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CASE #2395



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

2903

T H E P E O P L E

-against-

ALFRED SCHAFMAN  
impleaded with  
LEONARD LAFRANO.

B e f o r e:

HON. WILLIAM H. WADHAMS, J.,

and a Jury.

New York, January 10th, etc., 1918.

Indicted for grand larceny in the second degree.

Indictment filed December 27th, 1917.

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

ASSISTANT DISTRICT ATTORNEY EDWARD WEIL:

FOR THE PEOPLE.

CHARLES FIRESTONE, ESQ., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES:

Frank S. Beard.

Official Stenographer.

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(A jury was empaneled and sworn. The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two fifteen p.m.)

AFTER RECESS.

(Mr. Weil opened the case for the People.)

MR. FIRESTONE: At this time, if your Honor please, I desire to save as much time as we can, and for that purpose I will admit that the articles in question, so far as this defendant is concerned, are the property of Dent, Allcroft & Company, of 85 Fifth Avenue, and that the value of the property is as stated in the indictment, and that the errand boy, whoever the District Attorney says he was, placed the property on the post office box at 16th Street and Union Square, in the County of New York on the date mentioned in the indictment, and that the other defendant, Lafrano, took the package from the box, and that it is the same package that was deposited there. So that will save you calling all those witnesses, and we will get down to the meat of the case.

MR. WEIL: That is very good. Then we will not have to call witnesses to prove what property was left there, and by whom, and the ownership of the property, all those preliminaries.

MR. FIRESTONE: No, you will not have to prove all that. We concede everything, except that the defendant had any connection with the alleged theft.

THE COURT: Very well, then. That is conceded.

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## THE PEOPLE'S TESTIMONY.

W I L L I A M   H .   H A R L E S T O N , of 8 East 131st Street,  
a witness called on behalf of the People, being duly  
sworn, testified as follows:

## DIRECT EXAMINATION BY MR. WEIL:

Q   Mr. Harleston, are you a married man?   A   I am, sir.

Q   And do you live with your family?   A   Yes, sir.

Q   Where?   A   8 East 131st Street.

Q   How long have you lived there?   A   I have lived there  
for two years and three months.

Q   Have you a family?   A   Yes. I lease the house there.

Q   Then it is a private house?   A   Yes, sir.

Q   Now, were you employed on the 18th day of December, 1917?

A   Yes, sir.

Q   By whom were you employed?   A   By Rice & Hockster, 87  
Fifth Avenue.

Q   In what capacity were you employed by that firm?   A  
Shipping clerk.

Q   And how long have you been in their employ?   A   A year and  
three months.

Q   And before that where were you employed?   A   On the  
Deleware & Hudson Railroad, as a porter.

Q   And how long were you in their employ?   A   Three years.

Q   And where were you employed prior to that time?   A   Prior  
to that I was valet for Mr. C. Oliver Isclim, of Premium Point,  
for seventeen years.

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Q Now, do you remember the 18th day of December, 1917?

A Yes, sir.

Q Did you deliver two packages for your firm to the post box at Union Square and 16th Street on that day? A Yes.

Q When did you take the packages to the box? A About 5:15.

Q What did you notice about the box when you visited it, if anything? A There was a large package on the top of the box, and another long package protruding from the box.

And I put the two packages that I had in my hand under my arm (indicating the left arm) and I pulled out the protruding package, and put my two packages in the box, and then put the other package back in -- it couldn't go in, but I put it back in as I found it.

Q You could pull it out, but you couldn't put it in; is that the idea? A Yes.

Q Now, did you see the defendant at anyt time that afternoon? A Yes, sir.

Q When did you first observe him? A As I turned away from the box, he was standing near the box.

Q Was he alone, or with any other person? A He was with another young man.

Q And where were they when you saw them at that time? A They were standing just over near the edge of the curb.

Q How far away from the post box?

MR. FIRESTONE: I object to that as leading, if your honor please.

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MR. WEIL: No, I am sure that is not leading.

MR. FIRESTONE: Let him state what he saw.

THE COURT: I think the questions were all properly put.

Objection overruled.

MR. FIRESTONE: I respectfully except.

BY MR. WEIL:

Q How far were they away from the box? A They were about five or six feet from the box.

Q Facing in what direction? A Facing west.

Q Well, with respect to the post box, the package box, how were they facing? A Facing very near in front of it.

Q Were they facing towards it or away from it? A Towards it.

Q Now, what directed your special attention to these two men at that time? A As I had turned away from the box, after putting these packages in, these men looked at me in a rather suspicious way.

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

THE COURT: I sustain the objection. Strike it out.

BY THE COURT:

Q You saw them looking at you, did you? A Yes, sir.

Q And what happened then? A Well, it was rather peculiar, the way they looked at me.

MR. FIRESTONE: I object.

THE COURT: No. Strike that out.

BY THE COURT:

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Q What happened then? A I went across the street to wait.

BY MR. WEIL:

A And how far would you say that was from the box, <sup>from</sup> the post box? A Well, it is the width of Broadway, from one side of the street to the other.

Q Well, could you see these two men clearly, when you reached the opposite side of the street? A Yes, sir.

Q Was there any light there? A Yes, sir.

Q What kind of light? A An arch light, right on the corner.

Q How near to the post box? A There is a mail box right under the arch light, and in the corner, about seven or eight feet from the arch light was the post box.

Q And was that light lit at that time? A Yes, sir. And I stood there possibly three or four minutes.

Q Did you have this defendant and the other man under observation all the time? A Yes, sir; all the time.

MR. FIRESTONE: I move to strike that out, if your honor please, whether he had them under observation all the time or not. That is a question for the jury to determine, whether he did or not. He can say what he did, and in what directions he was going, and where he was looking.

THE COURT: Yes, that may be stricken out.

BY THE COURT:

Q You were looking towards them, were you? A Yes, sir.

Q And did you take your eyes away from them at all? A No.

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BY MR. WEIL:

Q What did you see this defendant and the other defendant do? A They both went to the box.

Q Together? A Yes. And one of them, that defendant, (indicating the defendant) he tried to take this package out, or put it in.

Q Which man? A This defendant here. He pushed it back and forward, that package that I had found protruding from the box. He wasn't successful in getting it in. He got it out, but couldn't get it in. And for two minutes, possibly, they did that, and the other defendant went and took the package, the large package, from the top of the box, the large package that was on the top of the box.

MR. WEIL: That is the package considered to be the property mentioned in the indictment?

MR. FIRESTONE: Yes, there is no question about that.

BY MR. WEIL:

Q Now, go on. What happened next? A The other man took the package and he walked down Union Square. I'm across the street. I run across the street, and was right behind them.

Q How far behind them were you at that time? A Possibly about ten feet; no further than that, sir.

Q Did you have them in sight? A All the time.

Q What did they do? A The man that took the package he carried it for possibly a block, and handed it to this man, (indicating the defendant).

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Q In what direction were they going? A Going south.

Q On what street? A On Union Square. When they got to 14th Street, I still had them under observation.

Q Now, please, just a moment. You say that the other man carried the package for about a block? A Yes, sir.

Q And, after carrying it for a block, what did he do with it? A He gave it to the other man.

Q Which man? A This man (indicating the defendant)

Q This defendant? A Yes, sir.

Q Go on. And that was about 15th Street and Union Square; was it? A Yes, sir; and he carried it to 14th Street.

Q Who did? A This man, (indicating the defendant.)

Q This defendant? A Yes, sir. And he handed it back to the other man. We had then got to 14th Street and Broadway, and there was a traffic officer there and I said to him --

Q No. You cannot tell that. You are not permitted to say what you said, in the absence of the defendant. You spoke to him, did you? A Yes, sir.

Q And the traffic officer continued to take care of his duties there? A Yes, sir.

Q And then what did you do? A I followed them to 13th Street and University Place.

Q Who had the package then, at that point? Do you recall which one had it? A The other man had the package.

Q Where did they go then? A Then they turned through 13th Street. There was an officer standing at the <sup>northeast</sup> corner of

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13th Street and University place -- yes, on the northeast corner--  
and I went over and spoke to him, and I said, --  
No.

Q /You can't tell that. And then what did the officer and  
you do? A We went to 13th Street, west, and between Fifth Avenue  
and University Place, we came upon these two defendants -- these  
two men having the package, and the officer arrested them.

Q Was any conversation had between you and either of those  
defendants, or between the officer and the defendants? A No, sir;  
I said nothing to them, and the officer said to them that he was  
going to arrest them.

Q And what did they say? A And the defendant there said,  
"What for"? And he says, "You'll find out when you get to the  
station house."

Q And what did the other defendant say? A He said nothing  
at all.

7 Q Now, where was the package at that time? A It was in the  
hands of the other defendant.

Q And do you know where that package is now? A In the  
Police Department, I presume.

MR. FIRESTONE: How does he know?

MR. WEIL: I asked him if he knew.

Q Well, who took the package at that time? A The policeman  
took the package.

Q How large was the package, Mr. Harleston? A About that  
high and about that wide. (illustrating) It was six packages  
tied together.

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MR. FIRESTONE: Have you got the package here, Mr.

Weil?

MR. WEIL: I don't know whether it is here or not. You conceded the package, who it belonged to, etc., and I think the jury will understand as to that package.

Q Did you do anything after that? A I went to the police station with the officer, and the two men.

Q And what became of the defendants? A They were held.

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

THE COURT: Motion granted. Strike it out.

Q Was there any conversations between the defendants and the officer, or yourself and the defendants at the station house?

A No, sir.

Q Did you subsequently go to the Magistrates' Court? A Yes.

Q And did you testify there? A No, sir. The examination was waived.

CROSS EXAMINATION BY MR. FIRESTONE:

Q Mr. Harleston, is it? A Yes.

MR. WEIL: Oh, pardon me, just a moment.

BY MR. WEIL:

Q Did you ever know either of these two men before? A No, sir; never seen them.

Q And did you have any relationship, any business relationship with the firm that owned these goods? A No, sir; none at all.

Q Do you know them? A No, sir.

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BY THE COURT:

Q Now, did you see this package after these men were placed under arrest? A Yes, sir.

Q And package was it? A It was the package that was taken off the mail box.

Q The package that you say that you put on the mail box?

A No, sir; I put my two packages in the box. This package that I speak of was on the mail box when I got there.

BY MR. FIRESTONE:

Q At the time that the defendant were arrested that package was taken possession of by the police? A Yes, sir.

Q And, when you went to the police station, the package was left at the police station? A Yes, sir.

MR. FIRESTONE: Have you the package here, Mr. Weil?

MR. WEIL: Why, the policeman is sick, if your Honor please, and I have just asked our process served to make an affidavit that the officer is sick in the hospital, the officer that made the arrest.

MR. FIRESTONE: Well, I think that the officer should be produced as to the conversation at the time of the arrest. I think it is very important.

MR. WEIL: Well, the conversation has been given by the witness on the stand, and it could not possibly hurt you.

It is as favorable as it could be to you. This man, your client, <sup>he</sup> says, asked the officer, "What are we arrested for?"

MR. FIRESTONE: Very well, then.

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Q Now, your duty as shipping clerk for your firm, is to deliver packages, or put them on the mail box? A Yes, sir; I deliver them to errand boys, who take them out for delivery, usually.

Q And on the 18th of December you put the mail packages on the mail box? A Yes.

Q Where is this box? A Corner of 16th Street and Union Square. It is around the corner, a few feet from the corner of 16th Street and Union Square, - and I work only one door from the corner of 16th Street and 5th Avenue.

Q Let me understand this? You are employed at 87 Fifth Avenue and that is a large office building, or business building, is it not? A Yes, sir.

Q And this place at 16th Street and Union Square, how far away from the place where you are employed, is it? A As I have before said, it is -- I am one door from the corner of 16th Street on 5th Avenue, and this is on the corner of Union Square, only one block.

Q Well, it is a block away from where you are employed? A Yes, sir.

Q I am trying to fix just where this place is in my own mind? A This is on the corner of 16th Street and Union Square, and I am one door from the corner of Fifth Avenue and 16th Street.

Q That is, facing the park where the battleship is? A No. The battleship is down at 14th Street, but it is in the same park.

Q Well, on what corner is the box? A It is on the north-

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west corner.

Q There is a bank there, is there not? A Yes, the Bank of the Metropolis, and the box is right on the corner by the bank.

Q There is a sort of a -- A Something like an alcove there.

Q And that box is in the alcove? A No, sir; not in the alcove. It is on the side. I pass there regularly every day. It's on the side of the bank, not in the alcove, because the box couldn't fit in the alcove, because the box is square.

Q Well, the box is about twenty inches by twenty-four inches; isn't it, and about three feet high? A Well, something like that, I couldn't tell you the exact measurements because I don't know.

Q Well, isn't it a fact that the box stands up against that alcove? A No, sir; it doesn't.

Q Well, where does it stand? A It stands against the rail that protects the bank from the sidewalk. It hitches right to the rail. There is an iron railing there.

Q There is an iron railing there? A Yes, sir.

Q And then it is away from the bank building proper, the box; is it? A Well, if you call the rail not connected with the bank building.

Q Well, you know what a building is? You know that it is a structure, do you not? A Yes.

Q And the railing is not a building; is it? A Undoubtedly not, sir.

Q And is the box away from the building itself? A Yes.

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Q About how many feet? A Possibly about two feet.

Q And in what direction from the corner of 16th Street and Fifth Avenue -- no, Union Square, -- is the box? Towards uptown, or is it towards the downtown? A The entrance of the bank?

Q No. The box I am speaking about. Where was it situated?

A The box was situated just like this table is situated.

(Indicating the Stenographer's table.)

Q Now, lets take the corner of his Honor's bench, (indicating) and tell us whether it was immediately at the corner, or within three or four feet? A The box was situated just about as near as I can guess, about a foot back from the entrance to the bank, on the side street.

Q On the side street? A Yes. The box is on 16th Street, very near the corner.

Q Oh, the box is not on Union Square, then? A The box is on 16th Street.

Q Near the corner of Union Square? A Yes, near the corner of Union Square.

Q So that, in order to put your mail in there, you don't have to go clear to the corner of Union Square? A No, not directly to the corner, because the corner would be where the arch light would be.

Q I don't mean the corner of the street, but the corner of the building. Did you have to go to the corner of the building, or didn't you reach the corner of the building when you put your boxes in? A It's right at the corner of the building, the box.

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I'm pretty sure it's right on the corner of the building.

Q Then it isn't on 16th Street, but on the corner of 16th Street and Union Square? A Well, I didn't make a diagram of it, but it's there.

Q I know its there. For how many years did you go there?

A I don't go there regularly to put no packages in there, but I pass there.

Q Well, you have been there at least half a dozen times a month? A Oh, yes.

Q And more than that? A Yes, I pass there every day.

Q So that you know just where it is; don't you? A Well, I can't say that I pay so much attention to it, to tell you whether it is right up to the corner, or one or two feet from the corner.

Q Tell us the fact is that youd didn't pay particular attention? That's so, isn't it? A I paid particular attention to --

Q I am talking about the situation of the box, where it is?

MR. WEIL: If your Honor please, I think the witness had told us as accurately as possible where the box is situated, and I think that this cross examination is now useless, and only wastes time, because I think the jury now understand perfectly the situation of the box.

BY MR. FIRESTONE:

Q (Repeated?)

THE COURT: Well, he says it is on 16th Street, at the

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corner of Union Square, but whether it is plumb up to the building line, on Union Square, he is not sure. He says it may be a foot or two from the corner, on 16th Street.

MR. FIRESTONE: Very well, your Honor, I will go on.

Q When you open the box, does it open towards 16th Street, or Union Square? A Towards 16th Street.

Q So that it is on the side of the bank building? A Yes.

Q Not in front of it? A No, it isn't in front of the bank.

Q Now, when you came with your parcels, you came along 16th Street from Fifth Avenue? A Yes, on the north side.

Q On the north side of the street? A Yes, on the north side.

Q On the north side of the street? A Yes, sir.

Q And, when you came to the box there were parcels on the box? A No, sir; not parcels; only one parcel on the box, and another one protruding from the box.

