Edward A. Kimball
MARYLAND

Edward A. KIMBALL was in trouble, a new experience for him. Activities which might arouse the suspicions of the police were distinctly alien to the placid routine of his life, yet he suddenly found himself in a police station charged with grand larceny—the theft of $15,000 from Michael Funicelo of New York.

His replies to the questions asked him by the two officers who examined him disclosed an almost incredible story, utterly inconsistent with the allegations made by Funicelo.

Kimball had been waiting for a train at the Pennsylvania Station in Baltimore on June 10, 1926, when Funicelo, accompanied by a policeman, came running into the station, picked Kimball out of the crowd, and told the policeman that he was the man who had robbed him at the Emerson Hotel a few hours before.

Denials were unavailing against the claims of the excited Italian and his positive identification. Consequently Kimball was pushed into a patrol wagon and taken to the police station.

He told the police he was on his way to Philadelphia, where he planned to visit the Sesquicentennial celebration. He had come directly from the Emerson to the station and he repeatedly denied that he had ever seen Funicelo before in or out of the Emerson.

He said he had no occupation.

"I have no business, but I am interested in different things. I belong to societies, read a great deal, and am interested in things of that kind."

He was forty-seven years old and had an annual income of between $7,000 and $8,000 from an estate left by his father. He was married and had a twenty-three-year-old son, a student at Bowdoin College.

He was a deeply religious man, a student of philosophy, an ardent supporter of the Salvation Army, and was known to many of its representatives as Brother Kimball. He wrote on religious subjects, and his father had written a book
called *Signs of the Times*, which dealt with the second coming of Christ.

Kimball's grandfather had been a successful Salem sea captain and trader. He left a fortune of $600,000, part of which the accused had inherited two years before his arrest.

Everything about Kimball made it difficult to believe the serious charge against him. Funiciello, however, remained positive in his assertions that Kimball was the man who had robbed him.

Funiciello had come to Baltimore from New York, June 8, with a friend, one Costello. Their original destination had been Washington, where Costello said they could buy whiskey permits and resell them at a huge profit. Funiciello was the proprietor of a successful trucking business in New York. Costello had persuaded him to raise $15,000 for the purchase of the whiskey permits. While they were on the train Costello received a telegram saying that he should stop first in Baltimore for a conference.

They left the train at Baltimore and went to the Joyce Hotel. After engaging a room they walked to a nearby restaurant for breakfast. During the meal Costello found a wallet under the table. It contained a large amount of money in bills, some notes which appeared to be tips on stock investments, a picture of the owner, whose name appeared to be Moyer. The wallet also contained a telegram addressed to Moyer at the Emerson Hotel.

It was decided to return the wallet to Moyer so the two men went to his room, No. 1618 at the Emerson. Moyer was exceedingly grateful and offered Costello a reward of $100, but it was refused. Moyer then suggested that he might be able to give his new friends some tips on the stock market which would prove valuable.

The three men walked down to the stock exchange; Funiciello was left outside while Moyer and Costello went in to place their order. They came out in a few minutes and said $200 had been invested and all three returned to Moyer's room. Half an hour later Moyer was notified that his stock was going up. He hurried back to the exchange and soon returned with $400 cash. After a brief conversation he said
he was going back to the exchange and he took Costello with him. When they returned they showed Funicielo $1,200, supposedly the result of the second investment.

And so it went until Moyer claimed to have invested $60,000, which was soon converted, so he said, into $181,000. About four o'clock Moyer left for the exchange to collect his money and he returned presently with a man he introduced to Funicielo as "Mr. Rose, manager of the stock exchange." Rose carried a small black bag from which he produced $181,000 cash, saying that was what Moyer had made.

He then told Moyer that before he could turn it over to him Moyer must put up $60,000 in cash to show that his investment had been legitimate and that he had had that much money when he placed his order. He said he would give Moyer twenty-four hours in which to get the cash.

After Rose left, Moyer confided to his friends that he could not lay hands on so much cash. He could get part of it and if the other two, Costello and Funicielo, would lend him the balance he would prove his gratitude in a substantial way.

Funicielo at first refused, but the temptation was apparently more than he could resist. That night he and Costello went back to New York. Funicielo drew $5,000 from each of three accounts in which his wife also had an interest. She at first flatly refused her consent, but was reluctantly persuaded by her husband, who explained that he was investing in a new partnership.

