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COURT OF GENERAL SESSIONS OF THE PEACE

City and County of New York - Part II.

-----X  
THE PEOPLE

vs.

KATIE FOSTER

: B e f o r e  
: Hon. Joseph E. Newburger, J  
: And a Jury.  
:  
:-----X

Tried, New York, March 14th et seq. 1905.

Indicted for Sodomy,

Indictment filed February 21, 1905.

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

Assistant District Attorney Keyran J. O'Connor, for  
the People,

Eohn W. Smith, Esq., for the Defense.

-----  
Frank S. Beard,  
Official Stenographer.

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## THE PEOPLE'S TESTIMONY.

WILLIAM E. MCGUIRE, a witness called on behalf of the People, being duly sworn, testified as follows,  
DIRECT EXAMINATION BY MR. O'CONNOR:

Q Now, Mr. McGuire, you are a police officer? A Yes sir.

Q Attached to what precinct? A 19th.

Q Now, on the 17th day of February, 1904, did you see the defendant? A Yes sir.

Q Where? A Basement of 147 West 26th Street.

Q In the County of New York? A Yes sir.

Q When did you see her there? A At 2:15 in the morning.

Q Was anyone with her at the time? A Yes sir.

Q Who was with her? A A colored man, by the name of Anderson, Anderson Miller.

Q And was anyone with you at the time? A Yes sir; three other officers.

Q Who were they? A Officers Garrison, Kehoe and Willemse.

Q And the time that you saw the defendant, Katie Foster

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and Anderson Miller, where were they? A He was sitting on a chair, and she was standing in the room, when I first saw her.

Q And where was the chair on which Anderson Miller was sitting? A About ten foot from the door.

Q Where was the basement? A 147 West 26th Street.

Q How many steps down from the sidewalk? A Probably six or seven or eight or ten steps.

Q Were there any windows to the basement? A Well, the windows were boarded up with shutters.

Q Well did you get into the basement? A Yes sir.

Q How did you get in the basement? A By Miller opening the door for me.

Q Well how did you see these defendants? From what position did you see them? A A square hole in the door, four or five inches.

Q Where did the door lead to? A To the restaurant.

Q Where did you see the defendants? A In the restaurant, in the basement.

Q And where were you looking through the door?

A From outside.

Q And was this down an areaway? A Yes sir; down an areaway.

Q Did you go down in the areaway? A Yes sir.

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Q How many of you went down there? Four of you?

A Yes sir.

Q Did you look in through the hole in the door, before you went in? A Yes sir.

Q And who else looked through? A Officer Garrison.

Q Where were the other two officers? A Standing up on the sidewalk.

Q So that you and Garrison were down in the door?

A I called Garrison down.

Q Now what did you see the defendant do with Anderson?

A I saw him go up to Miller, open his trousers, kneel down, take out his penis, and put it in her mouth.

Q And for how long a time did she keep Anderson Miller's penis in her mouth? A Well I watched them for two or three minutes, and then called Garrison down.

Q And what did you do, after Garrison's looking through the door? A I called Kehoe down.

Q And he looked through the door? A No sir; he rattled the door.

Q What happened after that? A Miller jumped up from the chair, and comes over to the door and asks who is there, and Kehoe made some remark -- he said, I think, it was Mac, and he opened the door, and we go in, and I told him he was

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under arrest for sodomy. "Why", he says "I just came from the toilet", and I said, "I have been watching you for over five minutes," and I called attention to his trousers. The whole front of them was unbuttoned, and he laughed; and that's all the conversation I had with him there. And then we go in the adjoining rooms --

MR. SMITH: Objected to, as to what happened in the adjoining rooms.

THE COURT: Objection sustained.

BY MR. O'CONNOR:

Q Was the defendant here with Miller, at the time you talked with him? A Yes sir, she was standing right there. And we go into the adjoining rooms, little partitioned off places, like bins, and we find three white women --

MR. SMITH: I object to anything that was found in the adjoining rooms, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

BY MR. O'CONNOR:

Q Well, go on? A Then I told him he was under arrest. And we inspected the places, and called for the patrol wagon.

Q And took the both of these defendants to the station

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house? A Yes sir.

Q Did you have any conversation with this defendant here? A I had a conversation with her, told her what she was accused of, and she had nothing to say.

Q What did you tell her? A I told her she was equally guilty of sodomy, and she said nothing.

Q By looking through this hole, how much of the place could you see? How large an opening was it? A About four by eight.

Q Four inches by eight inches? A Yes sir.

Q And you had a full view of the defendant Foster?  
A Yes sir.

Q And of this man, Anderson Miller? A Yes sir.

Q What was he doing? Sitting on a chair? A Yes sir.  
The chair was tilted back (illustrating).

Q And you saw his face? A I saw his face.

Q And you saw his penis? A I saw his penis.

Q And you saw her, the defendant here -- A Place it in her mouth.

Q How long about was it that you and the other officers were there, before you opened the door, or called upon them to open it? A A space of about ten minutes, probably.

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CROSS EXAMINATION BY MR. SMITH:

Q You are attached to the 19th Precinct? A Yes sir.

Q Now you say you saw Katie Foster go towards Anderson Miller, on the evening in question? A Yes sir.

Q And open the fly of his trousers? A Yes sir.

Q And take out his penis? A Yes sir.

Q And take it in her mouth? A Yes sir.

Q And you saw her remain in that position for several minutes? A Yes sir.

Q And you called some one else down? A Called officer Garrison.

Q Was there any lights in that place? A Yes sir; both gas and lamps.

Q Brilliantly lighted? A Pretty well lighted up.

