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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART I.

-----x
THE PEOPLE OF THE STATE OF NEW YORK

-against-

JAMES KEARNEY, JOSEPH SCHUBERT
and PHILIP SILVER.

:
Before:

: HON. THOMAS C.T. CRAIN, J.

: and a Jury.
:
-----x

New York, August 12, 1915.

INDICTED FOR ROBBERY IN THE FIRST DEGREE.

INDICTMENT FILED JULY 28, 1915.

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

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DEPUTY ASSISTANT DISTRICT ATTORNEYS OLCOTT AND ELLISON,
for the People.

LOUIS A. CUVILLIER, ESQ., for the Defendants.

A jury was duly empaneled and sworn.

Mr. Olcott opened to the jury.

MR. CUVILLIER: Your Honor, I ask that all witnesses
on both sides of the case retire.

THE COURT: Yes.

THE CLERK OF THE COURT: All witnesses on both sides
of the case retire until called for.

L A W R E N C E M U L L I G A N , was called as a witness on
behalf of the People, being first duly sworn, testified as
follows:

DIRECT EXAMINATION BY MR. OLCOTT:

Q Where do you live? A At present I am stopping at the

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House of Detention; no permanent address in New York City.

Q Where was your last known residence? A The steamship Pannonia.

Q What is your business, Mr. Mulligan? A Well, I have been laboring—for the last three or four months I have been --

Q All of these gentlemen want to hear you. Can I ask you to raise your voice so that all may hear you. It is very noisy in here, the windows being open. Talk as loudly as you possibly can. A (continuing) The last three or four months I have been working on boats.

Q What is the last employment that you had? A Working on a cattle boat, going to France.

Q When did you arrive in New York on that cattle boat? A July 23rd.

Q On July 23rd. Were you paid in money? A Yes, sir.

Q How much? A I got twenty dollars off the boat.

Q Where did you go after you got off the boat? A I went up to Harlem.

Q Do you remember about three o'clock on that morning, was it the 22nd or the 23rd? A Twenty-second.

Q Do you remember in the early morning of the 23rd how much money you had on you? A I had between ten and twelve dollars.

Q Do you remember placing any particular part of that money in any particular pocket at that time? A Yes, sir.

Q Where did you place it, and how much? A I placed eight

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dollars in the inside pocket of my shirt.

Q Will you please open your vest and show us that inside pocket? (The witness did as requested, indicating the right hand side blouse pocket).

Q Do you remember seeing any of the men who are at this table? A No, sir.

Q As far as you know -- have you ever seen any of them before? A No, sir.

Q Do you remember anybody coming up to you that morning?
A No, I do not.

Q What? A No, sir, I do not.

Q You had been drinking? A I had been drinking, yes.

Q Were you intoxicated after three o'clock, do you remember?
A Yes, sir, I was.

Q So that you don't remember anything that happened? A I don't remember anything, what happened, until I got in the station house.

Q You testified you put the money in a pocket of your shirt. Where did you go after that? A I went into a saloon at the corner of 125th street and Third avenue and got something to drink.

(Last question and answer read)

THE COURT: Will you have the kindness, Mulligan, to try and talk so that all the jurymen can hear you. There is a great deal of noise in the room. I would feel obliged to you if you would kindly talk so that they can all hear you.

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Q Have you stated in what form those eight dollars were in?

A Yes, sir.

Q What form was it? A Two-dollar bills.

Q Four two-dollar bills? A Yes, sir.

Q Did that form part of your pay money? A Yes, sir.

MR. OLCOTT: Your witness.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Mulligan, you stated that on July 23rd you were paid off?

A Yes, sir.

Q How much did you receive? A I received \$23.00.

Q And in what denominations, what bills were they? A One and two-dollar bills.

Q Where were you paid off? A Twenty-fifth street and North river.

Q One Hundred and Twenty-fifth street? A No, sir, 35th street and North River.

Q And what time of the day were you paid off? A Five o'clock in the evening.

Q Now when you were paid off, what did you do with the money?
A I started to drink.

Q Where did you put it? A In my pocket.

Q What pocket? A In my pants pocket.

Q In your right hand or left hand pants pocket? A In my right hand pocket.

Q Now you stated that you started to drink? A Yes, sir.

Q How many minutes or hours after you were paid off did you

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start to drink? A Well, about twenty minutes after I got off the boat.

Q Do you know where you went to? A Yes, sir.

Q Where? A I went up to Harlem.

Q But you had a drink when you went off the boat, didn't you? A Yes, sir.

Q And that was on the west side? A West side.

Q Down near the docks? A Yes, sir.

Q And what did you drink down there? A I drank whiskey and blackberry.

Q What? A Some whiskey with blackberry in it.

Q How many drinks did you have there? A One.

Q Anyone drink with you? A No, sir.

Q And from there where did you go to? A I went down town and bought a pair of shoes.

Q Whereabouts down town? A Down on the Bowery near Grand street.

Q And did you have a drink down there? A Yes, sir.

Q What did you drink down there? A Beer.

Q And how many beers did you have? A I had a couple.

Q What? A I had a couple.

Q Now then you bought a pair of shoes? A Yes, sir.

Q How much did you pay for the shoes? A Two dollars.

Q And did you meet anybody down there? A No, sir.

Q And after you bought the shoes where did you go? A I went up to Harlem.

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Q Did you take the Elevated or the surface line? A I took the Elevated.

Q Where did you get off? A 125th street and Third avenue.

Q Now what time did you arrive at 125th street and Third avenue? A About eight o'clock in the evening.

Q About eight o'clock in the evening? A Yes, sir.

Q And you had at that time one whiskey and blackberry and a couple of beers? A Yes, sir.

Q No more? A No, sir.

Q When you got to 125th street and Third avenue what did you do then? A I went into a saloon.

Q Which corner? A The northeast corner. The first one I went in was northeast -- no, northwest corner.

Q When you went uptown you got to 125th street and Third avenue -- there is only one saloon at that corner -- you got off the Elevated station, that is northeast, and went into that saloon? A I went across the street.

Q That is on the northwest corner? A Yes, sir.

Q What did you do after that? A Some more beer.

Q How much beer? A Two glasses, one glass in there.

Q Well then did you meet anybody there? A No.

Q After you had a drink in there where did you go then?

A I started over to the west side looking for a party.

Q West side. Did you take a car over? A No, sir.

Q You walked? A Yes, sir.

Q That is, you walked west on 125th street? A Yes, sir.

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Q And when you walked west did you stop in any saloons?

A No, sir.

Q Well, where did you go when you walked west? A I went over to 125th street and Fourth avenue.

Q Fourth avenue? A Yes, sir.

Q Fourth avenue, or Park avenue? A Yes, sir.

Q Where the New York Central Road is? A Yes, sir.

Q Who did you see there? A I didn't see the party.

Q Who were you looking for? A A party I went to school with, several years ago.

Q Lady or gentlemen? A Gentleman.

Q Did you have a drink over there? A Yes, sir.

Q In what saloon did you have a drink over there? A On the northeast corner of 125th street and Fourth avenue.

Q And what did you drink there? A Beer.

Q How many, one? A One.

Q And then from there where did you go? A Went back to Third avenue.

Q What saloon did you go in there? A I went into several.

Q Now did you go back to the saloon you first went into at 125th street and Third avenue? A Yes, sir.

Q Have a drink there? A yes, sir.

Q What? A Beer.

Q How many? A A couple.

Q A couple? A Yes, sir.

Q And then did you go to the saloon at the northeast corner?

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A Yes, sir.

Q What did you have there? A Beer.

Q How many? A One.

Q And then did you go to any other saloons? A Yes, sir, several around there.

Q Did you go uptown or downtown? A I went up towards 127th street.

Q Now then did you go to 127th street and Third avenue on the southeast corner?-- A No, sir.

Q There are only two saloons on those corners there --

MR. OLCOTT: I think counsel is testifying. I ask your Honor, that he ask the question of the witness.

MR. CUVILLIER: I withdraw that.

Q You went into a saloon up around 127th street and Third avenue? A Yes, sir, in the middle of the block.

Q Do you know the man that runs that saloon? A No, sir.

Q Ever been in there before? A No, sir.

Q Did you have a drink there? A yes, sir.

Q What did you drink there? A Beer.

Q How many beers did you have there? A I had a couple.

Q How many? A Two.

Q After you had beer there where did you go? A I went back to 125th street.

Q And into the saloon again? A Yes, sir.

Q What corner? A Northeast corner.

Q Had beer there? A Yes, sir.

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Q How many? A I do not know.

Q Then did you go into any other saloons after that? A No, sir, not that I know of.

Q What? A No, not that I know of.

Q Now you only drank one whiskey that evening? A Yes.

Q At the time you were paid off, and the rest was beer? A Yes, sir.

Q Now when you were going around you had this money you testified to in your right trousers pocket? A Yes, sir.

Q And you were taking it out there and paying for the drinks there? A No, sir.

Q Where were you taking it from? A Taking out silver and paying for the drinks; I was taking out mostly silver and paying for the drinks.

Q You had it all together in your pocket? A Yes, sir.

Q No other pocket? A No other pocket.

Q All one pocket? A Yes, sir.

Q And that was the right-hand pocket? A The right-hand pocket.

Q That was the right hand pocket? A Right hand pocket.

Q Now when you were drinking, going along, did you meet anyone whom you treated or they treated you? A Yes, sir, I met several of them.

Q And you treated them, didn't you? A Yes, sir.

Q You don't know how many you did treat, do you? A No, sir, I do not.

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Q In each saloon you met people and you treated them?

A No, not in each saloon.

Q But in the saloon in the middle of the block at 127th street, didn't you? A No, sir.

Q In the saloon at 125th street you did? A Yes, sir.

Q Now you didn't count your change at all, nothing like that, when you ordered a drink, but it was so much and you paid for it? A Yes, sir.

Q You didn't notice how much you had in your pocket?

A No, sir, not at the present, no, sir.

Q Now you testified here that you were intoxicated; is that right? A Yes, sir.

Q And during all the time you were around these places you didn't see any of the defendants, did you? A No, sir.

Q Never came across one of them? A Don't remember meeting them before.

Q Now do you remember around three a.m. on the morning of July 23rd? A Yes, sir.

Q All you remember is that on that morning around that time you went to the station house, is that right? A I don't know exactly what time I went into the station house.

Q It was that morning? A Yes, sir.

Q And you remember being at the station house? A Yes.

Q That is all you remember? A Yes, sir, that is all.

Q What? A That is all, sir.

Q You remember being at the corner of 123rd street and

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Third avenue? A No, sir.

Q Now Mr. Mulligan in the Magistrates' Court you made an affidavit? A Yes, sir.

Q That on the 23rd day of July at 3 a.m., that you had placed four two-dollar bills in the right hand pocket of your shirt? A Yes, sir.

Q Now you testified on direct examination that you had this money in your right hand trousers pocket? A Yes, sir.

Q And that is the only place you had it? A Well, when I had --

Q Oh, didn't you?

THE COURT: He is trying to answer you.

THE WITNESS (continuing): About three o'clock I took these eight dollars out of my pants pocket for safe keeping and put it in my shirt pocket.

Q About what time? A About three o'clock that morning.

Q That morning? A Yes, sir.

Q Now you testified on direct examination and on cross examination that you were intoxicated and you didn't know what you were doing? A Not at that time, sir.

Q What? A Not at that time.

Q What time? A Three o'clock.

BY THE COURT:

Q About what hour was it when you took the four two-dollar bills out of your pants pocket and put them in your shirt pocket?

A About three o'clock in the morning, sir.

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BY MR. CUVILLIER:

Q Now how came you to do that? A I don't know, it just came into my head, that is all.

Q Now where did you do it? A At 125th street and Third avenue.

Q On the corner? A Yes, sir.

Q In the saloon? A On the corner.

Q Which corner? A Northeast corner.

Q Well, now, you say you took out four two-dollar bills?

A Yes, sir.

Q When you did that were there any other bills besides those bills in your pocket? A There was, the other bill and some change.

Q What was the denomination of the other bill? A A two-dollar bill.

Q How much change did you have? A Well, I had about three dollars in change.

Q Do you remember testifying in the Magistrates' Court?

A Yes, sir.

Q And the question was asked by me of you, if you had any money in the pocket of your shirt and you said you didn't know?

A I said nothing of the kind, sir.

Q Didn't I ask you the question where your money was and you stated it was in your right trousers pocket? A No, sir, I said that I had some money in my shirt pocket and some in my trousers pocket.

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Q Now why do you say they were crisp two-dollar bills?

A I was paid off in brand new two-dollar bills on the boat.

Q Were the one-dollar bills new bills too? A Yes, sir, all new bills, just from the bank.

Q Do you know where you were going at three a.m. on the morning of the 23rd of July, from the corner of 125th street, do you? A I presume I was going to 122nd street and go to bed.

MR. CUVILLIER: I move to strike out the answer as not responsive.

THE COURT: Strike it out.

Q Do you know where you were going? A No, sir, not at the time that you mention.

Q What? A Not at the time mentioned.

Q You know you were going south on Third avenue? A Yes.

Q What was your idea in going south at three o'clock in the morning? A To go to bed.

Q Where were you going to bed? A 122nd street and Third avenue.

Q Where? A 122nd street and Third avenue.

Q What is there? A A hotel there.

Q What kind of a hotel? A A lodging house.

Q What side of the street was that on? A The west side of the street.

Q What is the name of the lodging house? A I could not tell you.

Q What? A I can't tell you exactly.

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Q Between what streets on Third avenue? A Right near 122nd and Third avenue.

Q In the middle of the block? A No, sir, it is pretty near the corner.

Q What? A It is right near the corner.

Q Now when you stated to the District Attorney that you were intoxicated what do you mean by that? A Intoxicated -- well, what does intoxication mean? It is taking an over-indulgence of liquor.

Q You had an over-indulgence of liquor, didn't you? A Yes.

Q And you didn't know what happened to you? A Not at that time.

Q Except that you remember distinctly that you did put four two-dollar bills, crisp bills, in the pocket of your blouse there?

In the morning at three o'clock. You do remember that? A Yes.

Q And the rest you have no recollection of whatever? A No.

Q You have had a talk with the police? A I have not seen anybody since I have been here.

Q Now at the time you were taken to the station house what was said to you by the police? A I don't remember what was said to me.

Q What? A I don't remember anything that was said to me.

Q You saw the three defendants there? A Sir?

Q You saw the three defendants there? A Not that I remember.

Q Did you notice them go to the station house with you?

A No, sir, I don't remember even going to the station house.

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Q When did you first realize you were in the station house?

A When I woke up in the morning.

Q When you woke up in the morning, then what was said to you? A Nothing said, only just brought out to court.

Q What? A Nothing said. A policeman just took me out.

Q What policeman took you out? A I don't know.

Q Was he a tall policeman? A I didn't pay much attention to him.

Q Did they ask you at the station house how much money you had? A Yes, sir.

Q You told them you didn't know? A No, I told them I thought I had between ten and twelve dollars.

Q You had between ten and twelve dollars and did you tell them where you had it? A Yes, sir.

Q Where? A I told them I had eight dollars in my shirt pocket and some in the other pocket.

Q Now when you got to court you made an affidavit? A Yes.

Q At their request? A At their request.

Q All you know is what was told you by Officer Coleman?

A Officer Coleman told me nothing at all.

Q Now your affidavit says that (reading) you were duly sworn and that James Kearney, Joseph Schubert and Philip Silver, now here, acting in concert, in the following manner. That on the said date, at the hour of three a.m., deponent placed four crisp two-dollar bills in the right hand pocket of the shirt which the deponent was then wearing at 135th street and Third

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avenue. The deponent is informed by Officer Coleman that at the hour of four a.m. he observed the deponent in conversation with these defendants here at the northeast corner of 125th street and Third avenue. That you also informed officer Coleman that when you walked west of the north crossing of 123rd street and Third avenue, you were followed by the defendants and that the defendant Schubert ^{did} seize you by the right arm and the defendant Silver took violent hold of the deponent's left arm and while the deponent was being held by the said defendant, the defendant Kearney did strike you on the head with a bottle held in the hand of the defendant Kearney, and that the defendants did then and there take, steal and carry away from the possession of the deponent, by force and violence against your will without your consent, the above mentioned property, to-wit, \$8.00."

You don't know anything about that? A That is not my statement. That is Officer Coleman's, outside of the money.

Q But you did tell him you had eight dollars? A Yes, sir.

Q And you mean you don't remember any other transaction in connection with this matter except that you had four two-dollar bills which you put in your shirt pocket? A I remember going into the saloon and drinking after I put it in my pocket.

Q And then after you put the eight dollars in your pocket you went into a saloon, did you? A Yes, sir.

Q What saloon did you go into? A Corner 125th street and Third avenue. Northeast corner.

Q How long were you in there? A I had several drinks in

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there.

Q Whiskey? A Beer.

Q Met some friends there? A No, sir.

Q Then after that where did you go? A I guess I started for the hotel.

Q You didn't meet anybody there at all? A No.

Q You testified you put this money in your blouse pocket on the sidewalk? A Yes, sir.

Q Then went back in the saloon? A Yes, sir.

Q Now that blouse you got has a pocket that buttons? A Yes.

Q You didn't put it in any pocket book or anything like that? A No pocket book.

Q No vest on? A Yes, sir.

Q Was your vest buttoned? A I can't remember.

Q Now, then, you were treated by an ambulance surgeon?

A No, sir.

Q You didn't have a scar? A No, sir.

Q Nor a cut? A No, sir.

Q Were not bleeding any at all? A No, sir.

Q No bruises? A Nothing that I know of.

Q Nothing at all, normal, had no pain there? A I had a headache there the next morning.

Q That might have been from something else? A That might have been.

Q You have never been convicted of any crime? A No.

Q Are you a New Yorker? A Yes, sir, born in New York.

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MR. CUVILLIER: That is all.

MR. OLCOTT: That is all.

MR. CUVILLIER: Your Honor, I would like to ask the last witness just one more question.

LAWRENCE MULLIGAN, recalled.

BY MR. CUVILLIER:

Q Since you made this charge, you have been in the House of Detention, haven't you? A Yes, sir.

Q And has officer Coleman come in to see you? A No, sir. There has not been anyone to see me since I was there.

Q Officer Phelan? A No, sir, no one at all.

Did
Q /They say anything to you about these eight dollars?

A No, sir, not any word.

Q Did they make a promise of any consideration at all?

A No, sir.

Q You are sure of that? A I am sure.

Q Are you married? A No, sir.

MR. CUVILLIER: That is all.

REDIRECT EXAMINATION BY MR. OLCOTT:

Q At the time of your arrest you stated just as you have here on the witness stand, that you had no permanent place of residence, that you had been working in a ship? A Yes, sir.

MR. OLCOTT: That is all. Thank you.

HENRY J. COLEMAN, was called as a witness on behalf of the people, being first duly sworn, testified as follows: (Sixth Inspection District).

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DIRECT EXAMINATION BY MR. OLCOTT:

Q How long have you been a member of the police force?

A About three years.

Q You remember the morning, some time after three o'clock, of July 23rd? A I do.

Q Where were you? A I was walking south on Third avenue, about four a. m.

Q About four a.m.? A Yes, sir.

Q Third avenue at what street? A 123rd street.

Q Who was with you at the time? A Officer Phelan.

Q Were you in uniform? A No, sir.

Q You say you are assigned to an Inspection District?

A Yes, sir.

Q An Inspection District is one which usually has the officers in plain clothes, that is right, is it not? A Always.

Q Officer Phelan is in plain clothes also? A yes, sir.

Q Do you see anybody in the court room whom you saw at that time? A I do.

Q Please point one or more of them out? A I seen these three defendants at the bar.

Q Had you ever known any of them before? A I did.

Q Which one? A The middle defendant, Joseph Schubert.

Q When did you first see any of these three defendants, and where were they? A About four a.m., they were standing on the northeast corner of 123rd street and Third avenue, these three defendants and a man known to me as Lawrence Mulligan.

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Q Had you known him before this time? A Known who?

Q Lawrence Mulligan? A No, sir.

Q You found out his name after that, is that right? A
Yes, sir.

Q What was he doing and what were the defendants doing at
that time? A The four of them were standing in conversation.
I was walking south on Third avenue with Officer Phelan.

Q What did you do when you saw them? A I grabbed hold of
Officer Phelan and I said, --

THE COURT: No, not what you said; what you did.

THE WITNESS (continuing): We stepped into a doorway.

MR. CUVILLIER: I object to his stating what he did.

THE COURT: Objection overruled.

MR. CUVILLIER: Exception.

THE COURT: You may state what you did.

THE WITNESS: We stepped into a doorway on the south
corner of 125th street and Third avenue.

Q You and the other officer, Phelan? A Yes, sir.

Q From where you were standing could you see the four men?
A Yes, sir.

Q What did you see them do; first, what did you see the
complaining witness Mulligan do? A I first seen the complaining
witness Lawrence Mulligan leave these defendants and start to walk
West
through 123rd street on the north side of the street. He crossed
Third avenue.

BY MR. CUVILLIER: Q What side? A On the north side of the street.

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Q What street? A Thru 123rd street he started to walk.

BY MR. OLCOTT:

Q Crossing Third avenue on the north pavement or flagstone? A Yes, sir, about five feet behind him the defendants Silver and Schubert.

Q Which one is Schubert? A The middle defendant.

Q Which one is Silver? A The third defendant, and about five feet behind him the first defendant Kearney. When the complaining witness reached the sidewalk on the west side of the avenue and got about even with the building line, the defendants Silver and Schubert got up alongside of him, Silver on his left hand side and Schubert on his right hand side.

Q This is at 123rd street? A yes, sir.

Q On the northwest corner which reached about the building line? A Yes, sir.

Q The building line of Third avenue you are speaking of?
A Yes, sir. Silver grabbed the complaining witness, Lawrence Mulligan, on the left hand side, Schubert on the right hand side. The defendant Kearney then came behind him, placed his left hand on the shoulder of Lawrence Mulligan and in the right hand he had a bottle and he struck the complainant on the head. Officer Phelan started to cross over --

MR. CUVILLIER: One moment. I object to what officer Phelan --

THE COURT: I will allow it.

BY THE COURT:

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Q But first tell me where you were; how far were you from these men at the time? You now tell us that these men were at what you call the building line of the north side of 123rd street, on the west side of Third Avenue, on that northwest corner at the building line, when you saw them. Whereabouts were you at that moment? A I was on the southwest corner.

Q In other words, there was just the width of 123rd street? A Yes, sir.

THE COURT: Now, go ahead.

MR. CUVILLIER: Has your Honor ruled.

MR. OLCOTT: I will ask another question and for the moment withdraw that question.

BY MR. OLCOTT:

Q Was the place where you were when you saw the occurrence that you have last described, the same place where you originally went into? A We first stepped into the doorway and as they crossed over to the west side we stepped out and looked through the looking glass, where the two corners come together, the window glass, we looked right through that.

Q A plain glass window? A Yes, sir.

Q What did you see after, as you have described, Kearney hit Mulligan over the head, what happened then? A Why Schubert and Silver immediately started to run across to the south side of the street, but ran in a westerly direction, at an angle of about forty-five degrees.

Q What did you do and what did Officer Phelan do? A

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Officer Phelan --

MR. CUVILLIER: I object.

