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CASE # 1512

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

-----X
THE PEOPLE

VS

FRANK McGUIRE.
-----X

Before:

HON. OTTO A. ROSALSKY, J.,

and a Jury

Tried, New York, March 19th, etc., 1912.

Indicted for Robbery in the first degree.

Indictment filed January 18th, 1912.

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

ASSISTANT DISTRICT ATTORNEY JAMES O'MALLEY, for the

People.

JAMES A. GRAY, ESQ., for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

MARTHA MORRISON, of 300 West 49th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Mrs. Morrison, how long have you lived at 300 West 49th Street? A Since the 1st of October.

Q And are you a married man? A No, sir; I just got my divorce.

Q You are divorced? A Yes, sir.

Q And your husband's name was what? A Morrison.

Q And where did you get your divorce from him? A Detroit, Michigan.

Q And how long ago was that, please? A The 15th of last March --- of last April.

Q 1911? A Yes, sir.

Q And then you came out to New York; did you? A Yes, sir.

Q And you have been living here since? A Yes, sir.

Q Do you remember Christmas Eve, December 24th, of last year? A Yes, sir.

Q Now, will you please tell the gentlemen of the jury where you were, that evening, and please speak up loud, Mrs. Morrison, so that all can hear you. A Why, a gentleman friend telephoned me, and we went to the theatre.

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Q To what theatre? A To Hammerstein's. And then we went to the Knickerbocker, after the show, and had a drink there, and then went to Maxime's, and then we came up Broadway and stopped at several other places. I don't remember the names --- and then it was quite late, and, when we got to 49th Street and Seventh Avenue, we went into Martin's Cafe.

Q That is on the easterly side of Seventh Avenue, between 49th and 50th Streets; is it not? A Yes, sir.

Q Now, who was with you during all the time that you have spoken of, on that evening and night? A Dr. Rodriguez.

Q And is he the gentleman who took you to the theatre?
A Yes, sir.

Q And he was with you until you entered Martin's Cafe?
A Yes, sir.

Q And that cafe is in the City and County of New York; is it not? A Yes, sir.

Q Now, then, when you entered Martin's Cafe, where did you go, Mrs. Morrison? Where did you go when you entered there, what room? A Why, there is only one room that you can go in, the back room.

Q And did you and Dr. Rodriguez sit down in that room?
A Yes, sir.

Q At a table? A Yes, sir.

Q Now, did you see, any time that morning, this defendant McGuire? Did you see him at any time after you

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entered Martin's Cafe? A After I left there?

Q No, after you entered there? A Yes.

Q Now, was he in there when you went in, or did he come in afterwards, if you remember? A I couldn't say that. I didn't notice.

Q But you saw him in that cafe? A Yes, sir.

Q Where was he? A Sitting at a table.

Q How far away from you? A Oh, I don't know; probably as far as that table over there (indicating the counsel table).

Q Shall we say about 12 or 15 feet from you? A Yes, sir.

Q And who was with him at the time; how many others, if any? A Why, I think there were about four.

Q Now, will you speak a little bit louder? I am afraid the jury are not hearing you. Now, then, tell everything that occurred in there after you took your seat at a table there and after you saw the defendant? A Well, the bartender called my attention to it, and called me in the bar, and he says to me ---

MR. GRAY: That is objected to.

THE COURT: Objection sustained.

BY MR. O'NEALLEY:

Q Was the defendant present when the bartender spoke to you? Was he in the pool room or bar room proper, were you

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and the bartender talked? A No, sir.

Q So that he didn't hear what the bartender said to you?

A No, sir.

Q And then the bartender called you into the barroom and said something to you? A Yes, sir.

Q What is his name? Do you know? A Yes, sir.

Q What is his name? A Jesse Clayton.

Q And where did you go after your talk with him? A I went back to the table, and sat down with Dr. Rodriguez.

Q Now, then, how long did Dr. Rodriguez stay there?

A Not very long.

Q Well, how long would you say? Give the jury your best judgment. A Oh, I don't know; not a great while.

Q Did you talk with the defendant in that saloon, or did you talk with any one who was at the defendant's table?

A No, sir.

Q Did you dance with anybody in that saloon? A Yes, sir.

Q With whom? A A little chap.

Q Did you know his name? A No, sir.

Q Did you know where he was from? A Why, he told me that he had ----

MR. GRAY: Objected to.

THE COURT: Objection sustained. Strike out the answer.

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BY MR. O'MALLEY:

Q Now, did you see where that man with whom you danced was before he danced with you, where he was sitting? A Over in the corner, with some people.

Q Well, what I mean to say is, was he sitting with the defendant, or at the defendant's table, or with the defendant and his friends? A Well, I don't know whether they were his friends or not.

Q Anyway, he was sitting down at another table in the cafe? A Yes, sir.

Q Now, after you danced with this young chap, did you see Dr. Rodriguez then? A Yes.

Q Well, did he at any time leave there that morning? A Yes, he got angry, and left, because I danced with this little fellow.

Q And then, after Doctor left, was the defendant still in there with his friends? A Yes, sir.

Q Now, what time did you leave there, if you remember? A Why, I think it was around half past six or seven o'clock; about seven o'clock, I guess.

Q In the morning? A Yes, sir.

Q And who went with you, if anybody? Who left the saloon with you? A A little chap I saw in there, named Pete.

Q Pete? A Yes, sir.

Q Do you know his last name? A I think it is Leary.

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Q. You think it is Pete Leary? A. Yes, sir.

Q. Now, when you left the saloon, were the defendant and his friends still in there? A. Yes, sir.

Q. Now, after you left the saloon, what occurred after you got out on the street? Which way did you go, in the first place? A. Well, Pete said he would take me home.

MR. GRAY: I object to that and move to strike it

out.

THE COURT: Motion granted. Strike it out, and the jury will disregard it.

BY MR. CUMALLEY:

Q. Well, where did you go then, if anywhere, madam?

A. Well, we started out and got over to 49th Street and Seventh Avenue, on the other side of the street, and when we got over there, this one here and four others (indicating the defendant)--

Q. When you say "this one here", you mean the defendant; do you not? A. Yes, sir. He and four other fellows came up, and chased him away from me.

Q. Chased who away from you? A. Why, Pete, the little fellow that was taking me home.

Q. Now, did you hear any conversation between this defendant and Pete? A. All I heard Pete say was, "Oh, I know that lady, and I'm taking her home. What you ^{are} butting in for? you don't know her".

Q. And at that time you were on 49th Street, going toward

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Broadway? A Yes, sir.

Q And then you say Pete left you at that time? A Yes, sir; they chased him away.

Q Then where did you go? A I walked up to --- oh, in the meantime, when they chased Pete, I went into a cafe across the street.

Q What cafe was that? A Averdan's.

Q How do you spell it? A I really don't know how to spell it.

Q Well, on what corner is that cafe of Broadway and 49th Street? The uptown corner? A Yes, sir.

Q And on which side of Broadway; the east or west side? A West, I think.

Q Well, east or west? That is, did you cross Broadway to go there? A No, sir.

Q Then it was on the northeast corner of Broadway and 49th Street? A Yes, sir.

Q Now, then, you went in there, and what occurred after you went into that cafe? A Why, I stayed there a few minutes, and then were playing and dancing. This gentleman that I danced with played the piano.

Q Now, I understood you to say that you went in there alone? A Yes. And this little chap that I was dancing with in Martin's came in.

Q And what did you do in there? A Stayed in there, and

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played the piano and danced for a while.

Q Now, also, if anybody else, came into that cafe, while you were dancing with the little chap? A These four fellows.

Q What were the names of these four fellows? A Well, McArthur, (phonetic) (phonetic) (phonetic) and three others.

Q And they were all in there when they came in? A Only a short time.

Q And did you leave that cafe then? A Yes, sir.

Q What time did you leave, Mr. Harrison? A The little fellow that I was dancing with.

Q And when you came out of the cafe, where did you go?

A Walked up 19th Street to Eighth Avenue.

Q And he was with you; was he? A Yes, sir.

BY THE COURT:

Q Whom do you mean by "he"?

MR. O'MALLEY: He is a little chap, your Honor, whose name we don't know, with whom she danced first in Martin's Cafe.

BY MR. O'MALLEY:

Q Now, did you, after you went towards Eighth Avenue, see the defendant again? A Yes, sir.

Q Where did you see him? A Why, they were coming up the street.

Q Behind you? A Yes, coming through 49th Street after me, in the direction of Eighth Avenue.

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Q The defendant and his three companions, you mean?

A Yes, sir.

Q And where did you go after you got to Eighth Avenue?

A Just walked slowly up Eighth Avenue.

Q With this little chap? A Yes, sir.

Q And did you see the defendant coming along? A Yes, sir.

Q And then where did you go, after you got up on Eighth Avenue? A To Morris's Cafe, 54th Street and Eighth Avenue.

Q And where did you go in that cafe, into what part of the cafe, what room? A In the back room, where they drink.

Q And did this little chap enter with you? A Yes, sir.

Q You and he together? A Yes, sir.

Q Where did you go after you got in the cafe yourself?

A Why, we went over to a table, and I excused myself for a minute. He ordered some beer, and I excused myself for a minute, and, when I came back to the table, these fellows were with him.

Q What fellows? A These men that robbed me.

THE COURT: Strike that out, and the jury will disregard that evidence entirely.

BY MR. O'GALLEY:

Q Well, you mean the defendant and the three men that you saw with him? A Yes, sir.

Q Now, where were they when you saw them, after you came

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from the toilet? A Sitting down at that table where I was sitting.

Q Now, where was the man that you had been sitting with?

A At the same table.

Q Now, please speak louder. I see that the last juror in this hearing is hearing to hear you. Now, then, tell the jury exactly what occurred after you came back to the table, and where the defendant and his three friends and the little chap that you had gone into the saloon with sitting there?

A I came back and sat down at the table, and there was a glass of beer setting on the table, and he said, "Go ahead and drink your beer", and I said, "No, I don't care for it." And they ordered a fresh one, and I wouldn't touch it. Then I started go out, to go out of the side door on 54th street, to go home, and I got almost to the door, when the four of them all crowded around me. And then I sort of realized that something was going to happen, don't you know?

THE COURT: Strike that out, what the witness says she then realized. And the jury will disregard it.

BY MR. O'NEALLEY:

Q You went to the side door leading to to 54th Street; did you? A Yes, sir.

Q And these four men, you say, crowded around you?

A Yes, sir. And then I ran for the door that goes into the bar, and I got to the bar door, when this one grabbed

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my lavalier (indicating the defendant), and the other one grabbed my hands. I was holding on to the door to keep them from dragging me back.

Q What other one do you refer to? A Why, two of the others. They tried to get my rings of my hands (illustrating).

THE COURT: Strike that out, what they tried to do.

BY MR. O'MALLEY:

Q Now, tell us exactly what they did. Don't say that they tried to do anything, because that isn't proper. You say the defendant grabbed your lavalier? A Yes, sir.

Q Where was it at the time? A Right on my neck, hanging on a little chain like that (illustrating).

Q Now, describe it to the jury, the lavalier. A Seven diamonds on a string, on a platinum chain, a little thin chain, hangs that way (illustrating).

Q Well, on what sort of a string? A Was just set in platinum settings, and hung on a platinum chain.

Q On a platinum chain? A Yes, sir, silver platinum chain.

THE COURT: You had better develop further the circumstances of the taking of the lavalier, and whether or not it was taken by force or violence.

MR. O'MALLEY: Yes, sir, I will. I intend to do so. But I was trying to get her to describe the lavalier first.

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BY MR. O'MALLEY:

Q Now, then, tell everything that the defendant did after you ran towards the door opening into the barroom?

A Well, he was the first one that grabbed my lavalisere, and I thought the chain would break, and I put my hand up (illustrating), and then he hit me on the hand with the gun.

Q Did you see the gun, A Yes, sir.

BY THE COURT:

Q That is, before he took the lavalisere? A No, sir; while he was trying to take it.

BY MR. O'MALLEY:

Q What part of the gun did he hit you on the hand with?

A Well, that I couldn't say.

Q Well, the juzzle or the butt end? A I guess it was the handle.

MR. GRAY: I move to strike that out, her guess, if your Honor please.

