I didn't have a chance to check it. I was called away and I left the packages right on the floor near the shelves to be able to check them to-morrow morning, and to-morrow morning that package disappeared and the one hundred pieces also.

Q So that on October 3rd, what time did you leave your place of business? A About half past four or five o'clock, something like that.

Q When you left your place of business did you see the velvet on the shelves together with those packages which were near the shelves? A Yes, sir.

Q You did not close the store, did you, or your lofts?
A No, sir, I have a special man for that.

Q Do you remember next morning, October 4th? A Yes, sir.

Q What time did you get to your place of business? A I was called by telephone.
BY THE COURT:

Q Well, what time did you get there, he asked? A About five minutes to eight, I was in the place of business.

BY MR. MANCUSO:

Q Before you went down there did you have a talk with anybody? A Yes, sir, I was called from the wire.
BY THE COURT:

Q Never mind that now.

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BY MR. MANCUSO:

Q Whom did you talk with? A A man from the place of business.

Q What is his name? A Well, I don't remember the name now.

Q Is he working for you now? A Maybe.

Q Well, after you had a talk with this man from your place of business you went down to the shop? A Yes, sir.

Q And you got there about what time? A About ten minutes to eight.

Q Did you go to the shelves where this velvet was stored?

A Yes.

Q Was the velvet there? A No.

Q How much of it was missing? A Everything was missing.

Q What about the two packages?

BY THE COURT:

Q You mean the hundred pieces were missing? A One hundred and twenty-two pieces.

Q No, but one hundred pieces that had been on the shelves were missing? A Yes, sir.

BY MR. MANCUSO:

Q What about the twenty-three pieces that were packed up in those two packages? A They were missing too.

Q Now, after you found these pieces of velvet were missing, did you look around the building? A Yes, sir.

Q Did you find any windows in the loft -- A (Interrupt-

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ing) One window in the toilet was open.

Q What about the roof door? A After we found with the officer the roof door open and the lock broken.

Q What time after you got there that morning did you examine the roof with the officer? A About ten or eleven o'clock.

Q Did you find anything on the steps leading to the roof or on the roof? A Yes, on the roof the officer found some tools and tickets from the velvet.

Q Did you look at those tickets? A Yes, sir.

Q Have you seen those tickets before? A Yes, sir.

Q Where? A In my place of business.

Q Where were they attached to, anything? A To the pieces of velvet.

Q This was on October 4th? A Yes.

Q Do you remember the 5th of October?

THE COURT: Why not ask him how many yards of velvet were in those hundred pieces?

BY THE COURT:

Q You said you lost one hundred pieces of velvet? A One hundred and twenty-three pieces.

Q Well, never mind the twenty-three for the present. We are speaking of the one hundred now? A I saw the package--

Q Never mind that. The hundred pieces you did see? A Yes.

Q How many yards were in those pieces? A There is a bill there. I can't remember.

Q Well, if you have any paper that will refresh your recol-

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lection you may do that? A Yes, sir.

BY MR. MANCUSO:

Q Have you got the bill with you? A No, sir, you got it.

Q Now, look at this paper to refresh your recollection and tell us how many yards there were in the hundred pieces?

BY THE COURT:

Q Is it not added up there? A Yes, sir, 12,034 yards.

BY MR. MANCUSO:

Q 12034 yards? A Yes, sir.

BY THE COURT:

Q Do you know the value of that velvet? A Yes, sir.

Q How long have you been in that business? A About twelve years.

Q During that time have you bought and sold velvet in the market? A Yes, sir.

Q What is the reasonable and fair market value of that velvet? A Sixty-two and a half cents a yard.

BY MR. MANCUSO:

Q Sixty-two and a half cents a yard? A Yes, sir.

Q What is the total reasonable market value of the one hundred pieces?

BY THE COURT:

Q Can you do that sum? A Well, about \$1,500.

Q Well, if you cannot do it we will call some one who can figure it?

THE COURT: How much do you make it, Mr. Spiegel?

MR. SPIEGEL: 12,034 yards at 62-1/2 cents would be

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about \$7,500, your Honor.

BY MR. MANCUSO:

Q Are you sure it was 12,034 yards or 1,234 yards? A Well, usually they run about 20 or 22 yards to the piece.

BY THE COURT:

Q I asked you if you knew how many yards of velvet were in those hundred pieces?

THE COURT: We have to prove value here.

Q If you have any paper you can refresh your recollection from it? A Well, the bills will show.

Q Well, do not have any discussion. If you cannot remember, say so? A I don't remember, your Honor.

Q But you know that the velvet was worth 62-1/2 cents a yard? A Yes, sir, 62-1/2 cents.

BY MR. MANCUSO:

Q Well, about how many yards were there to the piece?

A About 20 to 23 yards in each piece.

MR. MANCUSO: That would be 1,200.

THE COURT: Yes, about 1,200.

BY MR. MANCUSO:

Q Now, this is not 12,034. It is 1,233 and a fraction, isn't it? (Showing paper).

THE COURT: Now, that is not the question. Please do not ask questions like that. If he has anything that will refresh his recollection he may use it.

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BY THE COURT:

Q Look at that paper again and see if it refreshes your recollection. See whether your recollection is refreshed. That paper is not evidence.

THE COURT: Please remember that, Mr. Mancuso, and it will save a lot of trouble.

A That is 1,203 yards.

Q Well, say 1,200 yards? A Yes, sir.

Q You swear now from your own recollection that there were at least 1,200 yards in those hundred pieces? A Yes, sir.

Q Worth 62-1/2 cents a yard? A Yes, sir.

THE COURT: And it will be conceded by the defense that that is how much?

MR. SPIEGEL: That would be \$750.

Q When you say 62-1/2 cents, do you mean the price you sell it at or the price you pay for it? A The price I paid for it.

BY MR. MANCUSO:

Q Now, examine that paper and see if you can refresh your recollection and tell us whether there were any additional pieces besides the ones you told us about, the 1,203 yards?

THE COURT: Well, he cannot testify to anything about those 23 pieces.

Q Well, have you given us now the total amount of the 100 pieces? A Yes, sir.

THE COURT: Now, before you go on let us understand.
BY THE COURT:

Q As I understand your testimony, there were some bundles

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there that you had not opened? A Yes, sir.

Q You never saw what was on the inside of them? A No, sir.

Q Then you cannot testify what was inside of them. You may describe the bundles if bundles were found, the marks that were on the outside. That is all you saw? A Yes, sir.

Q You believed there was velvet in them but you never saw it? A No, sir.

BY MR. MANCUSO:

Q You told us there were one hundred pieces, is that right?

A Yes.

Q And by refreshing your recollection you told us there were 1,203 yards? A Yes, sir.

Q Now, can you tell us whether the 1,203 yards covered fifty pieces or one hundred pieces? A One hundred pieces.

Q Now, can you refresh your recollection - if you do not remember, look at that paper and tell us whether that covers fifty pieces or one hundred pieces (Showing paper)? A That covers fifty pieces.

Q Well, can you tell us how many yards there were in the other fifty pieces? A Well, that is all together.

Q This sheet you say covers only fifty pieces? A Yes, sir.

Q Now, what about the other fifty pieces? How many yards were there in the other? Do you remember? A No.

Q Now, you may refresh your recollection by looking at this sheet. How many yards? A This is 1,018 yards.

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Q At 62-1/2 cents a yard? A Yes, sir.

MR. MANGUSO: That would be \$692.16 for the other pieces, which makes a total of \$1,437.02. Is it conceded that the hundred pieces, that the fair market value is \$1,437.02?

MR. MOORE: We will concede at least that it was in excess of \$500.

THE COURT: Well, all right. That is all the concession that is required.

Q Now, do you remember the 5th day of October, 1916?

A Yes, sir.

Q Did you see Samuel Metrick? A He come down to my place of business and he offered me --

Q Now, wait a minute. Do not tell us any conversation you had with him. What time did you see him on October 5th? A About eleven o'clock.

Q Where did you see him? A In my place of business.

Q Did you have some talk with him at that time? A Yes, sir.

Q And after the talk that you had with Metrick, what did you do?

THE COURT: Who was that, this defendant?

MR. MANGUSO: No, sir, Samuel Metrick, a witness.

Q What did you do after the talk with Metrick? A I told him --

Q Do not tell us what you told him, what did you do? A I went down to his place of business.

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Q Where is his place of business? A I think in Rivington street somewhere.

Q 152 Rivington street? A Yes, sir.

Q How long after he had been to your place did you go down to 152 Rivington street? A About an hour and a half later.

Q After Metrick left your place of business did you have a conversation with a police officer? A Yes, sir.

Q And after the talk with the police officer did you go down to Metrick's? A Yes, sir.

Q And what time did you reach Metrick's place of business? A About half past twelve.

Q Did you go there alone? A No, sir.

Q Who did you go there with? A With the officers.

Q Do you remember their names? A Well, one I know, Mr. Quinn, if I am not mistaken. The other one, I don't remember him.

Q Did you go into Metrick's store? A Alone, yes.

Q While you were in the store did you have any talk with Metrick? A Yes, sir.

Q And during the talk was any velvet shown to you? A Yes, sir.

Q Where was this velvet taken from? A In his shelves.

Q How many pieces were shown to you? A Twenty-three.

Q Twenty-three pieces? A Yes.

Q I show you this velvet and ask you whether you have seen it before? A Yes, sir.

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Q When did you see it for the first time? A The first time when I checked the stuff.

Q When did you see it after that? A In Metrick's place.

Q And is that one piece or one roll, or what? A This is one roll. One piece of velvet from the twenty-three.

Q And you saw twenty-three in Metrick's place of business?

A Yes, sir.

MR. MANCUSO: I ask to have this marked for identification.

(A roll of cloth is marked People's Exhibit 1 for Identification).

Q After you saw these pieces of velvet in Metrick's place of business, did you have a talk with the police officers? A I called them in after recognizing that that is my stuff, I called in the officers and told them this was my velvet.

MR. MOORE: I move to strike out, "This was my velvet."

THE COURT: Why, he is describing the conversation there, now.

Q Do not tell us any conversation. You called in the police officers? A Yes.

THE COURT: I will grant your motion, Mr. Moore, to strike that out.

Q Did you see the defendant there at Metrick's store?

A Who?

Q The defendant Wipnia? A No, I did not.

Q How soon, or did you see him at all on that day, October

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5th? A Yes, sir.

Q Where? A When the officer called him over - or in Metrick's place of business.

Q How long after you visited Metrick's place did you see the defendant there? A About ten minutes.

Q Do you know where the defendant conducts his business? A Across the way. I don't remember the number.

Q Across the way from Metrick? A From Metrick, yes.

Q Did you look at the twenty-three pieces of velvet? A Yes, sir.

Q Did you find any mark on them? A Yes, sir.

Q What mark did you find? Can you tell us without looking at this velvet first if you remember what mark was on the velvet? A If you will open the piece I will show you (Indicating).

Q You say by the numbers that is on the selvage of the velvet? A Yes, sir.

Q And do you know the numbers of those twenty-three pieces that you found in Metrick's place? A If I look on the sheet.

Q Well, can you remember them? A No, sir.

Q Well, by looking at the sheet will that help refresh your recollection? A Yes, sir.

Q Well, look at it (Showing paper). A There was one piece No. 385,320, one piece 384,379; one piece 384,849; one piece 384,330; and 385,731, 381,917, 384,848, 385,062, 381,919, 383,911, 383,371, 383,140, 384,346, 378,363, 378,365, 384,540,

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383,317, and 384,273. That's all, that's all I marked checked.

Q You say the roof door, how was that fastened or locked?

A It is locked by a lock and by hooks around.

Q When you examined it on the 4th of October, what did you notice about these locks and hooks? A They were all taken out, all broken.

MR. MANCUSO: That is all, you may examine.

CROSS-EXAMINATION BY MR. MOORE:

Q Let us see, this mark that you have described upon the selvage edge of the cloth, is upon every piece of cloth, isn't it, in silk manufacturing? A Yes.

Q In other words, that is the factory number of that particular piece of goods? A Yes, sir.

Q So when you characterized it as a private mark, you did not mean it was private, in the sense that it was a mark that was put upon it by any other than the manufacturer? A No. I mean a private man who is not in the line.

Q What is that? A A man who is not in the line does not know that.

MR. MOORE: I move to strike that part out.

THE COURT: Strike it out.

BY THE COURT:

Q Did you put it on there or did the factory people put it on? A The factory people.

Q Well, then, it is not your private mark? A No, sir.

BY MR. MOORE:

Q The factory puts the piece number upon every piece of

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silk that they manufacture, do they not? A Yes.

Q And from whom did you say you purchased that property?

A From Wimpfheimer Brothers.

Q Where is their place of business? A The commission house --

Q Where is their place of business? A Now they are in 38th street somewhere.

Q Where was it then? A Then it was in Spring street somewhere.

Q Did they render you bills with those goods? A Yes.

Q Is that the bill they rendered you (Indicating)? A No, that is a copy to be able to check the stuff.

Q Where is the original bill? A I don't know where the original bill is. I think they got to have it somewhere here. They took it away from me.

Q At the time that your place was burglarized, ^{as} you have said, were all the goods taken out? A Yes, sir.

Q These particular goods, however, that were taken out, were all moved into your place on the very afternoon of the burglary? A Yes, sir.

Q And were taken sometime between then and the next morning? A Yes, sir.

Q Now, all the goods that were taken, all that you remember, all that were ever located were the twenty-three pieces that you found in Metrick's store, wasn't it? A Yes, sir.

Q You have known Metrick for some considerable time,

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haven't you? A I didn't know Metrick only from that day on.

Q You never had bought any goods of him before that day?

A No, sir.

Q Well, these goods that you claim to have lost were insured against burglary loss, were they not? A Yes, sir.

Q And you collected that insurance? A Yes, sir.

MR. MANCUSO: I object to that. Well, all right.

MR. MOORE: The only purpose of it is, your Honor—

THE COURT: I will allow it. You have a right to show motive, if you can.

Q And you have had a number of burglaries before this, haven't you? A One more.

Q How long before this was it you had the other burglary? A About a year and a half previous to that.

Q And had the material that you lost upon that occasion just been moved into your place the same day? A No.

Q Did you ever present to anybody your original bills from this concern that you speak of? A Yes, sir.

Q This concern is a concern you have been dealing with for some considerable time? A Yes.

Q And you buy practically all your velvets from them, do you not? A Not all of them. Part of them.

Q Now, are you sure that you lost any more than the twenty-three pieces? A Positive.

Q That is all.

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S A M W A S S E R S P R I N G, called and duly sworn as a witness on behalf of the People, testified through Official Interpreter Rosenthal, as follows:

(Residence, 284 Metropolitan avenue, Brooklyn).

DIRECT EXAMINATION BY MR. MANCUSO:

Q Where are you employed, Mr. Wasserspring? A By Rosenblatt Brothers.

Q And were you working for them on the 3rd of October, 1916? A Yes, I have been working for them for four years.

Q Where was their place of business at that time? A 65 Suffolk street.

Q And what work were you doing there? A I opened the shop and closed it.

Q And you were the last person out at night and the first person there in the morning? A Yes.

Q Did you shut the windows also, and the doors? A Yes, everything, the windows and shutters.

Q On October 3, 1916, what time did you leave your place of business? A Eight o'clock in the evening.

Q And when you left that night did you lock all the windows and doors? A Yes, everything was in order.

Q Did you lock the roof door? A Yes.

Q Were you the last person out that evening? A Yes.

Q What time did you report for work next morning, October 4th? A Six o'clock in the morning.

Q Did you open the shop yourself? A Yes.

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Q When you opened the shop did you find anything disturbed?

A I found the boxes inside thrown around.

Q When you left the shop on October, 3rd, did you see the velvet stored on the shelves? A Yes, sir, I myself unpacked it.

Q And put it on the shelves yourself? A Yes, sir.

Q And when you reported for work next morning, October 4th, did you examine those shelves where you had placed the velvet the night before? A I saw the empty boxes lying on the floor.

Q And after that did you examine the windows and the roof door of that building? A The windows were closed, only the toilet window was open, and the roof.

THE COURT: He said he saw empty boxes lying on the floor. Ask him what he means by saying he saw empty boxes lying on the floor.

THE WITNESS: The velvet was gone.

BY THE COURT:

Q But do you mean those boxes had been on the shelves?

A Yes, they were put on the shelves.

Q The velvet was in boxes on the shelves when you went away, and when you came back in the morning the boxes were empty on the floor, is that it? A Yes, in the morning I found empty boxes on the floor.

BY MR. MANCUSO:

Q And you said you examined the windows and found the win-

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dow of the toilet open? What about the roof door?

BY THE COURT:

Q Well, what was outside that toilet window? Was there a fire-escape there? A It was on the first floor.

Q How far from the street? A It goes into Broome street, where a monument maker has his place and stones are lying there on the ground.

BY MR. MANCUSO:

Q And that window, is that on the same floor where this velvet was stored? A Yes.

THE COURT: On the ground floor. Now, you were going to ask him about the roof?

BY THE COURT:

Q Did you examine the stairs leading to the roof? A Every morning whenever I opened the shop I opened the roof.

Q Well, did you on this morning? A I went to open it and I found that the lock was torn away.

BY MR. MANCUSO:

Q Now, when the velvet came there the night before, on October 3rd, was it packed in boxes? A In boxes.

Q What kind of boxes? A Velvet boxes.

Q Well, paper or wooden boxes? A Paper boxes, white paper boxes.

Q And did each box have a piece of velvet in it? A Yes, each box, one piece.

Q So that when you unpacked it you placed the boxes on

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the shelves? A Yes.

Q When you went there next morning on October 4th you found those empty paper boxes on the floor? A Yes.

MR. MANCUSO: That is all. You may examine.

MR. MOORE: No questions.

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

(Residence, 161 Rivington street).

DIRECT EXAMINATION BY MR. MANCUSO:

Q What business are you engaged in, Mr. Metrick? A I am in the trimming business, tailors' and dressmakers' supplies.

Q Where is your place of business? A 152 Rivington street.

Q Do you know the defendant, Max Wisnia? A I do.

Q How long have you known him? A Well, I know him since we are living in the same house.

Q How long is that? A It is almost two years.

Q About two years? A Yes.

Q Is he engaged in business there? A Yes, he kept a stand in 161 Rivington street, and in the morning he used to keep the stand on my side, and on the other side in the afternoon. He used to transfer the pushcarts.

Q Now, on October 4, 1916, did you have your place in 162 Rivington street? A My place of business is there for the last six years in 152 Rivington street.

Q On October 4, 1916, where did the defendant have his

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place of business? A He had it in 161 Rivington.

BY THE COURT:

Q He had a stand, a pushcart? A Yes, he peddled general merchandise.

Q Yes, he had a pushcart? A Yes, he kept everything on his pushcart? He used to buy auction goods.

Q Did he have a regular place all the time? A Yes, sir.

Q Where did he keep the pushcart? A He used to keep this at 161 Rivington street.

BY MR. MANCUSO:

Q Has he a store also? A No, sir, a stand.

Q A pushcart, you mean? A Yes, sir.

Q Now, on October 4, 1916, did you see the defendant?

A On October 4th, yes, sir, I did.

Q Where? A In my place of business.

Q What time of day was it? A That was about half past nine in the morning.

Q And did you have any talk with him? A Well --

Q Yes or no, did you have any talk with him? A Exactly.

Q Tell us what conversation you had with him on that day at 9:30 when he came to your store? A Mr. Wisnia came in in the morning, handling in his hand a piece of black velvet.

Q Now, when he came to your store, did he show you anything? A Yes, sir.

Q What did he show you? A He showed me a small clip of black velvet.

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BY THE COURT:

Q You mean a clip, a sample? A Yes, sir.

BY MR. MANCUSO:

Q What did he say to you when he showed you this velvet?

A He said that he has a few hundred yards of black velvet and he asked me if I could use it. I said to him, "I can't tell you exactly what kind of velvet that is because this is a very small sample. I must look at it by the piece." So he said to me, "I will bring you in later a whole piece to see how the velvet runs." In a few hours Mr. Wisnia came in with a small piece and he showed me that piece of velvet. I looked at him and I said, "The velvet is very cheap, it looks very cheap, I can't use it for my own use because I generally carry a better line of velvet, men's velvets, but this is millinery velvet. The only thing I could do is by going out to my trade and see if I could sell that velvet and make something out of it. I will take it on memorandum from you, and if not, if I would not be able to sell it, then your velvet will be returned to you." In the afternoon --

BY THE COURT:

Q Well, what did he say to you? A He said, "That's all right."

BY MR. MANCUSO:

Q Did he tell you how much he wanted per yard? A Exactly.

Q How much? A Fifty-five cents.

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Q What did you say to him about that? A Of course I tried to bargain it down, but he said he can't do any better.

Q Did you offer him anything? A Yes, I offered him a few cents less, but he said he couldn't do anything lower than 55 cents.

Q Did he tell you where he got the velvet? A Yes.

Q Did you ask him? A Yes, that is, I didn't ask him, but he said he bought that in an auction with a partner.

Q That with his partner he bought it at auction? A Yes, sir.

BY THE COURT:

Q With a partner? A With a partner, yes.

BY MR. MANCUSO:

Q Then he left the velvet with you? A Yes.

Q How large a piece did he have? A Eighteen inches wide.

Q How many yards? A I can't remember exactly.

Q Was it a whole piece? A Well, it was an original piece yes.

Q Was it wrapped up in paper, box or what? A It was not in a box. It was in a paper.

Q What kind of paper? A Ordinary clean paper.

Q After he left this piece of velvet with you, what did you do? A I didn't do anything, because I was busy that day.

Q Just a moment. Did he tell you how many pieces he had that he could sell you or let you have? A Yes, he told me about four hundred yards he had.

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Q Did he tell you how many pieces that was? A I don't remember that exactly, but he told me about four hundred yards.

Q Then what did you do? A I didn't do anything that day. I was busy that day in the store, and then in the morning, that means on October 5th, I took that velvet, that piece of velvet, and I went to 65 Suffolk street, a man by the name of Louis Rosenblatt, who are in the business of millinery. They make up hats.

Q Now, do you see Louis Rosenblatt in court? A Yes, that is the gentleman that I was speaking to that morning.

BY THE COURT:

Q That is the previous witness, the complaining witness in this case? A Yes, sir.

BY MR. MANCUSO:

Q Now, had you seen this Louis Rosenblatt before that?

A No, I did not.

Q Did you ever have any business transaction with him?

A I never had any business with him but I knew he trades in that section for years.

BY THE COURT:

Q You knew him by reputation? A Yes.

Q But you never had any business with him before? A No, sir.

BY MR. MANCUSO:

Q What did you do or what time did you go there? A I went down in the morning.

Q That is the same day or the following day? A No, the

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following day.

Q October 5th? A October 5th, yes, sir.

Q Did you have a talk with Mr. Rosenblatt? A Exactly.

Q Did you have any velvet with you? A Exactly.

Q Did you show him the velvet? A Exactly.

Q How large a piece was it? A Eighteen inches wide.

BY THE COURT:

Q But it was a whole piece? A Yes.

Q Twenty, thirty or forty yards? A No, about twenty yards, a small piece.

BY MR. MANCUSO:

Q I show you People's Exhibit 1 for Identification and ask you whether the piece you showed Rosenblatt was that one or one similar to it? A Well, I can't remember exactly that, but I know this is a small piece of that. I can't tell exactly what the yardage is or it.

Q Now, you had a conversation with Rosenblatt? A Yes.

Q And after this conversation with Rosenblatt, what did you do? A I left there. I gave them my address and I left them.

Q Did you leave the velvet with them? A No, I did not. I took it home.

Q How soon after that did you see Rosenblatt again? A I have seen him, that's when I had the conversation with Mr. Rosenblatt, he said he is not the buyer. He wants me I should give him my business address and he will be over with his

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brother.

MR. MOORE: I object and move to strike that out.

THE COURT: Strike it out.

Q Well, you had a conversation with him when you saw him at 65 Suffolk street? A Yes.

Q Then he came over to your store? A Yes, he came over with detectives.

Q How soon after you had seen him at 65 Suffolk street did he come to your store? A Well, it took a few hours.

Q Now, going back to October 4th, after your conversation with the defendant Wisnia in the morning - was it in the morning of October 4th? A What conversation do you mean?

Q When he came there with the piece of velvet, a sample? A Yes, exactly.

Q In the afternoon, was any velvet delivered to you, on October 4th? A Exactly.

Q How many pieces? A Well, it was about twenty pieces, I think.

Q And who brought it over to you? A Two men.

Q Do you know those two men? A No, I never saw them in my life.

Q Do you know their names? A No, I don't.

Q Do you know now who those two men are? A I do not.

Q Was the defendant's wife there? A When?

Q Mrs. Wisnia, on October 4th?

BY THE COURT:

Q At any time? A On October 4th, no.

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BY MR. MANCUSO:

Q When the goods were delivered? A No, sir.

Q Was she there later after the goods were delivered?

A Yes, on October 5th.

Q Was she there on October 4th after the goods were delivered? A No, sir, I didn't see her.

Q She came there October 5th? A Yes.

Q What time? A Well, that was after I left Mr. Rosenblatt.

Q Now, after you left Rosenblatt and you went back to your place of business did you send for Wisnia? A Exactly.

Q Did he come over? A No, he did not.

Q Who came over? A Mrs. Wisnia and a young man.

MR. MOORE: Then I move to strike out that he sent for Wisnia.

THE COURT: Strike it out.

Q Did you go? A I sent for him.

MR. MOORE: I move to strike that out.

THE COURT: Strike it out.

Q Did you yourself go to see Wisnia? A No, I did not.

Q Did you have a talk with any person? A I sent Mrs. Metrick to Wisnia.

THE COURT: Strike that out.

Q You had a talk with Mrs. Metrick? A Yes.

Q After that talk where did Mrs. Metrick go? A She went down to Wisnia.

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Q She went out? A Yes.

Q She came back later? A Immediately she came together with Mrs. Wisnia.

BY THE COURT:

Q She came back with Mrs. Wisnia? A Yes, and a young man.

BY MR. MANCUSO:

Q Who was the young man? A He claimed that is his partner.

Q What is his name? A I don't know.

MR. MOORE: I move to strike out that he claimed was his partner.

THE COURT: Strike it out.

Q After you saw this young man there with Mrs. Wisnia did you have any talk with Wisnia about this young man? A Mr. Wisnia was not there himself, because he said he couldn't go out on account he had a blue eye.

BY THE COURT:

Q Now, when did you see Wisnia, the defendant, after that? Did you ever talk with him after that? A Yes, I spoke to him after that.

Q At what time? A That was the time when the arrest was made.

Q Well, what date was that? A That was on October 5th.

Q What did Wisnia say to you then? A Mr. Wisnia said that -- why should I try to bring it out that he brought me in that merchandise, that I should say that a salesman brought me

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that in.

Q You mean brought it in? A Yes, sir.

Q Did he say anything else? A I said, "I can't say anything any different than what it is, I must tell the truth, the way it was."

Q Well, what did he say to that, if anything, did he say anything further? A Yes, sir, he did.

Q Well, tell us all that he said about this? A He said that I will remember him if I will bring it out that he did.

Q I do not understand that.

(The answer is repeated by the stenographer).

Q Are those the words he used? What did he say? He did not use the word "I", did he? Give us the exact words he said? A He said to me that I should not tell.

Q Well, he did not say "I", did he? He said, "you" if he was talking to you? A Exactly. He said, "You shouldn't tell."

Q Never mind, you told us that. I want this last part, I want to know what were the exact words? A "You will remember me by bringing out that I brought you in that velvet."

BY MR. MANCUSO:

Q Now, on the morning when your wife came back with Mrs. Wisnia, had you already seen Mr. Rosenblatt? Was it before you went over to see Rosenblatt or after? A I was there before to see Mr. Rosenblatt and after that when I came from Mr. Rosenblatt I went down to the merchandise which they

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brought me in, the two bundles to open them, to see the exact yardage.

Q Now, just a moment. On October 4th when these two bundles were delivered to you, did you open them up? A No, I did not.

Q Did you open them up the 5th of October? A That's when I came back from seeing Mr. Rosenblatt.

Q Was Mrs. Wisnia there? A Mrs. Wisnia was not there, but Mrs. Wisnia came there by the time I opened the goods and I couldn't find the tickets for these goods. Then I sent for Wisnia.

MR. MOORE: Now, I move to strike out that he sent for Wisnia.

THE COURT: Strike it out.

Q After you opened the package did Mr. Wisnia come over? A Mrs. Wisnia and the partner.

Q And another man? A Yes.

Q When Mrs. Wisnia came over what did you do? A I said I can't --

Q Do not tell us what you said. What did you do with the velvet? A I put them - I began to check them up and I wasn't able to find the numbers of it. Then I said, "I can't find them." So she said, "I will find it out for you."

MR. MOORE: I move to strike that out.

THE COURT: Strike out what was said.

Q Well, you took the velvet and measured it, did you?

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A That was to check it off, but I couldn't find --

Q Never mind. Did you check it? A Yes, I tried to check it.

Q And after checking off or examining the velvet did Mrs. Wisnia go away? A Yes, sir.

Q And what time did Rosenblatt come there that morning?

A Well, it didn't take very long after that time.

Q When he came there did you show him the velvet? A Yes, sir.

Q Where did you have it? A On the shelves.

BY THE COURT:

Q On your shelves? A On my shelves.

BY MR. MANCUSO:

Q Had you given Wisnia any money for that velvet? A I did not. I just took it on memorandum.

Q And after Rosenblatt came there did you see an officer there too? A Exactly.

Q And you were arrested? A Yes, sir.

Q Did you go anywhere with the officer after you were arrested? A I sent for Wisnia.

Q Did you go to see Wisnia?

THE COURT: Strike out that he sent for Wisnia.

A They didn't want me to go away from the store.

Q Did Wisnia come over? A Yes.

Q Alone or with whom? A Well, his wife and some other one, I don't know.

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Q And he was placed under arrest also? A Yes, sir.

Q Since the time he was arrested, have you seen him at your place of business? A Yes, sir, I did.

Q How long after his arrest did you see him? A Well, when he went out on bail.

Q Did he have any talk with you? A Yes.

Q What did he say to you? A He said why did I try to bring it out that he brought me in that velvet.

Q Did he tell you what to say about the salesman? A Well, not exactly, but he said --

Q Tell me all the conversation you had with him after he was bailed out? A Well, he said to me, why do I try to bring it out that he done that, and I said to him that I was not able to act any different and I must tell the truth.

Q Did you see him any more after that? A No, I did not.

BY THE COURT:

Q You were discharged, were you? A Yes, sir.

Q You were brought to the station house? A I was brought to the station house, yes, sir.

Q And were you brought to court? A Yes, sir.

Q And you were allowed to go by the Magistrate? A Yes, sir.

BY MR. MANCUSO:

Q You were charged with receiving stolen property, is that right? A Yes.

Q Well, you don't know that, but you were discharged by

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the judge in the Police Court? A Yes, sir.

CROSS-EXAMINATION BY MR. MOORE:

Q How long have you been in business? A For the last fourteen years.

Q What is the nature of your business? A Tailors and dressmakers' trimmings.

Q And in your business do you use large quantities of velvet? A Yes, sir.

Q About what would be the quantity of velvet that you would use--A That is according to grade

Q I say, about what would be the total quantity of velvet that you would use in the course of a year? A What is that?
BY THE COURT:

Q How much velvet, is what he means? A Well, it's according to season.

Q How much? A Sometimes one thousand, sometimes two thousand, sometimes three thousand.

BY MR. MOORE:

Q How long would you be using one or two or three thousand dollars worth in your business? A About three or four months.

Q So that in every three or four months in the business which you conduct you handle anywhere from one to three thousand dollars worth of business? A This is only in the season. You know the season in velvet is generally October, November and December.

Q Then you had these twenty-three pieces of goods it was

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in the velvet season, wasn't it? A What do you mean, in the velvet season?

Q What do you mean by it?

THE COURT: Oh, October, he said he saw the velvet.

Q You said October, November and December was the season?

A Yes.

Q So that these twenty-three pieces of goods came into your possession at the beginning of the busy velvet season, didn't they? A Yes, sir.

Q Are you a jobber? A Exactly.

Q And you job in not only velvets but all kinds of cloth, do you not? A What do you mean by all kinds of cloth?

Q I am asking you? A Well, I am asking you, what kind of cloth do you mean?

BY THE COURT:

Q Now, please answer questions. If you do not understand they will be explained to you but you must not have any debate.

A Only the line that I am experienced in.

BY MR. MOORE:

Q What kind do you deal in? A Silks, satins, Dutchess, Yondike, pieces of linings, all kinds, silecia, and so on.

Q Did you have in your dealings a line of customers?

A Exactly.

Q What you call your trade? A Yes, sir.

Q And you tell the jury that when you received these twenty-three pieces of goods you told the defendant that you would try

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and dispose of them to your trade? A Exactly.

Q Then was the man that you tried to dispose of them to one of your trade? A No, not exactly.

Q Well, was he in any way? You say "not exactly." Was he one of your customers? A What difference is it if he is one of the customers?

BY THE COURT:

Q Now, you will please answer questions. Was he one of your customers? A No, he was not. He is not a steady customer.

Q Now, please remember that this gentleman is doing his duty as an officer of this court and you must answer his questions if you can. If you do not understand them, then they will be explained, and please do not make it necessary for me to tell you again, because you are not a free agent. You must answer his questions. This is not a debating society, and if you render it necessary for me I will put you in jail for contempt of court. So just answer his questions politely if you understand them, and I do not want any more debates? A Well, your Honor, I don't understand it all.

Q Then I will have it put in Yiddish for you if necessary?

A That would be better, your Honor.

THE COURT: Yes, now, just tell him, Mr. Rosenthal, in Yiddish, what I say to him.

(The Interpreter repeats the Court's statement to the witness).

Q Now, understand that, that this gentleman is doing his

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duty. He is treating you politely and asking you questions and you must answer them in the same way. If you do not understand them they will be explained to you? A Yes, sir.

Q But you are not free to answer them or not as you please?

A Yes, sir.

BY MR. MOORE:

Q You used the expression that he was not a steady customer. Was he a customer occasionally of yours? A What do you mean by "occasionally?"

Q Now and then. (Question repeated through the Interpreter). A No, I never had dealings with Mr. Rosenblatt.

Q What did you use the expression for then that he was not a steady customer? A (Continuing in English) What I call a steady customer, whoever comes in very often to my place of business, that is what I call a steady customer.

Q Well, you mean to say then a man who came once in a while was not a steady customer? A Exactly, that's what I call them.

Q Then was he a man that you had dealt with once in a while?

A No, I never had dealings with him.

Q Just one minute, or just when was it that you got these twenty-three pieces of goods into your possession? A October 4th.

Q What time on October 4th? A About three o'clock.

Q And you live in the same house where this defendant lives, don't you? A Exactly.

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BY THE SECOND JUROR:

Q Was it day time or night time? A Day time, three o'clock in the afternoon.

BY THE COURT:

Q Now, as I understand you never before had been in Rosenblatt's store? A I did not.

Q And never had any dealings with him? A No, sir.

Q But he was the first and the only man you brought these goods to? A Exactly.

BY MR. MOORE:

Q And where is Rosenblatt's place of business? A 65 Suffolk street.

Q And that is how many blocks, about, from your place of business? A It is not far from my place.

BY THE COURT:

Q How many blocks, he asks you? A Well, it's about three blocks, I think.

BY MR. MOORE:

Q And you knew that he during all these years that you had been dealing in the jobbing business of velvet, that he was purchasing those for his trade? A I knew that a man who is in the millinery business uses velvets:

Q Will you answer my question? A Yes, if you will repeat it again.

Q Did you know that during all of this time you were jobbing in velvets that he was using a large quantity of velvets in

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his business? A Well, I imagined it.

Q I ask you if you knew? A Well, not exactly, but I went down to ask.

Q How long had you known where Rosenblatt's place of business was? A For a good while.

Q What do you mean by a good while? A I know it for a number of years.

Q And having known him for a number of years and knowing he was a purchaser of large quantities of velvets, you never called upon him in trade? A Never did.

Q You had trade much further away than this store of Rosenblatt's, did you not? A Yes, I have.

Q And you have in your business as a jobber in velvets, you have a considerable number of customers, do you not? A Exactly.