(No ruling)

Q What did you do, officer? A I ran after the defendants Silver and Schubert and caught them. When they had got about perhaps fifty or seventy-five feet away from the place of the first occurrence.

Q What did Officer Phelan do?

MR. CUVILLIER: I object to that.

THE COURT: Overruled.

MR. CUVILLIER: Exception.

BY THE COURT:

Q What did you see him do? A Officer Phelan grabbed the defendant Kearney and the complaining witness Mulligan came over to my side of the street to assist me with these two prisoners.
BY MR. OLCOTT:

Q Now let us get back a moment. When you first saw Silver grab hold of the left arm of Mulligan, what else, if anything, did you see him do?

MR. CUVILLIER: I object to that before he answers.

THE COURT: I recollect the evidence. I overrule the objection.

MR. CUVILLIER: As I recall it, the witness has testified that he saw Schubert put his hand on the left shoulder of the complainant and Silver on the right, and after he saw Kearney hit him on the head with a bottle, and on being asked "What did you see Schubert do?" he said, "They ran

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away and I ran after them."

THE COURT: I will allow the witness to answer the question that was last put by the District Attorney and the objection you have taken I overrule, and you have an exception. (Last question read by stenographer).

Q "He", referring to Silver? A I seen Silver and Schubert and the complaining witness --

Q Let us confine ourselves to Silver, because that is what my question asked for. Did you see him do anything? A I seen him jostle up against the complainant.

MR. CUVILLIER: I move to strike out the word "jostle".

MR. OLCOTT: I think it is entirely proper.

MR. CUVILLIER: It is not responsive to the question.

BY THE COURT:

Q You mean by "jostle" he pushed up against the complainant?

A Yes, sir.

MR. CUVILLIER: I ask your Honor for a ruling.

THE COURT: We will call it pushing up against the complainant.

MR. CUVILLIER: I ask that the word "jostle" be stricken from the record.

THE COURT: I will let it stand as "pushing up against".

BY MR. OLCOTT:

Q Did you see him do anything else before he ran?

MR. CUVILLIER: I object before the question is answered on the ground that it is leading.

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THE COURT: I overrule the objection. You may answer yes or no, now.

THE WITNESS: No, sir.

Q Now, referring to the defendant Schubert, whom you testified took hold of the arm, the right arm of the complainant Mulligan, after you saw him take hold of the arm of the complainant, did you see him do anything else?

MR. CUVILLIER: Same objection.

THE COURT: Same ruling.

MR. CUVILLIER: Exception.

Q That is, before he ran away?

MR. CUVILLIER: Same objection.

THE COURT: Same ruling.

MR. CUVILLIER: Exception.

Q What was it? A I seen him also push up against the complainant, crowd him in.

THE COURT: Strike out "crowd him in." The jury will disregard that.

Q Did you see the hands of Schubert, where they were?

MR. CUVILLIER: I object to "Did you see the hands of Schubert" as leading.

THE COURT: I will allow it, yes or no.

MR. CUVILLIER: Exception.

THE WITNESS: No, sir.

Q Where were they?

MR. CUVILLIER: I object to that question on the same

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grounds, leading.

MR. OLCOTT: I withdraw the question.

Q This was in the City and County of New York, this occurrence as you have described it? A Yes, sir.

Q Did you have any conversation with any of the defendants at the time you arrested them? A No, sir, I did not.

Q Did you hear any conversation which was had with them by Officer Phelan? A I did.

Q What did Officer Phelan say and what did any of the defendants say in response to the questions?

MR. CUVILLIER: I object.

THE COURT: I think we will get that from Officer Phelan.

MR. OLCOTT: But if this officer heard it?

THE COURT: Yes.

MR. OLCOTT: Very well, with permission to call this officer later, if Officer Phelan testifies to the conversation.

MR. CUVILLIER: No, I object.

THE COURT: The best witness would be the man who did the talking, or to whom the talking was done.

Q Did you have any conversation at any time with any of the defendants after making the arrest? A I did.

Q With whom? A With the defendant Schubert in the station house.

Q What did you say to the defendant and what did the de-

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fendants say to you in reply? A After they had been entered there in the blotter at the station house I was ordered by the lieutenant on desk duty to search the prisoners. I started in. I first searched the defendant Silver. I found nothing on him. I then searched the defendant Schubert. While I was going through his pockets, in the right trousers pocket, front, of his pants, I felt some money. Before extracting the money from his pocket I said to him, "How much money is there?" He said, "I don't know." I said, "Where did you get it?" He refused to answer the question. I then drew forth the money and found four crisp two-dollar bills.

Q Have you got that money with you, officer? A Yes, sir.
(producing money)

MR. OLCOTT: I offer it in evidence, your Honor.

MR. CUVILLIER: I object on the ground that there is no proper identification.

THE COURT: I will receive it merely in the light of the description given by the witness, not as having been proved. There is no testimony that the complaining witness identifies them as the particular bills. There is testimony given by the complaining witness that the money he had was of a certain denomination of bills.

MR. CUVILLIER: I ask for an exception.

MR. OLCOTT: And that he had received them as pay, received these particular bills he had before as pay.

THE COURT: I do not receive in evidence the bills

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as being shown by the testimony of the complaining witness to have been the bills taken from his person. There is testimony by the complaining witness that he had on his person bills of a certain denomination, namely, two-dollar bills and that the bills were new. There is testimony that the officer took from the person of one of the defendants, after arresting him, bills which are in evidence and the circumstance that they are two-dollar bills and that they are new is a circumstance which permits of their being received in evidence. Beyond that it does not go.

MR. OLCOTT: Will your Honor permit me to read the serial number of these bills.

MR. CUVILLIER: I object.

MR. OLCOTT: I don't want to do it unless your Honor --

MR. CUVILLIER: They are not in evidence as to that.

MR. OLCOTT: So far as connecting the defendants as being the property of the complainant.

THE COURT: Mr. Olcott, if you will have the kindness to allow me to make a suggestion. You propose to show by the person who made payment to the complainant witness that he received bills with a certain serial number --

MR. OLCOTT: No, your Honor.

(Mr. Cuvillier made a remark which the stenographer could not hear).

MR. OLCOTT: The comments of counsel in the form of groans is objected to.

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THE COURT: You will tell me the purpose.

MR. OLCOTT: My purpose in showing serial numbers here, if I may go back for a moment, the complaining witness stated that he received certain bills, among them the four two-dollar bills that he put in his shirt as payment. I want to show -- I do not know whether it is proper or fair for me to show just what the serial numbers of these bills are, at present, unless you permit me to read them. I want to show the serial numbers of these bills, to bear him out in his statement that the bills were received by him, and which he put in his pocket, that these are the same bills. I am frank to say sir, I have not any means of knowing the exact serial numbers paid out as pay from these ships, because they were not taken at the time.

THE COURT: Pardon me a moment, Mr. Olcott. Have you any testimony which you propose to offer, showing the serial numbers of the bills paid to the complaining witness to bear a certain relation to each other?

MR. OLCOTT: I have some evidence. Perhaps I had better wait until that evidence is in.

THE COURT: We will now suspend.

Gentlemen, you are admonished not to converse amongst yourselves on any subject connected with this trial, form or express any opinion thereon, until the case is submitted to you.

The Court takes a recess until half past two.

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The defendants are remanded.

AFTER RECESS.

HENRY J. COLEMAN, resumed the stand.

THE COURT: I think I was in error as to my ruling on the conversation that may have occurred between a brother officer and one of the defendants. I will allow you to put that question.

DIRECT EXAMINATION CONTINUED BY MR. OLCOTT:

Q Officer, will you state whether you ever heard any conversation which was had between Officer Phelan and any of the defendants? A Yes, sir.

MR. CUVILLIER: I object to that question on the ground it is immaterial and incompetent.

THE COURT: I will allow it.

MR. CUVILLIER: Exception.

Q Will you state what the officer said and what any of the defendants said in reply? A Yes, sir. When we started north on Third avenue for the station house the defendant Schubert was in the custody of Officer Phelan. I was directly behind him. Defendant Schubert attempted to put his hand in his pocket --

MR. CUVILLIER: I move to strike that out.

MR. OLCOTT: No objection.

THE COURT: Strike that out.

THE WITNESS: Officer Phelan --

Q You may say, officer, "I believe" what, if anything, the defendant Schubert did with his hands but the word "attempted"

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is objected to.

THE COURT: I will allow him to state what he saw done.

THE WITNESS: The defendant Schubert attempted to --

THE COURT: Strike that out. The jury will disregard it.

THE WITNESS: Officer Phelan ordered him to take his hand and keep it away from his pocket. Officer Phelan said to him, "You have been getting away with this for a long time but I have got you now." The defendant Schubert said, "You have me right now, but I will beat you yet."

MR. CUVILLIER: I object to that as not responsive.

THE COURT: I think I will strike it out. The jury will disregard it.

Q What did Officer Phelan say to the defendant Schubert and what did Schubert say to Officer Phelan in your presence and in your hearing? A Officer Phelan said to the defendant Schubert--

THE COURT: Mr. Olcott, I will allow anything that may have been said by any one of the defendants which you contend is in the nature of an admission and to explain what the defendants may have said. I will allow what was said to him in that regard to be put in evidence. Now that is the limit.

MR. OLCOTT: With that limitation, officer, will you answer the question.

BY MR. OLCOTT:

Q What did Schubert say to Officer Phelan? What did he say to him -- I don't want to lead you. A Schubert said to Offi-

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cer Phelan, "You got me right, but I will beat you yet."

MR. CUVILLIER: I move to strike out the answer as not responsive.

THE COURT: I will let it stand.

MR. CUVILLIER: Exception.

Q And that was in response to what remark made by Officer Phelan? A Officer Phelan ordered the defendant not to put his hand in his pocket.

MR. CUVILLIER: I move to strike out the answer as not responsive.

THE COURT: I will let it stay in.

MR. OLCOTT: Your witness.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Now, Mr. Coleman, are you a police officer assigned to Detective Ryan's staff, is that right? A Yes, sir.

Q Before you were assigned to Inspector Ryan's staff, what was your position in the Police Department? A A patrolman.

Q And as a patrolman you were assigned to the 43rd Precinct, is that right? A Yes, sir.

Q What precincts were you in? A The 13th and 28th precincts.

Q And where is the 13th? A Delancey and Clinton streets.

Q Where is the 28th? A West 68th street.

Q How long have you been upon Inspector Ryan's staff?

A Eighteen months.

Q And Officer Phelan, your associate in this case, is on

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Inspector Ryan's staff, is that right? A yes, sir.

Q Now you say you know two of the defendants? A I know one of the defendants.

Q And what defendant is that? A Schubert.

Q Now this is Schubert right here (indicating)? A Yes, sir (pointing out Schubert).

Q And how long have you known Schubert? A For about a year, perhaps a year and two months.

Q Now you arrested Schubert once before, didn't you? A I assisted in the arrest.

Q Where was that? A It was at 122nd street and Lexington avenue.

Q What date was it? A The exact date I don't remember.

Q What month or year? A It was in the year 1914.

Q And what was the arrest for? A He was arrested charged with disorderly conduct.

Q Was Officer Coakley with you at that time? A I think he was but I am not positive.

Q But you say you assisted in the arrest; you must know who was with you? A Officer Phelan was the one, Officer Phelan was the complaining officer in the case.

Q Didn't Officer Coakley or yourself charge the defendant with assault at that time? A No, sir.

Q Positive of that? A I am positive.

Q And he was convicted of the crime of disorderly conduct?
A Yes, sir.

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Q And sentenced to thirty days? A No, sir.

Q What was done with him? A At that time he was fined ten dollars.

Q Now after that you arrested him again, didn't you? A I never arrested the defendant.

Q Well, your associate did? A Yes, sir.

Q When was that? A Why, I have not got the date, counsel.

Q Was it in 1915 or 1914? A It might have been around the beginning of the year or the end of last year.

Q And what was he arrested for then? A Disorderly conduct.

Q And what disposition was made of the case? A He was discharged.

Q Now was not the second charge, that you charged the defendant with another defendant of being a pickpocket? A I never made any charge against the defendant.

Q Did Coakley make any charge? A Officer Coakley made a charge.

Q Of being a pickpocket? A No, sir.

Q What? A Disorderly conduct.

Q What was the disorderly conduct? A Acting in a disorderly manner, interfering with pedestrians, using vile language and refusing to move when ordered to do so.

Q Now after the first charge was made, do you know that the defendant Schubert preferred charges against you? A He didn't prefer charges. He came over to the office to prefer charges but he had no grounds for complaint.

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MR. CUVILLIER: I ask that the papers left by Inspector Ryan this morning here in court be produced. I would like to have them, and also the papers left by Inspector Schmittberger's man. I would like to have those papers.

Q Do you know anything about a charge preferred against you by Joseph Schubert, the defendant here, on November 23rd, 1914, to the Police Commissioner? A Not to the Police Commissioner. He was to the Inspector's office.

MR. CUVILLIER: (reading) "That the defendant Schubert on November 23rd, 1914, at 3 p.m. made a complaint that at about 12:45 a. m. on Sunday, November 22nd, 1914, while at the northeast corner of 125th street and Third avenue, plain clothes patrolman William J. Coakley, badge 7987 and Henry Coleman, badge 38, Sixth District Office, used profane language to him and arrested him without cause. Complainant was requested to call at the office at 3 p.m., November 24, 1914, for the investigation of his complaint."

Do you know anything about that? A I do.

Q That was made to Inspector Ryan? A It was made to Inspector Ryan's office.

Q And you saw the complainant there, didn't you? A I did.

Q And did he state in substance to Inspector Ryan --

MR. OLCOTT: Objected to as incompetent, irrelevant and immaterial, what the defendant stated at that time to anybody.

THE COURT: Sustained.

Q Now in those charges he appeared as a witness against

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you? A Did what?

Q On those charges he appeared as complaining witness against you? A He did on one, yes, sir.

Q On this one I have just read? A yes, sir.

Q And what disposition was made of that complaint? A The case was dismissed.

Q Did you receive a complaint made by Joseph Schubert to Inspector Schmittberger? A No, sir, I did not.

Q Inspector Schmittberger of the Police Department? A I did not.

Q Were you called down before the Commissioner on the complaint of the defendant Schubert? A I was not.

Q Now can you recall on November 30th, 1914, that the defendant Schubert worked for the Bradley Construction Company, constructing the new subway on Lexington avenue, at 123rd street?

A I do not. I know nothing about the defendant working.

Q Did you go to the Bradley Construction Company and tell Mr. Bradley or his foreman that Schubert was a thief and he should not be employed in his place? A I was never near the Bradley Construction Company or any employes attached to such company.

Q Or to any company where Schubert had worked? A No, sir, never.

Q Schubert is married, isn't he? A I do not know.

Q You have seen him on the street with a woman, haven't you?

A I did.

Q And didn't you say to him or the woman that "this Schubert

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was a pimp"? A I never spoke to Schubert in company with a woman.

Q I asked you if you spoke to the woman? A I never spoke to a woman who was in company with Schubert.

Q And also that he was a thief? A I never said anything to anyone that was in company with Schubert or to Schubert himself.

Q To Schubert's sister, Mrs. Ward? A I am positive. I seen a young lady in his company; I don't know who she is.

Q Did you have a conversation with her? A No, sir.

Q Did you see her at the Inspector's office? A No, sir, she was not there.

Q You said you saw Schubert on the street with a woman, is that right? A yes, sir.

Q Did you ever see that woman come to the precinct where you were in company with Schubert, to complain against you? A No, sir, I never did.

Q Were you and Coakley attached at that time to the Sixth District Office? A Was I in the office with him?

Q Yes? A Yes, sir.

Q In plain clothes? A Yes, sir.

Q Can you recall the Fall of 1914, that you met the defendant at 133rd street and Lexington avenue, and you struck him with your blackjack or club? A No, sir.

Q And then he went with his wife, a woman you saw, to the station house, Forty-third precinct, and the lieutenant at the desk told him, assigned an officer, to go with him and his wife to his home? A No, sir.

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Q Do you know anything about that? A No, sir.

Q Did you ever see him going along last fall, around November or December, 1914, with a woman and himself with a police officer? A No, I never did.

Q Did you ever see him going down the street with an officer and you and Coakley ran down the street and said, "I will get you yet."? A No, sir, I never seen him in company with an officer.

Q Now on the morning of July 23rd when you were with Officer Phelan you testified that Schubert -- Silver -- was on the left side of the complaining witness, Mulligan? A Yes, sir.

Q And Schubert on his right side, and Kearney came at the back of him with a bottle? A Yes, sir.

Q And struck the complainant on the head? A yes, sir.

Q Now how near were you to the complainant and the three defendants? A Just across the street and they were about six or eight feet in the block, off the corner.

Q That is they were on the northwest corner of 123rd street and Third avenue? A Yes, sir.

Q And you were on the southwest corner? A Yes, sir.

Q Now on the corner of 123rd street, what kind of a store is there? A There is a shoe store.

Q On the northwest corner, is it not? A No, sir, it is a gents' haberdashery. Is that the corner they were on, Pettit Brothers? A Yes, sir.

Q And you were on the southwest corner? A Yes, sir.

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Q What kind of a store is there? A A shoe store.

Q What? A A shoe store.

Q You are positive of that? A Yes, sir.

Q Now you testified that by the reflection of a glass you observed what was going on? A Not by the reflection of the glass but by my looking through a glass.

Q What do you mean by looking through a glass? A Looking through a glass (indicating a window of the court room), just the same as this, a plain glass window.

Q Now if you were on the corner, how could you look through a glass if they were a couple of feet up 123rd street, towards Lexington avenue?

A There is a glass on the corner like that (indicating the window of the court room) on the avenue. The two come together. You can look right through.

Q Don't you know that the glass, show case, or glass window, of that shoe store, that on the 123rd street side, that the shade is pulled down at night? A No, sir, it is not.

Q Is there an electric light on the northwest corner of 123rd street? A No, sir -- northwest -- no, sir.

Q It is dark? A Yes, sir.

Q And where these defendants were it was dark? A Yes, sir.

Q Now there was another man besides the three defendants there, was there not? A There was not. There was a man came after, in fact three or four people came after.

Q Came after? A Some man blew a police whistle and there

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was three or four people came around.

Q Now at that time of the morning, Third avenue, there is considerable walking to and fro all the time? A There are very few people out at that time of the morning.

Q Very few? A The avenue is deserted.

Q You know 125th street is only two blocks away?

A I know it is.

Q Now you say that the fourth man came after this thing happened? A Yes, sir, there was a couple of men came after it happened.

Q Did you arrest one of them just the same? A I did not.

Q You brought him to the station house? A I did.

Q What did you bring him to the station house for? A At the station house I questioned him to see what he knew in regard to the case.

Q See what he knew about the case? A Yes, sir.

Q Now if you were positive, officer, as you have testified that Silver took hold of the left arm of the complainant, and Schubert took hold of the right arm and Kearney hit him on the head with a bottle, why did you bring the fourth man to question him about the case if he was not there? A I asked him if he knew anything about the case. I didn't know where he was. I wanted to know if he was a witness, if he saw any of the occurrence.

Q Did you charge him also with being in with these three defendants? A No, sir, he was not charged with any crime; at the

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station house I questioned him as to what he had seen.

Q And what did he say? A He told me that he was coming down Third avenue and he seen Officer Phelan and I standing like there (indicating the window) and he seen us run, and by the time he got to the corner he seen these men in our custody.

Q Did you make him a witness? A I did not.

Q Why? A He didn't see any of the crime.

Q Now you have testified on direct examination that Silver and Schubert ran? A They did.

Q Which direction did they go? A They started west but crossed to the south side of the street; they cut across on an angle.

Q Towards the west? A Yes, sir.

Q Towards Third avenue? A No, sir, towards Lexington avenue.

Q And how far did they run before you got them? A They ran possibly between fifty and seventy-five feet.

Q What? A Between fifty and seventy-five feet, I should judge.

Q And did Phelan run with you? A No, sir.

Q What did Phelan do? A He ran over and grabbed Kearney and Mulligan.

Q Where did he find Kearney? A Right beside the complainant. He didn't get away from there.

Q Was the complainant insensible? A The complainant was not insensible. He seemed to be suffering from the effects of liquor.

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Q Was his head out? A It was not.

Q Did he break the bottle? A He did.

Q How many blows did he hit him on the head? A One.

Q Did the complainant have a cap or hat on? A A cap.

Q Broke the bottle? A Yes, sir.

Q Did he cut his cap? A No, sir.

Q Have you got the bottle here? A I have.

Q I would like to see it? (The witness produced broken fragments of a bottle and handed same to counsel).

Q So this is the bottle you found on the sidewalk? A Yes.

Q And there was not any cut on the cap of the complainant?

A No, sir, none that I noticed.

Q And his head was not out? A No, sir.

Q Now, officer, is it not a fact that you found this in the gutter, along the sidewalk? A No, sir, I found that on the sidewalk, right at the place of the assault.

Q Right where the complainant was? A Yes, sir.

Q You saw the complainant after he got the blow? A Yes.

Q Did he fall to the ground? A No, sir, he did not.

Q Now, didn't Phelan arrest Kearney and Schubert, and you arrested Silver? A No, sir.

Q Don't you remember testifying in the Harlem Court? A I do.

Q Don't you remember testifying to that effect? A No, sir, I do not, I never testified to that effect.

Q Now after they were got together did you and Phelan stand

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the three defendants up against a wall and you said to Schubert, "This is the only chance, this is the time I've got you; I will see about you breaking police officers", and beat him with your blackjack? A No, sir, nothing like that was ever said.

Q I ask you to look at this shirt (showing a shirt covered with blood) and I ask you did it have the blood on before you arrested him? A I don't think it did. It got that after I arrested him.

Q Did you hit him? A I did.

Q With a blackjack? A No, sir.

Q With what? A The butt of my revolver.

Q Where did you hit him? A The time I grabbed Silver I had my revolver in my hand. I grabbed Schubert and he attempted to escape, made a kick at me, the defendant Silver pulling at my other hand, and I struck the defendant Schubert on the head.

Q Did you strike him more than once? A Twice.

Q But you didn't make the remark, "Now is the time I've got you and I am going to teach you an example to try to break cops"? A There was no remark said whatsoever.

Q Stand up, will you please? (The witness stood up).

Q How tall are you? A Five foot eleven.

Q How much do you weigh? A I don't know, about 170.

MR. OLCOTT: Your Honor, the defendant is not on the stand at the present time.

THE COURT: Sit down (addressing witness).

Q So you had to use a weapon to bring him into submission,

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is that it? A Yes, sir, I did.

Q Why didn't you use the weapon on Silver? A Because Silver didn't give me so much trouble.

Q Why didn't you use the weapon on Kearney? A I didn't have him.

Q Phelan had him? A Yes, sir.

Q And the only man who gave you trouble was Schubert?

A Yes, sir.

Q Now didn't Phelan tell you what he wanted you to do, not kill Schubert, and you said you didn't give a God damn what you did; he was a squealer? A Phelan made no remarks to me whatsoever.

Q But you were not very friendly with Schubert, were you; he tried to take your job away from you, didn't he? A No, sir. He tried to prefer charges.

Q He did prefer charges? A He didn't prefer charges, he had no grounds; he was over to prefer charges.

Q He did. A He went over to try.

Q And you felt sore because he tried to take your job away? A No, sir, I did not feel sore.

Q How long have you been on the police force? A About three years.

