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CASE #1713

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

#1934

-----X
THE PEOPLE OF THE STATE OF NEW YORK

Before:

-against-

HON. JAMES T. MALONE, J.,

C H A R L E S H A P P E L.

and a jury.

-----X
Indictment filed April 22, 1913.

Indicted for burglary in the second degree and petit larceny.

New York, May 12, 1913.

APPEARANCES.

FOR THE PEOPLE: ASST. DISTRICT ATTORNEY CHARLES F. BOSTWICK.

FOR THE DEFENDANT: WILLIAM H. CARPENTER, ESQ.

Peter P. McLoughlin,

Official Stenographer.

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(At request of defendant's counsel the witnesses
in the case were excluded from the court room.)

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

(The witness states he lives at 598 West 178th street.)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Now, do you keep house at that address? A Yes, sir.

Q On what floor is your apartment? A The top floor.

Q Now, do you remember, Saturday, March 29, 1913, A Yes,

Q Where were you about 11.30 that morning? A Well, I
can remember that I sent the children out at 11 o'clock.

Q What time? A I sent the children out at 11 o'clock by
Miss Rothwell, the two little girls. Around half past eleven
there was a young man who came to the door and says, "Do you
burn gas." I said, "Sure." I closed the door and the young
man wore a long black coat with an astrachan collar and a der-
by hat. Then around one o'clock or a little after one the
bell rang again, and this time I went to the door, and the
young man at the door says --

Q The same man? A Yes, sir. After he got in--

Q What time was this? A After one. He says "Did you
report a leak to the Gas Company". I said, "Yes." He said,
"The Gas Company sent me here to fix it." I admitted the
young man. As I got in the hallway near the bathroom he says
"Madam, where is the leak". I was about to tell him when
he hit me a blow with what he had in his hand, pushed me right

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into the bathroom. I threw myself on my knees and I said "Please don't kill me. Take anything I have in the house." He tied my hands behind my back as I was on my knees and stuck a rag in my mouth-- a white sheet I had hung up in the bathroom an ironing sheet. He tied that around my head this way. (Indicating). He shut the door after him. Well sometime after that the bell rang, the downstairs bell.

MR. CARPENTER: I object to that.

THE WITNESS: (Continuing) The downstairs bell rang. This young man opened the bathroom door and he says "If you make an outcry I will kill you." He shut the door, I heard the outer door close. That is the last I knew till Miss Rothwell came in. I heard the bell ring, and I heard my little girl crying "mamma".

Objected to; objection overruled; exception.

THE WITNESS: (Continuing) So she rang the bell quite a number of times before she heard my cry, and then she told --

MR. CARPENTER: I object to that.

THE COURT: Let that go out.

BY MR. BOSTWICK:

Q Were you crying? A Yes, sir; I told her to --

Q Did you make an outcry? A Yes, sir; I told her to go through the lady's apartment next door.

Q Don't tell what she told you. This was in the County of New York? A Yes, sir.

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Q In what position were you when he left you? A I was on my knees with my hands tied behind my back.

Q Was your back towards the bathtub? A Back towards the bathtub.

Q What were you tied to, anything? A The pipe that runs up leading to the hot and cold water faucet.

Q It was when the doorbell rang that the defendant came to you and told you what? A He told me, he says, "If you make an outcry I will kill you". Then he closed the door behind him.

Q Were you tied so that you could not get away? A Well, my hands -- I was tied so that my hands was all swollen and discolored, my fingers ; they had to rub me with liniment.

Q Now, what did you do with the piece of sheet that was around you head or mouth? A Well, I showed it to the captain of the police.

Q When? A At that time-- it was still in the bathroom there; I suppose it was destroyed now.

THE COURT: Strike that out. Just wait until he asks you a question.

BY MR. BOSTWICK:

Q How was the sheet tied around your mouth? A Tied up around over my head.

Q Was it over your mouth? A Yes, sir.

Q Could you make an outcry with the sheet over your mouth?

A After the defendant left the room I was getting weak, I

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worked the gag down with my tongue and I got out to the end of the toilet --

Q So at the time the defendant was in the bathroom with you you could not make an outcry because this was over your mouth? A No, sir.

Q If I understand you correctly after the defendant left the bathroom you worked the gag down?

MR. CARPENTER: I object to the District Attorney's testifying.

Objection overruled; exception.

Q You worked the gag down? A Yes, sir.

Q So that when you heard the bell ring you were able to make an outcry? A Yes, sir.

Q Who was it that was with your children? A Miss Rothwell, Lillian Rothwell.

Q Now, did you see Miss Lillian Rothwell after the defendant left the place? A No, sir, not until she let me loose.

Q You did see her? A Yes, sir; after she let me loose.

Q How did she let you loose?

MR. CARPENTER: I object to that.

THE COURT: If she was conscious of what was being done she may answer.

THE WITNESS: She got through the lady's apartment door.

BY THE COURT:

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Q You appreciated what she was doing? A Yes, sir; she rang the lady's bell next door.

Q Got into the bathroom? A Yes, sir.

Q When she got into the bathroom what did she do?

A She got a knife to cut the rope, she couldn't cut it with the knife and she went and got a pair of scissors and cut it with the scissors.

BY MR. BOSTWICK:

Q In what condition did you find your place? A Everything was pulled out of the buffet and off the table and-- on the floor -- and also in my bedroom.

Q Now had you any money in that place? A I had two five dollar gold pieces on the buffet and eight dollars in my pocketbook in the bedroom.

Q Were they there after this defendant went out? A No, sir.

Q Where did you find your pocketbook after he had gone?

A On my bed.

BY THE COURT:

Q Nothing in the pocketbook? A No, sir; everything taken, the empty pocketbook he left on the bed.

BY MR. BOSTWICK:

Q Who struck you and bound you and tied you was the defendant sitting at the bar? A Yes, sir.

CROSS EXAMINATION BY MR. CARPENTER:

Q Mrs. Morris, how many rooms do you occupy? A Six rooms.

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Q Who occupies them with you, besides yourself? A I have Miss Rothwell and her brother also living with me.

Q That is two? A Yes, sir.

Q Is that all? A Yes, sir.

Q You and your husband? A Yes, sir, and two children, and I had a mother.

Q That is five? A I had a mother. She is in the hospital.

Q That is five? A yes, sir, five now at present.

Q In that apartment? A Yes, sir.

Q What time of day did you say this was? A It was after one.

Q The 29th? A Yes, sir, the 29th day of March.

Q You say somebody called to see you on the 29th day of March, 1913? A Yes, sir.

Q I take it you were all alone? Were you? A I can't understand you.

Q You were all alone? A Yes, sir, at the time.

Q This time, 11 o'clock? A Yes, sir.

Q Around 11 o'clock? A Yes, sir; it was after 11, when the defendant called.

Q Now, have you got a private hall? A Yes, sir.

Q There are rooms off the hall? A Yes, sir; all the bedrooms is off the hall.

Q Now, let us have the situation of your flat, does it face on the street, the first room? A My rooms all face on

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the street.

Q On the street? A Yes, sir.

Q And the hall is this side? A Yes, sir, the hall is this side.

Q Now, how far from the entrance into the bathroom is it from the entrance of the hall? A It is the fourth room.

Q The fourth room? A Yes, sir; that bathroom makes the fourth room.

Q Now, when you get to that door the hall is quite dark isn't it? A Well, yes.

Q Well, now, say yes or no? A Yes, sir; it is quite dark.

Q You frequently have a number of people come daily and knocking at your door, ringing your bell offering to sell you various articles, have you not? A Yes, sir.

Q You have people coming there asking you for charity, have you not? A Yes, sir.

Q You have found that it is a great annoyance, their constant coming, have you not. Please answer so that the stenographer can get it? A Yes, sir.

Q You have got yourself in the way so that you don't open the door, do you-- do you open the door for everybody that comes? A Well, not always, but sometimes I open it.

Q Yes. You open the door a very little way don't you? A Well, since this thing happened I got a chain.

Q I am asking you at this time, prior to this time, if

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anybody came to the door you don't throw the door wide

A No, sir.

Q You open it very very shortly -- you make your excuses if you don't want anything and close the door immediately, don't you? A Yes, sir.

Q Now when you were in the dark, in that hallway, going through the hall, you suddenly opened the door -- and you don't see with great distinctness people standing at the door, you don't look at them, just want to know what they want, isn't that your practise? A Yes, sir.

Q And upon this occasion at 11 o'clock on the 29th day of March, 1913 you did as you had on previous occasions done-- somebody as you say, came to you and asked you something about wanting to buy something -- what did you tell the District Attorney? A Gas tips.

