

START

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CASE

CASE #2420

COURT OF GENERAL SESSIONS OF THE PEACE.

.....X
PEOPLE OF THE STATE OF NEW YORK,

-against-

ALFRED FRANKEL and BENNIE ROSNER
.....X

2940

New York, March 4, 1918.

WITNESS	DIR	CROSS	RE D	RE C
SAMUEL HAIN	1	4		
THOMAS P. BOLAND	10	16	27	
RUDOLPH E. HOERR	27	30	38	38
SAMUEL HAIN (Recalled)	42	43.		

March 5, 1918.

Ettie Rosner	45	--
Alfred Frankel	47	56
Bennie Rosner	68	77

CASE #2420

COURT OF GENERAL SESSIONS OF THE PEACE.

2940

PEOPLE OF THE STATE OF NEW YORK,

-against-

ALFRED FRANKEL and BENNIE ROSNER,

Defendants.

Indicted for
Burglary Third Degree and
Receiving First Degree.

Judt. filed Dec. 28th 1919

New York, March 4, 1918.

BEFORE:

HON. C. C. NOTT, Justice and a Jury.

APPEARANCES:

EDWARD SWANN, District Attorney,
By Mr. Markewich, Assistant District Attorney.

FREDERICK A. WARE, ESQ.,
Attorney for Defendant Frankel.

Jury empanelled and sworn.

(Recess taken until two-thirty p. m.)

The District Attorney opens to the Jury.

MR. WARE: If Your Honor please, the defendant Rosner
is desirous of interrogating the witnesses himself.

THE COURT: I will permit him to when the proper time
comes.

SAMUEL HAIN, residing at 636 East 170th St., called on behalf
of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

MR. WARE: I ask that all witnesses be excluded.

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THE COURT: All witnesses will be excluded from the Court room, on both sides.

(Witnesses leave the room.)

Q Mr. Hain, what is your business? A My business? Manufacturing.

Q Where is your place of business? A 111 Bleecker St.

Q Did a brother of yours have a place of business at 219 Wooster St.? A 219 Wooster St. -- he was in the hospital.

Q Was he in business there? A Yes, sir.

Q Where was he? A In the hospital.

Q What hospital? A Suydenham Hospital.

Q Who took charge of your brother's place of business?

A I did

Q You did? A Yes, sir.

Q What is your brother's full name? A Louis.

Q I want you to talk up loud so these gentlemen over here, this last gentleman can hear you. What is your place of business, what is the sort of business he does? A Woolen business.

Q What part of the building was the place of business situated in? A Ground, a ground store.

Q Double store? A Single store.

Q One large plate glass window? A Yes.

Q What time on that day were you at that store? A I was there about half past nine in the morning.

Q Were you in the store? A I was in the store.

Q What time did you leave the store? A About ten or fifteen

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minutes later.

Q What did you do when you left the store? A Locked the doors with a patent lock, and hung up a lock on the outside.

Q You put a padlock on the door? A There is two locks, one a patent lock and one a heavy lock outside, a padlock.

Q You put both locks on? A I put both locks on.

Q And you locked the store? A And I went to my place of business.

Q And then you went to your place of business? A Yes, sir.

Q What time did you return to your brother's place of business? A A neighbor of mine came --

Q Never mind that, what time did you return? A About two or half past two.

Q When you came to your brother's store, what did you find? A I find the door was smashed in or is opened with a jimmy.

Q Well tell us how? A By a jimmy.

Q What did you find? A I find a piece of the door broken out, and the door was open and somethings was missing, I didn't know how much exactly.

Q Are you able to identify the goods in your brother's store that morning? A Yes, sir.

Q Now come down here please and look at these and tell us if you identify these? (Exhibiting a roll of goods.) A (Witness examinigg same) Yes, I saw these goods the day previous in the store.

Q You saw these goods in your brother's store? A Yes, sir.

Q The day previous? A Yes, sir.

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Q And the morning when you locked the store, were the goods in the store? A The goods were there in the store.

Q And when you returned at about two o'clock that afternoon, were the goods in the store? A No, it was not -- it was lying on the case, and all the goods from the case had disappeared.

Q It had disappeared? A Yes, sir.

MR. MARKEWICH: I just offer part of it in evidence, only this one.

MR. WARE: We object if Your Honor please, on the ground that they have not been properly connected.

THE COURT: You may mark them for identification for the present.

(Same marked People's Exhibit 1 for identification.)

Q Was there anybody in your brother's store when you came back? A When I came back nobody in there.

CROSS EXAMINATION BY MR. WARE:

Q What day of the week was this? A Saturday.

Q Are you employed in your brother's store? A No.

Q How did you happen to be there? A My brother went to the hospital the 30th of November for an operation, and the next day, -- so he gives me the keys, he had to receive some goods of a jobbing house -- from the railroad, I take it in, he had the keys and he gave them to me, and the truckman brought the goods up and I opened the door and I had the truckman brought in the case, in the bails and I locked up the door of the place.

Q What day was that? A Saturday, the same day.

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Q Same day? A Same day he went from there to the hospital, that was on a Saturday.

Q Was not his business carried on by anybody? A No.

Q The store was shut up? A It was shut.

Q When had you been in there before that Saturday? A Oh, I am over there every day in the week.

Q You are not in partnership with your brother? A No, but I am visiting him just the same.

Q In his store? A In his store.

Q Haven't you any business of your own? A Yes.

Q And where is your business? A 111 Bleecker St., just around the corner from his store.

Q What is the store? A Manufacturing pants.

Q Pants? A Yes, sir.

Q Do you come around and see your brother every day? A Yes.

Q How long had that been going on? A Ever since he is there, it is a couple of years.

Q You go and see your brother every day? A Almost every day.

Q Does he come to see you? A Yes, sure.

Q Your brother only occupies the store? A The store.

Q How deep is that? A How deep?

Q Yes. A I should say it is about 80 feet.

Q And how about, about how large a stock does he carry?

A Well it is accordingly, sometimes he carries five thousand, sometimes ten thousand, sometimes a few hundred, just the way he sells it; the stock varies.

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Q He is a jobber? A He is a jobber in woolens.

Q And what is there about this bundle of cloth that enables you to identify this as being the same cloth that you saw in your brother's place the day before, what is there about it? A About it? Well, I know the nature of the goods.

Q There are thousands of other bundles just like this, aren't there in New York? A Yes.

Q And your attention was not called particularly to this on Friday, was it? A No.

Q You just looked over the whole stock? A It was just goods that was lying on the case, right near the door.

Q About this, I suppose this was lying right up against the door, wasn't it?(Indicating) A No, not against the door, but on the case, piled up.

Q How many other piles of goods was there similar in there? A There were a number of goods there.

Q Was there any mark on these bundles of cloth that enables you to say that this property belongs to your brother? A The tickets on it.

Q Where? A Hanging on the end.

Q Where, this? (Indicating) A No, there is a ticket, isn't there?

Q Over here? A Yes.

Q What does this ticket do? A The ticket corresponds with the bill he has for it.

Q How do you know he has got the bill for it? A I looked

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up after the bill.

Q Where is it? A In his place of business.

Q You mean to say that you looked in the books to see whether the entries corresponded with this tag? A That is the goods, yes.

Q You made a memorandum then in your own book, was it, that you could compare that with your brother's books? A After it was -- I came to the station house, I see these goods; and then I see there was missing so much, so I took the bills, whatever he had there, only to identify the goods, that that is the numbers of the goods.

Q Where did you take the bills? A In his file.

Q And you didn't take this bundle of cloth with you, did you? A No, it was in the station house.

Q You didn't take this bill with you? A No, I did not.

Q You made a note of it on some paper? A Yes, and it corresponds with the bills.

Q Where was this goods, do you know, in the station house?

A As soon as I saw the goods, all right, I saw all of the bills too.

Q What? A I had the bills, I didn't need to note it.

Q Have you the bills? You had the bills, what did you do with them? A The bills are in the store.

Q Who put them in the store? A I put them back, I didn't need them.

Q You brought the bills to the station house? A No.

Q Where did you compare the bills with these goods? A There

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are the numbers in the station house, I find the numbers and I went to the store too, I looked up the bills, to know how much there was and I saw the same numbers corresponding.

Q The goods that were in the station house? A Yes, sir.

Q And the bills were in the store? A Yes, sir.

Q How did you know the numbers on these tags corresponded to the numbers on the bills in the store? A As I told you, I saw the tags in the station house.

Q Then how can you have carried it in your memory from the station house to the store? A Yes, sir, only about two blocks, I can remember that much.

Q Then if you can remember that much, can't you tell me about what those numbers were now? A Now, it is three months back, I can not remember.

Q How many numbers were there on these tags? A There was there three numbers, -- file number and the piece number and the number of the goods, that is usually on goods, on the ticket, on the piece goods.

Q And you do not pretend to say you knew any of these numbers, you did not know anything about that, did you? A No, I didn't know only as I look at the bill.

Q Was there only two of them or four of them or three of them or five of them, that is the figures on the number, where it is marked style, or where it is printed the word style, can you tell me the number of those, was it one, two, three, four or five figures?

A I can't recollect now.

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Q Don't know whether it was No. 1 or No. 1,000,000.?

A I told you I didn't know.

Q And the same thing in regard to the other piece, you don't remember anything about that, do you? A Not now.

Q Do you know whether the other piece was marked, the cost price, style number and the number of yards, do you remember whether they were all filled out? A I can not remember now, but I had a few bills, about two or three bills, and they corresponded with the numbers on the pieces.

Q But the bills were at the store? A The bills were at the store.

Q Then how did you know, if the bills were at the store, that the numbers corresponded to those figures in the station house? A Well I looked first in the station house. I went into the station house and I saw the numbers, and then I went back into the store and I get the bills thinking they would probably ask me to show the bills for it, so I had the bills with me, and I saw it was the same.

Q You mean to say you carried all these bills in there?

A Yes.

Q From the station house to the store? A No, no, no.

Q You mean you carried all these numbers in your head?

A No, I can not remember all of them. There was about sixteen pieces, I could not remember all of them, but a few of them.

Q You did not make any memorandum of these, of any of the numbers on these pieces? A No, because it is only a little ways

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away from the station house.

Q Yet you carried it in your head, is that the idea?

A As I say not all of them, but a few.

Q How do you know that these are two of them, of those sixteen pieces? A This they left, this larger piece, and I took all of the other pieces back, that is thirteen pieces back but these.

Q Why didn't you take this one? A They wanted it for evidence, they would not give it to me.

Q As a matter of fact you don't know who broke into your store, do you? A No, I don't know who broke in.

THOMAS P. BOLAND, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q What is your Precinct? A I am attached to the Sergeant, and assigned to the Record Room at Headquarters. Shield No. 462.

Q Officer, how long are you attached to the Police Force of this City? A Nine years.

Q On the first day of December, 1917 were you in the vicinity of Wooster St., this County? A At that time I was attached to the Sixteenth Precinct as a crime prevention officer. Wooster St. is in the boundaries of the precinct.

Q Were you at the building premises 217 Wooster St. on that

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day? A About two p. m.

