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

-----X
THE PEOPLE

-VS-

RICHARD LARKIN.

Before:

HON. JAMES T. MALONE, J.,

and a Jury.

-----X

Tried, New York, April 15th, 1912.

Indicted for Robbery in the first degree.

Indictment filed November 17th, 1911.

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

ASSISTANT DISTRICT ATTORNEY CHARLES E. COLLEGAN, for

the People.

ARTHUR J. W. HILLY, ESQ., for the Defense.

-:TRANSCRIPT OF STENOGRAPHER'S MINUTES:-

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

HARRY JACOBSON, of 171 Broome Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q Jacobson, on the 4th day of November, 1911, you were working for Mr. Morris Crane, who is the proprietor of a restaurant, is that so? A Yes, sir.

Q And that restaurant was on 11th Avenue? A Yes, sir.

Q No. 88? A Yes, sir.

Q Now, did you see this defendant on that day (indicating)? A Yes, sir.

Q Now, about what time of the day was it? A November 4th.

Q Yes, but what time of day was it? A Five P. M.

Q Now, did you have charge of the place at the time? A Yes, sir.

Q Is this a small or large store? A It aint a big place; that's a small place.

Q It is a restaurant, is it not? A Yes, sir.

Q Now, where did you see this man on that day (indicating the defendant)? A Under the counter.

Q And what street, or place, or city? A 88 Eleventh

Avenue.

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

Q And in your place of business there? A Yes, sir.

Q And this was about five o'clock, you say? A Yes, sir.

Q And who was with him, if anyone? A Two fellows.

Q And were you alone in the restaurant alone at the time they walked in? A Yes, sir.

Q Now, tell us what was done and said? A These three fellows came in, and asked me for coffee, and I told him I hadn't any coffee (indicating the defendant).

MR. HILLY: We object to that and we move to strike out what was said there. What was done is the question here.

THE COURT: I will allow it, as it was in the presence of the defendant.

MR. HILLY: And we except.

BY MR. HILLY:

Q Was the defendant one of those three men that came into the store at that time? A Yes, sir.

Q And you were in charge of the place, you say, at the time? A Yes, sir, I was in charge of Mr. Grano's place, November 4th, at five P. M., and three fellows came in, and asked for coffee, and I said, "I haven't got any coffee, because the coffee is cold," and one of the fellows started to

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speak dirty words, and he said, "We've got money", and he showed some money; and, as soon as I handed over the coffee, one fellow grabbed a hold of me and started to choke me, and then this fellow sitting there (indicating the defendant) went to the cash register, and took out of the cash register \$15 in money and a check for \$15.

Q And had you seen that money before that in that cash drawer or register? A Yes, sir.

Q And where was the cash register located? A Under the counter.

Q So that he had to go behind the counter to get to it? A Yes, sir.

Q And this is the man that took the money (indicating the defendant)? A Yes, sir.

Q And another man had you by the throat at the time? A Yes, sir. And the third man watched by the door.

Q And the third man watched? A Yes, sir, by the door.

Q Now, did anyone come in while this was happening? Did anyone come into the store? A When this happened?

Q (Question repeated) A Yes, the other fellow.

Q Levine, you mean? A Yes, sir.

Q Now, who is he? Who is Levine? A He isn't working in the store any more, in the lunchroom. He just came in then.

Q And what did he do, if anything? Or what did they do

to him, if anything? A They struck him down.

BY THE COURT:

Q Did you see somebody strike him? A Yes, sir.

Q Which man struck him? A He aint in here now, he aint around here. One of those three fellows;

BY MR. COLLIGAN:

Q Did you see this man after that (indicating the defendant)? A Yes, sir.

Q Now, when the money was taken, what did they do? How long did they stay there? A Oh, a couple of minutes.

Q And then they went out? A Yes, sir.

Q Now, did you see this man after that (indicating the defendant)? A Yes, sir.

Q Well, where did you next see him? A In the station house.

Q Yes. And you identified him in the station house, did you? A Yes, sir.

Q Now, did you see him after he was let out on bail? A Yes, sir.

Q Where, A In my own store.

Q He came into your place? A Yes, sir.

Q What did he say to you? A He said I shouldn't go against him.

Q And this is the man? A Yes, sir.

Q That robbed the teller? A Yes, sir.

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Q And that you identified in the police station?

A Yes, sir.

Q And who, later, came to you, when he was on bail, and told you you shouldn't go against him? A Yes, sir.

MR. COLLIGAN: That's all.

CROSS EXAMINATION BY MR. HILLY:

Q How did you know it was five P. M. when these three men came into the store? A What? How I know it?

Q Yes. A There was a clock there.

Q And when they came into the store, you looked up at the clock, is that so? A Well, I looked before on the clock.

Q And how long was it after you had looked at the clock that they came into the place? A I don't understand.

Q How long a time ---- you say that you looked at the clock before they came into the place, and that's how you know it was five o'clock. Now, how long a time was it before they came into the place that you looked at the clock? A I know it was about five P. M.

Q Now, answer my question, please. A (No answer)

(The question is repeated by the Stenographer)

A (No answer)

BY THE COURT:

Q Do you understand the question? A Yes, sir.

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Q Well, answer it. A (No answer)

Q When did you look at the clock before these men came in? A I couldn't tell you the right minute, how many minutes it was before they came in. When they came in it was about five P. M., but I couldn't say exactly to the minute.

Q Well, did you look at the clock at all? A (No answer)

Q What don't you answer the question if you understand it? A I didn't look at the clock that time.

Q Well, when, in reference to the time that they came into the place, did you look at the clock? A (No answer)
BY MR. HILLY:

Q Now, answer the question, please. A A couple of minutes.

Q A couple of minutes before? A I looked at the clock when they went out.

Q Well, you stated to me, a minute ago, that you looked at the clock before they came in. Now, did you look at the clock before they came in or after they went out? A When they went out.

Q After they went out? A Yes, sir.

Q Now, that's correct, is it? A It was about five P. M. when they went out.

Q Now, how do you know it was five P. M. when they went

out? A I looked at the clock.

Q You looked at the clock when they went out? A Yes, sir.

Q You remember now, after I have asked you these questions, that you looked at the clock after they went out; you remember that now? A Yes, after they went out of the store, I saw it was about five o'clock.

Q And somebody was actually holding you by the neck, and somebody else was going through the cash register in there, and yet you turned around and looked at the clock; is that it? A No, after they ran out.

Q And the first thing you did was to look at the clock after they ran out? A No; when they ran out I saw the clock, and it was about five P. M., something like that.

Q And what time on the clock was it when you looked at it? A I couldn't tell you exactly but it was around five P. M.

Q Well, who told you to say that it was five P. M. when this happened? A Nobody told me at all.

Q Sure about that? A Yes, sir.

Q Certain about that? A Yes; nobody told me at all.

Q Well, how did you come to say it was five P. M., on November 4th?

MR. COLLIGAN: I object to this as already answered.

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THE COURT: I will overrule the objection. You may have an answer.

A That's the time it happened.

BY MR. HILLY:

Q But who told you to say that? A Nobody told me to say it.

Q Are you positive about that? A Yes, positive.
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Q Now, you say/there were two other men with this man when he came into the place? A Yes, sir.

Q What did these other two men look like? A One fellow was wearing a cap and a brown coat, and different pants.

Q Well, what kind of a looking man was he, aside from what he had on? A Who are you talking about? Them two other fellows?

Q You say that one of these men had a brown coat on, and a cap, and a different pair of pants? A Yes, sir.

Q Now, what did he look like, aside from what he had on? A What do you mean by that?

Q Well, what kind of a face did he have? What was the color of his hair? A He was black.

Q Black hair? A Yes, sir.

Q And was he tall or short? A Not short. He was tall.

Q Well, what kind of a looking man was the third man?

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A He was a tall man, with a cap, too, with a blue coat.

Q And what kind of hair did he have? A Light hair.

Q Light hair? A Yes, sir.

Q Now, how was the third man dressed? A He was dressed in a blue coat and white stripes. That's the fellow sitting there (indicating the defendant).

Q Now, I asked you how he was dressed. I can't hear you. Speak up. A A blue coat, with white stripes, and a cap.

Q Now, how long afterwards did you see the defendant in the station house? A It was Monday, Monday morning.

Q And what day of the week did this happen on?

A I can't remember the date. It was on Monday.

Q (Question repeated) A This happened on November 4th.

Q But what day of the week was November 4th? You knew it was November 4th at five P. M., but you don't know what day of the week it was; do you; is that right? A What?

Q You don't know what day of the week this happened on; do you? A I know when it happened, November 4th.

Q But you don't know the day of the week it happened on; do you? A It happened on Saturday.

Q Now, then it was Monday at what time, when you saw this defendant? A About nine o'clock.

Q About nine o'clock? A No, between eight and nine;

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something like that.

Q Where did you see him? A In the station house.

Q What station house? A In 20th Street.

Q And how many more people were there at that time?

A A few others.

Q How many others? A About three or four.

Q Well, was it three or four? A Four.

Q Four? A Yes, sir.

Q And who was with you? A Levine.

Q And anybody else? A No, sir.

Q Was there any police officer there with you?

A Yes, a detective.

Q Well, what detective? A He sits up there (indicating).

Q Where does he sit, in the courtroom? A He was here a minute ago.

Q What is his name? A I don't know.

Q Have you heard his name? A Yes.

Q What was his name? A I forget his name.

Q Was it Carlson? A Yes, I think so.

Q Are you sure? A I think that's the name.

Q Now, the first time you looked over these four men, you could not see the men, or any of the men that had committed the crime; could you? A What you say?

Q (Question repeated) Any of the men that had robbed

the cash register, did you? A Yes, I did. I picked him out.

Q The very first time? A Yes, right away, as soon as I looked at him.

Q Right away, you said? That is the question?

A Yes, as soon as I looked at him.

Q And he was in the midst of four men in the station house? A Yes, sir.

Q And you picked him out from those four men?

A Yes, sir.

Q Now, where were they lined up the four men?

A In the side.

Q Now, the sergeant's desk is in the station house, off on the side, as you go in the door. Now, where were these four men standing? A Well, I picked him out in the cells.

Q They took you down to the cells? A Yes; and they took out four fellows from the cells, and I picked him out as soon as I saw him.

Q Now, were the four men lined up together? A What do you say?

Q Were the four of them put in a line? A Yes, sir.

Q They were? A Yes, sir.

Q Now, this day that they came into the restaurant and spoke to you about the coffee who spoke to you about

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getting coffee there? A The fellow with the brown cap.

