

START

2744

CASE

CASE #2744

Monday , January 12, 1920, and

Tuesday, January 13, 1920

Index

	Dir	Cro.	Redir.	Recro.
Charles Fischbach	2	21	49	53
Louis Rosenstrauch	56	63		
Dora Hoffman	73	76	77	
Mitchell Wechsler	77	79		
Julius Cohen	80	83		
John F. Rotchford	85	88	90	
Samuel Gribbin	91	95	98	
Harry Krichman	101	110		

172
172
86
x30

CASE #2744

Wednesday, January 14, 1920

Index (continued) -

	Direct	Cross	Redirect	Recro.
Hyman Kosofsky resumed	-	138	142	144
Jacob Goldberg	145	148		
Morris Ornstein	157	159		
Samuel Gribben (recalled)	166			

CASE #2744

COURT OF GENERAL SESSIONS OF THE PEACE.
IN AND FOR THE COUNTY OF NEW YORK.
PART II.

-----x
THE PEOPLE OF THE STATE OF NEW YORK :

-against-

HYMAN KOSOFSEY,
Indicted as Harry Kirchman, other-
wise known as Harry Krichman.

: Before:-

: Hon. Otto A. Rosalsky, J

: and a Jury.

3256

-----x
New York, Monday, January 12th, 1920.

THE DEFENDANT IS INDICTED FOR ROBBERY IN THE FIRST DEGREE,
GRAND LARCENY IN THE FIRST DEGREE, ASSAULT IN THE FIRST DEGREE
AND RECEIVING IN THE FIRST DEGREE, *as a second offender,*
INDICTMENT FILED MAY 29TH, 1919.

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

John Cardone, Esq., Assistant District Attorney,
for the People.

Frederick A. Ware, Esq.,
for the Defendant.

(A Jury is duly empanelled and sworn)

(At the request of Mr. Ware, all witnesses are ex-
cluded from the Court room)

T H E P E O P L E ' S C A S E .

(Mr. Cardone opens the case to the Jury on behalf
of the people)

CASE #2744

MR. CARDONE: May we have it noted upon the record, if the Court please, that Counsel for the defendant concedes the previous conviction of the defendant?

MR. WARE: We do.

MR. CARDONE: Counsel for the defendant concedes that the defendant, on the 18th day of May, 1917, under the name of Harry Krichman, was in due form of law convicted of the crime of petty larceny, in the Court of Special Sessions, before the Hon. John J. McInerny, Frederick Kernochan and Moses Herman, Justices of the Court of Special Sessions. That is your concession, is it not, Mr. Ware?

MR. WARE: It is.

C H A R L E S F I S C H B A C H, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. CARDONE:

Q Now, Mr. Fischbach, speak up/ so each and every one of these gentlemen in the jury box can hear what you have to say. What is your full name? A Charles Fischbach.

Q And where do you live? A 826 Beck Street, Bronx.

Q And what is your business? A Steamship tickets and foreign exchange.

Q On the 28th of April, 1919, what was your business?

A I came in the office, it was about--

CASE #2744

3
Q No, no; what was your business on the 28th of April, 1919, what was your business? A Steamship tickets and foreign exchange.

Q And where did you conduct your business on that day?
A 114 Essex Street.

BY THE COURT:

Q 140 ? A 114.

BY MR. CARDONE:

Q Is that in the Borough of Manhattan, City and County of New York? A Yes, sir.

Q What kind of a business do you say you conduct, what kind of a business do you conduct at 114 Essex Street, this City?
A Steamship tickets and foreign exchange.

Q When you say "foreign exchange", what do you mean?
A Buying and selling money and buying Liberty Bonds.

Q And do you transmit the money to foreign countries?
A Yes, sir.

Q On that day, what time did you open up your place of business? A About 8:30 or 8:20; I don't remember exactly.

Q In the evening, or morning? A In the morning.

Q And when you entered the place, what did you do?
A I opened the safe, opened the chest, took out some foreign money and some Liberty Bonds and placed them in the window.

Q You mean you put them in the window outside?

CASE #2744

4
A In the window for a show, and then I started to take out the books, and started going to work, and as soon as I started to work by the counter the defendant came in, and he pulled out a third Liberty book of one hundred dollars.

Q He pulled out what? A A third Liberty book; the first payment was made, four dollars.

Q Who did that? A The defendant.

Q The defendant showed you a book? A Showed me a book, a third Liberty Bond book, and he had the book this way (illustrating); he showed me the first payment, and he said, "what will you give me for it?"

Q That is, he wanted you to buy that? A He wanted I should buy it. I said "this is nothing worth to me," because this was the first payment, and the liberty bond was \$94.00.

BY THE COURT:

Q How much was the first payment? A Four dollars. I said "I have no use for these books", and I started to look at the book, and he pulled a gun and said "don't move".

BY MR. CARDONE:

Q Who pulled the gun out? A The defendant. He said "don't move". He was near me, about one foot.

Q What do you mean "one foot"? A He was by the counter, and I stayed here (illustrating).

Q You stood behind the counter? A Yes, sir, I

CASE #2744

stood behind the counter.

Q Where was the defendant when he pulled out the gun?

A Just opposite me.

Q Where? Where was the defendant standing? A Outside the store.

Q In front of the counter? A Yes, sir.

Q Who was in the place when the defendant came in?

A I was by myself.

Q All alone? A All alone.

Q There was nobody else there? A No.

Q When the defendant pulled out the gun, what did he say?

A He said "don't move". I didn't move. I was shivering; I don't know where I am. In the meantime it don't take one second, one fellow opened the door and came behind the counter.

Q What do you mean by "one fellow"? A Another fellow.

Q Go ahead? A There was an opening on the side of the counter--

Q You say the defendant was facing you at the counter?

A Yes, sir.

Q And while the defendant was facing you with the revolver in his hand, somebody else came in? A Another fellow came in.

Q Describe to the jury the manner that this man came into your store? A The man came in this way (illustrating), and under the counter there was a small little hole on the

CASE #2744

corner of the store, at the end of the store.

Q At the end of the counter? A At the end of the counter, and there was empty.

Q There was an opening, you mean? A An opening; and he kept over there.

Q You mean he went under the opening? A Under the opening, and he gave me with a piece of lead pipe a knock, and I fell down.

Q You fell down where? A I fell down on the floor, with my face to the floor.

Q You say this man came into the store and walked in front of the counter and under the board on the counter extending from the counter to the wall? A Yes, sir.

Q And then he came behind the counter? A Yes, sir.

Q And while you were behind the counter you say this man hit you on the head with a pipe? A Yes, sir.

Q How many times did he strike you with the pipe, and where did he strike you? A Here (indicating), I had four stitched.

Q On the head? A Yes, sir.

Q After you were struck with the pipe, what happened to you? A I fell down; I didn't hear anything.

Q You what? A I fell down to the floor.

Q Yes. A Then I felt that one fellow stood on me, and he kept me, and he had me by the mouth, his hand on my

CASE #2744

month, and she said, "don't holler, I am going to shoot".

Q Who said that? A I couldn't see him no more.

Q How were you facing when you were lying on the floor?

A With my face to the floor. He said "don't holler, I am going to shoot."

Q Then what happened? A Then I don't know how much it is, about five minutes, or less than five minutes, I heard the one fellow holler, "don't move; I am going to shoot".

BY THE COURT:

Q Who said that, do you know? A I don't know which fellow, I didn't see anybody at that time.

MR. CARDONE: The witness testified he was lying on his face towards the floor.

THE WITNESS: On my face, on the floor.

BY MR. CARDONE:

Q After you received the blow on the head, did you lose your senses, and were you rendered unconscious?

A I didn't hear nothing, didn't feel nothing.

Q You didn't feel anything? A No,

Q When you say you didn't feel anything, what do you mean? Do you mean you didn't feel the blow, or what?

A I was unconscious.

Q You were unconscious? A And it didn't take a few minutes, then one fellow started to holler "he is bleeding".

CASE #2744

MR. WARE: If your Honor pleases, it does not seem that ~~that~~ is proper. I ask that it be stricken out.

THE COURT: Strike it out.

Q How long were you unconscious, do you know?

A I don't know, about five minutes.

Q And when you came to --

MR. WARE: I object to that, and ask that it be stricken out, because how long ~~xxxxx~~ unconscious a man is, cannot possibly be testified to by himself.

THE COURT: Why not? He can tell when it occurred and when he revived. The probative value is for the jury.

MR. WARE: How can a man who is unconscious say that?

THE COURT: All right. If a man is willing to so testify, why do you object?

MR. WARE: All right, sir.

Q After you regained consciousness, what was the first thing that you noticed or observed in the store? A Well, I noticed that they ran out and I ran after them.

Q When you regained consciousness, were the men still in the store? A No.

Q Where were they when you came to? A They ran out and I ran after them; I looked between Delancey and Rivington Street, and they ran to Rivington Street.

CASE #2744

Q You ran out of the store? A Yes.

Q Before you ran out of the store, when you got up and started to run, where were the defendants? Were they in the store, or outside? A No, outside.

Q Outside the store? A Yes, sir.

Q Then, how far away from your store was this defendant or the other man when you first saw this defendant or the other man, as you were running? A About a quarter of a block.

Q About what? A About a quarter of a block.

Q About a quarter of a block? A Yes, sir.

Q How far away from the corner is your store? A Half a block.

Q Half a block? A Yes, sir.

Q How many buildings away from your store were the defendants when you started to run out? A About six buildings.

Q Six buildings? A Yes, sir, five or six buildings.

Q Did you see them leaving the store as you got up?

A I saw running the defendant with a soldier coat.

Q You saw the defendant with a soldier coat?

A With a soldier coat.

Q And did this defendant, when you say he pointed a gun at you, have on a soldier coat? A Yes, sir.

Q And what kind of a cap did he have on? A He had a

CASE #2744

cap with stripes.

Q What color? A Gray.

Q A gray cap? A Yes, sir.

Q And when you ran out where was the man with the army overcoat? A The man who run away in Rivington and Norfolk Streets.

Q I know, but how far away from your store was the man with the army overcoat and the gray checked cap when you first saw him? A About a quarter of a block.

Q And did you see him? A Yes, sir.

Q It was broad day-light; is that right? A Yes, sir, in the morning.

Q What did you do? A I run after them, and I started to holler; I couldn't holler so loud; I started to holler "halt, halt, halt"; I couldn't holler.

Q Yes. A And I run to the corner of Rivington and Norfolk Streets, and I stopped on the corner there, I couldn't run any more, and I couldn't holler any more, because I was bleeding.

MR. WARE: I ask that that be stricken out as not responsive.

MR. CARDONE: No, I ask that it stand. The witness is describing his inability to pursue further the defendant.

MR. WARE: He is telling what he could not do.

MR. CARDONE: I think it is competent testimony.

CASE #2744

THE COURT: I will allow it to stand.

MR. WARE: I take an exception.

Q How far away was the defendant with the army overcoat and the gray checked cap when you turned the corner of Essex and Rivington Streets from you? A About a quarter of a block.

Q A quarter of a block? A Yes.

Q And when you got to the corner of Rivington and Essex Street, how far away was the defendant with the army coat and gray checked cap?

MR. WARE: I object to that question, how far away was the defendant, with the army coat?

THE COURT: Objection sustained.

A Not very far away.

Q How far away was the man with the army overcoat and the gray checked cap? A About two or three houses.

Q Two or three houses? A Yes, sir.

Q Was he nearer to you then than he was when you started to run after him? A About the same.

Q About the same distance? A Yes, sir.

Q Where was the other man? A The other man I couldn't see.

Q That is, you didn't see the other man when you ran out of the store? A This man I saw, because he wore the coat, and I run after him right away.

CASE #2744

Q You didn't see the otherman? A No.

Q Did you see where the man ran to that had on the army overcoat and the gray checked cap? A Yes, sir.

Q Where? A He ran in 131 Norfolk Street.

Q And how far is 131 Norfolk Street from the corner of Rivington? A This is just the corner.

Q What? A Just the corner.

Q The corner? A Yes, sir.

Q Did you run into 131 Norfolk Street? A No.

Q You did not? A No.

Q What did you do when you got to the corner of Norfolk and Rivington Streets? A I fell down and then I picked up and went back to the store.

Q From the time you chased the man with the army overcoat and the gray checked cap up to the time you lost sight of him, when he ran into 131 Norfolk Street, did you cry out while you were running after him? A Afterwards, no.

Q No, no; while you were chasing him? A While I was chasing him I was crying; in back, I didn't holler any more.

Q While you were chasing him, what were you crying?
A "Halt, halt, halt".

Q Then you went back to your store? A Yes, sir.

Q Did you examine the safe and the chest in the safe when you got back? A No.

CASE #2744

Q Did you examine the money in the window? A No.

Q When did you make an examination of your money and property and your liberty bonds? A After my clerk came in the office.

Q When was that? A About nine o'clock or ten minutes after nine.

Q When did this happen? A What?

Q When did the defendant and the other man enter the place? A Between 8:30 and a quarter to nine.

Q And your clerk entered your store at what time?

A About nine or ten minutes after nine.

Q And when was it that you made some discovery about your money, your liberty bonds, your war saving stamps and your jewelry? A As soon as I came to the safe and I didn't see the bonds, but the bonds were prepared to go down town and sell them, they were in packages, made up, to sell the next morning; Saturday I made them ready in order to sell them on Sunday-- on Monday, I mean.

Q What did you do when you made an examination of your safe and the window? A I telephoned to the police headquarters that there was a robbery.

THE COURT: Strike out "that there was a robbery".

MR. CARDONE: I consent.

Q You telephoned to police headquarters, did you?

A Yes, sir.

CASE #2744

THE COURT: Find out from him what was missing.

BY THE COURT:

Q What was missing? A Liberty bonds.

Q What was the value? A Around seven thousand dollars.

BY MR. CARDONE:

Q How much? A About seven thousand dollars.

Q Can you give the denominations of the bonds?

A They were hundreds and fifties.

Q One hundred and fifty what? A One hundred dollar bonds and fifty dollar bonds.

Q All together, how many Liberty bonds did you lose, and what was the value of these Liberty bonds? A Between six and seven thousand dollars.

Q How did you arrive at that conclusion? How do you know you lost that much? A My clerk gave me a report.

Q Was your clerk there? A He checked up the numbers, and he gave the numbers to police headquarters.

Q What is your clerk's name?

THE COURT: You will have to prove first what he saw in his safe that morning.

THE WITNESS: The safe was empty then.
clerk's

Q What is your ~~first~~ name? A Paul --

THE COURT: Prove by this witness in what condition he found the safe when he opened up that morning.

CASE #2744

MR. CARDONE: I will, but I am trying to get the name of the clerk, because this witness didn't mention the other witness to me.

Q What is the name of your clerk? A Paul, P-a-u-l, Duff, D-o-u-f-f-.

Q And where does he work? A He works now for Rutkay.

Q Where is that? A Seventh Street and Avenue B; I don't know the number.

Q What was in your safe on the night or on the morning of April 28th, 1919? A There was Liberty Bonds, cash money, United States money, and Russian currency, and war savings stamps.

Q When did you lock your safe before you opened up the store on the 25th of April, 1919? A Saturday night.

Q Saturday night? A Yes, sir.

Q And what day was the 28th of April? A Monday.

Q Who closed the store on Saturday night? A I.

Q And who locked the safe? A I.

Q Do you know how much money, how many Liberty, how much Russian money and war savings stamps was in your safe on Saturday night? A There was between six and seven thousand liberty bonds.

Q Yes; how much cash? A And cash money between two and three thousand dollars.

CASE #2744

Q United States currency? A United States currency.

Q How much in foreign money? A Foreign money, around around 13,000 Russian rubles.

Q Thirteen thousand Russian Rubles? A Yes, sir. I had some more in the window, but in the safe I was prepared to deliver down town on Monday which I sold on Saturday; and I had war savings stamps.

Q How much? A Between six and eight hundred dollars; I don't remember; I don't know.

Q When you opened up the safe on April 28th, 1919, did you observe whether or not that property was in your safe?

A It was in the safe.

Q What? A It was.

Q It was in the safe? A Yes, sir.

Q Sure about that? A Yes, sir.

Q And does any one in your employ know the combination of the safe besides yourself? A No, only from the front door, not from the chest.

Q That is, they can open the combination, but not the inner combination? A No.

Q You knew both of them? A Yes, sir.

Q But you opened the safe on the 28th of April?

A Yes, sir.

Q When you got back to your store, after you had chased

CASE #2744

the defendant and the other man, did you observe whether or not there was any money, war savings stamps, liberty bonds or other property that was missing from the safe?

A Everything was missing.

Q What is that? A There was nothing left in the safe.

Q You mean the safe was cleaned out? A The safe was cleaned out, and then they started to work on the window.

THE COURT: Strike out "they started to work on the window".

Q We are talking about the safe only now? A The safe was empty.

Q There was nothing in the safe? A Nothing in the safe.

Q How much money did you place in the window on the morning of April 28th, before this occurrence took place?

A In the window I had between fifteen and twenty thousand roubles.

Q Between fifteen and twenty thousand roubles?

A Yes, sir.

Q Russian Roubles? A Yes, sir.

Q What is the value of a Russian rouble? A At that time, fourteen or fifteen cents.

Q Fourteen or fifteen cents? A A hundred.

Q A hundred? A No, one hundred was fourteen or fifteen dollars, one hundred.

CASE #2744

Q Did you observe the window when you got back?

A Yes, sir.

Q Did you examine it? A Yes, sir.

Q Did you make any discovery as to whether or not any money was missing? A It was missing a couple of bonds, liberty bonds.

Q You had liberty bonds in the window also?

A A few liberty bonds, only for show.

Q How much was taken all together from the window, if you know, approximately? A Only about two or three bonds.

Q Any money? A The money wasn't touched.

Q Any Russian Roubles? A No.

Q Was there any Austrian money in the window?

A Well, I don't remember exactly.

Q What? A I don't remember.

Q Did you lose any jewelry? A Yes, sir.

Q Where was the jewelry? A Also in the safe.

Q What did it consist of? A It was a watch and chain of my son.

Q A watch and chain? A One watch and chain.

Q Is that all? A And on the watch was the initials of my son's name, H. F., and a locket with a Swedish five corner piece, a gold piece.

Q Do you keep as much money as you have testified to

CASE #2744

in your store as a rule? A Yes, certainly I keep.

Q You do? A Yes, I keep sometimes more.

Q And you are sure now that you lost this money and other property that you speak of? A Yes, sir.

Q There is no doubt about it? A Yes, sir.

Q Now, I ask you this question, Mr. Fishbach, and then I will stop: Is this defendant who is sitting here next to Counsel the man that entered your store that morning, wearing the army overcoat and the gray checked cap? A Yes, sir.

MR. WARE: I object to that, because I haven't heard him testify that anybody did enter his store wearing an army overcoat.

THE COURT: I sustain the objection.

Q When this defendant entered the store, what did the defendant have on? A

THE COURT: How was he dressed?

A Army overcoat and a cap.

Q What else? A I didn't see, because I was behind the counter.

Q I don't mean under the coat, unless you saw it. What did the defendant have on when he entered the store?

A An army coat the the cap.

Q And what else? A I didn't see further.

Q I don't mean under the coat. What did he have on his head? A A cap.

CASE #2744

MR. WARE: I object to that as leading.

MR. CARDONE: I withdraw the question.

MR. WARE: Now, he knows, of course, what he is wanted to say.

BY THE COURT:

Q Who is the man who pointed a gun at you? A The man who is sitting there (indicating the defendant)

Q The defendant? A The defendant, yes, sir.

BY MR. CARDONE:

Q When you say you saw the defendant in your store that morning while you were alone behind the counter, what did the defendant have on his head? A A cap.

Q What kind of a cap? A A checked cap.

Q What color? A Gray.

BY THE COURT:

Q What color? A Gray color.

BY MR. CARDONE:

Q I show you an army overcoat, and I ask you if you ever saw that before (handing overcoat to witness)?

AA Yes; he wore it.

MR. CARDONE: I will withdraw the question. Of course, army coats all look alike, if your Honor please, and it would be difficult for the witness to say that this is the identical coat.

THE COURT: Yes.

CASE #2744

MR. CARDONE: So I will ask him this question:

Q Was it an overcoat something like that that was worn by the man that came into the store? A Yes, sir.

MR. CARDONE: I ask that this coat be marked for identification.

(Same marked people's exhibit No. 1 for identification)

Q I show you a gray checked cap, and I ask you if you ever saw that before, or something oike it (handing cap to witness)? A Yes, sir.

Q Was the man that entered the store that you say pointed the gun at you wearing a cap something like that? A Yes, sir, something like that.

MR. CARDONE: I ask that that be marked for identification.

(Cap marked people's exhibit No. 2, for identification, of this date)

Q Now, Mr. Fishbach, are you sure that this defendant is the man that pointed the gun at you? A Yes, sir.

Q You are positive? A Yes, sir.

Q Is there any doubt in your mind that this is the man? A No doubt.

MR. CARDONE: Your witness, Mr. Ware.

CROSS EXAMINATION BY MR. WARE:

Q Mr. Fishbach, when you spoke about the man coming

CASE #2744

into the store a little while ago, in answer to the District Attorney here, didn't you tell us that it was a man with a soldier's overcoat and a uniform on?

MR. CARDONE: He didn't say "uniform."

Q Why didn't you tell us what he had on, that he had on the uniform or the overcoat of a soldier? A He had a soldier's coat.

Q Didn't that seem to you very important?

MR. CARDONE: I think I asked the witness what the defendant had on, and I think he said that.

THE COURT: It was really the District Attorney's fault that he didn't ask him how he was dressed, was it not?

MR. WARE: All right.

Q Do you open up that store every morning? A Yes, sir.

