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CASE

New York January 17, 1910

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COURT OF GENERAL SESSIONS OF THE PEACE CITY AND COUNTY OF NEW YORK. PART II.
THE PEOPLE OF THE STATE OF NEW YORK

-against-

CARMELO GERVASI impleaded with FRANCESCO GAGLTO, GUISEPPI La GUTTUTO and ANTONIO LOPEZ
BEFORE: HON. WARREN W. FOSTER, Judged and a Jury.

New York January 17, 1910.

Indicted for burglary in the third degree, grand larceny in the second degree, and receiving.

Indictment filed November 24, 1909.

Appearances:

For People. Isidor Wasservogel, Esq., Assistant District
Attorney, and E. Channing Press, Esq.,

Deputy Assistant District Attorney.

For Defendant: A. J. Oshei, Esq.

A Jury is duly empanelled and sworn.

(The Court now declares a recess until 2:10 P. M. first duly admonishing the Jury as usual)

After Recess.

TRIAL RESUMED.

MR. OSHEI: I would like to know which indictment the District Attorney wishes to proceed on in this mat-

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ter.

THE COURT; Well, he will tell you that.

MR. OSHEI: There seems to be two here. They are all growing out of the same transaction.

THE COURT: Mr. District Attorney what is the number of the indictment which you are going to try?

MR. PRESS: 508.

Mr. Press now opens to the Jury on behalf of the People.

MR. OSHEI: Before we proceed with the trial of this case I ask to exclude all the witnesses.

THE COURT: Yes.

(Witnesses excluded)

CHRISTIAN BEHLMER, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your address?

A 53 Third Avenue.

Q What is your business?

A Truckman.

Q On the 18th of October 1909 did you own a steel gray horse?

A I did.

Q Had you been using it during that day?

A Yes sir.

Q In the evening did you take him to the stable?

A I

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did.

Q What hour did you go to the stable?

A Between five and six.

Q Where is the stable?

A 429 East 13th Street.

Q Owned by whom?

A Why, the stable is run by Mrs. McGlynn.

Q Is that in the County of New York?

A Yes sir.

Q You say you stabled it?

A Yes sir.

Q And closed the stable?

MR. OSHEI: As to that I object.

Q Well, what did you do?

A I put him in the stable and I can't say I closed it or not; that I won't Bay.

Q Well, did you fasten the horse in any way?

A Yes sir. He had a halter on him, fastened in his stall. I only have one horse and one stall.

Q Describe that horse?

A Well, he is a steel gray---black gray like, very stoutly built and got one eye partly blind---the left eye.

Q Do you know the value of that horse?

A Yes sir.

Q What is the value of that horse?

A Well, I paid \$225. for it a year ago. I have got the bill in my pocket now if any one wants to see it.

Q The next morning did you go to that stable?

A Yes sir.

Q Did you find your horse there?

A No sir, I did not.

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Q Did you get any information at all as to where he was?

A No, I didn't find anything out. I simply went to the landlady---

MR. OSHEI: And to that I object.

Q The horse was not there?

A No sir.

Q Where did you see your horse next?

A Up in Poughkeepsie.

Q Where?

A Up there in a livery stable.

Q Do you know whose livery stable it was?

A Well, I know a Mr. Arnold or something.

Q Did you identify that horse as your horse?

A Yes sir.

Q Did you see this defendant there at all?

A Well, I seen three or four of them up there but I don't recognize any of them.

Q Did this defendant make any statement to you whatever?

A No sir.

MR. OSHEI: Objected to. The witness says he cannot identify the defendant here, and I object to the form of the question.

THE COURT: The question is allowed.

MR. OSHEI: Exception.

Q Did this defendant make any statement to you?

A No sir.

Q And that's all you know about it?

A That's all I

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know.

CROSS EXAMINATION BY MR. OSHEI:

Q Where you stabled these horses there were a number of other horses there?

A Yes, three more there, besides me and the other man.

Q And other people were stabling their horses there besides you?

A Yes sir.

Q And they could bring their horses in there at any time and put them in the stable?

A Oh yes. They perhaps had a key to their lock.

MR. OSHEI: I move to strike that out.

THE COURT: Yes.

Q At the time you brought your horse there it was between five and six in the evening?

A Yes sir.

Q And when you went out were the other horses in the stable? Or hadn't they been there yet?

A I couldn't say whether they were or not.

Q So if they had not been they it was necessary for them to come in there?

A Certainly.

Q When you went out you don't know whether that door was locked or unlocked?

A I do not.

Q And you don't know whether the stable door was open or closed?

A I couldn't say that, no sir.

GEORGE E. GADDIS, balled as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Where do you live?

A Poughkeepsie, New York.

Q What is your business?

A Night-watchman.

Q Were you employed as a night watchman on the 4th of November 1909?

A Yes sir.

Q By whom?

A By George R. Arnold.

Q Where is his place?

A 412 Main Street, Poughkeepsie, New York.

Q What business does he do there?

A Trucking, ice and coal.

Q Has he got a stable there?

A Yes sir.

Q Do you know this defendant?

A Yes sir.

Q Carmello Gervasi?

A Yes sir.

Q Where did you see him first?

A About one thirty in the morning of November 4th?

Q Where did you see him?

A At the stable.

Q In Poughkeepsie?

A Yes sir.

Q When you say the stable?

A You mean Mr. Arnold's stable in Poughkeepsie?

A Yes sir.

Q Was he accompanied by anyone?

A Yes sir, bu La Guttuto.

Q Had they any horses with them?

A They had two.

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Q Was one of those horses a gray horse?

A One was a gray and the other was a steel gray.

Q Were you present when the steel gray horse was identified by Christian Behlmer?

MR. OSHEI: I object to that as leading and improper.

Objection overruled. Exception.

A No, I wasn't present.

Q What did this defendant say to you on the morning of the 4th of November 1909 when he saw you at that stable?

A They asked me if I could---

MR; OSHEI: I object to "They asked me".

Q Who asked you?

A One of them, I couldn't say which one.

Q They were both together though?

A They were both together.

Q And the one could hear what the other said?

A Yes sir. They were both together, side by side.

MR. OSHEI: Objected to as improper.

THE COURT: I will receive it.

MR. OSHEI: Exception,

Q Now what was said to you?

MR. OSHEI: Of course your Honor will notice my objection unless the witness testifies as to which one spoke.

THE COURT: He testifies that this defendant and

another man was there, one of whom he could not say which said something to the other. Now, what it was we will hear.

MR. OSHEI: The other is not being tried now.

THE COURT: We want to hear what was said in the presence of this defendant.

OSHEI: Exception.

Q What was said?

A One of them said that they brought a couple of horses up from New York for a man by the name of Hoyt and they would like to stable those horses over night, and wanted to know if I could accommodate them with the room, and they said they would pay me whatever the expense was, and I kind of thought it over and I found we had a couple of empty stalls there and I told them yes, I would accommodate them and keep them over night. They brought them into the stable and said they would call for them about six or seven in the evening, and they went out very quick and I looked the horses over and I just passed the remarks, I says--

MR. OSHEI: Objected to.

Q Was it in the presence of this defendant?

A It was after they left.

Q Had you any further conversation with this defendant, or with his companion in his presence?

A Not until the next night, the night of the 4th, in the evening, I guess about 7 in the evening.

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Q And where did you see them?

A Up to Arnold's stable.

Q Was it this defendant who spoke to you or was it LaGuttuta?

A Both of them spoke to me that night.

Q Were they both together?

A Both together, yes sir.

Q At the same time?

A Yes sir.

Q Now state the conversation had between you and either this defendant or LaGuttuta at that time?

A Well, they came there and they said they came after the horses. I says "How is it you didn't come around this morning"? I thought you were coming around in the morning for the horses." Well, they kind of stuttered around and I didn't understand what they said whether they said anything at all about it or not, but they stuttered about something and I could not understand it, and they wanted to take the horses out and I said "You can't take the horses until you see the boss." They wanted to know how soon he would be there and I told them he would be there in a few minutes.

Well, the boss at the time was talking Chief McCabe---

MR. OSHEI: Objected to and I move to strike that out.

THE COURT: I do not see that that amounts to anything.

Q Just state what this defendant said to you and what you said to him, or what LaGuttuta in his presence said to you and what you said to him?

A After that there wasn't

anything said. A Little conversation there that didn't amount to anything about the horses, and they commenced to get a little anxious---they wanted to get the horses out and wanted to know why the boas wanted them to wait and I told them that I guess he wanted to buy the steel gray horse, that he was kind of stuck on the steel gray horse and wanted to buy him if the horse was for sale, and one of them said---I think it was LaGuttuta, I think was the one that said "Yes, the horses are for sale. That is what we brought them up here for to sell them." And in the morning they told me that they brought the horses up for a man by the name of Hoyt, and at night they told me they brought them up to sell, and they wanted to get them out. They said the boss could look at the horses the next day someplace else I forget where it was they said, but they said the boss could see the horses the next day, and I told them no, they couldn't take the horses, that they would have to leave them there until the boss seen them. And a few minutes after that the Chief of Police come in and the sergeant and Mr. Arnold, and then they went around and looked at the horses and had a talk about it and they told the sergeant then that the horses belonged to their uncle over in Highland. I was there and I heard the rest of the conversation but I wouldn't try to undertake to tell it, because I couldn't remember what was said after that.

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Q Is that all you can recollect as to what took place between you and this defendant?

A That was about all.

Q So you were present at the conversation had between the Chief of Police and this defendant LaGuttuta?

A Yes sir. Well, before that one and the other one in that stable.

Q One of what other men?

A One of the men working for George Arnold. He was there standing right along side of me and he asked them where they had the horses and if they had been worked and they told him yes they had been worked over in Highland all Summer on a dump wagon, both of them.

Q Anything else you can recollect?

A That's all, I guess.

CROSS EXAMINATION BY MR. OSHEI:

Q What is your business?

A Wight-watchman.

Q How long have you been a night watchman?

A Well; about a year and a half.

Q Up there in Poughkeepsie?

A Yes sir.

Q What were you before that?

A I was a machine hand, a machine operator.

Q Where did you work?

A A Separator.

Q Where did you work?

A Label separator, Poughkeepsie, New York.

Q How many times have you been a witness in Court?

A I

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have never been one.

Q You have never been a witness?

A No sir.

Q Weren't you a witness in 57th Street?

A Well yes, that is in this same case.

Q How many times have you been a witness?

A Yes, I was a witness up there in the same case, once.

Q Now you say when they came there in the morning they had the horses with them?

A Yes sir.

Q Aint it a fact that those horses came the next morning by boat?

A Those horses come to me at 1.30 in the morning, November 4th. I don't know what hour they come.

Q Isn't it a fact that those horses came by boat the next morning?

A I don't know anything about it. I only know about it from the time they got to me. I received the horses at 1:30 in the morning.

Q Now isn't it a fact---

A I don't know.

Q And that is about as true as anything else you have testified to?

A I don't know anything about the boat. I had nothing to do with the boat.

Q What day do you say those horses arrived there?

A They arrived on the 4th day of November, Thursday morning, the 4th day of November about 1:30 in the morning they came to me.

Q Nov did you stable horses there before?

A Once in a while. We don't make a practice of it.

Q And when they brought the horses there was there any wagon attached to them?

A No sir.

Q Was there a harness?

A No sir, Nothing only the bridles.

Q Was there anything strange about the horses?

A Well, no, not exactly. The only strange thing---

Q That is sufficient. Now this conversation that took place between you and this defendant and somebody else, was it carried on in English or carried on in Italian?

A In English.

Q There was no Italian used in their presence, was there?

A No. They both spoke English.

Q That is what you state they both spoke English?

A Yes sir they spoke good English.

Q You did not speak Italian at all?

A No sir.

Q Now when they came there they asked you to stable these horses? You took them to the stable?

A Yes sir.

Q And you told them the price for which you would stable them?

A No sir.

Q Didn't you tell them what price they were to be stables for?

A No sir. They said they would pay whatever the bill was.

Q Don't you know what your price for stabling is?

A No sir. The boss sets the price.

Q And you mean to say that you were working there for

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a year and a half and you don't know the price?

A Well I know the price. If they had asked me I would have told them a dollar a night.

Q Does that include feed?

A That includes feed?

A Yes sir.

Q They came back the next day for the horses, did they not?

A They came back the same day, at night.

Q Was there anything different about them saying they would come back in the morning and then coming back in the afternoon than anybody else that had ever stabled horses with you?

A Yes, a few, not a great many.

Q The people who stabled horses with you had told you they would be back at a certain hour and didn't come back at that hour?

A No, not with me. They have always been on time. They might have been a few minutes ahead of time but I never yet had anybody late.

Q How many horses have you stabled in the last year and a half?

A Well probably a dozen or so not much more than that.

Q Where do those people live?

A I don't know. I never asked them.

Q You never asked them?

A No.

Q You were subpoenaed to come down here, were you not?

A Yes sir.

Q You have been down here how many times?

A This

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makes six times.

Q Didn't you testify before the Magistrate's Court in answer to this question, "as follows:" Q Gervasi at the last moment said that the horses belonged to LaGuttuta?" And your answer was "Yes. Q Was that the last thing he said? A Yes sir". Did you so testify before the 57th Street Court?

A Yes, I just remember. That was after he said that the horses belonged to his uncle.

Q Did you or did you not testify?

A I did.

Q Testified to this?

A I did, yes.

Q Did you not there state before the Magistrate that Gervasi, the defendant here, at the last moment said the horses belonged to LaGuttuta?

A No.

Q You didn't so testify?

A LaGuttuta?

Q Did you or did you not so testify at 57th Street?

A No sir.

Q You did not?

A No sir, I can answer the question correctly.

Q You did not testify to this there "That was the last thing he said?" And that you answered in regard to that and you said "Yes sir." You did not so testify?

A No sir, not that way. You have got it turned around.

RE-DIRECT EXAMINATION BY MR. PRESS:

Q You were asked if there was anything strange about the

horses and you said "Hot exactly" and you proceeded to say something further. What was that?

MR. OSHEI: Objected to. Not in answer to my question.

MR. PRESS: It was the continuation of his answer but you stopped him.

THE COURT: I will allow him to answer.

MR. OSHEI: Exception.

A It was in the bridles. I noticed that the bridles had had the reins on and that the reins had been cut in two. There is an outside rein, it is a long rein the whole length from the bridle back to the driver. The inside of the reins from the bridle of the off side horse over to this long rein with a buckle on, and I noticed that the buckle had been cut off of the two inside reins and was on one horse, and the two outside reins had been cut in two and made into riding reins, and I noticed that the cuts was fresh cut. That was my suspicion on the start of the horses, and one of the bridles had the owner's---it had a monogram ----I wouldn't say the owner's but it had a monogram on the bridle os some man.

