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- : I N D E X : -

	Direct	Cross	Re-D.	Re-C.
William E. Knox,	2	18	42	45
Thomas F. O'Connell,	47	55	59	
Nathaniel W. Kean,	61	70		

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#333

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

-----X
:
THE PEOPLE OF THE STATE OF NEW YORK
:
against
:
TIMOTHY REARDON.
:
-----X

Before:
HON. THOMAS C. T. CRAIN, J.,
and a Jury.

New York, January 20, 1910.

Indicted for attempted grand larceny in the second degree.

Indictment filed June 25, 1908.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY REUBEN LESLIE
MAYNARD.

For the Defendant, CLARK L. JORDAN, ESQ.

A jury was duly empanelled and sworn.

James E. Lynch,
Official Stenographer.

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WILLIAM E. KNOX, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MAYNARD:

Q Mr Knox, what is your business? A Comptroller of the Bowery Savings Bank.

Q Where is your place of business? A 128 Bowery.

Q You are at your place of business every business day in the year? A Unless prevented by illness or away on vacation.

Q Where do you reside, Mr Knox? A New Rochelle.

Q Do you make use of the Third Avenue Railroad to and from your place of business? A Daily.

Q What station of the Third Avenue Elevated Road do you take going home, from the same station that you go to your place of business? A Grand street.

Q And that is what is called an island station, is it?

A It is in the center with a track on each side.

Q I would thank you if you could, to describe that station to the jurors, so that they will understand what I mean by an island station? A Well, the stairway goes up from each side of the street, one from the east side and one from the west side of the Bowery, passing under the tracks, and coming to the station, which is a building in the middle of the avenue, over the roadway. The gates are at the north end of the

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station, there being no gate at the south end.

Q That is, the entrances and exits are both on the north end of the station? A All on the north end.

Q Now, north bound trains pass on which side of the station house? A On the east side.

Q Whereabouts, if you know, does the first car of an ordinary elevated train stop, in respect to that station?

A Just beyond the station, that is, the front end of the car does. Of course, the rear platform stopping at the station.

Q In passing onto such a train from the Third avenue elevated station, would it be necessary for you to go through the station house? A Yes, sir.

Q And whereabouts in the station house, building, is the exit onto the platform where the ticket chopper stands?

A That is on the east side of the station building; the building is directly over Grand street.

Q Well, is it the middle of the building, or whereabouts, if you know? A Well, it is rather toward the south end of the building, which contains the ticket office and the newsstand.

Q Now, on the 15th day of June, 1908, did you go to that station on that elevated road? A Yes, sir.

Q Did you go through the station? A Yes, sir.

Q Now, state whether at the time you went on the station, you had anything in your hip pocket? A I had my pocketbook.

Q Any money in it? A Yes, sir.

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Q Do you know how much? A About a hundred dollars.

Q Which pocket was it in? A The left hip pocket.

BY THE COURT:

Q Of your trousers? A Of my trousers.

BY MR. MAYNARD:

Q What kind of coat did you have that day? A I had a sack coat.

Q A long sack coat or short? A The usual length.

Q About the kind that you have on now? A No, I have a cutaway on. I had a sack coat without any tails on it on that day.

BY THE COURT:

Q The coat came down below the hip pocket, did it?

A Yes, sir.

BY MR. MAYNARD:

Q How far below the hip pocket would you think your coat passed? A Probably six inches. I wore very much the same kind of coat that you are wearing now.

BY THE COURT:

Q If you can talk a trifle louder it will be easier for the jury, Mr Knox? A Yes, sir.

Q Did you have your coat buttoned on that day? A I presume not. It was in the summer time.

Q What kind of day was it? A A wet day.

Q Was it then raining? A It was then raining, yes,

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sir.

Q When you went on the platform, did you have anything in your hand? A I had an umbrella in one hand, and a grip in the other, a dress suit case.

BY THE COURT:

Q What hour of the day was it, Mr Knox? A A very few minutes after three o'clock.

Q In the afternoon? A Afternoon.

BY MR. MAYNARD:

Q Was that the hour that you usually took the train there? A No, as a matter of fact, it was a little earlier than my usual hour, but generally any time from five or ten minutes after three to four o'clock, I take the train.

Q Do you remember in which hand you had the dress suit case? A I couldn't tell that.

Q Now, state in your own way, Mr Knox, what--

MR. MAYNARD: Question withdrawn for a moment.

Q You see the defendant at the bar? A Yes, sir.

Q Where was the defendant on the 13th day of June, 1908, when you first saw him, if you saw him on that day?

MR. JORDAN: This defendant.

Q (Continuing:) This defendant? A That defendant, he was standing just inside the ticket chopper's box, as I stepped out onto the platform from the station building.

BY THE COURT:

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Q Inside of the box? A No, sir, outside on the platform, between the box and the trains, and a little to the right.

BY MR. MAYNARD:

Q How far from the ticket chopper's box? A Just a few feet, probably four or five feet.

Q What, if anything, attracted your attention to him at that time?

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

THE COURT: I will allow it.

MR. JORDAN: Exception.

A Subsequent events made me remember that as I went through, he made a jerking motion with his head, to whom or at whom I don't know.

MR. JORDAN: I object to that.

Q Well, you just stated what he did.

MR. JORDAN: I object to the answer and move that it be stricken out.

THE COURT: Strike it out and the jury will disregard it.

Q Well, are you in a position to state, Mr Knox, to-day, of your own personal knowledge, that you saw a movement of the defendant's head on that occasion? A Yes, sir.

Q Describe that movement?

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MR. JORDAN: I object to the movement. My objection is, if your Honor please, that a description of a person's movements, so long as it is not improper, to be interpreted by a witness in the light of subsequent events, is coloring the testimony and is not competent, and is speculative and improper.

THE COURT: The witness is not called upon to characterize the purpose of the defendant, or what he thought was the purpose of the defendant. He is merely called upon to describe the physical motions of the defendant's person as he was, or as he saw them at that time and now recollects them.

MR. MAYNARD: Yes, sir.

BY THE COURT:

Q Now, you may describe the physical movements of the defendant, that you saw the defendant make at that time, as you now recall it, but you are not to characterize the purpose for which it was made, or what you think was the purpose? A The defendant jerked his head sideways and over his shoulder in that direction (indicating).

BY MR. MAYNARD:

Q Did you pass the defendant on your way from the platform to the car? A I did.

Q State, if you can, which car of the train you attempted to get on? A The second car of the train was an open car, to

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the best of my recollection. The third car was a closed car, the seats in the open car all being occupied, I went to the entrance, the front entrance to the third car.

Q Were there any people standing on the platform, around the platform of the car? A Quite a number.

Q Was anybody with you on this occasion, Mr Knox?

A Yes, sir.

Q Who? A Mr N. W. Kean.

Q When and where did he join you on that day? A He was in the bank to see me on a matter of business on that day.

Q Did he go with you from the bank? A Went with me from the bank.

Q To the station? A To the station.

Q Which proceeded first toward the platform of the car that you desired to take? A Mr Kean.

Q How far in advance of you was he? A Why, we were together until we struck the crowd.

Q Where was the crowd that you struck? A Right at the entrance of the car that we were boarding or about to board.

Q How many persons would you think were standing around that platform? A Probably anywhere from a dozen to fifteen, or eighteen, possibly.

Q Was the platform of the third car crowded at that time? A The front platform of the third car was.

BY THE COURT:

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Q When you say the third car, you mean the third car, counting from the head of the train? A The front of the train, yes, sir.

BY MR. MAYNARD:

Q Now, describe your efforts to board the train and what happened to you on that occasion? A As I stepped aboard the train, a number of passengers had gotten on just before me, and among them my friend Mr Kean; as I stepped from the platform of the station to the platform of the train--

Q Speak very distinctly, Mr Knox.

BY THE COURT:

Q A good loud voice. Twelve men want to hear you?

A As I stepped from the platform of the station to the platform of the car, I felt something in my left hip pocket, a movement.

BY MR. MAYNARD:

Q What did you do? A I turned suddenly and saw a hand being withdrawn from the region of my hip pocket.

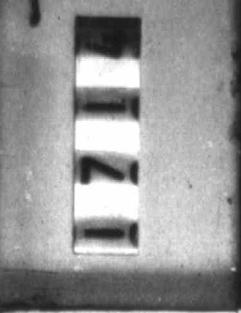
MR. JORDAN: I object to that and move that the answer be stricken out "I saw a hand being withdrawn". It must have been in some position to the--

BY THE COURT:

Q Well, you saw a hand? A I saw a hand in motion.

Q You saw a hand in motion and the motion was carrying the hand further away from the point where your hip pocket was?

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A Yes, sir, that's right.

MR. JORDAN: Yes.

BY MR. MAYNARD:

Q There is one part of your statement I am sure the jury did not catch. I did not hear it. You said you saw a hand in motion going away from what? A From the region of my hip pocket, where I had felt the motion, the movement.

Q Did you see the owner of that hand? A I did.

Q Whose hand was it? A The defendant's hand.

Q After you felt the motion in your pocket, how long a time elapsed before you saw the hand of the defendant going away from your pocket? A The fraction of a second.

BY THE COURT:

Q Now, ^{when} you first saw the defendant's hand, how far away was it from your hip pocket? A Not more than a couple of inches, just so that I could turn this way and see it (indicating).

Q And to what extent, if at all, was the position of your hip pocket at the moment you saw the defendant's hand, different from the position of your hip pocket at the time you felt a motion inside of it? Do you understand that?

A No, sir.

Q (Question repeated.) A Why, it is probably both a little further toward the right and a little way from the hand, because my motion in turning would naturally twist it.

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Q In other words, you made a motion which was in the same general direction as the motion made by the hand which you have described? A I think not. I think my motion would have been in an exactly opposite direction from the hand, because standing this way, and feeling the hand, if I turned that way (illustrating)--

Q I see, very well.