Q Protruding from the opening of the box? A yes, sir.  
or endeavor

Q Did you undertake to put that parcel in? A No, sir; I pulled it out, and put my packages in.

Q What did you do with it when you took it out? A What did I do with it?

Q Yes. A I held it in my hand.

Q And you held how many parcels in your hand? A I had my two parcels under my arm (indicating the left arm.) They were rather small packages.

And I held the package that I pulled out in my hand. (indicating) It was a small package as to its bulk, but it was quite long.

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Q But you said it was protruding out, and you pulled it out?

A yes, sir.

Q And then it was too large to put in the box? A I don't know about that. But I pulled it out, and put in my two packages, and put it back just as I found it.

Q Now, you put the package back again in the box? A Yes -- no, sir; I didn't put it back in the box, because it wouldn't go in. It was a long package.

Q That is, over two feet? A I don't know the exact length of it, I can't tell you that, but I know it was long, and wouldn't go into the box.

Q And after that, after you inserted your packages, and put in this package that you have described, where did you go?

A Where did I go?

Q yes. A I turned towards Union Square, turned my face towards Union Square.

Q Just a minute: You turned towards Union Square? A Yes.

Q And where did you intend to go? A I intended to go home, of course.

Q So that you were on your way home? A I were.

Q You had inserted these packages, and you turned south, in a southerly direction, didn't you? A No, sir; I didn't turn south; I did not.

Q Well, in what direction did you turn then? A I turned east. I was still going east.

Q Well, you didn't turn into Union Square, did you? A I

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must have. I did.

Q Union Square at that point, -- the street there is known as Union Square, isn't it? A I don't know about that.

Q Where do you live? A 8 East 131st Street.

Q And you were going to the subway, weren't you? A Yes, I were.

Q You were going to take the subway at 14th Street, weren't you? A Yes, I was.

Q Thank you. Then you didn't turn anywhere. You simply continued across? A I said, I kept going on east.

Q Then you didn't turn? A When I faced the box, I had to turn to go east again, I must have turned around.

Q Well, you didn't turn around; did you? A Yes I did. I must have.

Q Well, I don't care about that. Let's go on. A Well, you must care about it, when you ask the question.

Q Well, I only want the facts here? A And that's what I am here to tell you.

Q You continued on your way home? A Yes.

Q And how many people were on the street at that time? A I couldn't tell you, sir.

Q When was it? A Between five and five thirty.

Q Well, in that immediate neighborhood, would you say there were at least 150 people? A I don't know. I couldn't tell you.

Q People were going out from their shops and places of

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business, and going home ? A Undoubtedly.

Q And at that particular point quite a few people go home at night, don't they? A Yes, from all sections.

Q Yes, going to the subway station? A Yes.

Q Coming from Fifth Avenue, and University Place and Sixth Avenue, and all crossing over those streets around there, isn't that a fact? A You are aware of that fact, aren't you, sir.

MR. WEIL: Now, don't argue with counsel. Just answer hsi questions.

BY MR. FIRESTONE:

Q (Question repeated?) A Well, I didn't pay any particular attention as to what other people were doing.

Q Isn't it a fact that the crowds come from all those streets, at that time of the night; isn't that so? A I presume they do.

Q Don't you know it? Yes or no.

THE WITNESS: Your Honor is that question relevent?

THE COURT: Well, you are just asked if a crowd of people were going home at that time. Answer the counsel's question.

THE WITNESS: Yes, they were going home.

BY MR. FIRESTONE:

Q And you were going home? A Undoubtedly.

Q How far had you gone before you turned around? A When I got on the other side of the street.

Q When you got on the other side of the street? A Yes, sir.

Q Do you mean on the side where the park is? A Yes, sir.

Q And that is a distance of 80 feet at that point, isn't it?

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A I couldn't tell you how far it was.

Q Don't you know that it is? A No, sir; I don't know. I have never measured it.

Q You know distances, don't you? Can you discribe how far it is in this Court room, and see whaher we can get it that way?

A It takes in the car tracks, and it is the distance from one side of Union Square to the other side, to the park side.

Q You crossed the tracks, and went over to the other side of the street, to the park side? A Yes, sir.

Q And you went on to the side-walk where the park is? A Yes.  
BY MR. WEIL:

Q You didn't go into the park, did you? A No, sir.

MR. FIRESTONE: Now, please, Mr. Weil. You will get an opportunity

Q And there were a number of people coming from all directions, north and south and east and west? A I said there were before.

Q Then you say you turned around at that point? A I did.

Q You didn't go into the park? A No, I didn't.

Q And you whom at the box? A Whom did I see at tha box?

Q Yes. A I saw both of these defendants, this man and the other man at the box, both of them.

Q You saw this man -- stand up Schafman -- you are sure you saw this man at that mail box at that time? A Yes, I do; I'm sure of it.

Q And what was he doing? A He was trying -- he was fooling with the package that was in there.

Q What was he doing? A He was shoving it back and forth.

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Q Trying to push it in?

MR. WEIL: I object to that. He has very clearly described just what he was doing.

THE COURT: Well, did he appear to be trying to push it in? You may put the question in that form.

MR. FIRESTONE: Yes, sir; I will accept your Honor's admended question.

(The Court's question is repeated by the stenographer.)

A Yes. He appeared to be trying to push it in.

Q But he couldn't get it in?

MR. WEIL: I object to that as not being within the knowledge of this witness. How could he tell?

THE COURT: Sustained.

MR. FIRESTONE: I respectfully except.

Q Did he succeed in pushing it in? A No, he didn't succeed in pushing it in.

Q And he was about two or three minutes in doing that?

A Possibly that much time. It wasn't longer, I'm sure of that.

Q And, during all this time, these people were coming and going? A Yes, people were passing.

Q And then, what did you next see? A I saw the other man that was with him, take the large package from on top of the box.

MR. FIRESTONE: Now, I move to strike that out, if your Honor please, "That was with him."

THE COURT: Motion denied.

MR. FIRESTONE: I respectfully except.

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Q You say the other man that was there? A I say the other man that was with him, because they were both there, standing together, and talking to each other, previous to my putting the package in the box. They were standing near together, when I put the package in the box, within about five feet from the box.

Q Now, stand up and show us just how they were standing?

A The box was situated like this, (illustrating). The Front of the box is here. When I opened the box, the large package was sticking out, and I put my two packages under my arm. (indicating under the left arm, and took out this package that was protruding, and put in my packages, and then stuck the package I had taken out in, and pushed it in as far as I could.

I took this long package out of the box first, and put it under this arm. (indicating the left arm), and took this other and, and held it then -- now I want to be correct and truthfull about that. These two packages were about this size, (illustrating) and I go to this box, and I pull it down, and put the other packages here (indicating under the left arm), and held my packages under my arm, and then put my packages in, and then held the other package, the long package until I put them in, and then the package I had taken out, I shoved in again.

BY THE COURT:

Q And where were these two men standing, do you say? A About five or six feet from the box, halfway across the sidewalk, near the box.

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BY MR. FORESTONE:

Q Will you stand up? Now, place your left hand in the position you were standing at that time, with the two packages?

A This way I was standing. (illustrating)

Q Now, place those two books on the stenographer's table, lying there on the table, under your left arm? A Yes, sir.  
(The witness does so)

Q Now, with which hand did you open the box when you first arrived there?

MR. WEIL: I object to that, as already answered, and as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

Q Now, go on. A I took the package --

Q No. Which hand did you use? A My left hand I think, in pulling the box down.

Q And with the right hand, you extracted the package that was there? A Yes, sir.

Q Am I right? A Yes, sir.

Q And your next step was to do what? A Was to take the packages from under my left arm, and put them in the box (illustrating.)

Q With your right hand? A I held this package --

Q Now, don't go to fast. It is very important here.  
im

MR. WEIL: And I submit it is absolutely material, as to what hand he used in putting the package back in the box.

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THE COURT: Well, counsel seems to think it is important or material, and I will allow it.

BY MR. FIRESTONE:

Q What hand did you hold the box open with, the right or left? A With the left hand.

Q And you extracted the package that was in there with your right hand, didn't you? A These two packages were under here (indicating the left arm), and I pulled the box down, and took the package out, and put my two packages in.

Q Well, you took the package out with your right hand? A Whether I used the left or right hand I don't know. I didn't pay any attention to that. But I know I put it back.

Q And all the time you were facing this box? A Yes.

Q Is that correct? A Yes.

Q After you inserted your packages, and you reinserted the other package, you turned and walked across the street?

A Yes, I turned this way, (illustrating) and walked across the street (illustrating.)

Q Now, don't be in a rush. Take your time. A I'm not in a rush no more than you are.

Q You didn't see either of these two men when you inserted your packages, did you? A Why, yes, I saw them standing there, before I inserted my packages.

Q You saw them before you inserted the packages? A Undoubtedly, yes.

Q But they were not near the box then, at that time?

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Q They didn't try to push that bundle in at any time, did they? A No, sir; they were standing about five feet from the box.

Q Just as you have shown the jury the distance? A Yes, sir.

Q And people were coming and going along that street? A Yes.

Q Quite a few, going in every direction, weren't they? A Yes, people were going and coming.

Q You went over to that box, and your intention was to place those packages in the box? A My intention was what I did. My intention was to put them there, and I did.

Q And then you turned and walked across the street, and you say that at that time you noticed those two men standing there? A Yes, and I saw those two men while I was walking down the street, down 16th Street. I saw them standing there, as I was coming down the street.

Q And so you remember every man that stands on a corner, do you?

(Objected to; sustained. Exception. )

Q And then you crossed over from the west side to the east side of the street? A Yes, sir.

Q Any street cars running there? A yes, there were street cars running there.

Q And are there automobiles going past there? A Yes.

Q And you were looking up and down the street, to see that nothing ran into you, while you were walking across the street,

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you were looking in both directions to see that no car or automobile ran into you?

A Well, that would<sup>be</sup>/only natural for one to do.

THE COURT: No, just answer the question.

THE WITNESS: I was.

BY MR. FIRESTONE:

Q When you reached the other side of the street, you say you turned around? A I did.

Q And you saw this defendant, whom you are positive you saw standing there before, trying to push in the package? A Yes.

Q And then you saw the other man take the package from off the top? A From off the top of the box, yes.

Q It wasn't your package? A No, sir; it wasn't my package.

Q And, after he took the package, did he remain standing there, or did he walk away? A They walked away.

Q Now, did he walk in a northerly or southerly direction?

A In a southerly direction.

Q On the west side of the street? A Yes, sir.

Q And you, at a that time, was on the east side of the street? A Yes, sir.

Q And during all that time, cars and automobiles and persons were going in all directions, at that hour of the night? A Yes, people were passing.

Q And they walked south how far? A They walked south to 13th Street.

Q You followed? A I did.

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Q On what side of the street? A On the same side that they were. I ran across and followed on the same side of the street that they were.

Q Now, lets see. After they left the box and turned around, you saw them going in a southerly direction, and you came across? A Not striaght across, but diagonally across the street.

Q Oh, you came diagonally across the street? A Yes, sir.

Q Towards 15th Street? A Yes.

Q From 16th Street and Union Square, on the east side of the street, to the west side of the same street, at 15th Street?

A Yes. Between 16th and 15th Street., I got on the opposite side of the street where they were.

Q You know that that street is wider at 15th Street than at 16th Street? A Yes, but I kep those men under my observation all the time.

Q Now, just answer my question, please. You walked over to where they were or some distance from where they were? A Yes.

Q How far behind them did you reach at 15th Street? A Not quite half a block behind them.

Q Now quite half a block? A Yes.

Q How many persons were there between you and this defendant?  
A I couldn't tell you that.

Q Were there twenty-five? A I couldn't say, sir.

Q Were there fifty? A I couldn't say, sir.

Q A hundred? A I couldn't say, sir.

Q Would you say that there were none? A I would not, no.

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Q And most of the people at that point walked in the same direction, or were they walking in every direction? A Yes, in every direction, north and south and east and west.

Q And you followed -- y ur eyes followed this package?  
A Yes, and the two men that had the package.

Q And you walked with them how far? A I walked up to 13th Street.

Q And what? A University place.

Q Had you stopped any place before you reached University Place and 13th Street? A I did.

Q Where did you stop? A I stopped at 14th Street and University place --

Q Before or after this defendant as you claim -- these two young man that you are talking about -- crossed 14th Street?

A Yes, I was very near behind them. They didn't look around.

Q Well, was that before they had crossed 14th Street or after? A Yes, they had gotten on the other side of 14th Street.

Q On the southerly side of 14th Street? A Yes, sir.

Q They didn't stop? A No.

Q They continued to walk? A Yes.

Q But you stopped and talked to the traffic officer, as you stated? A Yes.

Q Where was that traffic officer? A In the middle of the street.

Q In the middle of 14th Street? A Yes.

Q And in the middle of University Place? A Yes, right in

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the middle of the street.

Q Not in the middle, but in the center do you mean? A Yes, in the center, as you say.

Q And when you saw the officer there, did you walk from the northerly side of 14th Street to where the officer was? A When I was at the northwest corner of 14th Street, the officer was in the middle of the street, and I crossed over to him.

Q And you went there for a purpose, undoubtedly? A Undoubtedly I did.

Q These men didn't stop? A No, sir; they didn't stop.

Q Then, when you went over to the officer you had something to say to him? A Yes, I spoke to him.

Q And that took about a minute or a minute and a half? A About a minute.

Q You then turned around and followed these men again? A Followed in the direction that they had gone.

Q Were they in your sight then? A Yes, they were in my sight, but they were at 13th Street.

Q You were at 14th Street and Union Square? A Yes, sir; in the middle of the street.

Q And the men that saw were at 13th Street and University Place? A Yes, sir.

Q At the time? A Yes, sir.

Q And there were a number of people on that street? A Yes, sir. But they had the package, and I saw that, and kept that in view.

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Q You saw the package, did you? A Yes, and those two men.

Q And where did they go? A They turned west down 13th Street.

Q Did they stop before they turned? A No. They went right around the corner.

Q And at the time that you were at 14th Street, and turned around and spoke to the officer, they were at 13th Street; is that correct? A Very near the corner of 13th Street.

Q And you started to follow again? A Yes. I ran.

Q In the middle of the street? A No, on the sidewalk.

Q On the sidewalk? A Yes, sir.

Q No one in your way? A Oh, yes, people were in my way, but I ran just the same.

Q You ran in and out amongst the people? A Yes, sir.

Q And they had turned on through 13th Street? A Yes.

Q And went towards Fifth Avenue? A Yes.

Q And when did you next see them? A <sup>then</sup> I saw them in the middle of the block, between University Place and Fifth Avenue, when I had the officer with me.

Q Now, when you turned the corner of University Place and 13th Street, did you see them? A Did I see them?

Q Yes. A No, sir; I didn't; not them.

Q You ran after them then? A No, I didn't run after them then.

Q You didn't see them? A You asked me if I ran after them.

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No, I didn't run after them.

Q Where did you pick up this cop? A On the northeast corner of 13th Street and University Place.

Q And you told the officer your story? A Yes, but I didn't finish my story. I said there was a crime committed, and I wanted to detect it, and he followed me, and in running, I told him the story.

Q And, when you arrived at the middle of the block, was it, or further down the block -- A About the middle of the block, I think it was.

Q Now, was it nearer Fifth Avenue? A Well, I couldn't say that. The officer knows the number of the house where he arrested the defendants, in front of the house.

Q It's a long block is it not? A Yes.

Q Were they near Fifth Avenue, when you arrived there? A Well, they were nearer to Fifth Avenue, than they were to University Place.

Q Now, who had the package in his hands at that time? This man? A No, he didn't. It was the other man.

Q The other man? A Yes.

Q And were they both together, walking together? A Yes, walking along together.

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

Q Walking towards Fifth Avenue? A Walking towards Fifth Avenue.

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Q They didn't stop while you saw them? A They didn't stop while I saw them?

Q Yes. A Where?

Q Anywhere on the way? A No.

Q They kept on walking? A Oh, yes. They kept walking.

Q And when the officer and you got up to the two men, you said, "There they are"? A I did.

