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

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

vs.

THOMAS J. DWYER, impleaded with
HARRY JONES, THOMAS McGONIGAL and
THOMAS J. REILLY.

B e f o r e

HON. JOHN F. MCINTYRE, J.,

and a Jury.

-----X
Indictment filed October 15, 1919.

Indicted for grand larceny in the second degree.

New York, January 9, 1930.

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY WILLIAM A. McQUAID.

FOR THE DEFENDANT: MR. JOEL KRONE.

Peter P. McLoughlin,

Official Stenographer.

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1
2
WILLIAM H. MILLBURY, a witness called on behalf
of the People being duly sworn, testified as follows:

(The witness states he is a Police Officer attached to the
33rd Precinct.)

DIRECT EXAMINATION BY MR. McQUAID:

Q How long have you been a member of the Police Force of
the City of New York? A About nineteen months.

Q Were you a member of that Department on the 16th and 17th
of July 1919? A Yes, sir.

Q Tell the jury what your post was? A Post 1, 2 and 3
which took in Fourth and Park Avenue and Madison Avenue from 27th
Street to 42nd Street.

Q What was your tour of duty on the 17th of July? A Twelve
one A. M. to 8 A. M.

Q Where were you about 3 o'clock on July 17, 1919? A In
the doorway No. 43 East 41st Street.

Q Did you see the defendant at that time and place? A Yes,
sir.

Q When you first saw him where was he? A Sitting on the box
of a taxicab.

Q Where was that cab located? A In the roadway in East 31st
Street between Park and Madison Avenue.

Q Which side of the street? A South side.

Q With respect to the number of the house or building on
East 41st Street the cab stood opposite what number or numbers?
A Well, when I first saw him he was standing in front of No. 58.

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East 41st Street.

Q Did you see any other men in that vicinity? A Yes, sir.

Q How far away from him, in what direction from him and the taxicab you describe? A Between twenty-five and thirty feet east of this taxicab, facing east.

Q From which direction did you come into 41st Street? A From Madison Avenue.

Q Turning east you were on Madison Avenue and proceeded in what direction? A North.

Q When you got to 41st Street what did you see looking east, did you look east? A Yes, sir.

Q What did you see? A I saw a taxicab in front of No. 56, facing west.

Q That is facing towards you? A Yes, sir, a private automobile standing on the south side, facing east.

Q Did you see anybody? A I seen three men at the rear of the private car.

Q Tell us what you saw them do?

MR. KRONE: I object to that as immaterial, irrelevant and incompetent unless it can be shown that the defendant was part and parcel to that -- one of the three.

THE COURT: The evidence will have to be adduced before I can say whether there is anything to connect the defendant. If it does not connect the defendant the testimony now being given may be stricken out.

MR. KRONE: Yes.

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THE COURT: You may move to strike it out.

THE WITNESS: Three men removed a spare wheel from the rear of this private car; one of the three men rolled it west to the taxicab, opened the door, placed the same inside. The three men entered the cab; it started west and I went to approach and when it approached the stop where I was standing I stopped it.

BY THE COURT:

Q Three men entered the taxicab and then the driver or operator started the cab up? A Yes, sir.

BY MR. McQUAID:

Q Officer, at this point let me ask you -- when you saw that taxicab the first time did you see anybody get out of it? A No, sir.

Q You didn't see anybody get out of it at all? A No, sir.

Q The first time you saw the three men was when they were at the rear of the automobile standing in 41st Street? A Yes, sir.

Q Then you saw those three men take a wheel and bring it to the taxicab? A Yes, sir.

Q And the driver started? A Yes, sir.

Q When you saw these three men as they got to the automobile did they come around to the front of the automobile? A No, sir.

Q Did they engage the chauffeur in any conversation whatever at that time? A No, sir.

Q Just opened the door, put the wheel inside and got in themselves? A Yes, sir.

Q Now you were at 43, you say, in the doorway of 43? A Yes, sir.

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Q Observed what you testified to from that point? A Yes, sir.

Q Did you go straight out into the street? A Yes, sir.

Q Did you say anything to anybody? A I ordered the car to stop.

Q Tell us in what words you did that and whom you addressed yourself to? A To the chauffeur, to stop the car.

Q By the chauffeur, do you mean anybody in this court room?

A The defendant.

Q You ordered him to stop? A Yes, sir.

Q Tell us your exact words? A I ordered him to stop.

Q Well, you didn't say that. Did you say, "I order you to stop

A No, sir; I said, "Stop" and stepped in front of the machine and asked him, "Where are you going with that shoe?"

Q Did you have anything in your hand? A Yes, sir; I had a night stick and a revolver.

Q Was the automobile stopped? A Yes, sir; stopped after I ordered it.

Q That means to say the driver stopped? A Yes, sir.

Q What happened then? A Three men got out from the rear part of the automobile or taxicab. I looked in the taxicab and I saw the wheel resting partly on the floor and on the seat inside the cab.

Q While you were doing this what happened, if anything? A I wrapped for assistance.

Q Did that taxicab remain stationed there?

MR. KRONE: I object to that as leading.

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Q What if anything did the defendant do? A Started the car; made an effort to start it.

MR. KRONE: I object to that and move to strike it out.

Q Tell us what he did? A He sort of raced the engine like a preliminary to starting the automobile and I had to order him again to stop.

Q Did the car move? A About half a foot.

Q What did you do, did you ^{do} anything besides that; did you do anything with any part of your body at the time you gave the second order to stop? A No, sir.

