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CASE 620

Court of General Sessions of the Peace,
City and County of New York,
Part II.

THE PEOPLE OF THE STATE OF :
NEW YORK

vs.

RAYMOND LOPEZ.

Before
: Hon. Thomas C. T. Crain, J.,
: and a Jury.

New York, January 16th, etc.,
1907.

Indicted for Attempted Burglary in the third degree;
Indictment filed January 11th, 1907.

Appearances:

For the People: Assistant District Attorney Keyran J.
O'Connor.

For the Defendant: Carl Fischer-Hansen, Esq..

James E. Lynch,
Official Stenographer.

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A jury was duly impaneled and sworn.

GEORGE MURKEN, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Now, Mr. Murken, you are in business at 2668 Eighth Avenue, are you? A Yes.

Q And you occupy part of that building? A Yes sir.

Q It is a five-story building? A Yes.

Q What part of the building do you occupy? A The store

Q Store and cellar? A Store and cellar, yes sir.

Q And occupy it for a grocery business? A Yes.

Q And you are in the grocery business? A Yes.

Q How long have you been occupying this place? A Four years.

Q On the 2nd day of January, 1907, was this place securely locked and fastened? A Yes sir.

Q What time did you leave there? A About six o'clock.

Q And you closed the business yourself, did you, with your men? A Well, I went upstairs at that time.

Q What time did you come downstairs? A Well, when the clerk, the man came up and told me about it--.

MR. FISCHER-HANSEN: Objected to.

THE COURT: Strike that out.

Q No; he came up and spoke to you, did he?

Objected to.

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Q What did you do then? A I went up for supper then.

Q But you said your clerk came up and spoke to you?

A I was up for supper, and they told me that they robbed-----.

THE COURT: Strike out "They told me that they robbed".

Q No; never mind what they told you. You say you went upstairs from your store; now, what did you do? A I was in the store all day.

Q What time was this store closed? A Nine o'clock.

Q Nine o'clock at night? A Yes sir.

Q Now, you are up in the house? A Yes.

Q Is that on the 2nd day of January, 1907? A Yes.

Q Now, when did you return to your store? A Well, when they told me about it, that I had to come down-----.

Objected to.

THE COURT: Strike that out.

Q What hour did they speak to you? A A little after six o'clock.

Q Six o'clock at night? A Yes.

Q Well, how could you go upstairs at nine o'clock at night, and they come and speak to you about it at six o'clock at night? Do you understand me? A Yes sir.

Q Now, let us see; what time did the business close up?

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A Nine o'clock.

Q What time did you leave the place of business?

A I leave at nine o'clock.

Q Well now, we have you leaving at nine, and the business closing at nine? A Yes.

Q Were the doors closed and locked at nine o'clock?

A Yes.

Q Is there a cellar to the business? A Yes.

Q Was that cellar door locked? A Yes sir.

Q You left the place of business and went upstairs?

A Yes, but this was before nine o'clock.

Q This was before nine o'clock at night?

MR. FISCHER-HANSEN: Now, I ask the Court to direct that this witness answer questions himself

THE COURT: Well, it will shorten the matter a little if there are a few leading questions. It does you no harm. When we get down to the crucial point, then the witness cannot be led.

Q Was there a door leading to the cellar? A Yes.

Q Was that door locked? A Yes.

Q When was that locked? A Five o'clock in the afternoon.

Q Who locked it; you? A I went down myself.

Q Where does that door lead to? A It leads to the

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side street.

Q And you ^{go} down steps to get to this door? A Into the cellar, yes.

Q What was in this cellar? A Groceries.

Q What was it locked with? A With a regular strong lock.

Q Now, that was at five o'clock; now, at six o'clock, your clerk came and saw you, did he? A No, at six o'clock I went upstairs.

Q When did your clerk come to see you? A I was about five minutes upstairs.

Q Then he came and spoke to you? A Then he came up and called me down.

Q Then what did you do? A Then I came down.

Q What did you do then, when you came downstairs?

A Then I seen this other man, Mr. Merkt; he had hold of the defendant.

Q And what did the defendant have; anything? A He didn't have anything then.

BY THE COURT:

Q Where was the defendant then? A He just took him up to the house, to his house.

BY MR. O'CONNOR:

Q To whose house? A To Mr. Merkt's house.

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Q Did you go down and look at the door that led to the cellar? A Yes.

Q What did you find there? A The lock was almost open; the staple was almost off.

BY THE COURT:

Q Is that the way it was when you left it that evening?

A It was locked, the cellar, when I was down there.

Q Was the staple in? A The staple was in.

CROSS EXAMINATION BY MR. FISCHER-HANSEN:

Q What time did you last see that door; that is, prior to nine o'clock? A About five o'clock, I was down there.

Q At five o'clock you were there? A Yes.

Q Were you the last person to see that door; that is, were you there; did you lock the door personally? A I locked it personally.

Q Do you lock it every night personally? A No; not every night.

Q How many employes have you? A I have three.

Q And your business is on the ground floor, is it not? A Yes.

Q You occupy the ground floor? A The ground floor and basement.

Q And you have this cellar, and the entrance to this

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cellar is on the side street? A Yes sir.

Q How often during the day, do you personally go down to that cellar? A Well, personally sometimes I go down and sometimes I don't.

Q And do you think that during the entire week you go down to that cellar perhaps four times? A Yes.

Q Do you suppose you go down fifteen times? A Yes.

Q How often a day do you suppose, as an average, do you go down there; that is, when you do go? A Sometimes I go down twice; sometimes three times.

Q And sometimes not at all? A No.

Q And whose duty is it to lock this cellar door every night? A Well, there is one of the employes.

Q What is his name? A Henry Meyer.

Q And it is his duty to lock this door every night?

A And there is John Gilligan, is his name.

Q Meyer and Gilligan; it is their duty to lock the door, or see it is locked? A Yes.

Q And do you remember how often you have personally locked that door during the last month? A That I could not say.

Q Have you, as a matter of fact, ever locked that door in the evening at five o'clock? A Yes sir.

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Q Can you tell us just once that you went down and locked that door yourself? A I couldn't say what day.

Q Can you tell us within the last month just one occasion on which you went down and locked this cellar door yourself at five o'clock in the afternoon?

THE COURT: Or any time in the afternoon.

A I couldn't say for sure.

BY THE COURT:

Q Well, are you sure you locked it yourself on this particular day? A Yes sir.

Q That you remember? A Yes sir.

BY MR. FISCHER-HANSEN:

Q What makes you so sure that on this particular day you went down and locked the door yourself, when Meyer and that other boy used to do it? A I went down for some stuff.

Q But do you know whether anybody went down after you or not? A That I couldn't say.

Q That you could not tell, could you? A No.

Q And can you tell the Court and jury at about what time you went down to that cellar yourself, on this particular day? A Five o'clock.

Q How do you know it was five o'clock? A Well, around five o'clock.

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Q And your store closes at what time? A Nine.

Q So that you have occasion to go down that cellar a good many times, between five and nine o'clock, every day, or your employes, I mean? A Yes.

Q That door is not locked for good at five o'clock, is it? A Well, we have always the key upstairs.

Q I ask you now, that door is no more locked at five than it is at six, or at two in the afternoon, or at ten o'clock in the morning, is it? A No.

Q It is not finally locked up at five o'clock, is it? You have occasion to go down in that cellar all day, between seven in the morning and nine at night, haven't you? A Yes.

Q And if a customer comes into your store between five and nine, and wants some stuff in the cellar, you go down and get it, don't you? A Yes.

BY THE COURT:

Q How many keys are there to that lock? A I have one key.

Q Where do you keep it? A In a desk upstairs, in the store.

Q That is the key that you lock it with? A Yes sir.

BY MR. FISCHER-HANSEN:

Q Now, when you last went to the cellar on this part-

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icular afternoon at around five o'clock, where did you go after having left the cellar? A I went in the store again.