Q And that was what you considered strange?

A Yes sir.

RE-CROSS EXAMINATION BY MR. OSHEI:

Did you ever sell harness?

A No sir.

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Q Were you ever in the business of making harness?

A Well, I repair harness; I do harness work.

Q Were you ever in the business?

A Not in the business, no.

Q You mean to tell me you could tell what those lines belonged to by looking at them that way, whether that was a short line or a long line?

A Yes sir.

Q Did you take it with you?

A That what?

Q The line?

A What business would I have to take the lines? They didn't belong to me.

Q Then you are testifying to something you saw at that time?

A Yes sir.

Q But you didn't see the whole line entirely?

A I didn't see the whole line entirely no sir. I seen the part that was attached to the bridle.

Q It looked to you like a double harness?

A Double reins, yes sir.

Q Not a single rein?

A No sir, it was not.

Q And did you hear anything about a double harness?

A No sir.

Q You mean to tell me that you have not spoken to the chief of police or to the other witnesses or anybody else about a missing harness?

A No sir, I have not. That is an honest fact, I have not made a statement or have not had a conversation with one.

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Q But you seem to have taken a great Interest in regard to these horses that were brought in there?

A Well, I will tell you---

Q Did you or did you not?

A Yes, sir.

Q Hoy if you had not been suspicious of something you would not have done so, would you?

A I wouldn't take notice, no sir.

Q And you thought it was a proper thing to be a witness in a case of this kind?

A I didn't care about being a witness

Q Didn't you know if you went about it in the way you were going about it that you would be a witness if there was anything?

A Yes, sure.

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

DIRECT EXAMINATION BY MR. PRESS:

Q Where do you live?

A Poughkeepsie, New York.

Q What is your business?

A I am manager of a trucking company.

Q You had stables in Poughkeepsie?

A Yes sir.

Q At what address?

A 412 Main Street.

Q Do you see this defendant?

A Yes sir.

Q Carmello Gervasi, when did you see him?

A Why, about seven o'clock on the night of November 4th.

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Q Where did you see him?

A In our stables.

Q Had he another man with him?

A Yes sir.

Q Do you know his name?

A No sir.

Q Did you have any conversation with this defendant or with the other man who was with him in his presence at that time?

A No sir.

Q Had you a steel gray horse in your stable on that day?

A That didn't belong to us?

Q Yes?

A Yes sir.

Q Were you present afterwards when that horse was identified by Mr. Behlmer?

A Why not the first time when he came to the barn. They went in there several times afterwards and he told me of markings on the horse.

Q But you saw him identify the horse ultimately?

A Yes sir.

Q Were you present when the chief of police had a conversation with this defendant or with the man who accompanied this defendant?

A Yes sir.

Q Do you remember any of that conversation?

A Why, they said that these horses had been taken down from the other side of the river to New York to be sold and they did not get their price and were bringing them back again.

Q Did they say where they were taking those horses to?

A No, they did not, not in my presence.

Q Do you recollect anything else that was said while

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you were there?

A No, I do not. I didn't pay much attention to the conversation, but I remember those remarks.

Q The last witness George E. Gaddis is he in your employ?

A Yes sir.

Q And what?

A Night Stable man.

Q There were two horses, were there not?

A Yes sir.

Q And this steel gray horse was one of these horses?

A Yes sir.

Q Is that all you know about this case?

A Why, I think so. I know that the other horse was identified a little better, I thought, than the steel gray, because when he would call him by name the horse would turn around and look at him. If he was standing behind the other gentleman's horse he would turn around and recognize his name.

Q Both horses were brought in at the same time, were they not?

A I don't know that.

CROSS EXAMINATION BY MR. OSHEI:

Q What was said there at that time was that they could not get their price and they were bringing them back to New York, is that right?

A What is that again.

Q When the chief of Police was there they said that they could not get their price for the horses and they were bringing them back?

A That was one of the stories they told. They told other stories.

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Q That is the one you remember?

A Yes.

CHARLES J. McCABE, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Where do you live?

A Poughkeepsie; New York.

Q What is your business?

A Chief of police, Poughkeepsie, New York.

Q When did you first see this defendant?

A On the night of the 4th of November 1909.

Q Where?

A At Mr. Arnold's Stables, in Main Street.

Q You were there as the result of a communication, did you not?

A Yes sir.

Q Had you a conversation with this defendant while at the stable?

A Yes sir.

Q Had he any company there with him?

A Yes sir.

Q Who was with him?

A Joseph LaGuttuta.

Q And this conversation that took place took place when both of them were together, did it not?

A Yes sir.

Q Now will you kindly state to the Court and Jury Just what you said to either this man or LaGuttuta, to this defendant or to LaGuttuta and what either of them said to you?

A Yes sir.

Q In the presence of each other?

A Yes sir. We had

a call from Mr. Arnold, and I went up there, sergeant Sheedy and I and Gervasi and LaGuttuta was in the barn and I asked them who owned the horses and LaGuttuta said that his uncle owned the horses and that he lived in Highland opposite Poughkeepsie, and that he brought the horses down to New York to see them and that he could not get money enough for them and he was bringing them back to his uncle at Highland, and I asked Gervasi if that was so and he said "Yes, that was so" because he knew his uncle in Highland and had been over on his uncle's farm there and knew that LeGuttuta was telling the truth. We brought them to the station house and when they got to the station house I brought Gervasi to the private office and I asked him if what he told me was the truth and he said it was. Then I searched him and on him I found a receipt from Lawyer McCormack of Jersey City, and the receipt read "Received \$100. "-----

MR. OSHEI: As to that now I object, your Honor.

BY THE COURT:

Q Where is the receipt?

A (No answer)

BY MR. PRESS:

Q Did you read that receipt in the presence of the defendant?

A Yes sir.

BY THE COURT:

Q Did you read it aloud in his presence?

A Yes sir.

Q Where is the receipt now.

MR. OSHEI: This is tending, if your Honor please, ----

THE COURT: Your objection is a general one and I must rule upon it generally.

MR. OSHEI: If your Honor examines it you will see that it has no bearing on this whatever.

BY MR. PRESS:

Q Well, had you any conversation with him about this receipt?

A Yes

Q What did he say to you about it and what did you say to him?

MR. OSHEI: Objected to, unless connected with this transaction.

THE COURT: I will receive it.

MR. OSHEI: Because I claim it does not---

THE COURT: Answer the question.

MR. OSHEI: Exception.

A It read that he received one hundred dollars as a retainer and was to receive fifty dollars when the case was settled. I ask Gervasi---

MR. OSHEI: Now, you see, your Honor, it is nothing at all bearing upon this.

THE COURT: I do not know whether it is or not.

MR. PRESS: We will connect it.

THE COURT: I will receive it subject to the promise by the people to connect it.

MR. OSHEI: In connection with this case?

THE COURT: I do not know. They say so. I cannot try it piece meal, I must give them the opportunity of proving their case in their own way. If it has no bearing on the case it cannot harm you and I will strike it out.

MR. OSHEI: But it will be before the Jury then. The Jury will hear it.

THE COURT: Go on, please.

MR. OSHEI: Exception.

A (Witness continuing) I asked him what the case was and he said it was suspicion, and I said what did they suspicion you of doing?"

MR. OSHEI: You see it has nothing to do with this case. I object.

Objection overruled. Exception.

A (Witness continuing) I asked him what the suspicion was and he said that a policeman had just come along the street and picked him and another fellow up by the name of Frank Gaglio.

MR. OSHEI: Objected to. You see it is all matter not connected with this case?

THE COURT: You have objected once and I have allow-

ed it.

?R OSEHI: Yes, your Honor.

A (Witness continuing) He said he picked him up in company with a man named Frank Gaglio, and I asked him what the suspicion was and he said it was just for being out at night, walking on the street. For what suspicion? I said "If you don't tell me I am going to call up Jersey City and I will find out from Jersey City, what the suspicion was."

MR. OSHEI: This is under my objection yet, and exception, all this evidence is under my objection.

THE COURT: Same ruling.

MR. OSHEI: Exception.

A (Witness continuing) Then he told me that the officer had arrested him and Gaglio on suspicion of attempting to steal a horse, that they found the barn door open and some burglars' tools, a jimmy and a pistol, alongside of the door and they suspicioned those two of having them in their possession.

THE COURT: Now, Mr. District Attorney, is that all.

MR. PRESS: That is all as to that.

THE: COURT: Well, the point it, it is not brought home to this particular transaction. I thought you were going to connect it with this transaction.

MR. PRESS: Except as to the fact that it was in connection with another transaction of the same character, namely, stealing a horse.

THE COURT: Well, horse theft is hardly such a theft as requires evidence of other transactions, is it?

MR. PRESS: It seemed to me in all probability there will be evidence---

THE COURT: Well, we receive evidence of other transactions for the purpose of establishing the proof of motive. When motive is very doubtful or difficult to prove; as, for example, the passing of counterfeit money, (which any of us may innocently do), would allow it to be shown that the defendant has habitually or frequently passed counterfeit moneys but if I come to you and knock you down and take your watch out of your pocket that does not require any proof of motive and it would not be competent to show, were I the defendant, that I had done that same thing to Mr. Wasservogel.

MR. PRESS: Well, that is as far as we can go with that line of testimony.

THE COURT: If that is all there is I will strike it out and instruct the Jury to disregard it. (How addressing Jury)
Gentlemen, when it is stricken out you will pay no attention at all to it.

MR. OSHEI: But it is before the Jury now.

THE COURT: I am aware of that. I have done the best I could. I have ruled strictly according to the law.

BY MR. PRESS:

Q Did you ask this defendant where he lived? Did he tell you where he lived?

A He told me he lived in I think 48 Bergline Avenue, Hoboken, or West Hoboken, or Guttenberg---48 or 49 I can't be positive.

Q Had you any further conversation with him in relation to those horses?

A Yes sir.

Q What did he say to you and what did you say to him?

A Well, I told him then that I was going to call up Highland and find out if there was such a man over there and if they did really send them to New York with those horses. Then he said that it would not be necessary to do that, that the horses were bought in New York.

Q Where?

A At 18th Street and Third Avenue.

Q Did he mention the name of the horse dealer from whom he purchased them?

A He said he met LaGuttuta at 18th Street and Third Avenue with the horses and LaGuttuta had told him that he had bought the horses at Fiss, Doerr & Carroll.

Q Did you say that you would call up Fiss Doerr & Carroll

A I did.

Q What did he say, or LaGuttuta?

A I said "I am go-

ing to call up Fiss Doer & Carroll"---Oh I asked him if he had a receipt. He said "No," I said "I am going to call up Fiss Doerr and Carroll and find out if you bought those horses". He said "I bought the horses just before the man got to Fiss Doerr & Carroll's; he was on the way to the auction room with them".

Q Did he say how much he paid for the steel gray horse?

A He said he paid \$250. for the steel gray, and I think \$175. for the other horse, if I aint mistaken.

Q Did you ask him where he had kept the horses from October 28th to November 3rd.

A Yes sir.

Q What did he say?

A He said he kept them in Guttenber in a barn adjoining a bake shop, 48 Bergline Avenue.

Q Did you ask him when he brought the horses first to New York?

A I did.

Q What did he say?

A He said on the day before he shipped them to Poughkeepsie?

Q Did he say that he came up with the horses from New York?

A No sir.

Q What did he say?

A He said that he turned the horses over to Frank Ross and Tony Lopez, that he and Gervasi brought them to Pier 24 North River and turned them over to Frank Rossa and Tony Lopez, and that they went on the boat with the horses and LaGuttuta and himself came to Poughkeepsie, went to the wharf, met the boat when the boat came in, took

the horses from the other two people and brought them to this stable.

Q Did he say anything about paving tried to sell these horses in New York?

A He did.

Q What did he say?

A He said they tried to sell them but couldn't get money enough.

Q Did he say where they were offered for sale in New York?

A Yes, he said at the auction mart, Fiss, Doerr & Carroll.

Q Did he mention how much they could get for them?

A I think he said he could get \$250. for one and \$150. for the other, and that he wanted \$300. for one and \$200. for the other.

Q Did he say anything about what he wanted the profit for?

A Yes sir. He said he wanted to go to Italy.

Q Now, at the time that LaGuttuta and Gervasi, this defendant, were together did you see LaGuttuta pass anything to Gervasi?

A Yes sir.

Q What was it?

A A five dollar bill.

Q Did you ask him anything about that?

A Yes sir.

Q What did he say?

A I asked him what he gave him and he told me he gave him a five dollar bill. I said "What for?" He said he was going to New York to get his uncle to come up to Poughkeepsie, LaGuttuta's uncle.

Q Did you ask him what his uncle's name was?

A I did, yes.

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Q What did he say?

A I will have to look at a paper here, I cannot just remember. I think he said LaGuttuta.

Q Or was it Lopez?

A I have it on a paper here. I guess I can refresh my memory? He said his name was Jack Scalaire.

Q Who was Tony Lopez?

A Tony Lopez is a young man that came up on the boat with the horses.

Q Is he any relative of this defendant or of LaGuttuta?

A Well, not that I know of.

Q Had you any further conversation with them in reference to these horses?

A Well, that was about all, that was about all the conversation we had, and then we started to send out circulars and telephoned to try to locate the owner.

Q Do you know an Italian by the name of Juliano Matto?

A Yes sir.

Q Was he present during the time this conversation was going on?

A Well, not that conversation, not that particular conversation.

Q Well, did you have a subsequent conversation?

A Yes sir.

Q And who were all at that conversation?

A Well, Gervasi, LaGuttuta and Lopez.

Q Just the three?

A The three, and then the office man, sergeant Morgan was there and myself and this Juliano Matto.

Q What conversation took place at that time?

A Well,

I came up to the station in the morning and the serbeant said that LaGuttuta had telephoned to New York for his uncle and so I asked LaGuttuta, "I said "Did you telephone to New York to your uncle"? He said "Yes." "What did he say?" He said "He is coining on the first train." He said he would be up on the first train, or about half past ten or Quarter to 11 Tony Lopez came into the station and wanted to see LaGuttuta, Joseph LaGuttuta and the sergeant called me from the back room and said "This boy's uncle is here now".

MR. OSHEI: Objected to. Not said in the presence of the defendant.

Q Was that conversation in the presence of this defendant As Why, that was all said in his presence.

