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CASE #2107

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART IV.

2597

----- x
T H E P E O P L E

-against-

WILLIAM KAFIS.
----- x

B e f o r e :

HON WM. H. WADHAMS, J.,

and a Jury.

New York, October 14th, etc., 1915.

Indicted for criminally receiving stolen property.

Indictment filed May 14th, 1915.

A P P E A R A N C E S :

ASSISTANT DISTRICT ATTORNEY JAMES E. MC DONALD,

FOR THE PEOPLE.

MESSRS. MARKS & MARKS, FOR THE DEFENSE.

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TRANSCRIPT OF STENOGRAPHER'S MINUTES.

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Frank S. Beard,

Official Stenographer.

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THE PEOPLE'S TESTIMONY:

J O H N J. G U N T H E R, of 341 West 24th Street,
a witness called in behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q What is your business, Mr. Gunther? A Wholesale
florist.

Q And where is your place of business? A 110 West 28th
Street.

Q And how long have you been in business, Mr. Gunther?
A About nine years.

Q Do you know Charles Futterman? A Yes, sir.

Q Was he an employe of yours? A Yes, sir. Do you
want to know how long?

Q Yes, about how long? A About three years.

Q Do you know Max Zinovy? A Yes, sir; he was employed
about a year and a half.

Q What was the nature of their employment? A Why, they
did about everything. They had the right to deliver flowers,
and sell flowers, and put flowers away, and take care of the
stock.

Q And wait on customers in the place? A Yes, sir; if
we were busy, and, if we were not, usually my brother and I
and the head man done the selling.

Q And you also employed as a head man the man Al Futter-

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man, the brother of Charles? A Yes, sir.

Q Now what time did you leave your place of business on the 30th day of March, 1915? A Was that a Friday?

Q Friday or Saturday? A About six o'clock at night. If it was a Friday.

Q And did you have any flowers? A We had a large stock of flowers.

Q What kind of flowers were they? A Carnations, roses, sweet peas, some lilies.

Q Natural flowers? A Natural flowers.

Q What is done with the stock when you close up your place of business? A We put it all in the ice box.

Q Now then, did you come again on the -- what time did you arrive at your place of business the next morning? A About eight.

Q Can you give us a description of the amount of stock that you had in your place of business on Friday night, approximately? A Well, I can't say as to that exactly, but the ice box was full, and we couldn't get any more in it.

Q Now did you go to the ice box the next morning? A No, but the manager did, and opened the store and opened the ice box.

Q And when he opened it, did he take the flowers out, if you know? A Oh, yes; he takes them out, assisted by these two boys.

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Q Now, then, did you make any investigation that day as to how much property was missing from your stock? A He told me.

Q Who did? A Al Futterman, the head manthere.

Q He told you? A Yes, sir.

Q Who has the keys of the room, or who locks up? A Why, I do, as a general rule. I am the last one to leave. Now and then, probably the head man will lock up, but that won't happen often.

Q And how many keys are there, Mr. Gunther? A My brother, who is my partner, and myself and this head man.

Q Three keys? A Yes, sir; three keys.

Q Do you know the defendant? A Oh, yes.

Q How do you know him? Is he a customer? A Oh, yes; he has bought flowers from me.

Q He has bought flowers from you? A Yes, sir.

Q Frequently? A Well, at times he may come in every day for a while, and then, of course, I wouldn't see him for a while, or it just happens that I have something to sell, I may have something that he wants, or something that he don't want.

Q And, of course, if you had something that he didn't want, he wouldn't buy? A Certainly not.

Q Now how long have you known the defendant? A About sixteen years, I imagine, fifteen or sixteen years.

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Q And has he been a customer, off and on, during the periods you have been at 110 West 28th Street? A Yes, sir.

Q During this past five years has he been a customer of yours? A Off and on.

Q Now, since the defendant -- I withdraw that. After your place was closed up, did you give any authority to your men to go back and open the place up and sell goods?

MR. MARKS: I object to that as immaterial, irrelevant and incompetent, and not binding on this defendant.

THE COURT: I will sustain the objection, but not on the ground that is offered. I sustain the objection.

BY MR. MC DONALD:

Q You had a conversation with the defendant, after the defendant was placed under arrest? A Oh, yes. He had been in the store a number of times, and bought flowers from me.

BY THE COURT:

Q After he was placed under arrest did you have a conversation with him? A Oh, at the 54th Street Court.

BY MR. MC DONALD:

Q At any time since he was placed under arrest? A Oh, yes.

Q Has he spoken to you about this case? A Oh, yes; he spoke to me about the case.

Q What did he say? A Why he said that he wanted to make good; he felt that he had made a mistake; he realized he had made a mistake, and if I had lost anything, he would gladly

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make good,

Q Your place of business is in the County of New York?

A Oh, yes.

MR. MC DONALD: He is your witness.

CROSS EXAMINATION BY MR. MARKS:

Q The price of flowers fluctuates from day to day, doesn't it? A Why, yes; not at all times.

Q No, not at all times, but it does from day to day? That is the rule? A Yes.

Q And what might be worth, this morning, fifteen or twenty dollars, might not be worth tomorrow morning, or tonight, ten dollars or eight dollars? A That's true, in some cases.

Q So that the market value of flowers shifts all the time? A As a general rule.

Q And you have known the defendant, I believe, as a customer of yours, for about twelve or more years? A Yes, sir.

Q During that time have you found him to be honest? A Always; I have always found him to be honest.

Q You know his reputation in the City of New York among the people with whom you deal and with whom he deals, for honesty and truth; do you not? A Yes, I don't know anything against him.

Q Well, is his reputation good? A As far as I know, yes.

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Q Well, from what you have heard from the general public, isn't it good? A Well, I can't say that I have heard anything, or ever had occasion to speak of him. Personally, I thought his reputation was good.

Q And do you believe so now?

MR. MC DONALD: I object to that.

MR. MARKS: Here is a man who has been dealing with him for twelve years, and still deals with him.

THE COURT: I do not think that is the proper way to prove reputation.

MR. MARKS: I admit that, but this is a witness under cross examination.

THE COURT: Yes, but I cannot allow you to use him as a witness to prove reputation, under the guise of cross examination. Objection sustained.

MR. MARKS: Exception.

BY MR. MARKS:

Q You deal with him now, do you not? A Yes, sir.

Q And, knowing as you do know, that he is charged with having received property stolen from you, if he came to your place to day to buy flowers on credit, would you give him credit? A Why, yes.

Q You would give him credit? A Yes.

MR. MARKS: That is all.

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REDIRECT EXAMINATION BY MR. MC DONALD:

Q Could you tell us, in a general way, what the prices of sweet peas were on the day in question? A Well, that depends upon the quality. There are many qualities of sweet peas. Those that I had were worth, by the dozen, sixty cents, as we sell them to the trade.

Q And the price of carnations? A Well, the quality that I had at that time, about \$3 a hundred.

Q And what about roses? A Well, now, roses run anywhere from a penny to thirty-five cents each. Those that I had, about three to four cents apiece.

Q You didn't accept any money from the defendant? A No.

Q You told him to see the District Attorney? A I told him that I couldn't do that; that I didn't think it was within the law, and I thought, if he saw the District Attorney, it was up to him.

MR. MC DONALD: That's all.

RECROSS EXAMINATION BY MR. MARKS:

Q So that no misconception of the facts can take place in the jurors' minds, let me ask you this: This man never offered you any money? A No, he did not.

Q As I understand you, he said to you, that/he made a mistake, and you suffered by it, he didn't want you to lose anything? A Yes; and he said he would make good what I lost.

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Q But he never offered you any money? A No, sir.

Q And didn't he tell you that when he bought the stuff he didn't know that the boys had stolen it? A Yes, that's what he told me.

C H A R L E S F U T T E R M A N, of 214 East Third Street, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q On the 20th of March, 1915, where were you employed?

A Gunther Brothers, 110 West 28th Street.

Q What is their business? A Wholesale florists.

Q What were you employed as? A Clerk.

Q And what were your hours? A Hours?

Q Yes? A Well, I didn't have any particular hours.

Of course, the place would open at seven or six, and sometimes we would get home at four. No particular hours.

Q Now do you know the defendant Kafis? A Yes.

Q Did you know him previous to the 20th day of March, 1915? A Yes, sir.

Q Did you know him as a customer of Gunther Brothers?

A Yes, sir.

Q How long have you been with Gunther Brothers? A Almost five years.

Q Your brother is manager of Gunther Brothers? A Yes,

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sir; he has been with them seventeen years, I guess.

Q Now then, on the 20th day of March, 1915, did you see the defendant Kafis? A Yes, sir.

Q With whom were you at that time? A With Max Zinovy, another clerk in the store.

Q And where was he when you saw him? A At his place of business.

Q And where is that? A Sixth Avenue and 23rd Street.

Q Sixth Avenue and 23rd Street? A Yes, sir.

Q And what time was it that you saw him at his place of business on the 20th day of March? A This must have been about half past six, on our way home from business.

Q On your way home? A Yes, sir.

Q And on that day did you leave at the time the place was locked up? A Well, I really disremember that.

Q Well, do you know whether you left anybody in the store or not? A I don't remember that either.

Q Now then, what was your conversation with Kafis, the defendant, on this day? A It was between the three / Max Zinovy and myself and Mr. Kafis. He knew we worked there, and we told him we had some flowers to sell cheap. And we had made up, you know, just how we were to be there, and what we were going to sell them for.

MR. MARKS: I object to all of that part of his answer which begins with the words "we had made up".

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THE COURT: Yes. Strike that out.

BY MR. MC DONALD:

Q Now had you had a previous conversation with the defendant? A No, sir; only that time.

Q Now tell us what the conversation was, and the jury can tell then whether anything was arranged or not. That is your conclusion. It is for the jury to draw the conclusion, if any. A Well, we told him we had some flowers to sell, and, in order to sell them at that price, we would have to get there after the place was closed, and sell them so that nobody would know about it, see, and we had made up what time he was to be there.

