

**START**

495

**CASE**

CASE # 495

244

244

COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York,  
Part III.

-----X  
: THE PEOPLE : Before  
: vs. : HON. RUPUS B. GOWING, J.,  
: OSCAR ACKERT, impleaded with : and a jury.  
: " Ferdinando Capparelli. :  
: -----X

New York, February 23rd, et seq., 1905.

Indicted for Attempted Rape in the First Degree.

Indictment filed January 4th, 1905.

Appearances:

ASSISTANT DISTRICT ATTORNEY KEYRAN J. O'CONNOR, for the  
People.

HUGH COLEMAN, Esq., for the Defense.

Frank B. Beard,  
Official Stenographer.

CASE # 495

1648

2

THE PEOPLE'S TESTIMONY.

-----

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

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live? A I live 206 Thompson Street.

Q County of New York? A Yes, sir.

Q How old are you? A I was sixteen, at the 26th of November.

Q You were sixteen, on the 26th of November? A Yes, sir.

Q Had you ever been married? A Yes, sir.

Q What? A No; I was never married.

MR. O'CONNOR: Where is the interpreter? She doesn't understand me, evidently.

MR. COLEMAN: I object to the interpreter, for this reason. The last time--

THE COURT: I will find out whether the interpreter is needed.

BY THE COURT:

Q Can you speak English? A Yes, sir.

CASE # 495

Q And can you understand it? A Well, some of it I can't understand it.

Q Have you ever been married to any one, the District Attorney asked you? A Yes, sir, I was married once before.

MR. O'CONNOR: No. I know what she means. But, having sexual intercourse, once before, is not being married, your Honor.

BY THE COURT:

Q Have you got a husband? A No, sir.

Q Have you ever had a husband? A I never have a husband.

Q Then you have never been married? A No, sir; never I been married.

Q You have never been married? A No, sir.

BY MR. O'CONNOR:

Q How long have you been in this country? A Four years.

Q Did you go to school? A No; I never go to school.

Q Can you read and write? A No, sir.

Q Now where have you worked? A I no work now. I was to work. I was to work before.

Q You did work before? A Yes, sir.

Q Where did you work? A I was work Sullivan Street.

Q Do you know the name of the firm for whom you worked?

A Yes, sir.

CASE # 495

1950

4  
Q What was the name? A Newman & Levinson.

Q What business did you work at? A Paper box.

Q Now do you remember the 30th day of December, 1904?

MR. COLEMAN: Objected to, as leading. That is a very important element in this case, about the date.

THE COURT: You might ask her if she knows the defendant, and if she ever saw him before, and when.

BY MR. O'CONNOR:

Q Do you know the defendant here, Ackert? A Yes, sir.

Q When did you see him, the last time? A I see him at the corner of Hester and Elizabeth Street.

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

Q Do you know what day of the month it was? A No; it was a Friday.

Q It was a Friday? A Yes, sir.

Q And what time of the day was it? A It was about twenty minutes to nine.

Q Did he speak to you, or you to him? A I met him, and him asked me--- he come over to me, and he said, "Hello", and I answer back again, "Hello".

THE COURT: I do not understand this witness, Mr Coleman. You may understand her, but I do not.

MR. O'CONNOR: He don't want you to understand,

CASE # 495

5 5  
or the jury to understand, either.

THE COURT: I am going to have an interpreter.

MR. COLEMAN: One moment. I object to the language of the gentleman who says that I don't want you to understand, or the jury to understand. Be cool, be quiet about it. Act the lawyer.

MR. O'CONNOR: That is just what I am doing; and I say it because you would not take my suggestion as to the interpreter, before, and the Court does not understand the witness.

MR. COLEMAN: No; and I won't take anything that you do.

MR. O'CONNOR: And I won't take anything that you do, either.

THE COURT: We must have an interpreter. I cannot understand the witness.

BY THE COURT:

Q Did you see the defendant in the morning or evening?

A In the morning.

Q Do you know the day of the month? A It was on a Friday.

Q Well, there have been so many Fridays since the beginning of the world.

MR. COLEMAN: If your Honor please, I will con-

1952  
CASE # 495

cede that it was the 30th of December.

BY THE COURT:

Q Was it on a Friday in this year, or last year, or ten years ago? A Friday of this year.

