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JOSEPH A. CUNNINGHAM,	7	11		
LUTHER WAITHE,	11	16		
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MYRTLE WILSON,	19	20	23	
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COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York, Part II.

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

ERNEST BOLDIN.

Before:

HON. JOSEPH F. MULQUEEN, J.,

and a jury.

New York, October 28th, 1913.

Indicted for burglary in the third degree, grand larceny  
in the second degree and receiving.

Indictment filed September 19th, 1913.

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

For People: GEORGE Z. MEDALIE, ESQ., Assistant District  
Attorney.

For Defendant: JOHN E. HEWITT, ESQ.

A jury is duly empaneled and sworn.

Mr. Medalie opens to the jury in behalf of the People.

H E N R Y A. H A U M M E L, called as a witness in behalf of  
the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q What is your address? A 131 West 133rd street.

Q What is your business? A Footman and lookout man for the  
American Production Company.

Q Where is that? A 236 West 42nd street.

Q Was that your employment on the 6th of September, of this  
year? A Yes, sir.

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Q Did you live on that day at 131 West 133rd street? A Yes.

Q You occupied a flat in that building? A Yes, sir.

Q And it is in the county of New York, A Yes, sir.

Q On what floor is it? A Top floor, rear, fifth.

Q On what side of the building? A It is a long --- well, it is the back, it is the back, the whole back apartment.

Q The entire rear of that top floor is occupied by you and your wife? A Yes, sir, and my sister-in-law at that time.

Q Your wife works, is that correct? A Yes, sir.

Q And so does your sister-in-law? A Yes, sir.

Q On the 6th of September when were you last in the flat before anything happened? A At 1:45, that is my last appearance there; I came in at quarter to twelve and went out between one and two.

Q When you left did you lock the door? A I did, securely.

Q That is the door that leads from the public hall into your apartment? A Yes, sir, the top landing.

Q It opens off on the top landing of the stairway? A Yes.

Q You locked it with a key? A With a yale lock and a plain door lock that is on the door.

Q What kind of a yale lock is that? Is it a part of the door, or a padlock? A It is a lock I bought and put on myself, at Frank & Meyers.

Q Is it attached to the door by screws or by staples? A By screws, inside screws.

Q When did you return to the apartment? A 5:30 in the afternoon.



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Q And then you were told something by some of the witnesses,

A I was spoken to by Mr. Cunningham at the house.

Q And he told you something? A Yes, sir.

Q You left certain wearing apparel and other wearing apparel in your flat, didn't you? A Yes, sir.

Q Do you recall what they were? A Yes, sir.

Q What were they? A I left four suits of clothes of my own, six suits of clothes of my wife's, two pair of shoes, four hats and two caps and two raincoats and two rings --- a diamond ring and a turquoise setting ring, a ladies gold watch, a Catholic rosary, 24 inch gold chain with a solid gold cross on it, silk handkerchiefs.

Q How many silk handkerchiefs did you leave there? A Well, I had a dozen all told, but about half a dozen of them is gone. I had half a dozen on top.

Q Do you recall what the design of those handkerchiefs was?

A Well, I had half a dozen handkerchiefs made about 12 inches square that I had made in Alperade, Mexico; they were designed by a woman who sits on the street and makes handkerchiefs.

Q I show you a silk handkerchief and ask you whether the half dozen silk handkerchiefs that you purchased in New Mexico included this? A This is one; the only one of this kind, that has been brought out of this kind.

(Marked for identification People's Exhibit 1.)

Q At the time of the defendant's arrest were you shown any other articles? A Only some pins, but I was not positive --

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MR. HEWITT: Objected to. No foundation laid; it is really two questions and he has not asked the first one.

THE COURT: Objection sustained.

BY THE COURT:

Q Have you seen any of your property since that time? A No, sir, only my coat that I wear now, that the police officer brought into the police station, and I went there and identified it and the silk handkerchief and the pin.

Q Was the defendant there? A The defendant was there when I got it, but I would not take the coat if he wanted to take it to court, and he said, "No, not necessary; only the silk handkerchief and the ladies gold pin."

Q That was after his arrest? A Yes, sir.

Q After his arrest you saw certain articles in the station house? A I pointed it out in the station house.

Q Where? A In the station house, in the detective bureau, and said, "That is my handkerchief, because the end of it was sticking out."

BY MR. MEDALIE:

Q Tell us about the coat that was given to you; when was that given to you? A The coat was given to me when my wife come home, about half past five or six in the evening, and we went down to the police station; Mr. Cunningham told her the coat was there and she went after it, and they would not give it to her.

Q You finally got it from the police? A I had to go to the

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police station to get it myself.

Q Had you seen the defendant before the 6th of September at any time? A Not as I recollect -- only around there in the crap games in the street, as usual.

Q Were you personally acquainted with him in any way? A No.

Q But you have seen him around the neighborhood in the street? A Yes, sir.

Q How many days after the 6th of September did you see him again? A Not any.

Q Did you see him when he was arrested? A I did, on that night.

Q Which night was that? A On Saturday night, 6th day of September, between one and two o'clock, in the dice game in 133rd street, between Lenox avenue and Fifth avenue.

Q Was it then he was arrested? A Yes, sir.

Q Who was with you that time? A Officer Turtayne and another police officer.

Q Another detective? A Yes, sir.

Q And it was then that you pointed him out to the police?

A Yes, sir.

Q Upon what Cunningham told you? A No, sir; on Mr. Luther Waithe's identification. We first went down to Lenox avenue and with me Luther went to identify the man that broke in my house. So I says to Luther, "Don't make any mistake, because I am going on your instructions, and if you make a mistake you will get the both of us in bad." He said, "I would know him if I seen him in one hundred men." So I goes down to the dice

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game, where they all were shooting the craps, and he pointed him out; and we walked past and as we did I said, "We had better go back to the corner, and as we turned I said, "Point the fellow out again", and he pointed out the same young man. When we got back to Lenox avenue I said to him, "You sit on the steps here until I go around to the police station and get a couple of officers, because if I approach him now, I will get what I am looking for, and a little bit more." So we goes into the police station and I says to Officer Turtayne, "One of you go to Fifth avenue and one go to Lenox and stay close to me, because when I get close enough to him I am going to grab him and hold him till you come so he won't get away." So he comes on down, and I goes to the dice game, and I called this young man up, and I said "Do you know a woman around here by the name of Johnson?" He said, "No, what do you want?" I said, "I am looking for her, she is a personal friend of mine. I am out for a little fun to-night, and I wouldn't mind seeing her." At that time the policeman was coming toward him, and before I could complete my conversation, the officer grabbed him.

Q Was it then they searched him? A No, not until in the station house.

Q Did they find various articles in his possession? A Yes, sir; my silk handkerchief and the pin; but I didn't identify the pin, because so many are made alike.

Q Have you ever seen any pins like that before? A No, only those I had.

Q Did you ever authorize the defendant to enter your apart-



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ment? A No, sir; nor Mr. Cunningham, the janitor.

Q Did you examine the lock on that door? A Yes, sir.

Q What did you find about it? A The lock was jimmied, and the whole panel of the door had been pushed off of the inside, and the door lock, where it was unlocked with a long skeleton key, had been jimmied and it was impossible to use the key. I had to take the lock off and take it to Frank & Meyers and have the lock fixed so I could use the key in it.

CROSS EXAMINATION BY MR. HEWITT:

Q You picked out this defendant because Mr. Waithe said this was the man? A I did.

Q You didn't know anything yourself personally about it?

A No, I don't know him personally.

Q You do not claim any pins absolutely as your property?

A I don't say that they are.

Q You pin all your faith on this handkerchief? A That is mine.

J O S E P H    A .   C U N N I N G H A M   (131 West 133rd street)  
called as a witness on behalf of the People, being first duly  
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q Are you the janitor of 131 West 133rd street? A Yes, sir.

Q What part of the building do you live in? A In the basement.

Q Do you know anybody by the name of Dummet? A Yes, I do.

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MR. HEWITT: I may later on ask the Court to re-examine this witness (Haummel), and I would like to have him excluded from the room.

(The witness Haummel excluded.)

Q Where does Mrs. Dummet live? A On the top floor east front.

Q Where does Haummel live? A Haummel lives on the top floor rear.

Q At about four o'clock did you have any conversation with Mrs. Dummet? A Yes, sir.

Q Where was that? A That was in her apartment.

Q On the 6th of september? A Yes; in her dining room.

Q After you had that conversation with her, did you go anywhere? A Yes, sir.

Q Where? A We went out into the hall, and as we got out into the hall --

Q Who was with? A Waithe.

Q Luther Waithe? A Yes.

Q Anybody else? A Luther Waithe and Mrs. Dummet and two more of her lodgers.

Q What did you see when you got into the hall? A When we got into the hall we seen this man ---

Q The defendant? A Yes. On the eve of closing the door coming out of the apartment.

Q And you mean that space between that point over there and this point here is the door (pointing) and that the door opens from this side, will you please indicate to the jury the

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position of the defendant when you first saw him? A The door<sup>9</sup> closes from this side (indicating) ---

Q The hinges are over here (indicating)? A The hinges are on the east side of the door.

Q Will you state to the jury what you saw him doing? A As I came out of the hall, out of the private hall and entered into the public hall, I seen this man with the cap in his hand closing the door, coming out of the apartment.

Q Did you see in the apartment? A No, sir.

Q Or partly in the apartment? A No, sir.

Q In the private hall of the apartment? A No, sir.

Q Just indicate where his arm was, his right arm, as you are pointing it now? A He had his hand on the knob.

Q And the door was partly open at that time? A Partly open and partly closed.

Q And his arm was inside the apartment? A Yes.

Q And then what did you do? A I asked him then, I said, "What do you want here?" I said, "Who do you want to see?" He says, "Well, I want to see Mrs. Haummel", so I says, "Why, Mrs. Haummel is not at home." So he says, "Well, I am waiting here to see Mrs. Haummel." I says, "Well, where is Mrs. Haummel at?" He says, "Mrs. Haummel is around at the butcher shop." So I says, "What is the apartment door doing open?" He said, "I am Mrs. Haummel's cousin." I said, "Well, that is mighty funny for Mrs. Haummel to give you her key, to give you permission to wait here for her and she is around at the butcher shop." I said, "What is the apartment door doing open?" So he says,

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"Well, I am waiting here on her because she is my cousin." I said, "Well, who is in the apartment?", and he says, "There is nobody." I said, "Let me go in there." He said, "No, you cannot go into the apartment." So then I says, "Why not?" He says, "Well, because you cannot;" and the moment that I made that remark I put my hand on the knob to go into the apartment to see what was in there, and he started to chase down the stairway.

Q Does the door of that apartment open right on the landing of the stairway? A Yes.

Q Did you run after him? A Yes.

Q Were you able to catch him? A No.

Q Had you ever seen him in the neighborhood before? A Never seen him before.

Q This was daylight when this happened? A Yes.

Q And you spoke to him for a minute or two? A Yes.

Q Looking at him all the time? A Yes.

