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CASE # 1494

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

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THE PEOPLE OF THE STATE OF NEW
YORK,

-against-

CESARE BLANDOLI.
----- x

1609

Before Hon.

JOSEPH F. MULQUEEN, J.,

and a jury.

Indictment filed January 5th, 1912.

Indicted for rape in the first and second degrees.

New York, February 16th, 1912.

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

For the People : ASSISTANT DISTRICT ATTORNEY LLOYD
P. STRYKER.

For the defendant: MR. WILLIAM MILLER.

Peter P. McLoughlin,
Official Stenographer.

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MARY POLLACK, a witness for the People,
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRYKER:

Q How old are you? A 13 years old. I live at
127 East 102nd street.

Q Now, Mary, I want you to look right at me and simply
answer questions. A Yes.

Q Will you try and talk so that every one of these
gentlemen here can hear you? A Yes, sir.

Q They want to hear your story. Look right at me and
speak to them. A Yes, sir.

Q How old are you? A 12 years old.

Q Are you 12 now or 13? A I am 13.

Q How old were you on Christmas day last? A 12.

Q When is your birthday? A January 13th.

Q The 13th? A Yes, sir.

Q You were 13 January 13th 1912? A Yes, sir.

Q You know Rosie Rottenberg, don't you? A Yes, sir.

Q And Bella Rottenberg? A Yes, sir.

Q They are little friends of yours? A Yes, sir.

Q Down here today? A Yes, sir.

Q Where did you say you lived? A 127 East 102nd
street.

Q You live with your mother and father there? A Yes.

Q You go to school? A Yes, sir.

Q Sunday school? A No, sir.

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Q You go to school? A Yes, sir.

Q Do you know that man (pointing to the defendant)?

A Yes, sir.

Q What is his name? A Blandoli.

Q Did you see Blandoli on Christmas day? A Yes.

Q Where --- 1911? A Yes, sir.

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

Q Do you remember what the number of the defendant's house was? A Yes, sir.

Q What is the number? A 54 East 104th street.

Q Did you go there alone or some person along with you?

A Rosie Rottenberg went with me and Bella.

Q So that Rosie and Bella and you all went over together?

A Yes, sir.

Q Is that right? A Yes, sir.

Q Was that the first time you had been there?

A No, sir.

Q You had been there before, had you? A Yes, sir.

Q How long had you known this man? A Before Christmas.

Q About? A I know him since last January.

Q You had known him a year before you went there?

A Yes, sir.

Q You had been there before, had you? A Yes, sir.

Q Now, Mary, I want you to tell me in your own way, your own language-- I don't want to lead you-- I want you to

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tell his Honor the Judge and these gentlemen just what happened in that room Christmas day. What did this man, Blandoli, this defendant right here do?

THE COURT: Or at any time prior.

Q What did he do to you Christmas day? A We went in to him in the morning; he wasn't home; then he was home.

Q Who went? A Bella and Rosie and me.

Q Christmas morning? A Yes, sir.

Q You went back in the afternoon? A Yes, sir; he was home; the janitor said he would be home about 4 o'clock.

Q So at 4 o'clock he was home in his room? A Yes.

Q You, Bella and Rosie were all together? A Yes.

Q What did he tell you when you came in? A He kissed me.

Q Did he kiss you? A Yes, sir.

Q And Bella? A Yes, sir.

Q And Rosie? A Yes, sir.

Q And what did he do then? A He then asked Rosie to lay on the bed.

Q Don't feel afraid. He said that right to you?

A Yes, sir.

Objected to; objection overruled; exception.

Q Did Rose lay on the bed? A Yes, sir.

Q What did you see the defendant do, what did this man do? A He took off his trousers. Then Bella took off her drawers and he layed on top of her.

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Q Was that Bella? A Yes, sir; Rosie.

Q Did you see what he did while on top of her?

A Yes, sir.

Q Moving or lying still? A Moving.