BY MR. MAYNARD:

Q Well, what did you next do, Mr Knox? A I shouted to my friend Mr Kean, "Mr Kean," I said, "there is a pickpocket here, come and help me, we will get him."

Q And where were you standing when you said that? A I had just gotten my feet on the platform of the car.

Q And you were on the platform of the car? A On the platform of the car, though that instant--

BY THE COURT:

Q Pardon me. Was the gate open or closed between you and the station? A The gate open.

BY MR. MAYNARD:

Q Where at the time you spoke to your friend, if you know, where was your friend Mr Kean? A He was in the car somewhere, not within my line of vision; I could not see him.

Q He had passed through the door in the car? A Yes, sir.

Q After you had made this outcry to your friend, what did

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you do? A I tried to follow the defendant.

Q Well, what then happened? A He backed off into the crowd, and as I tried to step off the train after him, another man interfered. That is, he was in my way. I dodged to one side, and the same man dodged, still facing me, and kept facing me.

Q How many times did he dodge? A That was once--

MR. JORDAN: I object to that, characterizing it as "dodging".

THE COURT: Well, they stepped coincidentally in the same direction.

THE COURT: Yes, stepped in the same direction, so that after three movements I found myself still facing the same man.

BY MR. MAYNARD:

Q Well, what did you do? A I struck him.

Q Did he go to get out of your way then? A He did.

Q And what did you do? A I said to the gateman or shouted to the gateman, I said, "You hold this fellow and I will get the other one." I stepped off the car, threw my bag on the platform, and my umbrella, and I started toward the south end of the station, in which direction the defendant had gone.

Q Did you overtake the defendant? A I did not. Before I got as far as he was, I heard a shout and a hurrying of

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feet behind me, and the shout was "Beat it".

MR. JORDAN: I object to the shout, unless it is chargeable to this defendant in some way, if your Honor please.

THE COURT: I will strike it out, and the jury will disregard it.

MR. MAYNARD: That was just the statement he heard?

THE COURT: Merely the statement.

Q How far from the platform of the car did this defendant or had this defendant proceeded when you started after him?

A He had gotten down almost to the rear platform of the car, the full length of the car, almost away.

Q How far did you follow him? A Probably halfway down.

Q Just answer yes or no, when you were halfway down the length of the car, following the defendant, did you hear anyone shout out some words?

MR. JORDAN: I object to it as incompetent, immaterial and irrelevant.

MR. MAYNARD: I ask for yes or no.

MR. JORDAN: Unless it is binding upon the defendant.

THE COURT: I will allow him to answer yes or no.

A Yes.

Q How far were you from the defendant at that time, in

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feet? A I should imagine 25 feet, 30 feet possibly.

Q Was the statement that you heard in a loud voice?

A It was.

Q What was that statement?

MR. JORDAN: I object to it upon the ground that it was incompetent, immaterial and irrelevant.

THE COURT: Objection sustained.

Q Well, after you heard the shout, what did you do, Mr. Knox? A I turned.

Q In which direction? A Toward the north end of the station.

Q What did you do? A I ran after the man whom I had struck.

Q What was that man then doing? A Running towards the gate.

Q How far did you follow him? A Until I got to the gate.

BY THE COURT:

Q When you say the gate, you mean what gate? A The exit, the sliding gate.

Q You do not mean the gate of the car? A No, sir, the gate of the station, the exist gate which rolls to one side.

Q Had the train moved out at that time? A No, sir, the train did not move.

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BY MR. MAYNARD:

Q Did the train remain throughout the entire proceeding?

A Yes, sir.

Q Right where it was? A Yes, sir, up to this point, I mean.

Q Up to this point? A Yes, sir.

Q How far did you follow the man whom you had previously struck, in attempting to get off the car? A I went as far as the gate.

Q Where was he at that time? A At the foot of the first flight of stairs, about.

Q What did you do then? A I turned and went back in the direction in which I had first followed the defendant.

Q Now, Mr. Knox, you said that you threw down your grip-sack and umbrella? A Yes, sir.

Q Whereabouts did you throw them? A On the platform of the station.

Q Where, with respect to the car that you attempted to board, did you throw it? A Immediately in front of the gate, and back toward the wall of the station.

Now,
Q /When you came back, or did you go back for your bag at this time? A I went back in the direction. I was not thinking about the bag.

Q Whom did you find standing by your bag? A My friend, Mr. Kean.

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Q Anybody else? A The defendant.

Q What did you then do or say in his presence? A I accused the defendant of having attempted to pick my pocket.

BY THE COURT:

Q What did you say to him? A I said "You are the man."

BY MR. MAYNARD:

Q Then what did you do? A I had some argument with him.

BY THE COURT:

Q What, if anything, did the defendant say when you said to him "You are the man?", A The defendant wanted to know what the hell I meant.

Q What did you say? A I said I meant that he had attempted to pick my pocket.

Q What did he say? A He said that was a terrible "acquisition," to make against a man, pronouncing the word in just that manner.

Q What is that? A He said it was a terrible "acquisition" to make against a man. I said possibly, but I was making it.

BY THE COURT:

Q What did he say? A Well, he said that he would see me for that, and he made all sorts of threats about false arrest.

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MR. JORDAN: I object to that "making all sorts of threats."

THE COURT: Yes.

Q Try and give us the conversation, what you said to him and what he said to you? A Well, he would make me suffer for this, that he was innocent man and I had not any right to make any such charge as that against him.

BY MR. MAYNARD:

Q If you caused his arrest? A I did.

Q Was there an officer on the station?, A A special officer on the station appeared. He had not been there, that is, I had not seen him at the beginning of this, but while I was engaged in conversation with the defendant the special officer appeared.

BY THE COURT:

Q Well, while you were talking with the defendant did any person have his hands upon the defendant? A I had, myself, at one time.

Q When you came up to the defendant, the defendant was standing with your friend? A Yes, sir.

Q Were they talking? A They were talking.

BY MR. MAYNARD:

Q And afterwards, he was arrested at your instance by the special officer on the platform? A Yes, sir.

Q This Grand street station is in the city and county

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of New York, isn't it? A Yes, sir.

CROSS-EXAMINATION BY MR. JORDAN:

Q Now, you say you caused his arrest how long after you went back there and began talking with him, how long was it that you caused his arrest? A The special officer came along within probably thirty seconds, sixty seconds, probably within a minute.

Q And he declined to make the arrest? A He asked --

Q I say, didn't he decline to make the arrest first?

A No, sir, he did not.

Q Didn't you so testify before Magistrate Finn? A I think not. He asked "What for?" or "Why should I?"

Q No, didn't you testify before Magistrate Finn that he first declined to do so? A If he declined, it was in that way, the question why he should do it.

Q I did not ask you about that.

BY THE COURT :

Q Now, Mr. Knox, your attention is directed to some answer that it is said you gave before Magistrate Finn?

THE COURT: Counsellor, it is best that you refer to the minutes, if you have them, and put the question and answer.

MR. MAYNARD: I object, unless the question is asked.

THE COURT: Yes, I sustain the objection. If you have the minutes, you may call his attention to the

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question and ask him whether it was asked, and call his attention to the answer and ask him whether he made it.

MR. JORDAN: I will get to that in a minute, your Honor.

BY MR. JORDAN:

Q Mr. Knox, you have taken a considerable interest in the prosecution of this action, have you not? A I think not.

Q You think not? Is that your answer? A I have taken an interest the same as I should imagine any good citizen would take.

Q I did not ask you about what you imagined. I asked you if you had? A I have taken an interest, yes, but not any undue interest, it seems to me.

Q Is it a fact that you were here incourt when Mr. Appleton was prosecuting, I think it was in this part; do you remember having been here before when the case was on the calendar? A Yes, sir.

Q A good many months ago? A Yes, sir.

Q And did you tell Mr. Appleton then, in the court room here, that if he did not try this case and put it on, that you would go to Headquarters? A I said that I would not consent to the case not being tried on any Assistant District Attorney's say so.

Q And that was in reply to Mr. Appleton's statement to you? A I don't know that it was just --

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Q Just a moment. That was in reply to Mr. Appleton's statement to you that he could not expect to get a conviction in this case, wasn't it?

MR. MAYNARD: I object to this as incompetent, immaterial and irrelevant.

THE COURT: Now, is it not a fact, Mr. Jordan, that any conversation between this witness and an Assistant District Attorney was between him and Mr. Howe?

MR. JORDAN: No, it was between both of them, the two of them.

THE COURT: Repeat the question.

(The question repeated by the stenographer).

THE COURT: Objection sustained.

THE WITNESS: Your Honor, I want to explain --

THE COURT: No, no explanation is necessary.

BY MR. JORDAN:

Q Is it not a fact that Mr. Howe of the District Attorney's office told you that he could not consistently present this case to a jury, and you told him that it would have to be done, or you would go to Headquarters?

MR. MAYNARD: Objected to on the same grounds.

THE COURT: Yes, objection sustained. Now, Mr. Jordan, that question is manifestly improper, with all due respect to you.

MR. JORDAN: If your Honor please, it is only --

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THE COURT: You are too well versed in the rules of evidence to put a question of that kind.

MR. JORDAN: But your Honor will pardon me, in putting myself right with the Court, it seemed it was competent to put a question upon the attitude of the witness, that is all, and I respectfully except to the ruling of the Court.

MR. MAYNARD: I move that the Court now instruct the jury to pay no attention to the characterization of Mr. Knox's attitude as given by Mr. Jordan.

THE COURT: If you can show bias on the part of this witness, or any motive that may attack his testimony--

MR. JORDAN (interposing): I thought that was evidence of it.

THE COURT: You are calling upon him to express an opinion as to the legal sufficiency of evidence and the propriety of the prosecution.