Q Any one who should have happened to have stepped down there from the street could have seen them? A Anybody that came to the door.

Q It didn't appear to you that they were hiding anything down there? A They had the shutters on the door.

Q Was there a hole in the door? A Yes sir; four by eight, an oblong hole.

Q Now how far back was Miller sitting from the door?  
A About ten foot.

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Q And where was Katie Foster sitting? A She was standing up, when I first saw her.

Q Where? A Right in front of him.

Q Now describe this restaurant as well as you can, how it was fitted up? A Well, on the side that they were on there was two tables, on the Sixth Avenue side, that is, the east side of the restaurant.

When I first saw her, she stood with her back to me. There was onetable nearer the door. Miller sat at the second table, with his arm resting on the table, and his chair tilted back. I believe there was a stove, also, on that side.

Q And what else was near this table? A There was a colored girl asleep, at the first table.

Q How do you know she was asleep? A Because she appeared to be asleep, and she was asleep when we got in there, and I woke her up.

Q Was she intoxicated? A Partly.

Q What else was standing near the table, when you went into the room? A There was a stove there, I believe, and a sort of sideboard, at the back.

Q How far from the sideboard was the table? A Quite a little ways.

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Q And on which side of the table was Katie Foster standing? A She was standing about in the centre, right in a direct line with the door.

Q Well, but, was the table between Miller and Foster, between Miller and this woman? A She stood right in front of Miller.

Q How was Miller facing? A He was facing slantwise. The chair was tilted, and his face was partly towards the door.

Q And how near was he sitting to the table? A His arm was resting on it.

Q His arm was resting on the table? A Yes sir.

Q Was he sitting in this position (illustrating)?

A In this position (illustrating). He had the chair tilted back.

Q And did he have his back to the table? A No sir; his side to the table.

Q Now do you mean to tell this jury that you saw this Miller sitting with his side to the table, and you saw this woman come to him, and take out his penis, and all that was in plain view? A Yes sir; all in plain view.

Q What was the color of it? A It was dark.

Q You are sure of that? A Positive.

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Q Did you see it when you got into the room? A No.

Q How many buttons were open on this man's trousers?

A The whole front of his trousers was open.

Q Did you see all the buttons open? A Every one, except the top button.

Q How many buttons did he have? A I didn't notice.

Q How was he dressed? A He had on his trousers and a jacket. He had his overcoat hanging up somewhere in the room.

Q What color was his overcoat? A Light tan, I believe.

Q A light tan overcoat? A A light tan Raglan, a sort of a Raglan. I won't say for sure it was a light tan, but light.

Q He didn't have his overcoat on at the time you saw him? A No sir.

Q Positive of that? A Yes sir.

Q You are positively sure that he didn't have his coat on? A Yes sir.

Q Did Miller appear to be intoxicated to you? A No sir.

Q Now what caused you to go down in that hallway, as you call it, or areaway? A The loud talking.

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Q Who was talking loud? A Miller.

Q How do you know it was Miller? A Because I saw him, when I got down to the door, and knew his voice.

Q And was there anyone else in that particular room?

A There was one man.

Q Where is he? A I don't know.

Q Why didn't you arrest him, that evening? A Because he hadn't committed any crime.

Q Hadn't you talked with that man, out in the street, just prior to going in there? A No sir.

Q Is it not a fact that that man got up and opened the door for you? A No sir.

Q Are you positive of that? A Yes sir.

Q How do you know that? A Well, because when I entered the premises, this man was sitting on the Seventh Ave. side of the restaurant, and Miller stood with his hand on the door knob.

Q And was this man perfectly sober? A Yes sir.

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Q And was this man perfectly sober? A Yes, sir.

Q What kind of a looking man was he? A A man about your size, but a little darker.

Q A little darker? A Yes, sir.

Q And you are absolutely sure that this was not the man that opened the door for you? A Positive of it.

Q Did you see glasses of beer on the table?

A Not at the table where Miller was.

Q Did you see any glasses of beer anywhere? A I couldn't say so. I didn't see any.

Q Did you see a beer can there? A I saw a can there.

Q Did you see any beer in the can?

A No, sir.

Q Did you see any glasses anywhere in the restaurant?

A There was glasses on the table.

Q Did it appear to you that there had been beer in those glasses? A I didn't take a good enough look for that.

Q Why didn't you? A Because it wasn't necessary.

Q Because it wasn't necessary? A Yes, sir.

Q Did you see any food on those tables? A No, sir; not a bit.

Q Did you see the remnants of any food on those tables?

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A No, sir.

Q You are absolutely sure about that? A Yes, sir.

Q And you are absolutely sure about everything that you say? A Yes, sir.

Q You are positive about it? A Yes, sir; I am positive.

Q Do you remember having said "why don't Miller take a lesser plea than that"? A No, sir; I don't.

Q But you remember what you said to me out in the hall.

THE COURT: No. Stop this.

BY MR. SMITH:

Q You are absolutely sure, now, that you saw Katie Foster commit this crime? A Yes, sir.

Q Absolutely sure? A Yes, sir.

Q Why didn't you arrest this other man that was in the place?

THE COURT: He has already answered that.

Objection sustained.

BY MR. SMITH:

Q What was this other man's name? A I don't know, sir.

Q Didn't you take his name? A No, sir.

Q You arrested several persons on that evening, at

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that place, didn't you? A Yes, sir.

Q And you arrested another girl who was in the same room? A I arrested one girl in that room, and four in the adjoining room.

Q And what kind of clothes did Katie Foster have on? A Well, I can't remember that, just now.

Q You are not sure? A No; I couldn't say.