THE COURT: Yes, strike that out, and the jury will disregard it.

BY MR. O'MALLEY:

Q And where was your hand at the time he hit your hand with the gun? A Up at my lavalisere, holding it (illustrating).

Q Did you have a hold of it at the time he struck you?

A Yes, sir.

Q Now, tell what any of the other men were doing in the

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meantime? A One of them tried to get my rings, and the other ----

THE COURT: No, strike that out. And they jury will disregard it.

BY MR. O'MALLEY:

Q No, describe what that man did. A He tried to pull my earrings out.

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

THE COURT: objection sustained. Motion granted.

They jury will disregard it.

BY MR. O'MALLEY:

Q Now, what did he do, not what he tried to do? A He pulled at my earrings (illustrating).

Q Did you have earrings in your ears at the time? A Yes, sir, I had these very earrings on that I have now. (Indicating) And you can see the holes in my ears are stretched now.

Q You say you had these earrings on? A Yes, sir.

Q And is this the earring that one of the men tried to pull out with his hand (indicating the left earring)?

A Yes, sir. And you can see how the hole is stretched; and I put my hand up to save the earring, and he hit me with a gun.

Q Who did? A One of the other fellows.

Q Where was your hand when he hit you? A Up at my

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Q Now, what did the other men do, or any of them? A One of the other men tried to get my rings off my fingers,

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

THE COURT: Objection sustained. Motion granted. And the jury will disregard it.

BY MR. O'MALLEY:

Q Now, tell exactly what that man did, please. A I had hold of the door like that, trying to keep them from pulling me back into the room (illustrating), and he had his hand on my hand, like that, pulling at my rings.

Q Pulling at your rings with his hand? A Yes, sir.

Q Now, will you remove your gloves, please. A I haven't any of my rings on, now, but I have some of them here in my purse.

Q Will you produce them, please. A There is my dinner-ring. They almost got that. See how it is bent (indicating).

MR. GRAY: I object to what they almost did, if your Honor please, and move to strike it out.

THE COURT: Objection sustained. Motion granted. Strike it out. And the jury will disregard it.

BY MR. O'MALLEY:

Q You wore that ring at the time you say your rings were attempted to be taken by these men? A Yes, sir.

Q And what finger was that ring on? A It was on my

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right hand, on this finger, on the third finger of my right hand (indicating).

Q And you say it was bent by the man? A Yes, sir.

Q And it was in that same condition afterwards? A Yes. But this part was bent up like this (illustrating). That was bent right up straight. I straightened it out some afterwards.

Q So that they got ahold of it under there, like that (illustrating)? A Yes, sir.

Q What other things did you have on? A These (indicating two diamond rings).

Q And on what hand did you have those rings? A Next to my wedding ring.

Q Then on the third finger of your left hand? A Yes, sir.

Q In addition to these rings did you have on any other rings? A No, sir.

Q During all this time you say you were hanging on to this door leading into the barroom? A Yes, sir.

Q Now, what, if anything, did you say at the time?

A Why, I screamed. The bartender was standing there, and I screamed, and said, "Can't you help me?" And, of course, after they got the lavalier, they ran out, and I ran out of the barroom, and looked up the street and didn't see them, and when I came back into the bar, the bartender handed me my muff.

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Q Now, don't tell us what he said to you, the bartender, when he returned your muff. But, after they got your lavaliers they ran out, you say? A Yes, sir.

Q Who did? A The five of them.

Q The defendant and his companions, you mean? A Yes, sir.

Q And then you went out on the street, for a moment, did you? A Yes, sir.

Q And did you see them then? A No, sir.

Q Then what did you do? A I went back in the barroom, and the bartender handed me my muff and I went home.

Q Now, Mrs. Morrison, when did you --- at any time after that did you see the police officers? A Yes, sir. I telephoned about seven o'clock, Christmas night.

Q Yes. A To Headquarters.

Q And did you talk to some one there on the 'phone? Just yes or no to that? A Yes, sir.

Q Now, between seven o'clock Christmas night, and the time you got home in the morning, had you talked with anybody?

A Yes, sir.

Q With whom? A Jesse Clayton, the bartender.

Q The bartender who was in Martin's saloon? A Yes, sir.

Q And when did you talk to him? A I telephoned to him and he came to my house.

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Q And you had a talk with him about this affair? A Yes, sir.

Q And did you see him again that day? A No, sir.

Q In any event, you telephoned the police, that evening?

A Yes, sir;

Q And a police officer came to your house? A Yes, sir.

Q When was the next time you saw the defendant after he ran out of the back room of Morris's saloon, as you have indicated? A Why, I haven't seen him since.

Q Why, haven't you seen him ^{anywhere} at all since that time?

A Only when I went to the Tombs to see him.

Q But after he was arrested, didn't you see him again before you saw him in the Tombs? A Yes, sir, in the 47th Street station, about one o'clock one morning.

Q And when was that; what month? A January.

Q And how did you come to go to the station house?

A Why, detectives came around for me, and I was out at the time.

Q And afterwards you went over to the station house; did you? A Yes.

Q And did you see the defendant there? A Yes, sir.

Q And where was he when you saw him? A Well, detectives brought him, into the room where I was.

Q Brought him to where you were? A Yes, sir.

Q And what, if anything, did you say after the defendant

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came in? A I just said that was the man.

Q And the defendant heard you, did he? A Yes.

Q Now, then, were you there when the defendant was taken back to his cell? A Yes.

Q Now, did you, at any time, hear the defendant say anything except while he was in there? A Yes.

Q Will you please tell the jury what that was? A As he was going out, he put his finger up to his lips (illustrating), and said, "See Jesse". That is, this bartender.

Q This bartender, Jesse Clayton? A Yes, sir.

Q And then he was taken back to his cell; was he?

A Yes, sir.

Q Now, then, when was the next time that you saw the defendant after you saw him in the police station? Did you see him in the Magistrate's Court when he was arraigned?

A Yes, sir.

Q Now, after you saw him in the Magistrate's Court, when did you next see him? A Down here, I think.

Q Where? A Well, I don't remember where.

Q Well, you say you saw him down here. Do you mean down in this part of the city? A No; in one of the rooms here.

Q In this building? Or was it in the Tombs? A Yes, it was in the Tombs.

Q And what day was that? A I think it was the 12th.

Q The 12th of March? A Yes.

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Q That would be a week ago to-day; wouldn't it? A Yes, sir.

Q Before you saw the defendant in the Tombs, did you have a talk with anybody? Yes or no? A Yes.

Q With whom did you talk? A With Detective Burgess.

Q After you talked with Detective Burgess, where did you go? A I went down to the Tombs, to see McGuire.

Q And did he go with you, Detective Burgess? A Yes, sir.

Q And when you got to the Tombs, what did you do?

A Why, I went and talked to McGuire.

Q Where did you see him? A In his cell.

Q And did you talk with him alone? A Yes, sir.

Q Now, will you relate to the jury every bit of the conversation that you had with the defendant McGuire when you saw him in his cell in the Tombs? A Well, he told Detective Burgess ----

Q No. You didn't hear that; did you? A No, sir.

Q Then you can't testify as to that. Now, just tell us what you said to him and what he said to you? A I asked him if he would tell me where my diamonds were pawned or sold, and he said he didn't know. He said that these fellows that were with him had done away with them, and that he had written letters, and that they wouldn't pay any attention to them.

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Q Yes, go ahead? A And then he asked me, if I got the diamonds, would I prosecute him, and I said no. And he denied that he knew where they were, or anything about it.

PROSECUTOR: Strike out that he denied something and the jury will disregard it.

ATTORNEY GENERAL:

Q What was the first thing he said to him when you went in? Did you tell us that? A Oh, I said, "Detective Burgess told me you wanted to see me".

Q And what did he say to that? A Well, he said, that he had been trying to get my diamonds, but he couldn't.

Q Well, now have you told us all the conversation that you remember that you had with the defendant at that time?

A Well, he said he would try to locate these fellows that had the diamonds, and that I should come down and see him again.

Q Yes. A And he said if he did get them, he wanted to know how he would get them to my house, and I said I didn't know. And he said that he had Detective Burgess's address, and he was going to send them to Detective Burgess's house.

Q Now, did he say anything else that you recall. Did he say where these fellows were? A Yes; he said they were in Cohees, New York.

Q And he said that he had written them letters, did he?

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A Yes, sir.

Q Now, did he say anything about -- did he use the term "share" at all? A Why yes, he wanted to know if I would be satisfied with his portion of it, and I said no, I wanted all.

Q How long a conversation did you have with him about this? A About half an hour.

Q Did you tell him anything? A Yes, sir.

Q How long ago was that, in March? A Yes,

Q Yes, sir.

Q Did you talk with any other person except this man about the return of your diamonds? A Yes,

Q Who? A My aunt, my aunt came to my

Q My aunt? A Yes, sir.

Q What is her name? A Deborah.

Q And when did she come there? A Wednesday.

Q The day after you saw the defendant? A Yes, sir.

Q Now with the exception of the defendant and his aunt, did you talk with anybody about the return of your diamonds? A Yes, sir, my aunt -- you mean the one that returned them? That's the only one.

Q Now, up to that time did you talk with anybody, ex-

Q About the defendant, as to the return of the dia-

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monds? A No, sir.

Q Now, I show you seven diamonds, six of which are attached, or five of which are attached, and one separate, and ask you if you seen them before? A There is another one.

Q Yes, there it is. I ask you if you have seen them before? A Yes.

Q Where? A Well, they are mine.

Q Well, are those the diamonds that were in your lavatory on that morning? A Yes, sir.

Q On the morning they were taken from you at Morris's Cafe? A Yes, sir.

Q And how were these diamonds arranged? A Just like that, with the large one at the bottom (illustrating). That large one was set like the small one, but it has been taken out of the setting. They were hung on a little platinum thing.

Q They were set in that way then, Mrs. Morrison, (illustrating)? A Yes, sir.

Q With this large diamond at the end? A Yes, sir; just like that (illustrating).

Q And the second largest diamond next? A Yes, sir.

Q And those seven diamonds were suspended on this chain that you had around your neck, on that morning? A Yes, sir.

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Q Now, when was the next time that you saw those diamonds after they disappeared from your neck in Morris's cafe? A I didn't see them until the fellow brought them to my house.

Q And what day was that? How long after you talked with the defendant in the Tombs? A I guess it was a week. Let me see. I think it was Tuesday.

Q Now, you talked with the defendant, as I understand it, on the 12th of March in the Tombs? A Yes, sir.

Q Now, when were the diamonds returned to you? A Just this past Wednesday.

Q Last Wednesday? A Yes, sir.

Q A week ago to-morrow? A Yes, sir.

Q Then that was the day after you talked with the defendant in the Tombs; wasn't it? A Yes, sir.

Q And who returned them to you, if you know? A I don't know him.

Q Was it a man or a woman? A A man.

Q Have you ever seen that man before? A No, sir.

Q How old a man was he? Give us your best judgment?

A About 25 or 28 years of age.

Q And where did he come to you with the diamonds? A He came to my own house.

Q And were they in the same form when he brought them to you as they are now? A Yes, sir.

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Q Mrs. Morrison, where did you purchase that lavalier?

A That was made at Theodore A. Cohn & Co., on Fifth Avenue.

Q And when did you have it made? A Last June.

THE COURT: Is there any question as to the value of the property?

MR. GRAY: Not that it is worth over and above the amount necessary.

MR. O'MALLEY: Then will you concede that it is worth more than \$500?

MR. GRAY: No, sir, I will concede it is worth more than \$25.

THE COURT: Then you must prove it. Send for the jeweller, and you can prove it by him.

MR. O'MALLEY: Yes, sir; he is right here in court now.

BY MR. O'MALLEY:

Q Now you had it made at Cohn & company's, you say?

A Yes, sir, I had it made from diamonds that I took from rings.

Q And in what month and year was it made? A Last June.

Q You took the diamonds there in June last and had them made up in this form? A Yes, sir.

MR. O'MALLEY: I think you may cross examine.

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CROSS EXAMINATION BY MR. GRAY:

Q How old are you, Mrs. Morrison? A 28.

MR. O'MALLEY: By consent of counsel for the defendant, if your Honor please, we are going to suspend the examination of this witness so I can call the jeweler, and he can go home.

