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**CASE # 256**

COURT OF GENERAL SESSIONS OF THE PEACE  
COUNTY OF NEW YORK  
PART II

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The People	:	Before
vs.	:	HON. MARTIN T. McMAHON, J.,
George Summers.	:	and a Jury.

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Indicted for Robbery in the first degree.

Indictment filed February 26th, 1901.

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Tried, New York, March 13th, &c., 1901.

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APPEARANCES:

For The People,

Assistant District Attorney Gerald Hull Gray;

For the Defense,

James W. McLaughlin, Esq.

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Frank S. Beard,  
Official Stenographer.

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THE PEOPLE'S CASE.

M A R Y O F, a witness called on behalf of The People, being duly sworn, testified as follows:

MR. McLAUGHLIN: I ask, if your Honor please, that the other witnesses be excluded.

THE COURT: They may be excluded.

D i r e c t E x a m i n a t i o n :

BY MR. GRAY:

Q Mrs. Of, where do you live? A I live at 892 Prospect avenue.

Q What number? A 892 Prospect avenue.

Q 892 Prospect avenue? A Yes, sir.

Q Will you speak as loud as you can, madam? A Yes, sir.

Q And that is in the City of New York and Borough of the Bronx? A Yes, sir; and the Borough of the Bronx.

Q And the Borough of the Bronx? A Yes, sir.

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

Q And about how high up? What numerical street? What numbered street? Near what street? A It is near One Hundred and Sixty-first street.

Q It is near One Hundred and Sixty-first street? A Yes, sir.

Q And do you live there with your husband? A I do.

Q And what is your husband's business? A He has got a framing business.

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Q A framing business? A Yes, sir, downtown.

Q Downtown? A Yes, sir.

Q And do you remember the 2d day of February? A Yes, sir.

Q Did he go away, your husband, on the morning of that day?

A Yes, sir, he did.

MR. McLOUGHLIN: Oh, I object. I ask that the District Attorney be directed to let the witness testify, and not lead her directly to the answer.

THE COURT: The question is leading.

MR. GRAY: Yes, sir. I will not lead her.

BY MR. GRAY:

Q Now, describe that house to the jury, will you? How many stories it has, and where the door is, and so on. A It is two stories high, and there is quite a high stoop in front, because the street has been taken down. It used to be lower.

Q Now, what door do you go in and out of? A By the front door.

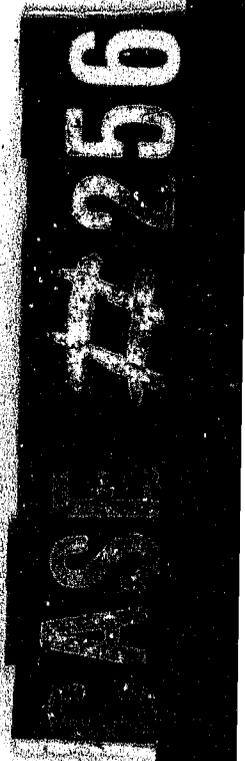
Q Yes. And where is that? Is that at the top of the stoop? A Yes, sir.

Q And there is also a door in the basement? A Yes, sir.

Q Where is that door? A That is on the side.

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

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



Q Now, that leads out to the ground, does it? A It does,  
and goes down to the cellar.

Q And goes down to the cellar? A Yes, sir.

Q In other words, the side door on the north side, when you  
step out, you do not go down any steps? A Yes, sir, down  
to the cellar.

Q Yes. A But it is even with the ground.

Q But it is even with the ground? A Yes.

Q Now, do you remember about twelve o'clock noon, between  
twelve and one o'clock on the day of the 2d of February?

A I do.

Q 1901? A Yes, sir.

Q Now, state what happened and what attracted your attention  
there at that time. A I expected my grocer to send home  
my groceries which I had purchased before, Saturday morning,  
and the groceries always come through the side door, and at  
about twelve o'clock I heard the footsteps on the board walk  
which led to the back door, and I went down to open the  
cellar door for the grocer -- I thought it was the grocer --  
and when I had the door opened I saw a strange man. He had  
a book in his hand and a pencil, and asked me if I had any  
groceries to order. I said no.

Q Yes. A And he asked me if my husband was home. I said  
"What has my husband to do with the groceries?" and he said,

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"Doesn't your husband keep a framing business?" Does he sell any pictures?" I said, "No."

Q Yes. A And I was ready to close my door when a second man rushed down and said, "Let's go to business," and four men followed, and he took my by the throat.

Q Who took you by the throat? A It is this defendant.

Q Yes. This man sitting here (indicating)? A Yes, sir; this man it is (indicating).

Q Now, he said, "Let's go to business"? A He said it.

Q The defendant? A Yes, sir.

Q And who was it that you say rushed down? A It was him also.

Q The defendant? A Yes, sir.

Q Now, then, when the defendant rushed down and took you by the throat was there anybody else with him? A The four men followed.

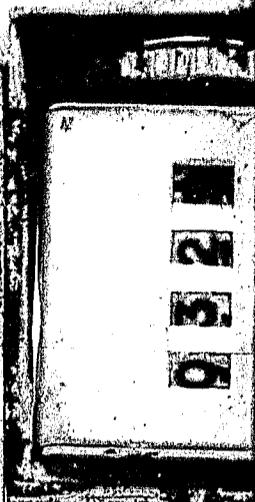
Q Yes. Four men followed him? A Yes, sir.

Q Now, go on and state what happened. A And he held me down on the floor.

Q The defendant? A The defendant.

Q You must say the defendant when you mean the defendant.

A And gagged me and covered my eyes and hit me with a sandbag and bound my hands and my feet. And I tried to scream, but I could not very loud, and whenever it was too



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loud for him he said, the defendant said, "Shut up or I will kill you," and he said it more than half a dozen times, and every time he said it he hit me with the sandbag, three or four times. And then those which had been up in the house ----

Q Well, now, one minute. Had you ever seen the defendant before that time, when he took you by the throat? A I had, the day before.

Q You had, the day before? A Yes, sir.

Q Now, under what circumstances had you seen the defendant the day before? A He rang the bell at the front door, and I opened the door.

Q Yes. A And he asked me if Mr. Of lived there.

Q Yes. A And I said yes. And the defendant asked me, "Does he keep a framing business?" and I said, "Yes," and he wanted to know if there was a vacancy in Mr. Of's place in that business, and I said, "If you want to know that, you have to go down to the business place. It is 88 Eighth street. I don't know anything about it." And he went away again, and I looked at him very sharp, and I even went to the parlor window to get a good look at him until he was down the step. And the step is round and no one can run down. It takes time to go down, and he had to walk slowly and I had a good look at him.

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Q That was the first time you saw him? A Yes, sir, that was the first time.

Q And did he ask you anything about your husband's habits, when he came home, or anything of that kind? A He did not.

Q Did you tell him? A I did not.

Q Now, on this day in question about two o'clock, when he seized you by the throat first, what did the other men do at that time? A I had a glance at the three, but my eyes were covered and I was thrown down. I could not see them any more.

Q Oh, who covered your eyes, who covered them? A The defendant.

Q Yes. And before he covered them and as he rushed towards you and as he took you by the throat did you have plenty of time to see him? A I had. If a man takes me by the throat I have a good chance to look in his face, and so I did.

Q Yes. Now, what did you hear him say to you or to the other men, besides "Let's get to business"? A He takes my purse out of my pocket, and he said, "Here is her purse."

Q Was this after your eyes were covered? A Yes, sir.

Q While he held you? A While he held me.

Q And what else did you hear him say? A After the men had

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gone into the house and come down he ordered them to walk out of the front door.

Q What did he say? What were the words he used? A He said, "Go out of the front door."

Q Yes. And what did he say to them, if anything, before they went in the house? A I didn't hear him say anything. But between that time one came down and asked for the keys.

Q How did they ask? A They only said "Keys."

Q And what if anything did the defendant say? A The defendant put his hand in my pocket and gave them my keys and also my purse, and he said, "Here is her purse."

Q Now, your keys up to that time had been in your pocket? A They had been in my pocket.

Q Now, was anything done about tying you or gagging you at that time? A Oh, yes.

Q Well, state that, please. A I was gagged right after he had thrown me down, and bound.

Q Well, who did this binding? A The defendant did it.

Q And was he alone, or with somebody else? A The one who came to the door and asked me for the grocery order, he was with him.

Q Now, he was with him? A Yes, sir.

Q And he was with him right along, was he? A Right along.

Q Now what, if you know, did they gag you with? A It felt

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like a cushion which was ready, but it must have been a few handkerchiefs, which were found in the cellar, which I succeeded in pulling out of my mouth.

Q Now, what did they do about tying you -- explain that more fully -- the defendant and these other men who came to the door when you opened it -- explain how they tied you.

A They tied me with a rope by the feet and some strings around the arms, and after they had all done the defendant said, "She'll loosen that," and he bound me once more. He put a leather strap around my legs and tightened the strings around my arms also.

Q Go on. A And then the defendant said, "Let's take her up to bed" -- after he had ordered the three thieves out of the front door -- "Let's take her up to bed," and two men took me and carried me from the back cellar to the front cellar and threw me into the coal bin, which was the darkest part of my cellar.

Q On the coal? A Yes, sir. My head was down on the ground and my body was up on the coal.

Q Now, did you hear the steps of the men as they went away again? A Yes, sir.

Q Did this defendant after -- was he one of the people who put you in the coal cellar? A He was, decidedly.

Q And what did he say as he left, if anything? What was the

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last thing he said, if you remember? A The last thing he said was, "Let's take her up to bed," and there was no more said after that.

Q And then they carried you into the coal bin? A Yes, sir, they carried me into the coal bin, and they left.

Q Now, all this time you had been in the front basement cellar? A In the back.

Q In the back? A Yes, sir.

Q Oh, yes. You had been in the back cellar? A Yes, sir.

Q Now, after you were left in the coal bin what did you do then? A I was sure that they had left, and I tried and made a desperate effort to free myself.

Q Yes. A And I tried to sit up, but I tumbled over again, and then the first thing I got that stuff out of my mouth, and I screamed as loud as I could for help, but no one came.

Q Yes. A And I worked all the while to get myself free from the strings and straps, and finally I succeeded, and I staggered out, first, to the back fence and screamed for help and no one came. And then I went out of the front door and went to the street.

Q Now, one minute. Before you got to the street. Now, in the coal bin you say you finally succeeded in pulling these things out of your mouth? A Yes, sir.

Q And where did you throw them? Right there in the coal bin?

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A Yes, sir, I left them right there in the coal bin.

Q I show you these handkerchiefs and ask you if you recognize them? A These are the ones.

Q That one? A That was the one.

Q That was stuffed in your mouth? A That was stuffed in my mouth.

MR. McLOUGHLIN: I object to the leading questions of the District Attorney.

THE COURT: They are leading. Ask her if she recognizes the handkerchiefs

THE WITNESS: I do.

BY MR. GRAY:

Q Now, tell all that you know about it, about them? A They were brought to me and shown to me, and there was nothing of the kind in my cellar before.

Q Now, look at this strap and this bit of cord. Did you ever see those before? A Only when they were shown to me after the assault.

Q Who showed them to you? A The officers.

Q Now, I show you this apron. Did you ever see it before?

A That was my apron that they tore off me.

Q Who tore it off you? A The defendant.

Q Did you have that apron on your body when he came in?

A I had.

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Q Where did you next see it after that? A When the officers showed it to me.

Q When the officers showed it to you? A Yes, sir.

Q Yes. Now, when you got out, at the front door, what did you do then? A I screamed as loud as I could for help, and I went to the next door, to Bennett's house.

Q Yes. How far is that? A And pressed the button.

Q Yes. How far is that? A It might be thirty feet.

Q Yes. There is a vacant lot between your house and theirs?

A Yes, sir. And I pressed the button, and they didn't seem to hear it, the bell didn't work, and I went back again, and when I was down in the street the colored girl came after me.

Q Yes. Her name is ---- A Priscilla Burrill.

Q Now, did you have some talk with this colored girl then? You told her, did you? A Yes, sir, I stated what happened to me.

Q Never mind what the conversation was. Now, what did the colored girl do with you? A She took me by the hand and led me up to my house, to the front door.

