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CASE #2741

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

3280

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

Before:

vs.

HON. JOHN F. McINTYRE, J.,

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

and a jury.

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

Indicted for grand larceny in the second degree.

New York, January 8th, 1920.

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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W I L L I A M H. M I L B U R Y, 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 23rd Precinct.)

DIRECT EXAMINATION BY MR. McQUAID:

Q How long have you been a member of the Police Force?

A About nineteen months.

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

Q Do you remember the 17th of July, 1919? A Yes, sir.

Q Did you see the defendant on that day? A I did.

Q Was he alone? A No, sir.

Q Who was with him when you saw him? A Three other men, Thomas J. Reilly, Thomas J. Dwyer and Harry Jones.

Q And this man McGonigal? A Yes, sir.

Q Tell the jury where it was that you saw him? A They got out of a taxicab in East 41st street between Park and Madison avenue.

Q Did you observe them before that. Did you have them under observation? A Yes, sir.

Q Before that point? A Yes, sir.

Q Tell us where you were when you first saw them and what you were doing if anything? A There was an automobile standing in front of 58 East 41st street, partly in front of that building, and partly in front of the delivery entrance to the Murray Hill Hotel; there was a taxicab facing west

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in front of No. 56 East 41st street.

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Q How far away from the automobile facing east?

A Between 25 and 30 feet. There were three men acting in a suspicious manner in the rear of the--

MR. KRONF: I move to strike that out.

THE COURT: Strike it out.

Q What did you see them doing? A Three men working around the rear end of this automobile, a private machine, facing east. I stepped into the doorway at No. 43 East 41st street and watched. I seen the three men remove a wheel that had been attached to the rear part of this machine, and rode it west to where the taxicab was standing. One of them opened the door and placed the wheel inside the rear part of the taxicab, and closed the door. The taxicab started up to go west.

Q How many men got into the taxicab? A Three men that was on the street.

Q Do you know who they were? A I did not learn their names at the time, but I learned afterwards.

Q Who were they? A McGonigal, Reilly and Jones.

Q This defendant one of them? A Yes, sir.

Q Who drove the taxicab? A A man named Oover.

Q Where did he sit? A He sat on the box.

Q On the left or right hand side of the taxicab?

A Right hand side.

Q That is the side nearest to you? A Yes, sir.

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Q You were on the north side of the street? A Yes, sir.

Q The taxicab on the south side? A Yes, sir.

Q You observed these men roll it, you got them into the taxicab with the chauffeur in his seat? A Yes, sir.

Q Tell the jury then what took place? A When the men reached opposite where I was standing I stepped out and hailed it-- I said, "Where are you going with the shoe". I then ordered the men out of the cab. Three of them got out and the driver sat on his seat.

Q Where were you standing when they got out? A On the left of the taxicab, the south side.

Q Please describe your course from 43, did you come directly out? A Came right to the front of the machine and stopped it.

Q Did you have anything in your hand? A Yes, sir.

Q What did you have in your hand? A I had a night stick and I had my revolver.

Q Then did you step to the door? A Yes, sir.

Q Which door? A The left hand side, yes, sir.

Q That is on the south side, towards the south side of the street? A Yes, sir.

Q Who opened the door? A I opened it.

Q Who came out? A The three men in the rear.

Q Was this man one of the men? A Yes, sir.

Q Did you look into the taxicab? A Yes, sir.

Q What did you find? A Found a wheel, a wire wheel and

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a tire resting partly on the floor against the rear seat of the taxicab.

Q Did you have any talk with these men? A No, sir.

Q What did you do then? A I rapped for assistance and Patrolman Daly responded. I left him in charge and I made inquiry in the Murray Hill and in the Belmont Hotel, and tried to find out who owned the machine.

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

THE COURT: Strike it out.

Q Were there anybody else in the street at the time between 43 looking east between that and Park Avenue? A I did not see anybody.

Q What time was it? A 3 a. m.

Q Was there any light in that street? A Yes, sir, one street lamp.

Q Where was it located? A About the middle of the block.

Q Where with respect to the taxicab? A It was on the north side of the street; the taxicab was on the south side and partly in the rays of this arc lamp.

Q This was one of those street arc lamps? A Yes, sir.

Q On a pole? A Yes, sir.

Q Did it face into the street? A Yes, sir.