Q The fellow with the brown cap? A Yes, sir.

Q This man didn't speak to you at all (indicating the defendant)? A No, sir.

Q And where did you go to get the coffee? A It was under the counter, in the can.

Q Now, let us get an understanding of this place where the robbery took place. On what side of the street is the store located? A What do you mean by that?

Q Which side of Eleventh Avenue is the store on?

A Well, it's in the middle of the block. It's a little store there.

Q Now, where is the lunch counter situated? A All around.

Q All around the store? A Yes, sir.

Q Close up to the wall? A Yes, sir.

Q And that extends around the entire store? A Oh, then, in the middle, stays a table, and here is the counter (indicating), and there is the cash register.

Q I see. Now, where did these three men sit?

A What?

Q They came in and sat down and asked you for coffee.

Now, where did they sit? A The first thing, they came up to the counter and started an argument.

Q And where were you standing? A Under the counter.

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Q What do you mean by under the counter? A Well, here is the counter (indicating), and I was standing under the counter here, and they started an argument with me, and I handed over the coffee to them, and as soon as I handed over the coffee, they started to choke me.

Q How wide is the counter? A A long counter.

Q But how wide is it, this way (illustrating)?

A What do you mean? A Long counter?

Q Well, you say they were standing on one side of the counter, you were standing on the other. Now, how much of the counter was between you and them, about how much, in feet? A Like that (illustrating).

Q Show us on this table, or that table, how much of the counter was between you (indicating the District Attorney's table). A I was standing here and here was the counter (indicating).

Q And where were they standing? A Over at the end of this table (indicating the District Attorney's table).

MR. HILLY: About four feet, shall we say?

BY MR. COLLIGAN:

Q How wide was the counter? Can't you understand English? A Well, I can't tell how many feet.

Q Come down here and show the jury. This is the front side of the counter (indicating). A The counter runs this way (indicating).

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Q Never mind the length of it, but how wide is it?

A I never measured it.

Q Is it as wide as this (illustrating a space on the table)? A Yes, sir.

Q And you were on one side, and he was on the other?

A Yes, sir.

Q Is that what you mean now? A Yes, sir.

THE COURT: How far is that, gentlemen?

Will you say for the record?

MR. COLLIGAN: Oh, two feet, or two and a half.

MR. HILLY: Yes, about that.

BY MR. HILLY:

Q Now, how high was the counter as it stood? Did people stand up to it when they were eating, or sit down?

A Sit down. There was round chairs.

Q Now, where does the counter reach on you, how high up on your body? A Right about there (indicating about the middle of the stomach).

Q And where was the cash register? A Under the counter.

Q And that was on a shelf in the back; wasn't it?

A Yes, sir.

Q Now, which one of these three men grabbed you by the throat? A One fellow from the three. He had a brown coat on.

Q And what color hair? A Light.

Q Light hair? A Yes, sir.

Q So that it was the man with the brown coat that had the light hair, and the other man had the black hair; is that right? A Yes, sir.

Q And he had hold of you? A Yes, sir.

Q And what did he do? A He tried to choke me.

Q And what did you do? A Well, I didn't do nothing.

Q Did you holler out? A I didn't have no chance to holler out.

Q And what did you do with your hands? A I didn't do nothing.

Q You simply stood there, right up close to the counter, with his two hands at your throat, and your two hands down at your sides? A I told you before when I handed over the coffee, I went out of that counter, and the other fellow went and took the cash money, that fellow there (indicating the defendant), and the other fellow with the brown coat took me by the neck.

Q Now, you stood right behind that counter, and this tall man, with the brown suit, stood up close to the counter on one side, and you on the other side of the counter, and this man reached over the side of the counter and caught you by the throat? A No. When I handed over the coffee to them, one sat here and the other there (indicating), and

the other fellow was standing by the door.

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Q Now, where the seats located? A It was all around, that way (illustrating). There was chairs all around and in the middle was a table and over here was the counter and over here was the cash register (illustrating), and they started to argue with me, and, as soon as I took out the coffee and handed it over to them, up at the lunch counter, one fellow was sitting sideways here (illustrating), and he grabbed a hold of me, and started to choke me, and the fellow that sits there (indicating the defendant), went up to the cash register, and took out \$13, and a check for \$15.

Q Now, you took the coffee from under the counter, and came around to a certain table; is that what you want us to understand? A What's that? What do you ask me?

Q Where was the counter with the coffee on it; where was it located? A It was located over here (indicating), and here is the coffee can (indicating).

Q And this was in the front of the store; was it? A Well, it was to the back, the coffee can.

Q The coffee was in the back? A Yes, sir.

Q On a stand? A Yes, sir.

Q And the cash register was alongside of it; is that correct? A Yes, sir.

Q And then there was a counter between that and the

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store? A Yes, sir.

Q And then there were chairs in front of this counter?

A Yes, sir, round chairs.

Q Now, where were these three men seated? A Where were they sitting?

Q Yes. A When they came in?

Q Yes. A When they came in, they made an argument with me, and I handed over the coffee and ---

Q No, we've had all that. Now, you say there were chairs alongside of this counter. A Yes, sir.

Q Now, what chairs did these men occupy? A They didn't sit together. One sits over here, and one over here (illustrating).

Q And what do you mean when you say over here? Were there chairs on the other side of the table? A I told you ^{were} ten times already that there round chairs here and here and here (illustrating), and they sit here and here and here (illustrating), and I handed over the coffee to one fellow, sitting here, and the other fellow is sitting here (illustrating), and he grabs me by the throat, and this man goes up to the cash register (indicating the defendant).

Q Now, I see. When this man grabbed you by the throat, you turned away from the cash register; didn't you?

A I saw when he went to the cash register.

Q (Question repeated) A He held me this way (illustrating).

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I saw everything. I saw him going up there and taking the money.

Q The cash register was off on the side of the wall, and the man who was sitting facing the cash register grabbed you by the throat; is that correct? A (No answer)

Q The man that was sitting here (illustrating), you say, grabbed you by the throat? A No, I didn't say over here. One fellow was sitting over here, and another one was sitting right over here (illustrating), and the other one over there, and I handed over the coffee to that fellow there (indicating), and that fellow grabbed me by the throat, and this one went up to the cash register and took the money (indicating the defendant).

Q And they all ran out of there? A Yes, sir.

Q Which man was it that had you by the throat?

A The man with the brown coat.

Q The man with the brown coat? A Yes.

Q And what did the other man do? A He was by the door.

Q He was standing by the door? A Yes, sir.

Q I thought you said that one was sitting here, and one was sitting here, and the third man was sitting there (illustrating). Now, how did the man get to the door?

A Well, as soon as that man started to grab me by the throat, he didn't sit there, and he ran up and held the

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door.

Q And he was off on that side of you, and the cash register was behind you (illustrating), and yet you want us to believe, that is, you state to this jury that you saw the man taking the money out of the cash register, and saw the third man holding the door; is that correct?

A What do you say? I don't understand that word you said.

Q Well, I'll try to make it simple for you. At the time you were grabbed by the throat, you were able to look around and see one man at the cash register; were you? A Yes, sir.

Q And at the same time you were able to see one man standing and holding the door; is that correct? A Yes, sir.

Q You saw both of them? A Yes. I could tell you how I was standing.

Q No, that's all. You saw both of those men?

A Yes, sir.

BY THE COURT:

Q Was anything said by either of these three men at that time? Did either of the men say anything to you or to the others, when they grabbed you by the throat? A No, they didn't say nothing.

Q Not a word was said either to you, or between the

three men? A No, sir.

Q Not a word said? A No, sir. He run right away up to the cash register (indicating the defendant).

Q Was there much force used on your throat? What do you say?

Q Could you breathe? Did you have difficulty in breathing? Did you or did you not have difficulty in breathing when you were stabbed by the three? A (No answer)

Q Could you breathe? A Do you know what I say? Do you understand me? A I couldn't understand that word. I'm not born here, you know.

Q Well, what language do you speak? A Well, I speak English, but I never heard those words before.

THE COURT: Well, perhaps you can make it plain to him, counselor. Go ahead.

BY MR. KELLY:

Q At the time that man had his fingers around your throat, how did you feel? A He held me tight here (indicating), and I couldn't holler. My neck was scratched all through there (indicating).

Q And did this man hold you away from him, like that (illustrating), or pull you up close to him? A Not much away from him.

Q He had you close up to him? A Yes, sir.

Q And you say he was a tall man? A Yes, in a brown suit.

Q And while he was grabbing you by the throat, and you couldn't cry out, you still turned around and looked at the cash register? A Yes.

Q And then you turned after that, and while he was still choking you, you looked at the door? A When he was choking me, I seen when the fellow that sits over there went up to the register (indicating the defendant), then I saw the fellow that was holding the door.

Q Now, when that happened after that? When did the man let go of your throat? A When he ran out.

Q When who ran out? A The both of them.

Q Then the man at the door and the other man that had you by the throat ran out? A Yes; and he threwed me down, that way (illustrating), and he hit the other boy on the head.

Q When he ran out? A Yes, sir.

Q He had you by the throat? A Yes, sir.

Q And he struck you, too? A He struck me when the other two fellows ran out of the store, but he didn't strike me before. He only took me by the throat.

Q And immediately on letting go of your throat, did he strike you? A When they ran out.

Q And when he was about to run out? A Yes, sir.

Q And he had you by the throat? A Yes, sir.

Q And then what did he do? A Then he struck me down.

Q And what happened to you? Did you fall down? A I fall on the chair. I didn't fall on the floor.

Q And did the blow hurt you? A Certainly, sure. My neck was sore and all scratched.

Q And you hadn't been able to breathe? A Yes, sir.

Q And you were struck? A Yes, sir.

Q And yet you saw another man struck by him as he was going out of the door? A Yes, sir.

THE COURT: When did he see Levine, the other person who was struck, for the first time? Will you develop that?

MR. HILLY: Yes, sir, I will.

BY MR. HILLY:

Q Now, after this man let go of your throat, and had struck you, and you had fallen into a chair, what did he do? Did he run? A He struck the other boy, and ran out.

Q Now, where were you located in the store when he had you by the throat; how far were you from the door?

A About as far as from that gentleman there sits, in the jury (indicating the sixth juror).

Q About from where you are sitting to me? A Yes, sir.

MR. HILLY: About 12 feet.

MR. COLLIGAN: Well, the jury can all see it.

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MR. HILLY: Well, it's only for the record.

