

START

2043

CASE

2043

N.Y. Monday, March 8th, 1915.

I N D E X

	DIR.	CRO.	REDIRECT	RECROSS
Mary Gray	1	14	35	36
John Boyle	36	45		
" " (Recalled)	61			
Julius Mishler	50	53	54	55
James A. Dolan	56			
Mary Gray	58	58		
Frank S. Price	59			
" " " (Recalled)	109			
John A. Gray	63	64	66	66
Agis T. Nicholson	67	89		

CASE 2043

5213

THE PEOPLE OF THE STATE OF NEW YORK
- Against -
A G I S T. N I C H O L S O N

New York, Monday March 8th, 1915.

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

INDICTMENT FILED DECEMBER 18th, 1914.

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

ROBERT C. McCORMICK, Esq., Assistant District Atty.,
For the People.

F. A. WARE, Esq., and

HENRY C. NEUWIRTH, Esq., For the Defendant.

(A jury is duly empanelled and sworn.)

THE PEOPLE'S CASE

(Mr. McCormick opens the case to the jury on behalf
the People.)

M A R Y G R A Y, called as a witness on behalf of the

People, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where do you live? A 217 West Eleventh street.

Q On the 29th of August where did you live? A 217 West

GAZE 2043

Eleventh street.

Q Where were you that afternoon? A I was at Sixth avenue and Thirtieth street. I went to a moving-picture show, Loew's theatre.

Q What time did you leave your home that day? A I left in the morning and went up to Macy's.

Q What time? A About ten o'clock, I guess.

Q Do you remember? A About that time, about ten o'clock.

Q Where did you go? A I went to Macy's, shopping.

Q And how long did you stay in Macy's? A I stayed in Macy's a couple of hours.

Q And then where did you go? A I then went to Gimbel Brothers'.

Q How long did you stay there? A About an hour.

Q And then where did you go? A (No answer).

Q Did you go to a moving-picture show? A Yes, sir.

Q What time? A It was in the afternoon, late.

Q Can't you give me about what hour? A It might be around five o'clock.

Q Where was that moving-picture show? A Thirtieth street and Sixth avenue.

Q Did you see this defendant? A Yes.

Q While you were in that show? A Yes.

Q Or before you went in? A No.

Q Tell us the circumstances under which you met him?

A This man down here was sitting next to me in the seat, and

CASE # 2043

I had a silk bag with some jewelry in it, and I let it fall on the floor, and he picked it up, and I said, "Thank you"; so he started humming some of the music the orchestra was playing, and he said, "That is nice music, isn't it?", and I said, "Yes". He said, "I am very fond of music". I said, "So am I". He said, "I would like to get in that line of business, in the vaudeville line, I have just put an add in the paper to get some-
who
body/would help me out"; so he kept on talking about the music, and I stayed until the performance was over, I guess it went over on the second time, and I came out, and he came out with me, and we walked up Sixth avenue, and he started to pull this paper out of his pocket, and showed me the add he had put in, and he said, "I would like to get you interested in this music", some scheme he was getting up. So I walked - he says, "If you come up to a room with me I will show you some cards and letters I have". I hadn't any suspicion of the man, that he was going to rob me -

MR. NEUWIRTH: Objected to, and I move to strike that out.

THE COURT: Yes, that part may be stricken out.

THE WITNESS: We walked across Thirty-fourth street to the - it is so long ago I can't remember - the McAlpin Hotel, that is it, and he pulled some cards out of his pocket, and I happened to see an address on it, Thirtieth street; so he went over to the desk, and the clerk asked him had he any identification card, and

CASE 2043

4
he said no. He came out again, and he walked across
Thirty-fourth street, and he seemed to be acquainted with
this place, near Seventh avenue, and he went upstairs.

MR. NEUWIRTH: I move to strike out, "he seemed to
be acquainted with that place".

THE WITNESS: So he was.

THE COURT: I will allow that to stay in.

MR. NEUWIRTH: I take an exception.

THE WITNESS: So we went in and went upstairs, and
he said he was very thirsty, and he went out and got
two bottles of beer.

THE COURT: Where was this place, this second place?

THE WITNESS: Thirty-fourth street near Seventh
avenue.

BY THE COURT:

Q Do you know what side of the street, what number?

A Yes, your Honor, it is the uptown side, near the corner. He
poured out the beer, and I took a glass of it; and he had
some letters - he had another glass, and then he started to
show me the cards, and that is all I remember. That is
all I remember, after I got the beer.

BY MR. MCCORMICK:

Q Well, what time was that? A That was - the show
got out about a quarter past eleven, I guess.

Q The moving-picture show? A Yes, and then it must
have been about twelve o'clock.

Q When you came out of the moving-picture show, did you

CASE 2043

go to the Grand Hotel? A No.

Q Sure? A No.

Q You went to the McAlpin? A Yes, and this other.

Q Have you told us all that happened before you got to the hotel where you went to sleep? A Yes, sir.

Q Did he tell you why he wanted you to go up in a room in a hotel with him? A He said he wanted to show me some letters or cards. He made no improper suggestions, because if I had any suspicions the man intended to rob me I would not have gone with him.

Q What time do you say you went in that hotel? A It must have been around 12 o'clock.

Q How long were you unconscious, do you know? A I do not.

Q What? A I don't.

BY THE COURT:

Q What time was it when you left the moving-picture place?

A About a quarter past eleven.

BY MR. MCCORMICK:

Q When you left the moving-picture show, where did you go? A Went to Thirty-fourth street and up Sixth avenue.

Q Right to the McAlpin? A Yes.

Q Were you in that moving picture show from about five o'clock in the afternoon until about eleven at night, and was he there all that time? A That I couldn't tell you; that I couldn't say.

Q Did you have anything to drink that evening except what

CASE 2043

you have told us about? A No.

Q Not a thing? A No.

Q When you woke up, do you know what time it was, about?

A It must be all of a couple of hours, anyhow, or more.

Q Was there anything on your person when you went to sleep that was not on you when you woke up? A Yes, sir.

Q What? A A diamond shaped Lavelliere.

Q Was there a brooch? A Yes, sir, a diamond brooch.

Q Where did you get that? A My husband gave it to me.

Q What? A My husband.

Q Do you know what he paid for it? A I guess he paid around \$400.00 for it.

Q What? A Around \$400.00, I think. He didn't tell me.

Q Was there a chain? A Yes, a platinum chain.

MR. NEUWIRTH: I object to the District Attorney reading from the document. He can ask the question what property she had on her person before she fell asleep and what she had afterwards.

Q Well, answer that. A I had a diamond brooch, fifty some odd diamonds in it.

Q How many? A Fifty some odd, fifty-three or 'six, I don't know exactly, and a platinum chain attached to it, and a pair of diamond earrings and a diamond engagement ring to match it and my wedding ring, and a gold watch, with a pin, and in my bag I had a pair of gold cuff buttons with four diamonds in them.

CASE 2043

Q When you woke up was any of that property missing?

A Yes.

Q Which? All of it? A No, all but one earring I had here; that was still in my ear, where I laid against the bed and had my hand under my head.

Q Let us see the earring? A (Witness produces earring.)

MR. MCCORMICK: I would like to have that marked for identification.

(Same marked People's Exhibit No. 1, for Identification, of this date.)

Q Which ear was this diamond in? A The right ear, this one (indicating).

Q And when you woke up, how were you lying, on the bed?

A I was lying against the bed, on a chair.

Q And your right ear was down? A Was down, and my hand against it.

Q The earring that was in your other ear, that was gone, was it? A It was gone.

Q Have you ever seen it since? A Yes.

Q Where is it? A When I was in the hospital, Bellevue Hospital, I identified it.

Q Is that it (exhibiting article to witness)? A That is it.

MR. MCCORMICK: I offer that in evidence.

(Received in evidence and marked People's Exhibit No. 2, of this date.)

Q What is that (showing article to witness)? A That is

CASE 2043

a heart I had on.

Q Was that on your dress? A It was on my neck, yes.

Q Where was it when you woke up? A I didn't have it.

It was gone.

Q Where did you see it the next time? A The detectives.

Q The detective showed it to you? A Yes.

BY THE COURT:

Q What detective? A Boyle.

BY MR. MCCORMICK:

Q Is that the one (indicating Officer Boyle)? A That is the gentleman.

MR. MCCORMICK: I offer that in evidence.

(Received in evidence and marked People's Exhibit No. 3, of this date.)

Q Now, did you have a diamond like that on you (handing article to witness)? A Yes.

Q How was it set? A It was set in a ladies engagement ring.

Q When was the next time you saw this diamond? A The officer.

Q When the officer showed it to you? A Yes, sir.

MR. MCCORMICK: I offer that in evidence.

MR. NEUWIRTH: I object to that, if your Honor please.

MR. MCCORMICK: Then, I will have it marked for identification.

CASE 2043

(Same marked People's Exhibit No. 4, for identification, of this date.)

Q How did you feel when you woke up? A Pardon me, Mr. McCormick; there is a chain, a platinum chain.

Q There is no chain here? A That was with the ring.

Q Was there a diamond ring left on your finger? A No.

Q What pieces of jewelry were left on you? A There was one ring on this hand (indicating right hand).

Q Where is that ring now? A Here (indicating right hand).

BY THE COURT:

Q That is the hand that was under your head while you were sleeping? A Yes, sir.

MR. McCORMICK: I offer it in evidence.

(Same received in evidence and marked People's Exhibit No. 5, of this date.)

BY MR. McCORMICK:

Q What was the condition of the room when you woke up?

A It was all right.

Q Did you see a collar there? A Yes, sir.

Q Is this the collar (exhibiting collar to witness)?

A Yes, sir.

Q Did you leave that collar there, or take it with you?

A I took it with me.

Q And gave it to a police officer? A Yes, sir.

Q Were those marks on the collar when you picked it up?

A I didn't notice.

Q Do you know whose collar it was? A Yes, sir, the de-

CASE # 2043

fendant's.

Q Did he have it on when he went in there? A He did.

Q Did you see him take it off? A No, sir.

Q He took it off while you were asleep? A I suppose so.

Q How long had you been in the room before you went to sleep, about? A About ten minutes.

Q Have you told us all that happened in that room before you went to sleep? A Yes, sir.

Q How much beer did you drink before you began to feel the effects of it? A A glass; one glass.

Q One glass, and you went right to sleep? A That is all I remember.

Q When you woke up and found that your jewels were gone, what did you do? A I called the clerk of the hotel and told him I had been robbed.

MR. NEUWIRTH: Objected to.

THE COURT: I will allow her to say she called a clerk and made a complaint.

Q Did you make a complaint to the clerk? A Yes, sir.

Q How, by telephone, or in person? A By telephone, called him upstairs.

Q Then what did you do? Did he come up? A He did.

Q What did he do when he got there? A He just told me that he saw this defendant go out.

MR. NEUWIRTH: I object to that.

THE COURT: Yes, not what he said. —Did he do any-

CASE 2043

thing?

Q What did he do? Did he talk to you? A Yes.

Q Did he look around the room? A He did.

Q How long did he stay there? A About five minutes.

Q Then what did he do? A He told me -

Q No, no. What did he do? A He went downstairs.

Q You are not allowed to say what conversation you had with this man. When he went downstairs? A Yes, sir.

Q How long did you stay there before you went downstairs? A About two hours.

Q After the hotel clerk came up? A Afterwards.

Q What were you doing? A The clerk said I should stay there, I was in such a dazed condition.

MR. NEUWIRTH: I move to strike that out.

THE COURT: Yes, what the clerk said may be stricken out. You may tell the jury what your condition, physical condition, was after you woke up?

THE WITNESS: I was not able to go out in the air after I woke up.

BY THE COURT:

Q Describe your condition. Why weren't you able? A My head was dizzy. I was not able to walk.

Q Tell what your symptoms were? A I was sick and dizzy.

BY MR. MCCORMICK:

Q In what way? A My whole body seemed as if I had no feeling in it.

CASE 2043

Q Were you nauseated? A Yes, sir.

Q Well, after you stayed there two hours, what did you do?

A I rang for the clerk, and he brought me downstairs in the elevator.

Q Where did you go? A I went home.

Q How did you go home? A Sixth avenue, down Sixth avenue.

Q What? A Down Sixth avenue.

Q In a car? A Yes.

Q Do you know what time you got home? A Yes, I do.
It was around six o'clock.

Q Did you ever talk with this defendant afterwards? A
Never seen him; never laid my eyes on him until I saw him in the hospital.

Q What? A I never laid my eyes on him. I only seen him once.

BY THE COURT:

Q You say you saw him in the hospital? A Yes.

Q When was that? A (No answer).

BY MR. McCORMICK:

Q You identified him there? A I identified him there, yes.

Q When did you go to the hospital? A I went to the hospital the middle of September, about ten days after this thing happened to me. I was sick all the time.

Q When did you make a complaint to the police first?

CASE 2043

A Monday morning.

Q I mean, how many days after you lost the property?

A One day. The next day was Sunday.

Q The next day? A Yes.

Q And where did you make that complaint? A Down to Police Headquarters.

Q Where? A Mulberry street.

Q And what police officers did you see there? A These two gentlemen here.

Q They were assigned to the case? A Yes.

Q And you talked to them? A Yes.

Q Now, after that did you go to a pawn shop with those policemen? A I did.

Q Whose pawn shop? A Sixth avenue, about a block from the theatre.

Q Do you know the name of it? A Yes, Feingold.

Q And did you see anything there that belonged to you?

A Yes, I did.

Q What? A The diamond heart and the earring.

Q Did you go to any other place where any of your property was found? A No.

Q Have you told us all you know about this case? A Yes.

Q Have you told everything? A Except when I went to the hospital I identified the rest of my jewelry. I have been in the hospital five months, crippled for four months, from whatever I got to drink, and I am crippled yet.

CASE 2043

MR. NEUWIRTH: I move to strike that out.

THE COURT: Yes, strike it out. What hospital did you go to?

THE WITNESS: Bellevue.

Q How long were you there? A I was there six weeks.

Q While you were there, was this defendant brought into the hospital? A He was.

Q And did you recognize him as the man who had taken you to this hotel? A I did, yes.

BY THE COURT:

Q What doctors had charge of you there? A I couldn't tell you. I don't know their names.

Q Did you have a private room, or were you in a ward?
A In a ward.

Q Don't you know the name of the doctor in charge of the ward? A No. When I was there six weeks I became insane.

MR. McCORMICK: That is all.

CROSS-EXAMINATION BY MR. NEUWIRTH:

Q What is your name, Madam? A Gray.

Q Are you a married woman? A Yes, sir.

Q On August 29th were you married? A What kind of a question is that to ask me?

MR. McCORMICK: I offer this collar in evidence.

MR. NEUWIRTH: Objected to.

MR. McCORMICK: I ask that it be marked for identification.

CASE 2043

tion.

(Same marked People's Exhibit No. 6, for Identification, of this date.)

Q Were you married on August 29th? A No, I was married on the 10th of June, eighteen years ago.

Q You were a married lady on the 29th of August last?

A Yes, sir.

Q And were living with your husband at that time? A No.

Q And how long prior thereto did you not live with your husband? A Two weeks.

Q You say you have told the jury everything that happened on that day? A As far as I can remember, yes, sir.

Q As far as you can remember? A Yes. That is seven or eight months ago.

Q Now, you have testified here before, have you not? A I have.

Q You said that before you went to this hotel on Thirty-fourth street near Seventh avenue that you went to the McAlpin Hotel? A Yes.

Q That is what you say you did, is that correct? A Correct.

Q You don't remember testifying going to the McAlpin the last time you testified here, did you?

MR. McCORMICK: I object to that. She was not asked.

THE COURT: I will allow her to say whether she did so testify, or not.

CASE 2043

THE WITNESS: No, I don't remember.

Q Do you remember that I asked you - A I do not remember, no.

Q Wait a minute. Do you remember that I asked you whether or not you went to the McAlpin Hotel, and you answered to that question, "I was not"? A No, I will say now I was.

Q Just tell the jury whether or not when I asked you the last time - A I don't remember what you asked me the last time.

Q Wait a minute. Did I not ask you the last time you testified whether or not you went to the McAlpin Hotel, and you said, "no"? A I don't remember it.

Q You don't remember it? A No.

Q Do you remember me asking you several times if you were sure you were not at the McAlpin Hotel, and you said, "positively no"? A I don't remember it.

Q What happened at the McAlpin Hotel? A This defendant here went in to get a room, and I stayed watching the people that were there, and they refused to give him a room because he didn't have any identification card or any valuables such as baggage.

Q You knew he was going into the McAlpin for a room, did you not? A Why, certainly, he said so.

Q Beg pardon? A He said he was.

Q Didn't you and the defendant discuss the question of going to get a room at the McAlpin? A I didn't, no.

CASE 2043

Q What? A I did not.

Q But you did know he was going to get a room? A Yes.

Q And you waited until he would get the room? A Yes.

Q Do you remember that he registered at the McAlpin Hotel? A I do not. I didn't see him. He went over to the desk. I don't know what the man done.

Q Did you hear this defendant testify, since the last time you have testified, that he and you went to the McAlpin, and that he registered? A Repeat that again, please.

Q Did you hear this defendant testify here on the stand the last time you testified - in other words, I will moderate it. After you testified in this court, then you heard Mr. Nicholson, the defendant, testify, did you not? A I did not.

Q You did not? A I did not. I was not here. I was told to stay outside.

Q Have you been informed that Nicholson testified that he and you went to the McAlpin Hotel? A I have not.