Q At about half past eight? A Yes, sir.

Q And you are there all by yourself? A At the time when it was, in April.

Q Please speak so I can hear you? A I used to open the store myself. Not now.

Q Then, prior to this occasion, April 26th or 28th, 1919, you opened the store alone? A Yes, sir.

Q How long have you been in business? A Five years.

Q In the banking business? A Five and one half years.

Q Have you been located at that same place for that

CASE #2744

length of time? A Yes, sir.

Q And you have been opening up all by yourself?

A Yes, sir.

Q Ever since you started? A Yes, sir.

Q You have a large custom? A Yes, sir.

Q A great many people go in and out the store?

A Yes, sir.

Q And everybody knew that you opened the place at half past eight, by yourself? A Yes.

Q Your customers knew it and the neighbors knew it, passersby knew it, is that right? A Yes, sir.

Q Now, you said, as near as I could hear you, because I couldn't hear everything you said, that the defendant, as you said, was about a foot away from you at the time that he pointed this gun at you;; is that right? A I don't know whether it was a foot; this defendant came and he was standing this way (illustrating) and I was behind the counter; this way (illustrating), he was standing that way (illustrating).

Q Is the counter as wide as this table? A No, the counter is about 20 inches.

Q About 20 inches? A About 20 inches wide.

Q Did you measure it? A Around 20 inches.

Q And you were on one side of the counter and the defendant, as you claim, or the man that you saw that morning, was on the other side? A Yes, sir.

CASE #2744

Q What? A Yes, sir.

Q And on the other side of the counter when he pointed a gun at you, is that right? A Yes, sir.

Q Why didn't you make some outcry at that time?

A I was afraid; he said "do n't move".

Q Haven't you got any burglar alarm connected with your establishment? A No, sir, nothing at all.

Q Haven't even got a bell that you could touch?

A No, sir.

Q Have you got a police whistle that you could blow?

THE COURT: You heard what he said, that the man said "don't move, or I will shoot"?

MR. WARE: I understand that, if your Honor pleases, but sometimes people don't always obey.

Q Now, Mr. Fishbach, did I understand you to say that there was some jewelry in the safe, after the District Attorney asked you if there was any jewelry there? A Yes, a watch and chain.

Q A watch and chain? A Yes, sir.

Q Belonging to your son? A Yes, sir.

Q And with initials on it? A H. F.

Q H. F.? A Yes, my son's name.

Q H. M.? A H. F. Hyman Fishbach.

Q Fishbach? A Yes, sir.

Q Now, you haven't got that watch back, have you?

A No.

CASE #2744

MR. CARDONE: Haven't got any property back?

THE WITNESS: Nothing at all.

Q Did you look ~~that~~ safe on Saturday night?

A Yes, sir.

Q What time? A Well, I close up between 9:30 and 10 o'clock, sometimes later.

Q Were there other people in your place at the time?

A No.

Q Were you all alone? A I closed up sometimes I am alone and sometimes people is there.

Q Don't you remember whether there were people there on Saturday night? A No.

Q Do you go over everything in the safe every night when you shut it up? A I tried always whether the safe is locked.

Q I appreciate that, but before you locked the safe was all the securities and money in the inside safe?

A I take everything out and put it in the chest.

Q I mean inside the safe? A In the inside.

Q And there are no receptacles or no spaces in that safe which are not locked? Do you mean you manage to put books or anything in there when you open the outside door?

A No, everything is locked inside.

Q Do you go all over that, all your stock in trade, every night when you close up? A I take together every-

CASE #2744

thing and put it in the chest.

Q You put it in the chest? A Yes, sir.

Q You don't go over it piece by piece? A No.

Q How do you know that these thirteen thousand roubles and six or seven thousand dollars in United States bonds and two or three thousand dollars in cash were put in that safe by you Saturday night? You didn't count it? A Yes, I put it in bundles; I made them ready for Monday to deliver.

Q So, you put the bundles in, and you figure that those were just what you have described? A Yes, sir.

Q But, as a matter of fact, you don't know whether that was all there, or not, do you? A I know I put them in the safe.

Q Where were they during the day?

MR. CARDONE: What day?

MR. WARE: Saturday.

A Everything was in the safe. I bought some more and put them all together.

Q How about the stock that you keep in the window, where is that kept? A Everything in the safe.

Q In the day time? A In the day time, I have in the window, one, or two or three or four bonds, or five bonds sometimes in the window, and the foreign money I put in the window, in order to sell it.

Q Didn't you say fifteen or twenty thousand roubles?

CASE #2744

A Yes, sir.

Q Where did you get that from? A This I took out from the safe.

Q So, you took part of the roubles from the safe and left part in the safe? A The others are left, because I am supposed to deliver them. About thirteen thousand roubles I was supposed to deliver down town, which I sold the previous day, and the rest I put in the window.

Q Are you sure you took fifteen or twenty thousand roubles out of the safe on that Monday morning? A Not exactly fifteen or twenty thousand; I don't say how much.

Q None of the roubles in the window were taken away, were they? A Some were touched; they didn't have no time to take out everything.

MR. WARE: I ask that that be stricken out.

THE COURT: Strike that out.

Q You say you were unconscious and lying on your face; is that right? A Yes, sir.

Q Do you know how long you were unconscious?

A It was around five minutes, not more.

Q How can you tell? A Because I ran after the thief, and I came back and the people came in the store and my clerk came around nine o'clock or ten minutes after nine, and I was in the store.

Q And this may have happened at half past eight?

CASE #2744

A About five or ten minutes.

Q You don't know during the time you were unconscious whether other people came in your store or not? do you?

MR. CARDONE: I object to the form of the question. Surely, he couldn't if he was unconscious.

MR. WARE: Yes, and he could not know anything if he was unconscious.

Q Now, you said you fainted, didn't you, in the street?

A I fell down on the corner.

Q What corner? A Rivington and Norfolk.

Q And is that the corner where 131 Norfolk Street is?

A Yes, sir.

Q You don't know whether this coat or cap were found?

A It was found an hour or two hours later.

Q Who brought it? A A detective, Mr. Cohen.

Q Brought in an overcoat and a cap? A Brought in an overcoat and cap.

Q And told you they had found them somewhere?

A Yes.

Q Do you know where they found it? A In the same building, 131.

Q How do you know that? A They told me.

Q And you believe everything you are told?

MR. CARDONE: One minute. I Object to the form

CASE #2744

of the question.

Q Do you believe everything you are told?

MR. CARDONE: I object to that.

THE COURT: I will allow it.

A Yes, sir.

BY MR. CARDONE:

Q Yes? You believe everything you are told?

A In this case.

BY MR. WARE:

Q You believe everything you are told in this case, but you don't believe everything in any other case?

A I believe the coat was found there.

Q You were very much excited when you saw a man with a cap pulled down over his eyes? A Yes, sir.

Q Pointing a gun at you, on the other side of the counter? A Yes, sir.

Q And, as you said during your testimony to the District Attorney, you didn't know anything, you were shivering?

A I was nervous.

MR. CARDONE: No, he didn't say anything of the kind, Counsellor.

MR. WARE: He did. Don't say that, because I know he did.

MR. CARDONE: The witness testified that he was nervous and excited.

CASE #2744

MR. WARE: I am not infallible, but the witness did he say he was shivering and did use the words "I didn't know anything", and I challenge the District Attorney to contradict that.

THE COURT: Do not enter into a discussion, gentlemen. What do you say, Mr. Witness?

Q What did you tell Mr. Cardone when he asked you about that?

MR. CARDONE: I object to the form of the question.

THE COURT: The objection is overruled.

Q What did you say when Mr. Cardone asked you about how you felt? A I saw him pointing the gun to me, and then the other fellow came in and give a blow with the pipe, with a piece of pipe.

Q Didn't you say a few minutes ago to the District Attorney's question that you were shivering, and used the word "shivering"? A I never saw in my life a man to point a gun against me.

Q Did you say that? A (No answer)

BY THE COURT:

Q Were you frightened? A Yes, sir, I was frightened.

BY MR. WARE:

Q And don't you remember saying, in answer to this gentleman's question, "I didn't know anything"?

MR. CARDONE: About what?

CASE #2744

MR. WARE: They are his own words.

MR. CARDONE: Let him testify.

Q Did you say "I didn't know anything", and if you did say it what did you mean by it?

THE COURT: Read what he said.

(Record read by stenographer, as follows: "He said, 'don't move'. I didn't move. I was shivering; I don't know where I am.")

Q What did you mean by saying "I don't know where I am"?

A When he pointed the gun on me I was shivering.

Q And you didn't know what was going on, you were so frightened that you didn't pay any attention to anything?

MR. CARDONE: Don't answer the question until I get through objecting. Go ahead, put your question, Mr. Ware.

MR. WARE: That will do for a question.

MR. CARDONE: I withdraw the objection.

A When I fell down I didn't know what was going on, when I fell down to the floor, with my face to the floor.

Q And you had been hit on the back of the head I understand? A Yes, sir.

Q By a second man that you had seen crawling through to get behind the counter; is that right? A Yes, sir.

Q And that must have been the man that you say hit you on the back of the head, because he was on the same side of

CASE #2744

32
the counter with you? A The other man came in and struck me with the piece of pipe.

Q Did he come in too? A Not the defendant; another man came in, and he struck me with this pipe.

Q Did you see either one of the two men that you speak about go to the safe? A No, I couldn't see that.

Q That is when you were laying on your face?

A I couldn't see anybody.

Q You didn't think you had been shot, at that time, did you? A He didn't shoot, I didn't holler.

MR. CARDONE: Shot? I object to the form of the question. I don't think Counsel is asking questions in accordance with the testimony.

MR. WARE: This man may have been so frightened that he thought he was dead.

MR. CARDONE: I object to Counsel's remarks before the jury, and I think Counsel ought to put questions to the witness.

THE COURT: Objection sustained.

Q Nobody had discharged a gun, had they, up to that time? A No.

Q You had been hit then on the back of the head, hadn't you? A Yes, sir.

Q More than once? A I don't remember.

Q And you had become unconscious, hadn't you?

CASE #2744

A I fell to the floor.

Q When you came to, you were still lying on your face, weren't you? A When I came to it? I picked up.

Q When your unconsciousness disappeared, you were still in the same condition? A I don't know how much they took, but I got up and run after them.

Q When you got up, was there anybody in the place at all? A There was plenty of people.

Q At the time you got up? A No, I didn't see nobody at that time.

Q There was nobody in the place when you got up?

A No.

Q And you ran out into Rivington Street? A I ran the other side of the store.

Q And you saw a man with an army overcoat waiting for you there?

MR. CARDONE: I object to the form of the question.

THE COURT: He said he saw a man in an army overcoat running.

Q So you ran after a man with an army overcoat?

A Yes, sir.

Q You have seen a great many men with army overcoats in the last year or two? I can't hear you. Please speak up?

A Don't holler at me, please.

Q I can't hear you, and I don't think the jury can.

MR. CARDONE: If you stand back there, Mr. Ware,

CASE #2744

I think we can get a better result.

THE COURT: Don't get into any controversy, Mr. Ware. Mr. Witness, the lawyer has a right to question you. Don't get excited. Lawyers, as a rule, are very irritable.

Q (Question read by stenographer, as follows:- "You have seen a great many men with army overcoats in the last year or two?")? A This has nothing to do with the case. I saw many, but --

Q When you came out of your store that morning, you only saw one army overcoat in sight? A Yes, sir, one.

Q You only saw one army overcoat? A I saw the man that ran, yes.

Q Please speak so that I can hear you? A I saw the defendant running with the overcoat through Rivington Street.

Q You say that the army overcoat was about a quarter of a block away? A Yes, sir.

Q How do you know that was the army ^{over}coat that was in your place?

MR. CARDONE: I object to the form of the question. that was

Q Well, how do you know that the man who wore an army overcoat that you say came into your place?

THE COURT: Allowed. You shouldn't object to that question, Mr. District Attorney.

CASE #2744

MR. CARDONE: I objected to the previous question, not to this one.

THE COURT: The lawyer wants you to give reasons. How do you know? Now, give your reasons?

THE WITNESS: The defendant came in, and he showed me the book.

MR. CARDONE: No, he didn't ask you that. He asked you how do you know that the man had on an overcoat, the defendant?

MR. WARE: I object to your asking my question.

THE COURT: Stop, gentlemen?

MR. WARE: Am I examining, or is the District Attorney?

THE COURT: This will not do. Answer the question, Mr. Witness.

THE WITNESS: Ask me again this question, please.

Q (Question read by stenographer, as follows: "Well, how do you know that that was the man who wore an army overcoat that you say came into your place?") Is the man that you saw on Rivington Street? A I saw that he ran out from the store; he was a couple of houses from my store, and he ran to the corner, and that is the man.

Q I thought a moment ago you said that when you got up from the floor where you had been lying on your face looking at the boards, or whatever you had on your floor, that there

CASE #2744

wasn't anybody in your store at all? A When I went outside I saw the man running, he was not in the store, outside the store.

Q If he wasn't in the store, how could he have been the man you say pointed the gun at you?

MR. CARDONE: I object to the question. I insist that Counsel put proper questions to this witness.

THE COURT: Objection overruled. You are objecting when he asks how. Let him give his reasons.

MR. CARDONE: I object to Counsel stating, in asking this witness the question how he knew, that the man who was in the store was the defendant, unless he saw him inside. He has given his version of what happened outside the store.

THE COURT: Go ahead. Proceed.

Q I would like to ask that question. (Question read by stenographer, as follows: "If he was not in the store, how could he have been the man that you say pointed the gun at you?")? A He ran out. He was in the store when he pointed the gun, with the coat, and when he ran out, as soon as I got up from the floor, I ran out of the store, and I saw him running down to the corner.

Q But you didn't see anybody running out of the store, because you testified you were lying on the floor, on your face? A Before I got up, he said "don't move, I am

CASE #2744

going to shoot", and he held his hand over my mouth; I was afraid to holler, and I heard something that he says, "he is bleeding", one to the other fellow, and they ran out. After I got up I ran after them. They were outside already, and I saw them about a quarter of a block from the store, the man with the coat running, and I ran after him.

Q Now you say at the time you got up you were bleeding; is that right? A Certainly, I was bleeding.

Q Your head was cut? A I could bring you the doctor.

Q I am asking you, not the doctor. Was your head cut, the scalp? A Yes, sir.

Q And blood coming from it? A Yes, sir.

Q From more than one place? A Well, I didn't see how many places.

Q Don't you know now, how many places you were hit?

A I had a couple of stitches, the doctor made me a couple of stitches.

Q I don't care how many stitches were taken. Was your head cut in more than one place? A I was bleeding; I didn't examine my head.

Q You were dazed? Do you know what that means?

A I know it.

Q You were dazed; you were dizzy? A Yes, sir.

Q Weren't you? A Yes, sir.

Q-- Wasn't you? A Oh, I heard everything what they said.

CASE #2744

THE COURT: Were you dizzy? That is the point.

Q Can you say "yes", or "no", to a plain question like that? A Certainly, I was dizzy when I fell down.

Q So dizzy that when you got down to the corner you fell down there? A When I left the store I run, and I--

Q As a matter of fact, when you ran out of the store, did you see anybody at all that you were running after, or did you just run out to give the alarm? A I run because I heard the sound that somebody is bleeding, and I run after them, and I saw them a quarter of a block from the store.

Q Did you see both people? A I couldn't see the other man.

Q What did the other man wear? A The other man had a spring coat, a black spring coat.

Q Was he tall, or short, dark, or light? A I didn't measure him, I didn't have a chance to see him.

Q You never saw him at all? A I couldn't see his face.

Q And the first man you didn't see, because his hat was pulled down over his eyes? A The first man I saw very good.

Q At the time you were shivering, just as you have testified in your -- A I was frightened.

Q You were so excited that you didn't know anything? A I was frightened.

Q You expected to be shot and killed, didn't you?

CASE #2744

A Certainly.

Q And, expecting to be shot and killed, you took careful note about checked caps and all that sort of thing?

A I saw him before, when he came in and showed me the book; it took a few minutes, when he showed me the book, and I said, "I have no use for it", and I saw the man with the cap and the coat, and when he pulled out the gun and said, "don't move or I will shoot", I didn't move, I was frightened.

Q You dropped right then and there, didn't you?

A I didn't move then.

Q I say, you dropped right down to the floor? A I didn't drop. I dropped when he give me with the black, with the pipe.

Q So, you had a gun pointed at you and expected to be shot and killed, and you were hit on the head with a piece of lead pipe? A I was pointed by the defendant with a gun, and the other fellow came behind the counter and struck me with a piece of lead pipe, and I fell to the floor.

Q Did he present you with the piece of lead pipe, or did you find it afterwards? A The police found it.

Q Who found it? A The police took it away; I don't know where they put it.

Q Did you find it? A I saw it.

MR. CARDONE: I suggest that Mr. Ware-- and I make this suggestion with respect and with kindness to my

CASE #2744

friend Mr. Ware-- that Mr. Ware stand over there, so the other jurors can get a proper hearing of this evidence.

THE COURT: Yes.

MR. WARE: I would like to get a hearing of the answers, occasionally.

Q Now, I will ask you again, did you find a piece of lead pipe in your place? A Yes, sir.

Q Where did you find it? A Just where I was laying.

Q And did you pick it up? A I didn't pick it up.

Q And then you saw it laying there? A Yes, sir.

Q What is that? A It was in the store. They picked it up in the store where I was struck, just by the counter.

Q How near to the safe? A This is about how far (indicating); the safe was over here, and the end of the counter was where you stand there (indicating).

Q The pipe was over here (indicating)? A Yes, where I was struck, because he struck me and pushed me down over there.

Q Where were you lying when you got up, do you know?

A Just at the end of the partition, the end of the partition of the store.

Q How far is that from the entrance? A Well, it is as far as from here up to where the Counsellor stands. (indicating).

Q Didn't I understand you to say that the lead pipe was--

A Where I was struck.

CASE #2744

Q That you saw the lead pipe at the same distance that you and I are apart? A I cannot remember exactly how many feet it was or how many inches.

Q I ask you if it was about as far away as you and I?

A The pipe was found by the police, and they showed it to me.

Q You said a few moments ago that you saw the pipe lying down on the floor? A They found it and they showed me that piece of pipe.

Q Can't you understand when I ask you a question about what you saw and what you did? I am not asking about what you were told? A I say they left the piece of pipe just where I was struck and bleeding.

Q Did you see that piece of lead pipe there? A I saw it.

Q On the floor? A On the floor.

Q You didn't pick it up? A No.

Q Who did pick it up? A I don't remember. The doctor came in and gave me a couple of stitches, and I was lying there for a couple of days; I couldn't move.

Q You are all right now. There is nothing the matter with your head now? A No, I am still sick.

MR. CARDONE: I object to the question. It is too susceptible of many different interpretations.

THE COURT: Make your objection.

MR. CARDONE: I object to the question, "there is

CASE #2744

nothing the matter with your head". Does Counsel mean mentally; or physically?

THE COURT: He is asking the question in proper form. Objection overruled.

Q Did you ever see anybody in your life before that who looked like this young man?

MR. CARDONE: I object to the form of the question.

THE COURT: Objection overruled.

MR. WARE: Well, I guess that is all, if I can get any answer.

BY THE COURT:

Q Did you ever see anybody in your life that looked like this defendant? A No, your Honor. I described to the police that man, that his nose is this way (indicating), thick nose on the bottom and turned up.

MR. WARE: Now, I ask that that be stricken out as not responsive. What little I could hear of it was not in answer to my question, whether he ever saw anybody in his life that looked like this man. I ask that that be stricken out.

THE COURT: Strike it out.

MR. WARE: And that the jurors be instructed to disregard that.

THE COURT: The jurors will disregard what has been stricken out.

CASE #2744

BY MR. WARE:

Q You have talked with the detective officers in this a good deal about it? A Yes, sir.

Q And they told you what the man looked like whom you say pointed a pistol at you, didn't they? A They didn't tell me. I told them how he looked.

Q But could you tell them you knew who he was?

A I told them. They took me down to the Rogues' Gallery.

MR. CARDONE: No, I don't that answer to come out, unless the Counsel asks for it.

THE COURT: Strike that out.

MR. CARDONE: Do you want that answer to stand?

MR. WARE: Certainly, I want it to stand, if this man is not guilty.

THE COURT: Now, your opinion is not evidence.

MR. WARE: I realize that, your Honor.

THE COURT: But you said "this man is not guilty".

MR. WARE: I said "if this man is not guilty, I want the answer to stand".

Q Now, at police headquarters, was this defendant put in a line with five detectives? A Not in police headquarters.

Q Where? A In the 13th Precinct.

Q Were you acquainted with the detectives that were in that line with him? A If I am acquainted with the detectives?

CASE #2744

Q Yes. A I am not acquainted with no detectives.

Q You had a description of a man with a big nose?

A I saw the picture.

Q How many thousand pictures did you look at?

A I saw this picture too?

Q How many thousand pictures did you see? A Oh, I saw many of them.

Q Was this defendant lined up with five detectives? Do you understand that? A I don't know whether they are detectives.

Q They were all big men? A People. I don't know whether they were detectives.

Q Can't you answer a question. I ask you if they were not all big men? A They were people.

Q What? A They were people. I don't know. I didn't measure them.

Q But they were all bigger than that one, weren't they?

A I didn't measure them.

Q You know a man to be a detective or a policeman has got to be over a certain height? Don't you know that?

A I don't know.

Q You know that all the policemen that you have ever met are big men? A They are big and small, different people.

Q So, first, before you pointed out anybody else, did

CASE #2744

you not take hold of one of those detectives by the arm and look at him and point him out as the man you wanted?