MR. JORDAN: But if your Honor will bear with me just a moment, it was struck me that that was just it. After an assertion had been made to him, he then said he would go to Headquarters. That was the object of it, and it seemed to me showed bias and extreme interest in the case, and it was only for that purpose I offered it. I trust your Honor will not think it was for any improper purpose.

THE COURT: Your purpose was proper. The question
Y

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I do not think bears upon the matter.

BY MR. JORDAN:

Q Now, Mr. Knox --

MR. JORDAN: Your Honor will pardon me for going one step further?

Q Did you have a conversation with Magistrate Finn before whom this matter was brought first?

MR. MAYNARD: I object to that.

THE COURT: He may answer yes or no.

A I was examined before Magistrate Finn, or rather at the time the charge was heard, before Magistrate Finn.

Q And did you state to Magistrate Finn that you wanted this defendant held?

MR. MAYNARD: I object to that. Well, I withdraw the objection.

A I may have.

Q And did Magistrate Finn say to you that he did not think it would do any good? A The record will probably show that. I don't remember.

Q Did the Magistrate say in your presence "I will hold the defendant for trial, because the District Attorney thinks he has a case here, but I do not think he can obtain a conviction on the evidence."

MR. MAYNARD: I object to that.

THE COURT: Objection sustained.

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MR. JORDAN: I take an exception.

Q And after --

THE COURT: Nothing more along that line now, Mr. Jordan.

MR. JORDAN: Yes, sir.

Q Mr. Knox, will you describe to this jury just exactly what you saw and felt before you saw any hand up there in near proximity to your body? A I felt a movement in my left hand hip pocket.

BY THE COURT:

Q In other words, you felt that there was something in your left hand hip pocket which was moving inside of that pocket?

A Absolutely correct, your Honor.

BY MR. JORDAN:

Q Now, there was a pocketbook in that pocket? A Yes, sir.

Q Did you feel anything except a movement in that pocket? That is, do you now recall any sensation of disturbance or anything else except in your pocket? A There was certainly a disturbance in that pocket, which I felt very distinctly.

Q I say, did you feel anything else, any other sensation except the disturbance of the pocket? A Not in the pocket, no.

Q Did you notice anything about your coat, the position of it? A Not at all. My attention was --

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Q I understand, but you did not observe or notice anything about any change in your coat? A Nothing whatever. I felt a very decided movement --

BY THE COURT:

Q Now, you have answered? A Yes, sir.

BY MR. JORDAN:

Q So that you do not know whether your coat was raised up or not, do you? A Well, being --

Q No, you do not know whether it was raised up or not, do you?

BY THE COURT:

Q Just answer yes or no? A Why, no, I cannot know that it was raised up.

BY THE COURT:

Q Very well, your answer is no.

BY MR. JORDAN:

Q Then you do not know whether this sensation which you felt as a movement in your pocket was ~~the~~ caused by the pocket-
from
book being moved/outside or from inside, do you? A It was inside.

Q No, no, just a moment.

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

THE COURT: Yes, strike out the answer. It is plain that the witness did not understand the question. Repeat the question.

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(The question is repeated by the stenographer).

BY THE COURT:

Q In other words, you felt a sensation as of something moving inside of your right, or your left hip pocket? A Left hip pocket, I did, sir.

THE COURT: Now, ask your question, counsellor.

Now, repeat the question again.

(Mr. Jordan's last question is repeated by the stenographer).

BY THE COURT:

Q In other words, suppose something had touched the cloth of your trousers on the outside, and touching the cloth of your trousers on the outside, had moved the pocketbook, which was inside in your pocket, that would have produced a certain sensation? A Yes, sir.

Q You would have felt that? A That was not the sensation that I felt.

MR. JORDAN: I move that that answer be stricken out as a conclusion and as incompetent.

MR. MAYNARD: I think it is perfectly responsive.

THE COURT: I will allow it to stand, because my question was merely paraphrasing yours. Your question called for precisely a similar answer.

MR. JORDAN: Exception.

BY MR. JORDAN:

Q Mr. Knox, was the sensation any more than the sensa-

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tion of something moving in your pocket? A I think it was, sir.

Q Well, now, just tell the jury what it was, in addition to the movement in the pocket? A May I illustrate it to the jury?

Q What? A May I illustrate it to the jury?

Q No, put it into words? A The sensation was like a tightening of the pocket, as though there was more in the pocket than there had been there before.

MR. JORDAN: I object to that. I have no objection to his saying that there was a tightening of the pocket, but saying "like there was something more put in there," I move that part be stricken out.

MR. MAYNARD: I think it is responsive. It was a peculiar question.

THE COURT: I will allow it to stand.

MR. JORDAN: I take an exception.

Q Mr. Knox, you say that you turned quickly after feeling that sensation? A Yes, sir.

Q And you say it was only a part of a second from the time you felt the sensation until you turned around? A I believe so, sir.

Q It was almost instantly?

BY THE COURT:

Q Just answer. Now, the jury want to hear you? A Yes,

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sir.

BY MR. JORDAN:

Q There was a hand two inches from your hip pocket?

A There, or thereabouts.

Q Now, is it not a fact that when you turned around, your body changed so that it was at least six inches, that your pocket was at least six inches from where it was when you felt the sensation? A I don't know how many inches it was, but I turned instantly and saw the hand.

Q You turned instantly and saw the hand within a couple of inches of your pocket? A Absolutely so, yes, sir.

Q Yet it was then when you turned? Now, your pocket was not in the same position after you had turned and saw the hand that it was when you felt the sensation in it, was it?

A Substantially in the same position.

Q I understood you to say in answer to a question from his Honor, that you turned around and it could not be in the same position, didn't you so testify? A Just a moment. I turned my head before the rest of my body turned.

Q But didn't you say to his Honor, in answer to a question asked by him, that you did turn around quickly, and you demonstrated it and said to his Honor that your pocket could not have been in the same position it was before? A Naturally, turning my head, my body, to some extent --

Q But I ask you, did you say so to his Honor? A I pre-

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sume I did. The record will show what precisely I said to his Honor.

Q And it is not a fact that all you can say is, that at the moment you saw that hand, it was on about a level with your pocket? Now, is not that all there was of it that you saw?

A That was part of what I saw and part of what I felt.

Q Is not that all that you saw, when the first glimpse of that hand was, that it was on about a level with your pocket? A It was very close to my pocket, within two inches.

BY THE COURT:

Q Now, was the hand at that time open or closed? A The back of the hand was up, to the best of my recollection.

Q Was it a gloved hand or a hand without a glove? A No, sir, it was a bare hand, without gloves.

Q Was it below the level of your pocket, or on the level of your pocket, or above the level? A Well, about on a level with my pocket, I should say. The whole thing passed in the twinkling of an eye, and it is just my impression of what happened at the time.

Q And the arm of the person with respect to the body of that person, was it outstretched or down at the person's side? A It was outstretched in this attitude (illustrating).

Q Was the elbow removed from the person? A To the best of my knowledge

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Q And somewhat out from the body? A Somewhat out from the body.

BY MR. JORDAN:

Q Now, Mr. Knox, your coat was down over your pocket, wasn't it, at that second? A I don't know.

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

Q You did not observe that it was up, did you? A Well, I did not observe that it was up. I don't know that it was either down or up.

Q Well, then, there was, so far as you know, between that hand and your pocket, a coat that reached six inches below it? A I don't know that.

Q So far as you know? A I don't know it.

Q You do not know whether it was or not? A No, sir.

Q Now, Mr. Knox, is it not a fact that there was a crowd getting on that car? A Probably a dozen or fifteen people.

Q Well, more than that, wasn't there? A I don't think so. Possibly a dozen and a half all told.

Q Going into that gate, that you were going into, wasn't there? A There was a number of people had gone on ahead of me.

Q I say, there was a good many people getting into that gate?, A Probably a dozen or fifteen people.

Q And there were quite a number of persons outside be-

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fore you got on, waiting to get on? A Yes, several.

Q And they were crowding on? A No more than usual.

Q Or taking it leisurely, and you were going on in the usual way and nobody was saying "Step lively" or anything of that kind? A I have never seen an elevated train without somebody to say that.

Q Well, what I want to get at is, were they hurrying up or were they taking it leisurely? A There was not any unusual crowd. There was the usual crowd getting on a Third avenue train, a dozen people.

Q Well, that is quite a good station for the railroad company? A Pretty good, I should imagine.

Q And a great many people do get on there? A They do.

Q Was not the defendant and other persons crowding up, and were not other persons crowding up behind you and the defendant? A Yes, and the defendant was immediately behind me.

Q Yes, I know, but there were people a little kind of pushing there, wasn't there? A I did not notice any pushing.

Q No crowding at all? A The crowd was going on as it usually does.

Q No, I mean behind, any crowding in behind? A No undue pushing. Probably in contact with each other as they always are getting on an elevated train.

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Q How far did the defendant stand behind you at the time you saw him? A He was the person immediately behind me.

Q Well, how far was he from you? A Possibly two or three or four or five inches.

Q His body? A He was close up behind me. I don't think as I can particularize.

Q What do you mean, if it was only two or three or four inches behind you, what do you mean by saying his elbow was extended from his body? A So it was.

Q His elbow extended from his body, if he was only reaching for your pocket, if he was only two or three or four inches away? A The man's hand was in this position (illustrating), and his elbow was just about in the position my elbow is now, which I take to be extended from my body.

Q Yes, I saw that is what you meant? A That is what I meant by it, about.

BY THE COURT:

Q In other words, the hand was hanging somewhat down from the, or the wrist was bent? A That is my recollection, that the back of the hand was up and the hand was being withdrawn from the neighborhood of my hip pocket.

MR. JORDAN: I object to that.

THE COURT: I will allow that "the hand was bent" to remain and strike out the balance.

MR. JORDAN: yes, strike out "being withdrawn"?

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THE COURT: The jury will disregard that.

BY MR. JORDAN:

Q Mr. Knox, do you know who was behind the defendant, immediately behind the defendant? A I do not.

