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CASE # 501

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York.

Part II.

----- X
THE PEOPLE

vs.

ANDREW PAWLKA.
----- X

Before

HON. JOSEPH E. NEWBURGER, J.,

and a Jury.

Tried, New York, March 10, 1905.

Indicted for Robbery in the First Degree.

Indictment filed February 23, 1905.

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

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

People,

SAMUEL FELDMAN, ESQ., for the Defense.

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

O T T O A D L E R, a witness called on behalf of the
People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Mr. Adler, where do you live? A 335 Second
avenue.

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

Q Now, on the 30th day of January, 1905, were you out,
on that night? A I don't understand.

(The question is repeated by the Official
Interpreter, Philip Dollin).

A Yes, sir; I was.

Q Where were you? A In Third street.

Q Where had you been? A I went to see a friend, and
where my friend lives there is a saloon, and we went down
into the saloon, and I came out of the saloon.

Q What time of night was it? A I can't tell you

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exactly the time. It was between eleven and one o'clock,
night time.

Q Had you been drinking? A Yes, sir; I had drinks,
but I wasn't intoxicated.

Q What saloon was it that you were in? A It is in
the middle of the block. I couldn't tell you the name
of the saloon.

Q And what street was it? A Third street.

Q Now, while you were in the saloon, who was with
you? A My friend and the man with whom my friend lives.

Q Now, what was the name of your friend? A Alfred
Kreutz.

Q And what was the name of your friend's associate?

A I only know his family name, Schimatsky.

Q Now, did you leave the saloon with your friend, Alfred
Kreutz? A No, sir.

Q Did you go out of the saloon alone? A Yes, sir;
alone.

Q Now, you had with you your overcoat, and you had your
other clothing on; hadn't you?

MR. FELDMAN: Objected to, as leading.

THE COURT: Allowed.

A I had an overcoat on, but not this overcoat. I had
a heavier overcoat on.

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BY MR. O'CONNOR:

Q Did you have any money in your possession, at the time? A More than ten dollars.

Q And where did you have that money? A I had the change in my pantaloons' pocket, the right side pantaloons' pocket, and I had the other money in a pocket book in my inside coat pocket.

Q That is, the bills? A Yes, sir; in the inside pocket of the overcoat.

Q Now, what else did you have with you? A I had a pocket knife, a cigar case, a watch and chain.

Q Where did you have your watch and chain?

A In the left hand side vest pocket, and the chain was fastened to a button hole on the vest.

Q Now, when you came out of the saloon, where did you go to? A I went to the toilet.

Q Was the toilet connected with the saloon?

A It is in the yard. I had to go through the hall into the yard.

Q Now, did you see the defendant, Pawlka, in the saloon? A Yes, sir.

Q Was he in the saloon while you were in there?

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A Yes, sir.

Q When you went out to the toilet did Pawlka remain in the saloon? A When I left to go to the yard, he was in the saloon yet.

Q Now, when did you next see Pawlka? A When he was kneeling near me and searching my pockets.

Q Where was this? A In the yard, about half way from the hall door into the toilet.

Q Well, you had gone out into the toilet?

A Yes, sir; but I wasn't in the toilet yet. I was on my way to the toilet.

Q And did Pawlka then meet you in the yard?

A I didn't see him again, but I recognized his face, when he was searching my pockets.

Q And, before your pockets were searched, did any person or persons lay their hands on you? A There was another man with him, and I received a blow-- the man was behind me-- a blow in the face. I received two blows. The first blow, I didn't fall down, and the second blow, I fell down.

MR. FELDMAN: Objected to.

THE COURT: Allowed.

MR. FELDMAN: Exception.

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BY MR. O'CONNOR:

Q Now, you fell on the sidewalk? A No, sir; on the stone in the yard.

Q Now, who did you see after you fell down? A I saw that one (indicating the defendant); he was kneeling on my chest.

Q Was there anyone else there, and, if so, who was that person? A I know the other one; he was arrested, too. There was another man.

Q Was his name Mike Stiff, or Mike Metz? A I don't know. I know the man by sight. I don't know his name.

Q Well, you say one knelt on your chest? A Yes, sir; and he held his hand over my mouth and nose, and the defendant and the other man were searching my pockets.

Q Now, what were you doing then while this was being done? A I tried to put the man away from my mouth, because I am suffering from asthma, and I was about to be choked.

MR. FELDMAN: That is objected to, his reason, and I move to strike it out, his reason.

THE COURT: Motion granted.

BY MR. O'CONNOR:

Q Now, how long were you on the ground? A At the least two minutes.

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Q Now, did you get up off the ground? A Yes, sir.

Q Did the man get up off your chest? A Yes, sir. And they all ran away, and then I got up.

Q Did you search your pockets then? A First I went into the saloon, and told them what happened, and then I immediately commenced to see what I am missing.

Q Now, what did you miss? A The watch and chain.

Q Yes. A And the change I had in my pocket, and the greenbacks, also.

Q How much money altogether, did you have, in American money? A Nine dollars I had in paper money, for sure, but the change might have been either fifty cents or sixty cents.

Q And your watch and chain were taken from you? A Yes, sir.

Q And your cigar case? A Yes, sir.

Q Now, did you wash the blood off your face?

MR. FELDMAN: Objected to, as leading.

A Yes; I wiped it off, with my handkerchief; and, on the shirt here, on the chest (indicating). I was all full of blood.

Q What did you do then? A Then I went into the street, and I called as loud as I could for police.

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Q And when did you see the defendant? A I didn't see him since that time until here, I see him.

Q Now, did you cause his arrest?

A Yes, sir. The policeman came and I told him my story.

Q Now, you had been drinking in the saloon where the defendant was, that night? A Yes, sir; he and two others were playing cards, while I was there.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until a quarter past two o'clock).

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After Recess.

O T O A D L E R, the complaining witness, being recalled
for cross examination:

CROSS EXAMINATION BY MR. FELDMAN:

Q Now, Mr. Adler, you live where? A I must wait a
moment. I came very quick, and I have the asthma very badly;
I can't breathe.

THE COURT: Take him into the next room and let
him recover his breath. Meanwhile call another
witness, Mr. District Attorney.

M I C H A E L M E T Z, a witness called on behalf of the
People, being duly sworn, and examined through the same
Official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live? A In Third Street.

Q What number? A 245.

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Q. Do you know Pawlka, the defendant? A. A couple of weeks I knew him before that happened.

Q. Now, were you with him on the night of the 30th of January, 1905, in the saloon?

A. I was.

Q. Do you know Otto Adler? A. I don't know his name; I know the man now. I don't know his name yet, but I know him by sight.

Q. Now, you were with the defendant Pawlka, that night, in the Third street saloon, weren't you?

A. Yes, sir.

Q. Did you do anything to Adler?

MR. O'CONNOR: Bring in Adler, a minute.

MR. FELDMAN: Now, if your Honor please, I object again. All the Interpreter has to do is to put the questions put by the District Attorney. The Interpreter is asking him about the case when there is no question.

THE COURT: The Interpreter will put the questions and give the answers only. Bring in Adler, for a moment.

BY MR. O'CONNOR:

Q. Do you know that man (indicating)? A. I saw him there.

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Q Now, what did you and Pawlka do on the night of the 30th of January?

MR. FELDMAN: I object to the form of the question, if your Honor please.

THE COURT: Objection overruled.

MR. FELDMAN: Exception.

A I hit that man once.

Q Where did you hit him? A I hit him on the head. He had his hat on and he fell down.

Q What did you hit him with? A With my fist;

Q Now, after you struck him on the head, Adler, and he fell down, what did you do then?

A When he fell down Pawlka got on top of him.

Q And what did Pawlka do, when he was on top of Adler?

A He searched his pockets, and I don't know what he took out of his pockets, but he searched his pockets.

Q Was anybody else there besides you and pawlka?

A Only that two.

Q Where was it that you did this to Adler? A In the yard. He fell down. I knocked him down in the yard.

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CROSS EXAMINATION BY MR. FELDMAN:

Q Now, Metz---

THE COURT: One moment.

BY THE COURT:

Q You were indicted for this offense; weren't you?