Q And the officer placed his hand on what man? A He placed his hand on both men.

Q Didn't he place his hand on the man with the bundle? A He placed his hand on both men, because I said, "There they are."

Q Didn't he place his hand on the man with the bundle? A I answered your question, sir.

Q (Repeated?) A He placed his hand on both men. He grabbed both men.

Q Are you sure of that? A I've answered your question, sir.

Q Are you certain of it, sir? Did he grab both men at the same time? A I said he grabbed both men.

Q At the same time?

MR. WEIL: I object to that if your Honor please. He has answered that question at least four times.

THE COURT: Then I will let him answer it again.

Q At the same time? A He grabbed both men, and in doing so, another officer ran up in the meantime, and he turned one man over to the other officer, and they both went to the station house with the two men.

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Q Now, who was the other officer? A I don't know, sir.

Q So that there were two officers at that point, at the point of arrest? A Yes. One came up shortly after the first one had taken hold of both men.

Q You didn't say in your direct examination that there were two officers, did you? A No. I didn't think it was necessary.

Q Well, now were there two or one? A I said there were two officers. One was from the 16th and the other from the 23rd.

Q And which one of the two did the talking? A The one from the 16th.

Q Do you know his name? A Officer Booth.

Q What did he say? A He told the same story that I told.

MR. FIRESTONE: I move to strike that out.

THE COURT: Yes. Strike it out.

Q What did he say? A I can't remember what he said, what Officer Booth said. I know he made the arrest, but I can't remember all that he said.

Q Why, was there a whole lot of talk there? A Why, there was a conversation between he and the lieutenant at the desk.

Q I'm talking about the time of the arrest, in the street. I am not talking about the station house? A He said nothing to them.

Q Nothing at all? A Only he wanted to know what he was arrested for.

Q The defendant here, asked the officer, "What are you arresting me for?" A Yes, he did.

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Q Did the other defendant ask any questions? A I don't know whether he did or not.

Q Now, you know don't you?

MR. WEIL: I object to that, to the form of the question.

Q Don't you know?

A No, I don't know.

Q Didn't you, on direct examination, say that the other man didn't ask any questions? A The stenographer will tell you whether I said it or not, I don't remember.

Q You don't remember what you said on direct examination? A I know that I am telling the truth in this case.

Q I'm not asking you that, sir? A Well, then, I can't remember everything, sir.

Q I'm talking about your direct examination, while you were examined by the District Attorney, a few minutes ago, didn't you say that the other man didn't ask any questions? A I don't remember whether I said that or not.

Q Well, did he ask any questions or not? I don't remember whether he did or not.

Q Is it not a fact that this defendant, when the officer, after he had arrested the other man, after he had put his hand on the other man, placed his hand on him, (indicating the defendant), and he said to the officer, "What do you want me for"? A He put his hand on both of the men, I said.

Q But did he at that time say, "What do you want me for?"

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or, "What am I arrested for?" A Yes, he spoke and asked what he was arrested for.

Q And the officer said what? A I don't remember exactly what the officer said.

Q Did he say anything? A I don't remember whether he did or not.

Q You then went with the officer or the two officers -- were there two officers there at that time? A Yes, sir.

Q And with this defendant and the other man to the station house? A Yes, sir.

Q Did they say anything at the station house? A No, they didn't say anything, to the best of my knowledge, I don't think so.

Q And you didn't say anything at the station house? A Oh, yes, certainly; I told exactly what I saw.

Q You made a statement there? A Yes.

Q Did you say at the station house that you were over at the park, looking at these people, and saw the other man take the package?

MR. WEIL: Now, just a moment. I object to that as immaterial, irrelevant and incompetent, and, further, upon the ground that this same question with respect at the station house was ruled out upon the objection of my friend, on the direct examination.

THE COURT: Objection overruled.

A I think I said that. I don't remember just what I said there.

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Q And didn't you say there when they asked you, "How about this man?" Didn't you say, "I think he was the other man"?

A I didn't say anything of the kind.

Q Are you sure of that? A Yes.

Q Did you say at the station house -- withdrawn. Now, you told us in detail just what you saw as you followed along, in reply to my questions as to just what you did; didn't you? A Did I reply to your question as to what I did?

Q I say, in detail, you described what you did, and what they did; did you? A I think I replied to your questions, sir.

Q Now, then just when did you see the defendant take the package from the other man? A Between 15th and 14th Streets.

Q Between 15th and 14th Streets? A Yes.

Q You saw this defendant take the package from the other man? A Yes, and carry it.

Q And carry it? A Yes, sir.

Q You are sure of that; are you? A I said, so, sir.

Q I didn't ask you what you said; I'm asking you whether that is the fact.

(Objection sustained. Exception?)

Q You didn't lose sight of the two men during the time that you crossed over from the east side of University place, -- or rather the east side of Union Square park -- to 15th Street; did you?

A No, sir.

Q Not for a minute? A No, sir; I didn't lose sight of them.

Q Isn't it a fact that the only thing that you saw was the

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package, and that you saw men going along with the package?

A I saw those two men having the package. I didn't lose sight of them.

Q You never lost sight of the two men? A No, sir; I didn't.

Q At no time, except when they turned into 13th Street?

A No, sir; I didn't lose sight of them.

Q You never saw this defendant before in your life? A No, sir; never have.

Q Until that day? A Never have.

Q And at that hour was it light, the same as it is now, or was it dark on that day? A It was dark, but there were a lot of lights, arch lights, around there.

Q The arch lights are half a block apart from each other, right there, aren't they? A It was light enough for me to keep them under observation.

Q (Repeated?) A I couldn't tell you. I don't know.

Q On the east side, or rather, on the west side of Union Square, isn't it a fact that the lights on the one side of the street are at least a block apart? A I don't know, sir. I couldn't say.

Q And you could tell the faces of all the persons who were in that crowd? Could you tell the faces of these two men amongst all the persons who were in that crowd at that time, from the fact that you had seen them from across the street, at the box?

MR. WEIL: I object to that question as not being proper in form, in that it calls for a fact not in evidence.

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The question would make it appear that the first time the witness observed the two men was when he was across the street from the mail box, whereas the fact in his case is that he saw them for the first time before he reached the post box, as he was coming down 16th Street.

MR. FIRESTONE: All right then.

Q From the time you said you turned around, and they were some feet behind you, from that observation, and seeing them from across the street, do you say that you could see these men and known them, while they were walking in the crowd on Union Square?

MR. WEIL: I object to the question as to what he could do. The question should be what he did do. I object to the question as to its form, and its calling for the operation of the witness's.

THE COURT: Objection overruled.

BY MR. FIRESTONE:

Q (Repeated?) A Yes, I knew then I knew them from --

Q Now, answer it yes or no? A Yes, sir; I knew them.

RE DIRECT EXAMINATION BY MR. WEIL:

Q Now, Mr. Holeston, were the two men who were arrested on 13th Street that night, this defendant and the other man were they the two men that you first saw at the post box at 16th Street and University Place? A Yes, sir.

Q The same two men? A Yes, sir.

Q Is there any question in your mind at all about that?

A No, sir; none at all.

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Q And, as matter of fact, one of these men, was the man you saw take the package from the post box? A Yes, sir.

Q And the same package that you saw taken from the post box by somebody, was found in the possession of one man, and the defendant was with him at the time?

MR. FIRESTONE: I object to that. He has described what he says occurred there.

MR. WEIL: I withdraw the question.

Q When these two defendant were arrested, were they arrested together? A Yes, sir.

Q What were the relative position of the two men, when arrested  
A Walking side by side.

Q How far apart were they? A Knocking arms together, as one would say, walking close to each other.

Q They were touching arms you mean? A Yes, sir. They were walking as close as possible to each other.

MR. WEIL: Now, step down and illustrate what you mean.

THE WITNESS: They were walking this way, (illustrating) as close as possible to each other. And the other man had the package in his hand.

Q Now, you were asked on cross examination what you said to the defendants in the station house, and you were not permitted, subsequently, by the counsel, to complete your answer -- withdrawn. Please tell me what you did say to the defendants when you reached the station house?

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MR. FIRESTONE: I object to that. The witness has testified to what he said.

MR. WEIL: No, if your Honor please, Mr. Firestone brought that out on cross examination.

MR. FIRESTONE: Oh, I will withdraw the objection, go on.

BY MR. WEIL:

Q (Repeated?) What did you say to him? A I said to them that I saw the men together standing at the mail box, and saw this man put the package in and take it out, push it in, and pull it out, and the other man take the big package from the top of the box, and they walked towards 14th Street with it, together.

Q Did you say anything else? A I don't remember now.

Q Well, on cross examination, Mr. Firestone asked the witness, asked you, if you didn't say, if you didn't express some doubt as to the identity of this defendant in the station house. Did you express any doubt there? A No, sir; I didn't express any doubt whatever.

Q From the time that you first saw the defendant and the other man at the post box, until they walked away, with the package, did you see anyone else approach that box? A No, sir.

Q And you had the post box in your view all the time, didn't you, until they walked away from it? A Yes, except the time that I was walking across the street to the park side of Union Square, as I said before.

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A N D R E W   K N E L L, of 571 9th Avenue, a witness called on behalf of the witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WEIL:

Q   Mr. Knell, what is your business?

MR. FIRESTONE:   What do you want to show by the witness? Perhaps I will admit it.

MR. WEIL:   He is a process server, and I want to show that he tried to serve the officer, and found that he was sick.

MR. FIRESTONE: I will concede that.

MR. WEIL:   Then I take it that it is conceded on the record that the arresting officer, is on sick leave, and that an effort was made to produce him at this trial?

MR. FIRESTONE: Yes, I will concede that, that you made an effort to serve him, and found that he was sick.

MR. WEIL:   Then the People rest. That is the People's case.

MR. FIRESTONE: Now, for the purposes of the record, will you admit that the defendant Lafrano is the person mentioned by the witness on the stand? Now be fair with me.

MR. WEIL:   Now, please, Mr. Firestone, tell me what you want, without any comments.

MR. FIRESTONE: Will you admit that Lafrano is the man the witness referred to on the stand?

MR. WEIL:   Yes, if you will admit that he is a co-

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defendant in this case.

MR. FIRESTONE: Just a second. And will you also admit that he is in the Tombs, and pleaded guilty to petit larceny?

MR. WEIL: You have made the statement, and I don't contradict it. That is all you want as to that?

MR. FIRESTONE: No, I want you to show why you didn't produce him. He is <sup>in</sup> your custody.

MR. WEIL: He is not in my custody at all. You can subpoena him and bring him here as well as I can.

MR. FIRESTONE: I ask the District Attorney, if your Honor please if he will concede on the record in this case that Lafrano, the other person indicted in this case, is in the Tombs Prison, having pleaded guilty to petit larceny, and that he hasn't been sentenced yet.

MR. WEIL: Yes, I will concede that.

THE COURT: It is conceded?

MR. WEIL: Yes, sir; with pleasure.

MR. FIRESTONE: Now, I move your Honor to dismiss this case, on the ground that the People have failed to make out a case, beyond a reasonable doubt.

THE COURT: It is a question of fact for the jury. Motion denied.

MR. FIRESTONE: I respectfully except. Now, may I ask your Honor to adjourn this case until tomorrow? I told

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your Honor the condition in which I came into this case, without preparing it. Will your Honor allow me time until tomorrow morning to prepare it and get the necessary witnesses.

THE COURT: Very well.

(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, January 11th, 1918, at eleven o'clock. )

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## TRIAL RESUMED:

New York, January 11th, 1918.

W I L L I A M     H .     H A R L E S T O N, being recalled by the  
District Attorney, testified as follows:

MR. FIRESTONE: Your Honor, I don't know why or where-  
fore, but the witness that we have have been told to remain  
outside.

THE COURT: It is my usual rule. All witnesses are  
excluded, all witnesses on both sides, so that <sup>what</sup> one witness  
says may not be heard by another, and that we may have, there-  
fore, as far as possible, unbiassed testimony. And then,  
when a witness has testified, my usual practice is to keep the  
witness in the room, so that he will not go out, and report  
what he has said. Now, that is the usual rule, but if there  
is any reason why you want your witnesses in here, let me know.

MR. FIRESTONE: No. Only that I never knew that to be the  
rule, unless the witnesses were excluded on the motion of  
both sides.

THE COURT: No. It is my usual rule and applies to  
every case.

MR. FIRESTONE: Very well. I only wanted to know the  
reason why.

THE COURT: And the reason why it is done is the reason  
of common sense.

MR. WEIL: With your Honor's permission, I will recall  
this witness to ask him two questions.

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MR. FIRESTONE: Only two questions?

MR. WEIL: Yes.

MR. FIRESTONE: Very good.

THE COURT: Very well.

DIRECT EXAMINATION BY MR. WEIL:

Q When you first observed the defendant and the other man at the corner of 16th Street and Union Square, did you see their faces? A I did, sir.

Q And were the two men that were subsequently arrested the same two men whose faces you saw at 16th Street and University Place? A They were, sir.

MR. WEIL: That is all.

CROSS EXAMINATION BY MR. FIRESTONE:

Q Your testimony that you give now is the same that you gave yesterday; is it not?

(Objected to. Sustained.)

Q You didn't see them in any different way than you have testified yesterday, did you? A Didn't see the men any different?

Q Yes. No more than you told us about yesterday?

(Objected to. Sustained.)

THE COURT: It is an argumentative question.

MR. WEIL: That is the People's case.

MR. FIRESTONE: Now I will have to renew my motion to dismiss the indictment, on the ground that the People have reopened the case, on the ground that they have failed to

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prove a case.

THE COURT: Motion denied.

MR. FIRESTONE: I respectfully except.

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## THE DEFENSE:

C H A R L E S        D.        B I E B E R, of 580 West 161st Street,  
a witness called on behalf of the defense, being duly sworn,  
testified as follows:

## DIRECT EXAMINATION BY MR. FIRESTONE:

Q Mr. Bieber, what is your business? A Manufacturer of  
leather goods, and jewelry and novelties.

Q Now, will you please speak up so that the last juror can  
hear you? A I'll try to.

Q And what is the firm name? A Wolf & Bieber Manufacturing  
Company.

Q Where is your place of business? A 58 East 13th Street.

Q That is on 13th Street, between what other streets?

A Broadway and University Place.

Q And on what side of the street is it? A The South side.

Q Do you know the defendant Schafman? A I do.

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

Q Has he ever done any business with your firm? A He did.

Q What business did he do with your firm, first? A Electro  
plating of metal ornaments.

Q At that time with what concern was he connected? A An  
electro plating company, but there is one word missing that I  
can't remember, one name.

Q Was it the French Electro Plating Company? A Yes.

Q And how long -- had he been coming to your place of business

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during that time? A Yes, sir. He has been up there several times.

Q And lately was he at your place of business? A He was, with his wife.

Q About five or six weeks ago? A Yes.

Q About what time of day, do you recall, it was? A In the afternoon.

Q Late in the afternoon? A Well, between the hours of three and five, I believe.

Q And on that occasion did he remain long? A About ten minutes.

Q And then he left? A Yes, he left.

Q Now, do you know other people that know him? A I do.

Q Do you know his reputation amongst the people that know him? A I do.

Q Is it good or bad? A It is good.

CROSS EXAMINATION BY MR. WEIL:

Q Mr. Bieber, what day of the month was it, if you recall, that this defendant was in your place of business? A I can't recall the date.

Q What day of the week was it? A I couldn't state just now.

Q Was it in the month of December? A It was.

Q How do you know that? A I couldn't offer any proof, but this being only a few days after New Years, I don't believe it was in this year.

Q Are you related to the defendant? A I am not.

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Q By marriage or indirectly? A Not in any way.

Q When did you first meet him? A About ten years ago, in a business way.

Q In a business way? A Yes.

Q How often have you seen him during the last year? A Three times.

Q Three times during the last year? A Yes.

Q And when were the three times that you saw him? A The first time I met him -- at least one of these times -- I met him on Broadway and 26th Street, between 26th and 27th Streets.

Q Did you meet accidentally? A Yes, sir.

Q Did you greet him and then pass by? A No, we spoke.