Q You have not? A No.

Q What did you say happened after Mr. Nicholson attempted to register at the McAlpin? A He went to Thirty-fourth street.

Q No, what happened at the McAlpin Hotel, where he attempted to register? A I told you a minute ago they refused to give him a room, because he hadn't any baggage or any identification card; and I wish you would only ask a question once; I am not able to answer a second time.

CASE 2043

Q What? A I wish you would only ask a question once; I am not able to answer a second time.

Q Now, kindly answer my questions as I put them to you?

A Yes, but take into consideration that I am not in perfect condition.

Q Now, you were admonished last time by the Justice -

MR. MCCORMICK: That is objected to.

THE COURT: I will admonish the witness, if necessary. Don't make any such statements.

Q Before you went to the McAlpin Hotel, did you not go to the Grand Hotel? A I don't know where it is.

Q Just answer me, "yes", or "no". Did you not go to the Grand Hotel? A No; I don't even know where the Grand Hotel is.

Q I didn't ask you that, Mrs Gray. A How could I go if I don't know where it is. That is enough of an answer, isn't it?

Q Do you remember going to a hotel at the southeast corner of Broadway and Thirty-first street with this defendant?

A No, sir.

Q Before you went to the McAlpin? A No.

Q As a matter of fact, you and Nicholson went to this hotel, known as the Atlan, at Seventh avenue and Thirty-fourth street first, did you not? A No.

Q Didn't you go to that hotel first? A No.

Q What time did you leave the moving picture place? A

CASE 2043

About a quarter past eleven or so.

Q At night? A At night, yes.

Q What time did you enter? A Around five o'clock.

Q And you stayed in that place continuously, from five until a quarter past eleven? A That is nothing remarkable, is it?

Q I didn't ask you that, Mrs. Gray. A Yes.

Q Did you stay there continuously? A Yes.

Q When was the first time that you noticed this defendant? A I don't know.

Q What time was it, or how long after you had entered the place? A I couldn't say.

Q You entered there about five o'clock? A I wouldn't have noticed him at all, only my bag fell, and he picked it up.

THE COURT: The question is, what time it was.

Q You entered there about five o'clock? A Yes, sir.

Q How long after you entered did you see this defendant?

A I said I don't know.

Q Was it one hour after, or two hours? A It might have been.

Q See if ^{you} cannot fix a time to the jury as near as you can? A I am telling you as near as I can. I don't exactly know.

Q How long? A It might be an hour, maybe two hours, maybe three hours; I didn't pay any attention to that.

Q Was it near the time you came out, or right soon after

CASE 2043

you came in? A No, it might have been an hour or so.

Q Don't you remember beating the defendant just before you entered the moving picture place? A No.

Q You don't remember that? A No, never seen the man before, only the once.

Q You say after you had been there an hour you saw this defendant? A It might be an hour, yes; it might be more; I couldn't tell you.

Q And you had a conversation with him? A Yes.

Q And after you spoke to him you stayed in this place until you left? A Until the show was over, yes.

Q Did you speak to him during the time that you both sat there in the place? A Yes, he spoke to me first. The man picked up my bag, and I said, "Thank you", and he started to talk about the music, how nice it was, and so forth, and that is what the conversation was about.

Q That was the only conversation? A That is the time I noticed the man.

Q Did you have your hat off? A Yes, sir.

Q And where did you have your hat? A In my lap.

Q Do you remember placing your hat on the lap of the defendant? A No.

Q Sure about that? A Positive.

Q Then you and the defendant left this moving picture place a little after eleven? A It was after eleven some time; whatever time it gets out.

CASE 2043

Q Where was the first place you walked to? A Up Sixth avenue.

Q How far? A Thirty-fourth street, and across Thirty-fourth street.

Q Across Thirty-fourth street west? A East.

Q Where was the first stop you made? A Broadway and Thirty-fourth street.

Q And what particular place was the first place you stopped at? A The McAlpin Hotel.

Q Sure about that? A Positive.

Q See if I can refresh your recollection. Did you walk up Broadway in the forties? A No.

Q Do you remember that? A Isn't that Broadway and Thirty fourth street? That is where I was.

Q I am asking you whether you walked up Broadway as far as Forty-second street? A No.

Q Do you know a cafe at Seventh avenue and Forty-second street? A No.

Q Broadway and Forty-third street? A No, I do not.

Q Do you remember stopping there with Nicholson? A No.

Q Did you have anything to drink with this defendant?

A Yes, sir.

Q Before you got to this place in Thirty-fourth street and Seventh avenue? A No.

Q Then, as I understand you, the first stop was the McAlpin Hotel? A Yes, sir.

CASE 2043

Q And then, when you were refused admittance there, you went over to Seventh avenue and Thirty-fourth street?

A Yes, sir.

Q And what time did you get there, about? A I couldn't say.

Q What? A I suppose about maybe twenty minutes or so.

Q Twenty minutes? A Yes, sir.

Q Did you see him register there at the Atlin? A He went over to the desk. I didn't see what he done.

Q You knew he was going to register? A I suppose so.

Q Didn't you know he was going to register? A He went over to write. I didn't pay any attention.

Q Didn't you know he was going to register and take a room?

A Yes, he was going to take a room.

Q Didn't you know that you and he were going to a room?

A Yes.

Q And how old are you, Madam? A Forty-two.

Q And you have children, have you not? A Two.

Q Those children were not living with you on the 29th of August, were they? A They were.

Q Now, Mrs. Gray, do you remember where those children were on the 29th of August? A Yes, they went up to my mother's

Q They were up in your mother's? A Yes, sir.

Q And you left your place that morning about nine o'clock, did you not? A Yes.

Q And you occupied a furnished room on Eleventh street?

CASE 2043

A Yes, with my two children.

MR. NEUWIRTH: I move to strike out the latter part of the answer.

THE COURT: I will allow the answer to stand.

THE WITNESS: I was living there with my two children.

MR. NEUWIRTH: I move to strike that out.

THE COURT: Motion denied.

Q When you left the house that morning your children were at your mother's house? A Well, it was vacation, and they had no school.

Q So, they were at your mother's? A Yes, sir.

Q Didn't you testify it was your sister's house? A My mother lived with my sister.

Q Then, it is your sister's house? A Well, it is immaterial, I suppose.

Q Then, you were alone in that furnished room that morning? A Yes, sir.

Q And you went shopping, as you testified? A Yes, sir.

Q To Macy's? A Yes, sir.

Q And you bought a piece of lace? A Yes, sir.

Q And that is the only thing you bought at Macy's? A That is all.

Q Is that correct? A Do you think those questions are necessary?

THE COURT: I will rule as to whether they are necessary.

CASE 2043

THE WITNESS: I said yes.

Q And then, after you bought this piece of lace, you went over to this picture place? A No, I went to Gimbels'.

Q Did you testify anything about Gimbels' the last time?

MR. McCORMICK: That is objected to.

THE COURT: I will allow it.

Q Did you testify anything about Gimbels' the last time?

A No, I was not asked.

Q You were not asked? A No.

Q Then, you did not testify about Gimbels'? A No.

Q Now, you woke up about one o'clock, I understand, or half past one, in the room at this Atlan Hotel; is that right? A Yes.

Q Were you asleep? A Yes.

Q And then, as I understand you, you testified the last time you took a Sixth avenue car? A Yes.

Q And you took a car south - you walked up to Sixth avenue from Seventh avenue first, as I understand it? A Yes.

Q And from Seventh avenue to Sixth avenue you walked? A Yes, sir.

Q And you walked up on the northerly side of the street, the uptown side of the street? A (No answer).

Q Don't you remember testifying you walked ~~xxx~~ from Seventh avenue and Thirty-fourth street to Sixth avenue? A I walked along.

Q On the same side of the street as the hotel was? A I

CASE 2043

couldn't say.

BY THE COURT:

Q Which side of Thirty-fourth street did you walk on, the north or the south side? A I walked towards Sixth avenue - towards Seventh.

Q On which side of the street? A I don't remember.

BY MR. NEUWIRTH:

Q Don't remember? A No.

Q Don't you remember last time you testified you walked on the same side of the street as the hotel was? A Maybe.

Q Did you? A I say I might have. I don't remember.

Q Then you took the car at Sixth avenue and Thirty-fourth street south as far as Eleventh street? A Yes.

Q And you got off at Eleventh street, and then, I understand, you testified you walked three blocks to your house, from Eleventh street and Sixth avenue? A It is two blocks, I believe.

Q Two blocks? A Yes.

Q A little over two blocks? A Yes.

Q Is that right? A Yes, sir.

Q And you came to your house and you undressed and went to bed; is that right? A That is right.

Q And the next day you said nothing to anybody about this matter? A The next day was Sunday.

Q Just answer my question, please. You said nothing to anybody about the matter? A No.

CASE 2043

Q You said nothing to anybody until two weeks there-
after; isn't that correct? A It is not.

Q Didn't you testify at the last trial that it was two
weeks after this Saturday, August 29th, that you spoke to Mr.
Boyle? A I did not.

Q You did not? A Monday morning.

Q When? A It was Monday morning.

Q Monday morning? A That day was Saturday, and it was
Monday morning.

Q You spoke to Mr. Boyle Monday morning? A Yes, sir.

Q That was the first Monday immediately following the
Saturday? A Yes; it could not be two weeks -

Q I am asking you is that correct. Did you speak to Mr.
Boyle on the Monday following this Saturday? A Yes.

Q And Mr. Boyle asked you who had your jewelry, didn't he?
A Yes, sir.

Q He asked you for the name of the man? A Yes.

Q And his address? A Yes.

Q And you told Mr. Boyle the name was Nichols, or Nichol-
son? A I told him it looked like Nichols.

Q And that he lived in Thirtieth street somewheres? A
Somewheres.

Q I beg pardon? A That is what I seen on the card.

BY THE COURT:

Q That you saw on what card?

MR. NEWSOM: I will bring that out.

CASE 2043

Q That you saw on what card? A When he pulled the card out of his pocket, he was showing me different cars he had, and that is how he came to tell me to come to the room with him; I happened to see the business on the card, and he said, "This is where I live"; and I just saw the name. I didn't see the number.

BY MR. NEUWIRTH:

Q You remember when you and the defendant were in the room in the Atlan Hotel you asked him his name; is that right?

A I did not.

Q He told you that he was an actor? A He did not.

Q He said he was interested in music? A Yes.

Q He did speak about music? A Yes.

Q Didn't you then say to him that you also were interested in music? A I did.

Q Is that correct? A Correct.

Q And did you not also say to him you think that you have seen him somewhere, or heard him sing in Jersey somewhere? A I did not.

Q Then, when he said he was interested in music, he pulled a card from his pocket with the name Agis Nicholson on it? A No, only Nichols. He kept his hand on the card, and all I could see was the last name and the number of the street.

Q Didn't you put the card in your pocket? A I did not.

Q Quite sure of that? A Positive. He put the card back

CASE 2043

in his pocket again.

Q All he did was to put his hand on it and show you part of the card? A He said, "This is my name".

Q When he said ^{to} you, "This my name", did he put his hand on the card? A Yes, he had a couple of cards.

Q And concealed part of the name? A He did. I never knew what his first name was until I saw it on the subpoena.

Q What? A I never knew what his first name was until I saw it on the subpoena.

MR. NEUWIRTH: I didn't ask that. I move to strike that out. Please answer my questions. Don't be too smart.

THE COURT: If there is any admonishing to be done, the Court will do it. Now, I request counsel to confine himself to the question. Now, just answer the questions, Madam, and don't argue with counsel, and we will get along much quicker.

MR. NEUWIRTH: I want to call your Honor's attention to the fact that this ^{defendant} ~~XXXXXX~~ answered the question in a sneering way and a defiant way.

THE COURT: This is not the defendant.

THE WITNESS: I am not a defendant.

Q I want you to tell the jury, at the time he took out this card, whether or not he held his hand over the card?

A He did.

CASE 2043

Q Were you interested to know his name? A No.

Q You were not? A No.

Q But still he showed his anxiety to tell you his name by showing you his card; is that correct? A Yes, and that was his name, was it? No.

Q Beg pardon? A That was not his name. He said it was.

Q He said his name was Nichols? A Nichols.

Q Now, when you told Mr. Boyle that you had been out with a man named Nichols, or Nicholson, who lived around Thirtieth street, he took a memorandum of that name? A Yes.

Q And subsequently Boyle apprehended Mr. Nicholson right in Thirtieth street? A (No answer).

Q You know he arrested him? A Yes, I was in the hospital when he was arrested. I don't remember.

Q Now, you say you had one glass of beer? A That is all.

Q Now, where did you have supper that night? A Well, I had dinner in Macy's.

Q Dinner in Macy's? A Yes.

Q What time was that? A It might be around twelve o'clock.
BY MR. MCCORMICK:

Q What time? A Around twelve o'clock, or one.

BY MR. NEUWIRTH:

Q Where did you eat between twelve o'clock noon that day and the time you got to the hotel? A I didn't eat any place.

Q Now, see if I can refresh your recollection. Do you remember this defendant, when he got to the Atlan Hotel, going out and getting a steak and potatoes? A No.

CASE 2043

Q What? A No.

Q Do you want to tell this jury you had nothing to eat from lunch time that day until you left the McAlpin? A I did not.

Q Where did you eat? A I did not eat.

Q What? A I did not eat since I had my dinner.

Q That is what you want to tell the jury, you had nothing to eat? A Yes; do you recollect the hour of night? It was twelve o'clock - to be bringing in steaks to a hotel?

MR. NEUWIRTH: I ask that be stricken out.

THE COURT: Yes, that will be stricken out as irresponsible.

Q Now, Mrs. Gray, kindly tell this jury whether or not you ate anything between lunch time as you say you had lunch in Macy's, and the time you left the Atlan Hotel, after midnight? A No.

Q Do you remember the defendant leaving the hotel that night? A No.

Q And putting up his collar, his coat collar? A I did not notice. He went out for two bottles of beer. I didn't know how he went out; I didn't notice.

Q He did go out for two bottles of beer? A Yes, he certainly did.

Q And he came back later, did he not? A He came back with the beer, yes.

Q There was no bar in that hotel? A I don't know; I

CASE 2043

couldn't tell you.

Q Didn't he say he would have to go out to some saloon?

A I didn't hear him; he just said he would get the beer, and that was all.

Q What time did he leave the hotel to get the beer?

A I think it must have been about 12 o'clock.

Q 12 o'clock? A As near as I can remember.

Q And how soon thereafter did he return? A In a couple of minutes.

Q A couple of minutes? A Yes.

Q Do you remember testifying he returned in about half an hour? A No.

Q You don't? A No.

Q When he returned, were you still dressed? A Yes.

Q Did you have your hat off? A Yes.

Q Did you have your skirt off? A No.

Q You had all your clothes on you except your hat? A Yes.

Q Sure about that? A Positive.

Q Do you remember him knocking on the door? A No.

Q You don't remember that? A No.

Q Do you remember saying to him, "Wait a minute"? A No.

Q Did he walk in without knocking? A He did.

Q Was the door open? A It was shut.

Q What? A It was shut. It was not locked.

Q It was shut? A Yes.

Q There was a bathroom connecting with this room was there

CASE 2043

not? A I could not tell you.

Q Will you kindly describe to the jury this room, how it was furnished? A It was furnished like any other room would be in a hotel, a bureau, a chair and a dressing table.

Q And one bed? A Yes.

Q Quite sure it was furnished like any other room in a hotel? A Yes.

Q When he returned you took a glass of beer; is that correct? A Yes.

Q He opened the beer? A The beer was open; the bottles were opened.

Q And did he take a drink with you also? A That I couldn't tell you. I know he poured out the beer for me in a glass, and I drank mine.

Q Didn't you testify that he took a drink and you took a drink, the last time? A I couldn't tell you.

Q Couldn't tell? A No.

Q Now, after you took the beer, what happened? A Well, I don't know yet; I couldn't tell you.

Q Now, when you woke up and went down to Thirty-fourth street and walked along the avenue, Sixth avenue, did you speak to any policeman? A No.

Q Did you call anybody? A No.

Q Did you shout? A No.

Q Now, when did you next see your children after you got back to your room in Eleventh street? A Tuesday, I think it

CASE 2043

was.

Q You were not on friendly terms with your husband at that time, were you? A I was and am.

Q You were on friendly terms with your husband? A Yes.

Q Your husband testified here at the last trial, did he not? A What did he testify?

Q I am asking you, please - A He testified, yes.

Q You know he testified here? A He did.

Q Did you hear your husband testify that he was not on friendly terms with you? A No.

Q He did not? A No, he certainly did not.

Q How far away did your husband live? A He lived one block.

Q In a different house? A Yes.

Q And in a different apartment? A Yes.

MR. MCCORMICK: I offer these two pawntickets in evidence.

THE COURT: What pawntickets? There is nothing to make them competent at the present time. I don't know what pawntickets they are. There is no evidence about any pawnticket.

MR. MCCORMICK: There will be testimony relating to them by the police officers later.

MR. NEUWIRTH: That will be all consented to. Well, we will read them later to the jury.

THE COURT: Very well, if it is consented to.

CASE 2043

Q Now, Mrs. Gray, do you remember speaking to Nicholson about the jewelry when you were in the room? A No.

Q Did he see the jewelry? A Yes, sir.

Q Do you remember giving him some money to go and buy the beer? A I did not.

Q Sure about that? A Positive.

Q Well, do you remember testifying the last time that he opened up the pocketbook? A My pocketbook?