Q Have you had any other charges besides this one made against you? A One over to the Inspectors, for different things.

Q What are the different things? A Assault.

Q When was that? A I don't exactly remember the date.

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Q A year ago, or two years ago? A No, within the past year.

Q And for assault; who did you assault? A I assaulted a prisoner.

Q And where did you assault him, in the station house or on the street? A I assaulted him at the time of the arrest.

Q And what was done with those charges? A The charges were dismissed.

Q Dismissed? A Yes, sir.

Q Who by? A By the inspector.

Q What inspector? A By Inspector Ryan.

Q Oh, still Inspector Ryan, and you were his associate. In other words, you were on his staff? A I am on his staff, not his associate.

Q But you report to him, and nobody else? A I report to Mr. McCauley.

Q But you receive your instructions from Inspector Ryan and no one else? A I receive my instructions from the lieutenant in charge.

Q But directly through the inspector? A I believe so, yes.

Q How many officers on the inspector's staff? A There is about eighteen or twenty men.

Q And on this charge; he heard the charges -- Inspector Ryan-- he heard the charges? A Yes, sir.

Q Any other charges you were up against? A No other charges.

Q I thought you said a little while ago you had several?

A Yes, sir, for assault. No other kind of charges.

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Q Previous to this one I spoke of? A What is that?

Q On a charge previous to the one spoken of? A Yes, sir.

Q What was that about? A At the time Schubert was over there and the time I had two colored men.

Q Yes. You were on Inspector Ryan's staff then? A I was.

Q And you assaulted them, for what? A While placing them under arrest.

Q Yes. What was done with those charges? A The charges were dismissed.

Q By Inspector Ryan? A Yes, sir.

Q You were still on his staff? A Yes, sir.

Q And Inspector Ryan dismissed the charges of Schubert?

A Yes, sir. While in uniform I had a complaint.

Q What? A While in uniform and attached to the 13th Precinct I also had a complaint.

Q Now are you assigned by the Police Commissioner to the Inspector's staff, or is ^{it} at the request of the Inspector you go to his staff? A I believe I am assigned by the Police Commissioner.

Q At the request of the Inspector? A I don't know whose request.

Q But you and the Inspector are very friendly? A Not that I can say, or not that I know of.

Q Well, you carry out any instructions he gives you? A Yes, sir, if possible.

THE COURT: You have been over that ground enough.

MR. CUVILLIER: Yes, your Honor.

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Q But after you saw Kearney hit the complainant over the head, you have testified on your direct examination, that Schubert and Silver jostled or shoved him, is that right? A yes, sir.

Q But you didn't see Schubert or Silver or Kearney go in his pocket, did you? A No, sir.

Q Or go in his clothes? A I did not see it, no, sir.

Q You didn't see any money on the complainant, did you, at that time? A No, sir.

Q Then why did you --

MR. CUVILLIER: Oh, let me have the information corroborating the affidavit by your own supplemental affidavit.

(Mr. Olcott handed a paper to Mr. Cuvillier).

THE WITNESS: I had a conversation.

MR. CUVILLIER: Wait one moment until I get through with my question: (reading) "That on the said date at the hour of three a.m. deponent (that means the complaining witness) placed four crisp two-dollar bills in the right hand pocket of the shirt which the deponent was then wearing at 135th street and Third avenue. Deponent is informed by Officer Coleman (meaning you) that at the hour of four a.m. he observed deponent in conversation with the same defendants at the northeast corner of 133rd street and Third avenue. Deponent is informed by Officer Coleman that when deponent walked west on the north crossing of 133rd street and arrived at the northwest of 133rd street and Third avenue he was followed by the defendants, and that the defendant

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Schubert did seize the deponent by the deponent's right arm and defendant Silver did take hold of the deponent's left arm and that while the deponent was held by the said defendants, the defendant Kearney did strike the deponent on the head with a bottle held in the hands of the defendant Kearney, and that the defendants did then and there take, steal and carry away from the possession of the deponent by force and violence and against his will and without his consent, the above mentioned property."

Now why did you supplement that by your own affidavit when now you say you did not see anything of the kind? A I did not supplement that. From the facts of the case, that is the way the complaint is drawn.

Q Well, then, your affidavit dated the 24th day of July is as follows:

"Henry J. Coleman, 6 I. D. Precinct Police, being duly sworn, deposes and says, 'That Lawrence Mulligan (now here) is a material witness for the People against James Kearney and two others, charged with robbery, as deponent has cause to fear --

First Division, City Magistrates' Court, 5th District, City and County of New York, ss.,

Henry J. Coleman (aged years), occupation policeman, No. 6 I. D. street, being duly sworn, deposes and says that he has heard read the foregoing affidavit of Lawrence Mulligan and that the facts therein on information of deponent

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are true to deponent's own knowledge.

(signed) HENRY J. COLEMAN.

Sworn before me this 20th day of July, 1915,

(signed) N. J. MARSH."

You made that affidavit? A Yes, sir. I am informed by the facts from the deponent. It states there, counsel.

Q And you made that affidavit on the facts he stated to you? A Yes, sir.

Q But still you were present when these defendants were with the complainant, but you didn't see them take any property from him whatsoever? A I didn't see any property whatever.

Q Then why did you make the charge of robbery, when you should have made a charge of assault?

MR. OLCOTT: Your Honor, the question has already been answered.

THE COURT: Sustained. We have been all over it.

Q Now in regard to taking the money; now in taking money from the defendant Schubert at the station house, you say you searched him? A Yes, sir.

Q And you found four two-dollar bills? A Yes, sir.

Q What pocket were they in? A They were in the right trousers pocket, on the front.

Q He had some other change with him, did he? A No, sir.

Q Did either of the other defendants have any change with them? A Silver had about twenty cents.

Q And what did Kearney have? A Kearney had nothing.

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Q And you say you asked Schubert how much money he had; what did he say? A He said he did not know.

Q Didn't he tell you he had ten dollars? A He did not.

Q Didn't he tell you when you asked him where he got this money from, that he got it from his brother? A He didn't.

Q Ten dollars and broke it? A The first time he mentioned that was in the Harlem Court.

Q I am asking you at the time you had him in the station house? A He did not.

Q Now, officer, did you make a statement after you went up to the Harlem Court -- you heard the testimony of Phelan, didn't you? A Yes, sir, I did.

Q And you heard Phelan testify that he himself saw Schubert go into the upper pocket of complainant and take out something green, didn't you hear that? A No, sir, he didn't say that.

Q What did he say? A He said he saw the defendant Silver extract his hand from the left hand pocket of complainant as he approached.

Q You didn't see that, did you? A No, sir.

Q And you were with Phelan all the time? A Except the time that Phelan started over for the defendants -- Phelan started first.

Q You didn't know what Phelan testified to? A I did not.

Q Do you remember in the Harlem Court you were separated?
A Yes, sir.

Q Like you are now? A Yes, sir.

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Q And didn't some policeman tell you in the Harlem Court, or tell Phelan after you got off the stand, to say that he saw Silver put his hand in his blouse pocket?

MR. OLCOTT: I object to that as it is immaterial.

THE COURT: Sustained.

MR. CUVILLIER: What is your Honor's ruling?

THE COURT: I sustained that.

MR. CUVILLIER: Exception.

Q Didn't you say in front of the Court that you had to throw this case because you were on the Inspector's staff? A I made --

Q Wait a moment -- to get even with Schubert? A I made no remark whatsoever.

Q Now you testified that these bills were crisp bills? A Yes.

Q What do you mean by crisp bills? A New bills.

Q Are these new bills? A Yes, sir.

Q Now these have been in your possession since you got them from Schubert, have they? A No, sir.

Q In whose possession? A In the property clerk's possession, in his office at Police Headquarters.

Q But you examined those bills, did you? A I did.

Q And I suppose you looked at the numbers? A I did.

Q And you put the numbers down, did you? A Yes, sir, I did.

Q Did you mark them anywhere else? A No, sir.

Q Did you notice the date of them? A No, sir.

Q What numbers did you put down, don't you remember? A I have the numbers right here (indicating a slip of paper).

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Q Let us have them. A Why, I will read the numbers to you, counsel. I have got something on this paper I don't want you to see. I will read the numbers, if you want them.

MR. CUVILLIER: No.

Q You had a talk with Phelan about this case, didn't you?
A Why, I did.

Q And did you talk to him, why your testimony didn't agree as to the defendant Silver putting his hand in the blouse pocket of the complainant?

MR. OLCOTT: I object. It presupposes it does not agree.

THE COURT: Sustained. Assuming something not in evidence.

Q What was the object in taking the numbers of the bills?

A I noticed the bills were new bills. I also noticed the serial numbers, they ran in rotation. I took the numbers down principally because those bills are to be held as evidence, and also I tried to trace those bills.

Q Tried to trace them? A yes, sir.

MR. CUVILLIER: That is all.

MR. OLCOTT: Officer, let us see that paper. We have to have no secrets from counsel, you know.

(The witness handed the paper to Mr. Olcott which Mr. Olcott handed to Mr. Cuvillier.)

MR. OLCOTT: You can offer it in evidence if you want.

MR. CUVILLIER (after reading): Nothing in that, that

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I can see.

REDIRECT EXAMINATION BY MR. OLCOTT:

Q Officer, you have been asked whether you were friendly with the defendant Schubert; I want to ask you whether you are friendly with anybody you see robbing anybody else? A I am not.

MR. CUVILLIER: I object to the question.

THE COURT: Sustained.

MR. CUVILLIER: I move to strike out the answer.

THE COURT: Strike it out. The jury will disregard it.

Q At the time you hit the defendant Schubert twice with the revolver, what was he doing to you? A He tried to kick me in the stomach.

MR. CUVILLIER: I move to strike out "He tried to kick me in the stomach."

THE COURT: I will strike that out.

BY THE COURT:

Q What did he do? A He raised his foot.

BY MR. OLCOTT:

Q Did you have anybody else under arrest? A I did.

Q What was the other prisoner doing? A Pulling in the opposite direction.

THE COURT: We will suspend now. Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, form or express an opinion thereon until the case is submitted to you. You are excused until eleven o'clock tomorrow.

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Whereupon at 3:20 p.m. an adjournment was taken until 10:15 a.m., Friday, August 13, 1915.

New York, August 13, 1915.

TRIAL RESUMED.

HENRY J. COLEMAN, resumed the stand.

CROSS EXAMINATION CONTINUED BY MR. CUVILLIER:

Q Officer Coleman, when the defendant Schubert was in the station house, bleeding from the assault of your gun, did he ask you for an ambulance from the Harlem Hospital? A No.

Q And didn't you say in response to that, "I will throw a bucket of water on you"? A I did not.

Q Did you hear him ask anyone that he wanted an ambulance to treat his wounds? A He did not ask anybody to get an ambulance. He was asked the question.

Q Now you testified on your cross examination that you were on the Inspector's staff, and that you performed duties for the Inspector, is that right? A Yes, sir.

MR. OLCOTT: I object to this question and to this line of questioning, as he has already had ample opportunity. In fact I think great leniency has been given counsel in examining this witness, yesterday. He closed his cross examination and turned the witness over to me. The matter was gone into exhaustively and I object to it.

THE COURT: The stenographer will read the question.
(Question read).

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THE COURT: I sustain the objection, That line of examination, so far as this witness is concerned, is closed.

MR. CUVILLIER: Exception.

Q Now when you arrested Schubert, you put him under arrest, did you? A Yes, sir, I put him under arrest.

Q Did you say anything to him in regard to knowing the complaining witness? A No, sir.

Q Did you say anything to him about having any money in his possession? A In the station house I did.

Q No, I mean at the time of the arrest? A No, sir, I did not.

MR. CUVILLIER: That is all.

MR. OLCOTT: That is all, officer.

HERMAN ROSS McMARTIN, was called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. OLCOTT:

Q Where do you live? A Algonquin Hotel, Forty-fourth street, New York City, Borough of Manhattan.

Q Mr. McMartin, what is your business? A Clerk in a steamship office.

Q Will you talk up so that all can hear you. It is a little noisy here. Did you have charge of the payment of men who were working on the Peonia, is that the way it is pronounced? A The Pannonia.

MR. OLCOTT: Then there must have been a mistake in

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writing down the name.

Q Paid on the 22nd of July? A Yes, sir.

MR. OLCOTT: Stand up, Mr. Mulligan.

(Lawrence Mulligan stood up in the court room).

Q Do you remember that man? A I do.

Q Was he paid by you on that day? A Yes, sir.

Q Under what name, may I ask? A James Brady.

Q You have known this man before? A Yes, sir.

Q He has worked on steamships with which you have been connected before, is that right? A Yes, sir.

Q Can you tell me how much money was paid him that day?

A He was paid \$23.27.

Q And in what sort of bills were they paid? A New two-dollar bills, unused, running in consecutive numbers, obtained from the bank.

MR. OLCOTT: That is all.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Now, Mr. McMartin, what is your business? A Clerk in a steamship office.

Q What steamship company? A Thomas Harling & Son.

Q And the complainant Mulligan, known to you as Brady, was employed on that steamship as what? A As a horseman.

Q A horseman? A Yes, sir.

Q What do you mean by a horseman? A A horseman takes care of horses going on the steamer.

Q To where? A To France.

Q And on July 22nd you say that he was paid the sum of \$23.27?

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A Yes, sir.

Q Did you yourself pay him? A Yes, sir.

Q And where did you pay him, whereabouts? A I paid him on the steamer.

Q Whereabouts was the steamer? A At the foot of West 25th street dock.

Q At what time of day did you pay him? A Why, I could not remember exactly, it would be about three to four o'clock, I think; I can't remember.

Q You say you paid him in denominations of what kind of bills? A Two-dollar bills.

Q All two-dollar bills? A Outside of the odd change.

Q The odd change of twenty-seven cents? A No, sir, there was a one-dollar bill as well.

Q Outside of that, the rest were all two-dollar bills?

A To the best of my memory.

Q Did you pay anybody else with it that day? A Yes, sir, I did.

Q Who else did you pay? A I paid about seventy men that day.

Q And what denominations did you pay them in? A Twodollar bills, two and one-dollar bills, they all got.

Q Now you say they were apparently new bills? A They were.

Q Where did you get the bills from? A Royal Bank of Canada.

Q When did you get them? A That same day.

I went straight from the bank to the ship.

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Q You say that they were consecutive in number? A yes, sir.

Q How do you know that? A Because I took note of it.

Q Why did you take notice of it? A Because they were new bills and I was counting them.

Q How much did you draw from the bank? A \$3500.

Q In two-dollar bills? A In two and one-dollar bills.

Q You want to tell the Court and jury that of the \$3500 which you drew from the Royal Bank of Canada on the 22nd day of July, that the bills were in consecutive order; did you count them? A The two-dollar bills were in consecutive numbers.

Q Did you count them? A I did.

Q Each one? A Yes, sir.

Q And you noticed mentally the number of them? A I could not tell the numbers. I noticed they were running in consecutive order.

Q Do you know how many two-dollar bills the Government prints at the Bureau of Engraving in Washington? A I don't.

MR. OLCOTT: I object to that.

MR. CUVILLIER: I will withdraw the question.

Q You say you noticed the numbers? A I didn't notice the numbers. I noticed they were running in consecutive numbers.

Q Well, in consecutive numbers, what did you consider the serial number then? A I could not tell you.

Q Did you notice the serial number? A No, sir.

Q Only the consecutive number? A Yes, sir.

Q Do you know that the Government money, besides having

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a figurative consecutive number, has an alphabetical serial number also? A I do.

Q Did you notice the alphabetical serial number? A No.

Q If a bill was handed to you, a two-dollar bill, you could not say that that bill was one of the bills that was drawn from the Royal Bank of Canada? A I could not.

Q If four bills were handed to you, and they ran in consecutive number, you could not say that those bills were drawn by you from the Royal Bank of Canada, could you? A I could not.

MR. CUVILLIER: That is all.

MR. OLCOTT: You don't want him any more, Mr. Cuvillier, do you?

MR. CUVILLIER: No, sir.

MR. OLCOTT: Thank you very much, Mr. McMartin.

ARTHUR J. PHELAN, was called as a witness on behalf of the People, being first duly sworn, testified as follows: (Shield No. 8972). (6th Inspection District)

DIRECT EXAMINATION BY MR. OLCOTT:

MR. CUVILLIER: May it please the Court, I would like to have the witnesses excluded from the court room. I asked that yesterday but some are in court.

MR. OLCOTT: Yes. Those that have testified.

MR. CUVILLIER: I ask that they be excused.

MR. OLCOTT: I have no objection to it. It is a matter of indifference to me.

THE COURT: Witnesses in the case step outside.

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THE CLERK OF THE COURT: All witnesses in the case please step outside until called for.

Q Where were you, officer, on the early morning, around four o'clock, of July 23rd? A At 123rd street and Third avenue.

Q And who were you with? A Officer Coleman.

Q Do you see anybody in court now whom you saw at that time?
A Yes, sir.

Q Will you please point the people or persons out? A I saw the defendants Kearney, Schubert and Silver.

Q Who are sitting here at this table now? A yes, sir.

Q Did you see Mr. Mulligan, the complaining witness? A Yes.

Q You know who he is; he was on the stand yesterday? A Yes.

Q Where was he when you first saw him? A I first saw the complaining witness Mulligan when he was in conversation with the three defendants, Kearney, Schubert and Silver.

Q Where? A On the northeast corner of 123rd street and Third avenue.

Q Where were you and where was Officer Coleman at that time?
A Walking south on 123rd street and Third avenue.

Q What did you do when you saw them? A Officer Coleman and I stepped into a doorway on the southwest corner of 123rd street and Third avenue, a shoe store doorway.

Q What did you see the four men do then? A I saw them proceed from the northeast corner of 123rd street and Third avenue, over across the crosswalk to the west side of Third avenue.

Q Who went first? A Lawrence Mulligan, the complainant.

Q Who came next? A The defendant Schubert and Silver.

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Schubert on the right, north side, Silver on the left, south side.

Q And where was the other defendant? A He was about five feet behind Silver and Schubert.

Q What did you see them do then? A I saw Schubert go to the right side -- left side of Lawrence Mulligan.

Q Schubert on the left side? A Yes, sir, and Silver on the right side, and grab hold of the complainant. I saw the defendant Silver grab the complainant by the arm, with his left hand, and with his right hand, I saw him put his right hand in the complainant's, Mulligan's, left trousers pocket.

Q That was the pocket nearest where you stood? A yes, sir.
BY MR. CUVILLIER:

Q What pocket? A Left trousers pocket.

THE WITNESS (continuing): I then saw the defendant Kearney step up to the complainant Lawrence Mulligan and strike him on the head with a bottle, containing some kind of a fluid. I then ran over.

Q I show you pieces of a bottle here; look in here -- the jury has already seen it -- and ask you where you have seen that since the time you saw the defendant Kearney strike Mulligan?

A On the ground.

Q Where? A About five or ten feet off 123rd street and Third avenue, in 123rd street.

Q On the north side of the way? A Yes, sir.

Q Did you pick that bottle up? A Officer Coleman.

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Q Did you see him pick it up? A Yes, sir.

Q What happened after you saw the defendant Kearney strike Mulligan with that bottle? A I ran over and grabbed the complainant Mulligan and the defendant Kearney and Officer Coleman ran after the defendants Schubert and Silver, they were on the south side of the street, about the entrance to a lodging house, about fifty feet away from where the assault was committed and I saw Officer Coleman grab the defendants Silver and Schubert. I saw Officer Coleman strike the defendant Schubert.

Q Did you see what the defendant Schubert was doing at that time? A He was fighting with Officer Coleman, trying to get away.

MR. CUVILLIER: Objected to.

THE COURT: I will strike out, "trying to get away."

Q What happened after the arrest, officer, did you go to the police station? A Yes, sir.

Q Did you have any conversation with anybody on the way to the police station? A Yes, sir.

Q Who with? A Defendant Schubert.

Q What did you say to the defendant Schubert and what did he say to you, if anything? A As we were about to walk up Third avenue and 123rd street, the defendant Schubert put his hand in his pocket. I said to him to take his hand out of his pocket and leave it out of there. I said, "You have been getting away with this thing a long time. We have got you right this time." He said, "I know you got me right but I will beat you yet."

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Q He said that to you? A yes, sir.

Q Was Officer Coleman present? A Two feet in the rear.

Q Whom did he have? A Lawrence Mulligan and the defendant Kearney.

Q Did you have any conversation with any of the defendants?

A No, sir.

Q Did you see what Schubert was doing, if anything, on the right hand side of complainant Mulligan?

MR. CUVILLIER: Wait a moment. I object to the question as leading.

THE COURT: Objection overruled.

MR. CUVILLIER: Exception.

A Only that he had a hold of him.

Q You didn't see what he was doing?

MR. CUVILLIER: Objected to.

THE COURT: I will let the answer stand.

Q Except that he was holding him? A He was holding him.

Q Were the defendants searched? A Yes, sir.

Q Were you present when they were searched? A Yes, sir.

Q What was found on any of them, on each of them, I should say? A Officer Coleman searched the defendant Silver; I believe he found a penknife on him; on the defendant Schubert was found two brand new two-dollar bills.

Q Two? A Four, rather.

MR. CUVILLIER: What I object to is the District Attorney prompting the witness, to refresh his memory.

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MR. OLCOTT: If I handed them to him I might be refreshing his memory or recollection.

Q I ask you to look at these bills and tell me if these are the bills that were found on the defendant Schubert? A Yes, sir.

Q Were you present when Officer Coleman searched him? A Yes.

Q What pocket did he find them in? A In the right hand pocket I believe.

Q What pocket? A The trousers pocket.

Q Do you know officer whether that was the pocket in which the defendant Schubert put his hand at the time when you had a conversation with him?

MR. CUVILLIER: Objected to as leading.

THE COURT: Sustained.

THE WITNESS: Yes, sir.

MR. CUVILLIER: I move to strike out the answer.

THE COURT: Strike it out.

Q What pocket was it, officer, that the defendant Schubert put his hand in when he went to the station house?

MR. CUVILLIER: Objected to as leading.

THE COURT: I will allow it.

Q What pocket, officer, did he put his hand in when he went to the station house? A In the right hand pocket.

Q Trousers pocket? A yes, sir.

MR. OLCOTT: Your witness.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Now, Phelan, how long have you been on the police force?

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A A little over three years.

Q And how long have you been with Inspector Ryan? A About fifteen months.

Q And before you were assigned to Inspector Ryan's staff, where were you then? A 43rd Precinct.

Q In what position? A As a patrolman.

Q 43rd Precinct, that is the station house on East 126th street? A Yes, sir.

Q Now you know the defendant Schubert, don't you? A Yes.

Q Known him for some time? A Yes, sir.

Q Have any trouble with him in that time? A Yes, sir.

Q You and Coleman, didn't you? A I know nothing about Coleman.

Q Did Schubert ever prefer any charges against you? A Who?

Q Did Schubert prefer charges against you? A No, sir.

Q Did he threaten to do it? A No, sir.

MR. OLCOTT:

I object and move to strike out the answer.

THE COURT: I will allow the answer to stand.

Q And did you ever tell him that you were going to get him?
A No, sir.

Q You and Coleman travel together, don't you? A No, sir.

Q You are on the Inspector's staff with Coleman, Inspector Ryan's staff? A Yes, sir.

Q You make arrests together don't you, and raids? A Sometimes.

Q You have, haven't you? A Yes, sir.