Q Now did you have the taxicab under observation without interruption from the time it started, after these three men got in and after they put the wheels-- from the time it

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started until it got up in front of you? A Yes, sir.

Q Did any one get into that taxicab? A No, sir.

Q Did you see any one get into it or out of it? A No.

Q Did the taxicab stop between the time it started, after they put the wheel and the three men got in until you stopped them? A No, sir.

Q Now, did you place the defendant under arrest? A Yes.

Q With three others, the chauffeur and two others?

A Yes, sir.

Q Where did you take them? A To the West 30th street station.

Q Where did you take the wheel, the tire and the tube?

A I took them to the station house.

Q What station house? A West 30th street, 23rd Precinct

Q What has become of it? A It was ordered given back to the complainant by Magistrate Marsh in the Second District Court.

CROSS EXAMINATION BY MR. FRONT:

Q How long have you been on the Police Force? A Nineteen months.

Q Now, when was the first time that you saw the taxicab and the men that you described at the rear of the automobile?

A About ten minutes of three.

Q That was the first time that you had seen these people wasn't it? A Yes, sir.

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Q You hadn't seen them before? A No, sir.

Q Where had you come from? A I came north on Madison avenue.

Q And turned into 41st street? A No, sir, I didn't turn in; I was with the intention of going-- it was my lunch time 3 a. m.

Q How did you come into 41st street? A I seen these two machines down there.

Q How far away were the machines from you when you saw them? A The first time?

Q Yes. A I guess it must have been all of 200 feet.

Q Then what did you do? A I walked across the street and entered the doorway at No. 43.

Q When you crossed the street you went to the north side of the street? A Yes, sir.

Q Then where did you go? A Turned east to No. 43.

Q How far away is that from the corner? A Between 75 and 100 feet.

Q Where is this lamp that you speak of? A It is--

Q In front of what number? A It is in front of the warehouse there, it takes in several numbers.

Q Now isn't that close to Park avenue? A No, sir.

Q Where is it near? A It is, I should judge, about the middle of the warehouse and that starts below from the number -- from the Athens Hotel to the Belmont Hotel.

Q So it is quite a distance away from the delivery en-

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trance, isn't it, of the hotel? A Yes, sir.

Q Now the taxicab you say was on the south side of the street? A Yes, sir.

Q How far away was that taxicab from you when you were in the hallway or in the doorway? A About 150 feet.

Q Now where was the automobile that was standing still in front of the delivery place of the hotel? A It is partly in front of No. 58.

Q How far away was that from you? A From me? Well about 175 feet.

Q You were looking towards this automobile? A Yes, sir.

Q How many persons did you see there? A Three.

Q Where is the saloon located? A No. 56 East 41st street.

here

Q That is where this automobile was standing? A The taxicab was standing.

Q The taxicab? A Yes, sir.

Q Were there any people going in or out? A I didn't see any.

Q Were there any ash cans being put out on the sidewalk at that early hour in the morning? A No, sir.

Q Did you see any taken out of the delivery part of that hotel? A No, sir.

Q Did you distinguish the features of the three men that you claim were at the rear of the automobile? A No, sir.

Q You could not tell who they were or what they were?

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A No, sir.

Q Now how were they standing with reference to the automobile, the three men, how were they standing? A Two of them were south of the wheel, and one was north of the wheel.

Q Well, were they, the three, handling the wheel? A Yes

Q How big was this wheel? A Well, I don't know the size, it is 34 by 4 1/2.

Q You mean by that it is 34 inches in circumference?

A Yes, sir.

Q You want to tell this jury it took three men to take off that wheel? A Yes, sir.

Q The three were working on this wheel? A Yes, sir.

Q You saw three men working there? A I did.

Q How did they take it off? A Well, they took a wrench out of the machine. The wheel was attached to the automobile by a hub tap, the same as it would be on a wheel when it is running.

Q Did you see them take it off with a wrench? A No, sir.

Q Why do you say it was taken off with a wrench? A Because I found a wrench in the taxicab afterwards.

Q You found something more than a wheel in the taxicab? A Yes, sir.

Q Find anything else in the cab? A Yes, sir, a wheel and a hub cap and a wrench.

Q You saw a rain coat in there? A There was.

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Q You did find a rain coat? in there? A Yes, sir.