Q And took some money out for the beer. A No, I did not testify to that.

Q You did not? A No.

Q You had some money in your pocket book, did you not? A Yes, sir.

Q You had about ten dollars in your pocket book? A I had over nine dollars in it.

Q And do you remember giving four of it to Nicholson to pay for the room? A I did not.

Q Do you remember that four dollars was the charge for the room? A I don't know anything about it. I don't know anything about the rates of those places.

Q Do you remember him speaking to you about what the room cost? A No, he did not.

Q Now, Mrs. Gray, tell the jury truthfully whether or not when you were in that room that night you had sexual intercourse with this defendant? A I did not.

Q How long were you in that room? A You mean alto-

CASE 2043

gether?

Q Altogether. A About four or five hours.

Q What? A About four or five hours.

MR. NEUWIRTH: That is all.

BY THE COURT:

Q Madam, what was your purpose in going to the hotel?

A This defendant told me that he was interested in some music, see, and he said, "If you come with me I will be able to show you different cards and letters I have, and show you about an add I have in the paper".

Q Why did you have to hire a room in a hotel to see these cards and the advertisement in the paper? A Well, I hadn't the least suspicion of the man.

Q What I want to get at is, not what was in his mind, but what was in your mind. What was your purpose in going to the hotel? A Just to see these letters and cards.

Q Did he say he had them in his pocket? A Some of them he had, but he put his hand over the name.

Q But why did you want to go to a room in a hotel to see those cards and letters? A Just as I told you, I hadn't the slightest idea. I wouldn't think of going there if I had suspected what was going to happen.

RE DIRECT EXAMINATION BY MR. McCORMICK:

Q On the other trial, you were excluded from the courtroom were you not? A Yes, sir, I was.

Q You did not hear what the people testified to? A No,

CASE 2043

not a word.

MR. McCORMICK: That is all.

RE CROSS EXAMINATION BY MR. NEUWIRTH:

Q Didn't you return to the room after your testimony?

A I did not.

Q Weren't you sitting right there? A I was not.

MR. NEUWIRTH: That is all.

J O H N B O Y L E, Lieutenant of Police, attached to the detective bureau, second branch, called as a witness on behalf of the People, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Did you arrest the defendant? A Yes, sir.

Q On what day? A About the 22nd or 23rd of September ; I am not sure what date it was, but it was either the 22nd or 23rd.

Q About three weeks after the 30th of August? A Yes, sir.

Q Now, the 30th of August was Sunday, was it? A Saturday, I believe; I believe it was.

Q What day of the week did you see her ? A I see her on a Monday, in Police Headquarters.

Q And she made a complaint to you? A Yes, sir.

Q That she had been robbed the day before?

MR. NEUWIRTH: I object to that, and move to strike it out.

CASE 2043

THE COURT: Yes, I will sustain the objection, as leading.

Q August 31st was Monday? A Yes, sir.

Q That was the day that you saw her? A That is the day it was.

Q Where were you when you first saw her? A At Police Headquarters.

Q What time of day? A In the morning.

Q Was there any other officer there with you? A Officer Price and I.

Q That is Officer Price there, is it (indicating)? A Yes.

Q How long a talk did you have with her? A About half an hour.

Q Did she show you anything? A Yes, sir.

Q What? A Showed me one earring that was in her ear.

Q And a finger ring? A And a finger ring.

Q Did she show you a collar? A No, she did not, not that day.

Q Did she any time? A Yes, sir.

Q After she talked to you on the morning of the 31st of August, Monday morning, what efforts did you make to find this defendant, or to find the man who had committed that larceny?

A She gave us a description of certain jewelry that were taken on that day that she had lost.

MR. NEUWIRTH: I object to that, if your Honor please.

Let him state what he did.

CASE 2043

THE COURT: I will let it stand simply for the purpose of explaining what he did afterwards, not as proving what she said to be true, but as explaining his actions later.

Q What did you do? A I went around amongst the pawnshops and second-hand dealers, to try and locate some of those jewels that I had a description of which I got from Mrs. Gray.

Q Did you see any of these jewels at any pawnshop or any other place? A I did. I seen a diamond heart and a diamond ring that was sold several days before that.

Q Did you see that article of jewelry (exhibiting same to witness)? A Yes, I saw that article of jewelry.

Q Where? A In Feingold's sales store, on Sixth avenue near Twenty-ninth street.

BY THE COURT:

Q You say they were sold, and not pawned? A Those were sold, yes, sir.

BY MR. McCORMICK:

Q What else did you see in Feingold's? A ^{And} One earring.

Q Are you able to say which one? A No, I couldn't say which one of those it was.

Q Ar earring like one of those (exhibiting earrings to witness)? A Yes, sir.

Q Tell us how you found this defendant? A Well, I got that collar. We had a description of the defendant from Mr. Feingold's clerk and also from Mrs. Gray, and when those ar-

CASE 2043

articles were disposed of there was an address given in Thirty-fourth street; the address was 328 I think, as near as I can remember, and after Mrs. Gray had come with Detective Price and myself to Feingold's and identified those articles we went to that number, in front of 328, and Mrs. Gray came with us. We stopped and we covered that house, as we call it. Mrs. Gray would stay there for several hours with us, right in front of Hammerstein's Opera House. Then she said she couldn't stay no longer, she couldn't stand on her feet, so she left us there, and Detective Price and myself covered the house for the biggest part of the day, and done that for several days. Then finally we got the collar, and we worked - in Headquarters, Police Headquarters, they have got a list of all the laundry marks of all known laundries, and we took that collar up there, and they gave us the laundry where that collar was laundered. We took that collar to the laundry. It is 307 West Thirtieth street, and he remembered who it was that he laundered that collar for; he described him as Nicholson, and said he used to live in that neighborhood, and he thought the number was 353, or 363, but he says, "He has gone out of here, because he come in here one day and told us that he was going away, to Brooklyn". He told the landryman. That is the information I got from the laundryman. Then we made a canvass of that street from Ninth to Sixth avenue, inquiring for anybody by the name of Nicholson. Finally we located a house very near Ninth avenue that a man by the name of Nicholson used to live in, but he had moved away,

CASE 2043

and they didn't know where, and through the man that kept that house we found out that Nicholson called there, had a friend who was still in the house, and was likely to come and see him, and finally we covered that house during the day of the arrest, when I seen Nicholson going through Thirtieth street.

Q What time of day? A It was about 2:30 in the afternoon, I should judge.

Q Whereabouts? A Between Eighth and Ninth avenues.

Q You had been trailing him for how long then? A Been watching for him.

Q For how long? A Well, since about the 31st, that Monday. Well, since the case was first reported to us.

Q About three weeks? A About three weeks.

Q Tell us about his arrest? A Well, after we went up, I said, "Hello, Nicholson". He said, "Hello". I said, "I want to talk to you." I said, "What did you do with those jewels that you took from that woman in the hotel up in Thirty fourth street?" He said, "I didn't take no jewels from any woman in a hotel." I said, "Your name is Nicholson?" He said, "Yes". I said, "All right; now, you did". I said, "I have got those jewels located in a pawnshop, and I am going to take you over and have you identified, to see if you are the fellow that sold them." Well, he says, "Where is it?" I says, "It is over on Sixth avenue near Thirtieth street." Well, we walked along, and I was trying to get whatever information I could about it, and he finally admitted that he did; and

CASE 2043

says I, "Where are the rest of the jewels? I have got the heart located; I have got one of the diamond earrings located; but where is the rest of the stuff?" He pulls two tickets out of his pocket and hands them to me. I said, "Where is - "

Q Are those the tickets (exhibiting paper to witness)?

A I think they are a little larger than those. Those aint the tickets that he gave me.

Q He gave you two tickets? A He gave me two tickets.

Q After he gave you those two tickets, what did you do? They were tickets for what? A What?

Q They were duplicates of these? A Two tickets. He said one represents the other diamond ring.

Q These are the stubs? A That is the stubs of the tickets

Q And the tickets you had corresponded to these stubs?

A Yes, sir.

Q Had the same numbers? A The same numbers.

Q And had the same description? A The same description.

THE COURT: Where are the tickets?

MR. MCCORMICK: They are not here, your Honor.

THE WITNESS: They were there a minute ago, I think.

MR. MCCORMICK: No, you are mistaken. We had the stubs.

Q Well, the tickets had the same numbers? A Yes, sir.

Q As these stubs? A Yes, sir.

MR. MCCORMICK: I will have these marked for identi-

CASE 2043

fication.

(Same marked People's Exhibits Nos. 7 and 8, for Identification, of this date.)

Q Are these the tickets (handing papers to witness)? A Those are the tickets, yes, sir.

Q Those are the two pieces of paper he took out of his pocket? A He took out of his pocket and handed them to me, yes, sir.

MR. McCORMICK: Now, I offer them in evidence.

THE COURT: Any objection?

MR. NEUWIRTH: No objection.

(Same received in evidence and marked, respectively, People's Exhibit No. 9 and People's Exhibit No. 10 of this date.)

Q Then what did you do? A Took him to Feingold's jewelry store.

Q When you got there -

BY THE COURT :

Q Are those tickets on Feingold's store? A No, sir, another pawnshop.

BY MR. McCORMICK:

Q One of them is on Feingold's, isn't it? A No, neither one.

MR. McCORMICK: No, these are Henry Lowy. Two pawntickets, one of them No. 53,952, Henry Lowy, 778-1/2 Sixth avenue, near Forty-fourth street, New York, Septemb-

CASE 2043

er 19th, 1914, neck chain, \$2.00, Nikas. The other is No. 53,951, Henry Lowy, 778-1/2 Sixth avenue, near Forty-fourth street, September 19th, 1914, diamond ring, \$80.00, in the name of Nikas.

Q Did you see any jewelry when you got to Feingold's?

A Yes, sir.

Q Which? A Well, I asked Mr. Feingold's clerk there was this the man that brought it in, but he admitted that he did bring it in, before he got there, and the man says, "Yes, that is the fellow".

Q And what is the name of that man? A I know him by the name of Julius. I don't know his other name.

Q He works for Feingold? A He works for Feingold.

Q Where did you get that laundry slip? Did you have that (handing paper to witness)? A Yes, sir; I got that laundry slip from the laundryman, I think.

Q I show you a chain, and ask you if you saw that (exhibiting chain to witness)? A Yes, sir.

Q In whose pawnshop? A In Loewy's pawnshop, on Sixth avenue.

MR. MCCORMICK: I will have that marked for identification.

(Same marked People's Exhibit No. 11, for identification, of this date.)

Q Did you visit Feingold's with this defendant? A Yes, sir.

Q Where was Feingold's? A It is on Sixth avenue between

CASE 2043

Twenty-eighth and Thirtieth streets, 429-1/2, on the west side of the avenue.

Q And you also visited Lowy's with him? A No, I didn't visit Lowy's with him.

Q Did you have any further conversation with this defendant? A Yes, sir; I asked him where the rest of the jewels were. I asked him what became of the watch. He told me he sold it to a Greek.

Q Keep your voice up. A I asked him what became of the watch and the pin, and he told me he sold it to a Greek. I asked him what became of the cuff buttons. He said he threw them away. I said, "What became of the wedding?" He said he didn't take it; he left it on the table; and I tried to find out who the fellow was that he sold the watch and chain to, and I could not. He couldn't tell me where it was. He said he met him in Twenty-ninth street; and I told him that the cuff buttons had diamonds on, "You didn't throw them away". He said he didn't know they were diamonds; he didn't think they were. Then I had - after I took him to Police Headquarters that afternoon, I went around to Mrs. Gray's house, on Eleventh street, and found out she was in the hospital. I went up to the hospital that night and saw the doctor, and he told me she was in no condition to go to Court, and he gave me a certificate to bring to the Magistrate. I think I must have gone there four -

MR. NEUWIRTH: That is objected to.

CASE 2043

THE COURT: Objection sustained.

Q When did she sign a complaint? A Well, it must be four or five weeks after the arrest, or three or four weeks after.

Q Why? A She was in the hospital and she could not come to court, and the doctors aid that this woman is likely never to leave that bed, and we explained that to the Magistrate and also to the Dictriect Attorney.

Q Did you take this defendant to the hospital? A Yes, sir, the Magistrate ordered us to.

Q And did she get a look at him? A Yes, sir.

Q And identified him? A And identified him and the jewels.

Q Have you told us all you know about this? A Yes, that is about all.

Q There is no further conversation, is there, with the defendant? A No, not that I remember.

BY THE COURT:

Q Did you show her the other jewelry you got at Lowy's?

A At the hospital it was summoned. I got a subpoena for Lowy's jewelry place to bring it to the hospital, and there it was shown her.

MR. McCORMICK: That is all.

CROSS-EXAMINATION BY MR. NEUWIRTH:

Q You say this woman identified the defendant as the man she that had been with in the hotel that night? A Yes, sir.

CASE 2043

Q And you testified to everything here about your remarkable detective work in this case have you not? Have you testified to everything you did here about locating this defendant?

A As much as I remember.

BY MR. McCORMICK:

Q Did he say anything about changing a ring? A Yes, sir, he told us that that ring, he had it made from the ladies ring in Gimbels' store, made into a ring for himself.

MR. McCORMICK: People's Exhibit No. 4 for identification.

BY MR. NEUWIRTH:

Q Who gave you the collar? A Mrs. Gray asked us did we get the collar in the case, and we said no, it was up in the hotel, and we got it at the hotel.

Q Got the collar at the hotel? A Yes, the office.

Q Sure Mrs. Gray did not give it to you? A No.

Q Didn't you hear Mrs. Gray testify that she took the collar with her? A I didn't hear her testify to that.

Q Weren't you sitting here in court? A Yes, sir.

Q When you asked Mrs. Gray about the man who was with her in the room of the hotel, she told you the name was Nichols, or Nicholson? A Yes, Nichols, she says.

Q Or Nicholson? A Yes.

Q And she thought he lived somewhere in Thirtieth street, 300 odd? A She said she saw a card and he thought some number on Thirtieth street was on the card.

CASE 2043

Q Did she take out a card from her pocketbook? A No.

Q Sure about that? A Certain.

Q So, after she gave you the information about the name Nichols, or Nicholson, in Thirtieth street, you went right to Thirtieth street? A No.

Q What? A No.

Q You went to the hotel? A No.

Q Didn't go to the hotel? A No.

Q You went to these different laundries? A I went to - first I tried to locate the jewels, and went around amongst the pawn shops.

Q And you found this collar in the hotel? A Mrs. Gray told us about the collar being there. We got it in the hotel.

Q Where did you find the collar? A We got it from the clerk in the hotel. He claimed that was the collar that was in the room.

Q Was it in the room, or did the clerk have it downstairs?
A He had it downstairs.

Q Now, when you arrested Nicholson, you said, "I want you, Nicholson; is that correct? That is what you said to him? A I said, "Hello, Nicholson".

Q And he said, "Hello? A Said, "Hello".

Q He did not deny his identity? A Not his identity, no.

Q And after you had various conversations he took these two pawntickets with the name Nicholson them, and handed them to you? A Yes, sir.

CASE 2043

Q He also said to you that he did not take the jewels?

A He denied taking them.

Q You said he said he did not take them; didn't you so testify? A Yes, I said he denied it until I told him I had them located.

Q After you had them located, did you ask him how he got the jewelry? A I don't think I asked him that question. I am not sure whether I did or not.

Q He told you he was with the woman in the room that night, didn't he? A Yes.

Q Didn't he tell you how he got the jewelry that night? A He said that this woman - I remember him saying this woman had a lot of jewelry, and she was a rich woman and he was a poor fellow.

Q And what else? A And that he was about going to try to put some sketch on the stage.

Q Go ahead. A And that he did not think it was any harm to take them.

Q Then, you want to tell the jury he said he did not think it was any harm to take them? A From a rich woman.

Q That was what he said? A That was the impression he gave me.

Q The impression? A That is what he said.

Q The jury want to know the words he used? A That is just what he said.

Q Did he say anything to you about the woman having given him some jewelry that night? A No.

CASE 2043

Q Have you heard this defendant make that assertion, that she had given them to him? A He said to Mr. Feingold's clerk, after I took him in there, he says, "What can I get for this? I am going to say the woman gave them to me." Then, when I came back to Feingold's, Feingold's clerk tells me that.

THE COURT: You did not hear him say it. Strike it out.

Q Did you hear this defendant say that? A No, I did not.

MR. NEUWIRTH: I move to strike out the other part of the answer; as not responsive.

THE COURT: Yes, motion granted.

Q Are you sure you have told the jury the entire conversation you had with Nicholson at the time you arrested him?

A Well, to the best of my knowledge, I have.

Q Where did he have those two pawntickets? A He pulled them out of his pocket. I am not sure whether he had them in a purse, or where he had them. I cannot exactly tell.

Q This number you found him coming out of, the hallway, did that tally with the number that Mrs. Gray gave you? A I didn't find him coming out of no hallway.

Q In front of the door? A No.

Q Where did you arrest him? A I arrested him on Thirtieth street between Eighth and Ninth avenue.

Q Was that on the street that you arrested him? A On the street, on the block.

Q Was that the block which contained that number that Mrs.

CASE 2043

Gray told you about? A Yes.

Q Have you got a record of the complaint that this woman made at Police Headquarters the first time? A Yes, sir, there is a record in Headquarters.

Q Have you got it here? A No, I have not.

Q Can you produce it here? A Yes, sir, I could.

MR. McCORMICK: I object to that. Let counsel subpoena it himself.