Q Did you do anything with the pistol or night stick? A No, sir; only used the night stick to wrap for assistance with.

Q Then you placed this defendant and the other three men under arrest? A Yes, sir.

Q Took the spare wheel around to what station? A The 23rd Precinct.

Q That is located where? A 30th Street between Sixth and Seventh Avenue.

Q Did you have any talk with this defendant? A No, sir -- after I placed him under arrest.

Q No more than you have already testified to? A No, sir.

Q None after you placed him under arrest? A No, sir.

Q How did you go to the Police Station? A In the taxicab.

Q Who drove it? A The driver.

CROSS EXAMINATION BY MR. KRONE:

Q Well, Officer, when you came to 41st Street -- when you

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reached on the corner of Madison Avenue and 41st Street how many feet away was the Marmon car from you? A A little over 200 feet.

Q Could you distinguish the features of the parties that were at the Marmon car? A No, sir.

Q Now then you say that the taxicab that the defendant was on was how many feet west of that? A Between 25 and 30 feet.

Q Did you distinguish the face of the taxicab chauffeur? A No, sir.

Q When you were looking down were you on the same side as the taxicab or were you on the opposite side? A When I first got to this corner I was on the same side, I then crossed over to the north side to 43 and entered that doorway.

Q You then looked at them on an angle? A Yes, sir.

Q How many feet away were you then at that angle from the taxicab? A About 150 feet.

Q Now then you claim that three men were at the rear of the Marmon car? A Yes, sir.

Q They came on the sidewalk on the southerly side? A Yes, sir.

Q Do you know which one of the three men rolled that wheel? A No, sir.

Q Were they always in your presence, the three men? A With the exception of a few seconds it took them to pass the taxicab.

Q Then when they were just a few seconds away you don't know what transpired, do you? A No, sir.

Q You don't know whether anyone of these three men spoke to this chauffeur? A No, sir.

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Q Was the car door of the taxicab open or closed? A Closed.

Q You could see that pretty plain? A Yes, sir.

Q How many lights were on that block? A One.

Q Where is that located? A In front of the Manhattan Storage Warehouse.

Q Then tell the jury how far away the Manhattan Storage Warehouse is from where this chauffeur was standing with his car?

A Directly opposite.

Q Directly opposite? A Yes, sir.

Q Will you say that three men got inside the car? A Yes, sir.

Q Sure about that? A Yes, sir.

Q Is your recollection good? A Well, I saw three men get in.

Q Is your recollection good? A Yes, sir.

Q Got a pretty good memory? A Yes, sir.

Q Now is your memory better today than it was July 29th, 1919? A No, sir, not any better.

Q You remember testifying in this case in the Police Court?

A Yes, sir.

(At this point the Court admonishes the jury and takes a recess.)

After Recess (2 P. M.)

WILLIAM H. MILLBURY, witness for the People,
resumes the stand.

CROSS EXAMINATION (Continued) BY MR. KRONE:

Q I was just asking you, Mr. Millbury, when we adjourned --
you saw this defendant ^{the} with three men that you saw at the rear of

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the Marson automobile there after entering this defendant's taxicab?

A Yes, sir.

Q The whole three of them? A Yes, sir.

Q Closed the door after them? A Yes, sir.

Q Positive about that? A Yes, sir.

Q You could not be mistaken? A No, sir.

Q Now I ask you did you testify in this case in the Police Court on July 29th, 1919? A Yes, sir.

Q Do you remember testifying in this case? A Yes, sir.

Q Do you remember a question being asked you in that Court, "State exactly what attracted your attention at the first time and what occurred thereafter"? A Yes, sir.

Q Did you make this answer among others, "I ordered them to the street and while the three got out there were two men inside the cab, one man sat alongside of the driver in front"? Did you make that answer. A I don't remember any such answer.

Q Will you swear that you didn't make that answer? A No, sir.

THE COURT: He says he does not remember.

Q Is your memory better today than it was July 29th? A No, sir, it isn't any better.

Q Well which is correct now, were the three men inside -- after having your memory or recollection refreshed as to whether the three men were in or two only in? A Three were in.

Q You could not be mistaken? A No, sir.

MR. KRONE: I ask the Court to ask the District Attorney to produce the testimony in the Jones case where these minutes

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were marked in evidence.

MR. McQUAID: The District Attorney hasn't got the minutes. They are in Court..

MR. KRONE: Will you consent that the testimony certified to -- that these are the correct minutes?

MR. McQUAID: Yes, certainly.

(Marked Defendant's Exhibit A.)

MR. KRONE: I offer in evidence that part of the testimony that I have just referred to.

(Mr. Krone reads a portion of Defendant's Exhibit A to the jury.)

Q Now you say that when you ordered this man to stop you had a conversation with him -- with whom did you have that conversation?

A With the chauffeur.

Q What did you say to him? A "Where are you going with that shoe."

Q Positive you had that conversation with him? A Yes, sir.

Q Could not be mistaken about that? A No, sir.

Q Well when was the first time you thought of the words, "Where are you going with that shoe"? A When I ordered him to stop.

Q Did you see him take a shoe? A No, sir.

Q Why did you ask him where he was going with the shoe?

A Because I seen it placed in the cab.

Q I ask you if you remember this testimony.

THE COURT: Did he say he didn't make that answer?

MR. KRONE: Page 8.

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"Q Did you have any conversation with these defendants regarding the wheel? A No, sir."