Q Then if it was, go on.

A He sat tight there both of them sat right there in the office, and I came out and I said "Are you LaGuttuta's uncle?" He said "Yes sir." I said "You made pretty good time." He said "Yes, I did". I said "What t train did you get?" Well he said "I had to run to get the train." Well I says "All right," and went on to talk to him, and this Juliano Matto that came in with him called me one side and he said "Say, Chief, that fellow didn't come from New York I played cards with four or five fellows down in a saloon here yesterday and he just came up from a saloon. He was here yesterday with three other fellows in that saloon." Then I called him one side and I said "You told

me you came from New York." He said "Yes." Well I said "Here is a man that says you played cards with him yesterday in a saloon in town, yesterday".----

MR. OSHEI: I object. Who are you talking about Now.

MR. PRESS: About the uncle in the presence of all hands.

A (Witness continuing) Except Frank Ross or Gaglio, and then I told him what this Italian had told me. Then he admitted that he did not come from New York, that he did come with them fellers yesterday, and this Italian says " There is another man down in the saloon yet, he sits down there yet." So I Bent an officer down to bring this other man up, and when we got him up there he said his name was Frank Ross, and he claimed that he came up on the boat with the horses.

Q Now you had a conversation with Lopez, had you not?

A Yes sir.

Q Was that in the presence of this defendant?

A Yes sir.

Q Did he say anything to you about these men having come to his house?

A Yes sir.

Q Will you state that conversation?

A Well, he said that Joseph LaGuttuta and Charles Gervasi came to his house at 93 Third Avenue, I think, and asked him if he would

not take a team of horses to Poughkeepsie for him and he said he would, and he accompanied him to Pier 24, and on the way to Pier 24 they met Frank Gaglio or Ross as he gave his name, and they two went to Pier 24 and shortly after they were there LaGuttuta and Gervasi came over with a team of horses and turned them over to Lopez and Rosa.

Q Now what did they say they did with the horses when they got to Poughkeepsie?

A They said they tuened them over LaGuttuta and Gervasi.

Q Had you any conversation with Rossa or Gaglio?

A Yes sir.

Q Was that conversation in the presence of this defendant?

A Yes sir.

Q State that conversation?

A Well, I asked Rossa how he came to get into it and he told me that LaGuttuta and Gervasi had met him and asked him if he would take a team of horses to Poughkeepsie in company with Lopez. He said he would and he said he went to the pier and met Lopes and that shortly after LaGuttuta and Gervasi appeared with the team of horses and turned them over to them.

Q Did Rossa make any statement to you in this defendant's Presence as to how long he knew LaGuttuta and Gervasi?

A Well he said he knew them for some time.

Q Did you ask this Gervasi if he ever had been arrested in Hoboken?

A Yes sir.

MR OSHEI: As to that I object on the ground that it is immaterial.

MR. PRESS: Question withdrawn. Simply as part of the conversation.

MR. OSHEI: If you can show there has been any conviction here I have no objection at all.

THE COURT: Mr. District Attorney, if you cannot ask this defendant the question directly, how can you do it indirectly?

MR. PRESS: question withdrawn.

Q When you arrested Gaglio what name did he give?

A Frank Rossi.

Q Had you any picture of him and Gervasi?

A Yes sir.

MR. OSHEI: That is objected to. Now if you can show any connection all right, but otherwise I claim it is clearly incompetent on the part of the District Attorney.

THE COURT: Well, he has a picture of him. I don't think that harms very much.

MR. PRESS: It might be his photograph.

Q Did you hear any conversation between these defendants

A Yes sir.

Q The three or four of them?

A The four of them.

Q Was this defendant? there?

A Yes sir.

Q What was that conversation?

A Well, it was in regard

Q And where did it take place?

A It took place in a cell at police headquarters in Poughkeepsie.

Q Were you in the room with them?

A No sir. I was in an adjoining cell.

Q Who was with you?

A A man named Nicholas Bennett, an Italian.

Q Was the conversation conducted in Italian or English?

A Part the time in Italian and part the time in English.

Q Do you understand Italian?

A No sir.

Q What was stated in English and by whom?

A Well, they talked up there---LaGuttuta, he seemed to be the spokesman of the crowd, and Gervasi there (Indicating defendant), those two would seem to run the thing. LaGuttuta said when they were locked up, he told them to keep their mouth shut "And when the chief comes down to question them to tell the chief as I told them." He says "You seen what I done. Tell him---you say 'Chief, you got me wrong' now that is all you have got to say and say that and don't say any more until I get my lawyer from New York and when I get my lawyer from New York," he says, "He will get us out of it".

Q Did he say anything about him having gotten him previously out of trouble.

A Yes sir. He said he had got them out of trouble before.

Q Did he Bay what the cause of the trouble was?

A No, he didn't say exactly but he said that at one time he stole--

he took a horse and wagon away from a boy in Newark and that he got out of that, but he didn't say what lawyer got him out of that.

Q Was there any further conversation had that you can testify to between this defendant and the other defendants

A Well, Just in regard to my writing to West Hoboken, that's all.

Q Were you present when Christian Behlmer identified his horse?

A I was, yes sir.

CROSS EXAMINATION BY MR. OSHEI:

Q You were a witness before the 57th Street Court, before the Magistrate, weren't you?

A Yes sir.

Q Did you testify anything there about a five dollar bill?

A I don't know as I had.

Q Did you testify there as to anything in regard to being down in a cell and listening?

A No sir, I don't think I had.

Q And the question was there put to you to tell everything that you knew?

A No sir, I don't think I was asked that.

Q Wasn't this question put to you? "Now will you kindly state to the Court exactly what transpired between you and the two defendants that you met first and the others that you saw afterwards?" And you answered and said "Yes sir."

A I don't remember being asked that question in the 57th Street Court.

Q But if it was asked of you and you so stated it was true, wasn't it?

A No sir. What I stated here was true.

Q Will you look these minutes over and see whether there is anything in them that you testified about being in a cell or anything?

A I probably wasn't asked it.

Q Now you knew it was clearly incompetent to tell any conversation in regard to some receipt and another transaction, didn't you?

A No sir.

Q How long have you been chief of Police of Poughkeepsie?

A About ten years.

Q How many times have you been on a witness stand?

A Oh, probably may be 100 times.

Q It has become a part of the by-way to you?

A No sir, it is my business.

Q You want to see a conviction in this case? Don't you?

A No sir.

Q You mean to tell me you don't want to see a conviction?

A Why, if the man is guilty I do, yes.

Q No, but the way you have testified you know you want to see a conviction, don't you?

A No sir.

Q You knew it was necessary for you to testify that all this conversation that you said took place was in the presence of this defendant, didn't you?

A No sir.

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Q Otherwise it would not be competent?

A It was in his presence.

Q You knew it was necessary for that, didn't you?

A No, I knew it was necessary and I knew he was there.

Q Now you want to tell me that all this conversation that took place was in the his presence?

A Yes sir.

Q How is that office of yours situated at Poughkeepsie?

A Why, there is four rooms, there is a court room, and two private rooms and the main office.

Q The main office is where the Judge sits in sometimes back there, isn't it?

A Yes sir.

Q When you had those four men you had them in the office where the Judge sits?

A No dir.

Q Where did you have them?

A Out in the main office.

Q In the main office?

A Yes sir.

Q Is that what leads to the street?

A Yes sir.

Q How were they sitting?

A Why they were sitting around in a group.

Q And how long had they been sitting there?

A Well, we had them from the 4th of November until the 9th.

Q Didn't you testify to the fact that it was on the morning of the 5th of November that you went down to the stable?

A The morning of the

Q 5th?

A The night of the 4th I went to the stable. On the morning of the 5th Rossi and Lopez came into the

station. I got two on the 4th and two on the 5th.

Q Did you testify to the fact that you saw Charles Gervasi and Joseph La Guttuta on the morning of the 5th of November?

A I probably did. I did see them.

Q How you say that somebody came to you and said that the uncle was coming from New York?

A Yes.

Q And that you asked LaGuttuta that he made fast time?

A No no. I asked Lopez.

Q You don't mean to tell me that Lopez represented himself to be the uncle of LaGuttuta, do you?

A Yes sir.

Q Do you know how old Lopez is?

A No, I do not.

Q Don't you know that he is only a young boy 19 years or twenty years.

A I don't know. He isn't a very old fellow.

Q Do you mean to tell me that you can look at a man and tell whether he was old enough to be the uncle of somebody else?

A Well, I don't know. I might and might not, I can't tell.

Q And this man Lopez you say represented himself to be the uncle of LaGuttuta?

A Yes sir.

Q Didn't you testify to this at the time of the trial before the Magistrate's Court "These two complainants" (Meaning Charles Gervasi and Joseph LaGuttuta), after you testified here---"By the Court"---the Magistrate himself asked you this---this was in the presence of the defendants---you had

a conversation---"What did you do?

A Oh, Sergeant Sheedy and myself went to the stable and there we found Charles Gervasi and Joseph LaGuttuta. Q These two complainants?

A Yes sir. They were in the stable and we asked him where they came from and they said they came from New York". Didn't you so testify?

A Yes sir.

Q What do you mean to say now that when you first were in the stable and asked them where they came from they said that they had been up at Poughkeepsie and was going back to Highland because they could not sell the horses.

Q Because they were after going to New York to try to sell them for their uncle and they were on their way back from New York to deliver their horses back to the uncle at Highland.

Q And you mean to tell this Jury you can remember every bit of that conversation?

A I can remember most of it, pretty well.

When there is a contradiction there?

A No sir, not to my knowledge.

Q Do you mean to tell me that you have testified now to the same thins that you did before?

A Yes sir.

Q Didn't you state upon your opening to this Court and Jury that the men had told you they had been up the state and were going back again because they could not sell the horses.

A Now the state, to New York.

Q What?

A They were down to New York and were on their

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back to Highland.

Q Where is Highland?

A It is opposite Poughkeepsie, by Ferry to Highland.

Q Isn't that back to New York?

A No, that is going west, across the river.

Q Why, Highland is right over in Jersey City?

A Oh no. Highlands is up in Ulster County.

Q Isn't that in Jersey City?

A No, it is in Ulster County.

Q Well, you don't know what Highland they said?

A Oh yes, very well.

Q You know that?

A Yes sir.

Q You state now that they told you the corner of 18th Street and Madison Avenue or 4th Avenue?

A Third Avenue.

Q That is what they told you?

A Yes sir.

Q And that is what you testified to before the Magistrate too?

A I think so, yes sir.

Q Are you certain about that?

A Well I think I am certain, yes sir.

Q 18th Street?

A That is what I think.

Q You are certain about that?

A Pretty positive.

Q What?

A I am pretty positive.

Q You are just as positive as you are on the other evidence you have testified to?

A Yes sir.

Q Nov did you testify to this before the Magistrate (Page

15) "And then they brought them to Poughkeepsie, and then he says he bought the horses from Fiss Doerr & Carroll on 23rd Street".

MR. PRESS: This is not the same conversation at all. It was as to where the other men were picked up, 18th Street and Third Avenue.

MR. OSHEI: I have a right to test this man's veracity.

MR. PRESS: Not that way.

THE COURT: I think you are testing his memory rather than his veracity. I will allow it.

Q Didn't you so testify at the 57th Street Court before the Magistrate?

A I might have testified to that.

Q But you won't say you did?

A I won't say I did for I didn't know where Fiss Doerr and Carroll's place was.

Q But you knew enough to say 23rd Street?

A To the best of my recollection.

Q And now you say 18th?

A Yes sir.

Q Now, which is right?

A Well, to the best of my recollection, 18th. I might have said 23rd Street.

Q Now you say that when Lopez came in to the station House he represented himself as being the uncle of LaGuttuta?

A Yes sir.

Q Did you so testify before the Magistrate's Court?

A I don't remember.

Q Well, if it was so you would have testified to it so?

A Well, if I was asked I would, yes sir.

Q How will you listen to me hear a minute (Page 16) "Q The sergeant said to you that the gentleman from New York is here?

A Yes sir. So I walked out. I said 'What is it?' 'What is your name?' By Mr. Oshei: Q It was in the presence of Gervasi and LaGuttuta?

A Yes sir. They were all sitting in there. By the Court. Q With whom was this conversation?

A With sergeant Morgan, and I came and I said to Lopez 'What are you doing here?' Why he says 'I came up'---" Do you remember that?

A He told me he was LaGuttuta's uncle.

Q Do you remember his saying he came up?

A I remember him telling me he was his uncle.

Q Now when you went down to the barn who was with you?

A Sergeant Sheedy.

Q Was Mr. Arnold there?

A Yes sir.

Q And this conversation that took place was in the presence of Mr. Arnold?

A Well, a great deal of it, yes sir.

Q And he was standing there so he could have heard the conversation?

A Yes sir. When we left the stable we were in conversation for several blocks.

Q I mean the conversation that took place between Gervasi and---

A Oh yes, when we first went down yes sir.

Q He could have heard everything that was said?

A Yes

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sir?

Q There is no doubt about that?

A Oh no, he was right there.

Q So anything that may have been testified to here in regard to what took place then, he was telling the truth?

A Well, as I say---

Q Will you answer my question?

A Yes sir.

Q Now at the time you had this conversation with these parties did you tell them at that time that any evidence they would give would be used against them?

A Did I tell them.

Q Yes?

A No sir.

Q You knew that any statement that would be made, that you would testify as to what was said, didn't you if you were called upon?

A That I would testify?

Q Yes?

A Oh, sure.

Q And you knew that it was proper for you to say to any person "Now any statement you make to me, I am an officer and I will use it against you," didn't you?

A No sir.

Q You don't know that?

A No sir, no sir.

Q And you didn't know you were even going to be called as a witness?

A Well I supposed I would, yes sir.

Q Now you say that when Lopez came in you got up?

A I was in the other office, yes sir.

Q And then before Lopez came in you were not in the

same room where the other men were?

A No sir.

Q There were in a room by themselves?

A No sir. They were right in the main office with the sergeant and several Policemen.

Q Well I say they were in a room by themselves?

A Oh yes.

Q Not alone but in a room by themselves, adjoining?

A Yes sir.

Q How long had you been in this other room?

A Oh, I guess five minutes? I think I was at the telephone.

Q And how long had you been in the other room where they were prior to that?

A Why, I just came up on duty about half past eight or quarter after eight.

Q And this conversation took place at what time?

A Oh, I should think twenty minutes with whom, with LaGuttuta?

Q LaGuttuta and Gervasi?