Q And how long did you stay in the store? A Until around six o'clock, when I went upstairs.

Q Oh, then you went upstairs; you live over the store?
A Over the store.

Q Now, are the clerks, Meyer and the other clerk, are they in the habit of telling you every time they have been down in the cellar? A Well, not every time, no.

Q So you do not know whether on this particular day they were in the cellar after you had been there at five o'clock, do you? A That I don't know.

Q That you do not know? A No.

Q Now, you did not see this boy try to break in or enter your cellar, did you? A No sir.

Q You do not know anything about his having tried to enter your cellar, do you, except what you have heard?
A Yes.

Q That is all you know? A That's all I know.

BY THE COURT:

Q How near was this defendant to that cellar, when you saw him that night, when you came down from your apartment where you lived? How near the cellar was that boy, the

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defendant? Well, Mr. Merkt took him up to his house; that is about three or four doors.

Q No; where was he when you saw him? A He was in 292.

Q 292, what? A 142nd Street.

Q 292 West 142nd Street? A Yes sir.

Q How far is that from the cellar? A That is about three or four houses from our cellar.

Q Upstairs, in that house? A No sir; on the first floor, I think it is.

BY MR. FISCHER-HANSEN:

Q Do you know this boy (indicating the defendant)?

A No sir.

Q You have never seen him before? A No sir.

Q And all you know about his having been in your cellar is what you have been told; that is all? A That's all.

T H E O D O R E M E R K T, JR., being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live? A 292 West 142nd Street.

Q What is your business? A Real estate.

Q In business for yourself there? A Yes.

Q On the 2nd day of January, 1907, Mr. Merkt, did you

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see this defendant Raymond Lopez? A Yes.

Q Where? A Caught him on coming out of the basement, after he had broken in the door.

Objected to.

THE COURT: Strike that out: "After he had broken in the door".

Q No; you saw him coming out of the basement? A Yes.

Q What basement? A The basement of this corner house, 142nd Street and Eighth Avenue.

Q Is that the basement which is part of the grocery place of business occupied by Mr. Murken? A Yes sir.

Q Now, how many steps from the sidewalk are there, leading down to the door? A I should say, about twelve or fifteen.

Q What kind of door is it? A It is a plain, wooden door, with a hasp and staple.

Q Now, you say you saw this defendant coming out of the basement? A Yes sir.

BY THE COURT:

Q Was he on the steps? A He was on the steps.

BY MR. O'CONNOR:

Q And did you say anything to the defendant? A As soon as I saw him, I says "I got you this trip all right".

Q And what did he say to you? A Nothing whatever.

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Q Then what did you do? A I held him, and I brought him up as far as the house, and wanted to find out whether any people knew him there, because my cellars had been broken into, and I wanted to see if they could identify him.

Q Never mind that.

THE COURT: Strike that out.

Q Did you look at this door down there? A I did, afterwards, after the policeman had come.

Q Well, did you see anything in regard to the door?

A Well, we noticed the staple a little loose, but it was not open.

Q Did you see the defendant doing anything with the door? A Well, I see him and the other man down in the cellar, yes, at the door.

MR. FISCHER-HANSEN: I object to "We saw him and the other fellow before". He said nothing about the other fellow before.

THE COURT: Well, he has a right to say it now.

A (Continuing) I saw him and his friend.

Q Where were they? A They were both down in the cellar.

BY THE COURT:

Q Were they in the cellar? A They were in the area-

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way. You see, this is one of those corner houses with an areaway, and they were at this door in the areaway, and they were down in the cellar.

BY MR. O'CONNOR:

Q What were they doing at that door? A (No answer).

THE COURT: We will adjourn here, Mr. O'Connor.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until 10:30 o'clock A. M. on Thursday, January 17th, 1907.

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New York, January 17th, 1907.

TRIAL RESUMED.

THEODORE MERKT, JR., witness called on behalf of the People, resumes the witness stand:

DIRECT EXAMINATION CONTINUED BY MR. O'CONNOR:

Q The last question put to you last night was, what were they doing at the door? A They were trying to force it open.

Q No; just tell what they were doing?

THE COURT: Strike the last answer out.

Q What were they doing? A They were both standing at the door.

Q Now, tell us what you saw the defendant and this other man doing? A Well, I see two of them enter this here areaway and walk right up to the door, in the basement.

BY MR. FISCHER-HANSEN:

Q You did what? A These two people went in the cellar.

BY MR. O'CONNOR:

Q You mean the defendant and another man? A Yes; they walked into the cellar and got up against this here door.

Q That was leading to the cellar? A That was in the

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cellar.

Q All right? A And they went against this door here, and tried to force it open.

THE COURT: Strike out "Tried to force it open".

Q No; what did they do? How did they do it? What did they have, if anything? A Well, they had an angle iron; we seen an angle iron, after it was dropped down.

Q Well, did you see anything in the other man's or the defendant's hand? A No; I couldn't see anything, because it was dark.

Q Did you see the defendant doing anything against this door? A Well, yes; they were against this door, but I couldn't see what they were exactly doing, you know; it was dark down there.

BY THE COURT:

Q How far away from you were they when you saw them?

A Well, I should judge about ten feet.

Q You were on the sidewalk? A On the sidewalk.

Q They were below the sidewalk? A They were below the sidewalk.

Q About how many feet below? A Well, about five feet below me; he is about five foot tall, I guess.

BY MR. O'CONNOR:

Q What did you do then? A As soon as they seen me,

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one of them must have seen me.

Objected to.

THE COURT: Strike out "One of them must have seen me".

THE WITNESS: Well, they must have seen me.

THE COURT: Strike that out.

Q What did you do when you saw this defendant there, and the other man, near or against the door in the basement?

A I was looking down, watching them.

Q Did you say anything? A Nothing whatever.

Q Then did this defendant and the other man walk out of the basement? A They ran out of the basement.

Q Did they run? A They ran.

Q You had not made any exclamation or cried out, or anything? A Nothing whatever.

Q Now, this defendant and the other man ~~ran~~ ran out of the basement? A Yes.

Q What did you do? A I grabbed hold of this fellow.

Q What did you say to him-- you mean the defendant?

A Yes. I said "I got you with the goods".

Q What did the defendant say? A Nothing whatever.

Q Did he offer any resistance? A Nothing whatever.

Q He went along with you, and went to your house? A

Yes.

Q And remained there until the policeman came? A Yes.

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Q And did you make a charge against him in the presence of the policeman? A I did.

Q What did the defendant say, in the presence of the policeman? A The policeman asked me whether I seen him at the door.

Objected to.

MR. O'CONNOR: It was in the presence of the defendant.

BY THE COURT:

Q What did the policeman say? The defendant was present, was he? A Yes sir.

BY MR. O'CONNOR:

Q What did the policeman say? A The policeman asked me if I seen him at the door, and I said yes, and the defendant said I lied.

Q What else did the defendant say to the police officer, if anything, in your presence, when you made the accusation against him? A Nothing whatever.

BY THE COURT:

Q Now, did you see them in the cellar, or were they outside of the cellar when you saw them? A I saw them in the cellar.

Q Inside of the cellar? A In the areaway, not in the cellar.

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Q They were not in the building when you saw them; they were on the outside of the door? A On the outside of the door.

Q And when you say that you saw them coming out of the cellar, you mean out of the area? A Yes, they came up the stairway leading from the area.

CROSS EXAMINATION BY MR. FISCHER-HANSEN:

Q So that your attention was attracted to them by seeing them walk out of the cellar? A No; my attention was attracted in a different manner. I came home this evening, and I see this defendant with two more in front of my house there, and I thought they looked kind of suspicious, and I was watching them, and I see these two, this defendant and his friend, go into the basement, and the third man stay on watch, when I walked up to the basement and watched them.

BY THE COURT:

Q When you say going to the basement, you mean going down into the areaway? A Yes sir.

BY MR. FISCHER-HANSEN:

Q Now, is there anything in your testimony of yesterday that you would like to change? A No, nothing whatever.