Q Is there any doubt now in your mind that he is the man who broke out of that apartment? A No doubt at all.

Q Where did you see him run? A He ran down the stairway, and from there he ran east on 133rd street, and he stopped in a saloon which is between Fifth and Lenox avenue.

Q What saloon is that? A I don't know the name of the saloon.

Q Is that Snyder's saloon? A Yes, I think that was the name.

Q Did you say anything more to him? A No, I did not.

Q Did an officer go in after him? A Yes.



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Q Did the officer come back with anything? A He came back with a coat.

Q Is that the coat which the complaining witness is wearing now? A I couldn't say whether that is the coat he is wearing now, or not; but he has his initials into it.

Q The coat was returned by the officer to the complaining witness? A By the officer, yes.

CROSS EXAMINATION BY MR. HEWITT:

Q You chased him down the stairs and over towards Lenox avenue? A Yes, sir.

Q And coming down the stairs you made quite a racket?  
A Yes.

Q And you had never seen him before in your life? A No.

LUTHER W A I T H E called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q Do you live at 131 West 133rd street? A Yes, sir.

Q With Mrs. Dummet? A Yes, sir.

Q On the top floor? A Top floor.

Q Do you remember the 6th of September at about 4 or 5 o'clock in the afternoon? A Between three and four.

Q Did you go anywhere from Mrs. Dummet's apartment? A No, sir, I did not.

Did you go anywhere with Mrs. Dummet? A No, sir.

Into the hall? A Oh, yes, sir, in the hall.

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the Haummel's? A Yes, sir; I saw some one in Mr. Haummel's apartment.

Q From where did you see that? A In the hallway.

BY THE COURT:

Q The same floor or the floor above? A On the same floor, I was on the same floor.

Q What did you see? A Well, I saw a young man very busily engaged.

BY MR. MEDALIE:

Q Whom did you go with?

BY THE COURT:

Q Who was with you in the hall? A I was by myself at that time.

BY MR. MEDALIE:

Q First you were by yourself? A Yes, sir.

Q Who did you see? A I saw a young man very busily engaged in Haummel's flat.

Q Was the door open? A No, sir, it was not open at the time --- it was closed.

Q How were you able to see that? A Well, the door is situated in such a way -- it is a glass door, so you can see right through.

Q The door has a glass panel? A Yes.

Q You could see through the glass panel into the apartment?

A Yes sir.

Q Whom did you see? A I saw a young fellow, that same young fellow there (indicating defendant).

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Q The defendant, is that right? A Yes, sir, the defendant.

Q What was he doing? A He was very busily engaged in getting some things out of the apartment.

Q What was he getting out? What was he handling? Clothing?

A Well, I don't know all right what things they were, I didn't see the things.

Q Well, he was handling something? A Yes, sir, and I went into my apartment and to my assistance I had the janitor come up.

Q You telephoned down through the tube? A Yes, sir.

Q And you spoke to Cunningham, the janitor? A Yes, sir, and then he came up in about five minutes time.

Q Did you and the janitor go anywhere? A Myself and the janitor, we went off into the hallway, and by the time we got in the hallway we saw that young man coming out.

Q How was he coming out? A He was coming out with a bundle under his arm first, and then as he saw us he put the bundle down behind the door and slammed the door and came out.

Q Did you see him shut the door? A Yes, sir.

Q Did you see him partly in the apartment at that time?

A Yes, sir.

Q What conversation followed? A Mr. Cunningham, the janitor inquired of him what was his mission in there.

MR. HEWITT: Objected to.

THE COURT: It is conversation with the defendant.

MR. HEWITT: Objection withdrawn.

(Witness continuing) He said Mrs. Haummel was his aunt ---

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his cousin, and she went around to the butcher store and left him to the charge of it till she returned. Well, Mr. Cunningham at first believed it and then he took a second thought and he said he has to go in the apartment. The young fellow informed him he hasn't any business in the apartment. When Cunningham started to open the door and he found it was broke open by a kind of a jimmy.

Q Did you see any marks on the door near the lock? A Yes, sir, the door was --- the woodwork was busted or broken away.

Q What did the defendant do when you people started to go into the flat? A Well, he started in and ran himself down the stairs --- he ran down the stairs.

Q Who ran after him? A Cunningham.

Q Did you run along too? A I ran only one flight of the very top, and I turned and went back into my apartment and I stood and seen he went right across to the other side of the street.

Q Your apartment opened out on the street? A Yes, sir.

Q And you could see the defendant crossing the street?  
A Yes, sir.

Q Do you know where he went? A Well, he went into one of the saloons.

Q Do you know which saloon it was? A I can't remember the name of the saloon.

Q Were you able to see him enter the saloon? A Yes, sir.

Q Was it Snyder's saloon? A Snyder's.

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Q Where was the saloon? A It was in between the block.

Q On which street? A I think the number was 47 or 49 , on 133rd street.

Q Between Fifth and Lenox avenues? A Yes, sir.

Q You saw him run into the saloon? A Yes, sir.

Q Did you see any policeman run after him? A Well, the policeman ran, but he could not get in at the time.

Q Had you seen the defendant before? A No, sir, never.

Q Did you have a good look at him on this particular day?

A Yes, sir, I did.

Q Did you see him later, before he was arrested? A No, sir, I did not.

Q Did you describe the defendant to anybody? A Yes, I described him to the owner of the apartment.

Q To Haummel? A To Mr. Haummel, yes, sir.

Q And then when the defendant was arrested did you see him?

A Yes, sir, I was along.

Q Did you identify him as the person who was in that flat?

A I did, yes.

Q You were not present when he was arrested? A Who?

Q The defendant? A Yes, sir, I was present.

Q Did you see anything taken from him? A Well, they took him to the 37th Precinct and I saw a handkerchief.

Q Was it a silk handkerchief? A Yes, sir.

Q Did the police take it from him? A Yes, sir.

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Q Is this the handkerchief, People's Exhibit 1 for identification? A That is the very one.

BY THE TENTH JUROR:

Q Did you see inside the flat? Could you see him inside the room? A Yes, sir, I could see him right through the glass.

Q Inside the room? A Inside the apartment, yes.

BY MR. MEDALIE:

Q What kind of glass is it on the panel of the door? A This is a kind of a lightish dark --- lightish green.

Q A light green glass? A Yes, sir.

Q Did you get a good look at the defendant when he passed or came out? A I had the better chance when he was outside, because the janitor was speaking to him a little while outside in conversation and I was standing there.

Q But you at least saw him moving around in the flat when you looked through that glass panel? A Yes, sir.

CROSS EXAMINATION BY MR. HEWITT:

Q This lad you saw at the door, had you ever seen him before the 6th of September? A No, sir, never.

GRACE HAUMMEL, (131 West 133rd street) called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q You are the wife of Henry Haummel? A Yes, sir.

Q You live with him on the top floor rear of 131 West 133rd

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street? A Yes, sir.

Q You lived with him there on the 6th of september? A Yes, sir.

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

Q Is he your cousin? A No, sir.

Q Did you ever meet him in a butcher shop? A No, sir.

Q Did you ever tell him to go up to your flat and wait there for you? A No, sir.

Q Prior to his arrest had you ever seen him? A I had never seen him that I know of.

Q On the day of this burglary, september the 6th, what were you doing? A What work?

Q For whom were you working? A Is it necessary I should call the lady's name?

Q Yes, the address? A Mrs. Pierce.

Q Where is that? A 50 West 51st street.

Q What hours were you working out? A From nine in the morning until eleven at night.

Q Were you working at that time? A I was.

Q When did you return home that evening? A Six that evening, because I was telephoned to.

MR. HEWITT: No cross examination.

JOHN G. STEIN (Detective Bureau, 37th Precinct)

called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

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

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Q When? A About one a. m. on September 7th of this year.

Q Did you search him after you arrested him? A No, he was searched by my partner, Detective Turtayne, in my presence.

Q Do you recall seeing People's Exhibit 1 for identification taken from his person? A Yes, sir.

Q Where did you find that? A Detective Turtayne took this out of a top pocket of his coat.

Q What, if anything did the defendant say at that time?

A I asked him where he got the handkerchief from, and he said "That belongs to me." I said to him, "Where were you yesterday afternoon?", and he said, "I was home with my sister, minding a baby." I said, "Were you out at any time during the afternoon?" He said, "Yes, I went out and got a can of milk; that is the only time I was out during saturday afternoon."

Q What was the name of the Officer who pursued the person who committed the burglary? A I believe his name was John F. Braughn.

Q He is not here at this moment? A No, sir.

Q Does he belong to your precinct? A I think he is attached to the 171st; he was attached to the Lenox avenue station on that day.

MR. MEDALIE: I offer the handkerchief, People's Exhibit 1, for identification, in evidence.

(No objection.)

(Received in evidence and marked People's Exhibit 1.)

MR. HEWITT: No cross examination.

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MR. MEDALIE: Subject to the production of Officer

Baughn, assuming that a defense is put in, the People rest.

M Y R T L E W I L S O N (131 West 131st street), called as a witness on behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HEWITT:

Q Are you employed in an employment agency at 133 West 133rd street? A I am.

Q What is the name of your employer? A Mrs. A. G. Furbert.

Q Were you on the premises 133 West (131) 133rd street on the afternoon of september 6th, 1913? A I was.

Q Do you recall any racket, any unusual racket in the house on that afternoon? A I do.

Q When you heard this racket, what did you do? A I was in the office at the time when I came to the door to see what was the trouble.

Q And what did you see? A I saw a man running down the hall.

Q Was there anybody running after him? A Yes.

Q Who? A The janitor.

Q What is his name? A Mr. Cunningham.

Q Did you see the man that Mr. Cunningham was chasing? A I did.

Q Take a good look at this man (indicating the defendant); is this the man? A It is not.

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Q Do you know this man (indicating defendant)? A I do.

Q What is his name? A Ernest Boldin.

Q Had you known him before the 6th of September? A Yes.

Q How had you come to know him? A Why, he came to the office where I worked, applying for a position.

Q To the employment agency? A Yes, to the employment agency.

CROSS EXAMINATION BY MR. MEDALIE:

Q How long have you worked in that employment agency?

A Since the first of April.

Q When did this defendant apply for a position? A Oh, at different times.

Q How many different times? A I can't say exactly how many times he was in the office.

Q When did he last come to your place and apply for a position? A August.

Q How long before he was arrested? A Oh, quite a while.

Q Two weeks? A Oh, longer.

Q Three weeks? A About that.

Q When before that did he come and apply for a position?

A Oh, I couldn't say exactly the time.

Q Well, you said he came several times before? A Yes.

Q Will you be kind enough to tell me on which other occasions he came? A Why, it was about the 1st of August he came in to apply for a position. I had nothing good at that time, and he came several times afterwards to see if I had any to suit him.

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Q Then the first of August was the first time he came in to apply for a position? A No, it was not.

Q What was the first time he came in? A I don't know. I am not the only one in the office, and I saw him in the office during that time that I was working there.

Q Do you know him by the first name? A No, not to speak to on the street.