Q How, up and down? A Yes, sir.

Q After he got through doing that with Rosie what did he do? A He got up and he asked me to lay on the bed; I laid on the bed and he laid on top of me when he laid down.

Q What about your clothes? A I took my drawers off and he took his trousers off.

Q His trousers were off? A Yes, sir.

Q What clothes did you have on? (No answer)

BY THE COURT:

Q Did you have a cloak on? A Yes, sir.

Q Did you take that off? A Yes, sir; I only took off my coat; I lifted up my dress and took off my drawers.

BY MR. STRYKER:

Q You were on the bed? A Yes, sir.

Q With your dress up? A Yes, sir.

Q What did the defendant do after he laid on top of you? A He laid on top of me.

Q At that time were his private parts exposed, pulled out? A Yes, sir.

Q His thing was out? A Yes, sir.

Q What did he do with it? A He put it between my legs.

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Q Whereabouts between your legs, any part of your private parts? A Yes, sir.

Q Put it on your private parts? A No, sir; only between my legs.

Q Did he put it in your private parts that day? A Yes, sir.

Q Christmas? A Yes, sir.

Q Moved up and down when he was there? A Yes, sir.

BY THE COURT:

Q Did you feel it in you? A Yes, sir.

BY MR. STRYKER:

Q Now was that the first time he had done that to you, laid on top of you that way? A That was the first time.

Q Not the first time he laid on top of you. Hadn't you been there before, other days before Christmas? A Yes, sir, but he didn't lay on top of me.

Q What did he do to you before that?

MR. MILLER: I object to that.

THE COURT: The transactions up to the time stated in the indictment are admissible.

Q Before Christmas, Mary, did you use to go to his room? A Yes, sir.

Q That is from January down to Christmas did you sometimes go to the defendant's room? A Yes, sir.

Q What day did you usually go there? A Sundays.

Q On Sundays? A Yes, sir.

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Q Did you usually go alone or did you go with some one else? A I went alone sometimes.

Q Sometimes? A Sometimes, yes, sir.

Q Who did you sometimes go with? A With Rose, and sometimes with Bella.

Q I suppose you mean Rose and Bella Rottenberg?

A Yes, sir.

Q Did the defendant ever use to give you anything?

A Yes, sir.

Q What did he use to give you? A Money.

Q How much money did he give to you? A 50 cents.

Q Did he use to give you 50 cents every Sunday you came

A Yes, sir.

Q Did you see him give Rose anything any time? A Yes.

Q What did he use to give Rose? A He used to give her a quarter.

Q He used to give you 15 cents every time you came?

A Yes, sir.

THE COURT: Strike that out, except on the date of the indictment.

BY MR. STRYKER:

Q Now on the other times, Mary, that is what I am asking now, you know, the Sundays that you went there before Christmas. A Yes, sir.

Q You understand. A Yes, sir.

Q On those times when you say he used to give you 50

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cents when you went there each time what did he use to do to you then? A He used to take me on his lap and play with me.

Q How would he play with you? A He put his hands into my drawers.

Q Fell your bare legs? A Yes, sir.

Q Put his hands on your private parts? A Yes, sir.

Q Did you ever lie down before Christmas day when he was there? A No, sir.

Q What did you use to do? A Sit on a chair.

Q After that did he ever use to do anything to you before Christmas, you used to lie on the bed? A No, sir.

Q Did you see him do it with Rose when you were there?

THE COURT: Never mind that.

Q Who introduced you to Blandoli? A Rose Rottenberg.

Q Rose introduced you to him? A Yes, sir.

Q What did Blandoli say to you when Rose introduced you to him? A He didn't say anything; he only said "Hello" and gave me 5 cents.

Q What else did he say to you? A He told us to come the next day.

Q To his place? A Yes, sir.

Q And did you go? A Yes, sir.

Q To his place? A Yes, sir.

Q To his room? A Yes, sir.

