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

1745

-----X
T H E P E O P L E

Before:

vs

HON. JOSEPH F. MULQUEEN, J.,

CHARLES ISOLA.

and a Jury.

-----X
New York, July 15th, 1912.

Indicted for Robbery in the first degree.

Indictment filed May 27th, 1912.

-: A P P E A R A N C E S :-

ASSISTANT DISTRICT ATTORNEY H. S. DEMING, for the

People.

CHARLES F. HOWE, ESQ., for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

BERNARD AMES, of 608 Grand Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DEMING:

Q Mr. Ames, what is your business? A Barkeeper.

Q Where? A 608 Grand Street.

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

Q Was that your job on the 20th of April of this year? A Yes, sir.

Q Do you remember the morning of the 20th of April, about half past six? A Yes, sir.

Q What happened in the saloon there when you were on duty? A Well, three or four young fellows come in, and took what money was in the till, and demanded it off me.

Q Four youngmen came in? A Three.

Q Three? A Yes.

Q And what did they do? A Well, one of them called me to the water-closet, and told the other fellow to get the money out of the till. One of them called me into the water-closet, that he wanted to speak to me.

Q Did you see this defendant there? A I couldn't swear to him.

Q You couldn't swear to him? A No.

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Q Who took the money from the till? A One of the young fellows.

Q What did he do before he took it? A Well, the fellow that called me into the toilet told him to go and get it, and they couldn't open the till, and so I went and opened the till, and they took the money.

Q Now, why did you open the till and give them the money? A Because I thought they might do me bodily harm.

Q Well, did they threaten you? A Well, I don't think they did, but I saw them with their hands in their coat pockets like that (illustrating by indicating the right hand outside coat pocket).

Q One of them had his hand in his right hand pocket like that? A Yes, sir.

Q And what did he say to you? A He told me to give up the money.

Q Can you remember anything else that he said? A No, sir, I can't.

Q And did he say anything about shooting you?

MR. HOWE: I object to that as leading.

THE COURT: Overruled.

MR. HOWE: Exception.

A Well, no, sir, not that I remember.

BY MR. DEMING:

Q Now, Mr. Ames, stop and think a minute. You say no,

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two or three days ago, in the room next here (indicating the ante-room), and told me what happened ,that morning, didn't you? A Yes, sir.

Q I asked you what happened and you told me; didn't you? A Yes, sir.

Q Didn't you at that time tell me that one of the men ---

MR. HOWE: I object, if your Honor please. I object to this line of inquiry on the ground that it is immaterial, irrelevant and incompetent, and an improper way to examine the witness. Whatever conversations the witness had with the District Attorney, I fail to see have any bearing on this case.

THE COURT: I will sustain the objection. You have not shown that the witness is hostile, or that you are taken by surprise.

MR. DEMING: Well, I will ask him a few questions, a few preliminary questions on that subject, your Honor.

BY MR. DEMING:

Q Are you afraid of anybody in this case?

MR. HOWE: I object to that.

THE COURT: Objection sustained. There is only one point there, on the identification.

MR. DEMING: Certainly, he hasn't been able to identify him

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THE COURT: Then you do not wish to examine him on that point.

MR. DEMING: No, sir. I only want to get as clear a picture as possible of the scene.

THE COURT: Well, he has testified to all that.

BY THE COURT:

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

Q Did they have any interest in that store there?

A No, sir.

Q They didn't own the store, did they? A No, sir.

Q And they had no right to take that money; did they?

A No, sir.

Q Well, did you give your consent to their taking it? A No, sir. I was scared that they would do me bodily harm.

BY MR. DEMING:

Q How much money was in the till? A Between \$17 and \$30.

Q And where did they go after they took the money out of the till? A There was an automobile outside and they went away.

BY THE COURT:

Q You say that there was an automobile waiting outside?

A Yes, sir.

Q And, when they got the money, they went out and got

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in the automobile, and drove off? A Yes, sir.

CROSS EXAMINATION BY MR. HOWE:

Q How many people were in the saloon? A Well, I wouldn't swear there was more than these three.

Q They were the only persons in the barroom? A Oh, there was more people in there besides these three, there was a lot of people in there.

BY THE COURT:

Q Besides these people that came in, was there anybody else there? A Yes, sir, customers.

Q How many customers? A Between five and seven, I guess.

Q Were they men? A Yes, certainly; nobody else but men comes there.

Q Do you know the names of any of the five or seven men? A I don't know their names, but I seen their faces before, but I don't know their names. They were standing around the store.

Q And they did not say anything; did they? A No, sir.

Q And they didn't do anything? A No, sir.

Q Were some of those men customers of the place, men that came in regularly? A Yes, sir, they were all customers.

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F R E D E R I C K F O X, of 29 Mangin Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DEMING:

Q Now, Fred, I want you to speak just as loud as you can, so that these twelve men can hear you, and take all the time you want, and understand the question before you answer it. You remember the morning of the 20th of April, when you were in the saloon at 608 Grand Street? A Yes, sir.

Q About half past six in the morning, was it? A Yes, sir.

Q How did you happen to be there? A I worked for a groceryman, John W. Kirk, and I went down there with an order to Fitzgerald, and, while I was in there, I took the groceries out of the basket and put them on the counter. And then I walked over to the bar, and these two men walked over to the toilet, and called the bartender out to the toilet, and then the bartender went behind the bar again, and he says, "Open the drawer, or I'll blow your brains out," and Barney Ames said, "I can't." And he said that the second time, "I'll blow your brains out, if you don't," and and he said, "I can't." And he asked him the third time, and he didn't say nothing, and then he put his hand on the "no sale" button in the cash register, and opened it up.

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BY THE COURT:

Q What did he do after he opened up the cash register?

A Two of them went behind the bar and they took the money out of the drawer, and put it in their overcoat pockets.

Q Do you mean the drawer of the cash register?

A Yes, sir.

Q And what did they do after they got the money?

A They walked out of the door and went in a taxicab and went away.

BY MR. DEMING:

Q Now, Fred, did you see this man there, that day, this defendant? A Yes, sir.

Q What did he do? A He took the money out of the cash register.

Q Did he say anything? A Yes, sir. He said, "Open the drawer, or I'll blow your brains out."

Q He said that to Ames, the bartender; did he? A Yes, sir.

CROSS EXAMINATION BY MR. HOWE:

Q Who do you work for, Fred? A I used to work for John W. Kirk.

Q But who were you working for on that day that this occurred, when you were in the saloon? A John W. Kirk.

BY THE COURT:

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BY THE COURT:

Q Was he a baker or butcher, or what? A He is a grocer.

BY MR. HOWE:

Q Where is this saloon that you speak of? A On the corner of Grand.

Q Which corner is it on? A Grand and Tompkins.

Q And do you know which of the four corners the saloon is on? A Yes, sir.

Q Which corner is it on? A (No answer)

BY THE COURT:

Q Is it on the uptown side or downtown side of Grand Street? A The downtown side.

Q And on which corner? The one towards the river; or the one away from the river? A Towards the river.

Q Towards the river? A Yes, sir.

THE COURT: That would be the southeast corner.

BY MR. HOWE:

Q When did you go into the saloon, that morning? A At half past six.

Q And who did you see in the saloon when you went in there; who was in there when you got inside? A These two men and the chef, the cook.

Q And how many other people? A A whole lot of people were in there.

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Q Well, about how many? A I couldn't say; there was a whole crowd there.

Q And were the two men that you speak of in the saloon when you went in? A Yes.

Q Do you know how long they were in there? A No, sir.

Q You didn't see them come in, did you, Fred? A No, sir.

Q And where did you go when you entered the saloon?

A I went over to the cook's table, and put these groceries on the table there and then went over to the bar to get the money for the groceries.

Q And what were the other men doing in the saloon?

A Some of them were at the bar taking a glass of beer.

Q Did you see the bartender when you first went in?

A No, sir; he was in the toilet.

Q About how many men did you see standing at the bar when you went in? A About 15. But some were standing at the bar, and some weren't.

Q And where was the bartender then? A Behind the bar.

Q Was he talking to anybody? A No, sir.

Q And where were these two men standing? A At the end of the bar.

Q Now, you noticed that, did you, when you went into

the saloon? A Yes, sir.

Q And did you know any of the other men that were standing there? A No, sir.

Q Can you describe any of them? A I couldn't describe none of them.

Q Now, the two men that you speak of were standing there, you say? Were they drinking? A No, sir.

Q Were they drinking, I say? A No, sir.

