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CASE 1529

COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part II.

#1664

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

: Before:

-against-

: HON. EDWARD SWANN, J.,

ALFONSO SANTARATO. :

: and a jury.
-----X

New York, April 12th, 1912.

Indicted for robbery in the first degree; grand larceny,
first degree; assault, second degree, and receiving.

Indictment filed March 14th, 1912.

A p p e a r a n c e s:

For the People: FLOYD P. STRYKER, ESQ., Assistant District
Attorney.

For Defendant: ABRAHAM AARONSTEIN, ESQ.

(A jury is duly empanelled and sworn.)

(Mr. Stryker opens to the jury in behalf of the
People.)

J A M E S B E N D O L I N O, called as a witness in behalf
of the people, being first duly sworn, testifies as follows,
(Through Official Interpreter Moustacki):

MR. AARONSTEIN: I ask your Honor first to find out
if this complainant can talk English. We would rather
have the testimony in the English language.

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MR. STRYKER: He speaks some English, but he speaks Italian far better.

MR. AARONSTEIN: I think we should have it in English.

THE COURT: Do you want him sworn in English too?

MR. AARONSTEIN: Yes, sir; I think he ought to testify in English too. I don't want him to have the chance of framing answers to the questions.

MR. STRYKER: I object to that statement.

MR. AARONSTEIN: Will your Honor question him and find out.

THE COURT: (Addressing witness) Can you testify in English? Can you give your answers in English?

THE WITNESS: I understand a little bit. I no understand very well -- only a little bit.

THE COURT: Try him in English.

MR. AARONSTEIN: Do you understand some English?

THE WITNESS: I cannot talk in English, I told you before. I can talk a little.

THE COURT: We will take his testimony through the Interpreter, as I think we ought to be considered also.

MR. AARONSTEIN: Exception.

THE COURT: I have just heard the witness speak, and I exercise my discretion to have the man speak through an Interpreter, because he is an Italian, and it is my judg-

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ment that he does not speak English sufficiently for us without great strain to get his exact meaning, and for fear he won't understand the questions put to him.

MR. AARONSTEIN: Exception.

DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 316 East 102nd street, City and County of New York.

Q You only speak a little English, don't you? A I can talk much better in the Italian language.

Q What is your business? A I am a contractor, a tailor.

Q Where is your tailoring establishment? A 104 East 101st street.

Q Do you remember the 4th day of March of this year?
A Yes.

Q And where were you at about half after six in the evening of that day? A I was on my way out from a saloon with a pint of beer.

Q Where were you going with the beer? A I was going to my own shop.

Q And that was where? A 103th street.

Q Did you walk upstairs there?

MR. AARONSTEIN: Just a minute ---

MR. STRYKER: Question withdrawn.

(The witness here half rises from his chair, speaking rapidly part in English and part Italian, and gesticulating

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in the direction of defendant's counsel.)

THE COURT: Tell him to answer questions. He has nothing to do with the defendant's counsel in any respect.

THE WITNESS: (After being spoken to by the Interpreter in Italian.) All right.

MR. STRYKER: Question withdrawn.

Q. Go ahead and tell the story of what happened to you from the time that you got that pint of beer and started along with it. Now, tell that in your own way.

THE COURT: From the time he got the pint of beer and started out of the saloon.

A I was on my way out from this saloon with a pint of beer, and when I reached about the door of my shop, before I entered the door, another man entered ahead of me into the door; he asked me the address of a certain man, and I told him, "On the third floor." A man who makes boys blouses. Then when I reached on the first flight of stairs, two men were coming behind me; I turned around to see who they were. At that moment the defendant seized me by the arms behind, and one of these two men who were facing me, gave me a punch on the stomach, (witness indicating towards his stomach), and the defendant then inserted his hand in my lefthand trousers pocket (witness indicating to his left-hand trousers pocket) and abstracted from therein my pocketbook.

Q. When you say the defendant, do you mean this man right

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here (indicating defendant)? A Yes.

Q How much was in the pocket book? A \$92 and a pawn ticket.

Q Is that the pawnticket? A Yes, sir.

Q What name did you pawn the articles on that pawnticket?

Objected to. Question withdrawn.

Q Is this the pawnticket that you had in your possession when the defendant took your pocketbook? A Yes.

MR. STRYKER: I ask to have it marked for identification.

(Marked for identification People's Exhibit 1.)

Q When was the next time that you saw this defendant after he took your pocket book which contained the money and this pawnticket? A In the court at 121st street.

Q And when you saw the defendant was the defendant standing alone, or were there other persons with the defendant?

MR. AARONSTEIN: Objected to as leading; let him tell his story.

MR. STRYKER: Question withdrawn.

Q What did you do when you got to court? A The captain of the court placed the defendant between six other people standing up, and I went and picked out the defendant between those people.

CROSS EXAMINATION BY MR. AARONSTEIN:

Q Where did you say you lived? A 316 East 102nd street.

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Q Where is your shop? A 248 East 104th street.

Q Didn't you say your shop was in 101st street, the first time? A No.

Q Where were you born? A In Italy.

Q How long are you in this country? A Eleven years.

Q Do you want us to believe that after being here eleven years you cannot talk English? A I cannot read nor write in the English language.

Q Can you sign your name in the English language?

THE COURT: I wouldn't waste time on that.

MR. AARONSTEIN: I want to cross examine him according to the way I see fit.

THE COURT: You must cross examine according to the rules of evidence, and must not ask him such a question.

MR. AARONSTEIN: I am leading to something else --- there may be papers that I want to find out if he signed his name to.

A I write my name in the same way if I write it in Italian, which is the same way it is written in English.

THE COURT: And just as everybody supposed.

MR. AARONSTEIN: I object to that remark of your Honor's.

THE COURT: Well, now, proceed, and do not ask absurd questions.

MR. AARONSTEIN: Well, I am not asking absurd ques-

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tions.

THE COURT: That was an absurd question.

MR. AARONSTEIN: Oh, no, that is a very proper question.

THE COURT: "Can you sign your name in the English language."

Q Well, I will make it, do you write your name in English? A It is written the same way in Italian; the characters in Italian are the same way as in English.

Q Where were you on the morning of March 4th --- do you remember? A In my own shop.

Q What time did you get to the shop? A At eight o'clock in the morning.

Q What did you do after that? A I worked.

Q Till when? A Till half past six o'clock in the afternoon.

Q Did you go out before that in the afternoon? A Only the time that I went out for the pint of beer.

Q Didn't you go out to lunch at twelve o'clock or one o'clock on that day? A No, because I have lunch in my own shop.

Q Did you have any beer before that time ---

MR. AARONSTEIN: Now, that man understands those questions before the Interrogator put them to him. I

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THE COURT: I think differently.

MR. AARONSTEIN: If your Honor will watch him ---

THE COURT: I have decided this finally and for all time.

MR. AARONSTEIN: Well, I make my motion again, that this complaining witness be required to answer in the English language.

THE COURT: The motion is decided for all time.

MR. AARONSTEIN: I take an exception.

THE COURT: Now, do not let me hear that again; do not make the motion again.

MR. AARONSTEIN: Well, I will make the motion, or whatever motions I see fit, if necessary.

THE COURT: You will pay the sum of \$50 for that remark, and stand committed to the County Jail until you pay it. Now, you may proceed.

MR. AARONSTEIN: I ask your Honor to remit that fine; I did not intend any contemptuous remark.

THE COURT: You will proceed with the trial of this case. I have given you ample opportunity -- ample warnings.

Q Was in the shop with you that day? A My father, m. mother and the working people.

Q What working people were with you there? A The working people who make ladies skirts.

Q Who were they? A My own helpers, my own working people.

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Q Who were they? Give their names, that is what I want?

A One name is Annie, another one is Santa, another one's name is Joe -- that's all.

Q What floor is your shop on. A Second floor.

Q At 6:30 you went down from the shop, is that right?

A When I came out of the shop it was 6:20, and when I came back with the beer it was about 6:25.

Q What makes you so sure that it was 6:20, or 6:25 or 6:30? A Because I have got my watch and I looked at my watch.

Q You looked at your watch that time when you went out?

A Yes, sir.

Q And when you came back did you look at your watch?

A Yes, sir.

Q Do you remember whether it was dark or light that day at 6:30? A There was a gas light in the hall.

Q What sort of a light -- a small or large light? A A large light.

Q Will you describe just how the entrance and the stairways of that house are? A There is a door to enter in and about eight feet of hallway, and then comes the stairs.

Q How high does that first floor run -- the stairway? How many steps on the stairway? A I am not there to count stairs.

THE COURT: No, but answer his question to the best of your ability.

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THE WITNESS: About fifteen or sixteen steps.

Q You came back with a pint of beer in your hand; which hand did you carry that pint of beer in? A I had the pint of beer in the righthand (witness indicating right hand).

Q How far did you go up the stairway before you met the first man? A About five or six steps.

Q And who was the man that you met -- the first man? I don't know. It was a partner of the other man.

Q Can you describe him? A Taller than the defendant, clean-shaven, medium sized in the face -- neither stout nor thin.

Q How tall was he? Was he much taller than the defendant? Six feet or five feet ten, or what? A About two or three inches taller than the defendant.

Q And what did he ask you? A He asked me, "Where is the man who makes children's blouses?", I said "On the third floor."

Q Did he tell you the man's name? A No.

Q We didn't tell you the man's name; then what did you do after that? A I kept on going up, and then these two people came behind me, and I turned around to see who they were, when I was attacked by the first man.

Q How far had you gone up before you met these other two men? A I had either four or five steps more to reach on the first floor.

Q You were walking up and walking up four or five steps?

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A No, there was four or five steps left.

Q You walked from the first position four or five steps more -- is that right? A I walked first four or five steps when I was stopped and asked where is the man that took children's blouses; after that I walked four or five more steps, and there was four more steps left before I reached the first floor.

Q You had gotten up about eight steps -- is that right? A About eight or nine -- I couldn't count them.

Q Where did those two men come from that afternoon, that took hold of you? A From the door.

Q Downstairs? A Yes.

Q Was the defendant among those two men? A This is the man that took my money from my pocket.

BY THE COURT:

Q No, was he one of the two men that walked upstairs behind you? A Yes, they were together.

Q But did they come upstairs behind you? Was this defendant one of the two men that came upstairs behind you? A Yes.

BY MR. AARONSTEIN:

Q Where did the other man go at that time, or where was he at that time? A One was the one that seized me behind by the arm, and this is one of the two that came behind me, and this defendant took the pocket-book.

(At the request of the Court, the last question is

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repeated by the stenographer.)

THE COURT: Be a little more specific as to "the other man."

Q Where did the man who first stopped you and asked you that question about the manufactory on the third floor -- where was he when the two men came off? A He came ahead of me, in front of me.

Q He was walking ahead of you? A Yes.

Q How far had he gotten ahead of you when you got up about eight steps? A Two stairs.

Q Two steps above? A Yes.

BY THE COURT:

Q Did the two men that followed you up the steps walk up rapidly or slowly? A Running.

Q Ran up the steps behind you? A Yes.

Q The man that was ahead of you, in front of you up the steps, what part of the transaction, or robbery did he take?

A He, the one that was in front of me, that asked me the question about the man that makes the blouses, was in front of me, and when I heard the rush of the two men running up stairs I turned around; at that time the man behind me seized me by the arms and held me there.

BY MR. MARONSTEIN:

Q Was this the man who held you by the arms (indicating defendant)? A No, he took the money.

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Q How many people took you and held you? Was it one or two or three? A One held me, one punched me and the other one took the money.

BY THE COURT:

Q Who held you? A Another one.

Q Which one was that? A I don't know him; he is not here.

Q Was he the man that asked you where the ladies waist place was? A Yes, that is the one.