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Q You made a raid on a place in 122nd street a week ago, didn't you, you and Coleman? A No, sir.

Q A disorderly house between Lexington avenue and Third avenue? A No, sir.

Q But you knew about Schubert making the complaint against Coleman, didn't you? A No, sir.

Q Didn't Coleman tell you so? A No, sir.

Q Did Inspector Ryan tell you so? A No, sir.

Q You take orders from Inspector Ryan, don't you? A I do.

Q Now on the 23rd day of July, on the morning of the 23rd of July, around four a.m., you were with Coleman, and you say that at the northwest corner of 123rd street and Third avenue you noticed four men, is that right? A No, sir.

Q How many? A I noticed three men at first on the northeast corner.

Q Northeast corner? A Yes, sir.

Q What side of the street is that on, Third avenue? A On the east side.

Q Is there an electric light there? A No, sir, there was no light at all at that time.

Q About four o'clock in the morning? A Yes, sir.

Q Was it day light? A No, sir.

Q There was no light? A No light.

Q You mean there was no electric light lighted? A Yes, sir, there was no electric light lighted.

Q No where around? A No, sir.

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Q Who did you notice on that corner of the three men? A My attention was called to Schubert, the defendant Schubert.

Q You were standing on the southwest corner? A I was walking.

Q On the southwest corner? A No, sir, northwest corner of Third avenue, walking over.

Q Northwest corner? A Yes, sir.

Q When did you first notice Schubert? A My attention was called to him by Officer Coleman.

Q And the others were standing on the northwest corner? A Northeast corner, standing there.

Q You were on the northwest corner? A Yes, sir, I was walking.

Q There was no light lighted? A No, sir.

Q You were across the street? A Yes, sir.

Q In the dark? A Yes, sir.

Q Well, how did you notice him -- you say Coleman did? A Yes, sir.

Q And from what Coleman said you thought it was Schubert at that time? A Yes, sir.

Q Now who else did you recognize besides Schubert? A I saw the defendants Kearney, and Silver, and Lawrence Mulligan.

Q Anybody else? A No, sir.

Q Now then what did you see then happen? A I then saw Lawrence Mulligan, the complainant, walking west across the sidewalk at 123rd street and Third avenue; behind him was the defend-

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ant Schubert, on the north, right side, and the defendant Silver on the left, south side. In the rear of them, about five feet, was the defendant Kearney.

Q Where were you standing then? A Southwest corner of 123rd and Third avenue.

Q You crossed from the northeast to the southeast corner?

A No, sir.

Q To the northwest corner? A yes, sir.

Q And what did you see then happen? A I then saw the defendants Schubert and Silver go up to the complainant, Lawrence Mulligan, and grab hold of him. I saw the defendant Silver place his hand in the complainant's left trousers pocket.

Q Left trousers pocket? A Left hand.

Q Left trousers pocket? A yes, sir.

Q Not in the right trousers? A In the left hand trousers pocket.

Q Left hand trousers pocket? A yes, sir. I then saw the defendant Kearney step up and place his left hand on the complainant's shoulder, strike the complainant, Lawrence Mulligan, on the head with a bottle. Kearney had a bottle in his right hand.

Q Now when that happened what did you do? A I ran from the southwest corner of 123rd street and Third avenue, over across the street, on the north side, to 123rd street and Third avenue, about five feet off Third avenue, and I grabbed the defendants Kearney and Mulligan. I told them I was a police officer.

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I then took the defendants Kearney and Mulligan across the street to where Officer Coleman had Silver and Schubert.

Q Now did Officer Coleman just walk up and put Silver and Schubert under arrest? A What is that.

Q Did Coleman walk right up and put Silver and Schubert under arrest? A He ran over there, yes, sir.

Q Did Silver and Schubert run away? A About fifty feet away.

Q Did they run? A Partly.

Q Now Officer Coleman has testified that they ran away and he had to run up Lexington avenue to get them; did he, or did he not?

MR. OLCOTT: If your Honor please, there is no such testimony. Towards Lexington avenue is the testimony.

Q Towards Lexington avenue? A About fifty feet away, right to the entrance of the lodging house.

Q You testified in the Harlem Court, didn't you? A Yes.

Q Did you testify that you put under arrest Schubert and Silver, and Coleman put under arrest Kearney and Mulligan? A No.

Q Now this is glass (showing) that you picked up on the sidewalk, is it? A Yes, sir.

Q You say that it contained some kind of liquid. How do you know it did? A Because the liquid was marked on the ground.

Q The liquid was marked on the ground. Do you mean that there was a liquid formation on the ground where the glass was?

A Yes, sir.

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Q Now was the complainant bleeding any? A No, sir.

Q Was his head out? A No, sir.

Q Was his hat out? What kind of a hat did he have on?

A A cap.

Q Was it out? A No, sir.

Q Was the complainant insensible? A No, sir.

Q Was he on the ground? A No, sir.

Q Well, now, what was his condition? A Partly intoxicated.

Q Could he talk coherently so that you could understand him?

A Yes, sir.

Q And what did he say to you? A When I told him I was a police officer, he said "They got me."

Q Who said that? A Lawrence Mulligan.

Q He said they got him? A Yes, sir.

Q Did he say anything to you about having any money? A No, sir, not at that time.

Q Did he say anything to you at the station house about having money? A Yes, sir.

Q What did he say to you about money? A He said he remembered about three a.m. putting four two new brand dollar bills in his right pocket.

Q Four what? A Four brand new two-dollar bills.

Q In what pocket? A In his right hand shirt pocket and they were not there when he went to the station house.

Q Now he said that when he got to the station house, did he? A Yes, sir.

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Q You heard him testify in the Harlem Court, didn't you?

A No, sir.

MR. CUVILLIER: Oh, you were excluded, that is right.

Q Well, he testified that he didn't say anything to you, or any of the officers and knew nothing until he woke up in the station house that morning?

MR. OLCOTT: That is objected to.

THE COURT: That is stricken out. You are instructed to disregard it, gentlemen of the jury. Proceed.

Q Now, you say you saw Schubert or Silver put his right hand in the left trousers pocket; is that right? A yes, sir.

Q You didn't see him take anything out of it, did you? A No.

Q Do you remember testifying in the Harlem Court? A Yes.

Q Do you remember testifying that Silver had put his hand in the blouse pocket and take it out and pulled out something green? A No, sir, I never testified to anything such as that.

Q You didn't see anything green around in the way of money, did you? A No, sir.

Q You didn't see him take any property from the complainant, did you? A No, sir.

Q All you know is that you saw this man Mulligan -- I mean this man Kearney, hit the complainant on the back of the head with a bottle and Silver was on the left side of him and Schubert on the right; that is all you know? A And I saw Schubert's hand in the complainant's pocket.

Q Now how near were you to him when he put his hand in the

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pocket? A Right across the street; I was on my way over.

Q And they were crowded around him? A Yes, sir.

Q And was the complainant standing or crouching on his knees? A He was standing.

Q Perfectly straight after being hit, is that right?

A Yes, sir.

Q On the police blotter in the 43rd Precinct, when entry did you make as to the charge against the three defendants?

A Officer Coleman charged the defendants.

Q Well how do you know what charge he made? A I do not.

Q You talked with him about the case, didn't you? A No.

Q What? A No, sir.

Q Well, you signed a supplemental affidavit corroborating the affidavit of the complaining witness, didn't you? A Yes.

Q Well, then, you must have talked about the case? A No.

Q You didn't talk to the complaining witness about it?

A No, sir.

Q You talked to someone about it, didn't you? A No.

Q You must have told the Clerk of the Court about it?

A I had nothing to say to the Clerk of the Court.

Q All you said is what you have testified in the Harlem Court and here, is that right? A yes, sir.

Q Were four defendants arrested, instead of three? A Yes.

Q You let the fourth go, didn't you? A No, sir.

Q What did you do with the fourth defendant? A The fourth defendant was Lawrence Mulligan for intoxication.

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Q He is not a defendant here, he is the complainant?

A He was a defendant at that time. There were four arrested.

Q For intoxication? A Yes, sir.

Q Who then was the fifth man you arrested? A No, sir.

Q You had a fifth man at the station house, didn't you?

A No, sir, not that I know of.

Q Now, didn't you and Coleman bring in besides the three defendants and the complainant, another man to the station house?

A No, sir.

Q Did you see Coleman bring a fourth man besides the three defendants? A No, sir.

Q And question him as to what he knew about the robbery?

A I did not.

Q And you were with him all the time? A Yes, sir, except when I brought the defendants to the cell in the station house.

Q And you are positive there was no other men but these four? A Not that I saw.

Q And you were there all the time? A Except when I brought the defendants to the cell.

BY THE COURT:

Q Whereabouts is that station house? A East 126th street, No. 148.

Q And as you walked from the place where the arrest was made to the station house, through what streets did you walk? A I walked north on Third avenue to 126th street, and west on 126th street to the station house.

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Q Now, as you were walking along, with respect to yourself, in what position was the defendant Kearney? A Defendant Kearney was on my right side and the complainant Lawrence Mulligan on my left side.

Q As you were walking from the point where the arrest was made -- A Pardon me, your Honor --

Q Now you listen to me. Where was the other officer, Coleman? A Officer Coleman was in the rear.

Q About how far in the rear? A I know about five feet.

Q And who, if anyone, was walking with Coleman? A I did not see anybody.

Q You mean to say you started for the station house first? A Yes, your Honor.

Q Having in your custody Kearney and also Mulligan, on a charge of intoxication? A No, sir, I had Schubert and Silver.

MR. OLCOTT: Your Honor, the officer started to correct his statement and you said, "Listen to me." He said, "I beg your pardon."

I would like an opportunity to be given to the officer to correct his statement.

BY THE COURT:

Q I want you to tell me, officer; you think, when you are sure answer; who, if anyone, was walking with you, or alongside of you, as you walked from the point where the arrest was made to the station house? A The defendants Schubert and Silver.

Q Well, now, with respect to you, where was Schubert? A

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Schubert was on my right side and Silver on my left side.

Q Then Kearney was brought to the station house, so far as you know, by the other officer? A Yes, your Honor.

Q And the complaining witness, Mulligan, was brought to the station house, so far as you know, by the other Officer?

A Yes, your Honor.

Q You had entered the station house, had you, before Officer Coleman entered? A Yes, sir.

Q You had arrived at the station house with Schubert and Silver before Coleman got there, is that so? A Yes, your Honor.

Q Where were you in the station house when Coleman entered the station house? A I brought the two defendants to the desk, in front of the desk, and I was in front of the desk.

Q And that is about how far from the station house door? A About five feet.

Q Did you see Coleman come in? A Yes, sir.

Q Did he come in accompanied by anybody? A Yes, sir.

Q By whom? A By the complainant Lawrence Mulligan and the defendant Kearney, they were handcuffed.

Q And was he accompanied by anybody else? A No, sir.

Q Did anyone else come into the station house in company with Coleman on that occasion? A Only the defendant Kearney and the complaining witness Lawrence Mulligan.

THE COURT: Go ahead.

BY MR. CUVILLIER:

Q No one else was there, present or charged with that crime

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except the three defendants? A Yes, sir.

Q Now you didn't see Silver or Schubert go into the pocket of the blouse of the complainant Mulligan, did you? A No.

Q You saw everything that happened from the time you laid your eyes on them, until the time you put them under arrest?

MR. OLCOTT: One moment. I wish to object. He asks him if he saw everything.

THE COURT: He purports to state what he saw. I think I will let it stand and sustain the objection as to "everything". You asked him to say he saw everything. That he cannot do.

Q But you didn't see either of the defendants put their hand into the blouse pocket, the blouse means the shirt pocket, of the complainant, did you? A No, sir.

Q Now who searched Schubert in the station house? A Officer Coleman.

Q You brought Schubert and Silver to the station house, didn't you? A Yes, sir.

Q Why didn't you search them? A Officer Coleman made the charge and he searched them.

Q He charged them and he searched them? A Yes, sir. He was the arresting officer.

Q What charge did Coleman make, do you know, on the blotter? A No, not as a matter of fact.

THE COURT: You have asked him that already, and he has told you.

Q Now did you notice what pocket Coleman took the bills out

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of Schubert's pocket; what pocket it was? A His right hand pocket.

Q And what did Schubert say when he was searched? A He said he didn't know how much money he had. When Officer Coleman asked him that question he made that reply.

Q When he searched him? A Yes, sir.

Q And when he produced these four two-dollar bills did he say anything to Coleman as to where he got them from? A No.

Q Did Coleman ask him? A Yes, sir.

Q What did he say? A He didn't say anything.

Q Now you testified a little while ago that Coleman arrested Schubert and Silver, didn't you? A Yes, sir.

Q And you arrested the complainant Mulligan and Kearney?
A Yes, sir.

Q You have testified in response to his Honor's question that you had taken Schubert and Silver to the station house, and Coleman had taken Kearney and Mulligan, the complainant? A Yes.

Q How did that happen; Coleman turned over Schubert and Silver to you? A Yes, sir.

Q Where? A In front of the entrance of the lodging house, while he was placing the handcuffs on the defendant Kearney and Lawrence Mulligan.

Q Did you see Coleman hit the defendant Schubert? A Yes.

Q What did he hit him with? A The butt of his gun.

Q Why did he hit him? A Because Schubert made a kick at him.

Q A kick? A Yes, sir.

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Q How do you mean, made a kick? A With his foot.

Q Coleman is a much larger man than Schubert, isn't he?

A Yes, sir.

Q Did you hear Coleman say anything to Schubert when he hit him? A No, sir.

Q Did you hear Schubert say anything to Coleman? A No.

Q Nothing was said at all? A No, sir.

Q Schubert didn't attempt to get away, did he? A Yes.

Q How do you mean? A When he attempted to kick Officer Coleman he was --

Q Did he kick him or attempt to? A I saw his foot raised.

Q Did he kick him or not? A No, sir.

Q You saw Schubert bleeding, didn't you? A Yes, sir.

Q How many times did he hit him? A I do not know.

Q Did you say, "Coleman, stop that and don't kill the young man."? A No, sir.

Q Did you hear Coleman say to him, "I have got you now and I am going to frame you up and beat you up"? A No, sir.

Q For trying to break the cops? A No, sir.

Q Now you are positive that the complainant said to you in the station house that he had these four two-dollar bills in his pocket? A He didn't say it to me.

Q What? A He didn't say it to me.

Q Who to, Officer Coleman? A Yes, sir.

Q Did you hear it? A Yes, sir.

Q That was immediately when he got to the station house?

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A Yes, sir.

Q Before the desk sergeant? A Yes, sir.

Q In the presence of the defendants? A Yes, sir.

Q You say he was in an intoxicated condition? A Yes, sir.

Q Did he say anything about having any change besides the four two-dollar bills, the eight dollars? A Yes, sir.

Q What did he say about that? A He said he had a dollar and a half in change.

Q Did he have it? A I do not know.

Q He was a prisoner, wasn't he? A Yes, sir.

Q Did you search him? A No, sir.

Q Why didn't you? A Officer Coleman searched him.

Q Do you know if he found any money on him? A I don't believe so.

Q Do you know if either of the defendants knew each other prior to this time, the 23rd day of July, 1915? A No, sir.

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

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

Q Did you charge the defendants with assault? A No, sir.

Q You never saw outside of Schubert the other defendants before that night? A No, sir.

Q You read the affidavit of Mr. Mulligan, the complainant, didn't you? A Yes, sir.

Q How came you to verify that affidavit? A Because I believed it to be true, what was in it was true.

Q You believed it to be true? A Yes, sir.

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Q Now officer, do you know as a fact that it is true?

A Yes, sir, it is true.

Q (reading) "He says Mulligan, James Kearney, Joseph Schubert, Philip Silver, now here, acted in concert in the following manner. 'That on the said date, at the hour of three A. M., the deponent placed four crisp two-dollar bills in his right hand pocket in the shirt, which deponent was then wearing at 125th street and Third avenue. Deponent is informed by Officer Coleman that at the hour of four A. M. he observed deponent in conversation with the same defendants at the northeast corner of 123rd street and Third avenue. Deponent is informed by Officer Coleman that when deponent walked west on the north crossing of 123rd street and arrived at the northwest corner of 123rd street and Third avenue he was followed by the defendants, and that the defendant Schubert did seize the deponent by the deponent's right arm and defendant Silver did take hold of the deponent's left arm and that while the deponent was held by the said defendants, the defendant Kearney did strike the deponent on the head with a bottle held in the hands of the defendant Kearney, and that the defendants did then and there take, steal and carry away from the possession of the deponent by force and violence and against his will and without his consent, the above mentioned property, to-wit, the sum of eight dollars." You didn't say that, did you? A I saw the defendant Kearney strike him with a bottle.

Q I am asking you, yes or no, did you say that? A Yes, sir.

MR. OLCOTT: It is immaterial, your Honor whether he

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saw every allegation contained therein.

THE COURT: Sustained.

Q Did you see the defendants take from the complaining witness the sum of eight dollars?

MR. OLCOTT: Your Honor, that has already been testified to.

THE COURT: He has gone all over that. It is already conceded that he did not see the actual taking of the money.

MR. CUVILLIER: All right, if that is so, your Honor.

Q Just one more question, Mr. Olcott. Was it Silver who put his hand in the left hand pocket of the complainant? A It was Silver who put his hand in the right hand trousers pocket of the complainant.

MR. OLCOTT: The People rest.

MR. OLCOTT: I move to acquit the defendants first, on the ground that the State has not proven a case against any of the defendants.

THE COURT: Denied.

MR. CUVILLIER: Second, I move to dismiss the indictment and acquit the defendant on the ground of Section 2130 of the Penal Law. To constitute the crime of robbery it must be proven, the unlawful taking of personal property from the person, or in the presence of another, against his will, by means of force or violence. In the present case the State has not shown that any property of any character has been taken from the complaining witness,

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Police Officer Coleman testified that he did not see any of the defendants go into the pockets of the complainant.

THE COURT: Motion denied.

MR. CUVILLIER: Exception.

And the only exception is that of Phelan, who said that he saw Silver go into his left hand pocket.

THE COURT: Motion denied.

MR. CUVILLIER: Exception.

T H E D E F E N S E .

J A M E S K E A R N E Y , one of the Defendants, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CUVILLIER:

Q Where do you live? A 2231 Third avenue, New York City, Borough of Manhattan.

Q Kearney, are you a citizen of the City of New York? A Yes.

Q Born here? A Yes, sir.

Q Were you ever convicted of any crime? A No, sir.

Q Were you arrested before this time? A Never.

Q What has been your business? A Well, the last three months I have been working as a cattleman on a ship.

Q What? A As a cattleman on a ship.

Q You mean ships going to Europe? A Going to Italy.

Q Now when did you return from your last voyage? A The Saturday previous to the Friday I got arrested.

Q Saturday the What? A 17th day of July.

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Q Now where did you say you lived? A 2231 Third avenue.

Q What is that? A A lodging house.

Q Whereabouts? A Between 121st and 122nd streets.

Q On Third avenue, between 121st and 122nd streets, is that right? A Yes, sir.

Q And you were living there on the night of the 23rd day of July, 1915? A That is where I was going to when I was arrested.

Q That is where you were going to when you were arrested? A Yes, sir.

Q At the time you were arrested it was about four o'clock in the morning, wasn't it? A Yes, sir.

Q Did you ever see or ever talk to the defendant Schubert or the defendant Silver? A No, sir.

Q You had never known them before? A Never seen them in my life before.

Q And you were on your way to your home or lodging house? A Yes, sir.

Q On what side of the street is the lodging house on? A East side of the avenue.

Q You saw the complainant Mulligan, who testified here? A Yes, sir.

Q Did you ever see him before that night you were arrested? A No, sir, I never seen him before.

Q Now state to his Honor and the gentlemen of the jury how you came to be arrested? A I was out drinking that night and I

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got drinking too much. I woke up at 139th street and Third avenue, I woke up outside of a saloon. I seen it was getting daylight and walked down the avenue, intending to go up to bed in the lodging house.

THE COURT: You are on trial charged with a serious crime and these men want to hear what you have got to say. Now will you kindly talk so that they can all hear you easily. Look at them and talk loudly.

THE WITNESS (continuing): I woke up --

THE COURT: Keep up your voice.

THE WITNESS (continuing) I woke up outside of a saloon at 139th street and Third avenue, and I seen it was getting daylight. I started to walk down Third avenue, intending to go to bed in the lodging house at 2331 Third avenue. I got as far as 123rd street and Third avenue, and I saw the officer, Mr. Coleman. He came right over towards me. The first thing he said was, "Come here." I walked over to him. When I got over to the other corner these two defendants here were with Mr. Phelan. We came down the avenue, and we met on the corner. He said, "You are another of the bunch." I said, "I can prove it I am not." I told him where I was working and everything. He lets go of another lad he locked up, he lets go of him, and the other fellow jumps right at Schubert and started beating him up. Schubert hollered, "For God's sake have

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mercy." Mr. Phelan, he said, "Take a tumble." These were the words he said.

BY JURYMAN No.10:

Q Who said that? A Officer Phelan, "Take a tumble." We started to walk up the avenue. Officer Phelan took this gentleman and Officer Coleman took me. Mr. Mulligan was in the center. We walked up to 136th street station house. He searched all of us. He found nothing on me. He found twenty cents on Silver. He said to Mr. Schbuert, "How much money have you got?" He said, "I have about eight dollars and sixty cents." He reached in his pocket and pulled out eight dollars, and Mr. Coleman grabbed it out of his hand and said, "Put it right down here." The first thing they searched me and chased me right back in the cell. When I got down the corridor I thought I was going to 135th street, charged with being drunk. All I could see was the three of us going to Headquarters. I asked them what were we charged with.

(The stenographer read the answer)

Q Who hit Schubert? A Coleman.

THE COURT: We will suspend now.

Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, form or express no opinion thereon until the case is submitted to you. You are excused until two o'clock. The Court takes a recess until two o'clock.

Whereupon at one p. m. a recess was taken until 2 p. m.

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A F T E R R E C E S S .

J A M E S K E A R N E Y , resumed the stand.

MR. CUVILLIER: May it please the Court, I thought that I could finish this case today, but the way it looks now I don't think I can, because there are two or three witnesses who should be here and who are not here, and I will not be able to get them here today.

THE COURT: Proceed with the trial. The Court will adjourn at 3:30 p. m.

DIRECT EXAMINATION CONTINUED BY MR. CUVILLIER:

Q Now, Mr. Kearney, you have testified that you were on your way to the lodging house in Third avenue? A Yes, sir.

Q And you had been drinking? A Yes, sir.

Q And you were on the left hand side of Third avenue, on the east side going down to your lodging house. Now when did you first notice Officer Coleman? A At 123rd street and Third avenue when he called me over.

Q And he called you over? A Yes, sir.

Q He then was on the northwest corner of 123rd street and Third avenue, was he? A Yes, sir.

Q And what did he say to you? A He came over and he grabbed me by the shoulder and he had another man and brought us over to the corner.

Q Who was that other man, either of these other two defendants? A No, sir.

Q Another man? A Yes, sir.

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Q And what did he say to you? A He said, "Another one of the bunch."

Q You are one of the bunch? A Yes, sir.

Q Now did you see these two defendants there? A No, sir, I seen them when I came down on the corner.

Q What corner? A Northwest -- I mean the southwest corner.

Q The southwest corner? A Yes, sir.