BY MR. HILLY:

Q And, as he let go of your throat, he hurled you from him, and struck you; did he? A When they both run out, he struck me down, so I couldn't get any chance to run out.

Q He was running out at the same time? A Yes, sir. And he struck the other boy in the head, and I fell on the chair when he struck me down.

Q And where was the other boy? A He was on the side.

Q Where? A Near the door.

Q Was he in the place or on the sidewalk? A What do you say?

Q Was the other boy in the store or on the sidewalk?

A When they came, there was nobody in the store but me.

Q Never mind about when they came in. After you had been choked, and had been struck, and hurled down upon a chair, where was the other boy then? A He was in the store.

Q And how far in the store was he, how far from the door? A Well, I didn't measure the store. I couldn't tell you.

Q I don't ask you exactly, but about how far?

A Well, from me to that gentleman over there (indicating the Assistant District Attorney).

Q He was in the store that far? A Yes, sir.

Q And then he must have been pretty close to you?

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A No, sir.

Q How far from you was he? A From here over to there (indicating the officer sitting by the defendant).

Q Well, was he between you and the door? Do you understand what I mean by that? A No, I don't understand.

Q Well, here is the door and here is where you were. Was he here or here (indicating)? A He was over here (indicating).

Q Between you and the door? A I didn't get no chance by the door. I was over here (indicating).

Q Well, now, one minute. I want you to answer my question. A I'm answering your question.

THE COURT: Now, just wait until the counsel has finished his question, and understand what his question is, and then reply to it, if you can.

BY MR. HILLY:

Q You say that when he struck you you fell into a chair? A Yes, sir.

Q And how far was the chair from the door? A Over to where that gentleman is sitting there (indicating the officer in charge of the defendant).

Q And the door was where? A Over here (indicating), and I was standing over there (indicating).

Q Over where this man is (indicating the same officer)?

A Yes, sir.

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Q And where was Levine? A He was on the side, like that (illustrating).

Q He was in the door? Was he coming in the door, or had he got in the door? A When?

Q Was Levine coming into the store? Was he? A I told you before how it was.

Q Now, was Levine coming into the store when you were struck? A No.

Q Was he in the store when you were struck? A When they run out, they dropped him.

Q When you were struck, where was Levine? A He was in the store.

Q In the store? A Yes.

Q Now, how near to you was he, when you were struck?

A Well, I told you before, a couple of times.

Q Well, tell me again. A From here to over there (indicating as before).

Q Now, did this man run out? A Which one?

Q The man that struck you? A When them two fellows run out, then he struck me down, and struck the other fellow down, and he run out, too.

Q For, you were struck down at that time? A Yes, sir.

Q Now, how did you see Levine struck? Where were you when he was struck? A When he strikes me down, why, I just

locked, and I seen he run sideways and struck Levine, and struck him down.

Q And you fell into a chair, you say? A Yes, sir.

Q And yet you saw him strike the other boy, as he was running out of the place? A Yes, sir.

Q Now, did you ever send for this defendant since the time he was arrested? A What do you say?

Q Did you ever send notes^{up} to this defendant's house since the time he was arrested? A What notes?

Q Did you ever ask this defendant here to come and see you at the store? A A couple of fellows come around -----

Q No, that's not my question. Now, did you ever ask him to come and see you? A No.

Q Did you ever send anybody to ask him to come and see you? A No, I didn't send nobody.

Q Sure? A Sure.

Q Do you remember meeting him one day? A He came in the store.

Q Did he come into the store? A Yes, sir.

Q What did you say to him? A I didn't say nothing.

Q You didn't say anything to him at all? A No, sir.

Q You don't remember saying to him that he wasn't Larkin? A No, sir, I didn't say that. I said he looked spooky now.

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Q You are sure you didn't say he wasn't Larkin?

A No, sir.

Q And you are sure that you didn't say, "You must be Larkin's cousin"? A No, sir, I didn't say that.

Q Do you remember a street sweeper being present at that time with this man? A I think he was there.

Q You think he was there? A Yes, sir.

Q And that conversation took place in his presence?

A (No answer)

Q Now, did you ever say to this man's wife that you were a poor boy, and this thing could be fixed up? A No,

I didn't say that. A Couple of fellows came in the store, and said ----

Q No, I don't want that. A Well, I must tell.

MR. COLLIGAN: Now, I beg your Honor's permission to
for the witness/state that conversation.

MR. HILLY: No, I object.

MR. COLLIGAN: Are you afraid of it?

MR. HILLY: No, sir, I'm not afraid of anything.

THE COURT: No, gentlemen, this is not good form. This discussion must cease. You are entitled to have an answer to that question, and at the proper time counsel for the People may examine the witness, in re-direct, if he desires.

A No, sir. I never said it.

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BY THE COURT:

Q Did you ever have any talk with her? Yes or no?

A No, I didn't.

Q You didn't have any talk with her at all? A No, I didn't.

BY MR. HILLY:

Q Do you remember that, on that occasion, that this defendant, with another man was in your store? A (No answer)

Q I mean on the day this alleged robbery happened?

A A fellow came in, his cousin from the Bronx, and he offered Mr. Crane money, that he shouldn't let me go against him.

Q No. I'm talking of the day this affair happened?

THE COURT: No, strike that out, strike that answer out.

BY MR. HILLY:

Q (Question repeated) A Yes, he was there with two fellows.

Q And you are sure he was in there on that day with two fellows, and not with one? A Yes, sir.

Q And now, do you remember saying to him, since his arrest, that he wasn't one of the three fellows that robbed you? A No, sir, I didn't say that.

Q Do you remember that you said you identified him,

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that day, because the police officer forced you to? A No, sir, he didn't force me to. Nobody didn't force me.

Q But do you remember saying that to him? A No, I didn't say it.

Q Nobody forced you to? A No, sir.

Q Do you remember telling the police officer that you were not sure that this was the man? A No. As soon as I looked at him, I said, "Yes, that's the fellow".

Q And, later on, in the Jefferson Market court, you said you were not sure that this was the man, didn't you? A No, sir, I said I was positive sure.

Q And the police officer said something to you, why had you arrested him, if you were not sure? You don't remember that conversation? A What you say?

Q You remember in the Jefferson Market court, when you were asked by the officer, "Do you know this man?" That you said no? A I said no?

Q Yes. A No. I said I knowed him right away.

Q You said you knew him? A Yes, sir.

Q You are positive of that? A Yes, sir.

ABRAHAM LEVINE, of 253 West 39th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q. Levine, what is your business now? A. Newspaper business.

Q. You are in the newspaper business? A. Yes, sir.

Q. Now, during last November, I believe you worked for Mr. Crane; did you not? A. Yes, sir.

Q. And that was in the Tenth Avenue store? A. Yes, sir.

Q. And now, do you remember coming to the Eleventh Avenue store, one day, when a fight was taking place, a disturbance? A. Yes, sir.

Q. Do you remember seeing this man in the store there (indicating the defendant)? A. Yes, sir.

Q. Now, what were you doing at that time? A. I was delivering a case of eggs.

Q. And what time of the day was this? A. About five o'clock.

Q. Now, whom did you see in the store when you arrived?

A. When I came in the store, I saw one boy by the door, and Richard Larkin by the cash register, and I turned around and I seen one boy choking Jacobson.

Q. Now, tell us just what you saw there, what was done?

A. When I came in the store with the case of eggs, I put down the case of eggs, and I saw this Larkin by the register, trying to open it; and then, after I turned

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around, I saw one boy choking Harry Jacobson. And so then I tried to run out and call for help, and one boy that stood by the door hit me in the head, and by this time he had the money out (indicating the defendant), and I fell down, and they ran out.

Q Now, you saw one of the men grab Jacobson by the neck? A Yes, sir.

Q Now, did it leave any marks on his neck? A Yes, sir.

Q You saw them afterwards, did you? A Yes, sir.

Q Now, this is the man that you saw at the cash register (indicating the defendant); is it? A Yes, sir.

Q You are positive of that? A Yes, sir.

Q When did you next see him, when did you see him after that? A In the station house, in the cell.

Q And did you identify him in the station house, did you pick him out? A Yes, sir.

Q Well, what did he wear that day? Do you remember? Tell us, if you remember.

A I guess it was a blue suit, with stripes.

Q Now, did you ever see him after that, when he was on bail? A I saw him in Jefferson Market court.

Q Well, I mean when he was on bail, when he was released on bail? A No, sir.

Q Did he ever come to you afterwards? A No, sir.

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CROSS EXAMINATION BY MR. HILLY:

Q This was at 5 P. M. on November 4th; is that right?

A Yes, sir.

Q Did you ever hear anybody make that remark before, "Five P. M., November 4th;" eh? A Did I ever hear that?

Q I say did you ever hear that sentence before, "Five P. M., November 4th"? A (No answer)

Q Who did you hear say it? A Just now I heard it, and I heard it in the Jefferson Market court.

Q You heard it in the Jefferson Market court?

A Yes, sir.

Q Who did you hear say it there? A Harry Jacobson.

Q Anybody else? A Except myself. I said it myself.

Q Now, how did you know that it was five P. M.?

A Because I saw. We had a clock there.

Q And you looked at the clock when you came into the place? A Yes.

Q Now, at the time that you stopped and looked at the clock, when you came into the place, there was a row going on in the store; is that right? A I saw the clock after.

Q Oh, after the row was over you saw the clock?

A Yes, sir.

Q And who were the other two men who were in the place?

A I don't know.

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Q How were they dressed? A I don't remember.

Q You don't remember how they were dressed? A No, sir.

Q You don't know whether they had a cap or a hat on? A I don't remember.

Q You don't remember whether they were tall or short, do you? A (No answer)

Q Answer the question, please. A I guess they were about his size (indicating the defendant).

Q They were about his size? A Yes, sir.

Q Are you positive about that size? A I'm not positive but I think.

Q You think they were about his size? A Yes, sir.

Q And you don't remember what color of hair they had? A No, sir.

Q You don't? A No, sir.

Q Now, what color of hair did the man have that struck you; do you remember? A Yes, he had black hair.

Q Black hair? A Yes, sir.

Q Now, where was Harry Jacobson when you came in with your case of eggs? A He was on the left side of the store.

Q And what was happening at the time? A One was choking him by the neck.

Q Now, do you remember what kind of a man was choking

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him? A I couldn't see his face. I only saw his back.

Q You only saw his back? A Yes, sir.

Q Now, the man that was at the cash register, did you see his face? A Yes, sir.