THE COURT: Well, it can be subpoenaed, or if the officer can produce it I see no objection to that.

Q You can produce it very readily, can you not? A Yes.

Q Will you try and produce it? A Yes, sir, I will try to get that. I think I will have to have a subpoena to get that.

MR. NEUWIRTH: That is all.

JULIUS MISHLER, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where do you live? A 254 West Twenty-fifth street.

Q What is your business? A Jewelry.

Q By whom were you employed - A Benjamin Feingold.

Q (Continuing) - on the 19th of September? A Benjamin Feingold, 491 -1/2 Sixth avenue.

Q That is near what street? A Thirtieth.

Q About that time, the 19th of September, did you see

CASE 2043

this defendant? A I saw him the first of September.

Q What? A The first; the first of September.

Q The first of September? A Yes, sir.

Q Tell us about that? A Well, it was on the first of September Mr. Nicholson came into the store and wanted to sell a diamond earring, and I asked him what he wanted for it. He said, "A hundred dollars." I said, "Would that be the lowest?", he said, "Well, what could you give me for it?". I said, "About eighty dollars". He said, "That is too little; I don't think I will be able to accept that." I said, "That is the best I can do". He said, "All right, I will sell it"; so he signed a receipt, "Sold", and I asked him, "Where is the other one?" He said the other one he had turned into a ring.

Q And how much did you pay him for it? A Eighty dollars.

BY THE COURT:

Q He said he had turned the other earring into a ring?

A Into a ring.

BY MR. McCORMICK:

Q Is that earring here? A Yes.

Q Will you pick it out? A This one here (indicating People's Exhibit No. 2).

Q Now, did you have any more talks with him? A Well, he waited around; I didn't have no money in the store, so he waited around a little while until I got the money, and that is the last we had; we didn't have any more conversation.

Q Keep your voice up. A And on September 5th is the

CASE 2043

next time I saw him.

Q What happened then? A He brought in a diamond heart, and he sold it for \$115.

Q You paid him \$115.? A \$115.

Q Is that the diamond heart (exhibiting People's Exhibit No. 3 to witness)? A That is right.

Q Well, did you see him again? A Well, I saw him when Lieutenant Boyle brought him around; that is the third time I saw him.

Q Did you have any conversation with him on the first two days that you have not told us? A Yes; that was the second time he was in; he was in the store for quite a while; he was in the store from nine until eleven, and we were talking about the war and so on, telling me about different things in Europe, and I asked him if he - from where he comes. He said he comes from Paris, and he is going back to the war. That is all the conversation I had the second time.

Q Now, how about the conversation on the third visit?

A When Lieutenant Boyle brought him in?

Q Yes. A Mr. Boyle just walked outside, and Mr. Nicholson was standing in the store a little while, and we were talking. He says to me, "What can I get for it?" I said, "I don't know what you have done." He says, "Well, she gave me the jewelry". I said, "I don't know what you can get for that". That is all I said to him.

Q That is all you know about it? A That is all I know.

CASE 2043

about it.

MR. McCORMICK: That is all.

BY THE THIRD JUROR:

Q Do you buy diamonds from anybody that comes into your place without knowing them? A It all depends.

Q For instance, in a case of this kind? A Yes, sir.

Q Without knowing the man, you would buy them? A Without knowing him?

Q Yes. A Yes, I can't know everybody who I buy from.

CROSS-EXAMINATION BY MR. NEUWIRTH:

Q You say the defendant said to you that she gave him the jewelry? A That was when Lieutenant Boyle brought him in

Q To whom did he refer when he said, "she gave him the jewelry"? A To a woman.

Q Had that woman been in your place? A Yes.

Q That woman testified here on the stand? A Yes, sir.

Q And he referred, therefore, to that woman? A Yes, sir.

Q And you knew he referred to that woman? A I don't know.

I suppose so.

Q What? A I don't know. I suppose so.

Q Was Mr. Boyle there at that time that he spoke to you?

A The third time?

Q Yes. A No, Mr. Boyle was standing outside.

Q He didn't say to you that he is going to claim that she gave him the jewelry, did he? A No.

Q And you didn't tell Boyle that he said that he was

CASE # 2043

was going to claim that she gave him the jewelry? A No, sir.

Q But he did, however, say to you that she gave him the jewelry? A He said, "What can I get for it?", and I says, "I do not know what you have done". He says, "Well, the woman gave me the jewelry"; so I says, "I don't know what you will get for it".

Q Did you ask him the circumstances under which he got the jewelry from this woman? A No.

Q Did you know what his business was? A Yes, sir.

Q He was a theatrical man? A That is what he said.

Q How did he come to speak of the theatrical end of it?

A He was telling me he was going to produce a sketch, like Mr. Hammerstein, and he would need money, and that is the reason he is selling the jewelry.

Q Didn't he say anything - did he tell you then where he got this jewelry so as to utilize it for that purpose? A No.

Q Or did he say he was going to use this jewelry to raise money on which to promote his sketch? A That is just what he said.

MR. NEUWIRTH: That is all.

RE DIRECT EXAMINATION BY MR. McCORMICK:

Q When he first brought the jewelry in, did he tell you where he got it? A No.

Q Did he say anything about his wife? A He said that it was his wife's.

Q What? A It belonged to his wife.

CASE 2043

Q That it belonged to his wife? A Yes.

MR. McCORMICK: That is all.

RE CROSS) EXAMINATION BY MR. NEUWIRTH:

Q Did you ask him to whom it belonged? A Yes.

Q Do you usually ask a person to whom it belongs? A I do.

Q And you took it for granted, the information he gave you? A If he shows an identification. We generally ask for identifications.

Q What identification did he show you? A He took out some letters.

Q And those letters were addressed Agis Nicholson?

A Nicholson.

Q And also the letters showed his address, Thirtieth street? A There was an address.

Q In Thirtieth street somewhere? A I believe it was.

Q And those letters came from a foreign country? A No, I couldn't say that, but there was one from New York.

MR. NEUWIRTH: That is all.

THE COURT: We will take a recess now. gentlemen of the Jury, please do not form or express any opinion as to the guilt or innocence of this defendant 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 P.M.).

CASE 2043

A F T E R R E C E S S

J A M E S A. D O L A N, called as a witness on behalf of the People, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where do you live? A 991 Boston Road, Bronx.

Q What business are you in? A Pawnbroking business.

Q Where? A 778-1/2 Sixth avenue.

Q By whom are you employed? A Henry Lowy.

Q Do you know this defendant? A Yes, sir.

Q When did you first see him? A On the morning of the 19th of September, I think it is.

Q Can you refresh your recollection as to the date by looking at this paper (handing pawnticket to witness)? A This is the 19th of September.

Q Tell us about that conversation in the pawn shop? A Mr. Nicholson came in in the morning and pawned a pair of cuff buttons and a platinum chain, and he came back in the afternoon.

Q Wait a minute. Do you know where the cuff buttons are? A Mr. Nicholson came back again in the afternoon about four o'clock, and he took out the cuff buttons and he pawned a diamond ring, and also re-pawned the platinum chain.

Q Is that the diamond ring (handing witness People's Exhibit No. 4 for identification)? A Yes, sir, that is the ring.

Q When he pawned that, did you give out a ticket and a

CASE 2043

stub? A Yes, sir.

MR. McCORMICK: I now offer in evidence People's Exhibit No. 4 for identification)

(Received in evidence and marked People's Exhibit No. 4, of this date.)

Q Is that the platinum chain (handing witness People's Exhibit No. 11)? A Yes, sir.

Q And when he pawned those articles are these the two pawn tickets you made out (handing witness People's Exhibits Nos. 9 and 10)? A Yes, sir, they are the two pawn tickets.

Q And are these two stubs in your handwriting? A Yes, sir, they are the two stubs, in my handwriting.

MR. McCORMICK: I offer in evidence the two stubs, People's Exhibits Nos. 7 and 8 for identification.

(Same received in evidence and marked respectively People's Exhibit No. 7 and People's Exhibit No. 8, of this date.)

Q Did you have any other conversation with him? A No.

Q Have you told us all that he said? A Yes, sir.

Q How many times was he in your place, if you remember?

A Twice.

Q And both on the same day? A On the same day.

Q Did you ask him where he got the stuff? A No, I didn't ask him where he got the stuff.

Q Did he volunteer any statement as to where he got it?

A No, sir.

CASE 2043

Q How much money did you pay him? A Two dollars on the platinum chain and eighty dollars on the diamond ring.

MR. McCORMICK: Your witness.

(No cross-examination.)

MR. McCORMICK: Officer Price is not here. I would like to have the privilege of calling him in rebuttal.

THE COURT: If it is proper in rebuttal.

MR. McCORMICK: I would like to recall the complaining witness for one question.

M A R Y G R A Y, being recalled on behalf of the People, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Mrs. Gray, when you woke up did you still have your bag, silk bag, that you testified about? A Yes, sir.

Q How about the money? A That was all gone but a five cent piece.

Q All gone except five cents? A Yes, sir.

Q Is that the chain (exhibiting People's Exhibit No. 11 to witness)? A Yes sir.

Q Where was that chain on your person? A It was around my neck, fastened on to the brooch.

MR. McCORMICK: That is all.

CROSS-EXAMINATION BY MR. NEUWIRTH:

Q Did you have any jewelry in your stocking? A No.

Q What? A No.

Q Sure about that? A Positive.

CASE 2043

Q Do you remember me asking you a question, "What else did you put in your stocking?", and you answered the question, "Another ring I had. I was lying on the hand, or he would have got that. Q. What kind of a ring was that? A A

Dutchess ring. Q. Have you got it here? A. Yes".

Do you remember putting a Dutchess ring in your stocking? A Yes.

Q How? A Yes, when I was going home, in the Sixth avenue car.

Q When you were going home you put it in your stocking?

A Yes, I took the earring out of my ear the one earring that I had, and the one ring, and put it in a little bag I have here.

Q You did that in the car? A In that little bag (producing bag).

Q You put that Dutchess ring in your stocking in the car? A Not in the car. When I came downstairs, in the waiting room of the hotel.

MR. NEUWIRTH: That is all.

F R A N K S. P R I C E, Lieutenant of Police, attached to the Detective Bureau, called as a witness on behalf of the People, being first duly sworn, testified as follows

DIRECT EXAMINATION BY MR. McCORMICK:

Q You were assigned to this case the same day that Officer the other officer was? A Yes, sir.

Q And you worked with him? A Yes, sir.

Q In this case? A Yes, sir.

Q When did you first see the defendant? A The first time

CASE 2043

I seen the defendant was about the 28th or 29th of September, up in the court, in Fifty-seventh street.

Q That is, after he had been arrested by Officer Boyle?

A Yes, sir.

Q What conversation took place there? A He was remanded back for a week, and I went downstairs with him, and I sat down on a bench there, and I said, "We are very anxious to get this other property back, the watch and pin and the cuff buttons and the ladies wedding ring", and he told me to go down and see the florist, at Fifty-fifth street and Lexington Avenue, and see if he couldn't help me out with the name of the waiter that he sold the watch and chain to.

Q A waiter? A A Greek waiter in Twenty-ninth street.

Q That was the watch and pin? A The watch and pin. The cuff buttons he said he threw away. I asked him about the wedding ring, and he said he didn't take the wedding ring. Then he said to me, "Where is Mrs. Gray? Why don't she come to court?" I said, "She is down in Bellevue Hospital". He says, "Do you think she is coming to court to make a complaint against me?" I said, "She certainly is". He says, "If she comes to court tomorrow to complain against me, I am going to swear that she give me the stuff".

Q Is that all? A That is about all the conversation.

Q You are a member of the Police Force of New York? A Yes, for thirty years.

Q Attached to the Detective Bureau? A Yes, sir.

CASE # 2043

Q So is Boyle? A Yes, sir.

MR. McCORMICK: That is all.

MR. NEUWIRTH: No cross-examination.

MR. McCORMICK: It is conceded that the hotel in regard to which testimony has been given on Thirty-fourth street near Seventh avenue is in the County of New York.

J O H N B O Y L E, being recalled on behalf of the People, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q This morning defendant's counsel asked you if you made a report? A Yes, sir.

Q Or if there was a report at Police headquarters? A Yes.

Q A record? A Yes, sir.

Q In this case? A Yes, sir.

Q And you have brought this from Police Headquarters, to have you not (handing paper/witness)? A Yes, sir.

Q And that is the record? A And that is the record.

MR. McCORMICK: I offer it in evidence.

MR. NEUWIRTH: No objection.

(Received in evidence and marked People's Exhibit No. 12, of this date.)

MR. McCORMICK: Crime, classification, Police Department, City of New York, complaint card. Grand larceny. Date, 8/31/14; that is, the 31st of August.

CASE 2043

Place of occurrence, hotel, 149 West Thirty-fourth street.
Name of complainant, Gray. First name, Mrs. Time and
date of occurrence, 2:30 A.M. August 30th, 1914. Address
of complainant 217 West Eleventh. Detective in charge,
John J. Boyle. Time and date, reported, 9:45 A.M.,
August 31st, 1914. Details. The above complainant re-
ports that she, accompanied by an unknown man whom she
met at a theatre at Thirtieth street and Sixth avenue,
to a hotel at 149 West Thirty-fourth street, and when she
awoke, at 2:30 A.M., 8/31/14, that is, the 31st of August,
the unknown man had disappeared, stealing from her the
following. It says, "Over. Description of person wanted.
Name and address, unknown, very dark complexioned, alias,
either French or Greek, age 28, height about 5 feet 4,
weight 130 pounds. Description of the property: A
diamond heart brooch studded with sixty-two diamonds,
Five hundred dollars; one diamond screw earring, 1-3/8
carats, Two hundred and fifty dollars; one ladies slipper
diamond ring, 1-5/8 carats, Two hundred and fifty dollars;
one ladies G.H.C. watch, Lambeth Brothers make, marked
M.D., Forty dollars; one gold wedding ring marked J.G. to
M.S., Six dollars; one pair of gold cuff links set with
small diamond, Twenty-five dollars. Signature of
detective John J. Boyle, S.G. Four. Signature of com-
manding officer, John J. Boyle. And then instructions
to the police officers, which I will not read.

CASE 2043

J O H N . A . G R A Y, called as a witness on behalf of the People, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q You are the husband of the complainant? A Yes, sir.

Q Where do you live? A 411 Bleecker street.

Q Have you ever seen this jewelry before (exhibiting jewelry to witness)? A Yes, sir.

Q Did you give that to your wife (exhibiting jewelry to witness)? A I did.

Q Where did you buy it? A Off a friend of mine in Hudson street.

Q Was he in the jewelry business? A He was in the jewelry business, yes, sir.

Q How long had he been in the jewelry business? A I really couldn't tell you. He has been in it for years. I have known him for the last twenty years.

MR. NEUWIRTH: now, to avoid taking up unnecessary time, we say that is absolutely immaterial in this action, where he got it, because, in view of the defence, we do not dispute that this woman had this jewelry.

MR. McCORMICK: Is the jewelry worth Five hundred dollars?

MR. NEUWIRTH: You can't prove value by this man. There is no dispute that this man got this jewelry.

THE COURT: I will have to rule on that when the question is presented.

CASE 2043

Q How much did you pay for it? A To the best of my knowledge, Three hundred and fifty dollars I paid for that.

THE COURT: You had the pawnbroker's representatives here, and they are experts. You could prove value by them.

MR. NEUWIRTH: If it is for the purpose of showing that all the jewelry together is over the statutory sum, we concede that.

THE COURT: It is conceded that the aggregate value of this jewelry which has been put in evidence exceeds the sum of Five hundred dollars; is that so?

MR. NEUWIRTH: Yes, all the jewelry, naturally.

MR. MCCORMICK: That is all.

CROSS-EXAMINATION BY MR. NEUWIRTH:

Q On August 29th, 1914, were you living with your wife?

A What date?

Q On August 29th, 1914? A No, I don't think I was.

Q Aren't you sure you were not? A No, I was not. I have been in the restaurant business and had sold out.

Q You testified last time that you were not on good terms with your wife? A I was not living with her, no.

Q And you were not on good terms with her? A I was on good terms with her, yes.

Q You were on good terms? A Yes, sir.

Q Didn't you testify the last time you testified here that you were not on good terms? A Well, we might have had a little -

CASE 2043

Q Didn't you testify on that stand when I asked you the question were you or were you not on good terms with your wife, and you said you were not? A I have always been on good terms with her.

Q Answer the question. I want to know whether or not you testified here the last time this case was on, in answer to the question, "Were you on good terms with your wife on December 29th?", and you said, "No"? A December 29th?

Q Yes, on December 29th - August 29th. Didn't you say you were not on good terms with your wife? A I do not remember.

Q How? A I don't remember.

Q You don't remember what you testified here last time?

A I do not, no, sir.

Q Didn't you testify that either she left you or you had some misunderstanding and took a furnished room? A No, I had been in the restaurant business, and I give it up.

MR. McCORMICK: That is objected to.

THE COURT: He is simply asked what he testified; not what the facts were.

THE WITNESS: She had a furnished room at the time.

Q And you lived elsewhere? A And I lived with my mother, yes, sir.

Q You lived with your mother? A Yes, sir.

Q Tell this jury now, irrespective of what you testified last time, whether or not you were or were not on good terms

CASE # 2043

with your wife in August? A. Well, as far as I can remember I have always been on good terms with her, except about that time, I broke up my restaurant and sold out.