MR. MARKS: I object to that.

THE COURT: Strike that out.

BY MR. MC DONALD:

Q Now tell us all of the conversation. A Well, he said he would see the stuff, and be there.

BY THE COURT:

Q Be where? A Outside of the store.

Q Whose store? A Gunther Brothers, 110 West 28th Street, at eight o'clock that night, and we would meet him there, and we would go in the store and show him the stuff; and, after he had seen the stuff we would make up the price, and all that. That's what we told him, and we met him there, that night.

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BY MR. MC DONALD:

Q Now, after you had this conversation with him you went home then? A Yes, sir.

Q And did Zinovy go with you? A Yes, sir.

Q Now, where did you meet? Did you have dinner?

A We went home and had something to eat. We live together right in the same neighborhood, right there on the corner.

Q You and Zinovy lived near together? A Yes, sir.

Q Now you arranged to meet after dinner? A Yes, sir; and go up there and be there by eight o'clock.

Q And then you went to 110 West 28th Street? A Yes, sir.

Q Where do you live? A 214 East Third Street.

Q 214 East Third Street? A Yes, sir.

Q Now at what time did the defendant say that he would be at 110 West 28th Street? A At eight o'clock, we had made up for.

MR. MARKS: I object to the latter part of the answer and move to strike it out.

THE COURT: Yes. "At eight o'clock" may stand. Strike out the rest of the answer.

BY MR. MC DONALD:

Q Now did you go to 110 West 28th Street? A Yes, sir.

Q Did you see anyone there? A Yes, sir; Mr. Kafis was waiting for us in the front of the store, on the curb.

Q All right. Now did you say anything to Kafis when

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you met him there? A No, sir; only he said, "All right", when we saw him and opened the store and went in.

Q How did you enter the store? A Opened the door with a key.

Q Where did you get the key?

MR. MARKS: I object to that as immaterial, irrelevant and incompetent, as far as the defendant is concerned.

THE COURT: Overruled.

MR. MARKS: Exception.

Q Where did you get the key? A I had had a key to the store given to me by the firm, and there was trouble, some time ago --

Q No. You had had a key given to you? A Yes, sir.

Q Now then, when you opened the door -- you did open the door of 110 West 28th Street, did you? A Yes, sir.

Q And did you go inside? A Yes, sir.

Q Well, who went with you? A Mr. Zinovy and Mr. Kafis.

Q Now, that door was locked, wasn't it? A Yes, sir.

Q What was the -- just give, in a general way, a description of the premises occupied by Gunther Brothers.

Is it a ground floor store? A Yes. And after you get to the store, you have to go down two steps to get inside.

Q And what have they in the front part of the store?

A Well, on the window is the name, wholesale florists, and

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a sign alongside the stoop.

Q In the front part of the store itself what do they have? A There is two windows and a door in the center.

Q And in the rear of the store what have they? A Well there is a door leading to another little room back of the store. It's closed there, see. They have an ice box in that part. There is a little house built out in the yard, and we have two ice boxes, one in the rear and one in the store. The one in the rear we don't bother with at all. We have nothing to do with the one in the back.

Q And what was the condition of the light in the store? A Well, we have a light there that you can make it small, any light you want, and we usually turn it down at night, and make a dim light, see?

Q And where is that light? A Well, almost to the back, near to the end of the store.

Q Is that in front of the ice box? A Well, It's right about back of the place, almost to the ice box.

Q And what did you do then? A In the ice box there is a light. There is a red light on the outside of the box, that shows that the light in the ice box is burning, and we turned that light out.

Q You turned out the light in front of the ice box?

A Yes, sir.

Q And then you opened the door of the ice box? A Yes, sir.

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Q And went inside? A Yes, sir.

Q And who went with you? A Mr. Kafis and Mr. Zinovy.

Q And what was in the ice box? A Why the ice box was full of flowers. I really couldn't describe how many, see?

Q (Repeated)? A Flowers.

Q Now tell us what happened when you went into the ice box, what was done. Was anything said? A Well, he told us what he wanted and we told him what we could give him.

BY THE COURT:

Q Who is "he"? A Mr. Kafis.

Q The defendant? A Yes, sir. And he told us what he could use, and we told him what we could spare, because --

MR. MARKS: I object to that.

A (Answer continued) Well, then, we made up the price and told him the amount of stuff we could give him for the money.

BY MR. MC DONALD:

Q You say he told you what he could use? A Yes, sir. And we told him what we can give him.

Q I see. And what did you give him, about? A Well, of course, the money that we took was seven dollars.

MR. MARKS: Now, one moment. Just answer the question. I move that that be stricken out.

BY THE COURT:

Q Now do you understand the question? What did counsel

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ask you? A What did we give him.

MR. MARKS: I move that be stricken out.

THE COURT: Yes.

THE WITNESS: We gave him about 15 dozen sweet peas.

BY MR. MC DONALD:

Q Where did you take them from? A Well, they were in water, in vases or buckets, I don't remember just which.

Q What did he say about the sweet peas? A He didn't say anything at all.

Q Well, how did you come to pick out sweet peas? Did he ask for sweet peas? A Well, I don't remember that at all.

Q Well, what else did you give him? A Some roses and some carnations.

Q And about how many carnations did you give him?

A About 200 carnations and about 200 roses.

Q Now then, what did you do then? A Took the stuff outside of the ice box and wrapped it up, and he paid us for it.

Q Now what did he pay you for it? A Seven dollars.

BY THE COURT:

Q Did you give that seven dollars to Mr. Gunther?

A No, sir.

BY MR. MC DONALD:

Q What did you do with the seven dollars? A We shared it up between us, Max Zinovy and myself.

Q Where did you share this money up? A I don't remember.

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Q After the stuff was wrapped up -- by the way, where was it wrapped up? A In the back of the store, right behind the ice box, on the floor.

Q In the back of the store right behind the ice box, on the floor? A Yes, sir.

Q What did you do then? A Well, then he went out first, and we told him to go out first, and we went out, a few minutes later, and we closed the store.

MR. MC DONALD: That's all.

CROSS EXAMINATION BY MR. MARKS:

Q Mr. Futterman, you say that, about five years before this occurrence, you worked for Gunther Brothers, is that right? A Yes, sir.

Q And you sold to customers, did you not, that came in for flowers for Gunther Brothers? A Not when I first started there.

Q I don't care about then, but later? A Yes.

Q And how long had you been selling customers, before the day in question? A Oh, maybe three or four years.

Q And had you sold this defendant, in the course of your business? A No, sir.

Q You saw him in there, I presume, from time to time?

A Yes, I saw him.

Q And you knew that he was a customer of Gunther Brothers?

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A Yes, sir.

Q And he knew you and you knew him? A Yes, sir.

Q And so that, on the day in question when you say you went over to his store, at about 6:30, he knew you right away, didn't he? A Yes, sir.

Q And he knew that you were working for Gunther Brothers?

A Yes, sir.

Q Now how long had you been in possession of that key, before this night in question? A I don't remember.

Q Oh, well, was it a month or two or six months? A Well, Mr. Gunther might be able to tell you. I can't remember at all.

Q Well, did you have it a year? A Oh, yes, I think so; a year.

Q And were you in the habit of opening and closing the place sometimes? A Yes, sir.

And so sometimes you remained there after others had gone away? A Yes, sir.

Q And your brother is general manager? A Yes, sir.

Q And, in a general way, when your brother couldn't do his work, you took his place, and did his work? A No, sir; I couldn't do his work.

Q Now, on the 20th day of March, had you ever stolen any flowers from Gunther Brothers before? A No, sir.

Q Is that the first any only time you ever stole flowers

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from Gunther Brothers? A Yes, sir.

Q You knew at the time that you were taking these flowers, and selling or giving them to the defendant, that you were stealing them, did you not? A Yes, sir.

Q And you knew that that was a crime, didn't you? A Yes.

Q When you brought -- withdrawn. When you were asked on the next day by Mr. Gunther or your brother whether you sold the flowers, what did you say? A I wasn't asked the next day.

Q Were you arrested without being asked anything? A I wasn't arrested there. I came to work next morning.

Q Yes? A And this happened on Friday, I think, and on Saturday night I came there and wanted to get a couple of flowers for myself.

Q Did you go there after the place was closed? A Yes, sir.

Q Did you go there to steal more flowers? A No, sir.

Q Only to take some more; is that it? A Yes.

Q I see. Go ahead. Now you distinguish between stealing and taking. A Yes. And I was there with Mr. Zinovy then.

Q And did he come to "take" some flowers? A Yes, sir.

Q Now what happened? Go ahead. Zinovy stayed outside waiting for you? A No, he was inside of the store with me, and my brother usually goes over to the Hotel Breslin when he is busy, and he came back to the store, and saw a light in the ice box, and he put his key in the door, and he was scared

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to go back there, because he didn't know who it was, and he said, "Come out, whoever is in there," and we came out, and he called me everything he could, and threw a hatchet at me, because I was a trusted employe of Gunther Brothers.

Q And did you have quite a number of flowers taken out of the ice box at that time? A Yes, I had a few.

Q Well, did you have a couple of hundred? A I don't remember.

Q Come now. A Well, I don't remember. Do you want me to tell something that I don't remember?

Q Had you taken out a few dozen at least? A Yes.

Q What were you going to do with them? A Take them home.

Q After business hours? A Yes, sir.

Q After everybody had left? A Yes, sir.

Q You went back to take flowers, to take to your home?

A Yes, sir.

Q Go ahead. A And my brother found us there, and he threw a hatchet at me.

Q And then after that you confessed when he accused you?

A It was Saturday night, and we went home, and we figured that we were caught, and so we didn't go back to work on Monday.

Q And what happened to you later? Were you arrested?

A Yes, sir.

Q By detectives? A Yes, sir.

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Q And when they accused you of committing the larceny, didn't you deny it? A Deny it?

Q Yes? A Well, we knew -- wait a minute.

Q No, I am asking you. Didn't you deny it? A Wait a moment; let me think about it.