Q And the next time? A He came up with his wife, and we talked business matters over, and he seemed to be interested in the plating of these articles.

Q When was that? A Well, that was about two or three weeks ago.

Q That was the second time? A Yes, sir.

Q When was the third time? A The third time I didn't meet him. The third time he was up, and I wasn't in, so I have been told that he was there.

Q Who told you that he was there the third time? A He told me himself.

Q When did he tell you that? When you were called as a witness for him? A No.

Q After he got into trouble? A I didn't know anything

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about the trouble at all.

Q When did you first learn that he was in trouble? A Today.

Q When did he tell you, the third time, that he was up to your place of business, and that you were not in? A Today.

Q He told you that today? A Yes.

Q Where? A At my place.

Q He came to your place of business today? A Yes, the defendant did, and --

Q And told you that he had been up to see you some time about two or three weeks ago, and you were not in? A Why, he didn't tell me he was up. He mentioned casually that he was up and I wasn't in.

Q Well, then, you want to characterize that as being a casual statement, do you?

THE COURT: I sustain the objection.

BY MR. WEIL:

Q When was he up at your place? A About nine o'clock.

Q This morning? A This morning.

Q Were you in your place of business at the time? A Yes, sir.

Q Did he come up to talk about business to you? A He didn't mention anything about business.

Q Well, what did he say? A He told me about his troubles.

Q And told you that he was up to see you when? \*

MR. FIRESTONE: I object to that.

MR. WEIL: Why, he testified that the defendant was up in his place of business this morning, and told him that

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he was up there, before, when he was not in.

BY THE COURT:

Q Now, how long ago was it that you saw the defendant in your premises? A About two or three weeks ago, when he was up there with his wife.

BY MR. WEIL:

Q Didn't you testify that the last time he was up in your place of business was three or four months ago? A I never did.

Q And you then say that he came there this morning to see you? A Yes.

Q And at that time told you that he had been up to see you, later, and you were not in; is that right? A Yes.

Q Did he have any other business there with you, this morning? A No, sir.

Q Had he been to see you prior to this time on a social call? A No, sir.

Q On other occasions, he called to see you on business; is that correct? A Yes, sir.

Q Now, you say you have known him for about ten years? A Yes, sir.

Q And you met him for the first time in a business way? A Yes, in business only. I never had any other dealings with him.

Q You have met his wife? A Yes, for the first time.

Q Have you visited his home? A No, sir.

Q Or has he visited your home? A No, sir.

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Q Now, who do you know that knows him? A People that I have been connected with in a business way.

Q Give me some of the names. A S. A. Hartogensis.

Q What business is he in? A He was in the same business that I am in now; in fact, we bought his place over, took his place over. I used to work for the same firm.

Q And you know that he knows him? A He used to deal with him.

Q Now, did you ever discuss this defendant's reputation with Mr. Hartogensis? A I had no occasion for it.

Q You never had any occasion to discuss it? A No, sir.

Q Now, who else do you know that knows the defendant?  
A Well, his three sons.

Q Whose sons? A Mr. Hartogensis' three sons.

Q Well, did you ever discuss the defendant's reputation for honesty with the three sons of Mr. Hartogensis? A I never did.

Q Who else do you know that knows the defendant? A Nobody.

Q So that, as matter of fact, you have never discussed the defendant's reputation for honesty with any person; have you?  
A I did not.

REDIRECT EXAMINATION BY MR. FIRESTONE:

Q When you say that you have never discussed it, you have never had occasion to discuss it, especially for honesty, but in general talks, you have talked with the people about whether he is a good, decent man or not, haven't you?

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MR. WEIL: I object to that as immaterial, irrelevant and incompetent, and upon the further ground, if your Honor please, that it is leading.

THE COURT: Well, it is not in the correct form; I sustain the objection.

BY MR. FIRESTONE:

Q You stated that you have not discussed his honesty, and have had no occasion to discuss it. Did you talk in a general way about his character?

(Objected to. Overruled.)

A As I mentioned before, I never had occasion to talk about him in that respect.

Q Well, in a general way did you talk about it? A Well, we knew he was a very industrious man, and ambitious.

MR. WEIL: I object to that, if your Honor please, and move to strike out the answer as not responsive.

THE COURT: Strike it out. It is not responsive.

BY MR. FIRESTONE:

Q You personally delivered -- did business with him?

A I did.

Q And you delivered merchandise to him for the purpose of having work done on that merchandise? A Yes.

Q And do you know of others that also delivered merchandise to him?

MR. WEIL: I object to that as immaterial, irrelevant

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and incompetent.

THE COURT: Sustained.

MR. FIRESTONE: I respectfully except.

Q Now, this morning when he came to you, did he deliver anything to you? A He did not.

Q I mean, did he give you any paper? A Yes.

Q Now, when you said he delivered nothing, do you mean that no merchandise was delivered to you, but he gave you a paper?

A Yes.

Q And that was a subpoena? A Yes.

Q And that's what he came there for, to subpoena you?

A Yes, sir.

Q And when he told you that he was in at one time, and you were not in, you didn't know at what particular time he was there?

A I did not.

RECROSS EXAMINATION BY MR. WEIL:

Q Now, you say he was there two or three weeks ago?

A Yes, sir.

Q How do you fix the time? A Well, I am almost certain it wasn't this year. This is my recollection that helps me along.

BY THE COURT:

Q Was it three or four, or two or three weeks? A Two or three weeks, your Honor.

BY MR. WEIL:

Q Have you any idea of the date? A I have not.

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Q Can you fix the date any better than you have already fixed it? A I really cannot.

Q And you don't know what day of the week it was? A No, sir.

Q Or whether it was before or after Christmas? A I really couldn't recollect. It was of so little importance to me.

Q And when did he call at your place? A In the afternoon.

Q Would you say it was before or after three o'clock? A I couldn't say. I said between two and five, anyway.

Q Well, how do you know that? A Because it was in the afternoon, and I go to lunch at one o'clock and come back at two.

Q Do you know whether it was as early as two o'clock? A Well, I can certainly say it was after two o'clock.

Q And you don't know what became of him after he left your place? A No, sir.

Q And how long was he there? A About ten minutes.

Q Alone? A With his wife.

Q Upon that occasion he was with his wife? A Yes, sir.

BY MR. FIRESTONE:

Q And on one other occasion, that is, on a number of other occasions, he was there with his wife? A Yes, sir.

BY THE COURT:

Q Has the defendant ever sold any goods to you? A He did.

Q What did he sell you? A Merchandise.

Q What merchandise? A Metal fobs and charms. He chiefly done the plating.

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Q But what goods has he sold you? A Fobs and charms and swivels and chains, which we handle with fobs.

Q Do you do a general jewelry business? A No, sir. Leather bracelets and woven chains usually.

Q Well, when was the last time he ever sold you a bill of goods? A At least six or seven years ago.

Q Six or seven years ago? A Yes, sir.

Q Nothing since then? A No, sir; nothing since then.

Q Have you seen him since? A Yes, I did.

Q Just once, or often? A Several times.

Q Where did you see him? A I met him in the street and he was up in my place.

Q What is that? A He was in my place.

Q He was in your place? A Yes, sir.

Q What was he doing there? A Just come up, and spoke over matters, business matters.

Q What business matters? A About plating, suggesting that I should put in a plating plant, to do the plating in my place.

Q Did he offer you any goods for sale then? A No, sir.

Q And you say that it was six or seven years ago that you had your last business transaction with him? A Approximately.

Q And have you had any business transaction with him since?  
A No, sir.

Q Has anybody connected with your firm had any, so far as you know? A No, your Honor.

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BY MR. WEIL:

Q Do you know a man named LaFrano? A I do not.

Q Or any name similar to that, or that sounds like that?

A No, sir.

Q Do you deal in kid gloves? A No, sir.

Q And you never had any at all? A Never did.

Q You know all about this man's family, do you not? You know his family relations, do you not? A No, I don't.

Q May I have you state again when was the last time you saw him at your place of business, prior to two or three weeks ago? Now, what was the time before that? A When I met him, that was on Broadway.

Q And you met him on the street? A Yes, sir.

Q And that was on Broadway? A Yes, sir.

Q How long ago was that? A Several months ago.

Q About three or four months ago? A Yes, sir; about that.

Q And when was the last time that you saw him at your place of business before that? A Oh, at least <sup>a year</sup> and a half or two years ago, I believe.

BY MR. FIRESTONE:

Q You told the Court that when he came up there on different occasions, he discussed about your putting in a plating plant? A Yes, sir.

Q Now, did he at that time, or during the conversation, suggest that he take charge of it? A He suggested to help me

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along in putting it in.

Q He offered to help you along with it, and then take care of it? A No, to help along in putting it in.

MR. WEIL: Yes. The witness didn't say that he suggested taking care of it.

MR. FIRESTONE: That is all.

M A X S C H N E I D E R, of 1038 Tiffany Street, Bronx, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FIRESTONE:

Q Mr. Schneider, where is your place of business? A 20 West 17th Street.

Q And what is the firm name? A Schneider Brothers.

Q Speak up louder. A Schneider Brothers.

Q And what is your business? A Manufacturers of cloaks and suits.

Q And how long have you been at that place? A Since June, 1911.

Q Since June, 1911? A Yes.

Q In the same line? A Yes.

Q And the same firm? A Yes.

Q Were you in business before that in any other place?

A No, sir.

Q Now, do you know Mr. Schafman, the defendant? A Yes, I do.

Q How long have you known him? A For about six years.

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Q Do you know what his business has been for the last five years? A Yes, sir.

Q What was it? A He has been a sort of a pedler, like, in merchandise. He used to come up and buy small bills, on cash sales, and many times he used to send me up customers, and receive a commission for it.

Q And do you know other people that know him? A Yes, I do.

Q And have you discussed his reputation as to character with other people? A I beg your pardon?

Q Have you talked about whether his character is good or bad with other people? A Yes, I have.

Q And what is his reputation among other people? A Very good.

Q As to truth and veracity? A Yes, sir.

CROSS EXAMINATION BY MR. WEILL:

Q When was the last time that you saw this defendant, Mr. Schneider? A The last time?

Q Yes? A Why, I saw him about the middle of December.

Q The middle of December? A Yes.

Q Where? A He was up at my place of business.

Q At what time? A Some time in the afternoon.

Q Was he alone or was anyone with him? A He was alone.

Q His wife was not with him? A His wife?

Q Yes? A No, sir.

Q And you say it was some time in the afternoon? A Yes.

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Q When was the -- was that the last time you saw him?

A What is that?

Q (Question repeated)? A Well, he was also up yesterday afternoon.

Q Yes. And served/<sup>you</sup>with a subpoena? A Yes.

Q And did he talk to you at that time? A He simply told me that he was in -- that he was charged with some case, and I was surprised to hear it.

Q Never mind whether you were surprised or not. He told you that he was charged with some crime? A Yes.

Q Did he tell you what it was all about? A Yes, he told me.

Q And did he remind you of the time that he was there at your place of business? A Remind me about what?

Q Did he remind you of the fact that he was at your place of business in the middle of December? A Did he remind me?

Q Yes? A No, sir; he didn't.

Q Well, how do you recall then that he was up in your place about the middle of November? A Well, he was up to buy some merchandise from me, that is, if I had anything to clean out, some samples or anything. That's what he used to buy from me all the time.

Q No. Not all the time. I want to know what he was doing up there in the middle of December.

MR. FIRESTONE: I object to that. I don't think the District Attorney should characterize the evidence, or

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characterize the nature of his visits.

MR. WEIL: No, I didn't characterize at all.

THE COURT: The District Attorney is correct in requiring an answer to his question.

BY THE COURT:

Q Now, did he buy anything on that occasion? A No, sir; I didn't have anything to sell him.

BY MR. WEIL:

Q Never mind why. You didn't sell him anything, did you?

A No, sir.

Q And how long have you known the defendant? A About six years.

Q A friend of his? A No, sir.

Q Did you ever visit him in his home? A No, sir.

Q Did he ever visit you at your home? A At my home?

Q Yes? A No, sir.

Q Don't repeat the question, please.

MR. FIRESTONE: Why, I don't think he is repeating unnecessarily. He is a careful witness, I believe, and wants to understand the questions.

BY MR. WEIL:

Q Now, give me the names of persons that know the defendant and that you know. A Schafman Brothers.

Q Are they relatives of his? A I don't know.

Q The defendant's name is Schafman, isn't it? A Yes, the

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defendant's name is Schafman.

Q Where are they in business? A 34 West 17th, a few doors away from me. 34 West 17th Street. I believe that's the number, and they are close to my place of business.

Q And you know them very well? A Yes.

Q Who else do you know that knows the defendant? A Cohen Brothers.

Q Where are they? A On 24th Street. They also manufacture cloaks and suits.

Q What is the name? A Cohen Brothers, I think it is. I am most sure that it is.

Q And did you ever discuss the defendant's reputation for honesty with any of these people? A Yes, I did; with Schafman Brothers I did.

Q What was the condition -- what was the occasion, rather, for your discussing this man's reputation for honesty with these people? A Because the very first time he came up to buy merchandise from me, he referred me to them.

Q To whom? A To Schafman Brothers.

Q And to who else? A And this Cohen Brothers, I believe.

Q He referred you to Schafman Brothers and Cohen Brothers?  
A Yes.

Q And you discussed his reputation at the time? A I didn't call up Cohen Brothers, but I called up Schafman Brothers, and spoke to Mr. Schafman personally.

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Q And didn't you know or didn't you find out that they were relatives of his? A No, sir.

Q And weren't you interested in knowing whether the reference you were getting came from relatives of the defendant or not? A Well, I didn't go any further, because I knew them very well.

Q Well, but didn't you inquire whether they were related to the man who was trying to get credit from you? A No, sir; I didn't.

Q And you don't know now whether they are related to him? A No, sir.

Q Who did you speak to in that firm? A Mr. Isidor Schafman, one of the firm. I rang him up.

Q What did you ask him? A I asked him whether the reference given by Alfred Schafman is all right; whether he bought merchandise from him, and what he knows as to his business and all that, and he gave me a very good reference. But whenever he bought merchandise from me, it wasn't really any necessity of calling up a reference, because he paid cash.

Q Then why did you call up any reference, when he paid cash? A Well, I just wanted to know who I am dealing with.

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Q Well, did you ever extend him any line of credit? A Well, once he owed me about sixty dollars.

Q Did you ever extend this man any credit, and have an entry made in your ledger, of the business transaction with him? A I did.

Q And will your books show a credit extended to him? A Cash sale account.

Q (Question repeated) A Yes, it was balanced up afterwards.

Q Can you bring that book down here between now and two o'clock?  
A No, I can't. OK

Q Why not? A Because I had to attend to other business.

Q Well, if you are required by the Court, can you? Are you quite sure that you have such a book, and can produce it?

MR. FIRESTONE: I object to that as immaterial, irrelevant and incompetent. This gentleman is not on trial here. Now, he hasn't fixed the time, and he doesn't show whether they still have those books there now or not.

BY THE COURT

Q When was this transaction? A That was, I believe, November, 1911.

BY MR. WEIL:

Q 1911? A Yes.

Q Seven years ago? A No, sir.

Q Six years ago? A It was about six years ago. I met Mr. Schafman just about three months after I was in business.

Q How did you come to meet him? A By him coming up for some merchandise to me.

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Q At that time was he dealing in cloaks and suits? A As far as I knew, he was dealing in all lines.

Q What? A (Answer repeated).

Q At that time? A Yes, sir.

Q Did you ever know him to be in any other line of business?

A No, sir.

Q Did you ever know him to be in the electroplating business?

A No, sir.

REDIRECT EXAMINATION BY MR. FIRESTONE:

Q You only knew him about five or six years; don't you?

A Yes.

Q And what he bought from you always were samples? A Yes, samples.

Q That was left over after the season? A Yes.

BY THE COURT:

Q What kind of samples? A Discards, anything that we couldn't sell.

BY MR. FIRESTONE:

Q In what line of merchandise? A Suits or coats, ladies suits or coats.

BY THE COURT:

Q Anything else? A No, sir, that is all we had.

Q When was the last time that you ever sold him anything?