Q Now after this you were examined by a doctor, weren't

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you? A Yes, sir.

Q Weren't you? A Yes, sir.
BY THE COURT:

Q On this Christmas day he laid on you. You have not told us what he did to you. You said he only put his penis between your legs. Is that all he did? A That is all.

Q Didn't he put his penis into your private parts?
A He put it in on Monday, Christmas.

Q Christmas day? A Yes, sir.

Q He put it into you, did you feel it? A Yes, sir.

Q In you? A Yes, sir.

Q Then he lay on you and moved up and down you say?
A Yes, sir.

Q You are quite sure you felt his penis in your private parts? A Yes, sir.

BY MR. STRYKER:

Q Now, Mary, did you ever spend a night at his place? A Yes, sir.

Q How long was that before Christmas? A About four weeks before.

Q Who spent the night in Blandoli's room with you?
A Rosie Rottenberg.

Q Where did you sleep that night? A Slept in the bed.

Q Where did Blandoli sleep? A He slept on the couch.

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Q Was he on the bed at any time? A No, sir.

Q Not that night? A No, sir.

Q You were in his room all night? A Yes, sir.

Q What did he say to you that night?

MR. MILLER: I object to that.

THE COURT: When was that?

MR. STRYKER: Two or three weeks before the day in question when she spent the night. I am asking for the conversation.

THE COURT: Any transactions between the defendant and this complainant prior to the date charged in the indictment and on the date charged in the indictment I will allow.

MR. MILLER: I take an exception.

THE COURT: He is not on trial for anything he did except on the date stated in the indictment but it is proper to show the relations between the defendant and this complainant prior to that time. That is all. It is one of the circumstances to be considered by the jury in determining whether or not the evidence shows him guilty of the crime charged in the indictment. That is the only crime he is here for but all their prior dealings and relations may be shown to the jury to put them in possession of all the facts.

BY MR. STRYKER:

Q Now, Mary, I was asking you, I think, what was it

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that Blandoli said to you that night that you
spending the night with him before Christmas? re-
member his talking to you at all? A He was saying--

Q What was he saying? A He wanted to do it to us
again and we wouldn't let him.

Q What did he say? A He asked us to lift up our
clothes and we said no.

Q Was it then he was on the sofa? A Well he was mad
and went on the sofa.

Q Where was he when he wanted you to do it he said?
A He was sitting on a chair when we came in; he just came
home from work.

Q He came in and wanted you to do it? A Yes, sir.

Q You spent the whole night there? A Yes, sir.

Q With him? A Yes, sir.

Q What did you use to do with these 50 cents' that
he would give you? A We went to a show.

Q And buy candy? A Yes.

GROSS EXAMINATION BY MR. MILLER:

Q Now, Mary, did you ever go to Sunday school? A Yes.

Q When? A When I used to live in 66th street.

Q How long ago did you use to live in 66th street?

A About 2 years ago.

Q Have you been to Sunday school since that time?

A No, sir.

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Q Now, where does your mother live? A 127 East 102nd street.

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

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

Q About a year? A Yes, sir.

Q Now, when did you first meet Blandoli, when did you first see him? A January, last January.

Q That is a year ago from last month? A Yes.

Q Is that it? A Yes, sir.

Q A year ago? A Yes, sir.

Q Where did you meet him? A In his room.

Q In his room? A Yes, sir.

Q Where was he living at that time? A Well, on 103rd street.

Q 103rd street? A Yes, sir.

Q He was not living in the same place where you were Christmas day, was he? A No, sir.

Q When did you first meet him in the room, or did you first meet him where he was working? A I met him in the room.

Q How did you come to meet him in the room there?

A Rose Rottenberg told me that that was her uncle, we could go to him, so I went with her.

Q Then you went to Blandoli's room in 103rd street?

A Yes, sir.

Q With Rose Rottenberg? A Yes, sir.

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Q When you went there with Rose Rottenberg, Blandoli did not do anything to you there, did he? A No, sir.