Q And were you nearest to the car than you were, that is, to the body of the car which you were to enter, than you were to the end of the platform of the car, or were you about in the centre? A My impression is I was about in the centre. If anything, I may have been a little nearer the platform of the car. That is, the railing at the end of the platform.

Q The railing that surrounds the end of the platform?

BY THE COURT:

Q Let me understand, were you standing in front of the gate, and when I say "the gate", I mean what is opened to admit a person on the car, the gate of the car? A No, sir, I was not on the edge of the platform. When the train drew in and stopped there, when the crowd -- as the passengers were in that direction, several people were ahead of me.

Q So that you were perhaps two or three feet back from the edge of the platform? A When the train stopped, when it drew into the station and stopped.

Q And you were two or three feet back from the edge of the platform at the time you say you felt this sensation in your pocket? A No, sir.

Q Where were you? A I had stepped off the platform

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of the station, onto the platform of the car, there being six or eight --

Q Oh, you felt the sensation when you were on the platform of the car? A Yes, as I was going through the car, with the people in front and people behind.

Q Now, that car platform, was it on the same level as the station platform, or did you have to step up at all? A No, it is on the same level.

BY MR. JORDAN:

Q Were there persons behind you on each side of the defendant? A There were persons, probably six or eight persons behind me, among them the defendant, who was immediately up against me.

Q How close to him was the next person? A About as close as he was to me, I presume.

Q Then, it was possible for the person next to him to have touched your pocket?

MR. MAYNARD: I object to that as calling for a conclusion.

Q Was it not; well, it was within reaching distance?

MR. MAYNARD: I object to that.

THE COURT: I will allow him to state whether the person who was immediately behind the defendant, I will allow him to state how far from him the person was.

BY THE COURT:

Q How far from you in feet and inches was the person who

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stood or was immediately behind the defendant? A The thickness of his body and two or three inches more.

BY MR. JORDAN:

Q Well, was there any one to the right of the defendant who was not as far away as the thickness of the defendant's body? A I think very possibly so, yes, to the right of the defendant.

Q How about the left? A Nobody to the left of him, to the best of my recollection.

Q Did you look and see? A When I turned behind me, he was the man engaged my attention. I think he, like myself, was probably a little nearer the end of the platform than the body of the car.

Q Now, you assumed that the defendant was the one who had been attempting to pick your pocket, did you? A I surely did.

Q And you turned and stopped short immediately, didn't you? A Yes, sir.

BY THE COURT:

Q Let me ask you: Was the defendant at that time on the car platform, or was he on the station platform? A He may have been. He was just on the boundary line. I had just stepped on the car platform and he was there on the very edge of the car platform, or on the edge of the station platform.

BY MR. JORDAN:

Q Now, you created something of a commotion and said there

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was a pickpocket, and hollered to your friend "Let us get him"?

MR. MAYNARD: I object to the characterization of a commotion.

THE COURT: Yes.

MR. JORDAN: I think I am entitled to that. The District Attorney has shown that some one hollered.

BY THE COURT:

Q Well, you tried to arouse the attention of people in your immediate neighborhood? A Yes, sir.

Q And make others, or among others, you spoke to your companion? A That's right, sir.

BY MR. JORDAN:

Q Now, Mr. Knox, your attention was attracted to something beside the defendant, immediately after you had hollered "There is a pickpocket here"? A No, my attention was on the defendant then.

Q Well, immediately after that, your attention was attracted to a man standing in front of you? A No, sir. I started to get off the car, keeping my eye on the defendant, and the man got between me and the defendant.

Q Well, now, just tell this jury where you were, whether you were on the car platform or the station platform? A I was on the car platform, and attempting to get off on the station when this other man got in the way.

Q Well, then, if you were just on the car platform when

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this matter happened, and you attempted to get off, you did not have any distance to go at all, did you? A Oh, yes, I had, because the crowd was coming in, and as I turned to go after the defendant he backed out into the crowd, and immediately another man took his place right in front of me.

Q Immediately another man stood there? A Yes, immediately.

Q Well, then, it was immediately that you were confronted by another proposition, wasn't it? A As soon as I turned --

Q Yes, that is what I asked you. Now, this man, you inferred that he dodged purposely when you did? A I did not infer anything.

Q Well, what did you hit him for? A Because he got in my way three times in succession.

Q Well, you hit him just because he got in your way?
A Yes.

Q That is your only reason? A Well, you might ask him, he is in court.

Q I did not ask you that.

MR. JORDAN: I move that that be stricken out.

THE COURT: Yes, that is stricken out and the jury will disregard it.

Q Now, Mr. Knox, how far had the defendant gone toward the other entrance of that car before you got out and began following him, as you say? A Probably half way.

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Q That is half way from the entrance to the car into which you were going, or had gone, and the other entrance of that same car? A About, I should judge.

Q Now, you started toward him, you say, after you had struck this man who was in your way, and he had got out of the way, you started in a southerly direction toward the defendant? A I did.

Q And then you heard a voice calling something, heard a noise, a sound? A Yes.

Q How far had you got toward the centre of that car where this defendant then was, before you heard that call? A Pretty well down toward the centre of the car.

Q Well, was he there? A No, sir, he had kept on moving while I was moving.

Q And he had got down about how far? A About down to the end of the car.

Q Now, you had got to the centre of the car and then you heard a noise saying "Beat it?" A I did.

Q All right. You immediately turned and you "beat it"? A No, I did not turn and "beat it." I turned and followed.

Q You turned and ran? A Turned and followed the fellow who was "beating it."

Q Yes, but you were making ^{the} same kind of motions as the man was who was "beating it"? A Only not so rapid.

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Q Well, you ran as fast as you could, didn't you? A You bet.

Q What? A Yes, sir..

Q And he got away? A He did.

Q You had not said anything to this defendant personally up to the time that you had chased this man out toward the gate, the exit gate? A That is true.

Q And had gone back to where your friend was, had you?

A That's right.

Q You had not said anything to him up to that time, and after you had lost the man that you were chasing, you found the man who stood behind you then for the first time, and you told him that he was the man who had attempted to pick your pocket, or take your pocketbook?

MR. MAYNARD: Now, do not answer that question until you know whether you understand it or not. I do not.

(Question repeated by the stenographer).

MR. MAYNARD: I object to that on the ground that it assumes a fact not proven, he lost the man he was chasing.

MR. JORDAN: Well, I will ask this:

Q The man got away from you, didn't he, that you were chasing? A The man that ran after --

Q Yes, he got away from you? A Yes.

Q Well, now, I repeat the question I asked before.

MR. MAYNARD: You had better ask another question.

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THE COURT: Repeat the question.

(Mr. Jordan's question again repeated by the stenographer).

BY THE COURT:

Q Now "him" there in that question refers to the defendant? A To the defendant. This was the first time I had opportunity to ask him --

THE COURT: Strike that out.

Q Just answer the question? A Yes.

Q The answer is "Yes"? A Yes.

MR. JORDAN: That is all.

BY THE COURT:

Q I assume, that so far as you know, you had never seen the defendant before that time?, A So far as I know.

Q And when you did see him, after having turned around and come back, he was standing near your friend, and he and your friend were in conversation? A Yes, sir.

BY THE FIFTH JUROR:

Q Can you tell us what is the reason why, after you ran after the defendant, you changed your mind and ran after the man you struck? A Because my assumption was that the two men were in collusion, and the other man was manifestly getting in my way, so that I acted on that assumption and I knew that the defendant could not get away out of the train or car, because there were no steps in that direction. He had to come back to

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where I was and I took a chance of getting the other fellow, and when I found I could not get him, I came back after the original.

MR. JORDAN: I object to that answer, and ask that it be stricken out.

THE COURT: Well, the answer is responsive to the question. The question was not objected to.

MR. JORDAN: Well, if your Honor please, because counsel does not see fit to throw any obstacles in the way of the jury getting information, in my opinion, it is no reason why an incompetent answer should be given and the defendant be bound by it. I might object to the question because it was not framed in the language that the rules of the Court require, but I do not want to appear to be attempting to blind the case or be bound by any such answer.

THE COURT: Well, I think that this particular question was one that could be only answered by an answer which would be incompetent. It was not a case of a question which could have been asked in a way to have made the answer receivable in evidence.

MR. JORDAN: Well, then, I ask your Honor to strike it out.

THE COURT: In other words, the question itself was manifestly objectionable, but no objection was taken to

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it.

MR. JORDAN: I ask your Honor to strike out the question and answer, on the ground that it is incompetent, immaterial and irrelevant, and that my objection be regarded as in season.

MR. MAYNARD: I object to striking it out. I have this to say on that, that counsel for either party in any proceeding knows the law to be that he may object to any question asked by the Court or jury, and that it is his duty to interpose such objection before any answer is made to such question, and that he foregoes the right to object to the answer if not interposed at that time.

THE COURT: If the answer, counsellor, were not responsive to the question as put, you would doubtless have the right to move to strike it out, but the answer being seemingly responsive to the question, as put, and called for by the question, I think I will allow it to stand.

MR. JORDAN: If your Honor please, I desire to except to it, and in doing that I want to say to your Honor that it is upon the theory solely that incompetent evidence cannot be made competent by silence or otherwise.

MR. MAYNARD: If your Honor please, I shall have to protest when counsel for the defendant makes such statements in the presence of the jury --

MR. JORDAN: And I protest also against the District

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Attorney --

THE COURT: Well, you have both protested now, gentlemen. Proceed.

RE-DIRECT EXAMINATION BY MR. MAYNARD:

Q Now, Mr. Knox, when you turned quickly on the platform of the car, I understood you kept your eyes on the defendant in this case and you tried to follow him? A I did.

MR. JORDAN: I object to that as calling for a conclusion.

Q Well, did you follow him?

THE COURT: I sustain the objection.

MR. MAYNARD: Yes, sir.