A I will answer this question in a different way. As soon as I heard the thief is caught--

Q Is what? A They caught the thief, and he came to my store, and thought I would get my money back, and when I came to the station house I looked at the line; I make a description how he looks, and how old he is, and when I came over there I started to look, and I took out the wrong man, and wanted to see if he is the man, because my description is five feet five, or five feet six, and I took out the man and said "this is not the man".

Q Which man is that? A The first man I took, I said, "this is not the man", and I said "this is the right man".

Q You were looking for somebody about five five or five six? A I looked at the man, because I was frightened, and it came to me this is the right man.

Q The man you first took hold of, you were looking for a man about five five or five six?

THE COURT: This is a very important piece of proof. You better develop that more carefully than you have.

Let him state what he did first, Mr. Ware.

Q Now, tell us, did you go in the inside room from the station house, or was this done in the large room where the desk is? A In the room down stairs.

Q You went down stairs? A Down stairs.

CASE #2744

Q And did you go in a room there? A They took me in a room.

Q Who took you in the room? A The detectives.

Q Which detective? A I think Mr. Cohen; I don't remember exactly.

THE COURT: State what he did when he got into the room.

Q Now, tell us slowly and distinctly, so that we can hear you, what happened after you went into that room, everything that happened? A They took me in the room; there was line up in the line-up a couple of men.

Q How many men? A About five or six or seven; I don't remember how many was there, and they told me I should pick out the right man, and I shouldn't talk, only to point on the man, whether this is the right man. At that time I was so shivering I didn't know where I am, I was shivering, because I thought they got my money which I was robbed, and I went to a man and I pulled him out, the first man, and I didn't talk nothing, and I give a look at him, I wanted to see his nose and the face, and I says "no, this is not the man, and I says "this is the right man"; I pointed to this man, the nose, because I wanted to see what size he is, and it came to me, and he was the right man.

THE COURT: Ask him, Mr. Ware, how long he looked at the persons in the line before he picked out the first man.

CASE #2744

Q How long did you look at the men in the line before you picked out the firstman? A I didn't take a second.

Q That is, the first man you pickedout? A Not what I picked out; I wanted to pick out the man in the line, because I made the description that the man has got a dark face, and the nose and everything, and when I took out the first man I said "no, this is not the man", and when I got to this defendant, I says "this is the right man".

Q Didn't you pick out the first man on the line three times in succession? A No, sir.

Q And then did somebody tell you "it is the second man, not the first man"? A Nobody told me.

Q You had seen the picture of the defendant in the Rogues' gallery; is that right? A I saw the pictures the detectives showed me.

Q And yet you couldn't pick him out? A The first time when I came in I didn't know where I am.

BY THE COURT:

Q Did you see a picture of this man? A Yes, sure.

Q When? A I picked it out in the Rogues gallery.

Q You are not asked whether you picked it out.

Strike that out. When had you seen a picture of the defendant? A The picture I saw a day or two later when I was robbed, when I picked it out.

THE COURT: Strike out "when I picked it out".

CASE #2744

BY MR. WARE:

Q Do you know who the man is that you picked out first or that you first took hold of and looked at? A No, I don't know.

Q He was a good deal taller than this man, wasn't he?

A He was bigger, yes.

Q And you knew the description of the man, his type and general appearance and size, before you went in to look, didn't you, at the line, at the people in the line? A I don't know what you mean.

Q You knew it was a man, we will say, between -- about five feet five or five feet six in height, you knew that, didn't you? A Yes, sir.

Q And you also knew that every man in that line except this defendant was over five feet eight and one half?

A I didn't know it.

Q But you didn't notice that right away, the man you looked at was about five feet ten or eleven, wasn't he?

A No, I didn't measure him.

Q I know you didn't. How tall are you? A I don't know.

Q Don't you know how tall you are? A What is it my business to know? I didn't measure myself.

THE COURT: Answer the lawyer's question.

THE WITNESS: I imagine about five five.

CASE #2744

Q You were told who to pick out, weren't you?

A What?

Q You were told who to pick out, weren't you?

A No, I was told to pick out the right man.

Q Weren't you told that you might be called on to pick this man out of the audience here in the court room?

A No.

Q Don't shake your head yet? A No, sir.

Q Were you not told that if you were asked to pick this man out in the Court room, in the audience, that he had that patch over his eye? A I wasn't told by nobody.

MR. WARE: That is all.

RE DIRECT EXAMINATION BY MR. CARDONE:

Q Now, Mr. Fischbach, did the man that came into your store on the 28th of April, 1919, wearing the army overcoat and the gray checked cap have on a patch over his eye, such as the defendant wears now? A He didn't have no patch at that time.

Q He did not? A No, sir.

Q And how long did you look at the face of the defendant when you say the defendant pointed a gun at you as he was standing in front of your counter? A What say?

Q How long did you look at the defendant's face when you say the defendant pointed a gun at you as you were behind the counter? A A few minutes.

CASE #2744

Q A few minutes? A A few minutes.

Q Did you get a good look at his face? A Yes, sir.

Q And how was the gray cap worn? A The cap was worn over here, straight here (illustrating), and the coat this way (illustrating), and he pulled out with one hand the book, and he showed me with one hand the book.

Q Never mind about the book now. If you will listen to my questions, they are very simple, and you can answer them very easily. Did the defendant have the gray cap over his forehead and over his eyes? Did the cap conceal his face?

A No, he had the cap up here (illustrating), I could see the whole face.

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

Q When you say you saw the defendant in a certain line at the 13th precinct, how many men were in that line together with the defendant? A Six or seven.

Q Six or seven? A Yes, sir.

Q Were they all dressed in civilian clothes? A Yes.

Q Every one of them? A Every one of them.

Q Before you did anything with reference to the line and the men that were in that line, had you given a description to the police of the man that stood in front of you with that gun? A Yes, sir, I gave a description to the police.

Q You did? A Yes, sir.

Q You gave a description to the police? A Yes.

CASE #2744

Q When? A As soon as I was robbed, the same day.

MR. WARE: I object to any description that this witness gave to anybody.

THE COURT: Objection sustained.

MR. CARDONE: I am not asking for any description. I am asking if he gave a description to the police, and that is where I intend to stop.

MR. WARE: Well, I object to that question.

THE COURT: Sustained. Strike out the answer.

Q Did you, when you were in the 13th precinct station house, pick out any other man as the man that robbed you with the gun before you did anything with reference to the defendant?

A When I came in there--

Q Did you pick out any other man before you did anything with reference to the defendant? A I wanted to be sure, to convince myself; I was frightened--

Q I just want you to say "yes" or "no"? A Yes, sir.

Q Did you pick out anybody else other than the defendant? A I didn't pick out. I wanted to take out the man and measure him and see whether this is the right man. I picked out the first one and said "this is not the man".

Q You say you didn't pick out anybody before you did anything? A (No answer)

BY THE COURT:

Q Did you say this was the man, or this was not the

CASE #2744

man? A When I took out the first man I said "this is not the right man", and nobody answered me anything.

THE COURT: I will ask a question with permission of counsel for the defense, so if you will step up here I will tell you both what it is.

(Mr. Ware and Mr. Cardone confer with the Court)

BY MR. CARDONE:

Q Did anybody tell you to do anything -- question withdrawn. How soon after the first man entered the store did the second man come in? A It didn't take a second or two seconds.

Q Two seconds? A Two seconds.

Q And when you gave chase, when you saw the man in the army overcoat, on which side of the street with reference to your store was the man running? A In the same side.

Q On the same side? A The same side of the street.

Q Did you see any other man running away with an army overcoat on wearing gray checked cap? A No, sir.

Q Sure about that? A Yes, sir.

Q You only saw one man? A One man.

Q Altogether, how far did you run from your store up to the time where you collapsed? A About a block and a half.

Q A block and a half? A Yes, sir.

MR. CARDONE: I think that is all.

CASE #2744

RE CROSS EXAMINATION BY MR. WARE:

Q Do you remember when the detective or detectives took you down stairs to the little room where the six or seven men were in line? Don't you remember that? A Yes, sir.

Q Were you not told at that time by whoever took you down there to look at the men in the line and go and put your hand on the one whom you identified as the man who was in your store that morning and pointed a gun at you? A They told me I should look at the men there.

Q That you should look at the men and go up and put your hand on the one you picked out? A They told me I should look at the men and pick out the right man, but nothing else.

Q By putting your hand on him? A I should tell them who is the man. They told me I should pick out the right man.

Q When they told you you should pick out the right man, didn't they tell you you should take hold of him to indicate was who the right man? A I should tell him who it is.

BY THE COURT:

Q Didn't they tell you to take hold of him and put your hand on the man whom you identified? A Yes, sir.

Q You did that? A Yes, sir.

Q Then, why was it that you first went over and took one man out of the line and then said "this is not the man"? Why did you do that? A Then it came to me, I was frightened

CASE #2744

when I came to the first party, I was frightened, then it came to me, and I started to look good, and I picked out this man and I said "this is the right man".

Q Now, look here, Mr. Witness, this is a very serious charge against this defendant, and in a case where a witness relies upon -- in a case where the people rely upon witnesses who identify defendants, the testimony must be clear and convincing. If it is ambiguous, that is, points in either direction, it must be wholly rejected. Now, if there is any doubt in your mind-- you see, you made a mistake in picking out the wrong man-- if there is any doubt in your mind, please clear that situation up right now? A There is no doubt that this is the right man.

Q Are you confirmed in your mind because he was the second man that you picked out and that you have seen him since that occasion? A Well, I saw him a couple of times here.

Q Since that time? A Yes, sir.

THE COURT: Well, that is all. You will have to have some stronger evidence of identification.

MR. CARDONE: I have another witness, if your Honor pleases.

THE COURT: Some stronger evidence than his as to the identification.

MR. CARDONE: I have another witness, who can

CASE #2744

identify the defendant.

THE COURT: Of course, the remarks of the District Attorney will not be controlling.

MR. CARDONE: Of course, the jury will consider it is the evidence that counts, and not my remarks.

THE COURT: Are you through with this witness?

MR. CARDONE: I am through with this witness, your Honor.

THE COURT: (To the Jury) Do not discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Be in your seats at 10:30 to-morrow morning.

(The Court then accordingly took a recess until to-morrow, Tuesday, January 13th., 1920, at 10:30 o'clock A. M).

CASE #2744

New York, Tuesday, January 13, 1920.

TRIAL CONTINUED

LOUIS ROSENSTRAUCH, called as a witness on behalf of the People, being first duly sworn and examined through the Official Interpreter, Mr. Edward J. Rosenthal, testified as follows:

DIRECT EXAMINATION BY MR. CARDONE:

Q Where do you live? A 328 Stockton Street, Brooklyn.

Q Mr. Rosenstrauch, how old are you? A Sixty-two years.

Q And what is your business? A I was a photographer for forty years.

Q For forty years? A Forty years.

Q Were you on the 28th of April, 1918, on Essex Street?

A I cannot remember the exact date, but I know it was in the month of April and on a Monday.

Q Was it in the morning, or afternoon, or in the night time, that you were on that street? A It was after eight and before nine o'clock in the morning.

Q In which direction were you walking? A From Houston Street by the way of Essex Street to go to Brooklyn.

Q That is, you were walking in a southerly direction through Essex Street; is that right? A I went from Houston Street toward the bridge, to take the car to Brooklyn.

Q When you say the bridge, which bridge do you mean, do you mean the Delancey Street Bridge, the Manhattan Bridge, or the Brooklyn Bridge? A The Delancey Street Bridge.

CASE #2744

Q So, you were walking downtown, is that right? A To take the Broadway or the Reid Avenue car to Brooklyn.

Q You say you can't remember the exact date, but that it was on a Monday, in the month of April. Is there anyway that you can refresh your recollection as to what day it was on that you were walking through Essex Street that morning?

A No, I haven't got anything.

Q What is that? A I have got nothing to get to the right date.

MR. CARDONE: May I have the complainant brought here so the witness can look at him? I want to fix the date as best I can by a reference to the complainant.

THE COURT: You may call him.

Q Mr. Rosenstrauch, do you know this man here, Mr. Fishbach (indicating complaining witness)? A Since that time that the thing happened.

MR. WARE: I object to that and ask that it be stricken out.

MR. CARDONE: I consent that it be stricken out.

THE COURT: Strike it out.

Q Do you know Mr. Fishbach, and when did you see him for the first time? A When the robbery occurred.

THE COURT: Strike out "when the robbery occurred."

MR. CARDONE: Yes. I consent.

Q Did you see Mr. Fishbach in the month of April, on the day that you were walking through Essex Street, in the morning?

CASE #2744

3
A I saw him running, and I heard him hollering, but what he hollered I did not understand.

THE COURT: Was that the only time?

Q Was that the only time? A That was the first time.

Q Now, when you saw Mr. Fishbach running, did you notice Mr. Fishbach's face? A I couldn't exactly distinguish the features of his face; I saw blood on his face; but I saw the face well when I got into the bank.

Q Where were you saw Mr. Fishbach running? A About two or three houses away from the bank.

Q From what bank? A His bank, his office.

Q On Essex Street? A Yes, sir.

Q Were you on the same side of the street as the bank?

A Yes, sir.

Q And what did you see, if anything, as you were walking on Essex Street about three doors away from the complainant's bank on that morning? A As I was walking there three houses away I saw two men running. The first man I did not see, because he was running very fast, but the second man -

Q How was the first man dressed? A A soldier's suit.

Q You say the first man you did not see? A No, the first man I did not see, only the second man. I thought at first that both had a fight and one was running after the other.

MR. WARE: I ask that that be stricken out.

MR. CARDONE: Yes, I consent.

THE COURT: Strike it out.

CASE #2744

Q Did you see a man running with an army overcoat on?

A Yes, that was the second man.

Q Did you see the second man as he was running away?

A Yes.

Q Did he have on an army coat?

THE COURT: He said the first man, he didn't see him; he wore a soldier's suit, he said.

MR. CARDONE: I will clear that up. I don't want any doubt as to the evidence. Let us have the last question answered, Mr. Rosenthal.

Q (Question read by stenographer, as follows: "Did he have on an army coat") the second man?

THE COURT: Put it specifically the second man.

A Yes, I saw that man; that man had a short army coat on.

Q Now, you say you didn't recognize the first man; is that right? A I did not recognize him; he passed me very quickly, and I had time enough to look at the second man.

Q Did the first man have on an army overcoat or a soldier's suit? A I did not notice it, because I didn't have time enough to look at him.

Q Was he dressed in civilian clothes? A I cannot say anything about it, because he passed me very quickly.

Q Did you see the second man that you referred to, wearing an army overcoat that morning? A Yes, sir.

Q Did you get a good look at his face? A He was from me about five or six feet away and just facing me.

CASE #2744

5

Q Did you get a good look at his face? A How much can a man notice in one second?

Q Don't argue with me.

THE COURT: The Interpreter has to repeat the question.

A (continuing) But I, as a photographer, if I look at a man one second, I recognize him.

THE COURT: "I, what"?

THE INTERPRETER: I recognized him.

Q Do you see the man here in court that you saw running away wearing an army overcoat that morning? A Here is the man (indicating defendant).

MR. CARDONE: Pointing to whom?

THE INTERPRETER: Pointing to the defendant.

Q Is the man at whom you just pointed the man whom you saw running through Essex Street on the morning in the month of April wearing an army overcoat; "yes," or "no?"
A Yes, sir.

Q Are you sure about it? A Yes, sir.

Q Did you get a good look at his face? A He came right facing me, and he is about the same size. Had he been a taller man perhaps I couldn't have had such a good look at his face, but he is the same size.

Q How far away were you from the defendant when he was closest to you? Question withdrawn. When you saw the

CASE #2744

defendant, how near was he to you?

THE COURT: He says they were face to face, a distance of about five or six feet away.

MR. CARDONE: I will withdraw the question.

Q What did you see Mr. Fischbach do as you saw --

THE COURT: No. First follow the defendant. Did he see where the defendant went?

Q Did you see where the defendant went? A He ran towards Rivington Street?

Q Who did? A And both there disappeared.

Q When you say "he" who do you mean? A One after the other.

Q Do you mean the defendant and the complainant?

A No, the complainant came later, about one or two minutes.

BY THE COURT:

Q At the time that you saw this defendant running, did you see any other person on the highway running? A I told you before that two men were running, one ahead of the other.

Q And the first man, how was he dressed? A I told you before, I had not time to notice.

Q How many persons did you see run that morning? A I saw those two, and then Mr. Fishbach.

Q How far behind this defendant was Mr. Fishbach when you first saw the defendant? A When he came out the two were away already, and he came out and kept on hollering.

Q Did you see Mr. Fishbach turn into Rivington Street?

CASE #2744

A He ran towards Rivington Street, passing me, and then I didn't notice any more where he ran to.

BY MR. CARDONE:

Q Where did the defendant go? A They had disappeared already.

Q Well, where? A In Rivington Street.

Q And did you see Mr. -- A Towards Norfolk Street, on the lefthand side.

Q Did you see Mr. Fishbach run towards Rivington Street, too? A I saw him there running through Essex Street. Whether he was running on Rivington Street, I don't know, but I heard him making an outcry.

Q In what direction did he run through Essex Street?

A If you come from Houston Street it is on the left side where he was running.

Q Yes, but I just want to find out the direction that the complainant was running. After you saw the complainant running, did you see the complainant turn the corner at Essex Street, and, if so, where did he run to?

THE COURT: Turned the corner of Essex Street?

MR. CARDONE: Essex and Rivington.

THE COURT: That is different. Essex Street runs north and south.

A He took his way to Rivington Street.

Q Who did? A Fishbach.

Q And how far behind this defendant was Fishbach when

CASE #2744

you saw Fishbach turn the corner of Essex and Rivington Streets?

A I told you before I couldn't tell you that, because my interest was not directed to my back. I didn't pay any more attention to what happened there.

Q Well, what was your attention attracted to? A Because I saw people gathering at the bank.

Q When? A At that time, when that happened, and that is the reason why I didn't pay any attention to what was going on there at the corner.

Q How long did you look at the defendant's face as he passed you? A Maybe one second, that is all, while he was passing me quickly.

Q And are you able to state with positiveness and with certainty that this defendant is the man that passed you, wearing the army overcoat? A According to my eyesight, according to my ability to see, this is the man whom I saw at that time.

Q Do you mean the month of April, 1918, when this occurred, or do you mean April of last year, 1919? A 1919.

Q Last year? A Yes, it will be a year this April.

MR. CARDONE: That is all.

CROSS-EXAMINATION BY MR. WARE:

Q Where is your place of business as a photographer?

A At the present time I have no photographic gallery.

Q How long ago did you have a photographic gallery?

A About seven years ago.

CASE #2744

Q What do you do for a living now? A I am going to cemeteries, Christian as well as Jewish cemeteries, on Sundays, and I take photographs of monuments, and in this way I am making a living.

Q Did you ever know Mr. Fishbach before the morning you say you saw him running and two other men running? A No, never before.

Q You haven't taken any photographs for Mr. Fishbach or any of his friends lately, have you? A I had not seen him in my life, Fishbach, outside of that time.

Q You have been in a criminal court before, have you not, a court like this? A Here?

Q Not here. Anywhere? A No, in my life I was not, not even in a police court.

Q Now, how did you happen to be on, I think you said Rivington Street, the morning of April 28, 1919 - on Essex Street, how did you happen to be there? A It happened very simple. I was in the coffee house of Schwartz, had a cup of coffee there and something, and then I was on my way to go to Brooklyn to my home.

Q Well, were you walking? A Yes; there are no cars; you have to walk.

Q You were not going to walk all the way to Brooklyn, were you? A I always walk from Houston Street to the bridge, and there I take the car to Brooklyn.

Q And you say you saw a man in an army overcoat, is

CASE #2744

that right? A Yes, sir.

Q What else did he have on, do you remember? A I cannot remember anything else.

Q Did he have a hat on, or did he have no hat on? A I cannot positively say whether he had a hat on, or not, I cannot say that.

Q But with your photographic eye one glance tells you exactly a person's features? Wouldn't it tell you whether they had a hat on, or not? A I cannot tell you positively whether he had a hat on, or anything else.

Q Then, how can you tell me what he looked like, if you don't know whether he had a hat on, or not? A A hat doesn't change the features of the face. Those remain anywhere.

Q If a hat covers the features, if it is pulled down over the face, you can't see the face, can you?

MR. CARDONE: I object to the form of the question. Let the witness tell what he saw on the day in question.

THE COURT: Mr. Ware, you may prove the fact, but your question is hypothetical. Instead of making it an argument or hypothetical, embrace the fact in your question.

Q If -

THE COURT: Not "if". You are wrong. You get into a hypothesis. Ask him would not the fact that the man wore a cap, or hat, in some way interfere with his recognizing his features. Ask him that question.

CASE #2744

Q Wouldn't the fact that a man wore a hat or a cap possibly pulled down over his forehead affect your judgment as to his features?

MR. CARDONE: Well, I object to the form of the question, as to the judgment.

THE COURT: Objection overruled. What, then, is identity evidence?

MR. CARDONE: All right.

THE COURT: It is a man's opinion, isn't it?

MR. CARDONE: I thought your Honor wanted the questions put by the Court.

A I have noticed his face from here (indicating a small space above the eyebrows up to the chin), and that is enough for me to recognize the face.

Q As a photographer, is it not important to you when you take out-of-door photographs to tell a man to wear a hat or to take it off, according as the light remains.

MR. CARDONE: I object to it, on the ground it is not germane to the issue.

MR. WARE: It is very germane to the issue.

THE COURT: I will allow that, but he was not taking a photograph there.

MR. WARE: He said he took a mental photograph.

A If the light is good, all I can tell him is to raise the head a little bit, so that the face should be exposed more, on account of the eyes.