Q Yes. Now, before you got to the other house, when you say you went out of the front door and were calling for help, did you see any men?

MR. McLOUGHLIN: When was this?

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MR. GRAY: When she first came out of the door, when she sent for the police.

BY MR. GRAY:

Q Mrs. Of, I show you this bag. Did you ever see one like that, similar in all respects, before? A I saw this bag. The officer showed that to me. And it never was in my house before.

Q Never? A No.

Q This was shown to you by the officers? A Yes, sir. They found it in the cellar.

Q Now, when you went out of the front door did you call for help? A I did.

Q Did anybody come? A No, not until I saw the colored girl.

Q Go on. And I also saw about the same time a man across the street.

Q Yes. A And I called him to come and help me.

Q Yes. A And he went for the police.

Q Yes. Now, when you got out and met Eriscilla Burrill did anything remain on your hands of these things? A Yes, sir.

Q What was it? A On my left arm there were those cords left, strings.

Q And what did she do, if anything? A I think she took them off.

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- Q And what, if anything, was the condition of your face and throat then? A She saw it.
- Q Well, all right. I will prove it by her. Now, after you got back to the house what happened then? A Very shortly after that the officers came and I felt protected.
- Q Yes. And did a doctor come at any time? A He did.
- Q When? A Soon after. The officers sent for him.
- Q And he is here this morning? A Yes, sir, he is.
- Q And how long did you stay in bed? A I stayed in my room two weeks.
- Q Now, when did you -- this was the 2d of February, was it not? A Yes, sir.
- Q What day of the week was it? A On a Saturday.
- Q On a Saturday? A Yes, sir.
- Q The 2d of February? A Yes, sir.
- Q Now, when was the first day that you saw the defendant again? A It was on the 18th of February.
- Q It was on the 18th of February? A Yes, sir.
- Q And where was it? A It was in the court room on One Hundred and Fifty-eighth street and Third avenue.
- Q It was in the court room on One Hundred and Fifty-eighth street and Third avenue? A Yes, sir.
- Q Now, what happened there? A I identified the defendant as my assailant.

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Q Yes. What did he say? Were there other men there at the time?

MR. McLOUGHLIN: I object to that, your Honor, as leading, particularly leading.

THE COURT: Oh, no, that is not leading, to ask if there were other men there at the time.

MR. McLOUGHLIN: But he asked who were there.

THE COURT: Ask her if there were any other men there first. Establish that first.

BY MR. GRAY:

Q Were there any other men there when you picked him out?

A Yes, sir, there were, but I saw my man soon and I did not look for others.

BY THE COURT:

Q No, never mind that. You were asked if there were other people in the room at the time. A Yes, sir, there were

BY MR. GRAY:

Q Now, what did he say when you picked him out? A He didn't say anything. I told the officers that this was my man.

Q Have you ever seen any of your property again? A I have not.

Q Now, after you came back to the house you went upstairs, did you? A I did not.

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Q Where did you go? A I remained in the dining room until towards night. I was quite exhausted and could not go up nor down.

Q And after that, some time after that, did you go through your house and investigate, look around? A Not the same day.

Q What since that time have you missed from your house, if anything? A Yes, sir.

Q What did you miss? A There was my -- my husband's overcoat was taken and a few gold pins of mine were taken.

MR. McLOUGHLIN: I object to this, if your Honor please.

THE COURT: I will allow it.

MR. McLOUGHLIN: Exception.

A (Continued) And a new pair of gloves that I had just bought were gone.

BY MR. GRAY:

Q Yes. A And everything was opened with the keys, and everything was searched.

Q Now, was there any money in your purse at the time?

A There were eight dollars and forty odd cents in my purse.

Q When this defendant took it out of your pocket? A Yes, sir, when this defendant took it out of my pocket.

Cross Examination:

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BY MR. McLOUGHLIN:

Q Now, madam, you said to the learned District Attorney that you identified this man in the police court? A I did so.

Q Eh? A I did so.

Q You did not go up to him and identify him in the court, did you? Right up in front of him? You were seated in the seats, weren't you? A I was.

Q Yes. And as he passed down the aisle you told the police officer who was with you that he was the man? A It was not so. I was sitting quite near him.

Q I know. But you were seated in the court? A He was sitting inside of the gate.

Q He was seated inside of the rail? A Yes, sir.

Q And you were outside of the rail? A Yes, sir, but very near.

Q Yes. But you did not go over to him and say he was the man, that is, right in front of him? You told the officer—  
A I was not asked to do that.

Q You did not do it?

THE COURT: She says that she did not do it.

BY THE COURT:

Q You did not do it? Why do you not answer? A I did not do it.

BY MR. McLOUGHLIN: Q Who told you to go to the police court?

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A An officer did.

Q One of the officers in the case? A No.

Q Which one of them? Do you remember his name? A I don't remember his name. It was an officer who came on horseback.

Q An horseback officer? A Yes, sir.

Q Did he tell you that he had the man in the police court?

A He said there was some man down in the police court, and I should go and identify him if I could.

Q Is he the officer who was seated in the seats talking to you? A He did not talk to me.

Q No, no. You told somebody in the police court, when this man was seated inside of the railing, that he was the man. Was that the horseback officer? A It was not.

Q It was another officer? A Yes, sir.

Q Do you remember his name? A I do not. There were more officers.

Q Yes. Was he an officer in citizen's clothes? A Yes, sir. Am I permitted to say something?

MR. GRAY: No. Wait a minute.

THE COURT: You will have ample opportunity.

BY MR. McLAUGHLIN:

Q Now, just as soon as you got to the court whom did you see first there? This officer in plain clothes? A No, sir.

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I saw lots of people.

- Q Oh, I know. But the first person that you spoke to outside of your own people -- I mean, in regard to officers, whom did you speak to first? This officer in plain clothes? A No; there were some officers, and more than one spoke to me, and they told me there was some man, and I should go and see if I could identify my man, my assailant.

MR. McLAUGHLIN: I would like to have Detectives Kelly and O'Brien brought in, your Honor, two of the detectives in this case.

THE COURT: They may be brought in.

BY MR. McLAUGHLIN:

- Q Was either one of those officers the man that spoke to you (indicating the two officers)? A This man, this tall man (indicating).

- Q The taller man? A Yes, sir.

MR. McLAUGHLIN: That is Officer Kelly. The other officer is O'Brien.

BY MR. McLAUGHLIN:

- Q At this time was the defendant inside of the railing?

A He was.

- Q Or was he brought in afterwards? A He was there.

- Q He was there? A Yes, sir.

- Q Did you see Kelly and O'Brien take this man handcuffed down?

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through the court room? A I did not.

Q Did you see Kelly or O'Brien take the man inside of the rail? A No. When I saw the defendant first he was inside of the rail.

Q But was not Kelly or O'Brien with him at that time? A I don't remember that.

Q Will you swear that they were not with him? A They were there in the room, in the court room.

Q No, no. I mean right near this defendant. Didn't they go right from this defendant over to you and talk to you?

A Yes, they did.

Q Didn't you see Kelly and O'Brien take the nippers off?

A I couldn't see that. There were too many people.

Q But you saw the two of them with the defendant? You saw Kelly and O'Brien with the defendant? A I saw Kelly outside of the rail.

Q But you saw him inside of the rail, too? A I saw him inside also.

Q And then they came right over to you from inside of the rail? A Not right away. I don't think they were -- they were not sure whether I was there or not.

Q Well, didn't they seat themselves each on one side of you?

A Yes, after that.

Q And begin to talk to you? A And talked to me.

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Q Didn't they point towards this defendant? A No. They asked me which one, and I told them this was the defendant, this was my man.

Q And there were only two there? A I guess so.

Q And both were manacled together? Both had irons on them, handcuffs? A I think so.

Q You saw the handcuffs? A I did not.

Q But you saw them tied together? A I did not, neither.

Q Well, then, why did you say just this minute that they were?  
A Not tied together.

THE COURT: She said, "I think so", that is, that they had handcuffs on.

BY MR. McLAUGHLIN:

Q You had seen Kelly, Detective Kelly, and O'Brien before you spoke to them in the police court? A Yes, sir. At least, I remember Kelly. I don't remember O'Brien.

Q They were both at your house? A They were at my house.

Q Did you see the two of them when they walked down the aisle in the police court? You had seen them before? A When they took the defendant away I was there. I was in court yet.

Q I know. But I want to get you to testify to when they brought him in.

THE COURT: Well, she has testified three times already

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that he was there when she came in, inside of the rail. She has testified to that three times.

MR. McLAUGHLIN: I did not so understand it.

THE COURT: Well, I did, decidedly. She said that he was inside of the rail, sitting down, when she came in. She said so three times. But if you are in any doubt, ask her again.

BY MR. McLAUGHLIN:

Q Was he within the rail when you came in? A Yes, sir.

Q Sitting down? A Yes, sir.

Q Two men together? A Yes, sir.

Q Did you know that two men were to be there? A I did not.

Q The detectives did not tell you that there were two men to be there? A They did not.

Q Madam -----

MR. McLAUGHLIN: Let me see the complaint, please.

MR. GRAY: There is no formal complaint. It was upon information furnished to the Grand Jury.

MR. McLAUGHLIN: Oh, no complaint in the police court?

MR. GRAY: No. There is of another charge.

MR. McLAUGHLIN: No. But we are trying this case now. You know that I am not talking about that.

MR. GRAY: I understood you to ask if there was any complaint against the defendant.

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BY MR. McLAUGHLIN:

Q You made no complaint in the police court? A I did not.

Q You were not brought up before the judge? A I was not.

Q Do you remember the judge who was there, the judge who was seated there, do you remember his name?

BY THE COURT:

Q Do you remember the name of the judge? A I don't remember.

Q Madam, when you came into the court room and sat down had you recognized this defendant before either of the detectives spoke to you? Had you recognized the defendant in your mind before they asked you? A In my mind?

Q Yes. A Oh, yes, I had.

BY MR. McLAUGHLIN:

Q How many other people did you say were concerned in this case? A How do you mean? How many?

Q How many more people were there at the time that you say this robbery took place? How many more men? A There were five altogether.

Q Five altogether? A Yes, sir.

Q Do you remember of seeing the faces of any of the others?

A The one who spoke to me by the door. I remember his face.

Q What kind of a looking man was he? A He had sandy whis-

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kers, and he was about five feet four ----

Q What is that? A About five feet four in height.

Q A very small man? A No. That is not a very small man, is it?

THE COURT: Well, that is a small sized man and a good sized woman.

BY MR. McLAUGHLIN:

Q Did he have whiskers? A No, sir, only a mustache, I mean.

Q Then you mean a mustache instead of whiskers? A Yes, sir.

Q Do you remember what kind of a hat he wore? I mean the short man? A He wore a black derby.

Q A black derby? A Yes, sir.

Q Do you remember any of the other people? A I do not. I only had one glance at them. I only remember that one of them had a bare face.

Q A smooth face? A A smooth face, yes.

Q Was he a big man, or a little man? A Rather small, little.

Q And that is the only one you remember? A Oh, the defendant.

Q Outside of the defendant? A Outside of the defendant.

Q And you remember the one with the red mustache? A Yes, sir.

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Q And that is three that you remember of the five? A Yes, sir. But, amongst the three, I could not be sure, because I had only one glance at them.

Q Then you would not be sure of anybody but the defendant?

A The defendant I am very sure of.

Q Then you would not be sure of anybody but the defendant?

A The other one I would not know about, if I saw him.

Q But you say that you had only one glance? A The one that took me by the throat.

Q The man with the red mustache? A Yes, sir. I would recognize him if I saw him again.

Q Now, do you know anything that the man with the red mustache did during the occurrence, what part he took in it? Can you remember? A He held me down, but the defendant did all the talking.

Q He did all the talking? A Yes, sir. And he hit me with the sandbag.

Q With the sandbag? A Yes, sir.

Q You can't tell what anybody else did except what he did?

THE COURT: Well, we cannot go all over this again. I think you have finished, counsellor.

MR. McLAUGHLIN: Oh, I think I have not, your Honor, in an important case like this.

THE COURT: Oh, I thought you had finished. That is

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why I examined. You sat down and I thought that was the end of it.