Q Do you say that when you got about eight steps up that you saw this man that asked you about the ladies blouses two steps still ahead of you, and when you heard the two men running up from behind you say you turned suddenly to look at them, and that this man ahead of you then grabbed you from behind, is that right? A Yes.

Q And the defendant took your purse with the pawnticket, and the other man struck you; where did he strike you?

A (Witness points to his stomach).

Q What did he strike you with --- with his fist? A With his fist, yes.

Q How do you know that this defendant was the man, - was one of the men there? How do you identify him? A I knew him by the brown suit he wore, and when I turned around well to look at him, I saw he had an injured eye, and by that I know him.

Q Well, how light was it there? A A gas light.

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Q Had you ever seen this defendant before? A No.

Q You had never seen him in that neighborhood around about there? A No.

Q You only saw him that once and then saw him in the line-up among those five others at the police station, is that right? A I saw him there in the Court room -- the time I was robbed I saw him, and also in the court room.

BY MR. AARONSTEIN:

Q Where was he when he, as you claim, put his hands in your pocket? What step was he standing on at that time? A I was about four steps from the first floor when he ran up and got the pocket book.

BY THE COURT:

Q Are you sure the man who took your pocketbook had a defect in one of his eyes? A I am sure.

Q Did you notice it at the time, that the man who took your pocket book had a defect in one of his eyes? A Yes, because the light was reflected on the defendant's face.

Q Where was the light? A Right in front of the defendant.

Q Well, what part of the hallway was it? A Leading on the first floor; right on the first floor when a person was going up the stairs.

Q Was it at the head of the stairs? A About four or five steps from the first floor.

BY MR. AARONSTEIN: Q What do you mean by four or five steps?

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Was it up on the floor, or on the wall opposite the stairway going up to the second floor, or was it down right near the stairs going up to the first floor? A It was the stairs, coming up on the first flight of stairs going to the first floor, and there is another light up on the second floor.

Q Was the light on the wall along which the stairway ran to the first floor, or was it up on the wall which was up on the first floor?

THE COURT: Was it at the head of the stairs, or at the side of the stairs, you probably mean.

MR. AARONSTEIN: Yes, sir. I meant, was it at the head of the stairs going up, or by the other stairway.

THE INTERPRETER: The witness claims the light was on the side wall going up the stairs, at the head of the stairs.

Q Now, that light was at least six to eight steps away from you when you were first met by these two men, is that right? A No, they were four or five.

Q And standing directly above you was the man whom you first met in the hallway; is that right? A He was right in front of me because he went ahead of me up the stairs.

Q Do you mean in front, going up? A Going up he was ahead.

Q He was above you on the stairway, is that right? A Yes.

Q And then you stood about the eighth step, is that right?

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A Yes.

Q And below you were these other two men, of which one was the defendant, as you claim; is that right? A Yes.

Q Now, one of the men struck you in the stomach, you testified? A Yes, sir.

Q And you say this defendant put his hand into your pocket? A Yes.

Q What side of the stairway was this defendant on, the right or left side of that stairway?

THE COURT: Well, you know you had better say going up or going down, because the same position could be the right side going up and the left going down.

THE INTERPRETER: He said he first turned, turned around quickly and the man who was above him seized him from behind, and one of the two coming up struck him, and the other took his pocket book.

Q Where was this defendant when you turned around and were punched in the stomach? A (Witness indicates his left side).

THE COURT: Was not the question on which side was this defendant?

MR. AARONSTEIN: Yes.

THE COURT: Well, he says the left side.

Q On the left side of the stairway? A Yes. (Witness indicates on his left side).

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Q Was that to the wall, or to the banister there? A To the side of the wall.

Q And another man, you say, punched you? A Yes.

Q Tell us how that other man looks, if you remember? A They are the same style of men --- clean shaven and of medium height.

Q They all looked alike to you, didn't they? A The others were thinner than this defendant.

Q Do you call this defendant fat? A No, but the other one was thinner than this defendant.

Q And you say you had time enough to get a very good look at him, and to see that he had a defect in the eye; is that right? A Yes, because immediately he faced me, with a reflection of the gas light I saw him immediately, that he had one eye.

BY THE COURT:

Q What did you do after you were robbed? Did you go to the police station and there report it? A I went upstairs and told my father and my brother.

MR. AARONSTEIN: I move to strike that out.

THE COURT: Motion denied; it does not harm anybody.

Q What did you do towards informing the police? A I sent my father to the police station.

Q Was that the same night that you were robbed? A Yes, sir.

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Q When is the first time you saw the police on the subject of your robbery? A About a quarter to seven I saw the police.

Q Now, what were the circumstances? Where did you see the police? A I saw the policeman at 103rd street.

Q In the street? A On the first floor.

Q Where did you see the policeman? A I would like to explain a big story first, before I answer.

Q No, we want to know where you saw the policeman. Where did you see the policeman? A I must tell the whole story. It was 103rd street.

Q You will tell the whole story after a while, and you just answer the question; where did you see the policeman first? A 103rd street.

Q Where? A Between Second and Third avenue.

Q And you saw him on the street? A No, not on the street.

Q Well, then, where did you see him? A At 103rd street, because my father had made him come to 103rd street.

Q What did he come to --- was it in a building that you saw him, and if so, what building? Can't you answer that question? A You (indicating interpreter) don't give me time to talk. Give me time and I explain everything.

Q Where did you see the policeman?

THE COURT: We are not going to stand any more nonsense from you. Do you understand what that means? We are not

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going to stand any more nonsense from you. You will answer that question directly, and if you do not answer it I will put you in the City Prison until you do answer it; now, do you understand that? With the question put to you we have taken up ten minutes of time. Where did you see the policeman first? Now, answer that or you go to the City Prison. Where did you see that policeman?

A I saw him at 103rd street.

Q What sort of a building was it in? A 305 East 103rd street.

Q What building was that? A It is a brick house.

Q But whose house was it? A I don't know the house.

Q Whose apartment or whose store, or whose liquor store was it? A Because we saw a bunch of these defendants ---

Q I want to know where you first saw the policeman.

THE INTERPRETER: The witness says "I want to talk confidentially to the Interpreter, so that his Honor wouldn't hear it, so that I will be able to explain everything."

Q If you do not answer the question I will have to commit you to prison. Do you understand that? A I met the officer in 103rd street.

Q In whose premises was it? A The policeman came together with my father. My father brought the policeman at 103rd street.

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Q Where did he bring him? A He brought him right to 103rd street house because ---

Q No, never mind because, but whose house? A I don't know whose house it was.

THE INTERPRETER: Your Honor, the witness wishes to explain that they heard a rumor that the burglars escaped into the house, and that is the reason they were looking through that house.

Q Well, at a house in 103rd street? A Yes, sir, and that is why the policeman happened to be there.

Q Did you give any description to the officer of the men who had robbed you? A Yes.

Q Did you ever go to the police station house? A No, my father went.

BY MR. AARONSTEIN:

Q You say that one of the men punched you. This man put his hand into your left pocket; is that right?

THE COURT: Yes, he said that four times. I would not go over the same grounds.

A Yes.

Q What did you do when the man punched you? A I got that punch on my stomach; it took my breath away and I fell on the stairs and I remained there fully two minutes before I went upstairs.

Q When did you look at this defendant before or after

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Q When did you look at this defendant before or after you were punched? A I saw him when he was ahead of me, when he was walking ahead of me on the stairs.

Q He was walking ahead of you on the stairs, or did he come up after you had got to the middle of the stairs? A No, he came afterwards behind me.

Q He came up afterwards behind you? A Yes.

Q Then you saw him as he was coming behind you, is that right? A When the other man seized my arms from behind I was facing these men who were behind me, these defendants -- the men who had been behind me before that.

Q And you saw him as he was coming up the stairs? A Yes.

Q And how near to you was he when he put his hand in your pocket? I mean how near was his head or his face? A About two steps.

Q Two steps under you, is that right? A Two steps.

Q Two steps below you? A Yes, below me (witness pointing at the two steps in front of the witness chair).

Q What did you do? Did you holler or did you make any noise, or what did you do after you were punched? A I couldn't shout because my mind was taken out with that punch.

Q Did you make any noise when you were grabbed by the men behind you? A I had no wind because I was struck immediately. I was injured.

Q Now, where did these men go after, as you claim they

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had stolen this money and punched you and seized you? A They ran away.

Q Where did they run? A How can I see? I was inside laying down; how could I see.

Q Where did they go --- over you as you were lying there, or run up to the roof, or stood there and waited? A No, they came downstairs and went back again the same way as they came.

Q And you simply were there, is that right? A yes.

Q Didn't make any noise? A No.

Q Did you run after them?

THE COURT: Oh, do not ask him that. The man says the wind was knocked out of him, he was stunned and he fell and remained there two minutes on that account. Now, do not go off and ask him all those things.

MR. AARONSTEIN: Well, I can ask if he ran after them.

THE COURT: Of course you can, but what good does it do? Now, just ask him.

Q Did you run after them, or did you go to the house?

What did you do afterwards? A I went straight up stairs in the shop.

Q Let me take you back from the time you came out of the saloon. What corner of 104th street is that saloon on on Second avenue? A On the right hand side of the uptown side.

Q Which side of the street did you come down to the house on from the saloon?

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Objected to as immaterial. Objection sustained.

MR. AARONSTEIN: I want to find out, did he see three men come there, or ---

THE COURT: He says he never saw anything until he saw the man go in ahead of him. It is wearying when you ask things that have nothing to do with the case, but go ahead.

MR. AARONSTEIN: I think they have some bearing.

Q Which side of the street did you come from -- on the same side your house is on, or the other side of the street? A The same side where my shop is.

Q Did you see anybody at the entrance to the shop at that time when you came there? A Only one that was in front of me that went upstairs.

Q Is that the same man that you say asked you the question that you saw there?

THE COURT: Yes, he said that, you know.

A Yes, that is the man that seized me from behind.

Q After this occurred you went upstairs and you saw your father, is that right? A Yes.

Q What is your father's name? A Guitano Bendolino.

Q Then what did your father do? A He ran out to see whether he could find out who these people were.

Q You said in answer to his Honor's question that you went around to 103rd street. Did you go with your father there?

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A Yes.

Q And who was the policeman you met at 103rd street? A He is right here in court.

Q Was he a policeman or was he a detective in plain clothes? A A detective.

Q Where did he come from? Was he brought from the station house?

THE COURT: How would he know.

MR. AARONSTEIN: Well, if he knew.

THE COURT: And what difference does it make?

MR. AARONSTEIN: I want to know how he got to 103rd street.

THE COURT: Do not ask a question that cannot benefit your client. It cannot hurt him but it cannot benefit him. He said his father went for the policeman, that the policeman came and he and his father and the policeman went to 103rd street, where they heard some citizen say that these robbers had run into the house, and that is the reason they went there.

Q Did you find anything in 103rd street -- any of the men that held you up, as you claim? A No.

Q When was the first time that you heard that this man (indicating defendant) was arrested for this crime? A My brother has been also arrested in this case, and as I went to

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court to look out for my brother's interests I looked at the line, and I picked out this man.

BY THE COURT:

Q Your brother was arrested on the charge of robbing you? A Yes.

Q Is your brother in court? A No.

Q Was your brother one of the men that robbed you? A My brother was placed under arrest because he had a concealed weapon, to wit, a revolver in his possession.

Q Was the charge made against your brother that he had robbed you? A My brother went after the defendant --- to try and find any of these defendants, to shoot them, and he had the revolver, and that is the reason he was arrested, for having the revolver.

BY MR. AARONSTEIN:

Q And that is how you say you came to the 121st street police court --- to see your brother, is that right? A Yes, sir.