Q You just said you saw Ernest in the office at that time?

A Where?

Q How do you know him by his first name? A I know his full name and address.

Q You don't know when he first came? A Not the exact date.

Q It might have been a year ago, for all you know? A No; I have not been in the office that long.

Q Did he apply to you the first time he came? A No.

Q What did he say to you when he spoke to you about a position?

A He came in and asked me did I have any elevator positions in and I said no; I said, "Come back again to-morrow, and I will see what I have."

Q You had his name and address, is that right? A Why, any one comes to ask for a position, I take their name and address there then.

Q What do you do with it? A Record it in books.

Q What book? A Why, a book that we have for the inspector.

The employment offices are regulated by law, and we have to report it in the books.

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Q Do you record it under the day when he comes? A Yes.

Q Has that book got stubs? A Stubs?

Q What kind of a book is it? A It is simply a blank book that we have to put names in.

Q Do you put the names in in their order? A Yes.

Q One after the other? A Yes.

Q Did you put his name in? A I did.

Q How often did you write his name in? A Once.

Q Did you put his name in the proper place? A I did.

Q About when did you write his name in? A At the same time he came in and asked me for a position.

Q That is the only time you wrote his name? A Yes.

Q No other time? A No other time.

Q This Mr. Furbert, he runs the employment agency which you wrote the name in? A I don't know. I wrote it once only.

Q At whose direction? A Mrs. Furbert.

Q She told you to write it in? A No. My instructions are as every one comes in and applies for a position to ask the name and address and record it then and there.

Q That is what you did with him? A I did that with him.

Q When did you first talk to anybody about this case? A Oh, away about three weeks ago his sister came to our house to get a position for his sister, and she spoke of it then, and I spoke about the noise, and what I heard and what I saw, and that was all. It was simply an accident that she come and was speaking of it.

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Q Never spoke to Mr. Furbert? A No.

Q Who ran out into the hall? A I don't know who the man was? A I don't know.

Q Did you run out into the hall to see what was going on?  
A No, I stood right in the door.

Q Well, who else stood in the door? A A girl with me.

Q Who was the girl? A Ida Bourne.

Q Anybody else? A Several people.

Q Who stood in the door with you? A Ida was right with me; I don't know the others. It is an apartment house; there are several families besides ourselves in the house.

Q Was that the entrance to the building in which you were standing? A It was the entrance to the building in which I was standing.

Q The only other person whom you knew who stood in the entrance of the building with you was this girl? A Was this girl.

Q Nobody else that you know? A Nobody else that I know.

Q That you are certain about? A That I am certain about.

Q And both the janitor and this man who was running rushed right by quickly? A Yes, they did.

Q Very fast? A They were both running.

RE-DIRECT EXAMINATION BY MR. HEWITT:

Q What is that girl's name? A Ida Bourne.

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I D A B O U R N E (131 West 133rd street) called as a witness in bealf of the defendant, being first duly sworn, testifies as follows:

EXAMINATION BY MR. HEWITT:

Q Were you at 131 West 133rd street on the afternoon of September 6th, 1913? A Yes.

Q Did anything unusual occur there that afternoon? A Yes.

Q Did you hear a racket of any kind? A Yes.

Q Did anything unusual occur? A Yes.

Q What was it? A It was a racket coming down the stairs.

Q What did you do when you heard the racket? A I was standing at the door.

Q Was any one standing in the door with you? A Yes.

Q Who was it? A Another girl.

Q Do you know her name? A Yes.

Q What is it? A Myrtle Wilson.

Q What did you see when you were standing in the door? A I saw a tall man run out; a tall, dark man, very stout.

Q Was anybody chasing him? A Yes.

Q Who was chasing him? A The superintendent.

Q His name? A Mr. Cunningham.

Q Take a good look at this man (indicating defendant) --

A That was not the man.

Q Have you a distinct recollection of the man that was being chased? A Yes.

Q How did his complexion compare with this man (indicating defendant) --- was it the same, lighter or darker? A No, very

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dark.

CROSS EXAMINATION BY MR. MEDALIE:

Q Do you work in the employment agency too? A I live there.

Q Do you know Mr. Furbert? A Yes.

Q Do you know ~~the~~ defendant, this young man here (indicating defendant)? A No, I didn't know him before.

Q The man who ran by ran by very fast, didn't he? A No, not so fast.

Q Not very fast? A No.

Q If anybody says he did run fast that person is mistaken?

A Yes.

Q What? A He didn't run very fast.

Q Well, about how fast did he run? Just at a little trot? A No, not a trot.

Q Well, just slow enough so you could take a very good look at him? A Yes.

Q Did the janitor run not very fast? A No, he was not running fast.

Q The janitor was not running fast either? A No.

Q When they were first coming through the hall, they were not coming very fast? A No.

Q No, but they made an awful racket? A Yes, coming down the stairs.

Q And coming through the hall they did not make much of a racket? A No.

Q They slowed up coming through the hall? A Yes.

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Q And slowed up enough for you to take a good look at the man? A Yes.

Q To know that he is a tall, very dark man? A Tall, very dark, stout.

Q Stout too? A Yes.

Q Tall, stout and very dark? A Yes.

Q And the janitor could not catch him? A No.

Q Although the janitor is not quite tall, and is thin? A Yes.

Q And though this man was not running fast the janitor could not catch him? A No.

Q You are sure of all that, aren't you? A Yes.

Q Who first spoke to you about this case? A The lawyer.

Q Did anybody speak to you about the case before the lawyer did? A Well, we talked about it at the house.

Q Did you speak to any member of the defendant's family about it? A No.

Q Nobody spoke to you about it? A No.

Q Did Furbert speak to you about it? A Yes, Mr. Furbert.

Q When did Furbert first speak to you about it --- how soon after this happened? A About a week after.

Q Now, what did he say to you? A He asked me if I was the man.

Q And what did you say? A I said yes.

Q What did he say to you? A What who said to me?

Q What did Furbert say to you? A He asked me did I know

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the man and I described the man to him.

Q He just asked you to describe him and you described him?

A Yes.

Q Did he ask you whether you saw the man who was arrested?

A No.

Q That he did not ask you? A I did not see him.

Q And after you told him that it was a tall, dark, fat man, who was not running very fast --- A Yes.

Q (Continuing) He went away, is that right? A He did what?

Q He did not ask you any more questions? A No.

Q You are sure he was tall and dark and fat? A Sure he was tall, very dark, very stout.

Q Very stout? A Yes.

Q How old a man was he? A He was pretty old; he was not a boy.

Q Did Myrtle Wilson talk to you about this case? A Yes.

Q When did you talk to Myrtle Wilson about this case? A The next week.

Q Didn't you hear in the meantime that a man had been arrested in connection with that crime? A Yes, I did hear it.

Q And didn't you say anything to anybody about the wrong man being arrested? A No.

Q This defendant is not tall, is he? He is not as tall as the other man? A No, he is not.

Q And he certainly is not as dark, is he? A No.

Q And he is not nearly as stout as the other man? A No.

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Q The other man was a much man, wasn't he? A Yes.

Q Didn't it seem strange to you that they should arrest the wrong man? A Well, it did.

Q Well, did you tell the janitor, "Now, you arrested the wrong man, Cunningham."? A I didn't talk to the janitor.

Q You know the janitor, do you? A Yes, sir.

Q You live in that house? A Yes.

Q Did you tell Luther Waithe that he arrested the wrong man --- who lives on the top floor? A No, he never talked to me.

Q Well, you know Luther Waithe? A No.

Q What? A No.

Q Did you know that the janitor and Luther Waithe were the main witnesses against this defendant? A I know the janitor.

Q Why didn't you tell the janitor that he had the wrong man arrested? A Well, he never asked me nothing about it.

Q Weren't you sorry for the defendant when they arrested him when somebody else committed the crime? A Yes, I was.

Q Why didn't you go and tell the janitor that he made a serious mistake? A He never talked to me about it.

Q Were you waiting for him to talk to you? A Yes, sir.

Q And you have not spoken to him about that since the beginning of this case? A No.

Q Never told him once that he made a mistake? A No.

Q Not until this man Furbert spoke to you about it, is that right? A Yes, sir.

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Q It was not until Furbert spoke to you that you found out that a serious mistake had been made, is that right? A Yes.

R E G I N A L D J. F U R B E R T (131 West 131st street) called as awitness in behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HEWITT:

Q You are the husband of Mrs. Furbert, who owns the employment agency at 133 West 133rd street? A Correct.

Q Were you at that house on the 6th of September, 1913? A I was.

Q And did you at that time see a man run out of that house chased by another man? A I did.

Q Tell to this jury the circumstances that brought you to the particular time ---

BY THE COURT:

Q What time was it? A What date?

Q What time of the day? A Oh, around about 4 o'clock, maybe; I cannot say, but around about 4, maybe a little after.

Q What were you doing there at that time? A We were doing something to a car which stood before the house.

Q What do you mean by a car? A An automobile.

Q Whose automobile is it? A Mine.

Q Who was the other man? A My chauffeur.

Q What is his name? A George Cordies.

Q Tell the jury what you saw and how your attention was attracted? A Well, a little excitement seemed to arouse us by

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some shouting at the door and we looked up and there we saw one man coming out of the door.

Q Use the pronoun "I", not "we"? A I saw a man chased by another, chased by another; the first man with no coat on him, coming out of the door and run toward Lexington avenue, and about a few seconds after, or a minute, or thereabouts, I don't think quite a minute, though, he was followed by Mr. Cunningham who was the janitor of the building there.

Q Was Cunningham chasing the first man? A He was.

Q Did you observe the first man? A I did.

Q Look at him (indicating defendant); is he the one? A Not that man, sir.

CROSS EXAMINATION BY MR. MEDALIE:

Q Will you be kind enough to describe the first man?

A Describe the appearance of the first man?

Q Yes. A He was a man of much darker complexion than this man; heavier built man --- a little stouter, I suppose about --- oh, as near as I can judge --- I didn't take great notice --- about between five feet seven and a half or five feet eight, or something like that, thereabouts.

Q Was he a very tall man? A No.

Q Just an ordinary sized man? A An ordinary sized man.

Q Not very stout? A Not very stout, not positively stout.

Q He was a man inclined to be stout? A Inclined to be stout.

Q But not very tall? A Not very tall.

Q Not very stout? A Not very stout.

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Q Was he running slow or fast? A Oh, he was running pretty fast.

Q Very fast? A Quite fast.

Q About as fast as you would expect a man to run when somebody was pursuing him? A Indeed.

Q Nothing slow about his gait, was there? A No.

Q About as fast as you ever saw a man run? A I couldn't say. I have seen some men run pretty fast.

Q But for an ordinary man he was going pretty fast? A He was going pretty fast.

Q Now, you got a good look at him in spite of that? A Well now, I got look enough to be able to give the description that I just now gave.

Q You don't think you are mistaken about that? A I don't think I am mistaken.

Q You are pretty sure? A If I were not I would not be here.

Q You would back that up against anything else that anybody else says on that subject? A I do.