MR. McLAUGHLIN: Oh, no, sir, not at all.

THE COURT: Then proceed.

BY MR. McLAUGHLIN:

Q You were very much excited, naturally very much excited?

A I am not.

Q But you were at that time? A Yes, sir, I was scared very much.

Q This took place on February 2d? A On February 2d.

Q And the identification took place on what date? A On the 18th.

Q Of ---- A Of February.

Q Of the same month? A Yes, sir.

Q Now, didn't you, when you told the officer that you thought this was the man -- did you say that you thought it was, or that you were positive? A I told him that this was the man.

Q "That is the man, positively"? A "That is the man, positively."

Q And was that your very language? A It was.

Q Now, tell me the language that the officer used, if you can.

A It was Mr. Kelly.

Q Yes. What did he say to you? A The other man -- I

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don't remember the name.

Q Yes. Mr. Kelly said what to you, as nearly as you can remember? A He asked me if I was sure that that was my man, and I said, "Yes. This is my man."

Q Now, what did the other officer say who was seated on the other side of you? A There was an officer who wanted me to make an affidavit right away, but it seemed that there was no chance.

Q But what did that officer say to you? A He wrote down my name and address, and finally they said they could not bring it before the judge that day.

Q Was your husband with you in the police court? A He was not.

Q Did he have any conversation with you at any time in regard to this case? A Why, the day it happened he was telephoned for.

Q And on the day that this man was arrested didn't he talk with you about the case? A He did not.

Q He did not make any assertion about the defendant being the man that assaulted you? A Why, no. He had not seen him.

Q But didn't he say that to you, or did he? A He did not.

Q He never made any assertion about the officers having the defendant, the one that assaulted you? A He did not.

BY THE COURT: Q Now, madam, you said a little while ago that

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you would like to say something, asked if you were permitted to say something. Now, you may say what you wish.

A There had been three prisoners brought to my house, before I identified the defendant.

Q Three prisoners were brought to your house before that?

A Yes, sir. But I could not identify them.

BY MR. McLAUGHLIN:

Q Brought to you by these same detectives? A Yes, sir.

MR. GRAY: Now, I am going to ask permission to call the physician, a little out of order, your Honor, because he wishes to get back to his patients.

THE COURT: Very well.

J O H N R I E G E L M A N, a witness called on behalf of

The People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. GRAY:

Q Now, Dr. Riegelman, you are a physician practicing in the City and County of New York? A I am.

Q Is the complainant here, Mrs. Of, one of your patients?

A She has been.

Q Did you visit her on the 2d of February? A I did.

Q Now, how did you do it? How did you happen to do it?

A Well, I was driving home, and had just about reached

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my residence ----

Q Where do you live, by the way, doctor? A 852 East One Hundred and Sixty-first street.

Q 852 East One Hundred and Sixty-first street? A Yes, sir. And that is within three blocks of where this occurred. And just as I was about to turn into my stable a mounted officer, Maidhoff, I believe is his name, was standing there at my stable with his horse, and he said, "Doc, won't you go right down ----"

MR. McLAUGHLIN: That is objected to. I object to this whole line of testimony, as immaterial.

THE COURT: Allowed.

MR. McLAUGHLIN: Exception.

BY THE COURT:

Q Well, you went down? A Yes, sir; at the request of the officer. And I found Mrs. Of in her dining room.

MR. McLAUGHLIN: I object to this entire line of examination on the part of the doctor.

BY MR. McLAUGHLIN:

Q When was this, doctor? A On the 2d of February, about half past twelve o'clock, noon.

THE COURT: Allowed.

MR. McLAUGHLIN: Exception.

BY MR. GRAY: Q Go on, doctor. A And there were several

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other persons in the room, and I believe the colored girl from next door was in the room, and the officer went in with me.

Q Yes. A And she was lying on a couch in the dining room and her face was covered with blood. She had two scalp wounds on the left temple, both of them right down to the bone; one about an inch long and the other one somewhat shorter.

Q Yes. A The whole left side of her head and face was very much contused and swollen. It was -- there was an extravasation, that is, the blood had escaped from the little blood vessels under the skin and discolored the whole side of her face and head. The left eye was closed -- she could not see out of it at all -- and the right eye was in a pretty bad way, too.

Q Yes. A And the character of the wound was such as one would suppose to have been produced by some sort of a blunt instrument. That is all I could say about it.

Q You visited her after that, I suppose? A I treated her subsequently until she was well.

Q Now, what room did you see her in? A I saw her in the dining room of her house.

Q That is on the ---- A On the first floor, the floor above the basement.

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Q And were there any articles there that you remember at the time? A Well, I wouldn't like to say anything about that. I really don't remember.

Q You don't remember that? A No, sir.

Q And that is all that you know about the case? A That is all that I know about the case.

C r o s s   E x a m i n a t i o n :   N o n e.

P R I S C I L L A   B U R R I L L, a witness called on behalf of The People, being duly sworn, testified as follows:

D i r e c t   E x a m i n a t i o n :

BY MR. GRAY:

Q Priscilla Burrill, where do you live? A Prospect avenue.

Q What number? A 898.

Q 898 Prospect avenue? A Yes, sir.

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

Q And the Borough of the Bronx? A Yes, sir.

Q What? A Yes, sir.

Q Whom do you live with there? A Mrs. H. Bennett.

Q Now, do you know Mrs. Of? A Yes, sir.

Q Where does she live? A In the next door.

Q Next door to you? A Yes, sir.

Q And how far is your house from her house? A Well, about two hundred yards, I think.

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- Q You think it is as much as that? A Yes, sir.
- Q Now, do you remember the 2d day of February? A Yes, sir.
- Q Saturday? A Yes, sir.
- Q Did you see Mrs. Of about noon that day? A No, sir.
- Q What time was it you saw her, do you think? A About half past eleven.
- Q About half past eleven? A Yes, sir.
- Q Well, that is about noon. Now, state what it was that attracted your attention when you did see her. You were working where? In the kitchen? A No, sir; I was in the dining room.
- Q You were in the dining room? A Yes, sir.
- Q Go on and state, please. You were in the dining room?
- A I was in the dining room about that time, and I spied through the front door, and I saw somebody going down from the front stoop, and they were going out to the gate, and I opened the front door and went out and stood about five minutes. I thought at first it was a crazy person, she was carrying on so.
- Q Mrs. Of, was it? A Yes, sir.
- Q Well, was it your next door neighbor? A Yes, sir. And I stood there about five minutes before I could discover who it was.
- Q Well, what was her condition? A Well, she was all full

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of blood when I saw her, and her eye was all swollen up and shut up, and when I went to her I said, "Oh, Mrs. Of, what is the matter?" and she says to me, she says, "I have been terribly injured by a thief."

MR. McLAUGHLIN: I object to all this, if your Honor please.

THE COURT: I sustain the objection. You need not state what she said, but just what she did or what you did. Leave the rest out.

A (Continued) Well, I carried her over to her house and untied the cord from around her arm.

BY MR. GRAY:

Q Well, were there some cords around her arm? A The cord was still around her arm.

Q Which arm? A Her left arm.

Q Now, I show you these cords. Do you recognize any of these cords? A Yes, sir.

Q Which one do you recognize? A Well, it was a cord just like that (indicating).

Q Which was around her left arm? A Yes, sir.

Q Now, you show the jury how it was around her arm, as well as you can. Just in general. Just show how it was on your arm. A It was tied around twice, and I picked it loose (illustrating).

- Q And was it tied at the wrist, the way you have it on your arm now? A Yes, sir, that is the way (illustrating).
- Q And was that the only thing you saw on her at the time? A And her apron was around her neck, a piece of her apron.
- Q Now, I show you this bit of apron, and ask you if you ever saw that before? A Yes, sir.
- Q Where was it? A Well, it was tied around her neck, and that other piece was in the cellar (indicating).
- Q Well, was this other piece around her neck? A No, sir. That was not around her neck.
- Q Where was this? A That was into the cellar.
- Q Well, did you ever see this piece before (indicating another piece)? A No, sir, I never saw that before.
- Q Well, when you say a piece was about her neck, do you mean a piece of material similar to this (indicating)? A Like to the smaller piece. And it was tied around her neck.
- Q Like the smaller piece, and it was tied around her neck? A Yes, sir.
- Q Now, how was it tied around her neck? A Well, it was tied around this way (illustrating).
- Q Yes. Was it tied in a hard knot? A Tied in a hard knot.
- Q And did you take that off? A Yes, sir.

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- Q How did you get it off? A I picked it loose.
- Q You picked it loose? A Yes, sir.
- Q Now, was there anything else on her when you saw her in your yard at the time except the cord around her wrist and the piece of apron around her neck? A No, sir.
- Q And what did you do? A I took her to her house and stayed with her until the policeman came.
- Q And how long was that? A About ten minutes.
- Q And where was she during that time? A She was laying on the sofa.
- Q In what room? A In her bedroom.
- Q That is up one flight, is it, from the basement? A Yes, sir.
- Q Now, what else did you do? A Well, I went with the detectives, when they came, all through the house.
- Q You went with the detectives? A Yes, sir.
- Q All through the house? A Yes, sir.
- Q When they came whereabouts in the house did you go? A Well, we went up the stairs, in the first place.
- Q Yes, go on. Tell all that you did.
- BY THE COURT:
- Q What did you find there? A Well, the first thing we found was we found the keys was thrown on a bed where the man had taken them from her.

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BY MR. GRAY:

Q Yes. A And all through the drawers was all ramshackled, and everything thrown out on the floor.

Q Yes. Go on. A And in every room it was torn all to pieces, except one place, and that was the closet, and that was not unlocked at all.

Q And where else did you go in the house? A And then we went down into the cellar.

Q Yes. A Where it was first done at.

Q Yes. And what did you see in the cellar? What part did you go into? A Well, we found some handkerchiefs down there.

BY THE COURT:

Q Some handkerchiefs? A Yes, sir.

Q And what else? A Well, that is all we found. And afterwards a strap was found down there.

BY MR. GRAY:

Q Well, were you present then? A No, sir, I was not.

Q Now, but when you were there was anything found besides the handkerchiefs? Cords, or anything besides the handkerchiefs? A A piece of apron.

Q A piece of apron? A Yes, sir.

Q A piece like this, was it (indicating)? A Yes, sir.

Q And where was that? In what part of the cellar? A It

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was in by the coal bin. It lay in by the coal bin.

Q And where were the handkerchiefs that you saw? A They were laying at the door.

Q Of what? A The cellar.

Q Now, I show you these handkerchiefs, and ask you if you ever saw those before? A Yes, sir.

Q Where did you see them? A At the door.

Q Lying at the door of the cellar? A Yes, sir.

Q And who was with you when you got them? A The detectives.

Q The detectives? A Yes, sir.

Q And they took them in your presence? A Yes, sir.

Q Did you ever see this cord before (indicating)? A No, sir. Just only one piece.

Q Did you ever see this article which I show you before (indicating a salt bag)? A Yes, sir.

Q Where was that? A That was lying right near the bench at the cellar door.

Q At the cellar door? A Yes, sir.

Q And what was its condition when you saw it? A Well, it had blood on it, and it was torn like that (illustrating).

Q Well, it had blood on it, and it was torn like that (illustrating)? A Yes, sir.

Q Was it empty, as you see it now? A Yes, sir.

Q Who were these officers that were with you? Do you know

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their names, the detectives? A No, sir. I didn't ask them their names.

Q You have seen them here this morning? A Yes, sir.

Q Now, have you told me everything that you remember about it?

A Yes, sir.

C R O S S E x a m i n a t i o n : None.

THE TENTH JUROR: Is this basement level with the street?

MR. GRAY: It is level with the street.

BY THE COURT:

Q Wait a minute. You say the basement is level with the street, that is, where the coal is? A No, sir, not level with the street. It is a little lower. You have to climb down into it to go up.

Q But I mean there is a pretty high stoop, is there not?

A Yes, sir, from the street.

Q And then the cellar is a little below the level of the street, you think? A Yes, sir.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess for one hour.)

AFTER RECESS.