A Well, they were all in there. Do you mean coming from New York?

Q No, I mean that morning. You say you just came on duty?

A Why, they were there from the 4th. They were sitting in the office there for two or three days.

Oh, you had them there all that time?

A We had them there from the 4th to the 9th of November.

Q This conversation took place on what day?

A We had several conversations from between the 4th and the 9th.

Q Now on the 4th did you take them up to the station hous

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A Yes sir, on the night of the 4th.

Q And you kept them there?

A Yes sir.

Q And you didn't leave them out?

A No sir.

Q So they were under arrest?

A Well, they were detained.

Q What do you call that?

A They were not under arrest. We were investigating.

Q But you had arrested them on suspicion?

A We held them on suspicion.

Q You Could not hold a man unless you arrest him on suspicion, you know that, don't you?

A We had them there so they couldn't get away.

Q Well practically they were under arrest?

A Yes, practically. They were detained.

Q And you knew they were under arrest?

A I knew they were detained. We had not put any charge against them.

Q But you were detaining them under arrest?

A Yes sir.

Q So at the time you asked him these questions and this conversation took place between you all you didn't say to him "Now here, I have you here on suspicion, I am detaining you here, you are practically under arrest, and anything that you may state may be used against you", you did not so tell them?

A No sir, I did not.

Q Although you know it was your duty as an officer to

so inform any person that you had practically under arrest and were detaining?

MR. PRESS: I object to that, your Honor.

Objection sustained. Exception.

Q You Bay you have been a witness over 100 times?

A Well, I think in my time I have, yes sir.

Q And different parts of the state or in Poughkeepsie?

A Well, different parts of the state.

Q Prior to going on the police force what was your business?

A I was a fireman on the New York Central Railroad, brakeman and fireman.

Q How long were you at that?

A About seven years.

Q After you came on the force did you study up the law in regard to what your duties were as an officer?

A Oh we have a book of rules, that's all I studied.

Q You didn't take the laws of the state there, and what was required of you, your duties, what they were when you had a person under arrest, two inform them and so forth?

A That is in the book of rules. That is all we had anything to do with.

Q Did this book of rules contain that you shall inform a defendant that any statement he makes will be used against him?

A No sir.

Objected to. Objection sustained. Exception.

Q How many officers have you up there?

A I have 25.

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Q That covers what?

A You mean---

Q The District?

A The distance.

Q The District?

A Oh, that covers 58 miles of street.

Q And the population is what?

A 29,000.

Q Now this cell that you speak of, what kind of a cell is it?

A Well, it is a cell we used to use as a dark cell, but they don't use it any more.

Q Yes, but you had these four men down in it, didn't you?

A Oh, where they were put? This is a great large ceil where they were. I thought you meant where I was.

Q No, I mean where they were.

A Oh yes. It is quite a large cell.

Q Down under round?

A Well, partly under ground, mostly under ground.

Q Isn't it?

A Yes sir.

Q And just one big room?

A Yes sir. There is three rooms.

Q And you have to go down a stairs and you have to carry a candle if you go down?

A No, there is a gas light there.

Q Was there a gas jet there the day I was up there?

A Yes sir.

Q Now at the time that I went up there did you say anything to me in regard to this Lopez representing himself

to be the uncle?

A I don't think I said anything to you at all.

Q Didn't I have the uncle with me at the time?

A I don't know.

Q An elderly gentleman?

A I don't know.

Q You saw an elderly gentleman with me didn't you?

A I saw a couple of gentleman with you, I think.

Q A couple?

A I think so.

Q Are you sure?

A I won't be sure, no.

Q How in regard to this conversation about buying the horses, LaGuttuta told you those horses, he had bought them, didn't he?

A He first told me---

Q I mean--- wait a second. Question withdrawn. You don't speak Italian, do you?

A No sir.

Q Now don't you know as a fact that LaGuttuta don't speak English, only a few words?

A Well, he carried on quite a conversation with me.

Q That is what you say?

A Yes sir.

Q Isn't it a fact that Mr. Gervasi was the man that carried on the conversation with you?

A Why, they all did, they all carried on the conversation with me.

Q Don't you know that Lopez don't speak English?

A Oh, Lopez talks as good as Gervasi near.

Q He speaks as good as Gervasi?

A Not quite, but he speaks very well.

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Q And you know it is necessary for you to state here that LaGuttuta could speak English, don't you?

A I don't know whether it is necessary or not.

Q Don't you know that if you did not testify to the fact that LaGuttuta could speak English that any statement you had made here could not be used against him?

A No sir.

Q What?

A No sir.

Q You mean to tell the gentlemen of the Jury that and that you so understand it and that they so understand it?

A Yes sir.

Q That you don't know that it was necessary for LaGuttuta to understand English because any statement that may have been stated would not be binding against him?

A Well, I know that he spoke English.

Q Well I know, but you knew that would be necessary that a part must understand what you were speaking about?

A Why sure.

Q So it was necessary for you to say and it is necessary for you to say that LaGuttuta could speak English to you?

A Sure.

Q And you knew it could not be used against him?

A Well, I didn't know that, whether it could be or not.

Q You didn't know that before?

A No, I didn't know. I know that he spoke English to me and that's all I knew.

Q In regard to these one hundred times that you have

been a witness, in what cases were they?

A Oh, numerous cases.

Q Were there any German cases or Italian cases or Spanish cases?

A Yes, there were probably German---all nationalities mostly.

Q You do not speak German, do you?

A No sir.

Q Did you there testify in regard to any conversation in those cases?

A I think to the best of my opinion I did.

MR. PRESS: Objected to.

Q Now what period did you say they met this party?

A 24, as I remember.

Q Now the horses didn't come by train?

A Well, no, it came by boat.

Q That you are positive about too?

A Yes sir. Well, I am not positive only what they say.

Q Oh, then you are only testifying then in regard to how the horses came simply by hearsay?

A Yes sir, just by hearsay.

Q There is a good deal of this conversation that you have testified to which is all hearsay, isn't it?

A Oh no.

Q What?

A No sir.

Q You remember before I came up there with the uncle that the uncle came up there with a young man, a clerk of

mine, a dark man?

A Yes sir, I think I do.

Q That was before I came up there with the uncle?

A I think so.

Q And that was the day before, wasn't it?

A Well, I won't be positive. It was only a few days anyway, only a short time.

Q Did you ask the uncle anything when he came up there the first time?

A I don't think so, I don't remember.

Q And still in all now you are positive that you did not ask the uncle anything when he came up there the first time?

A I won't be positive, but I don't remember asking him anything.

Q You haven't any recollection of that?

A No sir.

Q You have no recollection of asking him anything when I came up there, have you?

A No sir.

Q And still in all you knew of this conversation that had taken place between LaGuttuta, Gervasi and Lopez in regard to whom the horses belonged to?

A Yes sir.

Q And when he came up there you didn't ask him who the horses belonged to?

A No sir.

HENRY D. FAGHER called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Where do you live?

A Whitecourt, New York.

Q What was your business on the 3rd day of November 1909?

A Purser on a steamer. "Poughkeepsie".

Q Sailing from New York to Poughkeepsie?

A New York to Kingston, Rondout Landing.

Q On the 3rd day of November 1909 did you see this defendant Gervasi on the boat?

A No.

Q Had you any horses on your boat that night?

A Yes.

Q Had you a steel gray horse among the number?

A I don't know what the color was.

Q Have you seen LaGuttuta, one of the defendants?

A No.

Q All you know is that horses were shipped from New York to Rondout?

A New York to Poughkeepsie.

Q On November 3rd?

A November 3rd.

Q 1909?

A Yes.

Q You cannot say that you saw this defendant on the boat?

A Not that man, no.

MR. OSHEI: No cross examination.

MR. PRESS: People rest.

MR. OSHEI: I move to dismiss the indictment.

THE COURT: Do you claim to have proved here Mr. District Attorney?

MR. PRESS: We claim that this defendant was in possession of those stolen horses under circumstances

which we believe puts it up to him to explain how he became possessed of the horses.

THE COURT: Precisely. But you do not claim to have proved burglary, do you?

MR. PRESS: No sir. Second degree larceny.

THE COURT: Grand Larceny and receiving?

MR. PRESS: Yes sir.

MR. OSHEI: They are two different and distinct crimes. I have a case on that.

THE COURT: They are two separate and distinct crimes, and they are separately and distinctly charged in the indictment, I apprehend.

MR. OSHEI: But he cannot go on both.

THE COURT: Well, that is news to me. Has that been recently decided?

MR. PRESS: That surely is for the Jury to determine your Honor.

MR. OSHEI: It is People against O'Brien 53 Hun.

THE COURT: Well, a man may commit two crimes which are separate and distinct. I may break into a house after I get in there I may commit an assault or may commit a larceny. I can be charged with both in the one indictment and it may be submitted to the Jury to determine whether I have committed one or both crimes.

MR. OSHEI: The evidence here is this, that there is no evidence to support any burglary.

THE COURT: I am going to withdraw that count, so the question of burglary will not be before this Jury at all.

MR. OSHEI: The next question is in regard to stolen property. The mere possession does not prove the guilt.

THE COURT: Well, possession may not prove guilt, but possession under circumstances indicitive of information is sufficient to go to the Jury sometimes.

MR. OSHEI: No presumption can be raised from the possession of stolen property except where the possession was known to be conscious and exclusive on the part of the defendant, but that fact may be established by circumstantial evidence.

THE COURT: That is the very point the people claim.

MR. OSHEI: Yes, but they have not established it.

THE COURT: They say they have and you say they have not. Now let the Jury decide.

MR. OSHEI: I claim they have not established it by a preponderance of evidence, which they must do.

THE COURT: No They have to do more than that. I will withdraw the charge of burglary and deny your mo-

tion to advise an acquittal on the other counts of the indictment. You may open your case in the morning.

(The Court now directs an adjournment to Tuesday January 18, 1910 at 10:30 A. M., first duly admonishing the Jury as usual)

New York January 18, 1910.

TRIAL RESUMED

GUISEPPI La GUTTUTA called as a witness on behalf of defendants being first duly sworn, testifies as follows
(Through Interpreter)

DIRECT EXAMINATION BY MR. OSHEI:

Q Where do you live?

A 48 Bergline Avenue, Guttenburg

Q In the month of October 1909 where did you live?

A 4977 Boulevard New Dorp.

Q What business were you engaged in?

A Always a baker.

Q Did you own a horse and wagon at that time?

A Yes.

Q Have you bought horses and sold them?

A Always I did that.

Q Besides your baker business?

A Yes, I purchased and sold horses also.

Q Now, on the 28th day of October 1909 did you come to the City of New York?

A Yes.

Q Where did you go?

A 24th Street.

Q What did you go there for?

A To purchase a horse or two.

Q To what place did you go?

A Where the auction is, East 24th Street, between Third and Lexington Avenues.

Q And who was with you at the time?

A I went there alone but I there met Mr. Cerugusa and *Fortunata Rizzo?

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Q When you went there what did you see if anything?

A There were two horses there offered for sale outside the salesrooms, and we bargained on the pride and I purchased them.

Q Was the man an Englishman or what nationality was he.

A An Italian.

Q What was the price that you bargained with him for?

A One for \$200. and one for \$140.

Q How much did he ask you for the one of \$200.?

A At the outset he asked for \$300.

Q And the one for \$140., what did he ask you?

A He asked \$200. for that one.

Q And how much did you pay him down, how much money?

A I paid \$250. cash down and I had to pay him the balance of \$90. later on.

Q And did you take the horses with you at the time?

A Yes.

Q Now at that time how were you to pay the other \$90.

A We had agreed---that is contained in the receipt I gave you, that I would pay the balance of \$90. after he gave me a guarantee that the horses were sound and so on.

Q And where was the other \$90. to be paid?

A In the house of my uncle.

Q Where was that?

A 305 East 11th Street.

Q Now I show you a paper here and ask you if that is the receipt which you received at the time you purchased the

horses?

A Yes sir. This is the receipt I left with my uncle.

Q And was that receipt presented at the time you were at the 57th Street Court?

A Yes sir.

MR. OSHEI: I offer it in evidence.

Received in evidence and marked Defendant's Exhibit A.

MR. OSHEI: Read the exhibit to the Jury, Mr Interpreter.

THE INTERPRETER: (Reading) "October 28, 1909. Received from Mr. Guiseppi La Guttuta, the sum of Two hundred and fifty dollars on account of two horses which I sold to him, one a gray and black mixed"---

BY MR. PRESS:

Q Is that in your handwriting?

A The man who sold me the horses wrote this out.

MR. PRESS: Objected to as it has been written by the vendor and the vendor can be produced.

THE COURT: I supposed it was received by consent.

MR. PRESS: No, your Honor, I was waiting to ascertain who wrote it. It seems it was written by the vendor and not by this witness here.

THE COURT: How is it competent witness here?

MR. OSHEI: Because it is to show that at the time he bought the horses and paid he got a receipt for it. That is under the decisions here, that he may show

that he legally purchased the property.

THE COURT: Well, you have got that testimony in. You did not have to introduce the receipt.

MR. OSHEI: Well, we wanted to show the Jury also---

THE COURT: Oh no: if there is objection I sustain it.

MR. OSHEI: I take an exception to the Court's ruling. I ask to have the paper marked for identification.

Marked for identification Defendant's Exhibit A.

BY MR. OSHEI:

Q At the time after you bought the horses where did you take the horses to?

A Elizabeth Street.

Q Did you go to your uncle's place?

A Yes.

Q And did you leave any money?

A I went there and left the receipt.

Q And any money?

A I left the receipt and \$90.

Q Now this money that you paid, the \$250. that you paid had you drawn that out of any bank?

A Yes sir.

Q When had you drawn the money out, what day---the day before or on the same day?

A Three or four days previous to that.

Q How much had you drawn out of the bank?

A \$400.

Q Now after you left this money with your uncle did this man come to your uncle's place the next day or the

day following?

A He never showed up.

Q What did you do with the horses afterwards?

A I immediately went about trying to sell them.

Q You had bought other horses there before that at that place, hadn't you?

A Yes sir.

Q You bought them in the auction room?

A I purchased them and sold too.

Q Have you any bills to show that you purchased?

MR. PRESS: That is objected to.

THE COURT: Objection sustained. We will assume he is telling the truth. Now, go on with what you want to prove.

He said he purchased.

Q When did you meet Mr. Gervasi, the defendant here?

A After I purchased these horses and when I made up my mind to sell them right away then I met Mr. Garvasi and spoke to him about it.

Q What did you say to Mr. Gervasi?