THE COURT: Certainly.

J O H N G E A R Y, of 148 West 131st Street, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q And what is your business Mr. Geary? A Jeweler.

or

Q And where are you employed, where is your place of business? A 321 Fifth Avenue.

Q with whom are you employed? A Theodore A. Cohn & Son.

Q Now, how long have you been with that firm, Mr. Gary?

A About 25 years.

Q Do you know the complaining witness, Mrs. Morrison?

A Yes, sir.

Q And do you recall having made a lavalier for her in the year of 1911? A I have the date here, sir (indicating a memorandum.)

Q Will you please refer to it? A The 29th of June?

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Q 1911? A 1911.

Q And do you recall about what that lavalier consisted of? A Yes, I have it here, I have the record of the stones here.

MR. O'MALLEY: Do you object to his referring to that memorandum of record?

MR. GRAY: No. You may refer to the record, of course, if you please, sir.

THE WITNESS: There were seven stones in it.

BY MR. O'MALLEY:

Q Seven diamonds? A Yes, sir. They varied in sizes, and weighed about three and a half carats.

BY THE COURT:

Q Each stone? A No, sir; the total number of stones weighed that.

BY MR. O'MALLEY:

Q And she brought those diamonds to you; did she?

A Yes, sir.

Q And you made them up in the lavalier? A Yes, sir.

Q Now, what was the reasonable market value of that lavalier?

MR. O'MALLEY: First, however, do you concede the qualifications of the witness, Mr. Gray?

MR. GRAY: I do.

BY MR. O'MALLEY:

Q Now, then what was the reasonable market value of the

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lavaliers that you made up for Mrs. Morrison? A Well, I went over it, this morning, the record, and including my work, it was about \$865.

MR. O'MALLEY: You may examine.

CROSS EXAMINATION BY MR. GRAY:

Q Are these the stones, Mr. Gary, that were in that lavaliers (indicating the seven stones previously shown to the complainant by Mr. O'Malley)? A yes.

Q You are positive of that? A I recognize the pendant, yes.

Q Well, do you recognize the stones? A Well, I have got the accurate weight of them, and I could tell positively by the record.

Q Well, what I want to know is do you recognize these as the stones that you placed in that lavaliers? A Well, that is impossible to say positively without the record, but I would say that they were, or that they are.

Q You say that it is impossible to tell; do you? A No, I don't say that it is impossible to tell without the record, but I am quite positive they are the stones.

Q You are quite positive they are the stones? A Yes, sir.

Q Now, is there any way by which you can identify those stones? A Yes, positively.

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Q By what? A By the description of each stone and weight, and I have it right here (indicating a memorandum). I referred to my books this morning.

Q But have you taken the description and size of these particular stones? A Yes.

Q When? A When they were left to be mounted.

Q But how do you know that these are the particular stones that you recorded? A The record will prove it.

Q Now, Mr. Witness, you don't seem to get my idea. I haven't any question that you weighed certain stones. Now, what I want to know is if you are positive, and swear now, that these stones here before the Court are the stones that you put in that lavalier in June of 1911? A Well, I would have to refer to my record.

Q And you can't specify positively as to that now?

A No, sir, because I haven't seen them for a long time.

THE COURT: Can you express a professional opinion as to the fair market value of these particular stones?

A I have the record right here.

Q But without reference to your record. Now, examine those stones, and tell the jury whether you can fix their reasonable market value? A Yes, sir, I can.

Q Well, what is their reasonable market value? A I will say that the value that I placed on them is a conservative estimate, and that is \$865 with my work.

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Q But, exclusive of your work? A \$800.

BY MR. GRAY:

Q But now are you testifying that those stones are the stones that you put in the lavaliers? A Well, I am quite positive that they are the same stones.

BY THE COURT:

Q No, Mr. Witness. What Judge Gray wants to know is this: Exclusive of the fact that your concern did work for the complaining witness, are you in a position to express a professional opinion as to the value of these particular stones that are now before you? A Yes, I would say they are worth what I said.

BY MR. GRAY:

Q And that was what? A \$800.

MR. O'MALLEY: I offer the stones in evidence, at this time, if your Honor please.

THE COURT: Yes. Is there any objection?

MR. GRAY: None, sir.

(They are admitted in evidence, without objection, and marked People's Exhibit 1).

MARTHA MORRISON, being recalled by the District Attorney testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY: (Continued)

Q Now, at the time you were in Morris's Cafe, you had this lavaliers around your neck, did you? A Yes, sir.

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Q And these rings that you have told us about, and shown here, you had on your fingers? A Yes, sir.

Q And you had the earrings in your ears? A Yes, sir.

Q And how were you dressed that night? Can you give us an idea? A I was on a dinner gown, my sealskin coat, with ermine collar and cuffs, and my ermine hat and muff.

GRAND EXAMINATION OF MR. GRAY: (Continued)

Q How did you say you were? A HB.

Q Where were you born? A San Antonio, Texas.

Q And your maiden name was what? A Mortimer.

Q When did you leave Texas? A When I was 11 years old.

Q Where did you go? A Washington.

Q And how long did you remain in Washington? A I don't know. Until I came to New York.

Q You don't know how long you remained in Washington?

A Until I came to New York.

Q And how long ago is that? A I guess about 10 or 12 years ago.

Q Ten years ago? A Yes.

Q Then you remained in Washington until you were about 18 years old, didn't you? A Yes, sir. Well, I didn't live there all the time. I went all through the South, visiting different relatives.

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Q Now, when and where were you first married? A In New York.

Q What? A New York.

Q And what is your first husband's name? A Richard Jacobson.

Q Richard Jacobson? A Yes, sir.

Q And when did you marry Richard Jacobson? A In 1903.

Q 1903? A Yes, sir.

Q Nine years ago? A Yes, sir.

Q How long did you live with Mr. Jacobson? A Until he died.

Q Until he died? A Yes, sir.

Q And when did he die? A January 1908.

Q And then when did you marry Mr. Morrison? A July 8, 1910.

Q Did you marry him in New York? A No, sir.

Q Where? A Detroit, Michigan.

Q And how long did you live with him? A Until January, 1911.

Q And then you separated? A I applied for a divorce.

Q You separated, did you? A Yes, sir.

Q And you applied for a divorce? A Yes, sir.

Q And that divorce was granted to you in April 1911?

A Yes, sir.

Q Were you living in New York or Detroit at the time you

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applied for a divorce? A In Detroit.

Q And the divorce was obtained there? A Yes, sir.

Q Then you came to New York? A Yes, sir.

Q Now, do you remember exactly what time you came to New York? A I was here two or three different times.

Q Well, what time you came here permanently, is what I want? A I came here on business.

Q When did you come here to remain permanently? A I think it was in August, or the latter part of July.

Q Last year? A Yes, sir.

Q And you have been here since that time? A Yes, sir.

Q Well, when you first came, where did you make up your residence? A At the Imperial Hotel.

Q And how long did you remain there? A Well, I don't know just how long.

Q How did you come to leave the Imperial? A Why I met a friend of mine and he asked me to go to another hotel.

Q A man or a woman? A A gentleman.

Q A man or a woman? A A man.

Q And you went to what other hotel? A To the Van Cortlandt.

Q That is on 99th Street? A Yes, sir.

Q And how long did you remain at the Van Cortlandt?

A About the middle of September -- the 1st of September.

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Q And did this man remain there also? A I wasn't with him. He just told me where the hotel was.

Q Did he live there? A Yes, sir.

Q At the Van Cortlandt? A Yes, sir.

Q So that you lived at the hotel, and the man that you left the Imperial Hotel for lived at the Van Cortlandt?

A Yes, he himself lived at the Imperial himself.

Q And did he remain at the Van Cortlandt?

A Until the first of September.

Q And did it happen to leave there? A Well, I met a lady that had an apartment where I am living now, and she asked me to come and live with her, which I did.

Q And where is that apartment? A 49th Street and Eighth Avenue.

Q And you have been living there since the first of September of the last year? A I lived with her till the 1st of October, until I went on to Detroit, Michigan, and got my furniture.

Q And then you opened an apartment of your own? A Yes, sir.

Q In what building? A 300 West 49th Street, in the same building.

Q And you are still living there? A Yes, sir.

Q Now, on this particular Christmas Day, or Christmas Eve, you were invited to the theatre? A Yes, sir.

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Q And at first to dinner? A Yes, sir.

Q By a gentleman friend? A Yes, sir.

Q And where did you go to dinner? A To the Knickerbocker.

Q At what time did you go to the Knickerbocker? A Oh, I guess it was around seven o'clock.

Q And you had dinner there? A Yes, sir.

Q What did you drink with your dinner? A Champagne.

Q Do you remember how many bottles of champagne you and your friend drank? A Well, we only had one.

Q You only had one? A Yes, sir.

Q And then after dinner, you went to Hammerstein's; did you? A No; we had dinner after we left Hammerstein's.

Q You had dinner after you left Hammerstein's? A Yes, sir.

Q You went to the theatre directly from your apartment?

A Yes, sir.

Q Now, had you had dinner at the apartment before you left? A Yes, sir.

Q And with the gentleman friend? A Yes, sir.

Q And what did you drink at dinner there? A Nothing.

Q Nothing at all? A No, sir.

Q Not even beer? A Yes, beer.

Q You had some beer? A Yes, sir.

Q Do you remember how many bottles of beer you and your

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associate had? A Only one.

Q One a piece or one bottle between you? A One bottle between us; just one glass.

Q And then you went to the theatre? A Yes, sir.

Q And after the theatre you went to the Knickerbocker?

A yes. No, sir.

Q Well, which is it? A You said after the theatre, you went to the Knickerbocker?

Q Yes. Now is that right? A Yes.

Q And how is it that you got to the Knickerbocker at seven o'clock then? A Well, I didn't understand you then. I didn't understand your question.

Q You testified, awhile ago, that you got to the Knickerbocker about seven o'clock? A Then I misunderstood you.

Q Well, what time did you get to the Knickerbocker?

A After the theatre.

Q Well, about what time at night? A I don't know. It was after the show was out.

Q Well, was it half past ten or 11 o'clock? A I don't know exactly. After the show was out.

Q And that is the best answer you can give?, A Yes, sir.

Q And there you had dinner? A No, sir.

Q What did you have? supper? A We had a drink.

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- Q Nothing but a drink? A Yes, sir.
- Q At the Knickerbocker? A Yes, sir.
- Q And what did you drink? A A Highball.
- Q A highball? A Yes, sir.
- Q Now where was it that you drank the champagne that you testified to awhile ago? A At Maxime's.
- Q What wasn't at the Knickerbocker? A No, sir.
- Q You only had a highball at the Knickerbocker? A Yes, sir.
- Q And you had nothing to eat there? A No, sir.
- Q And how long did you stay at the Knickerbocker? A Only a few minutes.
- Q And then you went to Maxime's? A Yes, sir.
- Q Did you have anything to eat there? A Yes, sir.
- Q And you also had a bottle of champagne there? A Yes, sir.
- Q Do you remember how long you remained at Maxime's? A Quite a long time.
- Q Quite a long time? A Yes, sir.
- Q And you only drank one bottle of champagne? A I did not say that. I said we had one for dinner.
- Q Well, how many did you have there? A Two or three, I guess.
- Q Nobody joined you there? A No, sir.
- Q You and your friend were alone? A Yes, sir.

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Q And where did you go from Maxime's? A Went in several cafes. I don't know the names.

Q what is that? A Went in several places, but I don't know the names.

Q Which is the next place that you went to, after you left Maxime's? A I don't know. I don't know enough about the places to give the names.

Q Well, you had no hesitation in giving Mr. O'Malley any information that he wanted? A Well, I told you I don't know, or I would certainly give them to you.

MR. O'MALLEY: And I object to the remark of counsel, as entirely uncalled for.

THE COURT: Yes, objection sustained. The jury will disregard the remark of counsel.

BY MR. GRAY:

Q Well, tell us where you went then? A Into several places, I told you.

Q Well, did you take drinks in these other places? A No, sir.

Q Well, why did you go there then? A Well, we had champagne; yes.

Q And did you have champagne at all the places you went to? A Yes, sir.