Q Do you remember making that answer? A Yes, sir.

Q Do you now say that in view of this answer you still say you had a conversation with this man? A I made that conversation with him before I placed him under arrest.

Q There is no time stated in this question when you had any conversation. The question is "did you have any conversation with these defendants regarding that wheel?" Now that is the question put to you and your answer is "no, sir." Now which is correct, the one you are giving now or the one you testified to on July 29th?

A I gave the conversation I had with him before I made the arrest.

Q Now when this question was put to you was this answer correct or was the one you are making today? A The one I am making now is correct.

Q Your memory is today better than it was July 29th? A No, sir.

Q The facts were then fresh in your memory? A Yes, sir.

Q Did this man make any statement to you at all? A No, sir.

Q Sure about that? A Yes, sir.

Q He didn't say one word to you? A No, sir.

Q Didn't ask you what you wanted from him? A No, sir.

Q Let me ask you this, if you made this answer, "When the cab approached the doorway where I was standing I stepped out and stopped him; they wanted to know what was the matter". Did you make that answer? A I don't recall any answer being made to my

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question at the time --

Q Did you make that statement that he asked what was the matter? A I don't remember the question at all.

Q Will you swear that you didn't testify as stated? A I cannot swear, no, sir.

Q Well did you make that statement to the Court on July 29th, 1919, before Mr. Justice Ten Eyck? A I testified on that day.

Q Do you recall I think it is on the same page or number 7 which has been offered in evidence, that very same part this same answer -- I will read you the whole thing, gentlemen of the jury, so that there will be no question about it. "The driver then started west on 41st Street and when he approached the doorway where I was standing I stepped out and stopped him. They wanted to know what was the matter. I ordered them to the street and while the three got out there were two other men inside the cab and one of them sat alongside of the driver in front."

MR. KRONE: I also offer in evidence the part which I referred to a while ago on page 6. I ask you if you had any such conversation. The question was asked this witness, "Did you have any conversation with these defendants regarding the wheel? A No, sir. Q You just placed them under arrest?

A Yes, sir."

BY THE COURT:

Q How long have you been patrolling that particular beat?

A Well, it is not my regular post.

BY MR. KRONE:

Q Are you sure that you saw them then -- the lamp was in

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front of the Manhattan Storage Warehouse? A I don't remember the name of this warehouse.

Q You did testify it might be the Lincoln. It is not the Lincoln. A I said at the time I testified I did not recall the name.

Q Then it is not the Manhattan Storage Warehouse that you said this morning? A It might be.

Q You are not sure? A No, sir; I know that it is a warehouse.

Q Are you familiar with the running of a car? A No, sir.

Q Now, when you jumped out in front of this defendant you had your revolver, had you not? A Yes, sir.

Q Were you pointing at anybody? A No, sir; I had it right in that position, something like this.

Q Did you order this man to stop? A Yes, sir.

Q It was a sudden stopping, did it under orders? A Yes, sir.

Q In making that sudden stop did you know whether he threw his clutch off or the transmission off? A That I could not say.

Q He was on his first speed, wasn't he? A Yes, sir.

Q He had to leave it off-- did you see whether he did that or not? A He stopped the car.

Q You couldn't tell when you say here on the cross examination or on the direct examination that he wanted to start up that he was going to run away from you, was he, you don't want to impress that on this jury? A That was when the three men were in the street.

Q Do you want this jury to believe he was about to run away from you after he was out? A Yes, sir.

Q Didn't you testify he got up also? A No, sir.

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Q Didn't all the people get off that car? A No, sir.

Q Are you sure of that? A Yes, sir.

THE COURT: You are speaking of the defendant?

MR. KRONE: Yes, sir.

BY MR. KRONE:

Q Did you at any time when driving this machine to the Station House with the defendant tell him that he was under arrest?

A Yes, sir.

Q When did you say that? A When I stopped the automobile first off and the three men got out I placed the whole four under arrest.

Q Did you ever tell this man he was under arrest? A yes, sir.

Q When did you tell him that? A When I was standing in the street with the other three men.

Q Did you so testify in the Police Court? A Yes, sir.

Q I show you your testimony and ask you to point out where you made such a statement in the Police Court, find it for me.

A (No answer.)

Q Sure you testified in the Police Court that you placed this man under arrest? A No, sir; I am not sure.

Q Then the first time you made that statement is just now?

A Yes, sir.

Q Did you make that statement in the trial of the other three defendants? A No, sir.

Q Is that one of the defendants (pointing to McConigal)?

A Yes, sir.

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Q Was that man inside the car? A Yes, sir.

Q You saw positively that he was inside, one of the defendants? A Yes, sir.

Q He was inside the car that night? A Yes, sir.

REDIRECT EXAMINATION BY MR. McQUAID:

Q Were you asked at any time before this whether you placed the defendant at the bar under arrest? A No, sir.

Q That is the reason why you didn't so state? A Yes, sir.

BY A JUROR:

Q I would like to get the exact location of these automobiles, in what direction was the taxicab faced, the taxicab in which you saw the men get, did that face west? A Yes, sir.

Q The automobile from which the wheel was taken which way did that face? A East.

Q Facing east? A Yes, sir.

BY THE COURT:

Q That is to say they were face to face in opposite directions-- the automobile from which the wheel was taken? A Yes, sir.

BY A JUROR:

Q The two machines were back to back? A Yes, sir.

Q About 25 or 30 feet apart? A Yes, sir.