Q Were they talking to anybody? A They only talked to Barney Ames, the bartender, when they said, "Open the drawer, or I'll blow your brains out."

Q And did you get the money for the groceries from the bartender? A No, sir, I had to wait until these two men went out, and then Barney Ames paid me the money.

Q How long did you stand at the lunch counter? A About ten or fifteen minutes.

Q And were the two men standing at the lunch counter at the time? A Yes, sir, at the bar, until they went out, and then I got my money and went home.

Q Well, how long do you think they were there, these two men? A I couldn't tell you how long it was.

Q Well, about how long do you say they were there? A I couldn't tell you how long they were there.

Q Well, just give us your best idea of how long those two men stood there? A About 20 or 25 minutes.

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Q And, altogether, how long were you in the saloon?

A I was about that much, 25 minutes.

Q Well, now, was it at the end of the 20 or 25 minutes that you heard these words spoken that you have just stated, about blowing somebody's brains out if they didn't get some money? A Yes, sir.

Q And what kept you in the saloon 20 or 25 minutes?

A I was waiting to get paid the money for the groceries.

Q Who were you waiting for to pay you? A The bartender.

Q Well, wasn't he there? A Yes, sir.

Q And didn't you speak to him and ask him for your money? A No, sir.

Q Why not? A I wanted to wait until these two men went out, and then I would get my money.

Q Well, there were other men besides these two men standing there; weren't there? A Yes.

Q Well, now, why did you want to wait until these two men went out, before you asked the bartender for your money?

A I was afraid, I was afraid they would do something to me.

Q Well, but they were all standing there, all the men?

A Yes, sir.

Q And there was no trouble there; was there? A No, sir.

Q And you didn't hear those two men or anybody else say anything in a loud tone of voice; did you? A Only then

two men were speaking loud.

Q And were they speaking in a loud tone of voice for 20 or 25 minutes? A No, sir, not all the time.

Q And they didn't say anything to you; did they?

A No, sir.

Q But yet you say you were afraid of them? A Yes, sir.

Q What were you afraid of? They didn't say or do anything to you; did they? A (No answer)

BY THE COURT:

Q Well, tell him what you were afraid of. Were you afraid of getting shot? A No, sir, I was afraid they might hit me.

BY MR. HOWE:

Q But you hadn't done anything to them; had you?

A No, sir.

Q And they hadn't done anything to you? A No, sir.

Q Well, now, what were you afraid of? A (No answer)

BY THE COURT:

Q Well, didn't you hear them say that they would blow somebody's brains out? A Yes, sir.

Q And did that make you afraid? A Yes, sir.

Q You didn't feel very cheerful after you heard that; did you? A No, sir.

BY MR. HOWE:

Q But that didn't last for 20 or 25 minutes; did it?

A Well, it was ten or fifteen minutes after I heard him say it. I heard him say that three times.

Q Now, then, what kept you there for 15 or 20 minutes, without asking for your money? Why did you stay in this room for 15 minutes without asking the bartender for the money for the groceries? A (No answer)

THE COURT: Well, he has already answered that.

He said that he was waiting for his money, and was afraid, and whether he was there five or ten minutes is immaterial.

BY THE COURT:

Q You didn't look at the clock at that time; did you?

A No, sir.

Q You said 10 or 15 minutes. Will you swear it was exactly 15 or 14 or 5 minutes? A It was about 10 or 15 minutes.

Q Well, that is what you think? A Yes, sir.

Q It seemed that long to you, you mean? A Yes, sir.

BY MR. HOWE:

Q When was it you asked the bartender to pay you for the groceries? A After they went out, I asked him.

Q After they went out? A Yes, sir.

Q Now, what did all these other men do or say while somebody was talking about blowing somebody's brains out?

A They didn't do nothing.

Q Did they stay around the bar? A Yes, some of them did.

Q Did the bartender remain behind the bar all the time?

A Yes, sir.

Q He didn't go out of the room at all? A No, sir.

BY THE COURT:

Q Didn't he go to the water-closet? A Yes, sir; after he came out of the water-closet, he didn't go any more.

Q Well, after he came out of the water-closet, he went behind the bar? A Yes, sir.

BY MR. HOWE:

Q Did you see him leave the bar at any time you were there? A No, sir.

BY THE COURT:

Q Well, didn't you see him go into the water-closet?

A No, sir; he was in the water-closet with another man when I went in, and I saw him come out of the water-closet and go behind the bar.

BY MR. HOWE:

Q Now, when did you next see the defendant after that day? A In Bellevue Hospital.

Q Did you ever see him before that day, April 20th?

No, sir.

BY THE COURT:

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Q Do you know what he means by the word "defendant"?

A No, sir.

Q Well, then, why did you answer the question if you didn't understand it? A (No answer)

BY MR. DEMING:

Q Did you see this man sitting at the table there in Bellevue Hospital (indicating the defendant)? A Yes, sir.

BY THE COURT:

Q You saw him, next morning, in the liquor store?

A Yes, sir.

Q And the next time you saw him he was in Bellevue Hospital? A Yes, sir.

BY MR. HOWE:

Q Who took you to Bellevue Hospital? A Detective Snedecker.

Q Where was the defendant in the hospital? A He was sitting up in the bed, and the detective took me over to the bed, and he said, "Is this the man that was in the beer saloon?"

Q Did he point at the man that was in the bed, did he point at the defendant? A Yes, sir.

Q And what did you say when he asked you that question?

A I said yes.

Q And this was how long after the day you were in the

saloon? A I know it was on a Saturday. I don't know how long it was after.

Q Well, do you know whether it was one or two weeks?

A It must have been a week or so.

Q Could it have been two weeks? A Well, maybe it was one or two weeks; I aint sure.

Q Didn't you point another man, too, another man that wasn't arrested? A No, sir.

Q You didn't see three men come into the saloon?

A No, sir.

Q You are sure it was two? A Yes, two. That's all I seen.

RE DIRECT EXAMINATION BY MR. DEMING:

Q Are you sure this is one of the men (indicating the defendant)? A Yes, sir.

Q Perfectly sure? A Yes, sir.

THE COURT: Now, we will take a recess until half past two o'clock, and we will finish up this case to-day, if possible.

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

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After Recess.

FREDERICK FOX, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. DEMING:

Q Now, Fred, you remember that, this morning, you were asked about identifying this defendant, this man here, in the hospital? A Yes, sir.

Q Was that on the same day you saw him in the saloon or on a later day? A On the same day.

Q On the same day? A Yes, sir.

Q Officer Snedecker took you there? A Yes, sir; he came in the afternoon and took me to the hospital.

Q And on that same day you saw the defendant in the hospital? A Yes, sir.

CROSS EXAMINATION BY MR. HOWE:

Q Now, who was with you when you went to the hospital?

A Me and Snedecker, that's all.

Q You and the officer? A Yes, sir.

Q And on what floor was the ward where the defendant was in bed? A On the ground floor.

Q Did Officer Snedecker go in first? A Yes, sir.

Q Did you follow him? A Yes, sir.

Q And did Officer Snedecker walk into the ward?

A Yes, sir.

Q And did you follow him into the ward? A Yes, sir.

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Q And did he walk up to the bed of the defendant?

A Yes, sir.

Q And did you follow him? A Yes, sir.

Q And at that time the defendant had bandages around his head; didn't he? A Yes.

Q Didn't he have bandages around the top of his head, this way (illustrating)? A No, sir.

Q Well, where were the bandages? A I don't know if I seen any at all.

Q Why, don't you know that the defendant had bandages all around his head? A No, sir, I didn't notice any.

Q Now, just try to think and see if you can remember that fact? A I didn't see him with any on his head.

Q Well, did Officer Snedecker walk up to the bed where the defendant was? A Yes.

Q And you followed him; did you? A Yes, sir.

Q And what did the officer say? A He said, "Is this the man?"

Q Now, before you went to the hospital, did Officer Snedecker say what sort of a looking man he was that was in the hospital? A Yes, sir.

Q Did he describe the man to you? A He said, "He's got a scar on his face."

Q Oh, he said that to you, did he? A Yes, sir.

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Q And did he tell you what color his hair was? A No, sir.

Q Or what sort of clothing he was wearing? A No, sir.

Q But he told you that the man in the hospital had a scar on his face? A Yes, sir.

Q Now, when Officer Snedecker went up to the bed where the defendant was, did he say anything to the defendant?

A No, sir.

Q But he took you up to the bed; did he? A Yes, sir.

Q And did he then say, "Is this the man?" A Yes, sir.

Q Didn't you see some trouble with the scar on the defendant's head (indicating)? A No, sir.