Q Didn't the detectives tell you that this man had been arrested with a pawn ticket, and you should come up and see if he was one of the men? A No, I didn't know the police.

BY THE COURT:

Q What police? A That placed these people under arrest.

BY MR. AARONSTEIN:

Q You were simply sitting in the court, or did you go in to see your brother in the prison? A I was there trying to

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hail my brother out. At that moment the captain says, "Will you come here a moment and look at this line, and see if you see any one that robbed you."

How did the captain know that you had been robbed?

A Because I had made a declaration that evening, the evening before.

BY THE COURT:

Q To whom? A At the station house at 114th Street.

Q At the station house did you give a description of the man that had robbed you? A Yes.

BY MR. AARONSTEIN:

Q Whom did you give the description to at the station house? A To the captain.

Q Which captain? Do you know his name, or can you describe him? A I don't know him.

Q Tell us how he looks? A He is tall. I didn't pay attention to his face.

Q Can you describe how he looked? Does he wear glasses, or has he a mustache? A I made my declaration and I didn't pay attention ---

Objected to. Objection sustained.

Q Who was the man that you gave this description to at the police station?

MR. STYKER: He said to the captain. I object to going into these side matters.

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THE COURT: He was the man at the desk that particular day.

MR. AARONSTEIN: I was at the station house last night. I saw the desk-sergeant --- whoever he said --- and he said there was no description. I had a subpoena for them. There was no description given to them at that time.

MR. STYKER: I object to the testimony given by counsel.

MR. AARONSTEIN: Well, I will back that up by producing the blotter.

MR. STYKER: All right, only don't talk about it before hand.

THE COURT: Well, begin from the 4th of March and run down. It was either made on the 4th or 5th, and that will determine it. The man at the desk, whoever he was on the 4th or 5th of March.

Q Did you make a statement describing exactly who were the men who you say robbed you? A Yes.

Q Were you at the station house that night yourself, or did you go there with somebody else? A Alone.

THE COURT: Is the officer to whom the defendant made a statement --- if he did, giving description of the men -- is he present?

(OFFICER Cassetti arises in the court room.)

THE COURT: (Addressing Mr. Aaronstein) It is now two

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minutes of one. You can withdraw this witness now and have the officer put upon the stand immediately, before we adjourn, so that there won't be any possibility of any communication, and you will have the statement of the officer immediately. That is merely for your benefit.

MR. AARONSTEIN: I trust the officer.

THE COURT: Because then you won't have any trouble about any police scheme, and I merely suggest it to you.

MR. AARONSTEIN: A month already has intervened, so they might have seen each other.

THE COURT: You need not do it, if you don't want to, but here is a way so that there will be no opportunity of this man communicating with the officer or anybody in the police department. You can put the officer on the stand right now. I give you the opportunity of withdrawing this witness and putting the officer immediately on the stand, so that there cannot be any communication.

MR. STRYKER: I request that that be done.

MR. AARONSTEIN: They have had a month to communicate. I do not say they did; I don't know anything about it.

THE COURT: It is merely for your benefit, and if you do not want it you need not do it.

MR. AARONSTEIN: That is the People's case; I cannot call him.

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THE COURT: Withdraw the witness. Officer, come up here.

(Witness withdrawn temporarily.)

J O H N C A S S E T T I (Detective Bureau), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

EXAMINED BY THE COURT:

Q Did the complaining witness in this case make any statement to you, giving a description of the man? A Yes, sir.

Q And did you make a note of it at the time? A Yes, sir.

Q Well, have you any memorandum with you? A No, sir.

Q Where did he make that statement to you? A The station house, 104th street, 39th Precinct.

Q Anybody present besides yourself? A Two or three others --- I don't remember who they were.

Q Were you assigned to the case? A Myself and my partner Joseph Deguida.

Q Who assigned you? A Well, we take our turn.

Q The case comes in --- A Yes, sir, we take our turn as the case comes in the precinct.

Q They parcel them out to you in regular order? A Yes.

Q And this fell to your lot? A Yes, sir.

Q This case? A Yes, sir.

Q Did you hear the complaining witness when he made his statement of the alleged robbery? A Yes, sir.

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Q Did you interrogate him and ask him all about it? A Yes, sir.

Q Did he describe the men to you? A Yes, sir.

THE COURT: You can go right on with him now or not, to suit yourself.

MR. AARONSTEIN: I would rather adjourn. I will trust the officer. I have faith in him.

THE COURT: Very well. Step down. It is now two minutes after one, and we will have to suspend for luncheon until 2 p. m.

(The court now duly admonishes the jury as usual, not to talk about the case among themselves, or with any one else, nor to form or express an opinion thereon until the case is finally submitted to them.)

THE COURT: The defendant's counsel in this case is given entire liberty of action, and he may go and come as he wishes until the final determining of the case.

MR. AARONSTEIN: Will your Honor also put on the record that I beg to apologize for my conduct. This is the first time I ever tried a criminal case, and I was carried away by my sentiments. In fact, I was a little unnerved by the conduct of the complaining witness in the way he answered. This is the first time I have been here.

THE COURT: Well, we will take that up later.

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(RECESS until 2 p. m.)

After Recess, Trial Resumed.

JAMES BENDOLINO, resumes the stand and further testifies.

CROSS EXAMINATION BY MR. AARONSTEIN: (Continued)

Q You testified before that one man grabbed you from the back and held your hands. Did you ever at the police court, or at any other place, make a statement different from that to which you testified on the stand this morning?

MR. STRYKER: I object to that as improper?

THE COURT: Yes, it is too indefinite.

Q Look at this paper and tell me whether this is your signature and if you swore to this before Magistrate Krotel?

BY THE COURT:

Q Is that your signature? A Yes.

BY MR. AARONSTEIN:

Q (Addressing Interpreter) Now, read to the witness, if he cannot read English, that deposition.

MR. STRYKER: Call his attention to some specific thing.

Q Did you in your written complaint before the City Magistrate state as follows, this written portion, commencing at "Alfonso", down to the third line from the bottom, as fol-

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lows: "Alfonso Sanfarato, now here, acting together and in concert with two others, not arrested, under the circumstances following, to wit, on Saturday, at about the hour" ---

THE COURT: Are you reading the whole description?

MR. AARONSTEIN: No, only the portion I want. "At 6:30, as deponent was passing in the building 248 East 104th street, he was accosted by defendant and said others; that two of said parties seized deponent by the arms from behind and held deponent while the defendant rifled deponent's pocket."

BY MR. AARONSTEIN:

Q Which is the truth, the statement made then, or the statement made here to-day on the stand?

MR. SPYKER: I object to that.

BY THE COURT:

Q Did you state to the committing magistrate that two men seized you from behind? A I told them that one seized me from behind my arms, and the other two came from the front.

BY MR. AARONSTEIN:

Q Then the statement in this affidavit is not true, is it? A I signed it, but I cannot read nor write, and I don't know what it says in the affidavit.

Q Did you tell the officer who drew this affidavit what happened that night? A Yes.

THE COURT: A police court clerk drew the affidavit.

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Q Did you tell the police court clerk, who drew this affidavit for you, what happened that evening? A Yes.

Q And you mean to say that the affidavit as set forth in these papers and written out by the clerk is not true?

A That I don't know, because I can't read nor write; I can only write my name.

Q Is it true that two men took you from behind or is it true that one man grabbed you from behind; which is true? A One seized hold of my arms behind, and two came from front.

MR. AARONSTEIN: I offer this affidavit in evidence.

MR. SILVERMAN: Consented to.

(Received in evidence and marked Defendant's Exhibit A.)

Q You say you had \$92 with you. What did that money consist of? A One fifty dollar bill, four ten dollar bills, two single dollar bills.

Q How long before that did you have the money in your possession? A The same day that I exchanged a check for that amount I placed the money in my pocket.

Q Where did you change the check. Whose check was it? A Silverman; I have got the card here.

Q Where did you change the check, what bank? A 14th street and Fifth avenue.

Q The Security bank, you mean? A I don't know, but I know it is the boss's check, and I changed it there.

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Q. At the police court you say you went in to see the clerk and you say you drew the affidavit upon which this man was held, is that right?

MR. STEYLER: I object to that. This man did not draw anything.

MR. AARONSTEIN: Question withdrawn.

Q. Did anybody tell you that this defendant was to be arraigned in the police court at the afternoon of the time when you were there? A. Simply I was there because my brother was there and I went to bail him out. When I was there the captain says "Pick out the man that robbed you", and when I picked him out then I made a complaint.

Q. How did the captain know that you had been robbed?
A. Because I made the declaration to him.

Q. You told the captain in the police court? A. Yes.

Q. Then what did the captain do? A. I told you then that he told me "Look at these people and see if you can pick out the robber".

Q. Describe the other people who were there in the line at that time? A. I didn't pay attention how those men looked. All I know is how these defendants looked, and I picked him out.

Q. Did you look at the way how some of these fellows were dressed that were in line with you? A. I was not an inspector of dresses.

Q. Did you see how those fellows faces looked? A. And I

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am not a photographer.

Q Did you examine any of those fellows to see what kind of eyes they had? A I am not an examiner of eyesight.

THE COURT: (Addressing Interpreter) Tell him to answer those questions directly. Witness, answer every question directly.

A I don't know.

Q You didn't pay any attention to how those fellows looked, did you? A No, because I was only just a short time when I picked out the defendant.

Q Did you look at the other people before you picked out the defendant? A No, because they did not interest me.

Q You simply went right over and picked out the defendant, is that what you want us to believe? A Yes, that is the only one I picked out.

Q And that was the first time after the occurrence of the night of March 14th that you had seen the defendant, is that right? A Yes.

Q And then you want the jury to understand and to believe that in all your excitement, and not withstanding that you had been punched and knocked breathless in that hallway, where the light was at the top of the stairs --- you want the jury to believe that you were able to fix the face, the countenance of this defendant in your mind so as to be able to identify him on the next day; is that right?

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MR. STRYKER: I object to that question as highly improper in its form, in every particular.

THE COURT: You assume too much in the question. Why not put it to him this way?

BY THE COURT:

Q You state that you positively identified this defendant, notwithstanding the circumstances of the alleged robbery as you have detailed it.

THE COURT: Now, the jury will have to remember that you have got in a lot of things about the lighting of the head of the stairs and he said it is at the side. It is not necessary to recite all those things; you are apt to make mistakes. And the objection is well taken. Notwithstanding the fact you have testified to, it being 6:30 in the evening of that day, and you being on the stairs, you still positively identify this man as the man that robbed you?

THE WITNESS: Sure, I am sure of it.

BY MR. AARONSTEIN:

Q Since the time of the arrest did you talk with anybody about this case? A No.

Q Nobody at all? A Nobody.

BY THE COURT:

Q Since the arrest have you spoken to the policeman in regard to it? A I did not.

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BY MR. AARONSTEIN:

Q Don't you remember you had a little talk with Detective Cassetti out in the hall last week, after the adjournment of court one day? A No.

Q You never talked to him? A No.

Q Don't you remember that you were out here in the hall and you wanted to go away, and he said, "Stop and wait", and he gave a subpoena to you, and then you had a little talk with him? A No, I went away right away.

Q You never talked to Mr. Cassetti about the case in the court house here last week? A No.

Q Do you remember giving a description to Detective Cassetti or Deguida, either one of them, a description of this defendant, at or about the time of the occurrence of this alleged crime? A No.

BY THE COURT:

Do you know Detective Cassetti? A No.

BY MR. AARONSTEIN:

Q Could you point him out here in court? Look and see if Detective Cassetti is here in court? A I don't know him by face.

Q You mean to say that you never talked to detective Cassetti --- have never seen him or don't know him? A No.

Q Isn't this Officer Cassetti (indicating Officer Cassetti)?

A I don't know.