Q Did you try it on this man? A No, sir, I did not.

Q Bring the rain coat into the station house? A Yes, sir.

Q Ask whether it belonged to any of these men? A I did.

Q Did they say that it belonged to them? A No, sir; they denied any knowledge of it.

Q You say what happened after they took off this wheel?

A They rolled it to the taxicab.

Q Who rolled it? A One of the three men.

Q Which one? A I don't know which one.

Q Well, the three of them didn't roll that wheel?

A No, sir.

Q Did you see this man roll it? A No, sir.

Q Now you have testified you saw these men get into the taxicab? A I did.

Q Sure about that? A Yes, sir.

Q Cannot be mistaken? A No, sir.

Q Now there were only four men implicated in this deal that you saw? A That is all.

Q That means Reilly, Jones, McGonigal and the taxicab chauffeur? A Yes, sir.

Q You say three of them went inside of this taxicab? A I did.

Q You cannot be mistaken about that? A No, sir.

Q Did you testify in the Police Court in this case?

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A Yes, sir.

Q Your recollection better than than it is today?

A Well, no, sir, it is just as good.

Q Just as good? A Yes, sir.

Q You say you testified before Mr. Justice Ten Eyck?

A Yes, sir.

Q On July 29th, 1919? A Yes, sir.

Q Now did you testify as follows: "I stepped out and I stopped them. They wanted to know what was the matter and I ordered them to the street and while the three got out there were two men inside the cab, one sitting alongside of the driver in front". Did you so testify? A I don't remember testifying to that.

Q Repeated.

THE COURT: He says he does not remember.

Q Are you mistaken if you say there were three men inside the cab now? A Three men got to the street.

Q You said three men got inside the cab? A Yes, sir.

Q Three men came outside of that cab when you opened the door? A Yes, sir.

Q Now, are you mistaken about that? A No, sir.

Q Will you swear that you did not so testify? A I don't remember making that statement.

Q Well, is that your best answer? A Yes, sir.

Q Did you have any conversation with these men? A Only when I stopped them.

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Q Didn't you testify in the Reilly case? A Yes, sir.

Q Didn't you testify in the Jones case? A Yes, sir.

Q Didn't you testify in the Jones case you had a conversation there with these two men? A I testified I had.

Q Did you so testify? A No, sir.

Q You won't swear you didn't say in the Jones case that you had a conversation with these three men? A I had a conversation when I stopped them, not after I placed them under arrest.

Q These three men were not outside -- they were inside the taxicab? A That is true.

Q You had conversation with them while you were on the outside? A Yes, sir.

Q Well, I will ask you if you testified in the Police Court, as follows: "Did you have any conversation with these defendants, regarding that wheel? A. No, sir." Did you so testify? A Yes, sir.

Q Then you did not have any conversation with them? A Not after I placed them under arrest.

Q That is the explanation you make? A Yes, sir.

Q Now, you didn't see these three men get out of the taxicab, did you? A Yes, sir.

Q You want to swear that McGonigal came outside of that taxicab from the inside? A I do.

Q Sure about that? A Positive.

Q Did you see anybody sitting outside or standing on

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the running board of that car? A No, sir.

Q Or taxicab? A No, sir.

Q When you stopped in front of the taxicab you had your revolver with you, had you not? A I did.

Q You pointed it towards the taxicab driver? A Yes, sir.

Q You ordered him to stop, did you not? A Yes, sir.

Q You had absolute vision as to who was on the front or in the side of that car? A Yes, sir.

Q Will you swear that you didn't see this man in the front or outside on the running board? A I saw nobody outside of the car with the exception of the driver.

Q You could not tell by looking at a distance of 175 feet what these three men were doing behind that car? A No,

Q You say that you only saw one man roll the wheel? A Yes, sir.

Q Now when the men were on the side walk were they still in your vision, were they visible to you? A With the exception of a few seconds it took them to pass the taxicab.

Q Did you see anybody on the sidewalk at all? A No, sir. I did not.

Q Coming the other way did you notice or observe anybody? A No, sir.

Q Well was not your mind intent upon these men that were working suspicious to you? A It was but if anybody would have passed that point I could have seen them.

Q Did you see anybody? A No, sir.

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Q Did you see this man come towards that taxicab? A No, sir.