Q Yes. A Officer Hoerr --

THE COURT: The question is were you near these premises, yes or no?

THE WITNESS: Sure.

Q And what did you observe when you got to the premises 217 Wooster St.? A 219 Wooster St.

Q Well at 219 Wooster St. rather? A I observed that about the center of the door, which was open and broke badly, that there was a break about that long (Indicating); about ten inches and could plainly be seen from the opposite side of the street.

Q Did you notice whether the door was open or shut? A Well all I could notice from the opposite side of the street where I was standing was this break.

Q Did you notice whether this lock was on or off? A Padlock was off.

Q Noticed the padlock was off? A Yes, sir.

Q You say that you saw that from across the street? A Indid.

Q What did you do? A I went into the premises 218 on the first floor, which is occupied as a sponging store, where they sponge and shrink goods. I went in there and stood watching over across the street to No. 219, kept watch of the number from the opposite side of the street.

Q How long did you remain there? A Oh about five minutes altogether.

Q Was Officer Hoerr along with you? A Not at that time.

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Q When did he arrive if at all? A He arrived about ¹² two or three minutes later.

Q What did he do? A As he was passing ^{up} Wooster St. I tapped on the window, and he came into the premises.

Q And he remained at that time across the street with you?
A He did.

Q Did you at any time after you arrived across the street see the defendants? A I saw the defendant Frankel walking south on Wooster St. with two unknown other men, one who had a derby hat and the other had a velour hat. As they came in front of 219 the two men stopped, Frankel went over and I saw he shaded his eyes and looked into the store, into the window.

Q What store, 219 Wooster St.? A 219 Wooster St., yes, sir; and he came back and joined the two men who stood on the sidewalk. One of the men walked south and one of them, the one with the velour hat, went south, and the one with the derby hat, he walked north.

Q Then tell us what happened? A Just after that happened Officer Hoerr came along and came into the premises. We stood watching for about three minutes after and Frankel came down on the same side, 219 side. At that time there had been a rack truck, a rack truck that drew down in front of the premises, between the time Frankel left there, and the other two men were there. Frankel walked down on the sidewalk and took hold of the head of the horses of this little truck, and pulled it out about twenty feet south.

Q South of what? A South of the number 219. Then Rosner

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drove along in a covered wagon, red covered wagon with a Z on the side in a circle. They got in front of the door. Rosener got down off the wagon.

Q You are talking of the door in front of what? A 219 Wooster St., outside the store. When they got in front of this store Rosner came down off the wagon, walked to the back of the wagon and opened up the tail board, while Frankel went in, went to the door, pushed the door open and went inside and came out with three pieces of goods on his shoulder.

Q Inside of 219 Wooster St.? A Inside of 219 Wooster St.

Q Frankel you saw come out with three pieces of goods?

A Yes, sir.

Q Then tell us what took place? A As he placed the three goods into the wagon, Rosner went in and came out, and when he came out he had three or four pieces, I am not sure, because they were smaller pieces and I could not say how many there were, and he put them in the wagon. As he put them in the wagon Frankel made another trip back and came out with more goods on his shoulder and placed them in the wagon. When he was placing them in the wagon Rosner went back for a second time. Then Rosner came back the second time and as he came back to the wagon he then climbed into the wagon and as Frankel was coming out with the third load of goods, Officer Hoerr and I went across the street.

Q Did you place both defendants under arrest? A Rosner was in the wagon putting the goods -- evidently putting the goods around,

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they had been thrown in the wagon and he was arranging them, making more room. He was in the wagon and I covered him with my revolver and Frankel was coming out with three pieces of goods on his shoulder and when he saw me covering Rosner he dropped the goods but Officer Hoerr grabbed him.

MR. WARE: Might I ask what those last few words were that you said?

THE WITNESS: Officer Hoerr grabbed him.

Q What did you do with the wagons and the goods? A Well in the commotion a man on horseback, a traffic man came up; and we put him in back of the wagon and we took the two defendants in back of the store, we thought we might be able to find --

Q You took them back to the store? A Back to the store to look around the store, we thought there might be somebody hid in there.

MR. WARE: I object to that.

Q Never mind what you thought.

MR. WARE: I move to strike out what he thought.

THE COURT: Motion granted.

Q You took the two defendants back into the store, that is into 219 Wooster St.? A Then we examined the door, gave it a closer examination, of the door and of the place, a closer examination.

Q Tell us what condition you found the door in? A Just at the centre of the door, where the lock would be, there was a

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look both ways, it was locked with a padlock afterwards and at that place there was ten inches of the door broken away, broken out, we looked at that, and looked inside and looked around and looked in the back of the store and then brought them out, left an officer in charge of the store and brought the two of them, the two defendants to the station house.

Q At the station house did you have a conversation with either of the defendants? A I had a conversation with Rosner on the way over there.

Q What did you say to him or what did Rosner say to you? A I said, "Pretty good job Rosner", "Well," he said, "all I was going to get out of it was fifty bucks."

DEFENDANT ROSNER: Your Honor that is a lie, I never said that at all.

THE COURT: Keep quiet now, the witness is testifying on the stand, don't you say anything.

Q Did you have any further talk with Rosner? A Not with Rosner.

Q Did you have any talk with Frankel? A No, my partner had.

Q Now I show you --

MR. WARE: Now I object to that statement that his partner did.

THE COURT: It may stand only if he heard it. Did you hear the conversation?

THE WITNESS: Yes, I heard the end of it Your Honor.

THE COURT: You can tell what you heard.

A Well, on the way over to the station house my partner had

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a talk with Frankel, just exactly what that was I don't know; but when they got into the station house he said, "Where is the jimmie". Frankel said "You will find it either on top of the case or behind the case in the store." And Officer Hoerr left the station house, went down to the store and returned in about five minutes with the jimmie that we have here as evidence.

Q Is this the jimmie? (Handing same to witness) A Yes, that is it.

MR. MARKEWICH: I offer it in evidence.

THE COURT: Received.

(Same received in evidence and marked People's Exhibit 2.)

Q Officer, I show you these two pieces of goods marked People's Exhibit 1 for identification and I ask you if those two pieces were part of the goods that you saw the defendants take out of the store at 219 Wooster St. and put upon a wagon? A May I look at them?

Q Yes, come right down here. A (Witness does so.) Yes, these are two of the pieces; and this particular piece, these particular pieces are some of the pieces he took -- that is one of the pieces of goods that Frankel had on his shoulder on the last trip out.

MR. MARKEWICH: Now I offer them in evidence if Your Honor please.

(Marked in evidence as People's Exhibit No. 1.)

CROSS EXAMINATION BY MR. WARE:

Q Officer, what was it that first attracted your attention

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to this place at 219 Wooster St.? A A telephone call that
Officer Hoerr got from the telephone.

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

Q Two o'clock in the afternoon? A Close on to two, maybe
a little before.

Q What did you do in consequence? A Both of us left the
station house together.

Q And did you both go to the premises? A I went to the
corner of Third St. and Mercer, and turned west on Mercer St. until
I came to Wooster St., and then went south on Wooster St. Officer
Hoerr left me on the corner of Mercer and Third.

Q And I understand that as you looked across the street --
A I had to pass that place.

Q You were on the opposite side of the street? A Yes, I
was standing there.

Q Was there anybody in sight at that time? A Anybody in sight?

Q Yes. A People passing up and down.

Q Were there other stores alongside, both sides on the
avenue there that were open? A Well the store next to it I am
pretty sure was closed. It is a tenement house, this store -- two
stores, both in the same business.

Q You say there was a truck in front of the place? A Not
at the first time, that truck drew there later, it was not
a truck, it was a rack, you could not call it a truck, it was
a big paper box rack that they take paper boxes away on.

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Q Did you notice that particularly? A I noticed it of course because it pulled up there and stopped my view, and I had to change my place where I was standing to keep the door so I could see it.

Q How many men were in that truck? A One truckman.

Q One driver? A Yes, sir.

Q Horse I presume, one horse? A Two horses.

Q And did you pay any attention to the wagon at all?

A You knew -- I knew it was a paper box wagon, I knew paper box people were in that neighborhood, working in that neighborhood.

Q You knew that would not -- A And I also knew that they would not have anything to do with the other people in a wagon of that kind, they would have a closed wagon.

Q A closed wagon? A This was an open rack wagon.

Q A truck? A No, sir, a rack wagon.

Q I understand you to say that you could see across the way and see that the padlock had been broken off? A I knew that premises pretty well, I have been patrolling in that neighborhood, I know there is a padlock on that door.

Q You did know that, did you? A Yes, sir.

Q So you know all about the store before you go there?

A I know that neighborhood thoroughly, I have been nine years in that neighborhood.

Q Didn't I understand you to say that you saw that the door was cracked? A I saw the crack about ten inches long, plainly visible from the other side of the street.

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Q Visible to anybody that went up and down the sidewalk?

A Anybody could see that, you could see it at that time half a block away.

Q But nobody paid any attention to it, did they, although the padlock was broken off and the door was cracked? A Nobody paid any attention.

Q And nobody stopped and looked at it? You didn't see anybody going in and out of those premises? A I did not until the defendants Frankel and Rosner went in and out.

Q When you went -- when you first saw this door broken and the padlock broken off you were alone? A I was alone.

Q And Officer Hoerr was not in the neighborhood? A Officer Hoerr was proceeding to the place; just what route he took I didn't know then, I know now.

Q You didn't see him? A Not then.

Q You did see him in two or three minutes? A Yes.

Q And he was looking in the same direction? A In the same direction.

Q Why didn't you go over there Officer, to see if there was anybody inside? A I wanted to wait and see if anybody was coming out, if anybody could come out, nobody could go out, either in or out, or I would see them.

Q If anybody went in you would have been able to have got hold of them, wouldn't you? A We thought we would wait a while and await developments.

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Q You say you saw Frankel come in with two other men?

A No.

Q Go along the street? A Two unknown men.

Q Sure of that? A Positive.

Q You did not arrest Frankel, did you? A No, sir, Hoerr did.

Q Were you present when he was arrested? A I was covering Rosner on the wagon, I was right close by.

Q Officer, were you within a block and a half of Frankel when he was arrested by Hoerr? A I could not have been more than five feet away from him.

Q Sure of that? A Positive.

Q And that is right near the premises 219? A He dropped the stuff and started to run, didn't get far away.

Q Of course you didn't know who actually broke open these premises, did you? A No, sir.

Q And you didn't care about that? A I did care to know but I didn't know.

Q You say that you saw Frankel move the truck or wagon?
A Move the wagon down.

Q Where was the wagon? A Right opposite, I told you.

Q Where was the driver? A He was in or about doing business, getting ready for a shipment I guess.

Q Was he on that wagon? A No, nobody on the wagon.

Q What sort of a wagon was it? A A rack I said.

Q What store was he in, do you know he was in any store?

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A There is a place next door that makes paper boxes, and there is two or three different stores, I guess he was up stairs about a shipment, I don't know where he was.

Q Not on the wagon? A Nobody on the wagon.

Q You say you saw Rosner coming along? A Rosner came along and drove up to the curb.