A It was in the year 1917.

Q What did you sell him then? A I sold him a few goods, coats, but I can't recollect just what date.

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Q Was it in December? A No, sir, not in December.

Q November? A I believe I did sell him some in November.

Q You believe you did? A Yes.

Q What did you sell him? A Some few coats.

Q What were they? A Fall coats.

Q What were they? A Some sample goods.

Q Well, that is what I want you to tell me, what they were.

How many? A About five of them.

Q About five? Don't you know how many? Did you conduct the transaction personally? A Yes, sir.

Q Then, don't you know what you told him? A Yes, I do, but I never keep track of just how many coats we sell, because we have so many customers coming in, and there may be a little lot there, and we sell them to anyone who comes in for cash, and I don't think it was more than five coats that I sold him at the time.

Q How much did he pay you for them? A He paid me twelve dollars a piece.

Q For what? A For one coat, for each coat.

Q What for? A Coats.

Q Well, there are all sorts of coats. What kind of coats were they? A Different styles of coats. They weren't all the same style. There were probably two or three different styles, all discarded coats.

Q Discarded coats? A Yes, that we couldn't sell to the regular trade.

Q What were they, what material? A Velours, velours cloth.

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Q What color were they? A What color?

Q Yes. A Well, one was Navy, and there were two blacks, and there was one brown. I don't remember what the other color was. It must have been a green, I guess.

Q You think one of them was green? A Yes, sir. I never recollect the colors what I sold him. That is pretty hard to remember, your Honor.

Q Do you remember how many there were? A Five coats.

Q Now, you say that there were five? A Yes, sir.

Q You are sure of that? A Yes, sir; because he paid me sixty dollars cash. I remember that plainly.

Q Did you ever buy anything from him? A No, sir.

Q What did he have for sale? Do you know? You say that he was in the general peddling business? A He used to handle cloaks and suits, and underwear, I believe, ladies underwear, handkerchiefs; that is about all that I know.

Q How do you know that? A Because he told me.

Q That is what he told you? A Yes, sir.

Q Did you ever buy anything from him? A No, sir.

Q Did you ever see him have any merchandise in his possession? A No, sir, not when he was up in my place.

Q Did he ever have any samples with him? A He used to come around with a coat, sometimes. I never saw him handle any other line, with the exceptions of what he told me he did.

Q When was the last time that you sold him before November?

A I think he was up in the middle of September.

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And I sold him some stuff.

Q Did you do it personally? A Yes, sir.

Q What was it? A Some suits, discarded suits, because that was the beginning of the Fall, and we made suits first, and then whatever sells we keep on the line, and whatever don't sell we sell them out, and get rid of them, and, later on in the fall, we made coats, and when the cold weather comes along.

Q And how much was that transaction? A It was less than fifty dollars.

Q How much was it? A Just about three suits it was.

Q How much? A Fifteen dollars a piece.

Q Cash? A Yes, sir.

Q Forty-five dollars? A Yes, sir.

Q Now, what was the sale before that? A I can't recall of every sale, your Honor, unless I looked it up in the books.

Q How many sales did you make? A Quite a good many. Every time he used to come in, he bought three or four or five garments.

Q And paid cash? A Yes, sir.

Q And you entered that cash sale in the books? A Yes, sir.

Q Under his name? A No, sir. There is a sundry account which we keep, and every time we get a cash sale, we just put it into that ledger, simply charge it to cash, and it is credited to cash.

Q Have you any book that will show any transaction with the defendant? A No, sir, with the exception of the cash sale account.

Q Now, if there was a cash sale of forty-five dollars in November, would it appear under there in his name, in the book?  
A No, sir, only as cash.



And, when it is turned in, in the sales book, it reads so many suits or coats, that is all. It is a sundry account into which every cash sale is entered, because, if ever a person that comes in and buys for cash a single article, had an account opened in his name, it would require too much work, to enter that sale under the name of the person who bought the garment. For instance, a girl comes in and buys a suit for herself as a favor, and if we opened this account, we would have too many accounts to keep. They are what we call transients.

BY MR. WEIL:

Q But this man was not a transient customer here? A No, sir.

Q He was a steady customer? A Yes, sir.

Q You did business with him in almost every month of the year for six years, didn't you? A Yes.

Q And you claim that to be a transient custom? A Certainly I do. I can show you cash sales accounts that occurred when we first went into business, lots of them. Very, very seldom do we ever --

Q Then, very well. Now just answer my question.

MR. FIRESTONE: I object to this interruption, if your Honor please. I submit that the witness should be allowed to complete his answer, before another question is put.

MR. WEIL: I consider my question answered.

Q Now you say that the defendant's name doesn't appear anywhere on your books? A Yes.

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Q Despite the fact that he owed you at one time sixty dollars? A Yes.

Q And his name doesn't appear anywhere as owing you that money? A No, sir, it was only a cash sale.

REDIRECT EXAMINATION BY MR. FORESTONE:

Q How much business do you do during the year? A About one hundred and twenty-five thousand dollars.

Q How many coats do you sell during the year, about?

MR. WEIL: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

Q About how many? A I couldn't answer that question.

Q Give us your rough estimate. In the thousands? A Certainly.

Q And how many suits do you sell? In the thousands? A Exactly.

Q And you had -- when you stated to the Court discarded coats, you didn't mean that they had been worn and been discarded? A Oh, no, sir.

Q You mean that they were discarded as a number, that you would not use that number any longer; were not making up any more coats like that? A Yes.

Q And these coats were samples? A Yes, discarded samples.

Q And the same thing with the suits? A Yes.

Q And what he brought there was not one hundredth part of one percent of what you sell; was it?

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

BY THE COURT:

Q Do you know whether it was one hundredth part of one percent? A Well, I would have to figure it out.

MR. FIRESTONE: Well, the jury will understand that I am only attempting to illustrate the smallness of the account.

MR. WEIL: Well, are you going to sum up now?

BY MR. FIRESTONE:

Q As far as his dealings were concerned, you sold him only samples, for cash? A Yes.

Q You never had any running account with him? A No, sir.

Q And on this occasion when he owed you sixty dollars, you didn't open any account with him for that? A No, sir, he came in and paid it in a few days.

BY MR. WEIL:

Q Do you know a man named Lafrano? A No, I don't. And please don't holler at me.

Q I have to, because you don't appear to have good hearing, because you repeat my questions? A Yes, I am perfectly healthy.

Q And what are you doing now? Sparring for wind, so that you must repeat my question? A No, of course not.

THE FOREMAN OF THE JURY: Your Honor, there being so much talk about cash transaction that don't appear on the books, the names to whom they were sold, these cloaks and coats, I think that I have the wish of my fellow jurors with me, to say that we would like to have his books subpoena

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ed here, when he says that he has no books showing cash transactions. I would like to say that, if I am in order.

THE COURT: Yes, you are entirely in order. If you wish to see his books, you can see them. I questioned the witness, and it appears that his books only show a payment of forty-five dollars, but not the name of the defendant.

THE FOREMAN: I know, but I am not satisfied, if your Honor please, with the statement that no names appear on the books, as to goods sold, for cash, or cash purchases, because I believe that any house who does a large business, if properly conducted, shows the number and style of the articles sold for cash, and the name of the buyer, so that if the purchaser comes back in a few days, to have any change made, or anything of the sort, his name will appear, and the transaction will appear on the books.

BY MR. FIRESTONE:

Q Just explain your method or process of doing business?

A Well, he just pays it and it goes into the sales ledger as cash. I don't sell him regular goods, only discards.

BY THE COURT:

Q No names appear in your books then? A Just a few, your Honor, as I told you before.

Q Is this defendant's name in your books? A No, sir.

THE COURT: Very well. When you may bring your cash book and ledger, at two o'clock. Any other books wanted by the Jury?

THE FOREMAN: No, sir.

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MR. FIRESTONE: Your Honor, just a moment, while you are asking him to bring those books. I will ask him to bring whatever books that will show his cash transactions.

THE WITNESS: That is the sales book and the sales ledger.

BY MR. FIRESTONE:

Q Whatever books you have that will show sales, either for cash or otherwise? A Very well.

Q The foreman wants to know how you conduct your business, as I understand?

THE FOREMAN: No, no. I am a business man all my life, and I don't see how anybody can come into court, and testify to that.

THE COURT: Well, you have asked the question, Mr. Foreman, and I have directed the witness to produce his books at two o'clock.

MR. FIRESTONE: Yes, produce your books at two o'clock, in accordance with the Court's order, please.

THE WITNESS: Yes; just two books?

MR. FIRESTONE: Yes, that is as I understand. Bring any books, that will show your method of doing business in regard to cash sales.

EDWARD FEINER, of 81 West 124th Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FIRESTONE:

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Q Mr. Feiner, what is your business? A I am a jeweler. 73

Q Manufacturer of jewelry? A No. I buy and sell diamonds and jewelry.

Q Do you know the defendant? A I do.

Q Do you know his business, what his business is? A Well, I have known him to be a general salesman.

Q By that you mean, selling to -- A Selling merchandise.

Q Selling merchandise to different people? A Yes, sir.

Q What is commonly known as a custom peddler? A Yes.

Q And do you know other people who know him? A I do.

Q And do you know his general reputation amongst people that know him, for honesty, truthfulness and character? A I do.

Q In his character good or bad? A Good.

Q You have talked to other people about him, in a general way, have you not, as to his character, etc.? A Yes.

Q And you have heard them express an opinion? A Yes.

Q And that opinion was good or bad? A Good.

Q Now, you have sold him merchandise occasionally, haven't you? A I sold him a bill of goods between the 18th and 22nd of November of last year.

Q And you have sold him at other times? A Yes.

Q And you sell jewelry and diamonds, and things of that kind? A That is my business.

Q And that is what you sold him? A Yes.

Q Watches, etc? A I sold him two watches; a gold watch, the same day that I sold him a filled watch; and I asked him what was

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the idea of buying two watches at one time, and he said that the octagon watch --- as we call it --- that I sold him would be for holiday use, and the filled watch would be to use every day.

Q Did he ever sell you any goods? A No, sir, but I knew that he was a salesman, and I knew that he was connected with selling cloaks and suits and shirtwaits, and things of that sort, from other people that knew him.

CROSS EXAMINATION BY MR. WEIL:

Q What is your business, sir? A Jewelry.

Q And where is your place of business? A 81 East 124th.

Q And you also live there? A Yes.

Q Married man? A Yes.

Q Living with your family? A Yes.

Q And how long have you known the defendant? A About four or five years.

Q Have you known him only in a business way, or socially, also?  
A I have known him in both ways.

Q Have you ever been out with him? A No, but I see him around, now and then.

Q Have you visited him at his home? A Yes, two or three times.

Q And he has visited you at your home? A No.

Q Do you know his wife? A I have met her. I understand that he has been married only lately. I have met her.

Q Now, when was the last time that you saw him? A I see him nearly every minute in the day, every day.

Q Business visits, or what? A No, just passing by.

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And saying "hello".

Q And where do you see him every day? A In my neighborhood, Lenox Avenue and 124th Street, and around that neighborhood, when I would be running around, and would meet him.

Q Did you see him this morning, before you came to court?  
A No, he subpoenaed me last night.

Q Where? A On Lenox Avenue, between 116th and 117th Street.

Q And, as a matter of fact, you play cards with him, don't you?  
A I don't play cards.

Q You go out with him to the theatre? A No, sir, I don't.

MR. FIRESTONE: If your Honorplease, I don't think that question was fair, as to playing cards with him.

THE COURT: Overruled. It is cross examination.

MR. FIRESTONE: Exception.

BY MR. WEIL:

Q Now, Mr. Feiner, you say you sold him a bill of goods between the 18th and the 22nd of November? A Yes, sir.

Q What did you sell him? A Fourteen carat octagon watch, and a filled watch, both Elgin make.

Q Well, you say that you were surprised that he bought two watches? A I wasn't surprised, but I asked him what was the idea.

Q And you knew that he was buying them to sell to other people, didn't you? A No, sir, he said that he bought them for his own use. He said that he had no watch at the time, and he said before that, "Some time I will come over and give you a call for a watch."

Q Did you sell him those articles on credit? A No, sir, for

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cash. Certainly for cash.

Q And you say that you have discussed his reputation for honesty? A Yes.

Q With whom? A Well, I said that I have spoken to a number of people about it, and they don't say anything against him at any time. When I got the subpoena, last night, I said, "It is a strange thing that Schafman is arrested for larceny."

Q To whom did you say that? A In a public cafe, with a lot of men around.

Q Now, give me the name and address of any person who was present then? A I can't give you the address.

Q Then how do you know that they knew him? A Because I have seen Mr. Schafman in their company.

Q You know them, too? A Yes, from visiting this place.

Q Well, give me the name of one? A Just a moment, and I will try to give you the name of someone that knows him.

Q No. That you met in the cafe, last night? A Well, I don't know these people that I sat with, I don't know them by name.

Q Now, please tell me the name of any other people who know him, other than those that you met in the cafe, whose names you don't know? A Well, the reason that I am hesitating to give you any names, is that I don't know those people by name.

Q You know people with whom you have discussed this defendant's reputation for honesty, and who you say know the defendant, and you don't know the name of a single one of those persons? A I do not.

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REDIRECT EXAMINATION BY MR. FIRESTONE:

Q Now, this public cafe that you are talking about is not a place where they sell liquor, is it? A No, it is a restaurant.

Q It is a restaurant where they sell coffee and cake? A Yes, it is a lunch room.

Q You mean a restaurant? A Yes. That is all it is. You can't buy any beer or wine or nothing.

MR. WEIL: That is unfortunate for you.

MR. FIRESTONE: Now my friend interrupts again, and he is trying to make too much of this public cafe.

THE COURT: Proceed.

BY MR. FIRESTONE:

Q And you see the people that go in there every evening?

A Yes.

Q And they come there with their wives and children, don't they?

MR. WEIL: I object to that, if your Honor please, because counsel is testifying. The witness isn't testifying to that.

THE COURT: Sustained. It is leading.

BY MR. FIRESTONE:

Q Well, do they come there with their families?

MR. WEIL: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Suppose that they do come there with all their families, including the babies. He says it is a place where they go to buy coffee, and cake.

MR. FIRESTONE: That is all, your Honor.

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BY THE COURT:

Q Now, one moment. you are in the general jewelry business?

A Yes, sir.

Q Have you got a pawnbroker's license? A I am not a pawnbroker.

Q You are not a pawnbroker? A No, sir.

Q Do you manufacture? A No, sir.

Q And, in addition to this sale of these two watches that you have mentioned, what other goods have you sold the defendant?

A I have sold him a little stickpin, and a pair of gold cuff links.

Q When? A Perhaps six or seven months from the time that I sold him the watches.

Q But he was never a salesman for you? A Oh, no.

Q And, as far as you know, these were merely personal purchases for his own use? A He did buy them for his own use.

Q What were the circumstances under which you say that you went to his house? A Why, he phoned, one day, and he said, "If you come over to the house, I might be able to talk to you about a square watch," and he said to come after supper, about seven o'clock, and I went to see him, and he asked me to give him a price on an octagon watch.

And I said, "forty-nine dollars." And he said, "Is that the best that you can do?" And I said, "Yes."

And he asked me if I had one with me, and I took it out of the white bag in which jewelers keep watches to prevent their being scratched, and showed it to him.

Q Have you always visited him on business? A Yes, sir.

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Q Now, what was the business on the other occasion, if there was another occasion? A I sold him a pair of cuff links, and also a stick pin.

Q And how many times have you been to his house all told?  
A Probably three times.

Q How long have you known him? A About four or five years.

Q Do you know whether he ever had any place of business?  
A No, sir.

RECROSS EXAMINATION BY MR. WEIL:

Q Do you remember seeing him on the 18th day of December, 1917? You say that you saw him every day? A December or November?

Q December? A December?

Q Yes. A I can't say yes or no to that. I am not sure.

Q When did you learn that the defendant was under arrest?  
A About a week ago.

Q And how did you learn that? A Why, I met him in this restaurant. And the reason I visited this restaurant -- if you will allow me to tell you, I will tell you.