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Q Wasn't this the gentleman you talked to in the hall last week, about this case? A No.

Q Where was your brother that afternoon or that evening, when this occurred?

MR. STRYKER: I object. We must call a halt somewhere in this cross examination.

THE COURT: Objection sustained. Ask any question in regard to whether this was the man that robbed the defendant.

MR. AARONSTEIN: Haven't I a right to bring out whether he said the brother was after the burglars?

THE COURT: What the brother did after the occurrence I sustain the objection to. He has told you his brother was out with a gun to shoot these.

Q Where was your brother at the time?

Objected to as immaterial. Objection sustained.

RE-DIRECT EXAMINATION BY MR. STRYKER:

Q You came to my office and told me the same story you have told here to-day, did you? A Yes, sir.

Q You came up with Officer Cassetti, with a policeman?

A I know I was with him, but I don't know how his name is.

Q What do you mean by you don't know him? A I don't know what his name is, but I know I went with him to your office.

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RE-CRO'S EXAMINATION BY MR. AARONSTEIN:

Q. You have seen him several times since the arrest, haven't you? A. No, I always work in the shop. I didn't see him.

Q. Did you see him in court here last week on the day the case was on? A. No.

Objected to. Objection overruled.

Q. You did not see the detective Cassetti in court last week, while the case was on the calendar? A. No.

Don't you remember how he looked? A. No.

MR. SWYKER: Stand up, Cassetti.

(Officer Cassetti arises in the court room.)

BY MR. SWYKER:

Q. You saw this man (indicating Officer Cassetti), didn't you come down to court at various times?

(Objected to. Objection sustained.)

Question withdrawn.

Q. You have been down to this court several times, haven't you? A. Yes.

Q. When you were down at this court on the times before to-day when the case was not tried, did you see any other witnesses in the case down here? A. No.

Q. Didn't you see this man standing up down here before?

A. I don't know whether he is a witness, but I have seen him.

Q. You have seen that man when you were down, is that what you mean? A. Yes.

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BY THE COURT:

Q Didn't you know that Officer Cassetti was a witness in this case.

Q Did you know that he was the officer who had charge of arresting the defendant? A No.

MR. STRYKER: He is very, very ignorant.

MR. AARONSTEIN: I object to any remarks on the part of the District Attorney.

J O H N C A S S E T T I, recalled in behalf of the People, testifies as follows:

DIRECT EXAMINATION BY MR. STRYKER:

Q I call your attention to People's Exhibit 1 for identification. Where was the first time that you saw that paper?

A In the hands of the defendant.

Q Where was that? A In the Elk Loan Office, corner of 103rd street and Third avenue.

Q When? A Fifth day of March, 1912.

Q What did you do when you saw the defendant present that? A Put him under arrest.

Q After that what did you do with the defendant? A Took him over to the police station, took his pedigree, on the patrol wagon, and took him up to the Fifth Court, 121st street.

Q Did you see that gentleman there (indicating James A. Kinsley)? A Yes, sir.

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Q Is he a captain of the fifth district City Magistrate's Court squad? A Yes, sir.

Q Did you have what is called a line-up there? A Yes, sir.

Q Conducted under the auspices of the captain of the court squad? A Yes, sir.

Q Explain what was done?

BY MR. AARONSTEIN:

Q Did you take part in that?

BY MR. STARKER:

Q You were present, weren't you?

MR. AARONSTEIN: I object, if not of his own personal knowledge.

THE COURT: Overruled. He said he was present.

Q Tell what you saw when you were present? A I asked the Captain to have a line up, that we had a prisoner in there on suspicion of robbery. I asked him to give a line up, which they generally do in court and he got five or six other young fellows with caps from the pen, and lined them up in the back room, and I said, "Come out, and I will show you the complainant". I pointed the complainant out in court -- he was sitting in the court room; the captain and the complainant come inside, I followed him. He said, "See if there is anybody there that robbed you." He went directly to the defendant and grabbed him, and said "This is the man that robbed me."

Q Did you tell him that that was the defendant? A No, I

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didn't talk to him.

Q Did you talk to the complainant at all, before the defendant was picked out of the line by the complainant? A No, sir.

Q What did you hear this defendant say, if anything, when he came into the pawnshop with this ticket? A He told me that a man was on a car at 106th street and First avenue, and he dropped a pocket book and a pawn ticket. He let the pocket book to a Jewish lady and he kept the ticket. I asked him what kind of a looking man was it -- fat, or big or small -- he said, "How do I know?" I said, "How do you know that the man dropped it? You may have dropped it".

Q Did you find anything else on the defendant? A I found \$22 in cash and three other pawn tickets.

Q Have you that money here? A (Witness produces some bills and hands them to Mr. Stryker).

Q Is that the money you found on the defendant? A Yes, sir.

MR. STRYKER: I offer it in evidence.

MR. ARONSTERN: No objection.

(Received in evidence and marked People's Exhibit 2.)

MR. STRYKER: I also now offer this exhibit for identification, the pawn ticket, in evidence.

(Received in evidence and marked People's Exhibit 1.)

Q Now did you happen to be in that pawnshop? A I was

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talking to the complainant the night of the robbery, and he told me that with the \$92 he had in his pocket book there was a pawn ticket for a gold watch and chain that was pawned on 103rd street and Third avenue the night before the robbery --- the night of the robbery.

Q Did he tell you what was held in the pawnshop on that ticket? A A gold watch and chain, pawned for twenty dollars.

Q Did you find in the pawnshop what this ticket which is now in evidence as People's Exhibit 1 was the evidence of? A A gold watch and chain.

Q You found that, did you? A Pawned for \$20.

Q You found that to be so? A Yes, sir.

Q Did the complainant tell you under what name he had pawned it? A Jim, 9th of December.

Q I call your attention to the date and also to the ticket, and ask you if you find the date and the name Jim thereon? A Yes, sir.

CROSS EXAMINATION BY MR. AARONSTEIN:

Q What else did he tell you on the night that he talked with reference to this case? A He told me that he was robbed while going up with a pint of beer up to his shop.

Q What else? A By three men.

Q What else? A That one man go ahead of him, went up the stairs and asked him about a question about a man that has

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a shop in the same building, and he said after he asked him that the man is up at either the third or the top floor.

Q Coming down to the point of description of the men, did he give you a description? A He did.

Q What was the description that he gave you of this man?

A He described one man to be about five feet eight or eight and a half, with a cap on; and he described another one to me about the same height, and the same weight; and then he describes another man to me with a brown suit and a cap, and something the matter with his left eye.

Q He made all that description to you? A Yes, sir.

Q Did you take down that description? A I did.

Q Have you got that memorandum with you? A No, sir; I lost it.

BY THE COURT:

Q On the same night that he said he was robbed, was any record made in the blotter at the station house? A It is on the detective books that he was robbed --- a report of robbery, then the detectives assigned to the case, they go and investigate it for their own records.

Q That a robbery had taken place? A Yes, sir, a robbery committed at a certain place at a certain time.

Q That is all the record put down of that? A Yes, sir.

Q Then a detective is assigned to it and he gets the full details? A Yes, sir.

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BY MR. AARONSTEIN:

Q Do you remember seeing me at the police station last night? A Yes, sir.

Q You remember the desk sergeant referring me to you? A I know you were talking to me, because I was quite busy last night.

Q You were here in court several days last week? A Yes, sir.

Q Do you remember one occasion standing outside after the case had been passed for the day, when you talked to this complaining witness? A Yes, sir.

Q And you told him to wait for a subpoena, didn't you? A Well, I don't remember exactly what I told him. I know I was talking to him.

Q You said something to him in Italian, didn't you? A I did.

Q As I was standing a short distance away by the post? A I don't remember exactly where I was standing. I was talking to him.

Q You are sure of that? A Yes.

BY THE COURT:

Q Can you tell the substance of what you said? A I don't recollect. I might have said something about the case, but I don't recollect exactly what I said to him.

BY MR. AARONSTEIN:

Q See if you cannot remember if you did not say something

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to the effect that he wouldn't come down, or that he was unwilling to appear, or couldn't identify exactly --- do you remember that? A No, sir.

Q You don't remember what the conversation was at all?

A I didn't have any conversation about identification.

BY THE COURT:

Did the man tell you he had any difficulty in identifying the defendant? A He positively identified him in court, and told me all the way through that he was the proper identification.

Q But the question of counsel, was anything said to you to the complainant out in the hall the other day in regard to identification? A I don't think so.

BY MR. AARONSTEIN:

Q You were in the pawnshop about what time on the 5th of March? A At about five minutes to eight, or eight o'clock in the morning.

When was the defendant arrested, do you remember? A About twenty or twenty-five minutes after eight.

BY THE COURT:

Q In other words, the very first morning after the robbery? A Yes, sir.

Q Did the defendant tell you at what hour of the day or night he found this ticket or a man threw the ticket in a street car? A Yes, sir, he said about seven o'clock.

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Q That morning? A That evening before.

Q He saw a man throw it from a street car? A A man jumped on a car and he dropped a pocket book, and a pawn ticket. He said "I let the pocket book to a Jewish lady, and I took the pawn ticket." And I asked him to describe to me what kind of a man it was, and he could give me no description.

BY MR. AARONSTEIN:

Q In regard to the arrest, if the blotter entry in the police station should show that the arrest was made about 9:15, would that be correct? A 8:55 arraigned at the desk.

Q Or 9:15? A 8:55, maybe the lieutenant made a mistake. I know it was 8:55. I guess it is on this envelope there --- 8:55 a. m.

Q He was arraigned at the desk? A 8:55 a. m.

Q Five minutes to 9? A Yes.

Q Did the pawnbroker tell you he had been there three or four times before that morning? A He was there once before.

Q At least once before? A At least once before. He was trying to get that watch out of pawn.

Q Who told you that? A One of the men. That the boss was not there at the time to open the safe.

Q Who told you that? A One of the clerks. The owner, the pawnbroker himself was not there himself, the safe was closed, that is why he had to come back the second time.

Now, the money that you found in the possession of

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this defendant was the money that is now offered in evidence, is that right? A Yes, sir.

Q You put that in an envelope intact? A Yes, sir.

Q In the same number of bills that you found on that day?

A Yes, sir.

Q Yet you cannot remember whether or not this defendant told you at the time of his arrest that he had been in that pawnshop two or three times previous to the time you arrested him?

A The pawnbroker told me that he was there once.

Q Was he there at the time this conversation was had?

A He told me before he came in.

Q What did the defendant say to you when he was arrested?

A He told me "I was there once before trying to get this watch out."

Q That is all he said, only once? A Yes.

Q Who did he say the money belonged to? A To one of his friends.

Q Did he give you his name? A I don't know whether he did or not. I don't recollect.

Q He told you the money belonged to a friend of his? A Belonged to a friend of his.

Q Did he tell you how he got it? A To get that watch out.

Q From a friend of his? A Yes.

Q That watch was pawned for twenty dollars, wasn't it?

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A Twenty dollars.

Q And there was a little interest, so \$22⁰⁰ would cover it, is that right? A I suppose so.

MR. STUYVER: Of course the officer doesn't know what the interest was. It doesn't make any difference any way.

Q Coming back to the line-up at the court house, did you take part in that proceeding? A No, sir.

Q Who took care of that? A The captain of the court.

Q Where were you standing at that time? A Near the door.

Q Where? A Near the door entering that room where the line-up was held.

Q Where was the line-up held, in what room? A In a back room; there is a back room.

Q That is also by the pen? A Yes, sir, right next to the pen.

Q Did you see the other fellows that he lined up with this defendant? A Yes, sir, four or five --- there were five or six more.

Q Give me a little description, tell me how they looked generally? A Oh, young men, about twenty or twenty-one years old --- eighteen -- caps.