Q Did you know anything about Rosner's business? A Did I know anything about his business?

Q Yes. A I know what he told me.

Q What sort of a wagon was that? A It was one of old Ziegler's Frankfurter wagons and had a big Z on the side surrounded by stars in a circle.

Q A covered wagon? A A covered wagon -- shed wagon.

Q Anybody in it besides Frankel? A No.

Q One horse? A One horse.

Q Did you see anybody on the curb or sidewalk signal to Rosner?

A Signal to Rosner?

Q Yes. A No, I did not.

Q You could have heard anything that was said? A No, I was inside, I could not hear.

Q You were behind something? A No, I was inside the store, looking out.

Q You could see what you have described, but you could not hear anything that was said? A I could not hear from the inside.

Q So you don't know what was said? A No, I could not say what was said.

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Q You are perfectly positive about what you have told us about the arrest of Frankel, being right there at the premises?

A Positive..

Q On the sidewalk? A On the sidewalk near the truck and the goods, I had two things to pay attention to, Rosner and the wagon to pay attention to, and there was threepieces of goods on the ground.

Q Didn't you know where he was arrested, whether it was on the sidewalk? A He was arrested right back of me.

Q How far behind your back was that? A That I could not say.

Q Could it have been a block away, a block behind your back?

A No, I don't think it was more than five or ten feet he was behind me from the time it took him, he could not have been more than five or ten feet away.

BY THE COURT:

Q You say you saw Frankel make the first trip into the store?

A Frankel made the first trip, yes, sir.

Q Was the door closed then? A The door was closed together

Q You saw him open it? A I saw him push it open and then go in. And then the door was opened and closed as they went and made their trips in and out.

BY THE SIXTH JUROR:

Q Has the Sergeant any previous acquaintance with either of the defendants? A I never saw them, I never heard of them in my life.

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BY THE DEFENDANT ROSNER:

Q You say you seen a crack in the door when you passed about ten inches long? A About ten inches.

Q You waited a few minutes and you seen three men go along?

A I saw three men, yes, I saw them with Frankel.

Q And the other two men went where? A One went south and one went north.

Q And the other two did not look anything like me, didn't they, either one of the two? A You were not one of the two that came down the first time, no.

Q After those three men went away how long did it take before I came back with Frankel? A You didn't come back with Frankel; Frankel was on the sidewalk. You were driving the wagon close to the curb, in about two or three minutes after.

Q Well you said three men walked away, did you not?

A I did, yes, sir.

Q One walked south and one -- A North and then Frankel came back again south.

Q Then they separated? A Undoubtedly, I guess they were watching both corners.

Q I was not anywhere around? A I didn't notice you.

Q You are positive of that? A I didn't see you; you may have been there but I didn't see you around.

Q And after they separated, how long did it take before I came along with my wagon? A About three minutes.

Q That is all? A A few minutes.

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Q And I stepped off my wagon and opened up the tail part?²⁴
A You got off on the sidewalk side and you walked behind your wagon and came up and opened the tail of the wagon.

Q And then I walked into the store and carried out the goods?
A No, Frankel went in first.

Q And I walked in with him?
A No, no, you did not, when Frankel came out with the stuff in his arms then you went in.

Q And are you sure I did not walk in with him?
A I told you, I testified that you did not walk in with him, and the record is there (Pointing) and that will show it.

Q When you were waiting here and had us under observation for a few minutes and as you say we carried -- that we made about three trips, and you came running towards the wagon, did I make any attempt to run away?
A You could not, you was in there with the pieces of goods and I got you covered with my gun. The front of the wagon was closed and I covered you from coming out of the back with my gun.

Q I didn't make any attempt to get away, did I?
A Absolutely none.

Q You say that I says to you that I was going to be paid \$50.?
A You said to me you was going to get \$50. for that job.

Q You said I said that to you?
A Positively.

Q You are not mistaken about that, are you?
A No, absolutely.

Q Now isn't it a fact that you asked me in the store, when you placed me under arrest, you says, "Where did you come from", and

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I says to you that I was hired to do the trucking? A You told me you were hired to do the trucking and you were going to get \$50. for doing the job.

Q You asked me "Who hired you", and I told you a fellow with a bluehat? A Some unknown man.

Q The fellow with the velour hat, the fellow you seen walking away from the place, -- and I said to you that I was promised \$50.? A You said you were going to get \$50. for taking and trucking it away. I asked you where you were going to take it and you said to a stable on Willard St.

DEFENDANT FRANKEL: I want to ask some questions.

THE COURT: If you want any questions put to the witness your lawyer will put them.

BY MR. WARE:

Q Officer Hoerr was the only other officer in this case?

A Officer Hoerr and of course the traffic man drove up and kept the crowd back.

Q I mean at the outset. A At the outset.

Q You and Officer Hoerr left together? A Left the station house together.

Q Officer, you testified that you tapped on the window to where you were, to the other officer? A I signalled the officer.

Q And that was one flight up, wasn't it.? A No, right on the sidewalk.

Q And Officer Hoerr knew you were going to be there?

A I don't think he did because he was walking right by the place,

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and he was going over to 219 and I tapped on the window.

Q Was that before or after this man with the velour hat on came by? A It was after.

Q It was after that? A Yes.

Q Officer, just tell us how you happened to have gone -- how you happened to go to the store and how Officer Hoerr happened to be passing on the sidewalk? A The both left the station house together, the both of us with the same intention, of going down to 219 Wooster St., but took opposite directions knowing well that 219 Wooster St. was situated about the centre of the block. We wanted to come in towards it from both ends. I went down through Third St. and Officer Hoerr, the last I saw of him was going down through Mercer, afterwards he went through Bleecker and up Wooster.

Q And he passed the window in which you were stopping?

A Yes, sir.

Q And you tapped on the glass? A Yes, sir.

Q And that attracted his attention? A Undoubtedly.

Q Did he see you? A Sure.

Q Of course you were in plain clothes? A In plain clothes.

Q Both of you? A We worked together and have for years.

Q At the time that you saw these three men as you say, you were alone? A I was alone.

Q And I assume that that is why you didn't try to make any

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arrests at that time? A I wanted to see something develop before I made an arrest.

REDIRECT EXAMINATION BY MR. MARKEWICH:

Q A telephone message was received at the station house then and received by Officer Hoerr?

MR. WARE: I object to that.

THE COURT: I overrule the objection. He can not say what it was.

Q After the telephone message was received, you and Officer Hoerr left? A Started, and left the station house.

**

RUDOLPH J. HOERR, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q How long are you connected with the Police Department of the City of New York? A About six years.

Q On the first day of December, 1917 at about two O'clock were you opposite 219 Wooster St.? A I was.

Q Was Officer Boland in your company? A Yes, sir.

Q What did you do together with Officer Boland? A I was in the premises 219 Wooster St. looking across -- in premises 216 and 218 Wooster St., looking over towards 219 Wooster St.

Q What kind of a place of business is 219 Wooster St.?

A Store, occupied by a woolen concern, -- woolens.

Q How long have you remained at 216 and 218 watching premises

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219? A About fifteen minutes.

Q What did you see as you watched? A I seen a large big double truck wagon pull up in front of premises 219 Wooster St.; I saw Defendant Frankel walk down on Wooster St., on the west side of Wooster St.; and I saw Defendant Rosner on the wagon. Defendant Frankel pulled this large double truck wagon down about a door, that is approximately 20 or 25 feet south, on Wooster St.

Q South of it? A South of the premises in question.

Q 219 Wooster St.? A Yes, sir.

Q Yes, go on. A And Defendant Rosner pulled up, and jumped from his wagon and put the tail board down of the wagon which he drove south on Wooster St. Defendant Frankel went into the premises, opened the doors, -- they were closed.

Q Closed but not locked? A Closed but not locked. He went in and started to carry out goods, three rolls of woolens on his shoulder. Then after Defendant Frankel came out with three rolls of goods why Defendant Rosner goes in and started carrying out, but there was always one of them on the wagon while the other was carrying it out.

Q Well at any rate what did you do when you saw the defendant carrying the rolls of cloth? A Waited for my chance to run across and place Defendant Frankel under arrest.

Q What was the defendant Frankel doing? A At the time he was carrying out woolens, he had three rolls of cloth on his shoulder when he dumped them on the street, just coming out with the three, and as I said he dumped the three on the street, and

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the defendant Rosner was in the wagon.

Q What did you do with the Defendant Frankel after you put him under arrest? A Took him into the store.

Q How did you find the door, what did you observe as to the condition of the door? A The door was broken.

Q In what way? A A large, a big piece was taken out of the door about a foot long I should judge, about two or three inches wide, sort of chipped out, or jimmied out or broken out.

Q Did you notice the condition of the lock, if any lock was on the door? A Yes, sir, broken.

Q How long did you keep the defendants in the store?
A About two minutes I should judge.

Q Then what did you do? A Proceeded to the station house.

Q On the way to the station house did you have any conversation with Frankel? A I did.

Q What did the defendant Frankel say to you if anything?
A I asked Frankel how he got in the place and he said, "You know how I got in the door". I said, "No, I don't". Then I said, "Who jimmied that door?" He said, "I jimmied that door." I said, "What did you do with your jimmy?" He said, -- he refused to answer, didn't answer anything. While at the station house in front of the desk I asked Frankel again what he had done with the jimmy.

MR. WARE: I object to that as not responsive. I have not heard any question about the station house.

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Q Was there any conversation at the station house?

A There was.

Q Tell us what it was. A In front of the desk, the 16th Precinct Station House I again asked the Defendant Frankel where was the jimmy that he jimmed the door with and he said, "You will find it either on the case or right back of it." And I came back and found it down behind the case.

Q Did you go back to the store? A I did.

Q After the defendants were safely in custody? A Yes.

Q And look at People's Exhibit 2 in evidence, the jimmy on the table, and tell me if that is the jimmy that you found?

A It is.

Q And tell us where? A I proceeded to premises 219 Wooster St. and I looked on the case and found no jimmy, I looked behind the case and found that jimmy on the floor.

Q Can you state from your recollection how many pieces of goods were taken from the store and put on the wagon? A I seen fifteen pieces going on the wagon -- I seen twelve pieces going on the wagon and Defendant Frankel had three pieces on his shoulder when I placed him under arrest.

Q Look at these two pieces marked People's Exhibit 1 in evidence and tell me if those two are part of the fifteen pieces that you saw the defendant carrying out of the store? Step down here and examine them. (Witness does so.) A Yes, sir.

CROSS EXAMINATION BY MR. WARE:

Q Officer, you look at this tag, what did you do that for?

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A Looked at the numbers.

Q What are the numbers? A I looked at the numbers there, I had a faint recollection of the numbers, I had them in my memorandum book, but at the present time I can not find my memorandum.

Q Isn't it a part of your duty to keep and carry a memorandum? A It is.

Q Particularly when a case is on trial? A Yes, sir.

Q What has become of your memorandum book? A I lost it.

Q You lost it? A Yes.

Q When did that happen? A At least I can not find it.

Q When did you first lose it or miss it rather? A Why today, this morning, I had it right up to the present time.

Q You have got a faint recollection of these numbers?