Q Oh, it is a respectable place, I assume? A And I met him in there, and he said, "I got myself into trouble over nothing," and I said, "How is that?" and he said, "somebody stole something," and he said he happened to pass by, and he was arrested with some man, and I said, "What do you mean, that you got into trouble about nothing," and he told me what I said before, and I laughed at him, and went over to get my lunch in another part

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of the place.

Q Why did you laugh at him? A Because I never heard before of a person getting himself into trouble about nothing.

MR. FIRESTONE: If your Honor please, is there any reason why these business men should be kept here, when they want to go back to their business, these witnesses who have testified? They understand that they are being detained in court.

THE COURT: No. They may be excused.

A L F R E D S C H A F M A N, of 161 Manhattan Avenue, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FIRESTONE:

Q Mr. Schafman, how old are you? A Forty-three.

Q Where were you born? A United States.

Q What City? A New York.

Q And what school did you attend? A The Hebrew Orphan Asylum.

Q How old were you when you came out of the Orphan Asylum?

A About twenty-two or twenty-three.

Q And how long had you been at the Orphan Asylum, how many years? A About ten or eleven. I am not quite sure.

Q And when you first came out, what did you first do? A I went to work for a concern named the Speyer Plating Works, 118 Walker Street.

Q How long were you employed there? A Seven years.

Q Where did you go to work then? A Samuel Weiss, and Joe Langsman, 49 Crosby Street.

Q In what line? A Plating.

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Q How long? A About three years.

Q What did you do after that? A I took the concern over in my own name from Mr. Weiss, under the name of the French Electroplating Works.

Q And how long were you in business for yourself? A Five or six years.

Q And during the time that you were in that business, did you meet Mr. Bieber? A Yes.

Q And, after you got out of that business, what did you do? A I went in to custom peddling.

Q You had <sup>lost</sup> some money in the business? A Yes.

Q Were you ever arrested or tried for any crime in your life? A No, sir.

Q Do you remember this 18th day of December? A I do.

Q Do you know this man Lafrano, that they are talking about? A No, sir.

Q Did you ever meet him in your life before the time that you were arrested? A No, sir.

Q On that day, do you recall where you were during the afternoon? A I was downtown, around Canal Street.

Q Where? A Around Canal Street.

Q Where? A Going up on Broadway, 448 Broadway, the Eastern Merchandise Company.

Q You say that you went to what place on Broadway? A I was firstly uptown, with Schneider Brothers. It was about two o'clock - between two and three o'clock -- I am not sure.

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Q And then where did you go? A Right downtown.

Q To what place? A A hostery house here on Hester Street, -- or Howard Street, I think it is -- and Broadway, and then I went to another concern, Eastern Merchandise Company, of 448 Broadway, to see if there was any sale taking place.

Q And from there, where did you go? About what time did you leave there, the Eastern Merchandise Company, 448 Broadway?  
A About four or half past four. I am not sure.

Q Where did you go then? A I walked right uptown to 13th Street.

Q Intowhose place? A I was considering to go into Mr. Bieber's place, 58 West 13th Street.

BY THE COURT:

Q You say that you did not reach that place; do you? A Yes. I was on the corner. I was first going home on the subway.

Q Had you gone into that place? A Yes, sir, I was up at the place, the first floor.

BY MR. FIRESTONE:

Q And was Mr. Beeber in at the time? A No, sir.

Q Now, you purchased some waists that day, didn't you?  
A Yes.

Q Where did you buy them? A On Sixth Avenue.

Q Sixth Avenue and what? Near what street? A Between University Place and Fifth Avenue -- no, Fifth and Sixth Avenue.

Q On what street, do you recall? What street was it on that you bought the waists? A I don't know whether it was exactly 16th and 17th Street, or 15th and 16th Street. There are quite a few

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sales places there, along there, and I seen them hanging up on the wall, and I liked them, and I bought the waists.

Q When was that? A About three o'clock.

Q On the way down from Schneider Brothers, uptown?

A Yes.

Q And when you arrived at Mr. Bieber's place, and he wasn't in, did you leave there? A Yes.

Q Where did you go then? A I went right home.

Q You didn't reach home, though, did you? A No, I was on my way home.

Q Where did you come from to go home? A Mr. Bieber's place is situated on the downtown side of 13th Street, and the streets were rather crowded. There was a block of trucks and wagons, and I didn't want to go through the sidewalk, where the sidewalk was congested with cases, and so I crossed the street to the uptown side, and I crossed directly from Mr. Bieber's place.

Q And, after you crossed the street, where did you go?

A Then; towards Fifth Avenue.

Q For what purpose? A To go on the bus.

Q And to go where? A Home.

Q Now, tell us what happened before you reached Fifth Avenue?

A I couldn't very well cross University Place, as there was a big crowd there.

Q Yes. A And so I dodged about ten or fifteen feet from the corner, to cross over, and I had one foot on the sidewalk, and one foot on the gutter, and the street was very crowded.

THE COURT: The Grand Jury is coming in now, and that will be all

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until after recess. The witness may step down.

(The Court admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2.10 P. M.)

AFTER RECESS.

THE COURT: Proceed with the case on trial. Recall the witness, who was sent for his books.

MR. WEILL: Mr. Schneider?

THE COURT: Yes.

MAX SCHNEIDER, being recalled for further examination, testified as follows:

BY THE COURT:

Q What have you there? A The cash book and sales book.

Q Now, turn to your books for -- A Sundries account.

Q For November. Was that the month in which you said that you had a transaction with the defendant? A Yes, sir.

BY MR. WEILL:

Q You said the middle of December, didn't you, Mr. Schneider?

MR. FIRESTONE: Now, just a moment, Mr. Weill. Let the Court examine him.

BY THE COURT:

Q Now, in November, do you find any entry of any transaction with the defendant? A Simply cash sales accounts.

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Q And can you point out any transaction that you had with the defendant there? A There was one here of thirty-six dollars. There are quite a few you know, your Honor, but I don't know just which ones they are, because they are marked cash. Some have names, and some are marked cash, so I can't tell just the one which is his.

Q Now, can you turn to any month, and point out any transactions that you had with the defendant, that you know to have been a transaction between yourself and the defendant? A There is an amount of \$66.75. But they are all marked cash, and I can't tell about them.

Q What do these numbers mean (indicating)? A The folio number in the cash book.

Q Now, turn to the folio number in the cash book of that \$36 item which you spoke of? A November 7th, 1917, cash sales, \$36.

BY MR. FIRESTONE:

Q - What date was that, Mr. Schneider? A November 7th, it is dated here.

BY THE COURT:

Q Now, does that show what the goods were? A Yes, this one shows the cash that I collected, to enter in the sales book.

Q Now, does that show the goods? A Yes.

Q Where? A This book here shows the goods, the sales book and the cash book.

Q Now, what were the goods? A I don't know just which ones tally up with this amount. There is a lot of cash sales accounts, and I can't just tell which ones tally up. That is what I told you previously.

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Q What are these items here (indicating)? A These are sundry items.

Q With the names of customers? A No, sir. Just individuals that come in, like a girl that comes in for one suit.

Q Well, here I see B. and R. What does that mean? A Well, this is a cloak and suit house that comes in for an accommodation. This is the B. and R. Cloak and Suit Company.

BY MR. WELL:

Q Well, what account are you referring to? A That is the sundry account. (Indicating).

MR. FIRESTONE: Now, I think that he ought to let the witness answer your Honor fully, before he asks another question.

MR. WEILL: Will your Honor bear with me for a moment? This testimony is given in such a way that we have no record of what the witness is referring to. He said, "This" and that means nothing, and I ask him to refer to the page and the book.

BY THE COURT:

Q Well, what is that? A The B. and R. Cloak and Suit Company come in for an accommodation, occasionally, and ask for a suit, or something of the kind, and they pay for it, just to make up a complete out.

Q But what is there to show what the goods are? A Well, that is the sales book. You told me to bring the sales ledger and the cash book, which, your Honor, I did. I can easily point out on the sales book all these various numbers.

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Q But you have no name in any transaction with the defendant?

A No, sir.

BY MR. WEILL:

Q Now, referring to -- are these pages numbered? A Well, some of these are filled, and go out.

Q Now, I want a record of this. Is there any way in which I can get on the record what this book is? What is it, this book?

A The sales book.

Q Kept in your business? A Yes.

Q And I have here two pages, beginning with the date of November 13th, and headed, "Sundries"? A Yes.

Q And on that date is contained a list of cash sales made to customers, and the dates set opposite to the concern or the individual? A Yes.

Q Each one of these items refers to a cash sale; is that correct? A Yes.

Q So that every cash sale referred to on this page of your sales book also contains the name of a person or a concern with whom you did business? A Not all. Part. You will find plenty of cash sales simply marked cash, but no name.

Q Well, have you the names of some of the cash sales, the names of the persons with whom the cash sales were conducted, and not the others? A No, because I don't find any interest in taking the name.

Q Now, what interest did you find in taking the names of some of them? A If they give me their names, well and good. I don't make this a specialty, of selling retail. All these are retail

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customers.

Q Now, will you please answer my question? For instance, here the first item is the B. and R. Cloak Company, debit \$19.74. Now, does that mean a cash sale? A Yes.

Q And you received that money from that company? A Yes.

Q Now, the next item is Joe Grossman, \$17. That means the same thing, doesn't it? A Yes, a cash sale.

Q Now, in these instances, you say you took the name of the customer, because you knew their names, and for no other reason? A Yes.

Q Well, now, you knew the defendant's name, didn't you? A Yes, but he is only a peddler. He only comes in and gets goods, and I don't find any necessity of putting down his name.

Q Well, you had transactions every month of the year with him, for six years, didn't you? A Yes, probably he bought three times a month.

Q Now, in no instance did you have his name appear in your books anywhere? A No, sir.

MR. FIRESTONE: Now, Mr. Foreman, you ask for these books, and I am going to have the witness explain to you.

REDIRECT EXAMINATION BY MR. FIRESTONE:

Q Now, that sundries account shows the names of some of the persons who purchased goods? A Yes.

Q Now, that shows at least twenty-one items of cash, without any names, on these two pages? A Yes, sir.

Q Now, these books, are they books of account, or this particular book in question? A Well, I will have to look at it.

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Q Well, can you give us an idea? Is it one year or two years?

A 1916 and 1917.

Q Those pages referred to were not written for this case, for the purposes of this case? A No, sir.

Q And how much did the sales amount to in your firm? A About one hundred and twenty-five thousand dollars a year.

Q Now, does the cash book, and the folio numbers, refer to the folios in the cash book? A Yes.

Q Now, does the cash book --- and the folio numbers, refer to the folios in the cash book? A Yes.

Q When a man makes a purchase, you first entered in the cash book? A No, in the sales book, and that is transferred into the sales ledger.

Q And the only reason why you only brought these books was because the Court told you to bring only these two books? A Yes.

Q And the entries in the cash book would show what was sold, cloaks or suits or whatever it was? A Yes.

BY THE COURT:

Q But would show no names? A No, sir. Wherever it appears in the ledger, the word "cash", it would show cash in the ledger.

BY MR. FIRESTONE:

Q And it was a sale of something that was discarded; is that the idea? A Yes.

BY THE COURT:

Q Now, you say that you sold the defendant a bill for sixty dollars? A Yes.

Q Five coats? A Yes.

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Q Twelve dollars each? A Yes.

Q Show me that item in the books? A May 24th, that is the date. It is a different date. Sixty dollars. I can't just recollect what dates they were, but I have an item of sixty dollars.

Q Is that the only item of sixty dollars that you have?  
A Yes.

Q In May? A May 24th. And there is one in October, sixty dollars.

BY MR. WEIL:

Q Is there a name there? A No. All I find is "Cash \$60." on May 24th.

Q Do you know whether that is the item? A Yes, I think so, but I wasn't quite sure of the date.

BY MR. WEIL:

Q What did you say about the October item? A No, this is a different item.

Q Now, you claim that the sixty dollars in May is a cash sale to the defendant; do you not? A There is a sixty-four dollar cash sale.

Q Well, you know that that is not the item that you referred to, don't you? A It is a cash sale of \$66.75. I can't remember the dates or amounts exactly.

Q Now, you testified on the direct examination, or the cross examination, I don't remember which, that you sold the defendant five coats, for which he paid you sixty dollars? A Yes, sir.

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Q And you said that that transaction was some time in the middle of December of last year, or November of last year. Now, do you find any such item in your books?

MR. FIRESTONE: I object to that, if your Honor please, as a collateral issue entirely. We are going away into an absolutely collateral issue. This man has testified that he sold merchandise to this defendant, at different times, and he was asked to bring his books here, and he has done so, and he does a large business, and he is asked to remember particular dates in regard to transactions with this man, to whom he sold only discarded cloaks or suits, once or twice a month, and I submit that that is not a part of the issue here.

THE COURT: You called him, and went into the question, and the Foreman having asked for the production of his books, they were produced. You opened the door into this matter. However, if you don't want to have the same continued any further, I think it has gone far enough.

MR. FIRESTONE: I told him to bring the books, so that the jurors could see them.

THE COURT: Then that is all. Step down.

THE WITNESS: I can't recollect the particular month.

MR. WEIL: Well, in view of what has been said by counsel for the defendant, I desire it to appear on the record that he was not asked to remember anything. He was asked to testify and answer the questions.

THE WITNESS: Well, I have tried to remember the dates, but I can't.

THE COURT: That is all. Step down.

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ALFRED SCHAFMAN, the defendant, being recalled, and his direct examination being continued, testified as follows:

DIRECT EXAMINATION (Continued) BY MR. FIRESTONE:

Q I think that the last thing that you said was --

THE COURT: He said that he walked west to go home on 13th Street.

MR. FIRESTONE: Yes, that was it.

Q Now, what occurred after that? A I was on the way home, going west to Fifth Avenue, to go uptown, and as I proceeded, in the middle of the block on 13th Street, between University Place and Fifth Avenue, I had one foot on the sidewalk and one foot in the gutter, when of a sudden, I felt someone yank me at the shoulder (illustrating), and I turned around and realized it was an officer.

And I said, "What is this?" And he said, -- he answered me in a rough manner.

Q Well, what did he say? Can you recall? A Well, he used slang. I don't just remember what it was. And I said, "What is this? What's coming off here? Are you crazy, off your mind?"

And with that another officer come, and he give me over into his custody, and he yanked me so hard that I said, "This isn't necessary. I'll go with you, without your being so rough."

Q Did you ask him why you were arrested? A Yes, sir.

Q And he said, "You'll find out in the station house",

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did he? A Yes.

Q And after that you went to the station house with these two officers? A Yes.

Q Was anything said by you to them besides what you have said? A No, sir. When I got there to the station house, the first one I spoke to was the lieutenant. I gave him my name and address.

Q Did the officer, or any officer, say anything to you about your being charged with a crime of any kind? A I don't remember. I know I was under arrest. And he said, "You'll find out in the station house." That's all the words I remember him saying.

Q That's all that was said to you up to that time? A Yes; because I didn't want to say anything. I respected his uniform and so on, and I said, "All right. I'll go to the station house with you".

Q Now, as matter of fact, you have heard the colored gentleman, on the stand, Mr. Harleston, say that you were walking from -- you were at 16th Street and Union square, and that you were endeavoring to push a parcel into the box, or kind of shoving it in and out, that you were pulling it out and in. Were you at that corner at any time on that day? A I was at no time at Union Square.

Q That day? A That particular day, yes, or that hour.

Q And when you came to 13th Street, you were coming from downtown? A Yes, going up.

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Q And when you left 13th Street, you were going west on 13th Street? A Yes, going home.

Q Did you at any time take any parcel from anybody and carry it? A I didn't see anybody. I wasn't with anybody, and I didn't have anything in my hands.

Q You have stated that you have never been arrested in your life, and never have been in trouble in your life? A Yes.

MR. FIRESTONE: You may examine.

CROSS EXAMINATION BY MR. WEIL:

Q Now, Mr. Schafman, where did you live at the time of your arrest? A 161 Manhattan Avenue.

Q And how long have you lived at 161 Manhattan Avenue? A Six months.