Q Nothing at all; you want it to stand just as you gave it yesterday? A Yes; just as I gave it yesterday.

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Q Now, is there anything in your testimony to-day you want changed? A No, nothing whatever.

Q You want that to stand exactly as you have given it?

A Yes.

Q So that if you said yesterday that the first time you saw the defendant coming out of the basement, was that true or wasn't it? When you said yesterday that the first time you saw this defendant was when he came out of the basement; is that true or not? A Excuse me, but that question was put to me in a different manner.

THE COURT: Counsel, you have the minutes; read him the question you refer to.

MR. O'CONNOR: What page?

MR. FISCHER-HANSEN: Page 12 --- page 11, the last question.

Q You were asked, "on the 2nd day of January, 1907, Mr. Merkt, did you see this defendant Raymond Lopez?" and you said "Yes". You were asked "Where?" and you said "Caught him on coming out of the basement", didn't you?

A Yes.

Q So you were then asked, "Now, you saw him coming out of the basement?" A Yes.

Q And you said "Yes"? A Yes.

Q And then you were asked later on, "Now you say you

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"saw this defendant coming out of the basement?" "Yes sir!"

"Was he on the steps?" "He was on the steps"?

A Yes.

Q Now, how do you reconcile that with your statement now, that you saw him trying to break in the door?

A Well, I was watching these men at the beginning, right as soon as I thought they were suspicious characters, I was watching them,---

Q Now, I ask you again if this is true ---?

THE COURT: Let the witness finish his answer; then if you consider that is not responsive, you can address the Court.

A (Continuing) I see these three men acting kind of suspiciously, standing in front of my place. My place had been broken into and it made me act a little suspicious and watch these people. My place had been broken in two weeks previous; more than three or four cellars had been broken in, and I thought these young fellows looked kind of funny, and I was watching them.

Q Now, let me ask you what you mean by "These three fellows looked kind of funny"? A Looked kind of suspicious.

Q Why? How? A Well, at that hour of the evening, standing where they don't belong.

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Q How do you know where they belong; do you know everybody in that neighborhood? A I certainly do.

Q You know everybody? A I pretty near know everybody.

Q Are you a police officer in that neighborhood?
A No sir.

Q How long have you lived in that neighborhood?
A I have lived in that neighborhood four years, and been going there seven years.

Q And you know everybody in that neighborhood?
A Not exactly everybody, but pretty nearly everybody.

Q Are there any tenement houses in that neighborhood?
A Yes.

Q About how many tenement houses are there in that neighborhood, we will say within a circle of say half a mile; if you know everybody and everything? A You wouldn't call half a mile away from that the same neighborhood.

Q Well, you mean to say that particular neighborhood is limited to people living there, and that nobody else is permitted to step inside those boundary lines?
A No.

Q So in other words, you would suspect anybody you would see there who did not happen to be acquainted with you, because you lived there four years? A No,

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I wouldn't.

Q Well, why did you suspect this boy? A Because I seen him with two other boys that didn't look right, and he didn't look right.

Q What do you mean, he didn't look right? A He looked rather suspicious.

Q Do you think you look right? A I think so; I hope so.

Q Well, other people may differ from you? A Well, they might.

Q In what respect does he not look right? A Well, I don't know.

Q Well, you ought to know? A I said him and them acted kind of suspicious.

Q Will you tell the jury just what you mean by his looking suspicious? A Well, those three men were standing in front of this house here, and it was about half-past six in the evening.

Q Now, you want to change it again?

THE COURT: Counsel, let the witness finish his answer; then you can ask him another question.

A (Continuing) I was going along the street, and see these three fellows in front of my property there, and I know they had no business there, and my cellar had been

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broken into. That would make anybody suspicious. I watched those three fellows; I went in a doorway, , and the man on watch walked down the street, and these two people entered the basement. I walked after them; the man on watch couldn't whistle fast enough to give these fellows the tip, and---

MR. FISCHER-HANSEN: I object to what that man could not do.

THE COURT: Well, I think you have yourself given this witness great latitude, by the form of your question. I would not have allowed the witness to testify in this way but for your question, but when you asked the witness what he observed and so on, that people were acting in a suspicious way, you called for the opinion of the witness, and if you get an answer that is fairly responsive to your question, it seems to me you are in no situation to legally object.

MR. FISCHER-HANSEN: But, may it please the Court, while I am perfectly willing to have this witness testify to what he saw, I am certainly not willing to have him testify to what he did not see, and what he imagined, that a man could not whistle fast enough.

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THE COURT: Well, you did not ask him that. You asked him for his process of reasoning, by which he reached the conclusion that this man was a suspicious character and looked suspicious. In other words, you asked for this man's mental operation, and now he is giving it to you.

MR. FISCHER-HANSEN: Then your Honor permits the answer to stand?

THE COURT: Yes, I permit the answer to stand. Exception.

THE COURT: Now, I think he has fully answered.
BY MR. FISCHER-HANSEN:

Q Will you please tell us now, when you first saw these men, whether, as you said before, when they came up from the basement, or whether as you say now, when they went down into the basement? A I see these three men in front of my house first.

Q I am now asking you about this particular man here, and nobody else? A That man, I saw standing in front of my house.

THE COURT: And by "this man", Counsel, you mean the defendant?

MR. FISCHER-HANSEN: I mean the defendant.

Q I want you to tell the jury when you first saw the

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defendant, and where? A I saw him in front of my house.

Q Where is your house? A 292 West 142nd.

BY THE COURT:

Q Now, when your eye first rested upon the defendant, the defendant was in front of your house, is that so?

A Yes sir.

BY MR. FISCHER-HANSEN:

Q Go on; you saw him in front of your house? A Yes.

Q Where were you when you saw him in front of your house? A Going into my house.

Q About what time was this? A About six-twenty, probably a little later. I could not state exactly the time.

Q At that time, was it dark or light? A It was dark.

Q Now, just tell the jury what you saw after having observed this defendant standing in front of your house?

A Well, I stood watching him. He entered the basement.

Q He entered what basement? A The basement of these here premises that he was supposed to enter.

Q Where is that? A At the corner of 142nd Street and Eighth Avenue; number 2616, isn't it?

Q About how many doors from your house? A Only about, the entrance to that basement is about fifty feet away.

Q From your house? A Yes sir.

Q What did you do when you saw him walking towards the other house? A I walked right after them.

Q Just tell what you did? A I walked right up after them, and thought I would watch it a bit.

Q Just tell what you did, and not what you thought?

A I walked up to the basement, and watched them.

THE COURT: We will strike out "I thought I would watch them a bit".

Q How far up to the basement did you go? A Did I go?

Q Yes. A Right in front of the basement.

Q And what did you do then; what did you see? A I was trying to see as much as I could see.

Q Tell us what you did see? (No answer).

BY THE COURT:

Q Now, you looked at the basement steps? A Yes.

Q You saw something; what was it? A I saw these two men at the door; this defendant and, I don't know what scared him.

THE COURT: Strike out "I don't know what scared him".

BY MR. FISCHER-HANSEN:

Q I ask you what you do know, not what you don't know?

A I see him against the door.

Q Who is "him"? A The defendant.

Q You saw him do what? (No answer).

BY THE COURT:

Q Was he standing? A Yes sir.

Q He was standing up against the door? A Yes sir.

Q On the outside of the basement door? A Yes sir.

Q And was the door opened or closed? A The door was not opened; the staple was forced.

THE COURT: Strike out "The staple was forced".

BY MR. FISCHER-HANSEN:

Q I ask you to tell us what you saw him do; that is all I ask you to say? A Well, I couldn't exactly see---

Q I don't care what you could not see; I want you to tell us what you did see? A Well, I saw him in the basement.

Q Well, we have heard that, and you saw him standing against the door; we have heard that? A Yes.

Q Now, what else did you see? A Then I heard some crack, and a drop; now, it was dark there, and I could not see any further.