Q Where did you stand, west of the taxicab? A Yes, sir, west.

BY MR. McQUAID:

Q This taxicab was at what number? A 56.

Q You were in 43? A Yes, sir.

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

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Q About 125 feet from the taxicab and 150 feet from the
automobile? A Yes, sir.

BY MR. KRONE:

Q You could not distinguish the faces of the three men at the
rear of the automobile?

MR. McQUAID: I object to that as already gone into.

Q Could you distinguish the features of the taxicab driver?

A No, sir; not at the distance, no, sir.

Q The only time you did was when you were right in front of
him? A Yes, sir.

Q The first time you recognized him? A Yes, sir.

BY MR. McQUAID:

Q You had them under observation from the time that you
saw the three men place the wheel into the taxicab and just until
you called them to halt? A Yes, sir.

Q Did you see anybody get on or off that seat? A No, sir.

Q Was that taxicab stopped to permit anybody to get on or off?
A No, sir.

Q Was there any change in rapidity from the time that you saw
the taxicab at a standstill 25 feet west of the automobile until
you called it to a halt? A No, sir.

Q And ^{got} three men out? A No, sir.

Q And
Q You placed all four under arrest? A No, sir.

BY A JUROR:

Q Was the taxicab on the opposite side of the street or
both on the south side? A Yes, sir.

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Q It wasn't on the righthand side? A No, sir.

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

(The witness states she resides in Brookline, Massachusetts.)

Q Were you in New York City on the 16th of July, 1919? A Yes, sir.

Q You came from Brookline, Massachusetts? A When? Now? Yes.

Q At present? A Yes, sir.

Q On the 16th of July you were in New York City? A Yes, sir.

Q Were you in 41st Street? A Yes, sir.

Q That day? A Yes, sir.

Q What time? A About eight o'clock in the evening.

Q Were you alone? A No, sir.

Q With whom were you? A My husband.

Q Were you in an automobile? A Yes, sir.

Q Whose automobile was it? A Myself and my husband.

Q A gift of your father-in-law? A Yes, sir.

Q Did it have a spare wheel with an inner tube and a shoe also?

A Yes, sir.

Q Where was that attached to the automobile? A On the rear.

Q What kind of an automobile was it? A A Marmon.

Q Chummy? A Yes, sir.

Q Wire wheels? A Yes, sir.

Q The spare wheel was wire? A Yes, sir.

Q Just where in 41st Street did you leave this automobile?

A On the south side between Madison Avenue and Park Avenue.

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Q Was it a little nearer to Park Avenue or a little nearer to Madison Avenue, if you recall? A Nearer Park Avenue.

Q With respect to the Murray Hill Hotel did you know that?

A I don't know the Murray Hill Hotel.

Q Did you stop that night at the Belmont with your husband?

A Yes, sir.

Q That is on the north side? A Yes, sir.

Q Immediately opposite where you left the automobile? A It is on 42nd Street.

Q It ran through to 41st Street? A I don't recall.

Q You stopped the car -- was your husband driving it or you?

A I don't recall.

Q The car was stopped? A Yes, sir.

Q At the point you have indicated? A Yes, sir.

Q Then you and your husband got out of it? A Yes, sir.

Q Did you have occasion to go to the rear of the car? A We turned the lights on and looked the machine over, went around to be sure the lights were on and removed our bag and proceeded towards the hotel Belmont.

Q Was the spare wheel on the car at that time with the accessories? A Yes, sir.

Q Did you see where that wheel was? A It was attached to the rear, the back of the machine.

Q You and your husband went into the hotel? A Yes, sir.

Q When did you next see the car? A The next morning.

Q What time? A About eight o'clock.

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Q This was eight o'clock at night then you left it? A Yes, sir.

Q Was the spare wheel on the car? A No, sir.

Q When you got there? A No, sir.

Q Did you see anybody near your car? A An Officer.

Q The spare wheel wasn't there? A No, sir.

Q Was the tube, the inner tube or shoe there? A No, sir.

Q Where did you go then? A To the Station House on 30th Street.

Q Did you find the spare wheel with the shoe and inner tube there? A Yes, sir.

Q What kind of a tube or shoe was it? A A Goodyear cord.

Q What kind of a wheel was it? A A wire wheel.

Q You didn't look at the inner tube? A No, sir.

Q That wheel was on your car when your father-in-law gave it to you and your husband? A Yes, sir.

Q Was that the spare wheel that you had on that car? A Yes, sir.

Q Did you see it in the Station House? A It resembled it in every respect by which I could identify it.

MR. KRONE: I move to strike that out.

THE COURT: I will allow it to stand.

Q It was a wheel for a Marmon Chummy? A Yes, sir.

Q A wire wheel? A Yes, sir.

Q Was it exactly like the wheel that you had on your car?

A Yes, sir.

Q The Marmon? A Yes, sir.

Q Four wheels? A Yes, sir.

Q It had what kind of a tire? A Goodyear cord.

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Q That was the same kind of a wheel that was on the back of your automobile when you went up the night before at eight o'clock? A Yes, sir.

CROSS EXAMINATION BY MR. KRONE:

Q You know the number of the wheel? A No, sir.

Q Did you look at the number of the wheel that you found in the Station House? A No, sir; I don't think there is a number on the wheel.

Q You didn't know the number? A No, sir.

Q Did you say that -- I understand you to say to the District Attorney that the wheel was on the rear when your father-in-law gave it to you and your husband? A Yes, sir.