MR. O'CONNOR: No, sir; not this year. She doesn't understand.

MR. COLEMAN: No, sir. I will concede that it is the 30th of December.

THE COURT: Then it is conceded that they met on the 30th of December, 1904?

MR. COLEMAN: Yes, sir; that is the day it took place. I will concede that. That is what my books here show.

BY MR. O'CONNOR:

Q Now what did you do, after the defendant said, "Hello, Katie", to you? A I said, "Hello", back.

MR. O'CONNOR: Now, will you speak Italian to the witness, Mr Interpreter?

MR. COLEMAN: I object. This witness was on the stand before, and the trial took two days before, and she--

THE COURT: I can readily understand that. I do not understand her, at all. Now, answer the question when you can, in English, and, if you do not

6  
1653  
CASE # 495

7

understand the interpreter will interpret for  
you.

BY MR. O'CONNOR:

Q Now, what else did he say to you? A Nothing else.  
And I stop to talk to him and him asked me to go inside  
of the saloon to have a drink, and I said, "I will not  
go inside of a saloon to have a drink," and he said  
"Come on inside, and have a drink", and I said "I will not  
go in a saloon, and have a drink."

Q Go on. A Him say, "Come on in." I say, "I never  
will go in the saloon. Never I was in a saloon, and never I  
will go in a saloon."

BY THE COURT:

Q You said you were never in a saloon and never would go  
in a saloon? A Yes, sir. And him grabbed me around the  
neck, around my coat (illustrating) to go inside the saloon,  
and, when I was inside, him told Capparelli to give me a  
glass of whiskey.

Q And you took it, and drank it? A No, sir; I didn't  
drink. Capparelli bring up a glass of whiskey where I  
stay, where I sit.

BY MR. O'CONNOR:

Q Did Capparelli bring anything to you? A Two glasses  
of whiskey.

Q Well, he brought two glasses, containing something?

CASE # 495

8

A Yes, sir.

Q Some liquid? A Yes, sir.

Q Now, did you drink anything that was in either of the glasses? A No, sir.

Q Did Ackert drink anything that was in the glasses, any one of them?

A Yes, sir.

Q Now, did Capparelli leave the bar room? A No; Capparelli would sit by the stove.

Q Well, he was in the store? A Yes, sir.

Q Well, was this in the room that you were in?

A In the back of the saloon, I was.

Q And he was in the back of the saloon, with you?

A This young fellow, Ackert, he was with me.

THE COURT: There are two defendants, Mr. O'Connor?

MR. O'CONNOR: Yes, sir.

THE COURT: And only one is on trial?

MR. O'CONNOR: Yes, sir; Ackert.

BY MR. O'CONNOR:

Q Now, after the defendant drank what was in one glass, what occurred then? A Well, I starts to go out of the hotel, and Capparelli was standing by the door. One door go out of the hotel and one go upstairs, and I start to

1655  
CASE # 495

9

walk out, and Capparelli grabbed me, and they both grabbed me by the coat here (illustrating by taking hold of the lapels of the coat), and this young fellow carryme upstairs, and Capparelli too.

Q Capparelli and this young fellow, the defendant, carried you upstairs? A Yes, sir; to the second floor. It was a little room.

BY THE COURT:

Q How did they carry you upstairs? Right up in their arms? A Yes, sir.

Q Took you right up off your feet? A Yes, sir.

Q And carried you upstairs? A Yes, sir; with my coat (illustrating).

Q No. I don't understand that they took you right up bodily; do I? A No, sir.

MR. O'CONNOR: No, sir. She said that they grabbed her by the coat and pulled her up.

THE COURT: Well, I want to know just how much resistance she made. It is hard work to pull a woman upstairs, if she holds back. She says that they took her up in their arms.

MR. O'CONNOR: No, sir; that they took her by the collar of the coat and pulled her upstairs.

CASE # 495

BY THE COURT:

Q Now, explain to the jury? A They carried me up- stairs with my coat (illustrating), the both of them, Capparelli and this young fellow.

Q Did they drag you up or how? A Yes, sir. When I start to holler, they grab ahold of my throat.

Q They grabbed ahold of your throat? A Yes, sir.

Q Both of them? A Capparelli and this young fellow here.

BY MR. O'CONNOR:

Q Then you got up into the room; did you? A Yes, sir.