CASE #2744

Q So that wearing a hat, or not wearing it, is important when you take a photograph of a man, is it not? A No, that depends upon the person, whether he wants to have his picture taken with a hat on, or without.

Q Why did you say, when this gentleman asked you the first questions, about fifteen minutes ago, when he started to talk to you, why did you say that the first man running wore a uniform or words to that effect? Why did you say that - first man? A I said the second man had a military coat on, and I could never say about the first man, because I don't know.

Q Do you remember being asked these questions and making these answers which I ask the stenographer to read, in answer to this gentleman.

(Stenographer reads questions, as follows: "Q.

And what did you see, if anything, as you were walking on Essex Street about three doors away from the complainant's bank on that morning? A. As I was walking there, three houses away, I saw two men running. The first man I did not see, because he was running very fast, but the second man --

"Q. How was the first man dressed? A. A soldier's suit.

"Q. You say the first man you did not see?

A. No, the first man I did not see. Only the second man. I thought at first that both had a fight and that one was running after the other.").

CASE #2744

A I said it about the second man.

Q Do you mean to say that you didn't say that the first man wore a soldier's suit? A I said that the first man I couldn't catch, I couldn't see him.

Q Didn't you hear Judge Rosalsky, immediately later, as the minutes show, say, "He said the first man; he didn't see him; he wore a soldier's suit, he said"? Didn't you hear the Judge say that?

MR. CARDONE: Yes, and he corrected it when your Honor asked a question.

THE COURT: His testimony was as follows: That the first man ran at such a speed that it was absolutely impossible for him, for this witness to recognize his features, but, he says, the second man -

MR. WARE: If your Honor please, would you listen to the minutes just a moment?

THE COURT: Yes.

(Stenographer reads record, as follows:

"Q. And what did you see, if anything, as you were walking on Essex Street, about three doors away from the complainant's bank on that morning? A. As I was walking there about three houses away I saw two men running. The first man I did not see, because he was running very fast, but the second man -

"Q. How was the first man dressed? A. A soldier's suit.

CASE #2744

"Q. You say the first man you did not see? A. No, the first man I did not see, only the second man. I thought at first that both had a fight and one was running after the other.

"Mr. Ware: I ask that that be stricken out.

"Mr. Cardone: Yes, I consent.

"The Court: Strike it out.

"Q. Did you see a man running with an army overcoat on? A. Yes, that was the second man.

"Q. Did you see the second man as he was running away? A. Yes.

"Q. Did he have on an army overcoat?

"The Court: He said the first man; he didn't see him; he wore a soldier's suit, he said.

"Mr. Cardone: I will clear that up. I don't want any doubt as to the evidence. Let us have the last question answered, Mr. Rosenthal.

"Q (Question read by stenographer, as follows: Did he have on an army overcoat?) the second man?

"The Court: Put it specifically, the second man.

"The Witness: Yes, I saw that man; that man had a short army coat on.

"Q. Now you say you did not recognize the first man? Is that right? A. I did not recognize him; he passed me very quickly, and I had time enough to look at the second man.

CASE #2744

"Q. Did the first man have on an army overcoat, or a soldier's suit? A. I did not notice it, because I didn't have time enough to look at him.

"Q. Was he dressed in civilian clothes? A. I cannot say anything about it, because he passed me very quickly.

"Q. Did you see the second man that you referred to wearing an army overcoat that morning? A. Yes.

"Q. Did you get a good look at his face? A. He was from me about five or six feet away and just facing me.").

Q Now, Mr. Witness, when you said, as has been read -- You understand English, don't you? Do you understand English? Can't you hear me? A I don't understand English.

Q The testimony which has been read several times shows that you said, in answer to Mr. Cardone, the District Attorney, as to how the first man was dressed, you replied "a soldier's suit." Now, in making that reply, did you make a mistake? A I don't remember having said that, because I didn't see the first man.

Q Well, if you did say it, it was a mistake, wasn't it? A Whatever I said, I am saying now I didn't see the first man. I only saw the second man.

Q Don't you ever make mistakes?

MR. CARDONE: I object to the form of the question. We all do.

MR. WARE: I have heard a gentleman say in court here that he never made a mistake.

CASE #2744

MR. CARDONE: I would like to find out who that man is.

MR. WARE: I will tell you privately.

THE COURT: Go ahead.

A Yes, certainly, & I make mistakes.

Q And you may be mistaken in this case when you say you saw this man, may you not? A I cannot say once "yes," and once "no." I say what I said, that this is the man.

Q And you also said that the first man wore a soldier's suit, just now, didn't you?

MR. CARDONE: Now, I think counsel has cross-examined this witness at length on this point.

MR. WARE: I want him to tell the truth, to admit to the facts.

THE COURT: Stop. You have no right to comment upon the witness's testimony, Mr. Ware.

BY THE COURT:

Q How old are you? A Sixty-two.

Q What is the condition of your eyesight? A When I was younger I could see very well. Now I have to wear glasses, but at a short distance I see just as well. On the street I see everything. Only when it comes to reading I must have glasses.

Q Have you any doubt as to the identity of the person whom you observed running on Essex Street in April, 1919? It is very important? A I want to answer. (Witness speaks to Court in Yiddish).

Q No, we do not want any philosophy on the subject, but

CASE #2744

what we want to know is, your state of mind. Are you as far certain as it is humanly possible for a person to be with respect to your testimony that this defendant was the person whom you saw? A Yes.

BY MR. WARE:

Q Do you wear your glasses in the street? A Never.

Q Do you wear them only when reading? A Yes, sir.

Q Have you got them with you? A Yes, sir (Witness produces glasses.)

Q Can you tell what time it is from here (exhibiting watch to witness)? A Eight or nine minutes after 12:00.

Q You say your eyes used to be better when you were a young man? A That is understood.

MR. WARE: That is all.

BY THE COURT:

Q Do you wear glasses for distance? A No, only when I put the glass in the camera, then I use glasses.

BY MR. WARE

Q Can you read English? A I write good German and Roumanian and Polish.

Q Kindly put on your glasses. Can you read that (handing typewritten paper to witness)? A (In English) Yes, sir.

Q Can you read it without your glasses? A (In English) No.

Q You can't read it? A (In English) No.

Q And yet you can see my watch? A (In English) Yes.

CASE #2744

(Mr. Frederick Fischer, Official Stenographer, acts as Interpreter from this point on.)

Q Now, Mr. Rosenstrauch, you said you had never been in a court in your life, not even a police court; is that right?

A Not in all my life.

Q Wasn't you in the First Street Magistrates' Court when this young man was brought there? A Yes, that time I was there but I thought you asked me if I had anything to do with the courts.

Q Oh, no. I asked you if you had ever been in a court.

A The first time when I was called in this case.

Q So, you had been in a court before today? A Once before today.

MR. WARE: That is all.

REDIRECT EXAMINATION BY MR. CARDONE:

Q In connection with this case, is that it? A This case has brought me over twenty-five times into court already.

MR. CARDONE: That is all.

D O R A H O F F M A N, called as a witness on behalf of the People, being first duly sworn and examined through the Official Interpreter, Mr. Frederick Fischer, testified as follows:

DIRECT EXAMINATION BY MR. CARDONE:

Q Do you speak English, Mrs. Hoffman? A No.

CASE #2744

Q What language do you speak? A Jewish.

Q How old are you? A Forty-four.

Q And you are a married woman; is that right? A Sure.

Q Where do you live? A 131 Norfolk Street.

Q How long have you been living at that address? A 14 years.

Q And did you live there at that address on the 28th of April, 1919? A Yes, sure.

Q What floor do you live on in those premises? A Second floor.

Q Do you mean two flights up, or one flight up? A Two flights up.

Q You live on the first floor? A No, second floor. Two flights up.

BY THE COURT:

Q Is there a store downstairs? A Yes, there is a store.

Q How many floors above the store do you live? A Two flights.

Q The third floor? A Yes, sir.

BY MR. CARDONE:

Q Do you live in the front of those premises or the rear?
A The front.

Q Is there a toilet on that floor? A Yes.

Q Whereabouts is the toilet located? A In the hall.

Q Is it near your apartment? A Not far.

Q Did you find anything on the 28th of April, 1919, any-

CASE #2744

where in that building, and, if so, what? A I came into the toilet. There was a cap and a coat lying there.

Q What kind of coat? A A soldier's coat.

Q And what kind of a cap? A A rubber cap.

Q A what?

THE COURT: She didn't say a rubber cap, Mr. Fischer.

A A cloth cap.

Q Did you find it in the toilet? A It was lying on the floor.

Q Is that toilet used by the tenants on that floor?

A Yes, very often.

Q And is the door open? A Yes, it is not locked.

Q It is not locked? A No, sir.

Q What time was it that you found the cap and the army overcoat that you speak of? A In the morning, before ten o'clock.

Q I show you People's Exhibit No. 1 and People's Exhibit No. 2 for Identification, and I ask you to look at these exhibits (handing exhibits to witness)? A Yes.

Q What do you mean by "yes"? A Such a coat and such a cap.

Q Is this the coat and the cap that you found in the toilet; "yes," or "no?" A Yes, sir.

Q It is? A Yes.

Q What did you do as soon as you found the coat and the cap? A I went to the janitor and showed it to him.

CASE #2744

Q Yes. What is the janitor's name? A Wechsler.

Q And did you see a detective come there? A Yes.

Q And did the detective take possession of the coat and cap? A Yes, sure, he took them.

Q Did you search the coat? A No, I didn't touch it.

Q You didn't look into it? A No.

Q And you are sure it was before ten o'clock that morning?

A Yes, sir.

Q Now, do you remember the date? A No, I don't remember the date.

Q Well, was it the same day that you found it? A Yes, sure.

Q And that was the day that you gave it to the police officer? A The same day.

MR. CARDONE: That is all with this witness.

CROSS-EXAMINATION BY MR. WARE:

Q About how many families are there in that house? A 12, four floors, three on each floor.

Q And some of the young men in the different families were soldiers, weren't they? A No.

Q Not one in that whole twelve families? A I have a business; I am very little in the house, and I attend to my business, and I cannot tell who lives in that house.

Q You have seen a great many of these overcoats, haven't you, in the last year or so? A Yes.

Q And you don't know who that belongs to, do you? A No, that I don't know.

CASE #2744

Q Did you hear anybody inquire for an overcoat or a hat that had been found in the place where you say you found these, anybody in the house or otherwise? A No.

MR. WARE: That is all.

REDIRECT EXAMINATION BY MR. CARDONE:

Q You were found the hat and coat, and you were the one that notified the janitor; is that it? A I found it and I gave it to the janitor.

MR. CARDONE: That is all.

RECROSS-EXAMINATION BY MR. WARE:

Q Now, did you, or the janitor, if you know, notify the police? A The janitor.

Q The janitor notified the police and they came and got it? A Yes.

BY MR. CARDONE:

Q This was in 131 Norfolk Street, where you live? A Yes.

MR. CARDONE: That is all.

M I T C H E L L W E C H S L E R, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CARDONE:

Q Mr. Wechsler, where do you live? A 131 Norfolk Street.

Q What is your business? A Janitor.

Q Mr. Wechsler, how long have you been a janitor at 131 Norfolk Street? A About ten or eleven years.

CASE #2744

Q And were you the janitor there in the month of April, 1919? A Yes, sir.

Q Do you know Mrs. Hoffman? A Yes, sir.

Q Is she a tenant in that building? A Yes, sir.

Q Did you see Mrs. Hoffman in the month of April, 1919?

A Yes, sir.

Q And did Mrs. Hoffman call anything to your attention?

A Yes, sir.

Q What about? A I was in my house, I can't remember what day it was, but she called me up and she opened the toilet door and showed me there a coat.

Q What kind of coat? A A soldier coat.

Q And what else? A And a cap.

Q Is this it (handing witness People's Exhibits 1 and 2, for Identification)? A Such a coat and cap.

Q What did you do with them afterwards? A I told her to stay there and watch it and I will go and call up a detective.

Q Did a detective come? A And I went to the station and the detectives came.

Q Who were the detectives? A I heard one is named Cohen.

MR. WARE: I move to strike that out.

MR. CARDONE: May we have detective Cohen brought in?

Q Is that the officer that you mean (indicating detective Julius Cohen?) A Yes, sir.

Q And was the cap and the coat given to the officer? A He

CASE #2744

took it himself.

I didn't give it to him.

Q You didn't search the coat, did you? A No.

MR. CARDONE: Your witness.

CROSS-EXAMINATION BY MR. WARE:

Q You called up the police station or police headquarters?

A I was in the police station in Clinton Street and I said to the sergeant, and the sergeant sent me up to the Detective Bureau, upstairs. Then I went there, and I don't know who was there; he told the man to go with me.

Q You are the one, however who first saw the coat and hat.

The other witness, the woman who just testified, saw it first?

A I saw the coat laying in the toilet, and I ^{told} ~~saw~~ her she should stay in the hall and watch it.

Q But you saw it first? A No, I didn't saw it first.

Q But she saw it first? A She saw it first.

Q In other words, you don't know who it belongs to?

A No.

Q Among all the families in your building, ^{did} they have no young men that were enlisted or were drafted for the war? A No.

Q Not out of the whole bunch? A No.

MR. WARE: That is all.

JULIUS COHEN, police officer, shield No. 306, attached to the 13th Precinct, Detective Division, called as a witness on behalf of the People, being first duly sworn, testified as follows:

CASE #2744

DIRECT EXAMINATION BY MR. CARDONE:

Q You are a member of the Municipal Police Force of the City of New York, are you not, Officer? A I am.

Q On the 28th of April, 1919, were you attached to the 13th Precinct Detective Bureau, in this city? A I was.

Q Did you at any time on the 28th of April, 1919, visit the premises at 114 Essex Street, this city? A I did.

Q Did you see the owner of that place, Charles Fishbach? A I did.

Q Did you have a conversation with him? A I did.

Q And in consequence of that conversation what did you do? A I went to the corner of Norfolk and Rivington. The complainant, Fishman, told me --

Q Never mind what the complainant told you.

THE COURT: Strike out that testimony. You have been long enough on the force to know that you can't testify as to a conversation that you had with the complainant.

Q You had a conversation with Fishbach? A Yes, sir.

Q Then you went to the corner of Norfolk and Rivington Streets? A Yes, sir.

Q When you got to the corner, what did you do? A I entered the building of 131.

Q What street? A Norfolk Street.

Q And where did you go to in the building? A I looked for the janitor.

CASE #2744

Q Before you went to that building, did you see the janitor in the station house on Clinton Street? A I did not see him.

Q Did you receive any instructions from your superior officer to go to 131 Norfolk Street? A No, I had left the building before I had received any instructions.

Q You went to 131 Norfolk Street? A Yes, sir.

Q Where? A I went looking for the janitor.

Q And did you locate the janitor? A I did.

Q Where did you go to with the janitor? A I went to the second floor.

Q What happened there on the second floor? A He showed me where the lavatory was, and I opened the door and found on the floor of the lavatory on the second floor a soldier's United States Army coat and a cap.

Q And is this the coat and the cap (handing witness People's Exhibits Nos. 1 and 2, for Identification? A (After examining same) Yes, that is the coat and cap.

Q Did you search the coat? A Yes.

Q Did you find anything in the coat? A Found a red star in one of the pockets of the coat.

Q Have you got it? A I think Officer Rosenberg has it.

Q Rosenberg? A I believe so.

Q After you found the coat and the cap, did you retain possession of it? A Yes.

Q And did you take it to the Property Clerk of the Police Department? A No, I did not.

CASE #2744

Q What did you do with it? A I brought the coat back to the office of Fishman.

Q Fishbach? A Yes, Fishbach.

Q And the cap also? A Yes, sir.

Q When you got to Fishbach's place, did you observe Fishbach's head? A I did.

Q And did you make an examination of his safe? A Yes, sir.

Q Did you find anything on the premises, you yourself personally? A No, I did not.

Q Who was with you when you went to Fishbach's place?

A Officer Rotchford.

Q Detective Rotchford? A Yes, sir.

Q I show you a red star and I ask you if that is the star that you took out of the coat when you examined it (handing article to witness)? A Yes, that is the star.

MR. CARDONE: I ask that that be marked for identification, People's Exhibit No. 3.

(Same marked People's Exhibit No. 3, for Identification, of this date.)

Q When you examined the safe, what did you observe as to whether or not there was any money or liberty bonds or property in the safe? A I made no examination of the safe.

Q You did not? A No, I did not.

Q Did you examine the chest in the safe? A I did not.

Q What did you do after that, Officer? A I brought the coat back and had Fishman look at it.

CASE #2744

Q Never mind what Fishman said about the coat, because that is not competent. After Fishman looked at the coat, did you show him the hat? A I did.

Q And then what happened? A I brought the coat and hat to the 13th precinct Station house.

Q You didn't arrest the defendant, did you, Officer? A I did not.

Q Did you see the defendant after the defendant was arrested? A I did.

Q Did you have any conversation with him? A I did not.

Q Is that all you know about this case? A That is all.

MR. CARDONE: That is all, Officer.

CROSS-EXAMINATION BY MR. WARE:

Q Officer, you were not present at the time there was a line-up at the station house? A I was not.

MR. WARE: That is all, sir.

REDIRECT EXAMINATION BY MR. CARDONE:

Q Did you go to the defendant's house with Detective Rotchford? A I did.

Q Were you present when Detective Rotchford had a conversation with the defendant about an army overcoat? A Yes, sir.

Q Can you give us the conversation that took place between Detective Rotchford and this defendant about an army overcoat? A Yes, sir.

Q Give the conversation. A Detective Rotchford said to -

EXHIBIT

CASE #2744

I believe that woman was a sister of the defendant -

Q Q What? A A sister of the defendant's, he spoke to a sister of the defendant.

Q No, I am not asking you anything that happened between the officer and the sister. I want to know what this defendant said to Officer Rotchford in your presence about an army overcoat? A I didn't overhear any conversation about that.

Q You were not present when any such conversation took place? A No, I was not.

Q But did you go to the defendant's house? A I did.

Q Did you look for an army overcoat? A Yes, sir.

Q Did you look for a coat after a certain conversation was had between this defendant and Officer Rotchford, if you know? A Officer Rotchford asked me to accompany him to the home of this defendant, and I did.

Q And did you look for an army overcoat in this defendant's house? A I did, yes, sir.

Q Who did you see at the defendant's house when you went there with Detective Rotchford? A Saw a young woman who was there, I believed she had been the sister of this defendant.

THE COURT: Strike that out.

MR. CARDONE: Yes, strike that out is right.

THE COURT: You cannot prove --

MR. CARDONE: I am not trying to prove it, your Honor. I am just trying to prove who was there.

THE COURT: But there is no proof that his sister

CASE #2744

was there. Call a witness to prove that fact.

Q Where did you get the address as to where the defendant lived?

THE COURT: Excluded..

MR. CARDONE: All right; I withdraw the question.

Q Where did you go with Officer Rotchford? A 86 Hester St.

Q 86 Hester Street? A I think that was the number.

Q What floor in 86 Hester Street? A I am uncertain as to whether it was the first floor or the second.

MR. CARDONE: All right; I will prove it by Officer Rotchford, your Honor. That is all with this witness.

MR. WARE: That is all.

J O H N F. R O T C H F O R D, police officer, shield No. 716, attached to the Detective Bureau, 13th Precinct, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CARDONE:

Q Did you arrest this defendant, Officer? A Yes, sir.

Q When? A I will have to look at the arrest book to get the right date.

Q You can't testify about it from your recollection without referring to some memorandum book, is that it? A I would prefer referring to my memorandum book. I can, but for the correct date and detail I would prefer looking at the arrest book - memorandum book.

CASE #2744

MR. CARDONE: May the witness refresh his recollection.

THE COURT: Why not?

A (continuing) May 16th, 11 a.m., in the Forsythe Street Baths, he was in bed, that is in 79 Forsythe Street.

Q That is between what streets? A Between Grand and Hester, nearer to Grand.

Q You say the defendant was asleep in a room? A Yes, sir.

Q And when you arrested the defendant where did you go with the defendant? A I said, "Put your clothes on," and we went downstairs.

Q Be careful about certain testimony, Officer. Go ahead.
A He led the way and we followed him down to the ground floor. He was asleep in a bed on the second floor, one flight up, and I followed the defendant down to the ground floor. He opened a room and went inside; we went in with him; and he started to get dressed, and after he got dressed we searched the room.

Q Never mind what you found. Go ahead.

THE COURT: Just confine yourself to this case, Officer.

A He said, "What do you want of me?" I said, "They want you for a robbery." He says, "I don't know anything about it." I said, "We will soon find out."

THE COURT: Never mind what you said. He said, "I don't know anything about it?"

THE WITNESS: He didn't know anything about it. We brought him to the 13th Precinct station house, and De-

CASE #2744

etective Rosenberg had a complaint of robbery --

THE COURT: Strike that out.

Q You and Officer Gribben were together, is that so, when the arrest was made? A Yes, sir.

Q And you took ^{him} from the Forsyth Baths to the 13th Precinct station house? A Yes, sir.

Q Now, did you search the defendant, or did officer Gribben in your presence search the defendant? A Gribben searched the defendant.

Q Did you have any conversation with the defendant about this case other than what you have already testified to?

A That was about all, that he was wanted on a charge of robbery.

Q Never mind about that. Did you go to 86 Hester Street?

A Yes, sir.

Q And did you have any conversation with the defendant about 86 Hester Street? A Yes, sir.

Q What was the conversation about? A I said, "Were you in the army?" He said, "Yes." I said, "Where is your uniforms - where is your uniform?" He said, "Home, 86 Hester Street."

Q "Uniform?" A "Uniform."