Q You used to go to the moving picture shows, didn't you? A Yes, sir.

Q You used to go and see Mr. Blandoli for money to go to the moving picture shows, didn't you? A Yes, sir.

Q Did your mother know you were going to moving picture shows? A No, sir.

Q You never told your mother? A No, sir.

Q Did Rose Rottenberg use to go to the moving picture shows too? A Yes, sir.

Q That is you would come there, get money off Blandoli and then all you girls would go to the moving picture show, wouldn't you? A Yes, sir.

Q He didn't do anything then, did he? A No, sir.

Q How far from 103rd street where you first met Blandoli did you live? A I lived in the same place.

Q In the same house? A Yes, sir.

Q You lived in the same house with Blandoli then, did you? A No, sir.

Q You mean the same place where you are living now? A Yes, sir.

Q What is that? A 127 East 102nd street.

Q How far away is that from 103rd street? A One block.

Q About one block? A Yes, sir.

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Q How many times did you go to see Blandoli in 103rd street? A A few times.

Q A few times? A Yes, sir.

Q Every time you went there he gave you money, didn't he? A Yes, sir.

Q You spent that money on the moving picture shows?

A Yes, sir.

Q Now he didn't do anything to you in 103rd street, did he? A No, sir.

Q Never did a thing to you? A No, sir.

Q Now you know when he lived in 103rd street? A Yes, sir.

Q How did you find that out? A Rose Rottenberg one day she just walked, went as far as 104th street, and she seen him looking out of the window and that is how she knows.

(The Court then admonished the jury, calling their attention to section 415 of the Code of Criminal Procedure, and took a recess until 2 o'clock.)

AFTER RECESS.

MARY POLLACK, a witness for the People, recalled:

CROSS EXAMINATION CONTINUED BY MR. MILLER:

Q Now, Mary, you went to the premises in 103rd street where Blandoli lived. You went over there to see Blandoli with Bella Rottenberg and the other Rottenberg? A Yes, sir.

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Q Now you went there and found that he had moved a way, didn't you? A Yes, sir.

Q You went there to get some money for the moving picture shows, didn't you? A Yes, sir.

Q Now, the first time that you knew where Blandoli lived, after he had moved from 103rd street, was when Bella Rottenberg told you that she saw Blandoli in a window of 104th street, is that it? A Yes, sir.

Q Then you and Bella went over to the house in 104th street, is that it? A Yes, sir.

Q How long after Blandoli had moved from 103rd street did you go to where Blandoli lived in 104th street, over a year, wasn't it? A Yes, sir.

Q You had not seen Blandoli in the 104th street house until over a year after he had lived in 103rd street, is that it? A No, sir.

Q You didn't see him any time between that did you-- the only time that you knew Blandoli lived in 104th street was after Bella Rottenberg told you? A Yes, sir.

Q Then you and Bella went to 104th street, didn't you? A Yes, sir.

Q You then got more money for the moving pictures, didn't you? A Yes, sir.

Q In 104th street? A Yes, sir.

Q You kept going there and getting money at different times while you lived there, didn't you? A Yes, sir.

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Q Now, you stated that about four weeks prior to
mas, this was Christmas day the 25th of December? A Y.
sir.

Q That about four weeks prior to that time you and
Bella Rottenberg and the other Rottenberg girl went to Blan-
doli's apartment, that is where he lived? A Yes, sir.

Q Now, what time of night was it that you went
there? A 4 o'clock in the afternoon.

Q That was the first time, wasn't it? A Yes, sir.

Q Then you came back again at night, didn't you, with
Bella Rottenberg and the other girl? A Yes, sir.

Q That is the night you say you stayed all night.
You remember saying that you stayed in the apartment of Bland-
oli all night with Bella Rottenberg, don't you remember
that? A Yes, sir.

Q Well that night when you went to the apartment of
Blandoli, what time was it, was it about 12 o'clock at
night? A 11 o'clock.