Q Did you look for what dropped? A I didn't look im-

mediately, no. After he came up, we did, yes.

Q And you saw him simply standing against the door?

A Yes.

Q Now, just show us how he stood? A He would stand like an ordinary man would up against a door, trying to force it.

BY THE COURT:

Q You mean to say he was pressing against the door?

A Why-----.

Q Pressing his body against the door? A Judge, excuse me; it was dark down there, and you couldn't see all of it. I didn't really see this man put this thing in that door, because it was dark there. There was no light there, and I couldn't see down six or seven feet.

BY MR. FISCHER-HANSEN:

Q So in other words, you did not see him doing anything? A No, only probably trying to force the door.

THE COURT: Strike that out, except "No".

Q I say, you did not see him doing anything, did you?

THE COURT: I think, Counsel, you have all from

this witness on that subject that you can get.

Q How long have you known the owner of that grocery store? A Oh, about two years, I guess.

Q You and he are well acquainted, are you? A No.

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Q You are not? A No.

Q You are not -- you are in the real estate business, are you not? A Yes.

Q Is he a client of yours? A No.

Q What did you do after you had -- where did you catch the boy? A Caught him coming out of the basement, right at the top of the stairs.

Q Right at the top of the stairs? A Yes.

Q What became of the other two boys? A The other boy ran away. I couldn't grab him. There are two entrances to the cellar, and he came up the way he went down.

Q He did (indicating the defendant)? A Yes.

Q And he did not come up with the other boy? A He did come up with the other boy, but the other boy got away.

Q Do not be so talkative. I asked you, did this boy come up alone, or in company with the other two?

A He come up with the other boy; not with the other two; there was only one more went down.

Q And you suspected, didn't you, that something was wrong? A Yes.

Q What did you do with the boy that was standing outside, watching? A He ran.

Q When did he run? A As soon as he seen me, he ran

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across Eighth Avenue; he knew I was watching him.

Q Oh, he did know that? A Oh, I guess he got wise to me as soon as he seen me come out of the house again.

Q Well, I should think he would. That is all you know about it? A That's all I know about it.

BY THE COURT:

Q Do you know whether this defendant works for the grocery? A For the grocery?

Q Mr. Murken? A Mr. Murken is manager----.

Q I say, do you know whether this defendant was in the employ of Murken or not? A No, I don't; I heard he wasn't.

THE COURT: Strike out "I heard he wasn't".

G E O R G E H. MARXHAUSEN, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

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

Q Attached to what precinct? A The 31st.

Q Now, Officer, did you arrest this defendant in the house of Mr. Merkt? A I arrested him at the top of the steps, leading down to the areaway.

Q And you did not arrest him up in Merkt's house?
A No.

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Q Well, you heard the witness say he had him up in the house? A Well, we took him up to the house for identification, for the woman-----.

Q Now, I understood this witness to swear he took this man up in his house, and that he was up in that house, he held him there and you came up there. Now, which is right? A I got him at the head of the stairs.

Q The head of the stairs? A The areaway; at the top of the areaway, on the corner house there. We took him down to 292, I believe the number is, for identification purposes, because this man down there claimed he had been robbed about two weeks before.

Q That is, Merkt did? A Yes.

Q What was the boy doing at the top of the stairs?

A This Mr. Merkt had grabbed hold of him, and I was there at the time to make the arrest.

Q What did the defendant say? A He pleaded as if he hadn't done anything in the matter at all.

Q No; what did he say; not what he pleaded; what did he say? A He denied everything.

Q No, no; wait, Officer. This man Merkt had hold of him, as you say, at the head of the stairs; what did Merkt say and what did the defendant say? A I asked Mr. Merkt if he had seen the defendant downstairs. He said

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yes, he had seen him in the act of forcing the door, and also said he saw him drop this angle iron (indicating), with which he was trying to force the door.

Q Saw him drop it? A Yes.

BY THE COURT:

Q What did the defendant say to you? A The prisoner denied it.

BY MR. O'CONNOR:

Q What did he say? A He said he wasn't down there at all. Then I asked him again what he was doing down there, and he said he was looking for a job. Then later I asked him again what he was doing down there, and he said somebody dropped his hat down there and he went down after it.

CROSS EXAMINATION BY MR. FISCHER-HANSEN:

Q Where were you at the time this defendant was standing with this witness Merkt? A I was patrolling my post, east on 142nd Street. I was just coming across the avenue at the time.

Q And what attracted your attention to this young man and the former witness? A Somebody called me, and I saw a crowd gathering around there.

Q Who called you? A I don't know. I suppose Mr. Merkt; there was excitement there at the time.

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Q All right, if you don't know; and when you got there, you say there was quite a crowd? A Well, there was about ten or twelve people there at the time.

Q And who made the complaint against this boy to you?
A Mr. Merkt had him, and I asked him if he was the owner of the store, and he told me no, and we called Mr. Murken down, the owner of the store, who had been up to supper at the time.

BY THE COURT:

Q Where were they standing, on the sidewalk? A The defendant?

Q Yes; the defendant and Mr. Merkt? A Yes sir, at the top of the stairs.

Q On the sidewalk? A Yes sir.

Q Their feet were on the sidewalk? A Yes sir.

BY MR. FISCHER-HANSEN:

Q How far from the basement door entrance were they standing? A Well, right at the top of the stairs; right at the top or entrance.

Q You of course did not see him downstairs, did you?
A No, I did not.

Q Did you hear him deny -- when did you have this talk with him in which he said he went down for his hat?

A Between the time I arrested him and the time before I got him to the station house, on the way down.

Q And was this Mr. Merkt with you then? A Yes; I had the complainant come down to the station house.

Q I mean this witness who just testified? A Yes; I had the two people come down to the station house.

Q He was with you? A Yes.

Q You heard him testify, didn't you, that this boy denied having been there? A Yes sir.

Q And yet you said you had this conversation in his presence with the defendant? A I had a conversation with the boy going down to the station house; that was at the top of the stairs, between the time I placed him under arrest and the time I got him down to the station house.

Q And he said to you he had gone there for a hat?

A He gave me two different stories.

Q I don't care for your conclusion; I ask what he said?

A First he said he was looking for a job; later on, he told me somebody had thrown his hat down there.

Q Did he say he was looking for a job down there in that basement? A Yes sir.

Q You are sure of that? A Yes.

Q How did he say it? A I asked him what he was doing there. He said he was looking for a job there, and

then previous to that he had denied being down there. So he made three different statements.

Q Well, we will come to that. Just you tell us what he said, and we will account for it ourselves. Do not be so overanxious. A I am not overanxious.

Q You are sure it was three different statements he made? A Three.

Q Give us all three again? A First, when I arrested him, he denied having been down there.

Q What did he say? A I asked him what he was doing down there. He said "I wasn't down there". Then the next time I asked him what was he doing there. He said he was looking for a job. Then the third time when I asked him, when I got him near the station house, he told me somebody had thrown his hat down in the areaway, and he went down after it.

Q And those are the three different statements that he made? A Yes.

Q When you took him to the station house, did you search him? A Yes.

Q What did you find on him? A Found three pawntickets, and I found some kind of a nail-----.

Q Have you those pawntickets here? A No sir; he has got them in his possession.

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Q Three pawntickets, and what else? A Some kind of-- where you hammer nails down into the wood; whatever you call that I don't know.

Q You do not know what it was? A No; some kind of a tool.

Q You know this boy, don't you? A I have known him for about a year.

Q What is his reputation, so far as you know, for character, truth and veracity. You are the People's witness, but I will take your word? A Well, I have seen him hanging around corners; at times I have seen him peddle celery.

Q Yes; you have seen him sell celery on the street? A Yes; I have, and I have known him to be locked up before, too.

Q How many times? A Three, four or five times.

Q And do you remember why he was locked up; for selling celery?

MR. O'CONNOR: I object to this.