A Yes, sir.

Q How many sets of numbers are there on these you just looked at? A Four sets of numbers.

Q Tell us some faint recollection that you have got of the numbers? A 55 and a fraction on that roll, that has one number, the number on the bottom.

Q Well just now you looked at those figures. What is the number on that other roll? A There is three numbers on it.

Q Have you any recollection of them? A There is a fifth number, such as 10,000 and some more on the top.

Q And these are the numbers that you put in your note book?

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A Yes, sir.

Q Did you put all of the numbers in the note book that were on all of the rolls? A Yes, sir.

Q And these are two rolls that you picked out for exhibition purposes? A Yes, sir.

Q So that you naturally tried to memorize these? A Yes.

Q And you didn't really need your notebook? A Not necessarily, but I have not got the correct numbers, stating the five numbers of them.

BY THE COURT:

Q What was done with this cloth after the defendants were arraigned? A It was sent to the property clerk, Your Honor.

Q How did they get it down here? A These two rolls here we brought down.

Q Whom do you mean by "we" brought them down? A Officer Boland and I.

Q You brought them this morning? A Yes, sir.

Q From the property clerk? A Yes, sir.

Q Deposited them there under the name of the case? A Yes.

BY MR. WARE:

Q Did you bring this property with you from the station house? A From the property clerk with the assistance of Officer Boland, we both of us brought it.

Q Is there anything about this particular roll that you noticed that morning? A Oh yes.

Q Or rather that afternoon? A No, nothing particular.

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Q You say "nothing particular", you say this is just one of the bundles or rolls which you took? A Yes, sir.

Q Did you notice who carried this? A No, sir.

Q You didn't know when this was carried? A No, sir.

Q And the last one who carried any rolls was whom?

A Defendant Frankel.

Q And do you notice what rolls he carried? A When do you mean he carried?

Q At that time? A He carried three bundles.

Q Now Officer, as a matter of fact did you arrest him at 219 Wooster St., did you arrest him there or on the corner of West Third St. and Broadway? A No, sir.

Q Is there anybody else around, or was there anybody else around except you and Officer Boland? A Oh yes, yes, sir.

Q And the traffic man -- I have heard something about a traffic officer, who was he? A A mounted man on that -- I believe he was on duty in that street.

Q You don't know his name? A No, sir.

Q You did not ask his aid at all? A No, sir, outside of asking his aid by taking the wagon to the station house, which contained the rolls of goods.

Q Officer, in your notebook you put down his name and precinct, did you not? A No, sir.

Q Was not he a witness to any of these things? A No, sir.

BY THE COURT:

Q What became of the wagon, Officer? A The wagon was

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returned to the owner, Your Honor.

Q Who was that? A William Petermil, 29 Willard St.
BY MR. WARE:

Q Now won't you tell, when you left the Officer, tell us briefly -- or rather the station house, Officer, just what you did?

A At the station house.

Q No, when you left the station house? A I left the station house --

Q Were you alone or with anybody? A I was alone, yes, sir.

Q Where did you go? A I went directly south on Mercer St. to Third St., west on Third St. to Wooster St., south on Wooster St. to the premises 219 Wooster St.

Q Did you go right to 219? A Indd.

Q And when you got to 219 which is the scene of the -- A Of the crime.

Q Of the alleged crime, did you see anybody? A I did.

Q Whom? A An officer standing outside.

Q Who was he? A He was connected with the precinct.

Q Then there was an officer there connected with that precinct. A Outside.

Q Outside of this store. A Surely.

Q Where were the -- was this before or after the defendants were arrested? A Oh after they were arrested.

Q I asked you when you first went out of the station house, out of the police station, before the defendants were arrested, where did you go? A Oh I beg your pardon. I went south on Mercer St. to Bleecker St., west on Bleecker St. to Wooster St.,

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and north on the east side of Wooster St. and in front of premises 216 and 218 which I later found out, Officer Boland was in the store and beckoned to me by a knock at the window and I went in the store.

Q Did you know that Officer Boland was going to be in that store? A No, sir; no, sir.

Q What did you do after you saw him beckoning to you after he knocked on the window? A Went inside.

Q Then what did you do? A Watched the premises, Officer Boland was watching it, doing the same thing.

Q Before you had a conversation with Officer Boland you stood on the outside, is that right? A Yes, sir.

Q Now I understood you to say on your direct examination that you saw three men go along while you were standing there. is that correct or not? A No, sir, I didn't see them.

Q Did you ever see three men? A No, sir.

Q Well when you first looked across the way or just looked at 219 Wooster, what if anything did you see in connection with these defendants? A I didn't see anybody.

Q Nobody around? A No, sir.

Q Well what was the first time you saw one of the defendants?

A I saw--about four minutes later I saw Defendant Frankel coming down on the -- along south on Wooster St., the west side.

Q And was he alone or in company with anybody? A Yes, sir, he was alone.

Q He was alone? A Yes, sir.

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Q What did he do when he came along? A He stood there, there was a large, big double truck standing in front of the premises 219 Wooster St.

Q He stood there, and you two stood there, what happened then? A He grabbed hold of the lines, took hold of the lines and pulled the pair of horses south about 20 or 25 feet on Wooster St., that is just below 219.

Q Now was there anybody in the wagon at that time? A No, sir, nobody in the wagon.

Q Did you see anybody in the wagon at any time? A I did.

Q Anybody come out when he took hold of the horses and pulled them south? A No, sir.

Q And say anything to him? A No, sir.

Q Nobody objected? A No, sir.

Q What was the next thing he did? A I saw Defendant Rosner come down with a closed red wagon, one horse attached to a red wagon.

Q And where were you all this time? A I just was in the elevator shaft or rather in the door, that was a sort of a hatchway.

Q Of what? A Of premises 216 and 218 Wooster St.

Q Where was Officer Boland? A He was in the store I believe.

Q He was not with you? A No, sir, not at that particular moment.

Q Did you do anything just then? A No, sir.

Q You stood there, is that right? A Yes, sir.

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Q Separate from Boland? A Yes, sir.

Q You had no communication with him? A No, sir.

Q What was the first thing that you did next? How did you get out of the store? A Ran across, the door was open, leading to the hatchway.

Q You went all alone? A I went out that way, yes, sir.

Q You had no communication with Boland? A No, sir.

Q Do you know what he did? A He went out too.

Q Do you know that? A He went out through the same door, I know.

Q Well, if you had no communication with him how do you know that he went out the same door? A He stood outside of the door -- of that hatchway, that doorway leading into 216 and 218, out on the street it is and Officer Boland looked to see me there and then we went across.

Q You suppose he saw you there? A Yes.

Q Did you beckon to him to go out or say anything to him?

A No, sir.

Q At any rate he went across over there? A Yes, sir.

Q Was there anybody in the wagon? A Which wagon, the wagon in question?

Q The wagon that you say you found these goods in? A Yes.

Q Who was in the wagon? A Defendant Rosner.

Q I understood you to say that you saw Frankel come out with three pieces of goods on his shoulder. A Yes, sir.

Q Officer, don't you know that is one of the pieces? A I

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would not positively swear that it was.

Q Well don't you know that Officer Boland says that this is one of the pieces of goods? A He probably did.

Q You did not pay any attention? A Why he had three bundles there, and he practically threw them at me when I came up to him.

Q Whom? A Defendant Frankel.

Q What did you do with them when he dropped them? A They dropped to the sidewalk and I grabbed hold of Frankel.

Q Right there in front of 219? A Yes, sir, immediately in front of these premises.

Q No question about that at all? A Not at all, no, sir.

RE DIRECT EXAMINATION BY MR. MARKEWICH:

Q Officer, the goods were taken to the station house, were they? A Yes, sir.

Q Mercer St. station house? A Yes, sir.

Q The entire fifteen pieces of goods? A Yes, sir.

RE CROSS EXAMINATION BY DEFENDANT ROSNER:

Q When the telephone came down to the police station that the store was being robbed, you and Boland went off to the place, did you not? A Yes, sir.

Q When you came up there you didn't see anybody breaking into the store, did you? A No, sir.

Q All you seen was me coming along with the wagon and going inside and bringing out the goods? A That is all.

Q When you placed me under arrest, what did I say to you?

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A What did you say?

Q Yes. A I didn't place you under arrest.

Q Well when we were placed under arrest, you asked me whose wagon it was, isn't that so? A I asked you that?

Q Yes. A Not I.

Q I didn't tell you where I was taking the goods to?

A You did not.

Q I didn't tell you who hired me? A You told me about an unknown man -- I heard something about an unknown man.

Q I didn't tell you where the goods were going to? A No.

Q Or at least where this man told me to take the goods?

A No, sir.

Q What did you do, make up a story right between you two, and talk it over what to say? A Not at all, not at all.

Q Now isn't it a fact, that when you brought me into the store after placing me under arrest, you asked me whose wagon it was and I told you it was my wagon? A Nothing of the sort.

Q I didn't tell you where the goods were going to? A No.

Q You didn't see any man around at all? A No, sir.

Q Outside of me and Frankel? A No, sir.

DEFENDANT FRANKEL: I wish to cross examine --

THE COURT: You can not do it. It is an unheard of thing.

If a man has a lawyer he must cross examine for him. Now sit down.

If you want your lawyer to ask any questions tell him what you want and he will ask it.

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BY MR. WARE:

Q Where did you say you first saw Frankel and what was he doing at the time you first saw him? A I saw him go in the premises 219 Wooster St. from the sidewalk.

Q Before Frankel, as you say, went into the premises, did you see him do anything at all? A Yes, sir.

Q What? A I saw him draw this wagon along, take hold of the reins and draw the wagon along.

Q Before that did you see him do anything? A No, sir.

Q Did you see Frankel -- I have asked you I think before -- in company with anybody else? A No, sir.

Q Before that? A No, sir.

Q And was the first thing you saw him do, was to take hold of the wagon without any driver? A Yes, sir.

Q And pull the horses in which direction? A South on Wooster St.

Q Nobody on the wagon? A Nobody on the wagon.

Q Just tell us what he did after that? A He took hold of the reins of these two horses -- rather the one horse nearest the sidewalk, he pulled the horse south, -- rather he took the reins of the horse and walked south; and he then waited, paused -- probably stood there for about a half a minute I should judge until this red wagon drew up in front of the premises No. 219 Wooster St., and then he went into the store 219, and then started to carry out the goods.

Q And did you see anybody else at that time in that vicinity?

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A No, sir.

Q The defendant wants to know where you were watching from at that time?

THE COURT: He has already stated 218 Wooster St. on the ground floor.

A On the ground floor Your Honor, yes, sir, on the street floor.

Q Isn't it a fact that the officer who was mounted, arrested- put this man under arrest in a hallway at or near West Third St. and West Broadway? A No, sir.

Q What is the name of that officer? A I don't know the name of that officer.

Q Don't you know him? A I don't know him, no, sir.

Q Don't you even know what precinct he was connected with?

A No, sir.

Q Or where he was on post? A No, sir.

Q You are in that vicinity all the time, aren't you? A Yes.

Q Working there? A Yes.

Q For how many years? A Six years, not quite.