A Yes, sir; I am in the Tombs for that.

Q And didn't you plead guilty before me? A Yes, sir;
I am guilty.

THE COURT: Now, proceed.

BY MR. FELDMAN:

Q Now, Metz, what time of the day did you meet Pawlka?

A I don't know exactly if it was half past ten or 12 o'clock,
night time.

Q Where did you meet him? A I met him in the saloon.
I was first in the saloon, and he came in.

Q You didn't make any pre arrangements with him to
meet you there, did you?

A No, sir; I didn't tell him to come to the saloon.

Q And that was the first time you met him on that night
in the saloon? A The same evening, I saw him three times
in the saloon.

Q I mean, at the time when you met the defendant
in the saloon, that was the first time, when he came in there,

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by accident, and you met him there? A I saw him before that, but he went away, and then he came back, and I was in the saloon.

Q And you were there? And who else was there?
When he came back? A John Stiff was in the saloon, also.

Q When he came in, did he come up to you? A He came to me, when he came into the saloon.

Q Now, when he came up to you, what were you doing then? A We talked together.

Q Were you drinking there together? A We didn't drink immediately.

Q At the time when you were standing together, was the complainant in the saloon? A He was there drinking with other people.

Q Drinking with other people? A The German was there, drinking with other people.

Q And how many other people were in the saloon, at that time? A We were about seven in the saloon, about seven people.

Q And where is that saloon? A On Third street.

Q Near what avenue? A I don't know what avenue, but I knew it was in Third street.

Q Now, you were standing how long together, you, Stiff, and this defendant; for how long a time were you standing

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together?

A We went--- we passed our time mostly in the saloon, because we had no work, but that evening we sat about two or three hours in the saloon.

Q And during that time you were not drinking at all; were you? A That time we didn't drink, but we drank before. We drank three or four glasses of beer.

Q Then when you saw the German, as you call him, standing in the saloon, you didn't know the man, did you?

A No, sir.

Q Did you call the defendant's attention to the German in the saloon? A No, sir; I didn't say anything to him about the German.

Q So that when was it that you got up and left your company and struck the complaining witness? What time it was? A I don't know. It was around 12 o'clock, night time.

Q Did you say anything to any of your company that you go to strike this man, to rob him?

A No, sir.

Q So that you went out there of your own free will to attack this German? A I went first to the street, and then I went into the yard.

Q And until the time you attacked him none of your com-

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pany knew anything about it? A The persons in the saloon didn't know anything about it.

Q Did you say to anybody in the saloon your intentions, that you will go out and strike this German, attack him and rob him.

BY THE COURT:

Q Ask him who, if anybody, suggested that they go out and rob this man or attack him.

THE COURT: Is that your question, substantially, Mr. Feldman?

MR. FELDMAN: Yes, sir.

A I and this man, the accused, we talked about it, in the saloon.

BY MR. FELDMAN :

Q About what? A About attacking the man.

Q Why did you select this man to attack? A Well, because I thought that he was drinking, and was somewhat intoxicated.

Q You didn't see any money that he had, did you?

A No, I didn't. I didn't see money and I didn't see his watch.

Q And he was in company with others, wasn't he?

A Yes.

Q This same man, at the time when you saw him? A There

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were three, the German and two others. They were drinking together in the saloon, standing together.

Q Who was the first to suggest to attack him?
was it you or the defendant? A We saw him coming out,
and going to the yard, and then we followed him.

Q So, at the time you saw him go into the yard, that
was the first time it was suggested to attack him; is that
right?

A When he was in the yard-- we went into the yard,
and he was urinating, the German, and Pawlka showed to me
with his hand to hit him (illustrating); and so I went and
hit him and knocked him down.

Q Do you mean to say, Metz, that, after you saw the
complaining witness go into the yard, you and Pawlka followed
him? Is that right?

A Well, he went out about two or three minutes ahead of
us, and we followed into the street, and then went into the
yard.

Q And he left his company, two or three other men, standing
in the saloon? A Yes, sir; the others remained in the
saloon; they didn't go out.

Q Who suggested-- was it you or was it the defendant--
to follow him right into the yard?

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MR. O'CONNOR: Objected to, as already asked
and answered, and as to how they agreed to do it
together.

THE COURT: Objection sustained.

MR. FELDMAN: Exception.

BY MR. FELDMAN:

Q Now, Metz, don't you know that you were the only man
who followed him, and that the defendant was in the saloon
at the time? A Pawlka was out from the saloon ahead of
me, and I went after. He was ahead to go out from the
saloon, and I went after him.

Q Where was that toilet room? A In the rear of the
saloon, in the yard.

Q How far away was it from the saloon? A About six
or seven paces was the water closet from the saloon, in the
yard.

Q Did you see the German in the water closet, at the
time that you came out into the yard?

A I didn't see him go into the closet, but I saw him
that he was standing there, and urinating.

Q Was it dark or light in that yard? A Well, there was a
kind of a reflection of light from the saloon. I could see
a little.

Q You say he motioned to him with his hand? How did he
make that motion to you? A That is the way he motioned

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(illustrating).

Q And that was the first time that Pawlka told you, with that motion, to attack the German? A He made those motions to me about three or four times. I didn't want to hurt him, but he made that motion to me several times, and so then I did it.

Q And the time he made those three or four motions was when you were in the toilet room? A In the yard.

Q When the defendant was in the yard?

A Yes, sir.

Q And, at the fourth time, you understood what he meant, and knocked the man down? A I understood him when he made that motion, what he wants me to do.

Q Now, at the time you knocked the man down, where was Pawlka? Was he in front or behind or beside him?

BY MR. O'CONNOR:

Q Or, on top of him? Which? A The German was in the middle, between us. I was on one side of the German, and he was on the other side of the German, close together.

BY MR. FELDMAN:

Q And did you attack him from behind or in front?

A From the side, I hit the German. I was standing on his side and hit him.

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Q So that at the time of the attack that German couldn't see you?

MR. O'CONNOR: Objected to, as not the evidence, at all.

THE COURT: Allowed.

A I don't know if he saw me or not.

BY MR. FELDMAN:

Q You say you attacked him with your fist? Is that right? A Only with my fist I hit him.

Q Show us the way you did that? A That is the way I hit him (illustrating).

Q And, with that blow, he went down to the ground? A He fell down when I hit him.

Q After he was on the ground, what did you do? A Pawlka, when he fell down, got on top of him, of the complainant.

Q Could you see what Pawlka was doing there? A I saw that he was fumbling around in his clothing, but I don't know what he took out.

Q But you just said that you didn't see no watch or chain? A I didn't see what he took out, but I saw him fumbling in the man's pockets.

Q You didn't give any description to Pawlka, before you went out in the yard, of the contents of the German's pockets, did you?

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A I didn't know; I didn't see anything as to what the German has, and I didn't know what the German had.

Q In other words, he didn't know that he had anything when you struck the blow?

THE COURT: Oh, he has repeated that several times, that he didn't know whether he had any money or not.

MR. O'CONNOR: Yes, sir. And that they attacked him because he was intoxicated and easy, and they took their chances of getting money.

BY MR. FELDMAN:

Q Well, what did you do then, when the man fell? A I held him by the arm.

BY MR. O'CONNOR:

Q While the other fellow went through him, while the defendant went through him? A Yes, sir. And he was searching his pockets, his clothing.

BY MR. FELDMAN:

Q Did you see him take anything out of his pockets?

A No, sir; I didn't see what he took out.

Q What became of him afterwards? A Well, I didn't see what became of the German after; but I went out first from the yard, and then he joined me immediately, and I didn't see what became of the German.

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Q Did you get any of the money that he had? A I didn't receive anything from him; I didn't see no money and I didn't see no watch, and so I didn't get anything from him.

Q Did you go, after the attack, back to the saloon?
A We didn't go back to the saloon. Stiff was then in the street, when I came out, and then he came and invited us to go to another saloon.

Q And did you go? A Well, it was in the same street, the saloon, near the corner, and we all three went to that other saloon.

Q And what did you do there? A Well, he ordered, the defendant, ordered three glasses of beer in the other saloon.

Q Well, did you drink them? A Yes, sir.