Q Well is that true? A Yes, sir.

Q Did you testify in this case in the Police Court? A yes, sir.

Q Was this question asked you regarding the wheel, "Who bought it", and you answered "my husband?" A Yes, sir.

Q Is that true? A No, sir.

Q You testified in the Police Court to what was not true?

MR. McQUAID: I object to that.

THE WITNESS: I was mistaken.

MR. McQUAID: The People rest.

MR. KRONE: There is not one scintilla in this case on which you could send it to the jury. There is no proof as to the fact set forth in the indictment; no evidence of any kind or character to connect this defendant directly or indirectly with the larceny of that wheel.

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THE COURT: Motion denied. Exception.

MR. KRONE: I move to strike out the testimony of the Police Officer which does not in any way connect the defendant with the larceny.

THE COURT: Motion denied. Exception.

MR. KRONE: I further move, if your Honor please, to take the case from the jury. There is no evidence here of identification of the wheel before the Court as to what this wheel was or what the value of it was.

THE COURT: It doesn't make any difference because I am going to send this case to the jury as petit larceny. The value^{is} of no consequence. Some property was taken and if I send it to the jury I will ask the jury to pass upon the question of petit larceny only.

D E F E N S E .

T H O M A S J. D E W Y E R, the defendant being duly sworn, in his own behalf, testified as follows:

(The witness states he lives in 671 Second Avenue.)

DIRECT EXAMINATION BY MR. KRONE:

- Q Are you a married man? A Yes, sir.
- Q What does your family consist of? A Wife and six children.
- Q How old is the oldest? A Seven.
- Q And the youngest? A A year and two days.
- Q What is your business? A Chauffeur.
- Q Have long have you been a chauffeur? A About eight years.
- Q Driving about the City of New York? A Yes, sir.

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Q Do you own your own car? A No, sir.

Q Are you a licensed chauffeur? A Yes, sir.

Q Have you been such a licensed chauffeur for the past eight years? A Yes, sir.

BY THE COURT:

Q You own a car? A No, sir.

Q You own a taxicab? A No, sir.

Q Who owned that taxicab? A Mr. John O'Brien.

Q He is your boss? A Yes, sir.

BY MR. KRONE:

Q Now do you recall the night of July 16th? A I do.

Q Did you have any passenger on or about July 17th early in the morning? A Yes, sir.

Q Prior to the time that you were employed or hired by someone before the Officer stopped you -- had you a fare? A Yes, sir.

Q Tell the Court and jury just how and where you got that passenger and what you did? A I was coming back from the Hotel Belmont after getting a fare which I just had left out of it.

Q Where had you taken that fare to -- who constituted that fare? A Well I just left a man out of there.

Q Where? A 56 East 41st Street.

Q Where had you gotten that man? A From 56 East 41st Street.

Q There was someone along with this gentleman? A There was a lady.

Q Where did ~~you~~ take them to? A Up through the park, to 157 Riverside Drive and back to 71st Street and Broadway and then

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brought the gentleman back to 56 East 41st Street.

Q Did you get your pay? A Yes, sir, after I went to the Belmont Hotel with the gentleman.

Q Now what time of night or morning was it you got back?

A Well, it was around the neighborhood of half past two or twenty-five of three.

Q Where did you leave your car? A In front of 56 East 41st Street.

Q You accompanied this gentleman into the Hotel Belmont? A Yes.

Q How far did you go? A Right to the foot of the stairs.

Q What was the object of going there? A Because I could not change a twenty-dollar bill he asked me to change.

Q How much was your fare? A \$7.60.

Q Your fare thermometer registered that amount? A Yes, sir.

Q He gave it to you? A Yes, sir, he gave me \$8.

Q What did you do then? A I left the hotel and walked down Park Avenue to 41st Street, crossed over on the south side of the street, walked to where my car was, I was about fifteen feet away from my car and I noticed two gentlemen standing there. As I got near one fellow said to me, "Is this your car," I says "yes," he said, "are you engaged", I said, "no", he says "I want you to drive us to 42nd Street and 8th Avenue." I said, "All right." I got on the seat, put on my gloves and was about to drive away and I don't think I was more than ten feet before I started when McGonigal jumped on the running board and asked me where I was going. I continued on going, went about 50 to 75 feet when the

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officer stopped me. I stopped the car immediately, got off, let McGonigal get off ahead of me because he was standing on the running board. He went to the south side on the sidewalk of the street and he stood on the curbstone, I think he stood in the middle of the gutter, right by the machine; the other two defendants got off on the righthand side of the door, walked around the back part of the door. The Officer called McGonigal from the curb and put him in the car with the two defendants and told me to drive to the 30th Street Station House. After he found the tire in the rig, he pulled out a lamp out of his pocket and seen the tire in the rig.

Q Did he place you under arrest? A No, sir.

Q Did he say at any time that you were under arrest? A No, sir.

Q When was the first time that you were under arrest? A When I came out of the 30th Street Station House he told me to drive the car into the alley way and I told him what was I being arrested for and he said never mind.

Q That is the first time he ever said anything to you? A Yes, sir.

BY THE COURT:

Q Did you see the other defendant place this wire wheel and shoe in your taxicab? A No, sir.

Q Did you know whether it was placed there at any time? A No.

Q At the time that you got to your taxicab did you know that there was a wire wheel in that taxicab? A No, sir.

BY MR. KRONE:

Q These two men that hired you one of them -- they were

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both already standing there? A Yes, sir.