Q Did you ever see the mounted officer before? A I didnot.

Q You have seen hundreds of other mounted officers, haven't you? A Never have noticed any of them.

Q Did you ever have any business with any one before in regard to a case or inconnection with a case? A No, sir.

Q This is the first mounted officer you ever talked to?

A Yes, sir.

Q And yet you do not know anything about him or where to find

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him? A No, sir.

Q Didn't you make any notes of his number or the marks on the horse's harness? A No, sir.

Q Nor the saddle? A No, sir.

Q Would you know how to find that officer if you wanted to?
A No, sir.

Q And yet he assisted in this arrest, didn't he? A Yes.

SAMUEL HAIN, Recalled on behalf of the People.

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Now did you buy merchandise of the kind marked People's Exhibit 1? A Yes.

Q And buy large quantities of that? A Yes, sir.

Q Are you familiar with the market value, or the reasonable value of merchandise of that quality? A Yes, sir.

Q And kind? A Yes, sir.

Q On the first day of December 1917. A Yes.

Q Did you see the fifteen pieces of goods in the station house on Mercer St.? A Yes, sir.

Q On the 1st of December, 1917? A Yes, sir.

Q Are you able to state with a reasonable degree of certainty what the reasonable market value of the goods were on that date?

A The whole amount?

Q Yes, all. A Well I judge it was about \$350., not exactly.

Q About \$350.? A About \$350.

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BY THE COURT:

Q You swear positively it was more than \$50.? A Yes, over three hundred.

CROSS EXAMINATION BY MR. WARE:

Q Have you seen the property there in the Police Station?

A Yes, in the police station.

Q You are the gentleman that testified first? A Yes, sir.

Q And have you seen it since you saw it in the police station? A Yes, I took it out of the Police Headquarters.

Q What is the value of this property a yard? A There are different grades. This is about a 60 cent a yard value.

Q Do you know how many yards are there in this, of these goods? A This piece must be about 55 or 60 yards, approximately.

Q That would make it about, valued at about \$30., is that right, for 60 yards? A For 60 yards about \$30.

Q And all the other bundles, did they run differently? A Yes.

Q Cheaper? A Smaller yardage on some of them, some were 18 yards and some 20 yards and so forth.

Q This is the most important roll in the lot? A No, there was different ones in the Police Station, there was one worth about \$1.60 a yard, of which he had two pieces, one was stolen and one was left in the store.

MR. MARKEWICH: That is the People's case Your Honor.

THE COURT: I understand you don't want to go into the defense this afternoon.

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MR. WARE: Whatever is agreeable to the defendants.

THE COURT: It is four o'clock now and I think we will adjourn.

Gentlemen, please do not form or express any opinion as to the guilt or innocence of these defendants until the case is finally subkitted. Please do not discuss the case among yourselves, or permit anybody to discuss it with you.

Adjourned until 10:30 o'clock Tuesday, March 5, 1918.

CASE #2420

PEOPLE, Etc., -against- ALFRED FRANKEL and BENNIE ROSNER.

New York, Tuesday, March 5, 1918.

TRIAL CONTINUED

THE DEFENDANT'S CASE

(Mr. Ware opens the case to the jury on behalf of the defendants.)

N E T T I E R O S N E R, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Where do you live? A 24 Mangen Street.

Q Mrs. Rosner, you are the wife of the defendant Rosner, sitting at this table? A Yes, sir.

Q And how long have you been married? A Three years.

Q And how many children have you? A Two.

Q Now, do you know what your husband does for a living?

A Yes, sir.

Q What is his occupation?

MR. MARKEWICH: I object to that as being wholly immaterial.

THE COURT: I will allow her to state what his occupation is.

Q Just state what your husband does, if you know? A He peddles with junk.

Q A little louder, please. A He peddles with junk.

BY THE COURT:

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Q A junk peddler? A Yes, sir.

BY MR. WARE:

Q And what does he do it from? Does he carry it around in his arms, or does he have a horse and wagon? A A horse and wagon.

Q He has a horse and wagon? A Yes, sir.

Q And do you know where he keeps them, or where he gets it? A He buys it.

Q Do you know where he keeps the horse and wagon? A The horse and wagon?

Q Do you know where he stables the horse? A No, sir.

Q You have seen him going about in this wagon, driving the horse? A Yes, sir.

Q And you know that he peddles junk? A Yes, sir.

Q And supports you in that way? A Yes, sir.

Q Is that right? A Yes, sir.

MR. WARE: That is all.

MR. MARKEWICH: No questions.

BY THE COURT:

Q Have you ever seen your husband's wagon? A Yes, sir.

Q What kind of a wagon is it? A An open wagon.

Q It is not a closed wagon with - what was it, a star?

MR. MARKEWICH: A closed box wagon, as I understand.

THE COURT: It had some decorations, this wagon in question.

MR. MARKEWICH: A "Z" on it.

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Q Did it have a "Z" on it? A I don't know. It is an open wagon.

THE COURT: An open wagon. That is all.

A L F R E D F R A N K E L, one of the defendants herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Where do you live? A 833 East One Hundred and Sixty-seventh Street.

Q What is your occupation? A I am a feather dealer, going around the poultry markets, buying up chicken feathers, importer and exporter in that line.

Q How long have you been engaged in that business? A I have been engaged in that business practically for the last twelve years, with my father.

Q And where is your place of business? A My place of business is 615 and 625 Grand Street, with my father.

Q 615 to 625? A 615 and 625 Grand Street, City of New York.

Q You have been convicted of some crime, have you not?
A Yes, sir.

Q Tell the jury what that was? A I was arrested before, because I had some trouble with a stepmother of mine; my mother died and my father got remarried.

MR. MARKEWICH: I object to that.

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Q What were you convicted of? A Grand larceny, and I got Elmira Reformatory.

BY THE COURT:

Q What year was that? A 1915.

Q In what court? A Court of General Sessions.

Q Do you remember the judge? A Judge Crain, your Honor.

BY MR. WARE:

Q That is your only conviction, is it? A Yes, sir.

Q I don't know. A Yes, sir.

Q You are sure about that? A Yes, sir. Your Honor, before I proceed any further with this, I have a few words to say.

THE COURT: Now, answer questions like any other witness on the stand. This is a trial at law. We are not here to make speeches.

THE WITNESS: There is some point I have to say which I don't think my lawyer can bring out, in reference to my lawyer.

Q Do you want to state any point in connection with your conviction? A Not in that connection, but, your Honor, I furthermore wish to state -

THE COURT: Answer questions.

MR. WARE: I will ask you questions. If your Honor pleases, the Sixth Juror, I believe, desires to ask some question.

THE SIXTH JUROR: I just wanted the answer repeated to the last question.

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(Record read by stenographer.)

Q Is there anything further that you want to say in connection with the conviction and the Elmira Reformatory sentence? If there is, I believe his Honor will let you state it. After you get through with that, I will ask you something else.

A I have something to say in reference to the whole case, in detail.

Q I will ask you all about that. Now, state to this Judge and jury just how you happened to be arrested in connection with the case now on trial, at the time you were arrested, and anything further in connection with that arrest, or that alleged burglary, that you desire to tell. Begin at the beginning? A On December 1st, at 2 p. m., while passing West Third Street, West Third Street and Wooster, I was attacked by two officers - by one officer and two citizens. They started beating me up something dreadful, and I didn't know what happened. One of them drew a gun on me and the other fellow drew a blackjack and struck me with it, and I didn't know what it was, and I walked away a couple of steps, and I walked up to a hallway, and I covered up - I fell down on the floor, because I am suffering from heart trouble, and I got a heart attack, and I fell down on the floor, I was half unconscious, and the officer come over and kicked me. Then an officer on horseback come up and says, "He is the fellow I want", and he started beating me up. He said, "Where is the

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other fellow?" I said, "What do you want. I don't know what happened". He says, "You know what happened. Where did the other fellows go?" I said, "I don't know them. I am supposed to meet some party up here." He said, "I will show you what I will do. You will tell me pretty fast what happened"; so we walked back to some store on Wooster Street, as the officer stated, 217, or what the number was I don't exactly recollect.

BY THE COURT:

Q Where was it you were knocked down? A I was knocked down on Wooster near Third Street, between Wooster, I believe, and West Broadway.

Q And what officers knocked you down? A It was Officer-- I don't exactly remember his name. The young fellow.

Q The two that were here? A No, sir, it was the young fellow there, Officer Rudy is his first name; I don't know his second name. And he hauled off and struck me, and an officer came on horseback. He said, "You have got the fellow half dead. I will kill him before he is done," and he pulled a revolver and put it down my throat. I said, "If you want to kill me, kill me." I informed them I am suffering from tuberculosis and heart trouble, and I don't know nothing. He pulled me back in the store, and that is where I noticed Rosener, and he said, "Is he with you?" I said, "Is he with me what? I don't know what is the matter"; and they started beating us, and then they placed under arrest and took us to the police station. When we come to the police station we were locked up there, and I

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found out that we were to be tried for the same offense, and I didn't know this young man until we got in the police station and until we met in the court room.

Q Now, you go so fast we can't understand what you are saying. Talk slowly. When you got to 219 Wooster Street, you say Rosner was there? A Yes, sir.

Q Was he in custody? A Yes, he was in custody.

Q Who had him? A The other officer, Officer Boland.

Q Go on. A Then they drew out their blackjacks and started hitting us and beating us up again. So then they placed us under arrest. Then, when we were in the police station, the Lieutenant told the two officers, he says, "What do you want to do? Do you want to kill the fellows? Cut it out. You aint going to hit any man in front of me". They picked up a roll of the woollens and they hit us with it there.

Q You say you never knew Rosner before? A No, sir.

Q He is a stranger to you? A Yes, sir.

BY MR. WARE:

Q Now, Frankel, you are accused, in company with the other defendant, Rosner, of going in and out of the premises 219 Wooster Street, carrying packages or bales of cloth which you saw displayed here yesterday, and loading them, in company with Rosner, into a wagon which he had been driving. Is that true, or not? A It is untrue.

Q Did you have anything to do with breaking open the premises 219 Wooster Street on December 1st, or at any other

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time prior to that? A No, sir.

Q And did you know Rosner before you were arrested? A No.

Q Had you ever been connected with him in any way? A No.

Q Had you any engagement with him to have his wagon driven to 219 Wooster Street? A No, sir.

Q And where were you actually arrested? A I was arrested on a hallway stoop on West Third Street, near West Broadway.

Q About how far away is that from 219 Wooster Street?

A It is about a block and a half away, pretty near a block and a half away.

Q You heard the officers testify that they were in 218 and 220 Wooster Street, right opposite 219 Wooster street, and observed you coming toward 219 Wooster Street, one of them, Officer Boland, saying, that he saw you in company with two other men, one of whom wore a soft hat, a velour hat. Is that true, or not? A It is untrue.

Q And both officers said that they saw you carrying these bales of woolens out of that store on your shoulder and putting them in the wagon. Is that true, or false? A Untrue; it is false.

Q Now, is there anything else in connection with this alleged burglary that you wish to say? I would like to be allowed a little latitude, if your Honor pleases, so as to entirely satisfy my client.