Q To whom you supply for retail trade? A Not exactly. Wholesale and retail.

Q Well, either for retail trade or for manufacturing purposes? A Yes, sir.

Q And yet you want the jury to understand that you never had called at Rosenblatt's place before this day? A Not until that day, exactly.

Q Now, your home is almost directly across the street from your store, isn't it? A Exactly, 181.

Q And that is an apartment house? A A tenement house.

Q And Wienia lives in that same house? A Yes, sir.

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Q What floor do you live on? A The second floor.

Q What floor does Wisnia live on? A Ground floor.

Q How long have you lived in that building? A Two years, over two years.

Q How long has Wisnia lived there to your knowledge? A I think the same time.

Q So that you knew Wisnia well, did you not?, A Well, exactly from the time that he lived in the same house.

Q You knew him well, didn't you? A Well, just like a man, from the neighborhood.

Q Did you know him well? A I know him all right, yes.

Q Well acquainted with him, weren't you? A Very friendly, just like neighbors.

Q And you knew he had been to State Prison once for receiving stolen goods, didn't you? A I did not.

Q Never knew anything about that? A Never knew anything about that until the day that it happened.

Q Well, you knew he was not a jobber in velvets on the 4th day of October, 1916, didn't you? A I knew that the man --

Q Now, answer that question. (Question repeated by the stenographer). A I knew he was a jobber in all kinds of merchandise.

Q Why, he was a pushcart man that had a piece of cloth on his cart, or whatever he had, and sold it from the pushcart?

A A pushcart man has a right to buy one piece and has a right to buy a thousand pieces.

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MR. MOORE: Your Honor, he says he had a right.

THE COURT: Well, we have to make allowance for his lack of knowledge of the language.

Q Well, a pushcart man of course has a right to live at the Waldorf-Astoria, too, hasn't he? A Yes, I think so.

Q But they do not ordinarily? A I don't think so.

Q He didn't have on his pushcart a thousand pieces of velvets or five hundred pieces or one hundred pieces, did he?

A I didn't go into an examination of that matter.

Q Where did he have his pushcart stand during the two years you knew him? A In my neighborhood.

BY THE COURT:

Q In front of your house? A Yes, sir.

THE COURT: He has told us that already.

Q Is this the first transaction you have ever had with Wisnia? A Exactly.

Q Do you understand that question? A Yes, sir.

Q You never bought anything or sold anything to him in your life before? A Well, he used to buy cottons for the house, you know a customer coming in the store:

BY MR. MOORE:

Q As a matter of fact, instead of Wisnia selling you cloth, he had purchased from you at various times for his pushcart various little sales? A No, not his pushcart. That was for house use, machine needles and so on.

Q Didn't he ever buy anything at all from you to sell on

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his pushcart? A No, sir.

Q You don't know where he got that cloth that he had, if any? A Well, he used to buy from auction sales. I have seen him often with big bundles, carrying goods from auctions.

Q When you saw Rosenblatt as you say on the 5th, at least at that time, you learned these goods were stolen? A What did you say?

Q If not before, on the 5th you learned these goods were stolen? A I didn't learn anything.

Q You did not? A No, I did not.

Q Well, you were arrested on the 5th? A Exactly.

Q Charged with larceny of these goods, weren't you? A I don't know exactly, I didn't know anything about what crime I was charged with, but I know at the time they sent for him they said I was arrested and I should go to the police station.

Q Why, they took the goods out of your store? A Yes.

Q And you want to tell the jury you did not know you were arrested charged with the larceny of these goods? A I didn't have much experience of that kind.

Q You did not need to have it, much experience, when they came there and arrested you and took these twenty-three pieces of goods out of your store, did you? A Well, I didn't know what I was arrested for.

BY THE COURT:

Q How long have you been in this country? A For the last fifteen years.

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BY MR. MOORE:

Q This case of yours was adjourned from time to time, wasn't it, after your arrest? A That's over a year. You know they dragged me around, yes.

BY THE COURT:

Q Well, can you not remember that, how many times have you been arrested in your life? A Never did.

Q This was the only time? A Yes.

Q So that then you ought to remember, ought you not?

A Yes.

Q Well, now, he wants to know how many times you went to court on your own case? A In that case?

Q You were charged with stealing those goods? Do you understand stealing better than larceny, what the definition of stealing is? A Yes, sir, taking things.

Q Taking things that do not belong to you from the true owner to use for your own benefit? A Yes, sir.

Q Now, you told the lawyer that a charge was made against you. Now, he wants to know how many times that matter was up in court and adjourned before you were discharged.

BY MR. MOORE:

Q How many times did you go to court? A What court?

Q Any court? A Well, I don't remember, I didn't count the times.

BY THE COURT:

Q Well, just try and count them now. Were you let out

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on bail? A That was the first day when I was arrested I was bailed immediately.

Q Who bailed you out? A A neighbor in the neighborhood.

Q What was the name? A Sam Kusher.

Q How much was the bail bond? Do you remember? A No, sir.

Q You cannot remember that? A No, sir.

Q It was the only time you were ever arrested and you cannot remember how much the bail bond was? Do you know then how long it was, how much time elapsed between the day you were arrested and the time you were finally released? That is what the attorney wants to know and he has a right to know it? A Well, I think he has the record to look it up.

Q Now, he wants you to tell him? A Well, I don't know. I am not a lawyer. He gets paid for that.

Q Well, we know you are not a lawyer.

BY MR. MOORE:

Q Can't you tell me how long it was after you were arrested and bailed before you were discharged? A I can't tell you that.

Q Well, it was nearly four months, was it? A What did you say? I didn't count the time.

MR. MANCUSO: Four months?

MR. MOORE: Weeks, I mean.

Q It was a number of weeks, was it? A What did you say?

Q It was a number of weeks? A Well, it was a few weeks, yes.

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Q Now, at the time you were arrested and bailed did not the Magistrate or somebody in court tell you what the crime was that you were charged with? Why do you take so long to answer? A I don't understand your questions when you ask me questions.

A JUROR: Why not get the interpreter?

THE COURT: (Addressing the Interpreter) Just tell him that this jury must determine how much credence they will give him, whether they are going to believe him or not, and that his manner is an important element in the decision of that. That he must answer these questions to the best of his ability, and that he must explain, if his memory is so bad on this point, why it is so good on other points.

(The statement is repeated to the witness by the Interpreter).

THE WITNESS: (Through the Interpreter) Yes, he told me.

BY THE COURT:

Q Well, what did he tell you? A Because in my place was found stolen goods.

Q Well, what is your name? A (Continuing in English) Samuel Metrick.

THE COURT: Now, here is the paper. It says he was held in \$2,500 bail.

BY MR. MOORE:

Q Now, don't you know that day that you were held in \$2,500

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bail for the larceny of these goods?

THE COURT: No, criminally receiving stolen goods.

Q Well, criminally receiving these stolen goods?

THE COURT: What date was that?

MR. MANGUSO: This was on October 5th, your Honor.

THE COURT: On October 5th he was held in \$2,500 bail.

Q (Question repeated through the Interpreter). A I didn't know in reality what I was arrested for.

Q Did you have a lawyer? A (In English) I had a lawyer, yes.

Q You did not get any information from him? A No, not exactly.

Q You did not get any from the Court? A What information? Yes, he told me I am discharged from that case.

Q No, no, in the beginning?, A Of course I was arrested in the beginning, yes.

BY THE COURT:

Q You were let out on \$2,500 bail and then how long after that were you discharged? That is what he asked you, and if you will only answer questions we will get through? A Well, I can't remember exactly the date.

Q Well, we did not ask you for the exact date? A Well, two or three weeks, something like it.

Q Or four weeks? A Or four weeks. I can't remember it exactly. That is a thing that mixed me up. I understand you, your Honor, better than I understand this lawyer.

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Q No, no. Mr. Moore's English is much better than mine.

A I do not think so, your Honor.

Q Well, it is. You must not be afraid to answer these questions. He is simply doing his duty as a lawyer. It is his duty to ask you questions, do you not understand that? If you were on trial you would have a lawyer? A Well, some questions I don't understand.

Q That is all right if you do not understand them, but if this jury gets the impression that you do understand them and you do not want to answer them, it will not help you?

A Well, I think twelve men on the jury could understand my broken English better than they understand him, your Honor.

BY MR. MOORE:

Q Well, I ask you now again, did you on the 5th of October, did you learn from any source that those twenty-three pieces of velvet that were found on your shelves were claimed to have been stolen the night of the 3rd or morning of the 4th of October?

A Exactly.

Q So that on the morning of the 5th when Rosenblatt came—

A (interrupting) What do you mean, on what day did you ask me? Repeat it again?

Q On the morning of the 5th? A On the 5th, exactly.

Q When Rosenblatt came to your place, he came there with an officer, didn't he? A Two officers, yes, sir.

Q That was the time you were placed under arrest? A Exactly.

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Q And at that time you were informed, were you not, that those goods were stolen from Rosenblatt sometime during the night of the 3rd of 4th of October? A That's the way Mr. Rosenblatt claimed yes, sir.

Q He told you that? A Yes, he told me.

Q You knew then, didn't you, that it was necessary for you to explain your possession of them within that thirty-six hours of the larceny, didn't you? A What do you mean, to explain?

THE COURT: Let the interpreter repeat that question to him.

Q (Question repeated through the Interpreter). A Yes, sir.

Q And it was then that you told them that this defendant had delivered the goods to you? A (In English) Exactly.

Q Now, as a matter of fact, the defendant did not personally deliver the goods into your store, did he? A (In English) Only the samples, the first sample and the second sample.

Q Do you mean sample that was so small that you could not test it? A Yes.

Q And that is all he brought? A No, sir, the second sample was a big piece.

Q The goods, I am speaking of now, and the goods were not brought to your place by the defendant? A No, not by him, only by the two men.

Q Now, you told the Court and jury that you don't know where those two men are? A Of course not.

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Q You don't know anything about the two men? A No, I don't.

Q And the two men brought this stuff to your store in the daytime? A Exactly.

Q Did you know Mrs. Wisnia well? A Yes, from the neighborhood.

Q So that at the time the goods were taken from your possession they had been in your place less than twenty-four hours, hadn't they? (Question repeated through the interpreter).

A (In English) Yes.

Q Do you know Grand street? A Yes, sir.

Q That is how far from where you live? A Delancey, Broome and Grand, I think.

BY THE COURT:

Q Two blocks and a half, is that it?

BY MR. MOORE:

Q Do you know 398 Grand street? A What do you mean by that?

BY THE COURT:

Q Do you know where it is? A No, I don't know exactly.

BY MR. MOORE:

Q Have you ever passed by 398 Grand street? A I passed by several times, yes.

Q Why, you go up there almost daily, don't you? A No, I don't, I am not a street walker.

Q Many a time a week? A No, I am not a street walker. I'

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am mostly inside.

Q Do you generally ride in a car or in a limousine?

A Oh, yes.

BY THE COURT:

Q What is the answer? A I ride and I walk, yes.

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BY MR. MOORE:

Q Don't you know that at the time these goods were stolen, 398 Grand Street was an apartment house, and vacant?

A I do not.

Q Do you know anything about it? A Not at all.

Q Did you happen upon the morning of the 3rd to visit these premises, 398 Grand Street? A I did not.

Q Now, didn't you on the day of the 4th visit these premises, 398 Grand Street? A Never.

Q With Mrs. Wisnia and another man, and didn't you there actually see those 23 pieces of velvet that later came into your place? A Never did.

Q With nobody? A Not at all.

BY THE COURT:

Q What street did you say your store was? A Rivington.

Q That runs parallel with Grand? It runs in the same direction with Grand, three blocks from Grand? A Yes sir.

Q What number on Rivington Street? A 352.

Q Between what streets? A Clinton and Suffolk.

Q Well, do you know now where 398 Grand Street is?

A Not exactly.

Q Well, have you any idea? Is it between Clinton and Suffolk? A I don't know exactly how the numbers run, because I never paid any attention.

Q Well, you have customers on Grand Street? I do not know

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whether it is important or not only the attorney is entitled to an answer. A (No answer.)

BY MR. MOORE:

Q Do you know Harry Rapps? A No sir.

Q You know him at the present time, don't you? A Don't know even the name, I never even heard about the name. The name even is strange to me.

Q Do you mean to say that at your various trips to the courthouse in this case, in your case, that you have not met or heard of Harry Rapps? A No sir, I didn't.

Q Well, you know that it is claimed here, do you not, and has been during all the whole year, that you bought those goods from Harry Rapps? A I don't know anybody by that name.

BY THE COURT:

Q Do you know that it has been claimed that you bought these goods from Harry Rapps? A No, I don't.

Q Never heard that said? A No sir.

BY MR. MOORE:

Q And you have not heard that Harry Rapps has been indicted for the larceny of these very goods? A I do not.

Q Why, have you not been interested at all in this matter? A What interest do you mean?

Q Any interest? A I was interested only to go on the stand when they subpoenaed me. Of course I must come.

Q Well, at any rate there was no time that you ever paid

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this defendant any money for these goods, was there? A I didn't buy from him that merchandise.

BY THE COURT:

Q Well, did you ever give him any money for it? A No sir, I did not.

Q That is all then. He wants the facts, not the reason.

A Yes.

BY MR. MOORE:

Q In your business as a jobber you generally buy and sell, do you not? A Yes.

Q To take goods upon memorandum is not your usual practice, is it?

MR. MANCUSO: I object to the question, your Honor.

THE COURT: The objection is overruled.

A Please repeat it.

(The question is repeated by the stenographer.)

A What do you mean by "practice"?

THE COURT: Well, your habit, your general habit.

BY A JUROR:

Q Why not let the interpreter repeat the question to him?

(The previous question is repeated through the interpreter.)

A Many times I take goods on memorandum.

BY MR. MOORE:

Q You went before the Grand Jury, did you not, in the

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Rapps case? A No.

BY THE COURT:

Q Do you know what he means by the Grand Jury? A (In English) I was here last year before the Grand Jury but I don't know anything about the Rapps case.

Q Now, I ask you if you know what he meant by the Grand Jury?

THE COURT: Interpret that question to him.

Q (Question repeated through the interpreter). A Yes, I believe I do.

Q You believe you do? It is a body upstairs that investigates criminal acts or alleged criminal acts? A (In English) Yes, they asked me questions.

Q You went before that Grand Jury in some case? A Yes.

Q In what case? A That is the same identical case.

Q Well, he asked you if you ever went there in the case of one Harry Rapps? A I never heard anybody by that name.

Q Now, you are quite sure of that? A Yes sir.

BY MR. MOORE:

Q Did you ever talk with Mrs. Wisnia about Harry Rapps?

A No sir.

Q Don't you know that Mrs. Wisnia -- that at the same time you went before the Grand Jury that she waived immunity and went before the Grand Jury and told of your relations with Harry Rapps? A (question repeated through the interpreter)

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I don't know anything about that. I had no business with her.

Q Well, did she talk with you about it? A I didn't speak to her at all.

Q Why, you did speak with her. You claim she came over after you were arrested? A (In English) Well, since that day when it happened I didn't want to speak to those people. I didn't want to talk to them or look at their faces, even.

Q After you say you bought the goods from Wisnia you didn't want to talk with them any more? A No, didn't want to talk to them.

BY THE COURT:

Q Did you talk with her or not? A No sir, I did not.
BY MR. MOORE:

Q Did you see her down before the Grand Jury when you were down? A No sir.

Q Well, did you see her around this building when you were here? A Yes, I saw her many times here.

Q Now, did you talk to her when you saw her around here?
A No sir, I did not.

MR. MOORE: Call in Harry Rapps, please.

Q Don't you know this man (indicating man at the bar)?
A No.

Q Never saw him before to-day? A No. This man?
BY THE COURT:

Q Yes, that man?

THE COURT: Let him come inside and stand here so

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there will be no doubt about it.

Q Now, do you see him? A Yes.

Q That is the man he is asking you about? A Yes sir.

Q There is no doubt in your mind about that, is there?
You know which man he is talking about, do you? A Yes, about
this man.

Q Now, the question is, did you ever see him before?

A No, I did not.

Q You never saw him before and you do not know him?

A No sir.

BY MR. MOORE:

Q And never heard of Harry Rapps before to-day? A No.

Q During all the time since the defendant was arrested
and you were arrested you have both lived in the same apart-
ment, haven't you? A Exactly.

Q Are living there at the present time? A Yes sir.

Q And you have never talked with Mrs. Wisnia in any way
about this case, after the morning of the 5th when you were
arrested, is that right? A Well, Mrs. Wisnia was over once
and spoke to me about this, yes sir; that was of the Magis-
trate's case she spoke to me.

THE COURT: While the case was before the Magistrate,
he says.

THE WITNESS: Yes, exactly, but not after that.

Q Now, after you were arrested and these officers came

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and took the goods, it was Mrs. Wisnia that came to your place, wasn't it? A When?

Q That morning when the officers and Rosenblatt came to your place and placed you under arrest and took these 23 pieces of velvet, it was Mrs. Wisnia that came to your place?

A Mr. Wisnia and Mrs. Wisnia, both together.

Q Didn't you say on your direct examination --

THE COURT: I think you have changed your question.

You asked him did he not say that Mrs. Wisnia --

Q No, I say, wasn't it Mrs. Wisnia that came to your place? A That's when I sent for them, understand? They both came. The officer went after them.

MR. MOORE: I move to strike out "when I sent for them".

THE COURT: Yes, strike it out.

Q I asked you if there when you were arrested and the goods were seized if Mrs. Wisnia was the one who came to your place? A Mr. Wisnia was also there.

BY THE COURT:

Q Was that after the police had come to the place?

A They came there together with the police.

THE COURT: He says Mr. and Mrs. Wisnia came with the police.

BY MR. MOORE:

Q You do not mean that, do you? A Yes, I do mean that.

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Q I am talking now about when they came -- the police came before either Mr. or Mrs. Wisnia, didn't they? A Exactly.

Q After the police had been to your place with Rosenblatt for a spell, Mrs. Wisnia came? A I sent for them.

MR. MOORE: I move to strike that out.

THE COURT: Strike it out.

Q Mrs. Wisnia came? A Mr. and Mrs. Wisnia came.

Q They did not come together, did they? A Exactly, together.

Q Why, didn't you say upon your direct examination that Mrs. Wisnia came, and the defendant didn't come because he had some trouble with his eye? A This is before --

MR. MANCUSO: I object to the question. The witness stated.

THE COURT: Well, the jury will determine what the witness said.

THE WITNESS: Counsel mixed me up, I am telling the jury just what is so, I am telling the truth.

BY MR. MOORE:

Q Well, the jury may not agree with you.

THE COURT: Now, the jury will disregard all these statements. I merely want to have it said that one person should speak at a time. I will request the witness to speak only when he is asked a question, and counsel on both sides will be polite enough to remain quiet when

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the other is speaking, so that the stenographer can make⁵⁸
a proper record.

Q (Mr. Moore's last question repeated) A I did say
it, yes.

Q When was that? A That was before the police came.

Q Was that the same day or the day before? A The day
of October 5th.

Q Well now, the police came about what time? A I
can't tell you what time exactly.

BY THE COURT:

Q Well, try and remember. You were only arrested once
in your life? A Yes sir.

Q And you are fifteen years in America and only arrest-
ed once? A Well, that was not such a big pleasure for me to
be arrested, your Honor, and I was very excited that day.

Q Well, it was a very important matter, was it not?
A Well, I don't think this is^a very important thing for a man
to be arrested.

Q It is a very important thing? A I think a person
could live all his life and not be arrested.

Q Yes, and therefore I say that you ought to know the
hour and the day when you were arrested? A Oh, I remember
that.

Q Well, that is what he asked you before, what time was
it, morning, noon or night, when you were arrested? A When
I was arrested was in the afternoon.

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Q What time in the afternoon? A I think it was around halfpast two.

Q Well, why did you say you could not remember? A Well, I understand your question now.

BY MR. MOORE:

Q When you were arrested it was Mrs. Wisnia that came, or was it Mrs. Wisnia that came first? A They both came together with the officers.

Q At that time when you were arrested you said something to the officers about these goods, didn't you? Not what it was, but you said something? A What do you mean, something?

Q Did you say anything?

BY THE COURT:

Q You used some words? A Yes, I said that these goods --

BY MR. MOORE:

Q No, no. After that the officers went across the street and brought this defendant into your place, didn't they? A No. I sent for Mr. Wisnia to come in. I didn't tell them anything. In fact, if your Honor will allow me to explain to the jury I will explain the way I understand it.

BY THE COURT:

Q You have all the time you want to explain, but you must understand, you are not running this court. You have to obey our laws. I have told you before, this lawyer is doing his duty and you must answer his questions.

A Well, I will ask the interpreter to explain to me.

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Q Whether you respect the Court or not you must answer his questions. Now, I have told you that repeatedly. You must not be defiant, you cannot be defiant but you must answer his questions. A I do try my best.

Q Well, that is for the jury to determine, whether you are trying your best or not. Now, I will make you answer his questions if it takes a week. Now, you simply tell the truth, and that is all you are here to do. There is no charge against you now. You are not on trial. You are called by the People as a witness and this jury must know all you know about it, that is all. Now, there is nothing unfair to you in that, and you must not be so arrogant as to assume that you can dictate to an American court. Now, do you understand me?

A Yes sir.

Q Now, do not have me repeat that again. You will not control these proceedings, and you will answer questions. If you do not understand them they will be explained to you.

A All right, your Honor.

MR. MOORE: I move to strike out his last answer to my question.

THE COURT: Strike it out. Now, repeat the question to him.

(Mr. Moore's last question repeated by the stenographer.)

A Yes sir.

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BY MR. MOORE:

Q Now, that was the first time he was there, on the 5th, wasn't it? A Exactly.

Q He was not there after the goods were delivered by the two men until that time, was he? A No.

Q Mrs. Wisnia was there after the goods were delivered by the two men, wasn't she? A Exactly.

Q And you and Mrs. Wisnia measured up the goods, didn't you? A That is the young fellow also came together with Mrs. Wisnia, exactly.

Q At that time Mrs. Wisnia informed you that her husband was home sick, didn't she? A That was not Mrs. Wisnia, but Mrs. Metrick went for Mr. Wisnia and he said he can't come out on account of a blue eye.

MR. MOORE: I move to strike that out.

THE COURT: Strike it out.

BY THE COURT:

Q Did Mrs. Wisnia tell you that or not? A She said that he can't get out also, yes.

BY MR. MOORE:

Q That was on the 4th? A On the 5th.

Q On the 4th didn't you learn that he was sick? A On the 5th, gentleman.

Q And yet you say that he was at your place on the forenoon of the 4th? A On the 4th, exactly; he was in my place on the 4th.

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Q Now, you have been pretty intimate with Wisnia heretofore, haven't you? A What do you mean?

Q You have been a very close friend of Wisnia's heretofore, haven't you? A Well, just the usual acquaintance, neighbors.

Q You knew at the time that Wisnia was away out of the City, didn't you? A I did not.

Q Didn't you while he was away advance to Mrs. Wisnia sums of money several times? A I don't think so.

Q What? A I did not.

BY THE COURT:

Q He asked you whether you did or not? A No, I did not.

Q Did you ever give Mrs. Wisnia any money or lend her any money? A No, I did not.

BY MR. MOORE:

Q Did you ever lend Wisnia any money? A No.

Q Well, that is all.

REDIRECT EXAMINATION BY MR. MANCUSO:

Q Now, you say that on the 5th Mrs. Wisnia told you that her husband could not come because he was sick? A He said to Mrs. Metrick at the time I sent for him --

MR. MOORE: I move to strike that out, your Honor.

THE COURT: Strike it out. You may repeat the question. It is the answer that is objected to.

Q (Question repeated by the stenographer) Yes or no, did she tell you that? A Yes.

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Q Did she tell you what he was sick from? A Yes, that he had a blue eye.

Q Did she tell you where he got the blue eye? A No, not exactly.

Q When you saw him on the 4th he did not have the blue eye, did he? A No.

BY THE COURT:

Q What do you mean by a blue eye, a damaged eye or lacerated eye? A He was struck by someone.

BY MR. MANCUSO:

Q When you saw him on the 5th, at the time you were arrested, did he have a blue eye? A No, I didn't notice any.

Q When Wisnia came to your store with the sample on October 4th the first time who was in the store with you?

A Mrs. Metrick and my father.

Q Is your father here in court? A Yes sir.

Q And was your father there when he came the second time with the piece of goods? A Exactly.

Q And was your father there when these men delivered the goods with Mrs. Wisnia on the 4th? A Exactly. On the 5th, you mean.

Q What? A On the 5th, Mrs. Wisnia was there.

Q Well, the goods were delivered on the 4th, weren't they, in the afternoon? A Yes sir, exactly.

Q Was Mrs. Wisnia there then? A No.

Q Two men were there? A Yes.

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Q Was your father there at the time? A Yes.

Q Now, you have been down in this building about how many times on this case? A Well, I don't know, as many hairs as are in my head.

Q About fifteen times? A Maybe more than fifty, I think.

Q You were arrested on the 5th? A Exactly.

Q How many weeks after that were you discharged? A I think it took about three or four weeks.

MR. MANCUSO: Now I offer in evidence the record of the Magistrate's Court, since the question has been raised by defendant's counsel, showing the date of the discharge of this witness.

THE COURT: Well, let it be conceded.

MR. MOORE: Yes, it will be conceded.

MR. MANCUSO: Is it October 13th?

MR. MOORE: I think it is the 17th from that record, but I do not care.

THE COURT: Well, if there is any dispute about it I will not let it go in. Mr. Moore had a right to cross-examine this man, of course. Why, it is dated clearly October 17th, 2 P.M.

MR. MANCUSO: October 13th, and then it was adjourned to the 17th as to Wisnia.

THE COURT: That is not so. The jury will disregard that. It says the last adjournment was granted on the 13th. Then there is October 17th, 2 P.M.

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MR. MOORE: I do not care about the date. It was simply because he said he did not know what he was arrested for and did not know there was a larceny.

THE COURT: Why, your questions were proper, as I told him repeatedly.

MR. MANCUSO: Well, that is all, your Honor.

RE-CROSS-EXAMINATION BY MR. MOORE:

Q You say your father and your wife were present?

A Yes.

Q In the morning first when the defendant came there?

A Exactly.

Q And again when he came the second time? A Yes.

Q And again when Mrs. Wisnia came with the goods? A Yes sir.

Q And again when they measured them? A Well, that was the same time when Mrs. Wisnia came.

Q How old is your father? A My father is about sixty-five; sixty-two, something like that.

Q Is he doing any business? A He is a Hebrew teacher.

Q Teaching where? A Children.

Q Where? A Private lessons.

Q What are his hours for teaching? A From three on, after school he goes out.

Q What are his hours for teaching? A What do you mean?

Q When does he give these lessons? A After three o'clock, after school, when the American children go to learn Hebrew.

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Q Well, it was after three o'clock when Mrs. Wisnia and the young man brought the goods there, wasn't it?

A Not at all.

Q Didn't you tell the jury before that it was somewhere about three o'clock in the afternoon of the 4th that they brought these goods there? A Well, that was not after, but it was in that time.

Q It was about three o'clock? A Something in that time.

Q And I suppose your father just waited until the goods were there and then he left?

MR. MANCUSO: I object to the question as improper.

THE COURT: I will allow the question.

A He is always inside until three or halfpast.

Q Does your father live with you? A Yes.

Q At 261? A 261 Rivington Street.

Q And your wife was there upon all these occasions?

A Yes, she is always in the store with me together.

Q Now, she is not always in the store with you? A Oh, yes.

BY THE COURT:

Q How many children have you? A Three.

Q Well, who cooks their food? A Their mother.

Q Your wife? A Yes sir.

Q Then she is not always in the store? A Well, we have a kitchen in the store.

Q You do cooking in the store, do you? A Yes.

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Q Away from where you live? A We live on the second floor and it is a trouble with the children.

Q But she does her cooking in your store? A Exactly.

BY MR. MOORE:

Q How old are your children? A The oldest one is past eight.

Q And the next one? A The next one is five.

Q And the next one? A The third one is two.

Q Do you use those children over in the store, too, along with your wife? A What do you mean, use them?

Q Are those three children over in the store always along with their mother? A Well, when they come down they are generally in my store, not in someone else's.

Q I do not want to know generally. I want to know if your wife has one child eight years old and another five and another two, if she takes them over to the store and always stays there with them? A Well, the boy attends school.

Q What about the baby and the other one, that don't attend school? A No.

BY THE COURT:

Q What he wants to know, does your wife take them there in the store in the morning? A Yes.

Q And she cooks food there and leaves them there all day? A Yes sir,

Q And the only thing you do in the other place is sleep? A Yes sir, exactly, your Honor.

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BY MR. MOORE:

Q You do not quite mean that, do you, Mr. Metrick?

MR. MANCUSO: I object to the question, Counselor.

THE COURT: He has a right to ask the question.

This is proper cross-examination.

A Well, Counselor, I suppose you never was in the business the way I am in the East Side.

Q No, but I have raised some babies. A But you never lived a life like an East Side man?

Q I ask you if you mean that your wife came over to your store with those two babies and stayed there every day?

A Yes, every day. That's the way we live on the East Side.

Q Why, the women on the East Side live in their own homes, don't they, the same as any others? A Well, maybe working people.

Q And you are putting this wife in there to aid your alibi, stating that you did not commit this larceny?

MR. MOORE: Let the interpreter put that question.

(Question repeated through the interpreter.)

A My wife understands the business as well as I do and she is always in the store.

Q You are not doing it then for the purpose of having somebody support your story, that you procured these goods from the defendant, are you? A (In English) No, I did not, not for that purpose.

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Q Why, you would not, I suppose, tell a lie about this thing even if you went to State's prison for the larceny of the goods? A Never, never in my life.

MR. MOORE: I do not think he understood me. Let the interpreter put that question.

Q (Question repeated through the interpreter). A No, I would not tell a lie.

Q You would rather go to State's prison for the rest of your life than to tell a lie, wouldn't you?

A (In English) Exactly.

Q You never have told one? A In what matter?

Q Any matter? A Well, maybe in a business matter sometimes.

Q Well, is there any business more important than your liberty?

MR. MANCUSO: I object to this line of examination.

THE COURT: Why I suggest -- oh, I think Mr. Moore's cross-examination is perfectly proper. He has a right to attack the motives of the witness.

THE WITNESS: I can't understand that. I don't know what liberty means, whether Liberty bonds or Liberty something else.

(The last question is repeated through the interpreter.)

A If I should deserve not to be free then I ought not

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to be free.

Q Well then, if I may get it this way, you say that you would, or have told falsehoods, where you made a business gain, sometimes? A Well, in business sometimes one says that the goods cost more, although in reality they don't.

Q But where you might misrepresent or tell an untruth for the sake of a dollar you would not tell it for the sake of keeping out of State's prison, is that what you want this jury to understand? A With a lie that I am using in business I don't accuse anybody and don't put anybody into prison.

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

THE COURT: I will allow it to stand.

MR. MOORE: Then may I get an answer yes or no in addition?

THE COURT: Repeat the question and answer.

(They are repeated by the stenographer.)

THE COURT: Well, I think it implies the answer no and he gives a reason.

BY THE COURT:

Q Do you mean that you would not lie to keep out of prison by making a false charge against another man, is that what you mean? A Exactly, that is what I meant to say.

THE COURT: Well, that is what I understood.

BY MR. MOORE:

Q And I suppose if the door was open to you, where you

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could send a substitute to prison in your stead, you would not adopt that, would you? (Question repeated through the interpreter)? A Why should I harm anybody, why should I do him wrong?

BY THE COURT:

Q Well, he wants to know why should you go to prison? He says to you you were accused of this crime, and are you not now lying to save your own skin at the expense of another man? Now, that is plain English? A There are witnesses to prove that I am not guilty of any crime.

THE COURT: Well, strike that out.

Q He asked you would you under those circumstances lie or not? A I would not do that.

Q Well, that is the answer he wanted.

MR. MOORE: That is all, your Honor.

THE COURT: Well, perhaps we had better take recess now.

Now, Gentlemen of the Jury, the Court will take a recess until two o'clock, and in the meanwhile you must remember, you must not talk about this case with anyone. If anyone should attempt to talk to you about it, your duty would be to report it to the Court, and you must not talk about it among yourselves and you must not discuss it until the end of the case, when the Court submits it to you for your decision, after everything has been heard

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and said. That is the time to decide it and not before then.

(The Court then took a recess until 2 P.M.)

After Recess.

Trial resumed.

MR. MANCUSO: Your Honor, we want to make it appear on the record -- it is conceded by the defense that on October 13th, 1916, the witness Samuel Metrick was discharged by the Magistrate on the charge of criminally receiving stolen property, in the Third District Magistrate's Court.

THE COURT: Well, is that date conceded?

MR. MOORE: It is, your Honor.

THE COURT: Now, is it conceded by the defense, that on the 5th of October when he was arrested he first made the statement that he had received these goods from the defendant?

MR. MOORE: It is, your Honor.

THE COURT: Because the People have a right to prove that, in view of your cross-examination.

MR. MOORE: I desire to recall the witness Samuel Metrick. Take the stand.

SAMUEL METRICK, a witness for the People, recalled, testified as follows:

BY MR. MOORE:

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Q Do you know one Harry Schneider? A If I would see him then I will tell you if I know him.

Q Don't you know him anyway? A No.

Q Don't know any man by the name of Harry Schneider?

A Oh, I heard the name all right.

Q But I ask you, don't you know him? A I don't know exactly. If I would see him I will know him.

Q There are men that you know that you do not have to see to determine whether you know them or not? A Well, the name Schneider is not a single man carrying that name. There is Schneiders you could find in New York City, thousands of them.

Q But do you know one of the thousands? A Unless I would see him personally.

Q There is one Harry Schneider that you know, isn't there?

A I don't know exactly, only if I see him.

BY THE COURT:

Q Well, he means do you know a man named Harry Schneider?

A No, I don't.

Q Well, you do not know it is the same man he has in mind, but you know anybody named Harry Schneider? A No.

Q Now, you understand the question, do you? A I understand exactly.

Q And the question is not, do you know the man he means by the name of Harry Schneider, but do you know anybody by the

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name of Harry Schneider? A Well, I heard that name all right.

Q Well, do you know a man who goes by that name? A I don't know exactly until I will see him, maybe I will recognize him then.

BY MR. MOORE:

Q Don't you know Harry Schnedier who was in business on Rivington Street at the time of this trouble? A What line of business?

Q Any line? A What do you mean, any line?

BY THE COURT:

Q Well, shoe dealer or dealer in dress trimmings, any kind of business; do you know any man by the name of Harry Schneider? A Well, I have heard the name Harry Schneider.

Q But you do not know what line of business that man is in? A Well, Counselor asked me a question which I can't answer.

Q He is not asking you if you and he are talking of the same Harry Schneider, but do you know any man named Harry Schneider over on the East Side? A Well, Schneider could be a tailor, that is the Hebrew, "Schneider". I don't know who he means. If I saw the man maybe I will recognize him personally.

Q Well, do you know any tailor who goes by the name of Schneider? A Maybe so, I think so, but I don't know.

Q Do you know if his first name is Harry? A I don't know.

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Q But you do know a man named Harry Schneider? A I don't know, not till I see him.

Q Well, you say you will know if he is the same man when you see him? A Yes sir.

Q But that is not what he asked you. Do you know any man named Harry Schneider? A No, I don't.

BY MR. MOORE:

Q Now, do you know a man by the name of Harry Schneider who at that time was in the ladies suits business on Rivington Street? A In the ladies what?

Q Dress suits and suits? A Dresses, yes sir.

Q What do you mean by that? A That means a man by the name of Schneider was in Rivington Street who hired dresses to the public, that is, for weddings.

Q He was in Rivington Street at that time, wasn't he, in business? A I don't know if he was that time or not but if you mention the trade I could tell you.

Q Well, I have mentioned the trade now. He was in the ladies dresses and suits business? A Suits?

Q Well, dresses then? A Dresses, yes.

Q And that man's name was Schneider, wasn't it, you know that man? A Well, I think I know him if this is the same man you think was in the dress line.

Q Do you know that man, who was in the ladies dress business on Rivington Street at the time of your trouble? A I don't

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know exactly, I don't remember.

MR. MOORE: (Calling) Mrs. Schneider.