Q Go ahead. A I said, "Are you sure your clothes is home?" He said, "Yes." I said, "What have you got there?" He said, "I got a suit and an overcoat." I said, "Where is it?" He said, "In a closet in my house, in the front room."

CASE #2744

Q Where? A 86 Hester Street, on the first floor - second floor, one flight up.

Q Did you go there? A I went there. I had a conversation with his sister.

Q Never mind the conversation with the sister. Did you search that house? A I searched the room and the closet. I found in the closet a uniform suit, coat and pants.

Q A coat and pants? A Yes, sir.

Q What kind of coat? A An army suit.

Q An army suit? A Jacket and pants.

Q Did you find an army overcoat there? A No, sir, there was no coat there.

Q And what did you do after that? A I went back to the station house, and I said to the defendant, "All that is in the house is a suit. Your overcoat aint there."

Q What did the defendant say? A He at first told me that his coat was there, and then he said, "I sold the coat."

Q To whom? A Some fellow; he didn't know who it was. I said, "What is his name, or where can I locate him?" He said, "I don't know who it is; I sold the coat." I said, "You told me that the coat was home." "Well," he said, "I sold the coat."

MR. CARDONE: Your witness.

CROSS-EXAMINATION BY MR. WARE:

Q You are perfectly positive, Officer, about havind held this conversation that you have just related? A Yes, sir.

CASE #2744

Q It is a little less than a year ago now, isn't it?

A May 16th, six months ago.

Q But the words are fresh in your memory, that is, approximately? A Yes, sir.

Q Did you ever try this coat on the defendant? A The coat was tried on him in the station house. I saw him with the coat on him.

BY MR. CARDONE:

Q Where? A In the 13th Precinct Station house.

MR. CARDONE: Do you want him to try it on?

MR. WARE: Why, certainly.

MR. CARDONE: All right; suppose we have the defendant try on the overcoat and also the cap, if counsel for the defendant has no objection? Supposing we have a Court officer do it and not counsel for the defendant?

THE COURT: What difference does it make?

MR. WARE: I am not a very good clothing-fitter.

(The defendant puts on overcoat, People's Exhibit No. 1, for Identification.)

MR. CARDONE: Now, supposing we have the defendant button up the coat.

THE COURT: Button it up.

(Defendant buttons up overcoat.)

MR. CARDONE: Now, suppose he tries on the hat?

(Defendant puts on cap, People's Ex. No. 2, for Identification.)

CASE #2744

MR. CARDONE: May we have it noted on the record that the defendant yried on the army overcoat that was found in premises 131 Norfolk Street and the cap, on the 28th of April, 1919.

CROSS-EXAMINATION BY MR. WARE:

Q Now, Officer, were you with the defendant when there was a sort of identification in the station house, when he was taken downstairs and saw some men in line? A No, sir, I was on the first floor, and they took him downstairs and put him in a line of men. I was not present then.

Q You don't know who was in that line, then, only what you were told? A Only hearsay, that is all.

MR. WARE: That is all.

REDIRECT EXAMINATION BY MR. CARDONE:

Q Were you with Detective Cohen x when Officer Cohen received the hat and coat in question? A I was.

Q Did you examine the coat and search it? A I believe Cohen did, in my presence.

Q What was found in the coat? A There was a red star or something in the coat, a red star, I think.

Q Did you have any conversation with the defendant as to the length of service he rendered in the United States Army? A No, sir.

Q Was any conversation had with the defendant by Officer Cohen as to how long he was in the army?

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

CASE #2744

Q In your presence.

MR. WARE: He is not in trial for being in the army.

THE COURT: The objection is overruled.

A I don't recall what the conversation was.

Q That is all you know about this case? A I didn't know anything about this robbery case.

Q Is that all you know, Officer Rotchford, about this case? A I was not familiar with the robbery, and I didn't know anything about that.

MR. CARDONE: That is all.

S A M U E L G R I B B E N, police officer, shield No.502,
attached to the 13th Precinct, Detective Division, called as a
witness on behalf of the People, being first duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. CARDONE:

Q Officer Gribben, in the month of April, 1919, were you
attached to the 13th Precinct, Detective Bureau? A Yes, sir.

Q Did you, together with Officer Rotchford, arrest this
defendant? A Yes, sir.

Q Where was the arrest made? A The Forsyth Baths, 79
Forsyth Street, on May 16, 1919.

Q At about what time? A At about -- around 11 a.m.

Q After the defendant was arrested and taken to the 13th
Precinct, did you search the defendant? A I did.

Q Did you find anything on the person of the defendant?

CASE #2744

A Yes, sir.

Q In the station house? A Yes, sir.

Q What did you find? A I found this (hands green piece of pasteboard to Mr. Cardone.)

Q Let me have that other? A (Witness hands photograph to Mr. Cardone.)

Q I show you a green card and I ask you where you got that from (handing green card to witness?) A Out of his clothes.

Q Whose clothes? A The defendant's clothes.

Q When? A May 16, 1919, when I placed him under arrest.

Q That is, when you searched the defendant? A Yes, sir.

MR. CARDONE: I offer this photograph in evidence, if your Honor pleases.

(Same received in evidence and marked People's Exhibit No. 4, of this date.)

MR. CONDONE: Counsel for the defense consents that the second photograph, the enlarged photograph, be also admitted in evidence. I also offer that in evidence.

(Same received in evidence and marked People's Exhibit No. 5, of this date.)

THE COURT: (To the jury) Do not discuss this case among yourselves nor permit any person to talk with you about it nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Gentlemen, be in your seats at ten after two.

CASE #2744

MR. WARE: Would your Honor make it a quarter afterM
I have to go 'way up to 50th Street.

THE COURT: A quarter after two, gentlemen. Counsel
has an engagement.

(The Court then accordingly took a recess until
2:15 o'clock p. m.).

A F T E R R E C E S S

S A M U E L G R I B B E N, resumes the stand.

DIRECT EXAMINATION(continued) BY MR. CARDONE:

MR. CARDONE: I offer in evidence People's Ex. No. 2
for Identification, the cap, and also People's Ex. No. 1,
for Identification, the coat, in evidence.

THE COURT: Accepted.

(Coat and caprespectively, received in evidence
and marked Exhibits Nos. 1 and 2, respectively,
of this date.)

MR. CARDONE: I also offer in evidence the red star
that was found in the coat.

MR. WARE: This was found in the coat pocket?

MR. CARDONE: In the overcoat pocket.

MR. WARE: If it was in the coat pocket, we have
no objection.

MR. CARDONE: It is in evidence that it was found in
the coat pocket.

(Same received in evidence and marked People's

CASE #2744

Exhibit No. 3, of this date.)

Q When you arrested the defendant, at the Forsyth Street Baths, on the 16th of May, 1919, did you find a hat in the bathroom that was occupied by the defendant? A In a little room he had in the baths.

Q Will you produce the hat? A (Witness produces cap.)

MR. CARDONE: I think it is no more than fair and proper that the jury should see that hat, if your Honor please, so as to compare it with the hat that is in evidence.

Q Is that the hat that you found in the room? A Yes.

Q What did the defendant say about this hat? A He said that was his hat.

MR. CARDONE: I offer it in evidence, Mr. Ware, you have no objection?

(Same received in evidence and marked People's Exhibit No. 6, of this date.)

Q Did you also find a pair of shoes there? A Yes, sir.

Q Will you produce them. A (Witness produces shoes.)

Q What did the defendant say as to the shoes? A He said they were his shoes.

MR. CARDONE: I also offer the shoes in evidence.

(Same received in evidence and marked People's Exhibit No. 7, of this date.)

MR. CARDONE: Your witness, Mr. Ware.

CASE #2744

CROSS-EXAMINATION BY MR. WARE:

Q So, you found two checked hats? Did you discover both hats? A No, sir.

Q You say he told you that this hat belonged to him? A Yes, sir.

Q Did he tell you that those shoes belonged to him? A Yes, he said those shoes belonged to him.

Q Do you know what size shoes they are? A No.

Q Do you know he wears small shoes, I believe No. 7? A I don't know what size he wears.

Q Did you find those shoes and this cap in the same locker? A Yes, sir.

Q Several people used the same lockers in that bath? A I don't know.

Q You don't know that the things in that locker belonged to him, do you? A He said they were his.

Q Everything? A After we placed him under arrest he said there was somebody else using a part of that room. That is what he did say.

Q And didn't you make inquiries there to verify that, to see whether he was telling the truth? A Yes, sir.

Q And it turned out that one or more than one other -- A It turned out this way, that he hired the room, and the man said he might have taken a friend with him and put his clothes in there.

Q Did the bathman say that? A Yes, sir.

CASE #2744

Q So, he didn't know who owned the articles that were there?

A The room belonged to him.

Q What is that? A The room belonged to the defendant.

Q How big a room is it? Is it a closet, or what? A It is about that wide and about that high from the ground (indicating), and a wiring overhead; a Turkish bath.

Q He has that closet permanently, is that it? A That is the way I understood it.

MR. CARDONE: You mean the room?

MR. CARDONE: He calls it a room. I would call it a closet.

BY MR. CARDONE:

Q What is it, a locker, or room, or what? A Well, you could call it a closet. They are partitioned off and wiring across the top.

BY MR. WARE:

Q It is not a place where a man can go in and undress? A Yes, that is what it is, yes, sir.

Q Did you find any other articles there besides the cap?

A And the clothes that he was putting on; he had another pair of shoes in there that he put on.

Q Did you compare these shoes to see if they were different-sized shoes, or much larger? A I did not.

Q And, as a matter of fact, you don't know whether they are much larger than the shoes he wears, or not? A I couldn't say that, no.

CASE #2744

Q But you are sure he said they were his shoes? A Yes, he said they were his shoes.

Q Were you present at the line-up, or alleged line-up, when six or seven men, including the defendant, were in line?

A I was.

Q At the police station? A Yes, sir.

Q And did you tell - did you instruct the complaining witness, Fishbach, what to do? A Yes, sir.

Q Didn't you tell him to take a look at the men in line and put his hand on the man that he identified as the man who had robbed him? A Yes, sir.

Q And didn't he go up, take a look at the first man on the row and take hold of him? A When I brought him downstairs to pick his man out of the line, he was excited and nervous, and he went down and he picked out a man who was a police officer. He then immediately went and picked out the defendant; he said, "I made a mistake."

Q Did you ask him whether he made a mistake the second time? A I did not.

Q Now, as a matter of fact didn't he pick out the first man, the first man that he had picked out, didn't he practically pick him out three times? A Oh, no.

Q One after the other? A No, sir.

Q But he did put his hand on him? A Yes, sir.

Q And you had told him to take hold of the man that he identified as the man who had had the gun? A I didn't tell him to

CASE #2744

take hold of him. I told him to put his hand on him.

Q Put his hand on him; well, that is practically the same thing. A Yes, sir.

MR. WARE: That is all.

REDIRECT EXAMINATION BY MR. CARDONE:

Q When you say he immediately picked out the defendant after he had picked out this officer that was in line, how soon after he picked out the first man was it that he picked out the defendant? A Well, about a minute.

Q A minute? A Yes, about that.

Q And after he had picked out the first man, did the complainant say anything about the first man? A Yes, he said, "I made a mistake; that aint the man."

THE COURT: Now, --

MR. CARDONE: Counsel for the defendant brought that out.

THE COURT: I know he did, so you should not repeat it

MR. CARDONE: All right.

Q How was the defendant dressed when he was in line?

A (No answer.)

BY THE COURT:

Q Do you remember the police officer whom he picked out?

A Detective Rosenberg can tell you his name.

BY MR. CARDONE:

Q Do you know his name? A I don't know his name. Rosenberg has the names of the men that were in that line-up.

CASE #2744

Q Now, can you tell, Officer, whether or not this defendant, so far as his physical appearance is concerned today as compared with his physical appearance on the day of his arrest, is any different? A I imagine he got a little heavier, a little stouter.

Q That is to say, as he appears to you now, he appears in what manner? A He always was a well-built young man, but he appears to have gotten a little heavier.

Q He appeared to be heavier when? A Now he seems to be a little heavier.

Q That is, you will testify that he is a little heavier today in appearance than when you saw him on May 16th?

A Yes, he is a little heavier. I have seen him several times since May 16th.

Q You are sure, officer, that the complainant did not pick anyone out other than the officer and then this defendant?

A Yes, sir.

Q And when he picked out this defendant you say what occurred? A He said, "That is the man." "That is the man," he said.

Q Did the complainant make any statement as to why he picked out the other man? A Oh, yes, he said, "I was excited and I didn't know what I was doing; I got nervous."

Q How many men were in the line-up? A About six or seven; I am not sure.

MR. CARDONE: Any further questions, Mr. Ware?

CASE #2744

MR. WARE: None whatever.

MR. CARDONE: That is all. That is the People's case.

Oh, one question, your Honor, before we rest.

BY MR. CARDONE:

Q Were these shoes in a box, Officer? A One shoe was in a box and one shoe was on the floor.

Q Will you produce the box in which you found the one, so we will get everything before the jury. A (Witness produces cardboard box.)

MR. CARDONE: I also offer that in evidence.

(Same received in evidence and marked People's Exhibit No. 8, of this date.)

MR. CARDONE: Now, we rest.

MR. WARE: If your Honor pleases, I respectfully move this Court that it instruct this jury to acquit this defendant and that the Court dismiss the indictment, on the ground that the evidence produced by the prosecution is so contradictory and vague and unsatisfactory generally from the standpoint or viewpoint of the prosecution that it would be unsafe to convict this defendant of the crime with which he is charged under the indictment.

THE COURT: Motion denied.

MR. WARE: I take an exception.

-----+-----
THE -D-E-F-E-N-D-A-N-T-'S CASE

(Mr. Ware opened the case to the jury on behalf of the defendant.

CASE #2744

H A R R Y K R I C H M A N, the defedant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Where do you live? A 86 Hester Street.

Q Now, Krichman, is that your right name? A Yes, sir.

Q K-r-i-c-h-m-a-n? A K-r-i-c-h-m-a-n, Harry Krichman.

Q And that is the name that you are known by and the name that you live under, is it? A Yes, sir.

Q You are not married, are you? A No, sir.

Q Who do you live with? A Mother.

Q On the 18th day of May, 1917, you were convicted of the crime of petty larceny, in the Court of Special Sessions?

MR. CARDONE: You have conceded that, Mr. Ware.

MR. WARE: Yes, I know it, but I want to get it from you direct.

Q That is, a fact, that you were convicted of petty larceny in Special Sessions? A Yes, sir.

Q Now, you have heard the evidence in this case? You have heard the evidence that has been given by Mr. Fishbach? And also the others? A Yes, sir.

Q You have heard Mr. Fishbach say that he ran out of the store after he claims that he was unconscious and that he saw a man in an army overcoat running away? A Yes, sir.

Q And that he ran after him? A Yes, sir.

CASE #2744

Q You heard the evidence of one of the later witnesses, the photographer, who says that he met somebody face to face on the street and says that you are the one that he saw, that had an army overcoat on; you heard that? A Yes, sir.

Q Now, is that true or not? A No, sir.

Q Did you have anything to do with a robbery of the premises of Mr. Fishbach that he occupied as a sort of bank? A No, sir.

Q Did you, on April 28th, see Mr. Fishbach at all? A No.

Q Did you point a gun at him across the counter in his store? A No, sir.

Q Did another man come along and crawl under the counter and get x behind and strike Mr. Fishbach? A No, sir.

Q With any article at all? A No, sir.

Q Where were you that morning? A That morning I was sleeping.

Q Where? A In the Forsyth Baths, at 77 and 79 Forsyth Street.

Q On April 26th? A April 28th.

Q April 28th? A Yes, sir.

Q And how long had you been living at those baths, if you had been living there? A Well, I was staying there about two months in the baths.

Q Slept there? A Yes, sir.

Q In the night time? A Yes, sir, I used to go to work.

Q What two months was that? A That was the month of April

CASE #2744

and the month before, May and April.

Q April and May, 1919? A Yes, sir.

Q Last year? A Yes, sir.

Q And you see this cap that was introduced first, the cloth cap, people's Ex. No. 2; is that your cap? A No, sir.

Q Did you ever see it before? A No, sir.

Q You see this cap, People's Ex. No. 6 (handing exhibit to witness)? A No, sir.

Q Is that your cap? A No, sir; never seen it.

Q Do you know whose cap this is? A This was a fellow's that was living with me, used to come in the room to dress.

Q At the bath? A Yes, when he used to busy he used to come in regularly.

Q When was this photograph taken? A This photograph was taken on Grand and Allen streets, a photographer, when I was working driving a truck of fruit at the time of war; I couldn't get in without having a pass on the Government docks.

Q This is dated August 30th, 1918. Is that the time it was taken? A Yes, sir.

Q And that is your photograph? A Yes, sir.

Q Where is the hat which appears on you in that photograph? A This hat, I got it home.

Q You got it home? A Yes. I have a cap like that home.

Q It is not this cap, is it? A No, sir.

Q And it is not this cap, is it? A No, sir.

BY THE COURT:

CASE #2744

Q Where is that hat? A I have it home.

Q When did you see it last? A (No answer.)

MR. WARE: It is not either Ex. 2 or Ex. 6.

THE COURT: When did you see the cap last?

MR. CARDONE: Which cap, your Honor?

THE COURT: He says the cap which he used, the cap represented in the photograph.

MR. CARDONE: That is People's Ex. No. 2, the one that was found in the hallway.

Q When did you see your cap last? A My cap that I wore?

Q The cap which you wore at the time you had that picture taken. A That is - I left this in my house.

Q When did you see it last? A The last was in May, about in May.

Q You haven't seen it since May? A Never seen it since.

Q Didn't you know that your cap was the important feature of your trial? A I guess it is still home, your Honor, I guess it is still home.

BY MR. WARE:

Q Do you know what part of your apartments that cap is at the present time? A Now?

Q Yes. A It is so long I can't tell.

Q Do you know where it can be found? A It might be found on the piano, or in the closet in the house.

Q Do you know what closet? Have you got many closets in your apartment?

CASE #2744

A There is one big closet in the front room.

Q It ought to be there? A I guess it ought to be there.

Q Well, how long ago is it since you saw that cap? A About May, I guess, the last time I seen it, it was thrown in the closet.

Q Last May, nine months ago, or ten months ago, or eight months ago? A Yes, sir.

Q Well, now, did you tell one of the detectives that you had an army overcoat at home? A Yes, sir, I had an overcoat, and I sold it.

Q Well, but did you tell him it was at home? A What? No, I did not tell him it was home.

Q Did you tell him it was sold? A Yes, sir.

Q Did you tell him you had a uniform at home? A Yes, sir.

Q When did you sell your army overcoat? A I sold that in the summertime; I can't just remember the date, or day. I can get the man.

Q Do you know who you sold it to? A Yes, sir.

Q Who is that? A A fellow that works on Ludlow Street, a peddler.

Q Do you know where he could be found? A Yes, sir, I can get him to court.

Q Do you know his name? A I don't know his name but I know him.

Q How can you find him if you don't know his name? A Well, I know where he stays, where he peddles.

CASE #2744

Q Where is that? A On Ludlow and Grand.

Q Has he got a pushcart, or what? A Yes, sir.

BY THE COURT:

Q How many overcoats did you have? A One. My initials is inside of it.

Q And at the time you sold the coat were your initials in it? A Yes, sir.

BY MR. WARE:

Q What part of it? A In the sleeve, right alongside the sleeve, right here (indicating).

Q You have seen this overcoat and you have tried it on? A Yes, sir.

Q Did you ever own this overcoat? A No, sir.

Q Did you ever wear it? A (No answer.)

BY THE COURT:

Q Was any number entered on the coat, any number marked on the coat? A No, sir, just the initials. "H. K.".

BY MR. WARE:

Q Did you ever wear this overcoat, whether you owned it or not? A No, sir.

Q Did you, or did you not, put that overcoat and that hat in 131 Norfolk Street? A No, sir.

Q In the toilet or in any other part of the building?

A No, sir.

Q Do you know who did? A No, sir.

Q Do you remember ever having seen that photographer who

CASE #2744

testified here this morning? Did you ever see him in your life before this morning? A Never seen him in my life, just this morning and once in court.

Q In the police x court? A yes, in the First Street Court, in the complaint room, I seen him there, I didn't know who he was.

Q Do you remember being lined up with some other men, plainclothes men, or officers in plainclothes? A Yes, sir.

Q Where was that, as near as you can tell us? A Well, I was sitting in a little room.

Q Where? What place? A In police headquarters, upstairs.

Q Police Headquarters? A Yes, upstairs, in a little room, and there was three detectives inside, sitting down with me, and they brought up one man first to identify me for some other thing, I don't know what it was, and they lined me up with the same five men; I was the sixth.

Q Were you on the end of the line? A I was the second man in that line.

Q You were the second man? A Yes, sir.

Q And did you know the other five men? A No, sir.

Q Were they men about your size and general appearance?

A No, sir, all bigger than me.

Q They were all police officers, were they? A Mes, sir.

Q You know that positively? A Yes, sir.

Q And what happened when Mr. Fishbach came in to identify you? A When he came in to identify me --

CASE #2744

Q And who did he come in with? A I think he was with a captain of detectives, a stout man, he brought him in, and Detective Gribben came inside; it was upstairs; it was not down stairs, but upstairs; he took me into a little room and lined me up with five men and I was the 6th; I was put in a second line, with a spring overcoat, and I stood there, and the man came in and walked up against the line and went over to the first man and put his hand on him and he said, "Is that, the man?" and he said, "Yes," three times.

Q Who said, "Is that the man?" A One of the officers.

Q And who was it who said, "Yes?" A The complainant, Mr. Fishbach; he come in with a woman.

Q He had a woman with him? A Yes, sir.