Q And how many of these places do you think you visited?
A Two or three.

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Q And then you finally got to Martin's, at 49th Street, and you stopped there? A Yes, sir.

Q And your friend stopped with you? A Yes, sir.

Q Now, do you know what time it was when you got there at Martin's? A I guess it was about four o'clock or so.

Q Now, from the time you left the theatre, to the time you got to Martin's, at four o'clock in the morning, you had been constantly drinking; hadn't you? A Yes, not much.

Q And how long did you remain at Martin's? A I guess it was about half past six; around six or seven o'clock.

Q From four o'clock until seven o'clock you remained in Martin's? A Oh, I don't know just how long it was.

Q And you had a number of drinks there, at Martin's?

A No, sir, I didn't drink anything there.

Q You didn't drink anything there? A No, sir.

Q Who was with you when you first went into Martin's?

A The gentleman that took me to the theatre.

Q And how long did he remain with you after you got there? A Well, not very long.

Q Well, an hour? A Perhaps.

Q Perhaps an hour? A Yes, sir.

Q And do you mean to say that you and he remained at Martin's for an hour without drinking any drinks? A Oh, he was

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MI ordering drinks. He was drinking.

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Q He was drinking? A Yes, sir.

Q But you were not? A No, sir.

Q You had stopped at that time? A Yes, sir.

Q Why? A Because I didn't want anything.

Q You didn't want anything? A No, sir.

Q You had reached the extent of your capacity? A I had not.

Q You had not? A No.

Q You are sure that you didn't drink anything in Martin's at all? A I am positive.

Q You are positive of that? A Yes, sir. There was beer ordered and on the table but I didn't drink it.

Q Now, then, it was there that you danced with the little chap? A Yes.

Q And your friend got mad because you danced with him, and went off and left you? A Yes, sir.

Q And you and the young chap were sitting at the table, and you had occasion to go out somewhere? You were called out by the barkeeper? A Yes, sir.

Q Jesse Clayton? A Yes, sir.

Q Now, you knew Jesse Clayton very well; didn't you?

A I knew him quite well, yes.

Q Quite well? A Yes.

Q And you had met him a number of times prior to this?

A Yes.

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Q And he called you and you went out into the barroom?

A Yes.

Q And when you returned, there were four other men sitting with the young chap that you had danced with, the little chap, at the table? A I didn't say that.

Q What did you say? A I went to my own table, where I had been sitting.

Q And who was at your own table? A My friend.

Q The friend who was with you? A The gentleman I was with.

Q Well, then, Clayton called you before your friend left you? A Yes.

Q I am trying to get at the point that you left the table, and when you came back the four men were sitting with the young chap whom you had left at the table. When was that? A That was in the other place I went into.

Q That was in the other place you went into? A Yes.

Q And that was around seven o'clock in the morning, then? A Yes.

Q Did you drink anything at that place? A No, sir.

Q Now, when did you first see the defendant, that morning? A In Martin's, in the first place I was in, in Martin's.

Q You first saw him in Martin's? A Yes, sir.

Q And where was he when you first saw him? A Sitting

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at a table.

Q Speak a little louder, Mrs. Morrison. A why, he was sitting at a table with some people.

Q In what part of the room? A In the other side of the room.

Q How far away from you? A Oh, about as far as that table over there, I think (indicating the counsel table).

Q And was he by himself?

MR. O'MALLEY: shall we agree upon that as being a distance of about 12 or 15 feet.

MR. GRAY : Yes.

BY MR. GRAY:

Q And was he with anyone? A Yes; four or five other men.

Q Are you positive as to the number? A Well, not exactly, but it seemed to me that that was the number.

Q Now, was the little chap that afterwards danced with you one of the party? A Yes.

Q Did you notice any other of the number; except McGuire?
A Yes.

Q Can you tell me how many there were? A There were four.

Q Did that four include the young chap? A Yes.

Q Now, what kind of looking men were the others? A One was a big tall dark fellow, and one was short, with red hair,

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and looked like his nose had been broken --- his nose was kind of flat --- and the other one was a little, nice looking little fellow.

Q Did you talk with any of them, except the young chap that came over and danced with you? A Not in there; but, in the other place, I did.

Q In the other place you did? A Yes, sir.

BY MR. O'MALLEY:

Q You mean by that, in Morris's Cafe? A Yes, sir.

BY MR. GRAY:

Q What did you talk to McGuire about? Do you remember?

A Why, we were talking about the choice.

MR. O'MALLEY: where; what place are you asking about now?

MR. GRAY: Whenever or wherever she talked with McGuire.

BY MR. GRAY:

Q Now, what were you talking about? A We were talking about the choice.

Q In Morris's? A Yes, sir.

Q You didn't talk with any of them in Martin's? A No, sir.

Q Except the youngman that you danced with? A Yes, sir.

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Q You talked with him? A Yes, sir.

Q And then you went out with him to Martin's? A No, sir.

Q To Morris's? A No, sir.

Q Did you go alone? A No, sir.

Q Well, who did you go with? A Why, he met me later on. I started out with another fellow that came in there. You see, I was left alone and this little Pete said, "Mrs. Morrison, I'll take you home, " and I started with him, and they chased him away.

Q Was that Pete Coen? A No, sir; Pete Leary.

Q You had known him before? A Yes.

Q Where did you meet? A Why, he used to work at the Van Cortland Hotel.

Q And that's where you knew him? A Yes, sir.

Q And where had you known Jesse Clayton? A Why, I had been in Martin's.

Q When you were a frequenter of these places; were you, Mrs. Morrison? A No, I never go around those places. I was there a couple of times. The people from the Van Cortland Hotel used to go there.

Q So Pete started home with you? A Yes.

Q In which direction did you go when you went out of Martin's? A Right across the street, 49th street.

Q In which direction? Uptown or downtown? A Towards

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home, Eighth Avenue.

Q And then in the direction of Eighth Avenue? A Yes, sir.

Q And how far had you gotten from Martin's before these five men overtook you? A Right near the corner of 49th Street and Seventh Avenue.

Q They overtook you there? A Yes, sir.

Q And you saw McGuire then? A Yes, sir.

Q And you saw the other men? A Yes, sir.

Q Do you know any of their names? A Not then, no, sir.

Q Did you know McGuire's name then? A No, sir.

Q When did you first hear McGuire's name? A Christmas Day, when Jesse Clayton came over to my house, and I said the big fellow took my lavalier, and he said, "Why, he's a big bum, and his name is 'Red McGuire', and you tell the police that, and you get him."

Q Now, when they chased Pete away from you, you ran into some other place? A Yes, sir.

Q How long did you stay in there? A Quite a little while.

Q Quite a little while? A Yes, sir.

Q Did you claim protection from the people in this place, from this men who had run Pete away? A No, sir, there wasn't any in there. The little chap that I had been dancing

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with came in, and then they came in afterwards.

Q And did you talk with them all in there? A No, sir.

Q Only talked with the little fellow? A Yes, sir.

Q And did he then offer to take you home? A No, sir.

Q You didn't offer to go home; did you? A Well, I started to go home, and I thought at the corner he would leave me.

Q Why did you think he would leave you? A Because I didn't want him to know where I lived, and so I walked up Eighth Avenue with him.

Q And the others following along behind? A Yes, sir.

Q And was it then that you went into Morris's? A Yes, sir.

Q How long did you stay in Morris's? A Not very long.

Q So did you have anything to drink in there? A No, sir. He ordered beer, but I didn't touch it.

Q So when you started to leave, was that when you were attacked by these people? A Yes, sir.

Q When you were going home at that time? A Yes, sir.

Q That was about what hour in the morning? A Seven o'clock, I guess.

Q It was day-light? A Yes.

Q And there were a number of people around in the bar-room? A No one but the bartender.

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Q Was that Clayton? A No, I didn't know him.

Q Didn't know him? A No, sir.

Q Now, Mrs. Morrison, describe what took place between you and all of these people, at the time your lavalierere was taken? A Describe what? What's that?

Q Describe everything that took place. A Why, they were all grabbing my hands, and everything, and I had my lavalierere, and I was hanging on to the door like that (illustrating). And when I started to get out by the back door, they crowded around me, and I saw that I couldn't get out that way, and then I ran to the door leading out to the bar, and, just as I got there, they grabbed me, and I held on to the door like that, so they couldn't pull me in (illustrating).

Q And that was all that happened; all that occurred? They pulled the lavalierere off, and tried to get your rings?

A Yes, sir.

Q And you don't know who pulled off the lavalierere?

A Yes, sir, I do.

Q Who? A Why, that one there (indicating the defendant).

Q That one here (indicating the defendant)? A Yes.

Q Now, who told you that it was McGuire that took that lavalierere? A Why, didn't I see him? Who was going to tell me, when I see him myself?

Q Didn't Jesse Clayton tell you that he took it?

No.

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Q Didn't he say that McGuire took it? A No; he told me that was his name. I said, "The big fellow", and he said, "That's 'Red McGuire'".

Q Now, then, you don't know that this is the man except from what Clayton told you; do you? A Well, I guess I ought to know, and I do know, when I saw him pull it off my neck, myself.

Q Weren't you too drunk to know anything about it yourself, at that time? A No, sir, I wasn't drunk at the time at all, positively not, no, sir.

Q And you had McGuire arrested on what Clayton told you; didn't you? A I did not.

Q Didn't you tell the police that it was McGuire that robbed you? A I certainly did.

Q Yes. And you know it was McGuire from what Clayton told you? A I said, "The big fellow, with the red hair, with the tooth out in front," and Clayton said, "That's 'Red McGuire.' He is known as a gun-man." When I was in Martin's, he called me in, and told me he was a thief, and they were all thieves, and not to mix up with them.

THE COURT: Now, is there any motion made as to this evidence? I have heard none.

MR. GRAY: No, sir. I don't care anything about it. I don't think it's worth moving to strike it out. But yet I move to strike it out now.

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THE COURT: Strike out the evidence, and the jury will utterly disregard it.

BY MR. GRAY:

Q Now, after you had talked with Jesse Clayton, you told the police that "Red McGuire" was the one that had robbed you? A Yes, sir.

Q And "Red McGuire" was arrested; wasn't he? A I guess he was.

Q And you were called to the station house to identify him? A Yes, sir.

Q And when you got there, you were told that that was "Red McGuire"; weren't you? A No, sir, I wasn't.

Q And after you were told that that was "Red McGuire", you identified him as the man who had jerked off the lavalier?

MR. O'MALLEY: I object to it, as containing an assumption of testimony that isn't in the case. She says she wasn't told anything of the kind.

THE COURT: I will allow the question.

A No, sir. All the detectives said was, "We've got a man, and you come around and see if he is the man that took your lavalier." That's all they said to me.

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

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M A R T H A M O R R I S O N, her cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. GRAY:

Q Mrs. Morrison, the barkeeper was at his place in the barroom while this struggle was going on; wasn't he? A Yes.

Q Did he come out to where you were? A No, sir; he stood still.

Q He stood still? A Yes, sir.

Q He took no part? A No, sir.

Q Could he see what was transpiring from where he was?

A Yes, sir.

Q And did see what transpired? A Yes, sir.

Q Do you know what his name is? A Coen, I think.

Q Now, he was a witness in the Police Court; wasn't he?

A Yes, sir.

Q You say that Clayton told you that McGuire was a gunman?

A Yes, sir.

Q And that was where you got the idea of his striking you with a gun? A Why, certainly not.

Q He had already told you that, early in the evening.

A He had not. He told me that Christmas Day.

Q Oh, afterwards? A Yes, afterwards.

Q How was McGuire dressed, that night? A He had on a grey flannel shirt, with a collar turned up.

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Q Was that all? A Well, a dark suit, I think.

Q A dark suit? A Yes, sir.

Q And what kind of a hat? A A brown soft hat.

Q Well, you testified in the police court that he had on a brown suit; didn't you? A I don't remember. I don't think so.

Q You danced with him several times during the evening; didn't you? A I did not.

Q Didn't dance with him at all? A Certainly not.

Q And wanted him to go home with you? A Oh, certainly not.

Q You are positive about that? A Why, certainly.

Q Now, Detective Burgess sent you to the Tombs to see Mr. --- to see the defendant; didn't he? A Yes, sir.