THE COURT: Well, you did not ask him about any Mrs. Schneider.

MR. MOORE: Well, I am now asking him if he knows this lady (indicating woman at the bar.)

THE WITNESS: Yes sir, I do.

Q Do you know her husband? A Yes sir.

Q What is the name? A Schneider.

Q What is his first name? A I don't know.

BY THE COURT:

Q Well, is that the man who was in the business of hiring out dresses that you spoke of? A Yes sir.

BY MR. MOORE:

Q Now, within a few days after this defendant was arrested, did you have a talk with that Schneider? A Yes sir.

Q And in that talk did you tell him that you were sorry that you said that this man had anything to do with it?

A What do you mean, I am sorry?

THE COURT: You had better have the interpreter put the question to him.

Q (Question repeated through the interpreter) A No sir.

Q And did you further tell him that you had talked with your lawyer and that he said that inasmuch as you had said it was the defendant, you could not tell about Rapps? A No sir.

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Q Nor anything to that effect.

THE COURT: You had better make a full question -- did he say anything to that effect?

Q Did you say anything to that effect?

THE COURT: Let the stenographer take a fresh question. Put a full question.

Q Or did you say anything to him to that effect? A (In English) He spoke to me. I didn't speak to him at all.

Q Didn't you answer him if he spoke to you? A Exactly.

Q Well then, you said something to him, didn't you?

A Exactly, I did.

Q And the something you said to him was about this defendant, was it? A It was something, but not in that manner in which you expressed yourself before.

MR. MANCUSO: I request that the witness be permitted to state the whole conversation.

MR. MOORE: I am laying a foundation.

THE COURT: Well, you may ask him that later, Mr. Mancuso.

Q Now, did you in that talk say anything to the effect that you were sorry you had said you got it from this man, but that your lawyer had told you that now you had said he was the man you must stick to it and you could not mention Rapps?

A No sir.

Q Well, that is all.

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BY MR. MANCUSO:

Q Where did you have this conversation with Schneider?

A Mr. Schneider came over in my store and he spoke to me about this, that Mr. Wisnia sent him. He is a personal friend of his and he knows him more than I do. I know Mr. Schneider only from the fact that he comes around and buys little trimmings from me, also Wisnia is the same thing, but he is a personal friend of Wisnia and he sent him around to me that I should help him out. I said, "Mr. Schneider, in what manner do you think I could help Wisnia, when a man gives me such trouble, when a man comes over to my place and tells me he bought merchandise at auction, and I was only a man which was glad to make a few cents out of it, and he put me in trouble, to spoil my reputation, and I am a man the last fifteen years in business and never been arrested in my life, never knew anything about courts, and he put me in that trouble, so I can't do anything of that kind. Let that man do anything he wants, he wants to kill me, I wouldn't care for my life, if he wants to put me in that trouble". That is the conversation I had with Mr. Schneider.

Q What else did he say to you? A That's all.

Q Did Mrs. Schneider come over and speak to you? A No, Mrs. Schneider I never spoke to about it.

BY MR. MOORE:

Q Now, after telling in this great detail the conversation you had --

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THE COURT: Well, why not eliminate all that. I will let you put that through the interpreter.

MR. MOORE: Well, I am going to ask this question:

Q If you remember now so distinctly the conversation you had with Schnedier, why did you hesitate so long in saying you knew him?

MR. MANCUSO: Because he said he didn't know whether he was the same person you referred to.

THE COURT: I will allow him to explain it.

THE WITNESS: There are many Schneiders and I didn't know what Schneider you meant.

MR. MOORE: That is all, your Honor.

THE COURT: Any further questions, Mr. Mancuso?

MR. MANCUSO: No sir.

EPHRAIM METRICK, called and duly sworn as a witness on behalf of the People, testified through Official Interpreter ^{Rosenthal} ~~Roth~~, as follows (Residence, 161 Rivington Street.):

DIRECT EXAMINATION BY MR. MANCUSO:

Q Samuel Metrick is your son? A Yes.

Q And do you live with him at that number? A Yes.

Q And your son has a store at 152 Rivington Street?

A Yes.

Q And do you follow any occupation or business? A I am a teacher of Hebrew.

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Q Have you a school or do you give private instruction?

A I am giving private lessons.

Q What time of the day do you give these lessons?

A From halfpast three, after the children come from school.

Q And do you go to the childrens' homes? A Yes sir.

Q Do you remember the 4th day of October, 1916? A Yes.

Q On that day where were you, in the morning? A In my son's store.

Q Who was there besides you and your son? A My daughter-in-law.

Q That is your son's wife, Samuel Metrick's wife?

A Yes. Well, she comes in and goes out.

MR. MOORE: Well, just a moment. He asked you who else was there. I do not think that answers it. Who was there on that morning besides you and your son.

A I can't remember. It is a store and people coming in and going out, the door is open.

Q Well, did you see this defendant on that day? A Yes sir, between nine and ten I saw him.

Q At your son's store? A Yes.

Q Now, at the time this defendant came there between nine and ten, who else was there besides you, your son and this defendant? A I can't remember.

Q Well, was any relative of your family there besides your son?

MR. MOORE: Isn't that leading, if the COURT please?

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THE COURT: Well, I will allow it.

A I can't remember.

THE COURT: Why, his answer is perfectly plain.

He says he cannot remember.

Q When you saw this defendant come into the store did he have any conversation with your son? A Yes.

Q Did this defendant have anything in his hand at the time?

MR. MOORE: I think, if your Honor please, that he ought to let him tell what he saw and heard, rather than suggest to him.

Q Well, tell us the conversation you heard on that morning --

THE COURT: Between this defendant and his son.

Q Yes, between the defendant and your son? A Wisnia came into the store. I was sitting near the door and he went up to the counter to my son and he took out from his pocket a piece of velvet and asked my son whether he could use the goods. My son took the small piece of goods and examined it and said, "I can't judge from such a small piece". He took the small piece of goods and went away. And about an hour later, I can't tell exactly the time because I didn't look at any watch or clock, he came back with a piece of goods wrapped up in paper. He says, "These are the goods, and I bought it at auction, about 400 yards". My son looked at the

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goods and said, "These goods are not for me because I am dealing in mens' trimmings. I use good goods and this is plain quality. This is only good for ladies' hats", and he asked, "What is the price?"

BY THE COURT:

Q Who asked, "What is the price?" A My son asked "How much do you want for the goods"? He said 55 cents. My son said, "I will not buy the goods because I have no call for this kind of goods. If you are willing to accept 50 cents I will take it on commission. If I can make some profit on it you will get your 50 cents". So he took the goods and was about to leave the store. So I told my son, "You are not going to invest any money in this fellow here, what do you care, you might be able to make two or three cents a yard. Take it at 55 cents". Wisnia said, "I will leave this piece of goods here and afterwards I will either bring the balance myself or I will send it with my partner". That is all.

THE COURT: Well, that answers the question, does it not?

MR. MANCUSO: Yes, your Honor.

BY MR. MANCUSO:

Q Have you described the size of the parcel left by the defendant when he came there at eleven o'clock? A Do you mean the first time now?

MR. MANCUSO: No sir. The second time when he came there at eleven o'clock.

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A (Witness indicating) As velvet generally comes packed.

Q I show you People's Exhibit 1 for Identification and ask you whether it was similar to this one that the defendant left with your son? A Yes, it seems to me like that.

Q Now, at about, or were you in the store in the afternoon? A I leave the store at halfpast three and this was before that time.

Q Well now, that afternoon were there any packages delivered at your son's store?

THE COURT: Ask him did he see any?

Q Did you see anybody bring packages to your son's store that afternoon? A Yes, I was sitting there, two men one an ~~other~~ ^{older} one and another a younger one. It was before three o'clock.

Q And what did they bring there? A Two packages. They said Mr. Wisnia sent the goods. They took a receipt and they left.

MR. MOORE: I object to that, your Honor.

THE COURT: Strike out that last part, what they said.

Q After these two men left the packages there what did you see your son do with these packages? A They left the goods on the counter and they went away and my son did nothing.

Q Now, next day, October 5th, did you see Mrs. Wisnia at your son's store? A Yes.

Q What was she doing there, what did you see her do

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there? A I want to tell everything that happened. My son has gone on the 5th to sell the goods, and Rosenblatt had said that in about an hour he or his brother would come. Rosenblatt is in Broome Street and we are in Rivington Street. My son came and opened up the packages to put the goods on the shelf, because it looks nicer if you show goods from the shelf. My son opened the packages and saw that there were no tickets. He did not know how many yards there were in the pieces. A man will come and buy and he does not know how many yards there are in a piece. Then my son said to his wife, to Mrs. Metrick --

MR. MOORE: I object to that, your Honor.

THE COURT: Well, I will sustain that objection.

Q Well, after your son spoke to Mrs. Metrick, did Mrs. Metrick go out? A She went to call him.

Q And did Mrs. Metrick --

MR. MOORE: I object to that, your Honor.

THE COURT: Well, the answer is yes, she went out.

Q Well now, did she return later? A Yes,

Q Now, after Mrs. Metrick came back did you see Mrs. Wisnia in the store of your son?

THE INTERPRETER: The witness says Wisnia answered that he did not feel well in his eye and he couldn't come.

Q Well, did Mrs. Wisnia come to the store? A Yes, with one who had come the day before, the younger one.

Q What did Mrs. Wisnia and your son and this other person do in the store? A She showed on the goods somewhere, she said, "There is marked with a pencil somewhere", but my son said he didn't know about it. My son said he didn't understand. There was a salesman in the store at the time who was selling goods to my son and my son was busy for a moment, so that salesman went over and looked at the goods and made some figuring. Platt is the name of the salesman.

Q How long did Mrs. Wisnia remain there on that morning? A Then I left. I went to give my lessons.

Q Now, on the first day that Wisnia came -- now, wait a minute -- A (Continuing) No, I didn't go out to give lessons yet. It was not time yet to go out for the lessons. My son's baby was in the carriage and I went over to the carriage to rock the baby.

THE COURT: When he says "over", what does he mean, where was the baby?

A In the street in the carriage.

BY THE COURT:

Q In front of the store? A A little bit to the side of the store.

BY MR. MANCUSO:

Q Were you there when your son was arrested, when Rosenblatt came there with the officers? A Yes, I was standing near the store. I was rocking the baby.

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Q Now, on the first day that Wisnia came there on October 4th at nine o'clock in the morning, how far away from him and your son were you?

THE COURT: Well, he said between nine and ten.

Q Yes, but when Wisnia came there to the store between nine and ten, how far away from Wisnia were you, when this conversation was going on between Wisnia and your son?

A About two or three yards.

Q And who else was in there besides you and Wisnia at the time that Wisnia came there between nine and ten? A I don't remember.

Q I do not mean customers, any other person?

MR. MOORE: I think, your Honor, he has gone over that repeatedly.

MR. MANCUSO: Well, your Honor, I think it would be a fair question to ask him whether or not Mrs. Metrick was there.

THE COURT: But he has said several times that he does not remember.

MR. MANCUSO: He said people came in and out.

MR. MOORE: Of course she was there at some time.

THE COURT: Well now, I would not say that, Mr. Moore. I think you can refresh his recollection.

Q Will you refresh your recollection and tell us whether or not Mrs. Metrick, your son's wife, was there on October 4th

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between nine and ten o'clock, when Wisnia came there? A I can't remember for sure. She is always in the store.

Q Was she there between --

THE COURT: Well, he says he cannot remember for sure.

Q Was she there at eleven o'clock when Wisnia returned the second time? A I believe she was there. She was always in the store. I believe she was, but perhaps not, I don't remember.

CROSS-EXAMINATION BY MR. MOORE:

Q How long have you known Wisnia? A I believe from the summer of last year, I see him in the street ten times a day. Why, he is standing there with a pushcart.

BY THE COURT:

Q Standing where with a pushcart? A Close to his house in which he lives.

Q Well, where is that house? A 161 Rivington Street.

Q Well, is that where you live, too? A Yes, and I meet him in the street sometimes with packages. I was never in his house, but he lives on the stoop floor.

BY MR. MOORE:

Q Will you state now -- I have one question -- did you ever see him in the store at any time only on this one time of the 4th of October?

THE COURT: In his son's store, you mean?

Q In your son's store, yes? A I don't remember, but I

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believe he came in once in a while to buy needles or such things.

Q You don't remember ever seeing him in the store at any time before that day, is that the idea? A Before that day, no.

Q Did you ever see him come in there to buy goods of any kind? A No.

Q Were you in the store nearly all the time except when you were away giving your lessons? A I give lessons from halfpast three till nine o'clock in the evening. Other times I am in the store.

Q So that you are in the store, I take it, every day, as you want to say, from the morning when the store opens until you start out at 3.30 to give your lessons? A Not after the store opens but after I have done my prayers.

Q About what time then in the morning would you get to the store daily? A Sometimes at nine o'clock, sometimes at halfpast eight, sometimes at eight. It all depends on how long the prayers last in the synagogue.

Q And then you stay there until 3.30? A Yes, until about halfpast three.

Q Did you have your breakfast before you went to the store in the morning? A I eat no breakfast. I only eat once a day, dinner in the store.

Q Didn't I understand you to say a moment ago that it de-

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ended upon when you had your breakfast when you got to the store in the morning.

THE INTERPRETER: Oh no, upon how long the prayers lasted.

THE COURT: I do not think he mentioned breakfast. He spoke of going to the synagogue.

BY THE COURT:

Q How old are you? A Sixty five years.

Q How long have you been in this country? A Going on eighteen years.

Q You brought your family here, did you? A No. My wife is still in Mintz, Russia.

Q But those of your family who are here you brought them here, did you? A No, I came first.

Q And you brought them after? A They came after.

Q What has been your business all that time? A From the first day of my arrival here I have been a teacher of Hebrew.

Q Never engaged in any other business? A Here, no, never.

BY MR. MOORE:

Q Now, don't you sometimes give lessons in the forenoon? A I would be glad to give lessons in the forenoon, but there is nobody to give lessons to. I would like it very much.

Q I asked you if you do not sometimes give lessons in the

forenoon? A No. All the children go to school and there is nobody to go to.

BY THE COURT:

Q You mean public school? A They go to public school or kindergarten.

Q Then after that you instruct them in Hebrew? A Yes.

BY MR. MOORE:

Q Don't you also instruct some in Hebrew that do not attend school at all? A Well, you mean very small children. Grown-up people don't need any Hebrew lessons.

Q I do not care whether they do or not.

BY THE COURT:

Q Did you ever teach a grown-up person? A Oh, many years ago, there was a boy sixteen or seventeen years old, he was in an orphan asylum. I don't remember very much about him any more.

BY MR. MOORE:

Q Don't you remember whether you ever taught persons who were not in attendance at the public schools? A No.

Q Well now, you were not in the store on the 5th of October, the day your son was arrested, were you? A I was standing with the baby's carriage near the store.

Q You were not in the store, that is certain? A When I saw the detective go in there and there was some upheaval there, then I drove over the baby's carriage nearer to the

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door and I looked in to see, I didn't know what it meant, I couldn't understand it. I thought I will die on the spot.

MR. MOORE: That I move to strike out.

THE COURT: Strike out what he thought.

Q Do you know how long the officers were there when you were seeing this upheaval? A I can't tell you exactly, I don't know, perhaps half an hour.

BY THE COURT:

Q Were the officers in uniform? A No, citizens' clothes.

Q In plain clothes? A Yes sir, plain clothes.

Q Do you know a police uniform when you see it, do you not? A Yes, with the brass buttons, I know them.

Q But these men had no brass buttons? A No, very good clothes.

BY MR. MOORE:

Q And from outside the store did you watch these men, you say now, all the while they were in there? A Yes, I was looking. I even asked, "What is going on here?" And somebody said, "Stolen goods".

MR. MOORE: I object to that, your Honor.

THE COURT: STRIKE out what he asked and what somebody said.

Q You did not ask anybody in the store, did you? A The store was full of people at the time. I saw there was some

misfortune there, some trouble.

Q Were you in any way interested to know what the trouble and misfortune was in your son's store, if you were in front of it? A I found out the trouble very soon, that my son had gone with the goods to the very same man of whom the goods were stolen.

Q You say you found out what the trouble was? Did you see them packing up these goods that had been moved in there the day before by two men that you did not know? A Yes, very nicely in paper.

Q And when you saw them packing up the goods you remembered that they were the same goods that these two strange men brought there the afternoon before, did you? A Why, it was lying on the counter packed. It was not opened.

Q That does not quite answer. I asked if you then remembered that it was the same goods that you saw brought into the store the afternoon before? A I had nothing to remember. I knew it.

Q You did? Well, I will take that. You say the officers took the goods and your son away, did they not? A Yes.

Q And you know at that time that he was under arrest charged with wrongful possession of these goods, didn't you?

A I didn't know, but I understood there was something wrong.

Q Did you, or were you interested enough to find out why your son was arrested? A Why, what kind of a question is that?

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I thought I will die there, I was so excited, I was crying,

MR. MOORE: I move to strike that out, if your Honor please.

THE COURT: Strike it out.

BY THE COURT:

Q Well, were you interested, that is all, yes or no?

A I saw what he was arrested for, I saw that it was on account of the goods that the man had come and said he bought at an auction and they proved to be stolen goods.

MR. MOORE: Well, the latter part, that a man said he bought at auction, I move to strike out.

THE COURT: Well, it serves to identify the goods.

MR. MOORE: Very well, your Honor. It is probably harmless.

BY MR. MOORE:

Q You did not then tell the officers that you were present when your son bought these from Wisnia, and Wisnia said he had bought it at auction, did you? A They didn't ask me and I wouldn't go up and talk to them. I don't understand what they are talking.

Q You have told us you knew it was about these goods and you didn't say anything to them?

THE COURT: To whom do you mean?

Q To the officers who had arrested your son for possession of these goods, that you were present when he bought

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them from Wisnia, or when he got them from Wisnia? A I was frightened and I didn't think I had a right to go up.

BY THE COURT:

Q But did you go up, yes or no, and tell the officers?

A No.

BY MR. MOORE:

Q Do you spend any portion of your time at your home, 161 Rivington Street, except when you are sleeping? A Whenever I feel like it I go up, naturally. It is natural I should go up once in a while and see what is going on there.

Q You do naturally go home then once in a while, is that it? A It is across the street. This is 152 and that is 161, and I am the father, naturally. The wife and the children are always in the store.

Q Always in the store? A Well, the kitchen is in the store. They are eating in the store.

Q Well, they are not always in the store, are they?

A But in the evening at nine o'clock they go home.

Q But they are not always in the store in the daytime either, are they? A They are.

Q Don't she ever do any cooking or cleaning or washing in the home? A Whenever the house needs washing they beg a person to do that.

Q Is there a kitchen in the house? A There is a kitchen in the store and in the house. There are three rooms in

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the house.

Q Is there any food in the house? A Sometimes, tea and sugar always in the house, and the rest we have in the store.

Q And food for the table is always in the house, isn't it? A Some of it in the house and some of it in the store.

Q Well then, some of the time do you eat in the house and some of the time do you eat in the store? A Only Saturday in the house and weekdays always in the store.

M O R R I S D O L L I N G E R, called and duly sworn as a witness on behalf of the People, testified as follows:
Residence, 398 Grand Street.

DIRECT EXAMINATION BY MR. MANCUSO:

Q Where are you working now, Mr. Dollinger? A I work in 21st Street.

Q For what firm? A A. Bauman.

Q What kind of work do you do there? A I am working on military goods.

Q Do you reside at 398 Grand Street? A Yes sir.

Q Did you live there on the 4th of October, 1916?

A What?

Q Did you live there on the 4th of October, 1916?

A Yes.

Q And you are janitor there? A Yes.

Q And were you janitor on the 4th of October, 1916? A Yes.

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Q What kind of a building is that, tenement house or private house? A Tenement house.

Q How many stories? A Five stories.

Q Are there any stores? A Two stores.

Q Who occupied those stores there in the month of October, 1916? What kind of stores did you have there in October, 1916? A Same stores there is now.

Q What kind of stores? A Millinery on one side and on the other side there is a violin store.

Q Do you remember the 4th day of October, last year, in the morning? A Yes.

Q What time did you get up in the morning? A About before six o'clock.

Q After you got up where did you go? A Went out and I separated the garbage from the barrels and I put the barrels out and afterwards I took a broom and I went upstairs to sweep down the stairs.

Q About what time was it you started to sweep the stairs? A About twenty minutes after six.

Q Do you know Mrs. Wisnia? A No.

Q You have seen her, haven't you, in court here? A In court I seen her, yes.

Q Do you know that she is the wife of this man, the defendant? A Yes sir,

MR. MANCUSO: Will you call her in, please, Mrs.

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t
Yetta Wisnia?

Q Do you know her (indicating). A I didn't know her before, but I know her now.

Q When was the first time you saw her? A The first time I saw her was in the empty rooms.

Q When was it, what day, year and month? A Last year, I don't remember what day, last year I seen her there.

Q Was it around October 4th? A Something like that.

Q While you were sweeping the stairs where did you see her? A When I was sweeping the stairs I didn't see her. When I came down on the first floor, seeing a fellow walking through the empty rooms, so I followed the fellow, I come after the fellow, when he was going through the empty rooms, and he knocked on the door, and I was surprised.

BY THE COURT:

Q Never mind about that. What happened? A So he knocked on the door and a woman came to the door and the man went into the empty rooms.

BY MR. MANCUSO:

Q Did you see this woman who opened this door after this man knocked at the door? A That woman (indicating).

Q Mrs. Wisnia, who appeared here just now? A Yes.
other

Q Were there any/empty rooms in that tenement house on that day? A No.

Q Were there any empty rooms? A No empty rooms, only this side.

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Q What floor was this apartment on? A The first floor.

Q Front or rear? A The back.

Q Was that apartment vacant or occupied by somebody? Was it empty? A It was empty, yes.

THE COURT: He has told you repeatedly that it was a vacant apartment.

Q Then after this woman opened the door what did this man do? A That man went in, a big, fat man, he went in the rooms, and I went after him and I saw in the rooms lying some black goods lying on the floor.

Q Were these goods wrapped up in paper? A No.

Q What color were they? A I couldn't tell.

THE COURT: He said black.

BY THE COURT:

Q Did you say black? A Black goods, yes.

Q Don't you know what material they were? A I couldn't tell you because that time it is in the dark and it was a dark room even in daytime.

Q When you say it was black, do you mean it was apples or cloth, or what? A Like cloth, yes sir.

MR. MOORE: We will concede they were the goods in question.

MR. MANCUSO: I now offer as exhibit marked for identification as People's 1 in evidence. This is one of the twenty-three pieces taken from Metrick's place of business.

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THE COURT: Well, of course you have not proved all the preliminaries.

MR. MOORE: Well then, I will object to it, your Honor.

THE COURT: Then I will sustain the objection.

BY MR. MANCUSO:

Q I show you People's Exhibit I for Identification and ask you whether the goods you saw in the room resembled or looked like these goods I show you now? A Yes.

Q What part of the room did you see them in? A There is three rooms, when you come in is the kitchen and after the kitchen is the front room.

BY THE COURT:

Q Then there is a bedroom? A A bedroom on this side (indicating).

Q The kitchen is in the middle between the bedroom and the front room? A Yes,

Q Now, in which room did you see these goods? A In the front room.

BY MR. MANCUSO:

Q Were they piled up on the floor, or where? A On the floor.

Q How many pieces did you say you saw there? A I didn't count them. I didn't look at them that way.

BY THE COURT:

Q Can you tell the jury how high the pile was? A It was piled, it was lying out straight on the floor.

BY MR. MANCUSO:

Q How large a room did it occupy on the floor. Point out from this railing? A From this railing. (Indicating.)

BY THE COURT:

Q Well, suppose the table was the floor, how high up were they from the floor? A Like that (indicating).

Q Take the top of the table as the floor? A This is the floor (indicating), like that.

Q A pile about as high as that and about five feet wide?

A Yes sir.

MR. MANCUSO: About a foot high and about five feet wide?

MR. MOORE: Yes.

BY MR. MANCUSO:

Q Did you have any talk with this man that you saw go in there, did you talk to him? A I did not talk to him.

Q Did you talk with Mrs. Wisnia? A Yes.

Q After your conversation with her what did you do, did you stay there or go away? A No, I said, "What's the matter" --

Q Never mind; do not tell us what you said. You then went away, did you? A I went away, yes.

BY THE COURT:

Q Did you leave Mrs. Wisnia and the man in the room?

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A In the rooms, yes, and I went to sweep down further, to do my work because I had to go to work.

Q Never mind the reasons. You left them in the rooms with these goods and you went about your business? A Yes.

BY MR. MANCUSO:

Q Where did you go, back to your rooms afterwards?

A Yes.

Q Did you speak to your wife? A Yes.

Q While you were on the stairway or steps cleaning, did you see this man and Mrs. Wisnia go out? A I did not see them.

Q You did not see them? A No.

Q After you spoke to your wife you went away to your work? A Yes sir.

BY THE COURT:

Q Did you ever go back to that room again? A No.

Q You do not know what became of the goods? A No.

BY MR. MANCUSO:

Q Did you look at that room that night when you came home from work? A No.

Q Did you talk to your wife when you came home from work?

A Yes.

CROSS -EXAMINATION BY MR. MOORE:

Q About what time of day was this on the 4th? A Between seven and eight.

Q In the morning? A In the morning.

MR. MOORE: May we have Rapps come in?

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Q When you came back from your work did you go to the room again? A No.

Q So that you do not personally know when the goods were taken out? A What?

Q You do not know personally when the goods were taken out? A No.

Q Look at this man (indicating Rapps) and say if that is the man that you saw? A This is the man.

BY THE COURT:

Q It is the man or it is not? A This is the man.
BY MR. MOORE:

Q Now, did Rapps say anything to you? A No.

Q Didn't Rapps say to you, "Say nothing about this and you will get something out of it"? A No.

Q Do you remember whether he said anything to that effect? A He didn't say anything to me.

Q Now, this place had not been of course leased to them?
A What?

Q They were not there looking for this apartment to lease, were they? A No.

Q They had not any permission, so far as you know, to put the goods in there? A No.

Q But something was said about the goods being there, wasn't there? A I don't remember.

Q Didn't you make some inquiry as to how this package of velvet happened to be in the place? A When I came down and I

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saw the fellow walking in there and the woman opening --

Q No, you have said all that.

THE COURT: I will allow him to answer the question.

BY THE COURT:

Q Did you not speak to the woman about them? A No.

Q Or to the man? A No sir.

Q You said nothing at all? A No.

Q But you said -- A Well, I told them, "What is this"? So Mrs. Wisnia told me, "Keep still until I get the goods out, I just happened to pass by and I put the goods here and I take the goods out from here". I went down to my wife and I told her, "Annie" --

BY MR. MOORE:

Q No, never mind that. Now, was not Rapps the man that said he put the goods there and he would get them out? A No.

Q And you did not know either the man or woman at that time? A No.

Q They were perfect strangers to you? A Yes.

Q And the woman, you think, told you, "I just left them here and I will get them right out"? A Yes.

Q And that did not excite your curiosity in any way? I say the fact of seeing these goods in that vacant apartment and these people coming there at seven o'clock in the morning did not excite your curiosity in any way? A I don't understand that.

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Q (Question repeated through the interpreter) A When I saw that I got frightened and I went right downstairs and told my wife about it.

MR. MOORE: I move to strike that out.

THE COURT: Well, I will allow that.

Q Well, you had not done anything to be frightened about, had you? A I didn't do anything. I didn't know anything, what was being done there, and when I saw that man going in there I followed him and he knocked at the door and the woman opened the door and he entered and I followed.

Q Well, I ask you again, had you done anything that you knew of to frighten you? A I didn't do anything.

Q Now, didn't you sometime in the night of the 3rd help Rapps to put those goods in that vacant room? A I don't know him, I don't know anything about it.

BY THE COURT:

Q Well, what is the answer, yes or no? A No, he was not in my place and I didn't know him.

Q But did you help him put the goods in there, you are asked? A No.

Q Well, say so.

BY MR. MOORE:

Q Are those premises locked in the nighttime?

THE COURT: Which premises do you mean now?

MR. MOORE: The street door?

A The door is not locked.

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Q The outer door is not locked? A The hall door is not locked.

Q Did you have the keys to this vacant apartment?
A Yes.

Q Are those doors locked? A Sometimes my wife keeps it locked and sometimes open. It happens that if tenants of other apartments are short of water they go in there to get water.

Q That does not tell us anything. Were these premises locked or were they not? A (In English) Yes.

Q They were locked? A They were locked.

Q Who carried the keys? A In my house.

Q They were kept in your rooms? A Yes.

Q And they were in your rooms on the night of the 3rd of October of last year, were they not? A Yes.

Q Do you know now how that door was unlocked and these goods got into that room? A No.

Q Are you sure of that? A Sure.

Q You did not say anything to anybody except to your wife, until after Mrs. Wisnia told of the goods being in there, did you? A I told only my wife.

Q No, no, outside of your own family, you did not say anything to anybody about the case until after Mrs. Wisnia came over here and told the District Attorney, did you? A No.

Q Then the District Attorney sent for you and you then told him that the first you knew of the goods was when you saw

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them there in the morning? A When I saw the fellow going I went after him and that time I saw the goods.

Q Now, I ask you again, isn't it a fact that you were with Rapps and opened the door and let him put these goods in there the night before? A No.

Q Were not your suspicions aroused when you saw this package of goods under the conditions you have described? (Question repeated through the interpreter) A As soon as I saw it I ran out, and ran downstairs and told my wife about it.

Q I am not asking you that at all. You said that half a dozen times. Were your suspicions aroused when you saw this package of goods in those vacant rooms?

THE COURT: Ask him if he understands what he means by "suspicions aroused"?

THE INTERPRETER: I will ask him in Yiddish, your Honor.

A Why, I had my suspicions, because I knew that the rooms were vacant and I asked myself, "How can goods come there?"

BY MR. MOORE:

Q And you knew that that neighborhood had plenty of uniformed police officers in it at that hour of the day, didn't you?

MR. MANCUSO: I object to the question as incompetent, immaterial and irrelevant.

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THE COURT: I will allow it. Go on.

A There are always policemen around there.

Q You now tell us, do you, that at that time you thought this was stolen property? A I didn't know whether it was stolen goods or what.

Q You thought, I said? A I didn't think. She said that she had put it there for a short while and she would take it away soon.

MR. MOORE: I move to strike out the latter part as not responsive.

THE COURT: I will allow it to remain.

Q You did not think anything at all about it? A (In English) No.

Q But you got awfully frightened? A I got frightened, yes sir.

Q You got frightened because of that stolen property in the rooms of which you had the key, didn't you? A Well, I had the key of the rooms.

THE COURT: Well, let him talk through the interpreter. Repeat the question to him.

A I didn't know that they were stolen goods. I only got frightened when I saw a woman in the rooms which were vacant and the goods were lying there and I got frightened. I didn't think whether they were stolen or not stolen.

BY THE COURT:

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Q Well, he asked you if you did not have the key to these rooms? A Yes, I had the key.

BY MR. MOORE:

Q Now, wasn't the reason that you were frightened that when you went down there following this man, as you have described, that you went into the room and you saw a woman who was not in the party the night before when the goods were delivered to the place?

MR. MANCUSO: I object to the question as assuming facts not in evidence.

THE COURT: Well, I will allow it.

A No, not for that reason, but when I saw the man go in there and I followed him, I saw goods lying there I got frightened.

Q Now, how long were those premises vacant after that date? A A couple of months they remained vacant.

Q And during all those two months did you have the key to the apartment? A Yes.

Q How long were they vacant before that date? A Also a couple of months.

Q And during all that time you had the keys to the apartment? A Yes.

Q And you had them the night and day that these people were there, didn't you? A Yes.

REDIRECT EXAMINATION BY MR. MANCUSO:

Q Now, were those rooms at any time left open by you or

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by your wife? A Yes.

Q Why? A Because the tenants in the front, when they ran short of water, they go into the rear apartment and get water.

Q You cannot swear positively whether or not the rooms were locked by you on October 3rd? A They were always locked.

Q Did you give the key to anyone on October 3rd, the night of October 3rd, or morning of October 4th? A I didn't give the key to anybody except to a tenant who moves in.

BY THE COURT:

Q How many apartments are on a floor in that house?

A Four apartments on a floor.

Q Each apartment occupied by a separate family, is that it? A Yes.

Q And this was the only vacant apartment in the house, was it? A At that time it was the only vacant apartment.

BY MR. MANCUSO:

Q What kind of lock was on the door of this apartment on the 4th day of October? A An ordinary patent lock.

Q There was not a Yale lock or bolts or anything of that kind? A I know what a Yale lock is but there wasn't any.

Q Do you remember about two weeks after the occurrence of the morning of October 4th, having seen Mrs. Wisnia at your

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home? A Yes, with her husband.

Q She came, you say with her husband or with a man?

A With her husband, in the evening, when I came home from work and I was sitting at the supper table, they came.

Q You say Mrs. Wisnia and this defendant came to your house, is that right? A Yes.

Q And did you have any conversation with this defendant at your home at that time? A No.

Q Did you have any conversation with his wife? A Yes.

Q And was this defendant near you at the time that his wife was talking to you? A Yes.

Q Will you tell us what she said? A (In English) She told me I should go for a witness. So I refused to go for a witness because I didn't want to be a witness. I don't like to go to court.

Q Well, did she ask you what you knew about it? Tell us all that was said between you and this defendant and the wife, if anything?

MR. MOORE: In the presence of the defendant.

Q In the presence of the defendant? A I was sitting having my supper, so all at once I heard somebody knocked on the door. Mrs. Wisnia come in and this man, and she said, "This is my husband, and that goods that was lying in them rooms, these goods what was lying in the rooms was the goods they took away off me and now we go to trial and you should go for a wit-

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ness for me." So I says, "I don't know anything about you nor anything about your husband and nothing about the goods and I don't go for a witness."

Q Did you ask her where was the stout big fellow? A Yes.

Q Well, who did you refer to as the stout big fellow when you said that to her, did you mean the man you saw in the room that morning? A Yes.

Q And what did she say when you asked her that? A She said, "Don't ask me anything about him."

Q Was anything else said by her? A No.

RE-CROSS EXAMINATION BY MR. MOORE:

Q She told you that you would have to go over to the District Attorney's office and tell what you knew about it, didn't she? A Yes.

Q And she told you that you knew that it was this big stout fellow and not her husband that was with her, didn't she? A Yes.

Q And she told you that you knew it was the big stout fellow that brought the goods into your place? A She didn't tell me that.

Q And she told you her husband was in trouble because of that matter and she wanted you to come over and tell what you knew to help him out? A Yes.

Q And you didn't want to go? A No.

Q And she told you that she had already told the Dis-

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trict Attorney of your part in the transaction, didn't she?

A Yes.

Q And then you came with her to the District Attorney's office? A Yes.

Q She didn't ask you to tell anything only the truth, did she? A No, she told me only I should go there.

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

(Residence, 398 Grand street).

DIRECT EXAMINATION BY MR. MANCUSO:

Q You are the wife of the witness Morris Dollinger?

A Yes, sir.

Q The man who was on the stand before you? A Yes, sir.

Q And you live at 398 Grand street? A Yes, sir.

Q Were you living there on the 4th of October, 1916? A Yes, sir.

Q You are janitress of that building? A Yes, sir.

Q Do you remember the 4th day of October, 1916, about 7:30 in the morning? A Yes, sir.

Q Were you in bed at that time? A I was in bed. My husband came down from upstairs about half past seven or a little later, it was after seven, and he says, "Annie, get up."

MR. MOORE: I object to that, your Honor.

THE COURT: Yes. Strike it out.

Q Never mind what he said. Your husband spoke to you?

A Yes.

Q After your husband spoke to you what did you do? A I got

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up right away from bed.

Q Did you go out in the corridor or hallway? A I opened my door and I stood in the opening of the door.

Q In which direction did you look? A Out to the stairs.

Q To what rooms did you look? A Well, not to the rooms, I just looked to the stairs, the way you would go out in the street.

Q And what did you see while you were looking in the direction of the stairs? A About an hour later or so I seen a man going down with two big bundles, a short stout man, with a long moustache and a big long coat, and he carried two big bundles, and a little woman was walking down slowly, in a brown sweater, without anything in her hand. I stood and looked until she walked all out from the hall, and I shut my door and I went in the house.