Q Where was the cash register? A It was on the right hand side, by the window.

Q By the window? A Near the window.

Q Then it wasn't on a shelf up against the wall?

A Yes, up by the wall, but it was near the window.

Q And did the man who was at the cash register have his face towards you or away from you? A Before I saw him run to the cash register and after he was trying to open it, I saw him do that (illustrating).

Q So that you saw him running to the cash register?

A Yes, sir.

Q So that when you said, when you entered the store, that he was trying to open the register, he was actually engaged in opening the register, that wasn't true?

MR. COLLIGAN: I object to that. I don't think that is the testimony of the witness.

THE COURT: Overruled.

A Yes, he made a rush to the register and tried to open it.

BY MR. HILLY:

Q Now, where was he when you came in? A He was

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running to the register; he was behind the counter.

Q And you didn't see anything that was going on in the place, until you had taken the case of eggs off your shoulder, and laid them on the floor; is that right?

A Yes, sir.

Q There wasn't anybody at the door when you came in, was there? A Yes, there was one boy by the door.

Q Oh, you noticed him; did you? A Yes.

Q Now, what did you do? In what way was Harry Jackson facing then? A He was facing towards the register.

Q He was facing towards the register? A Yes, sir.

Q Sure about that? A Yes, sir.

Q So that he could see the face of the man at the register; could he? A I don't know whether he could, but I believe he could.

Q You believe he could? A Yes, sir.

Q Now, have you talked this matter over with Harry Jackson? A When?

Q At any time? A Yes.

Q You never talked with him about it; did you?

A Why, yes, after that we were speaking about how it happened.

Q You compared notes, did you, afterwards, as to how it happened? A Yes, sir.

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Q. You did? A. Yes, sir.

Q. When was that? A. That was after that thing happened in the store.

Q. After it happened in the store? A. Yes, sir.

Q. Now, then, after it happened in the store, what did you do after these three men ran out of the place?

A. Nothing. I picked myself up, then I came over, and we ran right over to the register, to see what was left in there, and we only saw a couple of pennies.

Q. I see. Now, you had been knocked down; is that correct? A. Yes, sir.

Q. And where was Jacobson? What happened to him? Was he knocked down, too? A. No, sir.

Q. He wasn't knocked off his seat at all? A. Well, I couldn't see that. Probably when he left him he knocked him off his feet. But I was on the floor then. He knocked me down to, and I tried to pick myself up, and he struck me again.

Q. How far from the door was Jacobson while he was being choked? A. I couldn't tell you. I don't know exactly the distance.

Q. Well, about how far? A. About two or three yards.

Q. About two or three yards? A. Yes, sir.

Q. He was close up to the door, wasn't he? A. No, he was near the corner.

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Q How far from the door was that? A I don't know how far.

Q Now, who was the last man of the three to leave the place? A The one that was choking Harry Jacobson.

Q And who was the first to go? A The first to go was the one by the door.

Q And you don't remember how they were dressed; do you? A I don't remember.

Q Then how do you remember this defendant? A I remember because I see him after that in the court, and I see him over there in the store, and after that I see him in the station house and in Jefferson Market court.

Q Now, how many men were with him when he was brought out in the station? Were you with Harry Jacobson the day he went to the station house? A Yes, sir.

Q And then was this defendant brought out with some other men so that you could pick him out? A Yes, sir.

Q Sure about that? A Yes, sir.

Q How many men were brought out with him? A Four or five, I guess.

Q Now, which was it? Four or five? A I don't remember.

Q And where were they lined up? A Up near the place there; right in front of this place where he sat there.

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Q Was it downstairs, at the cells? A Yes, downstairs, in the cells.

Q And who picked him out first? A Harry Jacobson.

Q And then, after he picked him out, you said, "That's the man"? A We both said alike. He said it, and I said it right after him.

Q How did you know that it was the man? A I could tell him by his face.

Q Is that all? A Yes, sir.

Q Now, what did the other two men look like? A I don't remember how they looked.

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

Q Now, how long was the man standing at the door before he struck you? A How long he was standing there?

Q Yes. You came into the place and laid down your case of eggs, and after a while you were struck. Now, how long was that after you came in? A About two minutes. When I was going to run out, he struck me on the head.

Q And you fell down? A Yes, sir.

Q Now, at the time you were struck, there was the man that was at the cash register? A He opened the cash register by that time.

Q Well, what was the last thing you saw the man at the cash register doing? A He was taking money.

Q He was taking money out of the cash register?

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A Yes, sir.

Q And then you were struck? A Yes, sir.

Q And you remember now, you say, that the man at the cash register, ran out of the place? A I was down on the floor when he ran out.

Q You didn't see him running out? A No, I didn't see him running out.

Q How long were you looking at him? A (No answer)

Q How long were you looking at the man at the cash register? A About two minutes.

Q And you were looking two minutes at the other man, too? A And then I looked on the other side, and saw he was just about to run out, and then he struck me on the head.

Q You remember about the man at the cash register, you say? A Yes, sir.

Q But you don't remember about the man who struck you? A If I see him, I don't know if I would recognize him or not.

BY THE COURT:

Q Who had charge of this cash register? Jacobson?

A Yes, sir.

Q He was in charge of the restaurant? A Yes, sir.

Q Did you hear anything said between these three men? Did you hear them say anything, any one of them while you were there? A No, sir.

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Q And was anything said to you when you were struck by anyone? A No, sir.

Q Was anything said at all? A No, sir.

Q Not a word was said? A No, sir.

BY MR. HILLY:

Q Now, in the station house do you remember Harry Jacobson saying, "No, that isn't the man"? A No, I never heard him say that, no.

Q Did he say anything in the station house? A He said the same thing what he saw.

Q What did he say in the station house? A (No answer)

Q Don't you remember what he said in the station house? A Down in the cell, he said, "This is the man".

Q He said, "This is the man"? A Yes, sir; and he picked him out.

Q And who was with you when you went down? A Harry Jacobson and the detective.

Q What detective? A The one that arrested him.

Q Did he say anything to you? A He says, "You recognize him?" And I said, "Yes."

Q And he pointed to this man (indicating the defendant)? A He didn't point to anybody.

Q He didn't point to anybody? A No, sir.

Q Sure about that? A Yes, sir.

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Q And you are sure that there were three other men lined up with this man at the time that was said? A Yes, sir; about four or five men.

Q Four or five? A Yes, sir.

Q And you are positive of that? A Yes, sir.

MORRIS CRANE, of 113 Crosby Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You are the proprietor of a restaurant on Eleventh Avenue in which the complaining witness, Jacobson, worked; are you not? A Yes, sir.

Q And you remember the day in last November when something happened in your place; don't you? A I aint the proprietor now, but I used to be there.

Q Yes, you used to be there? A Yes, sir.

Q And on the afternoon of the 4th of November last, you came to your place; did you? A Yes, sir.

Q And tell the condition of things there, just what you saw, and speak loudly, please. Tell us just what you saw there. At what time did you get to your place of business? A I was coming in that place a few minutes --- I want to explain.

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Q No, you can't explain anything. Will you kindly tell me the time of day? A It was about five or ten minutes after four.

Q Well, tell me what you found there? A I came there about five minutes after four o'clock, and I found the store wasn't in the right condition.

Q No, that's a conclusion of your own. Tell us just what you saw. A Well, the chairs were on the floor, and the boy was so nervous, and I was trying to find out everything about this case and they wasn't able to answer me right away. And I just looked around the store, and I seen the register was open, and I asked them to explain everything to me -----

Q Now, was Jacobson and the other boy there at the time? A Yes, sir.

Q Now, what was Jacobson's condition physically? Any marks on him? A I can't understand that.

Q Did you notice whether or not there were any marks on his body? A Oh, it was marks on the back here (indicating the back of the neck).

Q You understand my questions, don't you? A Yes.

Q And you say he was nervous? A Yes, he was nervous.

Q And the chairs were overturned? A Yes, about three or four chairs, not all.

Q And did you ever see this man after that day (indicating the defendant)? You didn't see him on that day; did you? A No, sir, not on this day.

Q Did he ever come to you afterwards? A I heard he was in the store, but I didn't see him.

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

THE COURT: Motion granted. Strike it out.

BY MR. COLLIGAN:

Q Did any of his friends come to you personally?

MR. HILLY: Objected to.

THE COURT: Sustained.

A I don't know.

CROSS EXAMINATION: None.

WILLIAM A. CARLSON, of the Detective Bureau, assigned to the 21st Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You were called to the store on Eleventh Avenue during November last; were you? A On the night of November 4th---

THE COURT: Yes or no will do for that, Mr.

Carlson.

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(The question is repeated by the Stenographer).

A No, sir. Complaint was made at the station house.

BY MR. COLLIGAN:

Q And you were put on the case? A Yes, sir.

Q Now, when was it you were put on the case? A November 4th, 1911.

Q And when did you arrest the defendant? A I arrested the defendant on the morning of November 5th.

Q Did you see the complaining witness, Jacobson, on the 4th of November? A Yes.

Q And what was his condition? A He had some slight marks on the back of his neck.

Q And where did you arrest the defendant? A At 19th Street and Tenth Avenue, about four o'clock in the morning, on the morning of the 5th.

Q Was he walking there? A Yes, sir, he was coming home.

Q Did you have any conversation with him? A No, sir. I didn't say anything to him at all. And I brought him to the station house, on the morning of November 5th, and the two witnesses, the defendant and the witness come up and identified him.

Q You mean the complainant and the witness? A Yes.

Q Now, they positively identified the man, you say?

A Yes, so they said.

CROSS EXAMINATION BY MR. HILLY:

Q Now, Officer, you simply brought this man out, and asked the two witnesses if they recognized him, is that correct? A I brought the defendant Harkin to the station house that morning that I arrested him, and the complainant and the witness came up to the station house, and said that was one of the three men that came in the store.

Q And he wasn't lined up with anybody, was he? A No, sir, he wasn't. There were three or four other prisoners in the cell at the time.

Q And you simply asked them if they recognized that man? A Yes, sir.

MR. COLLIGAN: That's all: The People rest.

MR. HILLY: Now, I move to dismiss, if your Honor please, on the ground that the evidence does not establish, beyond a reasonable doubt, the identification of this defendant, and that the People have failed to make out a case.

THE COURT: Denied.

MR. HILLY: Exception.

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THE DEFENSE.

THOMAS J. DENNIS, of 405 West Fifteenth Street,
a witness called on behalf of the Defense, testified as
follows:

DIRECT EXAMINATION BY MR. KELLY:

Q What is your business, Mr. Dennis? A Tree-trim-
mer.