Q Were they Jews, Italians, Irish, or what? A I don't know what they were. I didn't ask them.

Q Did you look up and see -- look at them to see if they

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looked nearly like the defendant? A They were all about the same age and about the same height.

Q You weren't particular to see that he was lined up against six or seven Italians, were you?

MR. STRYKER: I object. He said once that the captain did it, and this man had nothing to do with it. Why go into it ten times?

JAMES A. KINSLEY, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. STRYKER:

Q What is your address? A 278 Alexander avenue.

Q What is your business? A Captain of the court attendants Fifth District Court, First Division, City of New York.

Q Was that your business on the 5th day of March, this year? A Yes, sir.

Do you remember that day? A I do.

Q Do you remember seeing this defendant there? A I do.

Q Do you remember seeing Detective Cassetti there? A I do.

Q Do you remember seeing this complainant there? A I do.

What did you do in connection with that line up that happened? A I was sitting in the complaint room at the time

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when Detective Cassetti came to me and said he had a prisoner and he would like to have a line up. I went over to the detention pens to see the defendant, to see whether or not I could pick out some one who looked something like the defendant; I looked in the pen, and I found about seven other prisoners, all more or less of the same age, young men, wearing caps.

Q The defendant had a cap too, had he? A Yes; and they looked somewhat similar. I took those men from the detention pen, and took them into a rear room, and lined them up on the rear room, and told the defendant to select his own place in the line. I instructed him three different times to select his own place. After I had them properly arranged I went out and called Detective Cassetti, and told him to point me out the complainant, sitting in the court room.

Q The complainant was not there when you were fixing the line-up? A No, he was not. Detective Cassetti took me to the door leading to the court room, and pointed out the complainant in the audience. I then went over to the rail and called the complainant aside. I took him into the rear room, and at the entrance to that room instructed him to go in, look each man over very carefully, take his time and go slowly, and if there was any one there that he recognized to step forward and put his hand on him.

Q What did the complainant do then? A The complainant glanced over the number and deliberately walked over and put

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his hand on the shoulder of the defendant.

CROSS EXAMINATION BY MR. AARONSTEIN:

Q Detective Cassetti was the one who brought the defendant in to you, was he not? A No.

Q I mean the complainant? A He told me he was sitting in the audience -- pointed him out to me in the audience.

Q And you didn't know before that that the complainant was there, did you? A I did not.

Q Did you put this man amongst a line-up of Italians, as he is? A Well, I don't know just what nationality they were. I didn't pay particular attention to that. But I noticed that they did look more or less alike.

BY THE COURT:

Q Do you think this man looks like an Italian -- the defendant? A Why, no, I don't think he does.

Q In other words, would that be your best guess, if you were not told that he was an Italian? A No, I don't think I would.

BY MR. AARONSTEIN:

Q Did you know what the Italian's name was at that time, this defendant? A I did not.

Q You didn't know anything at all about the case? A I didn't know anything about the case, excepting that I was requested to have the line up.

Q Would you give us some description of the way the other

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fellows looked -- the dress, the appearance, the faces? A Well, none of them were well dressed -- they were all more or less roughly dressed.

Q Give me some little description? A The height was one item that I took notice of, the general build of the man, the age.

BY THE COURT:

Q Were they of the usual kind of those young men of that age, that you find coming up in the City Magistrate's Court?

A Yes, sir.

Q Just about the same thing? A Yes, sir, just about the same thing.

Q The same general kind that we get here in the mill -- day after day? A Yes, sir, your Honor.

BY MR. AARONSTEIN:

Q Did you bring with you or make any memorandum as to the names of those people who were there on that day?

MR. STRYKER: I object to that because the question is ridiculous on its face.

Q When were you subpoenaed here as a witness? A This morning.

Q That was the first time on this trial, is that right? A The first time.

Q Who told you to come here? A Some one telephoned me.

Q Who? A Who it was I don't know. I was simply told that

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District Attorney Stryker requested me to come to this court.

Q. You had not been subpoenaed before? A. I had not.

Q. Weren't you told that the question of identification would be the question in this case? A. I was told nothing about it.

Q. Did you know what you were brought down as a witness for? A. Not until I arrived here.

Q. You thought, didn't you, it was probably because of the fact that you acted at the time this defendant is alleged to have been identified? A. I had absolutely no knowledge of the case whatsoever until I arrived at this court.

Q. You didn't think it was important to take with you a transcript or record of some of the defendants who had been arraigned that day? A. We have no such records.

RE-DIRECT EXAMINATION BY MR. STRYKER:

Q. One of our process servers at my instance telephoned --

THE COURT: I couldn't go into that.

MR. STRYKER: Question withdrawn. The People will rest, - but I want your Honor's advice on one point. In the interest of saving time I am not calling the other officer because his testimony, in so far as it is pertinent to the case, is purely corroborative. I will ask him to remain in court.

THE COURT: No, you had better put him on the stand.

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right off.

V I N C E N T D e G U I D A, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 493 Carlton avenue, Brooklyn.

Q You, as well as officer Cassetti, are members of the Municipal Police Force? A Yes, sir.

Q Were you present at this line-up in the Magistrate's Court? A Yes, sir.

Q Tell what you saw? A I saw Officer Cassetti bring in the defendant, and he instructed the captain of the court attendants to bring in several of the men that resembled the defendant and lined them up, that we had a prisoner charged by the complainant with assault and robbery and we wanted to have the complainant pick him out of he could. And I saw the captain bring in several prisoners out of the pen and line them up, and told the defendant to take any place that he wanted to stand, and he did; and then they brought the complainant in, and I heard Officer Cassetti speak to him in Italian. He said, "You look over these men, and if you see the man that robbed you, put your hand on him." He just walked in the room, glanced over them and walked right over to the defendant, and picked him out as the man that robbed him.

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Q Do you know anything about the case? Did you have anything to do with the preliminary investigation or the arrest? A I was there when the complainant made his complaint at the station house.

Q You heard the description given of the defendant at that time? A Yes, sir, I have it here in my book. The complainant was quite excited. He said he was not sure of their clothes, that he gave me the best he could, but he was sure he would know them again if he saw them. He described one man as about twenty-one years old, five feet seven, one hundred and forty pounds, smooth face, pale looking, blue suit and a cap. The second about eighteen years, five feet five, one hundred and twenty pounds, smooth face, wore a cap, couldn't state the clothing he wore. The third, about eighteen, five feet five, about one hundred and twenty-five pounds, smooth face and wore a cap.

Q What, if anything, about any physical characteristics? Do you remember anything about that? A No, I have not.

Q You only made a rough, general entry, I suppose of the occurrence? A He spoke to me, and he spoke to Officer Cassetti he was excited, and as I say, I had to give him a drink of water twice, but he said he was sure he would know them again if he saw them.

CROSS EXAMINATION BY MR. AARONSTEIN:

Q That is the only description he gave to you, that which

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you have just read? A Yes, sir.

Q Was there anything else said by Detective Cassetti when he spoke Italian to the complainant, except that he should pick out the defendant if he could find him? A That's all he said to him, yes.

Q You saw the line-up, didn't you, you say? A Yes, sir.

Q They all looked alike, didn't they? A Well, they were young men, eighteen or twenty-one; they wore caps.

Q Just answer my question yes or no. They all looked alike, did they? A No, they did not. There were two or three of them taller than the defendant, and two or three about his size.

Q But in appearance of the face? A Well, one or two was stocky build, and the others were a little taller, and slimmer build.

Q The marks on the face -- were they clean shaven? A I don't remember any marks.

Q Did you take a good observation of all those fellows that were on the line? A No, I did not.

THE PEOPLE REST.

MR. AARONSTEIN: I move to dismiss on the ground that the People have failed to make out a case.

Motion denied. Exception.

MR. AARONSTEIN: I would ask that the District Attor-

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ney be required to elect as to whether he is going to prosecute on the charge of robbery or on any of the subsequent charges, for this reason: In the first three counts the property is alleged to be that of the complaining witness, and the plea in the last count, if I am not mistaken, is that the property is alleged to be the property of the complaining witness and his brother.

MR. STAYNER: It is the most familiar practice to charge in two counts that the property was the property of A, and in the second count that it was the property of B. That is familiar commonlaw pleading --- it is done in almost every case.

Motion denied. Exception.

MR. AARONSTEIN: I ask your Honor to acquit the defendant on the ground that it appears no crime was committed by this defendant, if the crime alleged in the indictment was committed.

Motion denied. Exception.

A L F O N S O S A N T A R A T O, the defendant herein, called in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. AARONSTEIN:

Q Where do you live? A 206 East 105th Street.

Q You are the defendant in the case? A Yes, sir.

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Q Will you tell me when was the first time you saw the complaining witness who was on the stand before? A Up in court 121st street, Magistrate's Court, 121st street.

Q That is the first time you ever saw him? A Yes, sir, the first time.

Q Were you on the 4th of March, at 6:30 p. m., or thereabouts, in the premises 248 104th street? A No, sir.

Q Were you in any way connected with a hold-up or robbery at that time, on that day? A No, sir.

Q Were you there with anybody else? A No, sir.

Q Will you please tell in narrative form, say beginning at about nine o'clock on the day, March 4th, what you did and where you were? A Well, I was in the place where I worked.

Q Where? A Mr. Varalla, 2051 First avenue; it is a restaurant and saloon.

Q Near what street? A 106th street.

Q What side of the street? A Northwest corner.

Q That is a wholesale liquor place? A Yes, sir.

Q Saloon and restaurant? A Saloon and restaurant down stairs.

Q Where is the saloon? A Upstairs.

Q On the ground floor? A On the ground floor.

Q Where is the restaurant? A Downstairs.

Q In what capacity were you employed there? A As a porter, and taking out orders.

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Q How long have you worked for Mr. Michael Varalla, the owner of that place? A About five months.

Q Before that where did you work? A With James Varalla in the willow plume business.

Q Where? A 25 East 106th street.

Q For how many years did you work for him? A Three years.

Q In what capacity? A Taking out orders, feathers, downtown and cleaning up the store.

Q Did you work before that? A Yes, sir.

Q Where? A In the tailor business.

Q With whom? A Mr. Baratta, on the west side in 82nd street.

Q Coming to the 4th of March, 1912, will you tell where you were and what you did from 9 o'clock in the morning till 9 o'clock that night; tell us continuously everything that you did, that you can remember? A At 9 o'clock in the morning I was in the place.

Q What place? A Mr. Varalla's place. That is how I went in there, and I stood in there until the afternoon, until half past four.

Q What did you do then? A Well, I went up and take an order up in the drug store up in 121st street.

Q What did you deliver there? A I went to take an order that was sent there along time before I worked with him.

Q What do you mean, you went to take an order, or take

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some stuff? A I went to take --- there was some bottles brought there and this man who bought the place out had bottles and didn't know anything about it, so the man that had the drug store first didn't pay for the stuff and Mr. Varalla sent me there to get these bottles.

Q Did you go alone? A Yes, sir, with a push cart.

Q You were alone? A Yes, sir, and I wheeled the push cart.

Q Where is that place that you speak of? A 121st street.

Q A drug store. A First avenue, yes, sir.

Q What did you take back from that place? A Well, supposed to be twelve bottles, but I only got eight.

Q Were they full bottles? A Full bottles.

Q Of some liquor? A Some liquor.

Q What did you do with those bottles? A I took them back to the place.

Q What did you do with the push cart? Did you go out again or stay there? A No, sir, I stood there until half past seven.

Q What did you do around the place during that period of time? A I stood in the restaurant downstairs.

Q What time did you come back from the drug store? A Five o'clock.

Q And after five o'clock where were you? What did you do?
A Well, I always stood in the place until half past seven when I found the pawn ticket.

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Q What did you do in the place? Did you do anything?

