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

-----X
THE PEOPLE

-against-

MAMIE DAILY, impleaded with
FRANK MARTIN and STEPHEN DENIKE.
-----X

Before:

HON. THOMAS C. T. CRAIN, J.,

and a Jury.

Tried, New York, December 1st, 1909.

Indicted for Robbery in the First Degree.

Indictment filed November 10th, 1909.

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

ASSISTANT DISTRICT ATTORNEY DANIEL F. MURPHY, for the
People.

GEORGE S. MacDONALD, ESQ., for the Defense.

Frank S. Beard,

Official Stenographer.

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(The jury having been empaneled and sworn, the Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the trial of the case until two o'clock p. m.)

AFTER RECESS.

J O H N C O N L O N, of 297 Tenth Avenue, a witness called in behalf of the People, being duly sworn, testified as follows:

MR. MacDONALD: I ask that all the witnesses be excluded.

THE COURT: Yes; I will so order.

DIRECT EXAMINATION BY MR. MURPHY:

Q Your name is John Conlon, and you reside at 297 Tenth Avenue, and you are a driver by occupation; are you not?

A Yes, sir.

THE COURT: Now, Conlon, when you give your testimony, try and talk loud enough so that all the jurors hear you, and slowly enough so that the Stenographer can take down what you say.

BY MR. MURPHY:

Q Did you ever see the defendant at the bar before today? A Yes, sir, on the 6th.

Q On the 6th of November? A Yes, sir.

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Q You saw her on the 6th of November, for the first time?

A Yes, sir.

Q What time of day was it? A About eleven o'clock at night.

Q Where? A In 28th Street, west of Seventh Avenue.

Q And did you have a conversation with her? A She spoke to me.

Q Now just say yes or no to that question. Did you have a conversation with her? A No, sir.

Q Did she talk to you? A Yes, sir.

Q And did she speak to you before you spoke to her? A Yes, sir.

Q What did she say to you? A She said, "Don't go with that woman. Come with me to my room. That one wants to bring you to a hallway." There was one woman ahead of me on the street when she said that.

Q What was that? A There was a woman going down the block, and this woman (indicating the defendant) turned back, and she said, "Don't you go with that woman," she says. "Come with me," and I said, "I am going with nobody. I've got no money to go with anybody. I am going home." And she said, "Don't you go with that one. She wants to take you into a hallway, and come with me. I have a nice room in 31st Street," and I said, "No, I am going home. I've got no money," and she said, "I only want a dollar," and she came halfway down the

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block with me, and I weakened, and went to her room at 338 West 31st Street.

Q And is that all the conversation you had with her on the street? A Yes, sir.

Q And you went with her to her room? A Yes, sir.

Q And what further conversation did you have there with her, if any? A She said, "Wait a minute," when I went in, and when I took off my hat and coat, "Give me a dollar," and I gave her a dollar.

Q Was anybody in the room besides yourself and the defendant when you entered, or when you had this conversation?

A No, sir. Then she said, "Wait until I come back." And she went out, and I was sitting on the side of the bed, with my hat and coat off, and she came in again, after she was three or four minutes out -- not five minutes -- and she commenced to walk around the room, and I didn't like her appearance, and I was sorry for going in at all.

MR. MacDONALD: I object to this answer, if your Honor please, and move to strike it out.

THE COURT: Yes. Starting with the words, "I did not like her appearance," the balance of the answer is stricken out, as irresponsible. Now, Mr. Witness, you will have to talk a great deal slower -- that means not so fast -- and a good deal louder. Now, take your time.

BY MR. MURPHY:

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Q Now, she came back; did she? A She came back.

Q After having gone out for a time from the room?

A Yes, sir; about four minutes.

Q Now, when she came back did you have any conversation with her? A No.

Q Did she say anything to you when she came back? A No, she said she thought I was no good.

Q After she received your dollar she said that? A Yes, sir.

Q Now, what else did she say? A She didn't say no more then, but she laid down on the bed, and this fellow, in the meantime, come in.

Q The fellow known as Frank Martin? A Yes, sir.

Q Now, wait a minute. We are getting along too fast. Did she have her clothes on, when she laid down on the bed? A She had some of her clothes on.

Q And then did anyone come into the room? A Yes; this Frank Martin.

Q Did you ever see him before the time he came into the room? A Never.

Q Now, did he say anything when he came into the room?

A He ran over, and pointed the revolver at my head (illustrating), and he said, "What are you doing here with my wife?"

And I said, "That's an old chestnut. If she is your wife, what made her bring me in here, and take a dollar from me?" And he

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said, "I have caught you in the act," and he struck me first on the head here (indicating the left side of the head, and then he struck me again in the jaw.

Q Did you see anything in his hand? A The revolver was pointing at my head all the time (illustrating).

BY THE COURT:

Q Now, where did he strike you, the first time? A Right here (indicating).

Q That is, on your forehead? A Yes, sir.

Q On the left hand side of the forehead? A Yes, sir.

Q And where did he strike you the second time? A On the right side of my chin (indicating).

BY MR. MURPHY:

Q And what did he say then, or what did he do? A I shoved the revolver away (illustrating) and he swung the revolver and give me the revolver right in the eye there (indicating the left eye).

Q And did you feel any bad effects from the blow in the eye with the revolver? A Yes, sir; I felt the room going around like that (illustrating).

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

THE COURT: Objection overruled. Motion denied.

MR. MacDONALD: Exception.

BY MR. MURPHY:

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Q You felt giddy or dizzy, you mean? A Yes, sir, that's what I mean. And then he put his hand in my left hand trousers pocket, and took my pocketbook out.

Q And what did that pocketbook contain at the time?

A There was between nine and eleven dollars in it. And then he went to the left hand vest pocket. (indicating), and took out my watch and chain.

Q What kind of watch was it? A Silver watch, Tiffany make.

Q Look at this watch which I show you.

BY THE COURT:

Q Now, before you open it, was there anything in it that enables you to identify it? A Yes, sir; on the back case of the watch there was, "Mrs. M. Bird to John Conlon."

BY MR. MURPHY:

Q And the date? A Yes, sir, and the date, 1894. At 161 West 21st Street, she lived then. It is a long time ago. I worked for her then, and she gave it to me for a present.

Q Now was that the watch that was in your pocket in that room, at that time, on that night (indicating)? A Yes, sir.

Q And is that the watch that Martin took out of your pocket? A Yes, sir.

MR. MURPHY: I offer it in evidence.

(It is admitted without objection, and marked People's Exhibit 1).

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BY MR. MURPHY:

Q And was there anything taken by Martin from your pockets, besides the pocketbook and the watch and chain at that time? A Yes, sir; a knife and a Canadian penny.

Q And after that what happened? A And after he robbing me, then he went over and had a whisper with her (indicating the defendant).

Q With the defendant? A Yes, sir. And she said, "Now, that will do. Let him go."

Q And, while he was going through your pockets did you see the defendant doing anything? A She was sitting over at the window on a chair, laughing.

Q And did she say anything to you? A No.

Q Either during the time that Martin was going through your pockets, or afterwards? A No, sir, not a word.

Q And you heard Martin say --or heard the defendant say to Martin -- "Let him go now. That's enough"? A Yes.

Q And did you go? A Yes.

Q You went out of the house? A Yes, sir.

Q And where did you go to? A To the station house.

Q And you made a complaint there? A Yes, sir.

Q And did you, in company with an officer, go back to the premises at 338 West 31st Street? A Yes, sir.

Q And to a room in those premises? A Yes, sir, I did.

MR. MacDONALD: I object to it, as leading your Honor.

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THE COURT: Well, I will let it stand that he went back there to those premises.

MR. MacDONALD: I take an exception.

