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CASE # 1523

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York, Part III

-----X  
THE PEOPLE

against

FRANK MAYNARD, indicted with JOHN  
KELLY.

-----X  
Indictment filed February 21st, 1912.

Indicted for Attempted Burglary in the third degree.

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

For the People, ASSISTANT DISTRICT ATTORNEY EMBREE

For the Defendant, MR. HOWE.

Tried before HON. THOMAS C. T. CRAIN, Judge,  
and a Jury, on the 8th day of April, 1912.

Thomas W. Osborne,  
Official Stenographer.

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J O H N J. K E L L Y, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:  
(8th Precinct Detective Bureau).

DIRECT EXAMINATION BY MR. EMEREE:

Q You are a member of the police force of the city of New York? A I am.

Q Now attached to the Detective Bureau? A The Detective Bureau, yes.

Q On the 8th and 9th of February, where were you located?  
A I was attached to the 18th Precinct.

Q As patrolman? A As patrolman.

Q How long have you been on the force? A Five years.

Q To what particular branch of duty were you assigned on this particular night? A Patrol duty.

Q What time did you go on duty? A 11 P.M.

Q And what time did you go off? A 7 A.M.

Q Did you during that time, during that period, serve on what is known as the fixed post? A Yes, sir, every half hour.

Q Who alternated with you? A A patrolman named William Strainer.

Q Did you go on fixed post at 3 o'clock? A 3 A.M.

Q You relieved Officer Strainer, who had been on that fixed post. A Yes.

Q What was the practice, when you went on fixed post, what were the duties?

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Objected to as immaterial. Sustained.

Q You say at 3 o'clock you did relieve this officer and will you state what you mean by fixed post -- what did you do while there? A You stand in the middle of the street.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Exception.

THE COURT: It does not prejudice anybody.

THE WITNESS: You stand in the middle of the street and around the four corners.

BY MR. EMBREE:

Q Remain there? A Remain there for the half hour.

Q Did you notice which way Officer Strainer went after you relieved him? A He went south on 6th avenue from 21st street.

Q On which side of the avenue? A On the west side of the avenue.

Q Did you that night, some time subsequent to 3 o'clock, see this defendant Maynard? A I saw him about 3:15 A.M. -- in the morning.

Q Now, tell the jury the circumstances under which you saw him. A I was standing on the southwest corner of 21st street and 6th avenue, and I looked south and I saw somebody, a couple of men standing in front of Simpson & Crawford's jewelry window. I watched them for awhile, a couple of minutes, and looked north and saw a south bound car coming, so, when the car got to the southwest corner of 21st street and 6th avenue, I beckoned

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for the motorman to stop the car. I got on the car and rode down, and just as I was right opposite where these defendants were standing --

Q What did you get on the car for? A To ride down to investigate what these men were standing there for.

Q Why didn't you walk down? A I was afraid they might see me.

Objected to. Sustained.

BY THE COURT:

Q You got on a car? A Yes, and rode down, and when I got opposite where these men were, I seen this defendant, Frank Maynard, with his hand on the iron screen right in the middle of it, pulling on it. I beckoned to the conductor to stop the car and he pulled the rope for the motorman to stop the car, and the car went to the northwest corner of 19th street. When I got off the car, there was a man standing there on the northwest corner.

Q What was your position on the car as you went by the front of Simpson & Crawford's? A I was standing until I just got right opposite these men, and then I sat down so they could not see my form, after the car had passed them, with the light of the car.

Q What part of the car were you sitting? A On the rear.

Q Was it an old-fashioned car with side doors. A What they call a box car.

Q Not a pay as you enter car? A No.

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Q You sat on the platform with your feet on the step?

A With my feet on the step.

Q Was there anybody else out on the platform? A No.

Q Was the door leading into the car, open or shut?

A Shut.

Q What was the weather that night? A Very cold, about seven above zero.

Q After you passed the middle of the store where these men were, you rode on to the end of the block? A Rode on to the northwest corner of 19th street and 6th avenue.

Q Is that right at the corner of Simpson & Crawford's?

A Yes, sir, that is right on the corner, the end of the building.

Q In what way did you get off the car? A I beckoned the conductor to stop the car and he stopped it -- the motorman stopped the car on the north crossing, and I got off the car.

Q Did you stand up on the car before you got off? A No, I just stepped off the car and this man was standing on the northwest corner -- he gave his name as John Kelly.

Q Another man, not this man? A Not this man -- and I told him --

THE COURT: Never mind what you said to him.

BY THE COURT:

Q You said something to him, and then what did you do?

A I placed him under arrest, and ordered him to walk up the avenue.

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BY MR. EMBREE:

Q In what way did you place him under arrest? A I pulled out my gun and ordered him to walk up the avenue, and I walked out towards the curb. When I reached to where this defendant was standing, I told him he was under arrest also, and placed another man under arrest named John Kelly, that was tried here the other day.

Q Did you have your gun in your hand as you walked up with this other man? A All the time.

Q Where did you walk with reference to the other man?  
A About eight feet away from him.

Q Out towards the curb? A Out towards the curb.

Q As you approached the jewelry window, did you see this man? A He was standing right there, yes.

Q Did you at any time see his hand on the screen? A When  
and  
I passed him on the car, when I came up the avenue, he had his hand on the screen still.

Q As you came up the avenue from the corner of the store?  
A From the corner of the store. He was facing north.

Q Was the other man facing north too? A Yes.

Q Standing with their hands on the -- A With their left hands on the screen -- he had his left hand on the screen, this defendant.

Q How near were you to this defendant Maynard when you told him he was under arrest? A I was about five feet away from him.

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Q You covered the three of them with your gun? A Yes.

Q What did you then do? A Ordered them to walk out to the curb and then rapped my stick for assistance.

Q Did assistance come? A Yes, sir, and I told them to take them to the house, and I would examine the show window.

Q Did any employee from Simpson & Crawford,s appear?

A Yes, sir, a man named Mr. Stephens came out of the store.

Q Then what did you do? A Looked around and saw the condition of the window -- there had been a couple of locks pried off, and the screen had been pulled about seven or eight inches away from its regular position, and found a lock in the street, one lock in the street --

Q Just where was that lock found in the street? A Right opposite the show window.

Q Out beyond the sidewalk? A Beyond the sidewalk near the car track.

Q Did you find anything else. A Then on the northwest corner of 19th street and 6th avenue, I found a screw driver and another lock in an ash can or in a paper can belonging to the city, D. S. C.

Q This corner you speak of is the corner of the building?

A Yes, sir, right at the corner of the building.

Q I show you these two locks? A This is the lock I found in front of the show window and this one in the ash can (indicating).

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THE COURT: Better have them separately marked for identification.

The first lock referred to by the witness is marked People's Exhibit 1 for Identification.

Q I show you another lock and I ask you if that was found there? A That was found in the ash can on the corner of 19th street and 6th avenue, the northwest corner.

The lock is marked for Identification, People's Exhibit 2.

Q I show you this screw driver? A This was found in the paper can on the northwest corner of 19th street and 6th avenue.

The screw driver is marked for Identification, People's Exhibit 3.

Q Was Mr. Stephens with you of Simpson & Crawford's, when you found the screw driver and lock in the ash can? A Yes.

Q Did Stephens afterwards produce some keys? A He went into the store and brought out keys that fitted these locks.

Q I show you these keys and ask you if these are the ones?

A Yes, sir.

The keys are marked for Identification, People's Exhibit 4.

Q In what part of the store is the main entrance there on 6th avenue? A It is right in the middle of the store.

Q Where is the jewelry window located with reference to that? A On the north side of the main entrance.

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Q Right next to the entrance? A Yes, sir. There is a pillar separates them.

Q State how this screen was arranged on the window? A The screen -- the window sits back like that, and comes out in front and there is three separate screens, and the side screen is fastened on the front screen with a lock, both side screens -- there is three locks, one on the top, one in the middle, and one on the bottom -- on both sides of the window.