A No, sir, sitting down. If I had an order to take out -- but I didn't have any that day.

Q You didn't have anything to do except sit around?

A That's all.

Q Where were you sitting? A In the restaurant.

Q And did you go out after that? A Well, it was half past seven, and I was supposed to be off at seven, so at half past seven I went out and wanted to buy a stamp across the street, in the drug store, and going over I found a pawn ticket.

Q Where across the street is that drug store? A Well, on the southeast corner --- not exactly on the corner but away from the corner, next door.

Q In other words, is it on the same side of the street, the north side? A It is on the southeast corner, going down, away from the corner.

Q On First avenue? A On First avenue.

Q Is there a drug store there? A Yes, sir.

Q And you went there? A I went there.

Q State what you did and what happened? A Well, as I went over to get a stamp I found the pawn ticket, and coming back I went downstairs.

Q Where did you find the pawn ticket? A In the car track, on the uptown side.

Q Describe the place on that car track. Was it nearer the uptown side of 106th street or the downtown side of 106th?

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street where you found this? A Right on the uptown, in the track.

Q But I mean with reference to 106th street, was it near the drug store as you crossed over? A Near the drug store.

Q It was nearer the drug store? A Yes, sir.

Q On the north track? A Yes, sir. No, sir, on the north track.

Q Well, you found what? A Pawn ticket.

Q Is that the pawn ticket that you found (indicating People's Exhibit 1)? A Yes, sir, that is the pawn ticket.

BY THE COURT:

Q Did you find anything else with the pawn ticket at that time? A I only found the pawn ticket.

Q Did you pick up a pocket book? A No, sir.

Q You didn't tell the officer that you picked up a pocket book and gave it to a Jewish lady? A I did not.

BY MR. AARONSTEIN:

Q What did you do after you found that pawn ticket? A I went downstairs in the restaurant and I showed it to Mr. Varalla. I told him I would like to get some money lent in the morning to go and look at this stuff.

BY THE COURT:

Q Varalla was your employer; you showed the ticket to your Employer Varalla, and you told him you would like to go and get the money to take that out? A Yes, sir.

Q Had Varalla ever seen the watch that was called for by that? A No, sir.

Q Did he let you have the money? A I was working for him and told him I would pay him little by little, to lend me \$22.

Q And he had never seen the watch? A I never saw it.

Q Neither you nor he? A No, sir.

Q But he gave you the \$22? A He gave me the \$22.

Q To take the watch out? A Yes, sir.

Q Had you any money yourself? A No, sir.

Q And you were investing in a \$22 watch and you hadn't any money at all? A Well, there might be a little more.

Q What salary were you getting there from Varalla? A \$5 a week and board.

BY MR. AARONSTEIN:

Q What time was it that you came back to the restaurant and showed this pawn ticket? A I didn't even stay out five minutes. Twenty-five minutes to eight I came back.

Q And you saw Mr. Varalla? A Yes, sir.

Q And you showed him the ticket? A The ticket.

Q What did you tell him as to where you had got the ticket? A I told him I found it in the car track.

Q And what did you do after that, after you had shown the ticket to Varalla, where did you go, what did you do? A I stood in the restaurant downstairs until half past eight.

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Q And where did you go then? A Half past eight I went out.

Q Where? A I went out to take my shirt over to the laundry.

Q What did you do? A Well, I went to take my shirt, and I brought it over to the house, and I left my shirt there, and I came back to Mr. Varalla's place.

Q Where did you go after that? A No place.

Q What time did you go home and go to bed that night?

A I went home with Mr. Varalla at the same time, twelve o'clock, when he closed up.

Q Where did you go in the morning? The following morning what did you do where did you go? A Went over to look at the watch and chain.

Q In the pawnshop in 103rd street.

Q What time was that about? A It was eight o'clock.

I went in there with the ticket, and he says to me, "You can't look at it." He said, "Come in in about twenty minutes or a half an hour." Well, I went out and I went to the place and I went back there at twenty minutes I went in again, that was the second time, and he says to me, "Come in again."; he says "I can't let you look at it." Well, I didn't ask him no questions or nothing at all, and I went in there about eight fifty or eight fifty-five. I went in there.

Q That was the third time you were in there? A That was

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"the third time I went there and I put the ticket on the counter-- I put the ticket on the counter, there was somebody else alongside of me getting some --- taking some stuff out of pawn.

Q Who else was in the place? A The detective was on the side, and he didn't know me when I went inside, and the man said, "Here is the man you are looking for." That was the pawnbroker. He said, "This is your man." Because when I went in there with the ticket I showed him I lived there and he didn't say nothing, he just said to the detective, "This is the man you want."

Q Had you seen this detective before? A I seen him around the neighborhood where I worked.

Q He had always been stationed around there for some time? A Yes, sir.

Q You know his face pretty well, don't you? A I do.

Q Did you see him before you came in the place the third time? A Yes, sir.

BY THE COURT:

Q You say the detective is stationed around where you work? Think that over again. A I seen the detective around the neighborhood; that is, where I work; I see him passing up and down with other detectives.

Q How did you know he was a detective? A Well, I see him searching people.

BY MR. AARONSTEIN: Q Had you seen him that morning before

you went into the pawnshop? A Yes, sir.

Q When was that? A Not even about three minutes before I was in the pawnshop.

Q Which time, first, second or third time? A Third time.

Q The last time you were in there? A Yes, sir.

Q Where did you see him then? A Right on the corner of the pawnshop.

Q 103rd street and Third avenue? A Third avenue, yes, sir.

Q That pawnshop is on the corner there, isn't it? A Yes, sir, he was standing there.

Q You saw him standing there? A Yes, sir.

Q What did you see him do then? A Well, I saw him talking with two men; as I was one side going to them two men went away and Mr. Cassetti went in the pawn office.

Q Then you came in a little while after? A I went in right after him.

Q And you presented the ticket to the pawnbroker and the officer arrested you? A Yes, sir.

Q What happened to you then? A Well, then he brought me up to 104th street, and from there he brought me up to 121st street. So he says to me, he says, "Well, I don't know if you did it, but we will bring you up there to see if the man claims that you done it." Well, he brought me up there and he told me he was going to put me between fifteen fellows for this man to pick me out. Well, as he brought me up there he put me in a

small room and he left me in there all alone for fifteen or twenty minutes, and then he come back, made me get in the line --- he said "Take any place you want". And so he went out and this man came in and he started to look and he looked at me, and he picked me out. I never saw this man before.

Q Were you in any way interested or implicated, or did you do anything to rob this complaining witness? A No, sir.

Q Where did you get that \$22 from? A From Varalla.

Q He lent it to you? A Yes, sir.

Q Was the money in the same shape and form as the money there now is (People's Exhibit 2)? A Well, I don't know. What do you mean, in bills?

Q Yes. A Yes, those are the same.

BY THE COURT:

Q Where were you at 6:30, between six and seven o'clock on the evening of March 4th? A I was in the place in the restaurant.

Q Between six and seven o'clock? A Yes, sir, where I worked.

Q Hadn't you gotten off your job at 4:30? A No, at 4:30 went out to take an order.

Q But you were working in the restaurant? A Downstairs, yes, sir.

Q Who saw you working there? A The cook, of course of the restaurant.

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Q The cook saw you there? A Saw me in the restaurant.

Q Did your boss see you there, Varalla? A Yes, sir, he saw me at six and seven o'clock.

Q Between six and seven o'clock? A Yes, sir.

Q Is he in court? A Yes, sir.

Q Well, now, let me ask you this: You had possession of that pawn ticket, which was part of the proceeds of a robbery, according to the complaining witness, and you had \$22. Now, the complaining witness says he was robbed of \$92 in large bills and the pawn ticket by three men. You testify that it is not a fact that the pawn ticket and \$22 fell to your share of this job, and the others took the balance of the plunder? A No, sir, I found the pawn ticket.

Q The People charge that you must have divided up the money and that you took at least \$22 for your share, together with the pawn ticket? A No, sir, I don't know nothing about the robbery.

THE COURT: Of course, those bills being large bills, they were evidently divided up --- of course not saying that this defendant did it --- but they must have divided up the bills and divided the plunder.

MR. AARONSTEIN: I think that ought to be a question for the jury.

THE COURT: Oh, yes, it is a question for the jury.

BY MR. AARONSTEIN: Q Under oath here, do you absolutely

swear that you were not near those premises and never saw this complaining witness before the day that you were picked out?

A. I swear.

CROSS EXAMINATION BY MR. STRYKER:

Q Did that pawn ticket belong to you? A No, sir, I found it.

Q The watch and chain held in that pawn shop, on that ticket did it belong to you? A No, sir.

Q What made you think then, that you would have the right to redeem that watch and chain? A I found it, and I was going to go in, and if it was there ---

Q Did you think that the mere fact that you found the ticket gave you title to the property held by the ticket? Is that what you thought? A No, I just went in, that's all and if he stopped ---

Q In other words, you knew that the property in that pawn shop on that pawn ticket was not your property, and that you had no right to it, isn't that a fact? A I didn't think of it.

MR. AARONSTEIN: I object. This is a question of law.

Q You didn't think about that at all? A No, sir. I just went in and I put the ticket there and he didn't give me a chance to talk. If it was lost it was lost ---

Q Did it occur you to take this property as lost property to the police station or post office, or any other place and

advertise that you had found such property?

Objected to.

A I don't understand.

Q Where were you at exactly 6:30 that afternoon? A The night of the robbery?

Q Yes, the night of the robbery? A In my boss's place.

Q What robbery do you speak of? A Well, that afternoon -- you don't explain to me.

Q You said the night of the robbery, what robbery do you mean? A Well, of course, what you ask me you don't explain.

Q No, but the night of the robbery --- what robbery are you talking about? A You didn't give me a chance to explain.

Q Well, I am giving you all the chance in the world to explain.

THE COURT: Put another question.

Q You get \$5 a week? A Yes, sir.

Q And your board? A And board.

Q And you came in with this ticket and showed it to your employer? A Yes, sir.

Q And after you showed it to him he let you have how much money? A I asked him, I said, "Lend me \$22", I said, "You can take it off my salary."

Q Why did you take \$22? A Well, that is all I thought of, \$22.

Q What is the number of the dollars on the ticket? A
\$20.

Q Why did you ask for \$22? A Well, I asked for \$22.

Q You have told me that. Now, I ask you why you asked for
\$22.

BY THE COURT:

Q How do you figure that you wanted \$22? A Well ---

Q Why not \$25? A Well, I didn't want to make it \$25,
so I only took these \$22. If there is any more I want I will
get it, because I am working for him.

BY MR. STRYKER:

Q If this was \$20 on that, why did you ask for \$2 over
the amount that you wanted for the watch? A Why did I ask?

Q Yes. A Well, if I needed any more I would have got the
lend of one or two dollars off somebody else.

Q You have told us, and the ticket speaks for itself, that
the amount pawned there in that pawn ticket was \$20? A Yes, sir.

Q You wanted enough money to redeem that watch and chain,
didn't you, on that pawn ticket? A Yes, sir.

Q Why didn't you ask your employer for the exact amount
that was represented on the pawn ticket, instead of asking for
two dollars over that amount? A I didn't think of that. I
asked for \$22.

Q When you asked your employer for the money did you show
him the ticket? A I just showed him the ticket. I said, "I

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found a pawn ticket on the track".

Q Did you show him that ticket? A I showed him that ticket, yes, sir.

Q He saw that it was \$20? A He saw it was \$20.

Q Did he ask you why you wanted \$22? A No, sir, just gave me \$22.

Q Had you ever borrowed money from him before? A Well, certainly, at the time I am working for him.

Q You had borrowed money before? A At the time I worked for him, I got a lend of \$5.

Q Have you ever in your life borrowed any sum or anything like that from him? A No, sir.