Q About 11 o'clock? A Yes, sir.

Q At 11 o'clock at night you and Bella Rottenberg and
her sister went to the apartment-- you and Rose went to the
apartment? A Yes, sir.

Q That was 11 o'clock at night? A Yes, sir.

Q You went to the apartment, you knocked on the door,
didn't you? A Yes, sir.

Q Didn't you tell Blandoli that your mother had locked

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you out and that you could not get into the house? At home? A No, sir.

Q What did you tell him? A We told him we were afraid to go home.

Q You told Blandoli you were afraid of your father? A Yes, sir.

Q Why were you afraid to go home? A Because my father wanted to hit me.

Q Your father wanted to hit you? A Yes, sir.

Q What did he want to hit you for, for being out on the streets, running around, wasn't it? A Yes, sir.

Q That aint the first time your father wanted to hit you for that, was it? A No, sir.

Q You told this defendant that you wanted to go in his apartment to sleep because your father wanted to hit you, is that it? A Yes, sir.

Q He took you in, didn't he? A Yes, sir.

Q He allowed you to go on his bed, didn't he? A Yes, sir.

Q You and this Rosie Rottenberg? A Yes, sir.

Q He went in the front room of his apartment, didn't he? A Yes, sir.

Q You and this Rosie Rottenberg slept on his bed that night? A Yes, sir.

Q He didn't do anything to you then, did he? A No, sir.

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Q He didn't attempt to do anything to you? (No answer)

Q He did not attempt to do anything to you? A No.

Q And the next morning what time did you leave there?

A 6 o'clock.

Q At 6 o'clock he had you get out, get out of the house, didn't he? A Yes.

Q Where did you go then? A No place then. We were staying on the street.

Q You stayed on the street? A Yes, sir.

Q How soon after did you go home? A Well, 3 o'clock in the afternoon.

Q What were you doing all that time from 6 o'clock in the morning until 3 in the afternoon? A Nothing.

Q Nothing? A No, sir.

Q Did you go to a moving picture show that day?

A Yes, sir.

Q He didn't give you any money, did he, that night?

A Yes, sir; he gave us 10 cents.

Q 10 cents? A Yes, sir.

Q Did he tell you what to do with it? A No, sir.

Q Then the next evening after that did you see Blandoli? (No answer)

Q Did you see him from that night until Christmas day, the 25th day of December? A Yes, sir.

Q Where? A In 104th street.

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Q Did you go there and see him? A Yes, sir.

Q Who went with you? A Rosie.

Q Rosie again? A Yes, sir.

Q Did he do anything or try to do anything to you then? (No answer)

Q After the night that you stayed all the night, the next time you went to Blandoli's house did he attempt to do anything to you then? A No, sir.

Q Now Christmas day what time was it when you went there? A 4 o'clock in the afternoon.

Q Who went with you there? A Rosie.

Q Who else? A Bella.

Q Rosie and Bella? A Yes, sir.

Q Where were those apartments where Blandoli lived, on the first floor? A On the ground floor.

Q On the ground floor? A Yes, sir.

Q The hall entrance, from the hall into Blandoli's room? A Yes, sir.

Q He had two rooms there, didn't he? A Yes, sir.

Q A front room and a back room? A Yes, sir.

Q When you went there what did you say to him? A He said "Hello" and he kissed us.

Q He kissed you? A Yes, sir.

Q What else did you do? A Then we sat on a chair.

Q After that what did you do? A Then he asked Rosie to lay on the bed.

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Q Where was that, in the front room or in the back room? A In the back room.

Q In the back room? A Yes, sir.

Q Where was that-- where were you at that time?

A I was sitting in the front room on a chair.

Q Sitting in the front room? A Yes, sir.

Q Was the door shut between the front room and the back room? A No, sir; they had curtains.

Q Could you see what was going on through the curtains?

A Yes, sir.