Q Which end of the main screen was it that was pulled?  
A The south end.

Q The south end of the main screen? A Yes.

Q Can you look through that screen and right through the glass? A Yes.

Q Did you notice what was in the window at that time?  
A Yes, sir, all kinds of different jewelry, mesh bags, rings and watches.

CROSS EXAMINATION BY MR. HOWE:

Q Did I understand you to say you were on post at 21st street? A Yes.

Q And 6th avenue? A Yes.

Q Where did you get on the car, what street? A On the car?

Q Yes. A At 21st street and 6th avenue.

Q Are you sure of that? A Yes.

Q Do you recollect giving your testimony in the Magistrate's

Court as follows: "I got on this car -- at 20th street there is

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a fire crossing. The car stops on the north side of 20th street. The conductor gave the bell and then the car started up." Did you get on the car at 20th street or 21st street?

A 21st street.

Q You were in uniform? A Yes.

Q And as I understand, so far as the fixed post is concerned, you have to stand in the middle of the street? A Yes.

Q At 21st street, where you say your post was, was there a large electric light there? A Yes, sir, two electric lights.

Q It was easy to see you standing in the middle of the street at that hour of the morning? A Yes.

Q An electric light directly over your head? A Well, there is one on the northwest corner and one on the southeast corner.

Q You say Officer Strainer, you relieved him at 3 o'clock in the morning? A Yes.

Q You say Officer Strainer walked south on 6th avenue on the west side of the street? A Yes, sir.

Q That is the same side Simpson & Crawford's store is on? A Yes.

Q He walked from 21st street down south on 6th avenue? A Yes.

Q Officer Strainer? A Yes.

Q Did you watch him walking down the street? A I watched him for one block -- watched him until he got to 20th street.

Q At the time he was starting to walk down on the south

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side of 6th avenue, did you at that time see anybody standing near or about Simpson & Crawford's store? A No, sir.

Q And this Officer Strainer walked as far as 20th street?

A I noticed him to 20th street -- I did not --

Q What time was that? A About 3:05.

Q What time was it when you first say you saw some men standing in front of the store? A About 3:10.

Q That was five minutes after? A Yes.

Q After you lost sight of Officer Strainer? A Yes.

Q You do not know whether or not he continued down past Simpson & Crawford's store, or not? A No, I do not.

Q Was he in uniform at that time? A Yes.

Q I ask you again, did you get on this car at 20th street or 21st street? A 21st street.

Q Did you stop the car, or did the car stop there because there was a fire crossing? A I beckoned for him to stop.

Q When you got on the car, did the car immediately start down south on 6th avenue? A Yes, sir.

Q Did you speak to the conductor? A No.

Q Say anything to him at all? A No.

Q Where was the conductor? A Inside the car.

Q Did you go inside the car? A No, sir.

Q When was it that you say you sat on the step of the car?

A Just as I got opposite this show window.

Q Up to the time that you were on this car, you did not sit down on the step until you were practically opposite Simpson

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& Crawford's store? A The show window, yes, of Simpson & Crawford's.

Q I understood you to say you were in uniform at the time?

A Yes, sir.

Q You say that you sat down on the step of the car to avoid those men seeing you? A Yes.

Q Now is it you waited until you got opposite, or practically opposite the store, before you sat down? A Well, the window of the car, when you are standing up, is just like standing in front of that window -- anybody behind you could look at the car coming down and see you standing up at the window.

Q Is it possible to see a man standing on the rear end of the car as the car is approaching you? A No.

Q Do you mean to say that you, standing on the rear end of this car, a man of your height and build, and in uniform, that it would be necessary for the car to get directly opposite you before you could be seen on the rear end of the car?

A Yes.

Q This is a box car? A Yes.

Q What do you mean by a box car? A It is a closed car, with a front and rear platform.

Q Where did the car stop to let you off? A At 19th street and 6th avenue.

Q At the time that the car passed Simpson & Crawford's store, where were these men that you have described?

A This defendant and the other defendant was right at the show window, the jewelry show window.

Q In what direction were they facing? A They were facing north.

Q They did not look in the direction of the car?

A No.

Q They were facing north? A Yes.

Q Was there anything up north on 6th avenue that would attract their attention, that you could see? A The fixed post at 21st street.

Q But you were not there? A I was supposed to be there, and was there, until this car came along.

Q But, from Simpson & Crawford's store, anybody could see to 21st street, where you were supposed to be? A There is an elevated pillar there, and I stood in the shadow of the elevated pillar.

Q As a reward for your services in this case, you were elevated to a second grade detective, were you not?

A I was.

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Q You knew that you could not make a charge of attempted burglary, unless you had the hands of this man on that screen-- didn't you know that -- you knew that was necessary, didn't you, to get a case against this man? A Why, I seen their hands on the screen and I charged them with what I seen them doing.

Q When the car stopped at 20th street, and you got off, did you see these men look in the direction of the car at that time? A No.

Q All the time they were looking north? A Looking north.

Q The passing of the car did not attract their attention?

A No.

Q The stopping of the car did not attract their attention? A No.

Q You say that these men were still standing at that screen until you got within five feet of them? A This defendant was.

Q Still standing there? A Yes.

Q Still with his hand on the screen? A He was standing right at that screen.

Q Did he have his hand on the screen? A No, he did not have it when I got right alongside of him, within five feet of it, but, before I reached there, he had his hand on the screen.

Q How long altogether did you see him with his hand on

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the screen? A When I passed him on the car I saw him pulling on the screen.

Q How about when you got off the car? A When I got off the car I placed the other defendant under arrest and when I got within 20 feet of this man I could see his hand still on the screen.

Q Which hand? A Left hand.

Q He was standing with his hand on the screen? A Yes.

Q How long a time altogether did you see him with his hand on the screen? A When I passed him on the car and when I came back after placing the other defendant under arrest.

Q How much time was that? A I guess three or four minutes.

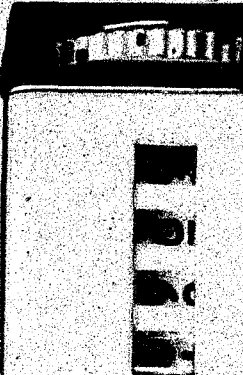
Q During all that time that he had his hand on the screen he was looking north in the direction where you were supposed to be? A Yes.

Q You tried as far as possible to keep your eye on the two men you saw in front of the store? A I did.

Q Did you at any time see either this defendant or the other man leave that screen? A The other man left the screen and started to walk north when I called him back, the other defendant Kelly.

Q That was after you got off the car? A Yes.

Q I mean from the time you first observed these men as you say in front of Simpson & Crawford's store, did you at any time



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see either one of them leave that screen until you got up and placed them under arrest? A No, only the other defendant Kelly -- this one stood right there, this defendant stood there.

Q This ash can that you speak of, how far is that from the entrance to the store, that is, the place where the screen was? A Half a block.

Q You did not see this man walk down to the ash can during the time you had him under observation? A No.

Q You did not see the other man that was with him? A No, sir.

Q Now, if these men had been standing in front of Simpson & Crawford's store at any time that they might have approached that store you would have seen them, you would have seen them as soon as anybody would come up in front of that store? A Not necessarily.

Q You would have had them under observation? A Not necessarily.

Q You say one of these locks was found in the ash can at the northwest corner of 19th street? A And Sixth avenue.

Q You did not see anybody put that lock in there? A No.

Q How long was it after the arrest of these defendants that you found the lock in the ash can? A About ten minutes.

Q What was the name of the officer who assisted you making the arrest? A I could not say the name.

Q Is he in court? A No.

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Q Was he the one who took the defendants to the station house or was it you? A Different policemen -- there were three different men took them to the station house.