Q Did you give him any security when he let you take that \$22? What did he have to show that he had given it to you? Did you sign a receipt? A No, I am working for him.

Q Did you sign a receipt? A No, sir.

Q Did you leave the pawnticket with him? A No, sir.

Q Did you ask him to come around to the pawnshop to see that you got this watch and chain and did not dispose of it yourself? A No, sir, I did not.

Q How did you guarantee or secure him for lending you that \$22? A Well, I am working for him.

Q At five dollars a week? A Five dollars a week. I could pay him \$3 a week or \$4.

Q Did you find four more pawn tickets that time on the

railroad track? A No, sir.

Q These two pawn tickets (indicating) you did not have?

A No, sir. There should be three pawn tickets.

Q There should be three? A Yes, sir.

Q Why should there be three? A Because ---

Because that is the number that was found on you? A
Them tickets he found on me, yes, sir.

Q He found them on you? A The policeman when he searched
me he found them in my pocket.

Q How did that happen? A Well, that is a friend of mine.

Q What is the friend's name? A My friend's name?

Q That is what I asked you, the friend's name? A
Two of them belonged to one ---

Q Tell me the name of the person who owned these three
pawn tickets? A Well, give me a chance to explain.

Q Just the name and address? A Two of them belongs to
Joe Barber, in 106th street, but the name ain't on there. I
will explain ---

Q All I want to know is simply an answer to a simple ques-
tion; you have said that these three pawn tickets belonged to
some friend, is that so? A Yes, sir.

Q All I want to know is what is the name of that friend?
A What name do you want to know -- that they belonged to?

Q You said these belonged to somebody? A Yes.

Q Who is that somebody? A A friend of mine -- Joe Barber,

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his name is.

Q Where does he live? A 405 East 106th street.

Q He is here in court of course? A I don't know. I don't see him.

Q When did he give you those pawn tickets? A Well, I went in and pawned that stuff myself.

Q When did he give you those pawntickets? A He made me hold them, he didn't want his mother to know it.

Q You pawned the stuff? A I did, his own stuff.

Q You pawned a ring, one hundred dollars? A No, that is a dollar -- that ain't one hundred dollars.

Q And this is a chain at twelve dollars? A Twelve dollars, yes, sir.

Q What is this thing here? A That belongs to the ring -- Varalla, that is his brother.

Q I ask you what amount of property is pawned on that ticket -- can you see the figure? A That is \$20.

Q You just told me a moment ago this ticket belonged to Varalla, and that seems to be somewhat different from your former testimony? A This ticket goes to Ernest Varalla.

MR. STRYKER: I ask to have that marked for identification.

(Marked for identification People's Exhibit 3)

BY THE COURT:

Q Who is Varella? A A brother of my employer, and he

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told me to bring that suit of clothes to the tailor ---

BY MR. STRYKER:

Q You say People's Exhibit 3 for identification belongs to the brother of your employer? A One does, the one that is in for \$20, that is a watch.

Q Then that does not belong to Joe Barber of 405 East 106th street? A The other two belongs to Barber.

Q Whom does that belong to (People's Exhibit 3 for identification)? A Ernest Varalla.

Q Who does that belong to? A Joe Barber.

(Marked for identification People's Exhibit 4.)

Q Whom does that belong to? A Also that belongs to Joe Barber.

(Marked for identification People's Exhibit 5.)

Q I notice the name Ross down at the bottom of People's Exhibit 5 for identification --- A That is the name he went under, the fellow that came in and pawned this ring, and I went in with the chain, being I didn't want to pawn the ring and chain together. So this ---

BY THE COURT:

Q Why not? A Well, because I didn't want to give my name, that I didn't want to give my right name in pawn.

Q Why not? A Because I didn't think of it.

Q Why didn't you want to pawn a ring and chain together?

A I said maybe he wouldn't want to give me so much on the

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ring and chain together, and so I asked him for twelve dollars, and the boy asked for a dollar on the ring. That is the ticket here.

BY MR. STRYKER:

Q Did you just say that all these three tickets belonged to the man Joe Barber? A Two of them do.

THE COURT: No, he does not say so.

Q Two of them belong to Joe Barber? A Yes.

Q What about Ross? That is the name of Joe Barber, is it?

THE COURT: He has not said it, and you must not put those words in his mouth. You should not do it, it is not right.

Q What do you say about that name Ross; that is all I want to get? A This name Ross, that is the boy that came with me and pawned the ring, and I went in with the chain, and I gave this here name Baratta -- Tom Baratta.

Q He was a party you worked for once, was he? A Yes, sir. His name was Tony, and I gave "Tom".

Q Did you pawn all of those three articles represented by those three tickets on the same day? A Two of them I pawned on the same day.

Q What is your true name? A Alfonso Sanorarata. He made a mistake.

Q Did you tell the police officer anything about a man who dropped a pawnticket? A I did not.

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Q You said nothing about that to him? A Nothing. I just told him I found it in the car track at 7:30 p.m., and he said, "Well, I don't say you done it, but you are under arrest". That's all.

Q You don't know where these articles represented by these three tickets were gotten from, do you? A Yes, sir, bought them off a jewelry man.

Q Your friend bought them from a jewelry man? A Joe Barber, that's all I know.

Q What was the name of the jewelry man? A I don't know, but he knows him himself.

Q He told you he had bought them? A Of course, he bought the ring, and the chain his mother gave him, with a blue stone on it.

Q Have you any idea why he sent you to pawn the articles?

A He didn't want to go in, and he sent me in.

Q Do you know why he didn't want to go in the pawn shop?

A I don't know. The reason he made me hold the ring, the ticket for the ring --- he didn't want his mother to see them, he made me keep them. He said "My mother might get hold of them." He was just going to get a locket that his mother was going to buy him off the man that goes to the house, and he said, "If my mother sees I have these tickets in my pocket, she won't buy me the locket", and he said, "You hold the tickets," and he made me hold them.

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Q After you got this watch and chain did you have some agreement with your employer, Varalla, as to what you were to do with the watch and chain, for the amount he let you have, for the \$22? A No, sir.

Q What were you going to do with it? A I didn't get the watch and chain out at all.

Q You intended to? A Well, if it was worth it, because I wanted to buy a watch and chain, little by little working, and I said "I will get it all at once, and you will take it off my salary yourself."

Q Out of five dollars a week? A Yes, sir, he could take three dollars or two dollars, whatever he wants.

RE-DIRECT EXAMINATION BY MR. AARONSTEIN:

Q You never told Officer Casetti that you had seen a woman or somebody find a pocket book, did you? A I never did.

Q You found that ticket yourself? A That is all, myself.

Q At 106th street? A At 106th street and First avenue.

BY THE COURT:

Q Did your employer know that you had these three pawn tickets in your possession? A Well, not the two of course, that belonged to my friend, but one belonged to his brother, being he sent me over to the tailor to get a suit cleaned and I happened to look in the pocket, and I saw the pawn ticket there, and I said "I will give it to him when I go back."

Q Which one was the one that --- A His name is on there--
Varalla.

Q That was the pawn ticket calling for a gold watch?

A Yes, sir.

Q Pawned for \$20 by Varalla -- that was the property of
your employer's brother? A Yes, sir.

Q Is that right? A Yes, sir.

Q Ernest? A Ernest.

Q Do you know why he had to pawn his watch? A No, sir, I
don't know.

Q Did he ever tell you why he had to pawn his watch?

A No, sir, he didn't tell me.

Q What is his job? A Well, he was just working for his
brother at the willow business.

Q What is that? A The willow business he had in 205 106th
street, just working packing up feathers. Mr. James has ---
Ernest ain't in business at all.

M I C H A E L V A R A L L A, called as a witness in behalf
of defendant, testifies as follows:

DIRECT EXAMINATION BY MR. AARONSTEIN:

Q Where do you live? A 2051 First avenue.

Q What business are you in? A Wholesale liquor and a
restaurant.

Q And you had this defendant under your employ? A Yes,
sir.

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Q How long did he work for you? A Four or five months.

Q And before that do you know where he worked? A He worked for my brother James Varalla.

Q What business was that? A Plume business.

Q Where? A 225 East 106th street.

Q Do you remember March 4, 1912? A Yes, I do.

Q Do you remember seeing this defendant on that day? A Yes, sir.

Q Was he employed at your place on that day? A Yes, sir.

Q Now, do you remember seeing him between six and seven o'clock around the place, the cafe, the restaurant there? A That I don't remember, between six and seven.

Q During what time of the day do you remember seeing him? A About four o'clock.

Q And do you remember what he did then? A I sent him out for an order, to get some bottles back, to get some goods that was returned to me, at 121st street, about four o'clock. That was about the time that I saw him, that I sent him out.

Q When after that did you see him, do you remember? A I saw him about half past seven or eight o'clock at night.

Q And what did he do then? Did he talk to you? A He came down to the restaurant. That was the time I was doing my accounting down there and showed me a pawnshop ticket.

Q What did you do? What did he say? A He said, "I

found this ticket." I said, "Where?" He said "106th street." And he said, "I would like to get \$22 from you, I would like to get it out." Well, I says, "I don't care to give you \$22", but he says "I just want to go and see the watch and chain, if that is worth it, your money is always good."

Q Were you in the store between six and seven o'clock, or were you away from the store? A Well, of course I was not downstairs, but I used to be out, in and out, because I got other business to attend to.

Q See if you cannot recall if at any time during this period, between four and seven thirty o'clock, you saw the defendant either in the store or downstairs in the liquor store, or the cafe, or outside? A I don't remember seeing him. Because between four and six o'clock, that is the time I do my accounts every day.

Q Your bookkeeping work? A Yes.

Q Where were you then? A I went upstairs.

Q Where? A In the saloon, right in the back of the saloon.

Q In the back of the saloon? A In the back of the saloon.

Q Working at a book? A Working at the books, I don't bother with nobody then.

Q Did you give the defendant \$22? A I did.

Q And the next time you heard he was arrested? A The next day about ten o'clock a boy came in and told me he was

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arrested, and as soon as I heard that, of course, about an hour after, or so, I saw Mr. Casetti, a couple of hours after, and I told him, I said, "I must have tough luck;" I said, "I lent that feller \$22 and he got arrested." I said, "Mr. Casetti, he has got my money." And he said, "Well, if you can prove before the judge that that money belongs to you, you won't lose that."

Q Look at that money there and see if that is the money which you gave to the defendant? A That is the money, I remember it well.

Q You are certain now that you gave him that money amounting to \$22? A Yes, sir.

Q How long have you known this defendant? A About four years.

Q Do you know other people who know him in the neighborhood? A Plenty of people know him up there.

Q Do you know his reputation for honesty? A I do. I never know anything against him.

Q Always been a good boy, to your knowledge? A Always worked for me. When he was working for me he was always right and I trust him.

MR. STAMER: That is not competent testimony, but I will not object.

Q Did he work for your brother James Varalla? A He worked for my brother, yes, sir.

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Q And were you at the place of business during the time that he worked there? A Yes, sir.

CROSS EXAMINATION BY MR. STRYKER:

Q Did you send the defendant out to collect a bill for you that day, on March 4th? A No, sir, I did not.

Q You didn't send him out to collect any bill at all?
A No.

Q Quite sure about that? A Quite sure.

Q Did you have any talk with Officer Cassetti in this case? A Yes, I talked to him.

Q Did you ever tell Officer Cassetti under what circumstances the defendant got that money? A I told him I gave him the money.

Q Did you ever tell Officer Cassetti the defendant collected that money for you, and that is how he happened to have it? A No.

Q You never told him that? A No, I never told him that way.

Q What did you tell him? A I told him I gave him the money.

Q Didn't you say anything to the officer about the defendant having collected that on some bill for you? A I told him that that money was mine, that I gave it to him.