BY MR. MURPHY:

Q Now, tell us what happened when you got back to the house there, with an officer? A We went to a couple of rooms, and the first room we went to, I said, "That's not the room." And we went to another room, and I said, "This is the room where the assault was committed." And there was a young man cooking his supper there, and a woman ran out, as we went upstairs, and I couldn't get a good look at her, and the officer said to the young man, "Where is that woman that just ran out of here?" And he said, "I don't know," and I said that was the room that I was assaulted and robbed in.

Q And did you see the defendant at any time in that house -- A Yes, sir.

Q Before you got out of the house again with the officer? A Yes.

Q You did see her there? A Yes, sir.

Q And did you see the man Martin, whom you mentioned, in the house when you were there with the officer? A Yes, sir.

Q And a man named Denike? A Yes.

Q And another woman besides the defendant? A Yes, sir.

Q Now, what did you see the officer do, if anything, at

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the time that you saw those four persons? A The officer knocked on the door, and they wouldn't open it, and they said, "Whose there?" and he said, "A police officer. Open the door, or I'll break it in," and the door was opened, and Martin was standing on the floor, and his wife was at the side of the bed, and this defendant was in the bed, with Denike. And I said, "There is the man that robbed me and assaulted me," (illustrating).

Q Pointing to whom? A To Martin. And this party here,-

Q The defendant here, you mean? A Yes, sir, (indicating). She had her head under the sheet of the bed. And I said the woman that was Martin's wife, that he said was his wife, wasn't the party. And I told the officer to take the clothes off this woman's head, and he did, and I said, "That's the woman." And he said, "Get up out of there," and he made the fellow get up, and this woman. And, when she got up, she said -- he went to strike me, she squared her fist at me (illustrating), and Martin shook his fist at her that way (illustrating), and says to her, "You got me in this scrape."

MR. MacDONALD: I move to strike that out, that "She went to strike me," as a conclusion of the witness.

THE COURT: Yes, I will strike that out.

BY THE COURT:

Q You mean that she put up her hands with her fist clenched?

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A Yes, sir.

Q And how near to you was she then? A About three feet away.

THE TENTH JUROR: Did the witness say, "That's the woman?"

MR. MURPHY: Yes, he has just testified to that, as I recollect it, but I will ask him again about that, Mr. Juror.

BY MR. MURPHY:

Q You said to the officer, "Make that woman take the clothes off her head," meaning the defendant? A Yes, sir.

Q And did the officer make her take the clothes down from her head, the bed clothes? A Yes, sir. And I said, "That's the woman that brought me in here."

Q And you heard Martin say to her what? A He held out his hand like that (illustrating by shaking his fist) and said, "You got me into this scrape."

BY THE COURT:

Q What did the defendant say, if anything, when Martin said that? What, if anything, did this woman who is now on trial say to Martin? A She said nothing. But she said to me, "Will your wife be at the court?" "You are married?" First, she said, and I said, "I am, and she said, "Will your wife be at the court? If she is, I'll shame you," and I said, back to her, "Will your husband be there?"

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BY MR. MURPHY:

Q Now, did you see the officers do anything after that?

A Yes, sir.

Q Did you see them search the room? A I did.

Q And just tell us what you saw the officers do in the way of searching the room? A Well, the fellow that was with this woman in bed there got out of the bed, and the officer searched him, and he had some money in his pockets, and I told the officer that I couldn't swear to it, that I couldn't identify it. And they got a penny in his pocket, a Canadian penny.

Q Where was the watch found, if at all? A I saw the officer raise up the carpet, and take it out.

Q And did the officer show you the watch he took out?

A Yes, sir; he held it up, that way (illustrating), and I said, "That's my watch".

And the officer asked Martin where the gun was and the watch, and he said he had no gun or watch. That was when we first went in. And he said, "Is there any gun in this house?" And Martin said, "No."

And so they got a loaded cartridge on the bureau, and then they searched around, and raised the bed up, the mattress up, and they pulled the gun out, and the officer said, "Here is the gun."

Q Now describe the revolver that they took out? A A revolver like that one you have in your hand (indicating).

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Q But you can't swear that this is the same revolver, though? A No, sir, I couldn't.

Q And did Martin say anything when the officer took it out from under the mattress of the bed? A Not a word. Then the officer said to him, "I thought you had no gun," and he held on his head, and said nothing.

BY THE COURT:

Q Who took the revolver out from the bed? A The officer, Officer Watson.

CROSS EXAMINATION BY MR. MacDONALD:

Q And where did you work, on November 6, 1909? A I was driving at the Belmont Hotel.

Q What did you do there? A Driving a horse and hansom.

Q Who did you drive it for? A Mrs. Haverly.

Q And how long did you work on that job? A About six weeks.

Q And when did you finish work, that night? A Maybe it was a little after eight o'clock; around eight o'clock or a little after.

Q Didn't you swear, this morning, that you stopped work at five o'clock? A I did not, sir.

THE COURT: Another question, now, Counsellor.

THE WITNESS: I did not, sir.

THE COURT: That is sufficient, you have answered.

Just answer the questions.

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BY MR. MacDONALD:

Q And, after you quit, at eight o'clock, where did you go? A I went up to 75th Street, west of Third Avenue, to see a friend of mine, and I heard he had left there, and I didn't see him.

Q Did you have a drink there? A No, sir, I couldn't; he wasn't there.

Q And what was his name? A A friend by the name of Murphy.

Q And where did you go then? A I took a car down to 40th Street and Third Avenue, and I went over to the Murray Hill Hotel, to see another party there, and he was gone home.

Q Did you have a drink there? A No, I didn't.

Q And where did you go from there? A I went from there to go home.

Q What street did you walk through? A I went through 40th Street to Fifth Avenue, and I walked down Fifth Avenue to 38th Street, and through 38th Street to Seventh Avenue, and down Seventh Avenue to 30th Street. I had some raw oysters at the corner of 30th Street at an oyster stand there.

Q Did you have a drink there? A No.

Q Now, after you had the raw oysters, where did you go? A I walked down Seventh Avenue to 28th Street.

Q And where did you go then? A I went through 28th Street, and was going to go home, going right west.

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Q And where did you say you met this defendant? A A little west of Seventh Avenue.

Q Near Seventh or Eighth? A A little west of Seventh Avenue.

Q Between Seventh and Eighth? A Well, maybe 40 yards west of Seventh Avenue.

Q (Question repeated)? A Yes, sir.

Q Well, what time of night was it that you met her?

A Well, I didn't take any trouble to look at the time. It must be after nine o'clock, anyway, or ten.

Q Were you intoxicated at that time? A No, sir, I wasn't.

Q How many drinks had you had up to that time? A I had two drinks all day long. I was out at seven o'clock in the morning.

THE COURT: Just answer the questions and answer as briefly as possible.

BY MR. MacDONALD:

Q Did you speak to her first, or did she speak to you first? A She spoke to me first.

Q Do you remember how she was dressed? A Beg pardon?

Q (Question repeated)? A I do, well; I do, indeed.

Q Did she have this same dress on (indicating)? A No, sir; and she had no hat on her either.

Q No hat? A No, sir.

Q And where did you go with her from there? A To 338

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West 31st Street.

Q And what kind of a house is that? What does it look like? A Well, it is an old fashioned private house, an old timer.

Q A stoop house, with a high stoop? A Yes, sir.

Q And is the house next door similar to it? A Just about the same. There is two or three houses there, with boards nailed across the stoop there, this side of that house.

Q Now, what time of night did you arrive there? A Well, my opinion is, between ten and eleven. I didn't look at the time.

Q And where did you go in that house? A I think I went up one flight to a room on the left hand side, in the back.

Q In the back? A Yes.

Q And what did you go to that room for? A Beg pardon?

Q (Question repeated)? A Well, prosecution, I suppose.

Q Prosecution? A Yes.

MR. MURPHY: I suppose he means prostitution. He is not perhaps as learned as you are, Mr. MacDonald.

BY MR. MURPHY:

Q You mean prostitution? A Yes, sir.

THE TENTH JUROR: May I ask a question?

THE COURT: Yes.