Q Will you swear that he did not? A What I can swear to is three men were leaving the rear part of this automobile with the wheel and entered the taxicab. I stopped the cab and this man was one of the three that got out.

Q One of the men that got out? A Yes, sir.

Q You still adhere to that? A Yes, sir.

Q You swear there were three men got out of that taxicab? A Yes, sir.

MR. KRONF:—With the exceptions to the minutes, your Honor, I am through with this witness.

BY MR. McQUAID:

Q Did you go to the police station in a taxicab?

A Yes, sir.

Q With these four men? A Yes, sir.

BY THE COURT:

Q When you saw the wheels taken off the automobile to the taxicab did you follow them right over? A No, sir.

Q To the taxicab? A No, sir.

Q How long did you wait there? A I waited until the taxicab got started up and about even to where I was standing.

Q Then you say you saw the defendant now arraigned in that taxicab? A Yes, sir. He got out of the taxicab.

Q Did he say anything when he got out? A No, sir.

Q Where did you see the wheel in that taxicab? A Resting

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partly on the floor, up against the leather seat.

Q That was the same wheel you saw removed from the rear of the automobile? A Yes, sir.

MR. KRONE: Will the District Attorney consent that this is a certified copy of the minutes taken before the Magistrate?

MR. McQUAID: Yes.

MR. KRONE: I offer in evidence the testimony of this witness-- as to the testimony before Mr. Justice TenEyck on July 29th, 1919 in the Second District Magistrates Court Borough of Manhattan, New York City.

THE COURT: Are you offering all the testimony? This part that he denies

THE COURT: You and the District Attorney may agree on it.

MR. McQUAID: No objection.

(Marked Defendant's Exhibit A.)

W A D E 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 that he resides in Brockline, Massachusetts.)

DIRECT EXAMINATION BY MR. McQUAID:

Q Do you recall the early evening of July 16th last, 1919? A Yes, sir.

Q Were you in New York at that time? A Yes, sir.

Q Did you have an automobile with you? A Yes, sir.

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Q You came from where? A Millbrook, New York.

Q Alone? A No, sir; with my husband.

Q Where did you leave the automobile? A On East 41st street.

Q Which side of the street? A The south side.

Q Pointing east? A Yes, sir, pointing east.

Q No, what time was that? A About 8 o'clock.

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

Q What kind of wheels did it have? A Wire wheels.

Q Known as a Marmon Chummy, that is a two seater? A Four-  
it seats four passengers.

Q But ordinarily used for two? A No, sir.

Q It is used for four? A Yes, sir.

Q Wire wheels? A Yes, sir.

Q Did you have a spare wheel on it? A Yes, sir.

Q Wire wheels? A Yes, sir.

Q Did you have a spare wheel on it? A Yes, sir.

Q What was there on the spare wheel? A A tube and then  
a shoe.

Q That was 8 o'clock? A Yes, sir.

Q Did you go to the rear of the automobile before you  
left it? A We turned on the lights and walked around to be  
sure they were on and took our bags from the machine;

Q Did you then see the spare wheel and everything in  
order in the rear of the car? A Yes, sir.

Q Where did you go then? A To the Belmont Hotel.

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

Q What time? A About 8 o'clock.

Q Was there a police officer in the vicinity? A Yes, sir, in the rear of the car.

Q Did you examine the car then? A Yes, sir.

Q What did you find with respect to the spare wheel? It was missing.

Q It had gone? A Yes, sir.

Q The spare wheel was and the shoe and the inner tube gone too? A Yes, sir.

Q All that went with the spare wheel? A Yes, sir.

Q The accessory parts? A Yes, sir.

Q Where did you see those next? (No answer.)

Q Where did you go then? A Went with the policeman to the station house.

Q What street? A 30th street.

Q Did you see the spare wheel there? A Yes, sir.

Q Did it have these accessory parts on? A Yes, sir.

Q The hub mounting. What kind of tire was it? A A Goodyear Cord.

Q Was there any inner tube? A Presumably; I didn't look.

Q You didn't look? A No, sir.

Q But there was a Goodyear Cord tire? A Yes, sir.

Q A new tire? A Yes, sir.

Q Have you bought tires? A Yes, sir.

Q What is the value of it? A About \$60.

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## CROSS EXAMINATION BY MR. KRONE:

Q Did you buy this tire? A No.