THE COURT: When?

MR. MARKS: At the time of his arrest, sir.

BY THE COURT:

Q He is asking about the time of your arrest. A When the detective asked me?

Q Yes. A Yes. I told him yes, that I went there many times and stole flowers.

BY MR. MARKS:

Q Many times? A Yes, sir.

Q Well, didn't you tell the jury a few minutes ago, that the first time you ever stole flowers from Gunther Brothers was the night that this defendant went there with you? Is that the truth? A To sell; to sell.

Q Oh, you stole many times before? A Yes, but not to sell.

Q But not to sell? A No, sir.

Q All right, then. You were brought to Court, weren't you? A Yes, sir.

Q You were asked to sign a statement, weren't you? A I don't remember that.

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Q Didn't you sign your name? A I don't remember.

Q Didn't they ask you whether you were guilty or not guilty? A Yes.

Q And didn't you say not guilty? A Yes.

Q And you told the Judge that you were not guilty? A My lawyer did; I didn't.

Q Oh, you didn't? A No.

Q But when the written paper was given to you, where the printed statement or question is, "Are you guilty or not guilty", it is marked in ink there, over your signature, isn't it, "not guilty"? Isn't that true? Yes or no? A Well, I had to do what my lawyer told me.

Q I don't care. I ask you if you didn't so write your name under the words "I am not guilty"? A Yes.

Q Now, have you been indicted since, since last March?
A No, sir; we appeared before the Grand Jury as witnesses against Mr. Kafis.

Q Yes, against the defendant? A Yes, sir.

Q But have you yourself been indicted? A No, sir.

Q Have you been promised immunity if you testified here, that you wouldn't be prosecuted? A No, sir.

Q You know that you are under oath?

MR. MC DONALD: I object to that question.

MR. MARKS: I will withdraw it.

Q You know that you have sworn to tell the truth?

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MR. MC DONALD: Objected to.

THE COURT: Allowed.

A Yes.

BY MR. MARKS:

Q And although you signed your name in Court, and told the Court that you were not guilty, and although on your statement --

THE COURT: You mean the Magistrate, when he was arraigned in the Magistrates Court?

MR. MARKS: Yes, sir.

Q And although you signed your name underneath the words "Not guilty", you still went before the Grand Jury and told them you were guilty; isn't that true? A Yes.

Q Now, what made you change your mind from the Magistrates Court to the time you went before the Grand Jury? A The lawyer didn't know my case at all. I didn't know who the lawyer was at all, but he came up to me and said, "You say that you are not guilty", and they got bail for me, and afterwards I told the lawyer -- I said I had a subpoena for the Grand Jury, and he told me to go up there and tell the whole truth.

Q And so the lawyer told you to lie to the Magistrate?

MR. MC DONALD: Objected to.

THE COURT: Sustained.

MR. MARKS: Exception.

Q Then the lawyer told you to tell the Magistrate some-

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thing that wasn't true, and you knew it wasn't true when you said it? A Yes.

Q And you knew, when you signed your name to your statement, what you then signed was not true, didn't you? A Yes.

Q And afterwards didn't you have a conversation with some other lawyer --

THE COURT: Now, counsel, do you contend that a defendant is obliged to state whether he is guilty or not guilty upon an arraignment before a Court? He is privileged to plead not guilty, is he not? And it is the duty of the People to prove his guilt, is it not?

MR. MARKS: Yes, sir. But I have a right to inquire as to what caused this boy to change his mind between two crucial points.

THE COURT: Oh, yes; I do not mean to hinder you in that.

BY MR. MARKS:

Q And didn't somebody say to you to go down and testify against Kafis, and no complaint will be made against you, and you will go free? A No, sir; my lawyer didn't know my case at all. He told me to plead not guilty in the Police Court.

Q And do you expect that, after this case is over, you are to be arraigned on a charge of larceny?

MR. MC DONALD: Objected to.

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THE COURT: Sustained.

MR. MARKS: Exception.

BY MR. MARKS:

Q Have you ever been told whether or not you are to be prosecuted? A No, sir.

Q Now, on the 20th of March, on the night of the 20th of March, of this year, you say you went over to Kafis's store?

A Yes, sir.

Q And that is only a few blocks away from the complaining witness's store? A Yes, sir; about five blocks.

Q And when you came there with your confederate, Max Zinovy, you told him you had some flowers to sell? A Yes, sir.

Q And he knew right away it was Gunther's place, didn't he? A Yes.

Q And when you said, "Meet me over at the place", he knew where to meet you? A We didn't say only that; we said more than that.

Q What did you say to him? A Well, we told him that we would give him so much flowers for so much money.

BY THE COURT:

Q Well, but how much for how much? What did you say to him? A We told him we would meet him there at eight o'clock, and we would go in the store, and not to say nothing to nobody, and that we would give him flowers, more than he would get anywhere else for that money. Mr. Kafis knew

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that wasn't on the level.

THE COURT: No, strike that out.

BY MR. MARKS:

Q Now, he met you there, did he? A Yes, sir.

Q Now you say that that store had two windows, with a door in the middle? A Yes, sir.

Q And there is a large plate glass in the window, I suppose? A Yes, sir.

Q And you say there is an ice box in front of the store? A Yes.

Q And another behind the store, in the rear? A Yes, sir.

Q And while Zinovy and you and Kafis were in the store, you never went back of that partition, did you? A I don't remember.

Q The place where you wrapped up the flowers is actually in back of the ice box, is it not? A No, sir; right alongside of the ice box.

Q Well, isn't that where you wrapped them up usually? A We wrapped them up anywhere, on the floor or behind the ice box.

Q Is there not always a light in the ice box? A Yes, but not burning.

Q And when does it burn? A Whenever you turn on the switch, when you want to go in.

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Q Well, what are the usual hours that it is turned on?

A Well, while we are there.

Q And as you look in from the street, after you have all gone, all that you can see is the ice box, because of the other light that is burning? A Yes, sir.

Q And that light is not put on at full force at night?

A No, sir.

Q Now, the District Attorney, in opening to the jury, said that when you came in you turned off that light, and left the place in darkness, so that no one could see you from the outside. A You mean we turned off the red light in front of the ice box?

MR. MC DONALD: I don't think I said that.

THE COURT: It is not your contention, of course, that this witness is responsible for what Mr. McDonald may have said; is it?

MR. MARKS: But he may have told Mr. McDonald one story, and the Court and jury another.

BY THE COURT:

Q Was the light on the ice box itself? A Yes, sir; on the ice box.

BY MR. MARKS:

Q Well, there was enough light shining into the box from the light on the side to show you what you were looking for?

A No, sir.

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Q Did you have to grope in the dark? A No, sir; that red light on the outside is to show whether the light is burning in the ice box or not; because we used to leave it burning all day, and so that red light is put on to show that the light was burning in the ice box.

Q And did you lock the door leading to the street while you three were in there? A I don't remember.

Q Now, wasn't it open, as a matter of fact? A What do you mean? Locked with a key?

Q Yes? A No, we didn't.

Q People passing along the street, and looking in, could see if people were in the store, could they not? A Well, I really don't know; I really couldn't tell you.

Q You know that Mr. Kafis is well known in that neighborhood, don't you? A I think he is.

Q That is a florist section? A Yes, sir.

Q A wholesale florists section? A Yes, sir.

Q And he had to be around that section every day, buying flowers? A Yes, sir.

Q So that if he was seen in the neighborhood he would be recognized?

MR. MC DONALD: I object to that.

THE COURT: Sustained.

MR. MARKS: Exception.

BY MR. MARKS:

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Q No, after you selected in the dark, where you couldn't see anything, these flowers, you wrapped them up, didn't you?

MR. MC DONALD: I object to that.

THE COURT: Sustained.

MR. MARKS: Exception.

Q After the flowers were taken from the ice box, you had to take them out of the ice box into the light again, didn't you; you went from the ice box into the light? A No, not very much light. A different light altogether. In the ice box the light was very bad, and outside it was kind of dark.

Q And then the flowers were wrapped up? A Yes, sir.

Q After which Kafis left, didn't he? A Yes.

Q And, later, you and your associate left? A Yes, sir.

Q Now isn't it a fact in your trade that it is not an unusual practice for left over flowers, or a job of flowers to be sold very cheaply; isn't that true? A Sometimes, yes.

Q Yes. And so flowers that you might buy yesterday for five dollars, you could get for two dollars or two dollars and a half, in your line? A Sometimes, yes.

Q And jobs are frequently given to florists? A Sometimes.

Q And you have sold many jobs, haven't you? A Yes, sir.

Q At away below cost, haven't you? A Yes, sir.

Q And the florist who comes in to purchase your flowers

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selects whatever he buys, doesn't he? A Yes, sir.

Q The same as this defendant did in this case? A Yes, sir.

MR. MARKS: That's all.

REDIRECT EXAMINATION BY MR. MC DONALD:

Q You didn't have any authority to sell any of these flowers, that you sold to the defendant, did you? A No, sir; not at that time of night.

Q These were not decayed flowers that the defendant picked out, were they? A No, sir.

Q They were fresh flowers? A Yes, sir.

MR. MC DONALD: That's all.

RECROSS EXAMINATION BY MR. MARKS:

Q You couldn't sell decayed flowers, could you? A No, sir.

M A X Z I N O V Y, of 199 East Third Street, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q You were employed by Gunther Brothers at 110 West 38th Street on the 20th of March, 1915? A Yes, sir.

Q What was your duty there? A To sell flowers, deliver them all around, general work.

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Q How long had you been working there previous to the 20th of March? A A year and a half or two years.

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

Q Did you see him on the 20th day of March, 1915? A Yes, sir.

Q Where was he when you saw him? A In his place of business, Sixth Avenue and 23rd Street.

Q Previous to the 20th day of March had you seen the defendant? A Yes, sir.

Q Was he a customer in the store? A He came in once in a while. He wasn't exactly a customer.

Q You had seen him in the place of Gunther Brothers?
A Yes, sir.