Q By your car? A Yes, sir.

Q When you arrived? A Yes, sir.

Q You say that when you came about — how far away were you when you first recognized them? A About 15 or 25 feet, I couldn't exactly tell you; it was some distance from the car; about from here to that wall there.

Q Did you know them? A No, sir.

Q Did you ever see these men before? A No, sir.

Q Did you ever know these men? A No, sir.

Q Never had any business dealings with them? A No, sir.

Q You have seen them arraigned in court, do you know any of these men? A No, sir.

Q Outside of McGonigal? A Yes, sir, the only man I did know was McGonigal.

Q How did you come to know him? A I knew him about three years. He was a bar_tender up in Third Avenue. As a chauffeur I used to stop there every morning for a glass of beer.

Q Did you have anything to do with taking this wheel off the rear of the car? A No, sir, positively no, sir.

Q Did you see these men take the wheel? A (No answer.)

Q Did you see three men at the rear of the Marmon car taking the wheel off? A No, sir.

Q Did you see a man roll the wheel to your car and put it in your car? A No, sir.

CROSS EXAMINATION BY MR. McQUAID:

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Q Ever been convicted? A Yes, sir.

Q You have been convicted? A Yes, sir.

Q Of what? A Pulling a fire box.

Q What is that? A Pulling a fire box.

Q Of an automobile? A Yes, sir, in 1914.

BY MR. KRONE:

Q 1914? A Yes, sir.

Q What else have you been convicted off? A That is all.

Q Opening a fire box and pulling an alarm? A Yes, sir.

Q How old were you when you did that? A I was about 23 or 24 years old. I was intoxicated.

Q Drinking when you did it? A Yes, sir.

BY MR. McQUAID:

Q How old are you now? A 29, tomorrow I will be 29.

Q You went into the Hotel Belmont with a fare and got your money? A Yes, sir.

Q When you came out what door did you go in to 42nd Street?

A At Park Avenue -- about to go in Park Avenue but had to go in 42nd Street, on account of the Park Avenue door being closed.

Q You left your cab standing facing west on the south side of 41st Street? A Yes, sir.

Q You have been a chauffeur for how long? A For about eight or nine years.

Q Don't you know better than to leave a car standing on the south side of the street facing west? A Well, we could not get any nearer there on account of the street being torn up; that was the regular line; Park Avenue was torn up from 40th to 42nd Street

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and we always lined up on the south side of 41st Street facing west at that time because there was no driveway to get in to the Hotel any nearer than that way unless you would have to go to the 42nd Street entrance.

Q Couldn't you have stopped on the north side of the street?

A I guess I could.

Q Why didn't you if you know the traffic regulation. If you were facing west you were bound to be on the -- you were supposed to go on the north side of the side street? A Yes, sir.

Q If you leave your cab stopped on the north side of the street you face west? A Yes, sir, I believe you will.

Q Why didn't you do that that night? A I can't say.

Q Tell the Court and jury why you didn't do it that night, then and there at that place? A I had been pulling in on the wrong side there for the past month; that is the way I got lined up on the wrong side of the street facing west.

Q East 41st Street? A Yes, sir.

Q You came back again, did you? A Yes, sir.

Q What is this place 56, if that is the number? A A cafe.

Q Were you in there that night? A Yes, sir.

Q When? A About ten minutes to one.

Q You were in there at ten to one? A Yes, sir.

Q When was it you returned with your fare? A When I stepped out of there I got a fare and when I brought the fare back there it was half past two.

Q You were away one hour and twenty minutes? A Yes, sir.

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Q Made the trip that you have described to the jury? A Yes, sir.

Q You came back, what time did you get back there? A About half past two.

Q You went into the Belmont Hotel and came back again? A Yes.

Q Now where were these two men standing? A Right in front of my taxicab.

Q In front of your taxicab? A Right alongside of it.

Q Immediately at the side of it? A Yes, sir.

Q Your taxicab standing on the south side of the street facing west? A Yes, sir.

Q These men were ^{right} alongside of it? A Yes, sir, about five feet away from it.

Q Both standing there? A Yes, sir.

Q You came across them -- did you come across the two diagonally to your taxicab or did you cross over and down? A I crossed-- you couldn't very well cross the street, 41st Street, it was torn up, all rubbish strewn there; the way they had the street torn up, I crossed like diagonally.

Q Towards your cab? A Yes, sir.

Q Now you haven't said a word to us about any automobile being there in your testimony? A No, sir.

Q Was there an automobile there? A I believe there was.

Q Well don't you know whether there was or not? A I couldn't really swear at that time when I left the cab because I didn't pay no attention.

Q You didn't see the automobile? A No, sir.

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Q Did you see it when you came back? A I don't believe I did, I didn't take notice.

Q You have heard the Police Officer say that the automobile was 25 or 30 feet from your taxicab? A Yes, sir, I heard him say it.

Q Were you sober that morning? A Yes, sir, I should say so.

Q Were you sober that morning? A yes, sir.

Q You didn't see that automobile standing there 25 or 30 feet from your car? A I can't say that I did.

Q Your attention was not attracted to it in any way? A No, sir.

Q Who was the first one spoke to you? A The little fellow.

Q Who is he? A I think his name is Reilly.

Q Don't you know his name is Reilly? A No, sir.

Q When did you first learn his name was Reilly? A I heard them call him Reardon or Reilly.

Q Calling him did they? A Yes, sir.