THE COURT: Well, have you told us all about it?

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THE WITNESS: Yes, sir, I told pretty near all about it.

Q Tell anything else in connection with it that you want to. A The only thing I have got to say, that the way it seems to me, that I have been a victim of a frame-up here. I happened to be passing by there, I happened to have an appointment to meet a certain party at that particular place there at 2 p. m., and while passing there, as I stated yesterday, this officer Rudy didn't place me under arrest; it was a uniformed man. I went down last night and inquired off the lieutenant at the Sixteenth Precinct, I asked them to give me this officer's name and number; I desired to have him subpoenaed here in court to testify that he first placed me under arrest in the hallway there, then that the second officer came over and started beating me up. The lieutenant instructed me, he says I should be there this morning, and I could get that information off Officer Rudy. Officer Rudy was asked that information, and he refused to give it.

Q Who is Officer Rudy?

THE COURT: He means Rudolph Hoerr.

A Rudolph Hoerr, and he refused to give me that information here in court, and he refused to let me find out who this officer was. I wanted to bring him here, to testify I was there, I wanted to bring witnesses, and while I wanted to take a witness he went to work and took his hand and hit me.

Q When did this happen? A Right at the time of the

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arrest.

Q Is there anything further you want to say now? A The only thing further I have to say, your Honor, and gentlemen of the jury, that owing to the fact that I am in a very bad financial condition I couldn't afford to get a lawyer to defend me, and, therefore, I have been assigned a lawyer by the Court; and there have been several points brought out here which I believe ought to prove my innocence, and I can prove my innocence, because I think this was a real frame-up, which I can't see on my part, because I had absolutely nothing to do with this case whatsoever. I happened to be standing there, because I had this appointment, and they come over and placed me under arrest. I can also prove where these officers, at the time when I was brought in the police station, had some fellow come over to me, which I believe he claimed he was - he is the proprietor of this woolen place across the street, where the officers were stationed. He came over and spoke to me; he said, "I think I know you from somewhere". I says, "Yes?"; so, he says to me, "I think I do;" so he says to me, "Listen -"

Q What officer was it? A It was not an officer; it was a citizen; he was in company with two officers. He come over to me and says, "I will tell you what I will do with you". This was after we were placed under arrest and everything. "If you got a little money, money will do the trick," and if we want to make an appointment where he can meet me; and he says, "I

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will tell you what I will do; if you will come down and see me with a little money I can do the trick, and you don't have to worry," but owing to the fact I haven't got no money that is the only reason they held me. If I had two or three hundred dollars to put up, or if my father would be willing to advance it, I wouldn't have to come here to court this morning and stand trial. That is all I have to say, and I hope you gentlemen will give me a fair chance and a fair trial.

BY THE FOREMAN OF THE JURY:

Q In what way are you connected with your father in business? A I go out Fridays and Mondays and during the week I go around the poultry markets, buying chicken feathers.

Q Do you draw any salary? A No, sir.

Q No salary at all? A No, sir, he pays me according to the weight of the feathers.

Q What amount do you get, approximately, weekly? A Approximately, weekly, some weeks I make twelve dollars, some fifteen, some twenty, and some twenty-five.

BY THE SEVENTH JUROR:

Q Was it true, what the policeman said on the stand there about the jimmy, that you told him it was behind the counter? A No, sir; it was absolutely false. I further wish to tell you, gentlemen of the jury, that the officers at first stated - you can very plainly see where this was a frame-up - at first they stated - Officer Boland stated that he acci-

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dentally happened to pass by the premises, and he noticed where there was a big piece chipped out of the door, and then he deliberately turns around and says that they received a telephone message in the police station, and then he states that this Officer Rudy happened to be passing by, and he knocked on the window. Officer Rudy, owing to the fact that they did not hear the testimony of one another, states that he was in the latch way across the street, and he couldn't very plainly see what we were doing or what we were carrying out, and he further states that he arrested me, he placed me under arrest, while coming out of the store with three rolls of woolens on my shoulder, and that I struck him with it; and I can further prove that I don't think I can - as far as carrying three rolls of woolens, I don't think I can carry two, even; and, secondly, I wasn't anywhere near these premises. He arrested me on West Third Street, and if the officer was -

MR. MARKEWICH: If your Honor pleases, I am not objecting -

THE COURT: It is all argument you are making.

MR. MARKEWICH: I am not objecting to it, because he wants to be his own lawyer, and let him argue at the same time he is testifying. Of course, that is subject to your Honor's ruling.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. MARKEWICH:

Q You say you were convicted of grand larceny? A Yes.

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Q Is that the only conviction against you? A That is the only conviction I was sentenced for.

Q Tell us of the convictions on which you were not sentenced? A For grand larceny.

Q And what other convictions did you have besides the one for which you were sent to the Elmira Reformatory? A I had one for fraudelity of employment.

Q Fraudelity of employment? A Yes, sir.

Q What is that? A I obtained employment under my mother's maiden name, and then under my - my mother's name was Schnapps, and I obtained the employment under the name of Alfred Schnapps, with the telegraph company.

Q You were not tried for that crime? A I was tried in Special Sessions.

Q And that is the best you know about the crime? A Sentence was suspended, yes, sir.

Q Anything else that you were convicted of? A I was convicted - I - the only thing I ever was convicted of was this charge of fraudelity of employment, in Special Sessions Court, where I was found guilty, but on the other occasions is -

Q Just tell us how many times you were convicted, and in what courts? Now, you are here to tell the truth, aren't you? A Yes, sir.

Q Now, tell us about it. A I was arrested -

THE COURT: You were not asked about when you were arrested. Just pay attention and answer the question.

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In what cases were you found guilty?

Q Only convictions, or where you pleaded guilty?

A I pleaded guilty for grand larceny, in the case of my step-mother.

THE COURT: That is the one you were sent to Elmira on?

THE WITNESS: I was given a suspended sentence on that.

THE COURT: That is another conviction for grand larceny.

Q What Judge? A By Judge Crain.

Q In this court, the Court of General Sessions? A Yes, sir.

Q When was that? A That was in 1915.

BY THE COURT:

Q Was that the time you were sent to Elmira? A I was re-arraigned on the second charge of grand larceny, and then I was sentenced to Elmira, and when I come back I received that suspended sentence of Judge Wadhams.

BY MR. MARKEWICH:

Q Tell us about some other convictions? A (No answer).

BY THE COURT:

Q Did you plead guilty to the second one, where you got a suspended sentence from Judge Wadhams? A Yes, sir; that is when I was released from Elmira Reformatory.

Q You were up before Judge Crain for grand larceny, and he gave you a suspended sentence? A Yes, sir.

Q Then you were arrested charged with another grand larceny? A Yes, sir.

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Q And so Judge Crain then revoked his suspension and sent you to Elmira on your first conviction? A Yes, sir.

Q Then you pleaded guilty to the second grand larceny before Judge Wadhams? A Yes, sir.

Q And because you had served in Elmira he suspended sentence; is that it? A Yes, sir.

BY MR. MARKWICH:

Q Tell us about the other convictions. A The other conviction was for fraudulency of employment.

Q Anything else? A That is all.

Q Were you ever convicted in the Police Court of disorderly conduct? A No, sir, never.

Q By the way, the conviction that you told us about on which you were sent to Elmira Reformatory, that related to a larceny of goods on a truck, didn't it? A No, sir.

Q You never knew these officers before, did you, before you were arrested by them? A No, sir.

Q Never had any quarrel with them? A Never had no personal dealings with them.

Q You say you ^{knew} ~~met~~ Officer Hoerr by the name of Rudy?

A That is what I heard them call him.

Q And who was that friend with whom you had an appointment on Wooster Street, or on Third Street, on the 1st of December, 1917? A I had an appointment with a young lady there.

Q And what is her name? A What?

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Q What is her name? A He r name? I knew her name, but I wasn't so very intimate with her at that time.

Q Tell us her name? A Jennie Lazarus.

BY THE COURT:

Q And where were you to meet her? A I was supposed to meet her on West Broadway, in West Third Street.

Q At what time? A Between 1:30 and 2:00.

BY MR. MARKEWICH:

Q You were working for your father at that time, weren't you? A No, sir, I don't work on Saturdays.

Q That was on Saturday? Ax Yes, sir.

Q You observe the Sabbath, do you? A Yes, sir, my father is closed on Saturday.

Q You started out by telling us that you were in business with your father? A I was in business.

Q That you are in business? A I am dealing with him.

Q What is the name of the firm? A M. Frankel Company.

Q You are not a member of the firm, are you? A No, sir, not directly.

Q What do you mean, not directly? Are you indirectly a member of the firm? A I aint a direct member of the firm, but anythme I want something I go over and I get it off my father.

Q That is, whether you earn any money, or not, your father gives it to you? A If I need money, I go over and tell him.

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Q Who bailed you out? A What?

Q Who bailed you out. A My father did.

Q Two thousand dollars cash put up with the surety company as security? A He signed the security, making good for me. He didn't put up - you know, he signed an affidavit, if I go away he will pay the two thousand dollars.

Q That is, if you didn't show up, he would pay the two thousand? A If I wouldn't show up.

Q And you didn't have any money to pay counsel? A No, sir.

Q You said you earned twelve to fifteen dollars a week. You have no wife to support, have you? A No, sir.

Q And you did engage counsel, as a matter of fact, didn't you? A Yes, sir, I had Sol Eisler engaged.

Q Sol Eisler? A Yes, sir.

Q Let us get back to your convictions. You were tried for the crime that you call dishonest person, or fraudulent employment, in Jersey City, weren't you? A No, sir.

Q Wasn't that where the case was tried? A No, sir.

Q Wasn't that where you were convicted? A No, sir.

Q Were you ever convicted in Jersey? A No, sir.

Q Do you remember being convicted before Judge Crain on the 9th of August, 1915? A I pleaded guilty.

Q You pleaded guilty to it? A Yes, sir.

Q Wasn't that for assault and robbery? A No, sir, it was for grand larceny. That was a case where my step-mother had me arrested.

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Q That was the case where sentence was suspended? A Yes.

Q Then on the 28th of April, 1916, you were convicted before what Judge? A What date was that?

Q On the 28th of April, 1916, before what Judge were you convicted then? A I don't exactly recollect no dates.

Q Wasn't that the time you were sent to Elmira Reformatory? A April, 1916?

Q Didn't you go at that time under the name of Joe Meyers? A Yes, sir.

Q You didn't tell us about the time you were sent to the Elmira Reformatory under the name of Joe Meyers? A I was sent to Elmira Reformatory under the name of Alfred Frankel.

Q When were you convicted under the name of Joe Meyers? A When I pleaded guilty before Judge Wadhams, when I received the suspended sentence.

Q On the 20th of July, 1917, were you again convicted in this court? A July?

Q Yes, 1917, last year? A No, sir.

Q Wasn't sentence suspended on you at that time? A No.

Q Sure of that? A Yes, sir; the only time I received a suspended sentence was when I was released from Elmira Reformatory.

Q On the 10th of August, 1917, were you returned to Elmira Reformatory? A No, sir.