Q And you say that you saw him on this day, the 20th of March, 1915, at what time? A A little after six.

Q With whom were you at that time? A With the other witness.

Q With whom? A With Futterman, the other witness.

Q This man here (indicating)? A Yes, sir.

Q Now, then, what conversation did you and Futterman have with Kafis? A We asked him if he wants to buy some flowers, and he agreed, said yes.

MR. MARKS: I object to that, the latter part of the answer, and move to strike it out.

THE COURT: Strike that out. Tell us what he said

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and we can find whether he agreed or not. Tell us what was said.

THE WITNESS: We asked him if he wanted to buy any flowers, and he said yes.

BY MR. MC DONALD:

Q Then what happened? A Well, we told him to meet us at eight o'clock in front of the place of business at 110 West 28th Street; and when we came there at eight o'clock he was there.

Q And then you left, after meeting him at 23rd Street and Sixth Avenue? A Yes, sir.

Q You left with Futterman? A Yes, sir.

Q And went home? A Yes, sir.

Q And then you met Futterman after dinner? A Yes, sir.

Q And you went up to West 28th Street? A Yes, sir.

Q And where was K-fis when you next saw him? A In front of the store.

Q About what time was that? A A little after eight.

Q Now, then, just tell us what happened there. A Then he pointed out the stuff he wanted to buy.

Q Wait a minute. He didn't point out the stuff from the sidewalk, did he? A No, sir; we opened the door and went in, and lit up the ice box, and showed him the goods, and he pointed out just what he wanted, and we gave him what he wanted, and then the stuff was wrapped up, and he went out

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before us, and we followed him.

Q Now did you receive any money for this stuff?

A Yes, sir.

Q What did you receive, how much? A Seven dollars.

Q And do you know about the quantity of flowers you gave him? A Yes, sir.

Q About what? A About 15 dozen sweet peas, about 200 carnations, and about 200 roses.

Q And these flowers were -- how could the defendant take out the flowers? A Wrapped up in newspaper.

MR. MC DONALD: That's all.

CROSS EXAMINATION BY MR. MARKS:

Q How many times before this night did you go there, after the place was closed, to take flowers? A Before?

Q Yes? A That was the first time.

Q You never went before? A No, sir.

Q Are you sure? A Positive.

Q Is this the first and only time in your life you went there after -- A One more time after.

Q Now, I will continue my question: Before Saturday morning, preceding the 30th of March; I want to bring that down from that night. A I can't get the question.

Q Now did you ever go into that place before that night?

A No, sir; that was the first time.

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Q Did you ever go in there again? A Yes, Saturday night; the following night.

Q And that's the time that Al Futterman caught you?

A Yes, sir.

Q And no one ever saw you, except that night, is that it?

A Yes, sir.

Q What did you go in there on Saturday night for?

A To get some flowers for ourselves.

Q What were you going to do with them? A Take them home.

Q Well how many were you going to take home? A Just a little bit of everything.

Q Well, if you had fifty varieties and you had two pieces of each variety, that would be several hundreds, wouldn't it?

A Well, only enough to satisfy ourselves.

Q Now, listen to me. How many flowers did you have out of the ice box when Al Futterman caught you, and threw the hatchet at you? Didn't you have a couple of hundred each out of the box? A No, sir; I don't know how many.

Q Was it fifty then? A I can't remember, because we never counted flowers when we took them out.

Q You mean that you took what you could grab, and took them as fast as you could? A No, sir; we didn't.

Q Well, were you particular and took the best? A Well, all the flowers were good.

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Q Well, you wouldn't take the one cent roses, would you?

A No, sir; and we didn't take the thirty-five cent kind, either.

Q Well, you selected the best. A No, sir; the kind that wouldn't be missed most.

Q Well, but you knew the qualities and the prices? A Yes, sir.

Q And you knew, when you went out, you could get more for the highest priced stuff than the lower grade stuff?

A Well, we didn't intend to sell them.

Q Well, you knew that if you brought swell flowers home, they would know you didn't come by them properly or honestly?

A That would be the first time. Any other time when I brought flowers home, I got them from the firm.

Q Got them honestly? A Honestly.

Q Now, before you came here, you and Futterman, you talked over this case, didn't you? A Yes.

Q And you talked over this case so that there would be no slip-up, didn't you? A No, sir.

Q You had seen him every day that this case was on, didn't you? A No, sir.

Q You live near each other? A Yes.

Q And you know that he is charged with larceny? A Yes.

Q And that you are charged with larceny? A Yes, sir.

Q And that the same larceny is charged against both of

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you? A Yes, sir.

Q And how far is he from you? A On the other corner.

Q One block away? A Yes, sir.

Q And you see each other very frequently, don't you?

A No, sir; not very frequently.

Q How many times have you seen him since March 20th to date? A Well, I don't keep a memorandum of those things.

Q Fifteen times? A Yes.

Q Fifty times? A Well, yes, maybe.

Q And haven't you talked about this case with him on any of those occasions? A Once or twice; that's all.

Q And didn't he tell you and didn't you tell him what you were both going to swear to before the Court and jury here?

A No, sir.

Q How long before you went before the Grand Jury was the larceny committed? A Beg pardon?

Q How long before you went before the Grand Jury did you commit this thievery? A I was only to the Grand Jury once.

Q How long after the 20th of March? A month? A (No answer).

Q Wasn't it about the middle of May? A Yes, sir.

Q So that you had all of April and half of May and ten days in March to talk it over, didn't you? A Yes.

Q Now, did you talk it over with him at all? A Yes, we did.

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Q Didn't you tell him what you were going to say before the Court and Jury? A Well, we knew what we were going to say.

Q Of course you did. But didn't you tell him what you were going to say? A I told him I was going to tell the truth; that's all.

Q And he said the same thing to you, didn't he? A Yes; naturally we had to tell the truth/

Q And that's all you said to each other? A Yes.

Q And have you, from the time you appeared before the Grand Jury until today, talked about what you were going to say? A Yes.

Q And did you tell him again that you were going to tell the truth? A Yes, sir.

Q But you didn't each talk to the other, and say just exactly how you went to Kafis's place, how you made the appointment, how you walked in, how the lights were; you didn't say anything about that, did you? A Yes.

Q Oh, you did say that? A Yes.

Q Then I am asking you, didn't you and he talk about your going to Kafis's, at 6:30? A No, sir.

Q Did you talk about the key? A No, sir.

Q Did you talk about going into the place? A Yes.

Q Didn't you tell him what you were going to say, today?

A Yes.

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Q And he told you what he was going to say, today?

A No, sir; he didn't.

Q Oh, you only told him? A Yes.

Q I see. Now you went into the store? A Yes, sir.

Q What lights were in the store? A One light, the rear light. That was lit.

Q Where was that? A All the way in the rear of the store.

Q Did you make it out? A No, sir.

Q Did you make out any lights? A Yes, the light outside of the ice box.

Q And was there not a light burning in the ice box?

A Yes, sir.

Q And people could see you from the street, couldn't they, when the light was up in the ice box, or if there was no light in the ice box, and the other light was burning, couldn't people see you in the street?

MR. MC DONALD: I object to that as speculative and hypothetical.

MR. MARKS: Question withdrawn.

Q You have often looked into the place at night, haven't you? A Well, only at the time of closing up.

Q Well, now, take the night after the 30th, Saturday night; didn't you go there and look in to see whethr anyone was in there before you went in yourself? A Yes, sir.

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Q Yes, and the light was burning in the rear? A Yes, sir.
Not the light connected with the ice box.

Q And you looked in? A Yes.

Q To see that nobody was in there? A Yes.

Q If there had been anyone in there, you would have walked away? A Yes, sir.

Q And so you could see by the rear light if anybody was in there? A Yes, sir.

Q And I suppose that anybody with the same kind of eyesight as you have could have seen in there as well as you do?

A If they looked close, they could.

Q Now you went to Court when you were arrested? A Yes, sir.

Q And you told the detectives that you didn't steal any flowers, didn't you? A No, sir; I told them I did steal flowers.

Q Do you remember your signing your name in the Magistrates Court to a statement, where the question is printed, "Are you guilty or not guilty?" And you said, "I am not guilty", and signed your name?

MR. MC DONALD: Now I object to that.

MR. MARKS: I will withdraw it, as to form.

Q Did you, when you went to the Magistrates Court, under the words, "I am guilty", sign your name? A Yes, I signed my name.

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MR. MARKS: That's all.

BY THE FOREMAN:

Q Was any latch on this door, so that, when you shut the door, it was locked? A No, sir.

Q Did you or Futterman locked that door from the inside?

A No, sir; the door was closed, but not locked.

BY THE COURT:

Q Who had the key? A Futterman.

Q Who opened the door? A Futterman.

Q Futterman opened the door? A Yes, sir.

Q He had the key? A Yes, sir.

Q Did the defendant go in? A Yes, sir.

Q And did the defendant go into the ice box? A Yes, sir.

BY THE FOREMAN:

Q Was there anything said either between you and Futterman and the defendant in regard to whether you expected anybody to be in the store or not? A No, sir.

Q Nothing was said about your being afraid to be caught, or anything? A No, sir.

Q You just walked in, without saying anything? A Yes, sir.

MR. MARKS: Just one more question.

BY MR. MARKS:

Q Now if there are no flowers outside, don't people look in the ice box? A No. In the morning we put all our flowers out. In the daytime people pick out flowers on

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the outside.

BY THE COURT:

Q On the 20th of March, when you went to this place in the afternoon, what did you tell the defendant after meeting him at the store, and what hour? A Eight o'clock, I told him to meet us in front of the store.

BY THE FOREMAN:

Q Where did you get hold of this key? A Mr. Gunther gave the key to Futterman.

Q He gave the key to Mr. Futterman? A Yes, sir.

Q So that you had that key, with his knowledge? A Yes, sir.

REDIRECT EXAMINATION BY MR. MC DONALD:

Q Were you there when the proprietor gave it to him, or did Futterman tell you how he got it? A Well, I knew that he got it.