Q How long have you been engaged in that business?

A 20 years.

Q Do you know the defendant, Richard Larkin? A Yes,
sir.

Q Do you know other people that know him? A Yes, sir.

Q How long have you known him? A Why, I've known him
ten years.

Q Do you know what his reputation is for truth and
honesty in the community? A I've always known him to be a
hard working young fellow.

Q Well, do you know what his reputation is for truth
and honesty? A Yes, sir.

Q What is it? Good or bad? A Good.

CROSS EXAMINATION BY MR. COLLIGAN:

Q Now, who have you talked this matter of his reputa-
tion over with? A Nobody.

Q Nobody? A No, sir.

Q Then you don't know what his reputation is in the

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community; do you? A Well, he worked for me, and I never knew anyone that said anything bad about him.

Q Yes. Did you ever hear anybody tell you that he was a member of the "Gas-House Gang"? A No, sir.

Q You are positive of that? A Yes, sir.

Q Don't you know that he is? A No, I don't.

MR. HILLY: I object to that.

THE WITNESS: No, I don't.

BY MR. COLLIGAN:

Q Who has he worked for during the last ten years that you have known him? A Well, he has worked for a man by the name of Crawford.

Q Do you know when he was working for him? A He was driving a truck.

Q Do you know when? A I don't know. It was about three years ago.

Q Three years ago? A Yes, sir. And he worked for Callahan.

Q Who did he work for during the last three years?

A He worked for me from 1910 to 1911.

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T I L L I E B R E W, of 595 Decatur Street, Brooklyn, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HILLY:

Q. What is your business, Miss Brew? A. I am a department store detective.

Q. How long have you been engaged in that business?

A. I've been working for R. H. Macy & Co., five years.

Q. Do you know the defendant Richard Larkin? A. I do.

Q. Do you know other people that know him? A. I do.

Q. How long have you known him? A. Seventeen years.

Q. Do you know his reputation in the community?

A. Yes, I do.

Q. For truth and honesty? A. I know him to be an honest hardworking boy since he has been able to work. I know his family intimately and I have visited the house frequently during the last 17 years, and I know this boy has never been in any trouble before this.

CROSS EXAMINATION BY MR. COLLIGAN:

Q. You don't know whether he was out at night, do you?

A. No, sir, but I've been at his house at nights and he has been home.

Q. Are you a relative of his? A. No, sir. A neighbor and a friend.

THOMAS BRENNAN, of 404 Third Avenue, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KELLY:

Q What is your business, Mr. Brennan? A Scrap metal dealer.

Q Speak up loud, please, so that the last gentleman can hear you? A Scrap metal dealer.

Q How long have you been engaged in that business? A Nine years.

Q Do you know the defendant Richard Larkin? A Yes, sir.

Q Do you know other people that know him? A Yes, sir.

Q How long have you known him? A Nine years.

Q Do you know what his reputation is in the community for truth and honesty? A Very good.

CROSS EXAMINATION: None.

MR. KELLY: I have one more character witness, if your Honor please, if your Honor will indulge me.

THE COURT: Yes.

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CHARLES BRONCATO, of 177 Tenth Avenue, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HILLY:

Q What is your business, Mr. Broncato? A Barber.

Q How long have you been engaged in that business?

A About 15 years.

Q Do you know the defendant Richard Larkin? A Yes, sir.

Q Do you know other people that know him? A Yes, sir.

Q How long have you known him? A About three or four years.

Q Do you know what his reputation in the community is for truth and honesty? A Yes, sir.

Q What is it? Good or bad? A Very good.

RICHARD LARKIN, of 508 West 19th Street, and defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HILLY:

Q Now, speak right up, so that the last juror can hear you, every word you have got to say. Do you remember the afternoon of November 4th, 1911? A Yes, sir.

Q Where were you working, that day? A Down on the

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dock, loading.

Q What dock were you working on? A Red Star line.

Q What time did you leave there? A I was working for Jeremiah Callahan up to the present day, and he didn't have anything to do that day, and I come up, walking along the river, and I met William Corbett, the boss loader on the Red Star line dock, and he asked me to work for him, and I worked until a quarter past four, and went to Jeremiah Callahan's to get the rest of my pay. My wife's uncle died, and her father and her went over to see about the funeral, and so I knew she wouldn't be home, and I felt like having a cup of coffee and a piece of pie, and so me and the fellow, that was with me, that worked on the Red Star line dock, goes into this fellow's restaurant, because my wife's uncle was dead, and I knew she wouldn't be home to get me anything to eat. And while we was in the restaurant, three other fellows come in, and a commotion started in the restaurant, and so me and the other fellow that was with me had our coffee and pie eaten by that time, and these three fellows started to get tough, and called the boy a name they shouldn't call him, and I said to this other fellow, "Let's get out. This is no place for us."

And while we were walking out of the restaurant, one of these three men grabbed the boy.

And so we went out, and I came up to 19th Street to my

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home, and my wife wasn't in, and so I went to Jeremiah Callahan to try to get the rest of my pay. And I just left the Ransloways' Club, at four o'clock in the morning, and was going home and the officer arrested me for robbery, he said, and I said, "What for? What robbery?" And he said, "Don't you know about that trouble in that place on Eleventh Avenue, that restaurant?" And I said, "Yes, I was in there," and he said, "Well, you are supposed to be one of the fellows," and I said, "I was in there, but I didn't have anything to do with any trouble in there."

And I was taken down to a cell, and, about nine o'clock in the morning, these two boys came down.

And he stood me out in front of these two boys. He didn't stand me with any other prisoners at all.

And this little fellow, this little boy Jacobson, said to Levine, "No," and the other boy stepped on his foot (illustrating), and then he said, "Yes, that's him, that's him." And then they both said, "That's him." And at Jefferson Market, when I stood up in front of the Judge ----

MR. COBURN: Now, I object to this, if your

Honor please. Let him wait until a question is asked.

MR. COBURN: He may go on.

BY MR. MILLER:

Now, just relate what happened in Jefferson Market.

A He stood there, and that man that makes up the complaint

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against me, he turned around and said to Jacobson, "Did you ever see this boy before?" And he said, "No, I never saw him in my life before." And then the officer said something to him (illustrating), and he said, "Yes, I know him." And then he said, "That boy has two gold teeth on each side (indicating themouth)."

Q And that's the only way he identified you, was it, by the gold teeth? A Yes, sir.

Q Now, on November 4th, at the restaurant 88 Eleventh Avenue, did you take any money out of the cash register there? A No, sir. I run out of the place as soon as I saw the commotion there. And ever since I've been out on bail this boy-----

MR. COLLIGAN: Objected to.

BY MR. HILLY:

Q Now, do you remember being sent for by this boy Jacobson, at any time after you were released on bail?

A Yes, sir; there was an endless line of fellows coming to my house continuously, as my mother told me, and she told me not to go near them.

Q And what did they say when they saw you, if anything? A They said, "This boy don't want to make a complaint against you. You had better go and see him."

MR. COLLIGAN: Now, I object to that, if your Honorplease, and move to strike it out.

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THE COURT: Yes, strike it out.

BY MR. HILLY:

Q. Now, did you have any conversation with the complaining witness since you were released on bail? A. Well, I came along the avenue with my baby, one day, and this boy Jacobsen was standing at the door, at his door, and I said, "Hello", and he says, "Hello," and I said, "Don't you know me?" And he said, "No." And I said, "Don't you know the fellow you had in the Tomb for 36 days?" And he said, "No. You aint Larkin. You're his cousin. And I want to see Larkin himself." And I said, "Don't you remember the day I sat there at that table, and had a piece of pie and a cup of coffee with a friend, and I threw the 25 cent piece upon the counter, when you said you didn't want to serve me, and then you served me? And you were cleaning the mirrors?" And he said, "Oh, yes, I remember that now. I didn't want to make a complaint against you, but the police officer and the boss made me go against you, and the policeman said they would send me to the House of Detention for a year, if I didn't go against you."

And I said, "That's a fine way to treat me, a man with a wife and a family." And there was a street cleaner standing in the place at the time, and he heard that talk.

CROSS EXAMINATION BY MR. COLLIGAN:

Q. Now, let's see. Where were you ^{working} during the year 1911?

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A Well, from 1910 to 1911 I was working for Thomas Dennis.

Q What time in the year 1910 did you go to work for Thomas Dennis? A Well, I couldn't just state that.

Q Well, now, recall that, if you can. Take your time, and think. A Well, just about a week before Christmas, 1909, just a few days before Christmas.

Q How long did you work for him? A Until September, 1911.

Q Who did you go to work for in September, 1911?

A 1911?

Q Yes. A I worked for Jeremiah Callahan.

Q Is he here to-day? A No, sir.

Q How long did you work for him? A I worked for Jeremiah Callahan about seven months, up to the time I got arrested.

Q But on this particular day you were not working for Mr. Callahan; were you? A Well, there was nothing doing. I was up at the stable, and he said, "There's nothing doing to-day, Dick," and so I walked over to Mr. Dennis' stable, thinking there might be something doing there.

Q Well, then, you were not working that day? A No, sir.

Q And how many days had you missed before that, for that year? A Well, I worked four or five days a week,

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say, on account of the slackness of work.

Q And what time did you reach this store, that day?

A It was about ten minutes past four when I walked into this man's place of business.

Q And who was with you? A Me and a fellow that worked on the Red Star line.

Q Who is he? A Lawrence Henry.

Q Where is he now? A I don't know, to-day.

Q Have you got him here? A No, sir.

Q Didn't you think it necessary to have him here?

A No, sir.

Q When you were arrested for the crime of robbery?

MR. HILLY: I object to that.

A I could have him here, if I called him up on the 'phone. He was here three or four days ago.

Q Where do he live? A Somewhere in 29th Street.

Q What's the number? A I don't know the number.

Q Well, how did you find him when you wanted to see him? A I saw him every day down on the Red Star line.

Q Did he ever tell you where he lives in 29th Street?

A No, sir.

Q Well, how do you know that he does live there?

A Because I know it.

BY THE COURT:

Q Do you say that he has been here? A Yes, sir.

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THE COURT: Do you not regard him as a very important witness, Mr. Hilly?

MR. HILLY: Yes, sir; and I had him down here several times, on Monday, Wednesday, ^{and} Thursday of last week, and then after that he said he would lose his place, and I thought he would be here to-day, so I instructed all the witnesses to be on hand this morning.