Q You remained behind? A I remained behind.

Q Who else remained there with you? A There was this officer Strainer and Acting Sergeant Unger and a few more came along when they heard the rapping of the stick, and they were all examining the windows and examining the screen.

Q How long was it after you had placed the defendants under arrest that you found this lock which is in evidence?

A There is two locks.

Q I mean the lock that you claim was found in the ash can? A About ten minutes.

Q Was it on the top of the can, that is the contents of the can? A No, we had to dump the can out into the street and search.

Q Where was the screwdriver? A Right on the top of the paper.

Q Did you find that too? A Yes, sir.

Q Who was it that found the lock that was out in the street? A I found it.

Q How many officers were searching for these locks which were missing? A There was two outside of myself.

Q You were the one found the lock in the street? A Yes.

Q And the lock in the ash can? A Yes, sir.



Q Which you say was at the bottom of the can, and you also were the one who found the screw-driver? A Yes, sir.

Q What were the other officers doing, were they finding anything? A They were busy examining the window and they were looking to see if they could find anything but I was the one--

Q You were the one who found everything? A Yes.

Q At what speed was this car traveling, after you got on the car at 21st street? A Started up the car -- just fast enough to make the next stop on the next corner, north crossing.

Q Was it proceeding rapidly or not? A Not very rapidly because he only had a short distance to go.

Q Were there any passengers in the car at the time?

A There was.

Q How many? A I couldn't say. I only noticed one.

Q The car was traveling rapidly at that hour of the morning? A Well, I don't think for half a block he would go very fast.

Q I thought this was two blocks, from 21st down to 19th?

A He went from 21st to the north crossing of 20th.

Q He stopped there? A Stopped there -- it is a fire crossing.

Q You were on the car at that time? A I was on the car at that time.

Q Standing on the rear end of the platform? A Yes.

Q Then he started from 20th street? A He started from

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20th street to go south again, and as he got opposite this window I seen this defendant there.

Q You say there was a man standing on the corner of 19th street and Sixth avenue? A Yes.

Q In what direction was he looking? A He was facing the car.

Q Facing the car? A Yes.

Q He was looking in your direction when you got off the car? A Yes.

Q Did you hear him say anything? A I told him not to speak or attempt to run or I would use my gun upon him.

Q Did you hear him say anything? A He never said anything then, no.

Q How far was the car away from this man when you got off the car? A About 25 feet.

Q Was the car moving when you jumped off? A Stood still.

Q Did you speak to this man as soon as you got off the car? A Yes, sir, I walked to the curb and told him he was under arrest and to walk up the avenue. If he did not I said I would use my gun upon him.

Q You did not hear this man say anything to anybody?

A No, sir.

Q Then it was as you say, that you went up and were within five feet of this defendant when his attention was first attracted to you, is that correct? A I was within five feet of

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him when I placed him under arrest.

Q He was still then looking north in the direction of where you were supposed to be upon stationary post? A No, when I got within five feet of him he turned and faced me.

RE-DIRECT EXAMINATION:

Q How is the street lighted there at Simpson & Crawford's?

A An arc light on the northwest corner of 20th street and Sixth avenue and an arc light on the northwest corner of 19th street and Sixth avenue.

Q Simpson & Crawford's store is here in the City and County of New York? A Yes, sir.

BY MR. HOWE:

Q Did this defendant, at any time, attempt to leave the place, that is after you spoke to him? A I told him he was under arrest.

Q Did he attempt to go away from you? A No, sir.

BY THE FOREMAN:

Q Did you find those locks open? A Yes, sir, just the way they are there now. Then we locked them and fitted those keys to them.

D A N I E L D. K A S H, called as a witness in behalf of the people, duly sworn and examined, testified as follows:

(Residence 306 West 20th).

DIRECT EXAMINATION BY MR. PHIBBS:

Q You are Police Detective at Simpson & Crawford's?

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A I am.

Q Are you familiar with the construction of what is known as the jewelry window there? A Yes.

Q State how that is constructed with reference to the rest of the building? A It is the first window north along-side of the centre door. It sets in the building and the exit to that window is through the store.

Q The front of that window is one of the front windows of the store? A Entirely enclosed.

Q One of the front windows? A Yes.

BY THE COURT:

Q Enclosed by what? A By a large plate glass.

GROSS EXAMINATION BY MR. HOWE:

Q How far would you say that show window is from the corner of 19th street, the northwest corner? A The centre doors are directly in the centre of the building -- the building takes in from 19th to 20th street. The centre doors -- there are a number of swinging doors in the middle and the window, the show window, the first window, the jewelry window in fact, is on the north side.

Q In other words, that show window that is on the north side as you have described is closer to 20th street than 19th street? A Yes, sir.

Q Just give us your best estimate of how many feet that

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window is from the northwest corner of 19th street and Sixth avenue? A I should imagine it would be probably 105 feet figuring the length of an avenue block -- 105 or 110 feet.

BY THE COURT:

Q How was that window -- it is a glass show window?

A Yes.

Q It is a glass show window on the uptown side of your entrance door? A Yes, sir.

Q It is a show window that forms a part of the front of the building? A Yes.

Q At night, when the store is closed, what if any guard or protection is placed on the outside of that window? A The jewelry window, that window, is the only window that is protected by screens, sort of a screen -- in this shape, a wire screen, that comes in front of the window with locks attached to each side.

Q Is that the constant condition of the window or is that the condition of it which exists after the store is closed up and before the store is opened? A When the store is closed at six o'clock the screen is put on the window until such time as the store is opened in the morning. They are then taken off.

BY THE COURT:

Q Was that so on the 9th day of February last, that is to say, when the store was closed on the evening of February 9th, are you able to say whether the screen was put on that window?

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A Yes, sir.

Q How is that screen fastened? A There is two smaller screens on each side of the window and the large screen that covers the front of the window. There is two locks at the bottom -- there is cleats come at the side and the lock runs right through on the bottom of both sides.

Q What kind of locks? A Small brass padlocks.

Q Have you ever seen them? A Yes.

Q Would you recognize them if you saw them? A Locks similar -- not the locks that was on that night.

Q Look at People's Exhibits 1 and 2 for identification and state whether you can say whether or not they are similar to the locks? A This is the lock we carry on all our windows, those same Yale locks.

Q You are prepared to say that that exhibit for identification is a lock similar in character to that which was customarily put upon the screen on the window that you mention?

A Yes, sir, I am.

Q Whose duty was it to put those locks on and to lock them at night? A Mr. Stephens is our head night watchman there at night, and he attends to the screens; who he has to do it I don't know.

Q So far as you are informed, in other words, on February 8th, it was either the duty of one Stephens, or of some one subordinate to him, likewise in the employ of your corporation,

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to lock those screens? A It was.

Q Did you yourself see these screens at any time between the evening of February 8th when the store was closed, and 3 a.m. on the morning of February 9th? A I did not see them in the evening but I saw the screens in the morning when my attention was called to the locks being broken off.

BY MR. HOWE:

Q You do not know of your own knowledge whether these screens were in place on the night of February 8th? A I do not.

Q What time was it the next morning when you examined the screens? A Eight o'clock.

Q Eight o'clock in the morning? A Yes.

WILLIAM STEPHENS, called as a witness in behalf of the People, duly sworn and examined, testified as follows: (Residence 201 West 18th).

DIRECT EXAMINATION BY MR. FERRER:

Q You are night watchman at Simpson Crawford's? A Yes.

Q And were you so employed on the night of the 8th and 9th of February? A I was.

Q Are you familiar with what is called the jewelry window there at Simpson Crawford's? A I am.

Q Where is that located? A It is right in the centre of the building.

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Q On Sixth avenue? A On Sixth avenue.

BY THE COURT:

Q Is it on the uptown side? A Uptown side.

Q Or the downtown side of the front door? A On the uptown side of the front door.