Q Who bought it? A Do you mean who paid for it?

Q Who bought it? A Well, I don't understand if you don't mean who paid for it.

Q Who bought the tire? (No answer.)

## BY MR. McQUAID:

Q I forgot to ask you-- Did you buy this car and its accessories including the spare wheel? A No, sir.

Q How did you get it? A It was given to my husband and myself.

Q By whom? A By my husband's father.

Q Your husband is a student in Harvard University? A Yes.

Q You had been residing in Brookline? A Yes, sir.

Q Where is that spare wheel now? A On the automobile.

Q In use? A Yes, sir.

Q Where is the automobile? A In Brookline.

## BY MR. KRONE:

Q Now, I ask you again, <sup>when</sup> if you got this car from your father-in-law was this spare wheel with it? A Yes, sir.

Q How long had you had the car? A About a month, about three weeks or a month.

Q Well, who bought the car? A My husband's father.

Q Who bought the wheel? A The wheel comes with it.

Q Sure about that? A Yes, sir.

Q Did your husband buy it? A No, sir, I said my father-

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in-law bought it.

Q Did you testify in this case in the Police Court? A Yes.

Q Did you testify before Mr. Justice Ten Eyck, July 29, 1919? A Yes, sir.

Q Do you remember this question asked "Who bought it"? A Yes, sir.

Q Did you answer "my husband"?

A I don't remember.

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

Q Sure about that. Do you remember testifying "That my husband bought it"? A I believe so-- I am not sure.

Q Now which is true, your father-in-law bought it or did your husband buy it? A My father-in-law bought it.

Q You were mistaken when you testified that your husband bought it? A Yes, sir.

Q How many wheels did you ever buy? A None.

BY MR. McQUAID:

Q But you have bought shoes and inner tubes? A Yes, sir.

BY THE SIXTH JUROR:

Q Do you recollect having a lock and some kind of a chain attached to this wheel? A There was no lock on it.

Q Protection of any kind at all? A No, sir.

Q Sure about that? A Yes, sir.

BY MR. McQUAID:

Q How was it attached to the rear of the automobile?

A By a hub cap which was screwed on to the machine.

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Q No sort of a bracket extending out that you could put it on alongside of that? A Yes, sir, there is with a lock-- but not lock on it.

BY MR. KRONE:

Q Did you have that car insured? A No, sir.

Q You left that car unattended from-what time in the evening did you get there? A 8 o'clock.

Q When did you come back to the car the next morning? A Yes, sir, 8 o'clock in the morning.

THE COURT: I say now even though she left it unattended that would not justify anybody in taking the property away.

Q When did you come next to that car? A 8 o'clock in the morning.

MR. McQUAID: The people rest.

MR. KRONE: There is no evidence here of any particular connection of this defendant or that he had anything at all to do with it. As the evidence stands before the Court it does not connect this defendant with the larceny. There is not a scintilla of evidence to connect McGonigal.

THE COURT: There is evidence here tending to show that three men were seen at the rear of the car; that the wheel was detached; that the wheel was carried to a taxicab; that the officer went over to that taxicab, and inside of that cab he saw that wheel and saw this defend-

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ant and two other person whom he says were there. The question for the jury to determine will be whether these people were acting together or whether they were aiding and abetting in the commission of a crime. I shall deny they motion.

MR. KRONF: I further move that there is no evidence here in particular that the defendant worked at this wheel. There is no evidence here showing that this particular wheel, which is claimed to have been stolen was the property of this defendant -- found in the taxicab.

THE COURT: She saw the wheel afterwards in the station house. The officer says that he took it to the station house, and there she said that it was her wheel. As to the value I will not send this case to the jury on the charge contained in the indictment, namely grand larceny in the second degree, but I will send the question to the jury on petit larceny.

MR. KRONF: Exception.

D E F E N S E.

THOMAS MCGONIGAL, the defendant being duly sworn, in his own behalf testified as follows:

DIRECT EXAMINATION BY MR. KRONF:

Q Where do you live? A 330 East 18th street.

Q Do you recall the night of July 16th and the morning of July 17th? A Yes, sir.

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Q This last year? A Yes, sir.

Q The early part of the evening where were you? A I was at a party on--

Q Where? A 455 West 48th street.