Q Now, who went into the room first? A Capparelli.

Q Now, what was in that room? A There was a little bed.

Q And what else? A A looking glass.

Q About how large was the room? A It was a little room.

Q A little room? A Yes, sir.

Q And who went into the room with you? A Capparelli.

Q Did he say anything to you? A Yes, sir.

Q Never mind what he said. Where was the defend- ant at the time? A He was by the door.

Q Did Capparelli do anything to you in the room?

MR. COLEMAN: Objected to, on the ground that the evidence at this stage of the proceeding is immaterial, irrelevant and incompetent.

MR. O'CONNOR: I withdraw the question.

MR. COLEMAN: One moment. Wait until I get through.

MR. O'CONNOR: I withdraw the question.

THE COURT: The question is withdrawn.

BY MR. O'CONNOR:

Q Did Capparelli leave the room? A Yes; Capparelli leave the room.

Q And what did Ackert do, after Capparelli left the room? A Ackert come inside.

Q And what did he do then? A Him grabbed me around the throat, and throw me down on the bed, and I start to scream, and, at the same time somebody come and knocked at the door. When I start to holler, he grabbed me by the throat, and he said "Shut up. Maybe there is some policeman come. Don't holler." He say that when I start to holler.

BY MR. COLEMAN:

Q What is that? You say you started to holler?  
A Yes, sir; when this young fellow come inside.

1650  
CASE # 495

BY MR. O'CONNOR:

Q What did he do when you started to holler? A Him was standing up, and I was standing up, too.

Q Well, did he take hold of you? A No. Him was holding me around the throat.

Q Then he did take hold of you when he had you by the throat? A Yes, sir; him grabbed me by the throat, and want to throw me down on the bed, and then some policeman knock at the door. I don't know who is it.

Q Well, now, you say that Askert threw you on the bed? A Yes, sir.

Q And what did he do when he threw you on the bed? A Well, then him want to lift my clothes.

Q Well, what did he do? A Him don't do nothing.

Q Well, what did he do with his hand? A He just want to lift up my clothes like that (illustrating).

Q Well, where did he put his hand?

MR. COLEMAN: Objected to.

THE COURT: Allowed.

MR. COLEMAN: Exception.

A Any place.

BY MR. O'CONNOR:

Q Did he put his hand---

MR. COLEMAN: Objected to. Held on. You have

got an answer.

Q When he took hold of you by the throat, what did he say to you? A When him grabbed me by the throat, he throw me down on the bed, like that (illustrating).

Q And what did he say? A He said, "Give me a fuck", and I said "No, I will not do nothing like that", and then when I say that somebody come by the door, and knock by the door.

Q And he placed his hand where, by your dress?

A This way (illustrating).

Q Well, did he lift your dress up?

A No, sir.

Q How far did he get your dress up? A As far as here (indicating the knee).

Q You say your clothes were raised up as high as your knees? A Yes, sir.

Q And what else happened? A Then somebody knocked at the door, and him let me alone.

Q Then who come in? A Nobody come in. I stand up and he stand up, and somebody give one kick at the door.

Q Well, when the door was kicked again, did anybody come into the room? A The policeman come into the room.

Q Who was in the room at the time? A This young fel-

1660

CASE # 495

low here. (Indicating the defendant).

Q Ackert, the defendant? A Yes, sir.

Q Did the policeman say anything to you, when he came into the room? A Him tell me, "Who bring you up here?" And I said, "This young fellow".

Q Pointing to the defendant? A Yes, sir.

Q Did Ackert say anything? A No; Ackert didn't say anything.

Q Well, who paid you the money there? Who paid you any money there? A Gapparelli.

MR. COLEMAN: That is objected to.

MR. O'CONNOR: Well, question withdrawn.

Gapparelli isn't on trial now. I consent that the answer be stricken out.

BY MR. O'CONNOR:

Q Did you ever have sexual intercourse with any man before this time?

(No answer).

Q Were you ever with another man before that day?

A Yes; I was with one man.

CROSS EXAMINATION BY MR. COLEMAN:

Q You testified in this case before, did you not, ratie? You were on the stand?

CASE # 495

A (No answer).

Q If I say anything, Katie, that you don't understand, I will repeat it? A All right.