A If he wanted to come along with me and help me in selling those horses, because I have an artificial limb, and also because he speaks English and would interpret for me.

Q How long have you been in this country?

A Three years and a half.

Q And since you have been in this country have you continually done business with Italians?

A Yes. I always was a baiter and purchasing and selling horses and wagons.

Q These customers that you nacre that you deliver bread to are Italians, are they?

A Yes sir.

Q Now, you sent these horses that you bought up to Poughkeepsie---

MR. PRESS: Ask him what he did with the horses instead of leading him.

MR. OSHEI: All right.

Q What did you do with the horses?

A I brought them to Poughkeepsie to sell them.

Q What else were you going to do up in Poughkeepsie?

A I brought along also a cousin of mine who is in the vegetable and fruit business, and I brought him over there in order to go around to the farmers and purchase fruit and vegetables.

Q Did Mr. Gervasi go with you on the train or did he go up on the boat with the horses?

A He came with me on the train. He hired another man.

Q He went with you on the train?

A Yes.

Q After you got up to Poughkeepsie what did you do?

A We arrived there in the evening and then brought the horses into the stable.

Q Were the horses there before you got there?

A arrived there.

Q How long had you been there before the horses came?

A We arrived there about five o'clock in the afternoon, or

thereabouts, and the horses were there probably about midnight.

Q Now in the meantime when you arrived there did you go to any stable?

A Yes sir.

Q Before the horses got there?

A Yes sir.

Q Now who went to the stable---you and Gervasi?

A Gervasi did, the defendant.

Q Were you along with him or was he alone?

A Together.

Q How far was this stable from the station?

A I couldn't precisely state---twenty or twenty five blocks---I couldn't tell you exactly.

Q Was it on top of the hill?

A Yes sir.

Q Now who spoke to the man in the stable when you got there?

A Gervasi.

Q What did he do, speak English or Italian?

A In English.

Q Did you say anything at all?

A No, I don't speak at all.

Q Then you left there and where did you go from there before you left the stable?

A We went in search of lodging accommodations and we did not get it and we stopped for a while and we stopped for a while at the station at the depot.

Q When the horses arrived who took them up to the stable?

A Gervasi and I.

Q And did you speak to the man then at the stable yourself or did Gervasi speak?

A The defendant did.

Q Did you say anything in English?

A No sir. I cannot speak the language.

Q Then you don't know what was said between Gervasi and the man?

A No sir.

Q All you know is what Gervasi told you?

A That's right?

Q After you left the horses there at the stable where did you go then?

A We went looking for lodgings And we could not find any and we went back to the depot. We waited there.

Q And when did you go back to the stable again?

A The following day.

Q What time did you go?

A About five o'clock in the afternoon.

Q When you went there did you see anybody there Outside of the stable man?

A There were lots of men there.

Q And was a police officer there too?

A No. He arrived afterwards---two of them in fact.

Q Did you say anything to the watchman before the police-officer came there?

A I told him through Gervasi that I intended to pay and take the horses away.

Q Was that all that was said?

A Yes sir.

Q And then while you were waiting there for the horses the officer came?

A Yes sir.

Q And where were they taken, where did he take them?

A To the Station House over there.

Q Before he took you to the station house did he ask you anything, the officer?

A No, he didn't say anything to me.

Q He didn't say nothing?

A No sir.

Q Did he say anything to Gervasi?

A They did exchange a few words. I don't know what it is.

Q And then you were taken to the station house?

A Yes sir.

Q How after you were taken to the station house did you say to the officer there, or the chief there, or the captain, whoever he was, or any officer there present that the horses belonged to your uncle in Highlands?

A No sir.

Q Did you say that the horses had been working on a farm all Summer?

A No sir.

Q And that your uncle had sent them to New York to sell them?

A No sir.

Q And did the officer say to you then "I will investigate and see if that is true and will let you know"?

A All I was told is that he suspected that the horses were stolen and he was going to detain us and was going to telephone all over, that is what I was told.

Q Did you speak to this chief of police or the captain or any officer present there, in English?

A No sir.

Q Did they put you down stairs in a cell, all four together?

A Yes sir.

Q While you were down in that cell did you say to the

rest of the young men down there with you. "Don't be afraid, you keep quiet, you do as I say and you will be all right", in English?

A No sir.

Q Nor did you say it in Italian?

A No sir.

Q And did you say that you had a lawyer who would get them out of any scrape?

A No sir.

Q When Lopez came in the station house and spoke after you had been taken to the station house and arrested, what did he speak, in English or Italian?

A He spoke in Italian. He doesn't know any English at all.

Q And do you know how long Lopez has been here?

A I don't know.

Q Now did you say to the stable man at the stable that you brought the horses up there for a man named Hoyt?

A No sir, never.

Q Did you give \$5. to Gervasi to---at the time you gave \$5. ---you gave \$5. to Gervasi in the station house?

MR. PRESS: Objected to as leading.

THE COURT: You are leading the witness. Ask the question in proper form. It is not a question at all It is a statement by you.

MR. OSHEI: Exception.

Q Did you pay any money to any one while you were in the station house? Did you give any money to anybody while in the Police Station house?

A I gave \$5. to Lopez to notify

my--- to send a telegram to my uncle and inform him that I had been placed under arrest without any cause.

Q Now when Lopez got this \$5. did he say that he was your uncle, in English?

A No sir.

Q Did he say it in Italian?

A No sir. I said to him to notify my uncle.

Q How old is Lopez, do you know?

A He must be about my age. I don't know precisely---about 22 years.

Q Now did you tell the officer that you had bought these horses at the corner of 18th Street and Third Avenue, New York City?

A No sir.

Q Or 23rd Street and Third Avenue?

A No sir. I bought them at 24th Street.

Q At the time that you bought these horses did you know they were stolen horses?

A No sir. Had I known they were stolen I would not have purchased them.

Q And at the time that you took them to Poughkeepsie did you know they were stolen horses?

A No sir.

Q Did you ever get your money back, the \$250.?

A No sir.

BY THE SIXTH JUROR:

Q The balance of that money, did you ever pay that?

A No sir; I never saw him again.

CROSS EXAMINATION BY MR. PRESS:

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Q When did you arrive in this country from Italy?

(The question is not interpreted to the witness in Italian)

A What?

(The question is now put in Italian by the official Interpreter)

A On May 14, 1906, about three years and a half.

Q Did you state in the Police Court that you had arrived in this country five years ago?

A No sir, I stated three years and a half there.

Q Was this statement read to you or did you read it yourself, before you signed it in the Police Court "Indicating Police Court affidavit)?

A I know they made me sign but I didn't understand a word. I believe there was an Interpreter but he was a German and I couldn't understand his Italian.

Q You do not talk English?

A No sir.

Q And you don't talk German?

A No sir.

Q And the Interpreter was a German and couldn't talk Italian, is that correct?

A He only spoke a few words of Italian.

Q But you did sign this statement in the Police Court?

A Yes sir; that is my signature.

Q And according to this statement you arrived in 1905 is that so?

MR. OSHEI: Objected to on the ground that the

statement is not competent proof?

Objection overruled. Exception.

A No sir. I have got all my papers to prove that.

MR. OSHEI: We can very easily ascertain it.

THE COURT: No, no, there is nothing before me to which your remarks can apply.

Q Did you go to school since you arrived in this country?

A No sir.

Q Where did you go to reside when you arrived in this country?

A With my uncle for 15 days.

Q Where was that?

A At 332 East 11th Street.

Q And after that where did you go?

A I went to where I am now, 4977 Boulevard, New Dorp.

Q Are you a citizen of the United States?

A No sir.

Q How long have you been in the bakery business?

A From the time I arrived here with Italy, three years and a half. At the beginning I was partner with my uncle and then I started---

Q Well, you were only 15 days with your uncle?

A Yes sir---when we purchased that business where I am together with my uncle.

Q Has your uncle also a partnership with you in the horse business?

A No sir.

Q When you were in Italy had you anything to do with horses?

A From the day I was born I had.

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Q And you dealt in horses In Italy?

A Yes six. I know that part very well, and all my family are in the horse dealing business.

Q In this country also?

A No, in Italy.

Q Have you any other relatives living with you in Guttenburg?

A No sir, I only have a partner there, no relative.

Q Do you attend to the bakery yourself?

A I always did but now I have a partner who attends to it.

Q How long is it since you quit attending to the bakery?

A From the 9th of October when I took in this partner. I sold him half a share.

Q In the bakery?

A Yes sir.

Q So that now you are devoting your entire time to the horse business?

A No, both businesses.

Q Now you have stated that you were in the horse trading business in Italy and all your family, have you not?

A Yes sir.

Q When did you learn the bakery business then?

A When I arrived here ---we knew how to make bread at home. I was brought up on a farm and every hand had to take his turn making the bread.

Q And that is the only business experience that you had in that line?

A Yes. Then I learned better here.

Q During the 15 days you were with your uncle in partnership

in New York?

A No sir, during those 15 days I did not do anything here. It is after fifteen days that my uncle and I went into the bakery business. At the beginning I was the driver only of the horse and wagon and then later on I learned even how to make the bread as they do here. Then after I lost my leg I perfected myself in the art of making bread.

Q Under your uncle's teaching?

A All the laborers and workmen we had, they all were teaching.

Q When did you purchase these horses?

A It was on the 28th of October, but I am not positive.

Q Did you purchase them in Fiss Doerr & Carroll's place?

A No sir. Outside the salesrooms.

Q Right in front of Fiss Doerr and Carroll's?

A Yes. There were quite a number of Americans standing there when I did.

Q Don't you know that Fiss Doerr & Carroll's do not allow horses to be sold in front of their places?

A I don't know. I purchased it, that's all I know. Some one even told me it was a bargain I got.

Q Do you know the name of the man from whom you purchased the horses?

A I don't remember exactly; Giovanni Denocheri (Spelled phonetically by the reporter).

Q He was standing there with these two horses?

A He was walking them about with another man.

Q Had you ever met him before?

A No sir.

Q Did you ever hear of him before?

A No sir.

Q You just walked up to this stranger with these two horses and offered to buy them, is that the way it was?

A Yes sir.

Q And you paid him \$250. down?

A Yes.

Q And he agreed that you should pay the balance later on?

A Yes sir.

Q And he also agreed that that balance should be left at your uncle's?

A Yes sir.

Q Had he known your uncle?

A I don't believe so. I gave him my uncle's address.

Q And he agreed to go to your uncle's although he did not know your uncle, for the balance of the money?

A Yes sir.

Q Now you say this man wanted \$300. or one of the horses at the time you were bargaining with him?

A Yes; for one he asked me \$300. and for the other \$200.

Q \$500. in all.

A Yes, for both.

Q And ultimately he agreed to take \$340. for the two?

A Yes sir.

Q And you want this Jury to believe that after all that bartering he agreed to take \$250. in cash and trust to your honesty for the \$90. to be deposited with your uncle?

A Yes sir, because he had to bring me the receipt and guarantee yet.

Q You had the horses?

A Yes sir.

Q You didn't need any further bill of sale when you had possession of the property, did you?

A Didn't I need it?

But I told him to bring me a receipt and guarantee and then I will pay him the balance. That is what I know.

Q But you had the horses?

A I wanted also the guarantee.

Q And he agreed to that?

A Yes sir.

Q Did he ever go to your uncle's for the \$90.

A No sir.

Q Did you ever see him from that day to this?

A No sir.

Q Do you think you would know him if you saw him?

A Sure, I would recognize him.

Q Did he talk English?

A No. We spoke in Italian.

Q Do you know whether he could talk English or not?

A I don't know. I don't think so. We spoke in Italian.

Q You have been arrested in connection with this horse business, also, have you not?

MR. OSHEI: I have a decision here, if your Honor will read it---

MR. PRESS: Question withdrawn.

Q Are you one of the defendants in the case of the People against

MR. OSHEI: In this proceeding. I will admit

that. I will admit that he is one of the parties accused here.

Q Have you endeavored to subpoena or obtain the presence of the party that you purchased these horses from?

A I did look around but I know it is almost an impossibility to find the man.

Q Why is it impossible?

A I couldn't find him; I looked for him and I couldn't find him.

Q Did you say that he could talk English?

A I didn't say that. He didn't speak English with me.

Q Have you gone through the Italian Section in this City looking for him?

A I did go around 24th Street several time and I went in the neighborhood of where my uncle lives and other places, but I had to go to work also.

Q When?

A At the beginning, when I came out on bail.

Q When you say you hadn't time, what do you mean by that?

A Because I also have to go to work.

Q What work?

A Baker.

Q But you are able to go around trading horses, are you not?

A I worked regularly up to 11 o'clock at my baker's business. Then after that occasionally I may go, out and bargain for a horse; not every day--whenever I have \$50. or so, old dollars, at my disposal, I go and risk it.

Q So when you have \$50. or \$100. your customers do not get any bread, is that it?

A What do you mean, when I have \$50. or \$100.?

Q Why, you said when you had \$50. or \$100. you went out for horses?

A Whenever I have it at my disposal outside of what is needed in the business, I do, yes.

Q Then your customers do without bread while you are out looking for horses, don't they?

A I don't know what you are aiming at, but I told you that outside of what is needed in the business and what is needed for working men's wages, if I have any money. at my disposal to use it that way.

Q You know very well what I am aiming at?

A I do not

Q What are your baking hours?

A From about two or three o'clock in the morning after midnight until until about 11 or twelve in the morning.

Q When you were up in Poughkeepsie all night how did your bakery get along?

A I had a partner.

Q And the partner can attend to the entire business without your assistance?

A Yes, with the help of a workman, the two workmen.

Q So that when you say you did not have time to look for this witness you did not really mean that?

MR. OSHEI: Objected to as incompetent. He has already answered and did not say that.

Objection overruled. Exception.

A I stated what I meant and I mean it. I didn't have all the time at my disposal and I couldn't be all the time in search of that man.

Q You knew that this man was a necessary witness in this trial, did you not?

A I don't know what you mean by that. I was looking for him.

Q You knew also that the liberty of you and your three companion depended upon his production here?

A I know I can no more than look for him.

Q Did you ask the aid of the police in finding him?

A I did when I was placed under arrest give a full description of the man and gave full details and they had to look for him.

Q Do you mean the police in New York City?

A Yes.

Q On in Poughkeepsie?

A To both.

Q Where did you ask them to search for this man? Where did you give the description of him and to whom?

A I don't know their name, but when I was placed under arrest I said to them that he was a man about 35 years old, and I gave them a full description of the man.