Q Why was he locked up? A He was locked up for disorderly conduct, and he has been locked up for petty larceny, and has been locked up for peddling celery.

Q Now, don't you know as a matter of fact, he has been locked up, only because he did not have a license to

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sell celery? A I wasn't the party that made the arrest.

Q Then why do you say you know why he was arrested?

Have you ever arrested him? A No, I have not.

Q Don't you know he was arrested once for selling celery without a license? A Yes, on one occasion.

Q Do you know that he is one of seven children, and that his mother is a widow? A I found that out yesterday afternoon.

Q Do you know that boy has gotten up at four o'clock every morning since his father died, and selling celery on the street to support his family? A I don't know that.

Q Do you know that? A I don't know that.

Q Do you deny that you know that? A I deny that I know he gets up at four o'clock in the morning.

Q Do you deny that you know that ever since that boy's father died, he has made his living selling celery on the streets, and that he has been arrested by an officer for not having a license? A I don't know that.

Q Will you deny that? A No.

Q Will you deny that that boy has been the only support of his mother and seven brothers and sisters, since his father died; will you deny that? A No.

Q You won't deny it? A No.

BY THE COURT:

Q Officer, do you know where this defendant lived?

A He lives at 5 Manhattan Street; that is the address he gave me.

Q And how close to the place of Mr. Murken was it, was his house? A Well, his house is right opposite, right near Columbus Avenue and 125th Street, and that place where the arrest was made is 142nd Street and Eighth Avenue; almost a mile.

Q And when you say you have seen him around, do you mean in the neighborhood of the complainant's place?

A I have seen him around Eighth Avenue and 125th Street, selling celery there at times.

BY MR. FISCHER-HANSEN:

Q You testified that the former witness who asked you to arrest him told you that he saw this defendant drop that thing there (indicating)? A Yes, he told me that himself. I didn't see it; he told me.

Q He told you that? A Yes.

Q You stand by that? A Yes, only on what he-----.

Q I ask you if you testify under oath that the former witness told you that? A Yes sir.

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RE-DIRECT EXAMINATION BY MR. O'CONNOR:

Q Now, you say that the defendant has been arrested-- Mr. Hansen brought this out --- not I. That he has been arrested for disorderly conduct? A Yes, by Officer Werner.

Q Do you know what became of him at that time? A On one occasion he was fined five dollars.

Q Now, the next time you say he was arrested and charged with petit larceny? A By Officer Campbell.

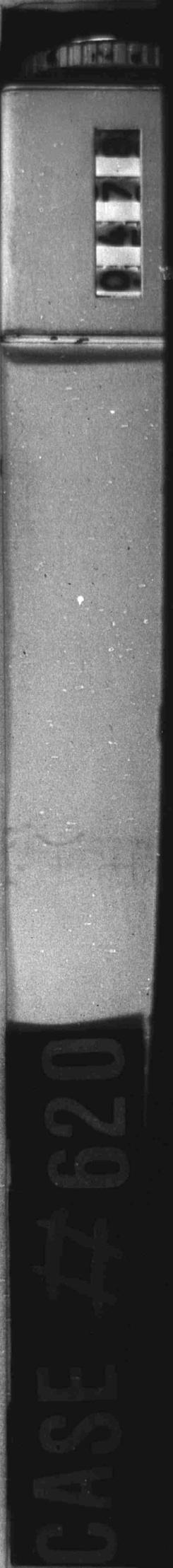
Q What became of him in that case? A There was a man by the name of Oppenheimer; he is in the butcher business; I believe he was the complainant in the case; there was three ducks taken off his wagon, and the complainant did not care to have the case brought downtown, and the charge was changed to disorderly conduct.

Objected to.

THE COURT: Strike out that "the complainant did not care", etc..

Q Tell us about it? A The complaint was changed to disorderly conduct and he was fined ten dollars.

Q That is twice he was convicted of disorderly conduct; then there was a third time, for peddling without a license? A Yes, I believe so, by Officer Renselaer, of the 31st.



MR. FISCHER-HANSEN: I would like to recall the former witness Merkt, if your Honor please.

THE COURT: Yes.

T H E O D O R E M E R K T, JR., Recalled---

BY MR. FISCHER-HANSEN:

Q Did I understand you to testify a minute ago that you did not see him drop anything? A I didn't see him drop anything, but I heard something drop.

Q Well, you did not see him drop anything? A No.

Q Did you tell the officer that you did see him drop this thing? A Either one; I couldn't tell which one.

Q I say, did you tell the officer that you saw him drop this thing? This thing that the officer had in his hand? A (No answer).

BY THE COURT:

Q Did you, yes or no? A I don't know whether I did or not. I don't remember.

MR. O'CONNOR: The People rest.

THE DEFENCE:

R A Y M O N D L O P E Z, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. FISCHER-HANSEN:

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Q Now, Raymond, I want you to speak distinctly and loud, so that every gentleman of the jury can hear all you have to say. A Yes sir.

Q And I want you to tell them openly and frankly, all you know about this transaction, and about your own life. How old are you? A I am seventeen.

Q You are seventeen years old? A Yes sir.

Q Where do you live? A 5 Manhattan Street.

Q Number 5 Manhattan Street; is that anywhere near 142nd Street? A No sir; it is about ten blocks away.

Q And whom do you live with there? A My mother, and my brothers.

Q How many in your family? A There is six brothers, and one sister.

Q And your mother? A Yes sir.

Q And have you always lived with your mother? A Yes sir.

Q Is your father alive? A No sir.

Q When did he die? A About five years ago.

Q And you have since then lived with your mother always? A Yes sir.

Q That is true? A Yes sir.

Q Now, what have you been doing during the last five years, since your father died? It has been testified

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here that you have on several occasions been arrested for petit larceny, disorderly conduct and so forth. I want you now to tell the jury all you can tell them about your life since the day your father died? A Well, I have worked in a grocery store.

BY THE COURT:

Q Now, stop right there. When did you work in a grocery store? A Right after the death of my father.

BY MR. FISCHER-HANSEN:

Q Whom did you work for? A Schraeder.

Q What number, and where? A He is right on 135th Street and Willis Avenue.

Q How long did you work for him? A About six months, after school and before school.

Q You went to work in a grocery store what time in the morning? A Six o'clock in the morning.

Q You worked how long? A Until eight o'clock in the morning.

Q What did you do then? A Then I got ready for school.

Q And you went to school where? A At 138th Street.

Q And you stayed in school how long? A Until three o'clock.

Q Then what did you do at three o'clock? A Then I

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went to work again.

Q In a grocery store? A Yes sir.

Q And worked how late in the grocery store? A Until nine o'clock at night.

Q Then what did you do? A Then I studied my lessons.

Q Then you went home and studied your lessons?

A Yes sir.

Q And you did this how long? A For six months.

Q What did you do after that? A Then I helped my mother ~~at night~~ out in her business, fish store.

Q What is your mother's business? A She had a fish store at that time.

Q Where? A 119th Street.

BY THE COURT:

Q And what avenue? A Between Lexington and Park Avenue.

BY MR. FISCHER-HANSEN:

Q What is the number? A 112 East 119th.

Q And what time did you go to work in the morning there? A Some mornings, would have to get up at four, or three o'clock in the morning and go down to the market and help buy some fish.

Q And what then? A Then I would come home and help around the store; be a salesman, like; make sales.

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Q All day? A Yes.

Q Did you quit school? A No, I went to school; I had another brother helping me then.

Q You were up at three or four in the morning, went to the fish market with your mother; then you went back to the store and tended store how long? A Until about eight o'clock.

Q What did you do then? A Then I got ready for school then.

Q Stayed there how long? A Until twelve.

Q What then? A Then I went around with a couple of orders, eat my dinner, and went to school again.

BY THE COURT:

Q How long did you stay in the fish store; how many months did you work for your mother? A She only had the fish store two months.

Q At the end of the two months, whom did you work for? A We moved into Manhattan Street, and I worked for A. Voltter, wine and liquor store.