BY MR. EMBREE:

Q Do you know whether or not any grating or screen of any sort is put over the window at night? A Yes, sir.

Q What kind? A Heavy wire screens.

Q Over this particular window? A Yes, sir, over this particular window.

Q Whose duty is it to put the screen on that window at night? A I do.

Q Did you put the screen on there on the night of the 8th? A I did.

Q At about what hour? A About 6 o'clock at night.

Q You are the night watchman? A Yes, I am.

Q Is it part of, or is it not part of your duty to inspect that screen during the night? A Yes, sir.

Objected to. Sustained.

BY THE COURT:

Q Did you inspect it at any time? A I do go around pretty nearly every hour during the night to try the locks and doors.

Q Did you at any time, on the night of February 8th and

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February 9th, and before 3 a.m. on the morning of February 9th, inspect that screen, yes or no? A Yes.

BY MR. EMBREE:

Q What time? A 2 o'clock in the morning.

Q In what condition did you find the screen at that time? A They were in good condition, they were all right.

Q Did you notice whether or not the locks were on it at that time? A I did and tried every lock on the screen as I went along.

Q I show you People's Exhibit 1 and People's Exhibit 2 for identification? A Yes, sir, these are our locks, these are the same locks that were on the screen, that I put on.

BY THE COURT:

Q That is to say, you now hold in your hand or held in your hands moment ago two locks that you say are the locks that you put on those screens on the evening of February 8th?

A Yes, sir.

Q After you put those locks on those screens, what did you do with the locks? A I locked them and left them there.

Q What did you do with the keys? A I turned them in to the house.

Q When you say you turned them in to the house, what do you mean? A I turned them in to hang them up inside of the office. There is an office there to hang all those keys inside.

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Q In other words, you took the keys with which you locked the locks on the screens -- you took those keys inside of Simpson Crawford's place of business and hung them up, is that so? A Yes.

Q You did that on the evening of February 8th? A Yes.

BY MR. EMBREE:

Q When did you next see that window after 2 o'clock in the morning? A About 5:10 in the morning I was on Sixth avenue on the main floor and heard the officer knocking his club on the sidewalk and thought there was something the matter --

Objected to.

THE COURT: Strike out that. Never mind what you thought -- you heard the knocking?

A Yes.

Q What did you do then? A I went outside and I looked around Sixth avenue side and when I came to the jewelry window I saw there were two locks missing from the jewelry window.

BY MR. EMBREE:

Q Did you notice whether or not the screen was in place?

A The screen was partly pulled out on the downtown side.

BY THE COURT:

Q How far down towards the sidewalk, or rather how far from the sidewalk about is the bottom of the plate glass window in the jewelry window? A It goes right down to the side-

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walk and covers the whole thing.

Q You say the glass of the jewelry window comes down to the sidewalk? A Within three or four inches of the sidewalk.

Q And the screen begins at what point from the sidewalk?

A It begins with the glass, at the bottom of the glass there is an iron bracket where the screen fits on on top, and bottom, so you cannot pull it out.

Q How far up does the screen extend? A It covers the whole window.

CROSS EXAMINATION:

Q How high is this screen? A I should judge it is about seven or eight feet high.

BY MR. EMBREE:

Q Did you see officer Kelly there at that time? A Yes, he was standing by the window.

Q Did you then make any search? A We did.

Q For missing locks? A He had one lock in his hand and he said there was another one missing.

THE COURT: Strike out what he said,-- he had a lock in his hand.

BY MR. EMBREE:

Q Did you and he later find another? A Yes.

Q Where? A In the city rubbish can on 19th street at the curb.

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Q The southern corner of the building? A Yes, sir, the southern corner of the building.

Q Did you find anything else? A Found a screw-driver and a lock. He dumped the can over and found the screw-driver and lock in the can.

Q I show you Exhibit 3 and I ask you -- A Yes, sir, that is the screw-driver that he found.

Q After you had found these locks, as you say, did you then produce the keys? A Yes, sir, I had to go to the station house and identify the locks and produce the keys.

Q I show you Exhibit 4 for identification? A Yes, sir, those are the keys.

Q Did you try them in the locks? A Yes.

Q Did they fit the locks? A Yes.

MR. EMEREE: I offer all the exhibits for identification in evidence.

THE COURT: Received.

People's Exhibits 1, 2, 3 and 4 are received in evidence and so marked.

BY MR. EMEREE:

Q Can one look right through this screen and through the window into the inside of the window? A Yes, sir.

Q Did you that night see whether or not there was anything in the window? A Yes, sir, there was jewelry in the window.

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Q Jewelry was in the window? A Yes, sir, watches, rings, lavaliers, bracelets, and so forth.

CROSS EXAMINATION BY MR. HOWE:

Q You say that you were outside around 2 o'clock in the morning? A Yes, sir.

Q And examined this screen? A Yes, sir, examined the doors and screens and everything.

Q Did you look up or down the avenue while you were outside? A No, I go right along the building --

BY THE COURT:

Q Did you look up or down the avenue at 2 o'clock when you were outside? A Yes.

BY MR. HOWE:

Q Did you see an officer on fixed post at 21st street?

A I did.

Q You had no difficulty in seeing him there? A No.

Q Where was he standing? A He seemed to be standing on this side of the railroad track.

Q In the street? A Yes.

Q There was an electric light there? A Yes.

Q You could see him very plainly from where you were?

A Yes.

Q Now then, is there an officer south of that post around 18th street, is there a fixed post there? A No, I didn't see any.

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Q At 17th street? A I think there is one on 17th street but I am not positive.

Q Is there a light at the corner of 19th street? A Yes.

Q How about 20th street, is there a light there? A Yes, sir, there is a light there too. They have two more lights the opposite side of the street.

Q At that hour of the morning the cars pass your place rather rapidly? A Yes.

Q At three o'clock in the morning? A Not at that time in the morning they do not go so --

Q They go rather fast at 3 o'clock? A Well, not very fast at that time in the morning.

Q Did you assist officer Kelly in this search that was made after the arrest of the defendants? A I did.

Q How many other officers were engaged in that search?  
A That was the only one I saw, officer Kelly.

Q You saw some other officers there? A No, sir.

Q Kelly has testified here --

THE COURT: Never mind what he has testified to.

BY THE COURT:

Q Did you see any other officers there? A I did not notice. I did not see nobody as I know of but officer Kelly.

BY MR. HOWE:

Q Officer Kelly has testified that he was assisted in his search by some other officers. A He might be.

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Q You could know? A I don't recollect anybody else was there at the time.

Q How long were you and Mr. Kelly there with the defendants? A Well, we were there about ten minutes.

Q Were the defendants there all the time? A Yes -- no, he was not there.

Q Where was this defendant at that time? A Well, they sent them to the station house as I understand.

Q Do I understand you that during this ten minutes search made by you and officer Kelly, that there was no other officers with you? A I did not see any other officers there, only officer Kelly. I know they went and looked up on the ledge of the window, looking for the locks, but I did not see no other officer, unless they were in plain clothes so that I would not know these people.

Q Did you find anything? A When I was with officer Kelly he found one lock and a screw-driver.

Q What did you find? A I did not find anything.

Q Officer Kelly found it all? A Yes, officer Kelly found it all.

Q Did you see him pick up the lock in the street opposite the show window? A I did -- no, not opposite the show window, but out of the city ash can I saw him pick out the lock and screw-driver.

Q Where was this lock you saw him pick out of the ash

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can? A In the ash can.

Q On the top? A I couldn't say whether it was on the top of the can or on the bottom.

Q You did not see officer Kelly dump that can out?

A Yes, sir; I stood right there when he done it.

Q You do not know if the lock was on top or the bottom?

A No, I could not swear to it.

Q Where was the screw-driver? A In the same can.

Q The same can? A Yes.