E D W A R D J. D O D I N, a witness called on behalf of

The People, being duly sworn, testified as follows:

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## D i r e c t   E x a m i n a t i o n :

BY MR. GRAY:

- Q Mr. Dodin, what is your business?    A    A student in the  
New York College of Dentistry.
- Q And where do you live, sir?    A    801 Prospect avenue.
- Q And that is in the vicinity of the premises at 892 Prospect  
avenue, in the Borough of the Bronx?    A    Yes, sir, across  
the way.
- Q Do you know the complainant, Mrs. Of?    A    Yes, sir.
- Q By sight?    A    Not then I did not know her by sight, but  
now I do.
- Q Do you recall the 2d of February, 1901?    A    Yes, sir.
- Q Do you recall that day?    A    Yes, sir.
- Q On or about noon of that day were you at or near the prem-  
ises of Mrs. Of, at 892 Prospect avenue?    A    Yes, sir.
- Q What attracted your attention there?    A    Well, I was  
coming home from college that Saturday, and I noticed a  
woman across the street, trying to draw the attention of an  
Italian, and so I stopped a while ---
- Q One moment, please, Mr. Dodin.    What time was this?
- A    Between twelve and one.
- Q And you were coming then from your college?    A    Yes, sir.
- Q And that got out at twelve o'clock, was it?    A    Well, on  
Saturdays we have no college.    I was only down there on a

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little business.

Q Was the woman that you saw Mrs. Of, the complainant here?

A Yes, sir.

Q Where did you see her? A In the gateway of her own residence.

Q In the gateway of her own residence? A Yes, sir.

Q What was she doing when you saw her? A Well, she was holding her hands to her head (illustrating), and she signaled to me to cross the street.

Q And did you? A Yes, sir.

Q And you had some talk with her then? A Yes, sir. She told me what happened, and then ----

Q No. Never mind what she said. What did you do after she told you something? A I went for an officer.

Q And whom did you get? A Well, I got the officer. I forget his name.

Q Well, was he a mounted officer? A He was a mounted officer.

Q Was his name Officer Maidhoff, do you think? A I don't know his name.

Q And did you accompany him to the premises? A No, sir: I stood outside.

Q And you did not go in yourself? A No, sir.

Q And was there anything to attract your attention at the

time -- were you near enough to Mrs. Off? A I was right near the gate.

Q How did she look then? A Well, one of her eyes was closed, and she was bruised about the face, and her hands were tied.

Q One of her eyes was closed and she was bruised about the face and her hands were tied? A Yes, sir.

Q What were her hands tied with? Tied with what? A With a kind of a heavy cord or string.

Q With a kind of a heavy cord or string? A Yes, sir.

Q And you did not do anything with her? A No, sir.

Q But just went for a police officer? A Yes, sir.

C r o s s E x a m i n a t i o n : None.

P E T E R M A I D H O F F, a witness called on behalf of The People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

B Y M R . G R A Y :

Q Officer Maidhoff, are you attached to the Municipal Police Force of the City and County of New York? A Yes, sir.

Q And what duty were you assigned to on the 2d of February, 1901? A Mounted patrol duty.

Q Mounted patrol duty? A Yes, sir.

Q Do you know a man by the name of Edward J. Dodin? A Yes.

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sir.

Q Did you see him on that day? A Yes, sir.

Q Where? A At One Hundred and Sixty-second street and Westchester avenue.

Q At One Hundred and Sixty-second street and Westchester avenue? A Yes, sir.

Q And that is in the Borough of the Bronx? A Yes, sir.

Q And how far from the premises 892 Prospect avenue? A About two blocks.

Q And did he tell you something then? A Yes, sir.

Q In consequence of what he told you what did you do? A I went right to the place.

Q What place? A 892 Prospect avenue. He told me that there had been a robbery -----

MR. McLAUGHLIN: Objected to.

THE COURT: Objection sustained.

BY MR. GRAY:

Q One moment. Don't tell that. Were the premises that you went to the premises of Mrs. Mary Of, the complainant here? A Yes, sir.

Q And what did you do when you got there? A I gave my horse to Dodin to hold.

Q Yes. A And I went in. When I got there there was a colored lady leading Mrs. Of into the house.

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Q Have you seen her here this morning? A Yes, sir.

Q And is she Priscilla Burrill, who testified here this morning? A Yes, sir.

Q Go on. A And when I got inside I asked the lady, Mrs. Of, whether she lived there -- I didn't know who she was at the time -- and she said yes, and she said ----

Q Well, never mind the conversation with Mrs. Of then. But you had some conversation with her, didn't you, with Mrs. Of? A No, sir, not her.

Q Didn't she tell you anything?

BY THE COURT:

Q You said you had a talk with her? A Oh, yes, sir, inside of the house.

Q Well, do not tell the conversation. What did you do?

A I asked her how this thing happened.

BY MR. GRAY:

Q Well, what did you do after she told you something?

A What did I do?

Q Yes.

THE COURT: You cannot give what she told you, because the defendant was not present, but you can tell what you did and what you saw and how she looked.

A Well, I seen that she had been assaulted. I went to work and asked her who done this, and she told me that there

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had been ----

MR. GRAY: Never mind what she told you.

THE COURT: You cannot give any conversation that took place, but you can tell what you saw.

THE WITNESS: Oh, just how I seen her?

BY MR. GRAY:

Q How did she look when you saw her? A Well, she had a very black eye, a contusion of the left eye, and there was also two gashes on the left side of her head, and she had part of an apron tied around her neck.

Q Well, let me show you this apron. Does that resemble ----

A That is it.

Q Well, did she have a cloth similar to that around her neck?

A Yes, sir. That is all she had around her neck; similar to that.

Q That is all she had around her neck, similar to that?

A Yes, sir.

Q Anything else on her body that you noticed, or around her body? A No, sir.

Q And did you examine her wrists at all? A I didnot.

Q You did not? A No, sir.

Q All right. Well, what else was there that attracted your attention to her, what else? A Well, she told me that she had been ----



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Q No, never mind.

THE COURT: Never mind.

BY MR. GRAY:

Q Well, what did you do? A Well, then I went to work and I wanted to call up the ambulance, and she didn't want no ambulance, but she wanted her doctor, and I asked her where her doctor was, and it was too far away, and I went to call up Dr. Riegelman.

Q The gentleman who testified here this morning? A Yes, sir. And, before I left for the doctor, I took a look around the place to see if the drawers around the place had been tampered with.

Q How far did you go into the house? A Just one flight up from the basement.

Q And Mrs. Of accompanied you into the house, did she?

A Yes, sir.

Q Into what room did she accompany you? A The same room in the first floor.

Q Now, state what was in the rooms you visited? A All that I seen was the drawers, and they were pulled out, out of the bureaus, and everything looked upside down, as if they had been disturbed.

Q The contents overturned? A Yes, sir.

Q Did you visit the basement or cellar? A No, sir. But

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I wrote out a little report, and my relief was just coming out at the time, and I told him to go there and take care of her while I went to the doctor and made a report at the station house.

Q And did you subsequently make a report at the station house?

A Yes, sir.

Q At that same hour? A Yes, sir.

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

Q Of your own knowledge? A Yes, sir, of my own knowledge.

Only that when I went to the station house the three detectives were sent right up there.

Q And their names were? A Everett, Foster and Gerity.

Q Yes. A And Foster was the one that identified this

Q Well, never mind that. Don't state anything that you did not see or that you don't know of your own knowledge. You were not present, were you? A No, sir.

C r o s s   E x a m i n a t i o n :   N o n e .

J O H N   F O S T E R, a witness called on behalf of The People, being duly sworn, testified as follows:

D i r e c t   E x a m i n a t i o n :

B Y M R. G R A Y:

Q Officer Foster, are you an officer of the Municipal Police Force of the City and County of New York? A Yes, sir.

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I am.

- Q To what duty were you assigned on the 2d day of February, 1901? A I was detailed for special duty in the Thirty-sixth Precinct, assigned to investigate an assault and robbery that was committed at 892 Prospect avenue.
- Q Did you visit those premises on that day? A Yes, sir.
- Q Whose premises were they? A Mrs. Of's, I believe.
- Q And what time did you get there? A Between one and 1.30 P. M.
- Q And did you go with anybody else, or alone? A Yes, sir; with Officers Everett and Gerity.
- Q Yes. Well, state what you did. A Well, when we arrived at the premises of Mrs. Of we met Dr. Riegelman, in attendance upon Mrs. Of, and after the doctor had left we questioned Mrs. Of, how the assault was committed.
- Q Yes. A She said ----
- Q Never mind what she said. What did you do after you had this talk with her? A We made an investigation of the premises.
- Q Yes. You went through what rooms? A We went through every room, and went to the cellar.
- Q State the condition of the rooms, as you found them. A We found the bureau drawers all pulled out, and the stuff all over the floor, and the wardrobes, the clothes all

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pushed around, and some laying on the floor and boxes rummaged and upset, and the contents all tossed around.

Q Did you find any keys anywhere? A No, sir. There were a few keys sticking in the doors.

Q And you went into the cellar? A Yes.

Q Whereabouts? A We went towards the coal bin, and saw two handkerchiefs.

Q Yes. A And picked up one of them. And on one of the silk handkerchiefs there was an initial "M" on it. And we saw some rope, or cord, at least.

Q Well, one moment. I show you this handkerchief, and ask you if you ever saw that before?

A This is one of the handkerchiefs (indicating).

Q One of the handkerchiefs? A Yes, sir.

Q Where did you pick that up? A This was in the cellar.

Q Whereabouts in the cellar? A At the coal bin.

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Q Now, I show you this handkerchief and ask you if you ever saw that before. A Yes, sir. This is another one of the handkerchiefs. That is the one with the letter "M" on it.

Q And where did you find that handkerchief? A In the cellar.

Q Near where? A Near the coal bin. That one I found also in the coal bin (indicating.)

Q I show you another handkerchief. A Yes, sir. That's one of the three.

Q And you picked up the handkerchiefs and took them to the station house? A Officer Everett did.

Q And you showed them to---? A The other officers all saw them.

MR. GREY: Now, I offer these handkerchiefs in evidence against the defendant.

MR. McLAUGHLIN: No objection.

MR. GREY: And I will tie them all together, and I ask that the three handkerchiefs be marked People's Exhibit 1.

(They are marked People's Exhibit 1.)

BY MR. GREY:

Q Now, what else did you find, if anything?

A I found some cord down there.

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Q Yes, where. A In the cellar, at the coal bin.

Q Well, I show you this bit of cord, which I have in my left hand, and ask you if you ever saw that before. A Well, that has a resemblance to the cord that was there, and it was all in a bunch.

Q Where? A In the cellar, at the coal bin.

Q In the cellar, at the coal bin? A Yes, sir.

Q And this (indicating another piece of cord)? A That was also there, near where we found the handkerchiefs.

MR. GREY: It is offered in evidence.

MR. McLAUGHLIN: No objection.

(It is marked People's Exhibit 2.)

BY MR. GREY:

Q Now, did you find any other cord? A No, sir; I didn't take notice to any other cord.

Q Or were you there when any other cord was found by anybody?

A No, sir; I was not.

Q Now, I show you this strap and ask you if you ever saw that before. A Yes, sir; that was in the cellar, near the table in the cellar.

Q How near the coal bin? A About twenty-five feet.

MR. GREY: It is offered in evidence.

MR. McLAUGHLIN: No objection.

(It is marked People's Exhibit 3.)

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BY MR. GREY:

Q I show you this bag (indicating a salt bag.) A Yes, sir.

Q Where was that? A That was laying at a table, as you go into the rear door into the apartment.

Q In the basement? A Yes, sir. And was half empty, only a little salt in it.

Q It had a little salt in it at the time? A Yes, sir.

Q And how much---hold that up---how much of the capacity of this bag was filled with salt at the time that you found it? A Well, it was filled up to about there (indicating.)

Q You indicate about halfway? A Yes, sir.

Q Were these spots on it at the time? A Yes, sir; they were on it at the time.

Q Was the tear in it at the time? A Yes, sir; it was broke.

Q And how about the contents of the bag, were they on the floor by the side of the bag? A It was laying on the floor broke, and the salt was spilled on the floor, and part on the table.

Q And filled up to there (indicating)? A Yes, sir.

MR. GREY: It is offered in evidence.