Q Or any marks on him of any kind? A I only seen the scar on his face; that's all.

Q Didn't you see bandages all over his ears, white bandages (illustrating)? A No, I didn't see them at all.

Q Now, you have never seen the defendant, as I understand it, before the day you were in the saloon; is that correct? A Yes, sir.

Q And what time of the day was it when you went to the hospital? A It was in the afternoon.

Q What? A It was in the afternoon; twelve o'clock it

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was.

Q Where was the first place you saw Officer Snedecker?

A He came to Kirk's store, and he brought me up.

Q He came to the store; did he? A Yes, sir.

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

Q Did he tell you that he had the man that had done all this? A Yes, sir.

Q He told you that he had the man that took the money out of the cash register; did he? A Yes, sir.

Q He told you that before you saw the man; did he? A Yes, sir.

Q I see. Now, what else did he tell you? A That's all he told me.

Q Did he tell you --- what else did he tell you about this defendant, Officer Snedecker? A That's all he told me.

Q Didn't he tell you how tall he was? A No, sir.

Q Didn't he tell you that it was a short man that was in the hospital? A No, sir.

Q He didn't? A No, sir.

Q Do you live with your mother, Freddie? A Yes, sir.

Q At home? A Yes, sir.

Q You didn't see any other boy in this room; did you?

A No, sir.

Q What? A No, sir.

Q You were the only boy in the saloon; were you?

A Yes, sir.

Q And all the others were men? A Yes, sir.

Q I just want to ask you one more question. How long were you in that saloon before you heard somebody --- the words used, "If you don't give me the money, I'll blow your brains out," or words to that effect? A About ten or fifteen minutes.

Q Now, you know how long ten minutes is; don't you?

A Yes, sir.

Q Can you tell the time by looking at the clock?

A Yes, sir.

Q What? A Yes, sir.

Q You can tell the time? A Yes, sir.

Q Now, look at that clock there. Can you tell me the time now? A Yes, sir.

Q And what time is it? A Six minutes to three.

Q Six minutes to three? A Yes, sir.

Q So that you know how long ten minutes is; don't you? A Yes, sir.

MR. HOWE: That's all.

MR. DENING: That's all.

BY THE COURT:

Q But you didn't look at any clock, that day? A No, sir.

C H A R L E S Z U S T, of 525 East 157th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DEMING:

Q Now, Zust, please speak loud. This is a noisy room, and it is hard for these gentlemen to hear you. You are the lunchman of 608 Grand Street, in the saloon there, aren't you? A Yes, sir.

Q And that was your job on the 20th of April, of this year? A Yes, sir.

Q Were you in that saloon at half past six o'clock on that morning? A Yes, sir.

Q Did you see the defendant enter that saloon on that morning? A Yes, sir; with another fellow.

Q There were two men in all? A Yes, sir.

Q And what did the defendant do after he came into the saloon? A They comes in, and talks with the bartender awhile, and then he said, "Open me the drawer. I want some money." And the bartender wouldn't do that, and there was a bottle standing on the bar, and he said, "If you don't open the drawer, I'll hit you with the bottle (illustrating," and then they go and open the till, and take out the bills, and they leave the change there, and they put it in their pockets, the bills, and jump right out, and outside is the auto, and they jump in, and goes away.

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Q. Did you say they went away in an auto? A. Yes, sir, in an automobile. There was four peoples.

Q. This man and another man did that (indicating the defendant)? A. Yes, sir.

Q. And how long were they in there altogether?

A. About ten minutes.

Q. Where were you during that time? A. I was across the way from the bar, about six feet from the bar.

Q. Were you behind the lunch counter? A. Yes; across the way from the bar, about six feet from the bar.

BY THE COURT:

Q. And you could see everything that took place in that barroom? A. Yes, sir.

BY MR. DEMING:

Q. Now, when did you next see the defendant, after that morning? A. Well, I seen him the next time in the hospital.

Q. Who took you there? A. The detective took me from my place in the hospital, the same day.

Q. The same day that you saw him in the saloon?

A. Yes, sir. And he was in the hospital.

Q. And you saw him in bed at the hospital? A. Yes, sir.

Q. Had you ever seen him in your place, in the saloon, before that day? A. Yes, he was there a couple of times before, and drank beer in the place. Four or five times they

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were in the place, him and some other peoples were in the place, and take a drink and goes outside.

Q And that's the only way you know him, from having seen him in the saloon? A Yes, sir.

CROSS EXAMINATION BY MR. HOWE:

Q You say that you are the lunch man there? A Yes, sir.

Q How long did you work in that place? A One year.

Q Where are you working now? A I work in the same place now.

Q You work in the same place now? A Yes, sir.

Q What time did you get to work on that morning?

A Six o'clock I started in.

Q Six o'clock? A Yes, sir.

Q And how many men were in the barroom at half past six? A Well, there was about fifteen peoples, but I don't know the peoples by the names. I know them, but not by the names.

BY THE COURT:

Q They were customers, were they? A Yes, sir, customers.

BY MR. HOWE:

Q What were they doing in the barroom? Drinking?

A Yes, sir. They sit in the backroom, you know.

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Q What time was it when you first saw the two men that you have described? A About half past six; between six and seven o'clock.

Q Well, can't you tell us about what time? A I couldn't tell you not the minute.

Q Well, was it half past six, or was it six, or was it seven? A Near seven o'clock.

Q Near seven o'clock? A Yes, sir.

Q Where did you first see the young boy Fred Fox?

A Fox?

Q Yes. A I don't know him by the name.

BY MR. DEMING:

Q The boy who was here, to-day? A Oh, that little boy?

BY MR. HOWL:

Q Yes, that's the one I mean. A He takes the orders from me. He comes every morning in the place, at half past six, and he takes the orders from me. He works for the groceryman in that time.

Q When did you see him first, that morning? A Near seven o'clock. Just the time when that man was in (indicating the defendant).

Q Was it seven o'clock or half past six? A I couldn't tell you so right the minute, because I didn't look at the clock, because this time I'm busy at the range, and that's

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the time I look up, when they had the trouble about the money.

Q Did they seem to be arguing about paying money at the bar? Was it about some debt the other man owed? Was it a dispute about the payment of money at the bar? A I don't understand you.

Q Now, you say you saw these men arguing at the bar?

A Yes, sir.

Q Now, were they arguing with the man behind the bar about some money that he owed? A Yes, sir.

Q Now, do you understand me? I don't think you do.

A Yes, I understand you.

MR. HOWE: If your Honor please, I think that we had better have the question repeated by the interpreter. I don't think he understands me at all.

THE COURT: Yes, he had better speak in German, and let him speak in German during the rest of his testimony.

(The question is repeated through the Official Interpreter, Mr. Rosenthal).

A Not this man (indicating the defendant), but the other man who was with him turned to me, and he said, "We'll have to get the money from the boss."

BY MR. HOWE:

Q Did they tell you it was money that was owing to them?

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A Yes. The other man said it, not this man.

Q How long did they stand at the bar? A About ten minutes; about ten minutes they conversed with the bartender.

Q Now, who came into the saloon first, the two men or the boy Fred? A The boy was there already, waiting for my order.

Q Was the boy in the saloon before the two men came in? A Yes, sir.

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

Q How long was he in there before the two men came in? A I can't say exactly, but the boy was standing around there quite a long while, because I had no time to attend to him.

Q Who is the one who pays the boy for the groceries?

A (No answer)

BY THE COURT:

Q Who in the store pays him, when he brings groceries?

A The bartender pays him.

BY MR. HOWE:

Q Did you see the boy speak to the bartender before the two men came in? A He was waiting for the money at the bar.

Q When the two men came in, where was the bartender?

A Behind the bar.

Q Did he remain behind the bar during the ten minutes,

that the two men were there? A No. This man (indicating the defendant) called him from behind the bar, and went with him to the toilet, to talk.

Q How long did they remain in the toilet talking?

A A couple of minutes.

Q Now, after they came out of the toilet, what did they do? A Then the bartender went behind the bar, and he didn't want to open the drawer as yet, and this man (indicating the defendant) was threatening him.

Q Now, during this time what were you doing? A I was watching it.

Q How long did these two ^{men} remain at the bar talking to the bartender? A A couple of minutes.

Q A couple of minutes? A Yes, sir.

Q How far away is the lunch counter from the bar?

A About six feet.

Q What time of the day was it when you next saw the defendant? A It was in the afternoon. I can't tell exactly the time. The detectives took me from the place to the hospital. I think it was between two and three o'clock in the afternoon.