Q Now, do you remember being on the witness chair, in this case before? A Yes, sir.

Q Do you remember testifying against Ackert? A I can't understand that.

Q Now, don't you remember that, in the other case, you never testified you hollered after you went into that room? You didn't say that you hollered after you went into the room; did you? A I started to holler when I was in the room, and this Ackert grabbed me around the throat, and throwed me on the bed, and I can't holler.

Q And now you say you did holler? A No. I not hollers. I couldn't holla when he have me by the throat.

Q Now, didn't you say, just now, to the District Attorney that you hollered when you went into the room?

A When him grabbed me I started to holler, and he grabbed me by the throat.

Q Didn't you say, in response to questions of the District Attorney, that you screamed, when somebody knocked at the door?

MR. O'CONNOR: No. I object, because she didn't testify to anything of the kind.

MR. COLEMAN: Well, if she didn't, I want to stand corrected.

BY MR. COLEMAN:

Q Now, isn't it a fact that, on the other trial, you never testified at any time on that trial that you hollered, or started to holler? Answer yes or no. Come right down to that? A I don't remember if I say so or not.

Q Will you swear, now, that you testified the same way, the other time? Answer yes or no. pardon me, Katie, but I want the truth. Will you swear now, that you testified at the previous trial that you hollered, or started to holler, when the police came to the door? One moment. Answer yes or no. Did you swear that, the other time?

A No, sir; I never swear it; no.

Q You didn't? A No.

Q Did you talk to anyone about this case since the last trial? A No, sir.

Q Were you in the room at the time, with that same party in this case? A Yes; I was in the room.

Q You were? A Yes, sir.

Q Do you recollect that you heard me comment on the fact that you didn't scream or holler? Do you recollect hearing me saying that, in the summing up? You know what

CASE # 495

I mean. While I was talking to the jury. You heard me talking to the jury, didn't you, when I was closing up? Do you know what I mean?

A Yes; I know what you mean.

Q Now, did you hear me say that you didn't scream or holler, and there was no evidence of your screaming or hollering? A When I---

Q No. I know you of old, Katie. Pardon me. I don't want to be unkind to you. Now, yes or no is what I want. Now, did you hear me make that remark in Court, and comment on it? A Well, I can't understand that.

MR. COLEMAN: Put that, Interpreter, in Italian. Ask her this question. Was she in the Court room when I summed up?

MR. COLEMAN:: To tell the truth, I don't think she was.

MR. O'CONNOR: If you will look at page 19 of the last minutes, you will find what you are trying to get at.

MR. COLEMAN: Page 19?

MR. O'CONNOR: Yes.

MR. COLEMAN: Which question?

MR. O'CONNOR: Page 19, on the examination

CASE # 495

of this girl.

MR. COLEMAN: But there is no evidence on page 19.

MR. O'CONNOR: One moment.

MR. COLEMAN: There is nothing in it, in that that page.

MR. O'CONNOR: I object to this, as trying to impeach the record. I read what the record is (reads). There is no evidence of a scream here. Don't distort language. Be fair, be fair.

MR. COLEMAN: Oh, you have heard often that remark before this. I am fair.

BY MR. COLEMAN:

Q Now, did you scream? Answer yes or no?

A No.

Q You didn't scream? A No. I--

Q One moment. I have got an answer. Did you holler? Yes or no. A No; I didn't holler.

Q Did you testify, the last time, that you hollered?

A I can't understand that.

BY MR. COLEMAN:

Q Now, ask her, Interpreter, did she testify she hollered at the last trial?

MR. O'CONNOR: Objected to, unless the witness

1995  
CASE # 495

says she knows the meaning of the word heller.

BY MR. COLEMAN:

Q I will put it another way. Do you know what it means to shout out, heller? A No, I don't.

MR. COLEMAN: If your Honor please, I want to call your attention to one matter. It is very evident that the District Attorney ought not to tell the witness the answer when I put the questions, how to answer. I don't want to be interrupted by the District Attorney. He can object, but not say anything. Let's try this case perfectly fair.

MR. O'CONNOR: I am fair. I have to be fair.

MR. COLEMAN: You are not; and you know it.

MR. O'CONNOR: I am fair, and you know it.

MR. COLEMAN: And I am going to tell you something that you did in Court before this case is over.