MR. McLAUGHLIN: No objection.

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(It is marked People's Exhibit 4.)

BY MR. GREY:

Q Now, is that all you know about it? A Well, I went up--- after finding that stuff there, I went up and interviewed Mrs. Of, and asked if she could give any description of the men.

Q Yes, and after that what did you do? A We went immediate-ly to the station house and reported, and went out on the case.

Q Yes, and after that what did you do? A Well, I brought two men to Mrs. Of's house to see if she could identify them, answering somewhat to the description that she gave, and she said no, that was not the men.

Q And when after that did you see the defendant? A I saw him on the morning of the 18th of February.

Q Where? A In the station house, 36th precinct.

Q And under what circumstances? A I was getting ready to go out on a tour of patrol, and one of the men in the station house said---

MR. McLAUGHLIN: Objected to. No, no.

BY MR. GREY:

Q No. What did you see? A I saw the defendant standing there, and I walked up to Officer O'Brien and I said---

Q Never mind what you said. What did you do? A I spoke

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to Officer O'Brien.

Q And what did you do? A I told Officer O'Brien---

Q Never mind what you told him. What did you do?

A I went out on patrol.

Q And that is all you know about it? A That's all.

Q Well, at that time was the complaining witness there, do you know? A No, sir.

Q Mary Of? A She was not.

Q She was not? A No, sir.

Q Were you there at any time when the complainant was there and the defendant was there? A No, sir; I was not.

Q Now, have you told me everything that you can about the case? A Yes, sir.

Cross Examination: None.

BY THE COURT:

Q One moment, officer. When you spoke to Officer O'Brien in the station house was the defendant there? A He was standing there, yes.

Q Did he hear what you said to Officer O'Brien? A I don't think he did, your Honor.

-----

T H O M A S E V E R E T T, a witness called on behalf of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n:

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BY MR. GREY:

Q Officer Everett, are you attached to the Municipal Police Force of the City and County of New York? A Yes, sir.

Q To what duty were you assigned on February 2nd, 1901?

A On Saturday, February 2nd, 1901, about 1.20 in the afternoon I was sent to Mrs. Of's house in Prospect Avenue.

Q Yes, 896 Prospect Avenue? A Yes, sir.

Q Yes. A To investigate a case of robbery and assault.

Q Yes. A When I got to her residence Dr. Riegelman was there attending to her wounds.

Q And who went with you? A Officer Foster and Gerrity.

Q Yes. And what did you find? A I found her suffering from two black eyes and contusions of the head and face.

Q Yes. And did you have some talk with her? A Yes, sir.

Q And what did you do then? A I got the description of the three men whom she saw.

Q Yes. And what did you do then? Did you visit the house?

A Yes, sir; went through the house.

Q Describe to the jury what you did and what you found.

A I went down to the cellar, and we found one of those handkerchiefs and some cord, and a salt bag--we found the two handkerchiefs.

Q Well, let me show you People's Exhibit 1, these three handkerchiefs tied together, and describe anything that you

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know about either of the three handkerchiefs. A This handkerchief here (indicating), Mrs. Of told me was in her mouth.

Q Never mind what she said to you. Where did you find it?

A In the cellar.

Q Who was with you? A Officer Foster and Gerrity.

Q And did you ever see that handkerchief before (indicating)?

A Yes, sir; it was found in the same place.

Q And this handkerchief (indicating), where was it found?

A It was found in the cellar. I don't know whether this was found in the rear or front.

Q Well, it was found there? A Yes, sir; the three were found in the cellar.

Q At or near the coal bin? A Yes, sir.

Q And you were with the other officers at the time?

A Yes, sir.

Q Let me show you People's Exhibit 2, these bits of cord tied together. Did you ever see those before? A Yes, sir.

Q Where did you find those? A In the cellar.

Q Whereabouts in the cellar? A Near the coal bin.

Q Were you with the other officers at the time? A Yes, sir.

Q Let me show you People's Exhibit 3. And I ask you if you ever saw that before. A Yes, sir.

Q Where?

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A In the cellar near the coal bin.

Q And you were with the other officers at the time?

A Yes, sir.

Q Now, let me show you People's Exhibit 4, and I ask you if you ever saw that before. A Yes, sir.

Q Where? A In the rear cellar alongside of the table.

Q Yes. A Laying on the cellar floor.

Q What was its condition? A It was broken and blood on it.

Q Yes. And how about its contents? A There was nothing in it.

Q Where was it? A Laying on the floor.

Q By the side of----? A It was laying on the floor alongside of an old table in the rear cellar.

Q Well? A There was a little salt in the bottom of it, and the contents of the bag, which we supposed, were spilled all over the floor.

Q On the floor? A Yes, sir. And there was particles of it over Mrs. Of's waist.

Q Let me show you this apron. Have you ever seen that before? A Yes, sir.

Q Where? A In Mrs. Of's cellar.

Q Where was it in the cellar? A Near the coal bin.

Q On the floor? A On the floor, yes. And she claimed

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that that was the apron that they put over her face.

MR. GREY: Never mind what she claimed. I offer that as People's Exhibit 5 against the defendant.

MR. McLAUGHLIN: No objection.

(It is marked People's Exhibit 5.)

BY MR. GREY:

Q Now, have you told me everything that you know about the case? A Yes, sir.

Q Well, were you present when the defendant was arrested?

A No, sir; I was not.

Q When was the first time that you saw the defendant?

A In court yesterday.

Cross Examination: None.

THE COURT: Now, Mr. District Attorney, are all these other witnesses that you were calling on these same questions on which I believe there is no dispute?

MR. GREY: No, sir. Officer Gerrity is as to the same questions, but the other officers will be as to different matters.

THE COURT: There seems to be no dispute about the condition of these premises and these articles being found. So there is no use of wasting any time now unless you have other matters to bring

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out.

MR. GREY: Oh yes, sir; I have other matters to bring out. I will not call Officer Gerrity then, sir, because he would testify to substantially the same matters. I will, however, call Officer O'Brien.

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J O H N O ' B R I E N, a witness called on behalf of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. GREY:

Q Officer O'Brien, you are attached to the Municipal Police Force of the City and County of New York? A Yes, sir.

MR. McLAUGHLIN: You had better send officer Gerrity outside. You might change your mind and call him.

MR. GREY: I will not change my mind, but he may go outside.

BY MR. GREY:

Q And to what duty were you assigned---did you assist in making the arrest of the defendant? A Yes. That is---

Q Under what circumstances was it? A Now, wait. I didn't arrest the man, not the day before, but I took him to Police Headquarters the next morning after being arrested.

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- Q Yes. That was on what day? A On the 18th.
- Q Were you present at any time in the station house at 104th Street, when the complainant, Mrs. of, was there, and this defendant was there? A Aren't you making a mistake about 104th Street?
- Q Well, I may be. Certainly I am. Well, the other station house. Were you present at any time at the station house in your precinct when the defendant was there and Mary Of, the complainant, was there? A Mrs. Of was never in the station house.
- Q Where were you together? A It was in the court room in One Hundred and Fifty-eighth Street and Third Avenue.
- Q Well now, is that the police court room there? A Yes, sir.
- Q Well, how is it divided? A Well, it is all one big room and a bar separating the judge---the place where the prisoners were arraigned and the spectators on the outside.
- Q There is a rail dividing the spectators from the prisoners and the bench? A Yes, sir.
- Q When was it that you were there with the defendant? A I was there on the 18th of February.
- Q Now, state what took place there in your presence when you were there. A We had this prisoner and another man fetched to Police Headquarters, and fetched them back up to the

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police court again in One Hundred and Fifty-eighth Street,  
and before we went down I told the----

Q Never mind what you said. A Well, the sergeant at the  
desk was sent over for to have Mrs. Of come over  
to court.

Q Yes. A I had never seen Mrs. Of before.

Q Yes. A And after we had put the prisoners inside in  
their proper place, I said to---I went out looking for Mrs.  
Of, and it appeared that nobody knew her. I didn't know  
her myself.

Q No. A But after inquiring around I finally found Mrs.  
Of and another lady together.

Q Where were they? A They were out amongst the spectat-  
ors.

Q Behind the rail? A Behind the rail.

Q Yes, go on. A Well, I said, "Mrs. Of, now you look  
amongst those people there that is inside the rail, and if  
you see anybody there that you claim assaulted you, why  
pick them out," and I sat her down in the front seat right  
near the rail.

Q Well now, don't describe all your conversation, but what  
did she do. A She said---looking them over she pointed  
out that that was the man that had assaulted her.

Q And that was all that took place there, then? Did you have

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any talk with the defendant? A What is that?

Q Did you have any talk then with the defendant? A I told him that she had picked him out as the man that had assaulted her.

Q And what did he say? A He said he was not.

Q And what other officer was there at the time with you?

A Well, there was Kelly and Henderson, and several other officers, but I couldn't say exactly whether they heard it or not, while they might have, might have been right alongside.

Q When you had the conversation with Mrs. Of was she seated?

A Yes, sir.

Q Behind the rail? A Yes, sir.

Q And what other officer was with you? A Well now, I can't say, only I know that Kelly was with me to headquarters, and we were right in there around together. There was quite a good many----

Q By Kelly you mean the officer with whom you were brought in, this morning, and asked to stand up with in court?

A Yes, the man that was brought in with me this morning.

Q By the counsel for the defendant? A Yes, sir.

C r o s s E x a m i n a t i o n :

BY MR. McLAUGHLIN:

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Q Where did you arrest the defendant? A I didn't arrest him, sir.

Q Who did arrest him? A Officer Kelly.

Q After the arrest he was taken to the station house where?

A At One Hundred and Seventy-eighth Street and Washington Avenue, the Thirty-seventh precinct.

Q What day was that? A That was on the 17th of February.

Q Was it that day or the next day that you sent for this lady, the complainant? A The next day.

Q Whom did you send? A Well now, I spoke in the station house telling them that this man looked a good deal like the description that had been given to me by Captain Wiegand, and I suppose they sent some one over. I don't know who it was, and I didn't know Mrs. Of at the time.

Q You walked in with this defendant did you into the police court? A Yes, sir.

Q And your partner Kelly walked in also? A Yes, sir. They were in front of us two going in.

Q Handcuffed? A Yes, sir.

Q With bright handcuffs? A Yes, sir.

Q And you seated the two defendants inside of the rail?

A Yes, sir.

Q And the two of you left the two defendants and walked over to this lady, did you not? A Well, I couldn't say that.

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the two of us left him, but I know that some little time after I thought of Mrs. Of and went looking for her.

Q Did you go and sit down beside her? A I don't know whether I sat down beside her or leaned over and asked her who she was when I found out that she was the lady.

Q Well, will you say that you didn't sit down beside her?

A I will not be positive about that.

Q Will you say that the other officer didn't sit down beside her? A No, sir.

Q That you were on one side and the other officer on the other side? A That I positively deny that the two of us were sitting on either side of her at any time.

THE COURT: Well, what difference does it make?

MR. McLAUGHLIN: Well, my claim is that they made the identification. When the time comes that is my claim, and it is very material.

THE COURT: Proceed.

MR. McLAUGHLIN: And I except to your Honor's remark.

THE COURT: Very well.

BY MR. McLAUGHLIN:

Q You brought these men down the aisle? A Yes, sir.

Q Handcuffed? A Yes, sir.

Q And you and your partner right behind them? A Yes, sir.

Q And you seated them within the rail? A Yes, sir; set

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them down inside of the rail.

Q And you went to this lady in the seats? A Yes, sir.

Q And had her to move nearer the rail, did you not?

A Yes, sir.

Q And seated her? A Yes, sir.

Q And then you asked her to identify somebody within the rail? A Before I fetched her over to the seat---she was an old lady, at at the time that she was----

Q I don't want any explanation.

THE COURT: Let him answer the question.

MR. McLAUGHLIN: I except to your Honor's ruling.

THE COURT: I have made no ruling, and you will not note any exception, Mr. Stenographer. I have made a direction to him to answer the question, to continue his answer.

A (continued) No, I did not.

BY MR. McLAUGHLIN:

Q Did you point out to this woman the two men within the rail?