Q. Were you or were you not, on good terms with your wife, were you living with her? A. I was not living with her.

Q. Were you on good terms with her? A. Well, I was speaking to her.

Q. Please answer, "Yes", or "no". A. I was talking to her right along; always on good terms with her, outside of living with her, because I could not afford to keep my floor at the time I sold my restaurant out.

RE DIRECT EXAMINATION BY MR. McCORMICK:

Q. Are you living with her now? A. No, I am not.

Q. How long before the 31st of August had you been living with her? A. I was living with her in July.

Q. What? A. Up until about the first of June or July I was living with her.

Q. All the time up until a few weeks before she went to this hotel? A. Yes, sir.

BY THE COURT:

Q. Who has the children, you or she? A. I have got the children.

BY MR. McCORMICK:

Q. Are you on friendly terms with her now? A. Yes, sir.

RE CROSS EXAMINATION BY MR. NEUWIRTH:

Q. But you are not living with her? A. I am not. I can't

CASE 2043

afford just at present to get a floor to keep her there.

THE PEOPLE REST

THE DEFENDANT'S CASE

(Mr. Neuwirth opens the case to the jury on behalf of the defendant.)

A G I S T. N I C H O L S O N, the defendant herein,
called as a witness in his own behalf, being first duly
sworn, testified as follows:-

DIRECT EXAMINATION BY MR. NEUWIRTH: :

Q Where do you live? A 6 East Forty-first street.

Q You have been in the Tombs since last Summer, September,
1914, is that correct? A Yes, sir.

MR. MCCORMICK: Objected to as immaterial.

THE COURT: September is not Summer.

Q Since when have you been in jail? A Since September 21st

Q And prior thereto you were in the pen up in the Fifty-
seventh police court? A I was there thirty-four days.

Q What was your occupation or vocation prior to the time
of your arrest? A I am actor.

Q What particular kind of an actor? A Vaudeville actor.

Q How long have you been in this country? A Five years
and a half.

Q And where have you lived immediately prior to the time
of your arrest? A 6 East Forty-first street.

CASE 2043

Q And immediately prior thereto where did you reside?

A 361 West Thirtieth street.

Q And how long did you live on West Thirtieth street?

A Five months.

Q And with whom did you live at that address? A With a friend of mine.

Q And what was the name of that friend? A Mike Murphy.

Q And did you board there at that address? A I just roomed there.

Q Do you remember the 29th of August of last year? A Yes.

Q Where were you at or about 12 o'clock on that day? A I was on my way to a theatre on Sixth avenue and Thirtieth St.

Q And did you meet anybody just prior to the time you entered that theatre? A Yes.

Q Who did you meet? A I met the complainant.

Q Mrs. Gray? A Yes, sir.

Q Did anything take place between you and Mrs. Gray just prior to the time you entered that moving-picture theatre? A Yes.

Q Kindly tell the jury what took place? A While I was on my way to the theatre I met the complainant, and she took me by the arm, she was walking along with me, and she said, "Hello, darling".

I looked at her and said, "I beg your pardon, Madam?" She said, "Don't you remember me, dear?". I said, "No, sir, I don't remember you." She said, "Wasn't you out in Astor Park last Summer?" Don't you remember me?" I said.

CASE 2043

"No, Madam, I never saw you before."

She said, "Yes, you do. Where are you going now?" I said, "I am going to a theatre." She said, "Whereabouts?" I said, "Here, in Loew's Theatre, Thirtieth street and Sixth avenue." She said, "I am going there, too; would you join me there together? They have a beautiful programme this week." I said, "Yes".

So, we both went to the theatre. When we reached the box-office I paid fifty cents for two orchestra seats, and both of us entered the theatre. That was about twelve o'clock.

As soon as we entered the theatre she asked me what is my occupation. I said I was an actor, and I was in the theatrical business; and then she told me she was interested in the theatrical business, too; and then she asked me my age, where I lived and what I was doing in New York at that time.

I told her I was looking for an engagement in a vaudeville act at that time. She said, "What kind of an act?" I said, "A vaudeville act." She said, "A musical act?" I said, "Yes" I am looking for a professional pianist to take part in my act" so she said she knew a certain lady, a friend of hers, who was a good pianist, and she was anxious to go on the stage, and it would help me by seeing that lady friend of hers and going in vaudeville together.

CASE 2043

So, when we were in the theatre together about an hour, and when the moving pictures were going on and when the theatre was dark, she took her hat off and placed it on my lap, and then she started to unbutton my pants, and she put her hands on me, and started feeling me.

Q What did you say? A I said, after she took her hat off, she placed it on my lap, and in the meantime she put her hand underneath her hat and unbuttoned my pants and started playing with me.

Q She put her hand on your privates? A Yes, sir; and then I told her it was not nice to do that in a theatre, because so many other people looked at us. She said, "Never mind the people. She said, "How old are you?" I said, "Twenty years old". She said, "Is that all you are?" I said, "Yes". She said, I was a good looking boy, and she was looking for a good looking boy herself. She said she was married, and her husband was a brute to her, and she didn't live with her husband for several years, and she said it was very foolish of me going out in New York and being without money and without good clothes and living in a cheap place, and she said she was wealthy and had millions and millions of dollars and several houses and automobiles and plenty of jewelry, and she was looking for a young fellow like me, so I could be her steady lover. She told me her husband was not the right person for her, and she had a miserable life with him.

Q Speak a little more distinctly and a little more slower,

CASE 2043

please. You have got lots of time. A And then she told me that she knew a friend of hers named Mrs. Perkins, and that lady was very rich, and she had a lover, a young boy like me, and she was giving him automobiles and diamond rings and theatre tickets, and she was happy, and why shouldn't she do the same thing with me.

I said, how would that be possible, that I am such an extra ordinary looking fellow that you want me for that purpose. She said, "Yes, I am looking for a young fellow like you, and I think you will be a good fellow; I will do lots for you"; and by that time it was a quarter after five; so I said, "Where will we go now?" She said she was very thirsty. I said, "We will go to some confectionery store and have some icecream soda. She said no, she didn't drink soda; she liked to drink beer.

So we went up to Forty-third street near Broadway, and there was a saloon, and she said she has been in that place several times. I said, "Do ladies go in the back of the saloon?" She said, "Yes, this place is all right".

We walked in that saloon together, and there was several ladies in that place. We sat at a table and ordered two beers. We drank those two beers, and then we ordered two more, and then two more.

When I tried to pay for the beers, she said, "No, dear, I don't want you to spend any money; I have plenty of money; put the money in your pocket", and she paid for

CASE 2043

the drinks.

We stopped there about an hour and a half; we were talking about several things, about my theatrical business, and then she said she was willing to help me out financially and put my vaudeville act on, also she was going to introduce me to that lady friend of hers, to go with her in the vaudeville act, but she said I will have to do a little favor for her.

Then it was about six o'clock, or a quarter after six. We walked out of the saloon and went up on Broadway. She said she liked to have the fresh air. So we walked up on Broadway again, and she said, "Now, listen, Baby, you will do me one thing, and I will do all I can for you. I want you to go to a place and stay with me; tonight I will tell you a whole lot of things; you will be very happy when I tell you all these things."

I said, "Where shall we go?" She said, "In a hotel". I said, "where?" "Never mind", she said, "we will go there and have nice eats, and sleep, and take a nice bath, and I will talk lots of things with you. I have no time to talk to you on the street".

I said, "I can't do that. You are a married woman, and I am afraid on account of your husband". She said, "Never mind my husband. I didn't see him for about three or four years"; and then I give her my card.

I said, "I can't do that now, because I have an en-

CASE 2043

gagement to-night, but I will give you my name and address, so you can write me, and when you get in touch with the lady friend of yours then send me a letter and let me know where I can come and see you and your lady friend and make arrangements for my act"; so she said, "We will have plenty of time to think about that", and that I should go to the hotel with her. Then we come back again to the same saloon.

Q Slowly. A (Continuing) - We had been in previously. As soon as we went back to the saloon we ordered some more beer. I said, "I can't drink much beer". She said, "When you drink beer your cheeks get red, and I like that; I want you to drink, because when you drink a little I like this kind of thing; I don't want you to drink whiskey, but beer won't do you any harm"; so I drank with her about three or four glasses more of beer.

Then she told me I will go to the hotel with her. I said, "What hotel?" She said, "I know a place; I am well acquainted in all these big places in New York; James Regan, the proprietor of the Hotel Knickerbocker, knows me very well, and he will give me a swell apartment; also George Bolt, of the Waldorf-Astoria Hotel. I have a good many places to take you. I don't take you in a small place or a cheap place".

I said, "What am I going to say, and how am I going to act with you?" She said, "Now, you are supposed to

CASE 2043

be my husband, and when we goto the hotel just say to the hotel clerk that you are my husband, and you register your name and wife."

I said, "What about the price of the rooms?" She said, "I will give you money for that before we go to the hotel, so you will pay the hotel clerk ^{and} if he asks you if you have any baggage, tell the hotel clerk that you just came to town, and we have our baggage in the depot, and we only want to stay in the hotel overnight, and we are going to leave the next morning".

So I said, all right. "What hotel are we going to?" She said, "We will go in a hotel here on Forty-second street, the Knickerbocker"; so as soon as we walked out of the saloon she said, "Baby, wait a minute", and she took a five-dollar bill out of her stocking and give it to me and said, "That is for the hotel. Have you got any money with you?" I said, "Yes, eleven dollars". She said "If it is anything more than five dollars for the room, you pay it and I will pay you up in the hotel".

So we took the car from Forty-third street, the Seventh avenue car. I said, "Don't we go to the Knickerbocker?" She said, "No, we will go to the Hotel McAlpin";

I know the people over there."

So we took the street car from Seventh avenue and Forty-third street, and we arrived in Seventh avenue and Thirty-fourth street. We got off the car.

CASE 2043

As soon as we got off the car we went to a confection-
ery store near, on the corner, and we bought about twenty-
five cents worth of candies, and mint candies, and she said
"We will go to the McAlpin."

In the meantime, there was the Hotel Atlan before
us, and she said, "Baby, don't you think it is a good idea
to try to get a room in this hotel? This hotel looks all
right." I said, "Just as you say."

So we walked in the hotel, and Mrs. Gray told the
hotel clerk that we wanted a room for the night, "We and
my husband want a room for the night", so the hotel clerk
put a pen in my fingers, and told me to sign my name.

Then the complainant asked what was the price of the
room; so the hotel clerk said he would give us a nice room
with bath for four dollars. The complainant said, "No, I
won't stay here for four dollars. For four dollars you
can get a nice apartment in the Waldorf. Baby, come, let
us go to the Waldorf. I won't stay in this hotel for four
dollars".

So we left the Hotel Atlan, and were on our way to
the McAlpin. Then she changed her mind and said, "We won't
go to the Hotel McAlpin. We will go to the New Grand; I
think we can get nice rooms".

So we went to the Hotel New Grand. We walked over
to the desk and saw the clerk, and I talked to the clerk. I
said, "I would like to have a room for overnight". He

CASE 2043

said, "Are you all alone?" I said, "No, my wife is here", and Mrs. Gray was standing next to me; so Mrs. Gray said, "Yes, we want just a room for overnight; we just come out of town, and only want to stay overnight".

Then the hotel clerk said he had a room, but it will be ready in about ten minutes, and if we could wait after about ten minutes a room will be ready for us. We sat down and waited for ten minutes.

Q Did you register at the Grand Hotel? A Not yet.

Then the hotel clerk said, "Your room is ready"; so I walked over to the desk and I signed my name, Mr and Mrs Nicholson, City, so the hotel clerk said, "Have you any baggage with you?" I said, "No, sir." He said, "Have you any identification to identify yourselves?" I looked at Mrs. Gray, and Mrs. Gray said, "No, we don't have to identify ourselves; we just come from out-of-town; we have our trunks down in the Pennsylvania Depot; we only want to stay for the night."

Then the hotel clerk said he would not give us the room. He said the rules of the hotel required us to have baggage or identify ourselves.

So we walked out of the hotel, and I said, "Now, dear I wouldn't go to any other hotel; they refused us rooms and I don't want to go to any other hotel. Please let me go home, and when you want me to meet your lady friend then drop me a letter and let me know."

CASE 2043

She said, "No, don't be afraid. I thought you were a brave boy. Don't be afraid. I am not going to kill you in the hotel. We will have a good time and talk together nice, and you will be very happy when I tell you a lot of things in the hotel".

I said, "Where will we go now?" She said, "To the Hotel McAlpin", so we walked to the Hotel McAlpin.

We entered the hotel, in the lobby, and I approached the hotel clerk, and I said I wanted a room for tonight. So the hotel clerk said, "What priced room do you want?" I said, "I like a room, plenty of room", so the complainant said, "Yes, a room with bath, if possible", so the hotel clerk said he would give us a room on the seventeenth floor for five dollars, so the complainant said that was satisfactory, register.

I took the pen and signed the name Mr and Mrs Nicholson. Then the hotel clerk said, "Have you any baggage?" I said, "No, sir", and the complainant said, "No, we have no baggage". She said the same story she said in the Hotel New Grand. Then the hotel clerk told us to wait a minute, they are supposed to call the manager, because another clerk came and said he was very sorry, that he couldn't accommodate us, then we went out in the street again.

Q Speak louder, and not so fast. A Then I said I wouldn't go to no other hotel again, and she said, "We

CASE 2043

must go to the Atlan" - in that place it was pretty sure they will give us the room, even for four dollars; she was willing to pay more than four dollars, and she was positively sure they would give us the room there; so I went with her back to the Hotel Atlan. As soon as we went to the hotel Atlan -

Q That is Seventh avenue and Thirty-fourth street?

A Seventh avenue and Thirty-fourth street; then she told the hotel clerk she changed her mind, and she made up her mind to stay in the hotel that night. The clerk gave me the pen, and I registered as Mr and Mrs Nicholson. Then he gave me the key, and the bellboy took us up in the elevator to the fifth or sixth floor, and there was a room with a private bath.

As soon as we went together up in the hotel she embraced me and kissed me, and she told me how much she liked me, and everything will be all right, and she said, "Baby, dear, I am very hungry, and it would be a good idea for you to go out and get something to eat". I said, "What would you like to eat?" She said, "Anything, pork chops, lamb chops, or steak, anything, I am very hungry". I said, "All right".

She said, "Have you any money left?" I said, "Certainly, because I only paid three dollars for the room".

Then, when I was going out of the room she called me back and said, "You forgot the most principal thing".

CASE 2043

I said, "What?" She said, "What about some beer?" I said "All right, I will get a couple of bottles of beer". She said, "No, get a dozen bottles of beer; we are going here to have a real good time"; so I said, "All right".

I walked down from the apartment. I took the elevator and came down, and I went first to the restaurant, that was between Thirty-fourth and Thirty-fifth street and Seventh avenue, near the hotel, and I ordered some steaks and potatoes and bread, and I went in the cigar store in the corner and I got some cigarettes for myself, and then I went in the saloon on Thirty-fourth street, northwest corner, and I got half a dozen bottles of beer, and I got two glasses, and I paid twenty-five cents deposit for them, and I got a bottle opener, because up in the hotel there was no glasses in the room, and that is why I got the two glasses, so I could pour the beer in, so I took the big package with the beer and the bottle-opener, and I went to the restaurant, and I took the steaks and potatoes, and I was going up to the hotel again.

The hotel clerk saw me, and he said, "How do you do?" I said, "I was outside for something to eat". He said, "All right"; and I took the elevator and I went up in the room.

As soon as I went up in the room the door was locked, and I knocked at the door, and she said, "Wait a minute",

CASE 2043

and she came and opened the door, and, to my surprise, she was all naked; she only had a small short vest on. She said, "Now, Dearie, don't be afraid, don't mind me". I said, "No, not at all", and she went back again in the bath room and put a kimona on, because she said, "I am going to eat now".

There were two chairs in the room, and we took the two chairs in front of the bed, and I opened the package and opened the steak; it was already sliced up; and I placed the bag with the beer on the bureau, and I took the two glasses and I placed one glass in front of me and the other glass in front of Mrs Gray, and I opened a bottle of beer, and I poured half the beer in her glass and the other half in my glass, and we ate the steaks and potatoes and bread, and we drank about two beers, and then she said, "Now you will have to go to bed with me". I was ashamed to do it. She said, "Never mind, Baby, there is nothing to be ashamed of. Did you ever have intercourse with any woman before?" I said, "Yes". She said, "Then, you wouldn't be afraid to do it for me". Then she told me to remove my clothes. I did remove my clothes, and she removed her clothes - I mean the kimona; the small petticoat she had on; she removed that, and she removed her flannels, too, and she was all naked, she didn't have nothing on.

Then I went in bed with her, and I had twice inter-

CASE 2043

course with her, and I was entirely exhausted by that time and then she told me I should open another bottle of beer. I opened another bottle of beer, and then another one. By that time it was two more bottles of beer left, and then she said, "Bye and bye I will dress myself again and go and get a little more beer for us", because the other two bottles of beer by that time were warm; it was summertime then, and she couldn't drink beer when it was warm.

After that she came in bed with me, and she tried to get my penis in her mouth. I said that I could not stand for that, and that my conscience would not allow such a thing, but she insisted I should let her do it. I was powerless, and I couldn't resist. I said I couldn't do it, my conscience wouldn't allow me to do such a thing. She said, "Never mind, Baby, about the conscience, you are my baby now, and I won't let any other woman take you away from me, and I will do all I can for you". I said, "No, I won't do it". She said, "Please let me do it. You are mine; I will give you all I have".