Q And if anybody thus says to the contrary that person is mistaken? A Yes.

Q And you say that under all the solemnity of an oath, don't you? A I do.

BY THE COURT:

Q When did you hear that the defendant was arrested? A I didn't hear that for about two weeks after.

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Q And then where did you see him? A I didn't see the defend-  
ant at all that time.

Q How do you know he was not the man that ran out? A Well,  
I didn't see that the defendant was --- I didn't hear that  
the man that ran out --- I simply heard that a man by the name  
of Ernest Boldin was arrested.

Q Do you know him? A I do.

Q So you didn't come down to look at him to see whether he  
was the same man that ran out or not? A No, I didn't bother  
about it. You see, I didn't hear it for two weeks or there-  
abouts. I had gone out of town and returned. Immediately I  
heard it I was struck with so much surprise that I immediately  
went down to Cunningham's and asked them about it. I said, "I  
heard you caught the man." They said, "Yes." I said, "What is  
this man's name?" They told me. I said, "I think they have  
got the wrong man, haven't you? I know that man. The man  
has been placed from our office again and again, and we are  
for him. I think you are mistaken." I said, "I want you to  
understand I am not interested in the boy --"

Q What did Cunningham say? A He says he knows; he felt  
pretty sure that was the right man. So there was a contention  
between us. Well, I said, "I don't know, I am not into this  
affair, there is nothing in it that I should care anything about  
it at all, but I do like to see people get fair play." I said,  
"I am sure you are mistaken, Mr. Cunningham." Well, there was  
a little contention with us, and it dropped from that time.

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Q He was just as sure that he was not mistaken? A Well, seemingly so, at that time.

BY MR. MEDALLE:

Q When did you first talk to Myrtle Wilson about this case? Or didn't you talk to her about it? A No, she was the one that first called my attention to it.

Q When was that? A About two weeks after; I can't remember the very date.

Q She told you Ernest Boldin was arrested? A She did. I wanted to know from her how did she know, and then she in her statement --- either she said, "He is not the man either that they are after, that ran out of the hall". I says, "How do you know?"

Q She spoke to you first about this, that is right, isn't it? A That is correct.

Q You didn't speak to her first about this? A No.

Q If she says that you spoke to her about it she is mistaken, of course?

THE COURT: Do not answer that question.

Q Did you speak to Ida Bourne about this case, or did she speak to you? A Oh, I questioned the girls, after going down to see Cunningham, then I came back and tried to again make sure.

Q You sent for Ida Bourne? A Oh, I didn't send for her.

Q Well, did you get hold of her? A They were right there in the house.

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Q And you spoke to her about it? A Yes.

Q She never mentioned anything to you? A I don't remember who spoke first in that particular instance, I can't tell you that.

Q How well do you know Ernest Boldin? A Well, I can't say I know him too well; I know him for the past year, or thereabouts.

Q When did you first get acquainted with him? A About a year ago, thereabouts. My first meeting him I judge was coming into the office applying for a position.

Q Did he apply for a position very often? A I think if I remember all right, unless I have the record --- my wife tells me she sent him out about twice.

Q You never gave him a job? A I remember taking him once to a position, but he did not get that one.

Q When was that? A That was, oh, so far as I can remember, I guess about two months and a half ago, or thereabouts.

Q Sometime in July or August? A I would be able to state that.

Q Within a month before his arrest? A It might have been a month or five or six weeks.

Q Did he ever pay you a fee? A I hate that question.

Q I know you do. A I regret to say that the boy owes us two fees right now.

Q Your records show that? A Yes, sir.

Q You take an active interest in the employment agency

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that your wife owns? A Oh, naturally I would, she is my wife.

Q You get employment for domestic servants, don't you? A That is the business of the agency, you mean?

Q Yes. A Yes.

Q And some of these domestic servants are brought here by you from Bermuda? A Not at present, no.

Q Well, they used to be? A No, not directly.

Q Well, indirectly? A Indirectly, about two or three years ago --- a couple of years ago.

Q Yes, I know, sometime ago? A Some time ago.

Q You used to import young women from Bermuda? A No, sir.

Q Didn't you? A No, sir, not a question of importing.

Q Well, you had ~~them~~ brought here to the agency? A A couple of times I brought two or three relatives and I brought a friend, but not by the agency --- the agency did not bring them.

Q Well, you did not give the agency credit for that, did you?

A No, we did not.

Q You didn't have that noted in your agency records that you brought these young women here from Bermuda? A You will find on the record that they were sent out for positions from there.

Q But the agency had nothing to do with their coming in here, you say?

Objected to. Objection overruled.

Q Are you quite sure as to the moral character of the places where you sent these young women? A Well, as far as we could investigate? yes, sir.

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Q Do you investigate? A We always investigate as a rule, yes.

Q And you are pretty certain that you sent them to reputable places? A As a rule.

Q Not to brothels? A Not intentionally.

BY THE COURT:

Q He is speaking about particular girls that you got from Bermuda. Did you send them to brothels or not? A Brothels?

Q Yes. You know what a brothel is, don't you? A No.

Q A house of prostitution? A Not intentionally.

Q But as a matter of fact did they go to houses of prostitution? A I know of no case in which they were sent to a house of prostitution.

BY MR. MEDALIE:

Q Why were you so much in doubt about it as to say that you did not do it intentionally? A Well, because we usually ascertain. We cannot go any further than ask the question of a party, or investigate from the party hiring these help who they are, or what kind of a place they are keeping.

Q In other words, the best investigation you make is to ask the lady who calls for the young woman that you have there, whether or not she keeps a brothel, is that right? A No, we don't ask it that way.

Q Well, you ask it in an indirect way? A In an indirect way it is asked.

Q And she usually satisfies you by telling you she does not,

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and you send the girl out with that woman, is that right? A Yes,  
that is the way.

RE-DIRECT EXAMINATION BY MR. HEWITT:

Q About the smile on the District Attorney's face, remarking  
that you are under oath --- do you solemnly swear that this  
is not the man (pointing to defendant)? A I solemnly swear,  
sir, that that is not the man that came out on that particular  
day.

Q What is your chauffeur's name? A His name is George Cordies.

BY THE COURT:

Q Did you know that this boy had been convicted of a crime  
when you gave him a place? A I did not, no; I never heard of  
his being convicted of crime.

Q Well, his lawyer said he was in addressing the jury; I  
don't know anything about it? A That he had been formerly  
convicted of crime?

Q Yes. A Well, I assure you we didn't know about it.

Q You don't know much about your people, or the places you  
are sending them? A Oh, we investigate. This is not my imme-  
diate duty. That is my wife's business. I am not directly  
interested.

Q You do not interfere in your wife's business? A Well, I  
simply help her out occasionally. A while ago she was away  
for a day or two and I helped her out.

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GEORGE CORDIES (131 East 133rd street), called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HEWITT:

Q Were you at 131 West 133rd street on the afternoon of September 6th, 1913? A Yes, sir, I was, opposite the door.

Q What were you doing there? A I was looking after my automobile at the time.

Q Which automobile? A The one I operate.

Q Do you own it? A No, sir.

Q Who owns it? A R. Furbert owns it.

Q Was he there at the time with you? A Yes, sir.

Q Did any racket occur at that time? A Yes, sir.

Q What did you see, what took place? A I heard an excitement coming down the hallway and I heard some one hollering out, "Stop him, stop the man", and when I looked around and saw a man running out the hallway ---

Q Was he chased by another man? A Chased by the janitor of the house.

Q What is the janitor's name? A I guess his name is ---

Q If you don't know, say so? A His name is Mr. Cunningham.

Q Did you observe the man that was being chased? A Well, from a quick glance, I did.

Q Yes or no? A Yes, I did observe him.

Q Take a good look at this man (indicating defendant)? A I see him. That is not the man.

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Q Was he the man that was being chased? A No, sir.

CROSS EXAMINATION BY MR. MEDALIE:

Q Of course, while that man was running he was not going so fast that you could not get a good look at him, isn't that right? A Well, I could look at him from the direction I were.

Q And he was running just at about a fair rate of speed so you could see him? A He ran towards me.

Q Running very fast, or slow, or medium? How was he running, give me an idea? A Oh, ordinary. You see, where I were, I was right in front of the door. Here was the entrance to the door, the steps coming out to the sidewalk, and my car stopped opposite, and I stood by the car opposite the door. When the man ran to me down the steps and then shot down the street.

Q How fast did he go? A I will give you an illustration of the steps.

Q Tell me. When a man runs fast --- A You cannot run very fast down a step.

Q No, ~~he~~ did not run very fast? A He ran fairly fast coming down the steps, but he ran faster when he got on the street.

Q He was a pretty fast runner? A Pretty fast runner going down the street.

Q How tall a man was this person? A He was a man about, oh, five feet seven.

Q Shorter than I am? A Shorter than you are?

Q Yes. A I don't know your height.

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BY THE COURT:

Q How tall do you think he (Mr. Medalie) is? A Well, he might be a little taller than you are. I know he is taller than I am.

BY MR. MEDALIE:

Q Would it surprise you to know that I am about five feet nine?

A No, not a bit.

Q But he might be as tall as I am? A He might be as tall as you are.

Q Was he stout or thin or very fat? A He is a heavy set man, around one hundred and fifty pounds.

Q A heavy set man around one hundred and fifty; he was about as tall as I am? A Yes, sir.

Q Did you ever see a heavy set man who weighed about one hundred and fifty who was as tall as I am? A By appearance, looked to be as tall and as well weighing one hundred and fifty.

Q What else did you observe about this man? A His complexion

Q What about it? A It was about my complexion (dark).

Q Anything else about the man that particularly attracted you?

A Well, only the condition in which he came out.

Q What was that? A In his shirt sleeves, without a hat.

Q He did not carry anything with him, did he? A No, sir, I didn't take notice.

Q You are sure about that? A I am almost sure.

Q You never saw the man before? A No, sir.

Q Did you ever see this defendant before? A No, sir.

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Q Of course, you and Mr. Furbert, your employer, discussed this matter, didn't you? A We did not.

Q Well, it was an exciting thing, you know? A Well, it was exciting, but it didn't interest me.

Q You knew that a burglary had been committed by somebody, by the man who was running out, didn't you? A That is all I knew.

Q Did you know that later in the day, one o'clock the following morning, somebody was arrested for it? Didn't you hear about that? A I heard them talking about it in the neighborhood.

Q Did you know who was arrested? A No, sir, I did not.

Q You assumed that the man who was arrested was the man who ran out, is that right? You believed that the man who was arrested was the man you saw running out of the building? A According to that description, yes.

Q When did you first hear that it was this defendant? A I didn't learn of that until after the man was arrested.

Q How long after? A Let us see. It was about that night.

Q That night you found out that they arrested the wrong man, is that right? A I did.

Q Tell us how you found out that night that they arrested the wrong man? A Why, by the description.

Q And you knew that they made a serious mistake, didn't you? A Oh, if they arrested the man? They certainly did.

Q When did you find out they arrested the wrong man? A That

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same evening.