Q And did he call them over? A No, sir.

Q You were on the northwest corner? A I was on the northwest corner when he called me.

Q When you got there the two defendants were on the southwest corner? A Yes, sir.

Q Did you see either of the officers call the defendants over? A No, sir, I did not. Officer Phelan had two of them standing right on the corner.

Q Officer Phelan had these two on the corner, the southwest corner? A Yes, sir.

Q Not the northwest corner? A No, sir.

Q Now the other man you say was with you or was there talking to Coleman, what did he say to the other man? A I didn't hear him say anything to the other man at all.

Q And Officer Phelan then brought the two defendants to where you were standing, is that right? A He brought us over to where they were standing on the southwest corner.

Q Officer Coleman brought the witness from the northwest corner to the southwest corner of 123rd street and Third avenue.

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where Officer Phelan had in custody the two defendants, is that right? A Yes, sir.

Q What did Coleman say to Schubert? A He said, "I got you now." They were the words he said, "and I can hand it to you."

Q What did he do? A He called him a rat, and everything like that.

Q Did he do anything, hit him? A Yes, sir, four or five times over the head.

Q With what? A A blackjack.

Q Not a revolver? A No, sir.

Q You saw the blackjack? A Yes, sir.

Q In his hand? A Yes, sir.

Q And what did Schubert say to him? A He said, "For God's sake let up, you have got me half killed."

Q And what did Phelan say to Coleman? A I don't remember hearing anything at all.

Q Did Phelan say anything to Coleman about hitting him?

MR. OLCOTT: I object. The witness said he did not remember.

THE COURT: Sustained.

Q Did you hear Schubert say anything at all as he was being hit? A That is all I heard him say, "For God's sake let up."

Q What did Phelan say to Coleman? A I don't remember.

Q Did he say anything? A I don't remember him saying

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anything at all.

Q Now when did you first notice the complainant Mulligan?

A When I got on the southwest corner of the avenue the first time I seen him.

Q The first time you saw him was on the southwest corner?

A Yes, sir.

Q And what was his condition? A He was drunk.

Q Did he say anything? A No, sir.

Q You heard the testimony of Coleman, didn't you? A Yes.

Q And also Phelan's? A Yes, sir.

Q That the complainant Mulligan was on the northwest corner of 123rd street and Third avenue? A Yes, sir.

Q And you in company with defendants Schubert and Silver, with Silver, got hold of the left side of the shoulder of the complainant, and Schubert on the right side, and you were five feet in the rear and came up with a bottle and hit Mulligan on the head, did you or did you not? A I did not.

Q Did you have a bottle in your possession? A No, sir.

MR. CUVILLIER: Where is that bottle.

(The fragments of the bottle were handed to Mr. Cuvillier).

Q Did you hit Mulligan at all? A No, sir.

Q Did you touch him? A No, sir.

Q Were you near him? A No, sir.

Q Did you see Officers Phelan and Coleman pick up any glass on the sidewalk? A No, sir.

Q What? A No, sir.

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Q Now who took you to the station house? A Officer Coleman.

Q Officer Coleman? A Yes, sir.

Q And who else was with you? A Another fellow that was arrested, he ain't here now.

Q Another fellow was arrested but is not here now? A Yes.

Q Was the complainant Mulligan with you? A No, sir.

Q Who had him? A Nobody had him, he was in the middle of us.

Q He was in the middle? A Yes, sir.

Q And Officer Phelan had the defendants Silver and Schbbert, is that right? A Yes, sir.

Q And you are positive that another man, who is not here, was arrested with you? A yes, sir.

Q In the custody of Officer Coleman? A Yes, sir.

Q You would know that man if you would see him? A I think I would, yes, sir.

Q This man went to the station house, did he, with you?
A Yes, sir.

Q And at the station house you were present when the charge was made against you and the other two defendants here, is that right? A Yes, sir.

Q And who made the charge, if you know? A Officer Coleman.

Q Did he make a charge against the other man? A No, sir.

Q Did he question him? A yes, sir.

Q And he let him go, didn't he? A Yes, sir. All he asked him was his name and address.

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Q His name and address? A Yes, sir. That is all I heard.

Q Do you know if the name was Joseph Mulholland? A I don't know his name.

Q Did you hear the name Mulholland by the other defendant who was let go? A I didn't hear his name.

Q Did you see Coleman search the defendant Schubert? A Yes.

Q What did he say to him, if you know? A I don't recollect what he said to him at all.

Q You saw him take some money from him, didn't you? A Yes.

Q What did Schubert say when he took the money from him?

A He said, "Give me back my money."

Q Did he say to him, did Schubert say to the officer, the officer said, "Have you got any money?" and did Schubert say how much he had? A Yes, sir.

Q How much did he say he had? A \$8.60.

Q Eight dollars and how much? A \$8.60.

Q And he took the money from him? A yes, sir.

MR. OLCOTT: Your Honor, this has all been gone over. I gave plenty of leeway but these statements have been brought out two or three times in the examination of the witness and I object now.

THE COURT: Ask another question.

Q Did you hear the defendant Schubert at the station house ask Coleman or Phelan, that he wanted an ambulance or a surgeon to fix up his wounds?

MR. OLCOTT: Objected to as leading.

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THE COURT: Sustained.

Q Did you see anyone strike the complainant Mulligan on the head with a bottle? A No, sir.

Q Was the complainant when he came to the station house, was his head cut or bleeding? A No, sir.

Q Did you hear the complainant say to Coleman or to Phelan, any conversation in the station house? A No, sir, I did not.

Q What was the complainant's condition? A He was drunk. That is all.

Q Did he make a statement to Coleman or to Phelan that he had in his jumper pocket on the left side four two-dollar bills?

MR. OLCOTT: I object to that as immaterial and irrelevant.

THE WITNESS: I didn't hear that.

THE COURT: It is leading.

MR. CUVILLIER: The witness, understand, was present, and he certainly has a right to --

MR. OLCOTT: He testified he didn't hear anything.

THE COURT: The objection to your question is that it is leading.

Q The three were around together; you and the other two defendants were around together at the desk with the complainant who was charged with being intoxicated, is that right? A Yes.

Q And you were there all the time? A Yes, sir.

Q Until you were carted back to the cell? A Yes, sir.

Q While you were there you didn't hear the complainant

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make any statement to Mr. Coleman or to Phelan or to the Lieutenant at the desk that he had four two-dollar bills in his jumper pocket? A No, sir.

Q Now you have testified that you worked on a cattle steamer?

A Yes, sir.

Q You have been paid off in money, haven't you? A Yes, sir.

Q What has been the largest amount that you have been paid off? A On the last trip I got \$17.73.

Q And how was that paid to you? A Three five-dollar bills, two-dollar bill, and seventy-three cents.

Q Were you ever paid off in one or two-dollar bills?

MR. OLCOTT: I object to how he was paid off.

THE COURT: Sustained.

Q And you saw the complainant prior to the time you were called over by Officer Coleman on the southwest -- north corner of 123rd street and Third avenue? A No, sir, I didn't see him before that at all.

MR. CUVILLIER: That is all.

CROSS EXAMINATION BY MR. OLCOTT:

Q Were these two men under arrest at the time you were arrested? A Yes, sir.

Q They were all standing on the corner? A Officer Phelan had the two by the shoulder.

Q Where were you standing, I asked you? A Down across the street.

Q Was anybody else with these men? A Officer Phelan.

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Q Anybody else? A No, sir.

Q Anybody else around? A No, sir.

Q Empty except for Coleman, Phelan and these two men? A Yes, sir.

Q Where was Mulligan? A Near the other lad.

Q Where was Mulligan? A Standing right on the corner.

Q That is all the people who were present? A Yes, sir.

Q It was dark there wasn't it? A Not exactly dark, it was just breaking day.

Q When is the last time you were paid off? A On Saturday previous to the day I got arrested, the 17th of July.

Q How much money did you have that evening with you? A That evening when I woke up?

Q Won't you tell me how much money you had? A 27 cents.

Q How much money did you have when you woke up? A Two cents.

Q When you woke up you came south on Third avenue? A I came down, yes, sir.

Q Where had you been? A I was out drinking that night.

Q But where? A Up around 129th street and Third avenue.

Q Why up there? A I know people up there, around in the saloons.

Q Where had you been living? A 2331 Third avenue.

Q How long? A I stopped there three nights since I came off the ship.

Q Where had you been before? A Before that I had been working on the ship.

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Q No. You came off on Saturday? A Yes, sir.

Q Well, that was more than three nights? A I slept one night at the Sylvan Hotel and the other two nights I stopped in the Arion Hotel.

BY THE COURT:

Q Under what name did you stop at those hotels? A James Kearney.

BY MR. OLCOTT:

Q The same name you gave here? A yes, sir.

Q What boat did you work on? A The Kanawha.

Q What pier? A Five.

Q Where did you go last time? A Spezia, Italy.

Q Where is that? A Italy.

Q When did you arrive, when did you get back? A The 17th of July.

THE COURT: Try and talk a little louder. You make it easier for the jury to hear you.

Q At any time between the time of your arrest and today have you ever made a statement to anybody that you would be willing to tell what happened, but you were not guilty? A No, sir.

MR. CUVILLIER: I object.

THE COURT: Objection overruled.

MR. CUVILLIER: Exception.

Q Did you? A No, sir.

Q Did you ever state to anybody that you were not guilty, but you saw these two men do this? A No, sir, I did not.

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MR. CUVILLIER: One moment, please. I object to the question as not a proper question on cross examination. That it is a proposition that the District Attorney is trying to eliminate or make some statement at the same time that he himself has the defendant on the witness stand.

THE COURT: I will allow the question. The question appears to be proper.

MR. CUVILLIER: Exception.

Q Your answer is no? A I never spoke to anybody about it at all.

Q Did you ever speak to these men about the case? A No.

Q Did they ever offer you money to testify? A No, sir.

Q You never said a word to them about the case, is that right?
A No, sir.

Q You have seen them recently, haven't you? A Only in the court here.

Q Have you seen them downstairs? A Yes, sir, in the pen.

Q You have not talked to them about the case? A I spoke a couple of words walking up and down.

Q What did you say? A ^{I know} /nothing about it.

Q You mean to say that is all you said down in the pen with them? A Talking about the case.

Q What did you say to them? A I told them I knew nothing about the case, that is all.

Q Is that all. Every word you said about the case and you have been down in the pen with them five or six days? A That is

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all I said. I was not even sitting with them. I walked away.

Q Did you ever see Officer Coleman before? A No, sir.

Q Did you ever see Officer Phelan before? A No, sir.

Q Never had any quarrel with them? A No, sir.

Q Never had any difficulty with them? A No, sir.

Q When they arrested you did they appear to know you?

A No, sir.

Q Had you passed this group on the corner? A No, sir,
I was arrested on the east side of the avenue.

Q Where is this lodging house, east or west? A The lodging house I was going to is on the east side, but there is one on 123rd street on the southwest corner.

Q Didn't you cross to the west side? A When Officer Phelan brought me over.

Q Did Officer Coleman go to the east side to get you?

A He walked right to the tracks, I walked to him, and he brought me to the southwest corner.

Q And had never seen you before? A No, sir.

Q And he called you over as you were walking on the east side of the avenue? A Yes, sir.

BY THE COURT:

Q Were you that night, a minute or two before your arrest; or just about the time of your arrest, at the northeast corner of 123rd street and Third avenue, yes or no? A Yes, sir.

Q Did you start to walk from that corner, cross Third avenue, going in a westerly direction, yes or no? A No, sir.

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Q Were you placed under arrest on the downtown side of 123rd street, a little west of Third avenue? A Yes, sir.

Q Had you not before you were placed under arrest been on the downtown side of 123rd street? A I was not.

Q And on the westerly side of Third avenue? A No, sir.

THE COURT: Go ahead.

BY MR. OLCOTT:

Q Now tell us just what happened when you were arrested?

THE COURT: Take your time and try and talk so you can be heard.

A I woke up, it was just breaking day.

Q After you were arrested you say the officer called you across the avenue from the east side, so finally you were on the west side before you were arrested, is that right? A Yes.

Q Now after he called you across, what did he say, what did he do, and what did you see done by anyone then? A He was coming over the east side of the avenue. He called me out on the tracks. I met him half way. He had this other man by the shoulder when he called me.

Q What other man? A He is not here now. He took me by the shoulder and walked me over to them. When we got there he separated us two apart. When he got a glance at Schubert, "Oh," he said, "Schubert, I got you now."

Q Hadn't Phelan had him under arrest?

MR. OUVILLIER: One moment? I object to the District Attorney arguing with the witness. Let the District Attorney

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ask him to state what happened in his own way.

MR. OLCOTT: If it please your Honor, I ask to be permitted, from time to time as this story is being told, to interrogate him more minutely as to the details.

THE COURT: You may question the witness.

Q Had not Officer Phelan already put you men under arrest?

A I don't know anything about that.

Q You said as you walked across, and before you were put under arrest, Phelan had -- A (interrupting)M The three were standing there.

Q Where was Coleman? A Coleman had me.

Q And as he came up and saw Phelan and these two, he said, "There you are", or something like that, is that right? A yes.

Q You gathered or you thought --

MR. CUVILLIER: Wait a moment.

MR. OLCOTT: Don't interrupt me all the time, please.

I tried not to interrupt you.

Q Was it your opinion from the way Coleman spoke to these defendants that he just saw them?

MR. CUVILLIER: Don't answer the question. Wait a moment. I object to what his opinion was at all.

THE COURT: I will allow him to state the impression made on his mind.

MR. CUVILLIER: Exception.

Q Is that the impression you got?

MR. CUVILLIER: I object to the word "impression".

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THE COURT: It is overruled.

MR. CUVILLIER: Exception.

Q That he had just seen them for the first time? A Yes, sir, that is the way it looked to me.

Q That was the impression made on your mind? A Yes, sir.

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

Q And what happened then after this gentleman was called, "Oh," somebody, "Schubert, there you are"; what happened then?

A Well, Officer Coleman put us all up against the railing and pulled out his gun and put it to his stomach and took his blackjack and hit him four or five times.

Q A gun in one hand and a blackjack in the other? A Yes.

Q Did he hit you? A No, sir.

Q Did he hit Silver? A No, sir.

Q Just hit Schubert? A yes, sir.

Q Schubert was not trying to get away? A No, sir, standing by the railing.

Q Who walked up with Schubert to the station house, which officer? A Phelan.

Q And Coleman had you, is that right? A Yes, sir, me and another man.

Q You were not badly handled, were you? A No, sir.

Q You have no complaint to make against these officers?

A No, sir.

Q Did you see Silver badly handled? A No, sir.

Q You or Silver didn't try to get away, did you? A No.

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I would not try to get away when I didn't know anything about it.

Q What is that? A No. I would not try to get away when I didn't know anything about it.

Q You didn't know what the charge was then? A No, sir.

Q Where was Mulligan all this time? A Standing right on the corner, around, at least.

Q Were you intoxicated, too? A No, sir, I was just after waking up from one.

Q You were all sobered up? A Yes, sir.

Q Perfectly in your senses? A Yes, sir.

Q And had you ever been to this hotel before? A Which hotel?

Q The one where you were stopping on Third avenue? A Yes.

Q When? A Last winter.

Q Had you paid your board -- what did you do, pay each night? A Yes, sir.

Q You didn't have any money this evening? A Yes, sir.

Q Two cents? A I had two cents when I woke up next morning.

Q You were going back to the hotel? A Yes, sir.

Q How did you expect to pay for your room, having only two cents? A I was not going in to pay for the room; I was going to meet a friend of mine. I had signed up on the ship to go out on the same day.

Q Where was he? A Stopping in the lodging house.

Q What was his name? A Joseph Caldwell.

Q You wanted to get him to pay for you? A No, sir. I was

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going to meet him, to go out on the City of Macon, go out at 8:30, supposed to be on the ship Friday morning when I got arrested.

Q Do you know who the steamship City of Macon belongs to, what company? A No, sir, I don't know the steamship company but it has an office at 129 Greenwich street.

Q 129 Greenwich street? A Yes, sir.

Q What is the name? A Morris Engel.

Q What is the name of the ship's master? A The shipmaster's name is Hochstein.

Q That sailed on the 23rd? A I don't know whether it sailed. We were supposed to be on the ship; we generally load the horses on the ship as soon as we get there.

Q Had you ever worked for this company before? A No.

Q How did you know you would be able to get a job? A I was signed up in the office to go on the ship.

Q When did you sign up? A Thursday.

Q Your name is in the office now? A Yes, sir.

Q The same name you gave here? A Yes, sir.

Q So it should be down there on the 22nd, is that right?

A July 22nd at this office.

Q 129 Greenwich street, is that right? A Yes, sir.

Q You are positive you don't know these officers? A No, sir, I don't.

Q Do you know what attracted these four ^{or five} people there; had you seen any disturbance there? A No, sir, I didn't see any dis-

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turbance there at all.

Q Had you seen Mulligan in any kind of distress at all? A No.

Q When you came up did he complain of anything? A No, sir.

Q There was no conversation at all about what happened? A
I heard no conversation.

Q Had you seen these young men before you saw them under arrest with Officer Phelan, when you crossed the street? A No.

Q Just tell me how far was the officer who arrested you, Officer Coleman, from Officer Phelan, when you were arrested?

A How far was he from Officer Phelan?

Q Yes? A He could not be over ten feet out of the first car track on Third avenue.

MR. OLCOTT: That is all.

REDIRECT EXAMINATION BY MR. OUVILLIER:

Q Kearney, did you see Schubert while in the custody of Coleman try to break away from him? A No, sir.

BY THE COURT:

Q Now, Kearney, I want to ask you some questions. While I am going to ask them of you, you face the jury. Now the night before your arrest where had you slept? A Downtown.

Q Whereabouts? A In Cooper Square Park.

Q Had you done any work on the day before you were arrested?
A No, sir.

Q Where had you been from eight o'clock to ten o'clock on the evening before you were arrested? A Right in the lodging house, 2231 Third avenue.

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Q What is the number? A 2231 Third avenue.

Q From eight to ten o'clock you were in that lodging house; is that so? A Yes, sir.

Q Alone, or with anybody? A A friend of mine, with a friend by the name of Joe Caldwell.

Q About what time did you walk out of the lodging house?
A It must have been about half past ten.

Q And when you left the lodging house at about half past ten, where did you go to first? A I went up the avenue; I stopped in several saloons, drinking.

Q You went up the avenue, how far? A Up to 129th street and Third avenue.

Q About what time was it when you got to 129th street?
A It must have been a quarter to eleven, I guess.

Q And at that time where did you go? A I got drinking with four or five people in a saloon.

Q Now, do you know any of those people? A I have seen them in the saloon.

Q Where was the saloon where you got drinking with these people? A 129th street and Third avenue.

Q About what time did you leave that saloon? A I don't recollect.

Q How long before your arrest was it that you left that saloon? A About four hours.

Q Now after you left the saloon where did you go? A I don't know where I went; I didn't go any place; I woke up outside the

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saloon..

Q You woke up out of a sleep? A yes, sir.

Q And you were then outside of the saloon? A Yes, sir.

Q On the sidewalk? A Yes, sir.

Q In what street? A 129th street and Third avenue, right off Third avenue.

Q And when you awake, where did you go? A I walked right down Third avenue.

Q On which side, east or west? A East Side of the avenue.

Q Alone or with anyone? A Alone.

Q And where were you walking to, where did you intend to go?
A 2231 Third avenue, to the lodging house.

Q And that is between what streets? A 121st and 122nd.

Q On which side of the avenue? A The east side of the avenue.

Q Now when you got to 123rd street, walking down on the east side of the avenue, were you alone or was anyone with you?

A I was alone.

Q When you got to that corner what happened? A The first thing I know I seen Officer Coleman come over, he got to the center of the car tracks and he called me over to him.

Q Came over from where? A West side of Third avenue.

Q He called to you? A Yes, sir.

Q And when he called to you, what did you do? A I walked over to him; he put his hand on my shoulder and brought me over to the other corner and said, "Another one of the bunch."

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Q Now you say you had signed to go on a ship; is that so?

A Yes, sir.

Q That is, you wrote your name on that day in a book? A Yes.

Q In an office? A Yes, sir.

Q Whereabouts? A 129 Greenwich street.

Q When did you do that? A The day before I got arrested, Thursday.

Q At about what hour of the day? A Half past nine in the morning.

Q To sail on what ship? A The City of Macon.

THE COURT: We will adjourn now.

Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, form or express no opinion thereon until the case is submitted to you.

You are excused until Monday morning at a quarter to eleven.

The defendants are remanded.

Whereupon at 3:20 P.M. an adjournment was taken until 10:45 A.M., Monday morning, August 16th, 1915.

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New York, Monday, August 16, 1915.

T R I A L R E S U M E D .

Appearances:

ASSISTANT DISTRICT ATTORNEYS ELLISON and MINTON,
for the People.

MR. CUVILLIER, for the Defendants.

(The Clerk of the Court called the names of the jurors).

MR. ELLISON: If your Honor please, Mr. Olcott, who
was prosecuting this case, found it necessary to leave New
York and he desires to apologize to your Honor, and with
your Honor's permission I will continue the prosecution.

THE COURT: It was with my knowledge and consent. I
am very glad to have you continue the case, Mr. Ellison.
J A M E S K E A R N E Y , resumed the stand.

REDIRECT EXAMINATION CONTINUED BY MR. CUVILLIER:

Q Mr. Kearney, you testified that on the 22nd day of July,
1915, you signed a paper to ship on what vessel? A The City
of Macon.

Q City of What? A The City of Macon.

Q At what office did you sign that in? A 129 Greenwich
street.

Q And what is the name of the proprietor? A Morris Engel.

Q Is Mr. Engel in court?

(A gentleman came up to the bar and handed Mr. Cuvillier
a list).

Q I hand you this list and ask you to look at it there,
and ask you is it your signature (handing list to witness)?

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A (Witness indicated the signature "James Kearney" on the list, with a blue pencil mark through it).

THE COURT: Instead of offering it in evidence, if there be no dispute about it, it will be conceded for the purpose of this trial that this witness did sign that paper in an office on that day.

MR. CUVILLIER: Your Honor, I offer the list in evidence.

MR. ELLISON: Objected to, as incompetent and immaterial.

THE COURT: Sustained. In view of the concession, Mr. Cuvillier, you do not need it in evidence.

Q Now this was signed on July 23rd, 1915, is that right?

A On what?

Q Signed on July 23rd, 1915, do you remember that? A No, sir, I didn't sign it on the 23rd.

Q What date did you sign it on? A 22nd. The ship was supposed to go out on July 23rd.

Q Now you say that you were on the northeast corner of 123rd street and Third avenue on the night of July 23rd? A Yes.

Q Or the morning? A Yes, sir.

Q That officer Coleman asked you to come across --

MR. ELLISON: Your Honor, I object to this repetition. Counsel has been all over it, and your Honor has brought it out very fully.

THE COURT: Yes. I think we have been over it very fully. You had the witness and you examined him very fully,

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and after that he was cross examined and in the interest of the clarification of the facts, I put to him certain questions. We have been all over it.

Q You never had any bottle in your possession, did you? A No.

Q Did you notice or see any bottle when you were brought over by Officer Coleman? A No, sir.

Q Did you see any bottle broken on the sidewalk? A No, sir.

Q Was anything said about any bottle? A No, sir.