She went to her bag and took out the bankbook. She had forty or forty-five thousand dollars, she said, in the bank. She said, "If the bank was opened I would go and get all the money. I have no money to give you now, but I will give you jewelry".

She gets up and goes to the bureau and takes the dia-

CASE 2043

mond - it was a diamond heart with a chain and a gold heart with a little chain and one diamond ring and one diamond earring and a pair of diamond cuff buttons. "Now," she said, "baby, put this in your hands", and she opened my hands and puts all the jewelry in my hands. She said, "Now, please let me do it, and I will do all I can for you".

I got up and put all the jewelry in my pocket, and then she came in bed with me again, and she committed an unnatural thing with me. By that time I was very exhausted and weak, and I was nearly half crazy, after she did this to me, and then she said, "Now you dress up and go out and get some more beer".

So I got up and dressed myself and put my clothes on, but I didn't put my collar on, because I was going down for about five or ten minutes. I put my collar this way (illustrating); and I walked down.

When I got down it was about half past twelve or one o'clock in the morning. When I came down on my way to get the beer the second time, when I came down I asked the elevator boy what time it was. He said about one o'clock. I said, "Are the saloons now open?" He said, "Probably, and if the saloons are not open I think you can go in the back door and get some beer", so I walked out.

As soon as I walked out from the hotel - I am ruptured, and I am suffering from that about two or three

CASE 2043

years - I felt my rupture coming down, and I nearly fainted on the street; I couldn't move for about five minutes. Now, I said to myself it will be a crime for me to go back to the hotel, because this woman is liable to murder me. She was like half crazy. She jumped in bed with me and bite my cheeks and bite my ears, and all over, and I couldn't stand for that, because I am not strong, and she was strong, and I couldn't resist her.

Then I make up my mind to go home, and I had the four beer bottles, empty, in a bag, and as soon as I came down from the hotel I placed the four bottles on the side walk, and I took the street car from Thirty-fourth street and Seventh avenue, and I went to Ninth avenue and Thirty-fourth street, and then I took the Crosstown car and went to Thirtieth street, right on the corner, where I live, and I went home, and I fell asleep, and I woke up next morning about one o'clock; so I said to myself, in case this lady, Mrs. Gray, was mad with me because I disappoint her and didn't come back to the hotel, she knows my name and address, and she can call here, or send me a letter. I will tell her it was impossible for me to go back again, because I couldn't stand it, and was very weak and helpless, and I couldn't stand it any longer with her.

That day was Sunday. I waited Monday, all day Monday, no answer came and no letter came, so I makes up my mind she had forgotten me entirely. I waited until Tuesday.

CASE 2043

Tuesday, no letter came, and nobody came, so at that time I was looking for my vaudeville enterprise, and I was looking to put a vaudeville sketch on the stage, and I was short of money, so I said to myself, now, I have the jewelry in my possession, and I think I will sell some of it and get some money and put my vaudeville act on.

So I looked in the Telegram, and I saw that Feingold's jewelry store, where they buy and sell jewelry, so I went up to him and I told him I have a diamond pin, because that earring was just like a pin, and I wanted to sell it. He said, "How much do you want for it?" I said, "One hundred dollars". He said, "I will give you Eighty dollars", so I took the Eighty dollars.

Then I went up to my manager, Mr. Rudolph Rafael, and I told him I was able to put my vaudeville act on, and I went to the booking offices of Mr. Fisher, and I told Mr. Fisher I wanted to put a certain act on the stage. He said inside of two or three days he will have his primadonna and baritone to take part with me in the act; so I waited two or three days more, and no letter I received, and I thought she didn't want to have nothing to do with me.

Then I went back to Mr. Fisher, and I told him; "Have you got my people for the rehearsal?", and he said, "Yes". We started the rehearsals, and Mr. Fisher told me this act needed a little money to put on, it will be about

CASE 2043

One hundred or One hundred and Fifty dollars, so I make up my mind to sell some more of the jewelry, so after four or five days I sold the diamond heart, and I got One hundred and Fifty dollars for it. Then I was rehearsing with my act.

So the diamond cuff buttons were left, and the watch; it was a ladies watch, and I couldn't use it, so I made up my mind to give it as a present to a lady friend of mine, or sell it, so I sold it.

I met a friend of mine who was going to get married soon, so I said "I have a gold watch", so I sold it to him for ten dollars, also the diamond cuff buttons for four dollars, fourteen dollars altogether.

Then it was about ten or fifteen days later that my act was pretty near already made up, and Mr. Fisher told me on certain days we will have a professional try-out, and he also got a booking for fifty-five weeks, with Keith & Proctor's, at \$375. a week.

After that I stopped in the house 361 West Thirtieth street eight days, no letter came there, and then I wanted a little more money, and I wanted to be near Mr. Fisher's agency, and I moved from Thirtieth street, and I went to Forty-first street, No. 6 East, so I stopped there about two and one-half weeks, and I was going every day, mostly every day, to the old house, also I took my laundry to this laundry man where Officer Boyle took my collar, to

CASE # 2043

find out where I lived and everything else, so I was on my way one afternoon to the old house, to see if I had my mail, or see my friends, and I saw Officer Boyle.

He said, "You are Mr. Nicholson." I said, "Yes". He said, "Did you ever have a woman in Thirty-fourth street in a hotel on August 29th?" I said, "Yes". He said, "And you robbed her of all her jewelry". I said, "No, sir, I didn't rob her of any jewelry". So I said, "Where was Mrs. Gray. He told me I will know later on. He asked me what did I do with the jewelry. I said I sold it in such and such a place. He said, "What did you do with the rest of the jewelry?" I said, "The rest of the jewelry I made a ring of it and pawned it for eighty dollars". He said, "Come along with me".

We went to the jewelry store, to identify me, and he talked to the clerk. He said, "Is this the man?" He said, "Yes, this is the man". They talked with him for about ten minutes, and then they took me to police headquarters, and I stayed there overnight, and the next morning they took me to Fifty-seventh street police station, and I was there for about thirty-four days, and after that I was put in the Tombs, and I am here since that time.

Q You heard Mr. Boyle testify that you gave him some tickets. Were those the tickets? A Yes, sir.

Q You gave him the tickets? A Yes, sir.

Q Is this the jewelry that has been produced here,

CASE 2043

marked in evidence and for identification, respectively, is that the jewelry you spoke of when you say Mrs. Gray, the complaining witness, handed to you under the circumstances you say she did? A Yes, sir.

Q On that night, August 29th? A Yes, sir, this is the jewelry.

Q She testified she spoke to you for the first time inside the theatre, when she dropped her bag. Is that correct?

A No, I met her outside the theatre.

Q Before you went in? A Yes, sir.

Q I show you a paper, a hotel sheet from the Grand Hotel (handing paper to witness). Is that in your handwriting, the words, "Mr and Mrs Nicholson, City" - whether you wrote that on August 29th? A Yes, sir, that is my signature.

MR. NEUWIRTH: I offer it in evidence.

(Received in evidence and marked Defendant's Exhibit "A", of this date.)

MR. NEUWIRTH: Do you concede that is a hotel sheet from the Grand Hotel?

MR. McCCRMICK: I do.

MR. NEUWIRTH: (To the jury) Gentlemen, this is a register sheet of the Grand Hotel, dated Saturday, August 29th, and that part of it marked in evidence Defendant's Exhibit "A", of this date, reads as follows: "Mr and Mrs Nicholson, City", in the handwriting of the defendant. Opposite - the top of the sheet, "Folio, name, residence,

CASE 2043

room, time of arrival." Under the subdivision of room there is a blank. Under the time of arrival there is a check.

Q Now, you also testified that subsequent to being at the Grand Hotel - withdrawn. When you went to the Grand Hotel, were you with Mrs. Gray, as you have testified? A Yes, sir.

Q And that is the hotel that you registered at at the time that you testified that you had been to the Atlan? A Yes.

Q And then went to the Grand? A Yes, sir.

Q How long were you in there, in this Grand Hotel?

A Ten minutes.

MR. NEUWIRTH: It is conceded that the paper produced here, which I will presently offer in evidence, is a sheet from the Hotel McAlpin.

Q Did you write your name there (handing paper to witness)? A Yes, sir.

Q Is that your handwriting? A Yes, sir.

MR. NEUWIRTH: I offer that in evidence.

(Same received in evidence and marked Defendant's Exhibit "B", of this date.)

MR. NEUWIRTH: (To the Jury) Gentlemen, this sheet in this book of the Hotel McAlpin also has the description at the top, "Name, residence, room, account No." On the 20th line of this page, under date of August 29th, which is the 16th page out of nineteen pages for that day - the page is very important, to show the respective time -

CASE 2043

in the handwriting of the defendant, "Mr and Mrs Nicholson, City". Under subdivision, "room" there is a blank, and under the subdivision, "accountNumber" there is a blank.

Q Now, Nicholson, after you left the McAlpin, and, as you testified, you were refused a room there, you went to the Atlan? A Yes, sir.

Q And things took place as you have testified? A Yes, sir.

Q Now, Detective Boyle has testified that on one occasion he had a talk with you, and you, to use his expression, you admitted you took the jewelry, or something to that effect? A I never admitted such a thing.

Q Did you ever take any of this jewelry from this woman?

A Never.

MR. NEUWLITH: I think that is enough.

CROSS-EXAMINATION BY MR. MCCORMACK:

Q How long did you live on Thirtieth street? A Five months.

Q At what number? A 361 West Thirtieth street.

Q Were you living there on the 31st of August? A Yes.

Q And how long did you continue to live there? A Five months.

Q Until what date? A Up to September 6th, or the 7th.

Q That was about a week after you went to the hotel on Thirty-fourth street? A Yes, sir.

Q Why did you then move from Thirtieth street to Forty-first? A Because I wanted to be near where the rehearsals

CASE 2043

of my act took place.

Q Where did they take place? A Thirty-fourth street near Broadway.

Q Thirty-fourth? A Thirty-fourth street near Broadway.

Q Thirtieth street was nearer than Forty-first? A No, I have to walk down three avenues and four blocks to Forty-first street and Fifth avenue; it was more on my way.

Q Is that the only reason you had for moving from Thirtieth street to Forty-first? A No.

Q What other reason did you have? A Because I had a little more money, and I wanted to live a little better, but comfortably.

BY THE COURT:

Q What number were you on Forty-first street? A 6 East Forty-first street.

Q What is that? A East side.

Q What kind of premises is No. 6 East Forty-first street?

A It is on the southeast corner of Fifth avenue.

Q Is it a hotel, or an apartment house? A No, it is a rooming house.

Q That is just opposite the public library? A Yes, sir.

Q Is there a rooming house there? A Yes, sir.

BY MR. MCCORMICK:

Q You had more money then than you had any time before?

A Ch, no.

Q You said you could live better at that time? A Yes,

CASE 2043

I had a little more money at that time.

Q Where did you get it? A From the jewelry I sold.

Q The jewelry belonging to Mrs. Gray? A Yes.

Q That you pawned and sold? A And sold, yes.

Q Did you have any other money? A I did.

Q What income did you have at that time? A At that time I didn't have no income, because I was not working.

Q How long had you been out of a job? A About two weeks.

Q In testifying here, you mentioned the names of hotels and of hotel proprietors? A Yes, sir.

Q Stating that she had suggested that you go to the Knickerbocker, the Grand, the McAlpin and the other hotels?

A Yes, sir.

Q Isn't it a fact you have been a hotel waiter? A Yes.

Q And that you are familiar with the names of the hotel proprietors? A Yes, sir.

Q And yet you mean to tell us that she suggested those hotels? A Yes, sir.

Q Did she tell you she knew James Regan? A Yes, sir, she did.

Q Do you know James Regan? A Not particularly. I have heard of him.

Q You know the names of the proprietors of all these hotels don't you? A No, not all of them.

Q You say you are an actor? A Yes, sir.

Q What experience have you had as an actor? A As an

CASE # 2043

opera singer and a vaudeville actor.

Q As an opera singer? A Yes, sir.

Q What kind of opera? A In Europe and here in America.

Q And what is your nationality? A Greek.

Q Do you speak Italian? A A little. I understand a little.

BY THE COURT:

Q Is Nicholson your right name? A My right Greek name is Nikas.

Q What is your real name? A Agis Nikas.

BY MR. McCORMICK:

Q When did you assume the name of Nicholson? A Since I came in this country.

Q How long ago? A Five years and a half ago.

Q If that was your name since you came to America why did you pawn these jewels in the name of Nikas? A I said Nicholson, but they put it Nikas.

Q It says Nikas on the ticket? A That is not my fault, if they put that down.

Q You didn't give them that name? A No.

Q But that happened to be a name that was about yours? A I said Nicholson, and they put down Nikas.

Q Nikas. What was your name originally? A Nikas.

Q How do you spell it? A N-i-k-a-s.

Q And there it is? A Well, the pawnbroker put it down.

Q You didn't tell him to? A No.

BY THE COURT:

CASE 2043

Q Did he know your name? A I told him.

Q What did you tell him? A Nicholson.

Q How did he come to get Nikas? A I don't know, your Honor. They always get fickle names, however they get it.

BY MR. McCORMICK:

Q And on the other time, did he make the mistake there, too?

A I didn't make the mistake.

Q You told him Nicholson? A Yes, sir.

Q And he made a mistake and happened to get the name that you used to use? A Yes, sir.

Q In Europe? A Exactly.

BY THE COURT:

Q How long have you been an actor altogether? A About two years and a half.

BY MR. McCORMICK:

Q Where did you play in this country? A I played in Philadelphia, in Pittsburg, in Minneapolis, in Chicago.

Q And during the five years you have been here how much of the time have you been a hotel waiter? A About a year and a half.

Q In what hotels? A In several hotels.

Q Mention them? A Hotel Martinique.

Q Where is that? A Thirty-third street and Broadway.

Q What other one? A Hotel Astor, Hotel Majestic, in New York.

Q And yet you did not tell this woman - suggest to her

CASE 2043

that you go to one of these hotels? A No, I didn't suggest any hotel at all.

Q She suggested it? A She suggested it, yes.

Q But you went in and registered? A Yes, sir, I did.

Q And you used your own name, Mr and Mrs Nicholson? A Yes, I did. She told me to do it.

Q Where was she when you wrote your name on the Grand Hotel register? A She was standing next to me.

Q How many drinks had she had at that time? A We had about seven or eight glasses of beer each.

Q How many drinks did you have in Dowling's saloon?

A About seven or eight glasses of beer each.

Q In Dowling's, Forty-third street and Seventh avenue?

A Yes, sir.

Q And did you have anything to drink in any other place?

A No, except in the Hotel Atlan.

Q Was she sober at that time? A Yes, sir.

Q What time was it you went into the Grand Hotel? A It was a quarter after eight.

Q What time did you go into the McAlpin? A I went about after that time.

Q What time did you first go to the Hotel Atlan? A We went to the Hotel Atlan about ten minutes of eight.

Q And what time was it when you last went to the Hotel Atlan? A About a quarter of nine, or ten minutes of nine.

Q And what time was it you got the room there? A We got

CASE 2043

the room about a quarter of nine; it didn't take us five minutes.

Q You told us you and she went up into the room? A Yes.

Q Then you went out and bought some beer? A Yes, sir.

Q How much? A Six bottles of beer.

Q And when you came back you say she had undressed? A Yes, sir.

Q She had no clothing on? A No clothing. She only had a small short waist, a flannel.

Q And then what did you and she do? Drink the six bottles of beer? A Not right away. We had dinner together.

Q You brought the food in there then? A Yes, sir, I did.

Q Consisting of what? A Steak and potatoes and bread and butter and beer.

Q Then how long was it before you went out the next time to get more beer? A I went out about twelve o'clock, half past twelve.

Q What were you doing between the time you had the food and the time you went out to get the additional beer? A We were in bed together.

Q What? A We had been together in bed.

Q When was it that she did this unnatural thing to you that you spoke of? A That was the last time.

Q Was that after you came in with the last beer? A I didn't come again with the last beer.

Q You got beer twice? A No, only once.

Q Only once? A Only once.

CASE 2043

Q You had intercourse with her twice? A Yes, sir.

Q When was it that she took all these jewels and put them in your hand and said they were yours? A It was before I left the room to go out for the other beer.

Q But she didn't give you all of the jewelry, did she? A Whatever was found in my possession was given to me.

Q She didn't give you the diamond that was in her right ear, did she? A Yes, she give it to me.

Q Did she give you both earrings? A I didn't see one earring at all. She took the jewelry out of her hand bag. I didn't see any earrings in her ears.

Q Isn't it true that you took this jewelry from her after having given her knockout drops? A No, that is a lie.

Q Wait until I get through. And that when you took the jewelry from her she was lying with her right ear on the bed and her right hand under that ear? A No, sir.

Q And on the righthand was a ring and in the right ear was an earring? A No; she was awake when I left the room.

BY THE COURT:

Q Do you know how she came to give you one earring and not the other? A She didn't have the earrings in her ears.

Q Do you know why she gave you one earring and did not give you the pair? A I don't know that, your Honor.

BY MR. MCCORMICK:

Q It is a fact she only gave you one? A Only one, yes.

CASE 2043

Q Why didn't you take the other? A Why do you ask me such a question? I couldn't take the other. She only gave me one.

Q You didn't want to take the jewelry? A After she gave it to me.

Q She forced you to take it? A She didn't force me to take it, no.

Q She took it all off and put it in your hand? A She put it in my hand.