A No, sir; I didn't. But I believe that the defendant afterwards asked me if I didn't do it. If I did do any such thing, it would be without my knowing, and I wouldn't do it at any rate.

Q And if you did do it you did it without knowing it?

A Yes, sir; and I am satisfied that I didn't do it.

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MR. McLAUGHLIN: Well, that is all.

BY THE COURT:

Q One moment, officer. Is it customary in the police court for an officer to bring in a prisoner? A Yes, sir.

Q In handcuffs? A Well, when we fetch them from Police Headquarters, your Honor.

Q That is customary? A Yes, sir.

Q Was there any departure in this case from the usual custom?

A No, sir.

MR. McLAUGHLIN: I object to the custom.

THE COURT: Your objection is overruled.

The exception will not be noted.

MR. McLAUGHLIN: I except to your Honor's remark that it will not be noted.

BY THE COURT:

Q One moment. I only want to ask you if there was any departure from the usual custom in bringing them from Headquarters as you say. A No, sir.

Q Did you know Mrs. Of was in the court room when you brought those two men into the court room? A No, sir. I never saw the woman before that day at all.

BY MR. McLAUGHLIN:

Q Was there any complaint made against this man in the police court that day? A There was, but

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Q I mean---

THE COURT: He has answered you, that there was.

MR. McLAUGHLIN: Let me see the complaint. Mr. District Attorney, let me see the complaint.

THE COURT: Now, finish your answer. You said, "There was, but---"

A The Judge said-----

MR. McLAUGHLIN: Objected to.

BY THE COURT:

Q Finish your answer. A The judge said that he was held on one case, and that was enough, and to have these people put down as witnesses, and they could go before the Grand Jury, and the Grand Jury would act accordingly.

MR. McLAUGHLIN: I object to all this, if your Honor please.

BY MR. McLAUGHLIN:

Q Then there was no complaint taken in this case?

THE COURT: He has answered it already. He said, "There was, but---" He had made the explanation now.

BY MR. McLAUGHLIN:

Q Was there any complaint made against this man in this case in that police court? A No.

Re - Direct Examination:

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BY MR. GREY:

Q When you say no, you mean that it was not written down?

A It was not written down.

Q Not reduced to writing? A No, sir.

R e - C r o s s E x a m i n a t i o n :

BY MR. McLAUGHLIN:

MR. McLAUGHLIN: Now, you must bear with me, your Honor. It is a very important case for the defendant.

THE COURT: I know it is.

BY MR. McLAUGHLIN:

Q Was the complainant ever brought before that judge to make a complaint? A Which complainant?

Q The complainant in this case? A Well, that I wouldn't say, that I wouldn't say.

BY MR. GREY:

Q Was the defendant brought before her? A I know that there was an officer in the precinct that----

MR. McLAUGHLIN: Objected to.

BY THE COURT:

Q Was this defendant discharged or held? A He was held on another complaint.

BY MR. McLAUGHLIN:

Q But he was never held on this complaint? A No, sir; but

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it was-----

Q Did you bring anybody up to this woman's house to have them identified except this defendant? A Up to what woman's house?

Q Mrs. Of's house? A I never brought anybody to her house.

BY MR. GREY:

Q Let me ask you one more question, Officer O'Brien. Roughly speaking, how many people were there inside of this railing near this desk? A Well, at least fifteen.

Q And he was one of the fifteen? A Yes, sir.

BY MR. McLAUGHLIN:

Q But were there any other persons than these two bound together with handcuffs? A There were none. And these two men weren't fastened together with handcuffs then.

Q Didn't they have handcuffs on them? A No, sir; they didn't. They were taken off when we got in and put them inside of the rail.

THE COURT: And the complainant has testified several times that she was not there when they were brought in, and that they were there when she came into the court room.

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T H O M A S F. K E L L Y, a witness called on behalf of the

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People, being duly sworn, testified as follows:

D i r e c t   E x a m i n a t i o n :

BY MR. GREY:

- Q   Officer Kelly, are you also attached to the Municipal Police Force of the City and County of New York?   A   Yes, sir.
- Q   On or about the 18th of February to what duty were you assigned?   A   On February 17th I was assigned to the citizen's clothes duty, special duty.
- Q   Now, did you arrest or assist in arresting the defendant?
- A   Yes, sir.
- Q   Where?   A   At the corner of Valentine Avenue and One Hundred and Seventy-eighth Street.
- Q   And on what day?   A   On the 17th of February, on a Sunday.
- Q   Now, what did you do after you arrested him?   A   Took him over to the station house.
- Q   And from there?   A   Well, down to the other station house where the cells were, where we keep our prisoners in the Thirty-sixth precinct.
- Q   What station house is that?   A   The Thirty-sixth precinct.
- Q   And after that what?   A   Well, we arraigned him in court the next morning, and before that we took him to police headquarters.
- Q   And on the 18th you arraigned him in court?   A   Yes, sir.

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Q Now, what took place when you arraigned him? A Well, the prisoner was in the dock where the rest of the prisoners was.

Q Well, how many? A Well, there may have been five, six or seven, I wouldn't be positive.

Q And after that what? A Well, I walked outside into the-- where the people were sitting, and Mrs. Of, as I understand her name now, was there, and she was brought there by members of the other precinct, by detectives from the other precinct.

Q Now, how long was this after you had brought him in?

A Oh, about five minutes, I should judge, about that.

Q Now, what did she do, Mrs. Of? A Well, as I can understand, she identified him there.

Q Yes.

MR. McLAUGHLIN: I object, unless he saw it, if your Honor please.

THE COURT: Objection sustained. He must give a more definite answer than that.

MR. GREY: I will withdraw the question and ask that the answer be stricken out.

MR. McLAUGHLIN: I ask that the answer be stricken out.

THE COURT: Yes, strike it out.

BY MR. GREY:

Q Now, did you have a talk with Mrs. Of?

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A Just asked her, after I found out who she was, that is all.

Q Now, did you talk to the defendant at the time? A Yes, sir; I spoke to him while the case was going on, that's all.

Q What did you say to him? A What did I say to him?

Q Yes; after Mrs. Of had told you something. A Well, we were just simply talking about the case. I told the defendant that this woman identified him.

Q And what did he say? A Well, he said that she had him wrong, that was all.

Q That she had him wrong? A Yes, sir.

Q Is that all you know about it? A That's all, yes.

C r o s s E x a m i n a t i o n :

BY MR. McLAUGHLIN:

Q Did you---were you present when Mrs. Of pointed him out?

A I was inside of the dock with the prisoner at the time that he was identified outside amongst the people; that is I was in the dock with the prisoner, talking to him at the time, and outside of the dock was Mrs. Of, with the other people. Do you understand what I mean?

Q Yes. I understand what you mean. Did you see the pointing out? A - No, sir; I paid no attention to that.

Q And you didn't see then whether the officer did any point-

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ing out? A I did not.

Q But you stayed in with the two prisoners? A I had business in there, I was drawing up my case before the magistrate.

Q And you did stay inside with the two prisoners? A I did. I had to.

Q And how long after you brought him in did you take the manacles off? A Right away.

Q The bracelets? A Right away.

Q And did you notice whether Mrs. Of was there or not at the time? A I don't know whether she was there or not at the time, I didn't notice.

Q Are you one of the two officers that took two other men up to Mrs. Of's house to identify them? A No, sir.

Q Did you send up to her house to have her come down to identify the two men that you arrested? A I did not. My partner might have done so.

Q But he didn't do so in your presence? A No, sir.

Q Was it while you were arraigning these two men that the identification took place? A Oh, no. They were in some time. They were in about four or five minutes or a little longer before I understood that there was an identification.

Q At all? A Yes, sir.

Q Did he say in your presence that the other officer had

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pointed him out to the woman? A I don't remember. He might have said so.

Q No, in your presence. A No, sir.

Q He didn't do so in your presence? A Not that I remember, no, sir.

Q Not that you remember? A No, sir.

Q Wouldn't you remember that if he had done so? A Won't you repeat that question?

Q Wouldn't you remember that if he had done so? A He said somebody had pointed him out, yes.

BY THE COURT:

Q Now, in order to clear this matter up. You talk about the arraignment of this prisoner. You helped in making the arrest? A Yes, sir.

Q It was not upon this charge upon which he is now being tried? A No, sir.

Q It was upon another charge? A Yes, sir.

BY MR. McLAUGHLIN:

Q Now, where did the arrest take place? A At the corner of Valentine Avenue and One Hundred and Seventy-eighth Street.

Q At the corner of Valentine Avenue and One Hundred and Seventy-eighth Street? A Yes, sir.

BY THE COURT:

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Q And on this other charge on which he was arrested he was then arraigned in the court? A Yes, sir.

Q And held? A Yes, sir.

BY MR. McLAUGHLIN:

Q But there was no complaint taken in this case?

A At the station house?

Q No, at the police court. A Why, there was a charge of robbery preferred against him down there.

Q No, I am talking about the same identical case.

BY THE COURT:

Q No. He is asking whether any hearing was had in this case before the magistrate. A No, sir; not that I know of.

J O H N H E N D E R S O N, a witness called on behalf of the People, after being duly sworn, testified as follows:

D-i-r-e-c-t E-x-a-m-i-n-a-t-i-o-n:

BY MR. GREY:

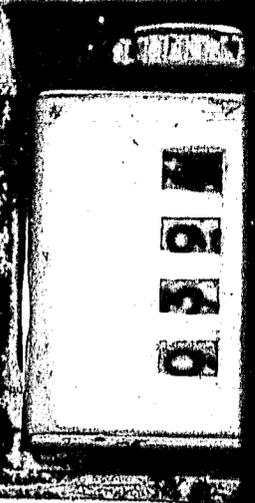
Q Officer Henderson, are you an officer attached to the Municipal Police Force of this City and County?

A Yes, sir.

Q Did you assist in the arrest of the defendant? A No, sir; I did not.

Q Were you present in the police court on the morning of the

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18th of January? A Yes, sir.

Q Of February, I should say. A Yes, sir; I was.

Q What took place in your presence regarding the identification of the defendant? A Well, Mrs. Of had already identified the prisoner before I went in.

Q Then you know nothing about it? A I went there to Mrs. Of and asked her if she had identified the man and she said yes.

Q But the identification had taken place before you got there? A Yes, sir.

C r o s s E x a m i n a t i o n :

BY MR. McLAUGHLIN:

Q Now, were you present when this man demanded an examination in the Of case? A An examination?

Q Yes. A Yes.

Q Insisted upon her coming up? A No, I didn't insist upon her coming up.

Q No, he. A Oh, no. I don't know as he did.

BY MR. GREY:

Q Did he? A I didn't hear that part of it.

BY MR. McLAUGHLIN:

Q Will you say that he did not? A He didn't insist upon her coming up?

Q Yes. A No, I didn't hear that part of it.

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Q No complaint was made by her? A She was willing to make a complaint.

Q But she didn't come inside of the rail to make a complaint?

A She was inside of the railing, yes.

Q But she didn't make it? A I arraigned her before the magistrate when the complaint had been drawn against the defendant in another matter, and the magistrate said that any evidence that I had in another case to submit it to the District Attorney, which I did.

Q But she made no complaint there? A No, sir.

R e - D i r e c t   E x a m i n a t i o n :

BY MR. GREY:

Q And that was said in the presence of the defendant?

A Yes, sir.

MR. GREY: I will rest the case, your Honor.

MR. McLAUGHLIN: One minute, officer. Come back for just one minute.

R e - C r o s s   E x a m i n a t i o n :

BY MR. McLAUGHLIN:

Q Officer, did you take any prisoners up to Mrs. Of's house to have them identified? A No, sir.

Q Do you know which one of the officers did? A No, sir; I don't.

Q Not of your own knowledge? A No, sir. I was not in the precinct at the time that this occurred. I was transferred

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there-later on.

Q Later on? A Yes, sir.

Q Now, officer, you had this man in the police court on what day, the 17th? A I didn't have him as a prisoner at all, counselor.

Q But when you were there and the Of identification took place you were there then? A Yes.

Q And wasn't he remanded to another day for examination? A Yes.

Q Did you have Mrs. Of there on that<sup>second</sup> day? A No, sir.

Q No? A No, sir.