BY MR. FISCHER-HANSEN:

Q How long did you work for him? A Six months.

Q Did you go to school also, when you worked for him? A No.

Q What did you do in his business? A I was an order

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boy.

Q What time did you report for duty in the morning?

A Seven o'clock.

Q What time did you leave at night? A Seven at night.

Q How much did you make there? A I made six dollars a week.

Q And while you worked for him, did you still live with your mother in her house? A Yes.

Q And where did you go after that? A I worked for A. Levy, another wine and liquor store across the street; he paid seven dollars a week, so I went over there.

Q How long did you work for him? A About four months.

Q What time did you start in the morning? A Seven in the morning, until seven at night.

Q And he gave you seven dollars? A Yes.

Q You gave the money to your mother, home? A Yes.

Q Then where did you go? A Then I worked down in the Pennsylvania Tunnel.

BY THE COURT:

Q Doing what kind of work? A I was helper on a rock drill.

Q How long did you work there? A About eight months, or nine months.

Q Who employed you? A Well, they have all bosses

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over gangs like that; you don't know the boss's name; you just go and ask him and he will give you a card if he employs you.

BY MR. FISCHER-HANSEN:

Q Did you get a card? A Yes.

Q Did you work there eight months? A Yes sir.

Q How much did you make a week there? A I got a dollar and a half a day.

Q What time did you report to work in the morning?

A Five o'clock.

Q And what time did you quit at night? A Half-past one in the afternoon.

Q You worked from five in the morning until half-past one in the afternoon? A Yes sir.

Q Then what did you do in the afternoon? A Well, I slept a little then; then I went around and got my supper.

Q And you still lived with your mother and brothers and sisters then? A Yes sir.

BY THE COURT:

Q When did you leave that employment? A Well, about November.

Q Of what year? A This here year, or last year, 1906.

BY MR. FISCHER-HANSEN:

Q 1906? A Yes.

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Q Did you peddle celery on the street? A Yes sir, after that.

BY THE COURT:

Q Since when? A In November; that is the time the celery business is in season.

BY MR. FISCHER-HANSEN:

Q Just tell us what you did? A Every morning I got celery, trimmed it up, washed it, and got it ready, and peddled it on 125th Street and Eighth Avenue.

Q What time did you start out in the morning? A About nine or ten o'clock.

Q Where did you buy your celery? A Down in Washington Market, and Harlem Market.

Q What time did you go down to buy that? A About four in the morning.

Q You went down to Washington Market; then you brought it back to Harlem, where you lived? A Yes.

Q Then you washed and cleaned it, and peddled it on the street? A Yes.

Q How late in the day did you peddle celery? A Until about seven at night.

Q About how much money did you make doing that?

A About two and a half or three dollars a day.

Q Did you live with your mother at that time? A Yes.

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Q Did you give her the money you made? A Yes.

Q While this was going on, you were living there with your brothers and sisters and your mother?

A Yes sir.

Q And did you have a license to peddle celery?

A You can't get a basket license to peddle celery.

Q You cannot? A No sir.

Q Were you ever arrested? A Once, for not having a license.

Q Just tell us when you were arrested, and who arrested you? A An officer arrested me; I don't know when.

Q About when? A At twelve o'clock in the day.

Q About how long ago; in November, December, or when?

A Well, in November.

Q And what did he do with you? A Well, he brought me from 125th Street station, and then I was brought down to court and I got fined two dollars, and I stayed in there until four o'clock, and paid one dollar and got out.

Q You were locked up in a cell? A Yes.

Q And you stayed out one dollar? A Yes sir.

Q And then you paid out one dollar for the fine?

A Yes sir.

BY THE COURT:

Q Were you ever arrested for stealing ducks out of a

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wagon? A No sir.

BY MR. FISCHER-HANSEN:

Q When you were arrested on this particular occasion, they found two pawntickets on you? A Yes.

Q I hand you two tickets, and I ask you if these two tickets are tickets that were found on you the time you were arrested? A Yes sir.

Q And what are the goods you pawned? A A suit of clothes and an overcoat.

Q And whose suit of clothes was that, and whose overcoat? A Mine.

Q Your own? A Yes sir.

Q And whom did you give the money to that you got on that overcoat? A Turned it home.

Q To your mother? A Yes sir.

Q Have you ewer committed letit or grand larceny?

A No sir.

Q Have you ever been arrested for it? A Only for peddling celery.

Q That is all you have ever been arrested for?

A Yes sir.

BY THE COURT:

Q Never arrested but once? A Only for peddling celery, that was all.

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Q I mean to say, outside of this particular occasion, only once before? A That is all, sir.

Q And that was for peddling celery without a license, is that so? A Yes sir; that is all, sir.

BY MR. FISCHER-HANSEN:

Q Now, on the 2nd of January, it has been testified here by several people that on the 2nd of January, 1907, at about six o'clock in the afternoon---? A Yes sir.

Q (Continuing) You were seen in company with two other boys descending a basement; is that so? A No sir, it is not so.

Q I forget the exact number -- 2668 Eighth Avenue; is that so? A No sir.

Q Do you remember, have you ever seen before the witness Mr. Merkt that testified here? A No sir.

Q I say, have you ever seen him before you saw him in this court? A No sir. I saw him when he arrested me. That was the first time.

Q That is it; I want you to tell the jury when you first saw that man? A When he caught me on the street, that was the first time.

Q Just tell what he did; where were you at the time? A I was walking on 142nd Street -- wherever that grocery store was; 142nd Street I think it is.

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BY THE COURT:

Q Just speak a little louder; tell your own story?

A I was walking on 142nd Street, wherever that grocery is I don't know what street it is, and as I was walking, this here gentleman, Mr. Merkt, whatever his name is, grabbed me and says "You are one of them; I got you this time". I was so excited I didn't know what to say. He brought me in a hallway.

Q Now, where did he grab you, as you say; where did he put his hands on you? A Right on my neck.

Q Whereabouts on the street; do you remember the number of the house? A Well, it was right near the house he said; 262, I think the house is.

Q Were you standing or walking? A I was walking.

Q In what direction were you walking? A Towards Eighth Avenue.

Q Were you alone, or with anyone? A I was alone.

BY MR. FISCHER-HANSEN:

Q Now, are you sure you were alone? A Yes sir; nobody else with me.

Q You were not on that afternoon with two other boys? A No sir.

Q Or one other boy? A No sir; nobody.

Q You are sure you did not go down into that basement?

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A Yes sir.

Q You did not try to break open the door in the basement? A No sir, I did not.

Q Have you ever been in that basement? A No sir.
BY THE COURT:

Q Have you been down those steps? A No sir.

BY MR. FISCHER-HANSEN:

Q You are sure of that? A Yes sir; never had any occasion to go down there.

Q Did you tell the police officer that you went down there to get a hat? A No sir, I did not.

Q You are sure of that? A Yes sir.

Q Just tell us what you did say to the police officer?

A He says, he asked me what I was doing up around this neighborhood and I said I was looking for a job. He says "What's the matter; why ain't you selling celery?" He knew I sold celery, and I told him it was getting too cold and celery would freeze, and there was no money in it now. There is no New York celery coming in, only California celery, and you have to pay a good deal more for California celery, and you can't get the price you ask the people, and I told him I was looking for a job.

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Q You told him that? A Yes sir, as we were walking along there.

Q And that is all you know about it? A Yes sir.

Q And you have been in the Tombs, in a cell, ever since? A Yes sir.

BY THE COURT:

Q Did you say that you had lost your hat and had gone down there to find your hat? A No sir, I didn't say anything at all like that.

Q Did he ask you whether you had been down in the cellar there? A No sir, he did not.

CROSS EXAMINATION BY MR. O'CONNOR:

Q Now, Lopez, I want you to--- This is very important to all of us---? A Yes sir.

Q The officer who arrested you for peddling without a license was a man by the name of Officer Renselaer, of the 31st Precinct; do you remember the name? A Renselaer; I don't know the man though.

