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COURT OF GENERAL SESSIONS OF THE PEACE,  
IN AND FOR THE COUNTY OF NEW YORK,

PART I.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

-vs.-

WILLIAM UNGER, impleaded with HARRY  
B. REED and FRANK K. EBERLE.  
-----X

Indictment filed January 31st, 1905.

Charge: Burglary in the Third Degree, Grand Larceny in the  
Second Degree, and Receiving.

Tried before HON. JOSEPH E. NEWBURGER, J., and a  
Jury.

New York, February 16, et seq., 1905.

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

JOHN H. ISELIN, ESQ., Assistant District Attorney, for the  
People.

CHRISTOPHER F. KINSLEY, ESQ., for the Defence.

George F. Flack,  
Official Stenographer.

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

DIRECT EXAMINATION BY MR. ISELIN:

Q What is your full name? A Max Marianson.

Q Where do you live? A At 994 East 165th Street.

Q And what is your business? A Druggist.

Q And is your drug store in the same premises where you live? A Yes, sir.

Q On the first floor? A Yes.

Q And you sleep upstairs? A Yes.

Q Are you a married man? A No, sir.

Q On the 24th of January, 1905, did you own and manage this drug store? A Yes, sir.

Q And on that day at that time of the evening before did you close up your store? A Half-past eleven.

MR. KINSLEY: I think, may it please the Court, we might save a little time here. The defendant admits that a burglary was committed in this place and that the complainant lost the property or that it was stolen from those premises on the night in question.

MR. ISELIN: That will save time.

THE COURT: Within the County of New York?

MR. KINSLEY: Yes, sir.

MR. ISELIN: What property?

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MR. KINSLEY: We will concede that all the property alleged in the indictment was stolen from the premises in question on that night.

BY MR. ISELIN:

Q Did you hear me read from this indictment the property that is alleged to have been stolen? A Yes, sir.

Q And was that your property? A Yes, sir.

Q And was it in ~~this~~ your store that night when you closed up? A Yes, sir.

Q Have you ever seen it since? A Yes, sir; with the detective.

Q What detective? Stand up, please. (An officer arises.) Is that the detective? A Yes, sir.

Q Thomas F. Teeman? A Yes, sir.

Q You went with that officer? A Yes, sir.

Q The following day? A No. The 26th. That was on Thursday,-- no, on the 27th of February.

Q And did you see these tickets (indicating) anywhere? A Yes; I identified my property.

Q On that day, when you say you went with this officer, did you see those tickets? A Yes.

Q Who had the tickets when you saw them? A The detective.

Q And did you go to the various places mentioned in those tickets? A Yes, sir.

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Q To what places did you go? A Went to Brookenheimer, on 113th Street, or somewheres around there; I don't remember exactly the street; and I identified my watch, and two diamond studs.

Q Did you buy that watch? A Yes, I bought it; yes, sir.

Q How much did you pay for it? A It cost about \$100 or \$110.

Q How long ago did you buy it? A About six or seven years ago.

Q And did you buy the diamond studs? A Yes, sir.

Q How much did you pay for them? A I must have paid -- but I couldn't remember -- about \$60 to \$80; somewheres around there.

Q How long ago did you buy them? A That is quite a while ago.

Q What do you mean by quite a while ago? A Well, about a year ago.

Q Now, you say you found this watch and these studs after this alleged burglary in Brookenheimer's pawnshop?

A Yes, sir.

Q And you are sure that those articles that were shown to you there were your property? A Yes. I lost the number of my watch, and I went over to the jewelry to

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get the number, and he gave me the number, and the number is the same as the watch calls for, and then I went to Brookenheimer's -- to Brookenheimer's two places we went.

Q Where was the Brookenheimer where you found the watch and studs? A 115th Street; somewheres around there.

Q And what avenue? A Third Avenue.

Q And then where did you go? A To 123rd Street, to another man of that name, "Brookenheimer".

Q Also a pawnshop? A Yes, sir.

Q And what did you find there? A Diamond cuff buttons.

Q Another pair? A Well, it is only one pair.

Q You say that in the first Brookenheimer's pawnshop you found your watch? A Yes, and two studs.

in

Q And then the second Brookenheimer's you found the diamond cuff buttons? A Yes, sir.

Q When did you buy those cuff buttons? A They were given to me on Christmas.

Q You did not buy them yourself? A No, sir.

Q Now, let me put this question--

MR. KINSLEY: On what date did he go to the pawnshop?

MR. ISELIN: On the 26th, he says.

Q Did you lose any money from your store on the night in question? A Yes, sir.

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Q How much money? A Over \$200.

Q In bills? A In bills and gold.

Q And where was this money in your store? A On my desk.

Q In your store? A Yes, sir.

Q Behind the counter? A Behind the counter.

Q Over \$200? A Over \$200.

Q Have you ever seen any of that money since? A No.

Q Look at the property which I show you -- A "M."-- that is the letter for my name.

Q Was that in your store on the night before the robbery? A Yes, sir.

Q Where? A In the desk where the money was lying.

Q And how about these coins? A That (Indicating) is a French coin, with a hole; I use it as a charm; and this cuff button (Indicating) is a Russian coin.

Q Belonging to you? A Yes; and here (Indicating) is what I got for being a delegate to the Buffalo Exposition as a druggist.

Q You identify it? A Yes; but this (Indicating) is not mine.

Q Look at the bunch of articles, and see if there is anything else that is not yours? A Yes, sir; everything else is mine.

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Q Only this ring is not? A Only that ring.

Q This ring we will put to one side. Now, where was that before the burglary? A In the desk.

Q And when did you see it next after the burglary?

A On Friday. The burglary happened between half-past eleven, when I closed up, and two o'clock in the morning, because the officer woke me up at two o'clock in the morning, to tell me that my place was robbed.

MR. ISELIN: I offer these trinkets and tickets for identification.

THE COURT: Yes.

The 33 pawn tickets are marked respectively People's Exhibits Nos. 1, 2 and 3, and the various trinkets are collectively marked People's Exhibit No. 4 -- all for identification.

BY MR. ISELIN:

Q These three tickets I have shown you are tickets-- you saw the goods they call for? A Yes.

Q And you identified them as yours? A Yes, sir.

Q And as having been in your store the night before the robbery? A Yes, sir.

Q Where was it that you saw these coins and t is ring that you say are yours? A In the police station in 126th Street.

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Q The station house? A Yes. They telephoned over to me.

Q Never mind what they said to you over the telephone.

Q Who showed them to you? A The detective.

Q What is his name? A Teevan. First he asked me--

Q Never mind what he asked you. Was this defendant there when he talked to you? A No.

Q Then you are not allowed to tell us what he said, but he talked to you? A Yes, sir.

Q And after he talked to you, he showed you these things? A Yes, sir.

Q And you knew them to be yours? A Yes, sir.

Q Now, at any time, Mr. Marianson, did you have a conversation with this defendant in regard to this burglary?

A No, sir.

Q Never said anything to him at all? A No.

Q Did you say anything at any time in the presence of this defendant about this burglary to Reed or to Frank K. Eberle? A No, sir.

Q Never said anything at all? A No, sir.

Q Do you know the defendant at the bar, Unger? A No, sir.

Q He had no authority to enter this place? A No.

Q You had never talked to him before the burglary?

A No, sir.

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MR. KINSLEY: He don't say that he entered the place.

MR. ISELIN: No, you are right; I beg your pardon.

Q You had never talked to him before the burglary?

A No.

Q And your store, that you have described, is in the County of New York? A Yes, sir.

THE COURT: That is conceded.

(No cross-examination.)

THOMAS F. TEEVEN, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q Officer, you are a member of the police force of the City of New York, attached to the 32nd precinct, are you not? A Yes, sir.