Q Did you go into the ward? A Yes, sir.

Q Did the detectives take you ^{to} the bed where the defendant was lying? A Yes, sir.

Q Did the defendant have any bandages on his head?

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A Yes, sir.

Q Where were the bandages? A On the head. Only the face was free, was open (illustrating).

Q Did the bandages come down over the left eye of the defendant (illustrating)? A (No answer)

BY THE COURT:

Q Well, do you remember about that? A I believe it was on the left side where he was bleeding, but I'm not quite sure.

BY MR. HOWE:

Q Now, during the time these two men were at the bar, you were attending your work at the lunch counter; weren't you? A Yes, sir.

Q And do you serve food there in the morning to different customers that come in? A No, not yet. I was preparing it, because at eleven o'clock, then I begin to serve the meals.

Q The two men that you have spoken of, they spoke in the same tone of voice as the other men that were standing at the bar; did they not? A No, easy.

Q Yes, they didn't talk any louder than anybody else who was around that bar? A No, sir.

Q So that there was nothing about the tone of voice with which they spoke that attracted your attention? A There was no quarreling. It was easy and quiet.

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Q Can you give us the names of any of the other men that were standing at the bar? A At the bar there was no one else, but there were sitting a lot of people in the rear.

Q Well, can you give us the names of any of the people who were sitting there? A No.

Q Some of those men that were sitting there was steady customers in that place; weren't they? A I didn't bother with those people; I'm attending to my business. There was people coming one day, and don't come the next day.

Q Can you describe any man who was in the place at the time, as you claim, that the defendant and another man were there? A That's a little hard, because it was quite some time, about four months have passed already.

Q Now, when you went into the hospital with the officer, who went in first? A I went first, and the detective came after me.

Q Now, when you got into the ward, did the detective walk over to the bed where the defendant was? A Yes, sir.

Q Did you follow the detective? A I was standing there, and also a man employed in the hospital was standing near me, and the detective asked me if I knew the man.

Q Well, were you standing at that time near the bed on which the defendant was lying? A Yes, sir.

Q And did the detective ask you if that was the man,

and did he point to the defendant? A This I don't know.

Q What did the detective say to you while you were standing at the bed where this defendant was lying? A He asked me if I knew the man and where I had seen him.

Q And when he asked you that, did he point to the defendant who was lying ⁱⁿ the bed? A No.

Q Did he point in the direction of the place where the defendant was lying? A Whether he pointed out I don't know, but I remember he asked me whether I knew the man.

Q What was the color of the clothes that the defendant was wearing at half past six o'clock in the morning of the 20th? A He had on a brown overcoat.

Q What was the color of the clothes of the man that was with the defendant? A He had no overcoat on. He had a short jacket on.

Q Now, then, can you describe the clothes, the color of the clothes of any other man who was in the barroom on that morning that attracted your attention? A No, I had no time to pay attention to the color of the people who were in there.

Q You were behind the lunch counter; weren't you?

A Yes.

Q Was the bed in which the defendant was lying, was that the first bed the officer took you to, when he went into the ward? A As our ward is the hospital, right at the

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beginning near the door was the bed.

Q Was that bed away from the other beds in the ward?

A There were other beds standing by, but no one was on them.

RE DIRECT EXAMINATION BY MR. DEMING:

Q When you identified this man in the hospital, was the Fox boy there with you or not? A No.

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C H A R L E S R O S E N B E R G, of the 13th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DEMING:

Q Officer, at about half past on the morning of April 20th of this year, where were you on duty? A I was on a fixed post at that time, at Tompkins and Grand Street.

Q That is, you were at the junction of two streets, near 608 Grand Street? A Yes, sir.

Q You were on post as two intersecting points there? A Yes, sir.

Q Did you see anything unusual at that saloon, at that hour? A I saw a taxicab come down Grand Street and stop at the side entrance of the saloon, and as it passed me, I noticed ----.

MR. HOWE: Now, if your Honor please, I must object at this point on the ground that this testimony is immaterial and irrelevant and incompetent.

THE COURT: Well, unless it is connected with the defendant, I will strike it out.

BY MR. DEMING:

Q You say a taxicab passed you? A Yes, sir; and two or three pairs of eyes was peering out from the rear of the machine, out of the little window at the back at me. And so I felt suspicious, and watched the machine.

MR. HOWE: I object to that, if your Honor please, I object to his suspicions, and move to strike it out.

THE COURT: Yes, objection sustained, strike it out.

A (Answer continued) And I saw two men come out and enter the saloon, and the door of the taxicab was kept open. I stood there for fully ten or fifteen minutes, watching, and fellow came out repeatedly from the side entrance, and looked at me, and went back, and he made that trip three or four times, and then the men came out, and entered the machine, and rode away.

Q Now, did you get the number of the machine? A Yes, I did.

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

Q When? A Coming out of the machine.

Q Was he one of the two men to whom you have referred as leaving the machine and going into the saloon? A Yes, sir.

Q Was he the one who came out several times or the other one? A It was the other one.

Q The other one? A Yes, sir.

Q You took the number of the machine, you say?

A Yes, sir.

Q Did you, later, see that machine again? A No, sir,

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I didn't.

Q You turned the number over to other officers, did you not? A Yes, sir.

CROSS EXAMINATION BY MR. HOWE:

Q Where were you standing, officer? A At the intersection of the streets there, Grand and Tompkins Street, about twenty-five feet away.

Q About twenty-five feet away from the entrance to the saloon? A Yes, sir.

A Were you standing on the sidewalk? A No, in the center of the street.

Q And you were in uniform, were you? A Yes.

Q How long did the taxicab remain in front of the saloon? A Well, about twenty minutes, I should judge.

Q Did you remain at your post all the time that the taxicab was there? A Yes, sir.

Q You didn't go over to the saloon? A No, sir.

Q You heard no outcry, did you? A No, sir.

Q And when the men left the saloon, they walked out to the taxicab; did they? A Yes, sir.

Q And then they drove away? A Yes, sir.

Q And how long did you remain at that fixed post afterwards? A Well, just as soon as the machine drove away ----

Q Can you state how long, without telling that? A Well,

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as soon as the machine drove away, I went over to the front of the ----

Q Oh, how long? How many minutes? A I didn't catch your question.

Q How long did you remain on your fixed post after the taxicab drove away? A About a minute or two. I left the fixed post then.

Q You say you noticed eyes peering out of the taxicab; do you? A Yes.

Q Did that strike you as unusual.

Q You had never seen that before in an automobile?

A No, not peering at me from the rear window.

Q And yet the taxicab drove right up in front of you, twenty-five feet away? A Well, it made the turn coming down Grand Street.

Q And you were on the fixed post about twenty-five feet away from the saloon? A Yes, sir.

Q Did they keep on looking at you? A Well, on and off, I could see them looking out at the window.

Q Was anybody in the taxicab looking at you? A There was.

Q Did you look at him? A Well, I didn't leave the fixed post. I just watched the machine.

Q Did you speak to them? A No, sir.

Q Did they speak to you? A No, sir.

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Q And when they got out did they keep looking at you? A Well, one man kept coming in and out of the saloon, the side entrance. He would come out partly from the side door.

Q And look at you? A Yes, sir.

Q And then go back into the saloon? A Yes, sir.

Q And all the time you were looking in the direction of the saloon? A Well, watching the side door and the machine, at the same time.

Q And how many times did they do that, or did that man do that? A Well, four or five times.

Q And then the two men came out? A Yes, sir.

Q Did they look at you? A Yes, sir.

Q Did you look at them? A Yes, sir.

Q And they got into the taxicab? A Yes, sir.

Q And rode away? A Yes, sir.

Q Did they run out to the taxicab or walk? A Walked.

Q Just walked out to the cab? A Yes, sir.

Q And you still remained on your fixed post? A Yes, sir, for a minute or two.

Q Are you the officer who took this little boy Freddie to the hospital? A No.

Q Were you with Officer Snedecker when he went to the hospital? A No, sir.

Q How long have you been in the police force, officer?

A About two years and three months.

Q Have you talked this case over with anybody other than the District Attorney? A I did not.

Q Have you talked with your brother officers about this case? A I have not.

Q Haven't you talked to Officer Hayes, or Officer Snedecker, about this case? A No, sir.

Q Didn't you tell them what you saw? A On the morning in question, I did. I made my report.

Q But did you talk to those officers? A On that morning I brought in my report and gave it to the detectives.

Q And after that you have no more connection with the case? A No, sir.

Q They didn't ask you anything about it; did they? A No, sir.