MR. O'CONNOR: Make the charge against me now, in open Court. I defy you to do it.

THE COURT: Do you think, gentlemen, that this is a proper way to try a case? Do you think that the jury are edified by this?

MR. O'CONNOR: But am I to be insulted openly

CASE # 495

in Court by this man?

THE COURT: No. Do you think that you are benefiting your client in any way, counsel? It is hard to try such a case anyway, and you make it 100 times as hard, and it does not do any good to your client. You would think that the world moved around this case.

MR. COLEMAN: Well, I apologize for my part in it.

BY MR. COLEMAN:

Q Now, young lady, do you know what hollering is?

A I say---

Q Now, wait a minute. I ask you that question. If you are out in the street and want to holler out very loud, do you know what that means? A Well, I mean---

Q Will you answer my question? Do you know what it means? Yes or no? A Yes; I know that.

Q Now, isn't it a fact that, at the previous trial, at no time during the whole entire trial, you used the word "holler"? A (No answer).

MR. COLEMAN: Well, I will read your testimony for you, question for question, if it takes us a little longer. Now, I will give you your tes-

1667  
CASE # 495

timony right through:

"Q Now where do you live?"

THE COURT: No; you will not do anything of the kind. If you think that I am going to allow you to read to this jury the whole record of a case that you say took two days, I will not do it.

MR. COLEMAN: All right, all right.

BY MR. COLEMAN:

Q Now, do you remember testifying at the last trial, that you had met Ackert three different times?

A Yes; three different times.

Q Now, Katie, let us see if we can't get along nicely together, without any excitement. Where was the first time that you had met him? A The same place.

Q Corner of Hester and Elizabeth? A Yes, sir.

Q Do you know where the Bowery is? A Yes, sir; I know where the Bowery is.

Q You had been on the Bowery, at different times, before that time; hadn't you?

A No, sir.

Q Were you ever on the Bowery? A I was there once, long before. I passed the Bowery.

Q Now, I will try to treat you kindly. Let us see

if we can't get along. When was it? A About five months past.

Q When were you on the Bowery? Afternoon, morning or night? A I was in the afternoon.

Q How long was that before this affair took place?  
A What?

Q How long before Ackert was arrested? A It was about three months before that.

Q It was about three months before that? A Yes, sir.

Q Now, was it in the day time? A Yes, sir; in the day time.

Q Where were you working, that time? A I no work that time.

Q How long had you been working at 211 Sullivan street? Or, have I got the right number? A Yes, sir.

Q How long were you working there? A About seven months.

Q About seven months? A Yes, sir.

Q You mean, up to the time that you left there?

A Yes, sir.

Q Now, when you left--- when did you leave Newman & Levinson? A Oh, I can't remember when I left.

Q Well, how long was it before you met Ackert, the

last time that you left Newman's? A It was about three or four months.

Q Oh, you misunderstand me. I don't want to take advantage of you, Katie. You quit working at Newman's, didn't you, 211? A Yes, sir.

Q Now, when was that? A Well, I can't remember when it was.

Q Now, how long was that before Askett was arrested with you? A That was about four months.

Q Oh, no, no. You misunderstand my questions. I don't want to lead you astray, Katie.

MR. COLEMAN: Ask her this, Interpreter.

This affair took place on the 30th of December. How long was it before the 30th of December that she left Newman and Levinson, at 209 and 211 Sullivan street, where she was working?

(The question is repeated through the Official Interpreter).

A Some four months.

BY MR. COLEMAN:

Q Some four months? A Yes, sir.

MR. COLEMAN: Perhaps, I misunderstand. Did she say that she had left the work four months prior to that?

CASE # 495

1670

THE INTERPRETER: Yes, sir. She left the work at 211, four months prior to the 30th of December.

BY MR. COLEMAN:

Q Well, hadn't you worked at any time during the month of December? A Two or three times--- three times.

Q You worked three times in December? A Yes, sir.

Q What do you mean? Three days? A Yes, sir; three days.

Q Well, now, what part of the month of December, do you know, was that? A (No answer).

MR. COLEMAN: I will put it a little plainer.

BY MR. COLEMAN:

Q Was that after or before Christmas? A Before Christmas.

Q How long a time was it before Christmas that you worked for Newman & Levinson; is that the right name?

A Yes, sir.