Q Well, what took place after that? A Then we went to a restaurant in Third street again, all three of us went to a restaurant.

Q And what did you do then? A We didn't have anything to eat in the restaurant. Only we sat down in the restaurant.

Q Well, what were you doing there? Doing nothing but sitting there? A Well, it is a place that was warm, because it was cold outside, and people sit there, at night, because it is warm, and so I sat there.

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Q Did you have any conversation with the defendant or anyone else there, about the attack on the German?

A He didn't-- we didn't talk in the restaurant about the affair, but, when he invited us to go to the other saloon, he showed me the knife.

Q What do you mean by that? What do you mean by saying that he showed the knife? A He said, "That's what I took from the German.

Q You didn't see any money on him; did you?

A No, sir.

Q You didn't see a watch and chain on him, did you?

A I didn't see on the German a watch and chain, and I didn't see that this man had any watch and chain.

Q You didn't demand anything for the job that you had just done? A Well, we didn't have anything to talk about it, we didn't talk. We drank the beer and he showed the knife; that is all.

Q And you knocked the man down for the purpose of robbing him; didn't you? A Well, that was my intention; and our intention, when I knocked him down, to take whatever we can find on him.

Q And you found nothing? A I didn't get anything from the German.

Q Now, what do you do for a living? A Laborer.

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Q And where were you working? A Well, about four weeks ago, or a month I worked last at the dock.

Q And you say you were how long in New York, in America?
A Seven months.

Q And that is the first time, during the seven months that you attacked a man, isn't it? A I never committed any crime except this.

Q And how long do you know pawlka? A Well, that evening, I knew him for about a week or two.

Q You never had any dealings with him before that time? A No; I never had any interest with him.

Q Now, you pleaded guilty; did you not? A This time I said, "I am guilty."

Q To whom did you speak about the case at the time when you pleaded guilty? A Well, I myself said, "I am guilty, and there was an Interpreter who talked my language. I don't know who it was.

Q Metz, when were you arrested in the case? A I was arrested, the same night.

Q Were you arrested all alone? A No. He was arrested later on.

Q How do you know? A Because I saw him afterwards in the Tombs.

Q Did you tell the Police where he can be found? A I

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said to the police that he lived in Second street. I didn't know the number of the house, but I said, "He lives in Second street."

O T T O A D L E R, the complaining witness, being recalled for cross examination, and being examined through the same Official Interpreter, testified as follows:

CROSS EXAMINATION BY MR. FELDMAN

Q Mr. Adler what time in the day was it that you came into that saloon? A I can't tell exactly the minute, but it was about eleven o'clock.

Q Do you know where that saloon is? A Yes, sir.

Q Where is it? A In Third street.

Q Whereabouts in Third street? A Well, it is nearly Avenue B or C. The saloon is in the middle of the block.

Q And you went into the saloon all alone? A No, sir. I and my friend and the landlord with whom my friend lives.

Q Before you entered the saloon, were you altogether?
A Yes, sir. I went with my friend to the place where he lives, and, finally, we left there together; and, whilst

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I was in the flat yet, I said "Let's have something to eat."

Q Were you in that saloon before? A Every time I go to see my friend then I go there.

Q When you came in, you were standing at the bar, or sitting down, or what? A All three of us were standing in front of the bar.

Q Was there any light in the room? A Yes, sir; plenty of light.

Q How many other people were in the room? A Maybe five or six or ten; I don't know exactly.

Q Did you know any of them? A I only know one musician, who is playing in the saloon. I know him by sight, and I never knew anybody else; and I didn't look around, as I had no particular interest to look at them, but I saw those three sitting there, playing cards, the defendant and the other two men.

Q Now, when you went out in the yard, did you leave your friends sitting in the saloon? A Yes, sir.

Q You knew the place out in the yard?
A Yes, sir.

Q Was it a dark or light evening? A Very dark. You could hardly see your hand, before your eyes, in the street.

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Q And, going to the yard, you felt a blow? A Well, the distance between the hall and the water closet, there I was attacked.

Q And the blow was struck from behind?

A yes, sir.

Q Where did the blow land on you? A The first blow landed on my ~~the~~ teeth, my mouth, and the second blow between my eyes.

Q When did you see anybody first, after you were struck? A Well, when I received the second blow, I fell down, and, when I came to then I saw three men. I saw that one was sitting on my chest, kneeling on my chest, and two were fumbling in my pockets.

Q Do you mean to say that you saw them when you were unconscious?

THE COURT: No, he did not say so. He said when he came to.

BY MR. FELDMAN:

Q How long were you unconscious? A Maybe a minute or a minute and a half.

Q And you could see somebody going to your pockets?

A Not only that I saw, but I felt, because in every pocket there were hands.

Q Now, Mr. Adler, as you stated before, the place was

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dark? A Yes, sir.

Q Very dark? A Yes, sir.

Q You could hardly see your hand before your face?

A Yes, sir.

Q Then how do you identify the defendant as being one of the men, the man who was on your chest?

A Because I remember his face well. I saw his face well.

Q Are there any peculiar features about him that impressed him on your memory?

A I saw his wrinkled hair, and his full face.

Q What is that? A I saw his curly hair and his full face.

Q Did he have a hat on? A I couldn't tell you.

Q Could you tell the color of the hat that he had on, at that time?

THE COURT: He said that he couldn't tell that he had a hat on or not.

BY MR. FELDMAN:

Q But you could see his curly hair? A Yes, sir; his face was close to me.

Q Where were the curly hairs? A Why, on the sides (illustrating) and principally on the back of his ears.

Q Well, did you see the other two faces also? A Yes, sir. Everything plain. All three of them all lying on top of you or standing around you? A Well, one was kneeling

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on me and the others were close to me, kneeling also.

Q And for how long a time did that take place?

How long were they kneeling? A Maybe a minute. Not even a minute. It was quickly done.

Q Did you scream out? A I couldn't, because they stuffed up my mouth and my nose; it was stuffed up.

Q And, after a minute they left you; is that right?

A About a minute.

Q What did you do afterwards? A I got up and went into the saloon and commenced to holler that I was robbed.

Q You said, on your direct examination, that you looked to see whether you had your watch. Didn't you see the man taking your watch from you? A I couldn't say particularly who did it, but I saw that they were tearing on me, on my clothes and my pockets (illustrating) and tore my watch away.

Q Did you see the man who went through your pockets, and took your money out? A Well, the one was as busy as the other. They were all busy at my pockets.

Q But you will not swear that it was the defendant who did that? A I will swear that he was the first, the quickest to go through my pockets.

Q And so that, after he went through your pockets, the other fellow went through your pockets also? Is that

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right? A They were together; all, at the same time, were working together.

Q And do you mean to say that all worked together, and put six hands in your pockets? A No, but possibly three or four hands at a time.

ALFRED KREUTZ, a witness called on behalf of the People, being duly sworn, and examined, through the same official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live, sir? A 335 Second avenue.

Q And do you know Otto Adler? A Yes, sir.

Q And were you in the saloon with him, in Third street, on the night of the 30th of January, 1905?

A Yes, sir.

Q And what saloon was that? A Third street, 224.

Q Did you see Pawlka, the complaining witness, in there? A Yes, sir.

Q And did you see Metz? A Yes, sir.

Q Now, did you see your friend going into the rear room and out into the yard? A Yes, sir; I saw him go out.

Q Did you see him when he came back? A Yes, sir.

Q What was his condition when he went out into the

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yard? A He was just in the same condition as he is now. He was dressed, everything in order, only he had around his neck a silk handkerchief.

Q Now, did you see who went out into the yard after him?

A Yes, sir.

Q Who went out? A All the three. First, one went out.

Q And who was the first one who went out? A I can't tell positively if it was this man (indicating the defendant) or Metz.

Q Then can you tell the Court and jury who went out into the yard? A Of those two, one went out first, of the defendant and Metz, one went out first.

Q And you are sure, then, that Pawlka and Metz went out in the yard? A Yes, sir.

Q Now, did you see your friend come back from the yard?

A Yes, sir.

Q What was his condition when he came back into the saloon from the yard? A He came in. He had no hat. He was full of blood here (indicating the breast) and he was so irritated that he couldn't speak.