Q They didn't ask you what the man looked like; did they? A No, sir.

Q All that you did was to hand in a written report. A Yes, sir.

Q And that ended your connection with the case. A Yes, sir.

Q Now, you have been with the detectives frequently since the arrest? A Yes, sir.

Q Are you in the same precinct as the detectives? A Yes, sir.

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Q And you meet them in the station house, don't you?

A Yes, sir.

Q And you knew this case was coming up for trial?

A Yes, sir.

Q During the period from the 20th of April up to the present time, you met the other officers in this case every day? A I do, at times, met them.

Q And yet you haven't discussed this case with them?

A No, sir.

Q And haven't said a word to anybody. A No, sir.

Q All that you did was to sign a written report?

A No, sir.

Q Did you talk to the boy Freddie about the case?

A I did not.

Q Before Freddie went to the hospital, did you speak to the boy? A I did not.

Q What time did you hand in your report? A I handed my report in about ten minutes to seven, or five minutes to seven; I aint sure which.

Q Did you talk to the witness who testified, the lunchman? A I never spoke to him,--only on the morning of correction.

Q You went into the saloon, didn't you? A No, sir.

Q You didn't go in? A No, sir. I just opened the door (illustrating), and spoke to the lunchman and the bar-

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tender.

Q Did you tell the lunch man what you saw? A No, sir.

Q Or whom you saw? A No, sir.

Q This report, which you refer to, is that in your own handwriting? A Well, I merely made a report out on paper of what I saw occur, that morning.

Q Did you state in your report all that you have stated here? A Well, the main facts.

Q Where is that report? A I don't know.

Q Do you know who has it now? A I do not.

Q You gave it to the lieutenant in the station house; did you? A Yes, sir.

Q Are these reports kept there? A I guess they are.

Q Did you state in the report that a man had come out three or four times and looked at you, and then had gone back into the saloon? A Well, that isn't necessary to report.

BY THE COURT:

Q Do you remember what you said in the report, officer?

A Just the mere facts that occurred, that morning.

BY MR. HOWE:

Q Did you state about the eyes looking out of the back window of the taxicab in your report? A No, sir, that wasn't necessary in that report.

Q You didn't think it was necessary to state that?

A No, sir.

RE DIRECT EXAMINATION BY MR. DEMING:

Q Now, counsel has asked you whom you spoke to in the saloon, and you said the lunchman and bartender? A Yes, sir.

Q Now, what did you say to them, and what did they say to you?

MR. HOWE: Objected to.

THE COURT: Objection sustained, because the defendant was not present.

ABRAHAM GOTTLIEB, of 79 East Second Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DEMING:

Q You are a chauffeur? A Yes, sir.

Q You run a taxicab? A Yes, sir.

Q Do you remember the morning of the 20th of April?

A I do.

Q Do you remember seeing the defendant on that morning?

A Never. That's the only time then.

BY THE COURT:

Q Did you ever see that defendant before to-day?

A No, sir.

BY MR. DEMING:

Q Did you ever see him in your life? A No, sir.

BY THE COURT:

Q Don't you see him now? A No, sir.

Q Can you see me? Look at me. Are you sure you can see me? A Yes, sir.

Q Now, do you see the defendant over there, (indicating)?

A I can't recognize him.

Q You don't know what is meant by the "defendant", do you? A Yes, sir, I do.

Q What is meant by "defendant"? A The party that is in ---

Q The party that is on trial? A Yes, sir.

Q Now, there are four men at that table there. (indicating the counsel table). Look at them. Did you ever see any of them before?

A That one there looks something like him. (Indicating the defendant).

Q Which one? A The one with the blue tie.

Q The one in the blue tie? A Yes, sir.

BY MR. DEMING:

Q Have you ever seen him before to-day?, A I think I did.

Q When do you think you saw him before to-day? A (No answer).

THE COURT: Now, just think, and refresh your

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memory, and tell the truth. You understand?

THE WITNESS: Yes, sir.

BY MR. DEMING:

Q Don't be frightened. A I aint frightened.

Q Now, when did you see him before, if at all? A I can't positively think it's him, but I saw someone that looks like him in the taxicab.

BY THE COURT:

Q Well, on what day? A I can't remember the day.

Q Where? A At Tompkins and Grand. I went with a party there.

Q How many people were in the party? A Four.

Q Four men? A Yes, sir.

Q And what time of the day was it? A It was six-thirty in the morning.

Q Now, what did those four men do at six-thirty in the morning? A I took them to Grand and Tompkins, and a few of them went into a saloon.

Q How many went into the saloon? A Two, I think.

BY MR. DEMING:

Q And was one of the two men that went into the saloon the man that you think looked like the defendant?

A Yes, sir.

Q Where did you get those four men? A In Chatham Square.

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Q Where in Chatham Square? A In a saloon.

Q In a saloon? A Yes, sir.

Q They came out of a saloon and got into your taxicab?

A Yes, sir.

Q And you drove around to Grand and Tompkins Street?

A Yes, sir.

Q Did they stop anywhere on the way there? A No, sir.

Q And two of them went inside of that saloon there?

A Yes, sir.

Q And how long did they stay inside? A A couple of minutes.

Q A couple of minutes? A Yes, sir.

Q And then came out again? A Yes, sir.

Q And what did they do then? A I drove them away.

Q And where did you take them? A Took them to another place, and we had a drink.

Q Another saloon? A Yes, sir; and we all had another drink, and then I took them down to Leight Street.

Q Did they give you a drink, too, in that saloon?

A Yes, sir, where we stopped.

Q Where did you take them to? A To Leight Street.

Q And did you leave them there? A Yes, sir.

Q How much was the whole fare? A \$4.

Q How long were they with you? A A little over an

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hour.

Q A little over an hour? A Yes, sir.

Q And they were only two minutes in this place in Grand Street? A Yes, sir, only a few minutes.

Q But they were with you over an hour? A Yes, sir.

Q Had you ever seen them before? A No, sir.

Q Later on, you told what you had seen to some detectives who came and looked you up? A Yes, sir.

Q And you took the detectives in the taxicab over the route where you had been with these four men? A Yes, sir.

Q And told them where you had left the four men?

A Yes, sir.

CROSS EXAMINATION BY MR. HOWE:

Q How long did your taxicab remain in front of the saloon? A A few minutes.

THE COURT: Which saloon do you mean? The saloon at Tompkins and Grand Street?

MR. HOWE: Yes, sir, 608 Grand Street.

A They were a few minutes in there.

Q About how long? A About five minutes or so.

Q Did you see anybody --- did you see any of those men out coming/of the saloon? A From those two?

Q Yes. A They come out and went into my car.

Q Is that the only time that they came out of the

saloon, after they went into the saloon? A Yes, sir.

Q They only came out once, and that was when they came out to get into the taxicab? A Yes, sir.

Q And you didn't see anything unusual about the way they acted? A No, sir.

Q They walked away into the saloon from your cab quietly? A Yes, sir.

Q And came out, and walked quietly to the taxicab, and got in? A Yes, sir.

Q And you drove away? A Yes, sir.

Q Did you see an officer around there? A Yes, right on the corner where the saloon is.

Q How far from the entrance to the saloon was he standing? A About 20 feet or so; 20 or 25 feet.

Q Was he standing on the sidewalk? A Yes, sir.

Q And was he in uniform? A Yes, sir.

Q You can't say, can you, that this man, this defendant here (indicating) is the man that went into the saloon, can you? A No, sir.

Q Or that he was one of the four men that was in your taxi, on that occasion? A I can't swear to it.

MR. HOWE: That's all.

MR. DEMING: That is all.

BY THE FOURTH JUROR:

Q Will you please call us if you would recognize any

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of those four men, if you saw them to-day? A No, sir, I never saw them since.

RE DIRECT EXAMINATION BY MR. DEMING:

Q Did you see this man in the hospital (indicating the defendant)? A I saw him in the hospital, yes, but his face was all bandaged up.

Q Is this the man that you saw in the hospital?

A No, sir, I can't say that.

Q Well, the officers took you there, to the hospital?

A Yes, sir.

Q And this man was in a bed there? A No, sir; he was laying on a table there.

Q And you couldn't recognize him, even after you saw him there in the hospital? A No, sir.

Q Would you know me tomorrow, if you saw me? A I might.

RE CROSS EXAMINATION BY MR. HOWE:

Q What portion of his face was uncovered? A The front part, like here.

Q The front part of his face? A Yes, sir.