Q In a perfunctory way you said no one closed the door? A Yes, sir.

Q That is all you know about it, isn't that so, we want you to be absolutely honest? A Yes, sir.

Q You just said "What do you want", you came there in a perfunctory way and closed the door and said "I don't want any", is that so; please answer? A Yes, sir.

Q You paid no further attention about it whatsoever, did you? A No, sir; not then.

Q You didn't give any further attention to it, you dismissed it from your mind? A Yes, sir.

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Q Now you say that at one or thereafter on the same day, the 29th day of March, 1913 you were still all alone, the people who lived with you even your children had not returned, they were out from 11 o'clock and they were still away? A Yes.

Q You were all alone? A Yes, sir.

Q Now, as I understand you on that occasion somebody came to you? A Yes, sir.

Q Represented they were coming from the Gas Company?

A Yes, sir.

Q Had you at any time reported any leak to the Gas Company? A I sent a postal card, but I don't remember the date I sent the postal card.

Q Did you send the postal card during the month of March or during the month of February? A No, sir; it was not in March; I don't think it was.

Q Well it was in April, wasn't it? A I don't know if it was in April.

Q Well, it was April 1913 you sent the postal card, wasn't it? A I could not tell you what date it was.

Q To the best of your recollection it was in April, was it not, we want to be perfectly honest with the jury. To the best of your recollection it was in April that you sent the notice to the Gas Company? A No, sir, I don't think so; I couldn't tell you whether it was in April or when I sent the postal card.

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

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Q You don't know whether it was in February when you sent the postal? A No, sir; I don't know whether it was in February.

Q You don't know or you cannot fix any time whatsoever it never occurred to you that you may have sent a postal card after this thing occurred? A No, sir.

Q Well when the party came in it was dark, of course, as you say, in that hallway door? A Yes, sir.

Q He spoke to you about some gas fixtures, you turned your back right on to him, and led the way? (No answer.)

MR. CARPENTER: I object to the District Attorney interrupting my cross examination--

THE WITNESS: Not gas fixtures.

MR. CARPENTER: If your desire to make any objection and argue it I desire that the witness leave the room.

MR. BOSTWICK: She said gas tips.

THE WITNESS: Yes, sir; he spoke to me about gas tips.

Q This was one o'clock? A About fixing the gas. He spoke to me about a gas leak.

BY MR. CARPENTER:

Q You turned your back right upon him, led on the way, did you not? A I was taking him to where the leak was.

Q You were leading him to where the leak was? A Yes, sir.

Q At this time your mind was not centered upon anything, just showing him where the leak was and attending to your du-

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ties, that was the condition of your mind at the time, going right on with your various duties, no special attention was suggested to your mind to unusually observe the man or anything of that kind? A Yes, sir.

Q Now you ledt the way? A Yes, sir.

Q You say that you were, suddenly, as I understand you, hit, were you hit by anybody? A Yes, sir; by what he had in his hand.

Q By what this person had in his hand? whatever it might be? A It was iron.

BY THE COURT:

Q What do you say it was? A It was a big piece of iron which he had in his hand.

BY MR. CARPENTER:

Q Was it a bar of iron? A It seemed quite a bar of iron to me when he hit me the blow.

Q You had a good plain view of it? A Yes, sir; in the police station afterwards I got a plain view.

Q At that time? A Not then.

BY THE COURT:

Q You had a good plain view of it? A Yes, sir; in the police station afterwards I got a plain view.

Q At that time? A Not then, I did not, your Honor, because he had it in his hand; I did not look at it but I knew he hit me with this piece of iron he had in his hand.

Q Where were you hit? A Right here I had the mark for

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two weeks on the side of the head.

BY MR. CARPENTER:

Q Where were you hit? A This side (indicating).

Q How that was a terrific staggering blow, wasn't it?

A No, sir, it was not.

Q It was a very hard severe blow? A It left a mark, the blow that he hit me.

Q You say that you were hit upon the head with some instrument? A Yes, sir.

Q Now your back was turned at the time you received the blow, wasn't it? A No, sir; he said, "Where is the leak", and as I went to turn and tell him where the leak was he struck me a blow on the side with what he had in his hand.

Q Your head was back of him at that time? A No, sir, not when I turned. I went to turn--

Q Immediately you turned your head you say you felt a blow, is that correct? A Yes, sir; when I went to tell him.

Q You were about turning your head around? A Yes, sir.

Q To face him, to answer his question? A Yes, sir.

Q You were leading on to where the leak was? A Yes, sir.

Q Is that correct? A Yes, sir.

Q As you were leading on to where the leak was you suddenly heard this party exclaim, "Where is the leak" as you were about to turn around you received a blow? A He hit me a blow on my face.

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Q You received a blow? A Yes, sir.

Q Now, when you received this blow it created in you quite an excitement and alarm, did it not, you were very much frightened? A Yes, sir, certainly I was.

Q The first natural impulse you gave a screech, did you not, a yell? A No, sir; he pushed me right in the bath room.

Q Didn't you when you were suddenly struck? A Not at the time.

Q Wasn't there a suggestion to your mind -- A Not at the time because I was --

Q Was your face badly cut where you had to call a physician? A I did not call a physician, no, sir.

Q You didn't have any treatment whatsoever for your face because of this terrible blow? A Just rubbed liniment.

Q At this time you received the blow you did not see the instrument? A Well, I didn't see it, but I knew he had it in his hand.

Q You did not see the instrument which caused the blow? A No, sir.

Q From that time on you were in a state of great excitement, alarm and fear were you not, from the time that you received the blow until you were released you were in a state of great alarm and excitement, isn't that true? A Yes, sir.

Q You say that at that time something was stuffed into your mouth, is that correct? A Yes, sir.

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Q Well, you were left alone there, were you not? A After he bound and tied me I was left alone.

Q Before you were bound and tied this party did not have to go to the bedroom or some other room to get the sheets?

A He closed me in the bathroom.

Q Did he not have to go to get some clothes? A No, sir; he took it out of my bathroom, on the line.

Q Do you hang it there? A No, sir; an old ironing sheet I had hung on the line in the bathroom.

Q You dry clothes in the bathroom? A No, sir; I just threw that over the line.

Q You have a line in the bathroom? A Yes, sir.

Q He didn't have to go outside to any other room to get this sheet? A That is where he found it.

Q (Repeated). A No, sir.

Q He stood there deliberately and tore a shred of the sheet, and tore another shred, did he not, right in your presence? A He tore one big piece off.

Q During this time your hands were perfectly free, were they not? A No, sir; he tied me first.

Q I thought he tied you with the sheet? A No, sir; he tied my head I said with the sheet, he tied me with a rope.

Q He tied you with a rope? A Yes, sir.

Q When he tied you with the rope or clothesline, was it not? A No, sir; he had it in his pocket.

Q You saw him take it from his pocket? A Yes, sir;

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he took the rope from his pocket and bound my hands with the rope.

Q You were so excited you didn't see everything, naturally you were excited, and your imagination suggested to you--

THE COURT: Ask one question. You have a tendency to involve your inquiry into several questions.

MR. CARPENTER: I will accept the suggestion and I will be very careful.

BY MR. CARPENTER:

Q Now at this time this was stuffed in your mouth, was it not? A Yes, sir.

Q You say something was stuffed in your mouth? A Yes. When?

Q That was stuffed into your mouth that created a great alarm, excitement, you were crying? A Well, I cried, yes, sir.

Q While you were crying you were very much excited and very much frightened? (No answer.)

Q Suddenly you say your hands were tied, is that so? A Yes, sir; behind my back.

Q Tied behind you? A Yes, sir.

Q Then you were dragged to the gas pipe or to the steel pipe? A No, sir; he didn't drag me; I was on my knees where he tied me; I threw myself on my knees when I went in, and begged him not to kill me.

Q You didn't make any effort to get away? A No, sir; he

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tied my hands.

Q (Repeated) A No, sir; because he had the bathroom door shut.

Q Do you have certain amounts of money given to you to provide for the house and so forth? A Yes, sir.

Q And you have a certain allowance given to you every week? A Yes, sir.

Q Sometimes you made expenses overgo that allowance? A Yes, sir.

Q And Mr. Morris sometimes felt a little annoyed or irritated, has he not, at the expenditures of the household?

A No, sir.

MR. BOSTWICK: I object to that. I move to strike out the answer.

MR. CARPENTER: All right. I will consent to it.

THE COURT: I sustain the objection.

(Answer stricken out.)

Q Now this party left the room, left you in the bathroom? A Yes, sir.

Q Your head was all bandaged up, wasn't it, your mouth and eyes and head? A Not my eyes.

Q But your head was bound very tight wasn't it? A Yes.