BY THE COURT:

Q What did you do with it when she put it in your hand?

A She said, "Put it in your pocket".

Q Where were your clothes? A On the chair.

Q So, you took the jewelry from her hand, and went and put it in your pocket? A Yes, sir.

Q Then you got back in bed and allowed her to do this act to you? A Yes, sir.

BY MR. McCORMICK:

Q Did she do that act against your will? A She forced me to do it, and I was helpless.

Q Did she force you, or was it done against your will? A No, it was not against my will.

Q You consented? A I consented, yes.

Q You were willing? A Not willing. I consented.

Q Then, you were willing that she should do it? A I was not willing; I denied, and I told her not to do it, and she forced me to do it, and I gave in and I did it.

CASE 2043

Q Why did you depart so hastily? A I didn't want to go back again in the hotel.

Q What was she doing when you went out? A I don't know.

Q Were you dressed, or undressed, when she handed the rings to you? A She was undressed, in bed.

Q Were you? A No, I dressed up myself - when she gave me the jewelry I was undressed.

Q What did you do with it? When she put them in your hand, what did you do? A I put them in my pocket.

Q But you were not dressed then, were you? A No, I was not.

Q Which pocket? A In the coat pocket.

Q Outside coat pocket? A Outside coat pocket.

Q Where was your coat? A My coat was on the chair, by my clothes.

Q And after you did that, did you get into bed? A I went in bed, yes.

Q And how long did you stay in bed? A We stayed in bed about half an hour, or three-quarters of an hour.

Q And then what did you do? A Then she told me to go out and get some beer.

Q And you went out without a collar? A Yes, sir.

Q And is that the collar you wore that night (exhibiting collar to witness)? A Yes, that is the collar.

Q You went out in a hurry? A Yes, and I left my necktie.

Q You left the collar, and you took the jewels? A No, I didn't take the jewelry.

CASE 2043

Q Didn't you have the jewelry with you when you went out?

A Yes, I did have the jewels in my pocket.

Q Why didn't you put your collar on? A Because I was going down for the beer, and I had intention of coming back again.

Q Why did you change your mind? A Because my rupture came down, and I couldn't stand it.

Q Your what? Rupture? A Yes, sir.

Q That rupture, you felt that just as soon as you got out of the hotel? A Yes, sir, because she committed these unnatural things on me, and that is why this rupture got that way.

Q How was that rupture caused? A It slips down.

Q How was it caused in the beginning? A What was the cause of it I don't know.

Q How long have you had it? A About two years and a half.

Q What kind of rupture is it? A I am not a doctor.

Q Didn't a doctor ever treat you? A Yes, he gave me a truss.

Q Did you ever wear a truss? A Yes, sir.

Q Do you wear one now? A Yes, sir.

Q Got one on now? A Yes, sir.

Q How long have you been wearing it? A I wore it for about two years.

Q Now, you told Weinberg, or Weinberg's man, that you were owning jewelry that belonged to your wife, didn't you? A Yes,

CASE 2043

sir, I did.

Q Why did you lie? A I lied because I couldn't tell him exactly how the jewelry came to be in my possession; I couldn't tell him the story.

Q Have you lied here today? A No, I don't lie here.

Q You have not told a lie? A No, not a lie.

Q All the truth? A Yes. I said the truth even at the last trial, I said the truth, and I am going to stick to the truth up to the last.

Q Didn't you tell the pawnbroker you were going to Europe, to the war? A Yes, I told him that.

Q That was a lie, wasn't it? A I was expecting to go to Europe.

Q I thought you were training for theatrical work? A We were talking about the war, and I said, "If my country goes to war I will certainly go to the war, too", but I didn't tell him at that time I was going to the war.

Q Didn't you ask Detective Boyle how much time you would have to serve in prison for this? A No, never did.

Q He is mistaken about that, is he? A Never did.

Q You were pretty well dressed that day, were you? A Yes, I was.

Q Is that a pretty bad rupture? A It is bad now.

Q How ^{is} it today? A It is on both sides now, since I am here in the Tombs, getting worse every day.

Q How was it the day you pawned the jewelry? A How was

CASE 2043

what?

Q The rupture. A It was getting better, because I had my truss on. I must have the truss on always.

Q How could you go to war if you had a rupture on both sides? A That makes no difference. If my country goes to war, I would go to war on one leg.

Q You are a great patriot? A I will do anything.

Q Did you ever receive money from any other woman? A No.

Q Or jewels? A I received little presents, Christmas presents.

Q What? A I received Christmas presents.

Q Who gave them to you, different women? A No, friends, different friends, among them are women, too.

Q How long had you been out of a job when you were arrested? A Two weeks.

Q Then, you were employed, the day you got these jewels? A I was not employed that day. I was looking to put my act on.

Q I asked you how long you had been out of a job the day you were arrested? A I was working that day. I was employed at that time. I was rehearsing my act.

Q You didn't have a job the day you went to the hotel?

A No, sir.

Q How long had you been out of a job then? A Two weeks.

Q And where were you working? A Forty-first street near Broadway.

Q I mean, two weeks before you went into this hotel? A Yes,

CASE 2043

Forty-first street and Broadway.

Q What is that place? A That is the Boulevard, the Cafe Boulevard.

Q Forty-first street and Broadway? A Forty-first street and Broadway, yes, sir.

Q What did you do there? A I was working as a waiter there

Q A waiter? A Yes.

Q How is it you did not mention that hotel when I asked you to give all the hotels where you had been a waiter? A You didn't ask me for every one of them.

Q Did you ever register in a hotel before that with any woman? A Yes.
any of

Q In ~~all~~ these hotels? A No, ~~not~~ in these hotels.
from

Q Now, Mr. Feinberg you got \$195? A Yes, sir.

Q How much did you get from the other man? A \$82.

Q That is \$277? A Yes, sir.

Q What did you do with it? A I spent it; I spent money for my act, copying manuscripts.

Q Did you think it was right for you to walk out of that hotel with this woman's jewels? A Well, she give them to me, didn't she? It was a present, and I didn't mean to keep it.

Q At the time she made you a present of them she was under the influence of a knockout drop, wasn't she? A No, she was not.

Q Did you put anything in that beer? A No, I didn't put anything in that beer.

CASE 2043

Q Can you explain how it was she did not give you both diamond earrings? A How can I explain such a thing.

Q You must have seen her take this jewelry off her person? A She took them from her bag on the table. I was laying on the bed.

Q Tell me how she gave those jewels to you? A I was laying in bed.

Q Which one did she give you first? A She give them all at once.

Q What did she say? A She said, "Baby, that is all yours. Let me do it, please. I will do all I can for you", and she took all the jewelry from the table and she put them in my hands, and then I put them in my pocket.

Q Had you been frequenting that moving picture show the day before you met her? A If I had been what?

Q Had you been in that moving picture show the day before you met her? A Other times, yes, but not that day.

Q What did you do with the watch? A I sold it.

Q To whom? A To a friend of mine.

Q What is his name? A George Orthanosopolis.

Q Where did he live? A I don't know where he lives.

Q For how much? A \$14., the watch and cuff buttons.

Q Who is he, a waiter? A No.

Q You told the officer you sold them to a waiter, didn't you? A No, sir, I never said such a thing.

Q What did you do with the cuff buttons? A I sold them to

CASE 2043

the same man.

Q For how much? A Fourteen dollars.

Q Do you know where he lives? A No, sir.

Q Where did he live then? A He lived in Twenty-ninth street some place, but he was intending to go back to Europe.

BY THE COURT:

Q What was the number of the house in Thirtieth street where you used to live? A 361.

Q Between what avenues is that? A Between Eighth and Ninth.

Q Did you know this Atlan Hotel before? A No, sir, I passed it several times. I knew where it was.

Q That was about a block - about three blocks away from where you lived? A The Atlan is on Thirty-fourth street, and I was living on Thirtieth street.

Q Four blocks? A Yes, sir.

BY MR. McCORMICK:

Q Why didn't you take this woman home, escort her home? You knew where she lived? A No, sir, I did not.

Q She told you? A No, she never told me. She told me she was living in the Bronx.

Q You didn't tell her where you lived? A I did tell her.

Q And you didn't tell her your name? A I give her my card with my right name and my right address, and I begged her to write me at that address.

CASE 2043

Q Didn't you hear her say she told the police officers your name was either Nichols or Nicholson, because she saw it on a card and that the card was in your hand? A I don't know what she said I give her my card.

Q Give me the names of the theatrical employer that you worked for? A I played with Mr. Raymond Duncan, brother of Isidore Duncan.

Q Where is his office? A He has no office. He travels all over the world.

Q Who else? A I played with the Saraganas Company here in New York, a Greek company.

Q Is there a Greek theatre in New York? A Yes, sir.

Q Where? A The Opera House, in Forty-fourth street. It is not altogether a Greek opera house, but they give Greek operas there.

Q Who else? A Then I was an organizer of the Greek Musical Society, in Washington, D.C.

Q How long did you live there? A About seven months.

Q And you organized that society in that time? A Not all alone; several other persons.

Q What was this theatrical proposition that you were working on at the time you were arrested? A It was a vaudeville act, an impersonation of Oscar Hammerstein.

Q How many people in it? A Three people.

Q And you were one of the three? A Yes, sir.

Q Who wrote it? A Mr. Rudolph Rafael.

CASE 2043

Q Did you have a contract for its production? A No my manager signed a contract.

Q Who was your manager? A Mr. Winton Fisher.

Q And for how long a time was the contract? A Fifty-five weeks.

Q For how much a week? A \$375.

Q How much out of that were you to get? A The act was mine. I was the producer of the act.

Q How much were you to get? A About One hundred and fifty or One hundred and Twenty-five dollars a week.

Q How much did you make as a waiter? A I made a hundred dollars a month.

Q What was your salary? A Thirty dollars a month.

Q Your wages? A Yes.

Q How much? A Thirty dollars a month.

Q You got thirty dollars a month as a waiter? A Yes, sir.

Q And under this contract that you had secured you were going to make about \$125. a week; is that right? A Yes, that is right.

Q How soon was that contract to go into operation? How soon were you to begin work? A About two days after I was arrested.

Q Where were you to start? A We started in New York one week.

Q What theatre? A With Keith & Proctor's Theatres.

Q You had this contract with Proctors? A Yes, sir.

CASE 2043

Q Keith's? A Yes, sir.

Q Where is that contract? A I haven't got it. My manager, Mr. Fisher has it.

Q Where is he? A He is in his office now.

Q Is he down here today? A No, he is not here.

Q Does he know you have been locked up? A Yes, I telephoned him.

Q He knows what you are charged with? A I don't know.

Q Have you seen him since you have been arrested? A No, I didn't see him personally.

Q Give me his name? A Winton Fischer.

Q Where is his office? A He moved from Thirty-fourth street. He is on Forty-fourth street now.

Q What number? A I don't know the number.

Q Is it near Broadway? A I don't know; I can't tell you; I think it is 212 or 214 West.

MR. MCCORMICK: That is all.

MR. NEUWIRTH: If your Honor please, I should like to have the testimony of the complaining witness, particularly the cross-examination, or the examination of the Presiding Justice, put into this record, which took place at the last trial. I understand the stenographer who took it down is now in Part 11.

THE COURT: You can offer in evidence such questions and answers as you called her attention to. You cannot read her whole testimony in.

CASE 2043

MR. NEUWIRTH: I was called in this case this morning. There is one particular question which I believe Mr. McCormick will concede. Whether or not he will concede it, Mrs. Gray testified she never was at the McAlpin Hotel with this defendant. That is the testimony that she gave at the last trial. If he will give me that concession, I shan't trouble any further, although I would like to have her whole examination.

MR. MCCORMICK: I don't remember whether she testified that way, or not.

THE COURT: Weren't the minutes of the trial written out?

MR. MCCORMICK: They were not written out.

MR. NEUWIRTH: No, they were not. I didn't think Mr McCormick would try the case again.

THE COURT: You will have to get the stenographer, then.

MR. NEUWIRTH: I simply want that concession, that she said she did not go to the Hotel McAlpin.

MR. MCCORMICK: I am under the impression she testified she was in one or both of those hotels on Broadway.

MR. NEUWIRTH: Well, then, if Mr. McCormick won't concede it, we rest.

THE DEFENDANT RESTS

CASE 2043

REBUTTAL TESTIMONY

FRANK S. PRICE, being recalled, on behalf
of the People, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Have you made any effort to find the clerk of the Hotel
Atlan, who was on duty the night that this complaining witness
was in the hotel?

MR. NEUWIRTH: I shall object to that, if your Honor
pleases, as not rebuttal.

THE COURT: Perhaps it is not strictly rebuttal. If
any comment is to be made on the failure to produce the
witness, I will allow them to prove efforts to get him.
If you make no point of that, I will not allow the testi-
mony. I say, if the defence will comment on the failure
of the People to produce the hotel clerk from the Atlan,
then I will allow them to prove efforts they have made to
get him, but if you make no point of that I will not allow
the testimony.

MR. NEUWIRTH: No, I shall not make any point of that. I
shall dwell on more important features of the case.

THE COURT: Very well, then, I will sustain the
objection.

TESTIMONY CLOSED

(Mr. Neuirth) then summed up the case to the jury

CASE 2043

on behalf of the defendant.)

(Mr. McCormick then summed up the case to the jury
on behalf of the People).

CASE # 2043

THE COURT'S CHARGE

N O T T, Jr., J.:

Gentlemen of the Jury: This defendant has been indicted by the grand jury of this County charged with grand larceny in the first degree. I may say, in the threshold of my charge, that we are here to determine whether that crime has been committed, whether the laws of the State have been broken, and whether the defendant on the one hand has committed a larceny, and whether the complaining witness on the other hand has been the victim of a larceny.

We are not here to sit as what might be called a Court of morals, to determine the moral character of this transaction. Of course, the jury are at liberty and it is their duty to take into consideration the morals that have been manifested by both of the parties to this transaction, in determining their reliability as witnesses, but apart from that the morals of the case are not in issue. That is to say, if this woman has been subjected to a larceny, and her property has been stolen, it is not a defense that she may have been at this hotel for an improper purpose. A man who is having illicit relations with a woman has no more right to steal property from that woman than he has to steal property from any other woman.

On the other hand, the same applies to the defendant.

CASE 2043

I suppose all clean minded men would look with a good deal of abhorrence on the fact that a man admits that he let himself be paid or bribed by the offer of jewelry to commit an act of sodomy, which, under the laws of this State, is a crime. Nevertheless, if the defendant did that, and the jewelry was given to him, he is not to be convicted because his conduct shows bad morals. He is to be convicted if he committed a larceny, and if he did commit a larceny he is to be convicted even though the complaining witness may have resorted to this hotel for an improper purpose.

So, therefore, I hope you will get the distinction clearly that while you may consider the conduct of each of these parties on the question of their credibility as witnesses, the defendant is not to be convicted because on his own testimony he has committed acts which would be abhorrent to you; nor, on the other hand, is he to be acquitted because the complaining witness may have been guilty of immorality in going to a hotel with him.

The jury, as you have heard charged before, and as I must charge in every criminal case, are the sole judges of the facts of this case. They are to find out where the truth lies, and in finding that out they are to use their natural common sense and good judgment, their knowledge of human nature and conditions, and arrive at a just and

CASE 2043

true verdict as to where the truth lies, a verdict uninfluenced by prejudice against either party or sympathy for either party.

Under the laws of our State, the burden is on The People to prove the defendant guilty beyond a reasonable doubt. If there is a reasonable doubt of the defendant's guilt, he is entitled to the benefit of that doubt and to an acquittal. On the other hand, if he has been proved guilty beyond a reasonable doubt, he has been proved guilty in the eye of the law.

A reasonable doubt is a doubt which arises from the evidence in the case, or lack of evidence, a doubt such as a reasonable man can give a reason for entertaining. That is to say, it is not a reasonable doubt to say "I have a feeling in my mind that the defendant may not be guilty, but for that feeling I can assign no reason; it is just a vague feeling that I entertain, and I can't give any reason for it." That is not a reasonable doubt. A reasonable doubt is based on reason, and the reason arising from the testimony.

To come down to the specific crime alleged, which is larceny in the first degree, larceny is defined by the Statute as follows:

"A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit

CASE 2043

"thereof, or to appropriate the same to the use of the
"taker or any other person, takes from the possession of
"the true owner any money, personal property or article of
"value of any kind, steals such property and is guilty of
"larceny."

You will, therefore, see that to constitute larceny
an act must be done, and it must be done with a certain
intent in the mind of the actor. The act is taking from
the possession of the true owner his property. That is
the act that must be done. There must be a taking
from the possession of the true owner. The act must
be done with a certain intent in the mind, and the intent
is either to deprive or defraud the true owner of his
property or the use and benefit of it, or to appropriate
the property to the use of the taker. Therefore, if any
person, with the intent in his mind to deprive and defraud
the true owner of his property, or to appropriate it to
the use of the taker, takes property from the possession
of the true owner, he is guilty of larceny.

Grand larceny in the first degree may be committed
in any one of three ways. I will charge you all three of
them, as either of such ways may be pertinent under the
facts of this case.

A person is guilty of grand larceny in the first de-
gree who steals, first, property of any value by taking the

CASE 2043

same from the person of another in the night time. Therefore, apart from any value that has been proved as to the property in this case, if this defendant stole any property of any value by taking the same from the person of the owner in the night time, he is guilty of grand larceny in the first degree.