MR. MARKS: And Futterman swore that he got it, today.

MR. MC DONALD: I am asking the witness a question, and not counsel for the defendant.

BY MR. MC DONALD:

Q How did you know that he got it? A Because I was in the place of business when he got it, when Mr. Gunther gave him the key. I saw Mr. Gunther give him the key.

Q Is that Mr. Gunther (indicating the complaining witness)?

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A Yes, sir.

BY THE COURT:

Q Now did you ever go to that place to sell flowers, in the evening, before this occasion? A No, sir.

Q What time did that store close? Do you know? A Six o'clock or a little after six o'clock. I don't remember exactly what time.

Q Are there other stores in West 28th Street open for business at night, wholesale flower stores? A No, sir.

Q Were they open at night on the 20th of March for business? A No, sir.

Q What was said to this defendant by you with respect to price? A Well, we agreed on the price.

Q I am asking you to tell me what was said. Tell me what was said. I don't want your conclusions. A I told him how much stuff we would give him for the money.

Q What did you say to him? A That was the only thing.

Q What? A How many flowers I would give him.

Q Well, what did you say? A I told him I would give him so much flowers for the money.

Q Did you say to him, "I'll give you so much flowers"? What does that mean? A Well, an amount.

Q Well what did you say? A I told him I would give him 200 of this, or some dozen of this, carnations, roses or sweet peas, or whatever we had.

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Q And what did he say? A Well, he remarked, he said, "All right, I'll take that much and that much."

BY THE FOREMAN:

Q What were the flowers worth that you gave him; do you know?

MR. MARKS: Pardon me. I object.

THE FOREMAN: Your Honor, that has been brought out here, that there was about twenty dollars worth.

MR. MARKS: This boy wouldn't be competent to give the value.

THE COURT: The objection of counsel is that it has not been shown that he is an expert as to flowers.

MR. MC DONALD: Well, he is trying to make him an expert as to how the flowers are sold in the store, and so on.

BY THE COURT:

Q Now had you seen such flowers as these, before?

A Yes, sir; during the day, at business hours, in the store.

Q And do you know the market value of carnations, roses and sweet peas, such as were given to the defendant on the 20th of March? A Yes, sir.

Q What was the market value? A Approximately, twenty or twenty-five dollars.

Q That is, you say that the value of the flowers that he took was between twenty and twenty-five dollars? A Yes, sir.

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RECROSS EXAMINATION BY MR. MARKS:

Q Are you under indictment? A No, sir.

Q Are you under any charges in any criminal Court at this moment? A No, sir.

Q Were you tried and acquitted? A I wasn't tried. I was discharged.

Q After you told the detectives you stole the flowers, you were discharged? A Yes, sir.

Q Did anyone promise you that in consideration of your going before the Grand Jury to testify against this defendant, no charge would be brought against you? A No, sir.

Q Do you know how you came to be discharged after you said you were guilty? A No, sir.

Q You know nothing at all about that? A No, sir.

Q You don't expect to be punished for this, do you?

A No, sir.

BY THE COURT:

Q What do you mean by saying that you were discharged?

A Well, I didn't understand it, but I know my father received his bail back. I was to the Grand Jury once, and the other fellow was there about two or three times.

BY MR. MARKS:

Q And you were also asked the question whether or not other stores were open in the vicinity of Gunther Brothers, at eight o'clock at night, and you said -- A No, I said

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florists' stores. I was asked the question about florists' stores.

Q Now Gunther's store is between what avenues? A Sixth and Seventh Avenues.

Q And that is the wholesale plant and flower market? A No, sir; there is another place in the vicinity.

Q And there are other retail stores all around that vicinity, too, aren't there, around Gunther's store? A No, sir; they are all wholesale stores.

Q Aren't there other plant stores, such as foreign plants? A Yes, sir.

Q And aren't they open at that time at night? A No, sir; They close by eight o'clock.

Q They are sometimes open until nine, aren't they?

A If the next day is a holiday, yes; they keep open late.

Q And in addition to that aren't the plants delivered at night and not in the morning? A No, sir; they are not.

MR. MC DONALD: I object to this, if your Honor please. This has nothing to do with dealers in flowers exclusively.

THE COURT: I will allow it to stand as far as it has gone.

BY MR. MARKS:

Q And isn't it a fact that, on Friday night, in the wholesale flower market, it is unusually busy, on account of

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a full stock for Saturday? A No, sir.

MR. MC DONALD: I have an officer who will be here tomorrow, and I told you the circumstances about the officer, your Honor.

THE COURT: Very well. We will adjourn now.

(The Court admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Friday morning, October 15th, 1915, at ten-thirty o'clock.)

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TRIAL RESUMED:

New York, October 15th, 1915.

MR. MC DONALD: If your Honor please, I would like to call the officer out of order, on account of a death in the family.

THE COURT: Very well.

B E R N A R D A. D I T S C H, of the Second Branch Detective Bureau, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Do you know Charles Futterman and Max Zinovy?

A I do.

Q On the 23rd of March, 1915, did you have a conversation with them? A Yes, sir.

Q And after that conversation did you see the defendant?

A Yes, sir.

Q And where was the defendant when you saw him? A The defendant was in front of a flower store -- the exact number I don't remember -- it is near 23rd Street and Sixth Avenue.

Q Now was anybody -- did you go up to the defendant?

A I did, sir; yes.

Q And was anybody with you at the time? A The defendants Futterman and Zinovy, and detective Fraser.

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Q Now, tell us what happened then. A I confronted the defendants at that time, Futterman and Zinovy, with the defendant Kafis, and I asked them if that was the man to whom they had sold a certain amount of flowers on Friday, March 20th, which were taken out of the store of a man named Gunther, on 28th Street, and they said yes.

I asked the defendant Kafis if he had known those defendant, Futterman and Zinovy, and he said no.

I made the defendants, Futterman and Zinovy, repeat again under what circumstances he had bought the flowers and how much was paid for them, and to the best of my recollection they mentioned the sum of seven dollars, which was paid to them on March 20th, and that the flowers for which he paid that amount were taken with out the knowledge of the owner of the store.

BY THE COURT:

Q What did the defendant say? That he had bought or had not bought the flowers? A He denied knowing the defendants Futterman and Zinovy.

Q He said he didn't know them? A At first, when I confronted them with him, I asked him if he knew those boys, and he said no. But, on the way to the Central Office, in the elevator --

BY MR. MC DONALD:

Q You placed Kafis under arrest? A Yes, sir.

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Q And you proceeded to Headquarters? A Yes, sir. And I repeated again the statements they had made in my presence and detective Fraser's presence. So then the defendant told me that he had been in the store, after hours, after eight o'clock, on March 20th, and that he had paid seven dollars for the flowers taken by the defendants Futterman and Zinovy.

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

(Cross examination: None.

MR. MC DONALD: The People rest.

MR. MARKS: The defendant respectfully moves the Court for a direction of acquittal, upon the ground that the People have not proven facts sufficient to constitute the crime as charged in the indictment.

THE COURT: Motion denied.

MR. MARKS: I take an exception.

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THE DEFENSE:

W I L L I A M K A F I S, of 364 Sixth Avenue, the
defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKS:

Q Now, Mr. Kafis, you must talk so that the last man
there can hear you as plainly as the stenographer. Now,
don't forget that. What is your business? A Florist.

Q And how long have you been in the flower business?

A About fifteen years.

Q In the City of New York? A Yes, sir.

Q How many stores have you? A I've got three now.

Q Where are they? A One in Sixth Avenue, one in the
Bronx and one in Brooklyn.

Q And have you any partner? A Only my brother.

Q How long have you been dealing with Gunther Brothers?

A Between fourteen and fifteen years.

Q And during that time, and for the last five years of
the time, did you know Futterman? A Yes, sir.

Q And in the past, in the last year, did he know his
associate Zinovy? A Yes, sir.

Q Before the night they came to your place in Sixth
Avenue, did you buy flowers from these boys? A Yes, Sunday
mornings.

Q At the place of Gunther? A Yes, sir.

Q And was anybody else there when you were there? A No,

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sir; only those two boys.

Q Was the store open? A Yes, sir.

Q Now come down to the night that they came to your place. What time of the night was it? A Oh, after six.

BY THE COURT:

Q Was this March 20th? A Yes, sir. The first thing, the boys told me what I paid for carnations in the other places, and I said a cent and a half and two cents.

And they said, "Gunther Brothers sent us down to see if you wanted to buy some stuff. They have plenty of stock, too much."

And I told them I couldn't get around then, because I was too busy at the store, and one of them said, "I'll wait for you at eight o'clock in front of the store," and I started from my place at eight o'clock, and I find them two boys.

Q Futterman and Zinovy? A Yes, they opened the store.

Q Do you know which one opened the store? A Well, that's Futterman.

Q Was there a light in the store? A Yes, right in front of the ice box was a red light. And after that I go in the store. I was the last. And they said, "I have some carnations and roses," and they opened the light in the ice box.

BY MR. MARKS:

Q Did they open the door of the ice box? A Yes, sir.

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Q And was it left open all the time you were in the ice box? A Yes, sir.

Q While selecting the flowers was it open? A Yes, sir; it was open.

Q And when was it closed? After you came out? A Yes, after we came out.

Q The light from the ice box, was that shining into the store? A Yes, sir.

Q What did you select? A Well, I selected 150 carnations and seven dozen sweet peas, and 75 roses.

Q Were they counted out? A Yes, sir.

Q And how much did you pay them for it? A Seven dollars.

Q In cash? A Cash.

Q And what did they say they would do with the money?

A And in the same time I asked the boys, "Give me a receipt," and the boys said that they couldn't give no receipt because, tomorrow morning, they give to Gunther Brothers the money.

BY THE COURT:

Q I don't understand that. They said that they could not give you a receipt, because, the next morning they were going to give the money to Gunther Brothers? A Yes, sir.

Q And was that the reason why they said they could not give you a receipt? A Yes, sir; they said because the time is too late.