Q Did you follow him? A I attempted to follow him.

Q And before you heard the cry of "beat it", how close had you got to the defendant in this case? A I had not gotten close to him. He had gotten away.

Q Well, how far? A He had gone probably 25 or 30 feet.

Q You did not at that distance say anything to the defendant at that time? A No, sir.

Q Did you then know that there was no exit at that end of the station platform? A I did.

Q When you heard the cry, the man you had struck for getting in your way was then in full run in the other direction? A After I heard the cry and turned, I saw him in

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fuel run.

Q And you followed him then for a minute, did you, to the exit? A For a few seconds.

Q But he outran you?, A He certainly did.

Q Now, I want to ask you the question, or a question or two about your position there at the platform when you attempted to board the train. You were looking straight ahead, were you? A Yes, sir.

Q At that time you did not see the defendant close behind you?, A I did not see anything behind me.

Q You did not see the man next back of him, did you?

A No, sir.

Q It was not at that time that you saw the crooked hand, was it, and arm? A No, sir, it was not until after the gate was opened and the passengers were moving onto the train, myself among them.

BY THE COURT:

Q Now, pardon me one moment. You had stepped from the platform onto the platform of the train? A Not at the time-- Mr. Maynard asked the question --

BY MR. MAYNARD:

Q Well now, follow the Court's question.

BY THE COURT:

Q You had at one time? A Yes, sir.

Q You had in one of your hands a valise or dress suit

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case, is that so? A Yes, sir.

Q In which hand was that? A I really couldn't tell you now.

Q And the arm which held the dress suit case, was it extended down or was it -- where was it? A It was extended down. It was a good sized dress suit case.

Q The dress suit case was full of clothing? A Yes, sir.

Q In the other hand you held what? A An umbrella.

Q You do not remember whether you held the umbrella on the side of the pocket in which you felt the sensation? A I don't now remember that.

Q Or whether you held the dress suit case on that side? A I could not swear to that now.

Q The arm that held the umbrella, was that extended down? A I absolutely could not tell you that. The chances are --

Q Did you have an overcoat on that day? A No, sir.

BY MR. MAYNARD:

Q Immediately upon following the movement in your left hip pocket, I understand you turned your face to the left and saw a hand? A Yes, sir.

BY THE COURT:

Q Now, the moment you turned your face, were you at that moment on the platform of the car? A On the platform of the car.

BY MR. MAYNARD:

Q When you turned your face, you saw the hand that was then

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two inches from your body? A There or thereabouts, yes, sir.

Q Now, when you turned your body, did you still keep your eyes on that hand? A I kept my eyes on the man that owned the hand.

Q You saw at once whose hand it was? A Yes, sir.

Q And that was the man that you followed first, was it?

A Yes, sir.

Q And that was the man whose arrest you finally caused?

A Yes, sir.

RE-CROSS EXAMINATION BY MR. JORDAN:

Q Now, was this question asked you in the Magistrate's Court, by the Magistrate: "Q But you won't swear that this defendant's hand was the hand that was in your pocket?

A No, not having an eye behind me." Did you have that question asked you? A I believe I said that.

Q And when you made the affidavit upon which the defendant was arrested, you swore that the defendant, that you saw the defendant withdrawing his hand from your pocket, didn't you?

MR. MAYNARD: I object to that, to the form of the question.

MR. JORDAN: Well, I will put it in a different shape.

Q Well, was this question asked you by the Magistrate:

"I want you to understand that if you cannot swear that you —"

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saw his hand in your pocket and you admit that the other man might have been near enough to have touched your pocket, it don't seem to me reasonable that you could swear that he did it."

MR. MAYNARD: I object to that as not a question.

THE COURT: Well, he is merely asking it for the purpose of calling the witness's attention to a remark the witness made before the Magistrate. I allow him to read it merely for the purpose of directing his attention now to something he says he said was before the Magistrate, and for no other purpose.

MR. JORDAN: Yes, sir.

Q (Reading:) "By the Witness: I can swear I think that." A Will you read the question again?

Q "By the Magistrate: I want you to understand that if you cannot swear that you saw his hand in your pocket, and you admit that the other man might have been near enough to have touched your pocket, it don't seem to me reasonable that you could swear he did it? A (By the witness) I can swear I think that." A I can swear that I think it was his hand that was in my pocket. I could not swear I saw it in my pocket.

Q Yes, and that was the answer that you made, as well as the one I read prior to that time? A I presume so, if your record is correct.

Q That is all.

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THOMAS F. O'CONNELL, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. O'Connell, you are a special officer of the Interborough Rapid Transit Company? A Yes.

Q You are stationed at the Grand Street station of the elevated road? A Yes, sir.

Q How long have you been there? A About three years.

Q Were you on duty at that station on the 15th day of June, 1908? A Yes, sir.

Q Were you there about three o'clock in the afternoon? A Yes, sir.

Q Whereabouts on the station were you at that time?

A I usually stand on the uptown side, on the south side of the station, that is, the east side, on the north rail, uptown track.

Q And you were that afternoon on the east side of the station? A Yes, sir.

Q I ask you where you were about three o'clock, if you remember? A Well, about 3:08 I went in the porter's room, situated on the east side of the station. There is drinking water in there.

Q You went into the porter's room on the east side of the station? A Yes, sir.

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Q Shortly after 3 o'clock? A Some minutes after 3, 3:08, or something like that.

Q Now, you are better acquainted with that station -- will you describe the east side of that station, in respect of doors and entrances? Do you understand my question? A I do.

Q Good. A There is an exit door, that is, the door coming from the station onto the platform; it is a double door with an alcove about six foot square, where the cancel box stands, in the centre, and south of that is the lady's waiting room and door.

Q An entrance in there? A An entrance, yes, which projects back into the station. Then, next to that, about four foot further south and near the end of the station is the porter's room. That is right at the extreme south end of the station.

Q And the drinking water for the assistants on the station is there? A Yes, sir.

Q Were you in the porter's room at this time? A Yes.

Q What, if anything, happened to which your attention was called at the time you were in there? A I heard loud words on the platform. I was just taking a drink of water.

Q What did you do? A I opened the door and stepped out on the platform.

Q What did you see? A I saw three men, that is, just at

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the south end of the platform.

Q Saw this defendant? A Yes, on the station, south end of the station.

Q Was this defendant one of these men? A That gentleman there (indicating).

MR. MAYNARD: Mr. Kean, will you stand up(indicating person in the court-room).

THE WITNESS: Yes, sir.

Q That is another man?, A Yes.

Q Was the last witness on the stand there? A Mr. Knox, yes.

Q About howlong is the building, the station itself between those tracks from north to south? A You mean length-wise?

Q The station building? A About 40 feet, 45 feet.

BY THE COURT:

Q That is the part that is under cover? A Yes, sir.

BY MR. MAYNARD:

Q Now, were these three men standing besides the building? A No, they were standing a little apart from the building. That is, the railing that runs down on the south end of the platform and extends, it is narrow.

Q As you came out of the door of the porter's room, which I understand is at the end of the station, practically the end? A Yes, sir.

Q You turned to the right, and there were those men?

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A Yes, sir.

Q They were right by the corner of the building there? A Yes, sir, exactly.

Q Was there anything there besides the three men?

A I noticed a grip, a satchel.

Q Did anybody have it in his hand, if you remember?

A I disremember. I could not say. I think it was setting on the platform.

Q Now, when you first came -- I will ask you this question, which of those three men was nearest the station building? A Mr. Kean.

Q Now, with reference to the position of Mr. Kean when you first came out of the porter's lodge, where did you see this defendant Reardon? A He was standing practically between the two, Mr. Knox and Mr. Kean, that is, he was a little further back.

Q Well, was he south of Kean? A Yes, a little further south of Mr. Kean.

Q When you first saw the witness Knox, was he in motion or was he walking? A If I remember right, he had hold of this defendant, just grabbed him as I came out the door.

Q What did he say? A He says "Officer, arrest this man, he tried to rob me," or words to that effect. I don't remember just what he said.

Q You did arrest him? A Yes.

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Q What did you do with him? A I took him to Eldridge Street Station House and from there over to Essex Market Court.

Q Did he go without resistance? A Well, at first he resisted a little.

Q Well, describe what he said or did?

MR. JORDAN: I object to that, if your Honor please. The fact that a man is not anxious to go, to be arrested, is not any evidence of guilt.

THE COURT: Repeat it.

(Repeated by the stenographer).

THE COURT: I will allow it.

MR. JORDAN: If your Honor please, I object to it on the ground that it was an unlawful arrest, and the defendant was not bound to go and had a right to struggle even to the death.

MR. MAYNARD: Now, I represent to the Court that the remarks of defendant's counsel are highly improper.

MR. JORDAN: And I protest against it, if your Honor please. I made objection upon that ground.

THE COURT: Pardon me, Mr. Jordan, what ground do you consent the arrest was unlawful?

MR. JORDAN: For the reason that it was not, that he had no evidence of the commission of any crime, and that it was upon verbal complaint made by --

THE COURT: Now, in the first place, this witness is

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what kind of officer, if an officer at all?

MR. JORDAN: A peace officer, I assume.

THE COURT: With the powers incident to a peace officer, to make arrests?

MR. JORDAN: I assume that is so, yes, sir.

THE COURT: The charge made was a charge importing a felony, was it not?

MR. JORDAN: The charge was a charge of felony, but he had no reason from the fact to believe a felony had been committed.

THE COURT: He was requested to make the arrest?

MR. JORDAN: Yes, sir.

THE COURT: The statement was made to him, and pursuant to that statement he made the arrest?

MR. JORDAN: Yes, sir, that is as I understand it.

THE COURT: The objection is overruled.

MR. JORDAN: Now, if your Honor please, as preliminary to that, I would like to know what kind of officer the witness is.

MR. MAYNARD: Well, you will have an opportunity on cross-examination.