Q How long was it before Christmas of last year? A Well I worked at that place about two years.

Q No. How long a time was it before Christmas of last year that you worked-- that you left Newman & Levinson? A I left Newman & Levinson, it was four months; and, after the four months, I work in another place, three

1971  
CASE # 495

days, and I left, and then I stayed home.

Q Didn't you work at Newman & Levinson's on the 22nd of December last? A No, sir.

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

Q Do you know a woman who works in Newman & Levinson's, named Nellie Woods, forewoman? A Forelady?

Q Nellie Woods? A Yes, sir.

Q Do you know her? A Yes, sir.

Q Was she your forewoman? A Yes, sir.

Q Now, while you were there, you had a book, hadn't you? A Yes, sir.

Q In which you kept track of the work that you did, didn't you? A Yes, sir.

Q And then, the last week you were there, you were put to work on a sewing machine; weren't you? A No; it wasn't the sewing machine.

Q Well, I mean the last week that you were there, were you put to work on any machine? A Yes.

Q What kind of a machine was it? A Well, it was a machine for making a box, of course. It wasn't a sewing machine.

Q Now, isn't it a fact that you left Newman & Levinson's, or that firm, at 209 and 211 Sullivan street, on the 22nd day of December, three days before last

1672  
CASE # 495

Christmas, and turned in your book to Nellie Woods?

A I got the book---

Q Answer yes or no. A No, sir; I got the book at home.

Q Now, when you left Newman & Levinson, why did you leave? A Because there was no work.

Q No work? A No.

Q Do you remember Mr. O'Scannon questioning you on the other trial? A Yes, sir.

Q Do you remember him putting these questions to you:

"Q Where did you work?" That is you. Do you remember that question? A Yes, sir.

Q And you answered "Sullivan street"?

A Yes, sir.

Q And then the next question,

"Do you know the name of the firm you worked for?"

Do you remember that question? A Yes, sir.

Q And you said: "Yes, sir".

Q And then the next question was: "What was the name of the firm?" A Newman & Levinson.

"Q And what business did you work at? A Paper boxes.

"Q Do you know the number where you worked? A Well, I know the number.

"Q What is the number? A 209 and 211.

1673

CASE # 495

"Q What street? A Sullivan street.

"Q How long did you work there? A One year and a half"

A Yes, sir.

Q Then he asked you:

"Now, on the 30th of December, 1904, were you working there? A No."

Do you remember that? A No, sir.

Q Did you say yes or no. A No.

Q Did you make such an answer as that?

"Now, on the 30th of December, 1904, were you working there, that day?" And did you answer: "No?"

Is that correct? A No.

Q You didn't make that answer? A I can't understand what you mean.

Q Oh, yes, you do.

THE COURT: I do not suppose she understands anything you have said. Apparently she does not. You are getting it all down, though. I do not think she understands you.

MR. COLEMAN: Oh, yes; she understands.

THE COURT: Well, you say she understands, but I do not think she does, and I do not think

the jury think so either. It is very apparent to me that she does not understand.

MR. COLEMAN: Now, I ask her this question, Interpreter--- I will repeat two of those questions before--- "What is the number? A 209 and 211." Do you remember making that answer?

(The Interpreter repeats the question).

THE WITNESS: Yes, sir.

BY MR. COLEMAN:

Q Then he asked, "What street? A Sullivan street." Is that correct? A Yes, sir.

Q Next question:

"How long did you work there? A One year and a half." Is that correct? A Yes, sir.

Q "Q Now, on the 30th day of December, 1904, were you working there, that day? A No." Is that correct?

A All right.

Q It is all right? A Yes, sir.

Q Now, the next question:

"When did you stop working for Newman & Levinson?"

Do you remember that question? A Yes, I remember.

Q "A Well, three days before this case came?"

A No; I had said I had worked another place for three

days.

THE COURT: Mr. Coleman, I think I can shorten this case a good deal, by saying now that I am not going to submit this case on the third count of the indictment, the abduction count, so that all the questions about screaming and hollering may be obviated. I am going to submit this case on the third count. So that the question will be: She being under the age of eighteen, and he not being her husband, did he take her into a room for the purpose of sexual intercourse?

MR. COLEMAN: Well, I will say in an undertone to your Honor what I wanted to continue the cross examination for. I don't like to say it in the presence of the jury.