BY MR. MARKS:

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Q And did you then go out? A Yes, sir. Them boys wrapped up the flowers and I went away.

Q Did they stay in the place? A Yes.

Q The red light that was in front of the ice box, was that burning all the time that you were there? A Yes, sir.

Q And the other light, towards the rear of the store, was that burning dim? A Yes.

Q You remember when the detective came to see you with the two boys, on the Monday following? A Now, see, I bought the flowers on Friday night and they arrested me Monday night.

Q Do you remember when the officer came, Detective Ditsch?

A Yes, sir.

Q Did you have any talk with him? A No, sir.

Q Did you have any talk with Futterman and Zinovy, who were with him, at that time? A No, sir.

Q By the way, on the way to Headquarters, did you have a talk with the detective? A Yes, I said, "Them boys come around and they said Gunther Brothers sent them around to sell stuff to the retail people", and I said, "Yes, I bought some flowers from them."

Q Did you tell officer Ditsch at first that you didn't even know the boys? A No, sir; I said I know the boys; that they are working in 28th Street in a wholesale florist.

Q You put your flowers in stock and you didn't have them when the officer came there? A No, sir.

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Q They had been sold and had disappeared by then, hadn't they? A Yes, sir.

Q And you say you have been how long in the United States? A Sixteen years.

Q And always lived in New York City? A Yes, sir.

Q And have you ever been charged with any crime, or arrested before? A Not at all.

Q How long have you been in Sixth Avenue? A I am twelve years.

Q And during those twelve years, are you every day in the flower market? A Yes, sir.

Q And is it situated around Gunther's section? A Yes, sir.

Q Around 28th Street and Sixth Avenue? A Yes, sir; 28th and 26th Street, that's a big market.

Q And do you know all the wholesale florists in that section? A Yes, sir.

Q And do you buy from every one of them? A Yes, sir; every one of them.

Q Although you have lived in New York sixteen years, you are a Greek reservist, are you not? A Yes, sir.

MR. MC DONALD: Now what do you want to show?

MR. MARKS: I am going to prove his character.

MR. MC DONALD: Well, I object to it.

THE COURT: Overruled.

BY MR. MARKS:

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Q Did you leave New York and participate as a soldier in the last war in the Balkans? A Yes, sir; the last three years:

Q And have you within the past two weeks received your notice to go again? A Yes, sir.

MR. MC DONALD: I object to that.

THE COURT: Yes. Sustained. Strike out the answer.

BY MR. MARKS:

Q You have participated, in the last twelve years, have you, as an amateur bicycle rider? A Yes.

Q Have you won prizes? A Yes, many.

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

THE COURT: Yes, that is entirely immaterial to this case.

MR. MARKS: We wish to show that he did something distinguished, not for money, whereas he is now accused of doing something wrong for money.

BY MR. MARKS:

Q Did you represent the United States in the last Olympic Games, at Athens?

MR. MC DONALD: I object. However I will withdraw the objection to save time.

Q You did? A Yes, sir.

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CROSS EXAMINATION BY MR. MC DONALD:

Q When was it that you saw Futterman and Zinovy first in the store in 28th Street, on Sunday? A Many Sundays.

Q Did you go there every Sunday? A Well, every Sunday if I needed any stock flowers. I would go around to buy them.

Q Was Gunther Brothers the only place you bought them? A There are many places. You can't always find what you want in one place, and so I went all around, to many places.

Q Did you buy any flowers on the 20th of March, that morning, from Gunther Brothers, on the morning of the 20th of March, Friday? A Yes, Friday night.

Q Now did you buy any from Gunther's that day? A Yes. I still buy, every week, three or four times.

Q No. On the morning of the day on the night of which you bought the flowers from Futterman and Zinovy, did you buy any flowers from Gunther Brothers, that morning? A No, sir.

Q When was it previous to the night that you bought flowers from these two boys that you bought flowers from Gunther? A Well, because, in the morning time, I used to buy the flowers in other places, and in the afternoon or evening, I was short some, and then boys come to my place, and they said they can sell me some flowers, because Gunther Brothers can sell to the retail people, and they said, "You can come around. We can sell some flowers."

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But I was so busy in my place at half past six that I couldn't go then. And they said, "We will go down to our house and have dinner, and meet you at the place at eight o'clock."

And I come around eight o'clock, and I saw them boys standing in front of Gunther Brothers place, and them boys went in first and I go in last, and they sell me the flowers.

Q Now when was it previous to the 20th of March, or previous to the night you bought flowers from Futterman and Zinovy, when was it that you bought flowers from Gunther? Did you buy flowers from Gunther on Thursday? A Yes.

Q In the morning? A Yes.

Q And who waited on you that day, do you remember?

A Well, so many times the boys sell me flowers themselves.

Q But who waited on you on Thursday, the day before you bought the flowers from these boys? A Mr. Futterman.

BY THE COURT:

Q The manager? A No, not the manager. This boy, Futterman.

BY MR. MC DONALD:

Q And did you ask a receipt from him then? A No, because I knew them people very well.

Q Well, why did you ask for a receipt that night? A Because Mr. Gunther Brothers isn't there, and many times I didn't take a receipt, because I was always in a hurry.

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I wrapped up the flowers, and I come around to get some more flowers, and I refused to take the receipt because I know the people very well. That's the reason I refused to take a receipt.

BY THE COURT:

Q Well, was that the reason why you asked for a receipt?

A No. I asked them boys for the receipt because Mr. Gunther Brothers wasn't there, and they said it was too late.

BY MR. MC DONALD:

Q Well, you had bought flowers from these two young men on Sunday. Did you ask for a receipt then? A Yes.

Q You always got a receipt on Sunday? A No, I don't have the receipt every time I bought flowersthere. I had it a lot of times.

Q Have you a receipt now for any flowers that you bought from Gunther Brothers at any time? A I think I have some in my place of business.

Q Well did you ever ask for a receipt? A Very few times.

Q Did you ever ask for a receipt except this time?

A No.

Q Do you understand me? A No.

Q (The question is repeated through the Official Interpreter, Mr. De Ville)? A No.

Q Had you ever seen those boys -- I withdraw that. Had these two young men ever gone to your place before and

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asked you to buy some flowers? A Asked me to buy any flowers?

Q Yes. Had these two young men ever gone to your place of business, or had they ever met you before, and asked you to buy flowers? A All the time I meet them in the store, every time I was around in the store.

Q Just at the store? A Yes, sir.

BY THE COURT:

Q You mean at Gunther's store? A Yes, sir.

Q But the District Attorney asked you if these boys ever came and looked you up before, and asked you if you wanted to buy some flowers. A (No answer).

Q (Question repeated through the Official Interpreter)?

A That's the only time they come.

BY MR. MC DONALD:

Q Well, didn't you think it funny that they should ask you to go up there at eight o'clock at night to get some flowers? A (No answer).

Q Eh? Did you think it funny? A Well, one way it is funny, and another way it isn't funny, because always I buy the flowers in the wholesale places.

Q Well, had you ever bought them from Gunther Brothers, Flowers, at night before? A Many times at half past six or seven o'clock, if I find the store is open, I go in, because you can't get no flowers in the night time.

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Q Is there any other place of business nearer to your place of business, than Gunther's? A No, only one other, at Sixth Avenue and 23rd Street.

Q Now is there any whole sale florsist between your place and Gunther's? A No, sir; only 26th Street and Sixth Avenue, on the corner.

Q Did I understand you to say in your direct examination that there was a wholesale florist at 26th Street and Sixth Avenue? A Yes, sir.

Q From whom did you buy the flowers at night, in Gunther's?

MR. MARKS: He didn't say that he did; he said that he had bought them as late as seven o'clock.

MR. MC DONALD: Well, what do you call that? Isn't that night?

MR. MARKS: Well, in summer it is day, and in winter it is night.

MR. MC DONALD: No, it is seven o'clock P. M., evening.

BY MR. MC DONALD:

Q From whom did you buy flowers at seven o'clock P. M., at Gunther's? A (No answer).

Q Do you understand me? A No.

Q (The question is repeated through the Official Interpreter)? A From the boss himself, if I found what I wanted.

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Q Well, did you buy from the boss frequently at seven P. M.? A Well, during the holidays, when the stores are open as late as ten o'clock, yes.

Q What stores do you mean? A The wholesale stores.

Q From what other place did you buy flowers, from what wholesale place did you buy flowers, at night, after seven P. M.? A Well, there were many florists in 28th Street.

Q Do you know the names of the firms that you bought flowers from after seven P. M.? A Well, I used to buy many times --

Q No, I want the names. A Henshaw was one place, in 28th Street.

Q When you bought flowers from Henshaw, did you buy them from an employe, from one of the workmen? A Well, from the men that was working inside.

BY THE COURT:

Q In the evening, after seven o'clock, who did you buy from in Henshaw's? A Well, all the bosses go home about six or half past six, and they leave the men there, and they close the store and go out, and if you find anybody in the store, you buy from them.

Q Have you bought flowers from Henshaw after seven o'clock? A Yes.

BY MR. MC DONALD:

Q Did you buy them from the manager of Henshaw's, or

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some employe who waited on you there? A Well, the people they have got inside to work, the salesman.

BY THE COURT:

Q Well, who was it? A Well, two or three young fellows there.

Q Was the store open? A Yes, sir.

Q They didn't open the store with a key at Henshaw's?

A No, I find it open.

Q You found it open? A Yes, sir.

BY MR. MC DONALD:

Q Now then, you say that there was a red light in front of the ice box? A Yes, sir.

Q Well, that red light wasn't there except when Zinovy or Futterman, turned the switch at the ice box, was it? A Well, no; the light was burning before those boys opened the store.

Q Did they turn the switch at the ice box? A They turned the switch after they had wrapped up the flowers.

Q Well, did they turn the switch before they opened the ice box? You know what an electric light switch is, don't you? A Yes, sir.

Q Did they turn the switch before they opened the ice box? A Yes, sir; before they opened the ice box.