Q After the detective who asked him was that the man and he had said "yes," what happened then? A Then he was called back, and the detectives, the three of them were there at that time, called him back up to where I am sitting, and there was a whisper there, and he didn't take a second but just come towards me and put his hand on me and grabbed my head and he looked at me and he says, "Yes, I think that is the man; he has got the hair; I can tell by his hair."

Q You didn't have anything the matter with your eye at that time, did you? A No, sir.

Q What is the matter with it now? A I had a boil there.

Q And I understand you to say he only picked out this other man once, not more than once? A Three times he picked him out.

CASE #2744

Q You haven't told us that; I asked you what he did about the first time? A He said again, "That is the man;" he said three times that that was the man, the first man he picked out.

Q And then he went back to where the officers were; is that right? A Yes, sir.

Q And finally he picked you out? A Yes, sir.

Q Had you ever seen him before in your life? A No, sir.

Q Had you ever pointed a revolver at him? A No, sir, never had a revolver in my life.

Q Did you ever go into that store that he had, that bank? A No, sir.

Q Did you take any securities out of the safe or out of the window? A No, sir.

Q Do you know why Mr. Fishbach should say that you are the man who did it? A I don't know.

MR. CARDONE: I object to the form of the question.

THE COURT: That question is really an improper question. If it were permissible here, you could ask a complainant to give his reasons.

MR. WARE: Your Honor, if he did know of some motive or some reason why Mr. Fishbach did it, wouldn't it be proper for him to state it?

THE COURT: Yes. You may ask him if he ever had any trouble or difficulty with the complainant.

Q Did you ever have any trouble of any kind with Mr. Fishbach that you know of? A I don't know of anything.

Q As a matter of fact you had never seen him before in your life? A I don't know him; never seen him.

CASE #2744

W.F.1

110
110

CROSS EXAMINATION BY MR. CARDONE:

Q You have testified that you never owned a revolver in all your life; is that right? A Yes, sir.

MR. WARE: I object to that, if your Honor pleases. He was not charged with owning a revolver.

MR. CARDONE: I am going to cross examine him about something that occurred in the bath room, and I think it is proper cross examination, as to whether or not this defendant ever owned a revolver in his life.

THE COURT: You would be bound by his answers on this charge. You have a right to question him.

MR. CARDONE: I will question him, your Honor.

THE COURT: I overrule your objection, Mr. Ware, but the District Attorney is examining him on a collateral matter.

Q When you were arrested in the Forsyth Bath, wasn't this revolver found in your shoe (exhibiting revolver)?

A No, sir.

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

MR. CARDONE: I ask that it be marked for identification.

THE COURT: No, sir.

MR. CARDONE: For identification.

THE COURT: No, and for nothing else. He has denied it, and, consequently, you are bound by his answer, and, gentlemen of the jury, you are instructed

CASE #2744

that, while the District Attorney had a perfect right to propound to this witness the questions that he did, the people are bound by the defendant's answers, the defendant having stated that he did not own nor possess the revolver, you are bound by his answers, and you must not draw any unfavorable inference against him because the District Attorney exhibited to him the revolver.

Q Now, where do you live? A 86 Hester Street.

Q And how long have you been living at 86 Hester Street?

A Since the time two months before I was arrested.

Q How long had you been living at 86 Hester Street before you were arrested? A How long I am living there?

Q Yes. A I lived there for about ten years, twelve years.

Q And 86 Hester Street is between what streets?

A Eldredge and Hester.

Q Between Eldredge and what? A Hester and Eldredge.

Q Between Eldredge and what street? Hester Street runs east and west? A Hester and Allen.

Q Between Hester and Allen Streets? A Yes, sir.

Q And how far is 86 Hester Street away from 114 Essex Street? A I don't know how many blocks.

Q What? A I don't know how many exactly.

Q How long have you been living on the East side?

A Ten years. Living all my years on the east side.

CASE #2744

3

Q What? A I was brought up on the east side.

Q Do you mean to say you don't know how far away 114 Essex Street is from 86 Hester Street, where you lived?

A How many blocks?

Q Yes. A About five or six blocks.

THE COURT: What is that again?

MR. CARDONE: Five or six blocks.

THE COURT: From where?

MR. CARDONE: 86 Hester Street is five or six block from 114 Essex Street.

BY THE COURT:

Q Between what streets is 86 Hester Street?

A Allen and Hester.

Q Between where? A Allen and Hester is 86 Hester.

Q Between Allen and Hester? A Yes, sir.

Q Or Allen and Eldredge? A In the middle of the block.

Q Between what streets? A Allen, Hester and Eldredge.

Q I am asking you whether 86 Hester Street is between Allen and Eldredge Streets? A No, it is in the middle of the block.

Q Well, is it on Hester Street? A On Hester Street.

Q Between what streets? Isn't that a plain question?

A Eldredge.

CASE #2744

Q What other street? Where were you born? A In the United States.

Q Did you have any public schooling? A Not much.

Q Do you know what the word "between" means? I am asking you between what streets 86 Hester Street?

A Between Eldredge and Hester and Allen.

Q Name the streets going east. You have got Allen, Orchard? A Yes, sir.

Q Ludlow? A Yes, sir.

Q Essex? A Yes, sir.

Q Now, do you know where 114 Essex Street is?

A Six blocks.

Q Were you ever in that neighborhood? A No, sir.

Q Were you ever on Essex Street? A I was on Essex Street.

Q Where did your parents live? A On Hester Street.

Q What floor? A First floor.

Q How far is 86 from the corner of Allen?

A The block.

Q How many feet? A Three houses.

Q On what side of the street is 86? A It is on the right hand side.

Q Going down town? A On the left hand side.

Q Going north? A Yes, sir.

Q Is it a tenement house? A Yes.

CASE #2744

5

Q On what floor did you live? A The first floor.

Q With whom? A My mother.

Q Where does your mother live at present? A 86 Hester Street.

Q How many rooms does she occupy? A Four.

Q Who live home? A My brothers and sisters.

Q How many in the family? A Nine.

Q Nine live in the four rooms? A There is seven now left living there.

BY MR. CARDONE:

Q And you say you have been living at this address how long? A Two months.

Q What? A Two months.

Q I mean at 86 Hester Street? A Ten or twelve years.

Q What did you mean when you said two months?

A I thought you asked me when I lived in the bath, how long I lived there.

Q Did you leave 86 Hester Street and go to live at the Forsyth Baths? A Yes, sir.

Q Last year? A Yes, sir.

Q And you did that about what time? A It was in May, two months, May and April.

Q April and May, 1919? A Yes, sir.

Q During the months of April and May, 1919, you did not live at 86 Hester Street; is that correct? A No, sir-- Yes, sir.

CASE #2744

Q You rented a room in the bath there; is that right?

A Yes, sir.

Q And you slept in the bath house? A Yes, sir.

Q Day and night? A No, sir.

Q When? A I worked in the day time.

Q What at? A I worked in the day time.

Q What time do you go to work? A Go to work at 10
or 11 o'clock.

Q And who were you working for? A My folks.

Q Wait a minute. Who were you working for when you
left 86 Hester Street and took up your residence at the
Forsyth Baths? A Working in my place for my mother.

Q Where is that? A 86 Hester Street.

Q What did you do there? A Packing and taking orders.

Q Packing what? A Taking out orders, deliveries.

Q Your folks keep what kind of store? A Cut
glass.

Q And you worked for your folks altogether?

A I only had one job since I left my folks.

Q When did you quit working for your folks?

A I worked for two months, driving a truck down town.

Q I asked you a very simple question. When did you
stop working for your folks? A I just can't remember.

Q Why not? Don't you remember when you stopped working
for your folks? A I don't remember.

CASE #2744

Q I don't want the exact date, but give me the approximate time, about? A (No answer)

Q Why can't you answer the question? A I can't remember.

Q Was it last year? A Yes, sir, last year.

Q When last year did you stop working for your folks? Was it in January, or February, or March, or April, or May, or some other month? A I think it was around June or July.

Q Around the month of June? June when, 1919?

A 1918.

Q 1918? A Yes, sir.

Q Then you didn't work for your folks after June, 1918; is that right? A I worked for them, that is the time I worked a couple of months. I worked two months driving a truck.

Q When was the last time that you worked for your folks? Was it in 1918, June, or was it in 1919, June? A I worked for my folks in 1919.

Q Yes. A Still working until the day I was arrested.

Q When did you work last? A Until the day I was arrested.

Q That is the 16th of May? A Yes, sir.

Q That was the day of your arrest? A Yes, sir.

Q Now, how old are you? A Oh, 23.

Q What? A 23.

CASE #2744

8

117

Q 23? A Yes.

Q And when you went to work for the first time, who did you work for? A Morris Klein.

Q Where? A Washington Street.

Q What number? A Washington and Murray; they have just got an office there.

Q Washington and Murray Streets? A Yes, sir.

Q What doing? A Driving a truck.

Q How old were you when you were working for Morris Klein, at Washington and Murray Streets, as a driver?

A About 21-1/2, I guess.

Q 21-1/2? A Yes, sir.

Q How long did you work for Morris Klein?

A Two months.

Q Two months. Did you quit voluntarily, or were you discharged? A I quit.

Q Why did you quit? A I went back to work with my folks, they were too busy.

Q You went back to work with your folks? A Yes.

Q At 86 Hester Street? A Yes, sir.

Q How long did you work for your folks? A Until I was arrested.

Q You worked for your folks, then, from 1916 up to 1918, is that right, or 1919? A I can't figure.

Q How long did you work for your folks all together

CASE #2744

after you left the employ of Morris Klein? A I worked all the ways through.

Q That is, you didn't work for anybody else after you worked for your folks? A Yes, sir.

Q Is that right? A Yes, sir.

Q Did you work continuously for your folks? A Yes.

Q And you were employed by no other person? A No.

Q Now, when did you enter the United States Army?

A I don't remember the date.

Q What? A I don't remember the date.

Q Well, what month was it in? Never mind the date?

A 1917 -- 1918.

Q 1917 or 1918? A Yes, sir.

Q Were you drafted, or did you enlist? A What?
Drafted.

Q You were drafted? A Yes, sir.

Q And what camp were you sent to? A Down South.

Q Camp Greenleaf? A Yes, sir.

Q South Carolina? A Yes, sir.

Q And how long were you in the army? A About eight months.

Q Eight months? A Yes, sir.

Q Down at Camp Greenleaf? A Yes, sir.

Q And when did you leave the army? A I don't remember the date.

Q Have you got your discharge papers with you?

CASE #2744

A Yes, I lost them.

Q Do you remember the year and the month of your discharge? A 1918, I guess.

Q 1918? A Around that.

Q Do you remember the month? A No, sir.

Q What were you -- a private? A Yes, sir.

Q You never went abroad, did you? A No, sir.

Q And the only camp that you were attached to was Camp Greenleaf? A Yes, sir.

Q Were you ever at Camp Upton? A No, sir.

Q Well, after you were discharged from the army, in 1918, what did you do? A Went to work for my folks.

Q For your folks? A Yes, sir.

Q Did you work for your folks before you worked for Morris Klein? A Yes, sir.

Q And then you went to work for Morris Klein; is that right? A No, sir; I worked first for Morris Klein, and then I --

Q All right. Well, when this photograph was taken, referring to the photograph on the green card, you were in the United States Customs, were you not? A Yes, sir, that is the one I got then, taking a picture, or they don't let you drive through the Government, if you don't have a picture taken.

Q When was this photograph taken? A I don't remember.

CASE #2744

the date; I can't remember.

Q Well, was it taken on the 20th-- A The 30th of August, 1918, it might have been; I don't know.

Q Well, about that time, was it? A I can't say if I don't remember.

Q How long did you work in the United States Customs service? A This aint a Customs Service. This is a pass to go through the Government docks with a truck, to get through.

Q You were working as a driver? A As a driver.

Q For whom? A Morris Klein.

Q So, when you had this taken, this photograph, taken, you were working for Morris Klein? A Yes, sir.

Q Did you work anywhere outside of the State of New York? A No, sir.

Q Didn't you work in the Dupont Works? A No, sir.

Q What? A No, sir.

Q Sure about that? A Yes, sir.

Q Were you ever in the State of New Jersey?

A Yes, sir.

MR. WARE: I object. It is no crime to be in the State of New Jersey.

Q And whereabouts in the State of New Jersey were you?

A Perth Amboy.

Q What were you doing there? A My brother has got a

CASE #2744

place of business there.

Q You worked in an ammunition place in Jersey, did you not? A No, sir.

Q What? A No, sir.

Q You never worked for the Dupont people? A No, sir.

Q Do you know where Pensgrove, New Jersey is?

A No, sir.

Q What? A No, sir.

Q Were you ever in Pensgrove, New Jersey? A No, sir.

BY THE COURT:

Q Did you work in Perth Amboy? A No, sir, my brother has got a place there; I just went there; all my cousins are there.

BY MR. CARDONE:

Q How far is Perth Amboy, New Jersey, from Pensgrove, New Jersey? A I don't know. I don't know the road there at all.

MR. WARE: Does your Honor consider this proper cross examination?

THE COURT: It is very important.

MR. CARDONE: If you want to know why I am asking him, I will tell you briefly, Mr. Ware.

MR. WARE: No, tell the jury.

THE COURT: No, I suppose these questions are being asked with some object in view.

MR. WARE: I am waiting.

CASE #2744

THE COURT: What?

MR. WARE: I am patiently waiting?

BY THE COURT:

Q Where did you work in the month of April, 1919?

A April, 1919?

Q Yes. A I worked for my mother.

Q And on the 20th of April did you work for your mother?

A Yes, sir.

Q What were your hours of employment? A I used to go in at ten or half past ten.

Q What time did you quit for the day? A Twelve o'clock at night, sometimes one.

Q And are you sure that on April 20th you worked for your mother? A Yes, sir.

Q And at no time did you work anywhere in the State of New Jersey? A No, sir.

Q And particularly you did not work for the Dupont Powder Works? A No, sir; no, your Honor.

Q Did you do any war work? A I don't get you?

Q Were you engaged in the performance of any war work at any time? A War work?

Q Yes. A No, sir.

Q Did your hat in any way resemble people's exhibit No. 2? A No, sir.

Q What kind of a cap was it? A I am now speaking of

CASE #2744

the cap as represented in the photograph. What kind of cap was it? What was its color? A It was a very dark shade colored hat, a checked hat. It was bigger boxes than that, your Honor.

BY MR. CARDONE:

Q You say that this cap, people's exhibit No. 6 in evidence, is not your cap? A No, sir.

Q Now, you saw the police find that cap in your room?

A Yes, sir.

Q At the Forsyth Baths? A Yes, sir.

Q And still you say this is not your cap? A No, sir.

Q And so, therefore, this could not be the cap that is represented in the photograph on the green card? A No.

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

Q All right. Now, you say that the cap that you wore when you had this photograph taken as represented on this green card was a dark shaded cap? A Yes, sir.

Q Is that right? A Yes, sir.

Q And that the checks were large? A Yes, sir, larger than that.

Q Look at the photograph of yourself and the cap, as well as the enlarged photograph. Do you see anything on the cap that is dark? Do you see a dark shade in the hat, or a light shade? A Well, it is a dark gray hat; it is more of a grayish color.

Q You admit then, that you owned a gray cap?

CASE #2744

15

124

A Yes, sir, a dark gray cap.

Q And a gray cap such as is represented on those two photographs? A Yes, sir.

Q The photograph on the green card and the enlarged one?

A Yes, sir.

Q All right. But you say that this cap is not yours, people's exhibit No. 6? A No, sir.

Q Now, the army overcoat that you speak of, you say you sold to a friend of yours in the summer time? A Yes, sir.

Q You sold a winter overcoat in the summer time?

A Yes, sir.

Q Is that right? A Yes, sir.

Q How much did you receive for it? A Three dollars.

Q What is the name of the person to whom you sold the coat? A I don't know his name, but I know where he stands with his push cart, where he peddles.

Q Where did you meet this man? A On Ludlod Street.

Q By chance? A Yes, sir.

Q Just walked along the street and met him? A I know him.

Q What? A I know him.

Q You know him? A Yes, sir.

Q Describe him to the jury? A He is a big, very dark complexioned, a tall fellow, a head bigger than me.

Q How tall is he? A He must be five foot eight, something like that.

CASE #2744

Q And you sold him your overcoat; is that right?

A Yes, sir.

Q How tall are you? A What? I am five foot five, I guess.

Q The coat fitted him, of course? A Yes, sir.

Q Fitted him perfectly? A Yes, sir, it was bigger on me when I got it.

Q The coat didn't fit you? A No, sir.

Q The coat was too big for you? A Well, it was not very too big, but it was a size and a half bigger than I wear.

Q And that was the coat that you sold to this man? A Yes.

Q This man five feet eight? A Yes, sir.

Q And you say this man five feet eight was much bigger than you in weight? A About a head bigger than me.

Q How about his weight? A I can't say what he weighed.

Q Did the man try on the coat? A Yes, sir.

Q It fitted him? A Yes, sir.

Q And he gave you three dollars? A Yes, sir.

Q When did you sell him the coat, in what month? A In the summer months, I think it was around June or July.

Q It was a winter overcoat, wasn't it? A Yes, sir.

Q And did he wear it during those summer months?

Q Well, the gray cap that you speak of, that you say is represented on this photograph, you last saw it in May, 1919, is that right? A Yes, sir.

CASE #2744

Q When was it that you saw it, when in May, 1919?

A Before I was arrested on this charge her .

Q Oh, before you were arrested? A Yes, sir.

Q Not after? A No, sir.

Q And have you seen the cap since? A No.

BY THE COURT:

Q Have you made any effort to subpoena the man to whom you sold the coat? A No, sir, your Honor.

Q Didn't you know that the question of an army overcoat would be a very prominent feature of your trial, it being claimed that this coat was found in the place and that it fitted you? A If they put the coat on it didn't fit me. I weighed 170 pounds when I was arrested, when I was taken to the station house; I can prove my weight when I was taken in.

Q The People's contention is that you wore a cap and a coat. Now, you did have a checked cap; is that right? A Yes.

Q And you did have an army coat? A Yes, sir.

Q But you claim you did not wear the army coat or checked cap; is that right? A Yes, sir.

Q Are you always in the habit of wearing checked caps?

A Not in the habit. I wear a plain hat. I geneally wear a slouch hat.

Q The two caps here are checkered caps, are they not?

A Yes, sir.

Q And you say you have a checkered cap home? A Yes, sir.

Q You are unable to state when you saw it last? A Well, I

CASE #2744

did say when I seen it last, but I don't know where it lays. I threw it in a closet. I seen it last --

Q Where can this witness be located, the man to whom you sold the coat? A I can send out and get him.

Q We will send out for him? A I can locate him on Orchard and Grand - on Ludlow and Grand, generally with a pushcart; they call him Nigger.

Q Do you know whether he can be - they call him Nigger?

A Yes, sir.

Q Do you know whether he has that coat at present? A I don't know, your Honor; I can't say.

Q When did you see Nigger last? A I didn't see him now for the last seven or eight months.

Q You were arrested when? A I was arrested --

Q When were you arrested? A In this case?

Q Yes. A I was arrested in April.

MR. CARDONE: No, he was arrested in May, I think, if your Honor please.

THE COURT: Well, Mr. Ware, you are this man's counsel. Bear in mind this charge is a very serious charge.

MR. WARE: If your Honor will give me until tomorrow morning I will do the best I can to get the overcoat again.

THE COURT: I will send detectives to subpoena that man, to take him into custody if necessary. This is a serious charge, and every bit of evidence that can spread

CASE #2744

some light upon this transaction should be brought to the attention of the jury.

MR. WARE: I didn't know about the overcoat until it cropped up during the trial.

THE COURT: You realize the importance of this proof?

MR. WARE: Yes, I do now, but I hadn't heard of it before.

Q When Officer Gribben took you into custody, what kind of a hat did you have on that morning? A A slouch hat, ^{or} ~~the~~ one I am wearing, like that.

Q Is that the hat that you had? A I had a hat like that one, but I didn't have this one; a slough hat, like that.

Q And from where did Officer Gribben take the checkered cap? A He took it from inside.

Q From where? A From a locker.

Q And who had the key to the locker? A I had the key to the locker.

Q You had the key to the locker? A Yes, sir.

Q And did he take a checkered cap from that locker?

A He did. I don't know. He come outside. He brought the stuff out with him.

Q Did you see Officer Gribben have any checkered cap before he went into the room where the locker was located?

A When I noticed one officer went in there, and he told him to search the room, and I saw that the other officer and he brought out a checkered cap.

CASE #2744

MR. WARE: If your Honor please, I don't think this cap is very important, and I may state so at this time, because it don't resemble the photograph at all.

MR. CARDONE: I concede that.

Q While working for your parents, what kind of a hat did you generally wear? A When I worked?

Q Yes. A A checked hat.

Q And for how long a time have you been in the habit of wearing a checkered cap? A Only at work I use it.

Q You always used a cap? A At work.

Q What kind of a cap did you use in April? A In April?

Q Yes. A Yes, used the same cap, if I had it.

Q The same cap? A An old cap.

BY MR. CARDONE:

Q What color was the cap that you say is a gray checked cap that you wore when you were working for your folks -- I withdraw the question. These shoes that have been offered in evidence, were those shoes found in the locker? A Yes.

Q You admit, then, that the shoes and the cap were found in the locker; is that right? A Yes, sir.

Q Now, the cap that is referred to in this photograph on the green card, you say you saw in your mother's home for the last time in May, 1919, before your arrest; is that right? A Yes, sir.

Q And you say it was a checked cap? A Yes, sir.

Q Is that right? A Yes, sir.

CASE #2744

Q What color was that cap? A It was a dark gray.