THE COURT: Well, the People are going to try to show here, as I understand, that this defendant was in a sleeping room, with this party, this girl?

MR. O'CONNOR: Certainly, sir; that is just it.

MR. COLEMAN: And we won't deny that.

THE COURT: Then what was he in there for?

MR. COLEMAN: To get two dollars from her, that she took from him.

THE COURT: Well, that makes the case a simple one. If he went in there to get two dollars from her, and not for the purpose of sexual intercourse, that ends the case.

MR. COLEMAN: Well, but, if you will allow me, I will state what I want to show, in the presence of the District Attorney, and not in the hearing of the jury.

MR. O'CONNOR: No. I want it all out before the jury, everything.

THE COURT: No; tell what you have to say openly.

MR. COLEMAN: Well, I want to show that this witness has testified before differently from this trial, and I have already established that to some extent. And there is another matter that I want to show by the cross examination, but I don't want to say it out loud, because, if I do, it will put her on her guard, and put the District Attorney on his guard; and I want to follow up those questions to form the basis of contradiction by other witnesses.

THE COURT: Well, then, your theory is that he took her into this room, but he took her into the room to get two dollars?

1977  
CASE # 495

MR. COLEMAN: No, sir; he never took her into the room. That we deny in toto. That was explained, in the last trial, very thoroughly.

THE COURT: Well, they were in the room?

MR. COLEMAN: Oh, yes, we don't deny it.

THE COURT: And he went in there to get two dollars, you claim?

MR. COLEMAN: Yes, sir.

THE COURT: And then, if the jury, believe that, they will acquit your client. That is not a crime. If the jury come to the conclusion that this girl was in that room with him, and that your client went in to get two dollars, and for that sole purpose, that ends the case. There is no abduction about that. It is must be for an improper and immoral purpose.

MR. COLEMAN: Yes, sir. If he went in there for that purpose, for an immoral purpose.

THE COURT: Yes. And I am going to take the rape part of it out of the case, and submit it on the abduction. Did he take her in there, first, and did he take her for the purpose of having sexual intercourse with her, she not being his wife, and she being under the age of eighteen years? If he did,

1670  
CASE # 495

then the crime of abduction is made out.

MR. COLEMAN: I concede that.

THE COURT: Then, see how simple the case is. Let us get down to the case.

MR. COLEMAN: Then I will ask just a few more questions, and stop. I will cut it very short. I will adopt your Honor's suggestion.

BY MR. COLEMAN:

Q Did I understand you to say that the defendant, Ackert, and Capparelli---

MR. COLEMAN: Will your Honor be kind enough to direct Capparelli to come here, so that we can see the man?

THE COURT: Yes. Bring up Capparelli.

BY MR. COLEMAN:

Q Is this Capparelli (indicating)?

A Yes, sir.

Q Now, do you want this jury to understand--- question withdrawn. Is that the same coat that you have on now that you had on then?

A Yes, sir.

Q But it isn't the same dress that you had on then?

CASE # 495

A Yes, sir.

Q But it isn't the same dress that you had on then?

A Yes; it is the same dress.

Q The same dress?

A Yes, sir.

Q Now, stand up, please, Katie, will you?

Now, turn around. Now, sit down. Now, that coat wasn't torn, was it?

A No, sir.

Q You had that coat on at the time you were carried up the stairs?

A Yes, sir.

Q And that is the same identical coat?

A Yes, sir.

Q And is that the same identical dress that you had on then? A Yes, sir. No, that is different, that part (indicating the waist).

Q You mean the upper part; you mean that part (indicating the waist?) A Yes, sir.

Q Now, is this the same dress that you had on? A No, sir.

Q It was a blue dress? A No, sir; it was this dress that I got on now.

Q This skirt (indicating)? A Yes, sir.

Q Pardon me for touching you; will you? Is that the same cloth that was in it then? A Yes, sir.

Q The same cloth? A Yes, sir.

Q And that is the same skirt, then? A Yes, sir.

Q Now neither your dress nor your coat was torn; were they? A My coat wasn't torn.

Q And your dress wasn't torn? A No, sir.