MR. JORDAN: But for the purpose of the objection, I ask that. I assumed that he was a peace officer. I don't know whether that is a fact or not.

THE COURT: Well, I am receiving it as bearing upon

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the conduct of this defendant, and when you come to cross-examination, you may develop what, in point of fact, the position of this witness was.

MR. JORDAN: Yes, sir.

BY MR. MAYNARD:

Q Now, state, officer, if you will, what was said or done by the defendant after you placed him under arrest? A Well, when Mr. Knox requested me to arrest this man I says, "Will you make a complaint?" He says "Yes, sir." I placed my hand on his arm and told him he was under arrest. He says "Officer, you are making a mistake, I am a business man," and he opened his coat and took out several cards and wanted me to take them. I said "You are under arrest now and you can use those in the station house." We started downstairs and he tried to pull away from me at the head of the stairs. I says "Now, take your time." He says "Come on, come on, hurry up."

Q Who said "Come on; come on"? A The prisoner, Mr. Reardon.

Q The defendant? A The defendant, and I told him to take his time. I got a better hold of him and we got part way downstairs and he tried to trip me.

MR. JORDAN: I object and move to strike that out.

THE COURT: Strike that out and the jury will disregard it.

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Q Now, officer, state to the jury what the defendant did?

BY THE COURT:

Q What the motions of the defendant's body were with respect to your body? A Well, he stepped across and put one foot across ahead of me on the steps. We were going rather fast.

BY MR. MAYNARD:

Q State that once more, he stuck his leg in front of you?

A Yes, stepped across and put his foot in front of me on the stairs going down.

Q Did you fall? A I did not. I straightened him up and drew my billy and told him that ^{if} he attempted that again, and if he did not go slow I would use my billy on him.

Q Did he thereafter go peacefully? A He went quietly after that.

Q Where did you take him? A Eldridge street station house.

Q What was done there? A I arraigned him before the Lieutenant and he was taken from there to Essex Market Court.

Q Immediately? A Immediately, yes, sir.

Q Who went with you to Essex Market Court at that time?

A The complainant and Mr. Kean.

Q Who do you mean by the complainant? A Mr. Knox.

Q And Mr. Kean? A Mr. Kean and Officer Finnegan of the Ninth Precinct.

Q Who was sitting in Essex Market Court? A Magistrate Finn.

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Q Was the defendant held? A He was held, yes, sir.

MR. JORDAN: Now -- if that is competent, I do not want to object to it, but I am inclined to think -- I think, however, I have proved he was held. All right.

MR. MAYNARD: Yes, I think you have.

Q Mr. O'Connell, did you know this defendant prior to the 15th of June, 1908? A No, sir, I did not.

Q Had you ever noticed him on that station prior to that time? A No, sir.

Q Have you ever seen him on the station since? A Yes, sir.

MR. JORDAN: I object to that. Wait a moment. It is subsequent to the time.

THE COURT: Yes, I think it is immaterial.

MR. MAYNARD: I withdraw the question.

Q Now, officer, at the time that you came out of the porter's lodge, did you see any one running on the platform?

A There was a man going out the exit gate.

Q A man going out of the exit gate? A Yes, that was at the north end of the station.

Q How far was that man away from the defendant at the time? A Well, he was practically the length of the station.

CROSS-EXAMINATION BY MR. JORDAN:

Q Was the man running that was going out of the exit gate? A Well, I should not say he was running. He was going kind of fast. I would not say he was running. He was going faster than a walk.

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Q And Mr. Knox, have you heard Mr. Knox's testimony here ? A Yes, sir, part of it.

Q You heard Mr. Knox say he chased the man up to the gate ? A Well, I did not see that.

Q Well, you heard him say that, didn't you ? A I think I did, yes.

Q But when you came out and when you saw the man running up to the gate Mr. Knox was up talking to the defendant, wasn't he, had his hands on him? A He grabbed the defendant just as I came out of the porter's room.

Q Yes, that is what I thought. Now, he was not chasing a man down towards the gate, was he, at that time ?

A I did not see him chasing him.

Q Well, that could not have been the man then that he was chasing, was it ? A I did not say it was.

MR. MAYNARD: I object to that ~~as~~ as calling for a conclusion.

THE COURT: Objection sustained.

Q Now, Mr. Witness, you were a witness in the Magistrate's Court, were you not ? A Yes, sir.

Q And was this question asked you, after you had said that the witness or that the defendant tried to trip you, was this question asked you: "At the time you say he tried to trip you, you thought it was an accident, didn't you?" and did you make this answer "I thought it was an accident, yes."

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Was that question and that answer made in the Magistrate's Court by you ? A Well, I don't remember.

Q What ? A I don't remember.

Q You don't know whether it was or not ? A After a year and a half ago I don't remember what answer I made to that.

Q You say you don't remember what the answer was ?

A I don't remember the answer I gave.

BY THE COURT:

Q Well, what is the fact, what was the impression made upon your mind at the time, that it was accidental or intentional? A Why, I believe it was intentional, your Honor.

MR. JORDAN: I did not quite catch the question.

May I have the question read ?

(Question and answer repeated by the stenographer).

MR. JORDAN: I move the answer be stricken out

"I believe it was intentional".

THE COURT: Strike out the answer.

BY MR. JORDAN:

Q Did you not believe at the time that it happened that it was accidental?

BY MR. MAYNARD:

Q Yes or no.

BY MR. JORDAN:

Q Yes, yes or no. A No, I did not think it was acci -

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Q No, I did not ask you what you now think. I asked you if you did not believe at the time it happened that it was accidental, and didn't you so testify in Magistrate Finn's Court ? A I don't remember what I said in Magistrate Finn's Court.

Q You know whether or not you told the truth there, don't you ? A I told the truth, I believe, yes, to the best of my knowledge, in both cases.

Q And was not this question asked you: "Q But at the time you thought it was an accident ? A Yes. Q And you are not sure now but it was ? A No." Were those questions asked you and did you make those answers ? A I could not say, I could not remember. It is a year and a half ago.

BY THE COURT:

Q In other words, you do not recall now whether those questions were or were not put to you in the Magistrate's Court, or whether you did make those answers you do not remember now ? A I don't remember now, no, your Honor.

BY MR. JORDAN:

Q Well, you did not say anything about any threats you made of drawing your club when you were before Magistrate Finn, did you ? A I don't remember.

Q Don't you know whether there was any question asked of you which called for that answer ? A I do not, no, sir.

Q But you remember that you said to him that^{if} he did not

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come along you would use your -- what was it you said ?

MR. MAYNARD: I object, he said nothing of the kind.

Q What did you say to the defendant about a club or billet, something of that kind ? A I told him if he did not go quietly that I would use my billet on him.

Q Yes, I thought so. Now, you did not say anything about that in Magistrate Finn's Court, did you ? A I don't remember whether I did or not.

Q Did you tell Mr. Knox first that you did not think that you ought to arrest him, the defendant ? A No, sir, I beg your pardon?

Q (Question repeated) A No, sir; I did not.

Q You asked him if he would make a complaint and he said yes, and you arrested him then ? A Yes.

Q You never knew him, you never had known the defendant?
A I told him he was under arrest.

Q I say, you never had known the defendant before that?
A No, sir.

Q And he protested that he had done nothing wrong ?
A He claimed that.

RE-DIRECT EXAMINATION BY MR. MAYNARD:

Q Was the time when you drew your billet before or after the defendant's leg had been stuck in front of you? A After.

Q Immediately after ? A Yes, sir.

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BY THE COURT:

Q Do you wear a uniform or merely citizen's clothes ?

A A gray uniform, your Honor.

Q And were you wearing the gray uniform on that day ,

A Yes, sir.

Q With a badge ? A A shield; yes, sir.

BY MR. MAYNARD:

Q What is the number of your shield ? A 570 .

BY THE COURT:

Q You were wearing that at the time you placed the defendant under arrest ? A Yes, sir.

BY MR. MAYNARD:

Q Prominently exposed ? A Yes, sir.

Q On which side , A The left side.

MR. JORDAN: I want to ask the District Attorney if he has a copy of the testimony taken before Magistrate Finn, and if he will concede this is a copy of the testimony ?

MR. MAYNARD: I am not in a position to do that. I do not think I have any copy of the testimony taken before Magistrate Finn.

MR. JORDAN: Just on the testimony of this witness.

MR. MAYNARD: I do not feel that I have a right to.

BY MR. MAYNARD:

Q At the time the defendant stuck his leg in front of you,

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did you believe that it was done intentionally ?

MR. JORDAN: I object to it as incompetent, immaterial and irrelevant, and not binding upon the defendant.

THE COURT: That is precisely the question that you asked on cross-examination.

MR. JORDAN: No, if your Honor please, I asked him if he did not testify before Magistrate Finn that he thought it was an accident when it occurred.

MR. MAYNARD: That is the precise question, and then the answer was stricken out for another reason. Now, I ask the question.

MR. JORDAN: If your Honor please, if the belief of this witness as to an act of the defendant --

THE COURT: Well, I will sustain the objection.

MR. MAYNARD: All right, I think that is all.

NATHANIEL W. KEAN, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Kean, what is your business ? A Advertising agent.

Q Do you have business relations with the Bowery Savings Bank? A Yes, sir.

Q Were you there on the 15th day of June, 1908 ? A I was.

Q Did you leave that bank with Mr. Knex , A I did.

Q Where did you go to ? A We went to Grand street sta-

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tion of the elevated road.

Q Did you have anything in your hand ? A No, sir.

Q Did Mr. Knox ? A Mr. Knox had a bag.

Q A dress suit case ? A Yes, a dress suit case.

BY THE COURT:

Q In which hand was he carrying it ? A I could not say. I could not say which hand, whether it was the right or left hand, I could not say.

BY MR. MAYNARD:

Q Which went into the station first, you or Mr. Knox ?

A I went into the station first.