Q You say that you drew \$400. out of the bank to purchase these horses?

A Yes sir.

Q What bank was that money in?

A In the Bank of Andrea Ribaud.

Q Where is his bank?

A 77 Houston Street, near Third Avenue.

Q Have you got your bank book with you?

A He has his books and we can prove it, but I always trusted that man. He has been my banker all the time.

Q Well, don't you think it would be wise to have your bank book here to show us that you had drawn it?

A My uncle has the bank book.

Q And your lawyer did not suggest to you the desirability of having that bank book here, did he?

A No, he did not.

Q Your uncle is in court, is he not?

A No. He is outside in the corridor.

Q Do you know whether he has got the bank book with him?

A I didn't ask him. I think so.

Q You think he has the bank book with him?

A I couldn't tell you. Maybe he has it. If he hasn't got it he will go and get it.

Q How long had you known Gervasi, the defendant, before you asked him to go with you to Poughkeepsie with these horses?

A About two years probably, two years and a half.

Q Have you been in the habit of taking him with you as Interpreter in your horse dealings?

A No sir. That was the only time.

Q Why you find it necessary on this occasion to take him with you as translator or interpreter?

A Because

I happened to drop in at the defendant's uncle's barber shop to get a shave and I found him there and he told me he was put of work and I suggested it to him.

Q You were able to sell all your horses before without knowing the English language, weren't you?

A I always had dealings with Italians.

Q You remember going up to the stable in Poughkeepsie to stable these horses?

A What do you mean, if I remember?

Q On the 4th of November, when you went to Poughkeepsie to stable these horses---you remember that, do you?

A Sure I do.

Q You saw there the stable man?

A Yes, I saw several of them.

Q Did you speak English to that man?

A No sir.

Q You remember seeing the owner of the stable the next evening, do you not?

A I really couldn't tell you who was the boss and who was not.

Q Did you speak English to him?

A No sir.

Q You recollect meeting the chief of police up in Poughkeepsie?

A Yes, I remember.

Q Did you speak English to him?

A No sir.

Q During your entire time in Poughkeepsie you spoke English to no one, is that correct?

A Certainly, I couldn't speak, I don't know how to speak.

Q And if he states that you did speak English to him

he states what is not so?

A Necessarily must.

Q Did you yesterday in the corridor speak to the owner of the stable and the stable man, in English?

A No sir.

Q Did you while you were in the cell in Poughkeepsie tell your companions that they should not be afraid, that you had been in trouble before and your lawyer had got you out of that trouble?

A No sir.

Q Then you want the Jury to believe that all the testimony given as to your talking English was absolutely false?

A Yes sir.

Q And also that you have been a successful business man in the bakery business and in the horse business and dress thoroughly American and do not speak English?

A Certainly, because I always first of all dressed well in Italy before I came here, and I do not deal at all with Americans, I do my business with Italians.

Q Did you state to the chief of police in Poughkeepsie that you were taking these horses up to Mr. Hoyt?

A No sir.

Q Did you hear any conversation to that effect?

A No sir.

Q Did the chief of police say he was going to telephone to Fiss Doer & Carroll to find out whether you had purchased the horses there?

A He didn't say that to me.

Q You were present during the time he was talking with you, Gervasi and the other two?

A Yes sir, I was present.

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Q And you did not understand what was being said by him to you by Gervasi to him?

A No sir. I only elicited some of the conversation from the defendant Gervasi, who told me afterwards.

Q Did you ask Gervasi what the chief of police was talking about?

A Yes sir.

Q And did he tell you?

A Yes, he told me that the chief thought that the horses had been stolen.

Q That was all?

A That is about all. And I told the defendant to tell them to telephone down to New York and inquire about me.

Q About how long did this conversation last between the chief and you and your companions?

A I can't exactly remember. About fifteen or twenty minutes probably.

Q Altogether?

A Oh, they would interrupt these words; and later on, in half an hour or an hour they would send for us again and ask us more.

Q But you don't remember any of the conversation except that the chief of police thought the horses were stolen and you wanted Gervasi to tell him to write or telegraph to your uncle?

A I didn't say about my uncle. I said I was a business man and I couldn't let go my business, and I wanted him to inquire and find that out.

RE-DIRECT EXAMINATION BY MR. OSHEI:

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Q During the month of October, on the 18th day of October, where were you living, last year?

A 48 Bergline Avenue.

Q In Jersey?

A Guttenberg.

Q Where is that, in Jersey?

A Yes sir, in New Jersey.

Q And did you sleep there that evening?

A Yes, and even now I have got my family there---even now I sleep where the boss has his family, my boarding house keeper.

Q And you have always slept there every night?

A Yes sir.

Q During the whole month of October last did you sleep there?

A Yes sir. I have been there for the last six or seven months.

Q Now about the name of the man that you purchased the horses from, would it refresh your memory if you looked at that slip (Defendant's Exhibit A for identification)?

A Certainly. It is on there.

Q Look at that and see if you can tell the name of the party that you bought the horses from?

A Giovanni Dinacera.

Q The customers which you have over in Guttenburg, New Jersey, are Italians, are they not?

A All of them, yes. I only have two Pollacks customers, that is all; the others are Italians.

RE-CROSS EXAMINATION BY MR. PRESS:

Q You don't know whether the name on this paper, Defendant's Exhibit A for identification, is the name of the man from whom you purchased the horses, do you?

A He told me that that was his name. That is the name he signed.

Q But you don't know yourself whether it was or not?

A Well, when he told me so I took it for granted it was his name.

BY THE EIGHTH JUROR:

Q Could you tell if a horse was sound or not by looking at him?

A Yes sir.

BY THE TENTH JUROR:

Q Did you sell any horses before in Poughkeepsie or outside of New York in your trading?

A At New Jersey, yes but not in New York. In the City I have been but not outside. My business was always between New York and New Jersey.

Q What was your object then in taking the horses to Poughkeepsie or Peekskill to sell them?

A Because I was told that I could get a better price by going over there. BY MR. PRESS:

Q Who told you?

A I heard that at the auction in 24th Street from Italians who deal in horses at the auction room on 24th Street; they told me that

Q I suppose this man told you too who signed this pa-

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per?

A No, he didn't say anything about that.

Q But some of the others did?

A Yes, other people who purchased.

Q You don't recollect the name of the man who told you?

A No.

Q Did you subpoena any of those people to come here today?

A No sir, I did not.

BY MR. OSHEI:

Q When you say that you can tell a horse when you look at him, whether he was sound or not, you mean from the outside, but not the internal defects?

MR. PRESS: I object to his determining as to what this man means.

THE COURT: Objection sustained.

Q In what regard could you tell that the horse was sound; in what way?

A I would look at the arteries and at the neck---whether the wind was broken and I know in a general way.

Q But not absolutely?

A No sir. Only a veterinary surgeon can do that. From general appearances I can more or less size up a horse.

ANTONIO. CERUGUSA, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

(Through Interpreter)

DIRECT EXAMINATION BY MR. OSHEI:

Q Can you speak English?

A No.

Q Where do you live?

A 316 East 12th Street.

Q How long have you been here?

A 11 years.

Q What business are you in? How long have you been in business here?

A 11 years.

Q Well, I mean what business?

A Flour business. I sell flour.

Q To grocery stores---I mean to bakeries?

A No. To bakers and macaroni makers I sell mostly.

Q And as such do you yourself have horses and wagons?

A Yes sir.

Q Now you know Mr. Guiseppi LaGuttuta?

A Yes sir, I know him.

Q Now have you bought horses at 24th Street, in the auction rooms there, between Lexington and Third Avenue?

MR. PRESS: Objected to on the (ground that it is immaterial irrelevant.

Objection sustained. Exception.

MR. OSHEI: If your Honor pleases, I will connect it, to show that this witness here was that morning.

THE COURT: Well you may ask him if he was there that morning.

Q On the morning of the 20th of October last were you on 24th Street between Lexington Avenue and Third Avenue?

A

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Yes.

Q And were you there to buy a horse?

THE COURT: Never mind that, show what happened.

Q Did you see LaGuttuta there?

A Yes, I did see him.

Q What did you see him do, if anything?

A I saw him go by and because I knew him, having sold Lour to him before for his bakery, and then I asked him what he was doing around and he said---

MR. PRESS: I move to strike that out, the part that has gone in, as immaterial and irrelevant.

THE COURT: Strike it out.

Q Well, what did you see him do? Never mind what he said to you?

A Nothing. I saw him purchase horses. I was right by. There was another man there and I saw him give a receipt to LaGuttuta.

Q Did you see any money exchanged between them?

A I wasn't there at the time.

Q But you saw this man hand him a paper, a receipt?

THE COURT: A paper.

A I saw the man writing on a paper against the wall and I heard from conversation that it was a receipt.

THE COURT: Strike that part out.

Q How many horses were there that you saw there at that time?

A Two.

Q And what kind of horses were they?

A One was all white and the other one was black and gray, spotted.

Q And he told you what he was doing there, did he not?

A Yes sir. He told me that he was there purchasing horses, and I said a few words and went away about my business.

Q And you saw this man writing something on a piece of paper?

A Yes, the man who was writing was against the wall in the street, and I exchanged greetings with LaGuttuta and went away.

Q Now you were called as a witness before the Magistrate were you not, in the 57th Street Court?

A Yes sir.

CROSS EXAMINATION BY MR. PRESS:

Q You don't talk English?

A (Witness replies with a negative shake of the head).

Q And you have been here 11 years?

A I no understand.

Q (Question now repeated through Interpreter)

A Yes.

Q Are you any relative of LaGuttuta?

A No sir.

Q Or Gervasi, the defendant here?

A No.

Q Or any of the other defendants in this case---Gaglio?

A No sir.

Q Or Lopez?

A I know Lopez.

Q He is the only one you do know?

A Also LaGuttuta, I know also.

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Q You are a horse dealer also, are you not?

A No sir.

Q You stick strictly to the flour business?

A Flour only.

Q No horses?

A No.

Q Have you ever been a witness before in any case involving the stealing of horses?

A I never was a witness in any court room in my life. This is the first time that I had to go as a witness in any case.

Q You do not know that the horse that you saw LaGuttuta purchase about the 28th was this horse that is involved in this proceeding?

A No, I don't know.

Q It may have been some other horse?

A I saw him purchase those two horses. Whether they are the ones in contention here or not I couldn't tell you.

FORTUNATO RIZZO called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

(Through Interpreter)

DIRECT EXAMINATION BY MR. OSHEI:

Q Where do you live?

A 509 East 15th Street.

Q Do you speak English?

A No.

Q How long have you been in this country?

A Five or six years.

Q What business are you engaged in?

A Yeast man.

Q And do you know Guiseppi LaGuttuta?

A Yes sir.

Q In the month of October last were you on 24th Street between Lexington and Third Avenues?

A Yes sir.

Q Did you see Guiseppi LaGuttuta there that morning?

A Yes sir.

Q What did you see him doing, if anything?

A I saw him there purchasing two horses.

Q Now do you own horses in your business?

A I went thee to purchase a horse that morning.

Q Oh, you went there also to buy a horse?

A Yes, I went there to the auction room to purchase a horse.

Q In your line of business, in the selling of yeast do you have a horse and wagon?

A Yes sir.

Q How many have you?

A Sometimes I have one and sometimes I do not.

Q What kind of a horse was LaGuttuta buying?

A One was white I remember. The other one was spotted, but I didn't pay attention to the color.

Q What did you see LaGuttuta do there, while you were there?

A I heard them bargaining.

Q Did you see any money passed?

A No sir, I did not. No, I went away.

CROSS EXAMINATION BY MR. PRESS:

Q You say sometimes you need a horse and sometimes you

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do not? In your business?

A Yes sir.

Q But you happened to need one on the morning of the 28th of October 1909?

A Yes sir, I went there for the purpose of purchasing.

Q You saw the last witness who was on the stand there also, didn't you?

A What is his name, if you please?

Q Cerugusa?

A I went together with Mr. Cerugusa because he is much more experienced than I am in those matters and I wanted him to help me.

Q Were there any others with you?

A No sir.

Q Just the two of you?

A Yes sir. I stopped at his store and I got him to come along with me.

Q How long have you been in this country?

A Five years.

Q Have you talked with any one about this case?

A I didn't speak with any one.

Q You didn't speak with the lawyer here?

A I don't know him.

Q And you never saw him before to-day?

A I saw him pass by outside but I never spoke to him.

Q Did he not ask you what you knew about this case?

A No, I didn't speak to that lawyer.

RE-DIRECT EXAMINATION BY MR. OSHEI:

Q The yeast that you sell, do you sell it to Italians or do you sell to Americans?

MR. PRESS: Objected to.

THE COURT: Oh, what is the difference. There is nothing to that at all.

BY THE TENTH JUROR:

Q Are you LaGuttuta's uncle?

A No sir.

GIUSEPPI LaGUTTUTA called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. OSHEI:

Q Where do you live?

A 332 East 11th Street.

Q How long have you been in this country?

A Near 19 years.

Q And what business have you been engaged in since you have been in this country?

A Shoe maker before.

Q How many years were you engaged as a shoemaker?

A Well, it is four years, like a this.

Q Then after that what business did you go in?

A Baker.

Q (Through Interpreter) Been in the baker business ever since?

A Yes.

Q And in the month of October last you were engaged in the baker business?

A Yes sir.

Q Now in the baker business you have horses have you not?

A Yes sir.

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Q And you own horses now?

A Yes sir.

Q And you just bought another horse, did you not?

A Yes sir.

Q Only about three weeks ago?

A Yes sir.

Q And the fellow swindled you?

A No.

MR. PRESS: Objected to as immaterial and irrelevant.

Objection sustained.

Q Now you remember October last, the month of October last your nephew buying two horses?

A Yes sir.

Q Now on the 28th day of October last did your nephew leave any money with you?

A \$90.

Q Whom were you to pay that to?

MR. PRESS: I object to any of the conversations He left the \$90. It is only a corroboration of LaGuttuta testimony.

Objection sustained. Exception.

Q (Through Interpreter) At the time the \$90. was left with you was that slip marked for identification Defendant's Exhibit A left with you?

A Yes sir.

Q Now did any man come to your store and ask for \$90. and demand it after you received that receipt from your nephew?

A No sir.

Q And when your nephew was arrested did you have that receipt in your possession?

A Yes sir.

MR. PRESS: No cross examination-

ANDREA RIBAUBO called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. OSHEI:

Q Where do you live?

A 77 East Houston Street.

THE COURT: We will suspend here, Mr. Witness, and after recess take your place right in the witness chair.