Q Did you see Pawlka or Metz come into the saloon again from the yard? A No, sir.

Q Did you ever see them after the time they left the

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saloon, and went to the yard? A I didn't see them until later on.

Q Where did you see them, later on? A In a restaurant, I saw them when I came with the detective and two policemen. There were several there.

Q And who did you have arrested in the restaurant?

A The one who was a witness here, Metz.

Q And Stiff? A Yes, sir.

Q Was Pawlka in the restaurant when you got there with the detective? A Well, now, it comes to my mind. Yes, I recognize him now that he was sitting in the corner, with his face turned to the wall, and I saw his profile; and now I recognize him as the man. I didn't notice him at the time, I didn't recognize him then.

CROSS EXAMINATION BY MR. FELDMAN:

Q You say you didn't recognize him at the time? Why didn't you call the attention of the police to him?

A I didn't recognize him then, but from the face that now I see I recognize him as the man that was there then.

Q Then you didn't recognize him as the man at that time? A Because I couldn't see thoroughly his face.

Q Well, you say that you are a friend of Mr. Adler?

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A Yes, sir.

Q How many years are you friends? A We are friends from Europe; about ten or 12 years now.

Q How many years are you here now? A Three years.

Q Do you see him quite often? A Yes. I worked for a couple of months in his place.

Q And you went quite often around to saloons with him, to drink? A Not very often. But, when he came to see me then we go, because he is not a drinking man.

Q How many times were you in that saloon with your friend, 224 Third street? A It might be about two or three times; no more.

Q And, on that night, it was about 11 o'clock that you came into the saloon; is that so? A As we came into the saloon it was about 11 or half past 11.

Q And how many were you altogether? A Adler the man with whom I live and myself.

Q And you stood up against the bar? A Yes, sir.

Q And you ordered beer, I suppose? A No.

Q What did you drink? A I drank wine, Adler got wine and seltzer water, and the third one got wine, too.

Q And, while you were that way standing, how many drinks did you have? A I can't state. Twice or three times.

Q It was no more than three times? A No; no more than

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that.

Q What kind of drinks did you drink? A White wine, Rhine wine.

Q There were other people in the saloon at the time you were drinking? A Yes, sir.

Q You didn't pay no attention to anybody in the saloon at that time, did you? A No.

Q When was your attention attracted to these three men, sitting at a table and drinking? A Well, a little later.-- We were in the saloon about half an hour or three quarters of an hour;--and, after being in the saloon about a quarter of an hour, then I saw those three, I noticed those three.

Q You didn't pay any particular attention to the three men, at all, did you? A Well, I sat at a table next to the table where they were playing, just out of curiosity, because they were playing a game that I had never seen. So I wanted to see what kind of a game they were playing.

Q Well, were you standing in front of this man or behind him, when he was standing there? A It was a round table and I could see the faces of all three of them, and I looked at their faces.

Q And then it happened that your friend Adler went out into the yard? A Of those three, one went out.

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Q Before Adler? A yes, sir; one of those men was the first one to go out, and then Adler, about two minutes after, went out.

Q They had no conversation with the man who went out before Adler, did they? The other two men at that table, I mean?

MR. O'CONNOR: Objected to.

BY MR. FELDMAN:

Q The man who went out, the first man out of these three that went out first, they didn't have any conversation with him; did they?

MR. O'CONNOR: Objected to.

THE COURT: Allowed.

A No, sir; I didn't see any.

BY MR. FELDMAN:

Q Now, which of those three men went out first--- I mean of the two left there? A Of those two, either this man (indicating the defendant), or Metz. I don't know their names.

Q Well, how long after that did Adler go out? A Maybe two minutes, and maybe not two minutes after.

Q And when one of the three went out, did the other two stop playing cards? A I don't know. They were sitting there, but I don't know if they continued playing cards, or

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not.

Q Well, you say you were looking them straight in the face, and you can't tell now who was the first man who left the table? A Well, I looked at them a little before that man went out, and then one of the three got up and went out, and so I can't tell who was the one of the three.

Q Now, what is your name? A Alfred Kreutz.

Q Now, Mr. Kreutz, you say that you had two or three rounds of drinks? A Yes, sir.

Q Now, who ordered them? A Adler.

THE COURT: We will go no further today. We will stop at this point.

Gentlemen of the jury, I have some important official work to attend to, this afternoon, and, therefore, I will have to adjourn Court a little earlier than usual today.

In the meantime, I admonish you not to discuss any subject connected with the trial of this case, among yourselves, or with anyone else, and not to form or express any opinion concerning the guilt or innocence of the defendant, until the case is finally submitted to you.

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The Court will now stand adjourned until Monday morning, at half past ten o'clock.

(The trial was then adjourned until Monday morning, March 13, 1905, at 10:30).

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TRIAL RESUMED.

New York, March 13, 1905.

ALFRED KREUTZ, being recalled for further cross examination, testified as follows, through the official Interpreter, Philip Dollin:

CROSS EXAMINATION CONTINUED BY MR. FELDMAN:

Q Now, Mr. Kreutz, you say there was one left the saloon before Adler left the saloon; is that right? Before the complaining witness, Adler, went out of the saloon?

A Yes, sir.

Q And you say you can't tell who left the saloon? Was it this man (indicating the defendant) or was it Metz

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who left it? A I don't know that.

Q Well, would you swear that the defendant was not the man who left first before the complainant? A I don't know who of the two-- which of the two-- went out first.

Q Now, you say you were standing there observing them playing cards; is that right? A Yes, sir.

Q And you took good notice of them; did you not?

A Yes, sir.

Q And you could tell, if you saw him again? A Yes, sir.

Q When Adler left the saloon, what were the other two doing at the time? I mean the other two. Were they playing cards or not? A I don't know. I didn't observe.

Q What were you doing? A Well, I just talked to the man with who I lived.

Q Well, how long a time did elapse until Adler returned back? A Maybe three or four minutes. I can't tell exactly.

Q And, when Adler came back, was any one of the three in the saloon? A Not one of them was any more there.

Q So, let me understand-- A None of them.

Q So that, let me understand. First, was one man from the three left? A Yes, sir.

Q And then the complainant, Adler, left?

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A Yes, sir.

Q And then the other two were sitting still there at the table? A Yes, sir. When Adler went out, they were sitting at the table yet, those two.

Q And you didn't see the two leaving the table, after Adler left; did you? A No, sir.

Q And, after a few minutes, as you said, three or four or five minutes-- A Three or four minutes; not five.

Q Three or four minutes. And then Adler came back?

A Yes, sir.

Q What became of the two? A They were not in the saloon any more.

Q You didn't see them going out, did you? A No, sir.

Q Now, what was the position-- when Adler came back, what did he say to you? A He only hollered that he was robbed.

Q Did he say to you by whom he was robbed? A No. I immediately ran out into the yard, and there was no one in the yard; and I found his hat in the yard. It was broken.

Q And, when he said he was robbed in the yard, you didn't know by whom he was robbed; did you? A No; not at

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that time.

Q And you had no suspicion upon anybody in the saloon?

MR. O'CONNOR: Objected to.

THE COURT: Objection sustained. We are not trying cases on suspicion.

BY MR. FELDMAN:

Q Now, when you ran out Kreutz, who did you find in the yard? A No one was in the yard. I have just said it.

Q Did Adler go with you into the yard? A No, no. Adler, in the meantime, was out in the street, and called for police.

Q Anybody else with you when you went to the yard? A No. I was alone in the yard.

Q Did you call anybody's attention to the fact that the man was robbed just now, in the yard?

MR. O'CONNOR: Objected to.

THE COURT: Objection sustained.

MR. FELDMAN: Exception.

Q You say you were standing there and drinking with Adler? How was he dressed, Adler? A Just as I told. He had an overcoat on and he had a white silk handkerchief around his neck.

Q Was his overcoat unbuttoned? A Buttoned or unbuttoned?

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Q Unbuttoned? A Yes, sir; unbuttoned.

Q Did you see a watch and chain on him? A Yes, sir.