Q But you are sure that it was Katie Foster that you arrested? A Yes, sir.

Q Or, rather, that you say committed this crime? A Yes, sir.

Q Positive? A Positive.

Q Now, how did the other women look in the place? Did they look like Katie Foster?

MR. O'CONNOR: Objected to.

THE COURT: Objection sustained.

MR. SMITH: I withdraw the question.

BY MR. SMITH:

Q Now, Officer, how many minutes did you say this thing went on? A Well, probably the act was for a period of from three to five minutes.

Q And all of this time Katie Foster had the penis of Anderson Miller in her mouth? A Not all the time.

Q Not all of that time? A No, sir; about three min-

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Q And what was she doing the other two minutes?

A She was standing up.

Q You say the noise attracted your attention down there? A Yes, sir; loud talking.

Q And who did you say was talking loud? A Anderson Miller.

Q And what was he saying? A Something about white men paying five dollars for it.

Q Paying five dollars for what? A I don't know.

Q Who was he saying that to? A To Katie Foster.

Q You are sure that he was saying that to her?

A Positive of it.

Q Absolutely sure? A Positive of it.

Q Now, what did Miller say at the time he was arrested? A He laughed. He didn't say anything.

Q Was he sitting in the chair when you came into the room? A No, sir; he opened the door.

Q Did he sit in the chair afterwards? A No, sir.

Q Did you touch him on the shoulder, and tell him he was under arrest? A I told him that he was under arrest.

Q Did he make any attempt to run away?

MR. O'CONNOR: Objected to.

THE COURT: Allowed.

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A He didn't have a chance. The door was guarded.

Q (Question repeated). A No, sir.

Q What did he say, when you told him he was under arrest?

MR. O'CONNOR: Objected to as already answered.

THE COURT: Objection sustained. It has already been asked and answered.

RE DIRECT EXAMINATION BY MR. O'CONNOR:

Q What time in the night was it, Officer? A 2:15 in the morning.

Q Is this about the size of the opening, Officer (indicating a piece of paper)? A That is about the size.

RE CROSS EXAMINATION BY MR. SMITH:

Q Now, didn't you testify, in the Police Court, that it was 1:15 in the morning? A No, sir; 2:15; it was 2:45 when we reached the station house.

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WILLIAM H. GARRISON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are an officer of the Police Department of the City of New York? A Yes, sir.

Q Attached to what precinct? A Nineteenth precinct.

Q Now, were you in company with Officers McGuire and Kehoe and Willemse, on the early morning of the day in question?

A Yes, sir.

Q Did you go the premises 147 West 26th street, in the county of New York? A Yes, sir.

Q Did you go down into the basement there?

A Yes, sir.

Q When did you go down into the basement? A About three or four minutes, perhaps, after Officer McGuire went down.

Q Officer McGuire went down first? A Yes, sir.

Q And where were you? A On the sidewalk.

Q Did you go down? A He called me and I went down.

Q What did you do when you went down in the basement? A I looked through a window-- through a hole in the

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shutter that was in one of the doors.

Q And what did you see? A I saw the defendant there, and another man, Miller, a colored man. The colored man was sitting in a chair, facing us, and the defendant Foster had her hands on him, and was just in the act of rising up from him.

Q Did you see Anderson's person? A No; I haven't.

Q What did you do then? A Officer Kehoe, he followed us down, and, about that time he rattled the door.

Q Who rattled the door? A I think it was Officer Kehoe.

Q Did anybody open the door? A Yes, sir; Miller opened the door, the man on the inside.

Q Was McGuire with you at the time? A Yes, sir.

Q And what did McGuire say? A Well, he accused this woman of being down on this man, having his penis in her mouth.

Q And what did she say? A She denied it.

Q Well, what did she say? A She said it was no such thing.

Q Did you look at Miller's person? A Well, his trousers were open.

Q What portion of his trousers were open? A The fly

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here in front (indicating).

Q And what did Miller say? A He denied also that such was the case.

Q Did you see the chair where he was? A Yes, sir.

CROSS EXAMINATION BY MR. SMITH:

Q How long after Officer McGuire went down did you say you were called down there? A It might have been three or four minutes.

Q You didn't go immediately? A No, sir.

Q You didn't go down until he called you?

A No, sir.

Q You didn't see Anderson Miller's person, did you?

A No, sir.

Q You didn't see his penis? A No, sir.

Q You didn't see Katie Foster taking his penis and place it in her mouth; did you? A No, sir; she was just getting up from the body of Anderson.

Q Now, did you swear, in the Police Court, that you saw her take his penis in her mouth? A No.

Q You didn't swear to that? A No, sir.

Q Did you testify at all, in the Police Court?

A I testified in the Police Court, and before the Grand

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Jury.

Q You say you did testify in the Police Court?

A Yes, sir. Merely as corroboration, being there.

Q Now, how far was Miller sitting from the door, when you went down in this areaway? A From the stove.

Q No; from the door? A perhaps 15 feet.

Q Perhaps fifteen feet? A Yes, sir. I should think it was about that; 10 or 15.

Q How was the furniture in the room arranged? A Well, from-- looking from the door inside, to the right is a stove. Miller was sitting right near the stove.

Q On which side of the stove was he? Near the door?

A He would be a little bit to the left of the stove, that is, facing it.

Q To the left of the stove? A Or to the right, facing me. He was facing towards the door.

Q And where was the stove? A To his left.

Q And was the stove between Miller and the door?

A No, sir; it was to one side.

Q And are you positive of that?

A Yes, sir.

Q What other articles of furniture were in this room?

A There was some tables and chairs there, in that room.