(The court now declares a recess until 2:15 P. M., first duly admonishing the Jury as usual)

After recess.

TRIAL RESUMED.

ANDREA RIBAUBO, resumes the stand and further testifies.

DIRECT EXAMINATION BY MR. OSHEI:

Q You speak English?

A A little, yes.

Q How long have you been in this country, in New York?

A 23 years.

Q Are you married?

A Yes sir.

Q Have you a family here?

A I have got my wife.

Q You have got a place of business here in New York City?

A Yes.

Q Where?

A 77 East Houston Street.

Q What kind of a business is it that you have there?

A Private bank.

Q That is, exchange of foreign money and sending of money to Italy?

A Yes.

Q And receiving deposits?

A No.

Q Temporary deposits?

A Yes, sometimes.

Q In the month of October did you have an account with one of the name of Guiseppi LaGuttuta?

A Yes, he got it before.

Q What is that?

A He got it before October.

Q When did he close his account with you?

A No, he no close his account. He get some money from me the 22nd of October.

Q On the 22nd of October?

A 22nd, yes.

Q How much did he get from you?

A \$400.

Q And before October 22nd how much had he with you?

A I will tell you. In my book it shows about \$560. Sometimes I wasn't home and he leave money to my wife after he take it and receive it back.

Q You say that on October 22nd he drew from you \$400.?

MR. PRESS: Objected to on the ground that it has been already brought out.

Q Is that correct?

A Yes.

Q Was that last year?

A Last year? This year.

No---

Q Yes, last year, 1909?

A Yes.

Q You know we are in 1910 now?

A I know. 1909.

CROSS EXAMINATION BY MR. PRESS:

Q Have you got your books with you?

A No, I aint got the book here.

Q Did this man LaGuttuta have any bank book?

A No. He got a memorandum himself.

Q You just take his money and you give him a memorandum?

A Because I know him, yes.

Q You know him and he knows you and you are a banker?

A Well, I give a receipt like, you know, a memorandum, and he got it.

Q How then does he know how much he has got in your place?

A He know how much he got. He got it in himself.

Q Then suppose he draws some money out of your bank?

A I take it off.

Q And he surrenders back the receipt to you, does he?

A Yes, he surrenders back the receipt.

Q And you give him a new one?

A Yes.

Q And you balance your books every time he draws money from you?

A Yes.

Q And you haven't brought your books here?

A Nobody asked me too.

RE-DIRECT EXAMINATION BY MR. OSHEI:

Q Nobody asked you to bring the books, did they? You have a subpoena, have you not?

A I have got a subpoena.

Q Does the subpoena call for the books?

A I don't know (Producing a subpoena and handing same to the official Interpreter).

THE INTERPRETER: It is only an ordinary subpoena to appear in Court.

MR. OSHEI: When does it say he should appear?

THE INTERPRETER: 18th day of January 1910. In the matter of Guiseppi LaGuttuta and others, that's all.

BY MR. PRESS:

Q When did you receive that subpoena?

A I was here yesterday.

Q When did you receive that subpoena?

A This morning.

Q At what time?

A At about after ten o'clock, about quarter past ten.

Q At whose instance was that served on you?

A The clerk of Mr. Oshei.

Q Mr. Oshei's clerk?

A Yes.

GUISEPPI GERVASI, called as a witness on behalf

of the defendant, being first duly sworn, testifies as follows: (Through Interpreter)

DIRECT EXAMINATION BY MR. OSHEI:

Q Where do you live?

A 233 Berline Avenue, Union Hill, New Jersey.

Q You are the uncle of this young man (Indicating the defendant?)

A Yes sir.

Q What is your business?

A Barber.

Q Has he worked for you?

A Yes sir. He has been working for me, but then he changes his trade and works at the butcher business, but he has been with me you know every time.

Q During the month of October was he living with you?

A Oh, yes, 17th, 18th, 19th, 20th, 22nd, of October, he was in my house.

Q During the whole month of October,

A Yes sir.

Q You mean October last?

A Yes.

Q Was he home every night?

A Oh yes, every night.

MR. ?PRESS: No cross examination.

MR. OSHEI: I had another witness from Jersey. Of course I could not subpoena him, and he was here yesterday and he promised to be here this morning.

THE COURT: What can I do for you?

MR. OSHEI: I sent a man about half past twelve after him, I sent one of the accused here, Mr. LaGuttuta,

as quick as he was through I sent him over to Jersey City to get him. May I go out and see whether he has gotten here or not?

THE COURT: Certainly.

(Defendant's Counsel now leaves the Court room)

MR. OSHEI: (Upon returning to the Court Room)

He has not come yet, your Honor, but I will call another witness that I see is outside. Mr. Lopes.

ANTONINO LOPEZ, called as a witness on behalf of defendant being first duly sworn, testifies as follows:

(Through interpreter)

DIRECT EXAMINATION BY MR. OSHEI:

Q What is your address?

A 193 First Avenue.

Q In the month of October last what business were you engaged in?

A I was in the vegetable and fruit business. I have a stand on 44th Street.

Q Now, do you remember being at Poughkeepsie on the 4th of November last?

A I think it was the fifth, or sixth.

Q Do you speak English?

A A little.

Q Did you say to the police officer or the chief of police at Poughkeepsie that you were the uncle of LaGuttuta?

A No.

Q I mean at the police station did you say to the chief of Police there that you had Just come from New York and you were the uncle of Joseph LaGuttuta?

A No.

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Q Did you speak in English to him?

A No, I did not.

Q How old are you?

A 23.

Q How long are you in the United States?

A Two years.

CROSS EXAMINATION BY MR. PRESS:

Q What did you say your business was?

A Vegetable vendor.

Q Have you got a stand in the City of New York?

A Yes.

Q Where?

A 44th Street and Second Avenue; 824 Second Avenue.

Q You sell vegetables to all nationalities, do you not?

A Yes.

Q How do you sell goods to people who speak the English language if you do not understand it?

A I have a companion there who speaks English and deals with the English speaking people.

Q You never spoke to the chief of police in the English language?

A No.

Q You are one of the defendants in the case of the People against Antonio Lopez, are you not?

MR. OSHEI: Yes, we concede that.

MR. PRESS: Wait a minute we will get it from him.

You let him alone.

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A Yes.

Q What took you up to Poughkeepsie?

MR. OSHEI: As to that I object. If he goes into that he makes him his own witness.

MR. PRESS: Question withdrawn.

MR. OSHEI: That other witness has not come so I will put the defendant on in the meantime.

CARMELLO GERVASI, the defendant herein, called in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. OSHEI:

Q Where do you live?

A 223 Bergline Avenue, Union Hill New Jersey.

Q What is your business or trade?

A My trade is butcher at present.

Q Are you a barber also?

A Yes sir.

Q Now in the month of October what was your trade then?

A Butcher.

Q Do you remember being at Poughkeepsie, on the 4th or 5th of November last?

A Yes sir.

Q When you went to the stable there at Poughkeepsie did you say to the man in charge of the stable that you were bring two horses for a man named Hoyt?

A No sir.

Q When you went to the stable there who did the talk-

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lag?

A I did.

Q Did LaGuttuta do any talking at all?

A No sir.

Q What hour of the night was it when you brought the horses there?

A Well it was about a quarter to twelve, a quarter to twelve or twelve o'clock, between that hour.

Q They came up by what?

A By boat.

Q And you went up there how?

A In the train.

Q Who did you go up with?

A LaGuttuta.

Q Did you say to the stable man that you would be there at 6:30 or 7 o'clock the next morning to get the horses?

A No sir.

Q Did the stable man ask you who the horses belonged to?

A That you answered and said they belonged to their uncle in Highlands?

A No sir.

Q Did you say to the stable man that you took the horses from Highland down to New York for to sell and that you could not get what you wanted to for the horses and then brought them back again?

A No sir.

Q Now do you remember when the chief of Police came there the office came there?

A Yes sir.

Q To the stable?

A Yes sir.

Q What was said, if anything, at that time?

A Well, the chief of police came in and said to me "Who did that horses belong to"? I said "to Mr. LaGuttuta." And he went around the stable and looked for the horses. At the

same time the chief of police asked Mr. LaGuttuta how much he wanted for the horses. Mr. LaGuttuta did not answer. I told him what he wants, so I explained it to him and said "How much do you want for the horses?" Mr. LaGuttuta answered him and said "\$500.". Then he said we have to come with him to the station house.

Q And then you went to the station house.

A Yes sir.

Q Just tell the gentlemen of the Jury just what took place at the station?

A Well, as soon as we reached the station house he searched us and started to tell us where we come from and so on, and I told him I come from New Jersey and Mr. LaGuttuta also come from New Jersey. He came over to my uncle's house---he was a barber---and he was taking a shave and while I was inside he came in and said "Hello Charlie" and I said "Hello Joe". He said "Are you working." I said "No". He said "Will you do me a favor"? I said "If I could, why not?" He said "Do you want to come to Poughkeepsie with me?" I said "Sure, why not?" Certainly. I may as well come with you." He said "I have got two horses tom sell.

Q That is before you went to Poughkeepsie that you are talking about now?

A Yes sir.

Q When you went to the station house what did the police officer there say to you?

A Well, the only thing he told me, he said "Who is the owner of these horses," and

"Where do you live?" and also, and I answered "The horses belonged to LaGuttuta, and he lives in"---

Q Did LaGuttuta tell him where he had bought the horses from?

A Yes sir. He told him that.

Q Did he state that in English or Italian?

A He told me that in Italian and I told the chief of police in English.

Q Did you hear LaGuttuta speak English there or anybody in the station?

A No sir.

You act as the spokesman there? You act as the party there all the time in speaking?

A I did.

Q They would say to them in Italian- A-And I used to explain to the chief or to anybody that used to talk to us.

Q Did he tell him he bought the horses at the corner of 18th Street and Third Avenue?

MR. PRESS: Objected to as leading.

THE COURT: Change the form of your question. That is all that is required.

Q Did you hear the officer testify while he was on the stand? Were you sitting here? Did you hear what Mr. McCabe said?

A Well, I hear what he said, that Mr. LaGuttuta told him that he talked to him in English, and he didn't talk to him. I was the only one who talked to him. He said he bought the horses in 18th Street, but I didn't explain nothing of the kind about 18th Street. The only place I told the chief of police was in 24th Street, between 2nd and 3rd

Avenues, that LaGuttuta explained that to me and I explained it to the chief of police.

Q And you explained that to the chief of police?

A Yes sir.

Q And that it was on 24th Street?

A Yes sir.

Q Between what streets?

A Second and ---Third and 4th Avenue.

Q And did you tell the police that the horses had been working on a farm all summer at Highlands?

A No sir.

Q Did LaGuttuta say while you were downstairs in the cell that "You will keep quiet", in English, and "That anything you say or you watch out and hear what I say and it is all right".

A No sir.

Q "I have a lawyer who will get you out of this".

A No sir. I didn't hear nothing of the kind.

Q Just describe this cell that you were taken down stain in, whether it was light or dark?

A Well, the cell was not light and not dark, medium, because there was the gas in the hallway introduced to the room, see? But the sell was pretty light. You could see everything down in the cell.

Q But was it under ground?

A It was under ground.

Q Now how were the stairs going down? Were they light or dark?

A It was light.

Q You had to go down stairs a flight of stairs to get to it?

A Yes sir.

Q Was It a big room?

A Pretty large.

Q Was there any other cells on the side of it?

A Two more cells.

Q Which way did they lead?

A Well, we just was--just the same as we were right here (Indicating); there is one cell another one there and we were right here (Indicating and pointing).

Q Now could you look into those cells from where you were?

A Yes sir.

Q Was there anybody in those cells?

A No sir.

Q To get to those cells, how would you have to get to them?

A Pass in front of us.

Q They would have to go down the stairs and go into the cells?

A Yes sir.

Q When did you first learn that these horses were stolen? When did you first find out?

A After I was arrested, after about nine days we were in, we heard the chief of police call us and he said we stole the horses and I started to laugh at him. I didn't know anything about that, and so I told Mr. LaGuttuta about it and Mr. LaGuttuta swore on me that he bought the horses and had proofs and everything, so I explained that to the Judge---to the chief of police---and the chief of police said "No sir, you wait a while and you will see the real owners of the horses." After about an hour or an hour and a half, like that, they called us up and we

found that Mr. LaGuttuta said that he wasn't the owner of these horses.

Q You mean somebody else came there and claimed to be the owner of the horses?

A Yes sir.

Q And that was the first time that you knew that these horses were stolen?

A Yes sir.

Q But of your own knowledge you don't know to-day yet, only what was told to you?

A That's all.

Q Did you know at the time that you went with LaGuttuta that these horses had been stolen?

A No sir.

CROSS EXAMINATION BY MR. PRESS:

Q Did you ever hear of the name of Hoyt?

A No sir.

Q You didn't make the statement to the Chief of Police that you were taking these horses to a man by the name of Hoyt?

A No sir.

Q And the conversation had between you and the chief of police has been testified to fully by you now, is that right?

A What is that sir?

Q You have testified to the entire conversation had between you and the chief of police, have you?

A Well yes. We had a conversation with the chief of police.

Q Well, that was the entire conversation that you have told us about now?

A Yes sir.

Q And LaGuttuta never spoke in English to the chief of

Police or any other one?

A No sir.

Q While up there?

A No sir.

RE-DIRECT EXAMINATION BY MR. OSHEI:

Q You didn't hear him speak in English to him, did you?

A No sir.

MR. OSHEI: I am all through excepting the witness in Jersey, and I think he is very important.

THE COURT: Well I suppose no harm is done if I adjourn this until tomorrow morning, Mr. District Attorney.

MR. WASSERVOGEL: Except that we have several witnesses here from Poughkeepsie.

THE COURT: Put your witnesses from Poughkeepsie on now and I will reserve the right to the defendant to call his witness in the morning.

MR. WASSERVOGEL: I call Mr. Arnold.

MR. OSHEI: I object to this witness being sworn. He seems to have been in the Court here during the examination of these other witnesses, he did not leave the room after he testified.

MR. PRESS: Prior to his testimony he was out of the room. This is only in rebuttal.

THE COURT: He may give his testimony.

GEORGE R. ARNOLD, recalled in rebuttal, on behalf of the people, having been previously duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Did you see Guiseppi LaGuttuta on the stand here to-day?

A Yes sir.

Q Did you hear him testify in reply to a question put by me "Did you speak in English to Mr. Arnold and Mr. Gaddis in the corridor yesterday"?

A Yes sir.