Q When did you come out of Elmira Reformatory? A June, 1917, June 20th.

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Q And you have been out ever since? A Yes, sir.

Q And you were not in any trouble since that time? A I was in that arrest -

Q Well, never mind arrests. You were not convicted of any crime? A No, sir, I was convicted for that fraudulency of employment, the only one.

Q But since then? A No, sir.

Q And it was in this building, you say? A Yes, sir.

Q Now, did you meet the girl on West Broadway near Third Street? A No, sir.

Q And the first thing you knew was when the officer came up and began to beat you? A Yes, sir.

Q An officer that you never met before? A Don't recollect meeting him before.

BY THE COURT:

Q You were just standing quietly on the sidewalk?

A Yes, sir.

Q And an officer and this man came up, and without any reason started to beat you? A He started to beat me.

Q And then a mounted officer came, and he joined in?

A When the mounted office came - when he hit me I fell down, and then the mounted officer come over.

Q Did he hit you? A No, sir, he just asked them what was the trouble.

Q And after this stranger had beaten you then he took you away around into 219 Wooster Street? A Yes, sir.

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Q Do you know why he did it? A No, sir.

Q Haven't any idea why? A No, sir.

BY MR. MARKEWICH:

Q And you say you are afflicted with tuberculosis?

A Yes, sir.

Q What are you being treated for on your hand? A What?

Q What are you being treated for on your hand. A I have been -

Q Now, tell us the truth about it. That is a gunshot wound, isn't it? A Yes, sir.

Q Who shot you? A Three weeks ago I passed Delancey Street, going over to my father's house, and I was held up by somebody, and they took off me thirty dollars and a gold watch and chain; he had his revolver up and I grabbed for the revolver, and I got shot through my hand.

Q That is how you were shot? A Yes, sir.

Q Did you make complaint to the Police Department? A Yes.

Q Do you know who is the one that shot you? A No, sir.

Q A friend of yours, wasn't it? A Not that I know of.

Q What do you mean, not that you know of? A If it was a friend of mine I would have known him.

Q Who was the police officer to who you complained about the hold-up? A Officer Haskins and Officer McKenna, from Police Headquarters, First Branch Detective Bureau.

Q And you gave them a description of the man? A Yes, sir.

Q Did you ever meet Officer Boland until the 1st of

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December, 1917? A No, sir.

Q You say that it is absolutely false that you carried any goods out of the premises 219 Wooster Street? A Yes, sir.

Q That you never knew Rosner at all? A No, sir.

Q Never knew him until you were arrested together?

A Until the time of the arrest.

Q Were you brought over by Officer Hoerr to premises 219 Wooster Street? A Yes, sir.

Q You were taken in the place there? A Yes, sir.

Q You mean you were taken a block and a half from West Broadway near Third Street, where you were standing when you were beaten, and taken to 219 Wooster Street? A Yes, sir.

Q And you didn't know what you were being taken there for? A No, sir.

Q Were you told about it when you got into the store?

A No, sir.

Q By the way, when you were assaulted and beaten by the officer on Wooster and Third Streets - on Third and West Broadway, a crowd collected? A Yes, sir.

Q Did any of the crowd follow that officer to 219 Wooster Street? A Yes, sir.

Q You knew that you were being beaten for nothing, and that you were being arrested not knowing for what. Did you shout out to some of the people there to please give their names? A I wasn't given the chance to.

Q He didn't have his hand on your mouth, did he? A Well,

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I was being beaten all the way down.

Q Were you bleeding anywhere? A Yes, sir.

Q Where from? A Through my nose. My eye was cut, and my forehead was cut.

Q When were you bailed out? A I was bailed out Sunday morning.

Q That was when? How soon after you were arrested?

A That was the next morning.

Q Did you go to a physician to be treated for your eye?

A No, sir.

Q And did you ask that a surgeon be brought to the station house to treat you? A I was not asked. Rosner was asked. Rosner asked for a surgeon to be treated.

Q Both Rosner and you took the same lawyer? A No, sir.

Q No? Did you tell the officer that you didn't know Rosner, and Rosner didn't know you, at the time of the arrest? A I told the officer I don't know nothing about the whole thing.

Q By the way, where was Rosner living? A I don't know. Now I know he lives somewhere on Mangen Street.

Q Mangen Street, near where? A I do not know.

Q 620 Grand Street, where your father's place of business is, is away down near the river? A Yes, sir, the first building on East Street.

Q Mangen Street is just there, isn't it, in the same neighborhood, just a block away from East Street, isn't it?

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A No, sir.

Q Where is Mangen Street? A East, then comes Tompkins, and then Mangen; it is three blocks over.

Q Mangen is two blocks away from the river front? A No, sir, Mangen is three blocks from the river front.

Q And you have lived around that vicinity all your life, or a good part of your life? A Yes, sir.

Q And you don't know Rosner, you never met him until the time of the arrest? A Had no occasion to be with him before that.

Q Did you see a wagon in front of 219 Wooster Street when the officer brought you over there? A I didn't pay no attention to no wagon or nothing.

Q Well, did you see Rosner in the store when you were brought in there? A Yes, sir.

Q Did you hear what Rosner had to say? A No, sir.

Q What did you tell the officer? A I just asked them what they placed me under arrest for.

Q And the officers wouldn't tell you? A They told me I will find out the reason why. They want I should tell them who the other fellows were with me, and I says I don't know what kind of fellows and who. I told them to wait a while and they will see, who I am waiting for, and the more I spoke the more they started beating me up, the more I started pleading with them.

Q And you didn't find out what you were arrested for

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until you actually got to the station house? A Yes, sir.

Q And you don't know what Rosner said to the officer in the store? A I was too excited and too nervous to know what he says.

MR. MARKEWICH: That is all.

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

DIRECT EXAMINATION BY MR. WARE:

Q Where do you live? A 24 Mangen Street.

Q Now, Rosner, what is your occupation? A Junk dealer.

Q And where do you keep your wagon or truck or horse, or how do you conduct that business? A What is that?

Q How do you conduct that business? A Well, I go around office buildings buying junk off the engineers.

Q And you drive a wagon? A Yes, sir.

Q Does that wagon belong to you, or do you hire it?

A I hire it.

Q And who do you hire it from? A Mr. Petkin, 29 Willett Street.

Q And how long have you been hiring that wagon? A About six months.

Q And do you get the same wagon every day? A No, sir.

Q You get different wagons on different days? A Yes, sir.

Q On the day you were arrested, where had you been first, where did you start from, and where did you go to? A I

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started up on Eighteenth Street between Seventh and Eighth avenues, the Monahan Express Company; there is a garage there; I was told to come up there on that day to buy up some junk.

Q Did you go up there? A Yes, sir.

Q About what time of the day did you get there? A Well I got there about twelve o'clock, around that time.

Q Did you get any junk there? A No, sir.

Q Where did you go from there? A From there I went down to 55 East Eleventh Street, another place where the engineer told me to come on that day.

Q Did you do any business with that engineer at that place? A He told me to come in Monday, he was too busy.

Q That was Saturday? A Yes, sir.

Q From 55 West, or East Eleventh? A East.

Q From 55 East Eleventh Street, what did you do and where did you go, and how did you go? A Going from 55 East Eleventh Street, I went to University Place and straight down as far as Fourth Street, when I was approached by a man asking me if I wanted to do some trucking for him.

Q Did you know the man? A No, sir.

Q It is not this defendant, Frankel? A No, sir.

Q What did you do with the man? A I asked him where he had the stuff and where the stuff was going to, and he told me the stuff was going down to Rivington and Chrystie Streets, and that was on my way down to the stable, so I thought I would take it down for him.

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Q Where did you go with him, or did you go alone? A He took me over to 219 Wooster Street.

Q And when you got there what happened, if anything?

A Well, when I got there I asked him where it was, and he showed me the store. I opened up my tailboard and he went in to the store. When he went into the store I went to work to put the feedbag onto the horse, and he come out and brought out two pieces of goods, and then I went in with him, and he showed me what goods to take, and I come out with two pieces, and he come out with two pieces, both together.

Q Was that this defendant, Frankel? A No, sir.

Q Go ahead? A And then my horse, the feedbag fell off him, and I went to pick the feed bag, to put the feedbag on to the horse, and the first thing I knew after I put the feedbag on the horse, going to the wagon, and I wanted to go on the wagon to straighten the goods out, being it was near the tailboard, and I wanted to put it in there, so we can get enough on, and the officers come over to me, and he held me up with a revolver, so I tried to ask him what was the trouble, and he said if I don't shut up he will blow my brains out, so I didn't have a chance to say nothing.

Q Do you remember another truck or wagon standing in front of 219 when you drove up? A Yes, sir.

Q There was one there? A Yes, sir.

Q And did you do anything in regard to that? A No, sir.

Q When you drove up? A No, sir.

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Q Did you lead the horse a few feet to make room for your wagon? A This other fellow done that.

Q The other fellow? A Yes, sir.

Q Now, you have been - I withdraw that. It was stated yesterday by both officers who testified that they had seen you from across the street walk in and out with bundles of goods on your shoulders. You did take some, did you not? A I went in there once.

Q And did you notice that any - that the door had been broken open, or any lock had been broken? A No, sir, the door was open when I come there.

Q You didn't notice anything the matter with that door?
A No, sir.

Q Did you have anything to do with breaking that door open? A No, sir.

Q Did you, on December 1st, or any day prior thereto, break open that door, or commit any burglary, or have anything to do with anybody else who broke that door open? A No.

Q Did you know that any burglary had been committed at those premises? A No, sir.

Q Is there anything further that you wish to say now in regard to this particular alleged burglary? A I would like to explain to the Court and the gentlemen of the jury how it happened.

Q Then tell us whatever you want to say in regard to the burglary. A Your Honor, and gentlemen of the jury,

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I am a man that has got a previous record and every time I was arrested I took my medicine like a man, I pleaded guilty, because I was guilty -

THE COURT: Now, you are not telling us about this burglary. You are making a speech.

THE WITNESS: Well, that belongs to the case, your Honor.

MR. WARE: You see, he is his own attorney.

THE WITNESS: Well, gentlemen of the jury, this is a case - I am peddling with junk. That day it was raining pretty strong, and I took out a top wagon, being I got an order for the Monahan Express people, to come up there and buy some junk. I took out a top wagon, went up there, and they were busy up there, and they told me to come in Monday. I went down to 55 East Eleventh Street. The engineer in Eleventh Street told me to come down the same day.

MR. MARKEWICH: If your Honor please, that has been already stated.

THE COURT: Yes, he has told us that. If there is anything you have not told us, tell us, anything that you have forgotten or that has not been brought out by the questions.

MR. WARE: One other question I desired to ask him. Is that all?

THE WITNESS: No, I aint started yet.

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THE COURT: Isay, don't tell us anything you have told us before.

THE WITNESS: I have to start my story from the beginning, your Honor.

THE COURT: No, you have not. You have told it. Your lawyer brought that out very well by the questions. We understand that. Now, if there is anything you have not told us, tell it.