Q What was the name of the party you were at? A The name is Dougherty.

Q What time did you leave there? A I left there around 2.20 or 2.30; I couldn't exactly tell you the time, between two and three o'clock anyway.

Q How did you proceed and where did you go? A I walked down 10th avenue; there was no car coming along; 10th to 42nd street, and no car coming I decided to walk home.

Q Where did you live? A 230 East 18th street.

Q When you got across to 42nd street what did you do then?  
A I walked across as far 5th avenue.

Q Then where did you go? A South to 41st street.

Q What brought you into 41st street? A Well, a certain place open all night I decided to have a drink.

Q What is your business? A Presently it is a clerk in the Post Office.

Q What part of the Post Office are you connected with?

A Well in the registry department.

Q Registered mail? A Yes, sir.

Q Handle considerable, do you? A Parcel post office.

Q Now, you were on 5th avenue -- where did you go to when you got into 41st street? A Well, I went east.

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Q Did you go as far as Madison avenue? A Yes, sir.

Q Did you see a taxicab? A Yes, sir.

Q Where was that taxicab when you got east of Madison avenue? A Why when I got pretty near the car-- it was starting off, the chauffeur had cranked the car, he was in the street, and he was coming west on 41st street.

Q What did you do? A I stepped on the running board and I says, "Is that you Tom? He says, "yes, I will be back in a few minutes. " I was about to step off--

Q Then what happened? A The officer stepped on the running board, right after me--practically there wasn't two seconds of distance.

Q Now were you one of the three men that he claims was at the rear of the automobile in front of the delivery part of the hotel, No. 56 East 41st street? A No, sir.

Q Had you reached that part? A No, sir; I hadn't reached that part.

Q Did you take part, any part in taking off an automobile tire from the rear of the taxicab? A No, sir; I didn't know there was a wheel in the car.

Q Did you assist in taking off the tire? A No, sir.

Q Were you the man that rolled the tire to the taxicab?

A No, sir, I did not see it.

Q Now, did you put it into the taxicab? A No, sir.

Q Of Dwyer? A No, sir.

Q Were you inside of that taxicab belonging to Mr. Dwyer?

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A No, sir.

Q Did you get out of the taxicab when the officer opened it? A I was not inside.

Q Who did get out? A Two men unknown to me.

Q Do you know these two men? A Never seen them in my life before.

Q Did you know these two men before? A No, sir, never seen them in my life before.

Q Did you ask this officer what he was arresting you for? A He said never mind. He ordered me -- I was standing on the sidewalk after he stepped on the running board I stepped on the sidewalk to see what was the matter and he said "come here you" he said "stand there."

Q He called you over? A Yes, sir.

Q As a matter of fact could have walked away? A Yes, sir I could have walked away; I wanted to stop there and see what was the matter; I didn't know what was the trouble.

Q Did you have anything to do with the taking off of this tire or wheels from the rear of the automobile? A No, sir.

Q And placing it inside the car? A No, sir. I didn't know it was in there until the officer made the second taxicab drive up.

Q The officer says in his examination in the police court that some man was seated on the outside with the chauffeur; do you know whether there was a seat in the front of the taxicab? A No, sir, no seat only one seat that is the

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chauffeur's seat.

Q Were you seated at the side of the taxicab chauffeur?

A No, sir, I was standing on the running board, just stepped on, wasn't on two seconds.

Q About what speed was it going, fast or slow? A Just started off, might have gotten to 52 as I was going towards it.

CROSS EXAMINATION BY MR. McQUAID:

Q What was your business in July, 1919? A I was a bartender.

Q Where were you a bartender? A 520 Hudson street.

Q What were your hours of duty? A My hours was from 6 at night to 10 in the morning and sometimes 1 to 2 and then the rest of the day off and on my day off, which was Wednesday I--

Q What day of the week was this, the 16th of July? A Wednesday if my recollection --

Q That was your day off? A Yes, sir; my day off.

Q You went up to visit some friends? A Yes, sir.

Q Who lived at 455 West 48th street? A Yes, sir.

Q A man named Dougherty? A Yes, sir.

Q You stayed there until 2.20 or 2.30? A Yes, sir.

Q You walked down-- 455 is between 9th and 10th avenue? A No, sir, corner of 10th avenue and 48th street.