Q And you are on plain clothes duty? A Yes, sir.

Q And were on the 24th day of January? A Yes, sir.

Q Look at the defendant at the bar, William Unger, and tell me if you ever saw him before? A Yes, sir.

Q Did you arrest him? A No. Officer Kilroy arrested him and brought him in to me, as I wanted him and two other men for burglary.

MR. KINSLEY: You are not asked that question.

The Court admonished the jury according to Section 415

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of the Code of Criminal Procedure.

Recess till 2:15 P.M.

MR. ISELIN: With your Honor's permission, I would like to recall the complainant in this case, owing to an oversight that I committed this morning.

MR. KINSLEY: Before the complainant is called back, I understand that there is a witness already testifying. Can we not first finish with his testimony?

MR. ISELIN: Does your Honor think that is better?

THE COURT: Yes.

MR. KINSLEY: Now, I move that your Honor strike from the record the voluntary declaration of the officer who was on the stand lastly before recess.

THE COURT: The stenographer will read it.

THE STENOGRAPHER: (Reading) "Q. Did you arrest him? A. No. Officer Kilroy arrested him and brought him in to me, as I wanted him and two other men for burglary."

MR. ISELIN: I will consent, of course, that that be stricken out.

THE COURT: Yes; strike it out.

THOMAS F. TEEVEN, a witness for the People,  
resumes the stand.

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DIRECT EXAMINATION CONTINUED BY MR. ISELIN:

Q What is the name of the officer who brought this defendant to you? A Kilroy; him and two others.

Q And where did Officer Kilroy turn this defendant over to you? A In the station house. He sent for me. They were all in the Olympic Theater at 130th Street and Third Avenue.

Q How many persons did the officer at that time bring to you, and what were their names, if you know? A Unger, Reed and Eberle.

Q At that time did you say anything to this defendant at the bar, or to either of the other co-defendants in the presence of this defendant? A I said it to Reed.

Q Yes or no; did you? A Yes, sir.

Q Now, tell us what you said and what the conversation was between you, if you remember? A I had a conversation with Reed.

Q How far away from you and Reed were this defendant and Eberle? A About five feet, I should judge.

Q Did you whisper to Reed? A No. I was talking the same as I am talking now.

Q So that he could hear? A Yes.

THE COURT: Tell us what was said.

BY MR. ISELIN:

Q Tell us everything that occurred in that conversa-

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tion? A I asked Reed about this burglary that was committed in 130th Street near Second Avenue, No. 136.

MR. KINSLEY: I object to that. It has no bearing in this case. This case was in 165th Street.

THE COURT: Yes, in reference to this case.

THE WITNESS: I didn't say anything to him in reference to this case.

BY MR. ISELIN:

Q Nothing at all? A Not at that time.

Q When next did you speak to Reed or to this defendant in the presence of Reed? -- That is, to Reed in the presence of the defendant, or to the defendant in the presence of Reed. A Not in the presence of Unger.

Q Never again? A No, sir. We took them out one at a time, and talked to them.

Q Did you ever talk to Unger? A Yes, sir; that night.

Q What did you say to Unger? A After I found all this stuff and this ring and got it off him, I asked him --

Q Now, Officer, please answer my question. Well, I withdraw the question for the purposes of that. Did you search this defendant at any time? A Yes, sir.

Q When? A In the station house at the time they were brought in.

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Q When? A Shortly afterwards.

Q Did you find anything on this defendant? A Yes, sir.

Q What did you find on this defendant? Look at these articles here, and you may step down for that purpose. (Indicating the various articles marked collectively "For identification People's Exhibit No. 4"). A There was a ring he had on his finger.

Q Which ring? A This ring (Indicating).

Q What else? A This Buffalo here (Indicating) was found on him.

Q This Buffalo badge? A Yes, sir; and all these coins. This here ring (Indicating) he said he bought for three dollars; that ring there -- all this stuff.

Q The other articles in this collection which I show you? A Yes, sir.

Q Did you find any of these other articles on him, or were you present when, if ever, they were found by anybody else? A Yes, sir.

Q Did you find them; yes or no? A No, sir. Officer Kilroy found the revolver on him, and found the jimmies on Reed and Eberle.

Q This gun or revolver was found on this defendant in your presence? A Yes, sir.

Q By you? A No, sir. By Officer Kilroy.

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Q And he is here in court? A Yes, sir.

MR. KINSLEY: I move to strike that out. Bring Kilroy up here.

MR. ISELIN: I will.

MR. KINSLEY: What is the use of asking this man what he, Officer Kilroy, found?

MR. ISELIN: He saw it. It was in his presence.

THE COURT: Motion granted. Do not tell us what another man did, but what you saw.

MR. ISELIN: What this defendant saw done in his presence.

THE COURT: Then objection overruled.

MR. KINSLEY: That was not brought out before.

MR. ISELIN: I beg your pardon.

Q Now, from what portion of the person or clothing of this defendant did you see this revolver taken that is here?

MR. KINSLEY: I object to the question, on the ground that it is incompetent, and has no bearing on the main fact in issue here. It has no connection with the burglary, because it is not shown that this defendant had anything to do with the burglary so far.

MR. ISELIN: I beg your pardon. It has been shown that the store was burglarized of these goods.

MR. KINSLEY: (Continuing) And whether he had a revolver upon his person on this night in question has

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no relevancy, because it was some days afterwards.

MR. ISELIN: Will the stenographer read the question?

THE STENOGRAPHER: (Reading) "Q. Now, from what portion of the person or clothing of this defendant did you see this revolver taken, that is here?"

A From his hip pocket.

Q Look at the two articles that I now show you, and state whether you ever saw those articles in the presence of the defendant? A Yes, sir.

Q Where were they? A At the station house.

Q Where were they in regard to the defendant, I mean? A He did not have them, but Reed and Eberle.

Q Was this defendant present when they were found? A Yes.

Q He was present when they were found on Reed? A Yes, sir.

Q Now, Officer, look at these articles that I now show you (Indicating), and state whether you have ever seen any of them before, and if so where? A Yes, sir; in the station house.

Q Was the defendant Unger present when you saw them? A Yes.

Q And where were they? A He had this badge pinned on his vest.

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Q On the defendant's vest? A Yes, sir.

Q Give me the badge. A (The witness complies.)

Q Anything else? A Yes; this bunch of keys (Showing)  
came off of him.

MR. KINSLEY: Which bunch?

BY MR. ISELIN:

Q Which bunch? A This bunch here (Indicating).

Q You saw them taken from the defendant? A Yes, sir.

Q By whom? A Officer Kilroy. They came off either  
Reed or Eberle.

Q Were they taken from Eberle and the other defendant?  
A Yes, sir.

Q In the presence of this defendant? A Yes, sir.  
The three of them were searched, one after the other, in front  
of the desk in the station house.

Q Now, was any offer made by any one of these three  
defendants in your hearing while this defendant Unger was  
present in the station house? A In his hearing?

Q In the hearing of the defendant Unger? A Reed made  
a confession --

Q In the hearing of the defendant Unger? A Well,  
that I won't say.

Q No? A That I won't swear to.

Q Then I understand you to testify that in the station  
house there was no statement made by any of the defendants--

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A By Reed there was.

Q -- in the hearing of the defendant Unger? A No, sir; not in his hearing.

Q Now, Officer, let us get down to the police court. When, if ever, were these defendants arraigned in the police court, if you know? A On the next morning.

Q By whom? A By me.

Q You were present? A Yes, sir.

BY MR. KINSLEY:

Q What day was that? A The 27th.

BY MR. ISELIN:

Q Of what? A Of January.

Q And what court? A The 6th District Court.