Q Whom did you tell that they arrested the wrong man? A I didn't tell any one.

Q Did you tell the boss that they arrested the wrong man?

A No, sir, it didn't interest me that much.

Q You didn't care that the wrong man had been arrested?

A I didn't care.

Q Who first spoke about this case, you or Furbert? A Why, let us see. Why, several people talked about it around there.

Q Who was the first person to whom you said they arrested the wrong man? A I didn't said it to any one at all.

BY THE COURT:

Q You never told any one? A I never told any one.

Q This is the first time you ever told any one? A This is the first time.

BY MR. MEDALIE:

Q Didn't you talk about it to Furbert? A No, sir.

Q How do you happen to be here? A I happen to be here through a subpoena from the lawyer, that got me here.

Q When did you first tell the lawyer about it? A To-day.

Q When did you first tell Furbert about it? A I told you I never told him about it.

Q Didn't you talk to Furbert about it for a single minute?

A Never.

Q Well, did you know that they were taking the wrong man to the police court for examination? A I told you I heard about

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it that evening.

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Q And you heard that they were taking the wrong man? A The folks in the neighborhood talks about it all the time on the sidewalk.

Q They described the man to you? A Nobody described the man. I never talked to anybody around there.

Q Is that the first time you have ever spoken to anybody about it? A Right here is the first time.

Q That you are sure of? A I am sure.

Q Nobody ever asked you to come to court? A No.

Q You never saw this defendant before? A Not in my life; this is the first time.

RE-DIRECT EXAMINATION BY MR. HEWITT:

Q Were you down in court this morning? A No, I was not down here this morning.

Q Yes or no? A No, sir.

Q What brought you down this afternoon? A I was brought down from a telephone.

Q Who telephoned to you? A I don't know. I suppose the lawyers telephoned to me.

Q Did it sound like my voice over the telephone? A No.

Q You certainly did not speak to me over the telephone?

A Well, somebody must have phoned for you.

Q Did you speak to me out in the corridor about half an hour or an hour ago? A I guess I did.

Q Could you at that time positively tell me that the man

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I was defending was not the man, or did you ask first to see the man on the witness stand?

MR. MEDALIE: Objected to on the ground he cannot rehabilitate his witness in that way.

THE COURT: Objection sustained.

Q Did you speak to me out in the corridor an hour or so ago?

A I did, yes, sir.

Q Will you tell the jury what I said to you?

Objected to. Objection overruled.

A He asked me do I know the defendant. He asked me did I see the man that ran out of the hallway down the street to the avenue; I said yes, I did. He said, "Can you describe the man?" I said, "Yes, I can" -- which I did, as I told you. The man says --- about one hundred and fifty pounds or so, and he is a dark complected man. He asked me "Do I know the defendant?" I said, "No." He said, "Will I go up and say that?" I said, "Yes, I will."

EDWARD F. WELTON (172 West 135th street,) called as a witness for the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HEWITT:

Q In the afternoon of September 6th, 1913, where were you?

A 588 Lenox avenue, Mrs Fields' house.

Q Who is Mrs. Fields? A Mrs. Boldin's sister.

Q You were in that house at that time? A At that time.

Q What were you doing there? A Painting.



Q What were you painting? A A manicure table, a baby carriage and a dresser.

Q Were you hired as a painter? A No, but I was doing odd jobs.

Q Did you get paid for what you did? A I got paid for what I did.

Q Was this at 588 Lenox avenue? A 588 Lenox avenue.

Q Was this defendant in the home of Mrs. Fields on the afternoon of September 6th? A September 6th was on a Saturday.

Q Was he there? A Was he there? Sure.

Q You saw him there? A I saw him there, passing back and forwards through the rooms.

Q Did you keep your eyes continually on him? A Not all the time because I had my work to do.

Q He might have gone out? A He might have gone out from what I know; I don't know.

Q How many times about did you see him during the afternoon?

A Four or five times.

Q How was he dressed? A He was in his shirt sleeves.

Q What was he doing? A Waiting on his sister. His sister was sickly, his youngest sister.

Q What name? A Anna Boldin.

CROSS EXAMINATION BY MR. MEDALIE:

Q You saw him, you say, only four or five times that afternoon?

A That afternoon.

Q During the space of how much time did you see him four or

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five times? A From one o'clock until five.

Q How many minutes at a time did you see him? A Sometimes fifteen, sometimes I wouldn't see him for half an hour.

Q What he did in the mean time you don't know? A I don't know.

RE-DIRECT EXAMINATION BY MR. HEWITT:

Q What street is that house at, - 588? A Between 139th and 140th.

RE-CROSS EXAMINATION BY MR. MEDALIE:

Q When were you first spoken to about this case? A Well, I can't just remember now.

Q Oh, how long ago? A It seems to me a few weeks ago, three or four weeks.

Q Were you spoken to about this case in September? A It was in september.

Q Did you go to the police court? A I did not.

Q When did you first find out he had been arrested? A I found out through his sister.

Q When? A On saturday --- it was on a Monday.

Q Two days after his arrest? A It was on Monday when I went to collect my bill.

Q Was that two days after his arrest? A Two days after the day I was in his house.

Q Did you go to the police court? A No, I didn't go to no police court.

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Q Were you told anything about it? A Were I told he was arrested?

Q Was that all? A That's all.

Q Did you know him? A I know him by seeing him through his sister, through doing work for his sister now and then.

A N N A B O L D I N (588 Lenox avenue) called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HEWITT:

Q Are you the sister of this defendant? A I am.

Q Where were you on the afternoon of September 6th, 1913?

A September 6th I came home about half past two from work, sick, very sick.

Q Was your brother at home that afternoon? A He was. He filled the hot water ---

Q Was he at home at two o'clock when you came home? A Half past one when I came he was there.

Q Was he in the house all afternoon? A Yes, sir.

Q Did he leave it at any time? A Only when he went on an errand in the drug store for me.

Q How long was he out then? A Not very long because I was waiting for the Omega oil.

Q Five minutes or ten minutes or half an hour? A Five minutes; not over five minutes.

Q What street is that house at? A Between 139th and 140th on Lenox avenue.

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Q Look at that handkerchief (handing People's Exhibit 1 to the witness) carefully; have you ever seen it before? A I have, surely.

Q When did you first see it? A I seen it on the second of August.

Q Where did you get it? A I got it from a girl, Ella Green.

Q Did she give it to you? A She gave it to me on the 2nd of August.

Q For yourself? A No, for my brother's birthday.

Q For this defendant? A Yes.

Q What did she say when she gave it to you?

THE COURT: Never mind that.

Q What did you do with the handkerchief? A I had it in my trunk, and also this pin.

Q Did the girl give you that pin with the handkerchief? A She did.

Q For whom was the pin? A The pin is mine.

Q The pin was for you? A Yes.

Q And the handkerchief was for whom? A For my brother Ernest.

Q What did you do with the handkerchief? A I kept it in a trunk until Monday morning, and I gave it to him before I went to work.

Q What date? A On the 4th of August.

Q Is that date of any peculiar significance in your family?

A That was his birthday.

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Q What date? A Fourth of August.

Q Did you give the handkerchief to your brother because of instructions you had received from Ella Green?

THE COURT: I will sustain an objection to that.

Q Have you a piano in your home? A I certainly have.

Objected to. Objection sustained.

Q Do you live with your sister, Mrs. Field? A I do.

Q Does your brother live with your sister, Mrs. Fields?

A He do.

MR. HEWITT: I desire to renew the questions now.

THE COURT: Put your question.

Q Is there a piano in your sister's home?

Objected to. Objection sustained. Exception.

CROSS EXAMINATION BY MR. MEDALIE:

Q Do you work? A Certainly, I do general housework.

Q You were not working Saturday afternoon? A I have Saturday afternoon off and I was off that day.

Q When did you first find out that your brother had been arrested? A About three o'clock Sunday morning.

Q What did you do? A I was sick, I couldn't do anything.

Q Did you go to court? A I did not, but my sister had some one go for her.

Q Did you ever tell anybody that your brother was home on the afternoon of that Saturday? A He was.

Q Whom did you first tell? A Why, I know he was there.

Q To whom did you first tell that? Did you go to court and

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tell it to anybody? A No, I did not.

Q You knew the importance of telling it in court, didn't you?

A Yes, but I didn't go to court.

Q Whoever told you that the case was coming up in court told you it was coming up the next morning? A Why, we looked up about that, sent and found he was arrested and then ---

Q Who told you he was arrested? A Two boys came there about three o'clock Sunday night.

Q How sick were you? A I was very sick. I was sick over six days and had the doctor.

Q Did you see your brother all of that afternoon? A I seen him at half past two until eleven o'clock that night.

Q He didn't go out of your sight except for a few minutes?

A Only for a few minutes. He went to the drug store for me, and then he went to the store for my sister.

Q How was he dressed? A I don't know, - I know he had a pair of tan shoes on.

Q Did he wear a coat? A Yes, sir.

Q Were his sleeves rolled up? A I don't know.

Q Was he in his shirt sleeves? A No, he had a coat on.

Q You are sure he had his coat on? A I know he did.

A N N A L E E, (50 West 132nd street, ) called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HEWITT:

Q Where were you on the afternoon of September 6, 1913? A At

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Ernest Boldin's home.

Q Do you mean Mrs. Fields' home? A Yes.

Q Does this defendant live with his sister, Mrs. Fields?

A Yes, sir.

Q What were you doing in that home? A I was cleaning around; I generally take care of the child, and I was cleaning for them as the painters had been there painting.

Q Were you there during the entire evening? A Yes, sir.

Q Was this defendant there that afternoon? A Yes, sir.

Q Was he there during the entire afternoon? A He was.

Q Did he go out at any time for any reason? A He went out twice; once he went to the store for his sister to get groceries and different things, and the last time he went out was because I needed Bon Ami to wash the windows, and that was about half past one.

Q What was the longest period of time that passed by while he was out? How long was he out, the greatest time? A Well, he only has to go right down stairs to the delicatessen store; that don't take him five minutes. Right down under us is the delicatessen.

Q Was Anna home from work? A Anna Boldin came home from work about two o'clock, sick; his sister.

Q Where was she? A She came from work.

Q Well, was she in the house? A In the dining room, on the couch, lying down.

Q Do you know of your own knowledge whether or not Ernest Bol-

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din went to a drug store for Anna Boldin? A I do. She sent him to the store for Omega Oil.

CROSS EXAMINATION BY MR. MEDALIE:

Q You say there had been painting in the house? A Yes.

Q And that is why you were cleaning up? A That is why I was cleaning.

Q After the painters? A After the painters.

Q When had the painters finished their painting? A Well, I don't exactly know, because I don't stay there.

Q Now, the painters were already finished, is that right?

A They were already finished painting?

Q Yes. A Not exactly; they had varnishing to do and different things, but I was cleaning up floors and washing windows, because we wanted to hang curtains.

Q Well, the painters were not there? A No, only a fellow was there by the name of Weldon there, painting her table, but he was not doing the house painting.

Q How long was he there? A Well, he was there until about five or half past five.