Q You heard Officer Marxhausen testify here; he gives day and date -- that an officer by the name of Campbell of the 31st precinct, arrested you on April 26th, 1906, charging you with the crime of petit larceny, of three ducks from Oppenheimer Brothers of 112th Street and Broadway, and that you were arraigned in court, and the charge

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from petit larceny was changed to disorderly conduct, and you were fined five dollars? (No answer).

BY THE COURT:

Q Now, think well before you answer, and tell us whether that is so or not? A Well it is not so.

BY MR. O'CONNOR:

Q You are under oath, you know? A Yes sir.

BY MR. FISCHER-HANSEN:

Q Tell us the best you can? A I have never been arrested before. The first time I was ever arrested was for ~~selling~~ celery without a license.

Q Now, tell the second, third, fourth or fifth time?
A I have never been arrested but only on this occasion.

BY MR. O'CONNOR:

Q You heard what the police officer testified to?
A Yes sir.

Q And you say that is untrue? A That is untrue.

Q Then he also swears that an officer by the name of Julius Werner of the 31st Precinct, the same precinct, arrested you for disorderly conduct, and that you were fined, I think ten dollars? A Well, that is untrue, too.

Q You were never arrested for disorderly conduct?
A No sir.

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Q Do you know this officer; did you ever hear of Officer Werner? A No sir.

Q And that you were also arrested by an officer by the name of Dowling, of the 31st Precinct? A Never arrested at all.

Q Never been arrested excepting -- Now, think over it, because I-----.

BY THE COURT (Interposing):

Q We want to give you every chance; we simply want you to tell the truth. Now, it is very important for you. Have you ever been arrested but once? If so, say so; just state what the fact is, now? A Well, I have never been arrested but once, and that was for selling celery without a license, the first time I ever been arrested, and I have never been arrested for petit larceny or disorderly conduct, or anything like that.

BY MR. FISCHER-HANSEN:

Q Now, let me ask you this: I am your lawyer? A Yes.

Q I want you to be perfectly truthful to the Court and jury. Now, if you have -- if for any reason you thought that it might hurt your case to say so, do not worry about that. Tell us the gospel truth. Many men big in life to-day, have been arrested for disorderly conduct. That is nothing. Tell us all about it, if you have

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Do not conceal anything? A I have never been arrested before.

Q You want this jurst to be fair with you? A Yes.

Q Now, you be fair with them. A Well, I tell the truth; I have never been arrested for disorderly conduct or petit larceny.

BY MR. O'CONNOR:

Q And you pawned your own overcoat, and your own suit of clothes? A Yes sir.

Q Do you always give your own name when you do that?

A No sir; I didn't give my own name on that occasion.

Q What name did you give? A I gave "Windy", and another name.

Q What other name? A I don't know the other name.

Q Can't remember the other name? A No sir.

Q And that coat, you swore here, was for the purpose of getting money for your mother, and giving to her the proceeds which you were to receive from the pawnbroker, to help your mother? A Yes sir.

Q And you gave the name of "Windy"? A Yes sir.

Q And you can't remember the other name? A No sir.

Q What did you give the name of "Windy" for? A I didn't like my own name, to have it in pawn.

Q Is there any such name as "Windy"?

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MR. FISCHER-HANSEN: Now, if your Honor please, I must say, this is entirely immaterial, incompetent and irrelevant for the purpose of this case, what name---

THE COURT: Well, it is testing the witness's memory.

MR. FISCHER-HANSEN: Most men will pawn under an assumed name. I do when I pawn.

Q "Windy"? A Yes sir.

Q What kind of suit was that you pawned under the name of "Windy"? A Blue serge.

Q A Blue serge suit? A Yes sir.

Q How long had you had that blue serge suit? A I had that suit about two months.

Q That was in December; you bought the blue serge suit in the month of October? A I guess so.

Q Not what you guess, now. A Well, yes sir.

Q A blue serge suit; is it a summer suit? A Yes sir; I know that.

Q You do not buy blue serge suits in the month of October? A Well, this was a heavy suit, and I got it cheap.

Q How much did you pay for it? A Seven dollars.

Q That was in the month of October? A October.

Q Now, what other name did you give? A I don't know

the other name on that ticket.

Q Well, as far as I can make it out, it is "Ruppi"?

MR. FISCHER-HANSEN: I think the District Attorney has gone far enough, if it please the Court.

The boy has admitted he used any name that occurred to him, which is a perfectly common occurrence in New York.

THE COURT: Now, we have it in evidence that at the time he pawned the suit and overcoat he gave two names; one name he remembers; the other name he does not.

Q Look at that (showing)? A Yes sir.

Q What name is that? A "Ruppi" is that name.

Q You could not recollect that name? A No sir.

Q Assuming you had lost this ticket-----.

Objected to.

Q How were you going to get that coat out of that pawnshop?

MR. FISCHER-HANSEN: May it please the Court, I object to the District Attorney going into that.

THE COURT: What is the purpose of it?

MR. O'CONNOR: I am going to show that this defendant could not get that overcoat out of the place without giving the name; secondly, if he did

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give it, he would have to commit forgery, signing the name "Ruppi" to the affidavit which he would have to swear to, that the ticket was lost.

THE COURT: I think I will exclude the testimony as irrelevant.

MR. FISCHER-HANSEN: I also ask the Court to exclude the District Attorney's speech on forgery, and so forth.

MR. O'CONNOR: If your Honor please, I made no objection to Mr. Hansen's testimony that went into this case. All I want is the truth. Now, the witness has sworn that these officers did not arrest him. The burden of proof rests upon me, to produce those three officers in court, either to contradict this defendant or to show that what he has been swearing to here is untrue.

THE COURT: I think the interests of justice would be served by holding the jury together, and adjourning the case, for the purpose of giving you the opportunity of establishing if it be a fact or not. It is a collateral issue, but it involves the credibility of this witness. If this witness can successfully establish that the evidence of the of-

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ficer was false in that regard, if it had a material bearing---

MR. O'CONNOR: Yes, your Honor; that is the only reason. We can have them here at two,, if your Honor please.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until 2 o'clock P. M., January 17th, 1907.

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AFTER RECESS---TRIAL RESUMED.

A B B I E L O P E Z, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. FISCHER-HANSEN:

Q Where do you live, Mrs. Lopez? A 5 Manhattan Street.

Q What number? A 5 Manhattan Street.

Q New York City, and in the County of New York? A Yes.

Q Do you know the defendant at the bar here? A My son.

Q That is your son? A Yes sir.

Q How many children have you, Mrs. Lopez? A Seven.

Q Are you a widow? A Yes sir.

Q How many years have you been a widow? A Going on five years.

Q Have you been in court during the trial of this case?

A Yes sir.

Q This morning, you have? A Yes sir.

Q Have you heard the testimony given in this case?

A Yes sir.

BY THE COURT:

Q Could you hear it where you were sitting; could you hear what was said on the witness stand? A Yes sir.

BY MR. FISCHER-HANSEN:

A Have you heard that your boy, the defendant at the

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bar, is charged with having attempted to commit a burglary in a certain place in New York? A Yes sir.

Q You have? A Yes sir.

Q Have you heard that your son has testified that he lives with you, and has been the main support of you and your six other children? A Yes sir.

Q Is that so? A That is so.

Q Is that so? A Yes sir.

Q What was your boy's vocation; what was his business immediately after your husband died? A He was in a grocery store, before and after school.

Q He went to school, and in his hours out of school, he worked in a grocery store; is that so? A Yes sir.

Q And has he lived with you ever since your husband died? A Constantly; yes sir.

Q Is he a good boy, or bad boy? A Very good boy.

Q Has he in any sense or in any way helped to support you and your six little children? A He is the main support.

Q He is? A Yes sir.

Q And has been for these five years? A Yes sir.