MR. MANCUSO: Call in Harry Rapps and Mrs. Wisnia.

Q You never saw that woman before that day? A No, sir, never.

Q And you never saw the man before? A No, sir, never.

Q And you do not know their names? A No, sir.

Q You know them now? A I know them now from the District Attorney's office, when I came up the District Attorney told me the name.

Q Now, is this the man that you saw walking down the stairway with two bundles (Indicating)? A Yes, sir, this was the man carrying down two bundles and he wore a long coat.

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MR. MANCUSO: Indicating Harry Rapps. Now, Yetta Wisnia?

Q Is this the woman you saw on October 4th coming down the stairway behind that man (indicating)? A Yes, this was the woman walking down the stairs.

Q And you say she was not carrying any bundles? A Nothing at all.

Q Did you go into the rooms of the vacant apartment after you saw these persons walk away? A No, sir, I didn't go in at all.

Q When was the next time you went into these rooms after that? A It was about two days later, they came to look at rooms.

Q Who came to look for rooms? A Some tenant.

Q And was the door locked when you went there with these tenants? A The door was open.

Q And you don't know whether the door was open on October 3rd, the day you saw this man and woman there? A Well, I couldn't tell if the door was open or not because the tenants, as soon as anybody moves out --

MR. MOORE: Well, I object to that, your Honor.

Q Well, never mind that. That is all.

CROSS-EXAMINATION BY MR. MOORE:

Q These two packages that you saw Rapps carry were large packages, weren't they? A Large packages.

Q Will you indicate to me the height and depth? A They were about so high (indicating). He could hardly walk down

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from the stairs --

Q Now, just a moment. Now, tell me when my hand is right. About there (Indicating)? A Yes, and he could hardly walk down from the stairs.

Q About a foot and a half high and about how wide? A About so wide (Indicating), this way.

Q And about a foot and a half wide, or a little more, and was it about square? A They were square, with rope tied around.

Q Now, I ask you if the packages were laid one upon the other of this height of a foot and a half, would you say that would be about the package, would that be about the shape of the package, providing others were laid on it (Indicating)? A Yes, that would be the shape of the package.

Q Now, your husband you say came down and said something to you on the morning of the 4th? A Yes.

Q Before he went to work? A Yes.

Q And what time does he go to work? A He goes at half past seven to work.

Q So that it was at least as early as half past seven he spoke to you? A Yes, maybe a little earlier.

Q Well, it was as early as that anyhow? A Yes.

Q And within an hour after that you saw Rapps leave these premises with the two big bundles? A Yes.

Q Do you know where this man Metrick's place is? A No, sir.

Q Do you know Metrick? A No, sir.

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Q Do you know that man (Indicating the witness Samuel Metrick, standing up)? A No, sir.

Q Well, you know where Rivington street is, don't you?

A Yes, sir.

Q Do you know about where 252 or 152 is? A I don't know. I suppose if I went to find out I could find it.

Q Well, Rivington street is within five minutes or three minutes' walk of your place, isn't it? A I don't know, I think so.

Q Well, it is between two and three blocks? A Yes.

Q So that these packages left that place sometime in the morning not later than 8:30, didn't they? A Yes, something like that.

Q In the possession of Rapps? A Yes.

Q Well, that is all.

I S I D O R E F L A T T, called as a witness on behalf of the people, and having duly affirmed, testified as follows:

(Residence, 4114 15th avenue, Brooklyn).

DIRECT EXAMINATION BY MR. MANCUSO:

Q What is your business or occupation? A Salesman.

Q For whom? A William Alsberg & Company.

Q Where is their place of business? A 826 Broadway.

Q Were you employed by them on the 4th of October, 1916?

A Yes, sir.

Q Do you know Samuel Metrick? A Yes, sir.

Q Do you do business with him? A Yes, sir.

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Q Do you remember the 5th day of October, 1916? A Yes, sir.

Q Were you at his place of business in 158 Rivington street, on that day? A Yes.

Q What time did you go there? A About half past eleven.

Q In the morning? A Morning, yes, sir.

Q Do you know Mrs. Wisnia? A I have not known her until I came to court.

Q Well, you know her now? A Yes, sir.

Q You have seen her outside in the corridor? A Yes, sir.

Q Did you see her there on that day, in Mr. Metrick's place? A Yes.

Q Who else was there besides? A Another young man.

Q You know his name? A I do not, no, sir.

Q Have you seen him around here? A Around here, no, sir.

Q Will you describe him as to his appearance and age? A I couldn't recollect.

Q Was Metrick there, Samuel Metrick? A Yes.

Q Who else was there, was his father there? A Well, I saw his father, yes.

Q Was his wife there? A I couldn't possibly say.

Q Well, how long did you remain in the store? A For about half an hour.

Q What did you see Mrs. Wisnia do there? A When I came in I found Mr. Metrick, Mrs. Wisnia and another young man checking up some velvet.

Q Did you see the velvet? A Yes.

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Q Where were they at the time? A They were on the table at the time.

Q How many pieces did you see? A I have no idea, I didn't count them.

Q I show you People's Exhibit 1 for Identification and ask you whether this is one similar to what you saw? A Similar goods, yes.

Q Did you take part in that conversation? A Well, they have been checking up the velvet and in the meantime they came to the second piece of velvet which Mrs. Wisnia claimed there was twenty-four yards in it and there was a dispute on it and they couldn't get along. In the meantime I butted in and said, "What's the use of you people arguing?"

MR. MOORE: I object to that, your Honor.

MR. MANCUSO: I consent to strike it out.

Q Well, you had some conversation with Mrs. Wisnia and Metrick over this velvet, is that right? A Yes.

Q And what did you do then? A I measured that piece of velvet and proved to them that there was only 18-1/4 yards there. ^(Question) What did you do after you measured that piece? A That's all. They finished checking up the velvet. Mrs. Wisnia and the young man left and I got through with my business with Mr. Metrick and I went away. Friday morning I got a call by phone--

Q Never mind that, that is all. You cannot tell about conversation.

CROSS-EXAMINATION BY MR. MOORE:

Q Have you got a way of fixing definitely the hour when

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you called at the store? A Well, no, sir, not just exactly the hour.

Q It might have been as early as half past ten, might it not? A Well, probably later than that, probably earlier but around that time.

Q It might have been earlier than 10:30 and it might have been later? A No, sir, it could not have been any earlier than 10:30.

Q The best you can fix it was sometime in the forenoon? A Yes, sir.

Q About what time did you get into that neighborhood that morning? A Well, I got in there about ten o'clock.

Q Or before ten? A No, sir.

Q Is that where you began your day's work? A No, sir, I had been previously to Mr. Metrick's place before.

Q Had you been there twice that day? A No, sir, once.

Q I am talking about this morning. Did you begin your day's work at Metrick's place that day? A No, sir, I had been to several places before that.

Q In that immediate neighborhood? A Yes, sir.

Q And about what time in the day did you begin your day's work? A About ten o'clock.

Q Well, about ten? A About ten.

Q Now, can you remember at the time the goods were measured or being measured all the people that were in the store? A No, sir.

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Q You are certain of how many? A Well, Mr. Metrick, Mrs. Wisnia, another young man, and the old man, Mr. Metrick.

Q You are unable to say whether others were there, however? A I am not able to say, no, sir, I didn't take notice of that.

Q Do you know Rapps? A No, sir.

Q Have you seen him? A No, sir.

MR. MOORE: Have Rapps come in, please.

Q I ask you to look at this man, indicating Rapps, and say whether you are able to say whether or not he was there? A I never seen him.

Q Well, when you say "never seen him," what do you mean by that? A Never seen the man there.

Q Well, that he was not there, or that you don't remember? A He was not there, no, sir.

Q Well, you don't know whether other men were there? A Well, I haven't seen this man there, no, sir.

Q Well, why were you so positive about that when you first looked at him there? A Well, I can tell when I see a person at once.

Q Can you tell every time that you go into a store all the people that you see there? A I can tell, seldomly, I can.

Q Well, isn't it rarely that you can tell all the faces that you see in a store with whom you have no business? A Not very often.

Q It is a rare thing for you to remember them, is it?

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A Yes, sir, it is.

Q So can you account for your exceptional ability to remember the fact positively that this man whom you never saw before and with whom you had no business, was not there? A I guess I can, yes, sir.

Q You are unable to say whether other men were there?

A Well, I have not seen this particular party there.

Q But you are unable to say whether other men were there?

A No men were there, merely Mr. Metrick, Mrs. Wisnia, another young man and the old man.

Q Now, you said before, both to the District Attorney and me that you were unable to say whether others were there, but you recall those distinctly, is that right? A Yes, sir.

Q Now, I believe that there is not hardly a store that you visit in your daily practice of visiting your trade but that you see many strangers or more or less strangers? A Well, I see some, yes.

Q And you do not want to tell this jury that you keep in your mind's eye for a year after that every one of those strangers that you see in the various stores, do you? A No, sir.

Q No, that is all.

BY THE COURT:

Q Well, you told him that you could explain why you were so positive about Rapps. / You may explain it? A Well, I haven't seen that man in the store at the time.

Q Well, did you hear about any trouble in that place?

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A No. The day Mr. Metrick called me up and told me --

Q Never mind that. You were there on the 4th of October, you say? A The 5th of October.

MR. MOORE: He is mistaken about that.

Q Now, when did you first learn there had been some trouble there? A Mrs. Metrick called me.

Q When, I say? A Friday morning.

Q Well, what day was that, the 6th, 7th or 8th? A The 6th.

Q The next day? A Yes.

Q Well, did that fact impress upon your mind and make you recall this transaction more than an ordinary transaction?

A No, sir. It is merely regarding as a customer, that's about all.

RE-DIRECT EXAMINATION BY MR. MANCUSO:

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Q Well, you were there for the twenty minutes or half an hour there was some conversation between you and Mrs. Metrick, Mr. Metrick, Mrs. Wisnia and this other person about measurement of the goods, wasn't there? A Yes.

Q And you had opportunity of speaking and observing people who were interested in that transaction? A I merely spoke to Mr. Metrick. I had not spoken to Mrs. Wisnia at all.

Q Mr. Wisnia was not there, was he? A I said Mrs. Wisnia.

Q Well, wasn't she there when you told them how to measure the goods? A Yes, she was there at the time.

Q How did you measure the goods? A Laid out the pieces

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of velvet on the counter. I counted out nine logs, which contained two yards to a log, that is 18 yards, and it was 18-1/4 yards altogether.

Q And then took your measurements? A Yes, sir, and they marked it out with chalk.

H A R R Y S O B E L, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence, 138 Ludlow street).

DIRECT EXAMINATION BY MR. MANCUSO:

Q What is your business or occupation, Mr. Sobel? A Buying jobs and selling jobs.

Q By jobs you mean goods? A Goods, yes.

Q And velvet? A All kinds of goods.

Q Do you know Mrs. Wisnia? A Yes.

Q Now, do you know Mr. Wisnia? A Yes.

Q Prior to the 4th day of October, 1916, did you have any business transactions with Mr. Wisnia and Mrs. Wisnia?

A With Mr. Wisnia.

Q What was the nature of that transaction?

MR. MOORE: I object to that. One moment.

THE COURT: How is that material?

MR. MANCUSO: All right. I withdraw the question.

THE COURT: Unless to prove acquaintanceship with him. If that is what you want to prove?

MR. MANCUSO: No, sir. I was merely laying a foundation for what was to follow. It will connect his presence at Mr.

Wisnia's house on the morning of the 4th.

THE COURT: Very well. Go on.

Q Now, do you remember the 4th day of October, 1916?

A Yes, sir.

Q Were you at Mr. Wisnia's house on the morning of that day? A Yes, I was there in the morning and I come to ask Mr. Wisnia for \$10 balance that he owed me.

Q Was Mr. Wisnia home? A He was lying in bed.

BY THE COURT:

Q Why do you not speak louder? Everybody is straining himself to hear you. All these gentlemen want to hear you.

BY MR. MANCUSO:

Q He was lying in bed? A Yes, sir.

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

Q Did you talk with Mrs. Wisnia? A Yes, sir.

Q After your talk with Mrs. Wisnia -- Question withdrawn.

Q Did you get \$10 from Mrs. Wisnia? A No, she says that he is sleeping --

BY THE COURT:

Q Never mind that.

BY MR. MANCUSO:

Q After your talk with her did you get the money? A No, sir.

Q After your talk with did you do? A I went to go home and she called me back and she says --

MR. MOORE: I object to what she says.

THE COURT: I will sustain the objection.

BY THE COURT:

Q You had a talk with her? A I had a talk with her and she said to me --

Q Never mind. You must not tell what she said.

BY MR. MANCUSO:

Q After this talk with her did you go any place, where did you go after your talk with her? A That's what I wanted to say.

BY THE COURT:

Q Well, please tell us. Do not say what she told you, do you understand that? A Yes.

Q Now, did you remain there ever since? A No.

Q No, you are here now, so you could not have remained there. Well, what is the first place you went after you left her flat? A When I left I went back home.

BY MR. MANCUSO:

Q Did you see her next day? A No, not next day. The same day I saw her.

Q Where was it that you saw her the same day again? A In her house.

BY THE COURT:

Q Where was her house? A 161 Rivington street.

BY MR. MANCUSO:

Q What time did you go to her house the second time?

A The second time was between, I think between ten and eleven.

Q In the morning? A In the morning, yes.

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Q And you had a talk with her? A Yes, sir.

Q Was anybody there besides her? A No.

Q Well, after this talk with her on the second occasion what did you do then, did you remain in the house or go out?

A No. What do you mean? Remain in the house?

BY THE COURT:

Q Did you stay there?

BY MR. MANCUSO:

Q Did you stay in the house after your second talk with her? A No, I walked out.

BY THE COURT:

Q How long did you stay there after the second talk?

A Probably about ten minutes.

Q Then you went out? A Yes, sir.

BY MR. MANCUSO:

Q Where did you go to? A She sent me to a place in Ludlow street.

MR. MOORE: I object to that.

THE COURT: Strike that out.

Q After your talk with her you went to Ludlow street?

A Yes.

Q What number in Ludlow street? A I couldn't remember the number. It was by Mr. Rapps.

Q Well, would your recollection be refreshed if I told you it was 137 Ludlow street? A I couldn't tell you the number.

BY THE COURT:

Q Well, did you ever make a statement about this to any

one? Did you ever tell any one about this? A About what?

Q About this transaction? Do you not know what we are talking about? We are not talking about the war? A I know that.

Q We are talking about something that happened in October, 1916, do you understand? A I was up there for a certain purpose.

Q But he asked where you went to in Ludlow street? A To Mr. Rapps'.

Q What number? A I couldn't remember.

Q Well, he says if it was 127, does that refresh your recollection? A I couldn't remember if it was 127.

MR. MOORE: That is the number, your Honor.

THE COURT: Well, it is conceded that it is No. 127.

BY MR. MANCUSO:

Q What time did you reach 127 Ludlow street on that day, October 4th? A That must be after eleven, a couple of minutes.

Q Would you say it was near one o'clock? A No, it was before noon time.

Q Was it near twelve o'clock? A I say after eleven, I couldn't say when.

Q When you went to 127 Ludlow street, whom did you see there? A I come up the first time, I didn't find only Rapps--

BY THE COURT:

Q Well, did you see anybody there? A Rapps.

Q What is the name? A Harry Rapps.

THE COURT: How do you spell it, Mr. Moore?

MR. MOORE: R-a-p-p, I spell it.

BY MR. MANCUSO:

Q Did you know Harry Rapps before that day? A No, sir.

Q You had never met him? A No.

BY THE COURT:

Q Now, you had never met him before that day? A No, sir.

BY MR. MANCUSO:

Q What floor did Rapps live on? A On the second or third, I couldn't remember.

Q When you went to his apartment did you have a talk with him? A Yes.

Q How long did you remain in his apartment? A About five minutes.

Q And after your talk with him and your five minutes' stay there, where did you go? A I went back to Mrs. Wisnia.

Q Alone? A All alone.

Q You went back to Mrs. Wisnia where, at the store or at the house - or at the pushcart - rather, or at the house? A No, there was no pushcart there.

BY THE COURT:

Q Well, did you go into the house or not? A Yes, sir, I went back to the house.

BY MR. MANCUSO:

Q And did you see Mr. Wisnia there? A Mrs. Wisnia, I saw.

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Q Did you have a talk with her, with Mrs. Wisnia? A When, the second time I come back?

Q Yes? A I beg your pardon, I found the door locked.

Q What did you do then? A I went back to Rapps.

Q Did you have any talk with Rapps? A When I come up the second time I found Mrs. Wisnia there with Rapps together.

Q So that she was there when you came back? A Yes.

Q Now, did you have any talk with her? A Yes.

Q How long did you remain on this occasion, up in Rapp's apartment? A Probably ten or twelve minutes.

Q Did you see anything up there? A Yes, when I come up I found two bundles wrapped up in paper and this was ready to be shipped away.

Q Did you take the wrapping off these two bundles? A Did I take them? I have no right to do that.

Q Well, did you or didn't you?

BY THE COURT:

Q Did you take it off or not? A I didn't take off anything.

BY MR. MANCUSO:

Q Can you describe to us the size of these two packages?

A Two bundles as high as this, so high and so wide (indicating)

Q And after your conversation with Mrs. Wisnia, up there, where did you go? A She says to me --

BY THE COURT:

Q Do not tell us what she said, what did you do?

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BY MR. MANCUSO:

Q What did you do with the packages after your talk? A I took a package and delivered it to Mr. --

Q Well, did you take one or two? A One.

Q Who took the other package? A Mr. Rapps.

Q And did you go out together with Rapps? A Yes. I was before him. I was walking out and then after he was following me.

Q You went out first? A I was walking out first, yes, sir.

Q And after you came Rapps? A Yes.

Q About how many minutes after you did he leave? A About two seconds.

Q And did Mrs. Wienia remain in the apartment or leave with Rapps? A She remained in the apartment.

Q When you reached the street did you walk with Rapps or did you continue walking with Rapps? A No, as soon as I delivered the package Rapps came in, in the same minute.

Q Where did you go from Rapps' house? A To Ludlow street, in a trimming store.

Q What number, 158? A I don't remember the number.

Q Well, is that Metrick's place of business? A Metrick's yes.

BY THE COURT:

Q What street did you call at? A Rivington.

Q You said Ludlow? A No, I mean Rivington street.

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BY MR. MANCUSO:

Q On your walk over to Rivington street did you walk a-
longside of Rapps or by yourself? A By myself and Rapps
was after me, in back of me.

Q How do you know he was? A I turned my face after I
reached the store and I seen Rapps coming.

Q When you reached the store in Rivington street did you
go inside? A Yes.

Q What did you do with the package? A Mr. - the boss of
the store.

Q Mr. Metrick? A Mr. Metrick took it off my shoulder
and he shoved it a little further up to the back.

Q Did you say anything to him, yes or no? A No.

Q Not a word? A Yes, he says, "Is that all?" I said,
"No, there is another package coming."

Q Wait a minute. Did Metrick say anything to you?

BY THE COURT:

Q You just said Metrick said "Is that all?" A Yes.

Q And you said, "There is another package coming?" A Yes,
and then the other man Rapps comes in with the other bundle
and he took the bundle from him. The first bundle was brought
in, he opened it out and he looked at it and he took out one
piece and he started to count the yardage. He says, "We can't
find any correct yardage there." So there was another man stand-
ing in the store, I don't know who that man is, and he says, "Open
up that piece and measure by the felt the way it is folded up

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and you can tell how the yardages run." That's all I saw.

BY THE COURT:

Q Well, did you leave these goods there or take them away?

A No, I left the goods there and I went away.

Q When did you next hear about this? A Metrick says, "How will we know to check up the goods?"

Q Well, that was said before you left? A Yes.

Q But after you left when did you next hear about that trip of yours with these bundles? A That's all I know about this.

Q Well, when did you next hear about it? You must have heard about it or you would not be here? A I don't understand that question.

Q Well, some one spoke to you about this afterwards, didn't they? A Who talked to me?

Q How do you happen to come here? A To court?

Q Yes, to court. You are on the witness-stand, are you not? How did you come to come here? A How did I come to get here?

Q Yes? A Because they said to me I have to be a witness.

Q When did they say that to you? A This was when I heard Wienia was arrested.

Q Well, I asked you when did you next hear about this thing? A This was on the second day.

Q The second day after you brought it there? A Yes.

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BY MR. MANCUSO:

Q After you delivered the package to Metrick's store, did you go back there after that? A No.

Q You only went there once with Rapps? A Yes.

CROSS-EXAMINATION BY MR. MOORE:

Q Now, young man, it was Mrs. Wisnia that went to you and told you to come down to the District Attorney's office and tell what you knew? A Yes.

Q And you did come to the District Attorney's office with Mrs. Wisnia to tell what you knew, didn't you? A Yes, sir.

Q Now, on the morning of the 4th of October, how many times were you at Wisnia's house? A Two times.

THE COURT: On the 4th or 5th?

MR. MOORE: On the morning of the 4th.

Q It was the morning of the 4th? A I don't remember.

Q Well, it was the morning of the day the goods were delivered. Well, whatever day it was, it was the day you were at the house that the goods were delivered? A Yes.

Q When was the first time you went to Wisnia's house?

A It was between about eleven and twelve.

THE COURT: You mean in relation to these goods?

Q Yes, the first time on that day before you were down at Ludlow street between eleven and twelve, weren't you? A I was up the second time --

Q No, I ask you the first time? A The first time, it could be after nine o'clock, before ten.

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Q Well, was it about nine o'clock? A No, after nine o'clock.

Q Between nine and ten? A Yes, sir.

Q At that time you went personally to see Mr. Wisnia, did you not? A No, Mrs. Wisnia sent me up there.

Q The first time you went there you went to see him, didn't you? A Who is him?

BY THE COURT:

Q That man sitting there (Indicating defendant)? A Wisnia, yes, sir, that was near nine o'clock.

Q You were looking for him? A Yes.

Q You did not know anything about this other matter then?

A No, sir.

Q You were looking for him on your own business? A Yes, he used to owe me ten dollars.

Q And you were there to collect your ten dollars? A Yes.

BY MR. MOORE:

Q Now, when was that? A It was after nine o'clock.

Q And at that time you learned that he was sick in bed, did you? A That's what his wife said.

Q And you did not see him? A I didn't see him in the bed.

Q You went back again how long after? A When I went back?

Q The second time? A The second time it could be after ten o'clock.

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Q And at that time you did not see him, did you? A No, sir.

BY THE COURT:

Q That's the time the door was locked, you mean, the second time? A No, he is talking about the first time.

Q Well, you are finished with the first time. You wanted to get ten dollars and his wife told you he was sick and you didn't see him, and you went away, is not that so? A Yes.

Q Then you went back again? A Yes.

Q Was the door locked the second time? A The second time the door was locked.

BY MR. MOORE:

Q Well, did you go back a third time then? A No.

Q How far is Ludlow street from Rivington street? A I know how many blocks it is.

THE COURT: Ludlow cuts across Rivington. You mean this particular number?

A It's about three blocks from Ludlow street to Metrick's.

BY MR. MOORE:

Q From 127, where you got this package in this house, to where you delivered that to Metrick's store? A It's about three blocks.

MR. MOORE: Can we have Rapps come in, please?

Q Now, you say when you took the goods to the store they were opened? A No, they were wrapped up in two bundles.

Q I say, after you got into the store they were opened?

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A Yes, after I got into the store, then one piece was lying on the counter.

Q Then they began measuring them? A Yes.

Q Did you stay there during the time they were measuring?

A Yes, sir.

Q Where was Rapp during the time they were measuring?

A He was standing on the side.

Q Well, he was in the store, wasn't he? A Yes, sir.

Q Do you remember the other man? A Which other man?

Q The salesman? A I don't remember --

THE COURT: One minute, please. Do not ask any questions in the presence of Rapps concerning this case. He may be a witness. All the witnesses were excluded. I merely allowed you to bring him in for purposes of identification.

Q Well, is this the man you spoke of as Rapps? A Yes, sir.

BY THE COURT:

Q That is the man that carried the other bundle? A Yes.

THE COURT: Well, let him pass out now.

MR. MOORE: Just a moment. May we ask him how he spells his name?

THE COURT: Yes, you may.

MR. MOORE: How do you spell your name?

THE PERSON ADDRESSED: R-a-p-p-s.

BY MR. MOORE:

Q Do you remember the drummer or another man that was

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in there? A I couldn't remember that man because I don't know that man.

THE COURT: Ask the last witness to come up here.

Q You don't remember him (Indicating the last witness)?

A No.

THE COURT: Ask the last witness to step up closer.

BY THE COURT:

Q Take a look at that man, did you see him there that day?

A I believe I saw him. I believe this is the man that said they should open up the piece of goods.

Q You think that is the man that did the measuring for them? A Yes, sir, he showed them how to do the measuring.

RE-DIRECT EXAMINATION BY MR. MANCUSO:

Q Now, are you sure you saw him there on the 4th or 5th, this witness? Was he there on the same day that you delivered the package or the following morning? A This was the day I delivered the package.

BY THE COURT:

Q Well, you were only in that store once, is not that so?

A Yes, sir, when I delivered the package.

BY MR. MANCUSO:

Q You were not there on the following morning about eleven or twelve? A No, sir, only when I brought the two packages.

BY THE COURT:

Q Mr. Metrick did not ask you to bring those packages there, did he? A No, sir, not Metrick.

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Q Mr. Rosenblatt did not ask you? A I don't know who is Rosenblatt.

Q The only dealings you had were with Mrs. Wisnia and with Rapps? A That's all. I didn't know Metrick.

Q All right, that is all.

THE COURT: Will you be able to finish your case today?

MR. MANCUSO: I do not think so, your Honor.

THE COURT: Well, I think in view of that we will have to take an adjournment until Monday now.

Now, Gentlemen of the Jury, the Court will excuse you until Monday morning at half past ten, and meanwhile remember what I have told you before, that you must not talk about this case with any one. If any one not connected with the jury should attempt to speak to you about it of course you would have to decline to discuss it and report that fact to the Court, and you must also refrain from discussing it among yourselves. The time to discuss it is after the case is submitted to you for your decision, at the end of it, when all the evidence is in and all the oratory has been had. Then you take the case and decide it and do not decide it until then. Keep your minds open until then.

Be here Monday morning at half past ten o'clock.

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THE PEOPLE v. WISNIA.

New York, November 26, 1917.

TRIAL CONTINUED.

H A R R Y R A P P S, called and duly sworn as a witness on

behalf of the People, testified as follows:
(Residence, 127 Ludlow Street).

DIRECT EXAMINATION BY MR. MANGUSO:

Q Mr. Rapps, you are the defendant in the case of the People of the State of New York against Harry Rapps, are you? A Yes.

Q You understand that any testimony or evidence that you give now in this trial may be used against you at your trial, do you understand that? A Yes.

BY THE COURT:

Q Do you speak English? A Yes, I speak English.

Q Where were you born? A Austria.

Q How long have you been in this country? A Twenty-five years.

Q Then I guess you can get along without an interpreter, can you? A I never was --

Q But you can speak English without an interpreter?

A Well --

Q Well, we will have the interpreter there in case you stumble and he will help you out, do you understand? A Yes, sir.

BY MR. MANGUSO:

Q And that no immunity has been granted to you and that

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you appear here voluntarily to make any statements concerning this case, is that right? A Yes.

Q And you make those statements voluntarily, knowing they may be used against you in the trial of the case against you? (Question repeated through the Official Interpreter).

A Yes, I know it.

Q And you are willing to tell the whole truth concerning this matter? A Yes, sir.

Q Now, you were arrested on January 3rd, were you?

A Yes, sir.

Q Charged with burglary in the third degree? A Yes, sir.

Q Do you know the defendant, Max Wisnia? A Yes, sir.

Q How long have you known him? A I know him about two years.

Q Speak louder, about two years? A Yes.

Q During those two years that you have known him have you had any business transactions or dealings with him?

A Yes, sir.

Q What was the nature of those transactions or dealings?

MR. MOORE: One moment. I object to that unless it relates to this transaction in question.

THE COURT: Well, I will allow it merely to prove the extent of his acquaintance with him.

MR. MOORE: He says, "What was the nature of the deal-

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ings?" I think that is pretty broad.

THE COURT: Well, he means social or business. Of course the District Attorney understands that he must not refer --

MR. MANCUSO: No, no other charge. It is merely a preliminary question.

THE COURT: If you wish merely to prove the character of their intimacy I think it is proper.

MR. MANCUSO: That is the only reason, your Honor.

MR. MOORE: Then I withdraw the objection, your Honor.

Q What was the nature of those transactions you had with him? A When we had a general strike with the cloak makers then I had nothing to do and I used to go around to sales.

Q What kind of sales? A Dry goods.

BY THE COURT:

Q Auction sales, you mean? A Auction sales.

BY MR. MANCUSO:

Q Just a moment. What is your business? A I am a tailor.

Q When you went to these auctions, what did you do, buy goods or what? A Buy goods, dress goods and dresses and stockings.

Q Was Wisnia with you on these occasions? A He also used to go around to those sales.

Q Well, did you have any agreement or understanding

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about these purchases that you made? Were you a partner or what? A No. Once in one place we had to buy some little goods, then I wanted to buy it and he wanted to buy it and we started together that time to buy as partners. We bought as partners that time.

Q And you sold these goods to third parties? A Yes, sir.

Q Did you do this for the last two years steadily on and off? A No, only in the summer time, that time when we had nothing to do, we used to walk around and we was trying to buy at sales all the time, goods.

Q So that whenever your business was slack you went with Wisnia to buy goods at auction and then sold them, is that right? A Yes.

Q And on the 4th of October, 1916, were you working? A Yes, sir.

Q For whom? A For Mr. Zahn.

Q What kind of work were you doing? A Cloaks.

Q Where is Mr. Zahn's place of business? A 12 and 14 West 21st street.

Q Before the 4th of October, when was the last business transaction that you had with this defendant Wisnia? A That was maybe about five or six weeks.

Q Five or six weeks before October 4th? A Yes.

Q On October 4th did you see this defendant Wisnia?

A No, I was over at work.

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Q Did you see him on the morning of October 4th, 1916,
I ask you? A Yes, sir.

Q Where? A In my house.

Q Where is your house, where was it then? A 127 Ludlow
street.

Q And what time in the morning did he come there?

A About seven o'clock in the morning.

Q What time did you go to work at that time? A I am
going at half past seven.

Q That was your usual hour to go to work? A My usual
hour.

Q Had you made an appointment with Wisnia to meet you
in your house? A No, I didn't make no appointment. He
came without an appointment.

Q When he came to your house who was at home? A There
was my wife and the children was home.

Q Was your wife up? A No, she was sleeping that time.

Q And when Wisnia came there did you have any talk with
him? A I was talking with him inside in the kitchen.

Q Tell us what the defendant Wisnia said to you? A Mr.
Wisnia came in in the morning, he knocked at the door and he
came in and I said, "Good morning, what are you doing here?"
He said, "Mr. Rapps, I bought a quantity of goods. If you want
to come up and see them all right." I said, "All right, I
will go down and I will see it." Then I dressed myself and
I washed myself and he was waiting until I went down with him.

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I went down with him in his house and he says to his wife, "You go up with Mr. Rapps and show him the goods that I bought."

Q Now, before you went down to his house did he tell you anything about what kind of goods they were and how much he paid for them? A No, we didn't talk that time nothing about this.

Q Well, did you go to his house? A To his house, yes.

Q You went together with him? A I was together with him.

Q Where was his house at that time? A In 161 Livingston street:

Q When you went to his house was his wife there? A Yes.

Q Did you have any talk with him at his house? A No, I didn't talk with him only he says to his wife she shall go up with me and show me the goods.

Q Did you then go out with his wife? A Yes, sure I went out with his wife.

Q Where did you go? A I went with his wife, I don't know, because she went with me to Grand street.

Q Do you know the number on Grand street? A I think that was 398.

Q What kind of building is that, a private house or tenement house? A Yes, a tenement house.

Q Did you notice what kind of stores were located there? A Yes, there is a millinery store one side and the other side is an electrician or something.

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Q When you went to 398 Grand street did Mrs. Wisnia go with you? A Yes.

Q What floor did you go to? A On the first floor.

Q Front or rear? A In the rear.

Q Did you go into any apartment? A Yes.

Q Was the door open or was it locked? A I couldn't tell you exactly.

Q Well, who went in first? A She was first..

Q And you went right in with her? A Yes, after her.

Q When you went inside what room did you go in? A On the right hand.

Q Is that the kitchen, bed room or front room? A First comes the kitchen and then comes the front room.

Q Did you go into the front room? A Yes.

Q What did you see there? A I saw there goods, velvet.

Q What kind of goods? A Velvet goods.

Q Was there anything else in that room besides the goods?

A There was packed in the barrels, there was packed furniture, packed in barrels.

Q Were those rooms vacant or were they occupied? A No, they were vacant, because the furniture was packed in barrels.

Q I show you People's Exhibit 1 for Identification and ask you whether these were the goods that you saw there. Examine them? A Yes.

Q Were they? A Yes, that's the goods.

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Q How many of these packages or bundles did you see there? A I counted, there were sixty pieces.

Q Sixty pieces?

MR. MOORE: I am going to object to counsel's repeating. He should not repeat anyhow, but he says there were over sixty pieces. I object to his repeating.

THE COURT: Well, it is a bad habit, of course.

THE MOORE: The witness said over sixty pieces.

THE COURT: Well, we will have the witness speak louder.

Q Were those goods packed or were they loose? A They were loose.

Q From the time you entered there did you leave those rooms at any time from when you first went in? A When I went in, no, I didn't leave the rooms.

Q Did you go at any time? A No.

Q Did you remain there all the time? A Not all the time until I asked her, "Did you buy the goods?" She said, "Yes, we bought the goods already."

MR. MOORE: I object and move to strike that out.

THE COURT: Yes, strike it out.

Q Well, you had some talk with her, did you, yes or no? A Yes.

Q After this talk, what did you do? A I was asking if she bought the goods.

MR. MOORE: I object to that, your Honor.

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Q No, no, did you go out of those rooms later? A Yes.

Q How many times did you go out of those rooms, or what did you do? A I didn't went out after this action was made.

BY THE COURT:

Q Well, what did you do with the goods?

BY MR. MANCUSO:

Q What did you do with the goods, did you leave them there or what? A No, I asked --

BY THE COURT:

Q Never mind what you asked? A I took the goods with me.

BY MR. MANCUSO:

Q How many bundles did you take out? A I packed up seven bundles.

Q Did you take them out all at one time? A No.

Q Well, I asked you how many times did you go out of those rooms? A The first time I took three bundles.

Q Did you go out alone the first time? A No, I was with Mrs. Wisnia.

Q Well, did you go out alone with the three bundles? A Yes, alone.

Q Then did you come back? A No, Mrs. Wisnia went with me. She took two bundles.

BY THE COURT:

Q But did you go back again? A Yes, I went back, after I took the three bundles, then I went back and I took

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the other two.

BY MR. MANCUSO:

Q And where did you take the first three bundles that you took? A To my house.

Q Was Mrs. Wisnia with you when you went to your house with the three bundles? A Yes.

Q Did you go back then to 398 Grand street with Mrs. Wisnia? A No, I went myself.

Q How many did you take then? A Two bundles.

Q Where did you bring them? A To my house.

Q And was Mrs. Wisnia there at your house? A No, she went home.

Q And did you take the other two bundles there to your house? A Yes, I took the other two bundles.

Q Did Mrs. Wisnia go with you? A Yes.

Q After you took the bundles to your house, what did you do with them, did you leave them there or what? A I left them in the house.

Q And was Mrs. Wisnia there when all the bundles were over there? A Mrs. Wisnia.

Q Yes? A Mrs. Wisnia went home.

Q She went home? A She went home.

Q What time was it when she went home? A Well, it was about ten o'clock.

Q Well, while you were home did anybody come up to your house that morning? Did any person come up there? A Mr.

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Wisnia came up after.

Q How long after that? A About half an hour.

Q A little while after? A Half an hour.

Q After what? A After the bundles was inside.

Q After the bundles were inside Mr. Wisnia came over?

A Yes.

Q Did you have any talk with him about the goods?

A Yes.

Q What did you say to him and what did he say to you?

A He asked that I shall give him some money.