Q Didn't Magistrate Brann, when this man insisted upon having an examination in that case, didn't Magistrate Brann ask why you didn't bring the woman into court? A No.

Q Did such a thing occur?

MR. GREY: Objected to.

THE COURT: Objection sustained. It is answered, however.

THE WITNESS: Shall I answer, your Honor?

THE COURT: No. The question has been answered.

MR. McLAUGHLIN: Do you overrule the question, your Honor?

THE COURT: The question is answered. He said no.

BY MR. McLAUGHLIN:

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Q What did occur at the time of the adjourned examination, at the time of the Of case? A I went up and explained to the magistrate. I said, "Your Honor directed me to take this man before the District Attorney and the Grand Jury and submit whatever evidence I had in the case:"

Q And then he didn't find fault with you for not bringing her there? A No, sir.

MR. GREY: I rest the case.

I have the officer here who brought the other prisoners up to the complainant's house, but as long as they were not identified, I will not call him unless the defendant wants him.

MR. McLAUGHLIN: Of course. I think you ought to call him. Who is he?

MR. GREY: Officer Baker. I will rest my case.

THE DEFENSE.

G E O R G E S U M M E R S, the defendant, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. McLAUGHLIN:

Q In your own way, Summers---talk loud enough so that the twelfth juror will hear what you say. Did you commit this outrageous assault?

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THE COURT: One moment, Mr. McLaughlin. So as to make the record clear, ask the witness who he is. Ask him, "Are you the defendant".

MR. McLAUGHLIN: I beg pardon.

BY MR. McLAUGHLIN:

Q Are you the defendant in this action? A Yes, sir.

Q Where do you reside? A I live at One Hundred and Twenty-fifth Street and Amsterdam Avenue.

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

Q Did you commit this most outrageous assault? A No, sir; I didn't.

Q Did you have anything to do with it? A No, sir.

Q Did you aid any other person by having anything to do with such an assault? A No, sir.

Q Where were you arrested? A I was arrested at the corner of Tremont Avenue and Burnside, if I ain't mistaken.

Q Now, go on and tell. Where were you arrested? A I was arrested on the corner of Tremont and Burnside Avenue, I think. It was the first time I ever was out there, and I don't know the streets very well.

THE COURT: Speak a little louder.

A (continued) It was the first time that I ever was out there where I was arrested. And they takes me to the station house and next morning to the police court,

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and in the court room the officer goes in and sits himself between two women, and he points me out to her, the complainant, and I calls the other officer's attention to it, and he calls the woman's attention to me, and I says, when he said, "That woman charged you with having held her up," I said, "Why didn't you bring her up to me, right before me?" But I was never in that neighborhood before, and I have three good witnesses to prove it, and they were here yesterday.

BY MR. McLAUGHLIN:

Q Now, how were you taken into that court? A I was taken into that court handcuffed, and walked up near the judge and sat down. Mr. O'Brien sat alongside of me, and Mr. Kelly went---well, Mr. Kelly sat alongside of me, and Mr. O'Brien went back to the woman, and he made me stand up to unloosen the handcuff.

Q And what did he open them with? A With a key; and he stood with me while the other officer went to the woman.

Q To the lady? A Yes, sir; and I saw him point right out me, and I called Kelly's attention to it, when O'Brien pointed at me.

C r o s s E x a m i n a t i o n :

BY MR. GREY:

Q Now, you were arrested on another charge, weren't you?

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A Yes, sir.

MR. McLAUGHLIN: I object to that. He was arrested.

That is sufficient.

BY MR. GREY:

Q Then you were arrested? A Yes, sir.

THE COURT: You brought out the fact that he was arrested, and the District Attorney has a right to ask him if he was arrested on this charge or not.

MR. McLAUGHLIN: I object.

THE WITNESS: I was arrested on no charge. I was arrested on suspicion.

BY THE COURT:

Q You were arrested on suspicion? A Yes, sir.

Q But on what charge were you held in the Magistrate's court, you were not held on suspicion in the Magistrate's court, were you?

MR. McLAUGHLIN: Objected to.

A No, sir; I was doing nothing. I was riding on a street car----

BY THE COURT:

Q No. We are not trying that case here. You were arrested on suspicion you say? A Yes, sir.

Q And on what charge were you held in the Magistrate's court?

A Larceny.

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MR. McLAUGHLIN: I beg your Honor's pardon. I asked him only where the arrest took place. I didn't ask him about it.

THE COURT: Well, you brought out the fact of the arrest, and it is perfectly proper for the District Attorney to show that he was not arrested on this charge.

MR. McLAUGHLIN: And I object to your Honor's examination in this direction.

THE COURT: Very well, and he states that he was arrested on suspicion.

BY MR. GREY:

Q Now, you were arraigned in the police court on the 18th of February? A Yes, sir.

Q Who told you that the lady pointed you out? A O'Brien-- no, Kelly. - O'Brien had the woman.

Q Now, you had never seen Mrs. Off before, had you? A No, no, sir; I had never seen her before.

Q And so when O'Brien went there to see Mrs. Of he was talking to somebody that you had never seen before and that you knew nothing about; isn't that so? A I never saw her before until I seen her there.

Q And you knew nothing about her until that morning?

A No, sir; but I see him point to me, and I see her

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point to me.

Q Why did you call the judge's attention to a woman that was calling to you? A O'Brien told me that she identified me. Kelly had taken my handcuffs off.

Q Now, I asked you first when was the time that he said that the woman identified you, and you said after O'Brien went over to see her. Now, do you remember that?

A No, sir; I don't.

Q Now then, why was it that you objected to the judge---to the officer talking to a woman you never had seen before?

A Why, he told me coming up on the train, "I'll poison you before I get through with you."

BY THE COURT:

Q He told you coming up on the train, "I'll poison you before I get through with you"? A Yes, sir.

BY MR. GREY:

Q And so you began to suspect something when he went over to talk with a strange woman? A Certainly I would suspect anything from him.

Q And did you say to the judge, "I suspect him of poisoning me," when he went over to talk to the woman? A No, sir. But he said that he would have another charge against me.

Q And how did you know that the woman was going to make the other charge? A I didn't know.

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Q And how did you know what kind of a charge it was? A Well, he didn't tell me until afterwards. I called the Judges attention to it.

Q And then you still remonstrated with the Judge, did you?

A I did, yes.

Q Now, tell me this: you say that you had never been in the Bronx over the Bridge before? A No, sir.

Q What is that? A I never was.

Q Do you want to say that you were never on Jerome Avenue and Burnside Avenue? A I never was.

Q On the 27th of January? A I never was there.

Q And do you mean to say that you were not in an electric car on that day? A No, sir; I never was.

Q But you live at One Hundred and Twenty-fifth Street, don't you? A Yes, sir; I lived there for two weeks.

Q And never have been over the Bridge? A No, sir.

Q And how long had you lived there? A About two weeks.

Q Where did you live before that? A Down on Second Avenue, between First and Second Street. I lived there when this crime was supposed to have been committed.

Q And what was the number at which you lived? A Well, I couldn't say very well, but it was three doors from the corner.

Q Could you tell me the name of the man that you lived with?

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A No, but it was some Jew.

Q It was some Jew? A Yes, sir.

Q You can't tell me the name of the man you lived with?

A No, sir.

Q Or the number? A No, sir.

Q How long did you live in this unknown address? A A week.

Q And where did you live before that? A Well, I was arrested before that. I had just got out of jail.

Q Yes? A Yes.

Q And how long had you been in jail when you got out?

A About two months, I guess.

Q Had you served a sentence? A No, sir.

Q Then you had been three weeks out of jail when you were arrested this time? A Well, I guess a little over that, a little more than that.

Q How much more than that? A Well, I couldn't say. You can figure it out easy. I was liberated on the 14th of January, and I was arrested on the 17th of February.

Q One month and three days? A Yes.

Q How long have you been in New York? A I have been here about six months, I suppose.

Q You used to live in Rochester? A No, sir.

Q In Chicago? A No, sir. I have been there.

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- Q You were convicted in Chicago, weren't you? A No, sir.
- Q You were convicted in Rochester, weren't you? A No, sir;  
I was not.
- Q When did you come here from Chicago? A Oh, I have been  
here about six or eight months.
- Q What have you done for a living? A I am a waiter.
- Q Where? A In a restaurant. I worked in Albany the last  
place I worked.
- Q Where? A In a restaurant as a waiter.
- Q How long did you live in Albany? A About six months.
- Q And when did you come from Albany? A About a little over  
six months ago.
- Q And you haven't had any work since then, have you? A Yes,  
sir; I was working over in Jersey City.
- Q You were working over in Jersey City? A Yes.
- Q And then when you came from Albany you went to Jersey City?  
A No, sir; I came down here to New York.
- Q And were you in jail before or after going to Jersey City?  
A Well, before. I went to jail after I came over  
here.
- Q How soon after you came from Albany did you spend your time  
in jail? A I guess it was three months.
- Q Three months? A Yes.
- Q What did you do for the three months before you went to

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jail? A Why----

Q Speak louder. A I was working.

Q As what? A As a waiter.

Q Where? A Over in Jersey City.

Q Who with? A In a restaurant.

Q What was the man's name? A With a man named Burke.

Q What is his first name? A Henry Burke.

Q How much did you get? A Four dollars a week.

Q What kind of a restaurant was it? A Well, a cheap restaurant.

Q And how long did you stay there? A About three months.

Q Who else worked with you? A Oh, there was two or three other people there.

Q Give the names of some of them. A I don't know any of them.

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

Q How long did you work there? A Three months.

Q About three months? A Yes, sir.

Q And then you worked up to the time you went to jail, did you? A I come down from there---I come over from Jersey City, and after I quit work there I got arrested.

Q And weren't you arrested in New York? A Yes, sir.

Q And went to jail in New York, didn't you? A Yes, sir.

Q And it was not on account of anything done in New Jersey,

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was it? A No, sir.

Q And how long had you been in New York before you were arrested? A Oh, not long.

Q Well, give a guess. A About two weeks, I guess.

Q About two weeks? A Yes, sir.

Q What did you do that two weeks? A Oh, I had money to live.

Q Well, where did you get it? A I worked for it.

Q Worked for it? A Yes.

Q Did you save it out of the four dollars a week?

A No, I got money from home.

Q Where is your home? A In Illinois.

Q In Illinois? A Yes, sir.

Q Chicago, is it not? A No, sir; Peoria, Illinois.

Q Where? A Peoria, Illinois.

Q Who is the Mayor of Peoria? A Why, Edwards was the last man when I was there.

Q And when were you there last? A Oh, about eight months ago.

Q About eight months ago? A Yes; eight or ten months ago.

Q And when did you go to Rochester? A I never was in Rochester.

Q When you got out of jail here, what did you do?

A What did I do?

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- Q Yes. A I went and got a room. I was sick.
- Q Where? A Down in Second Avenue.
- Q Oh, this is the place that you can't remember? A Second Avenue.
- Q And what did you live on then? A I got money from my father at home.
- Q What is his name? A Summers.
- Q First name. A Summers.
- Q First name? A George.
- Q George Summers? A Yes, sir.
- Q Do you know a man by the name of William Bohrman?
- A No, I don't.
- Q Who were you brought into court with on the morning that you were arrested? A I forget; with somebody.
- Q What was his name? A Oh, Tuohey.
- Q Tuohey? A Yes, sir.
- Q Were you arrested with him? A Well, he was arrested on the car. He was on the front and I was on the hind end of the car.
- Q Yes. And that was the car at Jerome Avenue and Burnside Avenue, was it not? A Yes, sir.
- Q Why didn't you say that you were never over the Bridge before? A Well, I was arrested over there, the day I was arrested.

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Q The day you were arrested? A Yes, sir.

Q Now, how long have you known Tuohy? A That was the first time I ever seen him. He was out there with three other men, I don't know who they were.

Q You didn't know their names? A No, sir; I didn't know any of them.

Q Then how do you know that he was there with three other men? There was a lot of people in the car, was there not?

A No, sir; there wasn't very many people. I was on the car.

Q You were on the rear platform? A Yes, sir.

Q And he was on the front platform? A Yes.

Q Then where were the three other men? A They were on the car. They must have been sitting in the car.