Q Did you see any bottle brought in the station house broken?
A No, sir.

Q Did the complainant make any statement to the desk sergeant or to anyone in the station house? A Not that I heard.

Q And you were present? A Yes, sir.

Q All the time when you were locked up? A Yes, sir.

Q Did you see Silver or Schubert catch hold of the complaining witness Mulligan? A No, sir.

Q Did you see Schubert kick at Officer Coleman? A No, sir, I did not.

Q Did you see Schubert try to get away from Officer Coleman? A No, sir.

Q Did you see Schubert and Silver run towards Lexington avenue? A No, sir.

Q When Coleman hit Schubert on the head with a blackjack, what did Phelan say, if anything? A "Take a tumble and let up."

THE COURT: We have been all over that. You asked

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him that twice before.

Q You were a defendant in the Harlem Court? A Yes, sir.

Q You heard Officer Coleman testify? A Yes, sir.

Q Did you hear him testify that Silver put his hand in the pocket of the complaining witness's blouse and pull out something green?

MR. ELLISON: Objected to as incompetent, irrelevant and immaterial. I have no objection to counsel putting it in question and answer form.

MR. CUVILLIER: Here is a defendant on trial, and he is a witness. The Constitution provides that he must face his accuser, and any testimony he might give in any court -- he is on the witness stand now and testifying as to what was testified against him.

THE COURT: There is only one conceivable theory upon which it is competent. I was about to ask a question in order to refresh my recollection as to his testimony in the case. If you asked Officer Phelan whether he did give certain testimony, and he denied he gave it, then this evidence is competent, otherwise not. That is all there is to it. You either did or did not ask the question. You either got an answer in the negative or affirmative. I will be frank to say I don't recall just which.

MR. ELLISON: I think he did ask him whether he saw pass anything green.

THE COURT: Then I will allow the answer.

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THE WITNESS: Yes, sir.

Q What did he testify? A He said he had seen Silver take something green out of his pocket. That was in the Harlem Court.

Q Did you hear Officer Phelan testify in the Harlem Court that he saw Silver put his hand in the left hand pocket of the complainant Mulligan? A Yes, sir.

Q Did you know the fourth man who was arrested and brought to the station house by Coleman? A No, sir, I did not.

MR. CUVILLIER: That is all. Your witness.

MR. ELLISON: Your Honor, I want to ask the witness a few questions.

RECROSS EXAMINATION BY MR. ELLISON:

Q Now do I understand here that at the time of your arrest these other two men were already under arrest; is that so or not?

A They were on the other side of the avenue.

Q Were they all under arrest at the time you were arrested?

A I don't know whether they were under arrest or not. I didn't know Officer Phelan was an officer at the time.

Q But you don't know what happened, of course, before you were brought over, do you? A No, sir.

MR. ELLISON: That is all.

MR. CUVILLIER: I would like to have the blotter of the 43rd Precinct.

(An officer came forward with the blotter).

W I L L I A M G O E T Z , was called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. OUVILLIER:

Q What is your name? A William Goetz.

Q What Precinct? A 43rd Precinct, Badge 1868.

Q Officer you are connected with the Police Department of the City of New York? A Yes, sir.

Q And assigned to the 43rd Precinct? A Yes, sir.

Q Is that right? A Yes, sir.

Q And by reason of a subpoena you have produced the blotter of the 43rd Precinct? A Yes, sir.

Q I will ask you to look at the entries on the 23rd of July, 1915 (handing book to witness). Have you an entry there of an arrest made by Officers Coleman and Phelan?

MR. ELLISON: Yes or no.

A Yes, sir.

Q I ask you to read the entry from the blotter?

MR. ELLISON: Objected to as incompetent, irrelevant and immaterial, not the proper evidence.

THE COURT: Sustained.

Q That is the official blotter of the station house, isn't it? A Yes, sir.

Q And do you know the handwriting on that blotter? A No.

Q Sir? A No, sir.

Q Is there any notation there as to who signed it?

MR. ELLISON: May I see this. Maybe we can save a lot of trouble.

A There (indicating); it is right there.

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MR. ELLISON: I consent to its going in, to save trouble. We will put it all in.

THE COURT: Read the particular entry in evidence. Is there a particular entry that you want to look at, Mr. Cuvillier?

MR. CUVILLIER: I just asked the question to qualify the witness. I have not looked at it yet.

THE COURT: I thought you offered it in evidence.

MR. CUVILLIER: I asked him to read what was on it and then you sustained the objection of the District Attorney. Now he consents that it go in.

MR. ELLISON: I saw counsel --

MR. CUVILLIER: (after reading) I will consent to it.

MR. ELLISON (reading): "Charge, assault and robbery; name of persons, James Kearney, Joseph Schubert and Philip Silver, and then the addresses; James Kearney, no home; Joseph Schubert, 211 East 123rd street; Philip Silver 55 East 115th street;". It then proceeds to give the pedigree, which we won't go into, with the consent of counsel.

"At 4 A. M. arrested at 123rd and Third avenue, charged with assault and robbing complainant at place of arrest, northeast corner; F-203, striking him on the head with a bottle, while the others, F-204 and F-205, held him, taking between ten and fifteen dollars from his shirt pocket.

Witness Joseph Mulholland, 78 East 128th street. Arrested by Patrolman Arthur J. Phelan, 8972, 6th District Office

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Squad; eight dollars found in possession of Schubert, one knife, three keys."

Then a charge of intoxication against Lawrence Mulligan, the complainant.

THE COURT: Now are you through with this book?

MR. ELLISON: In order that this might be entirely intelligible to the jury, I would say that "F-203, 204 and 205" are arrest numbers given to the prisoners.

JOSEPH SCHUBERT, one of the Defendants, was called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CUVILLIER:

Q What is your name? A Joseph Schubert.

Q Where do you live? A 211 East 123rd street, New York.

Q Schubert, how old are you? A Twenty-two.

Q Are you married? A Yes, sir.

Q How long have you been married? A Around 17 months.

Q Seventeen months? A Yes, sir.

Q You have been convicted of a crime, haven't you? A Yes.

Q Now what crime have you been convicted of? A Disorderly conduct.

Q And when was that, if you know?

THE COURT: Talk loud. Will you have the kindness to talk so that the twelfth juror can hear you.

THE WITNESS: Disorderly conduct.

Q And when was that? A I can't exactly recollect, around

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November.

Q November? A Yes, sir.

Q 1914? A Yes, sir.

Q And who were you arrested by? A I was at the Inspector's office to make a complaint against Officer Coleman --

(One of the jurors requested that the defendant talk louder).

THE WITNESS (continuing) I was up to the Inspector's office to make a complaint against Coleman. I was upstairs there and Inspector Ryan pulled in a bunch of detectives and said, "Go over and pull the man you were looking for." He brings all the detectives in and told me to pick my man out. I picked out my two men. I made the complaint there, so I stayed there a while and when I came out of the station house, I had no more than hit the front door, when I was stopped off by Officer Jones. He said to me, "What is your name?" I said, "Joseph Schubert." He said to me, "Do you know Tommy Howe?" I said, "Yes." He said, "Do you know where he is?" I said, "No." He said, "You do know where he is." He said, "If you don't tell me where he is I will put you under arrest." I said, "Honest to God, I don't know where he is." He takes me by the arm and takes me to the station house and puts a charge of felonious assault against me. The lieutenant at that precinct there saw it. He said to the officer, "Take him over where he belongs." On the way, going but, Officers Coakley and Coleman was on the side of us and Officer Jones said to me,

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"Have you carfare, Schubert, to ride over on the car?"

"No", I said, "I am broke." Officer Coleman pulls out a nickel and hands it to me. I let it drop on the floor. We go over on the car to 125th street and Seventh avenue. I was riding east with Officer Jones. Officer Coleman and Coakley took the next car and I looked back, wondering where they were. Anyway, he takes me over to the station house and puts a charge against me of felonious assault, and from the station house Officer Coakley came out and Coleman, and said to Officer Jones, "Why don't you handcuff that man?" Officer Coleman said that. Officer Jones said, "I got my little 'partner' in the back and if he runs I will use that." On the way going down 124th street a friend of mine came by and said, "Hello, Joe."

MR. ELLISON: If the Court please, I don't want to object, but --

MR. CUVILLIER: (interrupting) I want to get down to the fact of your conviction.

THE COURT: Do you want what he said to stay in?

MR. ELLISON: I have no objection, your Honor.

THE COURT: We will leave in what he said.

Q Now, Schubert, after this pay attention to the questions and just answer them. A Yes, sir.

Q Now I want to know, and the jury wants to know about your conviction for disorderly conduct.

THE COURT: When it was.

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A Well, I ain't exactly sure. It was in November they put the felonious assault against us.

Q We understand that. A But it was changed to disorderly conduct.

Q And you were arrested by Officer Coleman? A No, by Officer Jones.

Q By Jones? A Yes, sir.

Q And what was done with you? A I received thirty days.

Q And you served it? A Yes, sir, I did.

Q And were you arrested again, or convicted again? A Well, I was arrested by Officer Coleman, ten days or ten dollars fine.

Q That is what I want to know and what the jury wants to know. When was that? A I don't exactly remember. Before the thirty days or after; I don't exactly remember when it was; it was around that time.

Q Well, you were fined ten dollars? A Yes, sir.

Q And you paid it? A No, sir, I did it.

Q You didn't pay it? A No, sir.

Q Were you convicted of another crime? A I was.

Q What was it? A I did six months.

Q For what? A Disorderly conduct.

Q And who was the complainant there? A Two detectives.

Q Who were the detectives? A I don't know the detectives. That is three years ago.

Q Speak up. A That was three years ago; I don't remember the names of the detectives.

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Q Any other crime? A Yes, sir.

Q What other crime? A Five days.

Q For what? A Disorderly conduct.

Q Who was the officer there, do you know? A I think a man with a uniform, he locked me up then.

Q Any other crime? A Yes, sir, by Officer Coleman and Coakley.

Q For what? A He locked me and another man up for attempting to pickpocket and brought us up to the station house and then to court and we were discharged.

Q Was that the time you had trouble with Coleman? A I did.

Q Now after you served the thirty days did you get a position with the Bradley Construction Company? A I was working at the present time -- not the Bradley Construction Company, but McMullen, Snare & Triest Company, 123rd and Third avenue.

Q They are the contractors for the subway? A Yes, sir.

Q And you were working there? A Yes, sir, I was.

Q And did any of the employers say anything to you? A After I went away for the thirty days and came out, my wife and somebody else went over to the office to see if I could get my job back. When I was out on bail, at the time before, I got thirty days, I went right to work, see, and I was going to take off to go to court. I was at the tar pots. So the morning it was in my brain, because I was out on bail, "How am I going to court?" All of a sudden one of the tar pots got afire. There were three or four officers standing around and I started taking

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sand and throwing it in to try and stop the fire. The three pots got afire. One of the officer said, "Will I ring up the engines?" I said, "No, sir, --

MR. ELLISON: Just one moment, please. We are taking up a lot of time on matters which I do not think are material. If the counsel will put direct questions and the defendant make answers, we will make better progress.

Q Schubert, you will have to stop making speeches and answer the questions yes, or no, in explanation of any question, yes or no. I am asking you where you were working and for whom, whoever they may be -- Mr. Coleman had you discharged?

MR. ELLISON: Objected to as calling for a conclusion.

THE COURT: Objection sustained.

THE WITNESS: But Coleman was up there.

Your Honor, after I did the thirty days --

THE COURT: You keep perfectly still and absolutely quiet.

Q Were you working for those people? A I was.

Q Were you discharged? A No, sir.

Q What? A No, sir; I was arrested and received thirty days.

Q Now, Schubert, so that the Court, so that the jury can understand intelligently about this case, you, as a witness for yourself, will have to stop this digressing on things that are not material to this case; you did work for this construction company, didn't you? A Yes, sir.

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Q Were you discharged? A I was discharged when I came.

Q That is all I want. Were you discharged? A Yes.

Q I told you I don't want any explanation, yes or no?

A Yes, sir, I was.

Q Well, do you know why you were discharged? A Officer Coleman and Phelan went up to this place and talked about me.

MR. ELLISON: I object, unless he was present.

BY THE COURT:

Q Were you present at any talk? A My wife was.

THE COURT: Strike it out. The jury will disregard it.

BY MR. CUVILLER:

Q When you were discharged, what did the foreman say to you?

MR. ELLISON: Objected to as incompetent.

THE COURT: I will allow it. Bearing on the bias.

A The detectives were up there talking.

Q I am asking what the foreman said to you? A "We can't put you back to work. The detectives were around here talking about you."

THE COURT: Strike it out. I thought your question was as to what Officer Coleman said to him. The jury will disregard it.

Q Did you see Officer Coleman there? A I did not.

MR. CUVILLIER: May it please the Court, if a man is discharged --

THE COURT: I will not allow it. I will allow anything that Coleman may have said to him as bearing upon the bias,

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if any, of Coleman as a witness.

BY MR. CUVILLIER:

Q Did Coleman say anything to you, Officer Coleman, as to why you were discharged? A No, sir.

Q Now you say that you preferred a charge against Officer Coleman. When did you prefer a charge against him? A Over at the 6th Inspection District, 123rd street, between Seventh and Eighth avenues.

Q What charge? A Assault.

Q When did he assault you? A He assaulted me a number of times, every couple of days.

Q I say when, when was the first time? A The first time, about a year ago.

Q Where did he assault you? A On Lexington avenue and 124th street, him and another officer.

Q What did he do to you? A Officer Coakley grabbed hold of me. Officer Coakley, that was with Coleman, he had hold of me and pushed me up against a door. He said to me, "What have you got around you?" He said, "You are a 'cookie'" I said, "No, I ain't," Like that. Officer Coleman said, "You are." and he pulls out and smacks me.

Q Where, in the face? A I was hit in the stomach by Coleman and Coakley, and I was laid on the ground while the crowd was around and Officers Coleman and Coakley chased them, and I begged for mercy. Officer Coleman said, "I am going to lock you up." Coakley said, "Don't lock him up, let him go." The first thing I did I went down to my home and told my wife about

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it.

THE COURT: Never mind that.

Q Now who did you report that to? A To Inspector Ryan.

Q Did you first report it to the 43rd Precinct? A I did.

Q The same day? A The same day.

Q Who went with you there? A My wife did.

Q And you made complaint there against Coleman? A I did.

Q And did the lieutenant at the desk have an officer escort you and your wife home? A Yes, sir.

Q On your way home did you see Coleman and Coakley? A I did.

Q What, if anything, was done to you by them? A Officers Coleman and Coakley came over from the northeast corner towards where we were, southeast corner, came over, and he stopped, he wanted to talk to the officer that was with me and my wife.

Q And the next day you reported to the Inspector? A I did.

Q And made a complaint? A I did.

Q And you were heard? A No, sir, I was not. Inspector Ryan heard my complaint but Coleman was not there.

Q And Inspector Ryan asked you about the case? A He did.

Q Then did you hear anything more about it? A I did.

Q What did you hear? A He sent a man with a gold badge over to my house --

MR. ELLISON: I object. We have gone into this in detail.

THE COURT: I sustain the objection.

Q Now did you make another complaint against Officer Coleman? A I did.

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Q To whom? A Inspector Ryan.

Q When? A About three or four months afterwards.

Q Why? A For assault again.

Q Where did he assault you? A At 122nd street and Third avenue.

Q What did he do to you? A Beat me up.

Q Where? A He started to hit me with his hands and blackjack.

Q Blackjack? A Yes, sir.

Q Anyone with him? A Coakley was with him.

Q Why did he beat you up, if you know? A I do not know.

Q What time of the day was it? A I ain't got any idea, what time it was.

Q Morning or evening? A In the evening.

Q Did you make a complaint? A yes, sir, I did.

Q To whom? A Inspector Ryan, and didn't get any satisfaction there --

THE COURT: You have answered the question.

Q Did you ever make a complaint to Inspector Schmittberger?

A I did.

Q In person? A Sir?

Q In person, yourself? A Yes, sir, I did.

Q And who was with you? A Alone.

Q And did you see him? A Yes, sir, I did.

Q What did the inspector say to you?

MR. ELLISON: I object to that as incompetent.

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THE COURT: Sustained.

Q Did you see Coleman there? A I did not.

Q Did you see Ryan there? A I did.

Q Inspector Ryan? A Yes, sir.

Q What did he say to you?

MR. ELLISON: Objected to as incompetent.

THE COURT: Sustained.

Q Well, were you assaulted again after that? A I was.

Q Where? A A couple of days afterwards.

Q Whereabouts? A On Third avenue, right in front of my house at 123rd street and Third avenue.

Q How long ago is that? A This is about five weeks ago.

Q You mean before the arrest? A Yes, sir.

Q Who was with Coleman then? A Coakley, Officer Coakley.

Q Five weeks ago, and they beat you up then? A They beat me.

Q Who did? A Officers Coleman and Coakley.

Q What with? A Their hands.

Q Where did they beat you? A They hit me in the face, smacked me all over.

Q What did they say to you? A Nothing at all -- they said you are trying to squeal --

Q What? A That I am trying to break them, losing their jobs.

Q Now where did you say you lived? A 211 East 123rd street.

Q And between what avenues? A Right off Third avenue, between Second and Third.

Q You recall the night or the morning of July 23rd, 1915?

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A I do.

Q Do you remember seeing Officer Coleman and Phelan there?

A I remember seeing Officer Phelan there, but not Coleman.

Q I am speaking of the morning of your arrest now? A On the morning of July 23rd, I was leaving my house, going to work. When I started across the street, on the southwest corner, Officer Phelan approached me. He started to smile at me and he said, "Well, Schubert, what are you doing?" I said, "Nothing at all." He said, "Come with me." I asked him what for. He pulls his gun and puts it to my stomach and takes me west on Lexington avenue, ten or fifteen feet, and then he puts a gun towards Silver and Silver asked him what did he want him for. He said, "You are after passing the spot --

THE COURT: Slower and louder.

THE WITNESS (continuing) He said to Silver, "You are passing through this block and I want you as a witness on account of the trouble that was on Third avenue." Silver said, "I didn't see any trouble at all." He said, "Well, come on." So he takes us back to Third avenue, to Third avenue and 123rd street, on the southwest corner. Then I noticed Officer Coleman and Kearney and some other young man, and Officer Coleman took them too, while Phelan took us against the railing. Then Officer Coleman left go of the two and pulls out his blackjack and said to me, "You dirty little rat", and started to hit me. I was down on the ground, begging for mercy still. Phelan said, "Take

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a tumble", and Coakley said, "It is the only chance I got now", and Phelan grabs me and started walking towards the station house.

Q Now how far is this from where you were arrested, from your house how far? A Well, on the other side of the avenue.

Q Well, I know it is on the other side, but was it a half a block or a quarter of a block? A A quarter of a block.

Q Now tell the jury so they can intelligently understand it; you live at what number? A 211 East 123rd street.

Q Is that on the south side? A No, sir.

Q Or the north side? A North side.

Q Of 123rd street? A Yes, sir.

Q That is between Second and Third avenues? A yes, sir, between Second and Third avenues.

Q You were walking west towards Third avenue? A Yes.

Q On the north side of the street? A Yes, sir.

Q Had you crossed the crosswalk from the northeast corner to the northwest corner? A The southwest corner. I crossed over to the southwest corner.

Q When you crossed there, who did you see? A Officer Phelan.

Q He was standing there? A He was.

Q And what did he say? A He just came over and approached me. He said to me, he smiled at me, he said, "Well, Schubert," like that. He said, "Come with me." I said, "What will I come with you for?"

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Q What? A I said, "What will I go with you for?" So he said, "What, you won't go?" Then he pulled out his gun and put it against my stomach and walked me on 123rd street towards the west --

Q What? A He walked me towards the west.

Q Towards Lexington avenue? A Yes, sir.

Q What time of the morning was it? A Around four A. M.

Q Was it daylight? A Yes, sir, breaking daylight.

Q What? A Breaking day light.

Q And at this corner, the southwest corner of 123rd street and Third avenue, is there a shoe store? A Yes, sir, there is.

Q Then he walked west? A He did.

Q Towards Lexington avenue? A He did.

Q How far did he walk you? A All the ways over to Lexington avenue, about ten feet before the corner.

Q And when you got there who did you see? A Silver.

Q Who else? A That is all.

Q Who was with Silver? A Phelan with me -- he grabbed ahold of Silver.

Q Where did he grab Silver? A 123rd street and Lexington avenue.

Q 123rd street and Lexington avenue? A Yes, sir.

Q And he grabbed you at 123rd street and Third avenue? A Yes, sir.

Q Let us understand what we are getting. Then he walked from Third avenue and 123rd street to Lexington avenue and 123rd

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street? A Yes, sir.

Q And there found Silver, is that right? A Yes, sir.

Q And that was Officer Phelan? A Yes, sir.

Q Then when he grabbed Silver and had you, what then did he do? A He said to Silver, "I want you." So Silver said, "What do you want me for?" He said, "You were passing through this block, and I want you as a witness for the trouble that was done here." Silver said, "I don't know anything about any trouble." So anyway he pulled the two of us towards Third avenue.

Q Brought you to Third avenue? A Yes, sir.

Q Through 123rd street again? A Yes, sir.

Q Going east on the north side of 123rd street? A On the south side.

Q When you got to Third avenue and 123rd street, on the south side, who did you then see? A I noticed Officer Coleman with Kearney and some other young man.

BY THE COURT:

Q Did you see Coleman before that evening? A I did not.

Q Had you seen Coleman before you saw him with Kearney, on that evening?

MR. CUVILLIER: That morning?

THE WITNESS: No, sir.

Q That morning? A I did not.

BY MR. CUVILLIER:

Q Now when you got to where you stood or stayed, you

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found Kearney and another man and Officer Coleman? A Yes, sir.

Q Did you see the complainant? A I did not.

Q He was ~~not~~ there? A He was not.

Q What was said either by Phelan or Coleman to you or to Kearney and Silver? A Coleman brought him and the other man towards where Silver and I was. We were up against the railing.

Q The railing; on what corner? A Southwest corner, by the shoe store. So Coleman said to me, "Ah! Schubert, you dirty little rat. You are trying to break me." He started to beat me with his blackjack. I cried for mercy. I could get none. Officer Phelan said, "Take a tumble; knock off;" Coleman wouldn't listen to him. Officer Phelan, he pulls me and Silver away from Coleman.

Q Who does that? A Phelan, Officer Phelan.

Q Well, now, what was said --

MR. ELLISON: I object to this as repetition.

THE COURT: This is the first time this witness has spoken of it.

BY MR. CUVILLIER:

Q Did you have this shirt on (showing shirt)? A I did, and a collar and tie with it.

MR. CUVILLIER: I offer it in evidence.

MR. ELLISON: Objected to on the ground it is immaterial to this issue.

THE COURT: I will receive it.

(Received in evidence and marked Defendant's Exhibit A of

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this date).

Q Was the blood on that shirt before your arrest? A No.

Q What was the cause of that blood being on that shirt?

A Officer Coleman blackjacked me.

Q Now you testified that after you had this talk with Coleman and been assaulted by him, what then was said by him?

A Then Officer Phelan with me and Silver started walking up, and then Officer Coleman takes hold of Kearney and this other young man --

BY MR. CUVILLIER:

Q What other young man? A He let him go in the station house.