Q And who was the Magistrate? A Judge Mayo.

Q Now, at that time in the police court, did you hear the defendant Unger say anything in regard to this case?

A No, sir.

Q Was anything said by any person there? A Yes, sir.

Q Did you hear Reed say anything? A Reed, yes.

Q And how far was the defendant Unger from Reed when Reed spoke in relation to this case? A Well --

Q How many feet, Officer? Estimate for the jury, on your oath. A Well, they were two steps about from the level of the floor. Reed was up against the desk, like up here

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(Indicating), one or two steps further, and they were, say, a step lower.

Q Did Reed speak in such a tone of voice that Unger could hear what he said? A The Clerk asked him --

Q Did he? A I should judge he did.

Q In your opinion he did? A Yes.

Q And the defendant Unger was two steps down? A Yes. He was two steps down.

MR. KINSLEY: I object to his opinion as to whether they heard or not. I object to that as incompetent.

THE COURT: I will allow it.

MR. KINSLEY: Exception.

BY MR. ISELIN:

Q Answer the question? A When the Clerk of the Court, George Cregere, asked Reed what he had to say about the case, he said, "I plead guilty to the part I took into it."

Cregere asked him what part he took in it, and he said he was outside of those premises when Unger and Eberle was inside. He pleaded guilty to the paper and signed it to that effect.

Q Now, wait a minute. Did you see the paper that I show you in that police court on that day? A Yes, sir.

Q You did see that paper? A Yes, sir.

MR. ISELIN: I will offer the complaint in evidence.

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MR. KINSLEY: I have no objection.

THE COURT: Mark it.

The said paper is marked "People's Exhibit No. 5,  
in evidence."

BY MR. ISELIN:

Q Officer, you stated, I think, in answer to my last question, that Reed pleaded guilty to the charge? A Yes, sir.

Q Is that true? A That is true.

Q In the complaint which is offered in evidence, I find this question, "Give any answer you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation. A. I am"--then the next word is inserted -- "not guilty of the charge. Harry B. Reed."

MR. KINSLEY: Now, one moment; I object to the question.

MR. ISELIN: I have not finished it yet.

MR. KINSLEY: You have not finished it yet?

MR. ISELIN: No.

THE COURT: No. Let him finish the question.

Q (Continuing)-- how do you --

MR. KINSLEY: No, no.

MR. ISELIN: May I not put my question?

THE COURT: Yes, certainly, but (To witness) do

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not answer the question until I rule on it.

BY MR. ISELIN:

Q -- how do you explain the discrepancy between this piece of evidence and what you have just said, that the defendant Reed pleaded guilty to the charge?

MR. KINSLEY: I object to the question, on the ground that the record is the best evidence.

THE COURT: Objection overruled.

MR. KINSLEY: I take an exception. I also object on the ground that this is trying the defendant Reed, and not this defendant.

THE COURT: Objection overruled.

MR. KINSLEY: I take an exception. I object that it is incompetent for any purpose in relation to this charge of burglary alleged by the defendant.

THE COURT: I will admit it.

BY MR. ISELIN:

Q Go ahead, Officer, and tell the jury why you say that. A When he got back in the pen, and all three of them got together --

Q Was this after he pleaded guilty? A Yes, sir.

Q What did he say when he pleaded guilty? A He said he was not guilty.

Q That he wasnot guilty? A Yes, to the Clerk.

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Q You said that he pleaded guilty --Reed? A Yes.

Q Now, when he pleaded guilty, I want to know what language he used, as near as you can give it to us? A He said he was guilty to what I just mentioned a few minutes ago.

THE COURT: You remember that. You said that he was outside of the premises when Unger and Eberle were inside.

BY MR. ISELIN:

Q You said he was outside, watching for those other fellows, while they were in there doing the work? A Yes, sir.

Q Did you see him sign his signature to this paper?  
A Yes.

Q Was this paper on which appears this formal examination, signed when he pleaded guilty? A yes, when he pleaded guilty.

Q And did you see the complaint at that time? A No.

Q At that time was the word "not" here on the line above? A No.

Q What happened, if you recollect? A When he went back into the pen, ~~known~~ and the other two had gone back into the pen, and after they had been arraigned before the Judge, the Judge asked them what they had to say about it.

Q Did he ask Reed that? A yes, sir; and the other two

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pleaded guilty, and Reed said, "I don't plead guilty to this charge, but to the burglary in 126th Street."

Q Reed said? A Yes, sir.

Q So the second time that these three defendants were brought before the Judge to plead, the defendant Reed then said that he was not guilty of this charge? A Yes, sir.

Q Did you see who then inserted the word "not" in the complaint? A I did not, sir.

Q You don't know who inserted it? A No, sir.

Q Now, the first time they were called upon to plead by the Clerk, or were asked by the Clerk whether they were guilty or not guilty, you say that Reed said that he was guilty of this affair, in that he had stood outside of the premises while the other two, Unger and the other man, went inside; is that right? A Yes, sir.

Q You heard it? A Yes, sir.

Q Was anything said at that time in the presence of this defendant to indicate what the premises referred to were; was anything read to them by the Clerk, or was anything said? A Read to Unger?

Q Read to any of them in Unger's presence? A Cregere read the complaint to all of them.

Q And after the reading of that complaint, Reed said that he was guilty of standing outside the premises while

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the other two went in? A That is what he said.

MR. ISELIN: With your Honor's leave, I will read the complaint.

THE COURT: Oh, no; you need not read the complaint.

MR. ISELIN: To show the description of the premises. That is the point.

THE COURT: I understand there is no objection -- that it is conceded that the burglary was committed?

MR. ISELIN: Yes, that the burglary was committed; but I want to show to this jury that at the time Reed said that he had a part in it, and stood outside while the other two went in, he had been informed by the reading of this complaint, that it was those premises referred to in that particular street.

THE COURT: That may be proper in rebuttal, but at present it need not be read.

MR. KINSLEY: That is Reed?

MR. ISELIN: Reed, yes.

Q Now, what did Unger say at that time in the police court? A He denied all knowledge of it.

Q Oh, no; what did he say? You have been too long on the force not to know that the word "denied" is forbidden. What did he say; then the jury will be able to decide?

A He said he was not guilty.

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Q And did he say anything further? A No, sir.

Q Now, at the time that these goods that are here for identification were found, as you say, on Unger, did he make any statement in regard to them? A He said he bought them from some other fellow.

Q When was this burglary committed? A On Tuesday, between half-past eleven on Monday night and two o'clock on Tuesday morning previous to the arrest.

Q The 24th? A Yes, sir.

Q And on what day was it that you found these articles on the defendant Unger? A On the 26th.

Q The 26th? A Yes, sir.

MR. ISELIN: I will offer ~~it~~ in evidence, if your Honor please, the articles now, and which have been marked for identification, the articles which this officer has sworn were found in his presence, and some of them by him on the person of the defendant Unger upon his arrest.

THE COURT: Mark them.

The said various articles are collectively marked "People's Exhibit No. 4."

MR. KINSLEY: You don't mean to say that those things were taken from Unger?

MR. ISELIN: That is what the officer said.

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MR. KINSLEY: The officer did not say anything of the kind.

MR. ISELIN: (To the Stenographer) Turn and read the testimony.

MR. KINSLEY: He is on the stand now.

BY MR. ISELIN:

Q Officer, is it a fact that you saw all these articles that I hold here taken from Unger? A All except the jimmies.

MR. KINSLEY: Well, the articles ought to be enumerated.

MR. ISELIN: I offer one bunch of keys.

MR. KINSLEY: They are Unger's. That is right.