BY THE COURT: Did you make any record of it on your books, that you had advanced to your employee \$22? A Well, I didn't have the time. I gave it to him late, and the next morning

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I only come to the store about half past nine or ten, and that is the time I heard he got arrested.

BY MR. STRYKER:

Q When did you give him the money? A The night before.

Q When did the boy find the ticket?

MR. AARONSTEIN: Objected to.

Q When did the boy say he found the ticket? A He came to me about half past seven or eight at night.

Q Then you say that you let him that night \$22 on the ticket, that night? A Yes, sir.

Q And you had never seen the watch? A I never saw the watch.

Q And you didn't know who pawned it? A I didn't know anything. He showed me the ticket.

Q And you knew the boy had not pawned that? A I know that.

Q You knew it was not the boy's watch --- according to what he told you he found it, and from what he told you, wasn't it your inference that the watch belonged to somebody else, and not the defendant? A Well, he found the ticket.

Q But it was not his watch? A No, sir, it was not.

Q You lent him \$22 to take that watch out? A Yes.

Q And you had not seen the watch? A No, sir.

Q And you took no security from the boy? A That is something I never done, to get.

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Q. You didn't ask his note for it? A. No.

Q. You didn't take his receipt for it? A. No.

Q. You didn't make any entry on your books about it?

A. Not then. I always do it when I do my bookkeeping work.

Q. Did you make an entry on your books? A. Well, after, no. I tell you, we are partners, my brother James and I, and I was going to put it on my books; then he came down, and I told him the truth about the money. He said, "There is no use putting it in the books" -- my brother said that, -- because the firm is Varalla Brothers.

BY THE COURT:

Q. Why didn't you want to put it in your books? A. Because the money, what we put in the books is expenses.

Q. You say your brother told you not to put it in the books? A. Yes.

Q. Your brother told you? A. He said, "What is the use of putting it in the books? That is not expense, that is money that you took", so it is like I took the money.

Q. Did he charge it up against you on the books? A. Well, no because we generally do -- we don't split any money, we just put it in the bank. We have a bank account and that is all we do.

BY MR. STYKER:

Q. You took this money out of the money drawer, did you?

A. Out of my pocket. It was collected that night.

Q. Who collected it? A. I did.

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Q You collected it that night? A Yes.

Q Where? A Mr. Baglio (?).

BY THE COURT:

Q You collected it from one of the customers? A Yes.

Q Instead of turning it into the money drawer --- A I always keep it in my pocket. The drawer is for the bar alone. I had it in my pocket when the defendant came in and I gave him the money.

Q Are you saying so because it is a fact, or are you trying to defend this defendant? A I am saying this because it is a fact. It is my money.

Q Do you think you are doing a friendly act to the defendant, or are you telling us the truth? A I am telling you the truth.

BY THE ELEVENTH JUROR:

Q What time did you send the boy uptown to collect those bottles? A About three or four o'clock. It must have been about four o'clock.

Q What time did he come back? A I didn't see him when he came back.

Q You never saw him any more that evening.

Q When you sent him up there to collect those bottles didn't you instruct him to come back to your place of business?

A Why, he always did, only the bartender took charge.

Q Didn't you expect him to come back that day? A Yes.

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Q Were you surprised that he did not come back? A No, I was not surprised.

Q How did you account for it? Didn't you ask where he was? A I don't ask because the bartender he takes my place when I go, he takes all the goods that comes in and goes out.

Were you in the back doing your bookkeeping up to what time? A Well, I was there almost all the time, because I was in and out. I used to go out.

Q You sent him out about half past four, didn't you? A Yes, no, about half past three or four --- between three and four.

Q And didn't ask him when he came back, or if he brought the stuff back or anything? A No, because as soon as I got through my bookkeeping, I went downstairs.

Q If he had come back would you have seen him around your place of business? A Yes, I would, but where a feller is working I wouldn't see him.

BY MR. STYKER:

Q You have told the jury you didn't see him again that afternoon, but you sent him away to collect the bottles, is that it? A I didn't see him no more until half past seven or eight o'clock.

Q That is when this thing happened? A That is when he showed me the ticket.

Q Was any one present when this money was passed by you

to the defendant? A Yes.

Q Have you any of those people here in court to-day?

A No, they are working.

Q Have you the names of them? A I know one.

Q Who is he? A John Papp.

BY THE SECOND JUROR:

Q This robbery occurred at half past six, ten minutes past six or half past six, didn't it?

MR. AARONSTEIN: I object. That is not within the witness's mind.

THE COURT: The witness is supposed not to know that.

MR. AARONSTEIN: If the juror would like to ask at about that time what he knew ---

Q Well, about half past six this robbery occurred? A Well I heard that after.

MR. AARONSTEIN: That question is also objected to.

BY THE COURT:

Q Did you ever hear what hour the robbery occurred? A I heard after it was between six and seven; I heard that.

BY MR. STYKER:

Q You heard afterwards that the robbery occurred at about the time the defendant said he found the ticket, is that right?

MR. AARONSTEIN: Objected to.

Q Isn't that what the defendant said -- he got it some-time around six? A He may have, but he didn't tell me just

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the time. He said, "I found this ticket."

Q Did he come right up to you as soon as he got back with the ticket, or did he wait some time before he showed it to you? A He came right up to me and showed me the ticket.

BY THE COURT:

Q Where was your place of business? A Corner of 146th street and first avenue.

Q What is your full name? A Mikasa Maralla.

Q What sort of a place do you have there, - a saloon and restaurant? A I have a saloon and wholesale liquor upstairs. It is a store and restaurant in the basement.

Q How many employees have you got? A I have got five all together -- I had then.

Q Don't you keep books or some memorandum to pay the salaries, and so forth? A Yes, I do.

Q Have you got an account with this defendant, a salary account? A Five dollars, yes.

Q But do you put that on the book? A Yes, I put that on the book when I pay him. I don't put the name, I just put porter, bartender, or cook.

Q You don't put any name? A I just put the name of the job they have.

Q You don't put their names on the book at all? A No, sir, I do not.

Q How are you to get any record of the \$22 that you

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loaned to this defendant --- how are you to make any record of it? A Well, I didn't make a record. As soon as I heard he was arrested ---

Q But how would there be any evidence of it? Now, that was rather a large transaction, to loan him \$22? A Why, no.

Q Did you ever lend him so much as that before? A No, he never asked me. I trusted him. I know when he worked for my brother he trusted him with \$2,000 of feathers to bring from his store to a dyer, and he had to walk about half an hour.

BY MR. STRYKER:

Q Did your brother ever lend him money? A I don't know, but he trusted him that much.

Q How did it happen that although this watch and chain were on the ticket at \$20, you advanced him \$22? A He asked me for \$22.

Q Why did you give him \$22 if \$20 would have got the watch out of pawn? A If he had asked me for \$6 I would have given him \$6.

Q How were you going to get this \$22 back again? A I can take it out of his salary. He was good for it.

Q You mean he would be good for a judgment, if you sued him and got one? A No, but he would be honest enough to work off that.

Q You were ready to take a chance on four weeks work for that \$22? A Yes, on him, at the time.

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Q You were taking a chance? A Not exactly.

Q What were you to get out of it that would make you take that chance? A Nothing; he was working for me.

Q You were going to risk \$22; what were you going to get as its return? A Other times I give \$50 without having any idea of making a cent.

Q Were you going to get anything out of this or not? A No, sir.

Q Although you were going to get nothing, you were going to advance \$22? A Yes, sir.

Q On the hope that he would work that out in the future? A He told me he was going to give me the money.

BY THE COURT:

Q Whom do you specially cater to up there at 105th street and First avenue --- what sort of customers do you have?

A Groceries and saloons.

Q Grocery and retail saloon and restaurant? A Yes, sir.

Q What particular kind of customers do you have there at 106th street and First avenue, in your restaurant and retail saloon? A What kind of people?

Q Yes. A Good people.

Q Good people? A Yes, sir. If there is anybody that tries to raise trouble in the place we always put them out. We never have any disturbance in the place since we had it.

BY THE TWENTIETH JUROR: Q When this defendant came to you

and told you that he found it, did he say he found anything else besides that ticket? A No, sir, he did not.

BY MR. AARONSTEIN:

Q You have trusted this defendant many a time with money and property? A Yes, sir, I do.

Q And you would trust him with \$22? A Yes, sir.

Q You were that much of a sport, that you would take a chance for \$22 on him ---

BY THE COURT:

Q You tell the counsel you trusted him many times with money; you told me you never loaned him anything before? A Well, I trusted him to take goods out.

Q Did you ever give him money or property to take to a bank or to deliver? A Yes.

Q More than \$22 in value? A Yes, \$50.

BY MR. STRYKER:

Q Did you ever loan that defendant a dollar before this transaction? A No, I never loaned him, no.

BY THE COURT:

Q Did you know when you made your loan that day of \$22 that he had these three pawn tickets in his pocket? A I didn't, no. I know of one ticket that my brother checked.

Q Your brother's ticket? A Yes.

Q And your brother had pawned his watch for --- A He has got two watches, and he pawned one for \$20, he told me

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after. I didn't know it at the time.

Q Your brother is Ernest? A Yes, sir.

Q Ernest pawned his watch for \$20, is that right? A That is what he told me.

Q And the defendant had the pawn ticket in his pocket?

A Yes. He explained me why.

Q Well, now, did you know he had other pawn tickets in his pocket? A No, I didn't know he had them.

Q Do you know how this boy, the defendant, comes in possession of pawn tickets belonging to other people?

A I do not.

MR. AARONSTEIN: I object, calling for a conclusion of the mind. Nothing shown he has any personal knowledge.

A I did not know, no, sir.

Q You don't know how he came into possession of pawn tickets belonging to other people? A No, I know of one ticket, my brother's ticket.

Q We will eliminate your brother's ticket, and I will show you tickets for a watch chain, twelve dollars which he had in his possession, he admits that. Did he ever ask you to lend him any money on that? A No, he did not.

Q For the purpose of taking that out? A No, sir.

Q Why does your brother, who can trust the defendant with two or three thousand dollars worth of valuable feathers for the purpose of delivery, pawn his watch, do you know?

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MR. AARONSTEIN: Objected to. The testimony is that Ernest Varalla pawned it, and the testimony is that James Varalla was in business.

Q Is that another brother? A Yes, sir, that is another brother. I said that before.

Q What did your brother Ernest do? A He was managing the willow plume business then.

Q What is he doing now? A Now, they are just opening a new place, and he is working at it.

Q He is employed, is he? A He is employed by my brother.
BY THE SECOND JUROR:

Q At what hour did he come to you that night and ask you for the loan of \$22? A About half past seven to eight o'clock.

BY MR. STRYKER:

Q Did he tell you when he had found the ticket? A No, just showed me the ticket and asked me would I lend him the money.

MR. AARONSTEIN: Defendant rests. And the defendant makes the usual motion to dismiss on the ground that the People have failed to make out a case. On the further ground that it affirmatively appears that the complaining witness has failed to identify the defendant with the crime alleged in the indictment.

THE COURT: Where do you get your affirmation from?

PLEASE SEE 1520

MR. AARONSTEIN: From the evidence.

Motion denied. Exception.

(The Court now declares an adjournment to Monday, April 15, 1912, at 10:30 a. m., first duly admonishing the jury as usual.)

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New York, Monday, ^{Apr 8} March 15, 1912.

TRIAL RESUMED.

(Counsel now close to the jury.)

(The Court now charges the jury.)

The jury now retires and upon its return, renders
a verdict of guilty as charged.)

At request of counsel for defendant the jury is now
duly polled, the jurors severally stating their verdict
to be guilty as charged.

Stewart Liddell,
Official stenographer.

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