Q Your mouth bound very tight? A Yes, sir.

Q And the cloth was up above your nostrils? A Up to here (indicating.)

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Q Above your nostrils so that you had difficulty in breathing? A Yes, sir.

Q You had considerable difficulty in breathing, didn't you? A Yes, sir.

Q Certainly? A Yes, sir.

Q Your agony from your hands on account of the way your hands were tied -- you suffered considerably? (No answer.)

Q You were in a great state of terror during all this time?

THE COURT: Don't you think you have exhausted that subject of terror and fear?

MR. CARPENTER: I don't want to be discourteous to the court, but I am fixing the record here --

THE COURT: I only suggest to counsel that we have had a good deal of testimony upon that subject.

MR. CARPENTER: I shall not touch upon it again, sir.

BY MR. CARPENTER:

Q What time did this Miss Rothwell come to release you?

A 4.30.

Q 4.30? A Yes, sir.

Q You remained there from 2 o'clock to 4.30? A Yes, sir.

J O A N N A M E T A G U E, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states she lives at 898 W.178th street.)

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Q Your keep house there? A Yes, sir.

Q Living with your husband? A Yes, sir.

Q Now is your apartment on the same floor with that of Mrs. Morris? A Yes, sir.

Q Do you remember the 29th of March, 1913? A Yes, sir.

Q About one o'clock? A Yes, sir.

Q Had you had your luncheon at that time? A Yes, sir, they were -- the children were there --

Q What happened about one o'clock? A A young man came to the door, and asked me if I wanted to buy some tips, gas tips, I said "no." He said, "Well", He said "lady, you will save your gas bill a dollar and a half a month if you buy the tips." I let him come in and he put one tip up for me, and I gave him twenty five cents for the tip, and he said "Well, I will give you four for seventy five cents". I said, I didn't want any more, and he stood there talking.

Q Do you remember how he was dressed? A Yes, sir.

Q What kind of a coat did he have on? A A coat with an astraken collar on.

Q What color was the coat? A Black.

Q About how old a man? A I would judge between about 22.

Q Was it this defendant sitting here? A Yes, sir; that is the man sold me the tip.

CROSS EXAMINATION BY MR. CARPENTER:

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Q Do you live with your husband, I take it, in that apartment? A Yes, sir.

Q How big a family have you got? A Nine.

Q Nine? A Yes, sir.

Q Your duties -- you are greatly engaged in looking after your little family? A Yes, sir; I attend to my own family --

Q You just had your midday meal about one o'clock?

A Yes, sir.

Q Now at that hour you are very busy aren't you? A I certainly am very busy.

Q And very much occupied and engaged? A Yes, sir.

Q How long have you been a tenant in this apartment, for a year I take it or more? A How long have I been there?

(Question withdrawn.)

Q You are acquainted with Mrs. Morris? A Yes, sir.

Q You and Mrs. Morris are very dear friends, very good friends? A Well we were not friendly until this incident happened.

Q You knew each other? A Yes, sir.

Q To pass the day prior to this time naturally? A Yes.

Q You, during your occupancy of your apartment, frequently have had people come to your door? A Yes, sir.

Q Knocked on the door, rang the bell and ask for some charity, I want to sell you this or that, have you not? A Yes.

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Q You have at times, been very much annoyed with them have you not? A Yes, sir.

THE COURT: What is the purpose of this?

MR. CARPENTER: It is going to be used in my summation, I don't think it is proper to suggest at this time just what the purpose is.

THE COURT: Does it go to the subject of the identification?

MR. CARPENTER: Exactly, sir. That is why I am very careful in my examination, and I feel it my duty to be so.

BY MR. CARPENTER:

Q You are very often very sharp with people who come and annoy you that way, and you close the door immediately when you know the purpose that they want? A That is it.

Q In order to discharge your household duties and so forth you wear glasses, don't you? A No, sir; I don't.

Q Don't you ever use glasses? A No, sir, I don't.

Q You don't feel your sight is as perfect as it was a few years ago? (No answer.)

BY THE COURT:

Q How long was this defendant in your place? A He wasn't long in, just put up the tip.

Q How many minutes? A He wasn't in but a few minutes. he wasn't there long.

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Q He had quite a little conversation with you? A :

Q He put up the tip? A Yes, sir.

Q You paid him? A Yes, sir, I paid him a quarter.

Q For which he gave you one of the tips? A Yes, sir.

Q You had a good view of him? A Yes, sir; he is the young man.

Q No question about this defendant being the person?

A He is the boy that sold me the tip.

Q Have you any doubt of that in your mind? A No, sir; that is the boy sold me the tip; that is all I know about it.

BY MR. CARPENTIER:

Q You have had a conversation after this thing occurred with Mrs. Morris, have you not? (No answer.)

Q You spoke after this thing happened on the 29th day of March, 1913, you spoke to Mrs. Morris, did you not? A Yes, sir. The girl came into me -- yes, sir.

Q You talked about this thing various times with her, did you not? A No, sir; I have not.

Q You have on several occasions talked to her about it? A Yes, sir, when coming here.

Q Now you don't know whether this party was at your place at one o'clock that day? A I know he was.

Q Or whether it was the 29th of December or some other time prior? A Saturday noon time he was in my place and he sold me a tip; that is all I know about the man.

THE COURT: She says Saturday noon, lunch time.

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BY MR. BOSTWICK:

Q You picked this man out from a line-up? A Yes, sir.

Q Sure that is the man? A Yes, sir.

Q No doubt about it in your mind? A That is the man I bought the tip from.

BY MR. CARPENTER:

Q Now, when this man was on the line-up, as you recall it, at first you could not identify him among those who were standing in the line, you hesitated somewhat? A The minute when I seen that young man I knew he was the man who sold me the tip.

Q Did anybody suggest to you? A No, sir; that was the man who sold me the tip.

BY MR. BOSTWICK:

Q I ask you if that is the kind of a tip he sold to you?

A Mine was marked -- it was taken off -- my tip was -- but there is no mark on this.

Q Is that the kind of a tip? A Yes, sir; that is mine; this is my tip.

Q That is the identical tip he sold you, is it not?

A Yes, sir, there is a cross on it, a mark on it.

Q Let us see the cross on it? A Yes, sir; there it is.

Q That is the identical tip he sold you? A Yes, sir.

(The Court then admonished the jury calling their attention to 415 of the Code of Criminal procedure, and took a recess until two o'clock.)

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AFTER RECESS.

J O H N C. B R A D Y, a witness called on behalf of the
People being duly sworn, testified as follows:

(The witness states that he lives at 1858 Cedar avenue, Bronx.)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Mr. Brady, what is your business? A Superintendent
of the Consolidated Gas Co. 159th street.

MR. CARPENTER: If the purpose of this witness is to
show that this man was not in the employ of the Consol-
idated Gas Company I will concede it.

MR. BOSTWICK: Yes. Very good. It is conceded on
the record, that this defendant at the time mentioned,
in the indictment, and at no time was in the employ of
the Consolidated Gas Company.

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

DIRECT EXAMINATION BY MR. BOSTWICK:

(The witness states he lives at 598 West 178th street.)

Q Do you board with Mrs. Stella Morris? A Yes, sir.

Q Do you go to school? A Yes, sir, I go to a business
school.

Q What is the answer to that question? A Yes, sir; I
go to a business school.

Q Are you related to Mrs. Morris? A No, sir, I am
no relation at all to Mrs. Morris.

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Q Now, you remember the 29th day of March, 1913?

A Yes, sir.

Q Has Mrs. Morris any children? A Yes, sir, two children.

Q Now were you with those children at any time on the morning of that day? A Yes, I was out walking with them.

Q What time did you leave the house? A About 11 o'clock.

Q This was Saturday? A Yes, sir, Saturday morning.

Q Now, what time did you return to the house? A I returned to the house about 4.30 in the afternoon.

Q When you got there -- tell the jury what time you returned? A About 4.30 in the afternoon.

Q Now, when you got back? A When I got back I rang the bell and Mrs. Morris let me in the lower door, but I found she was not there; when I got back home Mrs. Morris -- I found I could not get in.

Q What did you do? A I rang the bell, and I found there was nobody to press the button from her apartment.

Q Now as to opening the door? A That is to press the button,

Q You rang the bell and there was no response? A No, sir.

Q The door did not open? A No, sir; the door did not open.

MR. CARPENTHER: Can I have the stenographer read at this time-- I was going to ask the stenographer to read the first part of her testimony. There was a point there, sir, that struck my ear.

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(The stenographer then reads as requested).

Q Did you say that Mrs. Morris let you in the lower door?

A No, sir; Mrs. Morris did not let me in the lower door.