J O H N M. H A Y E S, of the Detective Bureau, assigned to the 13th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DEMING:

Q Officer, did you arrest the defendant? A I placed him under arrest in Hudson Street Hospital.

Q Yes. Did you see him before you got to the hospital?

A No, I didn't.

Q You traced him there, did you? A Well, we were on the trail of some --

MR. HOWE: Objected to.

THE COURT: Objection sustained.

BY MR. DEMING:

Q Well, never mind that.

BY THE COURT:

Q Did you ever see him before that day at any time? Had you ever seen him before that day in your police career?

A Oh, yes, sir, I had seen him.

Q You had seen him before? A Yes, sir, on different occasions.

BY MR. DEMING:

Q Were you present when either Zust or young Fox identified him in the hospital? A I was present when Gottlieb identified him.

BY THE COURT:

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Q Who is he? A Gottlieb is the chauffeur. He positively identified the man. We didn't know then who was there at the hospital.

MR. HOWE: I object to that, and move to strike that out, as a conclusion, if your Honor please, that he identified him positively.

THE COURT: Yes, objection sustained. Strike it out, and the jury will disregard it.

CROSS EXAMINATION BY MR. HOWE:

Q How long have you been in the Detective Bureau?

A About four years.

Q And how long have you been on the police force?

A About 23.

Q Did you see a report written by Officer Rosenberg?

A Yes, I did.

Q A written report? A Yes, sir.

Q Who has that report? A He gave a report to the lieutenant at the desk, and the lieutenant sent it into us, to I and Detective Harvey.

Q Have you that report with you? A No; it was merely on a plain piece of paper.

Q Where is it? A I don't know.

Q Did you have it in your custody? A I did have it, but I believe I turned it up after I made my own report out.

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BY THE COURT:

Q Well, that was a report that gave you information about this alleged crime; was it? A Yes, sir.

BY MR. HOWE:

Q Now, when you went to the hospital with the last witness, who went in the ward first, you or the witness?

A Why, Detective Harvey went in, and then the chauffeur went in, and I followed the chauffeur.

Q Where was the bed of the defendant? A He was then sitting on the operating table, and they were digging out a bullet from behind his left ear (indicating), where he had been shot. He was sitting on a sort of operating table in the reception ward.

BY THE COURT:

Q Was he conscious? A Yes, sir, half conscious.

Q Well, did you talk to him? A Yes, sir; I asked him who shot him, and how he got shot.

Q And did he answer you? A Yes, sir; he said, "I don't know."

BY MR. HOWE:

Q And you took this witness to the operating table where the defendant was lying? A Yes, sir.

Q And who else was in the room? A There were two doctors.

Q Were they in the white uniform of the hospital?

A. Yes, sir, the white uniform.

MR. HOWE: That's all, officer.

RE DIRECT EXAMINATION BY MR. DEMING:

Q. Officer, what was the name of the officer who went to the hospital with Zust? A. Detective Snedecker.

Q. Well, who went with Fox? A. Well, either him or Detective Keane.

Q. Is Detective Keane here to-day? A. Yes, sir.

Q. Is he outside now? A. Yes, sir.

MR. DEMING: Well, send him in. No, we'll leave him outside, and counsel can call him, if he wants him. It is merely cumulative, I submit, your Honor.

THE COURT: Very well.

MR. DEMING: And we rest our case. The other officers are outside and counsel for the defense can call them if he wants to.

MR. HOWE: Now, I move, your Honor, for a direction of acquittal, on the ground that the People have failed to establish the allegations set forth in the various counts in the indictment.

THE COURT: Motion denied.

MR. HOWE: Exception.

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THE DEFENSE.

C H A R L E S I S O L A, the defendant, being duly sworn,
testified as follows:

MR. HOWE: If the Court please, the defendant has
lost the hearing of one of his ears, and I am afraid
that I will have some difficulty in making myself
heard by him, and understood by him, but I will try to
get along as best I can.

DIRECT EXAMINATION BY MR. HOWE:

Q What is your name? A Charles Isola.

Q Where do you live? A 24 City Hall Place.

Q How long have you lived there? A A year and a
month.

Q One year and a month? A Yes, sir.

Q And with whom do you live there? A I live there
with my brother and little cousin.

Q What do you work at, Isola? A At damp water-
proofing.

Q And what concern have you worked for? A The Sicilian
Asphalt Paving Co.

Q And how long have you been employed by them? A I've
been employed by them since the first time they built this
subway here in Lafayette Street.

Q How long is that? A About eight or nine years, and
it might be a little more. From eight to twelve years. I'm

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not certain.

Q Now, on the 20th day of April, were you a patient in the hospital in the City of New York? A Yes, sir.

Q What was the name of that hospital? A The Hudson Street Hospital.

Q The Hudson Street Hospital? A Yes, sir.

Q What time of the day were you taken there? A Well, I couldn't exactly tell the time. I don't remember.

BY THE COURT:

Q Well, about what time? A I don't remember.

BY MR. HOWE:

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

BY THE COURT:

Q Well, was it in the morning or afternoon? A In the morning.

Q Well, about ten o'clock, or nine o'clock, or what time? A Well, it must have been about nine o'clock in the morning.

BY MR. HOWE:

Q Were you suffering with some injuries? A Yes; I was suffering with a stab wound in the back here (indicating), and a shot in the head here (indicating a point behind the right ear).

Q And how long were you there under treatment? A I was taken out of the Hudson Street Hospital on a Sunday and

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taken to Bellevue Hospital, and I stayed there two weeks and two days.

Q. What time in the morning did you leave your home?

A. Seven o'clock in the morning.

Q. And where did you go? A. I went up as far as Chambers Street and Broadway.

Q. And where was it that you received the injuries that you have described? A. In Leight Street, between Varick and Hudson Street.

Q. Now, since the receiving of those injuries on that day, have you any recollection of what happened after that?

A. No, sir.

Q. Do you recollect anybody coming to the hospital and speaking to you? A. Yes, sir; I recollect the officer bringing up two boys to Bellevue Hospital, and he come in and he said, "Hello, Charlie," and started to talk to the two boys.

Q. Who was that officer? Do you know his name?

A. Snedecker.

Q. Now, tell in detail what he said to you in the presence of the two boys? A. He didn't say nothing to me, but only said, "Hello, Charlie," and he was talking to the two boys. He said, "Is this the man?" And they were making motions with their head. One minute they would go this way, and the next minute they would go this way (illustrating),

and I said to Officer Snedecker, "What does this mean?"

And he said, "You ought to know what it means."

Q And how long did they remain in the hospital?

A About two minutes.

Q Were you placed under ether, that day, and operated on? A Well, what hospital do you mean?

Q I mean when you were operated on? A Hudson Street Hospital.

Q Yes. Is that where the boys were? A No, sir, they were up in Bellevue Hospital.

Q And you were removed, were you, to Bellevue Hospital?

A Yes, sir.

Q Where were you operated on? A At the Hudson Street Hospital.

Q And have you lost the hearing of one ear as the result of that injury? A Yes, sir, right ear.

Q And have you ever been arrested before, and convicted of crime? A I've been arrested before for intoxication.

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

Q How old are you? A 36 years old.

Q Were you at any time in the premises at 608 Grand Street, on the 20th day of April? A No, sir.

Q It is stated here by witnesses that, at about half past six on that morning, they saw you in the saloon at that

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address. Have you --- can you recollect now about where you were in the City of New York at that time? A At that time I was in the house, dressing myself, to go and look for a position, for work.

Q You were in the house at that time? A Yes, sir.

Q Do you mean by the house --- you mean your home; don't you?, A Yes, sir.

Q And your home is where? A 24 City Hall Place.

Q Were you in a taxi at any time on that day? A No, sir.

MR. HOWE: That's all.

CROSS EXAMINATION BY MR. DEMING:

Q You were never in that saloon 608 Grand Street in your life; were you? A No, sir.

Q Never in your life? A No, sir.

Q You are absolutely sure of that? A Sure.

Q You left your home at seven o'clock? A Yes, sir.

Q And where did you go? A I went on the corner of Broadway and Chambers Street. There is a subway there. They started a new subway, and I went there to see if I could see two foremen that I knew to get a position.

Q You were out of a job? A Yes, sir; on account of the company being slack. I've been out of work now for six months, counting up to to-day.

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Q Well, you only worked off and on? You didn't work steady, every day, did you? A No, sir, because you can't work for one company steady, because they haven't always got the work.

Q Well, then, you haven't worked for one company steady for nine years? A That's the only company I worked for, yes, but when it rains, or it might be slack for a week, you get laid off.