Q On the top of the can or the bottom? A I couldn't say whether it was the top or bottom. Any way when he dumped the can, the lock and screw-driver was in the can and I saw him pick them up.

Q How long have you known officer Kelly? A I don't know.

Q You don't know him? A No.

MR. EMEREE: It is noted on the record that Simpson Crawford Company is a corporation as alleged in the indictment.

THE PEOPLE REST.

FRANK MAYNARD, the defendant, called as a witness in his own behalf, duly sworn and examined, testified as follows: (Residence 2132 Eighth avenue)

DIRECT EXAMINATION BY MR. HOWE:

Q How old are you? A 22.

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Q What is your business, what do you do for a living?

A Clerical work.

Q Do you recollect the 8th and 9th day of February this year? A Yes.

Q Where were you living at that time? A 2132 Eighth avenue.

Q Were you working on that day? A Certainly; yes, sir.

Q What time did you get to your home on the evening of that day? A I guess about twenty minutes after six or 6:30-- about 6:20 or 30.

Q What time did you leave your house after you say you reached there at 6:20? A About 7:30.

Q Where did you go? A I went up to 125th street to a theatre with a friend of mine.

Q What was the name of the theatre? A Hurtig & Seamon's.

Q Now in whose company were you at that time? A With a friend of mine in the service of the United States Navy. I had not seen him for about three or four years.

Q What time did you leave the theatre? A The close of the show, must have been about 11 o'clock.

Q Was your friend with you then? A Yes.

Q Where did you go with him? A We went down to 126th street and I had not seen him in quite a while and thought I would go out and have a little time with him.

Q Were you and he drinking? A Yes.

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Q During that evening? A Yes.

Q Do you recollect seeing officer Kelly at about 3 or 3:15 o'clock on the morning of the 9th day of February? A Yes, sir, I saw him when I got arrested. I don't know exactly the time.

Q Where were you standing at the time that you first saw officer Kelly and he placed you under arrest? A I was not standing. I was walking.

Q Where were you, on Sixth avenue? A I was about 90 or 80 feet south of 20th street walking directly in the centre of the sidewalk--in the middle of the sidewalk.

Q About 80 or 90 feet south of 20th street? A Yes, sir, something like that.

Q Which side of the street were you? A On the west side.

Q What did officer Kelly say to you at that time? A At that time he did not say anything. I heard him yelling when I was about that distance south of 20th street.

Q When you heard him yelling what did you do? A I walked, the same direction I was walking south.

Q Were you walking rapidly or at an ordinary gait?

A Yes, pretty fast.

BY THE COURT:

Q Were you walking uptown or downtown? A Downtown.

Q That is to say, you were walking toward 19th street?

A Yes.



Q From 20th street towards 19th? A Yes.

Q On what avenue? A On Sixth avenue.

BY MR. HOWE:

Q When you first saw officer Kelly where was he? A He was in 19th street corner, right on the northwest corner.

Q The same side of the street as you were on? A Yes.

Q The west side? A Yes.

Q Did you see officer Kelly with anybody at that time?

A Yes.

Q How many persons was he with? A One.

Q Tell in your own way what occurred between you and officer Kelly at that time? A I was walking down, I was about 80 or 90 feet as I stated and I heard somebody yelling and I looked down in front of me -- not exactly looked down -- I was walking along, looking in any direction, and there he was with another man. He beckoned to me to come on towards him -- in fact I was walking right towards him, and when I got about 10 feet or so away from him he pulled out a gun, or, in fact, he had out the gun all the time, and he said "Stand where you are or I will shoot you." I said "What for?" I said, "I am walking down the avenue. That is all I know. He just took hold of me and the other defendant John Kelly and walked us down to the station house.

Q Did you at any time on the morning of the 9th day of February approach this screen which has been testified to and

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place your hands on it? A No, I was north of it. I could not. I was walking down the avenue and could not go anywhere near because I was at least 15 -- about -- I cannot exactly explain how far I was away from the screen.

Q About how far do you think you were away? A How long in a block -- a block is about 300 feet, is it not -- a city block -- or 200 --

Q Were you half a block away or what? A No, I was not half a block away, about a quarter of a block.

Q About a quarter of a block away? A North of it.

BY THE COURT:

Q North means uptown? A Yes.

Q You understand that? A Yes, north of the screen.

Q North of the screen means between the screen and 20th street? A Yes.

BY MR. HOWE:

Q Were you then taken to the station house? A I was.

Q By whom? A By a special officer.

Q Where was officer Kelly then? A Kelly -- I don't know --

Q Was he or was he not -- you ought to know? A He came to the station house with us, yes.

Q Did officer Kelly take you and this co-defendant to the station house? A Yes, took Kelly to the station house and the special officer took me.

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Q Kelly took the other man? A Yes.

Q Did he take you to the station house immediately after he placed you under arrest? A Yes, sir, immediately.

Q How far, if you know, is that station house from Simpson & Crawford's? A It is on the same building block, I believe.

Q When you got to the station house with officer Kelly and this special officer, were any locks shown to the sergeant or lieutenant behind the desk? A No, not then.

Q Was anything said by officer Kelly about this screw-driver in evidence here? A No, not when we gave our pedigree, no.

Q Nothing was said by him at that time? A No.

Q When was the first time that you saw these locks and this screw-driver in evidence? A At the Magistrate's Court.

Q At the Magistrate's Court? A Yes.

Q Altogether how long was officer Kelly with you in the station house before you were finally placed in your cell? A About an hour easy -- we were not placed in any cell in that station house.

Q Were you examined in the station house by anybody?

A Why, no, not in regard to the case, no.

Q Were you asked any questions by the lieutenant behind the desk? A Just our pedigree, that was all.

Q Have you ever been convicted of any crime in your

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life? A No, never.

Q You say you are 22? A Yes.

Q Where have you been employed? A By the Vigilant Van and Express.

Q As what? A Doing clerical work, taking in all the orders and occasionally taking out a trunk myself in the express wagon.

BY THE COURT:

Q I did not hear the name of the company? A Vigilant Van Company.

Q Where is their office? A At 120th street and Eighth avenue.

CROSS EXAMINATION BY MR. EMBREE:

Q Where is 2132 Eighth avenue? A Between 16th and 15th-- 116th and 115th street.

BY THE COURT:

Q That is between what streets? A 115th and 116th, and Eighth avenue.

BY MR. EMBREE:

Q Up in Harlem? A Yes.

Q You were on that block, on the Simpson & Crawford block, at the time of your arrest? A Yes.

Q It was a little after 3 o'clock in the morning?

A That I cannot say.

Q In the early hours of the morning? A Yes, it was.

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Q Do you remember it was a very cold night? A Yes, it was.

Q Had you come down the avenue, passed 21st street? A Yes.

Q Did you see officer Kelly on fixed post as you came by? A I did not take notice.

Q What were you doing there on that block this cold morning at that hour? A I just left my friend who is in the United States Navy. We were going to a theatre with a telegraph operator and he said if he had not come up to the house in time to go to the show he would meet him down at 21st street where he lived; he lives in 118 or 120 West 21st street and he before said he would go back to Philadelphia he would bid him good-bye.

Q You say you were working? A Yes.

Q This was Thursday night? A Yes.

Q The next morning was Friday? A Yes.

Q You were going to work that morning? A No, sir, I don't think I would have went to work that morning because occasionally I take a day off.

Q Had you told your boss the night before that you were going to take a day off? A I told him I was going to a show and he knows my friend, and I said, we are going to a show, Mr. Kronke, and I don't know if I will be to work to-morrow or not.

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Q He usually understands that if you go to a show that means nothing doing next day? A No, not all the time, just on certain occasions.

Q This was in the early hours of the morning, on a cold morning? A Yes.

Q Your home was in Harlem? A Yes.

Q But you were walking down the streets? A Yes.