Q Do you remember being asked by the clerk in the Magistrates Court your name? A Yes.

Q And you said Alfred Schafman? A Yes.

Q "How old are you? 43 years old". A Yes.

Q "Where were you born? In the United States". A Yes.

Q "Where do you live and how long have you lived there?" And your answer was, "506 West 135th Street"? A Yes.

Q Did you live there? A No, sir.

Q That was not your correct address? A No, sir.

Q And you knew at the time that you made that answer that it was not your correct address? A Yes.

Q And you were asked your business? A Yes.

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Q And you said salesman? A Yes.

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Q Is that correct? A Yes.

Q Were you a salesman? A Yes.

A Well, buying and selling goods.

Q But you were not a salesman for any person? You were your own boss? A I said general salesman to the lieutenant. That's the words I said to him.

Q Well, you were not employed by anybody? A No, sir; not particularly.

Q You were working for yourself, weren't you? A Yes, always for myself.

Q Now, you say you live at 161 Manhattan Avenue? A Yes.

Q Near what street is that? A 107th and 108th Street.

Q What time did you leave your home, that day, the 18th of December, 1917? A About eleven, between eleven and twelve.

Q In the morning? A Yes.

Q And where did you go to? A I went over to 117th Street and Lenox Avenue, to buy a pair of rubbers, between 116th and 117th Street, on Lenox Avenue, on the east side of the Street.

Q Yes. And from there/<sup>where</sup> did you go? A I went in and had lunch.

Q That was around noon time then? A Yes.

Q Around noon time you were in Harlem? A Yes, I was in 125th Street.

Q All right. Now, you had your lunch? A Yes, sir.

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Q And where did you go then? A Downtown, to Schneider Brothers.

Q To Schneider Brothers? A Yes, sir.

Q What time did you reach Schneider Brothers' place? A Around two or three o'clock.

Q Who did you see when you went there? A Mr. Schneider, Mr. Max Schneider.

Q The gentleman who was on the witness stand this morning? A Yes, sir.

Q And what did you do there? A I said I just came around to see if he had anything that he could dispose of, and he said not now, but he will let me know in a day or so.

Q And where did you go then? A I walked down Sixth Avenue from his place.

Q Where is his place of business? A 16th Street -- no, 30 West 17th Street. Schneider Brothers.

Q Yes. Near what avenue is that? A That's near Sixth Avenue.

Q Go on, please. And where did you go? A I went towards Sixth Avenue, down Sixth Avenue, and I was looking along the stores, and finally I seen a display of waists and furs.

Q And you bought two waists? A Yes.

Q Where did you buy them? A Either between 15th and 16th Street, or 16th and 17th.

Q From what concern? A There is no concern. There is

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displays there on the walls in halls. They sell cheap goods, dresses, petticoats and waists.

Q And where did you go then? A I walked on to 14th Street and Sixth Avenue, and I took the car.

Q What car? A The 14th Street.

Q Going east or west? A Going east. And transferred to Broadway, going down.

Q Yes. A And I went down with the intention of buying hosiery, at Howard Street and Broadway.

Q That's near Canal Street, isn't it? A Well, there is a little street between.

Q Well, it's about a block away from Canal Street? A Yes. But this place is on the southwest corner of Howard Street.

Q What is the name of the house that you went to? A I could not think now of the name, but it is a hosiery house.

Q Had you ever been there before? A Yes, I have bought goods there.

Q And you don't know the name of the place? A Well, I can't just think of it. It's a Russian name.

Q And you know that that concern is there, do you?

A Why, sure. And I didn't like anything there. They were all seconds and I couldn't use them.

Q Whom did you see when you went into the place of business of that firm? A Some man working in there, a young fellow there. I don't know his name, but I could point him out if I saw

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him again, and I was through there, and then I went up Broadway.

Q When did you get finished there, about what time?

A About a quarter to four, around four o'clock.

Q Then where did you go? A I stopped into 448 Broadway, the Eastern merchandise Company.

Q Where is that? A Between Grand and Howard.

Q Yes. What sort of a concern is that? A That's a commission house, auction rooms.

Q What did you do there? A I went in there and asked for Mr. Bierbaum.

Q Did you see him? A He wasn't in. The other gentleman in there told me that he had left and he didn't know when he would come back, and I asked him when his next sale took place, and he said the following day, meaning Thursday.

Q Meaning Thursday? A Well, a week from the time that I was there before. I was going to buy ladies' apparel.

Q Did he say Thursday? A I don't remember the day exactly. I am not sure of the day. And I was through there when I couldn't see Mr. Bierbaum, and then I walked up Broadway.

Q Do you know the day of the week you were arrested? A Yes, Tuesday.

Q Go on. A And I walked up as far as 13th Street, and I reminded myself of this concern.

Q Did you walk up Broadway? A Yes.

Q On what side of the way? A I walked up as far as

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Houston Street on the east side, and then I crossed over and walked on the west side, going uptown.

Q And you reached 13th Street and Broadway? A Yes.

Q At what time? A About half past four or so. I had no time with me, and so I wasn't sure of the time.

Q Now, go on. A At the corner I paused and I reminded myself of this concern, Wolf & Bieber, 58 East 13th Street.

Q And between what avenues is that? A That's between Broadway and University Place.

Q And is that west or east of Broadway? A East.

Q Go on. A No, that's west of Broadway. The street starts right there.

Q Don't you know whether or not it is east or west of Broadway? A It's right near Broadway.

Q Well, you went to Bieber's place, didn't you? A Yes.

Q Well, where is it? East or west of Broadway? A West of Broadway.

Q All right. Go on. You went in there? A I went upstairs.

Q What floor are they on? A First floor, turning to the left.

Q And did you walk up? A Yes.

Q And whom did you see? A I went in there, and there is a sort of a long hall that leads to the private office, and then you have to turn to the right. Well, I didn't go in all the

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way, that day, and I called out, "Is Mr. Bieber in?" And somebody inside of the shop said he wasn't in, and the bell was ringing in the shop.

I had no particular reason to go in, but I went in, because he had promised me that he would give me an opportunity in a plating establishment, and he didn't know exactly what it would be, and I said I would drop in any time I was in the neighborhood, and I did.

Q And then you went where? A Down to the street.

Q And in what direction did you walk? A I didn't walk in no direction, but I stopped and watched the crowd in the street, trucks and other things.

Q And how long did you stand there? A About ten minutes.

Q Did you stand still all that time? A No, sir; I didn't stand still. I didn't cross right away, because it was sloppy and muddy, and I finally crossed the street to the uptown side, and when the street was clear, I finally crossed at University Place, and in the middle of the block I was arrested.

Q Do you know Schafman Brothers? A Yes.

Q Are they related to you? A Yes.

Q What relation are they? A Cousin. I didn't refer to them. I never go near them.

Q Do you mean to say that you didn't give them as a reference?

A No, sir. I want to deal with all strange people.

Q And when Mr. Schneider testified that you gave them

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as reference, he was mistaken? A Oh, I mentioned their name to him, but he never asked me about them. I mentioned them myself. I mean in regard to this case, I didn't refer to them.

Q Did you ever give Schafman Brothers as a reference?

A No, sir.

Q To any concern that you intended to do business with, or did business with? A No, sir; never.

Q So that when Mr. Schneider said that you gave Schafman Brothers as reference, he is mistaken? A I don't know whether he is or not, but I mentioned their name to him, just offhand.

Q Aren't they your cousins? A Yes. But I don't remember that I told them that I was their cousin, first off, when I began to deal with him.

Q When did you tell him? A I don't remember if I did or not. I didn't have no occasion to.

Q How about Cohen Brothers? Did you ever give them as reference? A Yes.

Q To whom? A I didn't give them as reference exactly. I represented them when I went up to certain places to buy things, to manufacturers.

Q You have always paid cash for anything you bought? A Yes.

Q And it wasn't necessary for you to give a reference to anybody? A I occasionally got ten days, that's all.

Q From whom? A From Margolies & Wolfberg.

Q Where are they? A They are in the same building with the

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Mirror Building, on Sixth Avenue and 20th Street.

Q When did they give you credit? A Well, I haven't dealt with that concern now in two years.

Q Two years ago? A Yes.

Q And has anybody else given you any credit in the past year or two?

(Objected to.)

A Not necessarily.

MR. FIRESTONE: That, is objected to, if your honor please.

MR. WEIL: I will withdraw the question.

Q Now, what did you mean when you said to the officer, "What's coming off here?" A Because I was astonished to see the commotion, and me being yanked the way I was by the officer. I said, to the officer, "What's the trouble? What's the matter?"

Q But did you say, "What coming off here?" A Well, I am not sure of the words. I was excited then. I never was arrested that way, and was never accosted that way.

Q You are not excited now? A Absolutely not.

Q And you know what you are saying? A Yes.

Q Well then, didn't you say in your direct examination that you said to the officer, "What's coming off here?" A I said to the officer, "What's the matter? What's the trouble?" And when I realized it was an officer had me under arrest, and he had hold of my shoulder, and he said I would find out in the station house,

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I respected his uniform, and he gave me to another officer.

Q Do you remember that you just testified that you said, "What's coming off here?" A Well, I was so excited that I can't be sure of the exact words.

Q You knew that you had done nothing wrong? A Yes, absolutely nothing. But I didn't want him to hold me by the arm and jostle me the way he did. And I said to the other officer, when he grabbed my arm, "Now, don't jerk me that way, because I'll go along with you."

Q Well, what did you say to the other officer, who first grasped you? A "What's the trouble? What's the matter? What's coming off here?"

Q Did you explain anything to the officer, where you had been and what you were doing in that street? A No, sir; I didn't think it was absolutely necessary to do so; no, sir.

Q Well, what did you say to him at the time of the arrest? Tell us that exactly.

(Objected to. Question withdrawn.)

A He didn't hold me one minute, then.

Q Now, you say the other man who was placed under arrest at the same time you were? A After I was yanked. First he was grabbed.

Q Well, you were right together, weren't you? A No, sir.

Q How far apart were you? A I had one foot in the gutter and the other foot on the sidewalk, and the street was crowded.

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I couldn't go one way or the other, because the street was crowded, and before I knew what was what I was yanked by the shoulder, and the other man was three or four feet from me.

Q In what direction? A Goings towards Fifth Avenue.

Q A head of you or beside you? A Three or four feet away from me, in front of me.

Q And you say there were other people there at the time?

A Yes, sir.

Q And the officer took hold of you with one hand? A Yes, he made one grab for him, and the colored man who was there said, "There he is", and he made one leap for me (illustrating), and I tried to jerk off, and he said -- I said, "This isn't necessary. I'll go with you without yanking me that way".

Q Weren't you arrested first? A No, sir.

Q Didn't you say that you were? A No. I didn't say that. I said the officer grabbed him first. He was about three feet ahead of me.

Q And the same officer that arrested him extended his hand and caught you? A Yes.

Q And you were about three feet behind him? A Yes, about that.

Q Did you see a bundle there at the time you were placed under arrest? A Not just at that particular minute, but when I realized I was under arrest, I noticed what it was.

Q Didn't you have a bundle with you? A No, sir.

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Q What became of the two waists that you bought on Sixth Avenue? A I had them in my pocket, wrapped in tissue paper.

Q Where are they? A The officer took them from me in the station house.

Q In which pocket did you have them? A In my inside coat pocket (indicating).

Q Your inside coat pocket? A I don't know if I had the two of them in that pocket.

BY THE COURT:

Q Did you have on that same suit of clothes that you are wearing? A I think that I had, sir. And I had my black overcoat on, and has a slide pocket on the side.

Q And was it in your coat pocket or your overcoat pocket? A Both were in your overcoat pocket, I believe.

Q Both the waists were in your overcoat pocket? A Yes, in tissue paper; one in the inside pocket and the other in this pocket (indicating the right hand outside coat pocket).

BY MR. WEIL:

Q Why did you put in your inside pocket and the other in your outside pocket? A Well, I didn't want to crease them up. They were white crepe de chine, and I didn't want to crush them up.

Q Have you an office for the transaction of your business? A No, sir.

Q Have you had an office during the last two years? A No, sir.

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Q Who do you live with? A My wife.

Q How long were you married? A Five years.

Q Five years? A Yes.

Q You heard a witness testify here that --

MR. FIRESTONE: I object.

MR. WEIL: I withdraw the question.

Q Now, you know Mr. Feiner, a witness in this case? A Yes.

Q And you have done business with him? A A little.

Q Did you buy two watches from him? A Yes.

Q When? A In November.

Q What kind of watches were there? A One was an Octagon watch, and the other was a sort of a round watch, a big one.

Q Now, do you remember buying five coats, or five cloaks, or five suits from Mr. Schneider? A Yes.

Q When? A I bought at different times goods there.

Q When did you buy a bill of goods, consisting of five suits, or coats, or cloaks? A I don't know whether it was the early part of June or the latter part of May that I bought a bill of goods from him. And I bought, a week after that -- I met him on the street and I said, "Max, have you anything in view?" And he said, "I think I've got some things that you can use".

And I said, "How much?" And he said, "I'll give you them cheap".

And I went down that afternoon, and he was busy with his books, and he excused himself, and I let it go for a week or so,

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and he brought me up the two garments in person.

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Q Now, did you buy any cash goods from him in the month of November, 1917? A I bought something from him in November, but I don't remember how much. I think it was either two coats, or a coat and a suit.

Q What did you pay for them? A I guess the bill was thirty or thirty-five dollars.

Q Well, is all this guesswork, or do you know? A Well, I don't know, because I buy small things, and I don't keep no book or inventory, because it's my business only.

Q Did you ever get a bill from Schneider? A No, sir; he may have given me a bill once, but I tore it up.

Q And he may have given you a hundred dollar bill, and you may have torn it up? Do you remember whether he did or not?

A I couldn't say. I have bills from other concerns, but none from him.

Q Did you ever get a bill for the merchandise you bought from Feiner? A Yes.

Q Where is it?

MR. FIRESTONE: Here it is, Mr. Weil.

BY MR. WEIL:

Q But you didn't get any bill for the merchandise that you bought from Schneider? A I don't remember. I don't think I ever got a bill, but if I did, that's about three or four years ago, because every time I come in I am rushed, and have no time to

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spare. In the station house I asked the lieutenant for my jewelry, and he wouldn't give it to me, and I got a bill for the jewelry afterwards.

Q In other words, you didn't have this bill until after you were arrested, for the watches you purchased? A Yes.

Q And so the bill wasn't given to you when you bought the merchandise? A When I bought the merchandise, I didn't get that bill; no, sir.

REDIRECT EXAMINATION BY MR. FIRESTONE:

Q When you say you didn't refer to Schafman Brothers, in answer to Mr. Weil's question, you mean that you didn't have them come here as character witnesses for you? A Yes.

Q And I told you not to bring any relatives down here, didn't I, as character witnesses? A Yes.

Q And that's the reason why you didn't bring down any relatives? A Yes.

RECROSS EXAMINATION BY MR. WEIL:

Q But you also said that you didn't refer to them in giving a reference? A Yes, I never did.

Q You know, as a business man, that when you buy for cash, it isn't necessary to give references, A Yes.

Q And you know that your money is better than any reference; don't you? A Yes. And I absolutely always pay cash.

MR. WEIL: That's all.

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BY THE COURT:

Q One moment. You saw this colored man on the stand here?

A Yes.

Q Did you see him when you were arrested? A Not just at that particular minutes, but when I got to myself, and I seen what was coming off there, and I wasarrested, I noticed the colored gentleman. He was about ten foot away all the time.

Q What was the name of the man that was arrested with you?

A I don't know.

Q Don't you know his name now? A I learned it in the station house.

Q You have seen him over in the Tombs? A No, sir.

Q You have never seen him in the Tombs? A No, sir. That is, I have seen him here, the last couple of days.

Q That's what I mean. Or have you been on bail all the time?

A Yes, sir; I've been on bail.

Q Now, when was the first time you saw him? A In the station house in Mercer Street; that is, before we went to Mercer Street, on 13th Street, where we were arrested.

Q You saw him for the first time on 13th Street? A Yes, sir.