BY MR. COLLIGAN:

Q Did you ask this witness to come into the Magistrate's Court with you? A No, sir.

Q Why not? A Because I didn't get a chance to speak in the Magistrate's Court. I was remanded to the House without bail.

Q Didn't you have an attorney there? A Yes, sir.

Q Didn't you tell him your story? A Yes, sir.

Q And didn't you tell him about this man that you claimed worked on the Red Star line? A No, sir.

Q And so you entered the store with this person. How many persons were in the store when you entered?

A This little boy. He was cleaning the mirrors in the store.

THE COURT: Can you get him here by two o'clock,

please? I regard him as a very important witness.

MR. HILLY: Yes, sir, I shall endeavor to do so.

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THE COURT: And I shall ask the State to secure his attendance by subpoena, if you need the help of the State to secure the attendance of that witness.

MR. HILBY: Well, I think I can get him myself, but I thank your Honor for your kindness in the matter.

BY MR. COLLIER:

Q Now, this boy was in there alone, you say? A Yes sir.

Q What did you do when you first went into this restaurant? A I said this boy, "Give me a cup of coffee, and a piece of cocoanut pie", and he said, "I haven't got any coffee", and I said, "Why, I see a cooler there, and you've got the heater under it."

And he said, "Well, I don't want to sell you". And I said, "What's the matter? You think you won't get paid?" And he said, "Well, fellows come in every day, and run out on me, and don't pay."

And I threw a 25 cent piece upon the counter, and so we got our pie and coffee.

And he was still cleaning his mirrors when we got these three other fellows and we had finished our pie and coffee. And they started to get tough there, and say things that they shouldn't say to this little fellow.

Q And what did you do? Did you run out? A Well, I seen them over the little boy, and I said to the owner

fellow with me, "Come on. We don't want to get mixed up in this thing," and we went out.

Q Did you run out? A No, sir, walked out.

Q Did you run for an officer or go for an officer?

MR. HILLY: Objected to.

A Why, what should I run for an officer for? That gang would kill me with a knife or something of the kind, and I didn't think there was any intentions of doing what they did do.

BY MR. COLLIGAN:

Q When did you leave the Red Star line dock, that day? A About ten minutes to four.

Q How did you come uptown? A Right along Eleventh Avenue.

Q Now, you live right in that vicinity; don't you?

A I live in 19th Street, 305.

Q Very near there? A Yes, sir.

Q You are a married man? A Yes, sir.

Q And you are sure you were in that restaurant to eat your dinner though you were so near home? A I didn't go in there to eat my dinner. I told you that my wife was out. Her uncle was dead, and her father and her went over to arrange the funeral, and I didn't go home for dinner, because I knew she wouldn't be there. And so I said to the fellow that was with me, "Come on in here. The

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wife is out, and I feel like having a cup of coffee," which we did, and in the meantime these three other fellows come in.

Q Now, what happened after you went out? No, I withdraw that. Three men came into that store? A Yes, sir.

Q And you and the man with you had concluded your meal? A Yes, sir.

Q And what happened? A They walked up to the counter and demanded coffee off this boy.

Q And tell what happened then? A And they started to say things that they shouldn't say. And then this boy was still cleaning the mirrors on the side, this little fellow Jacobson, and one of these fellows said something to him, and another fellow walked around the tables, and grabbed a hold of him, and I said to this other fellow ---
BY THE COURT:

Q Where did he grab him? How did he grab him?

A Around the waist with both hands (illustrating). And I said to the other fellow, "Come on. Let's get out of this place. We'll get mixed up in this case," and he said, "All right", and we walked out.

Q Now, were you afraid of being mixed up in it, if you had nothing to do with those three men? A Because I didn't want to be known or seen in that company, in the company of that man. The officers all knew them along

there.

Q And, as matter of fact, you were a member of that gang; weren't you? A No, sir, I wasn't.

Q And the other two men that you refer to, or the other three men, belonged to that gang, too, didn't they?

A No, sir, not that I know of.

Q Now, aren't you a member of that gang, the "Gashouse Gang"? A I'm not a member of no "Gashouse Gang", or any other gang.

Q Weren't you the third man with the other two that committed that robbery? A No, sir, I wasn't.

Q And so you were afraid of being mixed up in it; were you? A Yes, sir.

Q Now, what did you say about the officers knowing everybody there? A Well, they know them fellows was members of that gang, and hangs out on that corner, and don't work, and I didn't want to be seen in their presence.

Q Now, if you were not a member of the gang, what did you fear? A Well, I live right around the corner, and I see them fellows on the corner, and I didn't want to be mixed up with them.

Q Will you answer my question?

MR. HILLY: I object to that.

BY THE COURT:

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Q. Why did you have this fear of being seen with them?

A. Because I knew the police officers knew all these men, and I didn't want to be seen in their company, for fear the officers would think I was the same as they were, because I live around the corner in 500, and I see these fellows standing on the corner all the time.

RE DIRECT EXAMINATION BY MR. HILLY:

Q. What morning was it you were arraigned in court?

A. Arranged in court?

Q. Yes. A. Monday morning, and I was put back until Tuesday, Election.

Q. And what day was Tuesday? A. Election Day.

Q. And someone telephoned for me? A. Yes, sir.

Q. And I appeared at that time and just talked to you while you were being arraigned before the Magistrate?

A. Yes, sir.

RE CROSS EXAMINATION:

Q. I just want to ask you one question. When did you work for on the Red Star line? A. William Corbett.

Q. On what day? A. Yes, sir.

Q. What is his address? A. I couldn't tell you what his address is. I was just walking along there, and he asked me could I come in and help him out, and earn a day's pay, and I said certainly.

Q And how long have you known him? A About six or seven months.

Q What is his business? A Boss Loader on the Red Star line.

M A C B E T H G A R F I E L D, of 295 Christopher Avenue, Brooklyn, a witness called on behalf of the Defense, being duly sworn, testified as follows:

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

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After Recess.

W A C B I E I G A M P I D D. resumed:

DIFFERENTIATION IN THE FUTURE

Q. What is your business, Mr. Garfield? A. Well, Assistant Foreman of the Department of Street Cleaning. I was promoted since this thing happened from sweeper to assistant foreman.

Q Now, do you recall being in the place 88 Eleventh Avenue at the time defendant? A Yes, sir.

Q Were you in that place? A Yes, sir.

Q And do you know the complaining witness Harry
Jacobson? A (No answer)

Q Do you remember being in that place where that boy was employed (Indicating Jackson)? A Yes, sir.

Q And do you remember a conversation that occurred between this defendant and that boy, since the month of November last, or in that month? A Well, I know it was in the month of November but I don't know the date exactly.

"Well, what time of day was it? A I was between five and six o'clock in the evening. And I was in there and he told me Mr. Barkin came in, and he says to Mr. Jankowski, "I want to see a few times," and so Mr. Jankowski said, "I don't want to see you. I don't know you. Who are you?" And he said, "Well, I'm Barkin." And he came, "Well, you want Jankin. I don't know you." And then he

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said, "Let me see your mouth, open your mouth," and Mr. Larkin opened his mouth, and he said, "You aint the fellow. The other fellow had two gold teeth, and you've only got one," and so I walked out.

CROSS EXAMINATION BY MR. COLLIGAN:

Q Did you ever see two gold crowns in Larkin's teeth?

A No, sir.

Q When have you been talking to about this case; when have you been talking this case over with? A With nobody.

Q You are not afraid of the gang up there; are you?

A Gang?

Q Yes. A I don't know anything about a gang.

MR. HILLY: I object to the question.

THE COURT: Sustained.

MR. HILLY: And I ask your Honor to instruct the jury to disregard that question and answer.

THE COURT: Yes, I so instruct the jury.

BY MR. COLLIGAN:

Q You have been a regular customer in this place of business; haven't you? A Yes.

Q Now, isn't it a fact that you were in there, and had come in there alone, on the day in question, and that you didn't go in with Larkin; isn't that so? A I never saw Larkin before, and never knew him in my life before that

night.

Q Then how is it that it has made such an impression on you? How did you get into the case, if you didn't know the man? A I don't know. I was subpoenaed. That's all.

Q And you never knew Larkin before; did you? A No, sir.

Q And you hadn't given him your name; had you?

A No, sir.

RE DIRECT EXAMINATION BY MR. HILLY:

Q And who handed you the subpoena? A Mr. Larkin.

Q And before he handed you the subpoena, what did he do? A He didn't do anything. I guess he was waiting for me until I showed up at my work.

RE CROSS EXAMINATION BY MR. COLLIGAN:

Q You didn't tell him where you worked? A No, sir. It's easy to find out in the Street Cleaning Department, if he sees the Street Cleaning Commissioner.

MR. HILLY: I sent after this man at one o'clock, near Home, and Mr. Dennis said that he would see him and have him down here at two o'clock.

THE COURT: Did you learn that he was there? Did you find out where he was?

MR. HILLY: Mr. Campbell called up the Red Star work, during recess, but he couldn't find out

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whether he was there or not, because it was dinner time, if your Honor please, at the pier at that time.

THE COURT: Has this person ever been here, Mr. Hilmy?

MR. HILMY: Well, I recall that there was a witness here on two occasions, the man that was in that place with the defendant.

THE COURT: Have you conferred with him about the case?

MR. HILMY: No, sir, I have not. In fact, this matter, this case, has come to me not in the regular way, but I have known several of these people for several years, and they asked me to take care of it for them, and it is only a matter of charity, I may state, that I am here.

THE COURT: Ask the defendant if he can procure the attendance of this witness, to-morrow morning.

THE DEFENDANT: I guess he will be here, to-morrow morning, sir.

THE COURT: If I continue this case, I must be assured by you that you can have him here, to-morrow morning.

THE DEFENDANT: Yes, sir, I will have him here to-morrow morning. I seen him only last Friday.

THE COURT: Was he down here on that day?

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MR. HILLY: No, sir. Last Monday week, the case was on here, and he was here then, and the defendant saw him last Friday, he says.

THE COURT: I regard his testimony as of very considerable importance, and in the defendant's interest, and in the interest of public justice, I am going to give you an opportunity to have him here.

MR. HILLY: I thank your Honor.

THE COURT: But see, Mr. Hilly, that he be here, to-morrow morning.

MR. HILLY: Yes, sir, I will.

THE COURT: And I will ask the State to give any assistance possible to secure his attendance.

MR. COLLIGAN: If your Honor please, I offered that assistance at noontime.