Q And you had a talk with him there? A Yes.

Q And you wanted to get back your jewelry; didn't you?
A Yes.

Q Very anxious to get it back? A Yes.

Q And you told him that, if he would see that you got back the jewelry, you would not prosecute him? A Yes, sir.

Q That was last Tuesday? A Yes, sir.

Q And he told you that he didn't know anything about it; didn't he? A Yes.

Q And then his aunt came to see you on the following day?

A Yes, sir.

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Q And you had a talk with her? A Yes, sir.

Q And you told her the same thing, didn't you? A Yes, sir.

Q Now you got your jewelry back, didn't you? A Yes.

Q And you say you don't know where it came from? A No, sir.

Q But a young man about 25 or 28 years old, brought it to you? A Yes.

Q And called you up first on the telephone, I think you said? A Yes.

Q And you told him that you would see him? A Yes.

Q And he gave you your jewelry? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q Since this young man returned the jewelry to you have you seen him? A Yes.

Q Where? A I saw him at the Columbia Theatre, yesterday afternoon.

Q At the Columbia Theatre, yesterday afternoon?
A Yes, sir.

Q Did you see him at any time after that? A No, sir, but he telephoned me several times, but I wouldn't let him upstairs.

Q Since the time he returned the jewelry to you? A Yes, sir.

Q Have you ever seen him around Eighth Avenue and 54th

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Street near your apartment? A Yes, I saw him across the street.

Q When was that? A On Saturday morning.

Q On Saturday morning last? A Yes, sir.

Q Mrs. Morrison, describe to the jury where, when you sat at the table in Morris's cafe, the defendant sat? A Right next to me.

Q And where did this man from Detroit sit? A On the other side.

Q And did you have any conversation with the defendant there? A Yes.

Q What was that conversation? A Oh, just talking about the Detroit baseball club, and what a beautiful city it was, and one thing or another.

Q Where is your apartment house located, where you live? On which corner of 54th Street and Eighth Avenue?

A 49th Street and Eighth Avenue.

Q Yes, 49th Street and Eighth Avenue? A On the uptown side.

Q Well, on the east or west side? A Which is west? I don't know which is west. I guess it is west. On that side (illustrating).

Q Well, when you are coming from Broadway, do you have to cross Eighth Avenue before you come to your house? A Yes, sir.

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Q When it is west? A Yes, I suppose it is.

Q Now, where did you have this conversation with Jesse Clayton? A In my apartment.

Q And that was on 50th Street; was it? A Yes, sir.

Q And how did he come to come to your apartment? A I telephoned to him.

Q And that was the time that you told him who it was that took your lavalier, and he said it was Red McGuire; did he? A He said the tall man was Red McGuire -- he knew all of them, he said -- and the police knew him, too, he said, because he had been locked up before.

RECROSS EXAMINATION BY MR. GRAY:

Q Now, you told Mr. -- you told the defendant's aunt, that he was not the one who took your jewelry, did you not? A I did not; positively no, I did not.

Q And this man that you say gave you the jewelry back, you saw him at the Columbia Theatre yesterday? A Yes, sir.

Q And will you give a description of that man as near as you can? A Well, I should judge about the size of this gentleman here (indicating the clerk of the court), and dark hair, and very heavy dark eyebrows.

Q And smooth-shaven? A Yes, rather nice looking.

Q And you saw him on the other side of the street also?

A Yes, sir.

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Q Do you know whether his name is Wilson? A No, indeed I don't know his name.

Q Was he one of the five men that you saw at the cafe that night? A No, sir, I never saw him before.

Q You are positive of that? A Positive.

MR. GRAY: That's all.

MR. O'MALLEY: That's all.

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J E S S E H. C L A Y T O N, of 528 Flatbush Avenue,
Brooklyn, called on behalf of the People being duly sworn
testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q And what is your business? A A bartender at the
present time.

Q Where are you employed? A 751 Seventh Avenue, New
York City, sir.

Q And what place is that? A Mr. John H. Martin.

Q And how long have you been working there? A A year,
the last day of February.

Q And in what capacity? A Bartender.

Q And were you employed there on Christmas morning
of this year or rather of last year? A Yes, sir.

Q Do you recall having seen Mrs. Morrison on Christmas
morning last? A Yes, sir.

Q At what time did she come in, if you remember? A Well,
as near as I can tell you between half past four and five.
I couldn't be accurate about the time.

Q Well, who was with her, if you know? A Why, a gentle-
man by the name of "Doc" -- I can't recall his name.

Q Doctor Rodriguez? A Yes, sir.

Q And did you see the defendant McGuire in there on that
morning? A Yes, sir, he came in shortly after Mrs. Mor-
rison came in.

Q At what time? A Yes, sir, between four and five or five or

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seven; I couldn't be exact.

Q And where did the defendant and the others sit, if you remember? A Why, the defendant was at two small tables at the left hand side of the room.

Q And where did Mrs. Morrison sit? A Right at the little table by the hall door, as you come into the rear room.

Q Now, how long did Mrs. Morrison stay in there, if you remember? A Well, I couldn't tell you exactly, sir.

Q Well, you remember that she did leave at some time; do you? A Yes, sir.

Q And at that time were the defendant and his friends still in there? A Yes, sir.

Q You didn't see Mrs. Morrison go out, as I understand it? A No, sir, I didn't. I was serving a round of drinks at the time.

Q Now, did you see when the defendant went out? A Why no, sir, because I was serving a round of drinks, at the time too, drawing some drinks at the time they went out.

Q But you know that they did go out after Mrs. Morrison went out? A Yes, sir, shortly after.

Q And when did you next see Mrs. Morrison after she went out? A Next time I saw her after she went out?

Q Yes. A why, she called me on the phone, in the morning.

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Q And she had a conversation with you? A Yes, sir.

She said --

MR. GRAY: I object to what she said.

THE COURT: Objection sustained.

THE WITNESS: Pardon me.

BY MR. O'MALLEY:

Q And in pursuance to that conversation, what did you do if anything, after you had that conversation with her? A Why, I got off around eight or half past eight in the morning. The day bartender was a little late that morning, and the boss had lost his little dog, etc., and I told him the night previous, that I would go and see if I couldn't get some information in regard to his dog; and I also told her that I would do anything in my power to get her article, to help her get her article back.

THE COURT: Now, strike that out what he said to the complaining witness. The jury will disregard it.

BY MR. O'MALLEY:

Q Now, did you go to Morris's cafe that day? A Yes, I was there.

Q What time? A I couldn't tell you the time.

Q And whom did you see there? A The bartender, I believe.

Q Did you go to Mrs. Morrison's apartment? A Yes.

Q And you saw her there and had a talk with her?

A Yes.

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Q And where else did you go if anywhere, Mr. Clayton?

A Well, I went home, and went to work, if I am right.

Q Did you see any officers there? A That evening, three officers came in front of the bar.

Q In the place where you were working? A Yes, sir.

Q And you had a conversation with them? A Yes, sir. Or rather they had a conversation with me.

Q All right, have it any way you wish. But you had a talk with the three officers, did you? A Yes, sir.

Q In regard to Mrs. Morrison? A Yes, sir.

MR. O'MALLEY: You may cross examine.

CROSS EXAMINATION BY MR. GRAY:

Q You don't recall what time she came into this place?

A Not accurately, no, sir.

Q But it was very early in the morning? A Yes, about half past four o'clock I think.

Q And this man, Doctor Rodriguez was with her? A Yes, sir.

Q Is Doctor Rodriguez a white man or colored man? A A white man, sir.

Q He is very dark; is he not? A Well, he is white in color.

Q But he is very dark? A Well, I couldn't say that he is dark; no, sir.

Q How long did he stay after he came in there? A Oh, he was in there -- they had a couple of drinks, I guess, and

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finally he went out.

Q He went out and left Mrs. Morrison there? A Yes, sir.

Q And then Mrs. Morrison after he left, was joined by these other men, McGuire and his friends? A No, sir, not to my knowledge.

Q You knew McGuire? A Sir?

Q You knew McGuire? A No, sir.

Q Didn't know him at all? A Didn't know him. I had waited on him once or twice.

Q You knew who he was? A No, sir, no, not exactly,

Q You didn't know who he was? A No, sir.

Q Didn't you know his name? A Well, no, sir, I couldn't say that I knew his name.

Q You are positive that you didn't? A Because I only waited on him once or twice in my life, that I know of.

Q Then you didn't know his name? That is sure; is it? A Yes, sir.

Q Now, Mr. Clayton, what was Mrs. Morrison's condition as to being drunk or sober when she came into your place?

A Why, I presume she had a drink or two.

Q A drink or two? A I don't exactly put it that way. She was a little jolly, properly speaking.

Q A little jolly? A Yes, sir.

Q And how many drinks did she have in your place? A I

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served two or three drinks -- I wouldn't be sure on it -- two or three drinks they had.

Q Whiskey, or beer, or what? A Why, I think Mrs. Morrison took a drink of whiskey, and I think her friend drank beer.

Q Do you remember how many whiskies she drank? A Why, as I just told you, two or three, as far as I know of.

Q Well, you know Mrs. Morrison quite well? A Well, through waiting upon her, yes.

Q You have visited her, and had visited her at her apartment prior to that time? A No, sir, no.

Q Sure about that? A Yes, positively sure.

Q You called her out of the room into the bar? A No, sir.

Q During that evening? A No, sir.

Q Called her out of the backroom, and talked with her?

A No, sir.

Q Sure about that? A Yes, sir.

Q Positive? A Yes, sir.

Q Now, Mr. Clayton, when she called you up on the following morning, what time was it? A Why somewhere around six or half past six; somewhere around there.

Q In the morning? A It may have been seven o'clock. I wouldn't accurate about that.

Q That was on Christmas morning? A Yes, sir.

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Q After she had been in your place about four or five o'clock? A Yes, sir.

Q And she called you up about six o'clock? A No, sir, it was later than that. It was about seven o'clock, or a little after, I am quite sure.

Q And when did you go to her apartment? A Well, I was rather celebrating the Christmas Day myself, in a way, and I think it was in the afternoon.

Q Didn't you get around there until the afternoon? A No, sir.

Q When you got around there she told you what occurred?

A No, sir, she told me on the phone what had occurred before that.

Q Oh, she had already told you? A Yes, sir.

Q And what was your object in going around? To assist her in finding out who had been guilty of this crime? A Why she didn't ask me to find out who was guilty of it. She asked me would I try to find out how and where her article was, and who took the article that she lost, and I said "Well, Mrs. Morrison, I will do anything in my power to help you."

Q Yes, you promised to do anything you could to help her? A Yes, sir.

Q And you did quite a little, then and there, to help her; didn't you? A No, sir, I don't know that I did anything.

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Q You told her that the tall man was "Red McGuire", and that he was a thief, didn't you? A No, sir, I didn't.

Q And that he was a gunman? A No, sir.

Q You are positive that you didn't tell her any of those things? A Yes, sir.

THE COURT: That testimony was stricken out, I think, Counsellor.

MR. GRAY: No, I don't think so.

MR. O'MALLEY: Yes, it was stricken out, and upon your own motion.

THE COURT: Yes. He volunteered the information, and I asked you if there was any objection on your part, and you said you did not care much about it, but still you would make the motion, and I struck it out.

MR. GRAY: But, right after luncheon, I asked her if she didn't get that information from Clayton, and she testified that she didn't get it that night, but got it the following day. It is a direct contradiction of the testimony of Mrs. Morrison.

THE COURT: That will be for the jury to say whether it is or not.

MR. GRAY: I understand that. The witness is with you.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q Now, you say, Clayton, you didn't have any talk with Mrs. Morrison in the saloon at all? A Not outside of after

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the doctor went out of the room. But you didn't ask me that question at all.

Q Now, you served some drinks at her table? A Yes, sir.

Q Are you sure whether she drank it or not? A I am positive she had two drinks of whiskey, and "Doc" had two drinks of beer. Now, whether she had anything after that I am not positive.

Q Now, there was a man named "Pete" in there; was there not? A Yes, sir.

Q Now, when was it that he went out? A Now, while I was serving a drink, and when I returned to the barrom, the table was vacant.

Q That is, you missed them at about the same time, the complaining witness and Pete? A Yes, sir.