Q And it has been slack with you for about six months, hasn't it? A Yes, sir.

Q And there has been no subway building in New York during that time; has there? A Oh, yes. There is the Fourth Avenue subway in Brooklyn has been building, but I got laid off because the work was slack.

Q And when did you leave Broadway and Chambers Street, on that morning? A About eight o'clock.

Q With whom did you talk there? A I didn't talk with noone, because I didn't see none of the people that I know.

Q And you didn't talk to anybody during that hour then, from seven to eight? A No, sir.

Q And where did you go after eight o'clock? A I walked down through Chambers Street, expected to see some tar roofers working somewhere, and find out if I could get some work. And I walked a little ways down to West Street, and up West Street until I got to Leight Street.

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Q. You walked west? A. Yes, sir, I walked west down Chambers Street, walked west to West Street, and then I got up as far as Leight Street, and, to make a short cut, I come up through Leight Street, with the intentions of going to the Germania Roofing Company, and ask for a job.

Q. And did you see anyone that you knew, on the way up Leight Street? A. No, sir.

Q. And you stopped at a place in 34 Leight Street, to get a drink; didn't you? A. Well, I couldn't tell you the number, but I went into a saloon, and had a drink, and I heard some men quarreling in there, and so I took my drink, and went to walk out, and someone struck me a blow in the chest, and so I couldn't get out of the front part, and so I run through the yard, and, as I got out of the yard, I felt a pain in the head, and I dropped.

Q. Did you heard any shots? A. No, I didn't hear any.

Q. You just got struck, and didn't hear any? A. No, I couldn't hear, because from the weakness, from the loss of blood.

Q. And they took you to the Hudson Street Hospital?

A. Yes, sir.

Q. And operated upon you? A. Yes, sir, and operated upon me.

Q. And the officer came there while you were being operated upon? A. Yes, sir.

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Q The same day? A Yes, sir.

Q Now, wasn't it Torti who shot you? A No, sir, I couldn't tell you who the people are.

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

Q You never heard that name before? A No, sir.

Q Was it Poggi? A No, sir.

Q Do you know him? A No, sir. I read his name in the newspapers; that's all.

Q Well, was it Sirrocco? A No, sir, it wasn't.

Q Now, haven't you known him for years? A Yes, sir, for about fifteen years I've known him, but he never had nothing against me.

Q He has had a big row with Torti; hasn't he?

MR. HOWE: Objected to.

THE COURT: Objection sustained.

BY MR. DEMING:

Q Wasn't Torti with you in the taxicab, that morning?

A No, sir; and I wasn't in no taxicab at all.

Q And weren't you shot when you and Torti quarrelled about that money, and Torti accused you of keeping back some of that money? A No, sir; I wasn't in no taxicab at all.

Q And you were taken to the hospital from 54 Leight Street, weren't you? A Yes; I got shot in the yard there by some fellow that I didn't know at all, and I dropped, and I didn't remember going to the hospital at all.

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MR. DEMING: That's all.

MR. HOWE: That's all, sir. We rest.

MR. DEMING: The People rest.

THE COURT: Now, if you wish to recall the bartender you may do so, Mr. District Attorney.

MR. DEMING: No, sir, I don't care to recall him.

THE COURT: Now, then, that closes the testimony?

MR. DEMING: Yes, sir.

MR. HOWE: Yes, sir.

THE COURT: Then we will take a recess until ten-thirty o'clock, to-morrow morning.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow morning, July 16th, 1912, at 10:30 o'clock).

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T R I A L R E S U M E D.

New York, July 16th, 1912.

THE COURT: Any further testimony offered on either side?

MR. DEMING: No more, sir.

THE COURT: You do not wish to recall the first witness?

MR. DEMING: No, sir.

MR. HOWE: I desire to renew the same motion that I made at the close of the People's case.

THE COURT: Denied.

MR. HOWE: And I respectfully except. I now ask your Honor to take away from the consideration of the jury the first count in the indictment charging robbery in the first degree. There is no evidence to sustain that count in the indictment.

THE COURT: The motion is denied.

MR. HOWE: I respectfully except.

(Mr. Howe then summed up for the defense, and Mr. Deming closed the case for the People.)

THE COURT: Mr. Deming, do you want the larceny count submitted to the jury?

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MR. DEMING: Well, I think perhaps it would be better to submit it. The jury might have some reasonable doubt as to the degree of violence used, and in that case they would find perhaps only that there was a larceny, a stealing of the money.

T H E C O U R T ' S C H A R G E .

MULQUEEN, J.:

Gentlemen of the Jury:

This defendant has been indicted by the Grand Jury of this county of the crime of robbery in the first degree, and the indictment charges that in this county, on the 20th day of April, 1912, in the day time, with force and arms, he feloniously did make an assault upon one Bernard Eames, and the sum of seventeen dollars, in money, lawful money of the United States of America, and of the value of seventeen dollars, of the goods, chattels and personal property of one John Fitzgerald, from the person and in the presence of the said Bernard Eames, against the will and by violence to the person of the said Bernard Eames then and there violently and feloniously did rob, steal, take and carry away.

The indictment charges that he made a felonious assault on Bernard Eames, and that he did feloniously rob, steal and carry away the sum of seventeen dollars, which was the property of John Fitzgerald, from the person and in the presence of the said Bernard Eames and against the will and by violence to the person of the said Bernard Eames, the said Charles Isola being then and there aided

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by an accomplice actually present, to-wit, by a certain person or persons to the Grand Jury unknown.

Now, you understand, gentlemen, that an indictment is only a written charge, intended to let the defendant know what he is charged with, and to let you know what the charge against the defendant is. You must, therefore, keep in mind the allegation that in the county of New York, on the 20th day of April of this year, Bernard Eames had in his presence and in his custody seventeen dollars, the personal property of John Fitzgerald; and, secondly, that these defendants did feloniously make an assault upon Bernard Eames, and that they feloniously did steal, take and carry away that seventeen dollars from the person and the presence of Bernard Eames, against his will and by means of force and violence and fear of injury to his person, and that these acts were committed by this defendant, Charles Isola, and that he was aided by an accomplice actually present, by some person or persons to the Grand Jury unknown, and that these acts are against the statute in such case made and provided.

You understand that it is the duty of the Court to instruct you in the law, and you must take the law exactly as the Court gives it to you, without question, and then you must keep that law in mind and view the evidence in the light of the law. The statute which is referred to in the indictment is a very plain one. It

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is known as section 2120 of the Penal Law, which is as follows:

"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, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery."

You see that the first thing that that section says is that robbery is the unlawful taking of personal property. An unlawful taking is a taking without right or warrant of law; and the second element is 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.

There are different degrees of robbery. Robbery in the first degree, which is charged in the indictment, is defined in section 2124, as follows:

"An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this article, is robbery in the first degree, when committed by a person:

1. Being armed with a dangerous weapon; or,
2. Being aided by an accomplice actually present."

So that if there was any robbery on that morning in that store, and there were two persons concerned in it, that would be robbery in the first degree, if all the other elements were present. The charge is made in the indictment that this defendant robbed Bernard Eames and that he was aided by an accomplice actually present. If two or more persons are concerned in the commission of a crime, each is equally guilty with the other. All the persons who aid, or abet, or counsel, or advise the commission of a crime are equally guilty. Although one person may do the actual taking of the property, if any one was there aiding and abetting him, or counselling or advising him to commit that crime, all the persons concerned in the commission of the crime may be regarded as accomplices of each other, and they are equally guilty, and that is what is meant by an accomplice.

You have heard the testimony of the witnesses who said that they were in the store at the time, and of the police officer who says he was outside and of the chauffeur who is alleged to have driven that car, that there were two men who entered the saloon. The bartender, I think, said there were three. A discrepancy of that kind does not mean that any witness has committed perjury. If there were two or more men engaged in the commission of

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the robbery, they were all equally guilty, and it would be robbery in the first degree. If there was a robbery, whether there were two or three men engaged in the robbery is immaterial. The witnesses might be honestly mistaken on that point, in view of all that happened there at that time. You must decide what happened there, and you may consider whether a happening of that kind did or did not tend to excite or confuse persons looking on, and lead them to differ as to the number of persons engaged.

You understand that this is not an action between Bernard James and the defendant. It is an action between the defendant and the People of the State of New York, which means organized society in this State, the ten millions or more of people living within the borders of this State, who have the right to make laws to accomplish the purposes of the government. The People have made laws, and the law I have read to you defines and forbids robbery. They charge the defendant with the violation of that law in the particulars set forth in the indictment.