Q A dark gray cap? A Yes, sir.

Q Has that cap been located by you or anyone in your family since your arrest? A I don't know.

BY THE COURT:

Q Do you know whether your brother disposed of it? A I don't know, your Honor.

Q Did he ever tell you that he did? A No, sir.

BY MR. CARDONE:

Q Do you know where the cap is? A I don't know where it is; I don't know while I am here.

Q Have you ever seen it since you saw it last? A No, sir.

MR. WARE: I object to that.

MR. CARDONE: Yes, it is a foolish question, I will admit, one of these questions ^{that} ~~we~~ lawyers fall into sometimes when they don't think. It is just like asking a witness if he is living when he is on the stand.

Q Now, this army overcoat that you say you sold to this man Nigger, when you were arrested did you tell the police that you sold it to this man Nigger? A Yes, sir.

Q Don't you know Detective Rotchford knows Nigger? A I don't know.

Q Do you know that? A I don't know.

Q Did you ever tell Detective Rotchford or Detective Gribben that you sold the coat to Nigger? A Yes, sir.

Q When did you tell them that? A When I was arrested, when

CASE #2744

they tried it on.

Q What did you say your name is? A Harry Krichman.

Q Harry Krichman? A Yes, sir.

Q Are you known ^{under} any other name? A Yes, sir.

Q What? A Kosofsky.

BY THE COURT:

Q What is your true name? A Kosofsky, but I go under Krichman; we changed our name on the shore and I go under Krichman.

BY MR. CARDONE:

Q You are also known under the name of Kirchman? A Krichman is the right name.

Q And you are also known under the name of Kirchman?
A No, sir.

Q Just Krichman and Kosofsky? A Yes, sir.

Q In addition to the confession made by your counsel as to the crime that you were convicted of in the Court of Special Session, to-wit, the crime of petty larceny, were you ever convicted of any other crime? A Yes, sir, petty larceny again.

Q When were you first convicted? A I don't remember the date. It was in 1913, I guess, or 1914, something like that.

Q What crime were you convicted of? A Petty larceny, that was the first crime.

Q What? A Petty larceny.

MR. WARE: If counsel for the defense concedes that

CASE #2744

defendant had been previously convicted --

THE COURT: I suppose he is endeavoring to identify the name under which the defendant was convicted.

MR. CARDONE: And I am also offering proof of other convictions.

THE COURT: Oh, he is entitled to that.

MR. WARE: There can be only one object.

BY THE COURT:

Q What was your true name? A Kosofsky.

Q Kosofsky? A Yes, sir.

Q Were you convicted under the name of Kosofsky in Special Sessions? A I guess I was, your Honor.

BY MR. CARDONE:

Q You say you were convicted in 1914? A Something like that.

Q Of petty larceny? A Yes, sir.

Q Before what judge? A Three judges; I don't remember their names.

Q That was in Special Sessions? A Yes, sir.

Q What is your first name? A Hyman.

Q Well, when were you convicted the first time? A That was my first time I was convicted.

Q When? A 1914.

Q 1914? A 1914, yes, sir.

Q Were you convicted before Judge Crain, in 1914, of grand larceny? A I don't remember.

Q Were you convicted before Judge Crain? A I know I was

CASE #2744

convicted twice; I done once in the Pen. and once in the reformatory.

Q You went to the N.Y. City Reformatory? A Yes, sir.

Q And you were sentenced by Judge Crain? A I don't know who the judge was.

Q That was in 1914, wasn't it? A Yes, sir.

Q And what was that for? A Petty larceny, I guess.

Q Petty larceny? A Yes, sir.

Q Before Judge Crain? A Yes, sir.

Q Did you plead guilty, or did you stand trial? A No, I stood trial once.

Q You stood trial once, and the jury convicted you? A Yes.

Q That was before Judge Crain, am I correct? A I don't know who it was before.

Q It is up to you to answer, because you know; I don't; and I am trying to get this thing straight; now, were you tried by a jury when you sat in a court before Judge Crain, or did you plead guilty? A I don't remember that long.

Q What? A I don't remember.

Q How many times were you convicted in the Court of Special Sessions? A Twice.

Q So that makes three convictions, once in General Sessions and twice in Special Sessions; is that right?
A No, I was only sent away twice.

Q You were sent away twice? A Yes, sir.

Q But you received a suspended sentence? A No suspended

CASE #2744

Q Wasn't that in 1917? A I never had a suspended sentence.

Q Were you convicted of petty larceny on the 14th of September, 1916, and didn't you receive a suspended sentence?

A No, sir, never got a suspended sentence.

Q You were convicted three times? A Twice I was sent away.

Q You were sent away twice? A Yes, sir.

Q Once to the Elmira Reformatory and once to the Penitentiary? A No, sir, I never was in Elmira Reformatory.

Q You went to the New York City Reformatory? A Yes, sir.

Q And you went to the Penitentiary? A Yes, sir.

Q So, didn't you receive a suspended sentence in 1916?

A No, sir.

Q Didn't Detective Fitzgerald arrest and convict you in that case? A No, sir.

Q What? A Never. I don't remember.

Q You are serving time now, aren't you? A Yes, sir.

Q In the Workhouse? A Yes, sir.

Q How much did you get there? A Six months.

Q For what? A Disorderly conduct.

Q What did it consist of? A I don't know.

Q What do you mean? A I arrested off the street, going to a show.

Q Pushing and jostling? A No, sir.

Q Picking pockets? A No, sir.

Q What was it? A I don't know. Disorderly conduct they charged me with.

CASE #2744

Q What did the person who made the charge say? A They said disorderly conduct, and they had a man identify something that was stolen.

Q You were accused of stealing something? A Not me. Another man.

Q You were convicted? A Yes, sir.

Q What did they say you did? A Didn't say nothing, just said, "disorderly conduct," that is all I know I was charged with.

Q Didn't you hear the witness testify against you there?

A The witnesses there didn't testify at all.

Q They convicted you without a trial? A They had another man. I didn't go on the stand.

Q You pleaded guilty, didn't you? A I didn't plead guilty. I asked for a counsel, and they told me I couldn't wait a second, go right on with the trial.

Q That makes three convictions you have had, one in the New York City Reformatory, one in the Penitentiary and one in the workhouse? A Yes, sir.

Q You deny that you received a suspended sentence in 1916?

A I don't remember that.

Q In the court of Special Sessions? A Never remember of any suspended sentence.

Q Now, when you were sent to the New York City Reformatory, in 1914, what were you accused of taking? A Petty larceny.

Q What? A A package.

CASE #2744

Q A package of what?

THE COURT: You need not go into that.

MR. CARDONE: All right.

Q You say you got a boil on your eye? A Yes, sir.

Q Didn't you get into a fight at the workhouse? A No, sir.

Q Didn't somebody punch you in the eye there? A No, sir.

THE COURT: What difference does that make?

MR. CARDONE: I want to show a vicious act on the part of the defendant.

THE COURT: Go to something more important.

THE WITNESS: The doctor just cut it open.

Q Try on this cap, will you, People's Exhibit No. 6
(handing exhibit to witness)? A (Witness puts cap on his head)

Q You say that is not your cap? A No, sir.

Q What is the name of the photographer that took this photograph represented on the green card? A Allen & Grand.

Q What is his name? A I can't just recall his name.

Q Don't you know who it is? A I know him.

Q Isn't he still there? A He moved to Delancey, Forsyth
and ~~xxxxxx~~ Christie.

Q Whereabouts? A In the middle of the block there.

Q Delancey Street between Forsyth and Christie?

A Yes, sir.

Q You don't know his name? A No, sir.

MR. CARDONE: All right. That is all.

MR. WARE: If your Honor please, the hour for adjourn-

CASE #2744

ment is very close at hand, and in order, as your Honor has very properly and kindly suggested, that the matter may be fully presented, I ask your Honor to adjourn it until tomorrow morning, at which time I hope to be able to clear up one or two of the matters that are still cloudy.

THE COURT: Do not discuss this case --

MR. CARDONE: If your Honor pleases, your Honor sending suggested/some one to locate this man Nigger, to whom this defendant sold the coat. Now, I think, with counsel's consent, the Court can very properly do that, and we can send some one in the presence of some one that is designated by counsel for the defendant, so that the defendant gets a square deal, to see this man Nigger and to bring him here tomorrow morning.

THE COURT: Do the officers know Nigger?

OFFICER ROTCHFORD: Yes, I think I know who he has reference to.

THE COURT: Well, I will have the defendant accompany you.

THE DEFENDANT: If he will take me around I will show him the man.

THE COURT: Officer Gribben, you take this man. I will give you instructions after I have discharged the jury.

(To the jury) Do not discuss this case among yourselves nor permit any person to talk to you about it nor form nor express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you. Be here at 10:30 tomorrow morning.

(Recess to Wednesday, January 14, 1920, at 10:30a.m.)

CASE #2744

THE PEOPLE, ETC., -AGAINST- HYMAN KOSOFKY.

New York, Wednesday, January 14, 1920.

TRIAL CONTINUED

HYMAN KOSOFKY, the defendant, resumes the stand.

CROSS-EXAMINATION (continued) BY MR. CARDONE:

Q You testified that you were serving a sentence at the Workhouse; is that right? A Yes, sir.

Q When, after May 16th, the date of your arrest in this case, were you sent to the Workhouse on Blackwell's Island?

A The day after I was sentenced?

Q The day after the 16th of May? A Yes, sir.

Q You were arrested on the 16th of May in this case?

A Yes, sir.

Q 1919? A Yes, sir.

Q And you were convicted on the following day? A Yes, sir.

Q Of what? A 1919.

Q I know, but of what crime? A Disorderly conduct.

Q In the Magistrates' Court? A Yes, sir.

Q Where? A Jefferson Market.

Q And who was the judge that sentenced you? A I can't just replace the judge's name.

Q What was the term of sentence that you received? A Six months.

Q When will you be discharged from the Workhouse?

CASE #2744

A Next month.

Q The 16th of February? A Yes, sir.

Q Do you know what that disorderly conduct consisted of?

A Well, exactly they took me from 29th street and Sixth Avenue.

THE COURT: One moment. You cannot go into the merits of the conviction.

MR. CARDONE: No. I don't want to go into the merits.

I want to know, briefly, what it was about.

BY THE COURT:

Q You were convicted of disorderly conduct, and what sentence was imposed upon you? Where were you sentenced to?

A To the Workhouse.

Q And how long did you remain there? A Six months.

BY MR. CARDONE:

Q Now, on the day - on the 28th of April, 1919, the day that this alleged occurrence took place, where did you say you were at about eight-thirty a.m.? A Eight-thirty a.m.?

Q Yes. A I was sleeping.

Q Where? A 79 Forsyth Street.

Q In the baths? A Yes, sir.

Q And you say you had been living at the Forsyth Baths about how long? A About two months.

Q April and May, 1919, is that correct? A Yes, sir.

Q Did I understand you, if I am correct, you testified that you were at home on the 28th of April, 1919? A 28th,

CASE #2744

no, sir.

THE COURT: He said he was at the baths.

MR. CARDON#: At the baths. All right.

Q How do you know that you were at the baths on the 28th of April, 1919, how do you know that? A How do I know?

Q Yes; what makes you fix in your mind that date as being at the baths and at that hour? A That hour? Well, as far as I know, I was sleeping in the baths and never got up, before ten o'clock to eleven.

Q But you were not arrested until the 16th of May; isn't that correct? A Yes, sir.

Q And this case, so far as you were concerned, was not brought to your attention until you were arrested? A Yes, sir.

Q On this charge; is that correct? A Yes, sir.

Q Now, how do you fix in your mind that you were asleep in the Forsyth Baths on the 28th of April, 1919, above any other any other day? A Why?

Q Yes. A I was to an affair Sunday night, the night before that; the affair was at the Rutger's Social Club; I was up to the Lenox Assembly Room. At half past nine I went to the affair, the ball was given, and from there I left at three o'clock. At three o'clock I took my lady friend home that I am keeping company with; she lives on the other side of the baths, 72 Forsyth Street; it was about twenty after three. At twenty after three I left her and went right into the baths, and exactly I was a little dizzy, I had a little drink

CASE #2744

in me, not much, but I went to the baths, and I know I couldn't get up; it was twelve o'clock when I got up; it was exactly about twelve o'clock.

Q So that is how you remember; is that it? A Yes, sir.

Q Who did you meet at the bath house on the morning of the 28th of April, 1919? A Who did I meet?

Q Yes? A Didn't meet anybody. When I got up, there is the man at the desk knows me.

Q He sees you every morning when you get up, doesn't he?

A Yes, sir.

Q And can you give this jury the name of any person other than the man that you just referred to who saw you on the 28th of April 1919, in that bath house? A Well, I can get the barbers. When I got up I washed myself and got some powder at the barber's in that place.

Q These barbers see you there regularly? A Yes, sir.

Q And they can't tell, if they come here, that they saw you on a certain day? A I guess they could.

Q They can say that they saw you there, but they can't specify the date? A Well, exactly they know I get up at ten o'clock, but at that time I got up at twelve.

Q You were living with your parents, at 86 Hester Street, before you went to the Forsyth Baths, isn't that so? A Yes, sir.

Q What made you move from your mother's address to the Forsyth Baths? A Because we have a big family home in four

MUMFELL

CASE #2744

rooms that is all.

Q Yes? A And I thought of stopping in the baths.

Q You made up your mind to leave your folks sometime in April; is that correct? A Yes, sir.

Q And was that the first time that you left your folks?

A Yes, sir.

Q Did you ever live at 86 Henry Street? A No, sir.

Q Did you ever live on Henry Street? A No, sir.

MR. CARDONE: That is all.

REDIRECT EXAMINATION BY MR. WARE:

Q Did you live at these baths during the months of April and May of last year? A I did.

Q All of April? A Yes, sir.

Q And until you were arrested? A Yes, sir.

Q In May? A Yes, sir.

Q And you slept there every night? A Yes, sir.

Q What time did you have to go to work in the morning?

A Well, at ten o'clock, because I worked late hours, until twelve.

Q You worked until twelve o'clock? A Twelve, and sometimes one o'clock.

Q According to the business? A Yes, sir.

Q And then sometimes did you go out and get a little supper, or something of that kind? A Yes, sir.

Q So, that, between your late hours, working, and your out habits of staying a little while after your work is over, you

CASE #2744

slept late in the morning? A Yes, sir.

Q And you slept at these baths every night? A Yes, sir.

Q During those months? A Yes, sir.

MR. WARE: That is all.

RE-CROSS-EXAMINATION BY MR. CARDONE:

Q Who were you working for in April, 1919?

THE COURT: He said for his mother.

MR. WARE: I object to that. He has answered that.

THE COURT: He answered that yesterday. He said for his mother.

MR. CARDONE: But I wanted to ask the witness again, for the purpose of refreshing his recollection. I haven't had the minutes, and I haven't looked at the minutes, if the Court please.

THE COURT: I know, but you must not repeat the questions.

Q Who did you work for, did you say? A For my mother.

THE COURT: He said for his mother; that is in the record.

Q And did your mother know where you were stopping at during the month of April? A Yes, sir.

Q And what time was it customary for you to go to work?

A Ten o'clock.

Q Ten o'clock? A Yes, sir.

Q When you were arrested in the bath house you were arrested at 11 a. m., weren't you? A Yes, sir. No, sir, it was

CASE #2744

not 11 a. m.

Q What? A I don't think it was 11 a. m.

Q It was not? A No, sir.

Q You heard the police officers testify it was about 11 o'clock? A It was 10 o'clock before they got me up. Before I got dressed and all it was that late.

Q So you didn't go to work at ten o'clock that morning?

A No, sir.

Q And that was not the first time that you didn't go to work at 10 o'clock, was it? A No, sir.

MR. CARDONE: That is all.

BY MR. WARE:

Q Well, if you didn't get up at ten o'clock, you got up after ten o'clock, didn't you? A Yes, sir.

Q You didn't get up before ten o'clock? A No, sir.

Q Any morning? A No, sir.

MR. WARE: That is all. If your Honor pleases, I am informed by Officer Gribben and by the District Attorney that the man that we wanted to get yesterday and another witness have been secured by Officer Gribben and that he has them in court.

THE COURT: You may call them.

J A C O B G O L D B E R G, called as a witness on behalf of the defendant, being first duly sworn, testified as follows
DIRECT EXAMINATION BY MR. WARE:

CASE #2744

Q Where do you live? A 2208 Mermaid Avenue, Coney Island

Q Mr. Goldberg, what is your occupation? A I got a fruit store.

Q A what? A A fruit store.

Q Please talk a little louder, because these gentlemen want to hear you. A I have got a fruit store.

Q Where is your fruit store? A Mermaid Avenue, Coney Island.

Q Coney Island? A Yes, sir.

Q Do you know this defendant? A Yes, I know him.

Q Did you ever have any business transactions with him? Did you buy anything from him?

MR. CARDONE: Wait. I object to counsel leading the witness.

Q Have you ever discussed this case with me in your life?

A This case?

Q Did you ever talk to me? A Never did.

Q You never saw me before this moment, did you? A Never.

Q Do you know what business transaction means? A No, sir.

Q I didn't suppose so. Did you ever buy or sell anything to this defendant? A I bought a coat off him.

Q That is what I am asking. Do you remember when you bought the coat? A I bought it the last end of the winter.

Q The end of last winter? A Yes.

Q And what kind of a coat was it? A An army coat, something like this (witness indicates coat which he has on.)

CASE #2744

Q An army coat? A Yes, sir.

Q It was not that particular coat? A The same as this.

Q The same as that? A Yes, sir.

Q After you bought it, what did you do? A I was peddling.

Q Peddling, with a wagon? A Yes, sir, with a wagon, and I left it on the wagon, on Ninth Avenue.

Q So, you buy and sell other things besides fruit?

A No, only fruit business.

Q Only fruit? A Only fruit business.

Q You bought an overcoat from this man? A For me to wear.

Q For you to wear? A Yes, sir.

Q You don't do that as a regular business? A No.

Q You just bought it because you wanted to wear it yourself? A That is all.

Q Did you wear it? A Yes, I wore it.

Q And how long did you wear it, about? A I wore it about three weeks.

Q And then what did you do with it? A Then I put it on the wagon, and I was busy, and they took it off me.

Q Somebody stole it off you? A Somebody stole it off me.

Q Of course, you don't know who took it away? A No, if I would know -

Q Now, what you have just stated is the truth? A The truth, nothing but the truth.

Q And you understand you have sworn to tell the truth?

A Yes, sir, the truth.

CASE #2744

MR. WARE: Your witness.

CROSS-EXAMINATION BY MR. CARDONE:

Q Are you a friend of the defendant's, Goldberg? A No.

Q What? A I know him by sight; I used to be on Ludlow when the fruit market was there and he used to -

Q Wait a minute. You say you know him by sight? A By sight.

Q When did you meet the defendant for the first time?

A The first time he come over to me and says, "Do you want to buy this coat," and I knew he was a soldier.

Q What? A I knew he came out of the army.

Q Yes. A And he wanted to sell me a coat. I asked him how much he wanted. He was broke. He asked me for two dollars to lend him.

Q Two dollars? A Yes, sir.

Q And you bought the coat? A No, I lent him two dollars. Then he asked me if I wanted to buy a coat. I said, "What kind of coat was it?" He showed me that coat. He asked me five dollars, and I gave him three dollars more and I took the coat.

Q Where did this sale take place? A It been taken on Ludlow and Grand.

Q Ludlow and Grand streets? A Yes, sir.

Q I thought you said it was at the market? A The market I lost the coat.

Q You lost it at the market, but you bought it at Ludlow

CASE #2744

and Grand? A Yes, sir.

Q And what kind of a coat was it? A It was an army coat, something like this (indicating coat witness has on.)

Q Do you remember the month when the sale took place?

A No, I couldn't tell you.

Q What? A I couldn't tell you; it was the end of the fall

Q You said before the end of last winter. A It was something like April.

Q Last winter? A Something like April.

Q You bought it when, in April? A In April.

MR. WARE: He said "something like April."

MR. CARDONE: "Something like April."

Q Didn't you buy it in the summertime? A The end of the fall, the end of the winter.

Q When did you buy it? Did you buy it in April or did you buy it in the summer months? A No, in the winter months.

MR. WARE: Now, I hardly think that is fair, your Honor. He said "the end of the winter."

THE COURT: No, he is under cross-examination. Objection overruled.

Q When did you buy this coat from the defendant? A I told you the end of the winter, and I don't remember what month it was.

Q You said April. A Something like this.

Q Do you mean, by the end of winter -

MR. WARE: I object, again. He didn't say "April."

CASE #2744

He said, "Something like April," which is altogether different.

MR. CARDONE: Your Honor, I am cross-examining, and I think I ought to be allowed some latitude with the witness.

THE COURT: You need not make any reply. Objection overruled.

Q You said you thought it was something like April when you bought the overcoat? A Yes; I don't remember the month.

Q Is that what you mean when you say the end of winter? A The end of winter; it was cold yet.

Q Did you buy the coat in August, or in July, or in the summer months? A No, winter months.

Q You are sure about that? A I didn't need no coat any more; it was kind of warm, before Easter.

Q What year was this coat sold? A 1918.

Q 1918? A Yes.

Q Not last year? A Last year.

Q 1919? A 1918.

Q Well, this is 1920. A 1918 was the coat.

Q You bought it then, a year ago last April, is that right? A No, it was 1919.

Q Last year? A Last year.

Q You bought the coat in April? A In April, yes, sir.

Q Think, now, I don't want to puzzle you. All I want is to

CASE #2744

get at the truth. When did you buy the coat? Did you buy it last year, or the year before last? A Last year.

Q Last year? A Last year.

Q You are sure about that? A Sure.