BY THE COURT:

Q Who did you live with at 2132 Eighth avenue? A Well, lived with my folks.

Q At what hour did you leave 2132 Eighth Avenue on the evening of February 8th? A Half past seven.

Q Did you leave that house alone or with anybody? A With a friend of mine.

Q Give me the full name of the friend? A Thomas Maloney.

Q Was anybody else besides Thomas Maloney with you when you left your house about half past seven on the evening of February 8th? A No.

Q Where did you go with him? A Directly up to 125th street between 7th and 8th avenues.

Q To what place? A Hurtig & Seaman's.

Q Did you meet there anybody that you knew? A No, sir.

Q How long did you stay there? A Until the show ended.

Q When you left, did you leave alone, or did you leave with anybody? A With my friend Thomas Maloney.

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Q When you and he left that theatre, at the close of the show, where did you first walk? A West, towards 8th avenue.

Q On what streets? A On 125th street.

Q Did you go with him as far as 8th avenue? A Yes, sir.

Q When you got to 8th avenue, what did you do? A We walked south to 122nd street, and went in there and had some drinks.

Q Went in where? A In 122nd street, it is a rathskellar.

Q Now there did you meet anybody that you knew? A Yes, sir, I knew of two people that goes around there once in awhile.

Q Did you on that night when you were there with Thomas Maloney, meet anybody that you know in that place? A I knew of two people there, yes.

Q Give me the names of those whom you recollect as having been in that rathskellar, whom you know? A I just saw them by sight. I don't know them very well to talk to.

Q Can you give me the name of one person whom you met in that rathskellar, whom you knew? A Yes, sir.

Q Give it. A Jacobson.

Q What is his first name? A Henry.

Q Where does he live? A In 118th street and 8th avenue.

Q What number? A 271 West 118th street.

Q Where does he work? A He is working for the Western Union.

Q A telegraph operator? A Yes.

Q You say that you met him on that evening in that place?

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A Yes.

Q Did you talk with him there that night? A Yes, I said hello to him and good-bye.

MR. HOWE: I wish on behalf of the defendant to interpose an objection to your Honor's line of questions, on the ground it is incompetent and immaterial.

Objection overruled. Exception.

THE WITNESS: I just said hello and good-bye to him.

BY THE COURT:

Q How long did you stay in that rathskellar? A I should judge until about half past two or so, or 2:30.

Q About half past two in the morning? A Yes.

Q When you left there did you leave there in company with Thomas Maloney? A Yes.

Q Did you leave there in company with anybody else besides Maloney? A No.

Q After you left there, where did you and Maloney go?

A To 125th street el. station on 8th avenue.

Q When you got to the el. station, what did you do?

A We took a south bound 6th avenue car, elevated train.

Q Where did you get off? A 23rd street.

Q What avenue? A 6th avenue.

Q Did you get off there alone, or anybody get off with you? A My friend got off with me.

Q That is, Thomas Maloney? A Yes.

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Q After you got off at 23rd street and 6th avenue with Thomas Maloney, where did you go? A We walked down to 21st street and 6th avenue.

Q When you got to 21st street and 6th avenue, where did Thomas Maloney go? A We stood there talking, and he said "My friend"-- that was the telegraph operator -- he said "If he did not come up to the show with us, he would meet us down in--"

Q You and Thomas Maloney stood on 6th avenue and 21st street talking, is that so? A Yes, sir.

Q On what corner did you stand? A The southwest corner.

Q While you were talking there with Thomas Maloney, was there anybody else present? A Yes, sir.

Q Talking with you? A Yes.

Q Who was that? A His friend, the telegraph operator.

Q Tell me the name? A I don't exactly know this fellow. He has been acquainted with Maloney, and he introduced him to me. I believe it was Hermit, or something similar to that, his last name.

Q He was somebody who was known to Maloney? A Yes, sir.

Q When Maloney introduced to you that night, and whose name you don't remember? A Yes.

Q Where did you meet this man on that night? A Which man?

Q The telegraph operator, whose name you don't know?

A 21st street and 6th avenue.

Q From what direction did he come? A I don't know, he was

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waiting there for us.

Q In other words, he was there when you got there? A Yes.

Q Did you expect to meet him there? A Yes.

Q After you had met him on that corner, about how long did you and Maloney and this man stand on that corner talking?

A About five minutes or ten.

Q Which one of the three left first? A Why, the two of them went in the same direction. I shook hands with the pair of them. He said he was going back to Philadelphia to his ship and had to report in the morning.

Q In other words, Maloney and this telegraph operator left you, while you were on the corner of 21st street and 6th avenue? A Yes.

Q In what direction did Maloney and the telegraph operator go? A They proceeded west.

Q On the downtown or uptown side of 21st street?

A Downtown side.

Q After they had left you, where did you go? A I walked directly south.

Q On which side of 6th avenue, east or west side? A West side.

Q Alone or in company with any one? A Alone.

Q How far down the avenue did you walk before you heard a policeman call out? A About a block and a quarter.

Q Do you know Otto Hugel? A No, sir.

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Q Did you know Otto Hugel on February 8th? A No, sir.

Q You say that you were walking down the west side of 6th avenue at the moment you were placed under arrest? A Yes, I was walking south.

Q That is, downtown? A Yes.

Q Walking towards the lower part of the city? A Yes.

Q Now, when the officer approached you, did he approach you from behind or in front? A He did not approach me at all. He was standing with his gun out.

Q When you passed the show windows of Simpson Crawford Company, did you see any persons standing by the show windows? A No.

Q Did you see any persons placed under arrest at the time you were placed under arrest? A Yes.

Q How many persons were placed under arrest by the officer? A In all, three.

Q With respect to these three, which one was placed under arrest first, you or the other two? A The other two.

Q At the moment that you were placed under arrest, how many persons, if any, did the officer have in custody? A Two.

Q Where was the officer at the moment that he placed you under arrest? A On 19th street, he was about three feet north of the corner, standing out in the gutter with his gun out, yelling to me all the time from half a block away.

Q Where were the other two men who were in custody?

A Standing there.

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Q Where, on the sidewalk. A Yes.

Q Did you know either of those men? A No.

Q You say both of those men were strangers to you at the time. A Yes.

Q How long had you worked for this Express Company?

A Three years -- a little over three years.

Q What kind of work had you done for them? A Clerical work, and driving occasionally, when the occasion showed itself, I would take a trunk out or do a little work in the stable -- most of the time clerical work.

Q Father and mother living? A Mother living, father dead.

Q Was she residing at 2132 Eighth Avenue -- did she live there on February 8th. A No.

Q Were you living with your mother on that date? A Yes, I was living there. She was out of the city.

Q Your mother, you say, was away from home? A Yes.

Q On February 8th. A Yes.

Q But her home was at 2132 Eighth Avenue? A Yes.

Q The only saloon you had been in that night was the one in 122nd street and 8th avenue, the rathskellar, is that so?  
A Yes, sir.

Q Why were you going downtown when you left 21st street, when you lived at 2132 8th avenue? A My intention was to go down and get a cup of coffee or have something warm before I got on the train. It was immaterial to me which station I would

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take. I thought I would walk down and just as well get a restaurant down towards that way.

Q Have you seen Thomas Maloney since that night? A No, sir.

Q You say that he was at that time in the United States Navy? A Yes.

Q In what capacity? A First class fireman.

Q Attached to what ship? A He came up in citizen's clothes. He was on the Idaho, and had been transferred -- writing me letters and told me he had been transferred -- I did not take the trouble to ask him that night which ship he was employed on at the time.

Q How long before your arrest was it, that Maloney left you on the corner, how much time passed between the moment that he left you and the moment you were placed under arrest? A I should judge about a couple of -- less than five minutes -- about five minutes or a little less.

Q Do you know in what office the telegraph operator whom you say left you at the same time, worked? A Yes, sir, worked in the main office, because he told me that.