Q How long were you there? A Until ten to eleven that night.

Q And you saw the defendant in the house all the time?

A The whole time, excepting the two times I told you.

Q And how was he dressed? A Ernest? He was working in his shirt sleeves.

Q Shirt sleeves? A Around the house.

Q Pretty sure about that? A He was.

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Q He was working? A Yes, from one thing to another.

Q When did he leave the house? A Two times, I told you.

Q Well, later did he leave the house before you left? A At night, yes.

Q What time? A His sister sent him to the store; it was rather late.

Q After eleven o'clock did he leave the house? A After eleven no, I don't think so.

Q Did he stay in the house when you left? A No.

Q What did he do? A He went to the store for his sister.

Q The same time that you went out? A No. I was there until some time after. He was sent to the chop suey place.

Q You left the house at about eleven? A Around eleven, I said. Not on the minute. I don't know exactly.

Q Around eleven? A Yes.

Q When you left was he in the house? When you went home was he home? A Was Ernest home when I went home?

Q Yes. A No, he was not home, no.

Q When had he gone away? A Well, I don't know exactly what time.

Q Ten o'clock? A No, it was after ten, after half past ten.

Q Do you know where he went? A He went to the chop suey place to get pepper steak, from the chop suey place.

Q You don't know whether he went out late at night to make up for his domestic virtues all day? A I don't know what happened after I left. All I can explain is what I saw.

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Q Well, you know he was arrested at one in the morning? A No, he was not. When I heard of him was on my way --- was on my way --- him being arrested.

Q What time was that? A Oh, that was when I left our house around 11 o'clock, I went to a girl friend's house by the name of Emma Simmons, in 124th street. On my way back I met another girl friend of mine, by the name of Lelia and she told me Mrs. Fields' brother, Ernest, was locked up.

Q That was about 11 o'clock when you were going home? A No, I left her house at around 11.

Q What time did you hear this --- twelve o'clock, one or two? A I don't know exactly what time, but I know it was later than that, because I had to go away to 124th street and come back, but I don't know the time.

Q It was about twelve o'clock that you heard that he was arrested? A I guess so, I don't exactly know.

Q He was not arrested in his home, was he? A No.

Q Then he was out? A Yes, sir.

Q I want to know what time he left his home to go out and meet his friends? A I left her house around 11 o'clock.

BY THE COURT:

Q Well, do you know or not what time he went out? A He went out before I went, I told you that at first.

BY MR. MEDALIE:

Q He went out to buy something in the chop suey place and bring it back? A Pepper pork, or pepper steak, but he never

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BY THE COURT:

Q That is the last time you saw him? A Yes, sir, he never came back.

RE-DIRECT EXAMINATION BY MR. HEWITT:

Q Will you examine that handkerchief, please (People's Exhibit 1); have you ever see it before? A This handkerchief?

Q Yes. A No, I never seen that handkerchief. I don't think it was as dark grey as that.

RE-CROSS EXAMINATION BY MR. MEDALIE:

Q Did you give him any present? A No, I never gave him a present.

(The Court now declares an adjournment to Wednesday,

October 29, 1913, at 10:30 a. m., first duly admonishing the jury in accordance with law.)

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New York, October 29th, 1913.

TRIAL RESUMED.

MR. MEDALIE: May Furbert be recalled for one or two further questions on cross examination.

THE COURT: Is he here?

MR. HEWITT: I don't know whether he is here or not.

(Witness Furbert called for with no response.)

ERNEST BOLDIN (588 Lenox avenue), the defendant here, called in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HEWITT:

Q You live with your sister, Mrs. Fields? A Yes.

Q And your sister Annie Boldin? A Yes, sir.

Q How old are you? A Eighteen.

Q You have been previously convicted of the crime of carrying a revolver? A Yes, sir.

Q Were you sent to jail? A Sent to a reformatory.

Q How long were you there? A Six months.

Q What was the nature of the work that you did in the reformatory, if any? A Brick laying and dock work.

Q How old were you at the time you were in the reformatory?

A Sixteen.

Q Were you put at light work or heavy work, or work that was

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neither very light or very heavy? A Light work for about a month, then heavy work for the remaining five months.

Q What was the heavy work that you did?

THE COURT: I will sustain an objection to that. Please proceed.

Q Did you receive any injuries while you were at the reformatory? A Yes, sir.

Q What was the nature of the injury? A A slight rupture, a strain.

Q Was that due to the work that you did in the reformatory?

A Yes, sir.

THE COURT: That is a conclusion. I will sustain an objection to it.

Q Are you at this time able to run, run fast? A No, sir.

Q Going back to the 6th of september, 1913, tell the jury what you did on that day; start from the beginning and go right through the day? A I got up about eight o'clock in the morning I went to the store once about nine o'clock for my sister to get a can of condensed milk. I didn't go any more before one o'clock on that day to get a loaf of bread and from one o'clock up till half past two I didn't go out in the street until my sister come home sick. She sent me over to the drug store to get a hot water bag for her and from half past two up till eleven o'clock that night I was home helping my sister and waiting on my sick sister.

At eleven o'clock of that night my oldest sister sent me

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out to the Chinese restaurant to get some pepper pork, so I had to go from between 139th and 140th street, clean to 134th street, to the Chinese restaurant. So while I was in 134th street I went to the shoemaker's store, but it was closed; so I walked around 134th street to get a pair of heel plates put on my shoes --- and it was a customer in there when I first went in, and I had to wait about three quarters of an hour, and then the shoemaker put the heels on my shoes and I come out.

I was coming up 133rd street, and I passed a large crap game. So I passed this large crap game and there was about ten others from it and two men was quarreling right in front of the cigar store, so out of curiosity I just stopped to listen to them. Whilst I was listening to them, the complainant walks up to me and says, "Say, young fellow, do you know a woman named Mary Davis?" I said "No, sir." He said, "Are you sure you don't know her?", and while I was talking to him a detective walks over and taps me on the shoulder and tells me to come on. I says, "What for?" He said "All right, you know. You will find out when you got to the station house."

He "carried" me down to the station house and this complainant walks in. So he walks in and then he said he was going to get another man. So they go and get this janitor and come in and ask the janitor, and says, "Is this the man?", and he looks at me about two minutes and then pointed and says, "Yes, that's the man."

So then the detective in the station house asked this

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complainant, he says, "Do you recognize any of these things that this man has here?" And he takes a silk handkerchief out of this pocket, out of this pocket and lays it on the desk there. He said, "Do you recognize any of these things?", and he kinds of looks and walks away, he goes back and he says, "I will take this handkerchief." So then he holds me there until one o'clock and takes me over to court where I waived examination.

Q Is that your handkerchief (showing witness People's Exhibit 1)? A Yes, sir.

Q Where did you get it? A I received it from my sister.

Q When? A On August 4th, the morning of my birthday.

Q Where was it at the time of your arrest? A Just like that (putting handkerchief in left breast pocket of coat on outside).

Q Sticking out of your pocket? A Yes, sir.

Q At 4 p. m., on Saturday, September 6th, 1913, about say from a quarter of four to four p. m., where were you? A I was home.

Q Were you up on the top floor at any time of 131 West 133rd street? A No.

Q Did you break into that house? A No, sir.

Q When your sister gave you this handkerchief on your birthday what did she say?

THE COURT: I will sustain an objection to that.

MR. HEWITT: Exception.

Q Is there anything else you want to tell this jury that

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you think will help you?

MR. MEDALIE: I do not like to cut off the defendant from offering all that is proper, but I ---

MR. HEWITT: well, your witness, then.

THE COURT: Well, he can say relative to the charge against him.

MR. MEDALIE: Yes, I am perfectly willing that he tell anything about the charge.

MR. HEWITT: Your witness.

CROSS EXAMINATION BY MR. MEDALIE:

Q What time was it when you were arrested? A It was a little after twelve.

Q A little after? A Yes, sir.

Q Wasn't it one o'clock? Stop and think? A I am not positive.

Q You won't say that it was one o'clock? A No, sir, I won't say that it was not one.

Q Did you expect to find a shoemaker's shop open after twelve o'clock at night? A After twelve?

Q Now, you did not repeat your lawyer's questions, why do you repeat mine? A No, sir, I didn't expect to find one open after twelve, but before twelve.

Q I understand that you left the house at eleven o'clock, is that right, to get pepper pork? A A little after eleven.

Q To get pepper pork at the chop suey restaurant? A Yes, sir.

Q And did you get the pepper pork? A No, sir.

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Q So instead of getting the pepper pork you went off to 134th street to get your shoes fixed, is that it? A 133rd street.

Q Just to get your shoes fixed? A Yes, sir.

Q And you spent over an hour attending to that when somebody at home was waiting for you to go on an errand, is that right? A Well, the chop suey place ain't open till 2 o'clock on Sunday morning.

Q Well, when you went out to get that pepper pork when did you expect to come back? A I expected to be back by twelve.

Q You didn't tell anybody you were going out to have your shoes fixed? A Well, they didn't expect me right back.

Q Did you tell them? A They asked me would I go out and get the pepper pork and I said yes.

Q And then you went out? A I went out.

Q And did you come back as soon as possible? A Yes, sir.

Q You didn't expect to make a night of it, did you? A No, sir, I did not.

Q Because you were a home-staying boy? A Yes, sir.

Q You had been home all day? A Yes, sir.

Q When did you last work? A When did I last work?

Q Don't repeat my questions. Answer them readily, if you can? A I worked a little over a month before my arrest.

Q For whom did you work? A I worked for Edward Welton.

Q Where? A At a bicycle shop; I was helping him.

Q How long did you work there? A Going on two months.

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Q When did you work before that? A I was working up at Convent Court, 149th street and Convent avenue.

Q A month before you were arrested you quit working for this Bicycle Shop man, is that right? A Yes, sir.

Q And you had been working steadily for two months before that? A Yes, sir.

Q So that of course you did not need to go to Furbert for any employment at that time did you? A I went there on account of I got sick.

Q Did you go to Furbert while you were working for the bicycle man? A I was not working for the bicycle man, no, sir.

Q You didn't go to Furbert while working for the bicycle man? A Well, I had just got a stationary job,\* for just helping him out.

Q Then you did not do any work during those two months, did you? A Not so steady work, no, sir.

Q Then for at least three months before your arrest you did not have a single steady job, is that right? A Three months before my arrest, yes, sir.

Q Well, what was the single steady job you had within three months before? A Running an elevator up in Convent Court.

Q When was that? A That was around May.

Q From May to about July, did you have a job? A Only in this bicycle shop.

Q How long were you working as an elevator boy in that house in May? A Over six months.

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Q Were you working steadily for six months? A Yes, sir.

Q Down till May, is that right? A Yes, sir.

Q From about November or December, down to May you were working steadily as an elevator boy? A Yes, sir.

Q Then you did not have to go to Furbert during that time, is that right? A Mr. Furbert? I went to his place but another boy gave me the job.

Q During the time you were working as an elevator boy in Convent Court, from about November to May --- A Not November; from January.

Q From January to May, did you go near Furbert, looking for a job? A No, sir.