Q Did you hear him reply that he had not spoken to you in English?

A Yes sir.

Q Or to Mr. Gaddis?

A Yes sir.

Q Is that true or not true?

A That he spoke to us?

Q Yes?

A He did speak to us.

Q In English?

A Yes sir.

Q What did he say to you?

A "What is the matter now?"

Q When was that?

A Why, right after we were dismissed.

Q Just after Court dismissed yesterday?

A Yes sir. Yesterday afternoon.

Q Did you see that man in Poughkeepsie?

A Yes sir.

Q Did he speak in English to you there?

A He spoke in English in the barn.

Q To you?

A Why, I think some questions were asked to which he replied in English in regard to the price of the

horses.

Q Have you any doubt about that?

A Not any at all.

CROSS EXAMINATION BY MR. OSHEI:

Q Did you state upon your direct examination that you could not tell which one spoke to you in English?

A No sir.

Q Whether it was this one here (Indicating defendant) or the other?

A No sir.

Q Was that all he said to you in English "What is the matter"?

A Yes sir.

Q That is all he said?

A Yes sir.

Q Did you testify to this upon your direct examination in answer to the question which was put to you "Did you have any conversation with this defendant or with the other man who was with him in his presence at that time?

A No sir". Was that true? You did not have any conversation with him up there?

A But he had talked with others.

Q Well now will you answer my question?

A No, I won't answer that.

Q Why do you insist---

A I won't answer it.

Q What do you say now?

A I said that he did talk in English in the barn.

Q You want to change it?

A I don't want to change anything, sir. We could have brought lots of men down here

that would have testified to the some thing, if necessary; MR. OSHEI; I object to that. This witness is solunteering testimony.

THE COURT: Yes, strike it out.

Q So you remember testifying to this upon your direct examination "Do you remember any of that conversation?" I will read the question before that---"Were you present when the chief of police had a conversation with this defendant or with the man who accompanied this defendant?

A Yes sir. Q Did you remember any of that conversation?

A Why, they said that these horses had been taken from the other side of the river to New York to be sold and they did not get their price and were bringing them back again." Do you remember testifying to that?

MR. PRESS: Objected to. The only reason this witness was called was in rebuttal as to hearing this man talk in English.

MR. OSHEI: You went still further and asked him in regard to---

THE COURT: I will allow it. I do not see its materiality.

Q Do you remember testifying to that?

A Whatever I said there was true.

Do you remember testifying to that?

A I won't say.

Q What?

A I won't say.

Q You have no recollection?

A You have got the notes there.

Q I am asking you a question? Have you any recollection of testifying to that yesterday?

A Whatever I said there was true. That is all the recollection I have at the time.

Q That is what you want to tell the Jury---you won't say yes or you wont say no?

A I wont say anything about it.

Q So your memory has lapsed since yesterday?

A Oh no.

GEORGE E. GADDIS recalled in rebuttal on behalf of the people, having been previously duly sworn, testifies as follows: DIRECT EXAMINATION BY MR. PRESS:

Q Did you see Guiseppi LaGuttuta?

A Yes sir.

Q He stated in the witness stand that he never spoke English in your presence; is that true or untrue?

A It is untrue.

Q He was also asked if he had spoken in English to you or to Mr. Arnold in the corridor yesterday and he said No? Is that true or untrue?

A Untrue.

Q What did he say and in what language did he speak?

A He spoke in English. He says---We come out there and we

were laughing and talking together---he said "What is the matter now?" In plain English.

Q Did you hear him speak in English in Poughkeepsie?

A Yes sir.

CROSS EXAMINATION BY MR. OSHEI:

Q He did not use the words "What is the matter?" Just those words, did he?

A He said "What is the matter now"?

Q Did he use these words "What is the matter?"

A Yes sir.

Q What?

A Yes sir.

Q And now you say that he said "What is the matter now"?

A Well, "now" yes. He said "What is the matter now?"

Q You add the word "now"?

A Yes.

Q Was that all he said?

A That was all I heard him say. That is out here yesterday.

Q And that is all the conversation you heard in English?

A That is yesterday, yes.

Q Do you remember testifying before the Magistrate Court? You were a witness there, were you not?

MR. PRESS: I object to this on the ground that it is going into an examination with this witness that was not brought forth on rebuttal at all?

MR. OSHEI: Well the reason I am is that it was not conceded before that these were the extracts from

the minutes, and that the District Attorney during recess, stated that these were the extracts from the minutes taken before the Magistrate.

THE COURT: Well, you could have asked that question before. You did not need to have any concession to ask such a question.

MR. OSHEI: The only thing was that I thought I could reserve that until I had a chance to recall him. I could recall him---

THE COURT: I think that technically the District Attorney's objection is well taken. I am going to allow the question, however. The objection as a matter of law should be sustained.

MR. PRESS: Then I take it he is making this witness his own witness?

THE COURT: Well, what of that? You cannot attack his character. He can contradict him as to the fact.

Q You were a witness before the Magistrate's Court, you remember that?

A Yes sir.

Q You testified there?

A Yes.

Q What?

A Testified to what?

A

Q You testified before the Magistrate?

A I testified, yes.

Q Do you remember this question being asked of you on

cross examination by as "And what were the questions and what were the answers they gave?" And your answer was "Well he asked who the horses belonged to and they claimed that the horses belonged to their uncle in Highlands".

A Yes sir.

CHARLES MCCABE, called in rebuttal on behalf of the People, having been previously duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Did you see the defendant Guiseppi LaGuttuta here this morning?

A Not this morning, no sir. I wasn't here this morning.

Q Well he has stated in reply to an examination by me that he never spoke in English to you in Poughkeepsie?

MR. OSHEI: I object, it is not rebuttal. The witness upon direct examination said that he had spoken to LaGuttuta in English?

COURT: I will allow it.

MR. OSHEI: Exception.

Q Did LaGuttuta speak to you in English?

A Oh yes sir.

Q In Poughkeepsie?

A Yes sir.

Q He has stated here in reply to an inquiry by his counsel that in order for any one to get into the cell where

he was it was necessary to go down a stairway and pass through the cell in which he was located to get into the adjoining cell, is that correct?

A No sir, not correct.

Q How could you get into the adjoining cells other than by going down and through that cell?

A Through a back stairs and a back cellar.

And it wouldn't be necessary, would it then to go through that cell?

A No sir, it wouldn't be necessary to go near him there.

Q And could you be seen by those in that cell in going that way?

A No sir.

Q Was that the way you did go into the adjoining cell?

A Yes sir.

CROSS EXAMINATION BY MR. OSHEI:

Q How this room where these men were was a large room?

A Yes sir.

Q And cells adjoin?

A Yes sir.

Q And the cell you were in adjoined this room?

A Yes sir.

Q And if they walked to that grating and looked in they could see you in there?

A No sir.

Q Why?

A There is a sheet of boiler iron covers the grating on this cell.

Q Which side?

A On the south side. It was a cell

we used for a dark cell some years ago. They don't use it now and it is still there.

Q It is all bricked in, isn't it?

A Yes sir.

Q You mean to tell me that from the cell they were standing in they could not look into the other cell?

A No sir.

Q Because it was all covered over?

A With boiler iron, all the way up and bricked in.

Q How do you get your ventilation in there?

A From the other cell. There wasn't any ventilation. We got it was a back door.

Q Now that was bricked up in the back?

A No sir, only on the sides. The back was a wooden partition with a door leading from the other cellar into this cell.

Q Then any man in there could push up against the wooden door and push it open?

A Oh yes.

Q And you call that a dark cell?

A Yes sir.

Q And you claim that no man could get out of there?

A No, I don't claim so at all.

Q Then you mean to say that you put a prisoner in a cell of that kind?

A No sir, we do not.

Q And it was pitch dark when you were in there?

A Quite dark. Yes sir.

Q You could not look out in the other room, could

you?

A Oh yes.

Q Through what?

A Through a space about one and a half inch all the way up from the top of the door down, you could see right into the cell where they were.

Q Where is this cell located, in the centre of the room on the north side?

A Their cell was on the south and this cell on the north of them.

Q This crack is right in the centre?

A No, It is right on the edge, runs all the way up where the boiler iron doesn't cover. Where the door closes there is a space of about one and a half inch where the boiler iron does not cover the opening and you could look through that space into this room where they were.

Q Now you mean to say that these men all this time were locked up and weren't under arrest, is that right?

A They were under arrest and locked up when we got word from New York that they had the people who owned the horses.

Q Where did you keep, them before you got word?

A Up stairs in Police Headquarters.

Q The day that my clerk was down there where did you have them?

A I won't be positive, but I think up stairs. I think that was the day we got word from New York, the day before you came there.

Q Wasn't it a fact you hadn't received word yet?

A Oh I think we had, I am pretty sure.

Q Isn't it a fact that when I went up there that the owners of the horses were there?

A Was it a fact?

Q Yes?

A I couldn't say.

Q Didn't I waive examination and consent that they be taken without any warrant?

A Yes sir.

Q Didn't I consent that the officers should come from New York and take them back?

Objected to. Objection sustained.

Q And at that time wasn't who claimed to be the owner of the horse there in court?

A Well I won't be positive about that.

Q Is your memory as bad as all that?

A Well, it is liable to be. They were there but I won't say that they were there when you were there.

Q You wont say that, will you?

A No sir.

Q Do you know what transpired in the Court room when I came there?

A Well yes, I know a little about it.

Q Whom did I come there with?

A I couldn't say.

THE COURT: What is the use of going into this testimony?

MR. OSHEI: Only to test his veracity?

THE COURT: No, you will never get through if you carry this too far. You had your opportunity for that in the original cross examination.

MR. OSHEI: That's all.

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MR. PRESS: People rest.

MR. OSHEI: My witness has not arrived yet.

THE COURT: What do you want to do?

MR. OSHEI: Of course I have my motions to make first.

THE COURT: Well, make your motions if you want to. Do you want to close your case now and rest or do you ask for an adjournment?

MR. OSHEI: I would rather adjourn it.

THE COURT: Very well. You ask me now to adjourn to the end that you may get a witness missing at present to court?

MR. OSHEI: Yes.

(The Court now directs an adjournment to Wednesday January 19, 1910 at 10:30 A. M., first duly admonishing the Jury as usual)

Adjourned to January 19, 1910.

Mr. LaGuttuta each day?

A I always met him. When every time I come home from work he was in.

Q What time would that be?

A I usually get come about nail past six in the evening.

Q Do you know what time the bakers go to work in the morning?

A I know they work at night.

Q Then he would be working that night, would he?

A Yes sir, he would work at night, and then of course they go around delivering bread in the morning.

MR. PRESS: No cross examination.

GUISEPPI LaGUTTUTA (co-defendant) recalled on behalf of defendant, having been previously duly sworn, testifies as follows: (Through Interpreter)

DIRECT EXAMINATION BY MR. OSHEI:

Q I show you a paper and ask you if that is your pass port that you received when you left Italy?

A Yes sir.

Q What is the date of that pass-port?

A February 28th, 1906, when this was handed to me in Italy. Then I sailed from Italy on the 29th of April 1906.

Q Now at the time that I arrived at Poughkeepsie with your uncle who was in the Court Room?

MR. PRESS: If your Honor please I object to this. This witness has been on the stand and the defendant's Counsel has had ample opportunity to examine him

thoroughly. It is new matter.

MR. OSHEI: It is rebuttal. I asked officer McCabe whether the owners of the horses were there at the time.

THE COURT: Suppose you did? I do not see that it is very important to this issue.

MR. OSHEI: It is in this way to test his memory and veracity.

THE COURT: Oh no. I will sustain the objection. It is collateral matter?

MR. OSHEI: Exception. Defendant Rests.

MR. PRESS: People rest.

CASE CLOSED.

MR. OSHEI: I ask that the indictment be dismissed so far as this defendant is concerned, upon the ground, first, that the evidence of the defendant has created such a doubt that it is for the court now to direct a verdict of acquittal of the defendant and not for the Jury to pass there upon.

THE COURT: Motion denied.

MR. OSHEI: Second, as the evidence now stands it is not for the Jury to pass upon the guilt or innocence of the defendant. The defendant is entitled to all the evidence in his favor. And where the same ere-

ates a doubt it is for the court to dismiss the indictment and direct an acquittal of the defendant.

THE COURT: Motion denied.

MR. OSHEI: Third the evidence of the prosecution does not show beyond a doubt that the defendant had any knowledge of the fact that the horses were stolen when he assisted in taking them to the stable at Poughkeepsie, or when he went with the defendant LaGuttuta, to Poughkeepsie or up to the time of his arrest, and therefore he is entitled to a direction of a verdict.

THE COURT: Motion denied.

MR. OSHEI: Fourth, the prosecution has not proved by the preponderance of evidence the defendant had knowledge of the fact that the horses were stolen at the time, until he was arrested.

THE COURT: Motion denied.

MR. OSHEI: Exception. Fifth, the evidence as it now stands is clearly insufficient to submit the case to the Jury and there should be a direction of the Court for an acquittal of the defendant.

THE COURT: Motion denied.

MR. OSHEI: Sixth, upon the further ground that the evidence of the prosecution does not only not point to the guilt of the defendant, but the

evidence must be absolutely inconsistent with the innocence; That is, the inference of guilt must be only one that can reasonably be drawn from the facts and this is not sufficient.

THE COURT: Your law is all right, but I do not think it applies to this case. Motion denied.

MR. OSHEI: If your Honor will read 153 New York you will see that all my grounds are well taken in this?

THE COURT: Oh, your law is all right. I will deny your motion.

MR. OSHEI: Exception. I do not want to convey to the Jury that the denial of the motions---

THE COURT: You make the motion that I ask the Jury to acquit, for those reasons, and I deny your, motion. Now you can go to the jury and see if the Jury will acquit. They have the power.

MR. OSHEI: That does not mean, if your Honor pleases---

THE COURT: Oh no, not at all. The Jury are not to be prejudiced in my ruling. The question is submitted to them for their decision. That is all that I mean.

Mr. Oshei now closes to the Jury on behalf of

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the defendant.

Mr. Press now closes to the Jury on behalf of the People.

The Court now charges the Jury.

The Jury now retire and upon its return renders a verdict of guilty as charged.

DEFENDANT'S COUNSEL: I ask for an arrest of Judgment.

THE COURT. No, do not make your motions now. The right may be reserved to the defendant's counsel. We will ask the statutory questions and then I will note that all rights are reserved.

(Defendant's pedigree now taken by clerk)

Defendant now remanded to Friday January 21, 1910.