Q Working in the main office? A Yes.

Q You mean down on Broadway and Dey Streets? A Yes.

Q What kind of work was he doing there? A That is all I know, that he is a telegraph operator.

Q What did you understand his last name was? A Kermit, or something similar to that. I did not exactly catch that name.

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Q Where did he live? A I don't -- he lived 114 or 116 or some of those numbers he told me 114 or some number like that, West 21st street, 114 or 116. I don't exactly know.

Q Do you know where Thomas Maloney is now? A No, sir, I do not.

Q When did you hear from him last? A That was the last that I heard of him. I have been in jail since.

Q When did you last hear from the telegraph operator? A I never heard from him since or seen him since.

BY MR. HOWE:

Q You have been in prison since your arrest? A Yes.

Q That is, since the 8th of February? A Yes.

BY MR. EMEREE:

Q You told the Court you expected to meet the telegraph man at 21st street and 6th avenue? A Yes, sir.

Q Did you have an appointment with him? A I did not. My friend Maloney did.

Q At ten minutes to three in the morning? A Ten minutes to three -- he said he would be through about 2 o'clock, and he would wait there for us.

Q You went down there to meet him? A Yes, generally got through about 2 o'clock.

MR. HOWE: THE DEFENSE RESTS.

THE COURT: I will let the matter stand over, so that the proper efforts may be made to secure the attendance of

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the telegraph operator, and for the purpose of making some effort to ascertain the whereabouts of Thomas Maloney.

MR. HOWE: Do I understand that the efforts will be made by the prosecuting officer of this county, or do you desire the defendant's counsel to ?

THE COURT: I will ask Mr. Edwards. Have the kindness Mr. Edwards, to see what you can do towards securing the attendance of that telegraph operator.

JOHN J. KELLY recalled:

BY MR. EMBREE:

Q Were you on the corner of 21st street and 6th avenue five minutes before you arrested this man? A Yes.

Q Were you there ten minutes before you arrested him? A Yes, sir.

Q Did you see him on that corner at that time? A No, sir.

Q Did you see three men standing on the corner talking together? A No, sir.

Q Are you able to say whether or not there were three men standing on the southwest corner, talking together, while you stood on fixed post? A I couldn't say for sure. I did not notice anybody.

BY THE FOREMAN:

Q When you brought this other prisoner with you whom you had arrested first, and brought him down to where this man stood?

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A I brought him up.

Q or brought him up, did they recognize each other in any way? A I could not say that.

THE COURT: Let the defendant take the stand.

FRANK MAYNARD resumes the stand:

BY THE COURT:

Q You can give me the names of one or two people who know Thomas Maloney?

MR. HOWE: I must protect the interests of this defendant, and I respectfully submit that that subject has been thoroughly exhausted by your Honor, and on behalf of the defendant, I object to any further cross-examination of this defendant, in view of the fact that the District Attorney has completed his examination, and the defense has rested its case.

THE COURT: You may have an exception.

BY THE COURT:

Q Was Thomas Maloney known by sight to your employer, Mr. Frenke? A No, sir.

Q Was Thomas Maloney known by sight to any member of your own family? A No, sir, I don't think they could recognize him very well.

Q How long have you known Thomas Maloney? A About five years.

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Q Who, if any one, do you know who also knows Thomas Maloney? A I will tell you --

Q Keep your voice up? A It was in Coney Island about five years ago he was a life saver down there, and that was how I got acquainted with him. I used to go in swimming down there and that is how I got acquainted with him. He was a life saver there in Coney Island and we chummed together for a year or so.

Q Where did you meet Thomas Maloney on the night of your arrest? A My house.

Q What time did he get there? A He was there when I arrived.

Q That is to say, at the time you got home, Thomas Maloney was already in one of the rooms? A He was by the door. They told him I had not come home yet.

Q Thomas Maloney had spoken to somebody in your house on that night before you got there? A Yes.

Q That is your information? A Yes.

Q Who was living there in your home on that night? A My family.

Q Give me their names? A Frank -- at the present there was Frank and my sister Katie and Gertrude there.

Q That is to say, living in that house on the evening of February 8th, you had two sisters and a brother. A Yes.

Q Is that so? A Yes.

Q Have you any information as to which one it was who spoke

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to Thomas Maloney? A No, sir, I do not know which one he talked with first.

Q Had he ever called at your house before? A No.

Q Had you ever introduced him to any member of your family?

A No, I did not.

Q When you were at the rathskellar at 122nd street, did you introduce him to any one? A No, I did not.

Q Did you walk into your rooms with him that night?

A No, sir, he waited downstairs until I got dressed.

Q So that you did not see Maloney speak to any member of your family that night? A No, sir.

Q Were you present at any time that night when Maloney was in the presence of any member of your family? A No, sir.

Q Is there any additional information that you can give which will aid in securing the attendance of the telegraph operator? A No, sir, there is not.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2 o'clock.

AFTER RECESS. TRIAL RESUMED.

MR. EMEREE: If your Honor please, the defendant left the stand just before recess and with counsel's permission, I should like to have him recalled for a minute.



MR. HOWE: I understood that the case had been rested.

THE COURT: Have you any objection to this defendant taking the stand again?

MR. HOWE: No, I have not.

THE COURT: Take the stand.

F R A N K M A Y N A R D resumes the stand:

CROSS EXAMINATION CONTINUED BY MR. EMBREE:

Q I understood you to say that at the time of your arrest you were working for this man Kronke? A Yes.

Q He is in the van business? A Yes.

Q You said you worked for him how long? A Three years.

Q Continuously? A Yes.

Q And you say that you did clerical work? A Yes.

Q That is, writing on the books? A Yes.

Q And occasionally you drove the van? A Yes.

Q Is that the only kind of work you did for those three years? A During those three years, yes.

MR. HOWE: I submit this matter has been gone into, not only by your Honor, but by the District Attorney at this morning's session, and it is absolutely repetition, and nothing more, and I respectfully object.

THE COURT: I will hear the next question.

BY MR. EMBREE:

Q What did you do just prior to that employment? A I work-

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ed at plastering.

Objected to. Overruled. Exception.

Q Why did you give in the Magistrate's Court, your occupation as plasterer instead of clerk? A Well, I stated that as my occupation, because I can go back any time and work at that, but my shoulder has been dislocated; worked at that trade, and was engaged in the business about two and a half years; I have a dislocation of the shoulder, and could not very well move up, and could not keep up with the work.

Q You said in the Magistrate's Court you lived at 2132 Eighth avenue about two years? A Yes.

Q Is that right? A Yes.

Q Your family lives there? A Yes.

Q Under what name is your family known there? A Maynard.

Q How do you spell that name? A M-a-y-n-a-r-d.

Q You said this morning that there in the household with your sisters was your brother Frank? A Yes -- Frank?

Q Yes. A No, I said Joe.

Objected to as repetition. Overruled and exception.

Q This morning you said it was your brother Frank? A I said Joe.

Q Do you remember that you said Frank or Joe? A Joe -- pretty sure I said Joe.

Q Do you always go under the name of Frank Maynard?

A Always.

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Q Tell me what kind of a house it is at 2132 Eighth avenue?

A Two story house -- one story house on the ground floor and then one story -- two story you would call it -- one flight up.

Q What is on the ground floor? A Barber shop and jeweler's

Q What is the arrangement upstairs? A About four rooms.

Q Is the Maynard family the only family living on the second floor? A The only family?

Q Yes. A Why, yes.

Q Are you sure about that? A The last time I was there.

Q How long ago was that? A About two months ago.

Q You have not been there in two months? A Been in jail two months.

Q Was there anybody but the Maynard family living there on the 8th day of February? A Why, yes, I believe there was.

Objected to. Overruled. Exception.

Q You say you believe there was? A Yes.

Q What was the name of the other family? A I don't know.