Now, how were those tables situated? A Over against

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the wall, alongside the wall.

Q On which side? A On the left as you go in.

Q And were there any tables on the right? A I didn't notice any.

Q Did you see any beer glasses or any glasses in that place? A I don't remember that.

Q You don't remember? A No, sir.

Q Did you see a can, from which beer had been poured?

A That I don't remember.

Q Did you see any beer in the place? A I can't remember that I did.

Q How did you manage to see in this place? A Well, the shutters were at the door, and the top of the shutter has a hole cut in the shutter, an oblong hole, eight inches wide, at the widest part of it.

Q Now, were the lights burning brightly in this restaurant, at the time? A Yes, sir; quite brightly.

Q Were there any lights outside of the restaurant? A No, sir.

Q Positive of that? A Yes, sir.

Q Now, what called your attention to this place? A Well, McGuire called our attention to it, to loud talking there.

Q And can you tell what was said? A No. When I was going down the steps I heard somebody mention something about

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five dollars, but I don't know who mentioned it.

Q. Was anyone else in this place, in this room?

A. Yes, sir.

Q. Who? A. A colored woman and a colored man.

Q. What did the colored woman say?

MR. O'CONNOR: Objected to.

THE COURT: Objection sustained.

BY MR. SMITH:

Q. Was this colored woman asleep? A. I couldn't say either. She was awake enough, when we got in.

Q. How about this man, this other colored man? A. Well, I didn't notice him, because he was sitting at one of the tables, until we got in.

Q. Why was it you didn't arrest this man?

MR. O'CONNOR: Objected to.

THE COURT: Objection sustained.

BY MR. SMITH:

Q. Had you seen this man in the street before, this colored man? A. Which one was that?

Q. The one who was in this room, at the time? A. Not to my knowledge.

Q. Not to your knowledge? A. No, sir.

Q. How long had you been standing near this place?

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A Only a short while.

Q Only a short while? A Yes, sir.

Q How long? A Two or three minutes.

Q Now, that is all you saw? A In that place?

Q In this particular room? A No. I saw more there.

Q Now, Officer, are you positive that the stove was to the north of Miller? A As you go down the steps and go in, the stove was on the right, and Miller was sitting a little to the left of the stove.

Q Now, was he sitting near a table? A No, sir. No table there.

Q There was no table there? A No, sir.

Q Not where he was sitting? A No, sir.

Q And he didn't have his arm on the table? A No, sir.

Q You are absolutely sure of that? A Positive.

Q Where was Katie Foster sitting? A She wasn't sitting. She was in the act of getting up from his person. She had her hands on his body, and was in the act of rising up, straightening up.

Q And where did she have her hands on his body?

A Just above the waist here, as she was getting up (illustrating).

Q You didn't see her hand her hands on his penis?

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A. No, sir.

Q. Did you place Katie Foster under arrest? A. Well, in company with the other officers who were present, we arrested several people there.

Q. What kind of clothes did she have on?

MR. O'CONNOR: Objected to as immaterial.

THE COURT: Allowed.

A. Oh, I know her.

Q. What kind of clothes did she have on at the time she was arrested? A. Dark clothes.

Q. The same clothes she has got on now? A. That I couldn't say.

Q. Did you know Katie Foster before? A. No.

RE DIRECT EXAMINATION BY MR. O'CONNOR:

Q. One moment.

MR. O'CONNOR: Bringin Anderson Miller, will you please, Officer?

BY MR. O'CONNOR:

Q. Is that the Anderson Miller whom you saw there that night? A. Yes, sir.

Q. With the defendant (indicating)? A. Yes, sir.

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MICHAEL KEHOE, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are an officer of the Police Department of the City of New York? A Yes, sir.

Q And attached to the 19th precinct? A Yes, sir.

Q Now, on the early morning of the 17th of February, 1905, did you go to the premises in question, 147 West 26th street, in the county of New York?

A Yes, sir.

Q Who was with you, at the time? A Officer McGuire, Officer Garrison and Officer Willemse.

Q And did you go down into the basement there?

A Yes, sir.

Q Who was the first officer that went down into that basement? A Officer McGuire.

Q And who went down after him? A Officer Garrison.

Q And when did you go down there? A When Officer McGuire called me down, and I kicked at the door.

Q Did you see anybody in the room? A Yes, sir, when I looked in.

Q Who did you see in there? A Well, I saw the defendant and a colored man, named Anderson Miller.

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Q Did you see them doing anything when you looked in?

A No, sir.

Q You had a talk with McGuire and Garrison? A Yes, sir; and I kicked on the door.

Q Did anybody come to the door? A Anderson Miller.

Q What did he do? A He opened the door.

Q Did you know Anderson Miller? A Not at the time.

I never saw him before, to my knowledge.

Q Did you go into the room? A Yes, sir.

Q Who went in with you? A Officer McGuire and Garrison and Willemse.

Q And did you look at Miller? A Yes, sir.

Q How were his clothes, at the time you looked at him?

A The fly of his pants was all open.

Q And who spoke to Miller? A Officer McGuire.

Q And was the defendant present? A Yes, sir.

Q Can you recollect what McGuire said to Miller, in the presence of the defendant? A He accused her--- he accused Miller.

Q No. What did he say? A He said "You are a nice one to have a white woman go down on you", and he said he didn't, that he was only coming from the toilet.

Q And what did she say? A I don't remember her saying anything.

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Q Did you then and there arrest her and Anderson Miller? A Yes, sir.

Q And take them to the station house? A Yes, sir.

Q Were there other people there at the time?

A Yes, sir.

Q How many other people were in there? A There was 11 people, altogether, in the place; in the different rooms.