MR. ISELIN: And I also offer one shield reading "Deputy U. S. Marshal." I offer one revolver, and all of the stuff that the stenographer has marked as "People's Exhibit No. 4, for identification"; these articles contained in the yellow envelope.

MR. KINSLEY: It is better to have them specified on the record.

MR. ISELIN: Very well. Then I withdraw the offer of People's Exhibit No. 4 for identification, and I offer in evidence one gold and black enameled ring, with the initial in gold, "M", thereon.

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I also offer in evidence, further, this badge pin which has been referred to as "Buffalo", with the blue ribbon and silver medal attached thereto.

I further offer in evidence a round silver coin with the date "1758" thereon, and an inscription on the other side in Latin.

I also offer in evidence another round, silver coin with an inscription in French thereon, and a hole through the perimeter thereof.

I also offer in evidence a copper coin inscribed "One Cent, 1897".

I also offer in evidence what appears to be a silver cuff button with an inscription thereon in what purports to be the Russian language.

I also offer in evidence another copper coin bearing the inscription "One Cent, 1894", and bearing also other words.

I also offer in evidence one silver coin with the inscription thereon, "Victoria Regina", and other words.

I further offer in evidence one copper coin with the inscription thereon, "2-1896", and a coat of arms of a double-headed Eagle.

I also offer in evidence a copper coin inscribed, "Tradesmen's Currency" and "United States Copper".

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I also offer in evidence what appears to have been a ten-cent silver piece of the United States of America, with what appears to be a hole in it, and with the initials "A. M. B." in the monogram on the back thereof.

MR. KINSLEY: No objection.

The above enumerated articles are collectively marked by the stenographer "People's Exhibit No. 4."

BY MR. ISELIN:

Q Now, Officer, look at the pieces of paper which I hand you, and which are marked for identification, respectively, People's Exhibits Nos. 1, 2 and 3, and state if you have ever seen them before? A Yes, I have seen them before.

Q Where did you first see those pieces of paper? A This (Indicating) was found upon Unger, here.

Q You refer to People's Exhibit No. 1 for identification? A Yes, sir.

MR. ISELIN: I offer it in evidence.

MR. KINSLEY: No objection.

Admitted in evidence and marked "People's Exhibit No. 1, in evidence."

BY MR. ISELIN:

Q Where did you find the others, if at all? A I was told where to go and get them; at least, where he tried to sell them the night before.

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Q I can't make out one word you say. A I got them from a man named Welsh.

Q In the presence of this defendant? A No, sir.

Q Did you speak to this defendant in regard to those pieces of paper you have in your hand? A No, sir.

Q Or did you hear the defendant spoken to in your presence in regard to those pieces of paper? A No, sir.

Q Now, then, did you at any time go to the drug store occupied by the complaining witness at 994 East 165th Street? A No, sir.

Q You never went there? A No, sir.

MR. KINSLEY: I want to move to strike out that portion of the record where the witness stated that he was told where to go and get them the night before.

THE COURT: Oh, yes; strike that out.

CROSS-EXAMINATION BY MR. KINSLEY:

Q How long have you been a police officer? A Going on fifteen years.

Q I thought so. And you are a young man yet, are you not? A Well, not so young.

MR. ISELIN: And not so old!

BY MR. KINSLEY:

Q Just for a moment I want to take you back to the police court. You know there is a railing outside in which

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prisoners charged with the commission of crime have to stand?

A Yes, I understand.

Q And that is probably three feet from the Judge's desk or bench? A Yes, sir.

Q So that this man Reed was taken away from the other two and taken up to the Clerk? A No, sir. There is a railing there when we are going to arraign a defendant; but there is no railing up where the Clerk makes out the complaint. That is only two steps from the ground.

Q That is away from where the prisoners are arraigned? A Yes, sir.

Q And he was taken up there, was he? A Yes, sir; and the other two were down two steps.

Q So that his back was to the other two defendants, and his conversation was with the Clerk? A Yes.

Q And the conversation was between the Clerk and himself? A Yes, sir.

Q And you say that was only about five feet away? A I didn't say it was five feet.

Q Four feet? A It is not. It is only the length of two steps.

Q Do you see that bench where the Clerk is sitting here? A I do.

Q That is about ~~five~~ the distance from where the

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prisoners are arraigned and stand before the Judge? A Pretty near.

Q And, besides that, there were two steps where they walk up to see the Clerk, that much distance between them?

A Precisely.

Q Were the defendants Unger and Eberle up at the railing, or were they up at the side of Reed? A No; they were down two steps.

Q And they were supposed to hear all that Reed said?

A I don't know whether they were supposed to hear what he said or not.

Q You would like to have the jury understand that?

A I don't know as I would.

Q You are perfectly impartial? A I don't quite understand you.

Q You don't say anything unless it is something you saw? A No, sir.

Q And you don't call on your imagination for anything?

A No.

Q You are perfectly honest and sincere with reference to anyone who is charged with the commission of a crime?

A Yes, sir.

MR. ISELIN: Now, I will ask again for permission to recall the complaining witness.

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THE COURT: Yes .

MAX MARIANSON , complainant, being recalled  
by the People, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q Were you present in the police court when the  
defendants under this indictment, Unger, Reed and Eberle,  
were brought before the Clerk in the police court? A Yes, sir.

Q You were? A Yes, sir.

Q Did you hear any conversation between the defendant  
Reed and the Clerk; yes or no? A Yes, sir.

Q At that time how far, as you would estimate it, in  
feet, was the defendant Unger and the defendant Eberle stand-  
ing from Reed? A Well, about two steps.

Q Do you mean two paces? A No.

Q Or two steps? A Two steps. Here (Indicating) is  
one step, and here it is (Indicating).

Q That would bring the defendants Eberle and Unger  
below the level at which Reed was standing? A yes, sir.

Q Now, taking it from Reed to the other two defend-  
ants, who were standing lower down, about how many feet  
would you say it was? A About a foot and a half.

Q That is your best judgment? A That is my best  
judgment, of course.

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Q Now, Mr. Marianson, did you hear the conversation that ensued between the Clerk and the defendant Reed?

A Yes, sir.

Q Will you state to this jury, according to your best recollection, what it was?

MR. KINSLEY: Just a minute. I want to ask a preliminary question.

MR. ISELIN: I have no objection.

THE COURT: Yes.

PRELIMINARY CROSS-EXAMINATION BY MR. KINSLEY:

Q When Reed was speaking to the Clerk? A Yes, sir.

Q And you were standing directly beside him? A Yes, sir.

Q And those other two men were back of him? A Yes, sir.

Q Down below, two steps? A Yes, sir.

Q Now, the conversation that was carried on between Reed and the Clerk and you was intended for the three of you, and not for the people who were standing behind you; isn't that right? A Well, the only question--

Q I am only asking you.

MR. ISELIN: I object to that as calling for a conclusion from a witness who is manifestly not an expert on the question.

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(No ruling.)

BY MR. KINSLEY:

Q Was the conversation between the Clerk and Reed intended for you or the people standing behind you?

MR. ISELIN: Objected to.

THE COURT: Objection sustained.

THE COURT: How can this witness tell what it was intended for?

MR. KINSLEY: But he can tell what he thinks.

Q The conversation was between the Clerk and Reed?

THE COURT: Mr. Kinsley, you may ask him whether it was in such a tone that it could be heard at any distance.

MR. KINSLEY: But I don't want to ask that question.

THE COURT: I won't let you ask the other question.

MR. KINSLEY: I will ask this question, and your Honor may rule it out:

Q The conversation that was had was between the Clerk of that court -- the police court -- and Reed?

MR. ISELIN: No objection to that.

BY MR. KINSLEY:

Q (Continuing) Is that right? A Was between who?

Q The Clerk and Reed? A There was no conversation.