Q Were the curtains apart or shut? A They were apart.

Q What do you say you saw Blandoli do then? A He laid on top of Rosie.

Q How long did he lay on top of Rosie? A About 10 minutes.

Q About 10 minutes? A Yes, sir.

Q What did Rosie do after that? A Then she got up and he asked me to lay on the bed.

Q Then you laid down? A Yes, sir.

Q Did you take your clothes off? A I only took my drawers off.

Q You took your drawers off? A Yes, sir.

Q What did Blandoli do then? A Well nothing.

Q Nothing? A No, sir.

Q Did he expose his person to you, do you know what I

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mean, his privates? Did you see his privates? A Yes, sir.

Q Did he do anything with his privates to your person?

A Yes, sir.

Q Did he do anything? A Yes, sir.

Q What did he do? A Put it in.

Q Put it in where? A In my privates.

Q How long did he lay on you? A A few minutes only.

Q How long? A Only a few minutes.

Q Now after he had laid on top of Rosie did he lay on you-- how long, five minutes or ten minutes.

Q Two minutes to five minutes? A Ten minutes.

Q About 10 minutes? A Yes, sir.

Q Did you feel anything? A I felt him moving up and down.

Q What is that? A He was moving up and down.

Q Did you feel anything else? (No answer)

Q Is that the first time you saw his private parts?

A Yes, sir.

Q Never saw a man's person before that? A No, sir.

Q How long have you been in this country? A Well, 7 years.

Q How long? A 7 years.

Q Where did you come from? A From Hungary.

Q Hungary? A Yes, sir.

Q Do you remember going down in a basement with a young man about 4 years ago? (No answer)

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Q Did you ever go down in a basement with a young man?

MR. STRYKER: I object to that, your Honor.

MR. MILLER: It is leading up to the other question.

MR. STRYKER: On this indictment the question is not material or relevant.

THE COURT: It is only for the purpose of affecting credibility.

MR. STRYKER: If it is on that ground I will not object.

Q Mary, you remember going down in a basement with a young man about 4 years ago? A No, sir.

Q Did a young man ever expose his person to you in a basement about 4 years ago? A No, sir.

BY THE COURT:

Q Do you know what expose his person means-- showing you his privates? You understand that? A Yes, sir.

Q The question is did a young man show you his private parts in a basement 4 years ago? A No, sir.

BY MR. MILLER:

Q After Blandoli laid on top of you in his apartment was there any blood upon your person? A No, sir.

Q Nothing at all? A No, sir.

Q How many times did you stay out over night, Mary?

(No answer)

THE COURT: You mean before December?

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MR. MILLER: Yes, sir.

Q Before last Christmas how many times had you been out of your house at night? A Only three times.

Q All night that was? A Yes, sir.

Q Your mother didn't know where you were? A No, sir.

Q Did she? A No, sir.

Q Did you ever tell your mother a lie about where you were? A Yes, sir.

Q Often lied to your mother, didn't you? A Yes, sir.

BY MR. STRYKER:

Q You were very much ashamed of what the defendant had done to you, wasn't that it?

MR. MILLER: This is prior to the time of the alleged act.

MR. STRYKER: May I ask counsel to put in an objection and not instruct me on what the facts are?

THE COURT: Objection sustained.

Q Did the defendant Blandoli ever show you any pictures when you were there?

Objected to; objection overruled; exception.

A Yes, sir.

THE COURT: Anything that happened between the defendant and the complainant prior to December 25th is admissible to show the relations between the parties.

MR. MILLER: I merely wanted to have the objection entered, your Honor, to properly protect the rights of the

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defendant.

THE COURT: I want the jury to understand that he is on trial for one act but the relations between the parties may be shown.

Q Do you remember what was on those pictures?

Same objection, ruling, and exception.

A I don't remember every one of them.

Q Do you remember what was on some of them? A Yes.

Q What? A A lady lying down and a man on top of her.