Q What did you say? A I said I rang the bell, and I got no response, at the door.

Q Now, did you finally get in the lower door? A Yes, sir; because there were two little boys coming out, that is how I got in.

Q When you got in where did you go? A I went up to the place where Mrs. Morris lives.

Q Where is that? A The 5th floor.

Q Four flights of stairs? A Yes, sir, I found a couldn't get in there either.

Q What did you do when you got there? A I rang the bell-- I rang the bell three or four times, and I found I could not get in.

Q Now after you rang the bell two or three times did you hear anything? A Nothing until I rang the bell the third time.

Q What did you hear? A I heard Mrs. Morris calling to me, she said to me to go through the lady's apartment next door. I rang the lady's bell next door.

Q Is that Mrs. Hall's? A Yes, sir. She let me through, I got out on the fire escape on St. Nicholas avenue-- forced the window lock that is I got into the apartment of Mrs. Morris. When I got in the apartment I looked for Mrs. Morris,

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and I finally found her in the bathroom, the door closed, she was in a kneeling position, tied to the top of the bathtub with a sash cord.

Q Where were her hands? A Tied behind her back to the pipe, right at the top of the bath tub. I got a knife to try and cut the sash, cord, but I couldn't do it and I had to get the scissors.

Q I ask you if that is the cord that you cut from Mrs. Morris? A Yes, sir; that is the cord I cut from Mrs. Morris.

MR. BOSTWICK: I offer it in evidence.

MR. CARPENTER: No objection.

(The piece of cord is marked People's Exhibit No.1.)

Q Was there anything tied around Mrs. Morris' body or head or any part of her?

MR. CARPENTER: I object to this as leading.

Objection overruled; exception.

A There was a cloth tied around her head, and there was a handkerchief forced into her mouth. I found the cloth tied around her head.

Q Now, did you have a conversation with her? A Yes, sir, after I left her loose I asked her --

Q You are not permitted to tell what you asked her or she what you told you, but you said something to her? A Yes, sir.

Q And she said something to you? A Yes, sir.

Q Now in what condition did you find the drawers of the

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buffet in the dining room? A I found the drawers of the buffet all pulled out; there was one drawer, and left on the dining room table, and all the things were all shaken about in the drawer.

Q What was the condition in the bedroom? A The drawers were pulled out in the bureau in the bedroom and something pulled out and laying on the bed. Mrs. Morris' pocketbook was lying on the bed open.

CROSS EXAMINATION BY MR. CARPENTER;

Q Now, as I understand it what time did you leave that house on the morning of the 29th day of March, 1913? A I left the house about 11 o'clock.

Q It might have been about half past eleven or twelve o'clock, might it not? A No, sir; it was about 11 o'clock.

Q You didn't come home for lunch did you? A No, sir; I had my lunch with me; I took my lunch with me.

Q You did not come home for lunch? A No, sir.

Q Now, will you kindly explain to me when you said to the stenographer before interruption was made-- you said "Mrs. Morris let me in the lower door" now will you kindly let me understand why you had that upon your mind, and why you should have uttered it.

MR. BOSTWICK: I object to the question on the ground that the witness was distinctly asked whether she did say that, and she said the stenographer was in error. She did not say that.

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MR. CARPENTER: That was the purpose that I asked to have it read because I heard it myself.

THE COURT: You may answer the question.

THE WITNESS: Mrs. Morris did not let me in the lower door.

Q Was it a mistake you made when you answered that? A Yes.

Q You have answered the other questions? A Yes, sir.

Q That were put to you by Mr. Bestwick to cover the facts as they were -- the boy coming and letting you in? A Yes, sir.

Q Is that it? A Yes, sir.

Q That is the fact? A Yes, sir.

Q The other answer that you made was a mistake that you made? A Yes, sir.

Q You have on many occasions talked with Mrs. Morris about this case, have you not? A Yes, sir.

Q You have talked with Mrs. Morris about this case on many occasions? A I have talked about it when in her house.

Q Now on the 29th day of March, 1913, you had a conversation with Mrs. Morris on this case as on a number of subsequent occasions, did you not? (No answer.)

BY THE COURT: Q Have you frequently talked with her about the case? A Yes, sir; I have-- I spoke it over several times.

Q The way you found her? A Yes, sir.

Q And other things in connection with that matter? A Yes.

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BY MR. BOSTWICK:

Q Did you see these at any time (showing witness a pair of pincers) in any part of the apartment? A No, sir, I didn't see these at all.

MR. CARPENTER: At this time I have no further questions.

EDITH PARODI, a witness called on behalf of the People being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q What is your name? A Edith Parodi.

Q Your address? A 598 West 178th street.

Q Mrs. Parodi, you are married? A Yes, sir.

Q Where do you live? A 598 West 178th street.

Q What part of that house do you live in? A The second floor two flights up.

Q Do you remember the 29th day of March? A Yes, sir.

Q That was Saturday? A Yes, sir.

Q Do you remember this defendant coming to your door?

A Yes, sir.

Q What time was that? A It was between twelve and half past twelve that he rang at my door.

Q Did you go to the door or somebody else go? A My maid admitted him.

Q After he came in did you see him? A Yes, sir.

Q What part of the apartment did you see him in? A I followed the young man to the kitchen.

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Q Now when you got to the kitchen what was said?

A He was demonstrating a gas tip. The light was poor in the kitchen, and I thought we would try one so he asked for a chair. He stood on the chair and took a pair of pliers from his pocket, and removed the gas cock -- I think you call it -- with a pair of pincers.

Q Were they a pair of pincers like that? (Showing witness a pair of pincers?) A Something similar to those, yes, sir. After he had removed the cock -- he also removed the tip, and he remarked that there was a great deal of dust through the pipe. As he went to blow in the pipe he inhaled the gas and for a minute he was kind of overcome. He rubbed himself in the chest and he said "I nearly got it that time." My son and maid were present and the young lady got him a glass of water, but he didn't seem to wish the water, he would revive -- he was all right in a minute. He asked us for a pair of pincers or a screwdriver, he said he hadn't taken his along with him that day. He took up a sort of a screwdriver that happened to be laying in the kitchen, I went out for a minute, I didn't stay out long, when I came back he had already put the tip on the gas, and showed me how to light it -- that it was only a piece of asbestos or something, and he showed me the illumination it made. So I bought it for twenty five cents.

Q Now was your son present at any time during this?

A Yes, sir, during a part of it -- during the asphyxiation

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of the gas -- my son was in the kitchen with me and heard all that conversation.

Q Do you remember any other part of the conversation you had with him? A Why, only that he followed me to the dining room where my Welsbach light was, and he told me that I would prefer one of these tips to the Welsbach in the dining room, but I did not, and I told him I thought I had enough. I remember him handing me a piece of paper, telling me that his father was sole agent for these tips, and that any time I would like to buy some more I would let them know. He went through the different rooms of my apartment. So I took the paper and kept it in my hand, sort of a piece of yellow paper. I suppose his father's name, the name Happel on it, and it read if you bought one tip and so forth --

MR CARPENTER: I ask to have that stricken from the record.

BY THE COURT:

Q You read what was on the paper? A Yes, sir.

Q It had an address? A Yes, sir.

Q An address? A Yes, sir.

Q Where you could reach him? A Yes, sir.

Q Or his father? A Yes, sir, where I could get more tips.

THE COURT: I will allow it to stand.

Q How was he dressed at that time? A He had on a long black coat with a black astrakan collar and he had a derby.

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He laid the derby on the tubs while he put up the tip on the gas.

Q Now has your husband a coat like that? A Exactly like it; that is how we came to remark it.

Q Did you make a comment on that fact? A Yes, sir; I made the remark that the coat was similar to Mr. Parodi's, my husband.

Q What kind of shoes did he have on? A The shoes were exceptionally coarse looking compared to the coat.

MR. CARPENTER: I object to that. She is not competent to testify as to the kind of shoes he had on.

THE COURT: I will let it stand that they were coarse looking shoes.

BY THE COURT:

Q You have pretty good eyesight? A Simply the young man drew my attention to it--

BY MR. BOSTWICK:

Q This piece of paper that he showed you had the name Happel on it -- did he take that away or did he leave it with you? A I had it in my hand; he could not have taken it; no, sir.

CROSS EXAMINATION BY MR. CARPENTER:

Q Now, how big a family have you got? A You mean my children, sir?

Q Your family? A My family?

Q I don't care whether children or not? A Husband

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and children.

Q How many children have you got? A Eight sons.

Q Eight sons? A Yes, sir.

Q Your time is greatly occupied, is it not? A Yes, sir.

Q With your little duties, your attention towards them?