Q But you say you had never seen him before? A No, sir; I never saw him until he was arrested.

Q And there is the foundation then of your remark that he was there with three other men? A Well, I saw him standing around on the sidewalk with the men before the car came along.

Q Why, you were on the rear end of the car? A Yes, on the rear end.

Q And he got on the front platform of the car, you say?

A Yes. And there is where he was arrested from.

Q And then how did you see him get there? A Well, I don't

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know. That's where they said he was arrested, and he told me so himself afterwards.

Q And then how do you know that he was there with three other men? A I saw him talking with them on the sidewalk, before they got on the car.

Q How did he get on the car? A I don't know how he got on.

Q How did they get on? A I don't know. They must have been inside.

Q Well then, give us the reason for saying that he was there with three other men? A I saw him with three men talking together on the sidewalk, and I don't know whether they were on the car or not. If they were on the car it must have been inside. They were not on the back end of the platform.

Q They were ahead of you as the car came up? A Not as I know of.

Q Well, explain that to the jury if you can. A I was standing at that corner.

Q Yes. A Standing there five minutes. And him and three other men were standing there also talking and fooling around there, and when the car came along I got on, and I seen them going to get on, but I don't know whether they got on or not.

Q Now, I understand you to say that when you got on the car

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just before you got on the car where you were arrested and where Tuohy was arrested, and where you say he was with three other men, making five in all, you had been standing on the same corner together; is that right? A No, sir. I wasn't with him at all, I was by myself.

Q Oh, you were all on the corner together? A We were not on the corner together, it was in the waiting room.

Q Now, describe Tuohy.

MR. McLAUGHLIN: I object to his description.

BY MR. GREY:

Q Now, describe Tuohy.

MR. McLAUGHLIN: Objected to.

THE COURT: Allowed.

MR. McLAUGHLIN: Exception.

A Why, he is a young man, I should judge about twenty-two years old.

BY MR. GREY:

Q Yes? A Very near as tall as I am; smooth face.

Q Yes, smooth face? A Yes, sir.

Q Did you hear Mrs. Of describe the man with the smooth face that she saw with the man that robbed her? A Yes, sir.

Q Was that Tuohy? A I don't know. No. We were both handcuffed together when we were brought into the police

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court together.

Q What jail were you in?

MR. McLAUGHLIN: Objected to.

MR. GREY: Well, I am describing his location. He said he was in a jail.

A In the Tombs.

MR. McLAUGHLIN: Has he the right to go into that, your Honor?

THE COURT: He has answered the question. He says he was in the Tombs.

BY THE COURT:

Q One moment. What were you convicted of when you were in jail? A I wasn't convicted.

THE COURT: He says he was not convicted.

MR. GREY: He says he was never convicted.

THE COURT: Well, what was he doing in jail?

MR. McLAUGHLIN: I object to that.

THE COURT: Well, I want it explained for his own benefit.

THE WITNESS: I was arrested and brought up and committed for petty larceny from the person, and I was brought up and acquitted.

BY THE COURT:

Q You were acquitted? A Yes, sir.

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Q Were you ever convicted? A No, sir.

Q Of any crime? A No, sir.

BY MR. GREY:

Q What was the name that you had on the trial? A Summers.

MR. McLAUGHLIN: I object to this, I object to this, to going into this at all.

THE COURT: Objection sustained.

A Summers was my name.

BY THE SECOND JUROR:

Q Did you say that you saw Mr. Tuohy and three other men were standing on the corner? A I was standing on the corner, and he was standing there with three other men.

Q And you got on the car first? A Yes, sir.

Q And the other four men got on the car after you?

A Yes, I think so.

Q Well, but you said that you did not see them on the car?

A Well, they might have been sitting in the car. I didn't see them get on the car. I got on the platform first, on the hind end. The car come this way (illustrating.)

Q Did you see them on the car at all? A I saw Tuohy.

Q But you said you seen him in the car. A Well, the car comes down and stops. She doesn't come all the way through. When I was getting on the hind end I could see Tuohy get in

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in front.

Q And you said that you also saw the three other men get on the car? A I don't think I did, I suppose they were in the car.

BY MR. GREY:

Q Now, in answer to the juror's question---how do you know about the habits of the car if you had never been up there before? A Oh, I had been standing there for about ten minutes.

Q Then you let the other cars go by? A One car went by.

R e - D i r e c t E x a m i n a t i o n :

BY MR. McLAUGHLIN:

Q And Tuohey was the man with you in the police court?

A Yes.

Q Handcuffed with you? A Yes, sir.

Q And this lady didn't identify him as one of the men that hit her or robbed her? A No, sir. Your Honor, I have got three more witnesses to prove where I was.

MR. McLAUGHLIN: I will attend to that. I will play lawyer better than you will.

THE COURT: Counsel will attend to the summoning of your witnesses. Counsel has had more experience perhaps than you could have.

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F R A N K B A K E R, a witness called on behalf of the de-  
fense, being duly sworn, testified as follows:

MR. McLAUGHLIN: Will you examine him or I?

D i r e c t E x a m i n a t i o n:

BY MR. McLAUGHLIN:

Q You were summoned here by the People? A Yes, sir.

Q You are an officer of police? A Yes, sir.

Q You made three arrests? A I made three arrests? No,  
sir; I didn't make any arrests.

Q Somebody did? A Yes.

Q And you took the three people up to Mrs. Off? A No, sir;  
I didn't, but they were brought there, I believe.

Q Then you don't know anything about it? A Yes, I found  
some of the stuff in the cellar.

Q No, no. I want to know about the identification.

A Yes. I saw Mrs. Of identify him in the police  
court.

Q I am talking about the three men that were brought up to her  
house. A Oh, no, sir. I did make an arrest in that  
case. I thought you referred to this gentleman, Mr.  
Summers.

Q Did you take anybody up to the Of house? A Yes, sir.

Q One, two or three? A One.

Q But there were two others taken there? A Yes, sir; I be-

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lieve so.

Cross Examination: None.

BY THE COURT:

Q She did not identify the man that you took there as having had any part in this affair? A No, sir; not the one I brought.

MR. McLAUGHLIN: Now, your Honor, I would beg you, on account of the pressure that I had this morning on account of this case, to give me until to-morrow morning. I want to go out and see if I can get these other two witnesses myself. I sent out messengers.

THE COURT: Of course, if you have not your witnesses here, I will have to let the case go over until to-morrow morning.

MR. McLAUGHLIN: Thank you, sir. I expected two to come in every minute, and the defendant says that he has three.

THE COURT: Then the case must go over. I will not compel any man to go to trial without allowing him to have reasonable time to get his witnesses.

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took an adjournment until 11 o'clock on Thursday morning, March 14, 1901.)

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March 14th, 1901.

TRIAL RESUMED.

MR. GRAY: Have you your witnesses here, Mr. McLaughlin?

Are you ready to proceed?

MR. McLAUGHLIN: Permit me to conduct my own defense.

I ask your Honor to direct and advise this jury to  
acquit.

THE COURT: Motion denied.

MR. McLAUGHLIN: Exception. I ask your Honor to take  
away from the consideration of the jury robbery in  
the first degree.

THE COURT: Motion denied.

MR. McLAUGHLIN: Exception.

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## THE COURT'S CHARGE.

Gentlemen of the Jury,

The charge against this defendant is robbery in the first degree, which consists in the unlawful taking by force and violence of property from the person of another; and, when accomplished by more than one person, acting in concert, it is robbery in the first degree.

There seems to be no question in this case but that a robbery was committed, at the time and place laid in the indictment and by several persons acting in concert.

The People contend that this defendant was one of those persons, so acting in concert, and that he was the principal party engaged in the commission of the robbery and in the application of force.

That there was force applied, of course, is not disputed, any more than any other of the essential facts is disputed.

So that the only question, it seems to me, for you to determine, is: Was this defendant one of those persons who were engaged in the commission of this crime?

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You have, on the one hand, the positive testimony of the complaining witness, repeated over and over again, that this is most decidedly, and beyond a doubt, the man who assaulted her, who caught her by the throat, who beat her with a sand-bag, who struck her a number of times, who stood guard over her while she was lying there, bound and gagged, while he robbed her of her purse containing about eight dollars, and while his associates ransacked her house, who helped to throw her upon the coal bin, and whom she had seen on the previous day, when he came there apparently on a reconnoitering expedition, questioning her first on the subject of groceries, and then asking her about her husband and about what time he was at home, and who, on the following day, reappeared, after she had closely observed him, on this first day, because she suspected him, on account of his questions, and watched him after he left the house and as he went down the front steps, and whom she had, the next day, the day of the robbery, ample opportunity to observe, under circumstances that would naturally vividly impress his face upon her mind. You have heard the positive statement from

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her that this is the man.

Her honesty in that respect is further evidenced by the circumstance that two or three other men, according to the testimony of the officers, had been previously arrested, in connection with this crime, and taken to her house for identification, but were not identified by her.

It is claimed by The People that, if she was so anxious to identify and punish somebody, without reference to his guilt, or if she was so weak minded as to swear that a particular person committed this crime, simply because the police wanted her to do so, it is more than likely that she would have hit upon one of those men that had been previously brought to her house by the officers, upon the very allegation that they were engaged in the commission of this crime.

The defense is chiefly that she was mistaken in the identification, and that the identification was made at the instigation of the police officers.

Remember, gentlemen of the jury, that your sworn duty is to decide this case according to the evidence presented to you, and not according to the surmises or theories of counsel, and that the ques-

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tions of counsel, no matter how adroitly they are framed, are not evidence, but that the answers of witnesses are evidence.

In order to clear that point in your minds, the Court asked this question of the complaining witness: "Q. Madam, when you came into the court room and sat down, had you recognized this defendant, before either of the detectives spoke to you? Had you recognized the defendant, in your mind, before they asked you? A. In my mind? Q. Yes. A. Oh, yes, I had."

Now, then, assuming that this witness is honestly testifying, you have to consider her answer in that respect, in connection with the theories suggested by counsel for the defendant that she was induced to identify this defendant because one of the police officers pointed him out.

She swears there positively, and what she swears to is evidence in this case, remember, that she had recognized him in her own mind before either of the detectives actually knew that she was in court, or certainly before either of them had spoken to her upon the subject.

It is a favorite theory with counsel that the

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police, in order to save their reputation, do not care particularly whether they convict the guilty or the innocent, as long as they convict.

Well, be that as it may, all I need say to you on the subject is, that there is no evidence in this case that supports that theory.

Of course, in cases like this, there is always conflict of testimony.

Here the direct testimony as to the occurrence is necessarily only that of the complaining witness, because none others were there, except those who were engaged in the commission of the crime.

The defendant denies that he was present, or had any part in the crime. He denies even that he had ever been in that vicinity. He says that up to that time he had never crossed the bridge.

He testifies as to his antecedents, as to his previous residences and whereabouts, and, of course, raises the direct issue as between himself and the complaining witness.

In determining which of two witnesses tells the truth, you have a right to consider all the circumstances that the case develops. You have a right to consider what interest each may have in

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the result of your deliberations.

It goes without saying that the defendant always has a very serious interest in the result of a jury's deliberations, where he is on trial for a grave crime.

You have a right to ask yourselves how far that may influence his testimony, when he takes the stand.

So, too, you can apply the same rule to any other witness, as to what motive they may have in swearing before you, or in departing from the truth.

You have a right to ask yourselves what motive could this woman, the complaining witness, have in selecting this particular man, and swearing with such positive directness that he is absolutely the man that assaulted her in this cruel manner, unless she had certainty of the facts, and not a mere suspicion, generated by police effort.

The People are obliged to make out their case beyond a reasonable doubt. If they have failed to do so in this case, the defendant is entitled to the benefit of that doubt, which means an acquittal.

The law surrounds every defendant with the

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presumption of innocence, and that presumption remains about him, as a mantle, until your verdict removes it.

But bear in mind that this doubt must be a reasonable doubt, that is, a doubt based on sound, solid, substantial reasons, and not a mere surmise or suggestion or ingenious theory that might fit the circumstances of the case. It must be such a doubt as would influence men of good judgment in the important affairs of their daily life, and control their action.

The case is in your hands, gentlemen.

(The jury found the defendant guilty of robbery in the first degree.)

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