Q How do you know that he had a watch? You saw the chain. Did he take the watch out? A Yes, sir; he took out the watch; and I knew that he had a watch.

Q And you didn't see the watch and chain after he came in, did you? A No, no. When he came in all his coats were unbuttoned, and his pockets were turned inside out.

Q Did you put the question to him, who done it?

MR. O'CONNOR: I object to that. This witness was not present at the time of the alleged robbery.

THE COURT: Objection sustained. That is hearsay clearly.

J O H N S T I F, a witness called on behalf of the People, being duly sworn and examined through the same Official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live, Stif? A East Third street.

Q What is your business? A Any kind.

Q Now, do you know Pawlka? A No; I don't know him.

I only saw him in the street.

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Q Were you in the saloon on the 30th of January, 1905, when Adler was there? A I was.

Q Did you see Pawlka and Mike Metz there?

A Yes, sir.

Q What were Pawlka and Mike Metz doing at the time you saw them? A They played cards. I didn't play.

Q Did you see them speaking together? A I heard them talk together, but I don't know what they talked.

Q Well, did you hear them speaking about Adler?

MR. FELDMAN: I object to the question, if your Honor please. It is leading.

THE COURT: Objection overruled.

Exception.

A I don't know. I didn't hear them, because I didn't know who is Adler.

Q Well, would you know Adler if you saw him?

A Yes, sir.

MR. O'CONNOR: Adler, come up here. Stand right there.

BY MR. O'CONNOR:

Q Did you see that man in the saloon that night?

A Yes, sir.

Q Now, what did you see Adler do while he was in the saloon? A I saw that he was drinking.

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Q Did you see him go out of the saloon? A Yes, sir; I saw when he went out.

Q Where did he go to? A He went into the rear where the water closets are.

Q Did Pawlka or Metz go out of the saloon?
A Yes, sir.

Q Did they go out after or before Adler went out of the saloon? A Adler wasn't out yet, but Pawlka went out.

Q pawlka wentout first? A Yes, sir; and then Adler went out.

Q And, after Adler went out, who went out after him?
A Mike Metz.

Q Now, did you go out into the yard? A No; I didn't go to the yard.

Q Where did you stand? A I wentout in the streets.

Q Yes. A Well, I was in the street and this man (indicating the defendant) and Metz came out, and they invited me to go to another saloon and I went with them.

Q Yes. And what did you do when you went to the other saloon? A Well, we went there and Pawlka treated to beer, and Pawlka went to the water closet there.

Q When Pawlka went to the water closet, in the other saloon, did you see him when he returned from the water closet?

A Yes, sir.

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Q Did he show you anything when he came out of the water closet?

MR. FELDMAN: Objected to, as leading.

THE COURT: Objection overruled.

MR. FELDMAN: Exception.

A He showed a knife.

BY MR. O'CONNOR:

Q Go ahead. Anything else? A A pocket book he showed.

Q What did he say to you, when he showed the knife and the pocket book? A He said that he took it from Adler.

Q From Adler? A Yes, sir.

Q Did you get any of the money? A No; I didn't see any money.

Q Now, were you in the yard at the time this assault was being committed? A No, sir; I wasn't.

Q Now, were you chasing the dog away, were you chasing a dog away?

MR. FELDMAN: Objected to, as leading.

THE COURT: Objection overruled.

MR. FELDMAN: Exception.

A What?

BY MR. O'CONNOR:

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Q A dog? Was there a dog in the yard at the time the assault was being committed? A The dog was in the hall.

Q Yes. And what did he do with the dog (indicating the defendant)? A The dog wanted to enter the hotel. I opened the door, and let him in.

Q Well, at the time that you let the dog in, was that the time that Adler and Pawlka and Metz were in the rear yard, together? A They were.

Q You have pleaded guilty to the charge of robbery, have you, of robbing Adler? A I plead guilty that I was in the saloon; and that is all.

CROSS EXAMINATION BY MR. FELDMAN:

Q And who told you to plead guilty? A A young man who was talking for me, the Interpreter. I don't know who it is.

Q If I show you the young man, will you recognize who it is? Will you recognize the young man?

A Yes, sir.

Q Look at this man, Mr. Michael Tandlich (indicating): Is that the young man that spoke for you? A Yes, sir.

Q Now, you say you were not in the yard, at all?

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A No; I was not.

Q You knocked the man down, didn't you? A No.

Q You didn't put your hands in his pockets and rob the man, didn't you? A No.

Q And still you pleaded guilty to robbery in the first degree? A I didn't plead to that.

Q To what did you plead? A I only plead guilty that I was in the hotel, and that I was in the hall.

Q Weren't you told to what you are pleading guilty?
A He told me that I should plead guilty, and I said that I-- and I plead guilty that I was in the hotel and in the hall.

Q And all that you know of the case is that you were in the hall and in the hotel; is that right? A Yes, sir; I only know that I was in the hall and was in the hotel.

Q And, upon that knowledge, you pleaded guilty to robbery in the first degree? A I didn't plead guilty to that.

MR. FELDMAN: Well, let us look at the indictment.

THE COURT: Oh, there is no question about that.

The case was on before me, and, in the middle of the trial, they both pleaded guilty.

BY MR. FELDMAN:

Q Then you don't know what you plead guilty to?

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MR. O'CONNOR: Objected to.

THE COURT: No; we will not go into that now.

Objection sustained.

BY MR. FELDMAN:

Q And, as you stated before, the plea that you entered before was on the advice of Michael Tandlich? A He said that I shall plead to that what I know.

Q Where did you have the conversation with him?

A In the Court.

Q In the Court? A Yes, sir.

Q Where in the Court? Before the Magistrate or before this Court or where?

THE COURT: Now, I told you, a minute ago, that it was before me. Why take up time in this way?

MR. FELDMAN: Well, I would like to find out where he was advised to plead guilty.

THE COURT: Ask your next question.

A I was with Metz together.

BY MR. FELDMAN:

Q Now, what time did you go into that saloon? A I don't know. I didn't look at the clock.

Q When you came in, the first time, into that saloon, on that day, did you find Pawlka and Metz in the saloon?

A When I came, Metz and Pawlka were there, but Pawlka went

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out and came back again.

Q And then you all three were sitting down and playing cards? A No; only those two, Metz and he. I didn't play cards. I said that before.

Q And what were you doing at the time they were playing cards? A I was sitting and looking on, looking at the play.

Q And for how long were you sitting and looking at the game? A About an hour or more. I don't know.

Q What time was it when you saw Adler, the complaining witness, and his friends entering the saloon? A I don't know.

Q Did you see Adler and his friends standing in the saloon and drinking? A I saw people were drinking there.

Q Did you call anybody's attention-- I mean either pawlka's or Metz's attention-- to Adler and his friends in the saloon? A I didn't call their attention to Adler.

Q Did you have any conversation with pawlka or Metz, in reference to Adler, and his companions? A No, sir; I didn't talk about Adler.

Q Did you arrange with pawlka and Metz to rob Adler? A No, sir; I didn't talk with them about robbing Adler.

Q Now you say that, at the time you were sitting there, Pawlka was the first man who left this table, left this

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saloon to go to the yard?

A Yes, sir.

Q Then you say-- what became of you and Metz at the time he left the saloon? A I and Metz we were in the saloon, when he went out. We remained.

Q Did you know, of your own knowledge that Adler will be the next man to leave the saloon? A I didn't know if he wants to go out of the saloon or not.

Q And then, after pawlka left the saloon, then Adler was the next man that left it? A Yes, sir.

Q Is that right? A Yes, sir.

Q And where was Metz, at that time, when Adler left the saloon? A When Adler went out, then Metz went out into the street. I don't know where he went.

Q And he left you all alone in the saloon; is that right? A Well, I remained alone, but there were more persons in the saloon yet.

Q Did Metz, by leaving the saloon, say anything to you in reference to Adler? A He didn't say anything to me. Adler went out and Metz went out. He didn't say anything to me.

Q And, after Adler and Metz and pawlka left the saloon, you were still in the saloon; is that right? A I was in the saloon yet, when they went out.

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Q When did you, for the first time, hear of the robbery that was committed in the yard of that saloon? A I didn't see the robbery.