A Yes, sir.

Q Now realizing the importance of your testimony you cannot inform us here as to the certain hour, you are not positive, are you, as to the hour he came there? A I think between 12 and half past, sir.

Q But you are not positive are you now? A I wasn't positive what time it was, after twelve I know it was after twelve.

Q You are busily engaged -- this was a Saturday, was it not? A Yes, sir.

Q Your little family I take it are quite young children? A Yes, sir, most of them are.

Q They run in and run out of doors constantly, do they not? A Yes, sir.

Q Now about this time did you look at the clock, do you know whether your clock was correct, you didn't at this time go to look at the clock to see the time, did you?

MR. BOSTWICK: I object to that.

MR. CARPENTER: I withdraw it.

THE COURT: I think you can form your questions a little bit better.

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Q Now realizing the importance of your testimony--

THE COURT: You need not embody that in your question.

Q You did not look at the clock, did you? A Yes, sir, I did, and I will tell you why I did because--

Q You did look at the clock? A Yes, sir, I did.

Q You are not able to say whether that clock was correct, whether the astronomical observations made as to the time of twelve o'clock-- A Well I know it was between twelve o'clock and half past twelve.

Q You did not -- the Court will take cognizance of the fact that time is set by an astronomical observation-- you don't know at this time whether that clock was set with the hour when the sun was on the meridian, do you? A Well, sir, I must have the right, correct time, because you see my children are --

Q Do you or do you now know? A Well, I am almost positive that it could not have been slower or faster than about two minutes, sir.

Q Do you or do you not know? (No answer.)

Q Now you were so preoccupied and engaged with your duties that you--

THE COURT: Is there any evidence of her preoccupation. That is assuming something there is no proof of.

MR. CARPENTER: She has already stated, sir, that she has eight children. She has already stated that upon the record.

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THE COURT: She has.

MR. CARPENTER: She has stated upon the record also she has been occupied with her family.

THE COURT: Proceed.

MR. CARPENTER: I have no further question.

MARCEL PARODI, a witness called on behalf of the People, being duly sworn, testified as follows:
(The witness states he lives at 598 W. 178th street.)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q You reside with your parents? A Yes, sir.

Q Won't you speak out loud? A Yes, sir.

Q Is that your mother who was just on the stand? A Yes.

Q Do you remember the 29th day of March, 1913, that was Saturday, wasn't it? A Yes, sir.

Q Now, you were employed by the H. B. Claffin Co.? A Yes.

Q Were you working that day? A No, sir.

Q Do you remember seeing this defendant in your apartment that day? A Yes, sir.

Q What time was it? A Well, about, I don't know the exact time he came in.

Q Well was it in the morning or night, or middle of the day or when? A It was near twelve or half past twelve, somewhere around that time.

Q Around the middle of the day? A Yes, sir.

Q Was your mother present? A Yes, sir.

Q What did you see this man doing? (Indicating the

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defendant) A I didn't see him as he entered the apartment.

Q He was already in the apartment when you arrived?

A Yes, sir, I was in the living room in the back, and when I entered I saw him in the kitchen and he was about to mount a chair to see the gas. I saw him unscrew a part of the gas and when he was doing that he blew through the thing and he remarked that it was dusty.

Q You mean he blew through the pipe? A Yes, sir, he had got a whiff of the gas and he said he nearly got it, at that time. Then he went and started to put the thing back, and he put one of his tips on.

Q Have you any recollection of what kind of a coat he had on? A It was a coat with a black astrakan collar.

CROSS EXAMINATION BY MR. CARPENTER:

Q Now, Mr. parodi, will you kindly inform me -- you said in your first answer to the District Attorney that you did not know what time of day it was. You did not know whether it was in the morning, didn't know when it was positively, with certainty, how is it you were so uncertain at that time, how does it impress your memory so certainly that it was between twelve and half past twelve? A Because we were ready to eat lunch.

Q You did not look at the clock, did you? A I did not.

Q You heard somebody say to you probably it was dinner hour in a subsequent conversation, didn't you? A Yes, sir.

Q Of your own knowledge you don't know what time it was,

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is that correct? A That is correct.

Q You don't know the time?

THE COURT: He has said that.

LOUIS HEYMANN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q During the month of March you were and you are still connected with the Municipal Police Force of the city of New York? A I was.

Q Attached to the 42nd Precinct? A Yes, sir.

Q Did you at any time make a search of the cellar of the premises 598 West 108th street? A I did on the morning of the 30th of March; Sunday morning.

Q Did you find anything in the cellar? A I did.

Q What did you find? A I found this (showing a piece of paper) it was torn, it had got torn.

MR. BOSTWICK: I ask that this paper be marked People's Exhibit 2 for identification.

(The paper is marked People's Exhibit 2 for identification.)

Q Who was with you at the time? A There was officer Foley and Lieutenant Connor.

Q Now, did you take this People's Exhibit No. 2 for identification, and show it to Mrs. parodi? A I did.

Q After finding this and after having this conversa-

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tion with Mr. Farodi, where did you go? A Directly you mean? I went back to the station house.

Q Then where did you go? A We went over to the Bronx, 154th street.

Q What number? A 330. That was the following day.

Q The following day? A Yes, sir.

Q That was Monday? A Yes, sir.

Q Who did you see? A I saw the defendant there.

Q See anybody else besides the defendant? A His father and his brother.

Q Did you have a conversation with the father? A Yes, sir, I did with the father. I asked him if he had --

Q Was the defendant present? A No, sir, not at that time.

Q You had a conversation with the father? A Yes, sir.

Q He told you something? A Yes, sir.

Q The son was not home at that time? A Not at that time.

Q What time did the sone come home, if you know? A About 6.45 p.m.

Q Then did you have a conversation with the defendant?

A I did.

Q Did you have this with you at that time? A I did.

Q Did you show this to him? A Yes, sir, I did. (Referring to People's Exhibit 2 for identification)

Q Now state what conversation you had with him at that time? A I asked him if he was there -- that is the conver-

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tion I had with him -- when he came in his father says "This is Charlie", and then I asked the defendant where he was Saturday, and he said he was out selling gas tips. I asked him what neighborhood he was in selling these gas tips and he could not remember. I said, "What time did you leave your home", and he said in the morning. I said, "Where did you go?" He said: "I went to the subway. I said where did you get out of the train in the subway. He thought for a few moments and said 96th street and Broadway. Then I asked him were you up any further than that, what distance uptown were you, is that the furthest uptown you were that day. He could not remember. I said where were you between twelve and one or around one o'clock. He could not remember then. I pressed him for an answer, and he said in the same locality.

MR. CARPENTER: I object to that -- he pressed him for an answer.

THE WITNESS: I told him to refresh --

THE COURT: I will let it stand.

BY THE COURT:

Q. You asked him several questions? A. I asked him what was the furthest uptown he was, and then he put his hand in his pocket and he pulled out several papers amongst which was this -- and looking on the back he says "That is the furthest I was uptown."

MR. BOSTWICK: I offer that in evidence.

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MR. CARPENTER: I object to that if your Honor please.

THE COURT: Do you know what it is?

THE WITNESS: It was not folded like that.

BY MR. BOSTWICK:

Q This writing was on it? A Yes, sir.

Q Given to you by the defendant? A Yes, sir.

MR. CARPENTER: I object to it.

THE COURT: Why?

MR. CARPENTER: I object to it first, because it is immaterial, incompetent and irrelevant, not binding upon the defendant; secondly, because it does not at this time show the date on which it was said that he was uptown. This happened upon a Saturday. This conversation took place on Monday. There is no time fixed to show that this defendant understood at that time that they were referring to the previous Saturday. I say also that it is not binding upon the defendant.

THE COURT: I will receive it.

(The paper referred to is marked People's Exhibit 3).

Q Continue the conversation that you had with the defendant? A I looked at the paper, and read the writing on the back, and he said that was the address of the furthest he was uptown. I said "Do you know about how far uptown 1462 Amsterdam avenue is" he said he could not remember. I said, "Is it in the neighborhood of 165th street." He could not re-

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member. I said is it in the neighborhood of 175th street, and he could not remember. I said do you know whether or not it is around 135th street, he could not remember.

BY THE COURT:

Q He said he could not remember? A Yes, sir; he said he could not remember. Those were the answers. The defendant was dressed then in a dark suit of clothes. I asked him if he owned a coat, a black long coat with a fur astrakan collar on it. He said he did. I asked him would he put that coat on, and after some conversation with his father and brother I accompanied the defendant to the 42nd Street Precinct station house. We reached there about 7.15 or thereabouts, and I sent Detective Foley to the premises 598 West 178th street to obtain all the witnesses.