BY THE TENTH JUROR:

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Q Where do you live? Where did you live at that time?

A 297 Tenth Avenue, corner of 27th Street.

BY MR. MacDONALD:

Q How long were you in the room before you say a man came in? A About five minutes.

Q Five minutes? A Between five and six; it wasn't much more.

Q And, between the time when you first met her, until that time, did you have any more than those two or three drinks?

A I had no drink at all at the time. I was drinking --

THE COURT: Now, you have answered.
BY MR. MacDONALD:

Q And when did you leave that place, that house? A It must have been about eleven o'clock.

Q Didn't you look at the time? A No, sir, I didn't. I was kind of -- I was too much upset from what had happened to me.

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

THE COURT: Yes, strike out all of the answer from the words, "No, sir" down to the end of the answer.

BY MR. MacDONALD:

Q Now, where did you go from the house? A To the station house.

Q What time did you arrive there? A Well, it wasn't much after eleven.

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Q And who did you see there? A I seen the sergeant at the desk.

Q And then after that did you go with the police officer to the house? A Yes, sir.

Q Now, up to that time, did you have another drink? A No, sir.

Q Now, when you arrived with the police officers -- I believe there were two -- at the house, what time of night was it then? A Well, I should say it must be after twelve, because they kept me quite a time in the station house, until they would be ready to go with me. It must have been between twelve and one.

Q And, when you entered the house where did you go? A We went up to a room first, and there was somebody there in the room, and I said, "This ain't the room."

Q And did you go with the officers to a room in that house? A Yes, sir. But I told him, "This ain't the room." And then we went to another room, and I said, "This is the place where I was assaulted and robbed."

Q How many rooms did you go into? A Two.

Q Didn't you testify this morning, that you sat two hours on a chair, and didn't go to any room but one with the officers? A And I am telling you now that I sat in one room for nearly an hour and a half or two hours, but it was in the second room we stayed.

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BY THE COURT:

Q In other words, you sat for about an hour or two hours in the room in which you say you had been previously assaulted that evening; is that so? A Yes, sir.

BY MR. MacDONALD:

Q And the room that you say you had been assaulted in, you sat in for two hours? A Yes; about.

Q And did you see the defendant there in that room?

A No, sir.

Q Then where did you go, after two hours? A There was an officer sitting with me at the time in the room, and he said to the man, "Where did that woman go that ran out of here?" And he said, "I don't know," and he said, "Are you married?"

Q Never mind the conversation. Where did you go then?

A One of the officers --

THE COURT: No. You were asked a simple question.

BY THE COURT:

Q After you left the room where you say you sat for two hours, where did you go? A To another room on the top floor, front, in the same house.

Q And how long did you remain in that room? A Not longer than to make the arrest.

BY MR. MacDONALD:

Q And what people were in that room when you arrived

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there? A The defendant, and Frank Martin, and this other man, and the party that Frank Martin said was his wife; two men and two women.

Q And are they the same people that you said you saw before? A No; I only saw Martin and her before [indicating the defendant]. I didn't see the other two parties before.

Q You didn't see Martin's wife or the other man before? A No; and I wasn't there before at all.

Q You were not? A No, sir, not in that room.

Q Now, who did you see in the room where you were with the officers on the top floor? A I see the defendant and Frank Martin and the woman Frank Martin said was his wife, and the other man.

BY THE COURT:

Q Now, you are talking of the room in which the arrests were made? A Yes, sir.

Q And that was a room on the top floor of the house, in the front? A Yes, sir.

BY MR. MacDONALD:

Q And that is not the room that you went into the first time you were in that house, that night? A No, sir.

Q And did you have a drink up to that time that you went into that room on the top floor? A No, sir.

Q Weren't you under the influence of liquor at any time that night? A No, sir. I had two drinks all day, a drink of

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whiskey and a glass of lager and porter all day.

Q Only two drinks all day? A Yes, sir. Sometimes I'll be a month that I don't take a drink.

Q How many times did you visit the house after the first time you left it? A Only once.

MR. MURPHY: Just a moment. I don't quite understand that. After he left it first to go to the police station?

MR. MacDONALD: Yes.

THE WITNESS: I met a police officer on his beat, and he come up there with me, and didn't go in the room and he said -- he stood in the door of the room and he said, "Do you know anything about this man's watch," and a man put out his head, and said, "No". And then he said to me --

Q Who did? The officer? A Yes, sir. "Well, you had better go to the station house, and make a complaint, and you get a couple of detectives, and they will do more than I can for you." I hollered at the door when I first went out, and the policeman came up.

Q And the policeman came up to you when you hollered at the front of the house? A Yes, sir.

Q That was when you first went out of the house? A Yes, sir.

Q And then, when you say you visited the house only once,

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you were lying? A No, sir, I told you I visited the house twice.

Q You did? A Yes; I did indeed.

Q What time was it when you arrived at the police station?

A Oh, I couldn't exactly say. I know it wasn't much after twelve -- a little before twelve -- between eleven and twelve somewhere.

Q And when these people were arrested, what time did you arrive at the station house? A Well, it must be about half past two or thereabouts; about half past two, I think.

Q And did you fall asleep in the station house? A I did not.

Q When you visited the house, did you have any trouble finding the room that you were looking for? A No.

Q You say positively that all you had, that day, were two or three drinks?

THE COURT: No, we will not go any further into that.

You have questioned him enough about that.

BY MR. MacDONALD:

Q Didn't the officer say to you when he went to look for the watch, didn't he say, "Why, there is your watch in your pocket?" A No, sir, he didn't.

Q And then didn't he go over to the carpet, and say, "Here it is, and shake the watch, like that (illustrating)?"

A No, sir, he didn't; no such thing.

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Q And you remember everything that happened? A Everything.

RE-DIRECT EXAMINATION BY MR. MURPHY:

Q Just one question --

THE SIXTH JUROR: May I ask a question?

THE COURT: Yes.

BY THE SIXTH JUROR:

Q You say you went back from the police station with the officer and the first room you went into, you said you sat in for two hours. What were you doing for two hours? A The officer told me to wait there along with him, and the other officer went to search the house.

BY MR. MURPHY:

Q There were two officers with you? A Yes, sir.

Q And one sat with you, and the other searched the house?

A Yes, sir.

Q And you awaited the result of his search? A Yes, sir.

BY THE COURT:

Q Now, did you bleed from the blow that you received, that night? A No, sir, but my eye was closed, though, closed up like that (illustrating).

RE-CROSS EXAMINATION BY MR. MacDONALD:

Q When did you first find out that her name was Mamie Daily; that this defendant's name was Mamie Daily? A At the

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courthouse -- at the station house, at least.

Q And when did you find out Denike's name first? A At the station house.

Q And Martin's name? A At the station house.

Q You knew none of them before? A No, sir.

Q Or their names? A No, sir.

MR. MacDONALD: That's all.

THE COURT: Now, if the complainant is not required again, he may go.

MR. MURPHY: I see no reason why he should be required to remain, but perhaps he may want to stay.

THE COURT: Very well.

JAMES A. WATSON, of 212 West 82nd Street, a witness called in behalf of the People, being duly sworn testified as follows:

DIRECT EXAMINATION BY MR. MURPHY:

Q You are a police officer, attached to the 22nd Precinct, of the Municipal Police of the City of New York? A Yes, sir.

Q On the night of the 6th -- on the morning of the 7th of November, did you arrest the defendant? A Yes, sir.

Q Now, please state to the Court and jury all the circumstances surrounding her arrest? A The complaining witness, John Conlon, came to the station house, and I had a conversation with him in the station house.

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BY THE COURT:

Q And, as a result of that conversation what did you do?

A I went with the complaining witness, John Conlon to No. 338 West 31st Street, and searched through two rooms there.

Q Did anyone else go with you? A Officer Lavack. And we went up to the top floor, front room, and brought the complaining witness into this room, and, when we got into the room, the complaining witness pointed out the defendant as the woman who brought him up there.