Q Because you had a job you did not have to look for one?

A No, sir.

Q Well, then you were out of employment for about a month or two? A For about a month or two? For about two months.

Q You were doing nothing? A Only helping up in the employment shop --- in the bicycle shop.

Q And that was only an odd job? A An odd job, yes, sir.

Q You didn't get a regular weekly wage, did you? A No, sir, I got piece job.

Q So that from about May down to the time that you were arrested, you did not have a regular job, did you? A No, sir, not a regular job.

Q And then you would come in to Furbert looking for a job, is that right? A Yes, sir.

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Q How long do you know Furbert? A I knew him before my last conviction.

Q You knew him before your last conviction? A Yes, sir.

Q Were you convicted of carrying a revolver? A Yes, sir.

Q You said your last conviction: was there any other conviction? A No, sir, that is what I mean.

Q The only conviction you have ever had? A Yes, sir.

Q Having a revolver concealed on your person, is that right? A Yes, sir.

Q How long had you been carrying that revolver? A About one hour.

Q Just an accident that you were caught an hour after you got it? A Just an accident. I was taking it home.

Q What were you doing with that revolver? A What were I doing with a revolver?

Q Now, do you need time to think? Do not repeat my questions; if you do not know the answer take your time until you can think of the answer. I just had it in my pocket, taking it home.

Q What did you want it for --- a toy? A No, sir.

Q What was it for? A A fellow needed some money so he asked me if I would lend him 75 cents on this revolver, and he would give me \$1.50 the following Saturday night.

Q The following Saturday night? A Yes, sir.

Q But you were arrested an hour after you got the revolver?

A Yes.

Q So then he never gave you the dollar and fifty cents?

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A No, sir.

Q So you were going to become a pawnbroker, lend 75 cents at 100% interest and keep the revolver for security? A That was his agreement, yes, sir.

Q You never intended to do anything wrong with that revolver? A No, sir.

Q Wasn't that revolver loaded? A It was loaded when I received it from him.

Q You thought there was no crime in carrying a loaded revolver in your pocket and taking it home? A I didn't think there was any crime taking it home, no, sir.

Q Were you working at that time? A Yes, sir.

Q When you were arrested the officer found some pins on you, didn't he? A Yes, sir.

Q He found this horseshoe pin (indicating)? A Yes, sir.

Q And he found these two pins here (indicating)? A Yes, sir.

Q Ladies pins? A Yes, sir.

Q Where did you get them? A I got them from 132nd street and Lenox avenue.

Q For what? A To hold shirts in position.

Q To hold your shirt in position? A Yes, sir.

Q Did you need to hold your shirt in position with ladies breastpins? A Two of them. They sell them for five cents a pair.

Q Oh, that was your own? A Yes, sir.

Q Then they do not belong to any woman, do they? A They went through---

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Q This blue enamel pin, with an imitation diamond or a real diamond in the middle, was that to keep your collar in place? A Yes, sir.

Q You did not steal it, did you? A No, sir.

Q Why didn't you wear it on your collar instead of carrying it in your pocket? A I had it in my vest.

Q Where did you have it on my vest.

Q Where did you have it on your vest? A Just naturally sticking there.

Q So that you would not lose it? A Yes, sir.

Q You were not really using it then? A No, sir, not at the time.

Q Why didn't you leave it home? A I had it on my vest for a week.

Q Were you afraid to leave it home? A No, sir.

Q Were you afraid your folks would find out you had something that you should not have? A They seen it on my vest all the time.

Q They never said a word about it? A No, sir.

Q However, for a full month you were not working even for the bicycle man? A No, sir.

Q How did you live? A My sisters supported me.

Q Your sister boarded you for nothing, is that the idea?

A Because I was sick, yes, sir.

Q And is that why you were not working? A Yes, sir.

Q You used to go out occasionally with the boys, or did you

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stay home all day from eight o'clock in the morning until eleven at night, the way you did on this Saturday? A I didn't stay home all the time.

Q You went out once in a while with the boys? A Yes, sir.

Q Once in a while to a ball game? A No, sir.

Q Never went to a ball game? A Not during this month.

Q Ball games were going on just two blocks away from you on Olympic Field, weren't they? A I went there during the summer, but not during this month.

Q You did not spend a cent during that month? A I don't say that.

Q What did you spend? A But I couldn't keep account of it.

Q About how much? A I didn't have much to spend.

Q Well, whatever little you had to spend where did you get it from? A My sister.

Q Your sister gave you money? A Yes, sir.

Q How much did she give you? A Maybe a dollar or fifty cents.

Q And then that is all you had for spending money? A Yes, sir.

Q Never paid your board? A No, sir.

Q When did you last pay your board? A I didn't pay my board since I stopped working.

Q Did you pay your board while you were working? A Yes, sir.

Q What used you pay? A I used to pay for board and room too.

Q What did you pay your sister for that? A I used to pay her \$2 for board.

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Q How much for the room? A She used to let me sleep there and then she raised it to \$3.

Q Then you owed her \$12 when arrested? A I didn't owe her nothing.

Q You did not consider you owed her any money for the time you were out of work? Is that right? A No, sir.

Q You didn't feel any obligation to pay back any money she might have spent on you, did you? A She told me not to.

Q She told you you could stay along and did not have to pay a cent? A As long as I was sick.

Q Were you sick at that time? A During this time, yes, sir.

Q You said nothing to your counsel about that when he was examining you? A My counsel, yes, sir.

Q When he was examining you you did not say a word about that? A I told him I was sick during that month.

Q Is that why you quit working for the bicycle man? A Yes.

Q By the way, how did you happen to lose your job in Convent Court? A The house was sold. The owner of the house was Mr. Silverman, and it went into different people's hands, and so naturally the people had an objection to colored boys, so they discharged all the colored boys.

Q That is the only reason? A Yes, sir.

Q Do you mean to say you could not get another job as an elevator runner in an apartment house? A I went to Mr. Furbert for a position.

Q And he could not get you a place? A He didn't have none in right away.

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Q And you kept on going there from May until you were arrested, looking for a job as an elevator runner? A I didn't go there during the month I was sick, no, sir.

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

Q Even though somebody from his office says that you did go there during that month? A During the month I was sick, no, sir.

Q Well, you said you went there within the month before your arrest? A Oh, the month before?

Q Within the month before your arrest? A I was arrested September 6th, that was six days after the 1st of September.

Q And you had been there within a month before that, hadn't you? A I was there during August.

Q During August you went to Furbert looking for a job?

A On about the 1st of August.

Q Was that the only time? Didn't you go there toward the middle of August, looking for a job? A The middle of August?

Q Yes. A I went there once.

Q Didn't you go there in the end of August, looking for a job? A No, sir.

Q In the middle of August you were sick? A The middle of August I was sick, yes, sir.

Q How could you work if you were sick? A I just naturally got tired of staying around the house so I thought I would try my best to get something to do.

Q Were you tired in the middle of August of doing nothing when you only stopped working with the bicycle man at about that time? A I didn't want to be out of work, no, sir.

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Q Why didn't you follow up that tired feeling of yours and go to Furbert's again and get a job? A I got too sick again.

Q What was the matter with you? A Well, I had a strain from the reformatory. My eyes were affected --- I got so I could hardly see.

Q Well, that thing that happened to you in the reformatory was a long time ago, wasn't it? A It was a long time ago, but it worked, and worked on me.

Q Is that why you could not run an elevator? A Yes, sir.

Q Do you mean to say you could not stand on your feet? A Not that I could not stand on my feet, but my eyes --- you have to run a switchboard when you run the elevator, and I couldn't hardly see the letters.

Q Didn't you have that difficulty in the bicycle shop? A I have it and then it go away again.

Q From where do you know Furbert? A Only know him from going after jobs.

Q That is the only way you know him? A Yes.

Q When did you speak to Furbert about this case? A Never.

Q When you were arrested did you notify Furbert that you were arrested? A Yes, sir.

Q Sure you did not? A Positive

Q Of course you knew something about that building, didn't you? A No more than an employment office.

Q But you knew about the building? A I would go into the employment office for jobs, that's all I know.

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Q And you have been in the building several times? A In the office?

Q You knew it was a tenement house? A I knew it was a tenement house.

Q You knew people lived in the various apartments there?  
A No, sir.

Q You knew people did live there with their families?  
A People generally live in houses.

Q Yes, you knew that much about the place? A Yes, sir.

Q You were not unacquainted with the house? A I was unacquainted with the house but not with the office.

Q Did Furbert speak to you after your arrest? A No, sir.

Q Never saw you once? A No, sir.

Q Did you communicate with Furbert in any way? A No, sir.

Q When you were arrested, who were the first persons that you notified? A My sister.

Q When did you notify her, the same night? A I tried to get her a letter but they would not take it from me.

Q When did you finally notify her? A I was arrested on Sunday morning and she received a letter Monday night.

Q Did you then tell her all about yourself and have her see somebody? A No, sir, I told her I was arrested for a false charge, something I know nothing about.

Q When did your sister first tell you that Furbert knew that you were innocent? A When did she first tell me that Furbert knew I was innocent?

Q Yes. A My sister come there Tuesday and asked me what

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I was arrested for.

Q When did you first find out that Furbert knew something about this case? A When he came here.

Q Never knew it before? A No, sir.

Q Never knew that Myrtle Wilson could come and testify that you were not the man? A No, sir.

Q Never knew that until to-day or until yesterday? A Yes, sir.

Q That is the first time you found it out? A The first time I found it out.

Q You know Ella Green pretty well, don't you? A Yes, sir.

Q She would not give you a handkerchief if she did not know you well? A No, sir, I should say not.

Q Is she your sweetheart? A She is not my sweetheart now, no, sir.

Q You mean only because you were arrested? A In fact she never has been a sweetheart, but she is a close friend of my sister's.

Q And that is why she gave you this handkerchief? A Because she liked my sister, yes, sir.

Q She gave you the silk handkerchief because she liked your sister? A She didn't give it to me, she gave it to my sister to give to me.

Q Did you see Ella Green since you received the handkerchief from your sister.

Q Never had an opportunity to thank her, did you? A No, sir.

Q Even though your birthday was August 4th? A Yes, sir.

Q From August 4th to September 6th, you did not see her?

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A No, sir.

Q Although she was a close friend of your sister's, and you were a home-staying boy? A Yes, sir.

Q And you used to visit your sister? A Oh, she visited August 2nd. To my knowledge she had a position there since.

Q She knew you well enough to give you this handkerchief?

A Yes, sir.

Q Is she here? A No, sir.

MR. HEWITT: Defendant rests.

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MR. HEWITT: I make the usual motions to dismiss the indictment on the ground that the People have failed to make out a case; and they have failed to connect this defendant with the burglary that may have in fact been committed; on the further ground that the evidence is clearly in favor of the defendant.

Motion denied. Exception.

Counsel now close to the jury.

The Court now declares a recess till 2:05 p. m., first duly admonishing the jury in accordance with law.

After Recess, Trial Resumed.