Q Now this red light which you saw in front of the ice box, that was lighted when you got there, wasn't it? A There

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was a light there as soon as they get in the store.

Q A red light? A Yes, sir.

Q That red light in front of the ice box, was that light-
ed when you got to the store? A (No answer).

Q (Question is repeated through the Official Inter-
preter)? A It was.

Q And that light was lighted before Futterman turned
the switch?

MR. MC DONALD: Put that in Greek, please, Mr. Inter-
preter.

A It certainly was.

Q Now did you see Futterman reach up and turn out the
red light? A No.

Q Did you see him unscrew the bulb at any time? A No, sir.

Q The three of you went into the ice box, didn't you?

A No, only the two young men went in.

Q Well, what did you do? A Well, I told them, you
know, I wanted some roses and some carnations, and I stood
outside of the ice box, and those boys take the stuff out,
and they say, "What do you want?" And I said, "Some carna-
tions and some roses," and they counted the flowers, and
wrapped them up, and they give me the package and I go out,
and leave the boys in the store.

Q Now you say that they picked out the flowers? A Yes, sir.

Q You didn't go into the ice box? A No, sir.

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Q Didn't you point out anything that you wanted?
Did you let them -- A I told them what I wanted, what I
needed.

Q You told them that you wanted some carnations, some
roses and sweet peas? A Yes, sir.

Q And you let Futterman pick them out? A Yes, sir.

Q Now, when you buy flowers from a florist, what do
you do? Do you pick them out? A Well, I can't pick them
out because they give you right like they comes. Those
carnations comes 25 in a bunch.

Q No. When you go into Gunther's to buy carnations,
for instance, they don't pick up 500 caranations and wrap
them up for you, do they? A They not let you choose the
merchandise. They ask you, "How many do you want?" And
they go and bring them out.

Q Do you look at the carnations before you buy them?
A Yes, to see if they are all right, and, if you don't like
them, you don't buy. You go to another place to buy.

Q Yes, certainly. And sometimes they ask you for carna-
tions, three cents, and another place maybe it is only two
cents.

Q But on this night the two boys picked out the flowers,
and brought them out? A Yes, they brought them out; they
brought them out of the ice box.

Q And what did they do? Did they take them out of the

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water? A Yes. They were in the water, in the vases.

Q And you looked at them in the store when they brought them out of the ice box? A Yes.

Q And what light was there? A The light in the ice box and the red light, too, was burning.

Q And did you reject any flowers that night? A No, sir.

Q Did they bring out any that you didn't want, or wouldn't buy? Perhaps your didn't understand that other question. A (No answer).

Q (Question repeated)? A Yes.

Q What was it? A Some violets.

Q Oh, you didn't tell them that you wanted violets, did you? A Yes, I said I wanted violets, but they weren't fresh. They were two or three days old.

Q Had you asked Futterman and Zinovy if they had any violets? A They asked me themselves if I wanted any violets, and I said, "If you have any fresh violets, and cheap price, I can take them." And they showed me the violets, and they didn't suit me, because they are three or four days old, and they put them back in the ice box.

Q How many roses did they show you? A Well, they was to give me 75 roses.

Q And is that all they brought out? A Yes.

Q From the ice box? A Yes, sir.

Q The 75 roses? A Yes, sir.

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Q And you took all of those? A Yes, sir.

Q And the seven dozen sweet peas, is that all they took out of the ice box, and showed you? A Yes.

Q They didn't bring out eight or ten dozen? A No, sir.

Q Just brought out seven dozen? A Yes, sir.

Q And about how many carnations did they bring out of the ice box, about? A About 150/

Q Did you pick them out? A No, you can't pick them out. They come in bunches of 25.

Q Did you count how many bunches you had? A Six bunches.

BY THE COURT:

Q He asked you whether you counted them? A Yes.

BY MR. MC DONALD:

Q Six bunches, twenty-five each? A Yes, sir.

Q What is the price of carnations? A At that time they were about two cents, two dollars a hundred.

Q And what was the price of sweet peas? A Fifty cents a dozen, a dozen bunches in each package. That was the wholesale price.

Q And how about the roses? A They were three cents, that time.

Q Well, were those flowers very cheap? A Well, medium price.

Q But you needed those flowers? A Yes, sir.

Q But you hadn't any idea of going up to Gunther's until

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Futterman and Zinovy saw you and told you you could get flowers cheap? A Yes, I just needed some, that night.

Q Well, did you intend to go to Gunther's that night and buy some? A Well, if I find the place open, or I go to some other place.

Q You were in need of the flowers that you bought?

A Yes, I needed them to sell to the retail trade, because I am in the retail business.

Q Well, you were out of carnations and sweet peas and roses? A Yes, sir.

Q Well, had you sold out previous to seeing Futterman?

A Well, I just nearly sold out.

Q And you didn't want to wait until Saturday morning?

A Well, I used to go Saturday morning. I buy early in the morning stock, at about six o'clock, in the market in 26th Street, when it opens.

Q Well, you bought some stock on Saturday? A Yes, because I carry three places. I am a gentleman that needs flowers for three places.

Q Did you buy any stock on Saturday? A Yes, sir.

Q Where? A In different places. There are about fifteen places in the neighborhood.

Q Did you see any of them open on the night of the 30th of March, the night that you bought flowers from Futterman and Zinovy? A Well, there is many florists that keep open

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until half past seven or eight o'clock.

Q Well, you said you paid the regular price, didn't you? A Yes, a medium price.

Q And you didn't call in at any of these places to find whether you could get them as cheap as at the wholesale florists? A No, you can go in many places.

Q Then these flowers were not cheap? A Well, not so cheap and not so dear; just about medium.

Q You were not a bit suspicious at all when you asked for a receipt? A Yes.

MR. MARKS: Explain, Mr. Interpreter, the word "suspicious" to him.

(The question is repeated through the official interpreter.)

A No, I didn't suspect anything at all. If I had suspected something, I would have insisted upon getting a receipt, that night, because I know the people very well, because I deal with them fifteen years.

BY MR. MC DONALD:

Q Well, why did you ask for the receipt then? A Well, many times, you know, if you haven't a receipt, you can't think over what you bought in the day time, and, if you have a receipt, you can.

Q Well, you get a receipt all the time, don't you?

A No, when it is so busy I refuse a receipt and take the

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flowers to my place right away, and many times I make a mistake, but I don't take a receipt.

Q And then you have to guess of what you have bought?

A Yes.

Q And what you have paid for it? A Yes.

Q It wasn't because you thought there was something wrong about the transaction that you asked Futterman for a receipt?

A No, because if it is anything wrong I never buy them. I sell flowers on the level, and buy them too, on the level. If I think flowers is stolen I don't buy them.

Q Well why did they ask you to meet them at the shop at eight o'clock if everything was straight?

MR. MARKS: Objected to.

Q Now you found these boys where when you got to the store at eight o'clock? A I find them waiting outside of the store.

Q Well you passed a number of stores on the way there, didn't you? A No, only two.

Q Did you see anybody that you knew there that night?

A No, sir.

Q Not a soul? A No, sir.

MR. MC DONALD: That's all.

MR. MARKS: That's all.

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J A M E S J A C O B S, of 635 East 159th Street, a witness called in behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q What is your business, Mr. Jacobs? A Merchant tailor.

Q Where? A 443 to 445 Sixth Avenue.

Q What is the name of the firm? A Jacobs & Pell.

Q How long have you been in that neighborhood? A Twenty-two or twenty-three years.

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

Q How long have you known him? A Eight or nine years.

Q Have you seen him frequently in that length of time?

A Well, on and off, two and three times a week.

Q Do you know his reputation in the community for honesty and integrity? A I always found him that way.

Q Good or bad? A Always has been good.

(Cross examination: None.)

S A M U E L M A I N Z E R, of 345 West 28th Street, a witness called in behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKS:

Q What is your business? A Florists' supplies.

Q Wholesale? A Yes, sir.

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

Q How long have you known him? A About ten years.

Q Have you dealt with him during that length of time?

A Yes, sir.

Q Do you know his reputation in the community for honesty and integrity? A Yes, sir.

Q What is it? Good or bad? A Good, excellent.

(Cross examination: None.)

N I C H O L A S L E C A K E S, of 106 West 28th Street,
a witness called in behalf of the Defense, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKS:

Q What is your business, Mr. Lecakes? A Wholesale
evergreens.

Q Where? A 106 West 28th Street.

Q How far is that from Gunther Brothers? A Six doors.

Q And do you know the defendant? A Yes, sir.

Q How long have you known him? A About twelve years.

Q Have you dealt with him during that time? A Yes, sir.

Q Do you know what his reputation is in the community
for honesty? A Yes, sir.

Q What is it, good or bad? A Good.

Q Now, Mr. Lecakes, what time do you close your place
of business on Friday night? A Between eight and nine I close.

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Q And do the other evergreen or foreign plant places in the neighborhood close at eight o'clock? A No, they close the same time with me, the other people do.

CROSS EXAMINATION BY MR. MC DONALD:

Q What time did you close on the night of the 20th of March? A After eight; eight or nine; sometimes ten.

Q (Question repeated)? A The same time; eight, nine ten, and many times I stay later.

Q And do you ever close up at four o'clock? A No, sir; never.

Q Do you ever close up at six? A No, sir.

Q Did you ever sell any -- I withdraw that. Did you see Kafis on the 20th of March? A Well, I see him every day around 28th Street. I don't remember the date.

Q Well, did you see him at any time around seven o'clock P. M.? A Well, I saw him two or three times.

Q Where? A Around 28th Street.

Q Well, what was he doing? A Why, he passed and he said he is looking to buy stock.

Q What? A Buying flowers.

Q How many times did you see him after eight o'clock at night? A I don't remember.

Q Did you see him more than once? A No.

BY THE COURT:

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Q Now the wholesale flower people do most of their business in the morning, don't they? A Yes, sir.

Q Early in the morning? A Yes, sir.

Q How early do they open in the morning? A The wholesalers open at seven o'clock. I open at six o'clock.