BY MR. MURPHY:

Q Now, just what was his statement? What did he say relative to this woman? A He said, "This is the woman that brought me up here." And he pointed the other defendant, Martin out as the man that assaulted and robbed him.

Q And what did he say about Denike, if anything? A He didn't say anything about Denike.

Q And there was still another woman there; was there?

A There was still another woman there.

Q And what did he say about her? A He said that she was his wife.

Q Who said that? A Martin.

Q No, I mean the complaining witness. Did he say anything about her? A No, sir; he said nothing about her.

Q Now, proceed, Officer? A When we went into the room I asked Martin if he had a revolver and he said no. I asked him

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if there was a revolver in the room, and he said no. So I went between the two mattresses, and I put my hand under there, and pulled it up, and pulled out a revolver.

Q Is that the revolver (indicating)? A Yes, sir.

Q What was the condition of the revolver as far as cartridges were concerned? A It was loaded with blank cartridges, except one chamber, that didn't have anything in it.

Q And did you show the revolver to Martin? A I showed the revolver to Martin, and he said it didn't belong to him, and he didn't know how it got there.

Q Yes. A The defendant was in bed with Stephen Denike, the two of them undressed, laying in the bed; and she had the clothes -- when we come in, she pulled the clothes up over her head, and covered her face -- and then I pulled the bed clothes down from her face, and the complaining witness identified her.

Q What did he say in his identification of her? A He said, "This is the woman who brought me up here."

Q And what did she say to him, if anything? A I don't remember what she said to him.

Q Now, did you continue your investigation of the room? A I told the Daily woman and Denike to get up and dress themselves, and then we searched the room. Underneath the carpet, near the stove in the room --

MR. MURPHY: If your honor Please, I offer the re-

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volver in evidence.

THE COURT: Yes, received.

(It is marked in evidence, without objection, People's Exhibit 1.)

BY MR. MURPHY:

Q Go on Officer? A Underneath the carpet, near the stove, we found a silver watch and chain.

Q Now, had this watch been described to you by the complaining witness before you found it? A Yes. In the station house, he said --

Q Never mind what he said, but had he given you a description of it? A Yes, sir.

Q You found a silver watch under a flap of the carpet?
A Yes, sir; near the stove.

Q I show you this and ask you if that is the watch?
A Yes, sir.

Q Why do you open the back cover, officer?

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

THE COURT: I will allow it.

MR. MacDONALD: Exception.

A Because the complaining witness told me that, in the back of this watch, which was a Tiffany watch that had been presented to him, was the name of the woman that gave it to him, the woman he used to work for.

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Q And did you see the inscription when you found the watch, "John Conlon from Mrs. M. Bird, 1894?" A Yes, sir. Then I searched Denike, and I found a Canadian coin in his pocket, a penny, and I asked him if it belonged to him, and he said it didn't. And I asked him where he got it, and he said he didn't know how it got into his pocket.

And the Daily woman was putting her shoes and stockings on, and Martin shook his fist at her, and said, "You got me in this trouble." And we searched the room, and didn't find --

Q Did she make any reply to that? A She looked at him, and didn't make any reply. When they were dressed, Officer Lavack and myself took the three of them and the complaining witness to the 22nd Precinct Station House.

Q At that time you didn't find the pocketbook or the knife that the complaining witness claims to have lost? A No, sir.

Q Now, what happened in the station house? A In the station house, they took their pedigrees, and the doorman took them back to the cells -- the matron took her back and the doorman took the other two -- the two men -- and I told him to put the two men at different ends of the prison. After they had been locked up, the doorman opened the prison, and put me in between them.

Q In a cell? A Yes, sir; in the back.

Q Put you in a cell? A Yes, sir. And Denike and Martin

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had a conversation between them.

MR. MacDONALD: I object if you are going to relate the conversation.

BY MR. MURPHY:

Q They had a conversation together? A Yes, sir.

Q Did you listen to the conversation? A Yes, sir.

Q Now, what was it?

MR. MacDONALD: I object to the question, not being in the presence of the defendant.

THE WITNESS: I will state, your Honor, that she could hear the conversation.

BY MR. MURPHY:

Q Oh, was she locked up in the same tier of cells?

A Well, you could hear between the cells; they are so situated.

THE COURT: No, I will sustain the objection, and strike out the officer's statement that the defendant could hear it, and the jury will disregard that. I will allow you to testify, Officer, to anything that Martin said to this defendant, which you heard, or anything that this defendant said to Martin, in the prison cells.

THE WITNESS: Well, I was in there, and the defendant Martin called out, "Marian", and she answered, "What do you want"?

BY THE COURT:

Q Who answered? A Marian.

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Q And who is Marian? A Marian was the woman Daily.

BY MR. MURPHY:

Q This defendant (indicating)? A Yes, sir. And he asked her how she was making out. That's all the conversation that Martin had with her.

Q Is that all that happened? A Yes, sir.

CROSS EXAMINATION BY MR. MacDONALD:

Q Now, officer, what time of the morning of November 7, 1909, did you leave the police station, with the complaining witness? A I should judge between two and three o'clock.

Q Between two and three o'clock? A Yes, sir; it was after two o'clock. I kept him waiting in there for some time, to wait for Officer Lavack, who was at Night Court, and I wanted to take the officer with me.

Q Did you notice the notice the appearance of the complainant at that time? Did you notice in his appearance that he had been drinking? A I should say that he had been drinking a little.

Q You noticed signs of drink? A A little.

Q You noticed little signs of drinking? A Yes, sir.

Q Now, where is the police station? A 434 West 37th Street.

Q And how long have you been on the force? A Almost eight years.

Q And what time did you arrive at the house?

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MR. MURPHY: What house? Station house?

BY MR. MacDONALD:

Q At 338 West 31st Street? A Between two and three o'clock, I should judge.

Q And, when you entered, where did you go? A Up two flights of stairs, to a hall bedroom, in the back.

Q Did the complaining witness go with you? A Yes.

Q Did he go in with you? A Yes.

Q And then where did you go? A Went down a flight of stairs to a room in the back, where the complaining witness said that that was where the assault and robbery was committed.

Q Did he go in with you? A Yes; we went in there and sat down.

Q And he said that that was the room? A Yes.

Q And then where did you go? A Then we went up to the top floor again, in the front.

Q Yes. A And into the room there where the three defendants were, the Daily woman, Denike, and Martin, and the other woman, and that's where the complaining witness pointed the Daily woman out as the woman who brought him there.

Q And about what time did you arrive upstairs there?

A Between two and three; it was maybe a little after three o'clock.

Q Between the same hours as you left the police station?

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A I didn't look at the time. It was between that time. I figured the arrest was made about four o'clock, when we got through searching.

Q And then you went into a room, and who did you see there? A I seen the defendant Daily, Frank Martin, Stephen Denike and another woman, who said that she was Martin's wife.

Q And where did you see this woman (indicating the defendant)? A The woman was in bed with Stephen Denike.

Q Where did you see Frank Martin?

A Standing up, near the window in the room, near the front of the room.

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Q What was Frank Martin with? A He wasn't with anybody. He was standing there, and his wife was laying on the floor, the woman he said was his wife.

Q And he was standing up? A Yes, sir.

Q And you say you found a revolver under the mattress?

A Yes, sir.

Q With blank cartridges in it? A It was loaded with blank cartridges, except one blank chamber.

Q There was nothing in that chamber? A No, sir; that was blank.

Q Now, Officer, didn't you go to the complaining witness, and say, "Here is your watch in your pocket?" A No, sir.

Q And then didn't you go over to the carpet, and dangle the watch (illustrating), and say, "Who put this watch under this carpet?" A No, sir. I found the watch under the carpet, and showed it to the complaining witness, and he identified it.

MR. MacDONALD: I object to the answer as irresponsible, and move to strike it out.

THE COURT: "No, I will allow it to stand, for the reason that it is fairly responsive.