Q Pete and Mrs. Morrison? A Yes, sir.

Q Do you remember a conversation, Clayton, you had with the officers when they came there to the saloon that night? A Yes, sir.

Q And, for the purpose of refreshing your recollection, I ask you if you did not, at that time, tell them that you knew who this defendant was, that he was in the saloon there, and that his name was "Red McGuire?" A I told them that Mrs. Morrison called me on the phone, and told me that it was "Red McGuire" who had stolen or taken something from her.

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Q And do you remember also -- and this is also for the purpose of refreshing your recollection -- that you did call Mrs. Morrison to the barroom to have a conversation with her? A No, sir.

Q That doesn't refresh your recollection? A No.

MR. O'MALLEY: That is all.

MR. GRAY: That's all.

P E T E R C L E A R Y, 200 West 49th Street, a witness for the People being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your business, Cleary? A Waiter.

Q Where are you employed? A The Faust Cafe.

Q Where is that located? A Columbus Circle.

Q How long have you worked there? A Well, I have been working there two weeks and a half now.

Q Where were you working on Christmas Eve of last year?

A I wasn't working at the time.

Q Did you ever work at the Van Cortlandt Hotel? A Yes, sir.

Q When? A From about the 2nd of last January, a year ago, until somewhere around September.

Q 1911? A Yes, sir.

Q Were you there when Mrs. Morrison was living there?

A Yes, sir.

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Q Now, do you remember having come into Martin's Cafe on the early morning of Christmas last? A Yes, sir.

Q What time did you go in there? A Somewheres between five and six o'clock in the morning.

Q And whom did you see in there? A I seen Mrs. Morrison, and a fellow by the name of "Doc"; and there was four or five other people in there at the time.

Q Where was this man "Doc" sitting? A At a table, with Mrs. Morrison.

Q At a table? A Yes, sir.

Q And where were the other people sitting in the room?

A Across on the other side of the room.

Q Now, did you see where the doctor went? I withdraw that question. Where did you sit when you went in there?

A Two tables from them, on the same side of the room.

Q And did you at any time sit down at the table where Mrs. Morrison and Doctor Rodriguez were? A Yes, I did.

THE COURT: We will suspend for ten minutes, gentlemen.

The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess for ten minutes.

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AFTER RECESS.

P E T E R C L E A R Y, his direct examination being continued, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. O'MALLEY:

Q And did you notice whether or not the Doctor left there? A Yes, he had left. Mrs. Morrison was dancing with a party from some other table.

Q You saw her dance with a party from another table? A Yes, sir.

Q Now, when did the Doctor go out, with respect to the time you saw her dancing with this other man? Before or after? A Why, it was while she was dancing that he went out.

Q And did you have a conversation with him at the time he went out? Yes or no. A Yes.

Q Now, when did you leave the cafe? A Why, I left about ten minutes after going in there. I don't know just the exact time.

Q And who went with you? A Why, I started going out, and I bid good morning to Mrs. Morrison and she said "Wait a minute, I am going home too".

Q And did she go out? A She come out half a minute or so after I did.

Q And where did you and she go? A Well, I started to cross the road, to go over where I live.

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Q And where do you live? A 49th Street and Seventh Avenue.

Q And did she walk along with you? A Yes, sir.

Q Now what occurred after you got outside on the street?
A --

Q That corner did you go to, by the way? A We crossed the street to the northwest corner.

Q The northwest corner of 49th Street and Seventh Avenue?
A Yes, sir.

Q And what occurred there, if anything? A Why, one fellow came up to me, and asked me what I was butting in for.

THE COURT: Now, this evidence is incompetent, Counsellor, and you are sitting there silent, without making any objection. Is there any objection to this evidence?

MR. GRAY: If your Honor please, I will try to protect the interests of my client.

THE COURT: Well, do you make any objection?

MR. GRAY: I have not as yet.

THE COURT: The Court of its own motion, strikes the evidence from the record, because it is incompetent, and prejudicial, even though no exception is taken.

BY MR. O'MALLEY:

Q When you got over there, a man spoke to you, did he?
A Yes, sir.

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Q And how many men did you see on the street at that time when he spoke to you? A Well, he was the only one on that side of the street, and there were two on the other side.

Q By on the other side of the street, you mean by the other side of Seventh Avenue? A Yes, sir, on the east side.

Q And after he spoke to you what did you do? A Why I turned around, and looked for Mrs. Morrison and she was gone.

Q And which way did she go? Do you know? A Well, I couldn't say where they went to, because it is a very short block from Seventh Avenue to Broadway.

Q But he was walking in the direction of Broadway when you last saw her? A Yes, sir.

Q And where did you go after you last saw her? A I went home.

MR. O'MALLEY: You may cross examine.

CROSS EXAMINATION BY MR. GRAY:

Q Do you know who that man was that spoke to you? A No, sir, I do n't.

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

Q Have you ever seen him since? A No, sir, I haven't.

Q Now, while you were talking to him, Mrs. Morrison went on away? A Yes, sir.

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Q And left you standing there in the street? A Yes, sir.

Q And you don't know where she went? A No, sir, I don't.

Q And you saw nobody else except some people over on the other side of the street? A Yes, sir.

Q Two or three men? A That's all.

Q Were they standing or walking? A They were walking.

Q Did you see who were in the cafe at the time you were there in the cafe? A The only one I knew was Mrs. Morrison and this fellow they call "Doc".

Q Were there any other women in the cafe? A There wasn't.

Q She was the only woman there? A Yes, sir.

Q And you don't know where she went after leaving you?

A No, sir, only what she told me .

Q Now, did four or five men come up to you, while you were with Mrs. Morrissey or Morrison, on the street and drive you away from her? A No, sir, only one man come up and talked to me.

Q And he didn't scare you away? A No, sir.

Q And while you were talking with him, she went off somewhere else? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q Did you see a man dancing with Mrs. Morrison in the

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cafe? A I knew a man was dancing with her, but my back was turned at the time.

Q Well, there was a little fellow dancing with her in there; was there not? A Well, he was taller than I am.

Q Now, did you see that man out on the street? A Yes, I did.

Q Was he the man that talked to you on the corner? A I couldn't say, because there were two of them the same size.

Q Well, now listen to my question. It wasn't either one who talked to you on the corner? A Well, I couldn't swear to it.

Q Now, for the purpose of refreshing your recollection, didn't you just tell me, outside of the courtroom in the corridor that he was the man that danced with Mrs. Morrison? A I said I thought so.

RE-CROSS EXAMINATION BY MR. GRAY:

Q And your best recollection about it is that you never saw the man before that talked with you outside? A No, sir, I never did see him before to my recollection.

THOMAS COGN, of 395 Third Avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your business Mr. Cogn? A Bartender.

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Q Where are you employed? A 917 Eighth Avenue, now.

Q What place of business is that? Whose cafe is it?

A Mr. Powers.

Q And where were you employed on Christmas morning last?

A By Mr. Morris.

Q Where is that? A Northwest corner of 54th Street and Eighth Avenue.

Q Northwest corner of 54th Street and Eighth Avenue?

A Yes, sir.

Q And how long had you been working there at that time?

A About a year and seven months.

Q And were you on duty there about -- between 6 and 8 o'clock in the morning? A Yes, sir.

Q Now, do you remember some persons coming into the back room while you were there? A Yes, sir.

Q Now, tell the jury all about it? A Well, I know those five people come in there, and they ordered a drink, and I took goblets of beer to them.

BY MR. GRAY:

Q Now, which five people were there?

MR. O'MALLEY: One moment. I will bring that out.

BY MR. O'MALLEY:

Q Now, when was the first time you saw these five or six people? A When the bell rung in the back room, and I saw five people and I went back, four gentlemen and a lady, and they were sitting in the backroom at a table.

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Q And did you see the defendant there then? A Yes, sir.

Q Now, then, you say you served them with beer?

A Yes, sir.

Q And then what did you do? A I went away about my business?

Q Where did you go? A Out to the bar.

Q To the bar? A Yes, sir.

Q Now, what is the next thing that attracted your attention? A The next thing I heard was a holler.

Q Who hollered? A A lady.

MR. O'NEALLEY: Mrs. Morrison, stand up.

BY MR. O'NEALLEY:

Q Is this the lady you are referring to (indicating Mrs. Morrison)? A Yes, sir.

Q What did she holler? A She hollered about being gone from her neck, and I went back, walked back, and she was coming from the sitting room, from the back room, to the bar, and I stopped her. She wanted to come through that door, and I stopped her.

Q And who else did you see in the back room? A Only that gentleman there (indicating the defendant). Everybody else was gone and he was standing there with his hands in his pockets.

Q And where was he at the time with regard to Mrs. Morri-

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son? A About two feet behind her.

Q And what did the defendant say, if anything, when the complainant said that she had lost her lavalier? A He didn't say anything.

Q Now, then, tell us where they went, the complainant and the defendant? A I don't know where they went. They went out. That's all I know.

Q And the last you saw the complaining witness was where? A Standing at the barroom door, and the defendant was standing about two feet from her, with his hands in his pockets, and they went out of the back room door, as far as I know.

Q Did you see the complainant after that? A Yes, sir; she came back for her muff, about five minutes afterwards.

Q Now, when you went back there to wait on these people sitting at the table, what, if anything, did you notice on the complainant's hands? A Nothing, only a ring.

Q Only a ring? A Yes, sir.

Q When was the next time you saw the defendant? A The defendant?

Q McGuire. After the morning, after he left the saloon. A I didn't see him any more.

Q Hadn't you seen him again until to-day? A Oh, I seen him here about a week ago.

Q Now, Coen, did you see a struggle there at the door?

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A No.

Q Where were you standing when this woman hollered?

A At the center of the bar.

Q Behind the bar? A Yes.

Q Did you have a view of that door? A No, I couldn't see no door from the bar.

Q You could not? A No, sir. You go right out in the back through the door.

Q That is, you couldn't see the door leading into the backroom from the bar? A No.

MR. O'MALLEY: You may cross examine.

CROSS EXAMINATION BY MR. GRAY:

Q What time was it when they came in? A Around 6:45 in the morning.

THE COURT: Who do you mean by "they"? The men or the complainant and the doctor?

MR. O'MALLEY: The doctor wasn't in there at that time. The littleman was there, then, and these other men.

BY MR. GRAY:

Q About 6:45 in the morning? A Yes, sir.

Q And nobody else was in the room? A No, sir.

Q How long did they remain there? A They didn't remain there longer than six or seven minutes at the most.

Q Not longer than six or seven minutes at the most?

A Yes, sir.

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Q Now, you say that there were four men and one woman?

A Yes.

Q Now, how many times did you serve them? A Once.

Q Only once? A Yes, sir.

Q Now, what did you serve? A Five beers.

Q One for each of the five people? A Yes, sir.

Q And you say that this defendant here, McGuire, was one of them? A Yes, sir he was in the party.

Q He was in the party? A Yes, sir.

Q Do you know any of the others? Did you know any of the others at that time? A No.

Q Did you know McGuire at that time? A No, I didn't know his name.

Q Where did you first identify McGuire as being in that party? A When I was requested to identify him in the court, 54th Street and Eighth Avenue.

Q You identified him there? A Yes, sir.

Q Was it in court or at Police Headquarters? A In court, yes.

Q In court? A Yes

Q And what were the circumstances of the identification?

A Well, I don't know. They asked whether I knew him. He was the only gentleman that was there. That's all I know.

Q You only saw him five or six or seven minutes at that time? A Yes, sir.

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Q And you didn't take any particular notice of him then; did you? A No.

Q Now, you heard no struggle? A I seen no struggle. All I heard was the holler.

Q You heard her simply say --- it wasn't a holler --- she simply said somebody had taken something from her neck?

MR. O'MALLEY: I object to that remark of the counsel, that it wasn't a holler. The witness has just said she hollered.

THE COURT: Yes, sustained.

MR. GRAY: I will withdraw it.

A Yes, she hollered out that somebody took something from her neck, but I couldn't understand what she said they took. I couldn't pronounce it now, either.

BY MR. GRAY:

Q Well, what did she say? Leave out the pronunciation, and give it as well as you can? A She called out that somebody took a lavarelle, or something like that.