Q Did he say anything about the velvet? A About the velvet, sure.

Q Did you show him the velvet? A He saw it before.

Q Well, give us all the conversation? A I asked him how much he paid for the velvet.

Q Go on, tell us what else was said? A Mr. Wisnia came up and asked me for some money, and I asked my wife if she got some money. She said, "Yes, she has got some money." I asked her how much she got and she says she got about \$70.

Q And did you give him the money? A Yes, I counted it off, there was only \$69 and I gave it to him.

Q Did he say anything about the goods, how much he paid for them? A Yes, I asked him how much he paid for the goods and he said thirty-five cents.

Q Thirty-five cents for what, a piece? A No, a yard. So I told him I am willing to be a partner on thirty-five

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cents. I told him I am willing to be a partner.

Q Is that all that was said? A That was all we was talking about.

Q Did he then go away or did he remain in your house?

A No, he went away.

Q Did you see Mrs. Wisnia later? A Mrs. Wisnia, yes, yes, she came after.

Q Before Mrs. Wisnia came there did any person come up to your house? A There came up a boy.

Q Do you know his name? A Yes, I know his name.

Q What is his name?

MR. MANCUSO: Is Harry Sobel in court?

THE WITNESS: Sobel, that's right.

Q Well, do you know that young man? A Yes.

Q Had you seen him before that day? A No.

Q That was the first time you saw him? A The first time I saw him.

MR. MANCUSO: Will you concede that Harry Sobel is the person referred to by the witness, as the young man who visited him on that morning?

MR. MOORE: Yes.

Q When Sobel came there did you have a talk with him?

A He came up and he says --

Q Never mind what was said. Did you have a talk with him? A No:

Q Did he say anything to you? A Yes.

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Q After this talk with him did he remain in your house or did he go out? A No, he went out.

Q Was Mrs. Wisnia there when he came? A No.

Q And after he went out did Mrs. Wisnia come there?

A Yes.

Q How soon after this young man Sobel had left your house did Mrs. Wisnia come there? A It was maybe about twenty-five or thirty minutes.

Q When Mrs. Wisnia came there did you have a talk with her? A Yes.

Q While Mrs. Wisnia was there did Sobel come back?

A Yes, he came back about ten minutes after.

Q And did you, Sobel and Mrs. Wisnia have a talk?

A Yes, Mrs. --

Q Do not tell us what was said, yes or no? A Yes.

Q And after this talk with Mrs. Wisnia and Sobel and yourself, did you go out? A Yes, Mrs. Wisnia said --

Q Do not tell us what was said. Did you go out of your house? A Yes.

Q Did you have any packages or bundles with you? A Yes one package.

Q How many packages did you carry? A One.

Q How many did Sobel have?, A One.

Q Who went out of the house first, you or Sobel? A Well, I couldn't tell you exactly.

Q Where did you go? A I went to 152 Rivington street.

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Q Whose place of business is that? A It was a trimming store.

Q Is that Metrick's store? A Metrick's.

Q Did you bring a bundle or package there? A A bundle.

Q Tell us what you did when you reached the store? A I left the bundle inside and I went out, I went to Mr. Wisnia.

Q Did Sobel leave a package there too? A Yes.

Q Did you get a receipt for it? A No.

Q Then where did you go? A I went in to Mr. Wisnia and I told him that I carried in the bundle and Mr. Sobel brought in a bundle.

Q Where did you see Wisnia? A In his house.

Q Did you have any other talk with him? A No.

Q You did not go to work that morning, did you? A Yes, sir, in the afternoon.

Q In the morning? A No, not in the morning.

Q Did you go to work in the afternoon? A In the afternoon.

Q At what time? A After one.

Q At night did you see the defendant Wisnia at your home? A Yes.

Q At what time? A About nearly seven o'clock.

Q You said that you carried seven bundles to your house that morning, is that right? A Yes.

Q You took one and Sobel took one to Metrick's place of business? A Yes, sir.

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Q And when you left your home were there five other bundles in your house? A Yes.

Q When you came home that night from work were the five packages or bundles there? A No.

Q And that night did you see the defendant after he came home from work? A Yes.

Q Where did you see him? A In my house.

Q Did you have any talk with him? A Yes.

Q What did he say to you? A He said he sold the goods for forty-five cents.

Q Did he tell you to whom he sold them? A That he sold it to Metrick.

Q Did he tell you whether or not he got the money from Metrick? A He says he will get to-morrow the money.

Q Well, while you were in the house at 398 Grand street did you see the janitor come in the room? A Yes, sir.

Q Do you know Metrick? A I know him because I know him, that he is in business.

Q Did you ever talk to him in your life before the 4th of October? A No, I was not talking.

Q Did you ever have any business dealings or transactions with him before October 4th? A I was by him at the time when I kept a store, I used to keep my own store. I used to go and ask for some trimmings sometimes or patterns. I went in and I bought once these patterns.

Q Did you always find him there or his wife? A At

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that time was his wife.

MR. MOORE: I object to that and move to strike it out.

THE COURT: Strike out the answer. Please go on with the case.

MR. MANCUSO: That is all. You may examine.

CROSS-EXAMINATION BY MR. MOORE:

Q You said you were a cloak and suit maker? A Yes.

Q Have you any other business? A No.

Q Haven't you got a moving picture show? A No.

Q Did you have at this time? A I had, yes.

Q In October last year you were in the moving picture business, weren't you? A No, I was not. I rented it away.

Q Well, did you own a moving picture business? A What did you say?

Q Did you own this moving picture business? A No, I sold it.

Q When did you sell it? A Last week.

Q Well, how long had you been running it before you sold it? A It was running about two years and a quarter.

Q So that when you said you were a cloak maker you had during all this time a moving picture business that you were conducting, didn't you? A I haven't got -- the moving picture business was rented away to a lessee.

Q You owned it and leased it, is that what you mean?

A I leased it. It was my own.

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Q Now, in addition to this moving picture business you have several houses that you have under a long lease, haven't you? A I gave that away for five years lease.

Q Have you got several houses that you occupy under long lease?

BY THE COURT:

Q Do you rent any houses? A No.

Q You understand what he means?

THE COURT: (Addressing the Interpreter) Ask him if he holds any houses under long lease?

A (In English) No.

BY MR. MOORE:

Q Did you ever? A No.

Q In October last year, didn't you have five or six tenement houses that you leased and sublet? A No.

Q Did you have any? A No.

Q Did you have any property outside of the moving picture show that you say you leased? A No.

Q Where were you working in October of last year as a cloak and suit maker? A Where I was working?

BY THE COURT:

Q Last October? A I was working for Zahn.

BY MR. MOORE:

Q You were working making cloaks? A Cloaks, yes, jackets.

Q As a tailor, you mean, do you? A Yes, operator.

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Q Did you have any other business except that of work-
and
ing as a tailor or operator in this moving picture show?

A No.

Q Well, when did you get time to buy goods at auction
as you say with this defendant and sell them? A At the time
when the cloak makers had a strike, the last two years this
summer, we went down for a strike.

Q So you began handling goods, did you, then? A Yes.

Q You have handled other goods? A Yes.

Q Where was the first place that you saw these goods
that you say you went into partnership with, the whole quan-
tity of sixty pieces that you have described? A I didn't
stole nothing.

BY THE COURT:

Q Where was the first time you saw those goods? A These
goods, I didn't stole nowhere.

Q No, not stole. Where did you see them for the first
time. (Question repeated through the interpreter). A (In
English) In Grand street.

Q Where? A 398 Grand street.

BY MR. MOORE:

Q And that was in the morning, a little after seven
o'clock, wasn't it, according to your story? A Yes, between
seven and eight.

Q In a vacant apartment? A In a vacant apartment.

Q How far was that vacant apartment from your house?

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A From my house?

BY THE COURT:

Q Where did you live at that time? A 127 Ludlow street.

Q Well, how far away is that from 398 Grand street?

A It is five - six blocks.

BY MR. MOORE:

Q How far was 398 Grand street away from the defendant's house. A Also about four blocks.

Q That is about the same distance, isn't it? A Yes.

Q Now, how far is your house from the defendant's house?

A It's five blocks.

Q So that the goods at 398 Grand street were as near to your house as they were to Wisnia's house, were they not?

A Yes, because she asked me --

BY THE COURT:

Q Yes or no? A To her house was nearer.

BY MR. MOORE:

Q Didn't you know these goods were stolen? A No.

Q Did you say anything to Wisnia when you went over to his house that morning or he went to your house, about why he didn't have the goods in his own house? A Will you explain me again, please?

Q (Question repeated through the interpreter). A I did not.

Q You did not ask him why, if he bought these goods at

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auctionas you now say, he had them in a vacant apartment four or five blocks away from his own home?

MR. MANCUSO: I object to that, your Honor.

THE COURT: He said "No." Of course, if you press is, you have a right to ask it. Repeat the question, Mr. Stenographer.

(The question is repeated by the stenographer).

MR. MANCUSO: I object on the ground there is no proof that the defendant told him he bought them at auction.

THE COURT: The objection is overruled.

Q (Question repeated through the interpreter). A (In English) No, it was not that way because when I came upstairs I asked him, "Where did you bought the goods?" He said he bought it in a millinery store.

MR. MANCUSO: There has been no proof as to that as yet.

THE COURT: Well, let us have the answer.

Q Did you ask him why he did not take the goods home instead of hiding them away in a vacant apartment house?

A (In English) I didn't ask him because he said he bought it in the morning.

Q You say he came to your house that morning of the 4th of October and told you he had some goods? A Yes.

Q That he wanted to sell, and he wanted you to go and look at them, did he? A Yes.

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Q And you did go and look at them with him, did you?

A No, not with him.

Q But in taking the course that you did take from your house, as you now say, from your house to Wisnia's house, and then back again to 398 Grand street, you went more than twice as far as it was necessary for you and Wisnia to go to see those goods, didn't you? A I don't know why. He took me home.

Q And you went more than twice as far? A He took me first home to his house.

Q Isn't the reason now that you say he took you first home because you know that Mrs. Wisnia told about you and her going there after these goods (Question repeated through the interpreter). A It was not so, no.

Q Well, when you went there that morning, isn't it the fact that you first took out two bundles and carried them over to your house? A (In English) When I went --

Q To 398 Grand street? A Yes.

Q What? A Yes, I took them.

Q But the goods were not packed up in bundles at that time, were they? A No.

Q You packed them up in seven bundles, didn't you? A Yes.

Q And then you took two of those bundles from 398 Grand street to your house? A Yes.

Q Mrs. Wisnia remaining in the vacant apartment while you were away, is that right? A No, she went with me..

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She took also two bundles. She went with me.

Q Don't you know that she didn't carry any of those bundles out? A She carried two bundles with me.

Q How many trips did you make? A I made two trips.

Q And next time how many bundles did you take away?

A I took two bundles.

Q Wasn't there one trip when your son came there with you and carried away a bundle? A No.

Q Sure? A No.

Q You have got a son, haven't you? A Yes.

Q How old is he? A He is twenty-one.

Q Isn't it like this, that you made three trips, carrying a bundle in each hand upon each trip, and one of your trips, next to the last trip, your son came there with you and carried one bundle away? A No.

Q Was your son home that day? A He was sleeping.

Q Oh, he did not sleep all day, did he? A In the morning he was sleeping.

Q I ask you was your son home that day? (Question repeated through the interpreter). A My son is working on the train. (Continuing in English) On the Third Avenue Railroad.

Q What time did he work? A That time he used to work from half past one in the night till ten o'clock in the morning.

Q Well, then, he was not sleeping, was he, if he was working? A What?

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Q Then he was not sleeping on this morning if he was working? A Yes, well you asked me if he was home. I said he was sleeping.

Q No, I asked you if your son was home and you first said he was sleeping. Was he or was he working? A Well, I couldn't understand you exactly.

BY THE COURT:

Q Well, was he sleeping or was he working? A He was working that time.

BY MR. MOORE:

Q What made you say then when I first asked you that he was sleeping? A I couldn't understand just exactly what you asked me, in the morning or later that he was sleeping.

Q Do you know which son I mean? A What? The oldest one.

Q Do you know which son I mean? A No.

THE COURT: He said the oldest one.

Q Well, then, why do you assume that I mean the oldest son? Is it because that was the one that was over at 398 Grand street? A No.

Q Well, you have another son, haven't you? A Yes.

Q How old is he? A Eighteen.

Q Where was he that morning? A I couldn't tell you this. I think he went out to work.

Q You think he went out to work? A Yes.

Q Don't you know that one of your boys helped carry

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these bundles away? A No:

Q When you took the packages and put them in your house, the seven of them, where did you put them? A In the front room.

Q In the front room? A Yes.

Q And you left them there and went away, you say, in the afternoon? A In the afternoon I went away.

Q And when you came back they were gone? A Yes.

Q And you don't know what became of them? A No:

Q You told the jury, however, that that morning you decided that you would be a partner with this defendant in these goods, is that right? A Yes.

Q You did not make any trade with him as to at what price you would be a partner? A No.

Q You were just going to be a partner in helping him dispose of them, is that the idea? (Question repeated through the Interpreter). A No, he said that he himself would sell the goods.

Q Then the only part of your partnership was to take half the profits, is that it? (Question repeated through the Interpreter)? A Yes.

Q You did not do the stealing of the goods, did you? That was not your bit, was it? A (In English) No.

Q You were not going to sell the goods, were you? That was not your part? (Repeated through the interpreter). A No, I said that I had no time for it.

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Q Well, if that be so, you were neither the man who stole the goods and you had no time to sell the goods? How do you explain that you were a partner in this transaction? (Question repeated through the interpreter). A (In English) Because at that time when I was the last time, when I told him I was going away to work, I told him, "Mr. Wisnia, if you find somewhere, if you got somewhere a big quantity of goods, if you mind, if you would not have so much money, you come up to me, and then take me for a partner." That was at that time.

Q Is that it? A Yes.

Q You now say that he took you for a partner because he wanted the use of your money, is that it? A Yes.

Q Well, he had already got the goods at 398 Grand street, hadn't he, before he got any money from you, according to your story? A Yes, sir.

Q And they were in his possession then? A Whose possession?

Q In Wisnia's, according to your story? A I didn't know because he didn't live there. The goods were in his possession, that he had the goods there.

Q There were over sixty pieces of these goods anyway? A Yes.

Q And you knew that they cost a great deal more, even according to his story, than seventy dollars, didn't you? A Sure, I know: they cost more.

Q As a matter of fact, then you did go to Metrick's

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store with this package of goods, didn't you? At the time the two packages of goods were delivered to Metrick's store you went there, didn't you? A Yes.

Q And you went with Sobel? A Yes.

Q And if Metrick says you were not the man, he is wrong about that, isn't he?

THE COURT: Well, Metrick did not say that as I recall it.

MR. MOORE: I called him in here and he says he never saw him.

MR. MANCUSO: That he does not remember him.

MR. MOORE: He said he was not the man.

THE COURT: Well, some one else identified him as the man.

MR. MOORE: Yes, Sobel, who helped him carry the goods there.

THE COURT: Well, then, I exclude that question. He must not characterize another witness's testimony. It is for the jury to say whether Metrick is wrong or not.

MR. MOORE: All right, your Honor.

Q Now, at the time that the goods were delivered to Metrick's store there was no third man carrying goods, was there? A No third man.

Q Just you and Sobel? A Yes.

Q Were the goods measured while you were there? A No.

Q Did you leave Sobel there and go away? A Yes.

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Q And you did not make any attempt to collect for the goods? A No.

Q Or find out how many yards you delivered? A No, I went in to Mr. Wisnia --

Q Never mind. I don't care where you went. You now say you went out without knowing how much you delivered or anything about it? A Yes.

Q And left Sobel there? A Yes.

Q And was Mrs. Wisnia there when the goods were delivered? A No.

Q Was she there any of the time while you people were there with the goods? A No.

Q Until ^{the} time you left, you are sure about that, are you? A Sure.

Q So that while you and the man that was with you was there, you now say that Metrick and Mrs. Wisnia and others there did not use a yard stick for measuring these goods? A No.

Q Do you remember now whether this defendant had any injuries or bruises on his face that morning? A Yes.

Q What did he have? A He had a fight a day or two days before.

Q He did not have the fight on his face, only the effect of it you mean? What were they? How was his face that morning, if you know?

BY THE COURT:

Q Did he have any marks on his face? A Who? Which

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man?

Q Wisnia? A Yes, he had over here a blue eye.

BY MR. MOORE:

Q Did he also have a bandage of white cloth on his head?

A No, I didn't look.

Q Well, then, any time that you saw Wisnia that day you saw him alone, didn't you? A Yes.

Q So it is his word against you in that regard?

MR. MANCUSO: I object to that question as improper.

MR. MOORE: Well, I will withdraw it.

THE COURT: Any further questions?

MR. MOORE: Yes, your Honor.

Q You pleaded not guilty, did you not, to the indictment against you? A Not guilty.

Q And in that indictment you are charged —

THE COURT: Well, is there any indictment? I don't know of any.

MR. MOORE: Well, he says he was indicted.

MR. MANCUSO: Yes, sir, I sent for the papers. That is what the process server was talking to the clerk about a short while ago.

THE COURT: Well, I asked him to settle it at that time. Now, one minute. Let us settle that.

MR. MANCUSO: There was an indictment found.

THE COURT: Well, where is it?

MR. MANCUSO: I sent for it. I have a copy of it in my

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room, but I want to send for the original.

THE COURT: Well, I suggest that you get the copy. If you have a copy, then that may help them find the original, but I do not want any talk going on here while there is a trial. We cannot stop, but whenever it is necessary, I said anything concerning this case they can take up, but we do not want constant interruption. Now, Mr. Moore, one minute.

BY MR. MOORE:

Q You are indicted charged with stealing this very cloth, are you not? A (No answer).

BY THE COURT:

Q Do you not know whether you are under indictment or not?(Question repeated through the Interpreter). A Yes.

BY MR. MOORE:

Q And you are also indicted in the same indictment on the charge of receiving these goods knowing them to have been stolen, are you not? A Yes.

THE COURT: Oh, that will be conceded.

Q Well, you pleaded not guilty to that indictment, didn't you? A (In English) Yes, sir.

Q Do you still claim you are not guilty? A Yes, sir.

Q Then the story you are now telling is in explanation of your relation to the case, is it?

THE COURT: Well, translate that to him.

Q (Repeated through the interpreter). A Yes.

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Q Before you told this story to the District Attorney or anybody else, you learned, did you not, that Mrs. Wisnia had told the District Attorney all about this transaction, isn't that a fact? (Repeated through the Interpreter).

A No.

Q Did you learn it at any time before you gave testimony here to-day? A No.

Q Have you talked with the District Attorney about any benefit that you are to have for testifying here? A No.

Q Do you expect to get any benefit for testifying against this defendant? A No.

Q Aren't you telling the story and becoming a witness here in the hope that it will benefit your case? (Question repeated through the Interpreter). A Yes.

Q Did Metrick give you any money when you delivered the goods?(In English) No.

Q Did anybody give you any money? A No.

Q Was the \$69 that you gave or claim you gave to Wisnia all the money that you were to put into this transaction? A That's all.

Q You don't know how many pieces of cloth there were, do you, in these seven packages at 398 Grand street? A Sixty pieces, it was.

Q Well, you told us before it was over sixty pieces?

A I didn't say anything over or not over. You didn't ask me if it was over or not over.

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Q Were you not asked how many pieces and you said over sixty? A Sixty pieces. I didn't say over.

Q Did you count them? A Yes.

Q Were there exactly sixty pieces? A Sixty pieces.

Q Were the bundles all about the same size, the whole seven? A Yes, all the same.

Q And in the two bundles, there were twenty-three pieces that you carried over to Metrick, and do you still claim there were only sixty in the other five? A Yes.

Q Then they must have been very much smaller than the two that you carried over to Metrick? A Not smaller, they were all the same width.

Q Well, assuming that there were twenty-three pieces in the two bundles that you and Sobel carried to Metrick's, do you still say that in the whole seven bundles there were only sixty pieces? A The whole seven bundles were sixty pieces.

Q Well, was nearly one-half of them in the two bundles you carried to Metrick?

MR. MANCUSO: I object. Twenty-three pieces is not one-half of sixty.

THE COURT: Well, what is the use of going into that?

MR. MOORE: Because, your Honor, that would leave forty pieces unaccounted for. When it comes to the proper time we are going to show that the whole one hundred pieces were carried there.

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THE COURT: Well, suppose they were? You will concede that the property here was of the value of \$500? Suppose he is wrong on that. Suppose there were eighty pieces, what difference does it make?

MR. MOORE: The only thing is, we want to account for all the stuff.

MR. MANCUSO: Well, we will concede that there were one hundred pieces there.

MR. MOORE: That is all, your Honor.

RE-DIRECT EXAMINATION BY MR. MANCUSO:

Q Did you and Mrs. Wisnia count the yardage of these goods in the room at 398 Grand street? A Yes.

Q And she assisted you in doing it? A Yes, we marked it up on the paper.

Q Did you or Mrs. Wisnia have the paper? A Mrs. Wisnia had the paper.

Q And before Sobel came up to your house the second time, did Mrs. Wisnia come there with any other person? A No, not in that time. She came herself.

Q Did any other person come there besides Sobel to look at the goods? A I didn't see nobody.

Q I mean before you left for Metrick's store, did anybody else come over to the house to look at the goods besides Sobel and Mrs. Wisnia? A When I left Metrick's store then I went to Mr. Wisnia and I told him I delivered the bundles.

Q You told us that, but I am talking now of the time

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you were at your house, before you delivered the goods to Metrick's store, and after Sobel came there the first time, Mrs. Wisnia came there? A Yes.

Q Did she come there alone or with another person?

A Alone.

Q Did other persons come there? A No.

Q Sobel was the only other person that came? A Only person, that was Sobel.

Q And you say that you left Sobel in Metrick's store after you delivered the goods, or did he come out with you?

A I don't know if he left there or if he went out, because I went in to Mr. Wisnia.

Q You don't know whether he remained in Metrick's store? A No.

Q You went about your own business? A Yes.

THE COURT: Now, Captain, you can take this copy down to the Clerk's office and get the original indictment, if they wish it.

MR. MANCUSO: That is all, your Honor.

MR. MOORE: That is all, your Honor.

A N N I E R A P P S, called and duly sworn as a witness on behalf of the People, testified through Official Interpreter Rosenthal, as follows:

(Residence, 137 Ludlow street).

DIRECT EXAMINATION BY MR. MANCUSO:

Q You are the wife of Harry Rapps? A Yes, sir.

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THE COURT: Let us get near what street that is.

THE WITNESS: Corner of Rivington street.

Q You are the wife of Harry Rapps, the witness who was on the stand before you? A Yes.

Q You are janitress of that building, 137 Ludlow street? A Yes.

Q And you were janitress on the 4th of October, 1916? A Yes.

Q Now, was your husband working at that time? A He did work, but in the summer time he didn't work.

Q Now, on October 4, 1916, at about seven o'clock, where were you, that morning? A I was sleeping.

Q Do you know the defendant, Max Wisnia? A He used to come up.

Q Did you see him at your rooms on the 4th of October, 1916, at about seven o'clock? A In the morning, no, I didn't see him.

Q Well, what time did you get up from bed that morning? A About half past seven.

THE COURT: Mr. Moore, here is the paper you asked for.

MR. MOORE: Well, may we have it conceded on the record what he is charged with? It is conceded, if your Honor please, that the witness Harry Rapps was on the 3rd day of January, 1917, indicted in the Court of General Sessions of the Peace of this county on three counts.

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the first one charging burglary in the third degree, the second one grand larceny in the first degree and the third criminally receiving stolen property, all of which relate to the goods in question here.

THE COURT: Yes, in this case.

MR. MANCUSO: And also that the witnesses called before the Grand Jury on this indictment were Morris Dollinger --

THE COURT: Well, what about that?

MR. MANCUSO: The question was raised the other day that Metrick appeared against Rapps, and that he knew Rapps, and I want it to appear on the record what witnesses appeared before the Grand Jury.

MR. MOORE: I do not care who appeared before the Grand Jury.

MR. MANCUSO: Well, counsel was trying to contradict him on the point, whether or not he ever heard of Rapps or knew him, and he asked him the question if he did not appear before the Grand Jury.

THE COURT: Well, it is conceded that the name does not appear on this indictment.

MR. MANCUSO: Yes, the name of Metrick.

THE COURT: Well, he may have been a witness notwithstanding that. I say that the fact that his name is not on that indictment is no evidence.

MR. MANCUSO: Well, I will have to subpoena the Clerk

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of the Court.

THE COURT: Well, it is immaterial.

MR. MOORE: I do not care whether ^{or not} ~~prompt~~ he was called. He said he was summoned.

THE COURT: I do not see what bearing it has on the case. It is conceded that his name does not appear on this indictment as a witness.

BY MR. MANCUSO:

Q You say you get up from bed at half past seven that morning? A Yes.

Q And how soon after that did you see your husband in your rooms? A About nine or ten o'clock, after the children had gone to school already.

Q Was he alone or was he with some one else? A With Mrs. Wisnia.

Q Did your husband bring anything home with him? A He brought two bundles, three bundles.

Q Where did he place these bundles? A In the front room.

Q How many bundles did you see there all told? A She brought two and he brought three.

Q Well, do you know how many bundles were there altogether? A I didn't count exactly, but I think about seven bundles.

Q Now, after your husband came there with Mrs. Wisnia and left the bundles there, did you see Mr. Wisnia at your home?

A Afterwards he came up.

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Q And did you have any talk with him? A My husband spoke to him.

Q Well, while this conversation was going on between Wisnia and your husband, did you give anything to your husband? A My husband had asked me whether I had any money. I gave him about seventy dollars.

Q And you saw your husband give it to Wisnia? A He gave it to Wisnia.

Q After that did Mrs. Wisnia come back to your rooms the same day? A Yes.

Q And did she bring any - Question withdrawn.

Q Did you see your husband when he went out of the house with Harry Sobel carrying two packages? A Yes.

Q Was Mrs. Wisnia at your home at the time that your husband left with this young man Sobel? A Yes.

Q How long did she remain there? A Not very long.

Q Tell us approximately, one hour or two hours or three hours? A About half an hour.

Q Did any men come up to your rooms while Mrs. Wisnia was there? A She brought somebody up there to look at the goods.

Q And after your husband delivered or left the house with this package did he come back to the house? A No, he didn't come back. He said he had to go to the shop.

MR. MOORE: I object to that, your Honor.

THE COURT: Strike out what he said.

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Q Do you know what became of the other five packages? Did you see anybody take them away from your house? A She came with two men and took it away.

Q You don't know who those two men are, do you? A No.

Q Now, on the night of October 4, 1916, after your husband came home from work, did you see Wisnia at your home? A Yes.

Q Well, that is all.

CROSS-EXAMINATION BY MR. MOORE:

Q Now, you did not see the defendant bring any of the goods into your house, did you ?

THE COURT: Does she know what you mean by "defendant?"

Q Well, Wisnia, you did not see Wisnia? A No.

Q As a matter of fact, he didn't bring any of the goods into your house, did he? A No.

Q And you didn't see him take any of the goods out of your house, did you? A No.

Q And it is equally a fact that he didn't take any of the goods from your house, isn't it? A No.

Q When you saw your husband and Mrs. Wisnia bringing in the three packages of goods on that morning, where was it, the exact spot that you first saw them? By that I mean, Mr. Interpreter, was it as they were approaching the house or after they had got into the house? A They brought it into the house and into the front room.

Q Well, I say, were they in the house --

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BY THE COURT:

Q Well, had you seen them before they came into the house?

A No.

Q Did you see them on the sidewalk or on the stairs? A No.

BY MR. MOORE:

Q Now, you know Mr. Wisnia very well, do you not? A Yes.

Q You have known him for a number of years, haven't you?

A About half a year.

Q Why, this was over a year ago that it happened? A After that I didn't see him any more.

Q I know, but before that you knew him very well, didn't you?

A Yes, he used to come in and go out with my husband to auctions.

Q He used to come to your house often before that, didn't he? A Yes, very nice and decent.

Q Well, you say "Yes," he came often? A Yes.

Q Well, then, how do you fix the time -- Question withdrawn.

Q You cannot tell the date when he came to your house upon any other occasion except as you say on the 4th of October, can you? A In the summer time they used to go out to auctions together and at that time he came up and said --

Q No, I don't care about what he said in the summer time, but I want to know if you can fix any other date except this 4th of October when Wisnia came to your house? A When my husband started to work, then he came very seldom.

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Q Can you fix any other date that he came there?

BY THE COURT:

Q Do you understand the question? Can you name any other day of any other month when Wisnia was in your house? A I cannot.

BY MR. MOORE:

Q As a matter of fact, your husband was not arrested until just about two months after this time, when the velvet was brought to your house, was he?

BY THE COURT:

Q Well, when was your husband arrested? A I didn't make any note of it, I don't know.

Q Well, can you not fix that day and month when your husband was arrested? A I can't tell you that.

Q Well, has he been arrested more than once? A Only once.

Q Well, then, do you not think you ought to be able to fix that time? A I can't tell you that.

BY MR. MOORE:

Q Wasn't it after Christmas of that same year? A I didn't make a note of it and I can't tell you.

Q Well, can't you tell whether it was after Christmas?

THE COURT: Well, what is the use of going into that any further?

BY THE COURT:

Q Well, how do you fix the 3rd and 4th of October here?

MR. MOORE: Yes, that was the only reason for it.

A It was just about around that time.

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MR. MOORE: Well, that is all.

J O H N J. Q U I N N, First Branch Detective Bureau, called and duly sworn as a witness in behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MANCUSO:

Q You were a member of the Police Department on the 4th of October and the 5th of October, 1916? A I was.

Q And assigned to the First Branch? A Yes, sir.

Q Did you arrest the defendant Wisnia? A I did.

Q And also Samuel Metrick? A I did.

Q On what day, the 5th of October? A October 5, 1916, about 1:30 p.m.

Q On the 4th day or 5th day of October, did you have a talk with Rosenblatt? A I did.

Q Where was this talk? A 65 Suffolk street.

Q And after this conversation with Rosenblatt where did you go? A Went to the premises 152 Rivington street.

Q With Rosenblatt? A With Mr. Rosenblatt and two other men and Detective Dalton.

Q And when you reached 152 Rivington street did you go in the premises or did you remain outside? A Remained outside for about five minutes, while Mr. Rosenblatt and his brother went in with two other men, insurance men.

Q After that did you go in? A I did.

Q When you went inside you had some talk with Samuel Metrick?
A I did.

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Q And you placed Metrick under arrest?, A I did.

Q How long after that did you arrest the defendant Wisnia?

A Well, after having a conversation with Mr. Metrick I went up to Mr. Wisnia's —

BY THE COURT:

Q How long after, he asked you? A About five minutes.

Q You went right from Metrick's to Wisnia's? A Yes, sir.

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

BY MR. MANCUSO:

Q After your talk with Samuel Metrick where did you go?

THE COURT: He said he went to Wisnia's house and arrested him.

Q And you brought him back to Metrick's store, is that right? A Yes, back to 152 Rivington street.

Q Officer Dalton was with you? A Yes, sir.

Q While you were at 152 Rivington street, at Metrick's store, did you see any velvets there? A I did.

Q I show you People's Exhibit 1 for Identification and ask you whether you recognize this velvet as having seen it before? A Yes, the same kind of velvet, because three pieces were put with the Property Clerk and a number of other pieces were returned to the complainant.

Q How many pieces did you take from Metrick's place?

A Either twenty-two or twenty-three.

Q And you say the others have been returned to Rosenblatt?

A Yes, sir.

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BY THE COURT:

Q Did you bring those bundles over from the Property Clerk's office? A Yes, sir, I brought them direct from the Property Clerk to here.

BY MR. MANCUSO:

Q And they have been with the Property Clerk ever since?

A Yes.

Q And you have taken them from the Property Clerk to court every day and back to the Property Clerk from court?

A Yes.

MR. MANCUSO: I offer People's Exhibit 1 for Identification as one of the twenty-three pieces that was taken by this officer from Metrick's store.

THE COURT: Well, one of the one hundred pieces claimed to have been stolen.

MR. MANCUSO: Yes, your Honor.

(It is marked People's Exhibit 1 in evidence).

CROSS-EXAMINATION BY MR. MOORE:

Q When you went over from the store of Metrick to Wisnia's house, across the way, Wisnia was undressed, was he not? A Yes, sir, he had his hat and coat off. He was in his undershirt.

Q And he also had his shoes off, didn't he? A I didn't take notice to his shoes being off.

Q Didn't he while you were there put his shoes on, do you recall? A I don't recall.

Q Did you notice whether or not his face and eyes were

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discolored? A Yes, he had a black eye. I asked him where he got it. He said at a sale.

Q Did he tell you when he got it? A He did. He said he was at an auctioneer's sale and he had an argument there with some other man who struck him.

Q Well, when did he say? A I understood about a day or two before I arrested him.

Q And did you notice whether or not he had his head shaved, his head here (Indicating)? A patch? A No, I didn't take notice of that.

RE-DIRECT EXAMINATION BY MR. MANCUSO:

Q He did not wear any bandage around his head? A No, sir.

Q Did you have a talk with the defendant about three weeks after his arrest at the Third District Police Court, or two or three weeks after his arrest? A No, I didn't have a conversation, but Detective Dalton had a conversation with him.

Q All right, that is all.

BY THE COURT:

Q Well, did you hear the conversation? A No, I did not, your Honor.

JAMES DALTON, (First Branch Detective Bureau),
called and duly sworn as a witness on behalf of the
People, testified as follows:

DIRECT EXAMINATION BY MR. MANCUSO:

Q You are a member of the Police Department? A Yes.

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Q And you were on the 4th and 5th of October, 1916?

A I was.

Q Did you together with Officer Quinn have a talk with the complaining witness Rosenblatt on the 5th of October? A We did.

Q Where? A At his place of business.

Q And after the conversation with Rosenblatt did you go anywhere with him? A We did.

Q Where? A To, I think it was 152 Rivington street, or 151.

Q Who went there? A Officer Quinn and myself.

Q Were any other persons with you? A Mr. Rosenblatt was with us and his brother.

Q Were there any others? A There were two men, I believe they were insurance men for the Rosenblatt concern.

Q When you reached 152 Rivington street, did you enter the premises or did you remain outside? A I entered the premises conducted by a man by the name of Metrick.

Q And did you go there at the same time that Rosenblatt went? A No.

Q How long after Rosenblatt entered? A About a minute.

Q And after a talk with Metrick and Rosenblatt you placed Metrick under arrest? A We did.

Q And was the defendant also arrested later? A He was arrested about five minutes later.

Q Do you remember an occasion up in the Third District

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Court, having a talk with the defendant? A I did.

Q What was the conversation that you had with him? A After had, I think it was at least three adjournments with the defendant, and after --

BY THE COURT:

Q Well, the jury does not understand what three adjournments mean? A He was arraigned on what we call a short affidavit.

Q And there was no hearing, the hearing was postponed by the Magistrate three times? A Yes, your Honor.

BY MR. MANCUSO:

Q Now, did you have a conversation at the third time the hearing was adjourned? A No, not the third time, but I was at the Magistrate's Court, not in the case of the defendant. It was about three weeks later, when there was a friend of the defendant getting arraigned in court there and he was there. He called me outside the court house.

Q Who did, the defendant? A The defendant, and he says, "Do you know me?" I says, "I do." He says, "Now, if you want to do something for me I will do something for you." I says, "What do you want to do for me?" He says, "You meet me to-morrow about eleven o'clock and I will show you a good thief and a good receiver." I says, "Who is he?" "Now," wait a minute," he says, "you don't press me so very hard, be light with me and I will show you this good thief and a receiver." I said, "Where do you want me to meet you?" He says,

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"Don't come near my house." I says, "Where will I meet you?"

He says, "You meet me at Canal and Hester streets or Canal and Chrystie street," and I failed to keep the appointment.

Q You did not go there next morning? A I did not.

Q That is all the conversation you had with him on that occasion? A With him, yes.

Q Did you have any other talks with him at any other time?

A Not with him, no.

CROSS-EXAMINATION BY MR. MOORE:

Q Did you know at this time that you had the conversation you just told about that the defendant's wife, Mrs. Wisnia, had been to the District Attorney's office, and had told what she said was her version of this transaction? A No.