Q Where did you find it out? A When we went to the other saloon, then I heard them talk, this one and the other one, that they took from that man.

Q Where did you meet this man (indicating the defendant and Metz? A When we went to the other saloon.

Q Now, how long after Adler left the saloon and Metz and Pawlka left the saloon, did you go into the street? A Maybe a minute or two.

Q You didn't know, of your own knowledge, what they were doing in the yard; did you? A I didn't know what they were doing in the yard.

Q And you say, a minute afterwards, you met on the street, in front of that saloon? A In a minute or two, I went out in the street.

Q And left them? A Yes, sir.

Q And then you went away to another saloon? A Yes, sir.

Q Is that right? A Yes, sir. They came out of the yard, and they were laughing, Metz and Pawlka, and then they invited me to go to another saloon, and then I went with them.

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Q To what saloon did you go, then? A I don't know the name of the saloon.

Q How far away from the first saloon? A It was after Third street, on the corner.

Q How long did it take you to get to the second saloon, from the first saloon? A About two or three minutes, from one saloon to the other.

Q Now, when you entered the second saloon, tell us what took place?

A We didn't do anything there. We had beer, beer was ordered, and then they talked together.

Q Well, what do you mean? They talked together?

A Pawlka ordered the beer.

Q Yes. A They were talking, he and Metz were talking together, the defendant and Metz.

Q And you were standing there with them, weren't you?

A Yes; I was in the saloon.

Q Now, tell us what the conversation was? A They were talking about the robbery, and he said to Metz (indicating the defendant), "I didn't think that you were so daring, that you were so courageous."

Q And that was the first time that you heard about it?

A Yes, sir; when they talked together. They didn't say anything about the money.

Q So, all you heard, at the time you were standing in

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the second saloon, in the company of the other two, Pawlka and Metz, was that pawlka stated to Metz, "I didn't believe that you will be so daring or courageous"?

THE COURT: Now, why repeat that question?

Why take up the time in this way, Mr. Feldman?

MR. FELDMAN: I withdraw the question.

BY MR. FELDMAN:

Q Did you have a conversation with Metz, on Friday?

THE COURT: What Friday?

MR. FELDMAN: Last Friday?

A Yes, sir; I talked with Metz.

BY MR. FELDMAN:

Q Where did you see Metz? A Down there (indicating the prison pen of the Court).

Q And that was after he was on the witness stand; is that right? A Yes, sir.

Q Now, tell us what he said to you? A He said, "I said everything about Pawlka."

Q Didn't he say to you, "All I stated to the Court about the defendant Pawlka, was not the truth"? A He said so. He said, "I talked, but it was not true."

Q And didn't he say, also, "Because I know I will be sent away, and let him go, also"?

A He said, "Yes, when I am guilty and will be punished, I said also on him."

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RE DIRECT EXAMINATION BY MR. O'CONNOR:

Q Well, you were present in the saloon when Pawlka and Metz were there, on the night, before the assault was committed? A Yes, sir.

Q You heard pawlka dn metz state how they were going to rob this man Adler; didn't you?

MR. FELDMAN: Objected to. He said, before, that he did not.

THE COURT: Objection overruled.

MR. FELDMAN: Exception.

A Yes, sir.

BY MR. O'CONNOR:

Q And then, when pawlka went out in to the yard first, then Adler followed him? A Yes, sir.

Q Then Metz went out after Adler? A Yes, sir.

Q Then you went out in the street, in front of the saloon? A Yes, sir.

Q And then, within two or three minutes afterwards, Metz and Pawlka came out, out of the yard? A Yes, sir.

Q Then you went off to the other saloon, with them, to find out what they had stolen?

MR. FELDMAN: Objected to. He testifies that the first time he heard of the robbery was in the other saloon.

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THE COURT: Objection overruled.

MR. FELDMAN: Exception.

A I didn't know, when they called me to go to the saloon, what they did.

BY MR. O'CONNOR:

Q What they had? A Yes, sir; what they had; but they invited me and I went with them.

RE CROSS EXAMINATION BY MR. FELDMAN:

Q So you didn't know, and not a word was spoken about the robbery, when Adler left the saloon? A I didn't know that they wanted to take his money.

Q Exactly. And the first time you heard of the robbery was at that time, in the other saloon? A Yes, sir.

M I C H A E L J. L O N D R I G A N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Now, you are an officer of the Police Department of the City of New York? A Yes, sir.

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Q Attached to what precinct? A Fourth precinct.

Q On the night of the 30th of January, 1905, did you see this complainant, Adler? A Yes, sir.

Q Where did you meet him first? A In the station house.

Q And what was the condition of his face? A He was bleeding.

Q And did you have a talk with him? A Yes, sir.

Q What did you do then? A And I took Adler and his friend, Kreutz, out with me, and I went up to Second street, and met Officer Reynolds, and he was coming along with the saloon keeper, to the station house, no more than I got out; and we left the saloon keeper there behind us and we started out, and went up Third street to this saloon, with another officer, and we went up and saw the saloon keeper's wife, to see if she knew anything about it.

Q No. Never mind that. Go ahead. You saw his wife?

A Yes, sir.

Q Now, after seeing the saloonkeeper's wife, what did you do? A Well, I asked her about it.

Q No. And from there where did you go? A To 246 Third street, down in this coffee house.

And there was seven or eight or nine of them there. They was playing cards and Kreutz and Adler was along with

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me, and they picked out this man Metz and this man Stif,
as two of the men that had assaulted him and robbed him.

And they said there was another man. And from there
we took the two to the station house; and that was all, that
night.

Q Did Metz or Stif say anything there, in your presence?

A Metz and Stif, they didn't know anything about it.

Q They said they didn't know anything about it?

A No, sir; they didn't know anything.

CROSS EXAMINATION BY MR. FELDMAN:

Q So that you didn't arrest this man, did you, Officer?

A I arrested him, on the 21st of February.

Q How long after was that? A About three weeks.

Q And how did you come to arrest him? A Well, I got
information that he was implicated in it. I got information,
that morning, that he had something to do with it, a man of
that name.

Q A man of that name? A Yes, sir. And I went to 150
Second street at three o'clock that morning, January 31st.

Q And there you saw him? A No, sir; but I got told
that no man lived there.

Q That no man lived there? A Of that name.

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Q Are you sure of that? A That is what I got told.

Q On what floor was that? A On the rear building, around the top floor; the third or fourth floor up.

Q The rear house? A Yes, sir.

Q Well, do you know that he does live there? A Well, I believe that he lives there with his wife, since I found out on the 21st of February.

Q Well, didn't you find out that no man of that name lives there? A That is what I found out on January 31st.

Q Well, I ask you, of your own knowledge whether he lives there or not? A Yes, sir; I know that now, that he does live there.

Q And so he does live at 160 Second street, on the second or third floor? A Yes, sir.

Q And all that you knew about the third man, Officer, was he was implicated? What do you mean by that? A Well, he was the third; there were three men robbed this man.

Q Now, you didn't know that there was three men robbing or sitting in the saloon, of your own knowledge?

THE COURT: Oh, now, Mr. Feldman, that is unnecessary.

MR. O'CONNOR: The People rest.

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MR. FELDMAN: At this point, I ask your Honor to direct the jury to acquit because the prosecution has failed to establish a case.

THE COURT: Motion denied.

MR. FELDMAN : Exception.

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THE DEFENSE.

A N D R E W P A W L K A, the defendant, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. FELDMAN:

Q Now, Pawlka, try to speak English. You can speak
English. How long are you in this country? A Over 11 or
12 years.

Q In this country? A Yes, sir.

Q In America? A Yes, sir.

Q What do you do for a living? A I work in the shops.

Q Are you a marriedman? A Yes, sir.

Q Where do you live? A 160 Second street.

Q With whom do you live there? A With the wife
and my brother-in-law.

Q Your wife is in Court? A My wife and brother-in-law
lives in the house.

Q Is your wife in Court? A Yes, sir; she is over there
(indicating).

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Q You remember, Pawlka, the night of the 30th of January, that you were in the saloon in Third street? Do you remember that night? A Yes, sir; I remember that night.