MR. SMITH: Now, I object to who was in the different rooms, if your Honor please.

MR. O'CONNOR: You brought it out yourself.

THE COURT: Yes. I will allow it to stand.

MR. SMITH: Exception.

CROSS EXAMINATION BY MR. SMITH:

Q Now, officer, how long after the other two officers went down into the basement, did you go? A After the lapse of about two or three minutes.

Q And how long had McGuire been down there, before he called Officer Willemse down? A It was officer Garrison that went next.

Q And how long had he been down before he called that Officer down? A About a minute, or more.

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Q And, about two minutes after that, you were called down? A Yes, sir.

Q And you are sure it was not five minutes? A I don't think so.

Q What did you see? A I saw Anderson Miller standing right up near the defendant, when I looked in first.

Q How was Anderson Miller dressed? A He had all his clothes on, excepting a hat.

Q Did he have on an overcoat? A No.

Q Are you sure of that? A No. He didn't have on an overcoat.

Q What kind of a suit did he have on? A A kind of a light suit, a check suit.

Q Now, did you see Katie Foster open Anderson Miller's pants? A No, sir.

Q You didn't see her have her hand on his penis? A No, sir.

Q You didn't see her have her hand on his person anywhere? A No, sir.

Q Now, did you testify, in the Police Court, that you did see that? A No, sir.

Q Did you testify, at all, in the Police Court? A No, sir.

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Q You didn't? A No, sir. I was there, but I wasn't called to testify.

Q How was the furniture arranged in this room?

A There was-- as you go in the door--- there was two or three tables to the right, I think there was two, and three to the left.

Q And three to the left? A Yes, sir.

Q Was there any other article of furniture in that room? A Some chairs.

Q Was there a stove in there? A A small stove.

Q And where was that stove? A To the left, as you go in.

Q Did you see any beer glasses in that place? A I think there was a couple on one of the tables. I ain't positive which one.

Q Did you see any remnants of food on either one of those tables? A No, sir.

Q You are positive of that? A There might have been, but I won't swear positive whether there was or not, because I didn't look for it.

Q Now, how was Katie Foster dressed? A Well, she didn't have on what she has got on there, now.

Q What did she have on? A She had on an ordinary dress.

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Q What? A An ordinary dress. If she would open that cloak, I would tell whether that is the same dress that she had on or not.

Q Now, is that the same dress (indicating the defendant)?

A No, sir; it isn't.

Q Now, what did Katie Foster say, when Officer McGuire accused her of this crime? A I went on into the back room, and I can't tell you what she said.

Q Did you hear Anderson Miller say anything? A He said that he went to the toilet. I says--- after Officer McGuire accused--- I says, "Why, look at the fly of your pants", and he said "Why, I just come from the toilet."

Q Did you go back to investigate whethet there was a toilet there, or not? A No. From the time I seen Anderson Miller standing over Katie Foster, he came directly to the door.

Q You saw him standing over her? A Well, right alongside of her. He was standing up when I first saw him.

Q Was there a table near where Miller was sitting?

A There was a table near where he was standing.

Q When Officer McGuire first called you downstairs, what did you see then? A She was sitting on a chair.

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Q She was sitting down? A Yes sir; and Anderson Miller was standing right alongside of her.

Q He was sitting down, with his arm on the table; was he? A Not when I saw him.

Q Well, was officer Kehoe -- or, rather, was officer Garrison and Mc Guire standing there at the same time? A I took Garrison's place, to look in, where we could see in.

Q They didn't know that you were at the door, at the time? A Oh no, not the people inside.

Q They didn't know you were at the door? A No sir.

Q Well, who knocked on the door? A I did.

Q You did? A Yes sir.

Q And you saw Miller open the door? A Yes sir.

Q Now was this stove to the north of Miller, or to the south of Miller? A I think it was to the north, to the best of my knowledge now.

Q Is it not a fact, officer, when you looked through that window, the first time, is it not the fact that there was a table between Katie Foster and Anderson Miller?

A No sir.

Q You are sure about that? A Yes sir. She was right alongside of the table, the same as you are now (indicating)

Q And what kind of a hole did you look through?

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A About eight by four.

Q And you could get a good view of the inside? A Yes sir.

Q And anybody could have seen, what you saw? A Yes sir; if they went down into the basement, as we did.

Q Was there alight outside of the door, at the time? A No sir; the light was out.

Q How were the lights inside? A Pretty bright.

Q It wouldn't appear to you, at first blush, that anything was going on wrong down there; would it? A Not from the street, excepting that you heard some noise, or something.

Q Now did you hear any noise down there? A When we got there first, there was some noise there, and McGuire went down to investigate.

Q You didn't see what the noise was about? A No sir.

CORNELIUS W. WILLEMSSE, a witness called on behalf of the People, being duly sworn, testified as follows,

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are an officer of the Police Department of the

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City of New York? A I am.

Q Attached to the 19th Precinct? A Yes sir.

Q Now, on the early morning of the 17th of February, 1905, were you on post? A No; I was in citizens clothes, at the time.

Q And who were you with? A McGuire, Garrison, Kehoe and myself.

Q Were you at the premises No. 147 West 26th Street, in the County of New York? A I was.

Q Who went down into the basement first? A McGuire.

Q And who after him? A Garrison.

Q And who after him? A Kehoe.

Q You went down last? A Yes sir.

Q And what happened when you got down there? A When I got down there, McGuire had the colored man and this woman here, and he accused --

Q No. What did he say? A He told him that the woman had gone down on him.

Q Now, let us have the words, officer. We are used to it. What did he say? A Well I don't remember exactly the words.