THE WITNESS: Well, I say, gentlemen of the jury, when I was placed under arrest, this fellow that hired me started to run, and this detective, Boland, was covering me with a revolver. About five minutes later, Officer Hain, or whatever his name is, come marching along, calling this fellow, and they took me into the store, and he didn't say nothing to me; he says, "Where did this fellow tell you to take that stuff to?" I told him, to Rivington and Christie Streets. He says, "You never seen this fellow before?" I says, "No". He said, "It is too bad he got away". Then he said to me, "Were you ever arrested before?" I says, "Yes;" so, he says to the other officer, "Well, we better hold him, for he has got a record." And he asked me if that was the fellow that hired me, and I told him no. Then they went to work - well, he hit me on the head with a blackjack and pretty near knocked me senseless, but being that I got

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a pretty strong start it didn't have much effect on me, outside of making me a little dizzy, and started asking me questions, but I don't remember what they were, being I was a little dizzy, but anyway when we got into the house the lieutenant asked him how he come to make the arrest, and he told him that he got a telephone, a telephone come into the house that a burglary was being committed at that address, 219 Wooster Street, and that him and Rudy went up there to see who was committing the burglary, and when they got up there they seen three men burglarizing or forcing the door, and they wanted to await developments, so he says that the three men went away, and they followed them up, and they seen two men go one way and one man go another way, and Boland says one of the officers, that he seen the man coming up himself approach me while I was coming down with the wagon and say something to me, and then I went down to the place and started unloading the truck. He said, "Where is that man?" He said, "He got away on me". We said, "Is that one of the men that was with them three men?" He says, "Yes". He says, "Why didn't you grab the man that hired this fellow and that was carrying the goods out?" He says, "Well, we were only two men, and I grabbed this fellow, and while the other officer was chasing the other fellow they got away on me". Now, this is a case being that they see I got a record --

MR. MARKIEWICH: Well, I --

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THE COURT: Well, I will allow him to finish up. Go on.

THE WITNESS: That they are just trying to swear my life away; that is all. Why didn't they catch that fellow that hired me? Now, they know in their heart and soul that I - they followed the fellows up and seen one of the fellows like me, but they wouldn't admit to it. They get on the stand and they lie like the dickens, and I can't tell them they are lying; they aint going to admit they are lying; they are arresting us, and they are looking for a conviction. How are they going to convict us? They know I got a record, and the other fellow has a record, and they are saying whatever they please, and it is all up to you, gentlemen of the jury, to decide. I am a married man, with a wife and two small children. ^{am} I married three years; never was in any trouble in the time I was married, and it is up to you to decide whether I am innocent, or guilty. Don't let my record be a prejudice against me, and I further wish to state that I recalled up the stable woman, one of the officers -

BY MR. MARKEWICH:

Q Hoerr, or Boland? A I don't know which one; one of them. I seen Rudy Hoerr talking to the stable woman, and he says to the stable woman, "How is it, if this fellow is hiring a dump wagon off you, how is it he took out a top

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wagon today?" She says, "It was raining very strong today, and he says he will take a top wagon;" so he says, "Well, we aint got nothing on him, outside he was hired, and we can't get the fellows, so we got to hold him".

BY MR. WARE:

Q You have spoken about a record? A Yes, sir.

Q Have you been convicted of crime? A Yes, sir.

Q More than once? A Yes, sir. No. Well, yes, more than once.

Q Tell this jury just what crimes you have been convicted of, and when they happened? A Well, about seven years ago, I was only about fifteen years of age then, I got arrested for grand larceny, and was sent up to Elmira. When I come out of Elmira I got arrested for disorderly conduct.

Q Don't tell us about any times you got arrested. I am asking you only about such times as you were convicted or pleaded guilty. A Well, I pleaded guilty that time, and was sent to Elmira.

BY THE COURT:

Q What year was that? A What is that?

Q What year. A 1910, I think.

Q Go on. A Coming out of Elmira, I was arrested for disorderly conduct, and taken back to Elmira for a violation of parole. Coming out of there, I was arrested a few times for shooting craps, if you want to know that. That is all. I was arrested another time for grand larceny, but it was dis-

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missed.

BY MR. WARE:

Q You were not convicted of any other crime? A No, sir. Well, for small things. I got twenty days for shooting crap once, and I got thirty days for disorderly conduct. Yes, and I got three months for petit larceny.

Q That was in New York County? A Yes, sir.

BY THE COURT:

Q What year was that? A I think it was 1913 or 1914, I don't remember.

BY MR. WARE:

Q It has been testified by both the officers that the person who helped you load these pieces of goods on the truck was the defendant, Frankel. Is that true, or not? A No, sir; it was an Italian fellow.

MR. WARE: That is all.

CROSS EXAMINATION BY MR. MARKEWICH:

Q Well, the officers are telling the truth when they say that you went into the store and carried the goods out?

A Yes, I think they are telling the truth, yes, sir. I aint saying they aint.

Q And about the wagon being there and all that? A Yes, sir.

Q That is all truthful? A Yes, sir, they are telling the truth, yes, sir.

Q Do you claim they are trying to swear your life away as to what? A Well, it looks that way when the officer says

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I told him that I was offered \$50. for the job, and I never mentioned that to him.

Q You don't suppose - A He didn't even ask me that, because he seen the man hire me. That is trying to swear my life away, when he tells a lie like that, aint it?

Q Were you to carry the goods for nothing? A No, I was supposed to do a regular trucking job. I was going home empty.

Q You were in the junk business; you were not in the trucking business? A Well, that is all right. I was going home, and it was on my way home.

Q You hired the truck to carry junk? A I hire the truck, and I pay two dollars and a half a day for it.

Q You do any job you can get hold of? A Yes, sir.

Q Anything that can be carried on the truck, you carry it? A Legitimately, yes, legitimate stuff, sure.

Q And, of course, when you went to that store you thought it was legitimate when the goods were carried out?

A Yes, sir.

Q You hadn't asked this man whether he owned the place, or who he was? A Well, I didn't have to ask him that. When a man comes over to me and offers me a job, I ask him where the stuff was.

Q You saw a sign there? A Some name on the window, but I didn't take notice of the name.

Q You saw the name Hain there? A I didn't take no

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notice of the name.

Q You didn't think it was important? A No, sir.

Q You were in trouble before and convicted? A Yes, sir; that is what I mentioned.

Q You were very careful, you didn't want to fall into trouble again? A No, sir, I didn't look to fall into trouble.

Q When you saw the strange man and he asked you to take the goods out of the store, your suspicions were not aroused at all? A He didn't ask me to take the goods out. He just asked me what way I was going, and I said I was going down to the East Side. He said, "I have a few rolls of goods. Do you want to take them down to Rivington and Chrystie Streets?", and I said, "Yes," and we went over to the place.

Q Saturday is a very busy day? A A very slow day.

Q Around Saturday morning, around noontime? A Well, it aint busy.

Q That section is very busy? A I would call it slow; it was pretty slow for me, anyway.

Q Wooster street has a lot of trucks on it? A What is that?

Q Wooster Street has a lot of trucks on it. A No, sir, not at that time; it is pretty dead around there after twelve o'clock, anyway.

Q Did you notice the condition of the lock when you entered the store? A There was no lock on when I rode over to the store. This fellow first pulled the wagon up, and

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I pulled my wagon in, and he went into the store while I was opening up my tailboard. Now, a man walking into a store and a door is open, there was nothing to my mind that it was wrong.

Q How many pieces of goods did you have on your truck when you were placed under arrest? A I didn't count them.

Q You wouldn't say there weren't fifteen pieces of goods on the truck? A I wouldn't say. I didn't take notice how many was on. There was about ten or twelve; around that; I don't remember; I didn't count them.

Q Where do you live, do you say? A 24 Mangen Street.

Q That is right near where? A It is right near Mangen Street.

Q Is it nearer Grand Street? A Well, two blocks away from Grand Street.

Q Mangen Street starts at about Grand Street, doesn't it? A Yes, that is where it starts.

Q 24 is just on the block between Grand and Broome, eh?

A Between Broome and Delancey.

Q And you never knew this Frankel before the arrest?

A No, sir.

Q And you never saw him? A No, sir.

Q At all? A No, sir.

Q And you ~~never~~ knew ^{nothing} of him? A No, sir.

Q And the first time you met him was when he was brought into your store? A Yes, sir.

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Q And you never knew these officers before? A No, sir.

Q You never had any quarrel with them at all? A No, sir.

Q Never ran across them? A No, sir.

Q You say you were in the junk business? A Yes, sir.

Q Ever since you were married? A No, sir.

Q How long are you in it? A I am in the junk business about eight or nine months.

Q And hired a truck every day from the place on Mangan Street? A Yes, sir.

Q The stable is on Mangan Street, too? A No, sir.

Q What street? A Willett Street.

Q Willett Street? A Yes.

Q And from whom have you been buying junk? A Off the engineers, up town and down town, the offices buildings, wholesale.

Q What office buildings? A Any office buildings.

Q What office buildings have you been buying junk from?
A All over, every office building.

Q Give me the office buildings? A Oh, there is a thousand up there.

Q You didn't buy it from a thousand office buildings, did you? A Well, I got junk wherever - I was known up there pretty well, and a lot of engineers were friends of mine.

Q What streets? A Every street uptown.

Q The names of the engineers, please? A They got different names. There is quite a number of them. I don't re-

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member no names.

MR. MARKWICH: All right, that is all.

BY THE COURT:

Q How many officers came over to you when you were arrested? A One.

Q That is, Boland? A Well, Boland, yes, sir, Detective Boland.

Q Only one officer came over? A Well, there was a uniformed officer there, too.

Q When you were first arrested, I am speaking of now.
A When I was first arrested, only Officer Boland.

Q When this man that hired you saw Boland, did he run away? A Well, when I was arrested, your Honor, I had my back turned, see, and when he says, "Hands up," I turns around and I seen this fellow that hired me on the corner, and Rudy was like about 50 feet away from this fellow that was running, see?

Q The first time you saw Officer Hoerr? A Yes, sir, the first time.

Q What was this man like? A Who, the man that ^{hired} ~~met~~ me?

Q Yes. A He looked to be an Italian fellow, which I think he was, and he was a dark complexioned fellow, about a head taller than me, and stouter than me.

Q How far ahead was he of Rudy? A When he told me to put my hands up, I faced around, and I seen the fellow running to the corner. The corner was say about twice the distance from this room, anyway, I think it was, and I seen Rudy, and

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Boland hollered to Rudy, "Catch that son-of-a-bitch," and Rudy started to run, and about five minutes later he come back with this fellow.

Q I asked you how far he was behind the man he was chasing? A He was behind him about twice the distance of this room, about the third or fourth building from the corner. I don't know if you would call it fifty or seventy-five or a hundred feet.

THE COURT: That is all. I think we will take a recess now.

Gentlemen of the jury, please do not form or express any opinion as to the defendant's guilt or innocence, until the case is finally submitted to you. We will take a recess until two o'clock.

(The Court then accordingly took a recess until two o'clock p. m.)

AFTER RECESS

THE DEFENDANTS REST

Amos G. Russell,
Official Stenographer.

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