The rule is that when a defendant is brought here for trial, he is presumed to be innocent. That means that he is not obliged to prove his innocence. That is taken for granted until his guilt is shown by evidence. And the law is that, in the absence of sufficient credible testimony to satisfy you of his guilt beyond a reasonable doubt, he is entitled to an acquittal.

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The question arises as to what is meant by reasonable doubt. It is not a doubt that is based on prejudice, or on a caprice, or a whim, or a desire to avoid doing your duty, but it is a doubt that an honest juror feels, after a careful examination of all the evidence in the case. It is a doubt that is based on reason, as the term implies, and for which a reason can be given. If your minds are firmly convinced to a moral certainty by the evidence in this case that there was a robbery committed and that this defendant is the person who committed it, and that he was aided by an accomplice actually present, I say, if your minds are firmly convinced on these points, then your minds are not in a state of reasonable doubt. The People then have met the burden which is imposed upon them of proving him guilty beyond a reasonable doubt. But, if the evidence falls short of that for any reason connected with the evidence or lack of evidence in the case, then your minds are in a state of reasonable doubt, and the defendant is entitled to the benefit of the doubt.

You have heard all the testimony in this case, and it is for you to say whether there was any taxicab on that morning that was driven up to this place, and whether there was any police officer there who saw two men get out and go into the saloon, and whether there was any saloon there, and whether the bartender has told the

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truth when he said that the actions of these men scared him, or, as he put it here, "I saw them with their hands in their coat pockets, like that (illustrating)." He was asked, "One of them had his hand in his right coat pocket like that (illustrating)?" A Yes, sir.

Q And what did he say to you? A He told me to give up the money." And then he said he gave up the money "because I thought they might do me bodily harm."

Keep in mind the elements of the crime. You will have to find, first, that there was some personal property taken. Secondly, that the taking was unlawful. The bartender testified that these persons who came into the saloon had no interest in the saloon, that they were not the owners and had no right to take the money; if it was an unlawful taking; and, if that money was taken in the presence of the bartender, and the bartender said that he was there, and against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, that would be robbery.

It is not material whether that fear was produced by words actually spoken, or by acts which indicated to his mind an intent to do violence, to do injury to his person, as he says he feared. It is not necessary to prove, as some of the witnesses said, that the person who took the money said that he would blow his brains out,

or hit him with a bottle, they may have heard that or they may not, and it is for you to say whether they heard a part of the transaction, and the bartender heard the rest; but if the bartender, in whose custody that money was, had fear instilled into his mind in any way, by a threat, by the thrusting of the hand into the coat pocket, to instill fear into his mind that he would be shot or receive bodily harm, that would be one of the elements constituting robbery.

The law puts the burden upon you of deciding the facts; the Court is the judge of the law, and you are the supreme judges of the fact, and there is no going behind your verdict on the fact. So you must view the testimony carefully and calmly, with a desire to find the truth, if possible, from the evidence.

Facts are proved by witnesses, and you must pass upon the credibility of witnesses. That word "credibility" means worthiness of belief. You must decide from the evidence what took place, who saw the alleged occurrence, and how much of it they saw, and whether or not they have given you a correct account of the occurrence as it appeared to them.

In other words, you pass upon the credibility of witnesses, you decide what witnesses to believe. That is your burden. And, if there are discrepancies in their testimony which are not material, you may ignore them. If

you find, however, that any witness wilfully testified falsely on a material element in the case, that would be perjury, and you may disregard all the testimony of such a witness. But you ought to be slow to accuse any witness of perjury. The mere giving of a statement which differs in detail from that of another witness does not necessarily imply perjury, even if the facts are material. All the stories may be true, and you must, if possible, reconcile them. If there is an irreconcilable conflict in the testimony, then you must say which side you believe. If there was a robbery, was the defendant concerned in it?

Two of these witnesses swore positively that this defendant was in that saloon. You have heard the testimony of the bartender, that he could not recognize him. You have heard the testimony of the policeman that he saw him go into the saloon, and of the chauffeur, that a man that looked like him was driven by him to that saloon, and driven away from that saloon, and left by him in a saloon in Laight Street, where this defendant was subsequently found, a short while thereafter, shot.

Now, did those witnesses tell the truth? Does their testimony satisfy you beyond a reasonable doubt as to the identity of the defendant?

The defendant says he was not there. There is a direct conflict in the testimony, and you must decide between the witnesses as to who is telling the truth; and

while there is no absolute rule of law laid down as to how you shall make that decision, you must do it as reasonable men. You may consider the character of the witnesses, their manner of giving their testimony, their interest, if any, in the proceeding.

What interest, if any, has any of the witnesses called by the People in the case? That is for you to say. Are they animated by spite to testify falsely, or are they honestly mistaken, or are they telling the truth? That is for you to say.

What interest, if any, has the defendant in the case? Is he a truthful man, telling you the truth, or has the fear of a prison sentence or punishment led him to commit perjury? That is for the jury to decide.

You must weigh all the testimony carefully. Every criminal case is important, and the work you are doing now is the most important work that citizens are called upon to do, in time of peace. You must not be affected by any consideration whatever outside of the evidence in this case, but must be guided solely by the evidence and the law, as given to you by the Court.

The elements of the charge are easy to remember. Was any money taken? Was it taken by force or through fear? If money was taken, is it reasonable to suppose that the bartender would give up the money of his own accord, or do you believe him when he says that he gave it

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up through fear, or allowed it to be taken through fear of bodily harm? If that fear, as I have said, was inspired by any act of the person who took the money, or by any threat, then that would be one of the elements of robbery, which would distinguish it from larceny. If there was no money taken, no threat made, no fear instilled into the mind of the bartender, of course, there would be no crime at all. But if money was taken, without instilling fear into the mind of the bartender, or taken by a person who took it secretly without the knowledge of the bartender, it would not be robbery, but would be larceny, which is defined in section 1290 of the Penal Law, as follows:

"A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, takes from the possession of the true owner, or of any other person, any money or personal property, steals such property and is guilty of larceny."

That is, if some one entered that store, without the knowledge of the bartender, and went secretly behind the bar, and opened the till, and took out the money, that would be larceny; that is, larceny is the taking of personal property from the owner, or from the possession of the owner, or anyone representing the owner, with the felonious intent of depriving the owner of it, and appropriating it

to the use of the taker.

Now, you have to decide whether that is this case or not. Witnesses have testified that there was a taking, and that they saw it, and that the money was taken openly. The bartender whose duty was to protect it, said it was taken against his will, because fear of immediate injury was instilled into his mind by the acts of the person who took it and of his accomplice. If you find there was an unlawful taking, but that it was not a robbery, but was a larceny, under the circumstances of this case the proof being that only seventeen dollars was taken, and there being no claim that it was taken from the person of the bartender, as the money was not on his person but was in his custody, it would be a petit larceny only.

So that, gentlemen, you must consider the whole testimony, and you must decide who told the truth here, and if the testimony of the witnesses that you deem credible satisfies you beyond a reasonable doubt that there was an unlawful taking of personal property and that that unlawful taking was against the will of Eames, and that it was taken from his person or in his presence, against his will, by means of force, or violence, or fear of injury, and the person who did that unlawful taking was aided by an accomplice actually present, and that this is the person who either took it, or was acting in concert with the person who did take it, then it is your duty to say so by the

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verdict of guilty of robbery in the first degree.

There are some definitions which I shall read to you. Section 2121 of the Penal Law says:

"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."

You have heard the bartender's testimony as to how his resistance to the taking was overcome; and section 2122 says:

"When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial."

If enough force was employed to instil fear in the mind of the bartender, and property was taken in his presence by means of that force and fear, and if all the other elements of the crime are established to your satisfaction beyond a reasonable doubt, then that would be robbery in the first degree.

If you find that there was no robbery, and yet you find that seventeen dollars was taken from the till there, unlawfully, with the felonious intent to deprive the true owner of it, it would be petit larceny.

Any requests, Mr. Howe?

MR. HOWE: No, your Honor.

THE COURT: Mr. Deming?

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MR. DREWING: None, your Honor.

THE COURT: Nothing further?

MR. DREWING: No, sir.

MR. HOWE: No, sir.

THE COURT: Then the jurors may pass out.

(The jury retired at 11:50 A. M.)

(The jury returned to the Court room at 12:40 P. M., finding the defendant guilty of robbery in the first degree.)

MR. HIRSCH: I will ask your Honor to remand the defendant until Thursday or Friday, and I will reserve my motions until then.

THE COURT: Very well. Remanded until Thursday.

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