MR. MacDONALD: I take an exception.

BY THE COURT:

Q Now, Officer, what time was it -- you have already

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told, but I would like you to tell me again -- what time was it when you and your fellow officer reached 338 West 31st street, in company with the complaining witness, about what time?

A I should judge it was about 3 a.m.

Q And, when you reached that house, what was the first thing that you and your fellow officer and the complaining witness did? You went into the house?

A Went into the house, and ascended two flights of stairs.

Q Now did you go to the front or back, when you got up?

A Back.

Q And you went to the door of a room?

A Yes, sir.

Q What did you do? Did you knock on the door?

A Yes, sir, and I got no response. And the door was open -- I tried it, and found it wasn't locked, and I opened it, and there was a man laying in bed, and I asked the complaining witness if it was the man that assaulted and robbed him, and he said no. And then I took him downstairs --

Q Took whom? A Took the complaining witness, to a room on the floor below, where I saw the door open. And, the minute he got in there, he said, "This is the room where it occurred." And there was a man in there, cooking his supper, and I asked him, was this the man, and he said --

THE COURT: No, do not say what was said there.

Strike that out.

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BY THE COURT:

Q And what occurred then? A Then Officer Lavack went up to the top floor, and then he called me up, and I brought the complaining witness up into the room where the defendants were.

Q Now about how long do you think it was, what is your best recollection, how long do you think it was from the time you reached that house until you left it, with the complainant and the defendants and your brother officer? A About an hour, I should judge, and it might have been a little more than an hour. I sat in this room where I was with him, for some time, thinking that the people who had committed this assault and robbery would come back; I waited for them to come back.

Q In other words, you waited some time in the room that you entered down on the lower floor? A Yes, sir, on the lower floor.

Q And the complaining witness was with you? A Yes, sir.

MR. MURPHY: The People rest.

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THE DEFENSE:

M A M I E D A I L Y, the defendant, of 338 West 31st street,
being duly sworn, testified as follows:

THE COURT: Miss Daily, when you answer questions,
talk loud enough so that all the jurors can hear you.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION BY MR. MacDONALD:

Q Now, do you remember November 7th, 1909? A Yes, sir.

Q And do you remember November 6th, 1909? A Yes, sir.

THE COURT: Now, madam, you will have to talk a
great deal louder. You had better raise your veil, and
talk so that the juror who sits furthest away from you
may hear every word you say.

BY MR. MacDONALD:

Q Where did you live at that time? A 338 West 31st.

Q Now what part of the house did you live in? A The
top floor, front.

Q How long did you live there? A I should judge,
about five weeks.

Q Are you married? A Yes, sir.

Q Where is your husband? A My husband left me, the
week before that, saying he was going to Paterson, and I haven't
heard from him from that time up until now.

Q Do you know a man named Stephen Denike? A Yes, sir.

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Q And between the hours of seven and eight, did any one call at your house? A Yes, sir.

Q Who called there? A Mr. Martin and his wife.

Q And what did they say to you? A They asked me to go down to 14th street, to a moving picture show, down to the Dewey.

Q And what did you say? A I said yes, I would go down.

Q And did you go to this moving picture show? A Yes, sir.

BY THE COURT:

Q How long did you stay there? A We got there about eight o'clock, and we stayed there until it was about a quarter after eleven, when we left.

BY MR. MacDONALD:

Q What time did you leave there? A A quarter after eleven.

Q And where did you go then? A It was a nice night, and we walked from there on up to Eighth avenue, and up Eighth avenue to "Joe's" restaurant, where we had something to eat, between 27th and 28th streets.

Q And what time did you get there? A Well, I should judge about twelve o'clock.

Q And how late were you there? A Well, we had something to eat, and we sat talking, and I had some sandwiches made

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up, and I looked at the clock, and it was one o'clock, and I said it was time to go home. It was about half past one when I got home, anyhow.

Q And where did you go then? A We went from the restaurant on home.

Q Who accompanied you there? A Mr. Martin and his wife.

Q Do Mr. Martin and his wife live with you? A No, sir.
BY THE COURT:

Q Where were they living, if you know, on the 6th day of November? A 125th street, some place; just where, I don't know.

BY MR. MacDONALD:

Q And this was on the 6th day of November, 1909? A Yes, sir.

Q And when before had you seen Martin and his wife?

A The first time I met Mr. Martin was on the 26th of September, the day of his marriage, the day he was married.

Q Well, what were you at the marriage? A I stood up for him and his wife.

Q Did you know him or his wife before that? A I knew his wife. I never met him before that, before the 26th of September.

Q And then this was the second time that you met him?

A Yes, sir.

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Q And when you arrived home, was anybody in your room?

A Yes, sir; this Stevey Denike was in bed.

Q In your bed? A Yes, sir.

Q Had you known Stephen Denike? A Yes.

Q Had you known him long? A I knew him six or seven months, something around that. Stevey Denike knew my husband.

Q What time did you arrive home, November 7th, in the morning? A About half past one.

Q And where did you go then? What did you do then? How is it that Martin and his wife stayed there that night? A Well, it was late, and I requested them to stay over until morning, to stay with me all night, and go up home in the morning. It was late.

Q Now what time was it that these people entered your room? A Well, I should judge I was at home and in bed about an hour or an hour and a half, something like that, when I heard the knock on the door, and I told this Mr. Martin to get up and open the door, and then the two officers and the complainant came in.

BY THE COURT:

that,
Q Had you seen him before that night? Had you seen the complaining witness before that, that night? A No, sir.

BY MR. MacDONALD:

Q And what did they say? A And this Mr. Martin's

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wife was standing on the floor with him, and the complainant pointed her out, and said, "That's the woman I came up here with." And they were talking, and I raised up my head, after a while, to see what was the matter, and he said then, "No. That's the one that brought me up here." And then the officer went over, and took something out of his pocket, and he said, "Why, here's your watch." But he didn't say it loud. And then he walked over, and made out that he picked up something from underneath my carpet, and held up the watch, and said, "Is that your watch?" (Illustrating), and he said, "Yes."

Q And did they find a revolver in the room? A Yes.

Q Whose revolver was that? A That's my revolver.

Q Where did you get it? A My husband left it there, when he went away.

Q And has it always been under the mattress since your husband left there? A Yes, sir, always.

Q And did you notice the complaining witness's condition when you saw him?

MR. MURPHY: One moment.

A Yes, sir; he was under the influence of liquor.

MR. MURPHY: Well, it's in now. It is too late to object now. It had to be gotten in, I suppose.

BY MR. MacDONALD:

Q Now, had you any other room in that house?

A No, sir.

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BY THE COURT:

Q Now, did you notice the face of the complaining witness when you saw him, whether there was any bruise on it? A No, no, your Honor, I didn't.

BY MR. MacDONALD:

Q And what did the officers then say? A Well, I don't know. They started to abuse the fellows, slapped them in the face, and one thing or another, and told us to get dressed, and told this little woman to go on home, wherever she lived. They let her go on out, and took me on down to the station house, Mr. Martin, Mr. Denike, and myself.

Q What time did you arrive at the station house? About what time? A Well, about twenty minutes past four in the morning, Sunday morning.

Q When was the first time you ever saw the complaining witness? A When he came up to my room, with the two officers.

Q Had you ever seen him before that? A No, sir.

Q When was the first time you ever saw that watch?

A It was when this officer held it up. He took it out of his pocket first, the man's pocket, and he said, "Why, here is your watch? What are you talking about?" He said that in a very low voice. And the man was dodging from side to side in the room. (Illustrating).

Q You mean that he was intoxicated? A Yes, sir. Then

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he went to sleep in the station house.

BY THE TENTH JUROR:

Q What room did you occupy? A The top floor, front.

Q And you say you had but one room in that house?

A Yes, sir.

CROSS-EXAMINATION BY MR. MURPHY:

Q Did you talk with your counsel, your attorney, to-day, between the hours of one and two o'clock? A No, sir.