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Q Well, to the best of your recollection what did McGuire say? A He said, "You were sucking this nigger's penis".

Q And what did she say? A I don't remember what she said now.

Q Now did Miller say anything? A No.

Q Did you look at Miller's person? A His pants was all open, and he buttoned them up, right in front of us.

assist  
Q And did you ~~assist~~ the other officers in making the arrest? A Yes sir.

Q You didn't look through the peek hole? A No sir.

Q They had the door open, when you got there? A Yes sir.

CROSS EXAMINATION BY MR. SMITH:

Q Officer, how did you happen to be in that neighborhood, that night? A I was planted for a murderer there, a stabbing case, what occurred on 24th Street.

BY THE COURT:

Q Now, if you will only leave out the police slang, and tell us what you were doing there, in plain English, the Jury would understand you? A Well I was laying around

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the house where I knew this man used to go into.

Q The jurors do not know what planted means? A Very well sir.

BY MR. SMITH:

Q What first attracted your attention to this case?

A They called me down there.

Q Now had you, had all of you officers, been together that evening? A We had been together; yes.

Q And were you on duty? A Yes, certainly; always on duty. A policeman is always on duty.

Q And did you see anything going on, when you went down the steps? A No; I did not.

Q Now did you examine that place? A I did.

Q The room inside? A The room inside.

Q That is, the restaurant where they were sitting?

A Yes sir.

Q What did you see in there? A A lot of chairs and tables; and I seen a --

Q How many tables? A I don't know exactly.

Q How many chairs? A Maybe eight or ten. I don't know how many.

Q Was the place brilliantly lighted? A No. There was a couple of lights in there.

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Q It was kind of dark? A No, not very dark. You could easily distinguish anything that was in there.

Q Oh, you could? You could even distinguish the small objects? A Yes; certainly.

Q Now, was there a stove in this room? A I am not quite sure, now. I don't think there was.

Q You don't think there was? A I am not sure. There might have been one.

Q Was there a sideboard in this room? A I am not quite sure on that.

Q You are not quite sure? A No sir.

Q You didn't see Anderson Miller sitting at a table; did you? A Who?

Q You didn't see Anderson Miller sitting at a table, did you? One of the defendants? A No sir I didn't.

Q Did you see Katie Foster sitting at any table?  
A No sir. She was standing a little way from him, and was expectorating, when I went in there, and he was buttoning up his trousers.

Q You didn't look through the peephole? A No sir. I went into the back room, and looked after the other bunch that was in there.

MR. SMITH: I object to that, if your Honor please, and move to strike it out.

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THE COURT: Motion granted.

MR. O'CONNOR: The People rest, if your Honor  
please.

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## THE DEFENSE.

K A T I E F O S T E R, the defendant, being duly sworn,  
testified as follows,

DIRECT EXAMINATION BY MR. SMITH:

Q What was your business, on the night of the 17th  
of February? A I was working for Mr. Hunt, the owner of  
that restaurant.

Q In what capacity were you employed there? A I done  
the washing and ironing and cleaning, and I waited on the  
table.

Q You didn't cook there; did you? A No sir.

Q On the night in question, or, rather, at the time  
that these officers claim that they were looking through  
this window or aperture, where were you standing or sit-  
ting? A I was sitting right at the table near the door,  
and the stove was in the centre; and Anderson Miller was  
sitting at the opposite side of the stove, and girl Flor-  
ence was sitting and talking with Anderson Miller, and  
drinking a glass of beer.

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Q Now you did have beer there? A Yes sir.

Q How did it get in there? A This young fellow, this "Kid", brought the beer in. He went for a pint of beer, across the street.

Q Now, when the rap came on the door, who got up to open the door? A This "Kid".

Q He got up and opened the door? A Yes sir.

Q When these officers came in --

MR. SMITH: May it please the Court, I think that this answer, while we believe it is the truth --

THE COURT: What is that?

MR. SMITH: I don't know. It might be an insult to the court, if she answered it just in the language that was used.

THE COURT: Oh, go on and put any question you think proper.

BY MR. SMITH:

Q What did the officer McGuire say to you when he entered the room? A He looked at me and he said, "I see you are here again", and I said "Yes" and he said, "You old nigger fucker, I catch you down here fucking and sucking negroes". That was his remarks and he struck me in the face.

Q He struck you in the face? A Yes sir.

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Q And what did you say to him? A I told him I wasn't doing nothing of the kind; that I was sitting, drinking a glass of beer.

Q Now what was Miller doing, at the time? A He was sitting on the opposite side, at another table, talking to Florence, and drinking a glass of beer. He had come back out of the back yard.

Q Did you see him when he went into the back yard?  
A Yes sir. And I never moved out of the chair from the time Mr. Miller came in, until we was taken out by the officers.

Q Did you go near him, the whole evening? A No sir.

Q Did you know him personally? A No more than coming in and out of there, but I never had any conversation with him. He came in, off and on, to get his meals.

Q And was that often? A Sir?

Q (Repeated)? A Seven or eight times.

Q And how long had you been in this place? A Going on about two months.

Q Were you employed there on a salary? A I had five dollars a week.

Q Who paid you your salary? A Mr. Hunt.

Q Mr. Hunt paid you your salary? A Yes sir.

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Q Now you are sure that you never went near Miller during the evening? A I never moved off the seat, from the time Mr. Miller came in, until the officers put us in the wagon.

CROSS EXAMINATION BY MR. O'CONNOR:

Q What business is conducted in the basement? A Restaurant business.

Q What time do they do business there? A From eight o'clock in the morning, until twelve or one at night.