Q When you were arrested? A Yes, sir.

Q What was he carrying, if anything? A One package, different parcels together, wrapped up together, tied together.

Q Did they have any outside wrapper around them? A I can't say. I think they were all loose packages, tied with one string



around them, when I seen them in the station house.

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Q Well, you saw them on the street, didn't you? A Yes.

Q Now, I am asking you this: when the officer arrested you, you say the other man had a package? A Yes.

Q What was the color of it? A It looked like manila paper.

Q Now, what was it? One paper around the whole thing?

A No, sir.

Q Well, just describe it. A There were six or seven packages, put in together, and tied around with a string, half twine like.

Q These packages were separately wrapped up, do you say?

A Well, each package had cord around each one, and then they were all tied together with cord.

Q Was there any address on the packages? A That I couldn't say.

Q Now, how large was all the packages together? A From what I noticed of it in the station house, it was about that big and that high and that wide(illustrating).

Q Now, did you lift it? A No, sir.

Q Did you carry it at any time? A No, sir.

Q Now, were these packages in boxes or paper? A I don't know. They were tied together. Each package was wrapped in separate paper, from what I seen in the station house, and all the seven or eight boxes that were there were wrapped with a string.

Q Well, you know what a shoe box looks like, don't you?

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A Yes.

Q And were these separate bundles wrapped in separate papers? A Well, the boxes were wrapped separately, yes.

Q They were boxes, were they? A They looked like boxes.

Q And did you ever see the contents of them? A No, sir.

Q Never found out what was in them? A No, sir.

Q Now, if I understand you, the same officer grabbed you and the other man at the same time? A Not exactly the same time, your Honor. But he made a leap for this man that was in front, and then the colored gentleman behind pointed me out from half a dozen men that were there, and he grabbed at me, and he was in a position like this (illustrating). He took me from the gutter -- I was in the gutter.

Q One foot in the gutter? A Both feet, when I was arrested. I was shoved off the sidewalk in the commotion.

Q And he grabbed the man with the package with one hand, and you with the other? A Yes, because I was keeping on going, and when I noticed the man get arrested, the officer asked a lieutenant, one of our army men, to please assist him in taking me to the station house, and then the other officer came.

Q Can you give me the names of some of your customers?

A Well, I don't exactly whether I can or not. I cater from one house to another house, like a pedler, canvassing.

Q Do you sell jewelry? A No, sir; occasionally, if I get it cheap enough.

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Q Handkerchiefs? A Yes, different merchandise that I can get up in the sales.

Q To whom do you sell? A Private people, from house to house, in club rooms, etc.

Q Where was the last place that you made a sale before your arrest? A Well, I sold along 145th Street, some houses there, 445 or 446, and I have sold goods all along Broadway to people that I knew by sight only.

Q Now, give us the name of any person that you sold anything to in the month of December. A There is Mrs. Steiner and Mrs. Levine and Mrs. Cohen.

Q And where is Mrs. Levine? Is it Miss or Mrs.? A Mrs. Levine.

Q Where does she reside? Did you sell to her at her home? A No, sir; I used to meet them in the restaurant, where I go in frequently, and they asked me if I have anything to sell, and if I have, I sell it to them.

Q What was the last article that you sold? What was the character of it? A I sold some waists.

Q Is that the last thing you sold? A I sold some waists. Jewelry I haven't sold at all.

Q What was the last article that you sold before your arrest? A I sold about half a dozen waists that I had.

Q Was that the last thing that you sold before your arrest? A Yes, waists.

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Q On what day did you sell those? A Oh, about the 14th or 15th.

Q Four or five days before your arrest? A It was Thursday, Friday and Saturday, like.

Q What was? A Prior to the 18th.

Q No. When was the last sale you made? A I sold waists for the last three days before my arrest, and the last sale was made to Mrs. Cohen, whose husband kept the cigar store in Lenox Avenue, between 116th and 117th Street.

Q Is it on the corner? A No, it is not. I presume it is a door or so from the corner, next to the furniture store. I sold her two waists, and I sold to Mrs. Fishbein a waist, and her daughter a waist, the same day.

Q Where did you get those waists? A At auction, at a sale on Broadway.

Q What auction? A The Eastern Merchandise Company.

Q About three weeks ago -- that is, three weeks before my arrest.

Q Now, did you do any business with any houses, any business houses at all? A Well, I used to go into a lot of houses, where they used to put ads in the paper of odds and ends, and if I didn't like it I didn't buy it. I went up to the Saratoga Waist Company, and they were supposed to clear out 25 dozen waists, and I was to get an answer by phone as to my price, the price I offered, and they didn't accept my price, but they wanted

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25 or 50 cents more on the dozen, and I didn't think it was worth while, and I didn't buy them. And I went to different concerns in that line, and if I couldn't get anything cheap enough, I didn't buy it.

Q Where did you sell? A To private people, from house to house. I was always peddling for the last five years, in and out of town.

Q Where out of town? A Norwalk, Connecticut, and other towns in Connecticut; Cleveland, Boston, Cincinnati, wherever I would desire to go. The concern that I bought a considerable lot of goods from isn't in business today, Samuel Fischer. I could show by them that I paid cash always for goods, and I bought four or five hundred dollars at a time.

Q Is he dead? A I don't know. I don't know what has become of them. I haven't heard from them. And there was a Mr. Abrahams also, but I don't know anything about these people now, but I was away and lost sight of them.

Q When was the last time you were away, out of town? A I came back last April. I was away January, February and March and came back in April.

Q And have you been here ever since? A Yes. I came back the early part of May, I believe it was, from Wheeling, West Virginia, and I had a promise of business here.

Q Who do you live with? A My wife.

Q Have you any children? A I have one from my first wife.

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I didn't think it was necessary to mention that.

Q This is your second wife? A Yes, sir. I am divorced, six years ago.

THE COURT: Any other questions?

MR. FIRESTONE: That's all.

THE COURT: The next witness.

HERMAN COHN, of 303 Ditmars Avenue, Brooklyn,  
a witness called on behalf of the defense, being duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. FIRESTONE:

Q What is your business, Mr. Cohn? A Cloaks and suits.

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

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

Q Do you know other people that know him? A Well, not in business. Friends.

Q Friends? A Yes, sir.

Q Do you know what his reputation is for truth and veracity and honesty amongst his friends? A Yes.

Q Is it good or bad? A As far as I know it's good.

CROSS EXAMINATION BY MR. WEIL:

Q Mr. Cohn, you say that you are in the cloak and suit business? A Yes, sir.

Q Have you been in business with this defendant? A Why, just a small business.

Q Have you sold him anything? A Why, private trade.

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Q Did you sell him anything? A Not exactly to him, but some of his friends that he has brought around.

Q I didn't ask you that. I asked you if you had sold him anything. A No, sir; not to him.

Q Did you ever sell him anything? A No, sir.

Q Now, you say you know some of his friends. Who do you know that are friends of this defendant? Give me the names of anyone that you know as a friend of the defendant. A Well, I can't just remember them right now. I have known some of the people that he is associated with in Harlem.

Q Give me the name of one of them. A I can't think of their names now, because I haven't been there for three or four years.

Q You haven't seen any of his friends for two or three years? A No, sir.

Q Well, you have testified here under oath that you have discussed this man's reputation, and said that he bears a good reputation for honesty and veracity among his friends, and you now say that you have not seen any of his friends for two or three years. When did you discuss his reputation for honesty and veracity and respectability? A During the time that I came in contact with his friends, and with him, and I don't remember even his name, the name of the gentleman.

Q What gentleman? A The defendant's name. I haven't seen him enough for the last two or three years.

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Q You don't remember the defendant's name? A No, sir.

THE COURT: That will do. You are excused. That is sufficient, when the witness doesn't even know his name.

MR. FIRESTONE: But he knows the defendant, and his friends, and has seen them.

THE COURT: No. It is a waste of the Court's time to call a witness who does not even know the defendant's name. We will call another witness.

MR. FIRESTONE: If your Honor please, he says that he knows the man, but he don't remember the defendant's name at the time, until the matter was called to his attention, and I think we have the right to ask him what he meant when he said he didn't remember the name.

THE COURT: Well, bring him back.

MR. FIRESTONE: I only want to be fair in the matter. I have never seen the man in my life, and I don't know anything about him.

THE COURT: That is the trouble. You should have seen him before you put him on the stand. No lawyer should put a witness on the stand unless he knows what he is going to testify to.

MR. FIRESTONE: But not a character witness, I think.

THE COURT: Now, proceed.

REDIRECT EXAMINATION BY MR. FIRESTONE:

Q You know that is now standing up (indicating the de-

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fendant)? A Yes, sir.

Q And do you know his name? A Yes, sir.

Q And, when you said you didn't even know his name, you meant that you had forgotten his name since you had last seen him?

A Yes.

BY THE COURT:

Q And do you know anything about him for the last three years? A Yes, sir.

Q You do? A Yes, sir. The gentleman has come up to my place of business. I happened to meet him, and he said he was selling cloaks and suits, and he asked me whether I had any jobs occasionally to sell, and I told him yes, samples and so on, etc. And he said, if he ever brought a lady around, a lady friend of his up to sell her anything, would I sell to her, and charge five or ten dollars more, and split the difference with him, and I said I would.

Q And he was to find someone who would come up and pay the five or ten dollars more than the manufacturer's price; is that it, so that you could split the difference between you two?

A Yes, sir.

BY MR. FIRESTONE:

Q But that was five or ten dollars more than the manufacturer's price, wasn't it? A Yes, sir.

MR. FIRESTONE: That is the defendant's case.

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## REBUTTAL:

WILLIAM H. HARLESTON, being recalled by the District Attorney, testified as follows:

## DIRECT EXAMINATION BY MR. WEIL:

Q Now, Mr. Harleston, will you be good enough to tell us how the package in question was wrapped up?

MR. FIRESTONE: Just a moment. I object to any description of the package, as the evidence is that the package is in possession of the Police Department, and can be produced in Court.

MR. WEIL: It will be produced.

(Overruled. Exception.)

## BY MR. WEIL:

Q Now, please tell me how the package was wrapped up? A There were six packages done up separately, with the name of the firm on them, and where they were addressed to, and they were wrapped up altogether in manila paper, and tied up together -- all six packages -- and you wouldn't know whether there were six or seven or eight packages, until they were opened. They were all in one particular bundle.

## BY THE COURT:

Q With the wrapper around them? A Yes, sir.

## BY MR. WEIL:

Q Were they in boxes or in paper, the individual packages?

A In individual boxes.

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Q And how many boxes were there? A Six boxes, if I remember rightly.

Q But you are not sure of that? A No, sir; I can't say whether there was six or seven.

Q But, in any event, the individual packages were not exposed, and could not be counted exactly, and you couldn't tell how many there were, until the outside wrapper was removed?

A Yes, sir.

Q And when you say this package, it was one large package?

A Yes, sir; one large package.

Q Now, you were present when the defendant was placed under arrest, weren't you? A Yes, sir.

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Q And he was placed under arrest at your -- A At my behest. I caused him to be arrested.

Q Now, just tell the position of the defendant and the man Lafrano when they were arrested? A The defendant and the other man were walking side by side. The package was next to the wall (illustrating).

Q Now, wait a minute. When you say side by side, you have already said that no one was separating them? A Yes, they were knocking arms.

Q Or brushing arms? We will say that? A Yes, sir.

Q And the package was on the left side of Lafrano, and he was walking on the other side of him, and, when the policeman came, he took both men together, arrested both of them at the same time (illustrating).

Q Did he have to reach over any other person to take the defendant at the bar into custody? A No, sir, because there weren't very many people on 13th Street at the time, and, if the officer was here, he would state that.

Q Now, how close was any person to the two defendants, when they were arrested? Was anybody near them? A No, sir, no one at all.

Q About about how far away would you say the nearest person was, when they were placed under arrest? A I was the nearest person to them, the policeman and I.

Q And, other than the policeman and yourself, there was no one between them when they were arrested? A No, sir.

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Q Or in front of them? A I didn't see any one.

Q Or in the rear of them? A I didn't look behind to see who was in the rear of them.

Q Or, on either side of them? A There was nobody there at all. There were people on the other side of the street, possibly, but I wasn't interested in those.

Q Now, did you see the defendants in conversation at any time? A Yes, they were talking all the time that I had them under observation.

Q And you saw them go to the box together? A Yes, sir.

Q And continue together? A Yes.

Q Until they were arrested? A Yes.

MR. FIRESTONE: Need we go all over this again, your Honor?

MR. WEIL: It is rebuttal, if your Honor please.

THE COURT: No. I don't think it is necessary to go over it again.

CROSS EXAMINATION BY MR. FIRESTONE:

Q Now, did you hear them talking together? A I didn't hear the conversation, but I seen the men together.

Q (Question repeated) A Certainly I heard the two men.

Q Speaking together? A Yes.

Q And you were ten feet away? A Yes, I was possibly ten feet away.

Q Why did you say that you didn't see them talk? Didn't you start to say that? A I said that I didn't hear the conversation. That is what I began to say.

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Q Now, this package was wrapped up in colored paper? A In manilla paper.

Q In manilla paper? A Yes.

Q Well, did the cord around it go two days, or just once around? A I won't swear whether it was once around, or all around it, but the cord was around the manilla paper. That is what I know.

Q And the package was wrapped up in one large sheet of manilla paper? A Yes.

Q Are you sure of it? A Yes, I am sure it was one large sheet of manilla paper.

Q Wrapped around this package? A Yes.

Q Now, listen to me a minute, and see whether I am mistaken in hearing you correctly. Didn't you say there were six packages done up separately, and addressed to separate individuals? A There were six packages done up separately.

Q Addressed to six different individuals, separate individuals? A Yes, they were addressed to separate individuals.

Q And do you mean to tell the jury that those six packages that were on this box for the purpose of mailing, addressed to six different individuals, were wrapped up in one bundle, with manilla paper around it?

THE WITNESS: Judge, your Honor, I may say this, the receiving clerk of the department that they had been sent to is here in court.

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

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THE COURT: Yes, strike it out.

BY THE COURT:

Q He wants to know whether the Manilla paper was around the whole lot, or whether they were separately wrapped up?

A The Manilla paper is around the whole lot of them.

BY MR. FIRESTONE:

Q The individual packages were addressed to separate persons. Now, did you see the addresses? A I saw them at the station house, when they were taken out.

Q And were they addressed to different places? A Yes, they were addressed to different places.

Q And different cities? A Yes.

Q And all those packages were packed in one package when it was on the letter box? A When it was on the letter box.

Q Wrapped up in manilla paper? A Yes, sir.

REDIRECT EXAMINATION BY MR. WEILL:

Q Was there any address on the manilla paper? A I didn't see any address on it at all. Those packages were to be sent to the Post Office.

Q Were there any postage stamps? A Yes, on the individual packages.

Q The postage stamps were on the individual packages?

A Yes.

Q So that it would be necessary to open the large package to see the addresses on the individual packages?

(Objected to.)

Q Were there any stamps on the outer Manilla paper?

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A No, sir.

RE CROSS EXAMINATION BY MR. FIRESTONE:

Q Now, then, you say, you swear, that there were no postage stamps on the outside manilla paper? A Why, certainly not. If there were any, they would be addressed to one individual. I am here as an American citizen, and I am here to tell the truth, and that is all, and I would do it, if it were my own brother.

MR. WEIL: Now, if your Honor please, the People rest, with the exception of the package, and I have sent to Police Headquarters to have the package brought here, and, if your Honor will take a recess for a few minutes, I think we will have the package here.

THE CAPTAIN: I think the witness is outside, the witness with the package, is outside of the court room now, your Honor.

THE COURT: Very well. But you should have the property in any case that you try in court before you begin the case.

MR. WEIL: It was subpoenaed with the officer, sir, and I supposed of course it would be here. I am just informed that the Police Department will not delivery that property to any one but the policeman who made the arrest, on an order of the Court, and the officer is on sick leave, and, under the circumstances, may I ask your Honor to issue such an order.

THE COURT: Very well. And you may have it here on Monday morning.

(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 Monday Morning, January 14th, 1918. at 2 P.M.)

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