Q Well, we'll call it a lavalier. Now, tell us what she said. A She hollered out that this thing was pulled off her neck.

Q Now, tell us exactly what she said, Mr. Coen? A I'm telling you what she said.

Q Now, use her language. Just imagine that you are her, and tell us what she said? A Oh, she said just the one word.

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She came out hollering, with her hand up to her neck, hollering that this thing was pulled out of her neck, and she wanted to break out, and go out of the front, and I stopped her, and she dropped her hand, and went out the other way. That's all I know.

Q. She came out hollering? A. Yes, sir.

Q. And she just simply said the lavalier was pulled off her neck? A. Yes, sir.

Q. What else did she say? A. Yes, sir.

Q. And the defendant you saw him still in the room?

A. He was still standing there?

Q. He was still standing there? A. Yes.

Q. The others were gone? A. Yes, sir, all gone.

Q. And you don't know when they went out? A. No, sir.

Q. Did she say to you that this defendant had taken her lavalier? A. No.

Q. Did she tell you who had taken it? A. No.

Q. Did you attempt in any way to get her lavalier back?

A. No. For I knew nothing about it.

Q. You simply prevented her from going out? A. Kept her from going out the front door, and went back to my work.

Q. You told her to go back? A. Yes, sir, I told her that she couldn't go out of the front? A. Do you know whether

the defendant and she went out together? A. I know they didn't go out together. One must go out before the other.

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Q Now, which one went out first, the woman or the man?

A Well, as I understand, Mr. McGuire went out ahead of her, when she dropped her hand-muff.

Q Now, did she go out of the backroom -- where did she drop her hand-muff? A Right on the entrance, going in the bar, right five feet inside of the door into the bar.

Q And she went back into the backroom after she dropped the muff? A Yes, sir.

Q Now, she went out of doors before she missed the muff, and came back for it? A I asked her to bring it with her, but she wouldn't, and she came back, in about five minutes afterwards, for the muff.

Q Now, when she had gone out of the backroom, had she gone out on the street, before she came back for it? A Yes, sir; she was out on the street.

Q And McGuire had already gone out before she did, immediately preceding her, and she walked out right behind him? A Yes, sir.

Q Now, you see them on the outside? A No.

Q How long about five minutes she came back? A Yes, sir.

Q Was she pretty drunk; wasn't she? A Well, I couldn't say she was drunk.

Q Now, she was moderately so? A It might be; I don't know, I couldn't say she was drunk.

Q Did she stay up all night?

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MR. O'MALLEY: I object to that, as a statement of fact by counsel.

A I don't know about that.

BY MR. GRAY:

Q She only had one drink about in your place? A That's all.

Q What time do you go on? What time did you go on, that morning? A Six o'clock.

Q And you had been there three-quarters of an hour when they came in? A Yes, sir.

Q Now, did you know McGuire before that night? A No, sir.

Q Had you ever seen him before that night? A Once.

Q Where? A In the store. But I didn't know him until he went out. The boss that I worked for told me his name was Mr. McGuire.

Q And you recognized him when he came in, that night, as Mr. McGuire? A That morning.

Q That morning? A Yes, sir.

Q You recognized him as Mr. McGuire? A Yes, sir.

Q And you knew that it was Mr. McGuire while he was in the place? A Yes, sir, while he was in the place.

Q And did you tell anybody that it was Mr. McGuire that was there with Mrs. Morrison? A No.

Q Positive about that? A Yes.

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Q Did the police officers come there, making inquiry?

A Yes.

Q And you didn't tell them that it was McGuire? A No.

Q Why didn't you? A Eh?

Q Why didn't you? A I don't know. I wasn't sure that it was his name in the first place, until I seen him again.

Q They asked you who did it, who it was with Mrs. Morrison; didn't they? A Yes.

Q And you told them you didn't know? A Yes.

Q And yet, all the while, you knew that it was McGuire?

A Yes, that's the name he went by, but I didn't know that it was him until I went and seen the man. That's the name they gave me.

Q But, when the policemen came there, you said you didn't know who it was? A Yes, sir.

Q But you say now that you did know that it was McGuire?

A Well, I was told afterwards that it was him.

Q But your boss had told you before that? A Well, once before, when the man was gone, about two weeks ahead of that, the boss said did I see a certain man there.

Q Yes, he had told you that two weeks before that?

A Yes.

Q And when he came in there, that night, you knew that it was McGuire? A I didn't know the man at all. When the boss told me, he was gone out of the store, when the boss asked

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me did I know anybody on the upper end that I waited on, and I said no.

Q And then when you saw him at the police station, at the court, you identified him? A Yes, as the man that I waited on, when they told me that was his name.

Q You recognize him as the man that you waited on two weeks before? A Yes, sir, on that Christmas morning.

Q And you also identified him as the man who had been in there with Mrs. Morrison that night? A That morning.

Q That morning? A Yes; he was there that morning.

MR. GRAY: That's all. Oh, just one question more.

Come back, Mr. Coen.

BY MR. GRAY:

Q Do you know how McGuire was dressed? A Yes, sir, he had an overcoat on him and a derby hat; and I don't know whether he had a collar and tie on or not, because his coat was buttoned up around him.

Q But you are positive that he had an overcoat on and a derby hat? A Yes, sir.

Q And do you recover the color of that? A It was a black derby and the overcoat was kind of brown.

Q That you are positive of? A Yes.

Q There can be no mistake about it? A Not that I know of.

MR. GRAY: That's all.

MR. O'MALLEY: That's all. Officer Owens. Just a

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moment. I want to recall Coen, your Honor. Come back here, Coen.

T H O M A S C O E N, being recalled by the District Attorney, testified as follows:

BY MR. O'MALLEY:

Q When you first saw the defendant, he was sitting down at the table; was he not? A Yes, sir.

Q And you served him with beer and he went out? A Yes, sir.

Q And the next time you saw him was when he was standing directly behind Mrs. Morrison? A Yes, sir; about two feet and a half.

Q And then he, at that time, turned around and went out? A Yes, sir.

M A R T I N S. O W E N S, of the Detective Bureau, assigned to the 26th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q How long have you been a member of the Municipal Police Force? A Going on six years.

Q And to what precinct were you attached on Christmas day

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of last year? A 26th Precinct.

Q Were you one of the officers who investigated this case?

A I was.

Q When was the first time you were called into it?

A Christmas night.

Q And you started out from the station house; did you?

A I did.

Q And where did you go first? A To the complainant's house, Mrs. Morrison's house, 300 West 49th street.

Q Do you know whether she had been to the station house before that or not? A No, sir; but I believe she telephoned to the station house.

Q And you went to her house? A Yes, sir.

Q And went over the case with her? A Yes, sir.

Q And where did you go then? A To Martin's Cafe, 751 Seventh Avenue, and saw the bartender, which was Clayton.

Q And had a talk with him in regard to the case?

A Yes, sir.

Q Then where did you go? A From there I went back to the station house.

Q Who did you see there? A I saw several of the detectives there.

Q Now, was a description of the defendant given you by any of the persons that you had seen? A Yes, sir, by both.

Q Whom do you mean by both? A Both Mrs. Morrison and

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

THE COURT: Motion granted. And the jury will disregard it.

BY MR. O'MALLEY:

Q Well, then, you proceeded to look for a man? A Yes, sir.

Q And how long did you keep up your efforts? A Up to January 9th.

Q And where did you go? A To the neighborhood of 54th Street and Eighth Avenue, and 60th Street and Columbus Avenue, and in that vicinity, from 60th Street down to 47th Street and Eighth Avenue, and on Ninth and Tenth Avenues.

Q And how long did you keep up those efforts? A Until the morning of January 9th.

Q Did you make the arrest personally? A No, sir.

Q When was the first time you heard of the arrest of the defendant? A About ten minutes after he was arrested.

Q And on what date was that? A January 9th. Or it was about twenty minutes of one, on the 9th, that I heard it.

Q And where were you when you heard it? A I came into the station house.

Q And was the defendant there then? A Yes, I saw him.

Q And what did you do? A And then I telephoned to Mrs. Morrison, the complainant.

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Q Did you see her then? A No, sir. But I telephoned to her we had a man arrested.

MR. GRAY: I object to that, if your Honor please, and move to strike that out.

THE COURT: Yes, strike that out, and the jury will disregard it.

BY MR. O'MALLEY:

Q And how long after that did you see her? A About ten minutes.

Q And where did you see her? A At her residence.

Q And where did you go, if anywhere? A I took her to the station house.

Q Now, then, after you got the station house with her, did you see the defendant? A Yes, sir.

Q What, if anything, was said by Mrs. Morrison, in the presence of the defendant? A She got up and looked at him, and said, "That's the man that robbed me of my lavalier, Christmas morning."

Q And where was that identification made? A In the rear room of the station house.

Q When where was the defendant taken, if any place?

A Put in the cell.

Q Was he taken back to the cell? A Yes, sir.

Q Will you tell me who made the arrest, what officers?

A Officers Burgess and Fitzpatrick.

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Q Were they present at the time the complaining witness was brought in? A Yes, sir.

MR. O'MALLEY: All right. You may cross examine.

CROSS EXAMINATION BY MR. GRAY:

Q You called up Mrs. Morrison on the telephone, you say?

A Yes, sir.

Q That morning? A Yes, sir.

Q What time? A That was between a quarter to one and ten minutes to one.

Q And did you find her at her apartment when you went down there? A she answered the telephone.

Q Did you go down to the apartment? A I did.

Q Did you go upstairs where she lived? A Yes, sir.

Q And found her there? A Yes, sir.

Q Was anybody with her? A No, sir.

Q By herself? A Yes, sir.

Q Now, was she dressed when you got there? A Yes, she was dressed.

Q Did she go with you to the station house? A Yes, sir.

Q She was ready to go with you to the station house when you got there? A Well, I believe she had to put her hat and coat on.

Q You told her over the telephone what you wanted her to do? A Yes, sir.

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Q And what did you tell her? A I told her we had a man arrested, and I wanted her to come around and look at him.

Q Did you tell her who it was? A No, sir, I didn't mention the name.

Q Did you tell her what he was arrested for? A Yes.

Q And then you went around to the station house with her?

A Yes, sir.

Q On the way, did you inform her who it was that you had arrested? A I said we had a man arrested by the name of "Red McGuire".

Q You told her that you had "Red McGuire" arrested?

A Yes, sir.

Q And then when you got around to the station house, where did she go? To the cell? A No, sir, she didn't. She went in to the detectives' room in the rear of the station house.

Q And you brought McGuire in there? A Yes, sir.

Q And brought him in alone? A Yes, sir.

Q And what did you say when you got him in there? A I didn't say anything. I let McGuire go in the door first, and, as he got in the door, Mrs. Morrison stepped up and said, "That's the man that robbed me of my lavalere, on Christmas morning."

Q And that is all she said? A Yes, sir, that's all she said at the time.

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Q And you and the other officers were there? A Yes, sir.

Q No other prisoner? A No, sir.

Q But you had already told her that you had "Red McGuire"?

A I said a man by the name of "Red McGuire", yes.

Q And you sent this man in as "Red McGuire"? A She didn't know who it was coming in. We simply walked in, and he walked in first.

Q But she was sitting there waiting for him? A Yes, sir, she was sitting, waiting for the man to come in. But she didn't know who it was that walked in first.

Q But this was the only man that you brought in?

A Yes, but there was three of us filed in afterwards.

Q And the other three were detectives? A Yes, sir.

Q And she certainly didn't suspect any of you three gentlemen? A I don't know about that.

MR. GRAY: That's all.

MR. O'MALLEY: That's all, officer.

EDWARD C. BURGESS, of the Detective Bureau, assigned to the 26th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q How long have you been a member of the Municipal Police

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Force? A About three years and ten months.

Q And were you attached to the same precinct on December 21st of last year? A I was.

Q Do you know Officers Owens and Fitzpatrick? A I do.

Q Well, would you first hear of this case, if you can remember? A Yes, I believe it was Christmas night.

Q Where was the station? A It was in the station.

Q Did you see the defendant? A I did.

Q And how long had you known him? A Oh, I've known him for years.

Q Were you on an investigation? A I did.

Q What was it? A I did.

Q Who were with you on it? A Detectives Fitzpatrick and Owen.