Q That is all, Officer.

MR. MANCUSO: That is all. That is the People's case, your Honor.

MR. MOORE: If your Honor please, I move for a direction of a verdict on the ground that the People have failed to establish a case beyond a reasonable doubt, that the defendant is guilty of the charge. I think there has been no evidence offered except that which would be, assuming the defendant were guilty, that of accomplices in the transaction. The circumstances that they narrate are such that would indicate that anybody knew these goods were stolen goods, the very circumstances of their being brought about. Clearly Rapps is an accomplice and it

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seems equally clear that this man in whose possession they found the goods is an accomplice, and the circumstances under which he procured the goods would indicate that. That being so, there is no competent evidence outside of their evidence that would justify the jury in finding the defendant guilty.

THE COURT: The motion is denied.

MR. MOORE: Exception, if your Honor please.

Mr. Moore then opened the case on behalf of the defense.

THE DEFENSE.

Y E T T A W I S N I A, called and duly sworn as a witness on behalf of the defense, testified through Official Interpreter Rosenthal as follows:

(Residence, 161 Rivington street).

DIRECT EXAMINATION BY MR. MOORE:

Q Mrs. Wisnia, you are the wife of Mr. Wisnia, the defendant here? A Yes.

Q How long have you been married? A Nineteen years.

Q You remember the day when your husband was arrested in this matter, in October of last year? A It was one day before the eve of Yom Kippur.

Q Well, I say, you remember the circumstances of his being arrested, do you? A Yes.

Q Do you know Mr. Metrick? A Yes.

Q And do you know his wife? A Yes.

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Q And did you know them at the time your husband was arrested? A Yes.

Q And where was their store at that time? A Just across the way from where I lived.

Q And where was the place that they lived at that time?

A They lived in the same building in which I lived.

Q About how long had you lived in the same building with them at the time your husband was arrested? A About eight or nine months, I can't tell you exactly.

Q Now, coming down to the day before your husband was arrested for these velvets, tell us the first thing that was said or done by you and the Metricks upon that occasion? A Mrs. Metrick came in one morning and she asked where my husband was.

BY THE COURT:

Q Who is Mrs. Metrick? A She is not here in court now.

Q Well, the wife of Samuel Metrick? A The wife of Samuel Metrick.

BY MR. MOORE:

Q Then what next happened after that?

BY THE COURT:

Q Well, first, what did Mrs. Metrick do? A She came in the morning and asked for my husband. I told her my husband was sick in bed. I asked her what she wanted my husband for. She said she needed him very badly. So I told her, "Perhaps you can tell me what you want?" "Yes," she said, "there is a man in my place who has a sample of velvet, and I am afraid

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to trust him because I don't know him." She said, "I asked the man whether he knew anybody," and she said that he, the man Rapps, said that he knew us. Then I went in there and I saw Rapps there.

BY THE COURT:

Q Where? A In Metrick's store.

BY MR. MOORE:

Q And who else besides Rapps did you see? A Metrick's wife and Mr. Metrick himself.

Q Now, what conversation did you have there? A Mr. Metrick asked me, "Say, Mrs. Wisnia, can I buy goods of this man?" I answered, "Yes." So he said, "All right, Mrs. Wisnia, now, I ask you to be kind enough to go along with Mr. Rapps about the goods." So I said, "All right, I will go along, but I will have to go first back to my husband and see what my husband is doing." I came back to the house and I found my husband sleeping. He didn't even hear me coming in, and I left the house, letting down the patent lock, locking the door. I went back to Metrick's store and with Rapps I went to Grand street.

Q When you got to - that was 398 Grand street? A I don't know the number.

Q Well, this place in Grand street that you went to was the apartment where you found the velvets, was it not? A It was in empty rooms.

Q Well, I say it was in this place in Grand street that

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you went? A Yes, it was on the first floor.

Q How did you get into the premises where the velvets were? A Rapps went ahead, he opened the door and I went in.

Q Did you notice when he opened the door whether he used a key or how he got in? A I think so, the door had a very plain lock, not a patent lock.

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

MR. MOORE: Unless she means by that it is her recollection.

THE COURT: Well, it is consented to. Strike it out.

Q Now, after you got into the room what happened? A The velvet was lying in a dress closet. He said, "I am going downstairs now to get paper and a rope," and he went downstairs and brought up paper and rope and he made small bundles. I can't tell you exactly how many packages there were.

Q Well, what is your recollection as to the number of packages? A About six, I am sure. Whether seven I am not sure. I made up a bundle and he made up a bundle. He took both packages and went downstairs and he went away, and in half an hour ^{he} returned with his boy.

BY THE COURT:

Q And you remained there?, A Yes, I remained there. I didn't go away from there, and then he took a package and gave a package to his boy.

BY MR. MOORE:

Q That is when he came back the second time? Go on?

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A And then Rapps alone returned and then he took two packages that had remained there and he went downstairs ahead of me, and I went down after him. He walked along on Suffolk street and I turned into Clinton street and then I came home.

BY THE COURT:

Q Well, did you have a package with you? A I had nothing with me.

BY MR. MOORE:

Q After you went home, or first, which son was this, what is the name of the son? A I don't know his name.

Q Well, was it the oldest son? A No, it was the younger one.

Q After you went back to your home what was the next thing you did or said after going home? A When I opened the door my husband asked who it was and I said that it was me.

Q Well, I don't care about that. You went home and after that where did you go? A From my house I didn't go any place. Afterwards a young man by the name of Sobel came in and asked for my husband. I told him that my husband was sick. He said, "Perhaps I could see him," and I said, "No, he is sick in bed and he is asleep." I asked him what he wanted him for and he said that he owed him ten dollars. I said, "I don't know whether he has ten dollars or not, but I will not wake him up." So he was about to go away. Then I called him back. I said, "Mr. Sobel, perhaps you can buy some goods."

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So he said, "Will it amount to very much?" I told him about \$200. He said, that he couldn't buy such a large amount. He said, "I haven't got as much money as that." He said, "Perhaps if I could get a sample I might get a customer for the goods." I said I had no samples but if he would go up to Rapps and tell him that Mrs. Wisnia had sent him -- well, he went away and came back and he didn't get a sample, but my door was locked. He came back to Rapps and he found me there.

Q Then what happened? A I said, "Mr. Rapps, give this young man a sample and he will get you a customer for the goods." So he said, "The goods are sold already." I said, "To whom did you sell it?" He said, "To Mr. Metrick." So then he said, "I would like this young man to help me carry the goods away." So the young man said "All right, I will help you to carry the goods."

Then they both went away and I went to Orchard street to do some shopping for dinner and I went to my house. An hour later Mrs. Metrick came in. She said, "Mrs. Wisnia, come in, my husband has no time to figure out the yardage and Mr. Rapps is there too." I went in there and Rapps told him the yardage, and I wrote it down and we figured it, and Metrick paid Rapps. They promised me that I should have a couple of dollars but none of them gave me anything.

Q Now, is that all there was to that? A Then Mrs. Metrick afterwards came in. That was on Thursday, the day before the eve of Yom Kippur. I was not in the house and she said to Mr. Wisnia--

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Q Well, you cannot tell us what she said if you were not there. Next day you were home when the officers came and arrested your husband? A I was not in the house but I came there soon after.

Q Did you come there before the officers went away? A I met them in the house.

Q Had your husband been out of the house from the time he came home when he was hurt up to the time he went out with the officers? A No, he had not left the house. Not even from one room into another room had he moved.

Q Now, Mrs. Wisnia, did you go to see the District Attorney after your husband was arrested? A Yes. I told him everything; how it happened.

MR. MANCUSO: I move to strike it out.

Q Well, you want to see the District Attorney and afterwards, Mrs. Wisnia, did you go before the Grand Jury and were you sworn and did you tell this story? A Yes.

Q And before you went before the Grand Jury and told your story, did you sign a paper in which you waived any privilege that that going before the Grand Jury might otherwise give you? A I can't remember, but if a paper was given to me by the District Attorney to be signed, I signed it. I think I did sign a paper.

Q Well, is it your best recollection that you signed some paper that they called a waiver of immunity? A I am not sure but I think I did sign such a paper.

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Q When you were before the Grand Jury were you asked then if you waived immunity?, A They asked me before the Grand Jury and I told them everything that I am telling here.

Q But before they asked you to tell your story, did somebody in the Grand Jury room ask you if you waived any right that you had to tell your story, or did they use that expression "waive immunity"? In other words, that you did not claim that giving that testimony would protect you from punishment for your crime, if any?

MR. MANCUSO: We will concede that the statement was made by the foreman. It is the usual custom. No waiver was signed, I understand, but she made an oral statement before the Grand Jury, or she was asked by Mr. Bohan if she was willing to testify and she said "Yes," but no written waiver was signed.

THE COURT: Well, she has not been indicted or prosecuted in any way?

MR. MANCUSO: No, sir.

THE COURT: Go on.

CROSS-EXAMINATION BY MR. MANCUSO:

Q You said that you told the Grand Jury everything that you told us here now, is that right? A Everything that I said here, yes.

Q And you have not forgotten anything here? A No, nothing.

Q You have not forgotten the names of any person or any

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important fact or occurrence that took place that morning? A No.

Q Now, did you tell the Grand Jury that Metrick's father was in front of the store at 398 Grand street while you and Rapps were upstairs looking at that velvet? A Rapps said he was downstairs.

Q Well, why didn't you tell us about it?

MR. MOORE: Well, she was not asked about it here.

MR. MANCUSO: Well, she said she told us everything and mentioned names.

THE COURT: Well, what she told the Grand Jury -- that one thing was omitted. I will sustain objection to it. I do not see how it is disclosed without an order of the Court. That is the only way to disclose testimony before the Grand Jury. She says she was not asked about it before the Grand Jury, I suppose.

MR. MOORE: It would not be competent for me to bring it out here.

THE COURT: You may ask her the fact now. The proceedings of the Grand Jury cannot be divulged by you. It takes a Judge of this court to give an order for that. You may ask her anything you please, and if the testimony she gives here contradicts the testimony given before the Grand Jury, then I will give permission and she might then be indicted for perjury if it is a material matter.

Q Did you testify --

THE COURT: It does not make any difference what she

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testified to before the Grand Jury. Ask her here concerning any fact which you think is material.

Q Did Rapps tell you that Metrick's father was downstairs waiting while you and Rapps were in the rooms examining this velvet? A I didn't see him, but he told me that.

THE COURT: You do not mean Rapps's father, you mean Metrick's father?

MR. MANCUSO: Metrick's father, I mean.

Q You said that Mrs. Metrick came to your house that morning? What morning was it she came to see you? A It was two days before Yom Kippur eve.

Q Well, I do not know what date Yom Kippur was?

THE COURT: Well, Mr. Rosenthal can fix that day if it is important.

MR. MANCUSO: Well, I was going to ask her how many days before the arrest?

THE INTERPRETER: Yom Kippur in 1916 fell on October 7th.

THE COURT: Now, it was two days before Yom Kippur eve. What would that be?

THE INTERPRETER: Yom Kippur would be on Friday evening the 6th, and two days before that would be the 4th of October.

Q That was the morning she came to your house, on the 4th? A Yes, it was two days before Yom Kippur eve.

Q And she asked for your husband, and you told her that

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your husband was sick, is that right? A Yes.

Q And that she needed your husband badly, in order for her husband to see him regarding Rapps? A Yes, that the man was in their store who had some velvet to sell and he said that he knew us.

Q And you went down there to look at him? A Yes.

Q And when you were there you found Metrick and Rapps?

A Yes.

Q What time was it, about? A It was early in the morning. I can't tell what you time.

Q Well, was it before ten or after ten? A It was between six and seven.

Q In the morning? A Yes.

Q And what time did Mrs. Metrick come over to your house?

A After six o'clock.

BY THE COURT:

Q Well, how long after six? A I didn't look at a watch.

BY MR. MANCUSO:

Q How long after Mrs. Metrick had been over to your house to go down to the store? A I went together with her.

Q And when you went there the store was open? A Yes.

Q And what was the conversation had between Rapps, Metrick and yourself? A When I came into the store and I saw Mr. Rapps, I said, "Mr. Metrick, it is all right, you can buy goods from this man."

Q And did Metrick then make any arrangement with Rapps

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to buy all the goods that Rapps had? A Yes.

Q And did Metrick, or did Rapps rather, tell Metrick how many pieces or how many yards he had to sell? A No, this I didn't hear.

Q Well, did you hear how much Metrick was to pay for the goods? A No. They didn't talk about that in my presence.

Q Do you know anything about velvets? A I know something about goods.

Q Metrick's wife was in the store too, wasn't she? A Yes.

Q And his father was there? A I didn't see his father.

Q And then Metrick told you to go with Rapps to look at this velvet, is that right? A Yes, and to bring it.

Q And to bring it? A Yes.

Q And his wife was there when he told you that? A His wife was there, but she didn't mix in. She was behind the counter, there, busy.

Q You went along with Rapps in order to oblige Metrick, do him a favor as a neighbor, is that right? A Yes. He told me that he would give me something for my trouble.

Q Did your husband have a pushcart at that time? A No, my husband was sick.

Q Well, did he have or was he in business at that time?

A My husband was peddling from a pushcart.

Q Well, how long had he been sick? A From Tuesday until Thursday when the detectives took him away. The detectives took him away when he was sick.

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Q That is, Tuesday would be the 3rd of October, is that right? A I don't know about that.

Q Well, was it the Tuesday before the day that you saw Mrs. Metrick at your house? A Yes.

Q Now, what time did he get sick? A Tuesday he returned from a sale and there he was beaten up.

Q And did he bring home any goods that he bought at this auction sale, or any merchandise? A Yes, he brought it home.

Q So he had that on his pusheart on Tuesday before he was beaten? A Yes, the pusheart was outside. I was standing at the pusheart while he was at the sale.

Q In other words, you took care of your husband's business while he was away, is that right? A Yes.

Q And if your husband was sick you attended to his business? A No, while my husband was sick I was not at the pushcart.

THE COURT: How long will this cross-examination take?

MR. MANCUSO: About half an hour, perhaps longer.

THE COURT: Well, then, we had better take recess now. Take all the time you wish.

Now, Gentlemen of the Jury, we will take a recess until two o'clock, and meanwhile remember what I've told you, that you must not discuss this case with any strangers or talk about it among yourselves, and that you must not form or express any opinion on the question of the guilt or innocence of the defendant, until you hear all the evidence on

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both sides and until the case is submitted to you by the Court for your decision. That is the time to decide it and not before that.

(Recess until two p.m.).

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Y E T T A W I S N I A, recalled, testified as follows through

Mr. Rosenthal, one of the official interpreters:

CROSS-EXAMINATION BY MR. MANOUSO:

Q Now, when you left Metrick's store with Rapps, you knew then that Metrick had agreed to purchase all the velvet that Rapps had? A Yes.

Q And you went with Rapps for the purpose of assisting him to carry all that velvet to Metrick's store? A Not to Metrick's store, but Rapps took them to his house.

Q When Metrick sent for you and you went down to the store, didn't you say he told you to go with Rapps and bring the velvet to his store? A Yes sir, he said it should be brought to him, but it was not brought to Metrick's store.

Q All I am asking you is this: When you left Metrick's store you knew that the velvet was to be brought to Metrick's store with Rapps, didn't you? A Metrick said it should be brought to him, but I was not sure ^{whether} Rapps would bring it to Metrick.

Q The reason why you went to Rapps was because you were to bring it back to Metrick's store, were you not? A He did not take it to Metrick's store.

THE COURT: Strike that answer out.

Q We know that. Answer yes or no, whether you knew.

THE COURT: You ask her the reason why she went.

BY THE COURT:

Q Wasn't the reason of your going with Rapps to bring the

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goods to Metrick? A The purposes of my going was to look over the goods and figure out how many yards there were, but I was not to carry any goods.

BY MR. MANCUSO:

Q Well, did you not tell us on your direct examination that that was the reason why you went with Rapps to help him to bring the velvet to Metrick's store? A I was not to carry any goods, and I would not carry any goods if they gave me a thousand dollars.

Q So that all Metrick engaged you for was to measure the goods and find out the number of yardage? A I should see whether the goods were the same as the sample.

Q Which sample? A Which Rapps had brought to Metrick's store.

Q Did you ever buy and sell velvet before that? A No.

Q That is the first time in your life --

THE COURT: She said she never bought or sold any before, so it must have been the first time.

Q Was that the first time in your life that you handled velvets of that kind? A I bought velvet sometimes at a sale, but other kinds of velvets.

Q Ribbons? A Sometimes ribbons.

Q How large was the sample that Rapps had with him?

A A small piece of goods, about as large as the palm of a hand.

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Q And did you go directly to 398 Grand Street with Rapps. or did you go home before you went there? A No, first I went to the house to see what my husband was doing.

Q When you left the house was your husband at home? A He was asleep but didn't even hear that I left the house.

Q What was the necessity of going back to find out what he was doing? A I wanted to see whether he was up, and I wanted to give him some medicine or a drink.

Q And when you came back you and Rapps went over to this building at 398 Grand Street; is that right? A Yes sir.

Q And you said the velvet was in the closet? A Yes sir.

Q Was it spread out on the floor after it was taken from the closet? A Yes sir, on the floor near the window, one on top of the other.

Q Did you unfold it and measure it? A No, it was not opened up altogether.

Q And did you measure the yards -- I withdraw the question.

Q How many pieces did you see there? A I cannot tell you.

Q Did you measure each piece to find out the number of yardage --

BY THE COURT:

Q Did you measure them, yes or no? A No.

BY MR. MANCUSO:

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Q Well, didn't you go there for that express purpose of measuring, as you stated? A Rapps tore off a ticket, which was attached to each piece of velvet, and then he took a piece of paper and he wrote it down on a piece of paper.

Q Well, were the goods measured by you or Rapps?

A It was not measured, but each piece of velvet had a ticket. On the ticket was the quantity, how many yards there were.

Q And you say Rapps then went downstairs and brought up some paper and wrapped it up in packages? A Yes sir.

Q Did he tell you where he was going to bring that velvet? A When he came there the last time, I asked him, "Did you bring the velvet?" And he said, "I brought it to my house."

Q Did he tell you when he went out the first time whether he was going to bring the velvet? A No, he didn't say anything.

Q When he told you he had brought the velvet to his house, did you say anything to him? A Didn't say anything.

Q Did you say anything to him why he did not bring it to Metrick's? A I didn't care to stop on the street; I went along my way.

Q Did you ask him why he didn't bring it to Metrick's house? A I asked him but he said, "I brought it to my house".

Q Well, you knew that was not the arrangement; you knew that he was to bring it to Metrick's store, as you said?

A Yes sir, he didn't want to carry it right to the store.

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Q So that he took it to his house? A Yes.

Q Now, did you tell Rapps when you went into the building, 398 Grand Street, that your husband had bought the velvet from the millinery store downstairs in the building at 35 cents a yard, and that you put it there temporarily until you got a chance to move it out of there? A I didn't say that; I couldn't have said it; my husband was sick at the time.

Q Well, did you know what the value of that velvet was?

A No, I don't know about this kind of velvet.

Q You didn't know whether it is worth ten cents a yard or sixty cents a yard? A Ten cents is too cheap; it is rather worth sixty cents than ten cents.

Q You don't know how many yards were in all those pieces, did you? A I know I had figured it, but I don't remember now. I had it figured out on the paper and the paper remained on Metrick's counter.

Q Well, how many yards, can you recollect now, approximately, if you figured it? A I cannot remember now.

Q Well, did you know what the whole stock or quantity was worth, approximately? A No.

Q Well, didn't you tell Sobel, if he wanted to buy a quantity of velvet that you could sell it to him for \$200, or he could buy it for \$200? A I didn't tell him I could sell it, because I had nothing to sell.

Q Did you tell him he could buy a quantity of velvet for

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\$200? A Yes sir, I told him that.

Q Well now, how did you know the value of that velvet to be \$200? A I just in my mind figured out that the value should be about \$200.

Q You had no interest in the sale of the velvet, whether it was sold for \$50 or \$2,000? A I had no interest in it.

Q Your activities were limited only to the measuring of this velvet, and for that you received some compensation by Mr. Metrick, is that right? A Metrick and Rapps both promised to give me something.

Q Did they tell you how much they were going to give you?

A No.

Q Now, after you left Rapps at 399 Grand Street, did you go to his home later that morning? A I never left Rapps in Grand Street.

Q Didn't you tell me that when he took the last two bundles home he went to his home and you went towards your home, or to your home? A Yes.

Q Well, did you go to his home later, after that?

A Later I went there, yes sir.

Q About what time? A It was before dinner.

BY THE COURT:

Q When did you have dinner? A Twelve o'clock.

BY MR. MANCUSO:

Q Well, it was about eleven o'clock, was it? A About eleven o'clock.

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Q Well, after you left Grand Street, you went to your own house; is that right? A I went home.

Q Was your husband home? A Yes sir.

Q And then Sobel came to your house to collect \$10 from your husband? A Yes sir.

Q And at that time you asked Sobel whether he wanted to buy some velvet, that he could purchase it for \$200 from Rapps. A Yes.

Q Well now, if you knew that Metrick had bought this velvet from Rapps and that you were being called by Metrick to vouch for Rapps' honesty, and you knew that it was sold to Metrick, why did you ask Sobel whether he wanted to buy it in that form?

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

THE COURT: I think if it is put simply in the last part, it will be all right.

BY THE COURT:

Q Why did you ask Sobel to buy it? A Well, I thought, if I recommend Sobel to buy some goods, I might make some commission from Sobel.

Q But you said that Metrick had already bought it?

A But he had not paid yet. I thought, perhaps, that Rapps might withdraw from the bargain, and Sobel could get some of the goods.

BY MR. MANCUSO:

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Q You said Metrick had not paid for it yet? A Well, he hadn't the goods as yet, and he had not paid for it.

Q How did you know he didn't have the goods? A Because Rapps had told me that he had brought the goods to his house.

Q How do you know that Rapps hadn't delivered them while you went home? A Because he told me, and I believed him.

BY THE COURT:

Q What did he tell you? A That he had brought the goods to his own house.

Q Why, that was before you went back to your house, yes or no? A Yes sir, while going down.

Q The question you are asked now is, how did you know that he hadn't delivered them after that; after you went home? A He told me that all the goods were in his house.

Q Yes, but how did you know that they were still in his house, that he hadn't moved them to Metrick's? A I was sure that he would not fool me.

BY MR. MANCUSO:

Q So that the best answer you can make is that you were sure he would not fool you? A He had no interest in fooling me.

Q Now, didn't you say this morning that when Metrick sent for you, Rapps was there and his wife was there, and you saw money being paid over by Metrick to Rapps for this velvet?

MR. MOORE: One moment. I think that occasion should be mentioned.

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THE COURT: I will allow the question.

A When he had the goods already in his store then he paid Rapps.

Q When was it? A I think it was the same day when my husband was arrested.

Q So that he paid him the money on the 5th, you now state? A I don't know about the date.

Q Well, it was not on the same day that you went to Metrick's for the first time, it was the following day; is that it? A The next day he paid it.

BY THE COURT:

Q Well, did you see the money paid? A Yes sir.

Q Well, what do you mean by saying now that he told you he paid him the next day? A I was present when he paid him.

Q Well, what do you mean by saying just now that he told you that he paid him? A I saw how he paid him but he didn't pay him all the money.

MR. MANCUSO: That is not an answer.

THE COURT: The jury can consider that an answer.

BY MR. MANCUSO:

Q That is the best explanation you can give about that; is that it? A That is how it was.

Q Well, now, when you went back -- I withdraw the question.

Q When you talked to Sobel, you told Sobel to go to

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Rapps' home and look at the velvet; is that right? A Yes sir.

Q And Sobel left? A Yes sir, he went there.

Q And after that you went to Rapps house? A Afterwards I went to Rapps' house.

Q When you left your home was your husband still home?

A My husband was in bed.

Q And you locked the door? A Yes sir.

BY THE COURT:

Q Locked your husband in, didn't you? A I simply let down the patent.

BY MR. MANCUSO:

Q Did you have a key to the house? A Yes sir, with me.

Q In what room did your husband sleep, and in what room did you leave him? A In the next room from the kitchen.

Q When you reached Rapps' house did Rapps tell you that a young man had been there, sent by you? A He didn't tell me, because Sobel came up right after me.

Q He came right after you? A Yes sir.

Q Now, after you left Grand Street, and before you went to Rapps' house, did you go to Metrick's store? A I went first to my home.

Q After going to your home, did you go to Metrick's store? A I didn't go to Metrick's.

Q Didn't you say that you brought to Metrick's store, right after you left Grand Street, the tickets with the number

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of yards on it? A Not that time, but later I brought it to Metrick's store.

Q Well, what time later, morning or afternoon? A When the goods were delivered to Metrick's store, then I brought him those tickets.

BY THE COURT:

Q Well, what time after; what time of the day, he asked you was that? A I think it was between one and two o'clock.

Q Well, how did you know the goods had been delivered?

A Mrs. Metrick came over and called me to the store.

Q Now, when you went to Rapps' store that morning about eleven o'clock, Sobel came in shortly after you reached there?

A Yes sir.

Q And did you tell Sobel that the goods were sold?

A Yes sir.

Q Well, when did you first learn that the goods were sold? A When Sobel came up. I said, "Mr. Rapps, give this young man a sample." Then Rapps told me that the goods were sold.

Q To whom? A To Mr. Metrick.

Q Well, you knew that already, didn't you? A When he told me to go over there to Grand Street, I thought so but I was not sure.

Q Didn't you tell us that Metrick sent you there? That he had bought the goods and he wanted you to measure the

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yards? A Yes, but Rapps took the goods to his house.

Q And when Sobel came there you didn't give him a sample of the goods, did you? A No sir, because the goods were sold.

Q Well, if you said you had no further interest in the matter, outside of seeing that the goods were according to the sample, and that they were properly measured, why did you go to Rapps' house? A Because Rapps had told me that he had bought the goods to his house, therefore I went up to his house.

BY THE COURT:

Q Why, why? A Because I had sent up Sobel there.

BY MR. MANCUSO:

Q That was the only reason why you went there? A Yes sir.

BY THE COURT:

Q What business was Sobel in? A He's buying jobs, job lots, job lots of goods.

Q Did he ever buy any job lots from you before? A My husband had bought together with him from some factory, childrens' costs.

BY MR. MANCUSO:

Q Now, when you went -- I withdraw the question.

Q Did you see Rapps and Sobel leave the house? A Yes sir.

Q Did you go out with them, or did you remain at Rapps' home? A I left together with them.

Q Where did you go? A I went to Orchard Street.

BY THE COURT:

Q Where did they go? A They said that they were going

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to take the goods to Metrick's.

BY MR. MANCUSO:

Q You didn't go to Metrick's that day? A No.

Q And did you go to Metrick's the next morning? A No, the same day I went.

Q Well, what time was that you went there? A I cannot tell you the hour; I knew it was before dinner.

Q Well, you told us about that, that you went there at six o'clock, between six and seven o'clock when he sent for you, and that you went there after the goods were delivered, about twelve o'clock; is that right? A It was before dinner.

Q Well, what did you do at Metrick's store when you went there on the second occasion? A I brought the tickets.

Q And who was there on this occasion when you brought the tickets? A Metrick and Rapps.

Q Who else? A Nobody else; Sobel was not there any more.

Q Were the goods measured at that time? A The packages were open, but nothing else was done.

Q The goods were placed on the shelves? A On the shelf and on the counter.

Q Did you go to Metrick's store any more that day? A I thought it was the same day when she came over and said that she could not find out the yardage, how many yards there were, and that her husband had no time to bother with it now; that he was very busy; that I should write it down that Rapps had

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seen how many yards there were on all the tickets, and I wrote it down on a piece of paper.

Q Now, did you go to Metrick's store on the morning when your husband was arrested? A Yes sir, they called me; I did go there.

Q And who was with you on that occasion? A Rapps was with me.

Q Wasn't Sobel with you? A No, Sobel was not there.

Q Did you know Mrs. Schneider? A Yes sir, I know her.

Q She came there while you were discussing the yardage with Metrick? A She came in and called me aside and asked me what I was doing there? I answered that I had business there.

Q Did you tell her what the nature of your business there was? A No, I didn't tell her anything.

Q Do you know Mr. Platt (Mr. Platt, please stand up --) (A gentleman stood up in the courtroom.) Did you see that man there while you were measuring? A Yes sir.

Q And did you have any talk with him, any discussion about the yardage? A I didn't talk to him, but he showed them how to let out the goods, how to find out how many yards there were.

Q Now, didn't you say that there were 24 pieces there and that Metrick didn't know how to measure it, or something to that effect? A What do you mean, I said that where?

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Q Well, you were interested to know the exact number of yardage and the exact number of pieces, and you were talking it over with Metrick about it, weren't you? A They were measuring and they were counting and I did the writing.

Q And you had no other interest in all these transactions of yours other than that you had been promised some pay by Metrick for that work? A Yes sir.

Q Now, did you tell Metrick, when he sent for you, the day that your husband was arrested, that your husband couldn't come out, because he was sick, he had a black and blue eye?

A Metrick didn't tell me that he wanted my husband.

BY THE COURT:

Q Well, did you say that to Metrick. The question is did you say that to Metrick? A Yes sir.

BY MR. MANCUSO:

Q Now, after your husband was arrested did you go to Metrick's store?

THE COURT: Yes or no.

A I was in Metrick's store with the detectives.

BY THE COURT:

Q After your husband was arrested? A I went in and asked him why my husband was arrested.

BY MR. MANCUSO:

Q You didn't know why he was arrested? A Sure I didn't know, because I knew he was innocent.

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Q And so you went to Metrick. How soon after your husband was arrested, how many days or hours? A Why, Metrick was not there; Metrick was also arrested.

BY THE COURT:

Q Now, how many days after your husband was arrested, how many hours was it; did you go to Metrick's store, that is the question? A The same night I passed by and I saw Metrick in the store.

Q How long was that; when was your husband arrested, in the morning, noon or night? A About three in the afternoon.

Q And then that night you went to Metrick's store?

A Yes sir.

BY MR. MANCUSO:

Q And did you tell him on that occasion to keep quiet and say nothing? A I didn't tell him that.

Q And did he answer to you and say, "Nothing of the kind."

A He told me I should give him the two men that had brought him the goods.

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

THE COURT: Strike it out.

Q And did you further say, "Mr. Metrick, you should not say that Mr. Wisnia brought the goods in; say somebody else did, or we will fix you"? A I didn't tell him that, but he told me I should give him the two men that brought in the goods.

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MR. MANCUSO: I move to strike that out.

THE COURT: Strike out after "I didn't tell him that".

Q Do you remember while your husband was in the Tombs that you one day preferred a charge against a man for robbery, and you had him arrested?

MR. MOORE: To that I object.

MR. MANCUSO: This is merely leading to some other thing which I expect to connect.

MR. MOORE: I object to it as entirely immaterial.

THE COURT: That does not reflect on her in any way. You can fix a date by it. It will be admissible for that purpose only.

BY THE COURT:

Q While your husband was in the Tombs did you make a charge against some man of robbery? A Yes sir.

BY MR. MANCUSO:

Q And this man, you knew him, did you not? A No.

Q Didn't he come there to ask you for some money?

MR. MOORE: I object to that.

THE COURT: Objection sustained.

MR. MANCUSO: It was merely leading to something else which connects with this case.

THE COURT: Strike that part out. I thought you were trying to fix a date. Of course the jury understands that if she made a charge against someone that is no re-

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flection on her in any way unless it is connected with the case.

MR. MANCUSO: It is going to be connected with some statement she made concerning this case.

THE COURT: Made to whom?

MR. MANCUSO: Made to Officer Dalton.

BY MR. MANCUSO:

Q How many days after your husband was arrested did this happen? A A couple of weeks, and I didn't exactly make a complaint.

BY THE COURT:

Q Was your husband in the Tombs for a couple of weeks?

A Yes sir.

THE COURT: All right.

BY MR. MANCUSO:

Q Now at that time when you made this charge did you see Officer Dalton at your home -- is the officer there?

(No response from the officer.)

BY THE COURT:

Q Did you see Officer Dalton at your home at that time?

A A detective, yes sir.

THE COURT: Where is Officer Dalton?

MR. MANCUSO: I sent for him. I think, your Honor, he had an engagement in the court across the street for two o'clock.

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BY MR. MANCUSO:

Q Now, did you tell Officer Dalton, "Oh yes, I recognize you, you are the same man that arrested my husband." Now, if you will make it light for my husband --"

THE COURT: One thing at a time.

BY THE COURT:

Q Did you say to Officer Dalton, "I remember you are the man that arrested my husband"? A I didn't tell him that I recognized him.

Q Well, did you recognize him? A No, I was very excited at that time.

BY MR. MANCUSO:

Q You knew before he left your house that he was the same officer that had arrested your husband? A I cannot say whether he is the same, or not.

MR. MANCUSO: I move to strike that out as not responsive.

THE COURT: Well, let it go.

MR. MOORE: She said she couldn't say whether that was the same man.

THE COURT: Now you can put the other part of the question.

BY MR. MANCUSO:

Q Did you tell Officer Dalton that, "If you will make it light for my husband, I will give you some money, and I will give the other officer some money, if you will help my

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husband".

MR. MOORE: I object to that as incompetent, irrelevant and immaterial, not admissible in evidence, and not binding on the defendant.

THE COURT: Overruled. It goes to the question of her credibility.

MR. MOORE: Exception.

A I didn't tell him anything; I didn't know that he had anything to do with the case.

MR. MANCUSO: That is all.

REDIRECT EXAMINATION BY MR. MOORE:

Q You spoke about the patent on the door; will you tell us just how the door of your apartment locks, what kind of a lock it is?

THE COURT: The lock that you open from the inside, not from the outside, is a spring lock?

A Yes sir.

Q On the outside with a key? A On the outside one needs a key.

Q From the inside you can open the door without it?

A Yes sir, from the inside without a key.

MR. MOORE: That is all.

RE-CROSS EXAMINATION BY MR. MANCUSO:

Q Officer Dalton. Is this the officer (pointing to Officer Dalton) that came to your home when you made a complaint against that person for robbery? A I cannot say whether it

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is the same one or not.

Q When the first time that you saw this officer (indicating Officer Dalton)? A I don't know whether I saw him there or I saw him here.

Q When your husband was arrested you were in Metrick's store, were you not? A In Metrick's store, yes.

Q Didn't you see this officer there, together with Quinn? A I saw the tall one.

Q You didn't see him, Dalton? A This one (indicating Officer Dalton) I don't remember having seen him.

Q The first time you saw him was in court? A I don't know whether he's a detective or not.

MR. MANCUSO: That is all.

MR. MOORE: That is all.

D R. M O S E S A. G O L D B E R G, called as a witness on behalf of the defendant, being first affirmed, testified as follows:

(Residence, 292 East Broadway, New York City.)

DIRECT EXAMINATION BY MR. MOORE:

Q Dr. Goldberg, what is your profession? A I am a physician.

Q And how long have you been practising as a physician? A For twenty-one years.

Q And from what institutions were you graduated? A I am a graduate abroad, in Switzerland.

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Q And how many years have you practised in the City of New York? A Seventeen years.

Q Where do you live? A 292 East Broadway.

Q Do you know this defendant Wisnia? A Yes sir.

Q Has he been a patient of yours? A Yes sir.

Q Upon more than one occasion? A About twice.

Q Do you remember a time of going to treat him in October, 1916? A Yes sir.

Q Can you tell us the date? A I looked up in my book -- it was October 3rd and October 4th.

Q Have you brought your book with you? A Yes sir.

Q Will you produce your book. (The witness produces a book and hands same to counsel for the defendant).

Q Is this (referring to the book) -- I ask to have it marked for identification.

(The book referred to was marked Defendant's Exhibit A for Identification of this date.)

Q Doctor, I show you Defendant's Exhibit A for Identification, and ask you what that book is? A It is my book for calling for 1915 and 1916.

Q And you keep a record of all your calls? A Yes sir.

Q And you enter them in this book, do you not? A Yes sir.

Q Now, on looking at this book, under which date of October, are you able to state positively whether you made a call upon the defendant, Wisnia, that day? A Yes sir.

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Q Can you tell us what time of the day it was? A Judg-
ing by the entry it was the first call, that means after ten
o'clock in the morning.