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He only asked him whether he was guilty of the charge.

Q He asked him questions? A He only asked him whether he was guilty of this charge.

Q The Clerk was asking Reed questions as to himself?

A That is what I say.

BY MR. ISELIN:

Q He don't ask what he asked him. They were talking together, the defendant Reed and the Clerk, weren't they?

A Yes, sir.

BY MR. KINSLEY:

Q And he was asking Reed questions? A Yes, sir.

Q And you were standing beside Reed on this platform? A Yes, sir.

Q Two steps up? A Yes.

Q Now, he was not asking Reed anything about Unger, was he; say yes or no. A (No answer.)

Q Say yes or no. A No, he didn't ask him anything about Unger or anybody else.

Q That is all I asked you. A Yes, sir.

DIRECT EXAMINATION CONTINUED BY MR. ISELIN:

Q Will you state to the jury, in accordance with my former question, what the conversation was between the Clerk and Reed, as well as you recollect it; everything that was said?

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MR. KINSELEY: I object to it on the ground that it does not appear so far that this defendant here was within hearing distance, and that the conversation was not intended to reach the defendant's ear.

MR. ISELIN: That makes no difference.

THE COURT: Objection overruled.

MR. KINSLEY: I take an exception.

BY MR. ISELIN:

Q Go ahead, Mr. Marianson, please. A The Clerk asked him if he was guilty of the charge, and mentioned the three names; and he said --

Q How do you mean that he mentioned the three names? Tell us what he said. A He said, "Are you guilty of robbing the drug store at 994 East 165th Street?" And he said, "I was not inside of the drug store, but I was only looking out while the other two"-- mentioning the names--

Q What names did he mention? A Eberle and --

BY MR. KINSLEY:

Q Unger? A Yes,-- "while Eberle and Unger were inside; I was looking out."

BY MR. ISELIN:

Q That is what Reed said? A That is what Reed said.

Q And you heard it? A yes, I heard it when he said it to the Clerk.

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Q Now, were you present thereafter -- Oh, just one minute; I withdraw that. Did the Clerk read in your hearing, while you were there, this complaint? A yes.

Q To either of the defendants?

MR. KINSLEY: That is a general question, "to either of the defendants." Reed is the man on trial now.

MR. ISELIN: No; it is Unger.

MR. KINSLEY: He says, "to either of the defendants". Reed is the only one that had a conversation, so far as the evidence goes of the officer, and this witness. These men were not allowed to talk at all, were not consulted.

THE COURT: Objection overruled.

MR. KINSLEY: I take an exception.

THE COURT: Yes.

BY MR. ISELIN:

Q Did the Clerk read it to Reed? A Yes.

Q And was the reading of this instrument by the Clerk to Reed prior to the statement by Reed that you have testified to; was it before Reed said what you say he said? A No, sir; after he read the complaint to him he signed it.

Q Then Reed said -- A Yes; then he gave him the age and whatever it is here.

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## CROSS-EXAMINATION BY MR. KINSLEY:

Q You read English, do you not? A I think so.

Q You have read this complaint, have you? A Yes, sir.

Q What is the first sentence of the complaint that you have charged here? A I can't remember it now.

Q You have just had it in your hand? A I know, but there are lots of things we can't remember when we are a little bit excited.

Q Can you remember anything that is stated in the complaint? A Oh, yes; I remember a good many things.

Q You remember the property; that is all, isn't it? A Well, I remember what he said.

Q You remember how old you are? A I think twenty-seven, if I ain't mistaken, and that he gave his home as Jersey.

Q I don't think you understood my question. You know where you live, do you? A yes, sir.

Q Where do you live? A 994 East 165th Street.

Q You live there yet? A Yes, sir.

Q Do you know when you swore to this complaint?

A Yes, I do.

Q When? A What date or what?

Q Yes; what date? A I think the 27th; I think so.

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I know it was on Friday.

Q On what date was the burglary committed? A Between the 23rd and 24th.

Q In the morning? A Well, it would not be two mornings.  
BY MR. ISELIN:

Q Do you know whether it was in the morning? A Oh, yes; between half-past eleven at night and two o'clock in the morning.

BY MR. KINSLEY:

Q Now, this was sworn to on the 28th; is that right?  
A What is that?

Q This complaint. On what day were they arraigned?  
A On Friday.

BY MR. ISELIN:

Q Friday? A Friday, yes; that is right. The 28th, I think.

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HENRY G. KILROY, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q You are a member of the police force of the City of New York, are you not? A Yes, sir.

Q What is your precinct? A 32nd.

Q And what was your precinct on the 24th day of January of this year? A 32nd.

Q Did you arrest the defendant at the bar Unger? A Yes, sir.

Q When and where? A On the 26th of January, at the Olympic Theatre, at 130th street and Third avenue.

Q About what time? A About half past eight in the evening.

Q What day of the week was that? A I think it was on Thursday night.

Q And who was with Unger, if anyone? A A party by the name of Reed, and another party named Eberle.

Q Were you accompanied? A I was at the time I placed them under arrest.

Q What was the first thing that you said to those three defendants, if they were together, and what did they say to you? A They were all separate at the theatre. This gentle-

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man here Eberle or---

Q Unger you mean? A -- Unger, he was sitting in a box at the theatre.

Q And were Eberle and Reed there? A No; he was alone.

Q Just what did you say to Unger? A I called him out and told him I wanted to see him on the outside for a few minutes, and I brought him out; and at that time Reed and Eberle were inside.

Q Reed and Eberle had not gone out? A No.

Q What do you mean by stating that you brought him out? A I took him outside in the lobby of the theatre, and I told him he was wanted at the precinct by one of the precinct detectives.

Q Did you tell him what for? A I told him for "suspected burglary".

Q What did you say? Go ahead, officer, and speak loud? A And he says "All right. I will go with you." I left him in charge of another policeman and went in for the other two men.

Q Who was there; what officer? A An officer named John Elliott.

Q And you went back into the theater? A Yes, sir, and I got the other two men.

Q You mean Reed and Eberle? A Yes, sir.

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Q And what did you do with them? A Brought them out and left them also in charge.

Q In charge of Officer Elliott all three? A Yes, sir, all three in charge of Officer Elliott.

Q When you brought them out, did they say anything to Officer Elliott or he to them that you know? A Well, Reed confessed--

Q Now, please don't use that word. I ask if your Honor please that that be stricken out.

THE COURT: Yes.

A I told Reed that he was wanted at the station house.  
BY MR. ISELIN:

Q In the presence of Unger? A Yes.

Q And what did Reed say? A He asked me "what for"? And I told him that he was suspected of breaking into several places in our precinct and outside of our precinct.

Q Did you mention any place? A No, sir.

Q Was anything said in regard to breaking into these premises No. 994 East 165th street then?

A Yes.

Q Now, by whom, and what was said? A By Reed.

Q What did Reed say? A He confessed that he---

Q Don't say "confessed". A He told me that he had broken into this drug store, or rather that he was on watch

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while the other two men broke in.

Q What other two men? A Eberle and Unger.

Q And what became of those three men? A I brought them to the station house.

Q And what occurred at the station house? A I sent for officer Teeven.

Q In the station house? A Yes.

Q And then what happened? A I told Officer Teeven that they were the men that he was looking for.

Q Did you say that in the presence of Unger?

A Yes, sir.

Q Did Reed say anything? A No.

Q Or Eberle or Unger? A No.

Q And what occurred? A We searched them.

Q All in the presence of each other? A Yes, sir.

Q Did you personally search any of them? A I searched the three of them with the assistance of Officer Teeven.

Q Did you find any articles on the defendant Unger?

A Yes.

Q Look at the contents of this table and state whether you see on the stenographer's table here, among the exhibits for the People any articles which you found on Unger?