Q Now, what time did you enter the saloon?

A I went into the saloon about two or three o'clock in the afternoon.

Q Did you go in there all alone? A I went in there alone.

Q Now, tell us who you met in the saloon? A I met Mike Metz and John Stif.

Q You mean the two men who were here on the witness stand? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, how long do you know Mike Metz and John Stiff?

A I know Mike Metz for about two or three weeks, and I know John Stif about three or four days.

Q Where do you come from? A Who? Me?

Q Yes. Where were you born? A Oh, in Austria.

Q And where does Metz and Stif come from? A I don't know where they come from.

Q Can you speak the same language that they do?

A Yes; I can speak the same language.

BY THE COURT:

Q Are you from Galicia, Austria? A No; from Hungary.

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BY MR. FELDMAN:

Q You are a Hungarian? A Yes, sir.

Q Now, when you met them in the saloon, what took place? A I came in there, and I got four dollars coming off John Bernowsky, the saloon keeper. I was playing the music there, Saturday night, and Sunday. I got four dollars off him, and I treated him.

Q And you met Stif and Metz in there?

A Yes, sir.

Q And what took place there when you met them? What did you do? A I went in there, and I took my pay, what was coming to me.

Q And then you sat down? A Yes, sir; I sat down. And I treated them and we sat down and was playing cards.

Q And you had some drinks? A Yes, sir.

Q Now, when was the first time you left the saloon, to go into the back yard? A When was the first time?

Q Yes. A I don't know what time it was.

Q You don't remember that? A No. But I know I went the first man in there, and I got through with that, and I was want to go home, to get my supper and go to bed when---

Q Now, one moment. When you left the saloon to go into the yard, you left your friends in the saloon; is that

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right? A Yes, sir.

Q And then you went out to the yard? A Yes, sir.

Q Now then what took place? A I went in there. When I was through I was coming back again.

Q Now, how far is the toilet from the saloon?

A Oh, about 10 or 11 feet from the saloon.

Q About 10 or 11 feet from the saloon? A Yes, sir.

Q And there is a yard between? A Yes, sir; a hall.

Q A hall? A Yes, sir.

Q So go on, now, and tell us? A And then Mr. Adler went out, and Mike Metz got right after him, and he came after him, and he got him and he knocked him down, and he got on top of him.

Q Now, where were you at the time, as you stated, that Mike Metz hit Adler? A I was by the hall. I was trying to get out, but I can't. They was on the road there.

Q Did you know that Mike Metz will hit Adler? A No; I didn't know anything about it.

Q Did you speak in the saloon with Mike Metz and Stif, about Adler? A No; I didn't speak to them about that.

Q So that you mean to say that the first time you knew anything about it was when you saw Mike Metz actually hitting Adler; is that right? A I don't understand.

(The question is repeated through the Official Interpreter).

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THE WITNESS: And I don't know whether he wanted to take anything off of him or not, but what I saw is I saw him hit him.

Q Now, when you saw him hitting the man Adler, what did you do? What did you say? A I told him to leave him go.

Q Told him what? A To leave him go.

Q To let him go? A Yes, sir.

Q And, after the man was hit, what became of him? What became of Metz? What became of Adler? A Oh, Adler fell down.

Q And Metz? A And Metz bent down on him.

Q Yes. A And, when he was on top of him, Adler was hollering, and then he hit him again here, between the eyes (illustrating).

Q And now I ask you, also, did you hit him?

A No, sir.

Q Did you go through his pockets? A No.

Q By putting in your hands in his pockets? A No.

Q Were you near the man? How far were you away from him at the time you saw him laying on the ground? A About three or four feet.

Q About three or four feet? A Yes, sir.

Q Now, you say you picked up a knife; is that right?

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A I picked up a knife, when they got out.

Q When they got out? A Yes, sir.

Q You picked up a knife? A Yes, sir.

Q Where did you pick it up? A In the yard.

Q Now, after you picked up the knife, where did you go? A I went out.

Q Where? A Outside on the street.

Q Who did you meet there? A I meet John Stif and Mike Metz.

Q Now, tell us what took place then, after you met them there, on the street? A And then they asked me if I got any money yet, and I said, "Yes, I have got money yet. What do youse want"? And they said "Then treat us", and I said, "All right. Come on. I will treat." And we went into the saloon corner of Avenue B, Bernawsky's place; and we drink there; and then we went down to the restaurant.

Q Did you see, at the time Adler was struck by Metz, Stif there? A No, sir.

Q Stif wasn't there at all? A No, sir.

Q And, when you came out on the street, you met Stif? A I met him on the street.

Q You met him on the street? A Yes, sir.

Q And that was the second time you saw Stif since you left the saloon? A Yes, sir.

Q Now, after you met, where did you go?

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A We went in on Avenue B on the Third street corner.

Q Did you say anything about what you saw?

A No, sir.

Q Did they say anything to you? A No, sir. Stif asked me, "What was the matter? What was it?" And I said, "I don't know. Mike hit him there. I found the knife on the ground. I don't know what he hit him for."

Q And where were you arrested? A On Second street.

Q When? A I don't know when. The 23rd or something like that.

Q After Metz and Stif were arrested? A Yes, sir; three weeks after.

Q Three weeks afterwards? A Yes, sir.

Q And where were you during the three weeks? A Well, I was there.

Q In the house? A Yes, sir.

Q At 160 East Second street? A Yes, sir.

Q Where did you hear the first time that they were arrested and charged with robbery? A I don't understand.

(The question is repeated through the Official Interpreter).

A The same evening. When they were arrested, I was sitting there, but they didn't recognize me, they didn't identify me. I was sitting there. They didn't take me.

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Q Now, I ask you again---

BY THE COURT:

Q Were you sitting in the cafe when the officer came in and arrested these other two men? A What is that?

(The question is repeated through the Official Interpreter).

A Yes, sir.

MR. FELDMAN: Turn around there, Andrew. I would like to see the curls that you have there; that is all.

CROSS EXAMINATION BY MR. O'CONNOR:

Q And you turned your head aside, when the police officer came in to arrest Metz and Stif; didn't you turn your face to the wall?

MR. FELDMAN: Objected to.

A No; I was looking at them straight, what they were doing.

THE COURT: Objection overruled. He has answered the question.

MR. FELDMAN: Now don't be so quick. Don't answer when I object.

BY MR. O'CONNOR:

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Q You were in that saloon from three o'clock in the afternoon until 12 o'clock midnight? A Yes, sir.

Q What were you doing in the saloon allday? A I was playing.

Q Playing what? A Cards.

Q What was the game? A Pinochle.

Q You didn't work in the factory or shop; did you?
A Not that time.

Q How long is it since you had worked in a factory or shop? A About two weeks.

Q About two weeks? A Yes, sir.

Q You said something about playing in the saloons. What did you play? A Oh, we didn't play for money.

Q No. What music did you play? A Oh, there was a wedding on Sunday, and I played music on Saturday night.

Q And do you play for money there? A Yes, sir; for money.

Q What do you play? A I play a fiddle.

Q Well, what is your business? A I am a working man.

Q What kind of a working man? A Any kind of a laborer.

Q Well, what did you work at in the shop? What shop did you work in? A I used to work in a lumber yard.

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Q Well, where in a lumber yard? You talk English?

A Greenpoint, on Cherry street. I worked in Greenpoint for a whole year.

Q Well, a lumber yard isn't a shop. When did you work in a lumber yard in Greenpoint? A About a year ago.

Q And where is this lumber yard in Greenpoint? A Up in Pine street, I think. I don't know the street.

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

Q And you worked there a whole year? A Well, I didn't look at the street. It was close from the dock.

Q Let me see your hands. Did you ever handle lumber?

A Sure.

Q And you don't know the name of the boss, and the name of the street in which you handle lumber in Greenpoint for a year? A I didn't ask him his name.

Q You didn't ask the boss his name? A No, sir.

Q Now, Stif and Metz were together with you in this saloon? A Yes, sir.

Q And Stif and Metz and you were talking together?

A Yes, sir.

Q Adler went out of the saloon first, didn't he?

A No.

Q Who went out first? A I went out first.