MR. CARPENTER: I object to that.

MR. BOSTWICK: You need not state that.

Q You sent him with instructions? A Yes, sir; all the witnesses that we had interviewed the day previous, and the day that the assault took place -- to get them to come to the station house.

Q Did they come? A Yes, sir they did come.

Q Did you at any time show the defendant a gas tip?

A I did.

Q Where did you show it to him? A At the station house.

Q I ask you to look at these gas tips and state whether either of them is the one that you showed him? A This one.

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(Showing a gas tip).

Q What conversation did you have with him about this gas tip? A I asked him if that was his gas tip; he looked at it, and said it was that was the kind he was selling-- that he had no private mark on it -- that he could tell that that was his gas tip.

(The gas tip referred to is offered in evidence and marked People's Exhibit 4.)

MR. CARPENTER: I object to that. I would like to see the private mark first as far as the identification goes.

THE COURT: He said that he had no private mark upon it but he could identify it.

THE WITNESS: His father demonstrated with the gas pliers --

Q In his presence? A Yes, sir, how that mark was made by taking the gas pliers, the gas tip, and making an indentation with those prongs that causes the little indentations on that tip. The father demonstrated that in the presence of the son.

MR. CARPENTER: If that be the only identification because a man putting up tips will naturally take the gas pliers and apply them in that way.

THE WITNESS: You will find little indentations on it.

BY MR. CARPENTER:

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Q That could be done by anybody.

THE COURT: You have stated your reasons in support of your objection.

MR. CARPENTER: Any one could make a little mark like that, a gas man, using pliers.

THE COURT: You offer it in evidence.

MR. BOSTWICK: Yes, sir.

(Received and marked People's Exhibit 4.)

MR. CARPENTER: I respectfully except.

Q Was there any other conversation with the defendant?

A I took him to the station house where he was identified.

Q Was there any other conversation between you and the defendant? A There was a lot of conversation, but I am just leading up to when the conversation took place.

Q It was after he was identified? A At another conversation with him.

Q How many people were lined up with this defendant?

A Five others.

Q How many people identified him? A Five.

Q After this identification did you have any further conversation with this defendant? A I did.

Q State what that was? A I told him I placed him under arrest for assaulting and robbing Mrs. Morris. He denied ever being in the building. He said he was never up in that neighborhood; he said he didn't know where Washington-- I asked him if he knew a section of Washington Heights, and he said

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he didn't know where Washington Heights was. I asked him if he was ever in the building 598 West 178th street, and he said he was not, that he steadfastly stuck to all the way through. The next day in the police court he made the same statement, and an adjournment was taken in the police court.

MR. CARPENTER: I object to that. The fact of an adjournment being taken is a matter of record.

Q Was the case disposed of that day? A No, sir.

Q Did it come up again in the 5th District Court?

A Yes, sir, before Magistrate Butts.

MR. CARPENTER: I object to that, if the Court please, as immaterial and incompetent, and not binding upon the defendant. The record speaks for itself and is the best evidence.

Q What did he say on that day as to his being in the building? A He was questioned by Magistrate Burrs and he stated to Magistrate Butts, in the 5th District Court.

MR. CARPENTER: I object to that. The record should be produced.

THE COURT: If he has good hearing and heard what was said he may state it.

THE WITNESS: He stated to Magistrate Butts that he had been in the building selling gas tips, that is all he done. He done nothing to this woman, that was the first admission that he had made.

Q Did you bring People's Exhibit No. 1 to court? A I

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did.

Q Where did you get it? A Originally I found this, some parts of it, tied to the pipe in the bathroom of Mrs. Morris' apartment and some of the pieces where they were out -- were lying on the floor just directly below.

Q Did you ever see that pair of pliers before? A I did.

Q Where did you get those from? A The defendant had those in his pocket when he came home the night that I was at his home.

Q Found upon the defendant? A Yes, sir.

MR. BOSTWICK: I offer them in evidence.

MR. CARPENTER: I object to them if your Honor please.

(People's Exhibit No. 2 for identification is offered, received in evidence and marked People's Exhibit No. 2.)

MR. CARPENTER: I object to that if your Honor please.

Objection overruled; exception.

(People's Exhibit No. 3 received in evidence.)

Objected to; objection overruled; exception.

No cross examination.

DAVID E. FOLEY, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is attached to 42nd Precinct, the De-

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ective Bureau.)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q In March, 1913, you were and still are connected with the Municipal Police Force of the City of New York? A Yes, sir.

Q Did you go to the premises 598 West 178th street on the 30th of March, 1913? A Yes, sir.

Q You were in the company of Detective Heyman? A Yes, sir, and Lieutenant Connor.

Q Did you go to the cellar of those premises? A Yes, sir.

Q Now, I show you People's Exhibit No. 2 and ask you whether you have ever seen that before? A Yes, sir.

Q Where did you find that? A In garbage among a lot of papers in the cellar.

Q In those premises? A Yes, sir.

Q You were present when it was found? A Yes, sir.

Q You saw the officer find it? A Yes, sir.

MR. BOSTWICK: The People rest.

MR. CARPENTER: Now, if your Honor please I ask you to direct the District Attorney to name upon which count in the indictment he stands.

THE COURT: I do not know how the District Attorney feels about it, but I have myself a very definite view of the matter at this stage of the case. I purpose submitting this case to the jury on the count charging robbery in the first degree. I shall remove from the

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jury's consideration the other counts maintaining, however sufficient of the count to make complete and intelligent the fourth count in the indictment. So you may act upon that suggestion inasmuch as your motion may intend to effect the indictment. You may have an exception to the ruling of the Court if you desire.

MR. CARPENTER: No, sir, I don't desire it. I wanted it for my own information at this time.

(Mr. Carpenter opens the case on behalf of the defendant.)

CHARLES HAPPEL, the defendant being duly sworn in his own behalf, testified as follows:

(The witness states that he lives at 332 East 154th street in the Bronx.)

DIRECT EXAMINATION BY MR. CARPENTER:

Q Now please talk up so that these gentlemen of the jury can hear every word that you say? A Yes, sir.

Q Now do you remember the 29th day of March, 1913?

A Yes, sir.

Q Saturday? A Yes, sir.

Q Do you remember that day? A Yes, sir.

Q Now how old a young man are you? A 20 years.

Q Do you remember being in the premises 598 West 178th street on the 29th day of March, 1913? A I could not remember.

Q Do you remember being in the house where these wit-

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nenses have testified to-- of course, you probably don't remember the number? A I don't remember the number.

Q But you remember the house? A Yes, sir.

Q Do you remember being there? A Yes, sir.

Q On that day? A Yes, sir.

Q Now were you there once or were you there twice during that day? A Once, sir.

Q Only once? A Yes, sir.

Q Now was that in the morning or was that in the afternoon? A That was in the morning.

Q Around 11 or 12 o'clock? A Around 11 or 12 o'clock.

Q You, of course, remember being in Mrs. Parodi's apartment fixing the gas? A Yes, sir.

MR. BOSTWICK: I object, that. I want the fullest statement from this defendant, but I must object to his being led.

THE COURT: You should not lead him.

MR. CARPENTER: I will be most cautious, sir.

BY MR. CARPENTER:

Q Now at any time were you in the apartment of the complaining witness, Stella Morris? A I could not remember, sir.

Q Stella Morris, the complaining witness in this case, were you in her apartment on the 29th day of March, 1913, yes or no? A No, sir.

BY THE COURT:

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Q You say that you were not? A No, sir; I was not.

BY MR. CARPENTER:

Q Can you remember it? A I don't remember of it.

Q Now, Stella Morris, the complaining witness in this case, were you in her apartment on the 29th day of March, 1913, or not? A Well, I don't know.

Q Now you remember the complaining witness being here-- did you at any time represent to her that you had come from a gas company? A No, sir.

Q You saw this complaining witness here this morning, did you not? A Yes, sir; I did.

Q Were you at any time in her premises? A That I could not remember.

Q On the 29th day of March, can't I refresh him and lead a little here?

MR. BOSTWICK: Oh, no.

MR. CARPENTER: All, right I will not do it.

BY MR. CARPENTER:

Q Did you at any time place your hands upon her body?

A No, sir.

Q Did you take a gas plier from your pocket? A No, sir.

Q And strike her on the head? A No, sir.

Q Did you take a rope out of your pocket? A No, sir.

Q And tie her hands? A No, sir; I didn't have a rope.

Q Did you take any handkerchief or any article and stuff it in her mouth? A No, sir.

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Q In your presence did she fall down on her knees before you? A No, sir.

Q Did you go and tear up a sheet and bandage her, tie it around her mouth? A No, sir.