MR. KINSLEY: You can take up the articles, the

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the revolver and coins and ring and pawn tickets, and the badge and show them to him.

A (After examining the said articles) Yes; I took that off his person.

BY MR. ISELIN:

Q What is "that"? A A revolver.

Q I show you a bunch of keys? A Yes, sir; I took them from off his person.

Q I show you a bronze object marked "U. S. Deputy Marshal"? A I took that off his vest.

Q It was pinned on his vest? A Yes, sir.

Q I show you a gold and black enameled ring, with the initial "M"? A That was taken off by Teeven-- off his fingers.

MR. KINSLEY: That is correct.

MR. ISELIN: I object seriously to these comments.

MR. KINSLEY: I say "Yes, right."

THE COURT: It is conceded that all these that are marked in evidence were taken from the person of the defendant.

MR. KINSLEY: Those articles, the ring, the badge, coins, the revolver and the keys, yes; all those were taken from the defendant.

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THE COURT: It is conceded?

MR. KINSLEY: Yes.

MR. ISELIN: Very well; it is conceded.

THE COURT: Yes. Then why waste any further time?

BY MR. ISELIN

Q Now, was any statement made by any of the three defendants while they were being searched in regard to this affair?

A No, sir.

Q And after they had been searched, what became of them? A They were placed downstairs in a cell.

Q When were they arraigned, if at all, in the Police Court? A On the 26th.

Q The 26th? A Yes, sir.

Q That was two days after? A Two days after.

Q And did you hear anything said by the defendant Unger in the Police Court? A No, sir.

Q You did not? A No, sir.

Q Did you hear anything said by the defendant Reed in the presence of Unger in the Police Court? A Yes.

Q Where was Reed when he made this statement? A Just a couple of steps down from the complaint clerk's desk.

Q Who spoke to Reed if anyone before he made this statement? A The complaint clerk.

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Q And how far in feet as you can best estimate it, were the defendants Unger and Eberle from Reed when he spoke to the complaint clerk? A Oh, I guess a couple of feet.

Q What did Reed say to the clerk? A He pleaded guilty to the charge after it was read to him.

MR. ISELIN: That may be stricken out by consent.

MR. KINSLEY: Oh, let it stand. You have got lots of that in there.

BY MR. ISELIN:

Q Don't say that he pleaded or denied or admitted. Please tell us what he said as near as you can recollect, and the jury will make up their minds as to what they did? A After the complaint was read to Reed, he acknowledged--

Q What did he say? A He said he was guilty. The clerk asked him if he was guilty or not guilty? He says "I am guilty"; and he said he was on the lookout where the other two men had entered the drug store.

Q Who said that? A Reed.

Q Which other two men? A Eberle and Unger.

Q Now, were you present in Court when the defendants or either of them was called up before his Honor Magistrate Mayo? A Yes, sir.

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Q And did you hear what Reed said if anything in the presence of Unger in answer to the Magistrate's question as to whether or not he was guilty. What did Reed say to the Magistrate? A He said he was not guilty of breaking into--- of assisting to break into this drug store, but that he was guilty of breaking into a grocery store in 126th street.

CROSS EXAMINATION BY MR. KINSLEY:

Q How long have you been a police officer? A Nine years.

Q If a prisoner charged with the commission of a crime tells the complaint clerk, in answer to the question whether he is guilty or not guilty, he makes an explanation?

A (No answer).

Q Don't you know, as a matter of fact, that it is the duty of the clerk to put down his explanation?

MR. ISELIN: I object to that.

Objection sustained. Exception.

BY MR. KINSLEY:

Q Say whether you do or not?

Objected to.

Objection sustained. Exception.

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Q If he had made any such statement or explanation, don't you think it was the duty, and don't you know that it was the duty of the Clerk to write that down as his explanation?

Objected to.

Objection sustained. Exception.

THE COURT: The Court will take judicial notice of the fact that whatever he said to the Clerk should have been written down.

BY MR. KINSLEY:

Q Will you be kind enough to look over the questions put to Reed, Unger, and the other young man, and find if there is anything of that character in that paper?

MR. ISELIN: Never mind, officer. I object to the question on the ground that the paper is the best evidence of its contents.

MR. KINSLEY: Then we will have to read it to the jury.

MR. ISELIN: I have no objection to that at all.

Objection sustained. Exception.

BY MR. KINSLEY:

Q Did you ask the defendant Unger anything about the ring that he had on his finger? A No, sir, I did not.

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Q Did you ask him anything about the pawn ticket that you found? A No, sir.

Q Did you ask him anything about the coins that he had in his pocket?

A No, sir.

Q Don't you ever ask questions? A Well, the case was not mine. I was only searching him for another officer. The prisoners were arraigned at the time in front of the desk.

Q You arrested this man here? A On suspicion, yes, sir.

Q Which officer did interrogate these people?

MR. ISELIN: If you know.

A Officer Teeven.

MR. KINSLEY: I will ask to have him recalled for a moment.

THOMAS F. TEEVEN, a witness for the People,  
being recalled for further cross examination, testified  
as follows:

BY MR. KINSLEY:

Q Officer, did you ask the defendant where he got that

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pawn ticket which you found on his person? A Yes, sir.

Q And where did he say he got it? A That he got it from another fellow.

Q Did he say anything about getting it or buying it?  
A He did not say he bought it.

Q Do you know a man connected with the Mount Morris Hotel or connected with the Olympie Theatre up there in the Mount Morris Building, who had one of those pawn tickets?  
A He had two.

Q You did not arrest him, did you? A Brought him to the station house.

Q But you let him go? A Certainly, yes, sir.

Q You thought those pawn tickets represented stolen property; is that right? A Yes, sir; and he claimed he got them from him.

Q Now, did I ask you for that? Why don't you wait until you are asked questions? Don't you know-- now we will go into that question-- didn't he say he bought one from a man that he saw talking to this defendant? A Who said that?

Q This man connected with the theatre up there?  
A That he had bought--

Q Yes, that he bought one representing a watch?

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A No, sir; he didn't say anything of the kind.

Q Said he simply got it? A Yes, sir.

Q Now, did you ask the defendant anything about the ring that he had on his person?

A I did.

Q Did you? A Yes, sir.

Q And he had that ring on his finger? A Yes.

Q And what did he tell you about that? A He said that he had bought it for three dollars.

Q And what did he say about those coins? A He said he got them from another fellow.

Q Didn't he say that he paid for them? A No, sir.

Q Didn't he tell you that he paid five cents apiece for them? A No, sir; one ring, he said he paid three dollars for that.

Q Now, don't you know what this young man's occupation is? A I don't know anything about him.

Q Don't you know why he carried that revolver?

A I do not.

Q Don't you know that he was connected with a railroad?

A He was once.

BY MR. ISELIN:

Q Then you do know something about him? A No; he was

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MR. KINSLEY: I am examining now, Mr. Iselin.

THE COURT: Let Mr. Kinsley finish first.

BY MR. KINSLEY:

Q What was his occupation? A No. He was connected with the New Haven Railroad, but I don't know what his position was.

Q But you do know that it is customary for freight men and conductors to carry revolvers on a road?

A (No answer).

Q If you don't know, just say so? A I don't know; no, sir.

MR. ISELIN: I have a couple of questions to ask with the Court's permission.

THE COURT: Yes.

FURTHER DIRECT EXAMINATION BY MR. ISELIN:

Q Let me ask you this question, Officer: Did you see found, or did you find on this defendant any permit to carry a revolver? A No, sir.

MR. KINSLEY: Oh, now. It is a violation of the Corporation Ordinance.

MR. ISELIN: Oh, these young crooks all do it.