Q And when was the arrest made? A On the --- I believe on the 21st of January, on the morning of that day, on the night of the 20th of January.

Q The night of the 20th of January? A Yes, sir.

Q And how near midnight was it? A About midnight.

Q About midnight? A Yes, sir.

Q And where did you arrest the defendant? A At 67th Street between 61st and 62nd Street, on the east side of Columbus Avenue.

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Q And were you in the room when she was brought in or not? A I was not.

Q Now, did you at any other time have a talk with this defendant? A I did.

Q Where? A I talked to him in the prison pen here.

Q And when was that, officer? A Why, that was --- I don't remember the date, but it was a week ago last Monday.

Q That would be the 11th of March; wouldn't it? A It was on Monday, a week ago last Monday.

Q And now, will you tell the jury what was the first thing that was said when you saw the defendant? A Why, I asked him if he wanted to see me, and he said yes. And he said, "Now, if the stuff in this case goes back, why ---". We. He says, "Where should this stuff be sent"?

Q Yes. A "Why," I said, "send it to Mrs. Morrison". And he said he wouldn't it there; there was too much red tape about the delivery.

Q He mentioned the place where there was too much red tape? A At the Donac.

Q That is the apartment house in which the complaining witness lives? A Yes, sir.

MR. O'MALLEY: Is it conceded, Mr. Gray, that the Donac, where the complaining witness lives, is at 49th Street and Eighth Avenue?

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MR. GRAY: Yes, sir.

BY MR. O'HALETT:

Q Now, then, go on, officer. A And so then he asked me if it could be sent to me, the stuff, and I said yes, and he said, "Where?" And I said, "The station house." And he said he wouldn't send it to the station house, because the messenger or whoever delivered it, would be asked questions, and probably followed; and wanted to know if it could be sent to my house, and I said yes. He took a card from his pocket and a pencil and wrote my name and home address on it. And so then he asked me if I could --- if I thought the complainant in the case would be willing to drop the prosecution, if the stuff came back, and I said, "I couldn't be responsible for how she may see fit to act," and then he asked if he could see her.

Q Yes. And I said, "Well, do you want to see her?" And he said, yes, he would like to talk to her, and I said, "I'll tell her this, and, if she desires to come down, she may." And so I told Mrs. Morrison, that evening, and she said she would come down.

Q Now, officer, No, strike that out. Don't tell what

Q The defendant asked to see Mrs. Morrison?

A Yes, sir.

Q And that was on Monday, the 11th of March? A Yes, sir.

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Q And when did you see Mrs. Morrison after that? A I seen her that evening.

Q Monday evening? A Monday evening.

Q Now, did you at any time go to the Tombs with Mrs. Morrison? A I did.

Q When? A On Tuesday, the following day.

Q The following day? A Yes, sir.

Q And did you gain her admittance to the Tombs? A I did.

Q And did you or did you not go with her when she went into the cell? A I did not.

MR. O'MALLEY: You may cross examine.

CROSS EXAMINATION BY MR. GRAY:

Q You were called into this case, you say, on Christmas night? A Yes, sir.

Q And immediately went to work on it? A Yes, sir.

Q Did you look for anybody in connection with it except McGuire? A No, sir.

Q Why? A Why? Because, from information, and---

Q You had made up your mind that McGuire was the man who had committed the crime?

MR. O'MALLEY: One moment. I ask, if your Honor please, that the witness be permitted to answer the question. He hasn't finished his answer.

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THE COURT: Yes, answer the question.

A (Answer continued) Because, from information, and the description that I had obtained, and being well acquainted, that is, to know the defendant very well, I decided that he was the man.

BY MR. GRAY:

Q Yes. And you started to look for the man who committed this crime, and your mind made up that McGuire was that man?

A Yes, sir.

Q Yes. And you looked for nobody else, notwithstanding that there were four other men in the party at the time? A I looked for nobody else.

Q Did you get a description of any of the four other men? A I did.

Q Wouldn't you look for them? A I wasn't able to identify anybody from the description.

Q Now, the night that you arrested McGuire, it was raining? A It was.

Q A very bad night; wasn't it? A Very.

Q And you took him to the station house immediately? A We did.

Q And immediately sent for the complainant? A We did.

Q And brought her up there? A Yes, sir.

Q And the defendant was shown to her? A Yes, sir.

Q Now, how did you come to go to the man where McGuire

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was, the other day? A Why, I had heard that he wanted to see me.

Q Heard that he wanted to see you? A Yes, sir.

Q Who told you? A Why, a party, a young fellow.

Q Who was it? A I couldn't tell you his name.

Q How? A I don't know the party that told me.

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

Q Was it a man --- A It was.

Q In the courthouse here, A No, sir.

Q Where? A On the street, at 54th Street and Eighth Avenue corner.

Q Told you that McGuire wanted to see you? A Yes, sir.

Q You don't know who it was? A No, sir.

Q You have no idea? A I would know him if I seen him, and I have seen him many times.

Q Could you give us a description of him? A I could.

Q Well, let's have it. A Well, a man about 22 or 23 years of age, a fellow about five feet, eight or nine inches in height, clean shaven, mediumly well dressed.

Q And you, immediately on being informed that McGuire wanted to see you came down here? A Yes.

Q Did you speak to the District Attorney? A I did.

Q Did you tell him that McGuire wanted to see you? A I told him that I had been spoken to about the matter, yes.

Q And then you went to the pen? A Yes, sir.

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Q And you asked McGuire if he wanted to see you?

A Yes.

Q That was the first thing? A Yes.

Q And what answer did he make to that inquiry? A He said yes.

Q And did you ask him what he wanted to see you about?

A Yes. We started in on the conversation.

Q And what was the next thing that was said? A The next thing was said about the case. The first remark he made was how I thought he was in, and I said, "I think you are in bad," and then he remarked as to the return of the diamonds, if it would help him any.

Q Now, what did he say about that? A He said, if the diamonds in this case came back, would it tend to help him in his case any way.

Q He said, if the diamonds in this case came back, would it tend to help him in his case any way? A Yes, sir.

Q And what did you tell him? A I told him that, in a case of that kind, where the diamonds --- where the stuff was returned --- that it would usually --- that usually leniency was shown in cases like that.

Q That is the information that you gave him? A I did.

Q Now, what else was said? A And so then he asked me as to where they could be delivered. I informed him --- I

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told him that he could send them to the complainant, Mrs. Morrison, at the Donac, and he said that he would send them there, because there was too much red tape about the delivery; and I said, "You could send them to me, at the station house," but he wouldn't consent to that, didn't approve of that. And then he asked for my home address, and I told him I would give it to him, and he took a pencil and a cardout of his pocket, and I gave him my name and address.

Q And you wrote the name and address down yourself?

A No, sir.

Q Who wrote it down? A He did.

Q Now, officer, was anything said about \$50 or \$100?

A No, sir.

Q Quite sure? A Yes, sir.

Q Didn't you go to this cell, or to this pen, without any information whatever that McGuire wanted to see you?

A No, sir.

Q Didn't you go there and tell McGuire that you knew that he didn't take the stuff, but that he knew who had it?

A No, sir.

Q And didn't you tell him that you and your other associates would get from \$50 to \$100 apiece, if the stuff was returned, and that the complainant would agree not to prosecute, if he could get his friends to --- if he could get them or who had the stuff to send it back? A No, sir, I made

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no remark about any money, or any detectives --- any money.
I made no such remark.

Q. You are very positive about that? A. Yes.

THE COURT: Well, you have not fully answered the question put to you by counsel. Repeat the question.

(Question repeated by the stenographer).

A. Now, as to the last part of the question, that's where I remarked that I couldn't be responsible for any act that the complainant may see fit --- or any way she may see fit to act, as to the prosecution; that I couldn't be responsible for her feeling in the matter.

BY MR. O'MALLEY:

Q. And then your answer is no? A. No.

BY MR. GRAY:

Q. And thereafter you brought Mrs. Morrison down --- he said he wanted to see her; didn't he? A. Yes, sir.

Q. And you brought her down to the Tombs? A. Yes, sir.

Q. And procured her entrance to the Tombs? A. Yes, sir.

Q. And she went up to see him? A. Yes, sir.

Q. You don't know what the conversation was between them there? A. I do not.

MR. GRAY: That's all.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q. Oh, one further question, officer. Did you learn the

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name of any of the other four men who were supposed to be with the defendant in that saloon? A No, sir.

Q This is the only name that you learned? A Yes, sir.

J O H N F I T Z P A T R I C K, of the Detective Bureau, assigned to the 26th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You have been an officer here in New York how long?

A About ten years.

Q And were you attached to the 26th Precinct on December 25th of last year? A Yes, sir.

Q And you are at present time? A Yes, sir.

Q Did you assist Officer Burgess in arresting the defendant in this case? A I did.

Q And did you accompany him to the station house? A I did.

Q Now, were you in the room when the complaining witness was brought in? A Yes, sir.

Q And were you there when the defendant was taken out, back to his cell? A Yes, sir.

Q Did you hear the defendant say anything at any time,

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after the complaining witness had identified him? A Yes, sir.

Q What was it? A There was one remark he made, to see Jesse.

Q To whom did he make that remark? A The complaining witness.

Q The complaining witness was in the same room, at the time; was she? A Yes, sir. And I turned and asked her what he meant, and she said he put his fingers to his mouth (illustrating), and said, "See Jesse".

Q And was the defendant present when she said that?

A Yes, sir.

Q And did the defendant make any reply to that? A He didn't say anything.

Q Did you know the defendant at that time? A Yes, I did.

Q How long had you known him? A Oh, I've known the defendant McGuire seven or eight years.

MR. O'MALLEY: That's all.

MR. GRAY: I have no questions.

MR. O'MALLEY: There is just one question I want to ask the complaining witness. Will you please take the stand, Mrs. Morrison?

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M A R T H A M O R R I S O N, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Mrs. Morrison, do you know where Dr. Rodriguez is at the present time? A He's in Chicago, I think.

Q Yes. A Yes, last time I heard from him he was.

MR. O'MALLEY: The People rest.

MR. GRAY: If your Honor please, I have a motion to make that I assume I can make in the presence of the jury, with prejudice, and it is to strike out all the testimony with regard to the return of these diamonds, upon the promise made by this complainant, which she herself testifies to, that she wouldn't prosecute, in the event that the diamonds be returned.

THE COURT: Did she so testify?

MR. GRAY: That's my recollection.

THE COURT: Did she make any such promise, according to her testimony, Mr. District Attorney?

MR. O'MALLEY: I think she testified to something of that effect, but I don't see how it would have any bearing on this matter.

THE COURT: No, I deny your motion, because, under the statute ---

MR. GRAY: I know that any promise or favor, under the statute must be made by the District Attorney of the

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county.

MR. O'MALIEY: Why, her testimony was that she promised the defendant, when he asked her if she would prosecute, if the diamonds were returned. Now, there is no evidence that she had any talk with the District Attorney about that.

MR. GRAY: No, you misunderstood me. I said that I understood that the absolute requirement of the statute was that the District Attorney should make such a stipulation.

THE COURT: Yes, that is the statute. (Reads the section).

MR. GRAY: I understand that. But, if the Court please, it is the general tendency of the law that I contend for.

THE COURT: No, you are in error. The Court passed upon the precise question, some years ago, where a defendant charged with murder in the first degree was visited by a relative, and this relative said to the defendant, "Now, if you show me the place where you killed your aunt, because we want to bury her, I will see to it that you will be released. Take me to the place, and I will permit you to make your escape," and the Court of Appeals sustained such conduct on the part of the District Attorney and the police.

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MR. GRAY: Yes, sir, I remember the case.

THE COURT: It is the case of the People against Scott, 195 New York. "When a confession is obtained from a prisoner by a private person under a promise that he will aid the prisoner to escape, no stipulation being made by any public officer to discharge the defendant, and not place him upon trial, or any understanding had by the defendant to that effect, the confession, although induced by deception, is properly received in evidence".

MR. GRAY: Your Honor will allow me an exception?

THE COURT: Yes.

MR. GRAY: I waive the opening. Take the stand, McGuire.

THE COURT: No, we will take an adjournment at this time.

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Wednesday morning, March 20th, 1912, at 10:30 o'clock).

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