Q Which went through the door by the ticket chopper first ? A I went through the door first.

Q Was there a train then in the station? A No, I think there was one coming into the station as we got there.

Q Just at that time ? Now, which car, if any, of that train, did you attempt to board, speaking from the north end of the platform ? A About the fourth car on that train.

Q Well, did you notice whether there was an open car on that train? A Yes, that's the reason why I was about the fourth car.

Q Did you attempt to get on that car ? A I did not try to get upon the open car, but the one that followed the open car.

Q Now, you attempted to get on the car that followed the

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open car ? A Yes.

Q Were there any people standing around on the platform?

A Of the car; yes, sir.

Q And on the platform of the station? A Ahead of us.

Q Ahead of you? A Yes, sir.

Q Was Mr. Knox right behind you, on the platform?

A Yes, sir.

Q What did you do when the cars, when the train came in, stand still? A When the gate was opened, I made my way through the crowd on the platform into the car.

Q How far did you go ? A A distance of about, to the cross seats, say fifteen feet.

Q The cross seats of the car ? A About.

Q What then happened ? A As I got there, Mr. Knox called from where he was in the car "Kean, here are pickpockets." I turned around and re-traced my steps to the entrance of the car.

Q Did you hurry up ? A Yes, as quick as I could.

Q Where was Knox when you saw him? A Knox was close to the door, going out to the platform, to get off.

Q You mean close to the gate ? A To the door of the car. He had to turn. He was at the door of the car.

BY THE COURT:

Q You mean to say he was at the door leading from the platform of the car into the car, ~~ask~~ do you mean that ? A He was at the door of the platform leading into the car.

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Q Not from the gate leading from the car platform?

A No, sir, at the door of the car.

Q He was at the door of the car and facing you into the car ? A When I saw him he was facing to get off the car. He had turned as he called me, evidently, when I turned he had turned also evidently, so that he was facing the front of the car.

BY MR. MAYNARD:

Q What was he doing ? A He was shuffling or pushing his way to get off. He seemed to me to be scuffling, so I immediately got behind him and followed ~~him~~ him off the car.

Q What did he do as soon as he got off the car ? A As soon as his foot got almost on the platform, he threw his bag.

Q Where ? A On the platform towards the railing. It was on the platform.

Q How far ~~xx~~ from the car ? A Three or four feet.

Q What did he do then, after he threw his satchel ?

A He ran to the exit of the platform, which was north, and I remained by the bag, I watched Mr. Knox to see whether, or what was the outcome of it.

Q Well, you went directly to the bag, A I went directly to the bag as he threw it against the rail.

Q Did you see this defendant here at that time ? A I did not notice him.

Q Did not notice him o, sir.
? A N

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Q Did you afterwards see him on the platform? A Yes.

Q What direction did he come from, towards you? A Well, almost in front of me. That would be from the east, but it might be a little southeast, because the car, the gate of the car --

Q Well, when you first saw him he was southeast of you?

A A trifle south, he was due east.

Q Did the defendant say anything to you, yes or no? A Yes.

Q What did he say? A He said "Go and help your friend, go on, I will mind the bag."

Q The defendant said that? A That defendant said to me.

Q Well, did you follow his advice? A I did not.

Q You stayed by the bag? A I remained by the bag.

Q Did you hear anything else said? A While I was looking following Mr. Knox as he ran down the platform, following him with my eyes, there was a voice considerably above the crowd that said "Beat it".

Q Whereabouts on the station platform did you locate that voice? A Almost in front of me.

Q Near the car? A Near the car, between the car and myself.

Q Did you see any one "beat it"? A I did not.

Q You did not see any one run? A No.

BY THE COURT:

Q Now, Mr. Witness, I want to understand, you had gotten into the car and you had proceeded down from the door of the car towards the cross seats, and you had almost reached the cross seats when you heard a voice which you recognized as the voice of Mr. Knox? At the time that you heard the voice, you were facing in the general direction in which the train was about to go? A No, sir; the opposite direction. I was going ~~to~~ to the rear of the car.

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Q I see, the opposite direction? A The opposite direction. The car was going north and I was going south walking in the car.

Q Yes, and this voice came from directly behind you?

A Yes, sir.

Q You then immediately turned around? You remained with your eye rested upon Mr. Knox, after having heard his voice; Mr. Knox was in the doorway of the car with his back towards you, apparently in the act of going through that doorway onto the car platform, is that so? A He was in that doorway making his way off the platform, as though he was making a way to get off the platform, but he was in the doorway of the car, inside the gate.

Q In other words, directly above his head, in a perpendicular line, would have been the top of the doorway, is that so?

A That is right, yes, sir.

BY MR. MAYNARD:

Q When you first turned in the middle of the car, could you see Mr. Knox when you first turned? A Why, it is hard for me to say. The thought was not to locate him or look for him, it was to get to him.

Q You heard a voice and turned? A I turned.

Q Did you hurry as soon as he called? A I hurried immediately.

Q And the first you saw of Knox was on the platform trying

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to get off? A At the door.

Q Well, he was on the platform trying to get off, was he?
A Yes, sir.

MR. JORDAN: I object to that. It is coaxing as well as leading.

THE COURT: Well, I will allow the answer to stand.

Q Did you get close enough to Mr. Knox so that you touched him before he got off the platform? A I did.

Q Did you touch him before he got off the car onto the station? A Yes, I touched him.

BY THE COURT:

Q Mr. Witness, were any persons between you and Mr. Knox, at standing in the aisle of the car the time when you turned, having heard a voice, which you recognized as Mr. Knox's voice, as Mr. Knox? A I could not say.

Q Was your vision as you looked down the aisle of the car and towards the door, obstructed by anyone standing between you and that door? A No, it was not. In other words, if there was anybody there, my vision would be clear so that I could see him as my recollection serves me now.

BY MR. MAYNARD:

Q Well, do you mean that -- A (Interrupting) People might be standing there and still I could see over them.

BY THE COURT:

Q In other words, as you turned you could see Mr. Knox?

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A I could see Mr. Knox.

Q And you did see Mr. Knox? A I did see Mr. Knox.

BY MR. MAYNARD:

Q The instant you turned? A Yes.

Q Well, you were standing by the satchel subsequently, and after the defendant spoke to you, what happened, what did Mr. Knox do? A Am I to tell what he did from the time he got off the platform of the car?

Q (Question repeated)

BY THE COURT:

Q Now, you are by the satchel? A Yes, sir.

Q And the satchel is down on the platform? A Yes, sir.

Q Now, what did Mr. Knox do? A Mr. Knox returned from where he had run on the platform; he came back where I was standing by the satchel, and he immediately pointed to this man and says "That is the one".

BY MR. MAYNARD:

Q Did he lay his hands on him? A Yes.

Q Where was the defendant standing then when he laid his hands on him? A Standing in front of me.

Q How close to you? A Two feet.

Q Away from you? A Yes.

Q Now, was Reardon, the defendant, towards the south end of the platform, two feet away from you, or towards the north?

A He was, say, between two and three feet to the east of me,

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and just a little north of me.

Q To the east and north of you? A East and north.

Q What was the position of Knox at that time, with reference to you? A Mr. Knox was between myself and this man Reardon.

Q Did you see the special officer when he came on the station? A I did.

Q Were you present at the time of the arrest? A I was.

Q Did you see Officer O'Connell take the defendant Reardon down the stairs? A I did.

Q state what happened on the stairs, if anything?

A I simply saw him take and go down with the prisoner.

Q Was Mr. Knox walking with you? A No, I don't think he was. I think Mr. Knox followed the policeman.

Q Where were you? A And the defendant, and I was behind Mr. Knox.

BY THE COURT:

Q Now, Mr. Witness, pay careful attention to this question: From the time that you turned around in the car, as you have described, having heard a voice, and saw Mr. Knox, did you at any moment lose sight of Mr. Knox? A I did not.

Q He was at all times in your sight? A He was.

Q From that time until the time that Mr. Knox put his hand, as you have said upon the defendant, is that so?

A He was.

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BY MR. MAYNARD:

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Q Now, were you watching Mr. Knox and nothing else all the time, from the time you heard him shout until the officer arrested this man? A I was.

Q Watching Mr. Knox and nobody else? A Watching Mr. Knox.

Q You were watching Mr. Knox when you saw Reardon?

A Yes. I was watching Mr. Knox when Mr. Reardon --

Q You were watching Mr. Knox when you picked up the bag or went to the bag? A That's right.

Q Well, were you? A I had to locate the bag first.

Q Answer the question yes or no? A I was watching Mr. Knox all the time.

Q All the time? A All the time.

CROSS EXAMINATION BY MR. JORDAN:

Q You have stated now all that occurred, have you, Mr. Witness? A Have I given all my evidence? I have.

Q All that you recall of the circumstances? A All that I recall.

Q That is all, sir.

MR. MAYNARD: That is the People's case. Just a minute.

BY THE FIFTH JUROR:

Q While you were looking or watching the bag, did the train pull out? A No.

Q It did not pull out? A No.

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MR. MAYNARD: That is the People's case.

MR. JORDAN: If your Honor please, the defendant asks that this court now dismiss the indictment and discharge the defendant, upon the ground that there is no evidence on which the court or jury can judicially determine that this defendant committed any crime.

THE COURT: Motion denied.

MR. JORDAN: If your Honor please, one moment, I desire to be heard upon that proposition, and there is only one part of the testimony that I would like, and that would be to get the stenographer here from the Magistrate's Court. Aside from that, I shall have no testimony. I desire to be heard upon this case, and call your Honor's attention to the case of the People vs. Rogers, which is on all fours, in my opinion.

THE COURT: Now, it is preferable that the case -- you desire, you now make a motion at the close of the People's case?

MR. JORDAN: Yes, sir.

THE COURT: And in the event that that motion is denied after argument, you wish to put in as the defendant's case a portion of the stenographer's minutes before Judge Finn?