Q Did you close the door there and go and ransack through the house, pulling out drawers and taking out other articles? A No, sir.

Q Did you take two five dollar gold pieces from the sideboard? A No, sir.

Q Did you go into her pocketbook and take any money out of her pocketbook? A No, sir.

Q Her apartment, as I understand it -- did you see the second witness here who testified Mrs. McTague. You saw the second witness on the stand, did you not? A Yes, sir.

Q It is said that Mrs. Morris is right across the hall from her. When you go into a house you go through the house, do you, to find out through the house what they want. When you go into a house to see if they want gas tips? A Yes, sir.

Q If they don't want any you walk right away? A Yes, sir; I walk right away.

Q Now this Mrs. McTague -- were you in her apartment that day, do you remember, yes or no? A I could not remember, sir.

Q But you were only in that place just once? A Yes, sir, just once.

Q Just one time? A Yes, sir.

Q You at no time represented that you came from the gas

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company, did you? A No, sir.

Q You have been selling gas tips? A Burners, yes, sir.

Q Have you ever been convicted of any crime? A No, sir.

Q Now you don't know anything whatsoever as to this robbery? A No, sir.

Q You never laid your hands upon this woman? A No, sir.

Q Never been in any trouble before in your life? A No, sir.

Q You live with your father? A Yes, sir.

CROSS EXAMINATION BY MR. BOSTWICK:

Q Are these your pliers? A Yes, sir.

Q These are the pliers you had on the 29th of March?

A Yes, sir.

Q Those are your pliers? A Yes, sir.

Q Used to put on these tips in the various apartments?

A Yes, sir.

(The pliers referred to are admitted in evidence and marked People's Exhibit No. 5.)

MR. CARPENTER: I object to them if your Honor please, because it does not appear that they were in any way connected with the robbery.

THE COURT: I have received them in evidence.

Exception.

BY MR. BOSTWICK:

Q I show you these tips, and I ask you if those are your tips or if you ever saw them before? A I can't recollect them.

Q Were those the kind of tips you put on? A I had tips like these that were put on, yes, sir.

Q I ask you to look at these two circulars, and state whether those are your circulars? A Yes, sir.

Q (Referring to People's Exhibit No. 2 and People's Exhibit No. 3.) I ask you whether you stated to Officer Heyman that you had never been in that house, referring to the house No. 598 West 178th street? A Well, I don't remember, sir.

Q You don't remember whether you stated that to him or not? A No, sir; I don't remember.

M A R I O N B A U M, a witness called on behalf of the defendant being duly sworn, testified as follows:

(The witness states she resides at 599 East 139th street.)

DIRECT EXAMINATION BY MR. CARPENTER:

Q Mrs. Baum, do you know the defendant at the bar? A Yes, sir, I do.

Q How long have you known him? A I know him about eight years.

Q Do you know anybody who knows him? A Well, according to the lady -- I lived next door --

Q You lived near him? A Yes, sir.

Q You saw him quite frequently? A Yes, sir.

Q And had met other people who knew him? A Yes, sir.

Q Do you know his reputation as to truthfulness, honesty and decency? A I know him to be truthful and honest & hard-

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working boy.

CROSS EXAMINATION BY MR. BOSTWICK:

Q Did he ever visit you? A Yes, sir.

Q Did you talk with him that Saturday night, the 29th day of March? A No, sir.

K A T H E M c L O U G H L I N, a witness called on behalf of the defendant being duly sworn, testified as follows:
(The witness states that she lives at 597 East 139th street)

DIRECT EXAMINATION BY MR. CARPENTER:

Q Do you know the defendant at the bar? A Yes, sir.

Q The defendant at the bar? A Yes, sir.

Q How long have you known him? A I have known him for nine years, sir.

Q Do you know other people who know him? A Yes, sir, quite a number of people.

Q Do you know what his reputation is for truthfulness, honesty and peacefulness, whether it is good or bad? A I have known him only as respectable and honest as his father has brought him up, sir.

(No cross examination.)

M A R Y V O L D E N, a witness called on behalf of the defendant, being duly sworn, testified as follows.
(The witness states she lives 609 Westchester avenue, Bronx.)

DIRECT EXAMINATION BY MR. CARPENTER:

Q You keep house for your brothers who are working?

DO I

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A Yes, sir.

Q Do you know the defendant at the bar? A Yes, sir;
I do.

Q Do you know other people who know him? A Yes, sir,
I do.

Q Do you know the reputation he bears for truthfulness
honesty and peacefulness? A Yes, sir, I do.

Q Is it good or bad? A Good.

(No cross examination.)

MR. CARPENTER: The defendant rests.

(Mr. Carpenter closes the case on behalf of the
People.)

(Mr. Bostwick closes the case on behalf of the
defendant.)

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THE COURT'S CHARGE.

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MALONE, J.-

Gentlemen of the jury: The question that you are called upon to determine this afternoon is whether the defendant at the bar, Charles Happel is guilty or not guilty. If you find that he is not guilty you will have no further duty in the premises. If you find that he is guilty you will determine by your verdict, whether he is guilty of robbery in the first degree or robbery in the second degree or robbery in the third degree.

Every person who is charged with a crime is presumed to be innocent of it until his guilt is established beyond a reasonable doubt. If that burden be not carried by the State successfully then the case fails. The presumption of innocence acts as a shield at the conclusion of the case as it does at the threshold of the proceeding. The State, I have said to you, must make out a strong case against every defendant that is charged here with a crime. If the proof evenly balances the case fails. If it preponderates in favor of the State the case fails. A larger burden is imposed, under our form of law, and a clear, unmistakable case must be made out. There must not be any doubt of a man's guilt before a jury can in conscience and in law find him guilty.

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If there is a doubt of his guilt from all the evidence that has been elicited here after you have, in a painstaking way, analyzed the proof that is a condition or state of mind which makes for an acquittal and requires you to give him the benefit of it and a verdict of not guilty. That is the State's burden. If it carries it successfully and proves the defendant guilty, and the case is free from doubts that are real then the jury must find a verdict of guilty. You took oaths here and agreed to decide the case properly, intelligently and conscientiously, to be fair and impartial in the consideration of all the evidence, to know neither party and take from both sides the evidence that is submitted and carefully and conservatively and judiciously weigh the proof. You are not to permit any influence whether of emotion, prejudice or sympathy to get into your deliberations. A case in the Criminal Court submitted to a jury is a serious matter and imposes serious responsibility. When you shall have weighed of all these witnesses, sifted out the evidence and reached a conclusion with reference to the merits you will discharge your responsibilities and duties by rendering a verdict which will say whether the defendant is guilty of the crime charged against him or not guilty.

On the subject of the degree of crime which he may

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be found guilty of under this form of indictment you will give the defendant the benefit of any uncertainty or doubt in your minds. I mean by that if you conclude that the defendant's acts on the 29th day of March, this year at 598 West 178th street constitute robbery, but are uncertain, have a doubt in your minds as to whether it was robbery in the first degree you would drop the degree to robbery in the second degree. If you still doubted whether the crime charged, from the evidence, measured up to the standard of robbery in the second degree but still was robbery as the Court defines it to you, you would again give the defendant the benefit of that consideration and drop the degree to robbery in the third degree.

The offense of robbery is defined by the Legislature in this manner: Robbery is the unlawful taking of personal property from the person or in the presence of another against his will by means of force or violence or fear of injury immediate or future to his person or property.

"To constitute robbery the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery.

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"When force is employed in either of the ways specified the degree of force employed is immaterial, providing you find that some force was employed. The taking of property from the person of another is robbery when it appears that although the taking was fully completed without his knowledge, such knowledge was prevented by the use of force or fear."

I will define to you now robbery in the first degree in the light of the Statute "An unlawful taking or compulsion if accomplished by force or fear in a case specified in the foregoing sections of this Article when the offender inflicts grievous bodily harm or injury in order to accomplish the robbery."

There are other subdivisions of the offense but in view of the form of the indictment and the theory of the prosecution, ^{it} will not be necessary for me to read them for you as they have no application to the case here.

If you have given attention to ^{the} definition of robbery you will see what is required and what makes up the offense. It is a compound crime consisting of a violent assault and a larceny from the person or in the presence of the person assaulted. These two offenses must be committed at the same time in pursuance of a larcenious purpose.

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I define to you now robbery in the second degree:

"Such unlawful taking or compulsion when accomplished by force or fear in a case specified in the foregoing sections of this Article under circumstances amounting to robbery in the first degree is robbery in the second degree when accomplished first by the use of violence, or, second, by putting the person robbed in fear of immediate injury to his person or that of some one in his company."