Q You do not mean the complainant? A No. So he takes us down to the station house; while Officer Phelan was taking me and Silver to the station house Officer Coleman takes him and another young man, who is not here.

Q With Kearney? A Yes, sir. When I turned my back around I noticed Mulligan in the center of the six of us.

Q Who? A Mulligan, the complainant. So he brought us up to the station house and then he asked me --

Q Who asked you? A He asked me.

Q Who? A Mr. Coleman.

Q Whenever you say, "he", name the man? A Officer Coleman asked me if I got anything in my pockets. I said, "I have." He said, "What have you got in your pockets?" I said, "Money, a knife and keys." He said, "How much money have you?" I

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said, "Eight dollars and sixty cents." He said, "Where is it?" I put my hand in my pocket and I showed him it. He said, "Let me have that." He took my four two-dollar bills from me and kept them for evidence and then put a charge of assault and robbery against us.

Q Did you hear any statement made by the complainant Mulligan in the station house when you were around there? A I didn't hear Mulligan say a word.

Q Not Mulligan -- Mullen.

MR. ELLISON: His name is Mulligan.

Q Did you notice his condition? A Mulligan's -- he was drunk.

Q Did he open his mouth at all? A I didn't hear him open his mouth at all.

Q Did he say anything about having four two-dollar bills in his blouse pocket? A No, sir.

Q You heard Officer Coleman testify? A Yes, sir, I did.

Q Did you ever before the night you were arrested, ever meet Kearney before? A I did not.

Q Did you know Silver? A I did.

Q How long have you known Silver? A I went to school with Silver.

Q You did? A Yes, sir.

Q Was Silver with you that night or morning? A He was not -- no, sir.

Q Was Kearney with you? A No, sir.

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Q You heard Officer Coleman testify -- I mean Phelan -- that Silver got hold of the left side of Mulligan and you on the right side? A I did.

Q And Kearney had hit him with a bottle in the head? A Yes, sir, I heard that.

Q Did you see that? A No, sir.

Q Did you get hold of Mulligan? A Sir?

Q Did you get hold of Mulligan? A No.

Q You didn't see Mulligan there? A I did not.

BY THE COURT:

Q When did you first see Mulligan that morning? A After the four of us were on our way to the station house, I turned my head around --

JUROR NO. 8: I did not hear that.

THE WITNESS: After the four were on our way to the station house I turned my head around, and I seen Mulligan in the center of the bunch.

BY MR. CUVILLIER:

Q Did you see this bottle in the station house (showing fragments of a bottle)? A No, sir.

Q Did Coleman or Phelan have it in the station house? A He did not.

Q Did Coleman or Phelan pick the broken bottle off the sidewalk? A He didn't pick up any bottle at all. He was holding us against the railing; there was not any trouble to pick up a bottle.

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Q Did you see any bottle broken on the sidewalk? A I did not.

Q You heard Officer Phelan testify that Silver went into the left trousers pocket of Mulligan, did you see anything like that?

A Sir?

Q Officer Phelan testified that Silver went in the left hand trousers pocket of Mulligan, did you see that? A I did not see it.

Q Where did you get the \$8.60 that you had? A I received ten dollars off my brother the day before to take a ring and suit of clothes out of the pawn shop, that was run out. When I left my brother's house going towards the east on Third avenue, I started to walk north. At 120th street, I bought bananas. I changed a ten-dollar bill there and received the change. Then afterwards I bought potatoes and onions. Then I went on up towards home. I stopped at 123rd street on the west side of the city, and bought a package of cigarettes. I got an ice cream soda. That is why I had the money. When I went home I put a dollar in a drawer in the house. I had then \$8.60 to take out my suit and ring.

Q Now you say you were going to work that morning; who were you working for? A Alpert Brothers.

Q Who are they? A The Alpert livery stable and undertaker.

Q Where? A 147 East 119th street.

Q Had you been working for them? A Yes, sir.

Q How long did you work for them? A A number of years.

Q Doing what? A I helped to embalm and dress bodies, ice bodies and all that stuff; bring horses to the sale, bring horses from the sale.

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Q What time did you go to work in the morning? A I got up around there at seven or eight o'clock. Mondays, Tuesdays, Thursdays and Fridays, if I want to come an hour or so earlier I can make a few dollars by bringing horses to the sale.

Q What sale? A Fiss, Doerr & Company.

Q Where is that? A Between Third and Lexington avenue. Then to Van Tassell & Kerney's, Thirteenth street, between Third and Lexington avenue.

Q You heard Officer Phelan and Officer Coleman testify that you tried to kick Coleman in the stomach? A I heard him testify to that.

Q I ask you, did you try to kick him in the stomach?

A No, sir, I never made any attempt to kick Coleman.

Q How tall are you? Stand up. (The witness stood up)

A Five foot, four.

Q How much do you weigh, do you know? A About 132 lbs.

Q You were a witness in the Harlem Court, weren't you?

A Yes, sir.

Q You heard the testimony of Officer Phelan, didn't you?

A I did.

Q Did you hear him testify that Silver, after Kearney hit Mulligan, on the head with a bottle, put his hand in the blouse pocket of Mulligan and pull out something that looked like green; you heard that, didn't you? A I did.

Q Did you hear him testify that Silver went into the trousers pocket of Kearney -- of Mulligan? A I did.

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Q You never saw Mulligan except in the station house?

A Yes, sir.

Q Now state to his Honor and the jury what was said by either Phelan or Coleman at the time that they took you, Kearney, Silver, and a man named Mulholland to the station house; what was said by these officers to the four of you? A By officer who?

Q Phelan or Coleman? A The first thing we went in the station house he said, "What have you around you?"

Q I mean on the way to the station house; did they say anything to you? A No, sir; they didn't say anything.

Q Did you try to run away from Officer Coleman or Phelan, you and Silver? A We did not.

MR. CUVILLIER: That is all.

THE COURT: We will suspend now.

Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, form or express no opinion thereon until the case is submitted to you.

(Whereupon at 1:05 P. M. a recess was taken until 2:30).

AFTER RECESS.

JOSEPH SCHUBERT, resumed the stand.

CROSS EXAMINATION BY MR. ELLISON:

Q How long have you known Officers Coleman and Phelan?

A About a year.

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Q So that before the year 1914 you never knew Officer Coleman, did you? A I did not.

Q Do you want this jury to believe that all of your troubles that you have been into, and your convictions are due to Officer Coleman?

MR. CUVILLIER: I object to the question on the ground that it is argumentative.

THE COURT: It is objectionable on the score of form.

Q Where were you living in the year 1910, four years before you ever knew Officer Coleman was in existence? A 1910?

Q Yes? A 163 East 119th street.

Q Do you remember in November, 1910, being convicted before Judge Freschi and placed under a bond of \$300 to keep the peace or receive a sentence of three months in the workhouse? A I do.

Q That is 1910, right? A I don't remember what year it was.

Q Why does not a little matter like a conviction make an impression on your mind at all; don't you remember those little things? A I have got a bad memory.

Q Do you remember the month of May, 1911, three years before you met Coleman, do you remember that, May, 1911? A For what?

Q Do you remember being convicted before Magistrate O'Connor and sentenced to the workhouse for three days, or have you forgotten that? A I don't remember it.

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Q And don't you remember that after you got out for serving the three days you were shortly after convicted again and sent away for six months in the same year, 1911? A I remember that.

Q That was three years before you ever heard of Coleman?

A I did.

Q He had nothing to do with any of those convictions? A No, sir.

Q Do you remember the month of December, 1911, after serving six months, of being again convicted before Magistrate McQuade, do you remember that? A Yes, sir.

Q What? A Yes, sir.

Q Officer Coleman had nothing to do with that conviction, had he? A No, sir.

Q Do you remember the month of August, 1913, being convicted of disorderly conduct before Magistrate Appleton? A No; what year was that?

Q 1913, August, two years ago? A I was arrested two years ago, but I don't remember what day or date.

Q And don't you remember you were convicted before Magistrate Appleton and Coleman had nothing to do with the case, do you remember that? A Well, Coleman didn't have anything to do with that case at all.

Q So that you had been inconsiderable trouble before you heard of Coleman, hadn't you? A I was.

Q How long have you known Silver, the co-defendant? A I know Silver for a number of years.

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Q Have you been associated with him in recent years? A I was at one time.

Q What is his other name? A I know him by the name of Silver.

Q Do you know him under any other name, just think? A Well, I was arrested with Silver and he was under the name of Collins.

Q What name was he under? A Collins.

Q Now how long have you known Silver, under the name of Collins? A I knew him only on that day when he gave the name at the station house, of Collins.

Q And you tell these gentlemen of the jury that you happened to meet him accidentally at four in the morning the night of this trouble here? A I do.

Q Where was he living at that time, at the time of his arrest; tell us where he was living? A With his people.

Q Where? A I don't know where he lived.

Q Well, when had you seen him last before you met him at four o'clock in the morning; when had you seen him last? A About a week before that time.

Q And where did you see him a week before that? A 119th street.

Q Whereabouts? A Park avenue.

Q And did you meet him that time accidentally? A I did.

Q What time did you meet him; was it when you met him that time accidentally? A Around in the evening some time.

Q Just give us an idea of the time? A Around seven or

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eight, I suppose.

Q By the way, how long have you been living at 211 East 123rd street? A Since I broke up my rooms at 123rd street.

Q I say, about how long? A About four months.

Q Where did you live before you lived at 254 East 123rd street; how long had you lived there? A About a year or a little over.

Q And when you were going to work at four o'clock in the morning -- tell the gentlemen what you were going to do, leaving home at four in the morning? A Tell which gentlemen?

Q Right here. A I was going down to the stable.

Q What were your regular working hours there? A I didn't have no regular hours.

Q What was your salary a week? A Whatever work I did I got paid for.

Q No regular salary at all? A No. I got a salary for every horse I got, from Harlem, half a dollar apiece for a horse; I worked at driving, so much.

Q Where were you when Officer Coleman or Officer Phelan, or Coakley, whoever it was, had hold of you, just tell the jury where you were? A I was coming from the house and Officer Phelan --

Q Where? Give me the street. A At 123rd street and Third avenue, on the southwest corner.

Q And when he got hold of you, who else was standing around?
A Nobody.

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Q Nobody there at all? A Nobody there at all.

Q Did you see Mr. Mulligan, the intoxicated man there?

A No, sir, not at that time.

Q Did you see Schubert? A I am Schubert.

Q Silver? A No, sir.

Q Did you see Kearney? A I did not.

Q So you were the first one picked up, is that so? A Yes.

Q At that time you had \$8.60 in your pocket? A Yes.

Q And you told the jury you got the ten dollars from your brother? A Yes, sir.

Q For what? A To get a ring and suit out of pawn, that is run out.

Q What pawnshop? A In Wylie's.

Q Where? A 122nd and 123rd streets and Third avenue, on the east side.

Q And how much had the suit been pawned for? A The suit was in for three dollars.

Q And the ring? A For two dollars.

Q And your brother gets the five dollars? A My brother gets nothing at all.

Q Did he give you ten dollars? A Yes, sir.

Q That was only five dollars, wasn't it? A Well, the suit will stand about four dollars and some change to take out, and the ring will stand about two dollars and some change to take out. It stands, to my estimation, about eight dollars or seven dollars fifty to take the stuff out.

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Q You told the jury the suit was pawned for \$3.00 and the ring for \$2.00? A It was.

Q How old is your brother? A Twenty years of age.

Q And where does he live? A With my father, 162 East 119th street.

Q How was it that he gave you this money? A At my father's house.

Q You didn't ask him why he didn't walk around and get his own suit out? A I should ask him?

Q Why did he send you to get his suit out? A It was my suit.

Q To get your suit out? A Yes, sir.

Q Well, you had money, you had been working right along, hadn't you? A Yes, sir.

Q Yet you got this money from your brother? A I didn't work right along; I worked four or five days a week, and sometimes not at all. When I work I don't make a lot of money. I have a lot of expense; I have a wife to take care of.

Q When was the last time you had received money before that day for any work that you did? A I received it every time I worked, every day.

Q When was the last time you received any money before your arrest? A A couple of days before the time.

Q How much did you receive? A About a dollar and some change.

Q Well, now, how much did you spend in the pawnshop; any-

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thing? A Nothing at all.

Q You didn't go to the pawnshop? A The pawnshop was closed.

Q When did you get the money? A I got it in the evening, Thursday.

Q What time? A I can't exactly tell you, around near six o'clock.

Q About six o'clock? A I ain't sure of it.

Q Now tell the jury what you did with the ten dollars?

A When I left my father's house, going towards east and Third avenue, walking up, at 130th street I stopped off and bought bananas; I bought potatoes and I --

Q How much did you pay for the bananas? A Ten cents.

Q How much did you pay for the potatoes? A Ten cents, and five cents worth of onions.

Q All right. Now anything else? A I did.

Q What else? A Before I entered the house I got a package of cigarettes.

Q How much did you pay for those? A Ten cents.

Q Anything else? A Yes, sir, an ice cream soda.

Q What else? A Then I left a dollar in my drawer at home.

Q How long had you had the suit in pawn? A In pawn?

Q Yes? A Well, around -- I ain't positively sure, October or November, around that time.

Q That pawnshop is at 132nd and 133rd streets on Third

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avenue -- under what name did you pawn the coat and the ring?

A A suit and a ring.

Q Under what name? A McCabe.

Q Give me the full name? A My wife pawned my stuff.

Q Under what name? A Under her name. She pawns all her stuff; she can produce the tickets of all our stuff.

Q Well, can you give me the name it was pawned under?

A If it was not pawned in my name, Schubert, she pawned it under the name of McCabe, that is her maiden name.

Q Give me the full name -- now if you are married, why should your wife pawn under the name of McCabe and not Schubert?

A I don't know why she does that. There might be my name on the ticket. If it is not her name it is mine.

Q But this must be under the name of McCabe or Schubert?

A Yes, sir.

Q Have you pawned anything since that time, after that?

A After that?

Q Yes? A Oh, yes, sir.

Q Well, where had you pawned anything? A Same place.

Q What have you pawned? A I got a few rings in there; I got curtains, table cloths, pillow sheets; that is all one ticket; and another, a table cloth, on another ticket.

Q But this particular time you were just going over to get out the suit and the ring? A No.

Q What? A The particular time I was not going to take out the suit and the ring.

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Q But you were going over there for the particular purpose of getting the suit and ring, that is the reason you got the ten dollars? A Yes, sir, that was the purpose, to get my suit and ring out.

Q Now when was it you saw Silver the first time that morning?
A At Lexington avenue, when Officer Phelan brought me towards him.

Q By the way, had you seen Silver during any part of the year before this happened? A A year before?

Q Yes? A No, sir.

Q You didn't see Silver at all during the year 1914?
A No, sir.

Q Did you see him during the year 1912 or 1913? A I might have seen him around that time.

Q Well, now, did you or didn't you? A I did see him.

Q Do you know the years -- do you know what year this is?
A 1915.

Q Did you see him during the year 1914, yes or no? A In 1914?

Q Yes? A No, sir.

Q Did you see him during the year 1913? A I might have come across him a couple of times during the year 1913.

Q Did you see him during the year 1912? A I don't remember if I did or not.

Q Well, now, will you tell this jury how many times you saw him in the three years, 1912, 1913, and 1914; how many times

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you met him on the streets of New York during those three years?

A About thirty or forty times.

Q How many? A About thirty or forty times.

Q What year? A During the whole time between 1912 and 1915.

Q Now is that as true as everything you have told this jury?

MR. CUVILLIER: I object to the statement characterizing --

MR. ELLISON: I withdraw it.

MR. CUVILLIER: Characterizing the statement of the witness: Is that as true as everything he said. That is for the jury to decide.

THE COURT: He withdrew it.

Q Now I want you to tell me again, during what years you saw this man thirty or forty times on the streets of New York in 1912, 1913, 1914; tell me what years? A I can remember seeing him a few times; I think at the beginning of 1914; if I didn't it was at the end of 1913.

Q Now you are not sure about 1914? A I am not sure.

Q Whether you saw him at all? A In 1914.

Q You are not sure about it. I don't want to confuse you and I want you to think it over. A I might have seen him at the beginning of 1914; I ain't positively sure.

Q Now let us go to the year 1913. A I seen him a number of times in 1913.

Q Well, about how many times in 1913? A About six times,

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I think.

Q How many times in 1912? A Well, I was arrested with Silver -- I don't remember, 1911 or 1912, what time it was.

Q You were arrested with Silver in 1912? A I don't remember when it was; it was around that time.

Q Did you see him on the streets of New York in the year 1912? A I don't remember seeing Silver; I might have seen him a few times but I cannot remember.

Q A moment ago you told the jury -- A (interrupting) During all the time of 1912 to 1915, until today.

Q Have you been associated with Silver right along in the last few years? A I was not.

Q Now you testified to having made certain charges against Officer Coleman to the Inspectors; is that so? A I did.

Q Don't you know that on the 27th day of November, 1914, you appeared before Officer Thomas Ryan, the Inspector, and you stated that you had no complaint to make against Officer Coleman, but that Officer Coakley in arresting you, shook you by the arm; now just you look at that paper (handing paper to witness) do you remember that; now just look at that. A I remember that time (after examining).

Q Now you stated you had no complaint to make at all against Officer Coleman? A I went over.

Q Did you or did you not? A I did make a complaint against Officer Coleman at that time with Coakley.

Q Did you say that you had no complaint to make against

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Officer Coleman? A I didn't.

Q "But Officer Coakley in arresting me shook me by the arm and arrested me without cause"? A He did arrest me.

Q But did you say you had no complaint against Officer Coleman? A I made a complaint against both of them.

MR. ELLISON: I offer the original complaint, subpoenaed by complainant's counsel, concerning which he questioned the witness.

MR. CUVILLIER: I object to the offer in evidence. First, on the ground there is no legal evidence shown that it was legal evidence, and second, on the ground it is not an official record as recognized by the law of evidence; on the third ground there has been no foundation laid to connect the witness with the endorsement on that piece of paper.

THE COURT: I will hear what you have to say, Mr. Ellison.

MR. ELLISON: Your Honor will recall that this matter, while collateral in a sense, became important inasmuch as the witness Coleman when he was on the stand was interrogated as to bias. Your Honor will recall that defendant's counsel has gone into this matter fully, and asked this witness about what he said to Inspector Ryan and what Inspector Ryan said to him. That is all a matter of record here, brought out by defendant's counsel. I now offer in evidence the original paper from the police files,

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subpoenaed by defendants' counsel and concerning which he questioned the witness on the stand, the witnesses Coleman and Phelan both.

THE COURT: I do not think the paper is receivable in evidence. The matter may be inquired into, but the paper itself cannot be received in evidence. It may be marked for identification.

(Received and marked People's Exhibit 1 for identification of this date).

Q I say when you were taken to the station house you were searched, weren't you? A I was not.

Q Were you searched at any time that night or that morning? A At the station house.

Q And did you have four two-dollar bills in your possession? A I did.

Q Where had you gotten those bills? A When I changed my ten-dollar bill with the peddler.

Q A peddler? A Yes, sir.

Q What peddler? A 130th street and Third avenue.

Q Did the peddler give you new bills? A He gave me -- well, they were not brand new -- but they were new.

Q Well, anyway, the bills that the officer took from you were in your possession, four two-dollar bills? A He asked me.

Q Well, the bills that he got from you, that you gave him, or any way you want it, were four two-dollar bills? A Yes.

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S A D I E S C H U B E R T , was called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. QUVILLIER:

Q Where do you live? A 211 East 123rd street, New York City, Borough of Manhattan.

Q Now, Mrs. Schubert, I want you to talk slowly and distinctly? A Yes, sir.

Q So that the last juror there can understand you? A Yes.

Q Mrs. Schubert, the defendant here is your husband? A Yes.

Q When were you married to him? A Well, I cannot really think when I was married, but I am married about a year and a half.

Q About one year and a half? A Yes, sir.

Q And you lived with your husband, didn't you? A Yes, sir.

Q And where do you live now? A 211 East 123rd street.

Q And you lived with your husband there on July 23rd, 1915?

A Yes, sir.

Q Do you remember when your husband worked at McMullen, Snare & Triest Company;

Do you remember when your husband worked there? A Yes, sir, I do.

Q When did he work there? A I just can't think of the date, but he worked there for about a month.

Q Do you recall going to McMullen, Snare & Triest's and asking for --

MR. ELLISON: I object to leading questions on this matter.

THE COURT: Do not lead.

Q Did you call at any time at McMullen, Snare & Triest's,

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in regard to your husband? A yes, sir.

Q Do you know when it was? A He hit my husband.

Q No. I am asking you do you know what month in what year you called at the office of McMullen, Snare & Triest, the contractors? A Oh, where he worked, you mean?

Q Yes? A Yes, sir.

Q Do you know what month it was? A I don't remember just what month it was.

Q Was it this year? A Yes, sir, this year.

Q In the Spring? A It was about the month before New Year's he worked there.

Q A month before when? A A month before New Years.

Q That would be December? A It was around December.

Q That was 1914. Now don't get excited, but think. You are testifying now under oath. A I know I am and I am trying to think.

Q Don't jump at your answers haphazard, but think before you answer my questions. Well, why did you go there?

MR. ELLISON: I object.

THE COURT: Sustained.

Q When you went there, did you have a conversation with anyone in charge of the office of McMullen, Snare & Triest?

MR. ELLISON: Yes or no.

A Yes, I went there to collect --

Q What was that conversation?

MR. ELLISON: I object to that as incompetent.

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THE COURT: Sustained.

MR. CUVILLIER: Exception.

Q Do you know why your husband was discharged from his employment there at McMullen, Snare & Triest? A

MR. ELLISON: I object to that, your Honor; calling for a conclusion.

THE COURT: Sustained.

MR. CUVILLIER: Exception.

Q Was he discharged by the firm of McMullen, Snare & Triest? A He was.

MR. ELLISON: One moment. Your Honor I don't know how this witness can --

BY THE COURT:

Q Were you present at the time he left the employment, were you there when he stopped working? A I was there to collect his pay and they turned around --

THE COURT: I don't think there is any personal knowledge on the subject.

MR. CUVILLIER: The defendant went there to collect.

THE COURT: Strike it out.

MR. ELLISON: The defendant has already testified to the fact that he was discharged. He is trying to get it through a third person that knows nothing about it.

THE COURT: It appears she has no personal knowledge.
BY MR. CUVILLIER:

Q You know Officer Coleman? A I do not know if he knows me.

Q Do you know Officer Coleman? A You mean where he works?

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Q I ask you madam, if you know Officer Coleman?

BY THE COURT:

Q By sight. If you should see Officer Coleman, do you know him by sight? A Yes, sir, I do.

MR. CUVILLIER: Ask Officer Coleman to come in.

(Officer Coleman came into the court room).

Q Did you ever see that man before (indicating Officer Coleman)? A Yes, sir, I did.

Q Do you know who he is? A Yes, sir.

Q Who is he? A Coleman.

Q When did you see him before now? A I seen him when he hit my husband once.

Q When was that? A Around July or so, I think.

Q July of this year? A Yes, sir, it was this year.

Q Did you and your husband then go to the 43rd Precinct?

A Yes, sir.

Q On East 136th street? A Yes, sir.

Q And what was the condition of your husband? A Well, my husband was coming home that night --

Q I am asking you what was his condition? A To go there, you mean?

Q Do you know what condition he was in? What was his looks; was he hurt, bruised, perfect or hurt or how was he?