MR. KINSLEY: Your Honor did not hear that.

THE COURT: No.

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MR. ISELIN: If your Honor desires to hear it, I will repeat it.

THE COURT: No, I do not want to hear it. These side remarks by the District Attorney and counsel for the defendant are improper.

MR. KINSLEY: I move that the instruments which have been displayed before the jury here as things capable of--

THE COURT: Yes; put them out of sight.

MR. KINSLEY: (Continuing)-- which are supposed to belong to the trade of a burglar, and which were found in the possession of a man charged with the commission of this crime, be stricken from the record and from the consideration of the jury.

THE COURT: Yes; motion granted.

MR. KINSLEY: I now move that your Honor instruct the jury to acquit on the ground that there is not any evidence whatever that this defendant was seen in the vicinity of the store that is alleged to have been burglarized, and which is conceded by the defense to have been burglarized, and that the ring that was

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found on the defendant and claimed to be the property or a portion of the proceeds of that burglary was found in the possession of the defendant three days afterwards, and he explained where he had procured it. There is no evidence whatever---

THE COURT: That is a subject for him to explain to the jury.

MR. KINSLEY: But there is no evidence here at all that this man was connected with the burglary.

THE COURT: Motion denied, Mr. Kinsley.

MR. KINSLEY: I take an exception.

THE PEOPLE REST.

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THE DEFENSE.

WILLIAM UNGER, the defendant, called as a witness on his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KINSLEY:

Q How old are you, Unger? A 17.

Q Did you on the 24th of January, 1905, alone, or

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in company with a young man named Reed or Eberle break into the premises No. 994 East 165th street? A No, sir.

Q Do you know anything about that alleged burglary?

A No, sir.

Q What is your business? A Brakeman on the New York, New Haven and Hartford Railroad.

Q Now, you had in your possession, five or six coins which were identified by the complainant as his property; where did you get those coins? A I bought them for five cents apiece. He had a whole pocketful of them; he was selling them and was throwing some of them away.

Q Now, there is a ring which the complainant claims is his property and which was found on your finger; where did you get that?

A Bought that off the same fellow.

Q And there is a pawn ticket representing a pair of sleeve buttons. Where did you get them? A I paid a dollar for them.

Q Got them off the same fellow? A Yes, sir.

Q That revolver, you say, belongs to you, does it not? A Yes.

Q The officer found it with you? A Yes, sir.

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## CROSS EXAMINATION BY MR. ISELIN:

Q Where do you live? A 898 Eagle avenue.

Q Try hard to raise your voice. You have got to speak to these gentlemen here. Don't speak to me in answering questions; speak to these gentlemen down here on the end, and then we will all hear you? A Yes, sir.

Q Where did you say? A 898 Eagle avenue.

Q That is in the Bronx, isn't it? A Yes, sir.

Q How long have you lived there? A About a year.

Q Whom did you live there with? A With my mother.

Q Alone? A No; mother, father and two brothers and three sisters.

Q Two brothers, three sisters, your mother, your father and yourself? A Yes, sir.

Q You were arrested on the 28th day of January, were you not?

MR. KINSLEY: Yes, the 28th; I guess that is right.

THE COURT: Yes; that is consented to, and I understand.

MR. ISELIN: The 28th, yes, that is consented to.

Q You were there at that time? A Yes, sir.

Q And you know you are indicted with a boy called Harry

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B. Reed and another boy called Frank K. Eberle; do you know that? A Yes, sir.

Q You never had seen either of these boys before you were arrested? A Yes, I had seen them.

Q Now, tell us where you first saw Eberle? A I only knew Eberle about three days. He was a waiter up in a 126th street restaurant.

Q Eberle was? A Yes, sir.

Q Did you go to this theatre, where you were arrested, with Eberle? A No, sir; I went there by myself.

Q And tell us where you met Harry B. Reed? A I know Harry B. Reed about a week, and I met him in a pool room on 2nd avenue.

Q A pool room on Second avenue you met Harry B. Reed in?

A Yes, sir.

Q And Eberle was a waiter in a restaurant? A Yes, sir.

Q And you knew him from going to the restaurant?

A Yes, sir; I went there to get something to eat.

Q Now, you say you were a brakeman on the New York New Haven and Hartford Railroad? A Yes, sir.

Q How long were you employed by him? A I was employed from last March.

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Q Last March? A Yes, sir.

Q March, 1904? A Yes, sir.

Q And how long did you work there? A Well, I worked there, it was four months, then I got discharged.

Q You worked there four months and then got discharged?

A Yes, sir.

Q For what reason? A For missing a call.

Q But for four months you worked there? A Yes, sir.

Q What time did you go there? A The first of March.

Q Then you worked there, March, April, May and June?

A Yes, sir.

Q And you were discharged about the end of June, were you not? A Yes, sir.

Q Then what did you do? A Then I went up to Whitestone and I worked there about a couple of months.

Q For whom? A For Martin Powers.

Q Whitestone? A Yes, sir.

Q And whom do you say you were working for? A Martin Powers.

Q What is his business? A Livery stable.

Q At Whitestone? A Yes, sir.

Q That is on Long Island? A Yes, sir.

Q And you worked there two months for him? A No,

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sir. I worked-- well, yes, just about two months.

Q That would be July and August? A Yes, sir.

Q And then whom did you work for? A Then I went back on the railroad again.

Q To the New York, New Haven and Hartford Railroad?

A Yes, sir.

Q And in what capacity; what kind of work did you do for them? A Brakeman.

Q Had you in your former engagement with them, worked as a brakeman? A Yes, sir.

Q So you went back there in September? A Yes, sir.

Q Of 1904? A Yes, sir.

Q And how long did you work as a brakeman then?

A I worked up to around December, the latter part of December, and I fell off the train and got my head hurt, and I laid off a couple of months.

Q In the latter part of what month? A December.

Q Were you a freight or passenger brakeman? A A freight brakeman.

Q On both occasions when you were employed there?

A Yes, sir.

Q And who was your boss? A Well, Mr. Curtiss; he hires men down there.

Q On both occasions? A Yes, sir.

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Q And was it Mr. Curtiss, who discharged you the first instance for missing a call? A Yes, sir.

Q And then he took you back? A Yes, sir.

Q What became of you when you left that employ the last time--- how did you come to leave their employ the last time, in December? A I fell off a train and hurted myself and ain't been back since.

Q Didn't go back at all since? A No.

Q And have you worked since? A Well, that is only about two weeks ago since I left.

Q Well, it was in December? A Two or three weeks ago.

Q It was in December; in what part of December was it? A About the 30th of December, I guess; the latter part of December.

Q So you left then in the latter part of December, and have not worked since? A No.

Q Were you in the hospital? A No.

Q What does your father work at? A My father died last Saturday, while I was in prison.

Q Now, tell us whom you bought this pawn ticket from People's Exhibit No. 1 in evidence, calling for cuff links?

A I couldn't tell you his name. I just happened to speak to him down there, and he said---

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Q Down where? A Down at the Olymphic Theatre.

Q The very night you were arrested? A Yes, sir.

Q And how long before the officer arrested you had you bought this pawn ticket? A Oh, it was about seven o'clock-- now-- when I bought the pawn ticket.

Q In the theatre? A No; outside the theatre.

Q It was outside the theatre, then? A Yes, sir.

Q It was not in the theatre? A No.

Q How far away from the theatre was it? A Well, it was right down by the door.

Q By the door of the theatre? A Yes, sir.

Q At seven o'clock? A Yes.

Q What were you doing there at seven o'clock?

A I was standing there and had a talk and didn't have no place to go, so I thought I would wait there.

Q You have a home, have you not? A Yes.