Q At any rate, from the entry in your book it was the
first call that you made on the 4th? A Yes sir.

Q And where did you make that call?-- A I was called --

Q Whereabouts did you go? A To the place?

Q Yes. A 161 Rivington Street.

Q When did you enter this call upon your book, Doctor?
A October 4th, in the morning.

Q After you returned from your calls? A No sir; you
see it is this way; I have seen the man --

Q I am not going into details as to this entry you
spoke of? A This I made up in the morning after my morning
office hour; I made up the last calls that day until noontime
when I returned again to my office.

MR. MOORE: Your Honor, I offer in evidence the record
of his call made October 4th.

THE COURT: It is not admissible for any purpose.

MR. MANCUSO: If I examine it I may consent.

THE COURT: I don't want the record encumbered with
these things.

MR. MANCUSO: I said I won't object to it, your Honor.

THE COURT: I will not have anything on the record that
is not proper evidence. He may refresh his recollection

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with that and you may concede the fact, if you wish, but his book is not admissible in evidence for any purpose.

MR. MOORE: I think a memorandum made at the time is admissible.

THE COURT: Not at all.

MR. MOORE: Very well, I will take your honor's ruling.

THE COURT: On cross-examination he may refer to that to refresh his recollection and the People might prove that the record contradicted him. With the record we don't care for his record, we don't care about his record.

BY MR. MOORE:

Q After refreshing your recollection are you able to say what the defendant's condition was when you found him in his home at 161 Rivington Street on the morning of the 4th of October? A Yes sir.

Q Tell the jury what it was? A He had a contusion of his head, about on the top of the head, of the scalp, and he had a contusion on both eyes, and he had bruises on his back.

Q What treatment did you give him, Doctor? A I gave him an internal application. I advised him to apply cold applications to his head and to the swelling under the eyes.

Q Was this abrasion that you speak of on the scalp, did you do anything more, what treatment did you advise? A Cold applications.

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Q And that is the only time that you were called to see him was that morning, was it? A I was there the previous evening; I was there the evening before that.

Q What about the evening before that? A I found the same injuries, but the condition in the evening was worse than in the morning; he was slightly improved in the morning.

Q You mean on the evening of October 4th? A October the 3rd, the call which I made, which is recorded here (indicating Defendant's Exhibit A for Identification); this was the second call.

Q And those are the only two visits you made to him?

A Yes sir.

Q At the time you saw him on the morning of the 4th at about ten o'clock, how was he as to his dress? A He was not dressed; he was in bed.

MR. MOORE: That is all.

CROSS-EXAMINATION BY MR. MANCUSO:

Q Where is your office, Doctor? A 292 East Broadway.

Q City? A Yes sir.

Q Now, did he visit you at your office on the first occasion, or did you go to his home? A I went to his home.

Q And you say that the first visit that you made was on October 3rd? A Yes sir.

Q What time? A About ten o'clock in the evening.

Q And you keep a record of all the calls that you make?

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A Not all of them, some may escape being entered in the book.

Q Did you keep a record in your book of that call of October 3rd? A No.

Q You did not? A No sir.

Q Did you enter in your book the call that you made on October the 4th? A Yes sir.

Q And when you called on the first occasion you said that you found him suffering from contusions of both eyes and of bruises on the back? A Yes sir.

Q And contusions of his head? A Yes sir.

Q Is that right? A Yes sir.

Q Now, will you just, Doctor, describe the condition of his head, the nature of it? A It was a contusion, as if caused by the blow of some dull object; there was no bleeding but it was slightly swollen and painful; it was the size of about half a dollar.

Q On what part of the head? A Well, just the top of the head.

Q Well, will you point it out?

(The witness indicates.)

Q You didn't administer any stitches? A No sir.

Q And when you went to see him at his home was he in bed or was he sitting up? A In bed, both times.

Q And the contusion of his eyes, was it both or just one eye? A As far as I can remember it was both eyes.

BY THE COURT:

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Q Well, does your record show? A No, your Honor, that is only an entry of the time.

BY MR. MANCUSO:

Q Look at the record? A No, that is only as to my making a call.

BY THE COURT:

Q You make your bill out from that? A No, your Honor, that is simply to put in the books what calls I have to make.

Q Not what calls you have made? A No, what I have to make.

Q Well, how do you know you visited him on that day? Is there any record of the calls you didn't make? A No sir, simply helps me to remember that I have seen them.

Q Well how does it help you to remember that you have been there? Did you check them off, or did you do anything with them? A It happens very seldom I should have a call on my books and not make it; it may have happened sometimes but very seldom; it does not show any treatment.

BY MR. MANCUSO:

Q This is a record of the calls you are to make the next day (indicating)? A Yes sir.

BY THE COURT:

Q When did you make that record? A In the morning; the calls come in either by telephone or personally by some people, and I enter it in the book, and then I have a small

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either a book or a piece of paper, which I take with me to remember where I have to go. But this (referring to Defendant's Exhibit A for Identification) remains in my desk all the time; sometimes I have to look up previous days, to ^{and} make calls, /I want the list to be seen every day.

Q Now, Doctor, I notice on this record that Rivington Street, "sore back", see M. Wisnia" is the entry; I observe that to be squeezed in between two lines; why was that done? Why didn't you give a full line to that, the same as the others? A This line (indicating) was not used.

Q Will you point out to me any other page where three names appear between two lines? A Well, I don't see it.

BY THE COURT:

Q You made the Wisnia call as inserted? A Yes sir.

MR. MANCUSO: I wish to offer that record in evidence.

MR. MOORE: No objection.

THE COURT: For that purpose I will receive it.

MR. MANCUSO: For that purpose I offer it in evidence, page 208.

The record referred to was received in evidence (Defendant's Exhibit A for Identification) -- page 208 of same as People's Exhibit No. 2.

THE COURT: You will have to cut that out.

BY THE COURT:

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Q Are you willing to do that, Doctor? A Yes sir.

Q You have no use for the records of the month of October? A No, I can leave the whole book here.

Q You have a new book now? A Yes sir, I have, beginning from April, 1917.

BY MR. MANCUSO:

Q Now, Doctor, after October 4th, you have on the first line, "October 4th, Wednesday"? A Yes sir.

Q The next line, "Mannheim Drug Store"? A Yes sir.

Q The third line is "M.P." A Yes sir.

Q Now, between the third line -- I withdraw the question.

Q On the fourth line you have "210 Delancey Street, fourth floor, Nurenberg"? A Yes sir.

Q Now, between the third and fourth line in small writing is "Sore back. See M. Wisnia"; why didn't you give that a full line entry like the others; is that on the same line? A There is two letters for a certain object and this here (indicating) didn't take up the whole line, that was between the lines.

Q Between the lines? A Yes sir. I can find numerous occasions about the same thing.

Q Now, find another instance; look it up in the book (handing People's Exhibit No. 2 to witness for examination)? A (After examining) How about this (showing to counsel).

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Q That is at the bottom of a page? A Yes sir.

Q That is the end of your day's work? A Yes sir.

Q But give me an instance where you start the day with the first call? A How about this here (showing counsel), three between two lines (pointing to book).

Q That is the only explanation you can give for it?

A Yes sir.

Q Now, you said this record does not show the visits that you made, but it is a record, a calendar, which showed the visits which you would make next day; for example you would have a record of the visits to be made tomorrow? A No sir, this shows the visits I made on October 4th; I am in the office three times, in the morning, in the daytime, and in the evening. Now, in the morning office hours I make up the list as they occur between midday and office hours.

Q And this is the entry you made here? A Yes sir.

Q What is the number "161", "See numbers on the side"?

A That is the number of the place.

Q And this call was made when, on the morning of the 4th?

A Yes sir.

Q What time did you make the call at this defendant's home, on October 4th? A After ten o'clock.

Q After ten o'clock? A Yes sir.

Q Had you made any other call that day, or was this the first? A This was the first; the second, 210 Delancey Street.

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Q And in what condition did you find him then? A I found him in bed and undressed, carrying out my instructions of the previous visit, means "cold applications to his head, taking the medicine".

Q What medicine did you give him? A Oh, some internal medicine, for the pain.

Q To be applied externally, or drinking? A Drinking.

Q Was there any fracture at all? A No.

Q So that from the first examination you made -- I withdraw the question.

Q Doctor, I assume that you have examined a number of these cases and treated a number of cases where people were suffering from bruises and contusions? A Yes sir.

Q And from the examination you made, and also from your experience in these cases, can you tell us whether he was able to walk or go about, here and there? A He should not have done so.

Q Well, could he have done it? A He was not in a condition that would preclude the possibility of him getting away, of getting out, but I didn't --

Q There was a possibility that he could get out? A Yes.

Q His injuries were not such that would compel him to remain in bed? A They were quite painful but if he wanted to go out he could go out and walk about; he could have left the bed.

MR. MANCUSO: That is all.

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MR. MOORE: That is all, Doctor.

I would like the jury to see the exhibit, People's Exhibit No. 2, that has been marked in evidence.

THE COURT: That is the reason I didn't want it in evidence, a collateral issue. It is not a material fact in this case.

H A R R I S S C H N E I D E R, called as a witness on behalf of the defendant, first being duly sworn, testified as follows through Mr. Rosenthal, one of the official interpreters:

DIRECT EXAMINATION BY MR. MOORE:

Q Where do you live? A (In English) 89 Clinton Street.

Q Do you know this defendant here? A (In English)

Yes sir.

Q Do you know Mr. Metrick? A (In English) Yes sir.

Q Do you know his place of business? A (In English)

Yes sir.

BY THE COURT:

Q Whose place of business? A (In English) I know --

THE COURT: Speak either English or Jewish, take your choice.

A (In English) I speak Jewish.

THE COURT: Then speak through the interpreter only. We don't want any mixture of languages here. I want you to speak that language in which you can make no mistakes.

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Now, which one do you wish to speak, English or Yiddish?

A Yiddish.

THE COURT: That means that you will wait until the interpreter speaks to you. Not a word of English now. The questions will be put to you by the interpreter.

BY MR. MOORE:

Q Do you remember the day when this man was arrested?

A Yes sir.

Q Did you have a talk with Mr. Metrick soon after that day in reference to him? A Yes sir.

Q And in that talk did you say to Mr. Metrick, "Why did you put him on to Wisnia", and did he say that he told the officers he got the goods from him, and his lawyer told him he must not change it or couldn't change it? A Yes sir.

Q Did you see Wisnia the day before he was arrested?

A Yes sir.

Q About what time of the day was it? A It was in the nighttime, eleven o'clock.

Q And where did you see him? A In his house, he was in bed.

Q Did you notice his condition then? A Head and face.

Q What was it then? A I put on those glasses which are put on to draw out blood.

THE INTERPRETER: I cannot recall the word in English in this case for "glasses".

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THE FOREMAN OF THE JURY: Blood cups.

THE COURT: Go on.

Q Where did you put them?

THE COURT: I don't see why you should waste so much time on this. It don't make any difference whether he was sick or not.

MR. MOORE: We claim he didn't get out of the house, and this has some bearing on it.

MR. MOORE: That is sufficient.

CROSS-EXAMINATION BY MR. MANCUSO:

Q What time did you see him at his house? A Twelve o'clock in the night.

Q What day? A Tuesday night.

BY THE COURT:

Q Well, what day of the month was that? A It was three days before Yom Kippur.

Q What day was Yom Kippur? A Saturday, was Yom Kippur.

Q That would be the 4th then, would it?

MR. MOORE: Tuesday was the 3rd.

THE COURT: That is not three days before.

MR. MOORE: He said it was the Tuesday before.

THE COURT: He said it was three days before Yom Kippur, and that Yom Kippur was on a Saturday.

THE INTERPRETER: It begins Friday night.

THE COURT: I understand that.

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BY MR. MANCUSO:

Q Now, why did you go to his house at twelve o'clock that night? A His wife came to me and cried and asked me to come, that her husband was very sick, that the doctor was there and had ordered those cups to be put on him.

Q And you went there to do that; is that right? A Yes.

Q Now, you stated that you went to Metrick's store, did you, or house, which, after he was arrested?

THE INTERPRETER: Metrick's store.

Q To Metrick's store or his house? A To the store.

Q When, how many weeks or days or months after he was arrested? A About eight days after.

BY THE COURT:

Q After whose arrest? A After they were both arrested.

BY MR. MANCUSO:

Q Well, did you see the defendant after he was arrested?

A Yes sir.

Q Did you see the defendant before or after you had seen Metrick? A I cannot tell that; I see them both often, they are in my neighborhood.

Q Well, did the defendant tell you to go over and see Metrick? A Yes sir.

Q And that is the reason you went to Metrick's store eight days after he was arrested; is that right? A No.

Q Well, didn't you say, just a minute ago, that the defendant told you to go over and see Metrick? A I went to Met-

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rick's to buy some trimmings, and then we started to talk.

BY THE COURT:

Q What business are you in? A (In English) Dress-making business.

Q You became a druggist and a surgeon on this occasion when you put on the caps? A Well, I was in the Russian Army with and I was/an assistant surgeon and I had to deal with these things, I knew how to do it.

Q Now, when the defendant told you to go and see Metrick, what did he tell you to do? A He told me to ask what Metrick had against him.

Q What else did he tell you to say? A The defendant's says that his wife had some business with him, why should Metrick bother him?

Q Didn't you tell Metrick -- I withdraw the question.

Q Didn't you say to Metrick, "Mr. Metrick, I want you to do me a favor"? A Not that way.

Q Well, which way did you say it, tell us? A I told him this way, very simply, "As Wisnia's wife has sold goods to you, and the goods turned out to be stolen goods, while Wisnia himself was sick, what have you against him, why do you bother him?"

Q So that Wisnia told you that as long as his wife sold the goods to him, why should he get him into trouble; is that right? A Yes sir.

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Q And didn't you tell him, "Now, Mr. Metrick, I want you to do me a favor, and don't say anything about Wisnia"?

A No.

MR. MANCUSO: That is all.

MR. MOORE: Just one question. I want to locate your store.

BY MR. MOORE:

Q Where is your store? A 89 Clinton Street.

BY THE COURT:

Q What? A 89 Clinton Street.

Q Near what street is that? A (In English) Near Rivington Street.

MR. MOORE: That is all.

M A X W I S N I A, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q Where do you live? A 161 Rivington Street.

Q You must talk louder than that? A 161 Rivington St.

Q And that is between what streets? A That is between Suffolk and Clinton.

Q Suffolk and Clinton? A Suffolk and Clinton.

THE COURT: Clinton is east and Suffolk is west.

Q What is the next street that crosses Rivington, east of Suffolk Street.

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THE COURT: That is Clinton Street,

Q West, I mean; I want to go the other way.

THE COURT: That will be conceded.

MR. MOORE: I have a plan here.

Q And the next after that is Essex, is it not? A Essex.

Q And the next is what? A Ludlow.

Q And then, as you go south the streets that run parallel with Rivington Street, the first street is Delancey Street, is it not? A Yes sir.

Q And the second one is Broome? A Broome.

Q And the third one is Grand? A Grand, yes sir.

MR. MOORE: I have drawn a little plan.

THE COURT: They have been on the City map for almost a hundred years.

MR. MOORE: I would like to get this in evidence, if counsel for the People consented.

MR. MANCUSO: I don't know whether that is correct.

THE COURT: That is correct.

MR. MANCUSO: Then, your Honor, I will consent to it.

The plan referred to is received in evidence and marked Defendant's Exhibit B, of this date.

Q Here is Rivington Street, you see that circle marked "A" on Rivington Street, between Suffolk and Clinton Street; is that where your house is? A Yes sir.

Q This you see, this place from the corner of Ludlow

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Street and Rivington Street, marked "C", is that where Rapps lives? A Lives? Yes sir.

Q And then this place on Rivington Street, between Suffolk and Clinton Street, marked "B"; is that where the store of Metrick is? A Yes sir.

Q And this place, further down, "D" on Grand Street, between Suffolk and Clinton Street, is that where 398 is? A Between Suffolk and Clinton.

Q That is where 398 is located? A Yes sir.

Q And this place marked "E" on Clinton Street, between Delancey and Rivington Street, does that correctly locate the store of Schneider, or about? A Yes sir.

MR. MOORE: Would the jury like to look at this?

(Exhibit B was shown to the jury, who examined same.)

MR. MOORE: I can use it in my closing argument as well as now.

Q Now you know Mr. Metrick? A Certainly.

Q How long have you known Mr. Metrick? A About six years.

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

Q When? A About four years.

BY THE COURT:

Q What crime were you convicted of? A Of receiving stolen goods.

Q And what sentence was imposed? A Two years and seven

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months.

Q Where, in State's prison? A Yes sir.

Q What time did you actually serve? A One year and three months and fifteen days.

Q And at the time of your arrest how long had you lived at 161 Rivington Street? A Nine -- ten months.

Q During all that time Metrick had lived in the same apartment or same house? A Yes sir.

Q Now, coming down to October 3rd, did you get hurt on that day? A Yes; I was in an auction place --

Q Tell us what injuries you received? A I was in an auction place by Mr. Valvemann's; I got it here (indicating some papers which he produced from his pocket).

Q I don't care about your going over those papers. You got hurt? A Yes sir.

Q Tell us what injuries you received? A I got here my head (indicating); it was a piece of brass, one fellow hit me here, my head, and this place (indicating).

Q Hit you in the head? A Yes, and mine eye was blue, I didn't know anything, and some fellow dragged me in his house.

Q Were you hit any other places? A Yes sir, the back, on the back, I was hurt, (indicating).

Q What time was it when you were hurt? A That was about five o'clock.

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Q And after that you were taken or went to your home?

A Yes, sir, somebody telephoned.

BY THE FOREMAN OF THE JURY:

Q Morning or night? A After dinner.

BY MR. MOORE:

Q In the afternoon? A Yes, sir.

Q And from that time on the afternoon of the 3rd, about five o'clock, where, if any place, had you been up to the time of your arrest? A I was in my own place; I was only in bed; somebody telephoned.

Q I don't care about what somebody did. Then from that time until the time you were arrested you didn't leave your apartment at all? A No, sir.

Q When did you first learn of these goods that were stolen? A That was just a day before Yom Kippur, but ^{I think} it was on the same day, Yom Kippur was in the night, I think that was on the 4th; I am not sure.

Q Did you know of the goods before the time of your arrest? A No, sir.

Q Now tell us where you were arrested, where were you arrested? A I was in bed, and somebody knocked --

Q Where were you, in your house? A In my house, yes, sir.

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

Q Now, were you dressed at the time the officer came into

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your house that morning? A Only I had my pants on me and a shirt, and stockings.

Q No shoes? A No shoes.

Q Did you finish your dressing after the officer came there? A The officer, the big fellow, he told me, "Dress yourself."

Q Where did you go from there? A He took me over to 152 Rivington street, Metrick's store.

Q That was Metrick's store? A Yes, sir.

Q What conversation did you have in Metrick's store when you were taken over there by the officer? A I had a conversation in my house.

Q Well, what conversation did you have with the officers in the house? A When I was in bed somebody knocked at mein door --

Q You got up, the officers came in? A Not the officers, Mrs. Metrick came in. Mrs. Metrick came in and said to me, "Mr. Wisnia, come in my store." I said, "I am sick; I cannot go." I asked her, "Why you want me?" She said, "My husband wants you." I said, "When your husband wants me, be so kind and tell him to come to my house." She said, "I refuse to go home without you." She goes out and the detectives come in. They said, "Where is the velvet?" I look over, I said, "I don't know what you mean." He showed me his badge, the detective, and the detective, this gentleman sitting here - I forget his name - came right in and searched my place, searched

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all over. He said, "Where is the rest of the velvet?" I said, "I don't know what you mean by velvet." He said, "From whom did you take the goods?" I said, "Here, in gentlemen, are

bills, you can find the whole bills; they were on the table, go ahead and search the bills, you will find every piece of goods that I got in my house is billed." After the detectives searched my house, they said, "Dress yourself." I dressed myself, and I go over, the other side of the street to Metrick's store. When I came to Metrick's store, Metrick said, "He gave me the sample." I looked over, I said, "Mr. Metrick, I knew you so long, I have given you some samples; what kind of samples do you want off me?" The detective said, "These goods don't belong to you?" I said, "No, sir; these goods that belong to me are in my house; I don't know anything about these goods." After this, Metrick told me, "Where is the fat man?" Where is the fat man?" I said, "What kind of a fat man you mean?" He said, "The fat man; you know what kind of a man." He asked me, "What is his name?" I said, "I don't know what kind of a fat man you want." They locked me up, together with Metrick. When I came into Headquarters --

Q Was that all that was said by Metrick? A Yes, sir.

Q When you asked about the fat man, didn't he say "The fat man that brought the goods?" A He told me, "Where is the fat man living; tell the truth." I said, "Mr. Metrick, I cannot tell you; what do you want with the fat man?" I don't

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know, that is Rappa or somebody else; I don't know anything about it; this business I don't know nothing about it."

Q I don't care about that. You have been over it. Now, you went over to the police station? A I came over to the police station.

Q What talk did you have there? A He put the Metrick man in one room and took me in another room, took my hands, bring me up like that (Indicating), and strung my feet, and put me on the floor, and this other fellow, not the big fellow, he took me on the floor and with a blackjack he hurt me, I fell down; I cannot talk any more. He put a pail of water on my head. He asked me, "Where is the other stuff?" I said, "I don't know anything about it." I told you I didn't steal it." I said, "What do you want off me?" I said to one of the men, the gentlemen there, "What do you want of me?" He said, "I am not a gentleman; I am a captain." He said, "Where is the other stuff?" I said, "I don't know about this stuff." He called in Metrick. Metrick came in. He said, "Who bring you the stuff?" That is, he said it to him. I started to cry. "Metrick," I said, "you know me so long; did I bring you this stuff?" He didn't answer me anything. He took Metrick to another room; he beat me with some sticks a couple of times more, and I said, "Gentlemen, what do you want of me? Do you want me to say I stole it?" One of the fellows came around and beat me in my face; I fell down. He said, "You get out of this, come on." He picked me up. After this Metrick

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was going on the way and some other fellow took me out to Mr. Rapps. He took me up the other way. I came out, I started hollering, "What is the matter with the goods, who is the thief and who stole it?" I came down to my wife. I said, "You don't know anything about the goods? What is the matter, Metrick is hollering to me." My wife started up to tell me everything, the whole story. When she told me the whole story I came down to my lawyer. I said, "Mr. Spiegel --"

Q I don't care about that; only there at Headquarters?

A Yes, sir.

Q Was there anything more said about the fat man at Headquarters or the station house? A No, sir. Metrick said,--

Q Said what? A Metrick said some two fellows bring in the bundle, and I gave him a sample of piece of goods, he said, which I bring in.

Q How did he describe the men, or one of them, that brought the goods in there at Headquarters, together? A When I came down out of bed --

Q How did he describe the men? Did he say anything more about the fat man? A He was talking a whole lot, he bought the goods off a fat man. He talked about him.

Q What did he say? A "I bought the goods off the fat man," and I send up my wife to you and your wife told me, 'You know the man.'" I said, "I don't know anything about it; I find out; I don't know anything. When I came out I found out, when I found out I came down to the District Attorney's

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office and told the District Attorney all about it. I said,
"Your Honor, I am innocent; I don't know anything, and I
want you to help me, because I can prove it to you black
and white, I am innocent in this case," and the District At-
torney -8-

MR. MOORE: That is all.

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CROSS-EXAMINATION BY MR. MANCUSO:

Q Did you tell us about all your convictions? A Yes, sir.

Q You were not convicted for any other crime, were you?

A I beg your pardon?

Q Is that the only thing you were convicted for, for receiving in 1913, and sentenced to two years and seven months by Judge Wadhams of this court? A Yes, sir.

Q And nothing else? A For some cigarettes I was made to pay fifty dollars fine.

Q Wasn't that for receiving before Judge Grubb of the United States District Court, receiving stolen property?

MR. MOORE: He could not be fined there for receiving stolen goods.

MR. MANCUSO: For Federal property?

THE WITNESS: For cigarettes I was held to pay fifty dollars fine.

Q You were fined fifty dollars by Judge Grubb? A Yes, sir.

Q For receiving, is that it? A No.

Q Anything else? A No, sir.

THE COURT: You may question him about any conviction he had and if he denies he has been convicted you may produce the record. I find that those papers (Referring to records which counsel for the People held in his hand) are absolutely worthless, they are full of errors, and they should not be shown before a jury. I say that in the interests of justice, that is all. If you want

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the jury to have the impression that something which appears on a yellow sheet is produced from the Police Department, I say that that means nothing; it is not legal evidence. There is a way of getting in legal evidence. He has admitted two convictions, one in the United States Court, at which time he was fined fifty dollars, for cigarettes, whatever that may mean, and the other he says was for criminally receiving stolen goods, for which he was sent to State Prison. You may question him about any other that you desire.

Q What time did you go to the auction place on October 3rd? A After ten, about eleven o'clock.

Q What time did you leave there? A I left there, I think about five o'clock, I think so, because I can remember, I was very hurt, somebody telephoned for my wife, and my wife came down, and my wife she took me home, and some other fellow.

Q Did you buy anything that day? A Certainly.

Q What? A I bought, I cannot remember - I bought over fifty dollars worth - I think I have the bill in my pocket.

Q Did you buy anything? A Yes, certainly, dresses, skirts, handkerchiefs, stockings, shoelaces, collar buttons, and things like that.

Q Did you take them home or were they delivered to you?

A No, my wife with somebody took them home; I think she herself took them home; I cannot remember; I got here the bill, I have it in my pocket.

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Q Never mind about the bill. You say you were hit on the head with a piece of brass? A I cannot tell you that, but I think it was with a piece of brass.

Q Were you bleeding? A Not much.

Q A little? A Yes, sir, the nose was bleeding.

Q You were bleeding from your head? A Yes, sir, he hit me here.

Q What part of the body were you bleeding from? A The nose.

Q From the head? A From the nose, from here (Indicating head) a little bit I got a mark.

Q Were you bleeding from the head? A Yes, sir.

Q And what else? A My eye, the eyes was bleeding.

Q You got home at five o'clock? A I think so; it was near five o'clock.

Q And you didn't go out until the day you were arrested?

A No, sir.

Q You didn't go out at all? A No, sir.

Q You knew Rapps, didn't you? A Certainly.

Q How long have you known him? A I know him about eight or seven years.

Q And you had some dealings with him, you bought and sold property at auction with him? A No, sir; he never bought auction goods.

Q Wasn't he ever a partner of yours in some transaction?

A No, sir.

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Q Never had any dealings with him? A I know him; he never had any transactions with me; I bought of him a couple of times, skirts.

Q Bought from him? A I bought off of him; he had a store in --

BY THE COURT:

Q He has a store where? A I beg your pardon?

Q Where is the store? A He has before a store - he failed; he bankrupted; he failed.

Q Where was his store? A He has a store in, - what is the name - Rivington, - no, Stanton street.

BY MR. MANCUSO:

Q Well, did he have that store how many years ago? A That will be about four years ago, three years ago.

Q And since then did you buy any property with him at auction, and did you sell it and then divide the profits?

A Never.

Q Now, did you see him on the morning of October 4th?

A No, sir.

Q Didn't see him the night of October 4th? A No, sir.

Q Now, did your wife tell you on the morning of the 4th, or any time, during the 4th, that Metrick had sent for her, and that she had gone over to 389 Grand street? A No, sir.

Q Never said a word to you? A She said to me, when I come out, that Mr. Rapps took me out of bed, after that.

Q But before that your wife never mentioned a word to

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you about it? A No, sir.

Q Did she tell you that she sold the property to Metrick?

A After that she told me.

Q What did she tell you?, A She told me Mrs. Metrick came down in the house and she called her over and Rapps came down and said she got some velvet, and she was going to make a couple of dollars; she go down and help him^{look} at them. The same day she told me that I go right away, I think it is to District Attorney Swann, with my counsel, I came with my counsel, I was crying, I said that, and my counsel took me up to Mr. Swann's, I think it was.

Q Now, did your wife tell you that she sold velvet to Metrick? A She didn't say so.

Q Did she tell you that she sold velvet to Metrick?

A No, sir.

Q You know Schneider, the witness? A Yes, sir.

Q Did you tell him that your wife told you that she sold the velvet to Metrick? A I don't say that.

Q Did you tell him that? A No, sir.

Q Did you send Schneider to Metrick's store? A Yes, sir.

Q Why did you send him there? A I sent him to ask, "What is the matter?" I cannot tell to him, because I was excited, and I said, "By Gott, I don't know anything about it." what the man is talking of. Shall I bring him the goods," I

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said to Schneider; "I don't send him any." I said, "Mr. Schneider, I never saw a man like that;" he looks like to be tied, and he stood up, and said, "I sell him some goods; I gave him some samples; I am a fat man;" I don't know anything about it. " After Schneider said, "I go and ask him," he said he came, he said, "You are going to jail on account of your wife."

Q Who told you that? A Schneider.

Q So you didn't tell Schneider your wife sold the goods to Metrick? A No, sir.

Q Schneider told you about it? A Yes, sir.

Q Did you tell Metrick after you were arrested that he should not make any trouble for you, otherwise you would fix him up? A I didn't say anything like that to him, and I didn't talk to him, because I was very excited; no, sir.

Q At the time you were arrested, did you tell Metrick, in Jewish, tell the officer, that a salesman brought the velvet in here,--"Don't tell him that I sent it?" A No, sir.

BY THE COURT:

Q Is this the first transaction you had with Metrick?

A What?

Q Is this the first dealing you had with Metrick? A No, I have dealings before with him; before I was sent away, your Honor.

Q You bought goods of him? A I bought goods of him, and he bought goods, before I was sent away.

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Q You settled up with him? A I owe him a couple of dollars, yes, sir. Your Honor, when I came out, I was working, and he came down to me, and he told me, "What is the matter, Wisnia, you going around like that? You don't make anything." Your Honor, I said, "I have no money and I can buy no goods because I have no money." Mr. Metrick said, "You come down when you get some goods, come down to my place." I was broke; I was working for eight dollars a week. I came down - I cannot make a living - I said, "Mr. Metrick, I have got to buy some goods," and Mr. Metrick he took and loaned me a hundred dollars. At the time he loaned me the hundred dollars I was going down to auction.

BY THE COURT:

Q Metrick did that for you? A Metrick came and said, "Where is my hundred dollars?" I told him I had fixed me up a pusheart; I wanted to make a living, and this time, I think Mr. Schneider, Metrick came down and made a holler in my house, "Where is the hundred dollars," he said. I said, "Mr. Metrick I will give you back your money."

MR. MOORE: All of this is not material --

THE COURT: I think he has a right to make any statement he wishes.

MR. MOORE: It has no materiality but if your Honor wants to hear it, I have no objection to his going ahead.

THE COURT: Why, it may be material. It is for the jury to say whether they believe it or not on the question of --

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tive.

BY THE COURT:

Q Metrick was an enemy of yours at this time? A I beg your pardon.

Q Did he become an enemy of yours after that? A (Through the Interpreter) Yes, your Honor, after that.

Q Why did you send your wife to advise him of a business bargain, if he was an enemy of yours, can you explain that?

A Yes, your Honor. He is a man who wants to make a couple of dollars --

Q He was not an enemy of your wife; he was your friend, not your wife's? A He was more a friend of my wife's than of mine. At the time, your Honor, when I was away, he came down all the time in my house - when I was in jail.

BY MR. MANCUSO:

Q How many times did the doctor treat you? A I think twice, in the night time and in the morning.

Q Do you remember the morning of October 4th, when Sobel came to your house? A No.

Q Don't you know Sobel? A I know him.

Q You owed him ten dollars, didn't you? A I paid him already.

Q At that time he came there to collect the ten dollars, didn't he? A Yes, sir.

Q Did you see him in your room speaking to your wife?

A No, sir.

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Q You didn't hear him speak to your wife? A No, sir.

Q You didn't know he came to your house that morning?

A I know now.

Q Did you know that day he had been there? A No, sir.

Q Didn't know it until when? A When I came out; I found out everything; I know the time.

Q So you don't know anything at all about this transaction? A No, sir.

MR. MANCUSO: That is all.

RE-DIRECT EXAMINATION BY MR. MOORE:

Q Now when you were first arrested did Rapps secure a bondsman and bail you out? A Yes, sir.

Q And after your wife went to the District Attorney and told all this transaction, he then put you back to jail, didn't he? A Yes, sir.

MR. MOORE: The defendant rests, your Honor.

- R E B U T T A L -

OFFICER JAMES DALTON, recalled by the People.

BY MR. MANCUSO:

Q Officer, were you present at Headquarters when the defendant was taken there? A I was.

Q And were you there when he was placed in a cell and separated --

Q Will you tell us whether he was placed in the same cell with Metrick or whether they were separated? A This defend-

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ant was placed in the cell, I should judge about four hours before Metrick was.

Q And did you beat this defendant, punch him, kick him and blackjack him? A He was not my prisoner; I had nothing to do with him.

Q Were you there at all times with him? A Not all the time.

Q While you were there did you see anybody punch, kick or blackjack him? A I did not.

Q Now, do you remember an occasion of about two or three weeks after this defendant was arrested, and while he was in the Tombs, of visiting his home? A I do.

Q Did you see his wife there? A I did.

Q She made a charge of robbery against some one --

MR. MOORE: I object to that on the ground it is collateral, that he is bound by the answer of the witness to it.

THE COURT: Why any declaration concerning this transaction made by the witness would not be collateral.

MR. MOORE: I have in mind --

THE COURT: He laid the foundation.

MR. MANCUSO: I laid the foundation.

Q Did you, Officer? A I did.

Q And on that occasion did Mrs. Wisnia have any conversation with you? A She did.

Q Did she know who you were? Tell us all that trans-

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pired?

THE COURT: As to the alleged crime we are investigating now.

MR. MANGUSO: Yes.

THE COURT: Nothing else.

MR. MOORE: If your Honor please, then I would object to that.

THE COURT: Why, she was your witness and she was asked on cross-examination if she hadn't made certain statements concerning this crime.

MR. MOORE: Now, your Honor, he is asking him to tell all that took place for the purpose of contradicting her, on a matter that is collateral.

THE COURT: It was not a collateral matter.

MR. MOORE: She said, "It is so-and-so." That I submit is entirely collateral. I don't object if it is an admission relating to this crime.

THE COURT: That is all I will allow it for.

BY THE COURT:

Q Did she tell you about this alleged crime, larceny, or receiving stolen goods, concerning this property? A I asked the defendant did she know me.. She stated that she thought she did. She said, "I think you was one of the officers that was in Metrick's store." I said, "Metrick across the street?" She said "Yes." She said, "You know my husband is in trouble about velvet." I said, "Yes." I said,

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"Where is your husband now?" She said, "In the Tombs. I said, "I thought he was bailed out." "No, he is down in the Tombs," she said. "All the stuff I have here is paid for. Please help my husband out." She said, "If you help my husband out, I can get money; please tell the other officer--"

THE COURT: Please strike that out. That has no bearing on it at all.

MR. MANCUSO: That is all.

Your Honor, I would ask you to take an adjournment here.

THE COURT: Gentlemen of the Jury, remember what I have told you, that you must not discuss this case among yourselves, or with any stranger. You must not form nor express any opinion on the guilt or innocence of the defendant until you have heard all that is to be said on both sides, and until the case is submitted to you for your decision.

You will be excused until two o'clock to-morrow afternoon.

(Whereupon an adjournment was had until November 27, 1917, at 3:00 P.M.)

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THE PEOPLE v. WISNIA (Continued).

New York, November 27th, 1917.

TRIAL RESUMED.

THE COURT: There is a meeting of the Judges at four o'clock. How long will you want to sum up?

MR. MOORE: I think we can limit it to half an hour.

MR. MANCUSO: I think so, your Honor.

THE COURT: Understand, I do not want to limit you, but I do not want to keep the jurors out too late at night. How much more time will you want to finish the People's case?

MR. MANCUSO: Just one more witness in rebuttal, about five minutes, your Honor. Your Honor, may we make this concession on the record between myself and defendant's counsel? That the defendant, Max Wisnia, was bailed out first on October 7th and remained on bail until October 31st, when he waived examination at the Police Court. He then remained in the Tombs until November 22nd and was re-bailed on the 22nd and has been out on bail ever since. That he did not see the District Attorney until sometime after November 22nd, with his wife. Is that right?