You will recall the hour at which this transaction took place. Both parties agree in saying it was somewhere between the hours of, as I recall it, midnight and two or three o'clock in the morning. If you find that that is in the night time, and that the property was stolen, and that it was stolen, or any part of it was stolen from the person of this woman, that would constitute grand larceny in the first degree.

Second, a person is guilty of grand larceny in the first degree who steals property of the value of more than twenty-five dollars by taking the same in the night time from a dwelling house.

A dwelling house has been elsewhere defined in the code, in another Chapter, as follows: "Dwelling house. "A building, any part of which is usually occupied by a "person lodging therein at night is, for the purposes of "this article, a dwelling house."

Therefore, if this hotel was a house usually occupied by a person or persons lodging there at night, it may be

CASE # 2043

deemed, for the purposes of this case, a dwelling house, and if the defendant, therefore, took property of more than twenty-five dollars in value in the night time from a dwelling house, that constitutes grand larceny in the first degree.

Third. A person is guilty of grand larceny in the first degree who steals property of the value of more than five hundred dollars in any manner whatever.

Therefore, in this case, if the property taken exceeded in value the sum of five hundred dollars, and as I understand the property here has been conceded to be of more than that value, then if it was stolen in any manner whatever, either by taking it from the person or taking it from any other place, or from a dwelling house, in the night time or day time, it would be grand larceny in the first degree by reason of its value.

Therefore, the three tests of grand larceny in the first degree are, first, stealing from the person in the night time; second, stealing from a dwelling house in the night time property of more than twenty-five dollars in value, and, third, stealing property of more than five hundred dollars in value in any way whatever.

It is, therefore, gentlemen, for you to determine what the facts in this case are. If this defendant received this property from the complaining witness as a

CASE #2043

gift, then he did not take it from her possession with the intent of defrauding or depriving her of it. In other words, a person who receives property as a gift cannot steal that property. The defendant says he received the property from this woman as a gift. If that is so, he is entitled to an acquittal.

On the other hand, she says she did not give this property to him. She says that after drinking she lost consciousness; that when she came to she found the defendant and this property had gone, with the exception of one ear-ring, which remained, one ear-ring having been taken, and she says the ear-ring that remained was in her ear that she had upon the bed.

It is for you to say how the defendant came into possession of that one ear-ring which it is admitted that he had. It is conceded here that she kept one and he had one, and it is for you to say how he came into the possession of that one ear-ring, whether by a larceny or by a gift..

You are at liberty to take into consideration here the motives that may actuate these parties. The People claim that if the defendant's story is true it is not likely that this woman would resort to the police and to the publicity which she knew might follow. On the other hand, the defendant's theory is that she was so

CASE 2043

inflamed by her passions that she would stop at nothing in order to gratify them, and would even bestow upon him property of more than five hundred dollars in value for that purpose. It is for you to say whether that story is true, or not.

You can consider, in coming to the conclusion of who is telling the truth, the testimony of the representatives of the pawn brokers as to the statements made by the defendant at the time he pawned this property, the name it was pawned under, his explanation of how that name appears on that pawn ticket, and also the testimony of the officers as to the statements made by the defendant to them.

The defendant states that he received this property as a gift, and received, in addition, the promise of much greater benefits to come, of money and so on. He says that, notwithstanding those promises, he left this hotel without knowing the name or address of the woman that had promised him these future benefits, and he left her there not knowing her address, although she had promised to him to continue these favors and to give him more money. He says, however, that she had his address. That she denies.

You have heard the testimony of the officers that they did not see a card; you have heard the testimony

CASE # 2043

they have given as to their efforts to find the defendant, and it is for you to say whether they would have extended those efforts if they had had the card originally with the name and address. All those circumstances you can take into consideration pro and con in making up your mind who is telling the truth, for that is the great question in this case.

The law says that a jury in estimating the testimony of a witness is at liberty, if they find a witness has testified intentionally and wilfully falsely on a material issue in the case, to disregard the entire testimony of that witness. The law does not say that a jury must do so. The law expressly says that a jury is at liberty if it sees fit to take the testimony of such a witness and act, and believe that part that they find to be true, while rejecting the part that they believe to be false; but the law gives the jury the power, however, if they see fit, to disregard the testimony of any witness who has testified wilfully falsely on a material matter. That applies, of course, to the testimony of this complainant, and it applies equally to the testimony of this defendant. It is for you to say. If you believe that either of them have testified wilfully falsely on a material matter in the case, you then can reject their entire testimony, or you can reject such part of

WOLFE
CASE #2043

of the testimony as you find to be false, on the other hand accepting such part as you find to be true.

Nothing further occurs to me now that I need to charge you in the case. The law is very simple. The facts are not complicated. It is for you to take into consideration the conditions that prevailed, the situation of these parties, their antecedents in life, and use your common sense in determining how this defendant came into possession of that property, and whether when he pawned it it was the subject of a larceny committed by him, or whether it was a gift that had been made to him by the complainant.

Your verdict, therefore, gentlemen, will be either guilty of grand larceny in the first degree, or not guilty, according as you find the facts.

Any requests or exceptions ?

(The Jury then retired and subsequently returned a verdict of guilty of grand larceny in the first degree).

Amos G. Russell,

Official Stenographer.

CASE #2043

THE PEOPLE, Etc., vs. AGIS T. NICHOLSON

New York, Friday, March 19th, 1915.

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

ROBERT C. MCCORMICK, Esq., and

CHARLES N. FLINT, Esq., Assistant District Attorneys,

For the People.

HENRY C. NEUWIRTH, Esq., and

FREDERICK A. WARE, Esq.,

For the Defendant.

THE DEFENDANT IS ARRAIGNED FOR SENTENCE BEFORE

HON. CHARLES C. NOTT, Jr., J.

THE CLERK OF THE COURT: Agis T. Nicholson, what
have you now to say why judgment should not be pronounced
against you according to law?

MR. NEUWIRTH: We reserved our motions which I am about
to make, and some of the reasons for the motions my as-
sociate, Mr. Ware, will state to the Court.

The defendant moves to set aside the verdict and for
arrest of judgment and for a new trial upon the ground the
verdict is against the law; against the evidence and against
the weight of evidence, and upon all the grounds specified
in the law.

The defendant also moves for a new trial upon the
ground that perjury was committed by the complaining wit-
ness.

CASE 2043

122

As a basis for the latter motion, Mr. Ware has some information which, if necessary, could be embodied in affidavit form.

I want to say to your Honor, in all earnestness, I did not anticipate being here this morning. I had an engagement in another court, where I sent another attorney to represent me. My conscience impells me to appear here personally to urge upon your Honor the injustice which would be done in this particular case to let this verdict stand, in view of the nature of the evidence, the nature of the crime for which this defendant was tried at the Bar of this Court on two separate occasions. It is a matter of evident documentary proof which can be verified from the stenographer's minutes that the complaining witness perjured herself both on the first trial and on the second trial. She perjured herself on the second trial in that she testified to certain matters on contradiction on the first trial. To send this boy to a penal institution upon the evidence upon which he was convicted in my opinion would be a miscarriage of justice.

I never anticipated that the defendant would be tried the second time; otherwise I would have perhaps fortified myself with some of the information which Mr. Ware has obtained.

As a matter of fact, I came into court after the jury had been empanelled, ready to try the case. I understood

CASE 2043

that on the first trial the jury stood either ten or eleven to one for acquittal.

THE COURT: Judge Crain informed me they stood nine to three for conviction.

MR. WARE: The jury informed me themselves right after the trial how they stood.

THE COURT: That is what I was informed, but, at any rate, the first trial is not the second trial. We are going to act on the second trial now.

MR. McCORMICK: The jury told me it was nine to three on the first trial - nine to three for conviction.

MR. WARE: On that subject -

THE COURT: There is no use going into that subject.

MR. NEUWIRTH: However they stood, I say in this case this defendant ought to have a new trial.

THE COURT: On what ground?

MR. NEUWIRTH: On the ground that the evidence of the complaining witness is not sufficient to support the verdict. There is no doubt there was perjury committed by the complaining witness.

THE COURT: What perjury?

MR. NEUWIRTH: She denied, firstly, on the first trial, she denied that she had ever been to the McAlpin Hotel, or the Grand Hotel.

THE COURT: She admitted it on the second trial.

CASE 2043

MR. NEUWIRTH: She only admitted that she was at the McAlpin. She denied that she was at the Grand, and it was only after we got the records here of the Grand Hotel, which corroborated the defendant's contention, that she could not deny it.

MR. MCCORMICK: That is immaterial.

MR. NEUWIRTH: That is one thing. She stated that she was on good terms with her husband. As a matter of fact, in September she was arrested on the complaint of her husband, and put under bonds by a magistrate. This information we have just ascertained, and I think she will admit it if put on the stand. On the second trial, as on the first, the defendant's story which he told, and I want to say, your Honor, without any rehearsal, without going over - as I say, I didn't give the case the attention that really I should have given it - from all the testimony that the defendant testified to on the trial, it bears out that the relationship between the parties and the various incidents from the time of the meeting was as the defendant testified. The very fact of the complaining witness denying any meretricious relations had existed

under the circumstances, that she didn't know - that the only purpose in going up to the room was for the purpose of looking at some papers, that is so improbable, which I think of itself is stamped with the basest falsehood, and is unworthy of belief in any court of justice. I need

CASE 2043

not dwell any further on the details. It is true -

My attention is just called to the evidence about the children. That does not play a very important part; it only shows she was willing, when she was cornered, to patch up her testimony. On the first trial, she testified that the children were with her sister. First she testified that the children were living with her. Then she testified, on the second trial, that the children were with her mother. The children were not there. She had this furnished room.

Now, is it probable, if a wife is living with her husband, on good terms, no trouble between them, that the wife is suddenly going to have a furnished room, and, as the husband says, the reason they had to separate - although he testified on the first trial that they were not on good terms - was because of poverty, because of their financial irresponsibility; and right on top of that they are separated because they have not the means to keep up an apartment, and still the woman is able to be bedecked with a few thousand dollars' worth of diamonds; but if a woman sees her husband is in financial distress -

THE COURT: You don't dispute that she had the diamonds?

MR. NEUWIRTH: No, we never did, and we don't dispute that the defendant obtained possession of them. Another instance of the defendant's innocence of the crime charged, that is, the crime as charged in the indictment,

CASE 2043

he obtained possession of this jewelry, and then they appear in a pawn shop, pawned by this defendant. The natural instinct, I imagine, when a thief pawns jewelry, is to eradicate any traces of it. He would either tear up the ticket, or do something with it. Here he willingly gives up the ticket and says, "Yes, I pawned it; I got it from this complainant, but I didn't rob the woman." And a district attorney who would have your Honor believe -

THE COURT: What is there in that? He pawned them under a false name. When the officer arrested him, he knew he would be searched, and he handed the tickets over.

MR. NEUWIRTH: He did not pawn them under a false name.

THE COURT: He did not pawn them under the name he used in this city or under a name that this complainant would recognize him by.

MR. NEUWIRTH: His real name is Nikas. I have seen some correspondence from the Secretary of State of Greece.

THE COURT: I will agree to that. That is the name these goods were pawned under. He says he did not pawn them under the name of Nikas; that it was a coincidence; that the pawnbroker made a mistake, and, by a strange coincidence, happened to hit on that name.

MR. NEUWIRTH: I don't endeavor to explain that, but I can imagine what happened in that pawnshop, when he

CASE 2043

said the name was Nicholson. The name Nikas was on the ticket. There is no dispute about that. He could easily have given some other name, not Nikas or Nicholson. Either the pawnbroker put the name down Nikas for short, or he at the moment gave the name Nikas. He signed his name Nicholson on all the hotel registers. I think all these little earmarks all point to the fact that this complaining witness - if he is to be convicted on the story of the complaining witness in this case it would be a gross miscarriage of justice.

Another thing, if your Honor pleases: Here is a woman whom the District Attorney would have the jury believe was drugged on a certain night, near midnight. Now, I have spoken to physicians. I think from what little we know about the physical condition of the person after he gets a narcotic or any sort of drug, that he would not - that he or she would not be able to travel any distance after becoming conscious, as she would have the Court believe, and the jury, and be able to relate each and every circumstance, how she got up and how she held her hand, because if a woman is drugged, how can she remember that she laid down with her ear on her hand? That was done by the ingenious explanation, to cover up why the other earring was not taken away; and if she was in such a condition that she was drugged and helpless, this defendant could easily have turned her over and taken the other

CASE 2043

earring out.

I say the trust is she was drunk, and she took her earring out, perhaps intending to take out both; she took one out. I say the truth is that transaction was that she was drunk, and she didn't know what she was going. I don't think she intended to part with this property, but she did part with it, and she gave it to this defendant.

I think, if your Honor please, that this defendant ought to have a new trial. Your Honor would be warranted in sending it to another part. I would like to have this trial, if it is to take place, as speedily as possible. He has been in jail now several months.

THE COURT: Well, I shall not grant a new trial. I believe the verdict was entirely correct.

MR. NEUWIRTH: I have been counsel in this case without any remuneration.

THE COURT: Have you any more arguments to advance why it should be set aside?

MR. NEUWIRTH: If your Honor will listen to Mr. Ware, after I am through, if your Honor is not inclined to grant a new trial, I shall ask, if your Honor has the discretion to do so, that you grant a stay, so that a proper application may be made for a certificate.

THE COURT: I will do that, yes.

MR. NEUWIRTH: Or, if your Honor can grant a certificate.

CASE 2043

THE COURT: You had better apply to the Supreme Court. I could do it if I had a reasonable doubt, but if I have not, I will not. Anything further?

MR. NEUWIRTH: Except Mr. Ware.

MR. WARE: Only very briefly. I have made some investigation as to the complainant; and I am informed on most reliable assurance, by an attorney of this State and City, whose offices are near Jefferson Market, and who resides in the neighborhood of the complainant, and whose name I will give to your Honor privately, because he did not want to be mentioned, for obvious reasons, that this woman has been in hot water practically for a great many years; that Magistrate Krotel held her some two years ago under Five hundred dollars bond to keep the peace; that only last September her husband had her arrested for assault, and she appeared in Jefferson Market and was engaged in other similar brawls, and I have no doubt that if your Honor should ask this woman herself she could not deny these facts. It seems to me very unsafe to sentence this defendant or to deny him a chance to prove his innocence under these circumstances.

As to the jury, I will state publicly to your Honor, that I went out with them, and half a dozen of the members of the jury were with me for quite a while immediately after the first trial, which, of course, is not important, except that your Honor and Judge Crain have in some way been mis-

CASE 2043

informed, and I know it, because, if your Honor cares to -

THE COURT: I don't care how the first jury stood. I want to get to work on cases here. This jury is being held.

MR. WARE: I am interested in my own self; that is all. Now, your Honor, I will be able to show by the records which I have stated to your Honor, and I have not the slightest doubt that the woman herself will substantiate what I have said, and if her husband is here I know he will.

THE COURT: In this case this defendant has been tried twice. On the first trial the jury failed to find that there was a reasonable doubt in the case. They did not agree on guilt, but they were not twelve men that would say there was a reasonable doubt; but on the second trial he was convicted.

Now, as to the character of the complaining witness, in my mind I believe that she went up to this place for some improper purpose, and I believe the jury believed so. When you said that, it makes very little difference whether she has had trouble with her husband, or not. If that is to be believed, you have said as much as can be said against her, and if, in spite of that belief, the jury found this defendant guilty, it was because of the circumstances of the case, and his own testimony led to the inevitable inference of guilt. Even a confessed prostitute has a right to her property, and even if this woman

CASE 2043

went to this place for an improper purpose, she had the same rights. Now, it appears that this jewelry was deliberately taken by the defendant, and the disgusting explanation he gave of it was that he got the jewelry as a bribe to him to commit acts of sodomy with this woman. Whatever she may be, I don't believe that. But I don't believe she handed over to him Twelve hundred dollars worth of jewelry for that purpose on a Saturday and on the very next Monday went to Police Headquarters to make this charge against him. It appears that within a few days after he moved his residence, and pawned this property in a name which, while his true name was one which the complaining witness did not know and would not recognize.

On all these facts, the jury were amply justified in convicting him. He states he is now twenty-one years of age. The Emigration Department informed me that he arrived on the Martha Washington on September 11th, 1908, which would be seven years next September, and then gave his age as seventeen, which would make him twenty-four years of age next September, and from his appearance I have no doubt that that is correct.

MR. WARE: May I say a word, your Honor?

THE COURT: Yes.

MR. WARE: The defendant tells me that the Emigration officers wrote down the age of seventeen, on the ship's officers, possibly, in order to avoid any complications,

CASE # 2043

because I believe where a person under sixteen comes to this port without guardians or parents they are liable to be deported ; and the ship would have to bear that expense. I desire to also remind your Honor that this young man has spent six months in the Tombs.

THE COURT: This letter shows that he was consigned and manifested as going to his brother, so he could not have been deported. In this case, I have had some doubt as to what to do with this defendant. His crime was a most serious one, and at first I considered that I might send him to Elmira, but I have a duty to perform to the inmates there as well as to this defendant. From the testimony he gave on the stand, the nature of this defence set up and those facts, I don't think I would be doing right to the boys up at Elmira to send a person like that there in their company. I think he would do more harm there to them than he would receive good.

The sentence of the Court is that he be confined in State Prison not less than three years nor more than five years and six months.

I hereby certify that the foregoing is a full and accurate transcript of my stenographic notes taken on the trial of the aforementioned indictment
Amos Russell
clerk.

CASE 2043