MR. JORDAN: Yes, sir, only as to the testimony of

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the officer. I think there may be one or two others.

THE COURT: Now, you cite a case. What case is that?

MR. JORDAN: The case of the People vs. Rogers, decided in Appellate Division, 22 App. Div., and I think I can give your Honor the page. People vs. Rogers, 22 App. Div. 147.

THE COURT: You contend that the facts in that case are so nearly identical with the facts in this case that the rule of law as there laid down should be applied here?

MR. JORDAN: Yes, exactly.

THE COURT: Now, has that case been reversed?

MR. JORDAN: No, sir, I am sure it has not been reversed, and as your Honor will observe, this case is different. That is the other element of the contradiction of the People's witnesses.

THE COURT: Your motion is denied, counselor.

MR. JORDAN: And the defendant excepts. Now, your Honor, I assume that I will not be required -- I have not all the witnesses here.

THE COURT: Mr. Maynard, are you in a position to concede what is requested regarding the minutes?

MR. MAYNARD Will you specify?

THE COURT: Suppose you and Mr. Maynard go over it together. You can step over there and just see what you want.

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MR. JORDAN: Well, I want to know what will be the disposition of the case now. I have to be at the Appellate Division at two o'clock, and I understood your Honor would give me time?

THE COURT: Yes, and both sides may sum up tomorrow morning. Is that agreeable to you?

MR. JORDAN: Yes, sir, it is.

THE COURT: Then what disposition do you want to make of the case of the People vs. Jacob Cohen?

MR. MAYNARD: We are ready.

THE COURT: Mr. Jordan is counsel in that case. You may now confer with Mr. Maynard regarding those minutes. If you agree, why, they can be read in evidence.

MR. JORDAN: The District Attorney consents that the following be read in evidence: "By Mr. Jordan: Q. At the time you say he tried to trip you, you thought it was an accident, didn't you? A. I thought it was an accident, yes. Q. You don't know that he tried to get away from you? A. I take it for granted he was trying to get away. Q. But at the time you thought it was an accident? A. Yes. Q. You are not sure now but it was? A. No."

MR. JORDAN: The defendant rests, and now renews the motion made at the close of the People's case.

THE COURT: Yes, you renew the motion?

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MR. JORDAN: Would your Honor care to hear us on the proposition?

THE COURT: No, I do not think it will be necessary.

MR. JORDAN: Then to-morrow morning, and I have an exception to your Honor's ruling?

THE COURT: Yes. Gentlemen of the jury, you are admonished not to converse with one another upon any subject connected with this trial, nor to form or express any opinion thereon, until the same is submitted to you, and you are excused until to-morrow morning at half past ten.

(The court thereupon adjourned the further trial of the case until Friday, January 21, 1910 at 10:30 o'clock A. M.)

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THE PEOPLE vs. TIMOTHY REARDON.

New York, January 21st, 1910.

TRIAL RESUMED.

Mr. Jordan closed the case on behalf of the defense.

Mr. Maynard closed the case on behalf of the People.

During Mr. Maynard's closing address, Mr. Maynard stated as follows:

The evidence of the People in this case is absolutely uncontradicted.

MR. JORDAN: I object to this attempt on the part of the District Attorney to call attention to the fact that the defendant has not taken the stand.

MR. MAYNARD: Counsel for the People has in no way, shape or manner reverted to the fact to which counsel refers.

MR. JORDAN: I beg to differ. He has just stated that it is not contradicted.

MR. MAYNARD: And he is stating the fact, as he has a right to state.

THE COURT: That comment is proper, counsellor.

MR. JORDAN: I except to the ruling of the Court, as well as to the statement of counsel.

MR. MAYNARD: It is the hurt bird that flutters,

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gentlemen.

MR. JORDAN: I object to that statement of the District Attorney.

THE COURT: Proceed, Mr. Maynard.

MR. MAYNARD: Gentlemen, I once more repeat, that the evidence of the People in this case is absolutely uncontradicted.

MR. JORDAN: I object to the statement made by the District Attorney and except to his repeating that statement.

THE COURT: Objection overruled.

MR. JORDAN: And the defendant excepts to the ruling of the Court.

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- THE COURT'S CHARGE -

THE COURT: Gentlemen of the jury, the defendant, Timothy Reardon, is charged in this indictment with the crime of an attempt to commit the crime of grand larceny in the second degree.

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

This defendant, as already stated to you, is not charged in this indictment with the crime of grand larceny in its second degree, but is charged in the indictment with the crime of an attempt to commit the crime of grand larceny in its second degree.

The law says that, an act tending to effect the commission of a crime, but failing to effect its commission, is an attempt to commit that crime.

The defendant comes to the bar with the presumption of innocence, which means that, under our system of jurisprudence, he is not required to affirmatively establish the

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fact of his innocence, if it be a fact, but that the burden of proof is upon the prosecution, and that burden requires that, before you can find the defendant guilty, you must be satisfied from the evidence, beyond a reasonable doubt, of the defendant's guilt.

A reasonable doubt has been the subject of comment and of definition by Courts, and I invite your attention briefly to the substance of that which is said in that regard by the Court of Appeals in a comparatively recent case:

Proof beyond a reasonable doubt, says the Court of Appeals, has been well defined to be that which amounts to a moral certainty, as distinguished from an absolute certainty. Doubt is a state of mind in which a conclusion cannot be reached upon the question before it. If it is not due to mental inability to co-ordinate facts in evidence, it must arise from the absence of some material fact, or because such a fact has not been sufficiently established by the evidence, and therefore the foundations for a belief are insufficient. A reasonable doubt is not a mere whim, guess or surmise, nor is it a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing; but it is such a doubt as reasonable men may entertain, after a careful and honest review and consideration of the evidence. It must be founded in reason, and must survive the test of reasoning, or the

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mental process of a reasonable examination. It is a doubt back of which there is a "because", so that a juror says "I doubt the guilt of the defendant for such and such a reason."

The law knows two kinds of evidence; for evidence, as that word is understood, is ordinarily divided into two kinds, direct and circumstantial; direct evidence, when the witness testifies to the principal fact in issue, as when a murder is committed and the witness testifies that he saw the blow inflicted which resulted in death, and the person by whom it was so inflicted. In such a case the truth of the witness testifying is the main subject of inquiry. In circumstantial testimony, there is the fact proving and the fact proved inferentially from the fact given in testimony. The circumstances must be proved to the satisfaction of the jury, and it is for them to draw the inference from the fact proved.

To illustrate: A snow storm; the new fallen snow covers the earth. A witness testifies to human footprints. You infer some one has passed. He gives you the direction of the toe and the heel. You infer the direction in which the person was moving. As his steps are watched, it is proved that there is a dot or hole in the snow. You infer that he had a stick in his hand.

This may be said to be an illustration of circum-

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stantial evidence.

In determining a question of fact from circumstantial evidence, there are two general rules to be observed. One, the hypothesis of delinquency or guilt should flow naturally from the facts proved, and be consistent with them all; and, second, the evidence must be such as to exclude to a moral certainty every hypothesis but that of the defendant's guilt of the offense imputed to him.

Does the hypothesis or supposition of guilt or delinquency flow in the case at bar from the facts proved? If so, does it flow naturally from the facts? If so, is such hypothesis or supposition of delinquency or guilt consistent with all the facts proved? If so, does the evidence exclude to a moral certainty every hypothesis or supposition but that of the defendant's delinquency or guilt of the offense imputed to him?

If you answer each of these questions in the affirmative, bearing in mind the law's definition as given to you in this charge of an attempt to commit the crime of grand larceny in its second degree, you will find this defendant guilty as charged in the indictment.

If the hypothesis of delinquency or guilt does not flow from the facts proved, or if, although flowing from such facts, it does not flow naturally from them, or if, even flowing naturally from them, it is inconsistent with

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any one of them, or if, even though flowing naturally from them, and being consistent with all of them, the evidence does not exclude to a moral certainty every hypothesis but that of the defendant's guilt of the offense imputed to him, such circumstantial evidence is insufficient to warrant a verdict of guilty.

Wherever I have used the phrase "to a moral certainty", I have used it as the equivalent of the words "reasonable doubt;" that is to say, as meaning the same as the words "reasonable doubt," as those words have been defined to you in this charge.

You will be wholly uninfluenced in the rendition of a verdict by any disposition which the Court has made of any motion made during the pendency of the trial. That imports no opinion by the Court as to what your verdict should be.

You are the exclusive judges of the facts. It is your duty to weigh the evidence, so that you may determine from the evidence what is the truth, so that your verdict may represent that which you believe to be true.

Mr. Jordan, is there any desire that I should charge on any subject additional to that upon which I have charged?

MR. JORDAN: I just wish to ask your Honor to charge with regard to the testimony of the complaining witness, that it is the duty of the jury to reconcile the testimony

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of Mr. Knox and Mr. Kean, if they can, and if they cannot, then it may become their duty to determine which one told the truth.

THE COURT: Well, I will charge you that, except that I will not apply it to their evidence alone, but to all of the evidence in the case.

MR. JORDAN: Yes, sir.

THE COURT: The effort must be made to reconcile the testimony of the witnesses, if it is reconcilable, if the jury believe that it can be reconciled.

Any requests, Mr. Maynard?

MR. MAYNARD: The People have no requests.

THE COURT: Gentlemen, you may retire.

The jury returned the following verdict: We find the defendant guilty as charged in the indictment.

MR. JORDAN: If your Honor please, I desire to move for a setting aside of the verdict and for a new trial, and to be heard upon that matter if it is deferred.

THE COURT: We will take the pedigree of the defendant first. I will remand the defendant, if there is no objection, until the 28th?

MR. JORDAN: Just a moment. If your Honor please, I would request that the matter be put down for disposition on Monday next?

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THE COURT: Yes, I will put it down for Monday,
the 24th.

MR. JORDAN: Yes, sir, the 24th.

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