Q You walked down 10th avenue to where? A 42nd street.

Q Then turned on 42nd street and 5th avenue? A Yes, sir.

Q South on 10th avenue to 41st street? A Yes, sir.

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Q And east on 41st street? A Yes, sir.

Q Until you saw the taxicab? A Yes, sir.

Q Approaching? A I recognized the cab.

Q Were you ever a chauffeur? A No, sir. I am a chauffeur -- I carry a license.

Q Why did you first say no, sir to that question?  
A I never worked a chauffeur.

Q You never worked as a chauffeur? A No, sir, never earned a dollar in my life at it.

Q But you have a license? A Yes, sir.

Q Is that why you said in the Magistrates' Court that you were a chauffeur? A Well--

Q You didn't tell the, you were a bartender, did you?  
A No, sir, I didn't say anything on the Magistrates' Court.

Q You did not? A No, sir; I did not go on the stand.

Q Is that your signature there? (Referring to the police court papers) A Yes, sir.

Q Look at that and see it. A What the answer is there as to your business chauffeur-- you didn't say bartender?

A That is my business and has been for twenty years.

Q What, chauffeur? A No, sir, bartender.

Q You didn't put in your business there? A I am a chauffeur when I carry a license, I can use that also.

Q But you have never been engaged in the business of a chauffeur? A No, sir.

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Q Why did you say chauffeur if you have never been one? A Bartender is practically out of business now, after the first of July then.

Q Well, you were working then, weren't you? A Yes, sir.

Q You were not out of business? A No, sir, I wasn't out of business practically as a bartender.

Q You were working then? A Yes, sir.

Q Why didn't you say in this statement that you worked as a bartender? A Well, I didn't do it; it was not necessary.

THE COURT: It was not necessary.

A If I was a chauffeur also?

Q What do you mean by saying you were a chauffeur when you said an instant ago that you were not a chauffeur, and you didn't work as such? A No, sir, I never earned a dollar as chauffeur.

Q Did you pass an examination when you got the license?

A Yes, sir.

Q Who taught you to drive? A Well certain drivers that used to come into the place where I worked.

Q What kind of cars have you driven? A Packards and Studebaker.

Q How frequently have you driven Packards? A Well, quite often.

Q When you made application for your license did you state that you desired to be a chauffeur? A Yes, sir.

(At this point the Court admonished the jury and took a recess.)

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## AFTER RECESS.

THOMAS MCGONIGAL, the defendant recalled.

CROSS EXAMINATION CONTINUED BY MR. McQUAID:

Q Now. I understood you to say in the direct examination that the car had fairly started up you jumped on the running board, on which side? A On the south side.

Q On the side you were walking along on the south side?

A Yes, sir.

Q And the car just started up? A Yes, sir just about to go.

Q When you jumped on the machine and passed some remarks to the chauffeur? A Yes, sir.

Q You knew the chauffeur Dwyer? A Yes, sir.  
out of

Q Now did anybody get ~~into~~ the car? A No, sir.

Q You didn't see any passengers get out of the car at all? A No, sir.

Q When on the running board did you see how many there were in the car? A I seen men sitting there I couldn't testify how many was in there. My attention was at the chauffeur.

Q You were walking down the street? A Yes, sir.

Q Going rapidly or leisurely? A Leisurely at that time of the morning; I wasn't killing any time.

Q Did you see anybody rolling, as you came along there-- did you see three men rolling a wheel, a spare wheel or tire? A No, sir.

MR. FRONE: I object to that as immaterial and irrelevant. In the first place there is no testimony that

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there were three men rolling the wheel. The testimony is that only one man was rolling the wheel.

Q Did you see one man rolling a wheel accompanied by two others towards this taxicab? A No, sir.

Q Did you see any one putting a wheel, in an automobile wheel-- you know what a spare wheel is? QA Yes, sir.

Q An automobile spare wheel into the taxicab? A No, sir.

Q You didn't see anybody do it? A No, sir.

Q Did you see three men get into the cab? A No, sir, I didn't see anybody.

Q You didn't see anybody get into the taxicab? A No, sir.

Q How far had you walked-- how far was it from Madison avenue to the point where the taxicab started up? A Well that I could not tell you, the distance, the taxicab started up right near Park avenue.