Q When did you see him last? A Day before yesterday, I think.

Q Did he talk to you then? A Yes, sir, but nothing about my case, though.

Q What did he talk to you about? A About social matters?
A Well he only told me that I was going to take the stand, to-day. He didn't have much to say, because it was late.

Q Was that all he said to you? A That was about all.

Q Well, what else, if anything? You say it was about all? A Well, this Denike was sick over there, and I asked how he was.

Q He was your husband's friend, and he was sick, and you were worried about him? A No, sir, I wasn't worried.

Q Just displaying a friendly interest? A Yes, sir.

Q He is more of a friend of your husband's than he is of yours? A Yes, sir.

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Q Yet you knew him well enough so that he was in your bed in this room, when you came back to your room, on that night?

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

BY MR. MURPHY:

Q Do you know him well enough to have him spend the night in your room and in your bed?

MR. MacDONALD: Objected to, as immaterial, irrelevant and incompetent.

MR. MURPHY: Well, the witness brought it out herself, if your Honor please. I don't like to cause any pain to the witness unnecessarily, but I think it is my duty to ask the question.

THE COURT: I do not think that you can add anything in that respect. It is conceded that he was in the room and in the bed, and remained there with her until the officers ordered him to get out of the bed.

MR. MURPHY: Very well, sir. I will not press the question.

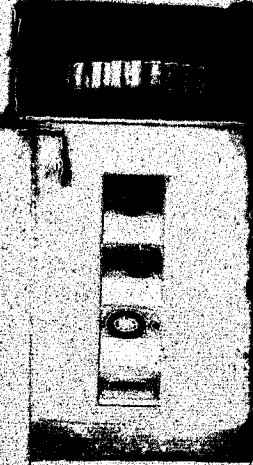
BY MR. MURPHY:

Q What is your name? A Daily.

Q No, that's your husband's name? A Yes, sir.

Q No, your own name? A Robinson, before I was married.

Q Where were you born? In New York? A No; Easton, Pennsylvania.



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Q How long have you been married? A Two years.

Q Where were you married? A Easton, Pennsylvania.

Q By whom were you married? A Justice Krause. He's dead now.

Q Oh, he's dead now? A Yes, sir.

Q Did you receive any certificate? A Yes, sir.

Q Who has got it? A My mother has got it.

Q Where? A In Easton, Pennsylvania.

Q How long have you been in New York? A Eight months.

Q What month did you come here? A I think it was in the month of November -- no, I don't remember exactly.

Q Where did you come from to New York? A I came from Paterson, New Jersey, over here.

Q And how long have you been in Paterson? A About a year.

Q About what? A About one year.

Q What were you doing in Paterson? A Keeping house.

THE COURT: Madam it is perfectly useless for you to sit there, and talk so that the jurors do not hear you. The twelfth juror says that he cannot hear you at all. You have nothing to be afraid of. Talk so that these twelve gentlemen can hear what you say. Look at them, and talk to them. Now go ahead.

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BY MR. MURPHY:

Q What were you doing in Paterson? A Keeping house for my husband. He used to work in a silk mill over there.

Q And about eight months ago, you moved to New York City?
A Yes, sir.

Q And what did you do in New York? A My husband was keeping me until a week before my arrest.

Q What did he do to make a living for you and himself?
A He worked in a restaurant, on Sixth avenue.

Q And where did you live with him? A Well, I lived on 25th street, until I moved to 31st street.

Q When did you move to 338 West 31st street? A When?

Q Yes?

BY THE COURT:

Q About how long before you were arrested? A Five weeks.

BY MR. MURPHY:

Q And how long -- how large a part of the five weeks did your husband live with you? A I can't hear you.

Q You can't hear me? A No, sir.

Q I am sorry. (Question repeated). At 338 West 31st street? A Four weeks.

Q Was he working then? A Yes, sir.

Q And when you said in the Police Court, in answer to the Police Court's Clerk's question, that your business was house-

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work, did you mean that you worked for some one else? A No, sir.

Q You kept house for your husband? A Yes, sir.

Q And you lived in one room, at 338 West 31st street, with your husband? A Yes, sir.

Q And did you take your meals out? A No, sir, I cooked right there in the room.

Q And your husband left you about a week before you were arrested? A Yes, sir.

Q Did he tell you that he was going to leave? A Well, he was talking about going back to Paterson again, and going back into the silk mill.

Q Did he tell you when he was going? A No, sir.

Q And so that you had no knowledge or information that he was going to leave you? A No, sir.

Q When did you decide that he had left you; after how many days? A Well, after he had been gone two or three days.

Q Well, did you go to Paterson to look for him? A No, sir.

Q And is that the first time that you were separated from your husband since you were married to him? A Yes, sir.

Q And he left you without any word of warning? A Yes, sir.

Q And you didn't go to look for him in Paterson? A No, sir.

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Q And it didn't occur to you to look for him at the silk mill where he had been previously employed? A Well, I was going over, the next week.

Q And how soon after your husband left did you see Denike? A I didn't see him until that night that we had this trouble; that the man brought the two officers up there.

Q Well then you mean that your husband had left the Saturday previous to your arrest, and you had not seen him, Denike, before that Saturday night? A Yes, sir; only on Saturday night he came down.

Q And the last Saturday night before that your husband was there? A Yes, sir.

Q And when you say he came down, from where do you mean? A He lived uptown somewhere; 159th street, I think.

Q And was it customary for him to spend the night in your room, when he came down? A I don't understand you.

BY THE COURT:

Q Had he ever slept in your room for the night, before that night? A Yes, your Honor, he has.

BY MR. MURPHY:

Q When your husband was with you? A Yes.

Q Where did he sleep? A He slept on the floor.

Q So that, when you came back from the restaurant, where you say that you had been with Martin, you were not at all surprised to find him there, and did find him there, in bed?

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A Yes, sir.

Q Now, at the restaurant, did Martin pay the bills?

A Yes, sir.

Q He was your host all the way through; was he? A Yes.

Q He took you to the theatre and also to the restaurant?

A Yes.

Q And how long have you known Martin? A From September 26, 1909. That's the first time I met him.

Q And that's the day he was married to his wife? A Yes, sir.

Q You are sure that it was not the 27th? A Well, 26th or 27th; I am not sure which; 26th, I think.

Q You were a bridesmaid? A Yes, sir.

Q But you made no note of the date? A No, sir.

Q Last September? A Yes, sir.

Q Now did you know Martin's wife before he married her?

A Yes, sir.

Q How long? A A couple of months.

Q Where did you meet her? A I was introduced to her by a little lady friend of mine.

Q By a little lady friend of yours? A Yes, sir.

Q Where did you meet her? A In this woman's house, in West 25th street.

Q And you had known her about two months before she married Martin? A Yes, sir.

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Q What was her name before she married him? A Tillie Morrissey.

Q And after two months' acquaintance with her, Miss Morrissey asked you to be bridesmaid at her wedding? A Yes, sir.

Q And you did act as bridesmaid? A Yes, sir.

Q Have you seen Tillie Morrissey, or Mrs. Martin, since you have been arrested and locked up? A No, sir.

Q Has she been to the Tombs to see you? A No, sir.

Q Have you had any visitors at the Tombs, except your counsel? A No, sir; that's all.

Q Have you talked with Martin since you were arrested? A No, sir.

Q Did you talk to him on the night you were arrested? A No, sir.

Q Did you talk to him in the room, on that night, after Conron left for the first time, and before he returned with the officers? A No, sir.

Q Now I don't want you to lead yourself into a misstatement, but be careful in answering those questions. Did you talk with any one besides your counsel --

MR. MacDONALD: I object to the remark of the District Attorney, if your Honor please, and move to strike it out.

MR. MURPHY: My only purpose was to benefit the wit-

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ness, if your Honor please.

THE COURT: I do not think there is anything improper in the remark. Objection overruled.

MR. MacDONALD: Exception.