Q I am talking of wholesale florists, now. What time do they open? A Seven o'clock in the morning.

Q And when do they close? A Well, after six. I don't know exactly. Any old time after six, and I close at eight or after eight.

Q What time do you mean as to the wholesale florists, what do you mean by after six? A Well, I see them busy many times, and they keep open until seven or eight o'clock.

Q I am asking you about the wholesale flower people. A Well, I see many times Jack Allen stay until eight or nine o'clock, and Gunther Brothers, too, because they are busy.

MR. MARKS: The defendant rests, and respectfully renews the motion made at the close of the People's case, for a direction of acquittal, on the ground that the people have not established facts sufficient to constitute the offense charged in the indictment.

THE COURT: Motion denied.

MR. MARKS: Exception.

(The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure and took a recess until two o'clock.)

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AFTER RECESS.

THE COURT'S CHARGE.

Madhams, J.

Gentlemen of the jury,

You have been accepted by both sides as the judges of the facts in this case. The indictment which I hold in my hand charges this defendant with criminally receiving stolen property, and this paper, handed up by the foreman and signed "A true bill", is not evidence, but is merely the affirmation of the charge, presented in a form which brings it on for hearing, so that it is part of the machinery by which a trial is had.

Criminally receiving stolen property, knowing the same to be stolen, is a crime defined in the Penal Law by Section 1308, which, as far as applicable to the facts presented here, and as far as necessary for your information to pass upon those facts, reads as follows:

"A person who buys or receives any stolen property, or any property which has been recently appropriated in such a manner as to constitute larceny, according to this article, knowing the same to have been stolen or so dealt with, if such misappropriation has been committed within the State, is guilty of criminally receiving such property."

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Now, you will observe that this section applies to both persons who buy and to persons who receive, and that the property which they buy or receive must be of a particular kind; that is, it must be stolen property, property which has been wrongfully appropriated in such a manner as to constitute larceny according to this article. I will, therefore, call your attention to the definition of larceny:

"A person who, with intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other persons, takes from the possession of the owner or of any other person, any money or personal property, or articles of value of any kind, steals such property and is guilty of larceny."

Property in a man's store is, within the meaning of this definition, property in his possession. Before this defendant can be found guilty, the People must show that the flowers, the sweet peas, the roses and the carnations, were stolen, as one of the elements in the case. In other words, the receipt of property by another cannot be shown to be a criminal receipt, unless it has been established beyond a reasonable doubt that the property was stolen property.

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Then there is the further element which must be established: It must not only be stolen property, but the defendant must receive the same knowing that the property has been stolen, and that knowledge he must have had at the time that he received it. Subsequent finding out that the property which has been received is stolen property does not fulfill the definition. The person charged must be shown to have known at the time that he received the property that it was stolen property.

This is a very simple issue. The people have called here two young men, whom you have heard. The first witness testified, as I recall his testimony, that he opened the store, having made an appointment with this defendant, and took him in, and opened the ice box, and delivered, for seven dollars, to this defendant, flowers which belonged to the concern by which he was employed, and that he divided the seven dollars with the other young man who was called, who was also an employe of that concern.

What were these young men doing? Were they stealing, within the definition of larceny, the property of their employer? If they were, did the defendant receive the proceeds of that theft from them, and, if he did,

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did he know that the property was stolen?

The first witness testified that at the time he made the appointment with the defendant to go to the premises, he told the defendant, "We would have to go there after the place is closed, to sell them, so that nobody would know anything about it". And he made an appointment to meet the defendant on the sidewalk outside of the store of his employer; that the light in the back of the store was turned down; and that, when they got to the ice box they turned out a red light in front of the ice box, which was to serve as an indicator as to whether the light on the inside of the ice box was burning.

Max Zinovy, the second boy, testified that the quantity of flowers delivered to the defendant was 15 dozen sweet peas, 200 carnations, and 300 roses.

The detective testified that when he brought these two young men, or boys, as they have been called by counsel, to this defendant, he at first said that he did not know them, but, on the way to the station house, he said that he had purchased some flowers from them. The defendant said that the number of flowers which he purchased was seven dozen sweet peas and 150 carnations and 75 roses, as I recollect his testimony, and that he

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had purchased flowers from these boys before, when they had served him as employees of Gunther Brothers, the establishment in which they worked, and that he went up there in good faith, and purchased these flowers on this night in question, believing that they had authority to sell them; and that he went in there and made his purchase, and took these flowers, which were wrapped up for him, and departed; and that he did not know that any theft was committed, and that he was buying in the due course of trade.

He says he asked for a receipt, and the answer which he received, he states, was that it was too late, and that the money would have to be turned over on the morrow, and that for that reason no receipt was given.

is,

The defendant, as he has told you, a Greek reservist. He has been for twelve years in the flower business on Sixth Avenue, and states that he was well known in this vicinity. He has called a number of witnesses, whom you have heard, who testified as to his good character, in that he had borne a good reputation for honesty.

I have not attempted to review at any length the evidence, because it was so brief, and is fresh in your minds. You may take into consideration the manner and appearance of the witnesses on the stand, in determining

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what credit you will give to their testimony. If you should find that any witness has sworn falsely to any material fact, you are at liberty to disregard the entire evidence of such witness, although it is for you to say whether you believe him or not, for you are the exclusive judges of the facts.

You may take into consideration the interest of any witness. I charge you that, because of the confessed conduct of these young men, Futterman and Zinovy, you should carefully scrutinize their testimony in determining what weight you will give to it. I do not mean that I am instructing you that you must disbelieve them necessarily, but I mean that this young man Futterman testified that he was a thief, that he did go there to steal from his employer, and Zinovy told you that he was with him, and, having confessed to such conduct, as bearing upon their character, I charge you that you may take it into consideration.

I charge you, also, that you may take into consideration the interest of the defendant. The defendant is very much interested in the result of the trial. That does not mean that you must necessarily disbelieve him, but you should bear in mind his interest in weighing his testimony, and, having borne it in mind, then give it

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such weight as you deem it deserves.

I will remind you again of the rules of justice, which apply in the trial of this, as in all criminal causes. The defendant is presumed to be innocent until he is found to be guilty by your verdict, after you have reached your conclusion upon the evidence, and when you so find, if you should so find, then the presumption is destroyed.

The burden of proving his guilt is upon the People, and that proof must be that he is guilty beyond a reasonable doubt. So that the defendant is entitled to the benefit of every reasonable doubt.

is not,
A reasonable doubt/ as you must know now, a whim, a guess, or surmise, nor is it a subterfuge to which resort may be had to avoid the performance of a disagreeable duty. It is not emotional sympathy. It is a doubt based upon reason, which is founded in fact and relates to the evidence. It is such a doubt as, after a careful consideration of all the evidence, leaves your minds in such a state that you cannot say that you are convinced to a moral certainty of the truth of the charge against the defendant. If you have a doubt as thus defined as to the guilt of the defendant, it is your duty to acquit him. If you have not a doubt as thus

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defined, as to his guilt, then it is your duty, under your oaths of office as jurors to find him guilty.

Is he guilty of criminally receiving stolen property, knowing the same to have been stolen? Or were these boys trying to arrange for a quick disposal of property which they intended to steal to a person who did not know that the property was being stolen?

What was the defendant doing in the ice box of Gunther Brothers, at eight o'clock in the evening of March 20th?

Gentlemen, that is the question which is presented to you upon this issue of fact.

Of course, I charge you that you are to give the defendant the same consideration that you would to a Citizen of the United States. He is not to stand before this Bar in any other light than a person haled here to submit the question as to whether or not he has committed a crime. All men are equal before the law, and so you will have no prejudice against him; but, on the other hand, you are not to show him sympathy, but, banishing prejudice and sympathy from your minds, you are to determine upon this evidence which has been presented either that the defendant is not guilty, or that he is guilty of receiving stolen property, knowing the same to have been stolen.

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Are there any exceptions, or requests to charge?

MR. MARKS: Your Honor having charged, in substance, the question, "What was the defendant doing in Gunthers' ice box?" I ask your Honor to charge the jury that the defendant denied that he was in the ice box, but stood in front of the ice box, and that the flowers were brought out to him.

THE COURT: I do so charge. I did not mean that you should be influenced by thinking that he was in the ice box, when I said in the ice box, because my meaning was either in or near the ice box. I do recollect now that the defendant said that he was not in the ice box, but in the doorway of it, or near the doorway of it.

MR. MARKS: Yes, in the door of it. May I ask your Honor to charge the jury, as matter of law, that the People could not sustain the allegations contained in the indictment upon the uncorroborated statements of the two boys, Futterman and Zinovy?

THE COURT: It is the law, gentlemen, that a defendant may not be convicted upon the uncorroborated testimony of an accomplice. In this case the defendant is charged with criminally receiving stolen property, and it is for you to say whether or not the evidence offered by the People, and the defendant's own testimony, together

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with that given by these two young men, establishes beyond a reasonable doubt his guilt. I charge as requested.

Gentlemen, you may retire.

(The jury retired at 3:55 P. M.)

(The jury returned to the Courtroom at 5:00 P. M.)

THE COURT: I am in receipt of a communication stating that you are unable to agree, gentlemen, and also a communication from one of the jurors, stating that, by reason of his religious beliefs, he wishes to be excused from further deliberation on the case, as the Sabbath is about to begin.

I will inquire of the Foreman whether he thinks it is possible for the jury to agree.

THE FOREMAN: It is not.

THE COURT: Do you think that all possible effort has been exhausted to reach a conclusion?

THE FOREMAN: Yes, sir.

THE COURT: Well, that being so, I will discharge you from further deliberation in this case, and declare this case a mistrial.

MR. MARKS: May I suggest, if your Honor please,

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that the Clerk may ask how the jury stands?

THE COURT: Well, we may make a note of how the jury stands, after they are discharged, so as to advise the District Attorney as to the future disposition of the case. The Clerk may inquire of the Foreman how the jury stood.

(The jury disagreed.)

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