Q The taxicab was near to Park avenue when it started up? A Yes, sir; nearer to Park than to Madison.

Q You were nearer to Park than to Madison? A I walked from Madison --

Q You were nearer -- as I understood you to say the car had just started up when you put your foot on the running board? A Yes, sir.

Q Just started up? A Yes, sir.

Q You must have been about a point within a few feet of the point where the car started? A Might be 25 to 50 feet I couldn't say.

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Q You didn't see anybody get into that car? A No, sir.

Q You didn't see anybody put the wheel into that car?

A No, sir.

Q Had you been in the saloon that night? A In that room about 8 or 8.30.

Q Had you been in there about 8 or 8.30? A The night previous.

Q Whom had you seen there? A I hadn't see anybody in particular more than the bartender or or boss.

Q How far were you away when you recognized Dwyer?

A I was coming and he was coming--

Q How far? A He was on the same side of the street.

Q You recognized his taxicab? A Yes, sir I recognized his taxicab, and I said is that you.

Q Did you recognize him too? A I saw him.

Q You were pretty close to him? A I was right alongside the sidewalk.

BY THE COURT:

Q Why did you get on the running board of that taxicab? A Well, your Honor I knew Dwyer and the cab also and the owner of the cab.

Q Who was the owner of the cab? A A man named O'Brien.

Q Where does he live? A In Astoria, Long Island some place.

Q How long had you known the driver of this taxicab?

A About three years.

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Q How long do you know the owner of the taxicab? A About three years.

Q He still had the same cab? (No answer.)

BY MR. McQUAID:

Q When you were placed under arrest was there a wheel taken out of the taxicab? A There was, yes, sir.

Q A wire wheel? A The officer ordered me over to the sidewalk; I was standing on the sidewalk, ordered me over under the point of a gun, I didn't know what was the reason; he told me to stand there.

Q Did the other two men get out? A Yes, sir, the other two men got out, and he ordered the other two men out, I never seen them in my life before.

Q Who opened the door of the cab? A The officer.

Q He went and opened the door of the cab as you stood there? A Yes, sir.

Q Opened the door on the south side? A Yes, sir.

Q These two men came and then presently the wheel was brought out? A I don't think he brought out the wheel; he just took them out and I seen the wheel.

Q Was the wheel brought out? A No, sir, I don't think so.

Q Just left in the car? A Yes, sir.

Q It was in the car when he drove around to the station house? A Yes, sir, the only time I looked in the car was when I got in at the point of the revolver, that is the

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only time I was in that car that night.

Q But there was a spare wheel, in the car? A Yes, sir  
a wheel in the car.

Q A spare wheel? A The first time I seen it was when the  
officer opened the door.

Q There was a spare wheel? A Yes, sir; I could not say  
if it was a tire that belonged to the car or to somebody else  
because I don't know.

BY MR. KRONE:

Q You have been a bartender for a number of years?

A Yes, sir.

Q Were you in any way connected as a bartender where  
the Black and White Taxicab Co. had its place of business?

MR. McQUAID: Objected to as immaterial.

A Yes, sir.

Q Do you know any number of chauffeurs? A Yes, sir, quite  
a number.

Q You come in contact with them by reason of your business  
and calling? A Yes, sir.

Q Nothing unusual for you to know these taxicab men?

A No, sir.

(TESTIMONY CLOSED.)

MR. KRONE: I renew the motion made at the end of  
the case. There is no evidence to justify the jury in  
convicting this defendant of the larceny of this particu-  
lar wheel. There is no evidence here that the wheel

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found in the machine ever belonged to the complainant.

THE COURT: Well as I recall the testimony it is in substance that the officer saw three men take that wheel and place it in the taxicab.

MR. KRONF: That evidence was in a measure contradicted under the examination by Mr. McQuaid that when the officer had these people under observation that he saw them before they got out and when the three of them got in to this particular taxicab and that one of them took off the wheel. Then when I had him under cross examination for the very first time he said that he saw them when they were at this automobile working on the rear of it and that he had not seen them prior to that time. Then from that point on he does not identify this particular men in any way, shape, manner or form except, of course, if your Honor wants to take his testimony, but outside of that there is not a scintilla of evidence connecting this defendant.

(The Court charges the jury.)

(The jury return to court and state that they cannot agree upon a verdict. The jury are discharged.)

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