MR. SPIEGEL: Correct, your Honor.

MR. MOORE: Except that on October 31st the bondsman surrendered him, refused to continue the bail.

R O S E M E T R I C K, called and duly sworn as a witness in behalf of the People in rebuttal, testified as follows:

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(Residence, 153 Rivington street).

DIRECT EXAMINATION BY MR. MANCUSO:

Q You are the wife of Samuel Metrick? A Yes, sir.

Q Do you know Mrs. Wisnia, the wife of this defendant?

A Yes, sir, I know her.

Q Now, Mrs. Wisnia testified yesterday that on the morning of October 4th you went to her home and told her that your husband wanted to see Mr. Wisnia, is that right? A No, not on October 4th.

Q And further, that she told you that her husband was sick and perhaps you could tell her what was wanted. Yes or no, did you say that? A No, I was not in her house on October 4th.

Q And did you further say to her on that morning of October 4th, "There is a man in my place who has a sample and I am afraid to trust him because I don't know him." A I did not.

Q And did you say, "I asked him whether he knew anybody," and that Rapps said that he knew them - referring to Mr. and Mrs. Wisnia. Did you say that? A No.

Q And that then she came with you to the store? A No.

Q Now, on October 4th at about nine o'clock where were you? A In the store.

Q Who else was there with you?

MR. MOORE: I object to that, if the Court please, on the ground that it is not rebuttal, but is a re-opening

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of the People's case.

THE COURT: I will allow it.

MR. MANGUSO: Just this one point, your Honor. I will not go any further.

Q Who else was with you? A My father-in-law.

Q And what is his name? A My father-in-law's?

Q Yes? A Ephraim Metrick.

Q Was your husband there? A Yes.

Q Did you see Mr. Wisnia there? A On October 4th --

MR. MOORE: I object to that upon the same ground.

Objection overruled. Exception.

Q Did you see Mrs. Wisnia there? A No.

Q Now, on October 5th, the following morning, did you go to Mrs. Wisnia's home? A Yes, after my husband came back with a sample from Mr. Rosenblatt, a piece of goods, and he said he is going to come down to the place and see the goods.

MR. MOORE: I object to that, your Honor.

THE COURT: Strike out the latter part of the answer, beginning where?

MR. MOORE: All except that she went there on that next morning.

THE COURT: Well, I will grant that motion.

Q Your husband went out that morning, October 5th?

A Yes.

Q And he came back later? A Yes.

Q When he came back you had a talk with him? A I

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had no talk.

Q Well, you had some talk with your husband, did you not?

A Yes, he only said he is --

BY THE COURT:

Q Never mind what he said. You had a talk? A Yes.

BY MR. MANGUSO:

Q After that talk with your husband did you go to Mrs. Wisnia's home? A Not before we opened the bundles and seen there was no tickets.

Q After your husband came back and you had a talk with him, did you go to Mrs. Wisnia's house? A Well, you want me to tell you the truth?

Q Now, did you go there? A I went to Mrs. Wisnia's to tell her --

Q You cannot tell us what you said to her. You went there and had a talk with her? A Yes.

Q Then did she come with you to the store? A Not right with me, but after she came a little later.

Q Who else came there with her? A A young man.

Q Was this man (Indicating the witness Harry Rapps) there with her on October 5th? A No.

Q That was the only time you went to Mrs. Wisnia's home, in October? A Yes.

Q Not on the 4th of October? A No.

CROSS-EXAMINATION BY MR. MOORE:

Q I suppose if you had gone over to Mrs. Wisnia on the

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morning of the 4th of October and told her that there was a man in there that you did not know whether you could trust or not, who wanted to sell goods, and you wanted to know whether he could be trusted - if you had that talk you would tell us, wouldn't you? A If I had I would, yes.

Q You know that regardless of the fact that you admitted that to be the truth, it would connect your husband with this stolen property? A Well, if I wasnot there, how can I tell you I was?

Q No, no. I said, if you had that talk that somebody was over there - that you told Mrs. Wisniathat morning was over there, and wanted to sell some velvet to your husband but that you did not know him and did not know whether you could trust him or not -- A (Interrupting) I didn't see nobody in our store.

Q No, no, if you had had that talk with Mrs. Wisnia, and told her you wanted her to come over and see whether he could be trusted or not, you would admit it? A If it was true I would have to.

Q Regardless of whether it would send your husband to State Prison, you would admit it, wouldn't you? A If it was true I would have to tell it.

Q Yes, that is all.

MR. MANCUSO: May Mrs. Wisnia be broughtto the witness-stand to pick out which one of the two Rapps boys she said she saw in that place that day?

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YETTA WISNIA, a witness recalled, testified as follows through Official Interpreter Rosenthal:

BY MR. MOORE:

Q Mrs. Wisnia --

MR. MOORE: I will have to question her as part of the defense, your Honor.

MR. MANCUSO: No, I called her. Well, it does not matter.

MR. MOORE: When she testified that one of the Rappa boys came at one time and carried away a bundle, he was not here, and Mr. Mancuso requested that I recall her. I say I will make that part of the defense, if she can identify him.

BY MR. MOORE:

Q Mrs. Wisnia, can you tell the Court and jury which if either of these boys whom you mentioned in your testimony as coming over to 398 Grand street and carrying away a bundle with his father, which of them it was (Indicating)? A There (Witness indicating).

MR. MANCUSO: (Addressing the person indicated:) What is your name?

THE PERSON INDICATED: Louis Rappa.

MR. MANCUSO: Well, take the stand.

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

(Residence, 127 Ludlow street).

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DIRECT EXAMINATION BY MR. MANCUSO:

Q What do you work at? A Fruit.

Q For whom? A S. Goldzahn.

Q Where? A 148 Attorney street.

Q Is Harry Rapps your father? A Yes, sir.

Q On October 4, 1916, did you go at about 7:30 or 8:00 o'clock that morning, did you go with your father to 398 Grand street? A No, sir, I was working that time.

Q Who were you working for? A S. Goldzahn.

Q The same people? A Yes.

Q What time did you go to work that day? A Five o'clock in the morning.

Q Is that the time you go to work now? A Yes.

Q And you work until what time? A Half past eight at night.

Q Did you when you arrived at 398 Grand street help carry some bundles or packages away? A No, sir, I was down in the market.

Q (Continuing) Wait. Packages or bundles, with your father, to your home? A No, sir.

Q Did you go into any vacant apartment on the first floor of 398 Grand street? A No, sir.

Q Did you see Mrs. Wisnia there? A I don't know that woman.

BY THE COURT:

Q Well, did you see her there? A No, sir.

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CROSS-EXAMINATION BY MR. MOORE:

Q Now, you say you work every day? A Yes, sir.

Q From five o'clock in the morning until half past eight at night? — A Yes, sir.

Q Never lose a day? A No, sir.

Q How long have you been doing that? A Been doing that for the last two years, more than two years.

Q Aren't there days during that time when you did not go to work? A I did go to work, working right along, and never stopped.

Q I say, weren't there some days when you did not work? A Sundays.

Q No week days? A Week days, only on holidays.

BY THE COURT:

Q You keep the Jewish holidays? A Yes, sir.

Q And every other day you work except Sundays and Jewish holidays? A Yes, sir.

BY MR. MOORE:

Q What kind of business is this line? A Wholesale produce.

Q Then, does he have other men working for him? A Yes.

Q How old are you? A Eighteen.

BY THE COURT:

Q What do you mean by produce? A Potatoes, onions, apples.

BY MR. MOORE:

Q How many other men has he working for him? A One man.

Q Outside of you? A Yes.

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Q Then you worked more, according to your story, than fifty-four hours a week and have been right along, you say?

A This is altogether a different market. We go down to market at half past four and five o'clock in the morning and we work right along.

Q You go down in the market and work there, then what do you do? A We come right back to the store. Then go back for another load.

Q Where did you board during this time, where did you eat? A We used to go home at twelve o'clock and eat.

Q Where did you eat any time you did eat? A In a restaurant sometimes, go in for a cup of coffee in a restaurant in the morning.

Q Well, you boarded at home, didn't you? A Yes.

Q And you went home for your meals? A Dinner time.

Q Yes, breakfast time too very frequently? A Breakfast, used to have a cup of coffee sometimes.

Q After you got done buying your goods in the market didn't you go home for your breakfast? A No, sir.

Q You went home, however, for your noonday meal? A Yes.

Q Always? A Not always.

Q Well, generally? A Generally.

Q And how much time did you have during the noon hour? A Just about half an hour.

Q Where is this place where you work? A 148 Attorney street.

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Q How far is that from where you lived? A That's only six blocks away.

Q Did you go home for your supper at night? A I come home - when I am through I go home.

Q No, don't you go home for your supper at night? A No, sir, when I am through.

Q You say you worked until eight o'clock at night? A Yes.

Q Did you go without anything to eat from morning until eight o'clock at night excepting when you were home for the noonday meal? A No, sir. I used to eat something outside once in a while.

Q Yes, and you used to eat home? A Yes, when I went home for supper, when I got through with my work.

Q Isn't it a fact, if you went down to market at five o'clock in the morning, that was to load supplies that were taken to this place? A Yes.

Q And then after that you had time off for your breakfast and went over to the store and worked around the store, didn't you? A We take the load right off.

Q Now, isn't that a fact? A What?

Q (Previous question repeated by the stenographer). A Yes sir.

Q After you had had your breakfast? A Yes, sir.

Q And so there were a good many mornings you went home between seven and nine o'clock in the morning? A No, sir.

MR. MANCUSO: I object. The witness has said a num-

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ber of times that he did not go home for breakfast.

Q But there were times when you went home in the forenoon, weren't there? A No, sir.

Q Never? A Not always.

Q I did not say always. There were times when you were at your house in the forenoon, weren't there? A No, sir.

Q Well, why did you say "Not always?" A Before I went out of the house I had breakfast.

Q Well, that was at five o'clock in the morning? A Yes, sir.

Q And then from that time you went to your home frequently in the forenoon, didn't you? A No, sir.

Q Well, did you go sometimes? A No, sir.

Q Never went back to your home then from the time you left in the morning until when? A Until noon.

Q What time at noon? A Twelve o'clock.

Q Did you always go home at twelve? A Twelve or half past twelve.

Q Or sometimes eleven? A Never eleven.

Q Where did you work up to the time you went home? A In Attorney street.

Q Well, you first went to the market? A That was in the morning, you go down for a load in the morning and then I am about the store, helping around the store.

Q Then you stayed around the store? A Yes.

Q What time would you get through with your work at the market in the morning? A It's according to how the boss buys

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his stuff.

Q Well, about what time would you get through? A I would be coming down with a load about ten o'clock.

Q Would you be from five until ten o'clock getting this load of stuff at the market? A Yes, sir.

Q Wouldn't you get away from the market much earlier than ten o'clock in the morning? A Not most of the time.

Q Well, I say generally you got back to your store in time to open up in the morning to sell goods in the morning trade? A There is a different man there to open up the store.

Q But this stuff that you buy in the market, was for the morning trade? A Well, morning trade is until twelve o'clock.

Q Well, the morning trade is when the store opens in the morning, isn't it? A Yes.

Q And the reason for getting up so early in the morning, five o'clock, so as to go back to the store for that trade, with that stuff? A Well, around ten o'clock I usually bring down a load, or nine o'clock.

Q You would not be five hours getting a load in the market? A Well, it takes time to buy stuff.

Q Would you be five hours doing that? A Well, I don't buy the stuff. It is the boss that buys the stuff and he gives me a full load.

Q Well, the boss wouldn't stay down at this market until ten o'clock in the morning? A Sometimes he stays down until

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two o'clock.

Q Well, sometimes he goes in the afternoon also? A Well, he is all day in the market.

Q No, I mean where he buys the stuff at five o'clock, that is all early in the morning, isn't it? A He doesn't buy it early in the morning right away, because I got to be down there in the morning to be ready. If stuff comes in he buys it off storekeepers and as soon as he buys it, he buys a little here and a little here and buys it from a store, and then until I get loaded it's around about nine or half past nine.

Q And after the wagon is loaded you take it home? A Yes.

Q Do you have anybody with you when you load your wagon?

A No, sir.

Q Are you all alone all the time? A All alone.

Q Did not the other man sometimes take this wagon to the market? A No, sir.

Q Never? A No, sir, I am the driver.

Q Did the other man go with you? A No, sir; the other man sells the stuff.

Q Did he ever go to help you load or unload early in the morning? A No, sir.

Q Well, what time did he go to work? A He comes in the morning to work.

Q What time? A I can't tell you the time he comes in. He comes in before me.

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Q Comes in the store before you, before five o'clock in the morning? A Sometimes later, I can't tell you exactly.

Q And he is the salesman there at the store? A Yes.

Q So your work is early morning work, isn't it? A Yes, it is all market work.

Q And after that you stay around the store? A No, as soon as I get my load off I go right down. I stop at the house and eat first. He says, "Go ahead and eat."

Q As soon as you get your load off you stop at your house to eat? A Yes.

Q Well, that is somewhere then around ten o'clock? A No, sir, around half past ten. I am down town until he takes the load off and everything is ready, about a quarter to twelve.

Q Now, when you get your load off then you go to your house and eat? A Yes.

Q And that is your habit, isn't it, every day? A Not always.

Q Well, generally? A Generally.

RE-DIRECT EXAMINATION BY MR. MANCUSO:

Q When did you get your load off? A Well, it's according to how much the boss buys, and how the store is fixed up to put the stuff in.

Q Well, how long do you stay there? A I don't do the fixing up. The salesman does that.

Q Well, when do you take your load off, at ten o'clock?

A As soon as I come down he says, "Wait awhile until I fix

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up." It takes us about half an hour to take the stuff off, or something like that.

Q Where is the market? A Which, the store?

Q No, the market you go to in the morning? A Washington Market.

Q How far away from the store is that, about, approximately? A Approximately it's about two miles.

MR. MANCUSO: That is all, the People rest, your Honor.

MR. MOORE: That is all. I ask your Honor to withdraw from the consideration of the jury the first count in the indictment charging grand larceny in the first degree.

THE COURT: Why, I think the evidence is equally applicable to all the counts.

MR. MOORE: Well, I thought there was not any evidence here.

THE COURT: Why, exclusive possession raises a presumption of fact. And that is for the jury to determine.

MR. MOORE: Well, I did not think there was any evidence of possession here.

THE COURT: Well, there is testimony here; whether the jury will so regard it or not is for them to say. Rapps testified -- Well, I do not wish to state the evidence.

MR. MOORE: Then I make the usual general motion to direct a verdict of not guilty on the ground that there is not sufficient evidence to justify the jury in finding

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the defendant guilty beyond a reasonable doubt.

Motion denied. Exception.

Mr. Moore then closed the case for the defense and
Mr. Mancuso closed the case for the People.

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THE PEOPLE v. WISNIA.

-:THE COURT'S CHARGE:-

THE COURT: Gentlemen of the Jury, I realize that you have been temporarily compelled to give up your own business affairs, in order to serve on the jury this month and to perform public service.

No higher duty could devolve upon a citizen in time of peace than to serve as a juror in a criminal action, where the issue is the liberty of a citizen. I therefore desire to express my thanks to you for the close, careful and unwearied attention and interest you have given to the testimony in this case. I think it only proper to thank the learned counsel representing the defendant and the learned assistant district attorney, representing the People, for their courteous conduct during this trial, and for the zeal and fidelity which they have displayed in representing their respective sides or clients. If there has been any discussion or heated argument, why you must consider that that is only due to their zeal, and must not in any way be regarded by you as affecting your view of the case. Statements, comments and arguments made by counsel on either side, when based upon evidence addressed to your reason, should receive attention and consideration; but statements, comments and arguments of counsel on either side which are not supported by evidence, or remarks which are of a personal nature, are valueless and should not receive any consid-

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eration at your hands.

It is the duty of the Court to present for your consideration the rules of law which shall govern you in determining the guilt or innocence of the defendant. There is a division between the duties imposed on the Court and those imposed on the jury by the law. You are the sole and exclusive judges of all questions of fact, and it is your duty under your oaths to apply the law to the facts. It is the duty of the Court to declare the law to you, and you must keep the law in mind when you are weighing the facts, and render a verdict according to the facts, viewed in the light of the law as the Court gives it. The Court merely decides the legal questions that may arise from time to time during the trial. It is not the duty or the province of the Court to form or express an opinion as to the guilt or innocence of the defendant nor as to any fact in the case; and, as you know, the Court has not expressed any opinion in this case, and I assure you that the Court has not formed any opinion. If you have formed any impression that the Court has any views in the matter, why of course, you must disregard them. You must be guided solely by your own impressions of the evidence. It is the duty of the Court to see that the defendant receives a fair and impartial trial, and also to see that the rights of the People are carefully guarded and protected. It is your duty, upon your oaths, to weigh the evidence carefully

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and impartially. You must endeavor to dismiss from your minds any impression which may have a tendency to lead you away from an honest and impartial consideration of the evidence. Neither sympathy nor prejudice are to enter your minds in the consideration of the evidence. The rights of the People and of the defendant require that you coldly and neutrally determine this case.

The defendant is brought here on an indictment. Now, the finding of an indictment against the defendant is no evidence of guilt and it must not be regarded as such by you. It is merely the accusation that is made against him and is put in writing, so that it may be clear, definite and certain, so that he may know exactly what the complaint is that is made against him, what misdoing is charged against him, and so that you may have it clearly in your minds. But no presumption exists against him on account of the finding of the indictment. The law is just the other way. The defendant is presumed to be innocent, and if the evidence does not satisfy you that he is guilty beyond a reasonable doubt, then you must acquit him. That is the result of the presumption of innocence; and the People are required to establish the guilt of the accused beyond a reasonable doubt. The accused is not called upon to establish his innocence. That is to be taken for granted, until you, by your verdict, decide that the evidence

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in this case has convinced you that he is not innocent, but that he is guilty beyond a reasonable doubt.

There are two counts in the indictment. The first one charges the defendant with the crime of grand larceny in the first degree, and the second, with the crime of criminaly receiving stolen property knowing the same to have been stolen, in the first degree.

The first count is a very simple one. It says that on the 4th of October of the year 1916, this defendant, with force and arms, a quantity of cloth of an amount and description to the Grand Jury aforesaid unknown, and of the value of \$1,708.21, of the goods, chattels and personal property of one Louis Rosenblatt, then and there being found, then and there feloniously did steal, take and carry away, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

That is a very clear and simple statement. In ordinary words it alleges that Louis Rosenblatt was the owner of certain cloth worth \$1,700, and that he had it in the County of New York on the 4th of October, 1916, and that this defendant, with force and arms, feloniously did steal, take and carry it away.

The indictment further alleges that that is a violation of the statute, so that I will read the statute,

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which you will see is just as plain and clear as the indictment is.

Larceny is defined by section 1290 of the Penal Law as follows:

"A person who, with ^{the} intent to deprive and 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, personal property, steals that property and is guilty of larceny."

There are two elements, you see, in the crime of larceny. First, there is the taking of personal property. If any one took property from Rosenblatt, from the shelves in his store, with intent to deprive Mr. Rosenblatt of it, and carried it off, as the statute says, with force and arms, to use it for his own purpose or the purpose of any one other than Mr. Rosenblatt, you have the crime of larceny, because there are the two elements present: The taking of the property from the store, and second, the intent.

If there were a larceny committed, the degree of the larceny in this case would be determined by the value of the property, and section 1294 provides that a person is guilty of grand larceny in the first degree who steals or unlawfully obtains or appropriates, in any manner specified

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in this article, property of the value of more than \$500, in any manner whatever.

It has been stipulated in this case, in order to save your time and the time of the Court, that the property alleged to have been stolen was of the value of more than \$500. So that, if that property was the subject of larceny, the crime would be grand larceny in the first degree.

You see, therefore, that the statute is very plain. Larceny is stealing; taking property with felonious intent, and if the value of the property be more than \$500, then such stealing constitutes the crime of grand larceny in the first degree.

The second count charges that this defendant, Max
of Manhattan
Wisnia, in the Borough and County of New York, on the day and year aforesaid, that is, on the 4th of October, the same goods, chattels and personal property mentioned, described and set forth in the first count of this indictment to which reference is hereby made, of the value mentioned and set forth therein, of the goods, chattels and personal property of one Louis Rosenblatt, by a certain person or persons to the Grand Jury aforesaid unknown, then lately before feloniously stolen, taken and carried away from the said Louis Rosenblatt, unlawfully and unjustly did feloniously receive them, the said Max Wisnia then and

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there well knowing the said goods, chattels and personal property to have been feloniously stolen, taken and carried away, against the form of the statute in such case made and provided and against the peace of the People of the State of New York and their dignity.

The language is somewhat involved, and yet it is a very simple accusation. It alleges that certain property which is described in the first count and referred to in the second count, namely, cloth of the value of \$1,700, being the property of one Louis Rosenblatt, which had been stolen from Louis Rosenblatt - that this defendant received it from the thief or from some other person, with guilty knowledge that at the time he received it, it was stolen property.

That is, to establish the crime of criminally receiving stolen property, it must be shown first, that there was a larceny; second, the receipt of the property by this defendant; third, the guilty knowledge that he had at the time he received or bought it, or took it into his possession or under his dominion, that it was stolen property.

There are two degrees of that crime now, and if the property be of greater value than \$50, it is criminally receiving stolen property in the first degree. Here, it being conceded that the property under discussion was of the value of more than \$500, if you find that that property was

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the subject of larceny, was stolen from Rosenblatt and received by this defendant within a short while thereafter, with guilty knowledge that it was so stolen, then if he were not the thief himself, he would be guilty as the receiver, of criminally receiving it.

Section 1308 covers that. It says:

"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, or appropriated wrongfully^a in such^a manner as to constitute larceny, under the provisions of this article, if such misappropriation has been committed within this State, whether such property were so stolen or misappropriated within or without the State, or who, being a dealer in junk, etc., if such property is of the value of more than \$50, is guilty of criminally receiving such property, in the first degree."

You see, the elements there are, first, that there must be a larceny, there must be stolen property. Second, it must be bought or received by the defendant, or he must aid in concealing it or withholding it from the true

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owner, and thirdly and lastly, at the time that he so receives it, or deals with it, he must know that it is stolen. He must know that he is dealing with stolen property. If he has no knowledge that it is stolen property, why then there is no crime; but if all those elements are found to have been established beyond a reasonable doubt, why, the defendant is guilty of criminally receiving stolen property, knowing the same to have been stolen, in the first degree, since the value of the property in this case is conceded.

Now, while under our law it is permitted to set up two counts in an indictment charging different crimes, which are of a cognate nature, it is not intended that the defendant must be convicted of both. In fact, if he were the thief, he could not be the receiver. If some one should come into your house and steal your clothing or your jewelry or your money, that person is a thief, and if the thief should take that clothing, jewelry or any other article of value to some one else, and that other person received it with guilty knowledge that it had been stolen, he would not be the thief or guilty of larceny, but he would be guilty of the crime of criminally receiving stolen property knowing it to have been stolen.

So, if you find the defendant committed any crime, you must fix the crime. You must find him guilty of grand

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larceny in the first degree, or guilty of criminally receiving stolen property knowing the same to have been stolen, in the first degree, or not guilty.

The evidence in this case has been so carefully analyzed by the attorneys on both sides, that I think it is unnecessary for me to refer to it.

You remember the theory of the People is that this defendant came to Mr. Metrick's store with a sample of goods and they had a discussion about it, and that Metrick told him that the sample was not of such size that he could determine anything about the goods. That he brought back a larger piece, and then that Metrick, after bargaining with him, agreed to take those goods and see what he could do with them, and that then the defendant said he would send the rest of the goods, about four hundred yards, he said, to Metrick's ~~his~~ place; and the People have called other witnesses to corroborate the coming of Wisnia there. Then they have called the persons who brought the goods there, Rapps and Sobel, or at least the People say they brought them there, and they have disclosed to you the circumstances under which they came to bring the goods there, and they have called witnesses here who assert that they were present when the goods were brought there, and who are offered as corroboration of Metrick's story; and the People also claim that Metrick, acting innocently, happened to bring the goods to

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the man from whom they were stolen, and that in that way the goods were recovered by the police, and Metrick and all the other persons alleged to have been involved in it were detained for examination, and this defendant charged with the crime of stealing it.

The defendant denies any guilty knowledge of the transaction or any knowledge of the transaction whatever, that he ever went to Metrick's store, and that on the contrary, he claims that Rapps, or that Mrs. Metrick, rather, went to their house and first called the attention of Mrs. Wisnia to it, and asked for her help in examining these goods or finding out the quantity of the goods, and in that way Mrs. Wisnia says she became interested, and that her husband never had anything to do with it. Her husband makes the same statement, and in that way Mrs. Wisnia explains being at 398 Grand street, where the goods were and where she and ^{the} witness Rapps, it is alleged, were seen by the janitor, who was called here as a witness.

Now, it is for you to weigh all that evidence calmly, quietly and judicially, and you must not get excited. There is no occasion for excitement. You know, you are not lawyers. You are not retained on one side or the other. You are impartial men to whom the People present their evidence, and the defendant presents his, the theory being that you will weigh it all. The law makes you the sole and exclusive judges of the facts, and the facts can only

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be proved by witnesses, by the testimony of witnesses, given here before you, or by such documentary evidence as may have been received in evidence.

You are the sole judges of the credibility of the witnesses. Facts can only be proved by the witnesses, and it is for you to say how much credence you will give to every witness that appears before you. The same rules or tests must be applied to all the witnesses on both sides, the witnesses produced by the People and the witnesses called for the defense. You may believe all of the story told by any witness, all of the testimony, or you may reject it all, or you may believe part of the testimony and reject part, just as your reason and conscience dictate.

If any witness deliberately testified falsely, with guilty knowledge that he was testifying falsely on the material points of the case, such witness would be guilty of perjury, and you would be at liberty to disregard all the testimony of such witness.

If Wisnia never brought any sample or any goods to Metrick, why then Metrick is guilty of perjury, because that is an essential part of the case and a material part of the case.

The People in this case do not claim to have shown who committed the burglary. They have called no witnesses

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to show the actual taking of the property, but that is unnecessary, if the evidence that they have submitted satisfies you that there was a burglary or larceny, and that this person Wisnia was concerned in it.

If there be a larceny, one who is found within a short while thereafter in exclusive possession of the property, may be convicted of the larceny. It is sometimes briefly put, that a person who has recent and exclusive possession of stolen property may be presumed to be guilty of the larceny; that such evidence as that overcomes the presumption of innocence and raises a presumption of guilt. That is a presumption of fact, as we call it. That is, the evidence is offered as proof of the fact that he is guilty, and on it alone you could base a verdict of guilty, if such possession be not satisfactorily explained.

Now, in this case, the defendant denies that he was ever possessed of the property or that he ever knew anything about the property; that whatever knowledge his family had of it was had only by his wife, and that her knowledge was obtained from the complainant Metrick, and that her dealings with the property were solely in the interest of Metrick and at his request.

If you do not believe that, if you are satisfied from a study of all the circumstances of this case, that he

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was possessed of a sample of that property, and that his wife had the dealings at his request with the property, that the property was in 398 Grand street, to avoid suspicion upon him, to avoid danger of arrest, to avoid the consequences of being found with stolen goods which he knew to have been stolen, you may find him guilty of the crime of grand larceny in the first degree. If you are not satisfied from all the evidence in the case that he was guilty of the crime of grand larceny, but that some one else did commit the larceny and that he got that property into his possession or control or dominion for any purpose other than that of returning it to the true owner, if he tried to sell it with a sample, knowing that it was stolen property, if he had that piece of goods in his possession, even if he never had it on his own premises - if he kept it at 398 Grand street and had it brought then to Rappaport house, you could then find him guilty of the crime of criminally receiving stolen property knowing the same to have been stolen, and you would find him guilty in the first degree of that crime, since the value of the property is admitted.

There is no rigid rule laid down to guide you in the decision of the very important questions that are to be decided by you. The law expects you to be honest men, to banish every thought but the desire to do your duty, and that

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should be your only motive, that you should remember that you are performing a very important public service, and that you should keep the law in mind, and the law is very simple in this case, and then you find the facts from the witnesses, weigh their testimony carefully, calmly and judicially, just as if the issue affected the most important affairs of your own lives.

You may consider the manner of the witnesses, the possible interest of any witness in the controversy, the existence of any motive that may have induced any witness to testify falsely. Even if you should find that any witness had a motive, or that there was a possible motive which may have induced a witness to testify falsely, it would be unfair to reject the testimony solely on that ground. A wife may have a motive to protect her husband, and at the same time tell the truth. The defendant may have a motive to testify in order to save himself from going to prison. It would be very unfair to reject his testimony simply on that account; but the existence of a motive which may have influenced the giving of the testimony may always be considered by you.

Weigh all these matters carefully, as I said, and then if you are properly convinced to a moral certainty by the evidence that the defendant is guilty, that is what we mean by proof beyond a reasonable doubt.

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The People are not obliged to prove their case to an absolute certainty. We never find absolute certainty in the ordinary affairs of life. In science and mathematics some things are considered absolutely certain, but in human affairs there is always an element of uncertainty.

Now, the law does not assume any such burden as that. The law is not required to produce people who saw him in the act of taking that property away; but by proof of certain other facts and circumstances from which that inference may properly, reasonably and logically be drawn, such as the possession of the stolen property within a reasonable time, the exclusive and recent possession of stolen property, and all the other testimony as to his alleged dealings with the property - if you believe all that testimony, if you believe the story told by the People's witnesses and reject the story told by the defendant's witnesses, and if the testimony that you believe produces a moral certainty in your minds that he is guilty, why, that is all the law requires. If it falls short of that for any reason, then you have a reasonable doubt.

A reasonable doubt is a doubt based upon reason connected with the evidence, arising and flowing out of the evidence. It is not based on prejudice; it is not based on sympathy; it is not a doubt that is based on a desire to avoid doing your duty if it should be disagreeable. Those matters you should not consider; but if an honest

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man on the jury, after weighing the evidence, in the way that I have indicated, finds himself unable to say for any reason connected with the evidence that he is not morally certain of the defendant's guilt, then his mind is in a state of reasonable doubt and the defendant is entitled to the benefit of that doubt and should be acquitted. If you are convinced beyond a reasonable doubt by the evidence, reviewed calmly and dispassionately, that he committed a crime, then decide which crime you find him guilty of.

If you find him guilty of the first count, you need go no further; find him guilty of grand larceny in the first degree. If you have a reasonable doubt as to whether he was the thief or not, you could not find him guilty of larceny. You should then take up the question of whether the evidence satisfies you that he is guilty of the crime of criminally receiving stolen property, knowing the same to have been stolen, after some one else had stolen it. If you have a reasonable doubt, as I said, of his guilt of that crime, acquit him. If you think he was an innocent man in this transaction, that he had nothing whatever to do with it, as he claims, but became unfortunately involved in it on account of the act of his wife in trying to help out Metrick, or for any other reason except guilt -- I say, if that is your state of mind, if you feel that

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that is the impression the evidence has produced upon you, acquit him. But if you are convinced beyond a reasonable doubt that, even if he were not the thief, that he had dominion over this property, that he had it, or some of it, in his custody; that his wife was acting under his orders; that Rapps was acting under his orders in dealing with this property in 398 Grand street, and the subsequent dealings which brought it to the shop of Metrick, then you could find him guilty of the crime of criminally receiving stolen property knowing the same to have been stolen, in the first degree.

Your verdict therefore should be either guilty of grand larceny in the first degree, or guilty of criminally receiving stolen property knowing the same to have been stolen, in the first degree, or not guilty.

Allusion has been made here to the former conviction of the defendant. It would be grossly unfair if you should be influenced in any way in determining his guilt by that, because that happened long ago, and it could not have any connection logically, you can see that, with this crime that he is now charged with; but it is brought out only for the purpose of affecting his credibility; just as you can show bias or prejudice of any witness on cross-examination, so it is always proper to bring out, when a defendant takes the witness-stand, that the defendant has been previously convicted of crime, or has committed any vicious

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act, so that the jury may take that into account and give it such weight as they think it ought to receive on the question of his credibility only, not on the question of his guilt of this crime, with which it has no connection whatever; but you may take it into account and give it such weight as you think it ought to have in determining the question of credibility; that is, how much credence you will give his testimony. In other words, it affects him only as a witness and not as a defendant. You will please keep that in mind with the other instructions that I have given you on the law in the case, and find your own verdict from your own honest investigation of the facts as found from the testimony that you believe.

Any requests, Mr. Moore?

MR. MOORE: If your Honor please, I think your Honor inadvertently used the name of the defendant for that of Rapps.

THE COURT: Wisnia is the defendant.

MR. MOORE: Well, I say, I think you said that Mrs. Wisnia and the defendant went to 398 Grand street.

THE COURT: No, I meant to say Rapps. There is no evidence that the defendant ever went there, but one of the questions is, whose agent is Rapps?

MR. MOORE: But your Honor used that language.

THE COURT: Well, then, I did not mean that.

MR. MOORE: Yes, sir, I knew it was an inadvertence.

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Now, I ask your Honor to charge the jury that the fact that certain motions were entertained and denied are in no way to influence them.

THE COURT: I so charge. Those were merely legal matters connected with the formal trial of the case, and do not concern the jury in any way. They are merely the Court's expression as to the law involved.

MR. MOORE: Yes. I ask your Honor to charge, in view of the evidence in this case, on the law of accomplices, so far as Rapps and Metrick are concerned.

THE COURT: Well, if the jury find that Metrick and Rapps were concerned in any crime that may have been committed here, either in the receiving of this property or the stealing of it originally, - if Metrick knew he was dealing with stolen property, and Rapps knew he was dealing with stolen property, why, they are what is known in the law as accomplices. All persons concerned in the commission of a crime are equally guilty. One who aids, abets, counsels or advises another in the commission of a crime, is an accomplice, whether he be present or absent when the crime is committed. If an accomplice is called to testify against some one else who is charged with crime, no conviction can be had on his testimony unless it is supported by other evidence, evidence given by other persons than the accomplice, and ^{other} proof of the facts, so that the conviction could not rest on the unsupported

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testimony of the accomplice. Is that satisfactory?

MR. MOORE: Yes, your Honor.

THE COURT: Any requests, Mr. Mancuso?

MR. MANCUSO: No requests, your Honor.

THE COURT: . Of course, you will have to determine in this case, since Metrick and Rapps both deny that they had any guilty intent or guilty knowledge, - you will have to determine whether you believe them or not. If they admitted that they were concerned in the crime they would be accomplices in law, and the Court could then charge you to refrain from finding any verdict of guilty on their testimony, unless it was supported in its material aspects by testimony of other witnesses. If you believe them, that they were not concerned in the crime, why, that will be a finding on your part that they are not accomplices, and the instruction does not extend to them in that case. It is only in the event that you feel that they were accomplices, that they had guilty knowledge, guilty connection with the case, ~~and~~ then you could not convict on their testimony unsupported by other evidence.

You said something about the exhibits. The rule is that if a defendant consents the exhibits may be taken by the jury if they wish them.

MR. MOORE: Any exhibits they desire, yes, sir.

THE COURT: Well, as I understand, the defendant must

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consent personally.

MR. MOORE: Well, he does consent, your Honor.

THE COURT: Well, he consents to have the doctor's book or the cloth or anything that is an exhibit that the jury desire taken out to them? Then if we are not here, should they ask for the exhibits, does he consent to their being taken to the jury-room?

MR. MOORE: The defendant says he personally consents, your Honor.

THE COURT: The stenographer will note that the defendant personally consents to that. Now, Gentlemen, you will please pass out.

(The jury retired at 4:15 o'clock p.m. and returned to the court room at 6:10 o'clock p.m., and rendered the following verdict:

We find the defendant guilty of criminally receiving stolen property, knowing the same to have been stolen, in the first degree).

MR. MOORE: If your Honor please, I move to set aside the verdict on the ground, first, that it is contrary to law; second, it is contrary to the evidence, and third, upon the exceptions taken to your Honor's rulings during the trial.

THE COURT: The motion is denied, with permission

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to renew it at the time of sentence on the same or other grounds. All your rights are reserved. When will you be ready for sentence?

MR. SPIEGEL: Any time that the Court fixes, whenever your Honor will be here.

THE COURT: I will be here all next week. I will remand him for one week.

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