Robbery in the third degree is thus defined "A person who robs another under circumstances not amounting to robbery in the first or second degrees is guilty of robbery in the third degree."

The theory of the State here is that this defendant committed the crime of robbery in the first degree against the person and property of Stella Morris. The defendant pleads not guilty to the charge, and you are now considering the evidence as it has been adduced on the side of the People and on the side of the defendant.

The contention is that Stella Morris was on the 29th day of March of this year, about noon, besought by the defendant to permit him to put on some device adjusted to burners for the purpose of economy in the consumption of gas; that while in her apartment about one o'clock

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she was violently set upon by the defendant, struck with an iron instrument, brought into the bathroom, bound and gagged; that she made some effort to extricate herself from her situation; she said that the defendant made to her certain threats for the purpose of keeping her still and that, thereafter, the defendant took without her consent and against her will feloniously property of the value of \$18. She says that she is clear in her own mind as to the identification of the defendant as the person who struck, bound and robbed her.

You have for your consideration testimony of Johanna McTague who says that the defendant came to her apartment on the same floor on which Stella Morris resided and put on one of these tips or devices on her gas pipes.

Mrs. Parodi has given testimony to the same effect, as to the visit of the defendant to her apartment and the adjustment of a tip upon one of her gas burners for which she paid the defendant the sum of 25 cents. The testimony of both of these witnesses does not disclose that the person who did this work acted with any impropriety or gave signs of a criminal purpose.

Lillian Rothwell has testified that she boards with Stella Morris and was occupied during the morning with some of her children; that she left the apartment about 11 o'clock with two of Mrs. Morris' children; that she

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returned about 4.30 in the afternoon. This witness made efforts to get into Mrs. Morris' apartment on the 5th floor and finally entrance was secured by the means that you recall. You will consider what she found -- the condition of the injured person Stella Morris and the general condition of the apartment with reference to the drawers and the finding of the pocketbook on the bed.

The defendant going upon the witness stand has told you about himself. He says that he was at the apartment of Mrs. parodi and that he has no recollection as to whether he was in the apartment or did any work on this day in the apartment of Stella Morris or Johanna McCague. He however, does deny that he had anything to do with the assaulting of Mrs. Morris or the stealing of her property.

We have had some persons called here who have told you that they have known the defendant for some years and speak highly of his reputation.

That is, in a nutshell, the testimony that has been taken here and discussed here by the counsel. All the facts are entirely for you. You will consider them all in making up your verdict. You are the supreme judges of all the facts in the case. It will come largely to you upon the testimony of the defendant himself and Mrs. Stella Morris and Miss Lillian Rothwell. Is

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there any question of the identification of the defendant as the person who went to her apartment? On that subject you have the testimony of the defendant himself. He says he was in Mrs. Parodi's apartment. You have the testimony of Mrs. McTague, and the testimony of Stella Morris. If there is a doubt as to his identification of course you will give him the benefit of that doubt and an acquittal. If there is not any doubt then you will take up the question whether he committed this offense as Mrs. Morris has outlined here in her testimony.

The case is one of great gravity to both sides. You must carefully consider all the testimony and then determine it in such a way that you will be satisfied that you have reached a solution of the issues raised by the indictment and the defendant's plea of not guilty.

On the subject of character testimony I ought to say to you that character evidence is always permissible, and relevant in a criminal trial. I do not mean to convey to you that good reputation carried for a long time in the community protects a person who has committed a crime or mitigates the situation. If such a person commits a crime he must be held responsible for his criminal acts, despite the good life that he has before that time lived or the good repute that he had held in by the community. It is received rather upon the subject whether a person of that character and general bearing

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has committed the crime which is charged against him. It will, therefore, be given by you its proper weight and no more.

I know of nothing further than I ought to say to you except to impress upon you the great responsibility that you undertake in a case of this character, a case which involves much to both sides. It is of equal gravity to both sides. If this defendant is not guilty then he should be, of course, at once discharged by your verdict. If he is guilty and the evidence constrains you to find him guilty then you should turn him over to the law for the consequences of his atrocious acts.

The form of your verdict will be either not guilty, or guilty of robbery in the first degree or guilty of robbery in the second degree or guilty of robbery in the third degree.

Is there anything you would like to have me submit to the jury?

MR. CARPENTER: If your Honor please I may have misunderstood you, but I understood you to say, inadvertently, speaking upon the evidence of Mrs. Morris that he went there to put burners on the gas or for the purpose of fixing the gas and he violently struck her a blow.

Now if I recall it the evidence was --

THE COURT: I was stating the theory of the prosecu-

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tionas to the testimony of Mrs. Morris.

MR. CARPENTER: If your Honor please I would call your attention to the fact.

THE COURT: It is, of course, for the jury to find the fact.

MR. CARPENTER: Mrs. Morris said that the man stated he came from the Gas Company. I feel it quite proper to have the jury so instructed at this time.

THE COURT: Well, gentlemen, you will recall just what the facts are. The facts are exclusively for you and not for me. Your opinion will not be, in the slightest degree influenced by anything that I have said upon any question of fact unless it coincides exactly with your memory.

MR. CARPENTER: I submit those to you-- the requests (handing requests to the Court.)

THE COURT: You should have done that before. I am surprised that you did not.

MR. CARPENTER: I have some requests to charge.

THE COURT: Yes. Let me see them. Do you desire me to charge one or more?

MR. CARPENTER: Those I have marked.

THE COURT: I charge the first request. The burden of establishing every material fact in the case beyond a reasonable doubt never shifts to the defendant but rests

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upon the prosecution from the beginning to the end of the case.

The second I think I substantially covered that the defendant in a criminal case is not obliged to bring forward any proof or offer any evidence, and the burden will still rest on the prosecution to establish every material fact in the case beyond a reasonable doubt and even if the defendant does offer testimony he is not obliged to conclusively establish any fact. If testimony offered in his behalf goes no further than to raise a reasonable doubt in the minds of the jury as to the innocence of the defendant he is entitled to an acquittal.

I think I have already charged that substantially, but I will charge it again. I think I have charged the fourth, but I will do it in the language of your request.

MR. CARPENTER: I ask your Honor to charge the jury that the defendant is entitled at the hands of the jury to the same consideration as if the best citizen of the community was on trial.

THE COURT: So charged.

MR. CARPENTER: I ask your Honor to charge that if the evidence is evenly balanced upon any given portion of the case it is the duty of the jury to give the defendant the benefit of the doubt and an acquittal.

THE COURT: I so charge.

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MR. CARPENTER: I ask the Court to charge the jury that the burden of identification is upon the People, and if the evidence equally balances on that proposition it is the duty of the jury to give the defendant the benefit of the doubt and acquit him.

THE COURT: I so charge.

MR. CARPENTER: I ask your Honor to charge the jury that it is now well settled that evidence of good character may, of itself, raise a reasonable doubt which would warrant the jury in acquitting the defendant no matter how strong the evidence against him may be.

THE COURT: Yes.

MR. CARPENTER: I ask your Honor to charge that the presumption of innocence survives the finding of an indictment, the arrest, arraignment and the empanelling of a trial jury, and continues throughout the trial until the rendering of a verdict of guilty.

THE COURT: I so charge.

MR. BOSTWICK: I ask your Honor to charge the jury that the amount involved is immaterial.

THE COURT: It is inconsequential. What the amount taken was. If property of some value was stolen by means of a violent assault the amount would be immaterial.

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MR. CARPENTER: I ask your Honor to charge the jury that in the disposition of any motion that the Court may make upon the request of counsel the jury will disregard.

THE COURT: Yes. Any legal situation you are not concerned with. Questions as to the form of the indictment and motions with reference to the admission or exclusion of testimony and the denial of such motions at certain stages of the case you are not responsible for. You are to determine the case on the merits, and to declare the truth with reference to this charge. That is your responsibility and you have no other. Anything that I may have said upon the exclusion or admission of testimony or in the denial of motions made has no bearing on your responsibility or duty.

(The jury retire.)

At 5.10 p.m. the jury return to court.

THE COURT: I have this communication from the jury: "May we have read the testimony of Mrs. Morris where she identified the defendant as being the person who assaulted her at her house.

(In the presence of the defendant and his counsel the stenographer read the direct and cross examination of the defendant.)

(At 5.45 p.m. the jury return a verdict of guilty

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of robbery in the first degree and recommend him to the mercy of the Court.

THE COURT: What is the basis of that recommendation?

THE FOREMAN: His age and his past character.

MR. CARPENTER: I move to set aside the verdict, on the ground that it is contrary to law and contrary to the weight of evidence and on all the grounds mentioned in the Code of Criminal Procedure.

Motion denied. Exception.

(Defendant remanded.)

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