Back in Baltimore they met Moyer in his room. He had what money he could raise. Costello went ostensibly to a telegraph office and collected the funds he claimed to have sent for and Funicielo turned over his $15,000.

Moyer now had $60,000 in cash. Costello was intrusted with the delivery of it to Rose. Ten minutes after he left the room he called up and said Rose was busy and he would have to wait. Moyer and Funicielo waited some time. Then Moyer's "employer" called him and he excused himself, saying he would return soon.

Funicielo waited several hours. No one came. Finally, he
became suspicious and went to the desk to inquire for Moyer. At just that moment he saw a man getting into a taxi in front of the hotel whom he recognized as Rose. He ran out of the hotel, jumped into a cab, and ordered the driver to follow the taxi ahead. At the station he met Police Sergeant William Curd, excitedly told his story, and pointed to Kimball as the swindler. Kimball was arrested.

Kimball answered his inquisitors frankly. He said he arrived in Washington about 5:00 p.m., June 8, and engaged a room at the Willard Hotel. He was on a sight-seeing trip and spent the next day taking bus rides around Washington, returning to his hotel late in the afternoon. He checked out about 4:30, he said, caught the 5:30 to Baltimore, and arrived at 6:30, going direct to the Emerson, where Room 1615 was assigned to him.

In the morning he went sight-seeing in Baltimore and spent the afternoon visiting Annapolis on a Gray Line tour. He returned to the city in time to check out of the Emerson at 6:05 to catch the train to Philadelphia.

His bag was searched but it was found that he traveled very light. It contained nothing but the bare necessaries and a Bible, which he said he always carried with him. He had about $32 and a ticket to Philadelphia.

He told the police that he had been graduated from Boston University in 1911, had studied law and worked in the office of a Boston lawyer for two years, the only position, because of chronic ill health, he had ever held. He had studied medicine and taken courses at Columbia University. His home was at 200 West Fifty-eighth Street, New York City, and his wife was traveling in Europe.

Despite the fact that his story appeared to be true in every detail, he was held, and on June 28 an indictment charging larceny of $15,000 was returned against him.

His knowledge of legal procedure in such a predicament was very slight, and it was several days after he was arrested before he considered bail. He communicated with his bank in New York and a lawyer was sent to see him and arranged bond for him.
The case came on for trial before Judge Eugene O'Dunne and a jury in Baltimore, November 10, 1926.

The state relied principally upon Funicielo's testimony until Joseph Elsie of Canton, Ohio, was put on the stand by the State's Attorney. He was a surprise witness and his story appears to have created an impression upon the jury favorable to the prosecution's cause.

Elsie testified that on April 27, 1925, he had been induced to go to Chicago by Costello, then using the name of Madison, where he met Moyer, introduced as one Mills.

Elsie said these two men introduced to him one "J. W. Rose, of the National Stock Exchange for the Rothschild boys." This man, said Elsie, was the present defendant. He was as positive in his identification of Kimball as Funicielo had been at the station. Elsie said that one thing about Kimball which helped to identify him was the glasses he wore; Funicielo also had singled out the glasses as a distinguishing mark.

Elsie had lost $17,000 in a swindle alike in all respects to the one by which Funicielo had been victimized. Every detail, practically, was identical with the exception that Costello and Moyer used different names.

This testimony was admitted in toto by Judge O'Dunne, over the objections of the defense, for the purpose of enabling you [the jury] to get some additional light on whether the intent with which the transaction was done here, if you find it was done—whether the intent was to defraud or not. In other words, you cannot try a man here for a crime which he committed in Chicago, but if the evidence is of such a character as to satisfy you of a similar form of operation, from which you can infer that as to the one that is under inquiry here, the intent was to defraud, and not satisfactorily explained, then you can treat it as admissible for that purpose and for that purpose only.

Kimball took the stand in his own defense, repeating the story he told the police. His testimony was corroborated by his wife, his son, and an old friend, Rudolph E. Gruge, vice-president of Merck & Company, manufacturing chemists.

It was pointed out by the defense that Kimball was a type
of man much more likely to be the victim of a swindle than
the perpetrator of the offense, and consistent with this con-
tention was his wife's description of him as a "literary
loafer."

Questioned as to what she meant she replied:

I have had to manage everything since I was married. I have
been married 25 years, tomorrow, I was married at 17 and became
a mother the same year and I have been the man of the family
ever since. I never know in the morning what he is going to do be-
fore the day is over. He does what he wants to do and what he
feels like doing.