BY MR. MURPHY:

Q Did you talk to any one but your counsel about this case before you took the stand here, before or since your arrest? A No, sir.

Q And you say you left the music hall about a quarter after eleven? A Yes, sir.

Q And are you sure of the time? A Yes, sir.

Q What was there about the leaving of the theatre that impressed the time on your mind? A Well, nothing in particular, only as I was coming out, there was a man ahead of me, and I heard him say to his wife, or his lady friend, or whoever she was, that it was a quarter after eleven.

Q Well, it might have been a quarter past ten; might it not?

MR. MacDONALD: Objected to, as immaterial, irrelevant, incompetent and improper.

THE COURT: Well, I think she has testified that she has no personal knowledge, except what she has given. Objection sustained.

BY MR. MURPHY:

Q As far as you know, it might have been a quarter past

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ten, instead of a quarter past eleven? A It was a quarter past eleven.

Q Now what did you do? Did you walk up to the restaurant on Eighth avenue, between 27th and 28th streets? A Yes, sir.

Q When did you arrive there? A About twelve o'clock.

Q And you did nothing on the way to the restaurant?

A No, sir.

Q Stopped nowhere? A No, sir.

Q And you say it was twelve o'clock when you arrived at the restaurant? A Yes, sir, I am positive of that.

Q And so, if Martin testifies that it was one o'clock, he is mistaken?

MR. MacDONALD: I object to that.

THE COURT: Objection sustained.

BY MR. MURPHY:

Q Well, you are sure it was twelve o'clock? A Yes, sir.

Q And how long did you stay there? A Until about a quarter past one.

Q And did you go from there direct to your apartment?

A Yes.

Q And what time did you get to your apartment? A I should judge about half past one.

Q And not two o'clock? You are sure it wasn't two

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o'clock? A About half past one; between half past one and two o'clock. I know it was half past one, anyhow; no earlier than that.

Q No earlier than that? A No, sir.

Q And no later? A Well, that I don't know. It was between half past one and two o'clock.

Q Now you say that this revolver belonged to your husband, the revolver in evidence? A Yes, sir.

Q And you heard the officer, Officer Watson, say, when he came in, he said to Martin, "Where is that revolver?" A No, sir, I didn't.

Q Well, will you swear that Officer Watson didn't say to Martin, "Where is that revolver that was in this house?"

A No, sir, I didn't hear him say it.

MR. MacDONALD: I object, and move to strike out that answer to that question as already answered.

THE COURT: I will allow it to stand.

MR. MacDONALD: Exception.

BY MR. MURPHY:

Q You didn't hear any comment made to Martin by Officer Watson about any revolver? A No, sir.

Q Did you hear Martin say to Officer Watson, "There is no revolver in the room?" A No, sir, I didn't.

Q You heard the officer give that testimony just now; didn't you? A Yes, I heard him say that.

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THE COURT: I think, Mr. District Attorney, the word used by the officer in his testimony was "gun".

BY MR. MURPHY:

Q Well, did you hear the officer say to Martin, "Where is the gun that you had in the room?" A No, sir.

Q And did you hear Martin say that there was no gun in the room? A No, sir.

Q And you were in a position where you could hear all the conversation that took place between the officer and anybody else? A Yes, sir.

Q But you didn't hear any conversation between any one and the officer about a revolver? A No, sir.

Q When did you first know that the officers wanted this revolver that your husband had? A When they were searching the room, when they lifted up the mattresses. And I always kept it there, and never handled it. My husband put it there, and I didn't never disturb it.

Q Did you know whether it was loaded or not? A Well, I knew there was something in it.

Q Well, you knew that there were cartridges in it; didn't you? A Yes.

Q Then this was taken up from between the mattresses, or the ticking, or whatever you may call it; wasn't it? (Indicating People's Exhibit 1)? A Yes, sir.

Q Then you say the officer went over to Conlon, and said,

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under his breath, something? Now how did he do that? Describe that? A Well, he took the watch out of his pocket (illustrating).

Q Out of whose pocket? A I don't know what his name is.

Q Out of Conlon's pocket? A Yes. And he said, "Why, here's your watch," and he said it low. And then he walks over and picks up my carpet a little bit, and holds up the watch (illustrating), and he said, "Here's your watch," and Conlon said, "Yes, that's my watch."

Q The officer held up the watch? A Yes, sir, by the chain (illustrating).

Q And said "Here's your watch," and then walked over to the end of the carpet, and took it from under the carpet? A No, sir.

THE COURT: No, Mr. District Attorney, I do not think that you have it just as the witness testified.

MR. MURPHY: That was my understanding, sir.

BY THE COURT:

Q Now you may just tell us again what you say the officer did? A The officer walked over to this Mr. Conlon, and took the watch out of his pocket (indicating the vest pocket), and he said, "Why, here is your watch." He said that low. And he walked over, and picks up the carpet, as though he was going to pick up something, and then he held up the watch (il-

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illustrating).

BY THE COURT:

Q Who did that? A The officer.

BY MR. MURPHY:

Q Well, you heard this very low toned remark that he made to Conlon? A Yes, sir; and I saw the watch in his hand, too.

Q But you didn't hear him say, in an ordinary tone of voice, to Martin, "Where is the gun that is in this room?" ?

A No, sir.

Q And do you remember saying to Conlon, "Wait until you get into court to-morrow. What will your wife say to you?" ?

A No, sir; I never used any such expression.

Q And didn't Conlon say, "What will your husband say to you?" ? A No, sir.

Q None of that conversation took place? A No, sir.

Q You didn't see Conlon at any time before he was led into your room by the officer? A No, sir, never.

Q Have you ever been before the Night Court, and convicted there of soliciting? A No, sir.

MR. MacDONALD: I object to the question, as immaterial, irrelevant and incompetent and improper.

THE COURT: I will allow it. The answer is "No."

BY MR. MURPHY:

Q Have you ever been convicted of any crime? A No, sir.

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Q What have you been doing for a living since your husband left you, a week ago -- since a week before the 6th of November? A (No answer).

BY THE COURT:

Q What had you been doing to make a living from the time your husband left you, until you were placed under arrest?

A Nothing, your Honor. My husband left me money -- at least I had it, the day he left -- between twelve and thirteen dollars, about thirteen dollars.

BY MR. MURPHY:

Q And he didn't tell you, of course, then that he was going to leave you? A No, sir.

MR. MacDONALD: The defense rests.

MR. MURPHY: I do not know how pleasant it will be to counsel for the defense, but I will be willing to complete my summing up in five minutes.

MR. MacDONALD: Well, I don't know that I will take more than that, but I don't like to be limited.

THE COURT: Well, go ahead, counsellor, and take all the time that you think the case calls for.

MR. MacDONALD: Thank you, sir.

(Mr. MacDonald summed up for the defense, and Mr. Murphy closed the case for the People).

THE ELEVENTH JUROR: Your Honor, may a question be asked at this time?

THE COURT: No, it may not.

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THE COURT'S CHARGE.

CRAIN, J.:

Gentlemen of the Jury: The defendant, Mamie Daily, is charged in this indictment with the crime of robbery in its first degree. She is also charged in the indictment with the crime of grand larceny in its first degree. She is also charged in the indictment with the crime of assault in its first degree. And she is, lastly, charged in the indictment with the crime of criminally receiving stolen property, but that count in the indictment which charges her with the crime of criminally receiving stolen property is withdrawn from your consideration, and this case goes to you, gentlemen, in order that you, as the exclusive judges of the facts, may determine from the evidence, as you recollect the evidence, first, whether or not this defendant is guilty of the crime of robbery in its first degree, and, under the contingencies about to be mentioned to you, whether or not she is guilty of the crime of grand larceny in its first degree, and, under the contingencies about to be mentioned to you, whether or not she is guilty of the crime of assault in its second degree.

The law defines the crime of robbery, and to the law's definition of that crime I invite your attention.