Q They were standing five feet south of the cab on the sidewalk? A Yes, sir.

Q You walked up to them? A Yes, sir.

Q Did you from the time you rounded the Hotel Belmont into 41st Street -- did you meet anyone? A I couldn't say.

Q Were they where you could see them? A What do you mean, when I pulled the car in there?

Q When you came from getting your change in the Hotel Belmont you stepped diagonally across towards your taxicab? A Yes.

Q Now the minute you turned the corner of the Hotel Belmont did you see these men standing there? A No, sir.

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Q Were they there? A I couldn't say.

Q In what direction did they come? A I don't know.

Q Where were they when you first saw them? A About 15 or 25 feet away; I left the cab on the south side of the street.

Q You were there? A Yes, sir, I was there.

Q You didn't cross diagonally to your cab? A Yes, sir, but that didn't bring me to the cab, it brought me about, I should judge about 50 feet from the cab.

Q 50 feet east of where the cab was? A Yes, sir.

Q Have you changed your testimony because your answer would make you run in to the automobile? A No, sir, I started across diagonally and I saw I couldn't cross the street on account of the street being torn up; I didn't walk exactly straight over but I went over that way (indicating.)

Q In other words you walked along East 41st Street and that automobile was at your right hand as you walked along the street? A As I was walking on the sidewalk.

Q That automobile was at your right hand? A Yes, sir, it must have been.

Q Because you crossed to the east of it? A I must have crossed in front of it.

Q Did you see any red light on the automobile? A No, sir.

Q Now you say you proceeded about ten feet when McGonigal jumped on the running board? A About five or ten feet.

Q How far had you proceeded when you were halted? A About 50 to 75 feet.

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Q What did the policeman say to you? A Nothing.

Q He didn't say anything? A No, sir, stop, that is all.

Q He did say stop? A Yes, sir.

Q What do you mean, nothing or stop? A He did have a conversation with me -- that is all he said, "Just stop" and I stopped.

Q Did you see a pistol in his hand? A Yes, sir.

Q See a club in his hand? A Yes, sir.

Q Is that why you stopped? A No, sir.

Q Why did you stop? A Because he hollered stop.

Q Did he say what are you doing with that tire? A No, sir.

Q He didn't say anything of that kind? A No, sir.

BY THE COURT:

Q Do you mean to say that he didn't say it or that you didn't hear it? A If he did say it I didn't hear the words.

Q He just simply said stop? A Yes, sir.

BY MR. McQUAID:

Q Then you stopped? A Yes, sir.

Q Did he say anything else? A No, sir.

Q Did he say anything when ^{he had} the four men lined up on the sidewalk? A No, sir.

Q You got off your taxicab? A Yes, sir.

Q Did you get down because he told you to get down? A No, sir.

Q He didn't tell you to get down? A No, sir.

Q You got down voluntarily? A Yes, sir.

Q You went over there and you were lined up with the other three men, you stood alongside of them? A Stood in the gutter.

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Q Three men in the gutter? A One was on the side.

Q McGonigal on the sidewalk? A Yes, sir.

Q He called him over? A Yes, sir.

Q So the four of you were standing in the gutter? A Yes, sir,
he called McGonigal over and he said, "Come here a minute."

Q Say anything to the other men in your hearing? A Not
that I heard.

Q How far away were you? A About two or three feet.

Q If he said anything you must have heard it? A Yes, sir.

Q He told you men to get into the cab and drive -- told you
where to drive? A Yes, sir.

BY THE COURT:

Q You drove to the Station House? A Yes, sir.

Q Following the direction of the Officer? A Yes, sir, he
just said drive to the 30th ^{Street}/Station House and I went down Fifth
Avenue to 30th Street and crossed over to the Station House.

Q Anybody sit on the seat with you? A The Officer.

BY MR. McQUAID:

Q Did he use a flashlight to see the wheel inside your
taxicab? A He had a light of some kind in his pocket that he
pulled out.

Q Did he say at any time in your hearing what are you doing
with this wheel? A No, sir.

Q Or this tire? A No, sir.

Q He didn't say that? A No, sir.

Q You had no conception of why you were being taken to the

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Station House? A Yes, sir.

Q You mean you didn't know what it was about until after he told you to drive your car into the alleyway alongside the Station House? A Yes, sir.

Q Did you at any time have anything to do with this tire which was in your cab? A No, sir.

Q Did you expect to do anything with this tire? A No, sir.

Q Never at any time? A No, sir.

Q Didn't you protest at being told to drive around to the Station House under these circumstances without any information at all? A No, sir.

Q You made no protest? A No, sir, outside of when I came into the Station House.

Q I mean starting in East 41st Street to the Station House?
A No, sir.

Q You made no protest whatever? A No, sir.

BY MR. KRONE:

Q In 41st Street he never said you were under arrest? A No.

BY THE COURT:

Q You said you made no protest when he told you to go to the Station House? A Yes, sir.

Q When he told you to go to the Station House you immediately started up to the Station House? A Yes, sir.

Q When did you first learn that there was a shoe or tire and a wire wheel inside the taxicab? A When I stepped off the seat from my wheel and the Officer opened the door and lit the

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light.

Q That is the first time you knew of it? A Yes, sir.

Q What time was it that you say you left your taxicab in the street after having discharged your fare? A In the neighborhood of half past two or twenty-five to three.

Q How long had you been driving that man around? A About an hour and a half or twenty-five minutes.