Q Now, Katie, do you want the jury to understand that a man of his size and strength (Indicating Capparelli)-- hold up your right hand, Ackert-- and a man of his size and strength (Indicating the defendant) could take you by the lapels of the coat, and lift you off both feet, and take you up two flights of stairs, and carry you upstairs?

A Yes, sir.

Q Without tearing your coat? A Yes, sir; and a strong coat can't be tore that way.

Q Well, it was a second hand coat, when you bought it; wasn't it? A Well, it was new. It can't be torn.

1697  
CASE # 495

Q How long had you had that coat? A It was two months before this case was.

Q Was it a new coat, or a second hand, when you bought it? A It was a new coat.

Q Do you understand my question? It was quite common material; wasn't it? A Well, yes; it is good material.

Q Well, one of them got hold you this way (illustrating), and the other, this way; both of them with each hand?

A Yes, sir.

Q And lifted you up this way (illustrating), and carried you upstairs? A No. By my arm and my coat, this way (illustrating).

Q Now, pardon me. Sit down, Katie. And you testified, at the last trial, that it was by the lapel of your coat that they took you up, didn't you? A Yes, sir; this way (illustrating).

Q And they lifted you right up off your feet? A Yes, sir.

Q And carried you up two pair of stairs? A Yes, sir.

Q Two flights of stairs? A Yes, sir.

Q All the way up? A Yes, sir.

Q Now do you remember testifying, the last time, when I cross examined you, that they only carried you one flight of stairs up, and dragged you up the second flight; do you

remember that? A The first--

Q Now answer yes or no; won't you, Katie? Do you remember correcting me, or correcting the District Attorney--

I forget which-- and saying, "No. They carried me up one flight of stairs"? A Well--

Q No. Hold on. Don't you remember testifying that you stated, in correcting the evidence, "They carried me up one flight of stairs, and dragged me up the other flight of stairs"? A Yes, sir.

Q And now you say that they carried you up two flights of stairs? A One flight, they grabbed me by the coat, and carried me upstairs; and Capparelli didn't carry me up one flight.

Q And what about the second flight? A Him walk up.

Q Him walk up? A Yes, sir.

Q Now, one moment. Now, where do you live? A I live 206 Thompson Street.

Q Between what streets is 206? A Between Bleecker Street.

Q Bleecker Street and what street? Third Street; isn't it? Am I right about that? A Yes, sir.

Q And you live there with your father and mother; don't you? A Yes, sir.

Q Now have you talked with any person about this case,

CASE # 495

since the last trial? A No, sir.

Q Did anybody speak to you about it? A Yes; somebody speak to me.

Q Who was that somebody? A Well, now, nobody. Somebody just ask me--

Q Now, were you in the District Attorney's Office, since the last trial? A No, sir.

Q To talk with anybody there? A No, sir.

Q Have you been down here, since the last trial?

A No, sir.

Q Did anybody go to your place, since the last trial, and have a conversation with you? A No, sir.

Q About this case? A No, sir.

Q Did anybody say anything about the last testimony?

A No, sir.

Q Well, then, how do you account for the fact that you didn't testify, the last trial, that you hollered, but you testify in this case that you hollered? How do you account for that fact? A I didn't say I holler. When I start to holler--

Q Never mind. You understand me? How do you account for the fact-- A No; I don't understand.

Q Well, why did you say, at the last trial-- why didn't

CASE # 495

1687

MISSING PAGES  
39 - end

38

you testify, at the last trial that you hollered and screamed, and at this trial you testify that you hollered and screamed, or attempted to scream?

MR. O'CONNOR: I object to that. There is no such testimony here. It is immaterial, anyway.

THE COURT: She has already answered it.

A I said, "Let me alone", and that is what I mean by screaming.

BY MR. COLEMAN:

Q That is what you mean? A Yes, sir.

Q Now you say that Capparelli put \$2 in your pocket?

A Yes, sir.

Q And what pocket was that money in? A It was in this side pocket (indicating right outside pocket of the coat).

Q But Capparelli had nothing to do with you? A No, sir.

Q You had the drinks downstairs, you say? A I don't drink nothing.

Q That is correct. You didn't drink anything? A No, sir.

Q Ackert had a whiskey? A Yes, sir.

Q Now these two flights of stairs that we speak of are pretty steep stairs, or deep stairs? Perhaps you understand that better? A Yes, sir.

CASE # 495