THE COURT: I know you did. And I would be glad to have you offer it again. And I trust that he will be brought here in the morning.

MR. HILLY: I will endeavor to have him here, to-morrow morning, sir.

(The Court then admonished the jury in accordance with Section 418 of the Code of Criminal Procedure, and adjourned the further trial of the case until Tuesday morning, April 16th, 1912, at 10:30 o'clock).

MR. HILLY: And the bail will be continued, if

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your Honor please, that we may have an opportunity of finding the witness?

THE COURT: Yes, under the circumstances the trial will be continued. What is the bail?

12. WASSERVOGEL: \$2,000, sir; a surety bond.

TRIAL RESUMED.

New York, April 16th, 1912.

L A W R E N C E H E N R Y, of 614 West 29th Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HILL:

Q What is your business, Mr. Henry? A I work with a partner. We have a business on the Red Star line, loading.

Q What is your business? A Loader.

Q And what do you do as a loader? A We load cases and barrels. We take all the freight that comes on the Red Star line and we get rid of it, put it in the trucks and get paid by the package.

Q Now, do you remember November the 4th? A Yes, sir.

Q Do you know this defendant? A Only through getting a truck.

Q Were you with him on November 4th, 1911, at four P.M.? A Yes, sir. I worked with him all that day. I put him to work, that morning.

Q And do you remember going into a restaurant at 68 Eleventh Avenue on that day? A Well, I don't know the number, but I remember having a cup of coffee in Eleventh Avenue.

Q Now, where was the place located? A 18th and 19th

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Streets.

Q And who was with you? A That man there, Mr. Larkin (indicating the defendant).

Q Now, tell the Court and jury what you saw there, and what happened at the time. A Well, we happened to get done early. It was on a Saturday.

Q Speak right up, so that the last man can hear you.

A We happened to get done early, it was on a Saturday, and we were done about four o'clock, and I had my tickets in my pocket to collect from a man named Meehan, a truckman in 19th Street. He wasn't a big customer of ours, and we get paid by the firms we work for by the week, and I said, "I guess I'll collect these tickets," and this Larkin said he had five days' pay coming to him off a truckman named Callahan, and I believe it's in Ninth Avenue this truckman keeps, and he asked me would I take a walk down with him, to get his pay, and so I said, "Certainly. I'm going down there to collect these tickets from a man named Meehan. He's a truckman."

Q And then you walked down to 19th Street and Broadway Avenue, and he asked me would I like to have a cup of coffee, and I said I wouldn't mind.

Q And so he said, "Come on in," and I came in.

Q So, when we went in this store, we ordered a cup of coffee and a piece of pie. And so there was a boy in the

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store and he says no; he refused to served us like, and this man Larkin asked him why, and so he says, "If you want to pay," and he said people were in the habit of coming in there, and not paying them for the stuff they ate.

And he said, "Why, that's all right," and he threw a quarter on the desk there and we had a piece of pie and a cup of coffee served to us, and while we were eating and drinking, three men come in, and they looked to me like longshoremen.

And they used boisterous language, and so the first thing you know they started a little rough-house, and I didn't like the looks of it myself, and he said to me, "Come on. Let's get out of here," and so I said, "All right."

And so we walked down to 15th Street, and I walked into this stable of this man Neenan, and he wasn't in. And then he left me to go and get his money off Callahan.

Q And did you see this man Larkin, in that place, take any money out of the cash register? A No, sir, I hadn't seen anything that was in the place, only that we walked out, after we had a cup of coffee and a piece of pie, and I didn't want to see no rough-house at all; I walked right out.

CROSS EXAMINATION BY MR. COLLIGAN:

Q Who did you say your partner was? A Bill Corbett.

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Q Corbett? A Yes, sir.

Q Do you swear that Mr. Corbett is your partner?

A Positive fact.

Q You don't work for him? A No, sir, I don't. And by rights I own the business.

Q You do? A Yes, sir.

Q How long have you known this man (indicating the defendant)? A Only through driving a truck, about three years.

Q Three years? A Yes, sir.

Q Positive of that? A Well, I wouldn't say positively. I only knew him by driving a truck, and doing his work for him when he worked for Crawford.

Q Now, did you see him on this morning as question?

A Yes, sir.

Q And did you hire him on that morning? A Yes, sir.

Q You are positive that Mr. Crawford didn't hire him? A Yes, sir. I've got as much privilege to hire him as Crawford has.

Q Well, what day was this? A November 4th, he says it was. I remember the day only because I hired him to work. It was on Saturday. And when I had the pie and coffee with him, I found out he was arrested.

Q Now, didn't I tell you I had the pie and coffee too

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much. How many times had you hired this man before?

A Only once.

Q That's the only day you ever hired him? A Yes, sir.

Q The 4th of November, 1911? A Yes. Why I hired him, I'll tell you.

Q No, I don't want you to tell me.

THE COURT: Just wait and get your question, witness.

BY MR. COLLIGAN:

Q And when you left your place of business you went to this restaurant? A Yes, sir.

Q Who was in the restaurant when you arrived there? A Well, I only seen two boys.

Q Two boys? A That's all.

Q Now, you are positive two boys were in the restaurant? A No, I'm not positive.

Q Well, why did you say, just now, that you only saw two boys? A I only seen one boy behind the counter, and I aint saying for sure, but I think I saw another boy wiping off mirrors or windows, but I aint positive.

Q Well, what happened when you got in the restaurant? A I told you.

Q Tell it again. A We had a cup of coffee, we ordered a cup of coffee, and the boy refused to serve us.

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and he asked him why, and he gave me an idea that people wouldn't pay him for the stuff, and so he threw up a quarter, a 25-cent piece, up on the desk, like that (illustrating), and the boy served us with the pie and coffee, and when we were eating this pie and coffee, this thing started.

Q Now, just tell us what started and how it started?

A Well, I only seen three men walk into the place, and one started to throw his arms around the boy some place, and they started rough-house.

MR. COLLIGAN: Now, will the complaining witness in this case stand up?

BY THE COURT:

Q Have you ever seen this boy before (indicating the complainant)? A Yes, sir.

Q Was he in the restaurant? A Yes, sir.

Q What was he doing? A I think he was wiping the windows, I'm not sure; but I think he's the man he gave the quarter to.

Q Can you remember what the other man or boy was doing? A No, sir.

Q You ordered a cup of coffee and you were served?

A I didn't order it. My friend ordered it.

Q Well, it was ordered and you were served? A Yes, sir.

Q And you sat at a table? A Yes, sir.

Q Now, had you finished your pie and coffee by the time these men arrived? A Yes, I had, but he hadn't.

Q How, how many men arrived? A I only seen three.

Q Now, describe them, if you can. A Well, as far as I could describe them, they were dressed in old clothes, and they looked like longshoremen to me.

Q Looked like longshoremen? A Yes, sir.

Q Probably coming home from work? A I don't know about that.

Q Did you have pie and coffee? A Yes, sir.

Q And what happened then? A I walked out, he asked me to come out. He said, "Let's get out of here. There's going to be trouble."

Q How did you know there was going to be trouble?

A Well, I heard them get to cursing and hollering like that, and I didn't want to be in that place when these people were going to have a rough-house.

Q How did you know they were going to have a rough-house? A Well, they started to curse and call this bee names, and things like that.

Q What for? A For nothing.

Q They just came in and cursed him? A Yes, sir, and they weren't drunk at that.

Q And then there three strangers, longshoremen pro-

usually, came in, and immediately cursed this boy, you walked out? A Why, certainly.

Q Why? A I didn't want to be in the place.

Q What were you afraid of? A I'm not afraid of nothing, but suppose I got hit with a plate, or something like that. Suppose these longshoremen were drunk, and started to throw around things.

Q Don't you know whether they were drunk or not?

A No, sir.

Q Couldn't you tell by their appearance? A No, sir, but they were dirty and wore old clothes.

Q And you were afraid of them? A No, sir; but I didn't want to get hurt for nothing, and they were real big men, one of them was a big man certainly.

Q And you didn't want to help this little boy out; is that right? A No, sir; how could I?

Q You were not such a small man, yourself, are you?

A No, sir, but I'm not such a healthy one, either.

Q And you walked out? A As soon as I seen the trouble I walked out.

Q What exactly did you see? A They acted boisterous, they cursed, and talked all around, and started to shuffle things around.

Q And you didn't even speak to them in a pleasant way, is that right? A No, sir, I didn't.

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Q And he hadn't spoke to them, the boy had not?

A No, sir.

Q Or even asked them for an order? A No, sir.

Q And you went out? A Yes, sir.

Q And you were very much afraid that there was going to be trouble in there? A Yes, sir.

Q And you knew that there was a little boy, about five feet tall, alone in there; didn't you? A Yes.

Q And you knew he was liable to be hurt? A How did he know that there wasn't nobody in back of that place, cooking things?

Q Well, don't you know as a matter of fact it is only one small room? A No, it aint, because there was a place where they could cook orders.

Q And you walked off and left the boy to himself?

A How did I know he was all alone? Couldn't there have been somebody back there cooking orders?

Q And how long were you in there? A Gee, I guess I wasn't in there five minutes.

Q Yes. And you had your coffee and pie there?

A Yes.

Q And where did he take the coffee and pie from?

A Off the table.

Q And so you didn't see any cook in there? A No, sir.

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Q And didn't hear any talking back there? A No, sir; because there wasn't anything ordered to be cooked.

Q Now, why didn't you go to a police official, if you thought the boy was going to be hurt?

MR. HILLY: I object to that. It doesn't matter why he didn't.

THE COURT: Overruled.

A Why didn't I go to a police official?

BY MR. COLLIGAN:

Q Yes. A Had I seen one on my way, I would have told them.

Q And still you allowed that boy to remain alone there? A Did I know what was there? Suppose there was a proprietor or somebody else back there, accounting for something. And I thought it was no place for a boy to remain in there.

Q And you were willing that the little boy should get hit; were you? A No, I wasn't.

Q Now, Longshoremen generally are not what is known as members of a gang; are they? A Not as I know of, no.

Q And if your associate, who was there, the man at the bar, (indicating the defendant), said that the reason why he went out was because he was afraid of the gang, is he mistaken, do you suppose? A I don't know of any gang; I don't hang out with any gang.

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Q Well, longshoremen are not generally known as members of a gang; are they? A No, not as I know of.

Q Did you testify in the lower court, the Police Court? A No, sir.

Q Did he ask you, did the defendant ask you to testify for him in the lower court? A No, sir. His mother came around to me and asked me how things were and, and I told her, and she asked me would I be willing to come down here, and I said yes.