Q What did your clock show? A \$7.60.

Q Where did you drive to? A Up Fifth Avenue, through the Park, and over to 157th Street and Riverside Drive and drove to West 71st Street and then back.

Q Was there only a man in the taxicab? A A man and a woman.

Q You drove around the park? A Yes, sir.

Q How much did you say the fare was? A When I got back to 41st Street it was \$7.60.

Q He gave you a twenty dollar bill? A He asked me if I had change and I said no and we went in the Hotel and got the change and he gave me \$8.

Q That is to say 40 cents for a tip? A Yes, sir.

Q The other was for the fare? A Yes, sir.

Q When you came back, after having gotten the fare, the three Reilly, Jones and McGonigal, where were they standing?
A I only seen two men.

Q You only saw two? A Yes, sir.

Q Did you see Jones? A I believe that is what his name is Jones and Reilly.

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Q They were standing where? A By the taxicab.

Q You saw but two men? A Yes, sir.

Q Do you know whether there was another man inside? A I couldn't say whether there was or not.

Q When you got to the Station House how many got out of the taxicab? A Three.

Q But one of the three men you hadn't seen before that? A No, sir; it was only two got in; the other fellow was standing on the running board with me; the Officer pushed him in after he put the other men under arrest -- there were three men.

BY MR. KRONE:

Q Were there three men when you started off with your car at 56 East 41st Street -- did three men get into your car? A Three.

Q Was there any man seated on the front seat with you? A No, sir, no front seat there, outside of one seat; I was sitting there, nobody sitting on the front seat when I started off.

Q Did any man sit alongside of you in the front? A No, sir.

Q There was but one seat there? A That is all.

Q A vacant space? A Yes, sir.

Q Only one seat? A Yes, sir.

Q There is one thing I wanted to ask you -- the Officer says that he ordered you to stop and when you stopped did you attempt to go any further? A No, sir.

THE COURT: Well, I don't think the Officer said that.

BY MR. KRONE:

Q Did you start up --

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THE COURT: The Officer said the machine was in motion as though racing the engine.

BY THE COURT:

Q When he told you to stop did you immediately get out your clutch? A I threw out the clutch and the brake at the same time.

Q Now afterwards did you put the clutch in again? A No, sir, but I did go a couple of feet afterwards. I probably forgot to take the three levers out of speed; I immediately jumped out.

(John O'Brien of 192 Stryker Avenue, Woodside, Long Island, owner of the taxicab, Patrick J. Allen of 178 Tenth Street Brooklyn, William S. Doomer of 2482 Valentine Avenue, Bronx, testified to the good character of the defendant.)

THOMAS J. DWYER, the defendant, recalled.

BY MR. KRONE:

Q How long have you been a chauffeur? A In the neighborhood of nine or ten years or eight years.

Q Have you been constantly employed in that occupation for eight or ten years? A Well, in the hacking business I have been employed for about seven years.

Q When did you work for E. Altman & Company? A In the years 1908 and 1910.

Q What were you doing at Altman's? A Wagon boy.

Q Do you remember who it was employed you in Altman's?

A Yes, sir.

Q What was his name? A Mr. Murphy.

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Q He is there still? A He is dead now.

Q Did you leave there of your own accord? A Yes, sir.

Q Where else have you worked? A I worked in A. A. Vantine's for three years.

Q They deal in Japanese goods? A Yes, sir.

Q How long did you work for them? A Three years.

Q Leave them of your own accord? A Yes, sir, I went there from Altman's.

Q Before you went to Vantine's did you work any place?

A Just going to school.

Q You were in school? A Yes, sir.

Q You were asked by the District Attorney regarding if you had ever been convicted and you said you had? A Yes, sir.

Q What was the sentence that you got then? A Suspended.

BY THE EIGHTH JUROR:

Q Now this street was broken up I understand, Park Avenue?

A Yes, sir.

Q Were those streets in good condition on 41st Street?

A Well, about --

Q Was the north side of 41st Street in good order so that a taxicab could drive up properly? A I couldn't say.

Q You don't remember whether 41st Street was in good condition or not? A Not below where they were filling up Park Avenue, over there by the Lincoln Storage it was because we used to drive on the sidewalk and turn around in the street.

Q I want to know the condition of that street 41st Street,

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I want to know why a taxicab driver would stand on the wrong side of the street? A Because they could not pull on the opposite side because that was where all the baggage and all the stuff for the hotel goes, the Belmont delivery is there, the servant delivery, a sort of a delivery entrance, trunks and express wagons go there, the different firms selling goods to the Belmont Hotel would back in there and of course you couldn't back up to that part of the street with a taxicab and we took the side with the least traffic on which was the down town side of 41st Street.

Q The Police Officer allowed that? A Yes, sir.

Q To stand on the wrong side of the street? A Yes, sir.
BY THE COURT:

Q Did the condition of this repair in the street begin a little above the avenue -- didn't it? A No, sir, the street paving-- they were out there from 42nd Street, I should judge about 25 feet in the street and they had a lot of barrels and stones and stuff like that there which drove the cars over west; you would have to go in that street and over or along Park Avenue.

Q You couldn't go directly across Park Avenue? A No, sir, go to the street and then come down again on the south side of 41st Street if you want to continue down Park Avenue.

Q Was that the time they were building the viaduct? A When it was completed they were repairing the street.

(Upon motion of the defendant's counsel the Court directed a verdict of acquittal.)

(The jury returned a verdict of not guilty.)

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