Robbery is the unlawful taking of personal property

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from the person of another, against his will, by means of force or violence.

Robbery in its first degree is an unlawful taking or compulsion, if accomplished by force, by a person armed with a dangerous weapon, or, in the alternative, aided by an accomplice actually present.

It is not the contention of the People that this defendant used any unlawful force, or any force whatsoever, upon the person of the complaining witness. It is not the contention of the People that this defendant took any personal property from the person of the complaining witness, either by means of force or violence, or by any other means. But it is the contention of the People that personal property was taken from the person of the complaining witness by a man by the name of Martin; that such personal property was taken from the person of the complaining witness against the will of the complaining witness; and that it was taken from the person of the complaining witness by means of force or violence used by the man named Martin towards the complaining witness.

It is the contention of the People, as I understand their contention, that at that time Martin was armed with a dangerous weapon, and, more particularly, with this revolver which has been offered and received in evidence; and it is the contention of the People that Martin was

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aided by an accomplice actually present; and it is the ⁵⁹ contention of the People that this defendant who is now on trial, Mamie Daily, was the accomplice of Martin.

The law says that a person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal.

The theory of the Prosecution, as I understand their theory or their claim, that you are justified from the evidence in finding this defendant guilty of the crime of robbery in its first degree, is predicated upon the contention that there originated either in the mind of this defendant, on the one hand, or of Martin, on the other, a plan or scheme to rob some one, and that that plan or scheme was communicated by the one in whose mind it originated to the other, and that, pursuant to such plan, this defendant addressed certain language to the complaining witness, upon the street, in the Borough of Manhattan, for the purpose of inducing this complaining witness to go to a place with her, the defendant, at which the defendant in another case, and the person who has been named in this case as Martin, might perpetrate the crime of robbery upon the person of the complaining witness; and the con-

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testimonies of the People is that, pursuant to such plan, the defendant did entice or lead the complaining witness to the premises 338 West 31st street, in the Borough of Manhattan, and that Martin was there, and that Martin, with the aid of this defendant, robbed the complaining witness, as robbery is defined in the law; and the contention of the People is that the evidence will warrant you in finding this defendant guilty of the crime of robbery in its first degree, under such circumstances.

The guilt of this defendant of the crime of robbery in its first degree, assuming that you entertain no reasonable doubt upon the evidence that Martin did what it is testified that he did do by the complaining witness, depends upon the circumstance as to whether or not the defendant aided Martin in the commission of that offense, assuming that Martin did it.

If this defendant met the complaining witness upon the street, and solicited him to go to the premises 338 West 31st street, but not with the intent that he should be there robbed, and did not know that he was to be robbed there, and did nothing by way of overt act or by counsel to assist or aid Martin in the commission of a robbery there, if one was committed, this defendant cannot be convicted of the crime of robbery in its first degree, no matter how immoral you may regard her conduct.

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If, upon the evidence, you believe the defendant to be innocent of the crime of robbery in its first degree, or if, upon the evidence, you entertain a reasonable doubt respecting her guilt of that crime, you will consider the question of the defendant's guilt or innocence of the crime of grand larceny in its first degree.

The law says that a person who, with the intent to deprive the true owner of his property, takes from the possession of the true owner personal property, steals such property, and is guilty of larceny. Where property is taken from the person of another, in the night time, the crime, if one has been committed, is grand larceny in its first degree, and that irrespective of the value of the property taken.

The question of this defendant's guilt or innocence of the crime of grand larceny in its first degree depends upon whether she aided Martin in the commission of a larceny, upon the assumption temporarily that you entertain upon the evidence no reasonable doubt that Martin did commit a larceny in the taking of personal property from the person of the complaining witness. In other words, it is not the contention of the People that this defendant personally took any personal property from the person of the complaining witness.

Her guilt or innocence of that crime, upon the assumption that the crime of grand larceny was committed,

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is dependent upon whether she answers to the description of a person concerned in the commission of a crime, either by directly committing the act constituting the offense, or by aiding and abetting in its commission.

If, upon the evidence, you believe her to be innocent of that crime, or if, upon the evidence, you entertain a reasonable doubt respecting her guilt of that crime, you will consider the question of her guilt or innocence of the crime of assault in its second degree.

The law says that a person who wilfully and wrongfully assaults another by the use of a dangerous weapon is guilty of an assault in its second degree. It is not the contention of the Prosecution that this defendant assaulted the complaining witness. Her guilt or innocence of that crime depends, assuming that the complaining witness was assaulted, upon whether or not she answers to the description of a person concerned in its commission, or to the description of one aiding and abetting in its commission, or to the description of one either directly or indirectly counseling in its commission.

The defendant contends that you should not find her guilty of any of the crimes submitted to you for consideration, because she contends that the evidence of the complaining witness, plus the evidence of the officer, if it is corroborated by the evidence of the officer, should be

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deemed unsatisfactory by you.

She contends that she was elsewhere at the time when these alleged crimes were committed. She denies by her plea and by her evidence upon the stand that she committed any crime. Her evidence goes to the point likewise of a denial that the complaining witness was the victim of a crime committed or participated in by one Martin.

This defendant comes to the bar with the presumption of innocence, which means that, under our system of jurisprudence, she is not required to affirmatively establish the fact of her innocence, if it be a fact; that the burden of proof is upon the Prosecution, and that burden requires that, before you can find Mamie Daily guilty of any of the crimes mentioned in the indictment, you must be satisfied from the evidence, beyond a reasonable doubt, of her guilt. It means that there are two contingencies, in either one of which she is entitled to a verdict of not guilty at your hands, namely, first, if upon the evidence you believe her to be innocent, or, secondly, if upon the evidence you entertain a reasonable doubt respecting her guilt.

You will give this case, gentlemen, the careful consideration which it merits. If the evidence satisfies you beyond a reasonable doubt of this defendant's guilt, it will be your duty to so find. If you believe her to be

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innocent, or entertain a reasonable doubt respecting her guilt, it will be your duty to render a verdict of not guilty.

You are to be wholly uninfluenced by any ruling of the Court during the progress of the trial, and you will be guided solely by the evidence, and you will apply to the evidence the rules of law stated to you in this charge.

Are there any requests to charge?

MR. MURPHY: None, sir.

MR. MacDONALD: No, sir.

THE COURT: Gentlemen, you may retire.

(The jury found the defendant guilty of robbery in the first degree).

MR. MacDONALD: Will your Honor set the sentence down for Monday?

THE COURT: Have you any motions to make?

MR. MacDONALD: I would like to make the motions at that time, if your Honor please.

THE COURT: I think that it is conceivable in this case that I might want to take the matter under advisement, if a motion is made, and, Mr. Murphy, I will suggest that you get a copy of the record in the case.

MR. MURPHY: Yes, sir, I will. And you will hear argument on Monday, then?

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THE COURT: Just for the purpose of going over the evidence to see whether the evidence warranted that particular verdict.

MR. MURPHY: Yes, sir; I will get the record from the stenographer.

THE COURT: I will remand the defendant until Monday, and on Monday you may make such motions as you may be advised.

MR. MacDONALD: Yes, sir.

MR. MURPHY: Now, will your Honor hear me as to the defendant Denike, or the man jointly indicted with this woman and Martin?

THE COURT: Yes.

MR. MURPHY: From my investigation before both trials and from the evidence developed in both trials, I am convinced that there is nothing disclosed as to him, Denike, that would warrant the people in going to trial in his case, and, therefore, I respectfully recommend that he be discharged on his own recognizance.

THE COURT: I grant the motion.

MR. MURPHY: And will your Honor direct the Clerk to turn over the watch to the complainant? Or, perhaps, as you are going to hear argument in the matter of a new trial, perhaps it had better be kept here.

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THE COURT: I do not see any objection to it being turned over to the complainant now. Counsellor, I will hear you on Monday. I want to consider whether the evidence is sufficient to show the participation of this woman.

MR. MacDONALD: Very well, sir.

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