Q And you say you bought it something like the month of April? A Something like the month of April, but I don't remember, April or some other months.

BY THE COURT:

Q What did you do with the coat? A What?

Q What did you do with the coat. A I was in the market with a wagon, peddling.

Q Where is the coat now? A I lost it, it was stolen off me.

BY MR. CARDONE:

Q Did you ever report to the police the fact that you lost the overcoat? A No.

Q Never made any report to the Police Department that your coat was stolen? A It didn't pay.

Q What? A I didn't pay to make a report.

Q Please stand up and let the jury look at you. A Witness stands erect on witness stand.

Q How tall are you? A Five feet nine.

Q How much do you weigh? A 183 pounds.

MR. CARDONE: May I ask that the witness stand alongside the witness, so the jury can compare their respective sizes.

CASE #2744

THE COURT: Yes.

(The defendant stands alongside the witness on the witness stand.)

BY THE COURT:

Q Did the coat fit you? A It was kind of short on me when I bought it off him.

BY MR. CARDONE:

Q Try on this overcoat, will you (handing witness People's Exhibit No. 1). A (Witness puts on overcoat, People's Exhibit No. 1).

Q Take your sweater off. A (Witness removes sweater which he is wearing and puts on overcoat, People's Exhibit No. 1)

BY THE COURT:

Q Did you serve in the army? A No, sir.

Q How did you get possession of the army coat that you are wearing now? A My brother was in the army. It is my brother's coat. He is working now.

BY MR. CARDONE:

Q The coat that you have on now, your own overcoat, the army overcoat, just measure it with this one, will you, in length and width; just show it to the jury, will you. A (Witness holds up his own overcoat alongside People's Exhibit No. 1)

MR. CARDONE: I don't want to take physical possession of this witness's coat, your Honor, but I think some reference ought to be made on the record showing the difference and size between the coat, People's Exhibit

CASE #2744

No. 1 in evidence -

THE COURT: Will it be conceded?

MR. WARE: We have no objection. The defendant disclaims that he ever saw this coat, so what difference does it make?

MR. CARDONE: It makes a whole lot of difference.

THE COURT: You can see that this coat is entirely too short and it does not fit this witness.

MR. WARE: Yes, and it does not fit that witness (indicating defendant.)

THE COURT: That is for the jury. For the purposes of the record, will you concede that the coat is too small and does not fit the witness? The question is whether this coat fits the defendant is one of fact for the jury.

MR. WARE: It certainly does not fit the witness.

THE COURT: It is entirely too small for him.

MR. WARE: Surely.

Q Do you know the defendant's mother? A No.

Q Do you know any of the defendant's family? A What?

Q Do you know any of the defendant's family? A No.

Q What? A Nothing.

Q When did you know that you were going to be a witness in this case for the first time? A Yesterday.

Q You had never received any information that you were going to be called as a witness before yesterday; is that cor-

CASE #2744

rect? A Correct.

Q Are you known under the nickname of "Nigger?"

A Nigger.

Q Have you ever been in trouble with the law?

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

MR. CARDONE: This is a witness for the defense.

THE COURT: I will allow it. Objection overruled.

MR. WARE: In trouble?

THE COURT: Ask him if he was ever convicted.

Q Were you ever convicted of a crime. Now, tell the truth.

A No.

Q Have you ever been tried and received a suspended sentence? A (No answer.)

BY THE COURT:

Q Were you ever convicted of crime and was sentence suspended upon you? A I don't understand it.

Q Do you know what a suspension of sentence means? Were you ever brought to a court, either before a Judge or a jury, and convicted of a crime, and the judge placed you on probation?

A Yes, I was brought to court once.

Q And convicted? A What?

Q Were you convicted and placed on probation? A (Through the Official Interpreter, Mr. Fischer? No.

MR. CARDONE: All right. That is all.

MR. WARE: No, it is not all.

MR. CARDONE: Well, go ahead. It is all as far as I

CASE #2744

am concerned. I don't want to limit you.

MR. WARE: Your Honor, it seems to me absolutely unfair that a witness who is brought here to bring out the truth should be subjected to questions of that kind.

THE COURT: You know it is perfectly fair, Mr. Ware.

MR. WARE: Why didn't you put him on the stand?

MR. CARDONE: Because he is your witness, and not mine.

MR. WARE: He is not my witness any more than yours.

THE COURT: Proceed, gentlemen.

BY MR. WARE:

Q You came here to tell the truth?

MR. CARDONE: That is objected to.

Q You have told the truth?

MR. CARDONE: That is objected to.

THE COURT: Objection sustained.

MR. WARE: I asked him if he has told the truth.

THE COURT: It is for the jury to determine whether he did.

MR. WARE: Can't he state whether he did?

THE COURT: No, a witness cannot support himself in that way. The jury must determine that fact.

MR. WARE: He has sworn to tell the truth.

THE COURT: Exactly, and he has told all he knows about the case, he says. Whether he is telling the truth, or not, the jury will determine.

MR. WARE: Can I ask him whether he has obeyed the

CASE #2744

oath he took when he was sworn?

THE COURT: He took an oath to tell the truth, the whole truth and nothing but the truth. You have questioned him, haven't you?

MR. WARE: Yes.

THE COURT: Now, the jury will determine whether the testimony given by him is true.

MR. WARE: And he is not allowed to state?

THE COURT: No.

MR. WARE: If he has kept his oath?

THE COURT: Proceed.

Q Now, did I understand you to say, in answer to this gentleman, that the coat that you bought from the defendant was too tight for you? A It was, just a little; it wasn't like this one, but the other coat I got all dirty, it was black, from the wagon grease.

Q But it was a little too tight? A Just a drop.

Q Not like that one? A No.

Q Not as bad as that? A No.

Q And you never knew until yesterday? A Never knew until yesterday.

Q And who told you yesterday? A They come to my store, they come to my store.

Q The officer? A Yes, sir.

Q Mr. Gribbin? A Yes, sir.

Q So that is the first intimation or the first notice

CASE #2744

that you ever got that you were going to testify about this overcoat or anything else in this case? A Yes, the first time.

MR. WARE: That is all.

MORRIS ORNSTEIN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Where do you live? A 214 Forsyth Street.

Q Now, Mr. Ornstein, you have never talked about this case with me, have you, not that I know of? A No.

Q Did you ever see me before this morning? A No.

THE COURT: What difference does that make?

MR. WARE: Every difference. The District Attorney has intimated that somebody may have prepared these witnesses.

MR. CARDONE: I didn't make any such statement, Mr. Ware. Now, I wish you wouldn't make any such statement as that. I am conducting the case fairly and squarely.

THE COURT: Now, look here, gentlemen, this is the last time I shall admonish both of you. I shall not permit either of you to make any comment, and I want to say to you, Mr. Ware, that a lawyer does not do his full duty unless he does talk to witnesses. You have no right to put a witness on the stand and conduct a fishing

CASE #2744

expedition. There are certain rules of law which Courts must live up to. Now, I have criticised even the District Attorney when he has said, "I have never conferred with the witness." He is negligent in his duty if he fails to do so.

MR. WARE: In a case of this kind?

THE COURT: In every kind of a case. It is your duty to converse with your witness, in order to find out what he knows of the facts. Otherwise, you cannot intelligently examine him.

MR. WARE: I respectfully except to your Honor's statement. In a case where I have an impartial witness, I don't want to ~~ex~~ have anything to do with him. I want him to make an absolutely fair statement.

Q Do you know this witness (indicating last witness, Jacob Goldberg)? A Sure, I know him.

Q Do you know the defendant? A Yes, sir.

Q Do you remember an army overcoat that he had for sale?

A Yes, sir.

Q And did you talk to him about buying that army overcoat? A Yes, I wanted to buy it off him; I wanted to give him a dollar and a half for the coat.

Q But you didn't buy it from him? A No, I didn't.

Q But were you present when he sold the overcoat? A Yes.

Q Now, tell us about it. A It was on Grand Street that he wanted to sell me a coat for a dollar and a half, a friend

CASE #2744

of mine, Jake Goldberg, was around, too, and he give him the coat for three dollars.

Q Talk a little slower and louder, so the gentlemen of the jury can hear you. A It was at Grand and Orchard Streets, and he wanted to sell me a coat for a dollar and a half, and a friend of mine was around, and he bought it for three dollars.

BY THE COURT:

Q Did you see Goldberg try on the coat? A Yes.

Q What kind of a coat was it? A A soldier coat.

MR. WARE: Your witness.

CROSS-EXAMINATION BY MR. CARDONE:

Q How long do you know Goldberg? A Goldberg I know for the last five years.

Q The last five years? A Yes, sir.

Q Did you tell Goldberg that the defendant wanted to sell you the same coat for a dollar and a half? A Sure. He was around; I wanted to give him a dollar and a half, and he give him three dollars at the same time.

Q Did you tell Goldberg that this fellow wanted to sell you the same coat for a dollar and a half, the same coat he sold to Goldberg? A No.

MR. WARE: I object to that.

THE COURT: He said he offered him a dollar and a half.

Q Didn't you say the defendant wanted to sell you this coat for a dollar and a half? A I wanted to give him a

CASE #2744

dollar and a half and he gave him three.

Q Did the defendant want to sell you the coat for a dollar and a half, or did you want to give him a dollar and a half for it? A No, I wanted to give him a dollar and a half for it.

Q When was that? A The end of the winter.

Q When? A I can't remember exactly the time.

Q What year? A This year, 1918.

Q You mean the year before last? A No, this year.

Q 1919? A 1918.

Q This is 1920. Do you mean last year, or the year before that? A It is only about seven months.

Q What? A It is only about six or seven months.

Q So, it would be last year? A Yes, sir.

Q It is not the year before last, is it?

MR. WARE: If your Honor pleases, he just said it was last year.

MR. CARDONE: This is a hostile witness, and I have a right to cross-examine him.

THE COURT: Objection overruled.

MR. WARE: May I ask a question of your Honor?

THE COURT: The objection is overruled.

MR. WARE: May I ask your Honor a question?

THE COURT: Yes.

MR. WARE: Isn't there a limit to the number of times the District Attorney can ask the same question over again?

CASE #2744

THE COURT: I have ruled.

Q What month last year was it? A I can't remember the month; the end of the winter.

Q What do you consider the end of winter? A About July or before July.

Q When did this sale take place, in what month? A Well, I can't remember exactly the time, what month.

Q You said you considered the end of winter to be the end of July? A Yes, sir.

Q Do you mean the sale took place at the end of July or around July? A No, before July.

Q When? A I don't know what comes before July.

Q How is it you can say it was six or seven months ago if you don't know when the sale took place? A I said I think it was about six or seven months ago.

Q What month? A I can't remember exactly the time.

MR. WARE: I object again. He has stated he didn't know what month.

THE COURT: Objection overruled.

Q What month? Was it in July? A Before July.

Q What month was it before July? A I don't know how the months comes.

Q Well, was it in June? A June, yes, between June and July.

Q Between June and July? A Yes, sir.

Q You are sure about it? A I am not sure about it.

CASE #2744

MR. WARE: This is so obviously ridiculous, either the witness is stupid or he is ignorant in not knowing that the end of the winter is not July.

THE COURT: Well, I can't help that. Mr. Ware, I am surprised at you. If I didn't know you as well as I do, I would be inclined to be more caustic in some of my remarks. The witness on the stand is subject to very rigorous cross-examination. This witness is being properly cross-examined by the District Attorney. We can't help it if he is unfamiliar with the seasons of the year.

MR. WARE: I meant no disrespect to your Honor.

THE COURT: But you made a statement which you had no right to make. You said "Anybody knows that June and July is not the end of the winter."

BY THE COURT:

Q Are you familiar with the Jewish calendar? A No, sir.

Q Where were you born? A Born in Russia.

Q What schooling have you had, any? A Didn't have any schooling at all.

Q No religious instruction? A No, sir.

Q How old were you when you came to America? A Nineteen years.

Q And you had no religious upbringing? Where did you live in Russia? A Poland.

Q What part? A Lublin - Lenchner.

CASE #2744

Q And you never attended any religious school? A No.

Q Do you know when the Jewish Passover is? A No, I know some holidays.

Q What holidays are you familiar with? A Paruth.

Q I am speaking of Paruth. When was Paruth? A This I can't tell.

Q Do you know when the Jewish New Year is? A No.

Q Roshashona? A No.

Q Or the Day of Atonement? A No, sir.

Q Or the Feast of the Tabernacles? A No.

Q How old are you? A Twenty-six.

Q Do you attend the Synagogue? Do you ever go to the Synagogue? A No, sir.

Q Did you ever go to public school here? A No, sir.

Q Do you go to the Synagogue on the Day of Atonement, Yom Kippur? A What?

Q Do you go to the Synagogue on the Day of Atonement, Yom Kippur. A No. The first year I come to this country somebody took me along.

Q And where do you live? A 214 Forsyth Street.

Q What is your name? A Morris Ornstein.

Q And you live where? A 214 Forsyth Street.

Q How long have you lived there? A I have lived there about four months.

Q Where did you live before that? A 165 Eldridge Street.

Q How long did you live there? A About two years.

CASE #2744

Q Is that across the street from the University Settlement?
Do you know where the University Settlement is, on Eldridge
corner of Rivington? A I know the bank there.

Q You don't know the building upstairs? A No.

Q Never went into that building? A No, never.

Q Do you know the months of the year? What month are we
in now? A I don't know.

Q You can't name the months of the year? A No, sir.

Q Did you ever hear of the month of January? A No. I
hear a lot of January. I don't know.

Q Can you read or write? A Not much.

Q What can you read? A Jewish.

Q You can read Jewish? A A little Polish.

Q You are under oath, Mr. Witness. Do you know what it
means to swear in a court of justice? You say you can write
Hebrew? A Yes, Polish.

Q Didn't you have some religious instruction? A Sure, I
had private.

Q You attended a school in Russia, didn't you, the
father? A No, sir, never.

Q Did you receive private instruction? A Not private.
My sister used to learn me a little.

Q You say you are unfamiliar with the Jewish holidays?

A (Through the Official Interpreter, Mr. Fischer) I don't
know that.

Q With what Jewish holidays are you familiar? A (Through

CASE #2744

the interpreter) I know all the holidays but I can't name them; I don't know their names.

Q Can you name them in Yiddish? A (Through Interpreter) Yes, sir, Easter, that is Easter.

Q Was this coat sold during the Passover holidays?
A (Through interpreter) I don't remember.

Q Do you know what period of the year the Passover holidays usually fall? A (Through Interpreter) That I don't know.

Q Was it during the Feast of the Tabernacles? A (Through interpreter) That I don't remember.

Q Was it during the Feast of Pentacost? A (Through interpreter) I don't remember.

Q Do you know whether the Feast of Pentacost is in the latter part of the Spring? Do you know that? Or the latter part of the Summer, rather? A (Through interpreter) Yes, I know it is the beginning of the Summer.

Q Was the coat sold at about that time, or during the Passover holidays - or nearer to the Passover holidays? A One month before the Summer began.

Q When did the summer begin, in your estimation?
A (Through interpreter) All I know is I peddled, and I know the time when the tomatoes are about to be sold; that is all I know.

THE COURT: That is all.

CASE #2744

BY MR. WARE:

Q Did you ever hear of Decoration Day? A No.

BY THE COURT:

Q How old are you? A Twenty-six.

Q Did you serve in the war? A I was waiting for the service.

Q Are you a citizen of this country? A I had my first papers, and I lost them.

Q When did you obtain your first papers? A I got them three times.

BY MR. WARE:

Q Do you know the four seasons of the year? Did you ever hear of the four seasons? A No. (Through the interpreter) That I don't know.

Q Of course, you don't know the months of the year? A (Through Interpreter) No, I know them, but I can't count them; I don't know how to count them straight.

Q You know when it is cold, of course, you know the Winter when you hear it? A I know when it is cold.

Q Do you know what month the 4th of July comes in? A (In English) No.

MR. WARE: That is all.

SAMUEL GRIBBEN, being recalled, testified as follows:

BY MR. WARE:

CASE #2744

Q Officer Gribben, did you go to the defendant's residence?

A I did.

Q Or house yesterday? A Yes, sir.

Q And did you find anything there that you went to look for? A I found what the defendant went to look for.

Q Oh, the defendant went with you? A With me.

Q And did you find a cap?

MR. CARDONE: Now, wait a minute. I object. I think it is perfectly competent for the defendant to testify as to what he himself found, so I can be afforded the right to cross-examine the defendant.

THE COURT: I will allow that. Objection overruled.

Q Did you or the defendant find a cap? A The defendant found a cap.

Q Were you with him at the time? A I was.

Q You saw him get it? A I saw him get a cap.

Q And have you got the cap with you? A I have.

Q Will you kindly let me see it? A (Witness produces cap).

Q And this is the cap that you found, or, rather, that the defendant found in his residence yesterday while you were with him? A Yes, sir.

Q And you saw him find it? A Yes, sir.

MR. WARE: I ask that this cap be marked in evidence.

MR. CARDONE: I object, if your Honor pleases.

THE COURT: Objection overruled.

CASE #2744

MR. CARDONE: There is no proof that this is the cap that belongs to the defendant.

THE COURT: I have accepted it. Now, you can cross-examine on it.

MR. CARDONE: All right.

(Cap received in evidence and marked Defendant's Exhibit "A", of this date.)

BY THE COURT:

Q Where did you find the cap? A He took the cap out of a closet with other caps, about six or seven caps, and they were laid on a table, and he said, "That is my cap."

Q And what time did you go to his house? A As soon as we left here.

Q And where was his brother? A They come up as we come up.

Q They didn't get to the house before you did? A They might have got in about a second ahead of us, but I was right on top of them.

THE COURT: Mr. Cardone, I think the defendant has created a reasonable doubt in this case.

MR. CARDONE: Very well, your Honor.

THE COURT: Gentlemen of the jury, under Section 410 of the Code of Criminal Procedure, it is provided as follows: "If at any time after the evidence on either side is closed the Court deems it insufficient to warrant a conviction; it may advise the jury to acquit the

CASE #2744

"defendant, and they must follow the advice."

You see, there is a duty placed upon the Court and a responsibility which it must discharge. If the Court deem the evidence insufficient, in other words, if the Court deems the evidence sufficient, it is the Court's duty to submit the issue to the jury, but where the Court deems the evidence insufficient to warrant a conviction, then the duty devolves upon the Court to direct the jury to acquit.

In the case of *The People against Ledwin*, 103 N.Y., the Court of Appeals held that the mere fact that there might be some evidence to warrant a submission of a case to the jury is insufficient; there must be evidence of quantity and quality coming up to those high standards which we exact in a criminal case, so that if a conviction be had there should be no doubt as to the guilt of this defendant.

This defendant is a man with a very bad record, but under the Anglo-Saxon system of justice a man must not be convicted because he had heretofore lapsed from rectitude.

You can only convict where the evidence is clear and convincing, but where a doubt is created then no conviction can be permitted.

As I said to you a few moments ago, it is the duty of the Court to throw every safeguard about a person charged with crime who had heretofore been convicted, for

CASE #2744

the reason that if you gentlemen had convicted this defendant I would impose upon him only one sentence, and that is a sentence of forty years, because the man who commits robbery is a potential murderer, and this Court has gone on record that where men of such type are convicted they are entitled absolutely to no mercy, and they get no leniency from me. His bad record would ordinarily weigh him down, and it is a heavy handicap, but yet the law is so merciful and so tender when it deals with a human being that it steps in and says the presumption of innocence must be resolved in favor of the accused, and unless the proof beyond a reasonable doubt is sufficient to warrant a conviction, the hand of the law should be stayed.

The proof offered by the defense convinces me that there is a reasonable doubt as to the guilt of this defendant. The testimony of the unfortunate man who was assaulted and whose property was stolen is valueless with respect to cogent-identification evidence. Evidence of identification frequently baffles courts and juries. Perhaps no other subject is so difficult for a court to pass upon and a jury to pass upon than the question of identification, and such evidence should be as certain as human recollection will permit under the most favorable circumstances, and the books are full of cases where people have been convicted because of mistaken identity.

CASE #2744

Now, the photographer's evidence is only valuable provided you could show that this defendant was the person who fled from the store, to identify him. The photographer's evidence, standing alone, is meaningless, but when the District Attorney offered proof of the finding of a coat and a hat, supplemented with the photograph, I thought that he could prove that this hat was a hat that belonged to the defendant, and the coat also; then it would strengthen the other weak evidence.

But in order to make the identification testimony perfect, it is essential to mend together all of the pieces of proof tending to establish the identity of this defendant. The moment you can divide any of the links, then the chain becomes weak. If you can hold the links together, then the chain is strong.

Now, the defendant accounts for the hat represented in the photograph, and the cupidity of this defendant was clear on the stand, because he didn't know whether the hat was home, and, fearing that the brother might reach the home before the police, I arranged it so that the police would get to the home simultaneously with the relatives of this defendant, and the hat was found.

Now, having accounted for the hat, with respect to the coat you have got two witnesses here, ignorant men, who testified that they were present when the sale was made of the coat, and Officer Gribben told me that others could

CASE #2744

have been procured to corroborate him in that particular.

The case of The People is too weak to submit it to you gentlemen, and I therefore advise you to acquit this defendant.

THE CLERK OF THE COURT: Please stand up, Mr. Foreman. Gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN OF THE JURY: We have.

THE CLERK OF THE COURT: How say you, do you find the defendant at the bar guilty, or not guilty?

THE FOREMAN OF THE JURY: Not guilty.

THE CLERK OF THE COURT: Hearken unto your verdict as it stands recorded. You say you find the defendant not guilty, and so say you all.

Amos G. Russell,

Official Stenographer.

CASE #2744

START

2745

CASE

CASE #2745