Q You worked from eight o'clock in the morning, until twelve o'clock at night? A Yes sir.

Q And what time do you get up in the morning? A Half past six or seven o'clock.

Q And what were you doing up, at half past two in the morning, drinking beer? A Well, this colored girl came down there, and was talking to me.

Q Which colored girl? A This girl Florence. And the "Kid" was there, and the cook was there.

Q Anybody else in there? A No; not in the store.

Q But in the other part of the restaurant? A Yes sir; there was people there.

Q How many?

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MR. SMITH: Objected to.

THE COURT: Objection overruled. It is proper cross examination.

MR. SMITH: Exception.

BY MR. O'CONNOR:

Q How many? A There was five women.

Q Five white women; weren't there? A Yes sir.

Q And how many colored men? A Three or four colored men.

Q Where were the white women with the colored men?

A They were inside, in the rooms.

Q They were in bed with them; weren't they? A Yes sir.

Q This wasn't a restaurant? A Yes sir; it was.

Q Did all these white women work in that restaurant?

A No sir.

Q Well what were they doing in bed with colored men, in there? A I couldn't say; because they hired the rooms from Mr. Hunt.

MR. SMITH: Objected to.

THE COURT: Objection overruled.

MR. SMITH: Exception.

BY MR. O'CONNOR:

Q So Mr. Hunt, instead of renting the restaurant,

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opened his rooms out to the colored gentlemen, with white women; is that right? A Yes.

Q And you were not washing dishes in that place?

A I used to wash and iron there, and wash dishes, and wait on the tables.

Q Where do you live? A I slept there.

Q Where do you live? A My sister lives at 72 East 124th Street, and Park Avenue, and when I am not working, I make my home with her.

Q Where is that? A Park Avenue.

Q On the corner of Park Avenue? A Yes sir; she's the janitor there.

Q Which corner? A Right opposite Judge Welde's house.

Q You haven't lived there for eight years? A I been there, off and on.

Q You haven't any home at all; have you? A I have.

Q Where? A With my sister, when I am not working.

Q Where did you work before that, before you worked for Hunt? A I worked for Cohen's, I worked in Cohen's corset factory.

Q And how long did you work there? A Three months.

Q When did you work there last? A Last Winter.

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Q And what have you been doing since last Winter?

A Washing and ironing.

Q For the past year? A Yes sir.

Q Where did you wash and iron? A Off and on.

Q Where? A Wherever I could get it.

Q And you went to work, two weeks ago, in this place in West 26th Street? A Two months ago.

Q Two months ago? A Yes sir.

Q Who gave you the job there? A Mr. Hunt.

Q Now Anderson Miller didn't sleep there; did he?

A No sir.

Q He didn't live there? A No sir.

Q Where did he live? A 27th Street.

Q What number? A 229.

Q How do you know that? A Because he gave that number in the station house.

Q Now, you said that you didn't know this man?

A Well, I say he gave that number in the station house.

Q Then how do you know that he lives there? A That's what he said, in the station house.

Q And that's the reason why you say he lived there?

A Yes sir.

Q Did you ever go around there? A No sir.

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- Q Do you know what his business is? A No sir.
- Q And this is the first night you met him? A He come in there off and on, and got his meals.
- Q ~~When~~ did he get his meals? A In the daytime and evening.
- Q And how late did he come in for his meals, in the evening? A Half past ten or eleven o'clock.
- Q And he was quite a visitor there? A No more than to get his meals there.
- Q And did the white women come in alone? They stayed there; didn't they? A Yes sir.
- Q They lived there? A Yes sir.
- Q And the black men came to visit them there? A I don't know anything about it.
- Q Well, these five white women, you being the sixth, stayed there all the time? A Yes sir.
- Q And the black men would come in there to visit the place? A They eat there.
- Q And got family accommodations, in the rear rooms? A I couldn't say. The boss knows that.
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JOSEPH PARKER, a witness called on behalf of the defense, being duly sworn, testified as follows,  
DIRECT EXAMINATION BY MR. SMITH:

Q Mr. Parker, what is your business? A Cook.

Q Where do you cook now? A I cook there, for Walker.

Q Where is Walker's place at? A 247 West 26th .

Q 247? A No sir, 147. That's right.

Q 147 West 26th Street? A Yes sir.

Q Were you cooking there on the night of February 17th? A I were.

Q Or, rather, on the early morning of that day?

A Yes sir.

Q You were cooking there? A Yes sir.

Q You were regularly employed there? A Yes sir.

Q Who owned the place, at that time? A Harry Hunt.

Q You were working for him? A Yes.

Q And did he pay you a salary? A Yes.

Q Now how many people were in that restaurant, in the restaurant proper, on that evening, or, rather, at 2:15 in the morning or 2 o'clock in the morning? A There was twelve.

Q I mean, in the restaurant? A Oh, there was four in there.

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Q Four? A Yes sir.

Q Who were those four people? A There was Katie Foster, and Anderson Miller, and this fellow that they call "The thousand dollar kid", and Florence.

Q Yes. Now what was Anderson Miller doing in that place? A Well, he came around there to get some pigs feet, and so on, and he stayed in there a little longer than he intended, and he intended to go home, and he asked me to let him have some pigs feet, and I let him have the pigs feet, for ten cents.

Q Now just a minute. Did they have any beer in that place? A No. They didn't have any. Only they sent this boy out for some.

Q They sent the boy out for some beer? A Yes sir.

Q Who paid the boy to go out for the beer? A Oh, nobody paid him. He only went.

Q Well who gave him the money for the beer? A Oh, Miller gave him the ten cents.

Q Did you see him give it to him? A Yes sir.