Q You went out first? A Yes, sir.

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Q And then Adler went out? A Yes, sir.

Q And you were in the yard when Adler came out? A Yes, sir.

Q And then Mike Metz came out? A Yes, sir.

Q And, when you and Adler and Metz were in the yard together, then it was that Metz punched Adler? A Adler came out and Metz came right after him, and knocked him right down, as soon as he got out of the hall.

Q And he held his hand; didn't he? A Yes, sir.

Q And had one hand on Adler's mouth, and you went through him; didn't you? A No, sir.

Q Now, where did you get that knife from?

A I found it on the ground.

Q On what ground? A In the yard.

Q There was no light in the yard? A Yes; there was light.

Q Where was the light? A There was the light in the saloon.

Q But you were out near the toilet? A Well, there was light in the hall, too.

Q Who held the door open in the hall, to let the light come into the yard? A I don't know.

Q Wasn't Stif standing by the door?

MR. FELDMAN: Objected to.

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THE COURT: Objection overruled.

MR. FELDMAN: Exception.

A I don't know if he was standing there, or not.

Q Was there a light that was coming from that hallway there? A Yes, sir.

Q The light in the saloon was in the front of the saloon; wasn't it? A Yes, sir.

Q Stif stood by the door leading to the hallway?

A I don't know. I haven't seen him.

Q And you and Metz had this man Adler in the yard?

MR. FELDMAN: Objected to.

THE COURT: Objection overruled.

MR. FELDMAN: Exception.

THE COURT: It is proper cross examination.

BY MR. O'CONNOR:

Q Did you hear the dog? A No, sir.

Q Did you hear Stif chase the dog out of the yard, when he was coming in? A No, I didn't.

Q Well, you didn't go to the saloon after you picked up the knife; did you? A No, sir.

Q But you walked out through the hall into the street?

A Yes, sir.

Q What did you do with the knife? A I threw it away.

Q Where did you throw it away? A In the street.

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Q Why didn't you give it to Adler? He was standing right there?

MR. FELDMAN: Objected to. He says the knife was found after they left.

THE COURT: Objection overruled.

MR. FELDMAN: Exception.

BY MR. O'CONNOR:

Q The man was lying on the ground, wasn't he, Mr. Adler? A Yes.

Q Did you go over to him to give him a lift and put Metz away from him from beating him? A When Metz got up, he got up himself.

Q And you walked out with Metz? A No.

Q And you met Stif on the street? A Yes.

Q And you all went down to the saloon? A Yes.

Q And you went into the toilet in the saloon; didn't you? A No.

Q Well, who had the pocket book? A Well, I had my own pocket book.

Q And you showed your own pocket book to Stif and to Metz, in the saloon? A Well, he was searching me--- did I took any money off him.

Q And so you showed them an empty pocketbook? A Yes, sir; it was my own pocketbook.

Q And what did you do with the money that you took out,

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out of the pocket book when you went into the toilet?

A Money?

Q Yes. A I didn't have no money at all.

Q Well, where did you get the money to pay for the drinks? A Well, I had four dollars coming from Mr. Bernowsky, where I was playing music for two nights.

Q And you had that money from Saturday night? A No. On Monday morning, I got that when I came into the saloon.

Q And how much did you get? A Four dollars.

Q And how much did you spend from two o'clock in the afternoon until midnight? A About one dollar.

Q Only one dollar? A Yes, sir; sure.

Q And, after showing them the empty pocketbook, you took them around to a cafe, didn't you? A Yes, sir.

Q And you paid for the lunch there, didn't you?

A No, sir; and I wasn't going to pay for it either.

Q And you weren't going to pay for it either? A No, sir.

Q And you didn't give Mike Metz a cent of the money?

A No, sir; and I didn't took any there.

Q And you didn't give him the knife? A No, sir.

Q Now, what had you done with the pocket book that you had there? A I have got it.

Q Where is it? A Home.

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Q And did you find any pocket book on this man Adler?

A No.

Q Did you find any in the yard? A No.

Q Did you see Adler-- did you see Metz take anything from him? A No; I didn't see whether he takes anything or not.

BY THE COURT:

Q Now, at the time that Stif and Metz were arrested, you say that you were in the cafe with them; don't you?

A Yes, sir.

Q Now, you had been in their company all day, hadn't you? A Where?

Q In the saloon playing cards with them? A Yes, sir.

Q And you knew that Metz was the one that hit Adler?

A Yes, sir.

Q Was Stif in the yard at the time that Metz hit Adler?

A No, sir; I didn't see him.

Q Then why didn't you tell the Officer, at the time he arrested these two men, that Stif was not in the yard, to do and had nothing at all with it? A I didn't know what was happening.

Q You did not know what was happening? A No, sir.

Q And you did not interfere at all? A No, sir.

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Q And you allowed these two men to be arrested, and you sat there; is that right? A Well, I ain't got nothing to say, if I didn't do anything.

RE DIRECT EXAMINATION BY MR. FELDMAN:

Q Did you know why they were arrested, for what they were arrested? A No; I didn't know.

MR. FELDMAN: The Defense rests.

MR. O'CONNOR: The People rest.

MR. FELDMAN: I renew my motion, if your Honor please.

THE COURT: Motion denied.

MR. FELDMAN: Exception.

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THE COURT'S CHARGE.

Gentlemen of the Jury,

When one or more persons, acting in concert, assault a person, and take from his person property, immaterial as to the value, immaterial as to the amount, if the assault is committed for the purpose of taking from the person of the individual assaulted property, that is robbery in the first degree.

There appears to be no dispute, in this case, that the complainant was upon the premises in which the defendant and these two other men were. There is no question that they were there, that night, and it is for you to determine what they did there.

If you believe, gentlemen of the jury, the story of this defendant, that he stood by, and saw the complainant assaulted, and that, after the assault, he and the person who committed the assault left the

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premises, and that he had nothing at all to do with it, and did not know what it was done for, or what brought it about, if you believe that story, of course, your verdict must be that of not guilty.

Or, if there be a reasonable doubt in the case, you must give the defendant the benefit of the doubt, and find the defendant not guilty.

But if you believe, gentlemen of the jury, that this defendant, acting in concert with Stif and Metz, on the night in question, assaulted the complainant, immaterial as to who received the proceeds of the crime, immaterial as to who struck the blow, immaterial as to who took the money or property from the pocket or pockets of the complainant, immaterial as to who stood upon guard, if the three men were acting in concert, your verdict ought to be that of guilty of robbery in the first degree.

In determining the question of the guilt or innocence of this defendant, you have a right and ought to consider the hour of the night, the neighborhood, the conduct of the defendant at the time; his admissions or statements as to the hours that he spent in the saloon in the company of the other two men; and his conduct subsequent to the assault; and the taking of the property; and you can best determine, gentlemen of the jury,

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from your own experience in every day life, and the experience that you have gained in the jury box, who is telling the truth.

You may retire.

(The jury returned to the Court room at two o'clock).

THE COURT:

Gentlemen of the Jury,

I have received your message. As I understand it, you want to be instructed by me, "Whether actions on the attacked must be proved to make the defendant an accomplice." Is that what you mean?

THE FOREMAN: Yes, sir.

THE COURT: I want to say, in answer to your question, gentlemen, that, if you determine, from the evidence and the entire circumstances of the case, that the defendant was acting in concert with the others, even though he did not put his hand upon the complainant or did not touch him; or, if you believe that the three men were acting together, at the time, your verdict ought to be that of guilty as charged in the indictment.

Now, have I made it plain, gentlemen?

It is immaterial as to who put his hand on

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the person of the complainant, or took his money or property.
If they were acting together, aiding, abetting, assisting
or counselling each other, one is as guilty as the other.

Now, do you understand the answer to your
question?

THE FOREMAN: Yes, sir.

THE COURT: Then you may retire.

(The jury found the defendant Guilty of
Robbery in the First Degree).

MR. FELDMAN: At this time, I would ask your
Honor to set aside the verdict and grant a new trial on the
ground that the verdict is against the evidence, and
against the weight of evidence, and on all the other
grounds in the Code.

THE COURT: Motion denied.

MR. FELDMAN: Exception.

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