Another indicative exchange occurred during questioning
about the glasses he wore, those which both Funicielo and
Elsie had referred to. On redirect examination it was said
that the defendant needed glasses to read the fine print in
the Bible he always carried with him. The court ordered
him to put on his glasses and read from his Testament.

He chose the following passage:

Truly my soul waiteth upon God. From Him cometh my salva-
tion. He only is my rock and my salvation. He is my defense. I
shall not be greatly moved. How long will ye imagine mischief
against me. Ye shall be slain, all of you, as a bowing wall which ye
be and as a tottering fence.

Kimball's wife, his son, and Mr. Gruge all denied that he
had been in Chicago in 1925. Hotel records substantiated
the story of his stay at the Willard and that he had paid his
bill there shortly before 5.00 p.m., June 9. The books of the
Emerson Hotel corroborated his testimony that he occupied
Room 1615 at 6.45 the same evening.

Despite this alibi the jury, after deliberating about an
hour, returned a verdict of guilty. When the foreman had
announced the finding Judge O'Dunne said: "Gentlemen,
I hope you have convicted the right man but I am personally
satisfied that you have made a terrible mistake."

The jury was then discharged and Judge O'Dunne retired
to his chamber. The jurymen, perturbed by his remark, sent
word that they wanted to confer with him but he replied that
the verdict was enrolled, the jury dismissed, and nothing
further could be done at that time.
Kimball's friends were convinced of his innocence and as a result a motion for a new trial was filed November 12, 1926, with twenty-five exhibits which established definitely, and to the satisfaction of the eleven justices of the Supreme Bench of Baltimore, that Kimball was not in Chicago, April 27, 28, and 29, 1925, the dates on which the transaction involving Elsie had taken place. It was shown in the exhibits accompanying the motion that Kimball was in New York on April 27, 1925, and that on that day he and Mrs. Kimball visited their safe-deposit box at the National Park Bank, 214 Broadway. It was shown through their signatures in the bank’s records that they had had access to the vault that day.

Other exhibits showed conclusively that Kimball was also in New York April 28 and 29.

The motion was granted on the strength of this mass of detailed exhibits, and on January 7, 1927, the new trial came on for hearing before Judge O’Dunne. State’s Attorney Herbert O’Connor entered a plea of “not guilty confessed.”

In closing the case Judge O’Dunne apologized to Kimball for the injustice he had suffered and said:

I am of the same opinion regarding this case as the State’s Attorney. I told the jury which brought in a verdict of guilty that a great mistake had been made. Since then new evidence has been found which justified my statement.

I am sorry, Mr. Kimball, that the State of Maryland does not provide for restitution when a man is unjustly convicted of a crime.

In France and other countries such restitution is provided for, but not in Maryland. All I can do is express profound regret and the greatest admiration for the heroic support given you by Mrs. Kimball during your trial.

“God bless you, Judge,” said Mrs. Kimball.

It would be hard to find a more preposterous mistake than Kimball’s conviction. Yet it was all plausible enough. The positive identification by Funicelo, supported by his fellow victim, Elsie, swept away all those doubts which should have
troubled the jury, as they did Judge O'Dunne. Why the judge, in view of his apparent belief that a mistake had been made, did not set aside the verdict, is not known. Perhaps he did not wish to assume the responsibility. Probably the fact that Kimball had no accountable occupation, as well as the coincidence that he occupied a room in the Emerson near Moyer's, influenced the jury against him. But a more innocent, unworldly man it would be hard to find, and one would suppose that the jury would have realized that. On the contrary, his strange and detached character doubtless contributed to his undoing. Twelve good men and true could not understand him. His case indicates how possible it is for any man to be taken from the streets and to be placed in jail and suffer the tribulations of the damned. Possibly Kimball's religious philosophy helped him to bear with fortitude a predicament which must have been harrowing and tormenting. Although he escaped the penitentiary, it took a considerable expenditure of time and money to enable his family and friends to prove him innocent. Not every victim of the law’s mistakes has such means and funds at his disposal. As Judge O'Dunne points out, Maryland should have compensated Kimball for his undeserved sufferings. Needless to say, it did not do so.

BIBLIOGRAPHY


4. Acknowledgments: Judge Eugene O'Dunne; Mr. Leigh Bonsal; Mr. J. Richard Standiford.