Q And did the boy bring the beer back? A Yes sir.

Q And you proceeded to drink the beer? A Yes sir.

Q Did you have some of it? A No sir; I didn't drink

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any of it, not at the time.

Q Now state as near as you can to the jury, and state so that this last gentleman heremay be able to hear you, just the position of that restaurant, just where the chairs were situated, and just where Miller was, and where Katie Foster was, and every one else in the restaurant, at the time? A Well at the time, the tables were sitting just as them gentlemen is sitting there (indicating), and the sideboard was right against it, one table.

Q What table was that? A The table that Katie Foster and Miller were sitting at.

Q Were they sitting together? A No sir. He was sitting on the other side of the table, towards the door, and she was on the other side.

Q And did he have his back turned towards the street? A Yes sir, at the time, eating.

Q How was Miller dressed, at the time? A Well, he had on his clothes. He had on his overcoat, too. He was fixing to go home, he said.

Q He had on his overcoat? A Yes sir.

Q Now did you hear the rap when it came to the door? A No; I didn't hear the rap; because I had just left out the room, and went in the other room to go to bed.

Q Oh, you were getting ready to go to bed? A Yes

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sir, at that time.

Q What caused you to go back into this room? A Well, I heard such a loud talking in there, and so I came back, and there was a whole lot of cops, and one thing or another in there, and that caused me to go back. I didn't know what it was, until I find out.

Q And what did you see, when you came in the restaurant, that time? A I didn't see nothing, no more than the white people in there.

Q What did the officers say? A Well, they just said, "The place is raided." That's all I heard them say.

Q Did you hear him, at the time, say anything to Katie Foster? A No; I didn't hear him say anything.

Q Did you hear him say anything to Anderson Miller? A No sir.

Q Did you hear him say that he made a charge of sodomy against the woman and the man? A No sir. I didn't hear that until they took us to the lock-up.

Q How did you hear that? A Well, some one came around to my cell, and warned me to tell him about it, but I didn't know anything to tell him.

Q How long had you been employed in this place? A Oh, they only had it about four weeks, about as near as I

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and get at it.

Q Was Katie Foster working there? A Yes sir.

Q Was she a waitress there? A Yes sir, working as a waitress, and washing dishes and towels and so on for Harry.

CROSS EXAMINATION BY MR. O'CONNOR:

Q Parker, what did you work at? A Cook.

Q Cooked what? A Cooked steak, and one thing or the other.

Q Well what is one thing or the other? A Now, meat and chops.

Q Now, you don't know what took place between Anderson Miller and this defendant, do you? A Well, while I was in there?

Q Well, you got busy yourself; didn't you? A Well no sir. I had nothing to get busy about.

Q And you say you were getting ready to go to bed?  
A Yes sir.

Q And you took a white woman with you; didn't you?  
A No sir. She was already in there.

Q And she took the name of Catherine Moore; didn't she? A That's right, sir.

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Q And, while you were busy with Catherine Moore, you don't know what Anderson Miller did with Rattie Foster?

A No sir.

Q Then why did you undertake to describe to the jury the positions of the chairs and tables etc. in the room? A That's the way it was. I had been out only four or five minutes.

Q But you were in bed with Catherine Moore; weren't you? A Yes sir.

Q Well then why did you try to tell the court and jury that you walked out, when you heard the noise? A Well I hadn't been out only four or five minutes as I said.

Q And Catherine Moore got three months; didn't she? A Yes.

Q How many more of you colored men were there, with white women? A There was two more.

Q Wasn't there four black men there, altogether? A There was three with me, because Miller ain't black.

Q There were five black men, altogether? A Yes sir.

Q And four of you were sleeping with white women? A No sir.

Q Well they were in the rooms with them? A Yes sir.

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Q Now you have used the expression that Anderson Miller came in and said, "Any pigs feet here?" A I sold him the pigs feet.

Q Now you knew what he meant when he said, "Now, is there any pigs feet here, to-night?" Didn't you? A Why, I sold him the pigs feet.

Q (Repeated). Don't you know what he meant? A No sir; I can't read or write, sir.

Q Don't you know that that was the expression that was used in that joint? Don't you know that the term pigs feet meant that he was to have a white woman go down on him? A No sir.

Q And that that was the term used by you black fellows in that joint? A No sir.

MR. SMITH: May it please, that is as far as the defense is able to go, until we have any opportunity to get that other witness, who was an eye-witness to the fact, a person who was in that room at the time.

THE COURT: Well, you say that he can be found tonight?

MR. SMITH: Yes sir I do. Now, I don't know whether I --

THE COURT: Now, will you serve the subpoena

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and bring him here yourself?

MR. SMITH: Yes sir; I will do it.

THE COURT: And have him here, in the morning.

MR. SMITH: He has been personally served, and refused to come.

THE COURT: Then I will give you until tomorrow morning, to produce this witness.

MR. SMITH: Would your Honor direct me, or give me permission, if he will not come, to get an officer to lock him up, so as to bring him here?

THE COURT: I have no power to do that. If, tomorrow morning, you file an affidavit of personal service, and he does not appear, then I will issue an attachment. But the case will go on, tomorrow morning.

Now, gentlemen of the jury, before permitting you to separate, it is my duty to caution you.

Do not discuss among yourselves any subject connected with the trial of this case, or form or express any opinion thereon, until the case is finally submitted to you.

The Court will take an adjournment until tomorrow morning, at half past ten o'clock.

(The trial was then adjourned until Wednesday morning, March 15th, 1905, at 10:30)

*(The Defendant pleaded guilty, Mar. 15th, '05)*

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