Q Now, let me ask you: You are familiar, are you not, with your son's movements and with his life during the last five years, are you? A Yes sir.

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Q Speak up a little bit. This is very important.
Try and speak up, as you spoke to me outside in the hall.

A Yes sir.

BY THE COURT:

Q If you can, Madam, talk loudly, so that the jurymen who are farthest away from you can hear you. If you cannot, why the stenographer will repeat your answers.

A Yes sir.

BY MR. FISCHER-HANSEN:

Q Now, so far as you know, and I want you to be perfectly truthful and frank with the jury -- they are our fellow-citizens -- has your boy ever been arrested, charged with petit larceny or disorderly conduct, or both, and fined? A Never.

Q He never has? A Never.

Q Do you know if he once was arrested because he peddled celery without a license? A Yes sir.

Q He was? A Yes sir.

BY THE COURT:

Q With that exception, was he ever arrested, except on this charge? A Never.

BY MR. FISCHER-HANSEN:

Q Have you ever had any police officers, or anybody, or any court subpoenas to come to court, regarding any mis-

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conduct charged against your boy? A Never; never.

Q You never have? A No sir.

Q Have you any other income than the income that your boy, the defendant here, has given you, during these five years? A One elder son.

Q What does he do? A He is in Washington Market.

Q And does he also help support you? A Yes sir.

Q Now, so far, then, as you know, your boy has never been arrested? A Never.

Q He has never been convicted? A Never.

Q He has never been fined, although that of course, is the same as being convicted? A Never.

Q And has your boy been faithful in his work? A Yes, sir.

Q Do you know whether your boy, in October, 1906, possessed a suit of clothes that he pawned? A Yes sir.

BY THE COURT:

Q What kind of suit of clothes was it? A It was a blue serge; it was a suit that cost seven dollars, because I could not let him have any more money, and it was the first he bought himself, and it was a summer suit.

BY MR. FISCHER-HANSEN:

Q And that suit he pawned to help you; is that so?

A Yes sir.

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MR. O'CONNOR: No cross examination.

BY MR. FISCHER-HANSEN:

Q I will ask you one question: During these five years that your boy has lived with you, during the last five years, has he ever been absent from your home for more than a day; has he ever been absent ever-night?

A No sir, not until this last term, here.

Q Until he was arrested here? A Yes sir, the 2nd.

Q And he has been in the Tombs ever since? A Yes sir.

MR. FISCHER-HANSEN: The defence rests.

REBUTTAL:

L E W I S A. J. RENSELAER, being called and duly sworn as a witness on behalf of the People, in Rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

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

Q Attached to the 31st Precinct? A Yes sir.

Q Look at the defendant at the bar, Raymond Lopez; did you ever arrest him? A I did, sir.

Q When did you arrest him? A I arrested him at 1:55 on the 2nd of November, 1906.

Q Charged with what? A Peddling without a license,

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but mainly for obstructing the sidewalk.

Q And what was done with him then? A He was fined two dollars by Magistrate Baker, in the Fifth District Court.

THE COURT: Now, that is the arrest the defendant admits?

MR. O'CONNOR: Yes sir.

(NO CROSS EXAMINATION.)

F R A N K A. C A M P B E L L, being called and duly sworn as a witness on behalf of the People in Rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

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

Q Attached to what precinct? A The 31st.

Q How long have you been attached to that precinct, Officer? A Eighteen months.

Q Look at the defendant here, Raymond Lopez; did you ever arrest him? (No answer).

BY THE COURT:

Q Now, look carefully, because so much depends upon your answer. (No answer).

BY MR. O'CONNOR:

Q Can you identify him, as to whether or not you ever

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arrested him? A That is not the man I arrested.

Q That is not the man? A No sir. I arrested a young man-----.

MR. FISCHER-HANSEN: I object to whom else he arrested.

BY THE COURT:

Q Never mind. You say that is not the man? A That is not the man I arrested.

(No cross examination).

JAMES F. DOWLING, being called and duly sworn as a witness on behalf of the People in Rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

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

Q Attached to what precinct? A The 31st.

Q I want you to look at this defendant here, Raymond Lopez, and state whether or not you ever arrested him?

A No.

Q You did not? A No.

(No Cross Examination).

MR. FISCHER-HANSEN: I desire to recall the police officer who testified that this defendant at the bar had been arrested for petit larceny and disorderly conduct.

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THE COURT: Recall the officer.

GEORGE H. MARXHAUSEN, Recalled:

BY MR. FISCHER-HANSEN:

Q Do you remember testifying this morning? A I do.

Q That this defendant at bar, to your personal knowledge---

MR. O'CONNOR: I object to that.

MR. FISCHER-HANSEN: I will put my question, and you can make your objections later.

MR. O'CONNOR: No; I object to that question, because the officer did not say to his personal knowledge.

THE COURT: That is true; he did not say to his personal knowledge.

Q Did you testify this morning that this defendant at the bar had been arrested by certain police officers, on one occasion charged with petit larceny, and on another occasion charged with disorderly conduct; in one case fined ten dollars, and in another case, I don't know what you said? A I did.

Q You still stick to that? A On the information I had received.

Q I ask you now, is that true, or isn't it? A I testified on information I received.

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Q I ask you is that true or not? A It is.

Q It is true that this boy has been arrested, charged with petit larceny and fined, and also been arrested charged with disorderly conduct?

THE COURT: No; the witness simply testified that it is true that he testified so this morning.

Q Well, when you testified this morning, did you know what you were talking about? A From information I had received, I did state I had not made the arrest, but I mentioned the officers that had made the arrest by the name of Lopez, that lived on Manhattan Street.

Q And Renselaer, you said? A Yes.

Q And that Renselaer -- you mean the man that testified it was not true? A Renselaer testified he had taken him up.

Q But the second one, who testified he had not ever arrested this defendant charging him with petit larceny?

A I heard that testimony.

Q Now, do you still stick to the story that this boy has been arrested by Van Renselaer and charged with petit larceny? A No sir, not from the testimony I had heard here.

Q Are you in the habit of testifying in these courts against people who come up here charged with crime---

A (Interrupting), No; I testified from information I had received.

Q I ask you, are you in the habit of testifying in that line against people who come up in these courts charged with crime? A I always tell the truth, to the best of my knowledge.

Q You do? A Yes.

Q Do you ever testify on such flimsy testimony as you did this morning? (No answer).

MR. FISCHER-HANSEN: Oh, that's all. Get off!

MR. O'CONNOR: Oh, no. Wait.

BY MR. O'CONNOR:

Q You are an officer of the Police Department, and have been how many years? A Five years.

Q And when you make an arrest in the station house, you generally confer with your brother officers as to if they ever had such a man by that name?

MR. FISCHER-HANSEN: Objected to.

MR. O'CONNOR: This is in fairness to this officer.

MR. FISCHER-HANSEN: It is absolutely incompetent, immaterial and irrelevant to this case, what he generally does, because he has proven conclusively himself what he generally does; what he did in this

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case is absolutely outrageous.

THE COURT: You have used the term. If I had known you were going to use it, I would not have allowed you to use it.

MR. O'CONNOR: If your Honor please, may I proceed?

THE COURT: You may.

BY MR. O'CONNOR:

Q Officer, did you consult with your brother officers, or do you? A Yes sir, I always do in an important arrest.

Q And in this instance, officers told you they had a man by the name of Lopez? A Yes sir.

Q And that was hearsay testimony? A Yes sir.

Q And you gave that as hearsay? A As information I had received.

Q You were not asked these questions by the District Attorney, were you? A No sir.

Q Asked by Counsel for the defence? A Yes sir.

Q You were not swearing positively this was the man?
A I swore from the information I had received.

Q During the time you have been on the force, five years on the police, you have never had a complaint against you? A Well, one.

Q But never charged with perjury, were you, or making

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false statements? A No sir.

Q (Continuing) In the performance of your duty?

A No; never.

TESTIMONY CLOSED.

(The Jury found the defendant Not
Guilty.)

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