Q You never thought that it was your duty to go to a police officer after you left there?

MR. HILBY: I object to what he thought.

THE COURT: Overruled.

A I said that, if I/seen one, and seen what happened, but I didn't see what happened. How did I know? Suppose these men were in there to pick an argument with us.

Q Well, yes they? A How do I know? I told you they were acting belligerently, when they came in.

Q Well, didn't you think the proper thing, under the circumstances, to do was to go to an officer, and at

least protect the boy? A I would have protected the boy,

I don't know if he was in any danger. But look here, listen ---

A Yes, sir.

MR. HILBY: Oh, let him explain, let the gentleman

BY MR. COLLIGAN:

Q If you thought the boy was not in danger, why did you go out? A How did I know that they wouldn't hit me? I never thought that men like that would ill-treat a little boy, as big as him.

MR. HILLY: The defendant rests. And I make the usual motions, if your Honor please.

THE COURT: Motions denied. Anything further? Do you rest your case, Mr. District Attorney?

MR. COLLIGAN: Yes.

THE COURT: Both sides rest?

MR. HILLY: Yes, sir. And I take an exception to your Honor's denial of my motions.

THE COURT: Yes, go to the jury.

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THE COMMONS OF THE STATE OF NEW YORK.

ALBANY, N. Y.,

Honorable Members of the Jury:

You will by your verdict either find the defendant not guilty, or you will find him guilty of robbery in the first degree.

The State charges him with committing, on the 4th day of September of last year, in the county of New York, robbery in the first degree, in that on that day, he, with force, stole property in the custody and presence of Jacobson, by means of a violent assault, and because of the assistance that he had in having accomplices present with him.

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 or duress.

I have defined to you the definition of the crime of robbery, so far as is applicable to the facts of the prosecution by the indictment. If you have listened to it, you will find that it is a complex crime, consisting of a larceny and an assault, the purpose being to effect the larceny by means of the assault.

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To constitute that crime, there must be force applied, or fear created. The quantity of force or fear is not material, providing both are found by the jury. There must be, also, a larceny. The property may not be taken secretly, but it must be taken in the manner that I have stated to you, by using force, or by creating fear, such fear as overwhelms the person who is in possession of the property.

An unlawful taking, that is, larceny, if accomplished by force or fear, in a case specified in the section which I have defined to you, is robbery in the first degree, when committed by a person being assisted by an accomplice actually present.

That is the highest degree of robbery, and it is laid in the indictment that that offence has been committed by the defendant; that he committed a violent assault, that his purpose was to steal, that he succeeded in his purpose, and that he was assisted in his criminal design by accomplices actually present. If the things that I have stated to you have been proven so that you do not doubt them, you will find the defendant guilty of robbery in the first degree. If they have not been proven or any one of them has not been proven, then you will not find the defendant guilty of robbery in the first degree.

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You have had some appeals made to you here by the learned counsel for the defendant and by the learned counsel for the State as to how you ought to take up the consideration of this case. The case has been well tried by both sides, tried with great earnestness. Appeals have been made to your sympathies and to your duty as citizens in the enforcement of the law. That is the function of counsel, and they but poorly serve their respective client's cause, if they do not do what in them lies to satisfy the jury of the merits of their respective causes. They owe duties on both sides, duties that are not to be lightly considered. Those duties have been performed, and well performed by both sides.

Your duty and mine is quite different. It is my duty, under the law and the Constitution of the State, to pass upon the law of the case, and advise the jury as to questions of law that may arise in the case, to guide the jury in applying the evidence as to the definitions of the law, and the legal way of applying the evidence. As to the law, I am the judge. If a verdict favorable to the defendant is given, the Court has no other duty to perform. If a verdict adverse to the defendant is rendered, then the Court has another duty to perform, and that is to administer the law in the

spirit of the law. Of all those things I am the judge, and it is not, of course, for you to take upon yourselves those considerations. You are made by the constitution and the law the judges of the facts in the case. You are to weigh the witnesses, and sift out their testimony, to reach the truth, wherever the truth is, and, when you have found it, to fearlessly proclaim it in your verdict.

The verdict of the jury, therefore, ought to be, of course, one that shall secure to the community a rigorous and unrelenting administration of the criminal law of the State of New York, and, at the same time, one that will assure an individual's entire protection against prejudice, excitement and injustice. You will, therefore, calmly and conservatively, as becomes your duty, take up the service that the law imposes upon you, and see where it brings you.

The State carries a burden of proving its case. It is asking for a great thing. It is asking for the liberty of an individual, it is asking for a conviction of one of the highest crimes known to the law, a crime that may bring in its consequences to him twenty years in State Prison. The State, therefore, is constrained by the law to prove clearly his guilt, before it is entitled to such a result. It

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must prove this defendant's guilt so that the jury have no question of his guilt. If there is a doubt of his guilt, or of any of these essentials of the crime charged, he must be acquitted. If there is no doubt of his guilt, and of the essentials, you must, as sworn jurors, and in conformity with your responsibility, find him guilty, and turn him over to the law, for the consequences of his crime.

It is charged that this defendant committed this crime at 88 Eleventh Avenue in the County of New York, on the 4th day of November last. The State has called here Harry Jacobson, Abraham Levine, Morris Crane and Officer Carlson in support of its case; and the defendant has called here Thomas J. Dennis, Tillie Brew, Thomas Brennan, Charles Broncato, Richard Larkin, Macbeth Garfield and Lawrence Henry in support of the defense.

The defendant urges that, up to the 4th day of November of last year, he, the defendant, bore a good name, and an unsullied reputation in the community. To that fact Thomas J. Dennis, Tillie Brew, Thomas Brennan and Charles Broncato have addressed themselves. The People urge that, through the examination of the defendant, it is established that his reputation is not what it should be. Well, you have heard these wit-

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nesses testify in direct and cross examination, and you will reach a proper judgment upon that subject.

Harry Jacobson says that he was in charge of this restaurant at 88 Eleventh Avenue, on the day in question, and that the defendant and two others came in, and asked for coffee, and at once began to create trouble. One of the three men, he says, grabbed him by the throat, while another went to the door, and the defendant, he says, went to the cash register, and took some money that was there.

Abraham Levine has said that he went into the store on the afternoon in question, and, when he arrived there, saw the defendant at the cash register; and that he himself was struck down by a person who was there, not the defendant.

Morris Crane has testified to the condition in which he found his place of business when he returned to it, on that afternoon.

You have had the testimony of Officer Carlson, who made the arrest, and he says that Jacobson and Levine identified the defendant as being one of the persons concerned in that crime.

The defendant has gone upon the witness stand, and has denied that he is guilty of this charge. He says that he, with Lawrence Henry, after finishing

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their work, went into this store for the purpose of getting refreshments; that they had some talk with the person in charge; and that they left the store because of the entry of three others, who began to create trouble, and caused their departure. That version of what happened there is corroborated by Lawrence Henry.

Macbeth Garfield, an Assistant Foreman of the Street Cleaning Department, has told you that, some time later, the prosecuting witness, Harry Jacobson, said that the defendant was not the person who assaulted him.

These are some of the matters that have been taken up by these witnesses, but all of the facts testified to are, of course, for you.

You will take this case with you, and put aside all passion, all appeals to your prejudices and your sympathies, and find what is the truthful version, and, as you find it, you will return it in your verdict.

The case is one of great importance, because of the gravity of the crime charged. If the defendant is not guilty, there should be lifted from him at once the shadow of such an awful crime. But, if he is guilty, public considerations require his conviction,

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and the punishment that the crime of robbery in the first degree demands.

Take this case, gentlemen, and apply wholesome common sense to it. Weigh all these witnesses in charity, but with common sense and great care, to the end that in your verdict justice will be done to the State, on the one hand, and the defendant on the other.

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

MR. HILLY: No, sir, I have no requests to charge.

THE COURT: Then take the case, gentlemen.

(The jury found the defendant guilty of robbery in the first degree).

MR. HILLY: I ask your Honor to set this case down for next Monday, and I will reserve the right to make my motions until then.

THE COURT: Yes. And you may send to me, through Mr. Conway, any letters that you may be able to obtain in the interest of the defendant, and Mr. Colligan will do likewise for the State of New York, any letters or communications.

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

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THE PEOPLE

-vs-

RICHARD LARKIN.
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:
: Before:
:

:
: HON. JAMES T. MALONE, J.
:

New York, April 22nd, 1912.

- Indicted for Robbery in the First degree.

Indictment filed November 17th, 1911.

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

ASSISTANT DISTRICT ATTORNEY CHARLES D. COLLIGAN, for
the People.

ARTHUR J. W. HILLY, ESQ., for the Defense.

THE SENTENCE.

Frank S. Beard,
Official Stenographer.

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THE SENTENCE.

New York, April 22nd, 1912.

The defendant being arraigned for sentence:

MR. HILLY: If your Honor please, in this case I should like to have until Thursday morning. I have been requested to get an adjournment here, so that further investigation may be made.

THE COURT: Oh, I have had several letters in the interest of the defendant. I will dispose of the matter now. I will hear you, whatever you have to say.

MR. HILLY: Well, I first make the usual motion to set aside the verdict of the jury, on the ground that it is contrary to the weight of evidence, and contrary to the evidence, and contrary to the law, and on all the grounds enumerated in the Code.

THE COURT: Motion denied.

MR. HILLY: Exception. Now, if your Honor please, in this matter the defendant, under the verdict of the jury has been found guilty, but I wish to urge upon your Honor the facts that this young man is but 23 years of age, that he has a wife and two young children, and an aged mother, and on those facts I urge upon your Honor to be as lenient as possible with him under the

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circumstances. I think that here is a case where, on account of the age of the young man, there might be a possible reform worked in him, if he were committed to an institution of that kind, a reformatory institution; and I feel that if a State Prison penalty is imposed upon him at such a stage of his life, why, that it will mean not only the wreck and ruin of his life, but it will mean the deprivation of the few remaining years of life that his poor, aged mother may have, and will entail great suffering upon his wife and children, and I urge all these considerations upon your Honor in imposing sentence.

THE COURT: Richard Larkin, after trial, you have been convicted of robbery in the first degree. The judgment of the law is that you be imprisoned in the State Prison for not less than seven years, nor more than nine years.

I hereby certify that the foregoing transcript is an accurate transcript of the minutes of the trial of the People vs Richard Larkin.

Frank L. Bond
Official Stenographer

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