Q Then tell me how you bought this ticket? A Well, he came over to me and asked me if I have a match, and I said, "Yes, I got a match"; and he said "How is the show this week?" I says "I don't know how the show is; I guess it is a pretty good show."

So he commenced to jingle his money in his pocket; so I asked him, I said---

Q Speak up louder. A I said "You must have lots of

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money." He said "Yes, a lot of foreign coins. I will sell you a couple of you want me to."

So I says "Let me see them."

Q You said that? A Yes. So he pulled them out and pulled them pawn tickets out too.

Q All three pawn tickets? A No; he had a big bunch and those were on top.

Q Those three? A Yes, sir; rings and watches, he had pawn tickets for a whole bunch of them.

Q So what happened? A So I told him, "I will take a couple of these coins", so I took a couple of them for five cents apiece.

Q Just tell me which coins they were that you took for five cents apiece? A Every one of them.

Q They are more than a couple, are they not; did you buy all these coins from that man? A Yes, sir.

Q At five cents apiece? A Yes, sir.

Q (Counting) Eight coins, and you paid him forty cents for the coins? A Yes, sir.

Q And what happened? A So he says "I will sell you a good ring if you want to buy it." So I says "All right".

Q Sell you what? A He said he would sell me a good ring if I wanted to buy it, so I says "All right, if it will fit"; and he said it was W; so I says "That is my

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initial"; and he says "I will sell it to you cheap";  
and he asked three dollars for it and I bought it off  
him.

Q This (indicating) is the ring, isn't it?

A Yes.

Q That makes three dollars and forty cents you paid  
him? A Yes, sir.

Q And what happened? A Then he said "Do you want to  
buy any decent pawn tickets?" I said "Let me see them;"  
and he said "I have a good pair of cuff buttons, and I will  
give you them for a dollar."

Q And you gave him a dollar? A Yes, sir.

Q So that was four dollars forty? A Yes.

Q And then what? A Then I went upstairs and he  
sold one of them to the doorkeeper there.

Q You saw him? A Yes, sir.

Q Do you know which ticket he sold? A I think it  
was for a watch.

Q That one (indicating)? A Yes, sir.

Q He sold that to the doorkeeper? A Yes, sir.

A And how about the other ticket; do you know  
how he sold that? A No, sir.

Q Can't tell us how he sold that one? A No, sir.

Q Now, how about the cuff buttons? A That one

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was inside with them others.

Q How? A I bought that with the others.

Q I counted out eight coins and asked you whether you got eight, and I asked you whether you paid forty cents for them, you having told me you paid five cents apiece, and you told me that was right. Do you recollect the eight now? A All of them, I said; I didn't know how many there were.

Q I asked you and counted them for you, and you said to me that you bought the cuff buttons among them? A Yes, sir, among them pieces of coin.

Q You had never seen this man before, had you?  
A Yes, sir; I had seen him before.

Q Where had you seen him? A In Schaefer & Schaefer's pool room I saw him.

Q Where is that? A 125th street and Third avenue.

Q Have you been there often? A Three or four times.

Q While you worked for the New York New Haven & Hartford Railroad Company, did you work at night? A While I was over there I worked by night time.

Q How then did you get to the pool room if you worked at night time for the railroad company? A Well, I would go on on a call.

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Q I suppose, when you got home, that maybe sometimes you would amuse yourself by going to the poolroom; that is right, isn't it? A Yes, sir.

Q Now, this man after selling this ticket for a watch to the doorkeeper at the theatre, went upstairs?

A No, sir; he stayed downstairs talking to this doorkeeper at the door, and I went in.

Q So the man who had sold you these things did not go upstairs? A He might have gone upstairs for all I know.

Q Didn't you state to me before that after he had sold this ticket to the doorkeeper he went upstairs?

A No, sir.

Q Well, I will leave it to the jury. Now, you went in? A Yes, sir.

Q And where did you go? A I went in a box seat.

Q You had bought this ticket and you had paid a dollar for that? A Yes, sir.

Q What were your wages as brakeman for the New York, New Haven & Hartford Railroad Company? A Make as high as \$21 a week and \$28 a week.

Q How much did you make? A I made as high as twenty-one dollars.

BY THE COURT:

Q You are seventeen years old? A Yes, sir.

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BY MR. ISELIN:

Q Now, you had no idea that Frank Eberle was in there, had you? A No, sir.

Q None at all? A No, sir.

Q You had known Eberle before, you say? A Three days.

Q Had seen him several times in a restaurant?

A Yes, sir.

Q And you also had no idea that Harry B. Reed was there? A No, sir.

Q In the theatre at all? A No.

Q And you had known him for sometime, had you?

A About a week.

Q You had seen him several times? A Yes, sir.

Q So it was just what you might call a coincidence that you three happened to be there together?

A Yes, sir.

Q Now, do you really-- you are 17 years old, are you not? A Yes, sir.

Q Not a bit older? A No, sir.

Q Do you really mean to tell this jury that you knew that the tickets sold by this strange man to the doorkeeper was for a watch? A Yes, sir; I seen it.

Q You saw the ticket? A Yes.

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Q Do you know the doorkeeper? A Yes; I know the doorkeeper.

Q How long have you known the doorkeeper? A I know him now from being there last year.

Q You go often to the theatre? A Yes, sir; I go quite often.

Q You had paid out on this evening, according to your own account, to this strange man \$4.40, and for your ticket you paid one dollar? A Yes, sir.

Q Making five dollars and forty cents? A Yes, sir.

Q And this was on the 28th of January, wasn't it?  
A Yes, sir.

Q And that was a month after you had been injured--- a month after you had left the New York, New Haven & Hartford Railroad Company? A Yes, sir.

Q So you had not been working for a month? A No, sir.

Q And what did your father do for a living? A Painter.

Q Was he working? A No, sir; he was paralyzed.

Q And did your mother work? A Yes.

Q Where? A For a bank.

Q Where did she work? A She takes charge of a bank

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up here.

Q As janitress? A Yes, as janitor of the bank.

Q And besides you, she had two daughters; is that right? A yes, sir-- three sisters.

Q And two other boys? A Yes, sir; small, young.

Q How old was the eldest of those four children?

A One of my sisters is eighteen, and the other is fourteen, and then another one is seven; and the boy is seven or eight, one of them, the other one is three.

MR. ISELIN: That is all.

MR. KINSLEY: I understand, may it please the Court, that this young man who is in the District Attorney's office to some extent is here in Court, and I should like to have him called by the District Attorney or by the Court.

MR. ISELIN: May I ask to whom counsel alludes.

MR. KINSLEY: Reed.

MR. ISELIN: No; he is a co-defendant, and I do not care to offer him immunity, and putting him on the stand is an offer of immunity, tacitly, at least. It has been so recognized for years in these Courts.

THE COURT: I have no power either to instruct the District Attorney or defendant's counsel as to whom they shall call as witnesses.

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MR. KINSLEY: Well, I ask your Honor to instruct the jury to acquit the defendant on the ground that there is not any evidence here connecting him with the burglary other than the possession of this property that was stolen, and he has explained where he got possession of it.

THE COURT: Motion denied.

MR. KINSLEY: I take an exception. Is the mother of this defendant here?

THE COURT: For what purpose do you wish to call her?

MR. KINSLEY: Well, never mind. I think that is the case for the defense, may it please the Court.

THE DEFENSE RESTS.

TESTIMONY CLOSED.

Mr. Kinsley sums up the case for the defense.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure.

Adjourned to Friday, February 17, 1905, at 10:30 A. M.

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Friday, February 17, 1905.

TRIAL RESUMED.

MR. ISELIN summed up the case on behalf of the  
People.

THE COURT charged the jury, who returned a verdict  
finding the defendant guilty.

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