A He was hurt.

Q Well, he was hurt; do you know who hurt him? A Coleman did.

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Q Why did you go to the station house? A I went up to get an officer to make Officer Coleman leave my husband alone.

Q Did you go to the station house? A I did.

Q With your husband? A Yes, sir.

Q Whom did you see there? A I seen the captain.

Q You had a talk with the captain? A I spoke.

Q What did you tell the captain?

MR. ELLISON: Objected to.

THE COURT: Sustained.

Q In response to what transpired between you and the police captain, what happened?

MR. ELLISON: Where did you go?

THE WITNESS: I went home.

Q Well, who accompanied you? A An officer did.

Q Why did he accompany you?

MR. ELLISON: I object to that.

THE COURT: Sustained.

Q The officer came with you and your husband? A Yes.

Q In uniform? A Yes, sir.

Q On your way home whom did you see? A Coleman on the other side and he whistled over to the officer and the officer said, "Never mind, walk ahead, and I will lead you to your door."

CROSS EXAMINATION BY MR. ELLISON:

Q I am going to ask you a few questions, and if you don't understand them, say so. Do you understand. Now you say you have been married about a year and a half? A Yes, sir.

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Here is my paper (producing paper).

Q I want to see how your memory is. A I have a poor memory.

MR. CUVILLIER: Mr. Ellison, I would just like to ask one more question.

MR. ELLISON: Very well.

BY MR. CUVILLIER:

Q Now your husband has been working, has he? A Yes, sir.

Q Where has he been working? A In a stable at 119th street and Lexington avenue; Alpert Brothers.

Q Has he worked regularly? A Not steady, but off and on.

Q Now did you pawn any clothes for your husband at any time?

A Did I what?

Q Pawn any clothes for your husband? A Yes, sir, a suit of clothes.

Q Anything else? A My jewelry and stuff, his, I am sure.

Q Under what name did you pawn that under? A My maiden name.

lan Q What was it? A McCabe.

Q Where did you pawn it? A Between 122nd and 123rd streets on Third avenue.

Q Do you know the name of the pawnshop, or pawnbroker? A Stein -- S-t-e-i-n -- No --

MR. ELLISON: Tell her the name.

Q Well, it was? A Yes, sir. That is it.

Q And you pawned more than your husband's suit of clothes and jewelry? A Yes, sir.

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Q What else? A We have rings, my bracelet and my locket and a tablecloth.

Q Now do you know if your husband had a suit of clothes in pawn on July 23rd? A He did.

Q And did you know that he had money to get this stuff out of pawn? A He did.

Q Do you know how much he had? A I don't know because he borrowed it of his brother.

MR. CUVILLIER: Your witness.

THE COURT: In view of a request which has been made by one of the jurors, in adjourning this case we will adjourn it until the day after tomorrow.

You are admonished not to converse among yourselves on any subject connected with this trial, form or express no opinion thereon until the case is submitted to you.

Gentlemen, you are excused until Wednesday morning at 10:45 o'clock.

The court stands adjourned until tomorrow morning at 10:15 o'clock.

(Whereupon at 3:20 p.m. an adjournment was taken.)

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0652

New York, Wednesday, August 18, 1915.

TRIAL RESUMED.

Appearances:

ASSISTANT DISTRICT ATTORNEYS ELLISON AND MINTON, for
the People.

MR. CUVILLIER, for the Defendants.

(The Clerk of the Court called the names of the jurors.)

SADIE SCHUBERT, recalled.

DIRECT EXAMINATION CONTINUED BY MR. CUVILLIER:

Q Now, Mrs. Schubert, you testified that you had pawned
your husband's clothing, a suit of clothes? A Yes, sir.

Q Have you got the pawnticket here? A I am after send-
ing my brother-in-law for it over to my sister-in-law's; I
left it in her house.

Q Have you any other pawntickets of the pledges you
testified to? A Yes, sir, my husband's signet ring.

Q Have you got it with you? A No, sir, he went over
to get them; I left them with her.

MR. CUVILLIER: Your witness.

CROSS EXAMINATION BY MR. ELLISON:

Q Now, madam, you said you were married about a year and
a half ago; is that so? A Yes, sir.

Q Can't you tell us what month it was in? A Here it is
(producing a paper and handing it to Mr. Ellison).

Q What name did you pawn this stuff in? A McCabe.

Q McCabe; how do you spell that? A M-c-K-a-y, but

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they call me McCabe. They don't pronounce it right in the pawn.

(Answer read by stenographer)

MR. ELLISON: I don't think I care to ask the witness any further questions.

PHILIP SILVER, one of the Defendants, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CUVILLIER:

Q What is your name? A Philip Silver.

Q How do you spell your last name? A S-i-l-v-e-r.

Q Where do you live? A 55 East 115th street.

Q Is Philip Silver your right name? A Yes, sir.

Q How old are you Silver? A I am 31 September 27th.

Q What is that? A I will be 31 September 27th.

Q What is your occupation? A Well, I have been working for my father last on hat bands.

Q Where is your place of business and where is his place of business? A 115 and 116th streets and Park avenue.

Q And where was the last time you worked for him? A July 23rd, the night I got a dollar from him to go to an amusement place, when he went out of business.

Q July 23rd, 1915? A Yes, sir.

Q Now you have been convicted of crime, haven't you? A Yes.

Q What were you first convicted of? A Disorderly conduct.

Q And when was that? A 1910.

Q And what disposition was made of your case? A I was sent

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away for three months.

Q And you were convicted after that? A Yes, sir.

Q For what? A Disorderly conduct.

Q And when was that? A In 1911.

Q And what disposition was made of your case? A I got three months again.

Q And after that were you convicted of crime again? A I was.

Q Of what? A Petit larceny.

Q And when was that? A 1912.

Q And what disposition was made of that case? A Six months.

Q And after that were you convicted of any crime? A Yes.

Q What was it? A Rape.

Q And when was that? A In 1914.

Q What disposition was made of you at that time? A Sent to Elmira Reformatory.

Q And how long is it since you have been out of Elmira? A Five months -- March.

Q Now, Silver, do you know the defendant Kearney? A No, sir.

Q Did you ever see him prior to July 23rd, 1915? A No, sir.

Q Never associated with him? A No, sir.

Q Now you know Schubert, don't you? A Yes, sir.

Q And how long have you known him? A Well, I have been on bad terms with him.

Q I am asking you how long have you known him? A I went to school with him.

MR. CUVILLER: Why didn't you say so?

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Q And you say that you went to school with him? A Yes, sir.

Q When did he and you leave school together? A I was 14 years of age.

Q And since that time how often have you met him and been with him, Schubert? A Well, I have not been with him -- but I was arrested with him in 1912.

Q That is what I want to know. What was that for? A Petit larceny.

Q Was he convicted too? A No.

Q He was acquitted? A Yes, sir.

Q And were you arrested with him at any time excepting that time? A No, sir.

Q Now when was the last time you saw Schubert or was with him prior to July 23, 1915? A I didn't see him at all.

Q Except at the time you and he were arrested for larceny? A Yes, sir.

Q What year was that? A 1912.

Q From 1912 to July 23rd, 1915, how many times have you seen him? A I never seen him until this arrest.

Q Now where do you say you lived? A 55 East 115th street.

Q And that is between what avenues? A Park avenue and Madison avenue.

Q Now how came you to be on Third avenue and 123rd street on the morning of July 23rd, 1915? A I was coming down from Clason Point -- it was one o'clock in the morning. I stopped in the park at 129th street and Third avenue because I knew I could

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not get in -- my father won't allow me in unless I keep good hours but he gave me permission this night to go out and enjoy myself, because July 22nd he went out of business, so I didn't have to go to work in the morning -- until Monday morning -- to look for another position; he gave me permission to stay out. I didn't want to go in until half past five. He gets up that time generally every morning; I didn't want to go in and awake him so I stayed in the park, and about four o'clock I came down on the south side of the street until I reached 123rd street. I was going towards Lexington avenue, and then Officer Phelan stopped me and said, "Come here, I want you."

Q Where were you then? A On 123rd street and Lexington avenue.

Q What corner? A On the south side of the street.

Q Southeast corner? A It is on the southeast corner; it is ten feet away from the corner.

Q Go ahead. A He said, "Come here, I want you." I said, "What do you want me for?" He said, "I want you as a witness in the case. You are after coming through this street and you could not help but see the trouble." I told him I didn't see anything. He put the revolver to my stomach and made me go with him. In 126th street station house he was going to let me go there but there was a Sergeant by the name of Hawthorne who said "Why Silver came out from doing thirty days." So he held me.

Q Get down to the time that Phelan called you at Lexington avenue and 123rd street; now Phelan took you towards Third avenue,

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didn't he? A Yes, sir.

Q When you got to Third avenue and 133rd street, who did you see there? A I seen Kearney.

Q This man here (indicating Kearney)? A Yes, sir, and I seen another fellow, it was not the complainant Mulligan.

Q It was not the complainant Mulligan? A No, sir.

Q Did you see Schubert there? A Schubert was arrested with me.

Q Were you with Schubert? A No, not when Officer Phelan came up Lexington avenue. He had Schubert in his possession.

Q Then he marched you and Schubert back to Third avenue, did he? A Yes, sir.

Q And who did you meet there? A I met Kearney and another fellow, he ain't in court now, who is not the complainant Mulligan.

Q Did you see Mulligan there? A No, sir, I didn't see him until I arrived in the 126th street police station.

Q Did you see Mulligan going up to the station house in company with Officer Coleman? A No, sir, I was in front.

Q Now who had you and Schubert in charge? A Officer Phelan.

Q And do you know who Coleman had? A He had Kearney and another fellow.

Q Not the complainant? A No, sir, it was not the complainant.

Q Did you see the complainant? A No, sir, not until I got to the 126th street police station.

Q Now you heard the testimony of Coleman and Phelan, didn't you? A Yes, sir.

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Q Now Coleman testified that on the northwest corner of 123rd street, you got hold of the left side of the complainant and Schubert on the right side, and that Kearney hit him in the head with a bottle, did you do that? A No, sir, I didn't.

Q Did you have your hands on the complainant at all?

A No, sir, he arrested me at 123rd street and Lexington avenue, and was going to let me go at the police station.

Q You testified to that. I am asking you did you have your hands on him? A No, sir.

Q You heard the testimony of Officer Phelan? A Yes, sir.

Q And after Mulligan was hit in the head with a bottle by Kearney that you went into the left hand trousers pocket of the complainant; did you or did you not? A I did not.

Q You were a witness in your own behalf in the Magistrates' Court, weren't you? A Yes, sir.

Q You heard the testimony of Officer Phelan? A I did.

Q Did you hear him testify that after Mulligan, the complainant, was hit in the head with a bottle by Kearney, that you went into the blouse pocket of the complainant Mulligan and pulled out something that looked like green, did you hear that?

A Yes, sir, I did.

Q Did you hear him also testify that you went into the pocket of the complainant Mulligan? A Yes, sir.

Q Did you do either one of those things? A I did not.

Q Now didn't you hear the complainant make any statement to the lieutenant or sergeant at the desk in the 126th street

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station house when the three of you were arraigned before the sergeant? A No, sir, I did not.

Q Did you notice the condition of the complainant? A He was intoxicated.

Q Did he make any statement at all? A No, sir.

Q Did you hear him make a statement at the station house that he had placed four two-dollar bills in his blouse pocket?
A No, sir.

Q You were searched, weren't you? A Yes, sir.

Q Was any money found on you? A I had about forty-five cents.

Q They took that from you? A No, sir.

Q They gave it back to you? A Yes, sir.

Q Did you hear Schubert make any statement as to how much money he had? A yes, sir.

Q What did he say he had? A He said he had eight dollars and sixty cents in his possession, and officer Coleman said, "Let me see the money." He took the money, and Schubert said, "Give it back to me," and Officer Coleman said, "You will get it back later on."

Q Now were you present when officer Coleman struck the defendant Schubert in the head with a blackjack? A Yes, sir.

Q How near were you to both of them? A I was standing right next to Schubert.

Q Now state to his Honor and the jury what Coleman did to Schubert and what he said? A He places us up again the railing

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on One Hundred and Twenty-Third street, right near Third avenue, and as he done that Officer Coleman came up with Kearney and another defendant, which was not the complainant Mulligan, and when he done that, "Oh", he said, "Schubert", and he pulled out his blackjack and started hitting Schubert over the head. He staid, "You tried to break me, you squealer. This is my only chance. I have got you now." Officer Phelan said to Officer Coleman, "Why don't you take a tumble and let up." Officer Coleman said, "This is my only chance." So Officer Phelan pulled me and Schubert away from the railing and brought us up Third Avenue towards the Police Station.

Q Did you see Schubert trying to kick Officers Coleman or Phelan? A No, sir.

Q Or kick at them? A No, sir.

Q Did you and Schubert try to get away? A No, sir.

Q One moment. Coleman or Phelan? A No, sir.

Q And went some feet distant from Third avenue? A No, sir.

Q Stand up. (The witness stood up)

Q How tall are you? A Five foot, seven.

Q What is your weight? A About 130 lbs.

MR. CUVILLIER:

Where is that bottle, Mr. District Attorney?

(The fragments of the bottle were handed to Mr. Cuvillier)

Q Now where was Kearney when you were brought back by Phelan, where was Kearney? A He was coming across the car tracks from the southeast corner to the southwest.

Q Well, was he in company with anyone? A He was.

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Q With whom? A With another fellow.

Q Well, you say he was coming across towards the west side of Third avenue? A Yes, sir.

Q What was said by anyone to Kearney? A Why, nothing that I heard.

Q Did you see Kearney placed under arrest? A Yes, sir; no, I didn't see him placed under arrest. When I came down from Lexington avenue I seen he was under arrest by Officer Coleman with another man.

Q Now did you see any any bottle around any of those men who were under arrest? A No, sir, I did not.

Q Did you see any broken bottle on the sidewalk? A No.

Q Did you see Officer Coleman or Officer Phelan pick up any broken bottle? A I did not.

Q Now you spoke about a fourth man that was arrested. Did he go to the station house with you? A Yes, sir.

Q Was he subsequently let go? A He was let go at the station house.

Q Did anyone question him there? A Officer Coleman talked to him.

Q What did he say to him? A I was too far away. Officer Coleman had him in the corner and was talking to him.

MR. CUVILLIER: Your witness.

CROSS EXAMINATION BY MR. ELLISON:

Q How long have you been living in New York City? A I was born in New York.

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Q Did you go to school here? A Yes, sir.

Q How do you say you spell your name? A Silver, S-i-l-v-e-r.

Q Have you ever spelled your name Silva, S-i-l-v-a, Philip Silva? A No, sir.

Q Have you ever been known under the name of Frank Collins?
A When I went to Elmira Reformatory.

Q Why did you find it necessary to have more than one name?
A Why, I didn't want to disgrace my people.

Q Well, when was it you took the name of Frank Collins?
A When I went to Elmira, to the reformatory.

Q When was that? A In 1914, January 13th.

Q Well, how many times had you been convicted of crime before that? A Well, about three or four times.

Q After being convicted three or four times, you didn't want to disgrace your folks, is that it? A I was not convicted of anything bad. I was convicted of disorderly conduct.

Q You don't consider being convicted of petit larceny bad, do you? A When I was convicted of petit larceny I didn't use my right name.

Q What name did you use then? A Philip Shaw.

Q Well, do you consider it bad to be sentenced to the workhouse on two occasions, thirty days each time, or don't you consider it bad? A I was not at the workhouse for thirty days at all.

Q Well, for three months? A Ninety days.

Q Do you consider that bad? A Why, of course it is bad.

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Q Well, about disgracing your folks; what name did you give when you were sent to the workhouse? A I gave my right name because it was my first time.

Q Well, when you were sent to the workhouse the second time for three months, what name did you give then? A I gave my right name. I would not give it only my people found out about it.

Q You are very considerate of your people, aren't you? A Yes, sir, I am.

Q And that is the reason you didn't wake your father up at four o'clock in the morning, and stayed around the streets of New York? A I didn't stay around the streets of New York. I was on my way home when I was arrested.

Q Four o'clock in the morning? A Yes, sir, four o'clock in the morning.

Q Now I don't know whether I misunderstood you or not. When did you tell the jury that you last saw Silver or Schubert? A In 1912, when he was arrested with me.

Q Now you tell these gentlemen that you never saw this man from 1912 to 1915, is that so? A That is so.

Q Were you in court -- you were sitting here the other day when Schubert was on the stand? A Yes, sir.

Q Do you remember when I asked him this question, and he gave this answer:

"Q Well, when had you seen him last before you met him at four o'clock in the morning; when had you seen him last? A About a week before that time.

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"Q And where did you see him a week before that? A 119th street.

Q Whereabouts? A Park avenue."

Did you see him at Park avenue? A I didn't. He might have seen me, because I was on bad friendship with him.

Q Well, now, let us see about this. You remember when I asked this question and he gave this answer:

"Q Well, now, will you tell this jury how many times you saw him in the three years, 1912, 1913, and 1914; how many times you met him on the streets of New York during those 3 years? A About thirty or forty times."

Well, do you know where he might have seen you? A I never stopped to talk to him but he may have seen me in Fiss, Doerr & Carroll's, Twenty-third street and Lexington avenue, down at the sales.

Q Do you still tell this jury that you never saw this man during those three years? A I do.

Q The last time you saw him you were both arrested, charged with larceny; is that right? A In 1912.

Q And then you never saw him again until you met him accidentally at four o'clock in the morning, three years later, and you were both charged with larceny? A Yes, sir.

MR. ELLISON: That is all.

MR. CUVILLIER: That is all.

S A D I E S C H U B E R T , recalled.

DIRECT EXAMINATION BY MR. CUVILLIER:

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Q Mrs. Schubert, I hand you these pawn tickets and ask you to look at them and see if you recognize them? A The torn one is for the suit of clothes and the other one is for a signet ring, \$2.00 and \$3.00 on the suit of clothes. I hooked them myself.

MR. CUVILLIER: I offer them in evidence.

MR. ELLISON: I have no objection.

THE COURT: Received.

(The two pawn tickets referred to were received in evidence and marked defendant's exhibit "B" of this date.)

CROSS EXAMINATION BY MR. ELLISON:

Q Madam, how long have you known Silver? A I don't know him.

Q When was the first time you ever saw him? A In here, that is all.

NATHAN SCHUBERT, was called as a witness on behalf of the defendants, being first duly sworn, testified as follows:
(I reside at 162 East 119th street.)

DIRECT EXAMINATION BY MR. CUVILLIER:

Q Mr. Schubert, what is your business? A Printer.

Q Where is your place of business? A I am with the Manhattan Press, 124th street, No. 182 East 124th street.

Q Speak up. A I am with the Manhattan Press, 182 East 12th street.

Q And is the defendant Schubert here, your brother? A Yes.

Q Is he married? A Yes, sir.

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Q Was his wife in court a little while ago? A Yes, sir.

Q Did you on or about the 22nd day of July, 1915, give your brother any money? A Yes, sir.

Q How much did you give him? A Ten dollars.

Q Why did you give it to him? A To get his suit and ring out of pawn.

Q Did he ask you to give it to him? A yes, sir, he asked me a few days previously.

Q What denomination of money was it? in? A A ten-dollar bill.

Q Do you remember what date you gave it to him? A It was on a Thursday.

Q Do you know the date of the month? A No, sir, I do not.

Q Was it on the 20th? A Around the 21st or 22nd.

Q You have never been convicted of any crime, have you? A No.

MR. CUVILLIER: Your witness.

CROSS EXAMINATION BY MR. ELLISON:

Q Where was your brother living then? A 211 East 123rd street

Q How long had he been living there? A I don't exactly know.

Q Where did he live before that? A He used to live on 122nd street.

Q What number? A 254.

Q How long had he been living there? A Well, he lived there for about two months before I went away. I had my store there; I gave it up and I went away.

Q Did you see much of your brother during the years 1911 and 1912? A Yes, sir, I have.

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Q Where did he used to spend his time during those years?

A Well, do you mean during the day or evening?

Q Did he work during that time? A yes, sir, he did.

Q All the time? A Yes, sir, most of the time.

Q Don't you know he was in the workhouse about five or six times during those years for periods of months at a time; don't you know that? A I don't exactly remember.

Q You don't remember that? A No, sir, I do not.

MR. CUVILLIER: I ask if Mr. Mulholland is in court?

THE CAPTAIN: No answer.

MR. CUVILLIER: The defendant rests.

MR. ELLISON: I am just waiting for a paper which I sent for down to Special Sessions. Then I will close my case.

The People rest, your Honor.

MR. CUVILLIER: If your Honor please, I make the request to move to dismiss and I ask that pending the argument on that motion the jury be excluded.

THE COURT: Any objection? (No objection)

(The Court admonished the jury in accordance with Section 445 of the Code of Criminal Procedure.)

During the argument of the motion you may retire to the jury room.

(Whereupon at 12 o'clock the jury retired)

MR. CUVILLIER: On the whole case I move that the defendants be discharged on the ground that there is no evidence

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to sustain the indictment on the charge of robbery in the first degree.

THE COURT: If you have any case, Mr. Cuvillier, which you think is decisive of your contention, I will look at it.

MR. CUVILLIER: I have the case, your Honor, of the People against O'Neill.

THE COURT: I will look at it. (After examining)
Any other case, Mr. Cuvillier?

MR. CUVILLIER: Not at present, your Honor.

THE COURT: I don't think it is in point, as I recollect the evidence in the case. It appears to me that there is sufficient to take the case to the jury. One case may differ from another in the degree of strength that there may be in the testimony and it is a question for the jury to consider whether under all the circumstances of the case there is not sufficient circumstantial evidence. The testimony of the officers, if believed by the jury, goes to the point that some force was used upon the person of the complaining witness and that the hand of one of the defendants went into the pocket of the complaining witness in which he had put money, and that the money found on one of the defendants was money of the same denomination as money that had been placed by the complaining witness and that the bills found upon the defendant were consecutive in serial number, in which respect they were similar to the bills paid to the complaining witness, and that in addition to that an effort was made

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by one of the defendants while being taken to the station house seemingly to get rid of something from the pocket in which the bills were found. Now under those circumstances I think there will be sufficient to take the case to the jury. The motion is denied and you have an exception.

MR. CUVILLIER: Thank you, your Honor.

THE COURT: The jurors may be brought back.

(The jury returned into the court room at 12:11 P.M.)

(The Clerk of the Court called the names of the jurors.)

Mr. Cuvillier summed up.

Mr. Ellison summed up.

The Court charged the jury.

At 1:04 P. M. the jury retired.

At 3:05 P.M. the jury returned into court, and the foreman announced that they had found James Kearney not guilty, and Joseph Schubert and Philip Silver guilty of grand larceny in the first degree.

The pedigrees of the defendants were then taken.

MR. CUVILLIER: May it please the Court, I move to set aside the verdict as against the weight of evidence, contrary to law, and I move for a new trial on all the grounds provided for in Section 999 of the Code of Criminal Procedure, and the provisions applying to a new trial in the Code of Criminal Procedure.

THE COURT: Denied. You have an exception.

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I will remand them until a week from today, the 25th.

Any other charge against Kearney?

THE CLERK OF THE COURT: No other charge, your Honor.

THE COURT: Kearney is discharged.

Ludwig Lutz,

Official Stenographer.

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