The Court now charges the jury as follows:

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CHARGE OF THE COURT, MULQUEEN, J.

Gentlemen of the jury, this defendant has been indicted by the Grand Jury of the crime of burglary in the third degree. There is also an allegation of grand larceny in the second degree and criminally receiving stolen property, but I think it is better to submit the case to the jury solely on the burglary charge.

The indictment charges that in the county of New York, on the 6th day of September of this year, 1913, in the day time, with force and arms, a certain building, to wit, the dwelling house of one Henry Haummell, there situate, he feloniously and burglariously did break into and enter with intent to commit some crime therein, to wit, with intent the goods chattels and personal property of the said Henry Haummell, in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

You understand, Gentlemen, that the indictment is intended merely to bring the defendant here before you for trial and to let you and him know what the charge is. ✓

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He is not to be convicted because he has been indicted.

You must ask yourself therefore, in the first place, what is the charge?

In ordinary language the charge is that Henry Haummell lived in the county of New York, and on the 6th day of September, 1913, this defendant, with force and arms, broke into Haummell's dwelling, with intent to commit a crime therein; that is, with intent the goods, chattels and personal property of the said Henry Haummell in the apartment to steal, take and carry away.

Breaking and entering with criminal intent are defined in the statute very clearly, as follows: "One who breaks and enters a dwelling or a room or an apartment, with an intent to commit a crime therein, is guilty of burglary in the third degree." It is a very simple law. Those terms "breaking" and "entry" were used in the old English law centuries ago, and they received definitions which have been enacted into law in our code. For instance, "break" means not only to violently destroy or smash or demolish, but also to open a door or a window.

The testimony is that this door was locked in the morning, and that there was a Yale lock on the inside of the door, screwed onto the door; the door would ~~lock~~ when it was drawn to; that in the afternoon when the owner, Mr. Haummell, returned there were marks on the door, where the

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wood had been broken away, and the lock was broken. So that if any one did that with intent to commit a crime in the room that is what is known as a burglarious breaking. Then, if the person who broke the door in that way went into the apartment that would complete the crime, if he intended to commit a crime. It is not necessary to prove that he actually stole anything; it is the mere entry after breaking with felonious intent. The breaking and the entry, with felonious intent. That is the charge made by the People here.

This accusation is brought by the People of the State of New York, all the people living in this state, who have the right and the power and the duty to make laws to protect every member of society or the State in the enjoyment of his life, liberty and property. It is the intention of the law that a man may safely lock up his apartment and go away about his business, that his wife may lock it up and go out shopping and the law will protect it, will see that no one breaks and enters; or, will see that if anyone does break and enter that that will be considered a crime.

There is a direct line of division between the power of the Court and your power. It is the duty of the Court to see that the defendant receives a fair trial. That means a trial according to law. Not a trial swayed by

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sentiment on one hand or by prejudice on the other, but simply a trial in which the recognized procedure is followed and the defendant afforded every right which the law gives him. At the close of the trial it is the duty of the Court to instruct you in the law, and you take the law without question. The law here is very simple, as you know.

As to the facts, the Court has not anything to do. If there has been evidence introduced which would warrant a finding of guilt, if you believe the evidence, it is the duty of the Court to submit it to you, and let you pass on the facts, and your judgment must be the free expression of your opinion on the evidence, viewed in the light of the law.

The defendant is presumed to be innocent. That is another of our legal principles, the basic principle of our criminal jurisprudence. Our trials are based on that principle, that the defendant is not obliged to prove that he is innocent. The People are obliged to prove that he is guilty, and to do that they have produced here the witnesses that you have heard for the People.

The defendant has a right to take the stand as he did here, and to call witnesses; then you take the whole case and weigh it as honest men seeking to find the truth, if possible, from the evidence. Then you must pass on the credibility of witnesses. Facts are proved by witnesses. You decide the case solely on the evidence produced here

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before you, and after you weigh the evidence, with that desire to find the truth, you will pronounce then your opinion of the evidence, and if that evidence satisfies you to a moral certainty that the defendant did break and enter, with intent to commit a crime, then he is guilty. If the evidence leaves you undecided, if the evidence merely creates the ~~thought~~ that he is possibly or probably guilty, or the suspicion that he is guilty, that is not enough.

You heard the People's evidence; you heard the owner of the apartment, Mr. Haummell, testify as to the condition in which he left this house and the condition in which he found it when he returned at five o'clock in the afternoon; you heard him testify as to the handkerchief, that that was one of a dozen that he had had made in Mexico of a special design and that he knew it at once. He testified that other articles were missing, but he could not identify any of the other articles found on the defendant; he simply said that they looked like things he had, but he could not swear that they were his articles.

As I told you, it was not necessary to prove that the defendant stole anything, but if you are convinced by the evidence that he had on his person when arrested, within a short while after this burglary, any property which had been taken from that apartment, that would raise a presumption of guilt. Recent possession of stolen property is the strongest evidence of guilt. It raises

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a presumption of guilt unless the possession is satisfactorily explained. 79

The defendant denies that that handkerchief belonged to Mr. Haummell, and says it was given to him as a present. Other people were brought here, relatives or friends of his, who say that it was given to him by some one who is not produced here before you.

You know whether the janitor, Mr. Cunningham, is an intelligent man or not. He was on the stand, and you know the manner in which he gave the testimony. He said he knew the defendant, had seen him around the neighborhood and saw him and talked to him at that door; that the defendant did not wish to let him, Cunningham, go into the room, that the defendant said he was waiting there for Mrs. Haummell, and that when the janitor insisted upon going into the room this defendant ran away.

You heard the testimony of Mr. Waithe as to what happened in that hall; he testified practically to the same thing as Mr. Cunningham. Then Mr. Cunningham testified to the pursuit of this defendant and that he did not get the defendant then. You heard the circumstances described of his arrest.

On the other hand, you have heard the witnesses here who say that they were downstairs and saw a man run out --- some said in his shirtsleeves, and some, I believe, said with a coat, and that this defendant was not the man;

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that it was a different looking colored man altogether.

You heard also the defendant's statement as to his whereabouts at that time?

The defendant's testimony is practically an alibi. Alibi is a word meaning "elsewhere". If it were to be said to-morrow that one of you twelve gentlemen committed a crime in Harlem at twenty-five minutes after two o'clock you could easily say that you were here at that hour and that would be a complete answer to it, and you could not possibly have committed the crime. In deciding whether the alibi raises a reasonable doubt in your mind as to his presence in this flat, you have to consider the interests of the people who testified; the motive, if any, which they might have had for giving false testimony; their relationship to this defendant. Scrutinize carefully all the testimony. It is also important that the alibi should cover every particle of the time during which the crime might have been committed, because if it would be still possible to commit the crime and believe all the testimony for the alibi that defense would fall. So that you have to weigh all the testimony very carefully; consider the motive of the people that testified, the interest, if any, they have in the controversy, their manner on the stand, their intelligence, their character so far as revealed by cross examination, and decide how much credence you will give to each of them. That is a very important duty

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of yours. First you are to find the facts, and, second, to  
pass on the credibility of witnesses by whose testimony  
the facts are established. After you have found the facts  
here, then the question for you to decide is whether those  
facts satisfy you that the defendant broke and entered  
that apartment.

You remember Mr. Cunningham's testimony that the  
door was not only broken but that this defendant was coming  
from the room, that he had the bundle on his hand and then  
when he saw Cunningham he stepped back into the room and  
dropped the bundle back of the door and came out. If you  
believe that testimony there was an entry. If you believe  
that that handkerchief belonged to Mr. Haummell that would  
be proof that it was taken from the apartment and that  
there was an entry.

You have, therefore, testimony as to the breaking,  
and as to the entry and as to the taking of certain property  
from the room. You have the testimony of the defendant's  
witnesses as to his whereabouts on that day, and the testi-  
mony of some of them that they saw a man running away and  
that this defendant was not the man. You have to say  
whether the witnesses were telling the truth, or whether they  
are honestly mistaken, or whether they deliberately gave  
false testimony. Weigh all the testimony calmly and  
quietly and pronounce your verdict, either of guilty or not  
guilty.

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MR. HEWITT: I ask your Honor to charge the jury that in order to convict this defendant they must believe, all of them and each of them, beyond a reasonable doubt, not only that a crime was in fact committed but that this defendant was the man who did it.

THE COURT: I so charge.

MR. HEWITT: And I call your Honor's attention to your charge in which you say that they may take into consideration the motive of the defendant's witnesses.

THE COURT: Of all the witnesses. I did not say only the defendant's witnesses, but I say all the witnesses-- the motive, if any, which any witness had for testifying falsely.

MR. HEWITT: And I ask your Honor to charge that that applies also to the motive of the complaining witness.

THE COURT: All the witnesses. There is no rule laid down for your guidance in testing the credibility of witnesses. You have to use the same good sense and the same good judgment that you would use in your ordinary affairs of life, in your ordinary business. You are business men, you have to decide problems in your business and you do not believe all that you hear said. Now, then, use your own good judgment in deciding what is false and rejecting it, and taking what is true and clinging to it. One of the tests which you apply in common experience to test the truth of any statement is whether the person who

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makes the statement has a motive to make it; does he seek revenge or advancement, or is he seeking to avoid the consequences of some act? You may consider whether the complainant here is animated by any motive of hatred or revenge. Does the testimony disclose that? Whether Mr. Cunningham has any motive for picking this colored man out of all the colored men in New York and charging him with the crime? Whether Mr. Waithe has any motive? Or whether the defendant's sister has any motive to save him, or these other people he has called here? Whether the defendant is telling the truth, or whether the fear of punishment is a motive strong enough to make him tell you what is not true? Those are all considerations that you may apply in testing or weighing the testimony of every witness that appeared on either side; and you must do that without prejudice, without passion. The law says that the proof must satisfy you beyond a reasonable doubt. That means the doubt that a reasonable man could entertain, that an honest man could entertain after listening to all the evidence and all the circumstances of the case? It is not a doubt that is based on prejudice or sympathy or a desire to avoid doing your duty, but it is the state of an honest juror's mind --- a man who has made up his mind to do his full duty. If he weighs the testimony and says "I am unable to say that I am firmly convinced to a moral certainty by this evidence that the defendant is guilty,

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then that man is in a state of reasonable doubt and it is the duty of such a juror to vote not guilty. If his mind is firmly convinced as a reasonable, honest man, to a moral certainty, that the defendant is guilty, it is likewise his duty to proclaim it by a verdict of guilty.

Are there any requests?

(No requests.)

The jury now retire to deliberate upon a verdict, and upon their return render a verdict finding the defendant guilty of the crime of burglary in the third degree.

MR. HEWITT: I move to set aside the verdict on the ground that it is contrary to the evidence and the law, and on all the other grounds mentioned in the code.

Motion denied. Exception.

MR. HEWITT: And I now move for a new trial upon the same grounds, your Honor.

Motion denied. Exception.

THE COURT: I will remand the defendant for sentence to November 6th, and on that date you may make such other motions as you wish.

(Defendant remanded for sentence to November 6th, 1913.)