Q How long had the other family lived there? A I don't know.

Q Have you any idea how long the other family lived there?

A No, no idea.

Q Who was in the other family? A Who was in the other family?

Q Yes -- father and mother and children? A Why, yes -- father --

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Q How many children, do you know? A I don't know exactly.

Q Were there some boys? A I don't -- I believe there was, I ain't sure.

Q About what ages? A I could not give any estimate on the ages.

Q But your family had lived there two years? A Yes.

Q And you had lived there with them? A Yes.

Q How long had the other family lived there? A I don't know.

Q Two years? A I don't know.

Q Had they come there just recently? A No.

Q You don't know -- was there a grown boy in the family?

A A grown boy?

Q Yes. A That I don't know.

Q You don't know? A No.

Q There might have been, but you don't know? A Yes.

Q Was the door of this other family just across the hall from your door? A Yes.

Q You used to see them going in and out? A No.

Q You did not see them? A Never saw them.

Q It is possible they lived there two years also? A Possible.

Q That is, you don't know anything to the contrary? A Yes.

Objected to. Objection sustained.

THE COURT: I think you have gone far enough.

BY MR. FURBER:

Q Is the name Maynard on the door or was it on the door on

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the 8th of February? A No.

Q What is the arrangement of the hall after you go up - stairs? A There is a little -- it is a public hall about six feet, I guess, and then there is the stairs leading up and then at the top there is another little public hallway and then on either side is four rooms and then in the middle there is a toilet.

Q And those doors are opposite? A Yes.

Q Those are the only two families that live up there?

A Yes.

Q And in that family are your mother and two sisters?

A yes, sir.

Q And your brother? A Yes.

Q Four rooms in the house. A Yes, I believe there is four.

Q What? A Four.

Q Are you sure of that, you said you believed there was four? A Yes.

Q But you are not sure of that, are you? A Three rooms, I believe.

Q What are they? A Dining room, bedroom and parlor.

Q Dining room, bedroom and parlor? A Yes.

Objected to. Overruled. Exception.

Q Has the apartment always consisted of those three rooms?

A Well, I don't know if they have been altered or not.

Q During the two years your family has lived there, has

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there just been three rooms? A Yes.

Q Is there anybody else who lives there in those rooms except your own family? A No.

Q What is the name of the man who runs the barber shop below? A I don't know.

Q What is his nationality? A German.

Q What is the name of the jewelry man? A At one time Rainer.

Q Do you know if he is still there or not? A No, I do not know. I do not know if he is there now.

Q Have you a middle name? A Why, yes.

Q What is the middle name? A Aloysius.

Q Has your brother Joe a middle name? A Yes.

Q Do you know what it is? A Certainly.

Q What is it? A I refuse to give his middle name.

Q Is his name Joe or Joseph? A Joseph.

Q You refuse to give the middle name? A Yes.

MR. HOWE: That is the case for the defense.

MR. EMBREE: If your Honor please, I am expecting another witness at any moment. May I ask the Court's indulgence to wait a few minutes to see if that witness arrives. It is important and material to the People's case. The witness has been sent for at some considerable distance from the court house, and the messenger who went has had barely time to return.

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THE COURT: If this jury step aside, this case cannot be reached again to-day.

MR. DIBBLE: Then I would prefer to have them step aside and let the case go over until to-morrow morning.

THE COURT: Is there any objection to that?

MR. HOWE: Yes, the defense objects to any further delay of this case. The case is now on trial. I only do this in the interest of my client.

THE COURT: I think it is in the interest of justice that the People should be given a reasonable adjournment.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until to-morrow morning, April 9th, 1912, at 10:30.

CASE # 1523

THE PEOPLE v. MAYNARD.

New York, April 9, 1912.

TRIAL RESUMED.

WALTER BURNS, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:  
(Residence 480 East 173d street.)

DIRECT-EXAMINATION BY MR. EMEREE:

Q What is your business? A Clerical man for John Russo, 2132 1/2 Eighth avenue and 2132.

Q Where in the city and county of New York? A Yes.

Q How long have you held that position, Mr Burns? A The past three years.

Q Always in those premises? A Yes, sir.

Q Then you are familiar with the premises there? A Yes, sir.

BY THE COURT:

Q What was the number you gave? A 2132 Eighth avenue and 2132 1/2 Eighth avenue.

Q That is between what streets? A 115 and 116 on the East side of the avenue.

BY MR. EMEREE:

Q On which side of the avenue? A The east side of the avenue.

Q Between 115 and 116th street? A Yes.

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Q Will you describe those premises there, what is the nature of them? A Well, they are used mostly for business purposes.

BY THE COURT:

Q How many stories high is the building? A Two stories.

Q What is the second floor used for? A One side is used for a tailor establishment and the other side is used for club rooms.

Q What was the use those rooms were put to on the 9th of February last? A The same thing as they are now, club rooms and tailors.

Q When you say one flight up, do you mean what would ordinarily be called the second floor? A Yes.

Q Is there a story above that? A No.

BY MR. EMEREE:

Q Was there any family living upstairs in those premises at all?

BY THE COURT:

Q On the 9th of February? A No, sir, to the best of my knowledge there was the same two businesses that are there now.

BY MR. EMEREE:

Q This club and the tailor? A Yes.

Q Do you know this defendant? A No, sir, I do not.

Q Do you remember to ever have seen him before? A No.

BY THE COURT:

Q What is your relation to the premises, what do you have to do with those premises? A I am a clerical man in the employment of John Russillo.

Q And who is he? A He has a fruit place at 2132 1/2 Eighth avenue.

Q Is 2132 in the same building as 2132 1/2? A 2132 1/2 and 2132 is the same building.

Q Did you ever have occasion to go upstairs in that building? A No, sir, I never did.

Q Do you know a barber shop there in the building? A No, sir, I never did.

Q Do you know of a jewelry store in that building? A No, sir.

Q Where is the nearest barber shop if you know on that side of the avenue? A 2136 Eighth avenue.

Q Where is the nearest jewelry store? A 2136 Eighth.

Q How high a building is 2136? A Two story building, the same as 2132 Eighth avenue.

Q Do you know who lives on the second floor of 2136? A I do not.

Q Is it between the same streets 115th and 116th? A Yes.  
BY MR. EMERSON:

Q You say your employer has a fruit store downstairs on one side? A Yes, sir.

Q And what is on the other side downstairs? A A lunch

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room.

Q And upstairs you say is a club? A And a tailor.

Q Do you know the name of the club? A No, I do not.

Q Do you know the nature of the club there? A I could not tell you.

CROSS-EXAMINATION BY MR. HOWE:

Q Did I understand you to say that you never were upstairs in the premises 2132? A Yes.

Q So what you testified to is what some one else told you, is it not? A No, sir.

Q You have never been upstairs to ascertain whether it is a tailor establishment or not? A There is a tailor upstairs by his signs outside of the windows, and my employer collects the rent from the tailor and it is used for nothing else only business purposes.

Q You yourself have never been upstairs? A No, I have never been upstairs.

Q How many rooms are there upstairs? A I have never been upstairs.

Q Do you know from any other source, how many rooms there are? A I do not.

BY MR. EMBREE:

Q In looking from the street up into the tailor's place can you see in the window? A Yes, sir, you can standing out

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close to the curb towards the gutter.

Q Have you stood there and looked at those windows?

A Often looked up, yes.

Q It appears to be a tailor shop? A Appears to be a tailor shop and I saw people passing in with clothes to be repaired there.

THE PEOPLE REST.

TESTIMONY CLOSED.

MR. HOWE: I respectfully move for the direction of a verdict upon the ground that the People have failed to sustain the allegation set forth in the indictment. There is only one count and that is the charge of attempted burglary. I now make that motion on behalf of the defence.

Motion denied, and exception.

*Jury rendered a verdict  
of Guilty as charged*

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