Q Did he ever show you pictures like that (showing witness pictures)? A Yes, sir.

Q You would know the pictures if you saw them? A Yes, sir.

Q Would you? A Yes, sir.

Q Did he ever show you that picture?

Same objection; same ruling; exception.

Q What is the answer? A Yes, sir.

MR. STRYKER: I offer that picture in evidence.

(The picture referred to is marked People's Exhibit 1.)

BY MR. MILLER:

Q Now that picture that was shown to you, you can't swear positively that that was the same picture that Blandoli showed you, can you? A He showed me that picture.

Q He showed you one similar to that, didn't he, did you put any mark on that picture so that you can identify

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it? Won't you answer that? Did you put any certain mark on the picture so that you could identify it as being the same one Blandoli showed to you? A No, sir.

Q Only you think it was? A Yes, sir.

BY MR. STRYKER:

Q You think it is the same picture, don't you?

A Yes, sir; I don't think it is the same picture.

Q You don't think it is the same picture? A But he showed me postal cards like that with dirty pictures on them.

Q You recognize this picture, don't you? Look it over and see if this is the picture he showed you? A Yes, sir.

Q Did he show you that picture? A Yes, sir.

MR. STRYKER: I offer it in evidence.

Objected to; objection overruled; exception.

(Marked People's Exhibit 1.)

MR. STRYKER: May I show it to the jury, your Honor? Or shall I offer the others first?

THE COURT:

Q That picture, did he show you that one? A Yes, sir.

Q That is one that this defendant Blandoli showed you?

A Yes, sir.

Q In his room? A Yes, sir.

BY THE COURT:

Q When did he show you these pictures, you say? A He showed me them when he lived in 103rd street.

Q When he lived in 103rd street? A Yes, sir.

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Q Before he moved to 104th street? A Yes, sir.

BY MR. STRYKER:

Q He also showed that to you later, didn't he?

MR. MILLER: I object to that.

Q Did he show them to you any other time? A He showed them to me when he lived in 104th street.

Q Is that all you said? A Yes, sir.

Q Speak out loud. When did he show you these pictures? Try and refresh your memory, to the best of your recollection? A 103rd street was the first time.

Q Did he show them to you more than once? A He showed me them in 104th street again.

Q In 104th street again? A Yes, sir.

Q On two occasions he showed to you pictures? A Yes, sir.

Q Is that all? A Yes, sir.

Q Did he show you any Christmas day? A No, sir.

Q Now, look at that picture and see if that is one picture he showed to you either in 103rd or 104th street prior to Christmas day 1911? A Yes, sir.

(The second picture is marked People's Exhibit 2.)

Q And that picture too? A Yes, sir.

MR. STRYKER: I offer that also.

Same objection; same ruling; exception.

(marked People's Exhibit 3.)

Q This one too? A Yes, sir.

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Same objection; same ruling; exception.

(Marked People's Exhibit 4.)

Q This picture also? A Yes, sir.

Same objection; same ruling; exception.

(Marked People's Exhibit 5.)

MR. MILLER: All this is under the same objection
and I take an exception to each and every one of them.

Q And this one too? A Yes, sir.

(Marked People's Exhibit 6.)

MR. STRYKER: I will now show them to the jury,
your Honor.

THE COURT: Yes.

MR. MILLER: All under the same objection and ex-
ception.

BY MR. MILLER:

Q You say the first time you saw these pictures was
when Blandoli lived at 103rd street? A Yes, sir.

Q Were you there alone at the time? A No, sir.

Q Who was with you? A Bella and Rosie.

Q Bella and Rosie were with you when Blandoli showed
you the pictures? A Yes, sir.

Q And the first time you saw them was in 103rd street?

A Yes, sir.

Q Now, the second time he showed you the pictures were
you alone or was anybody with you? A Rose was with me.

Q Did you ever go alone to this man's house? A Some-

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times.

Q These pictures were all shown to you prior to December 25th, that is Christmas? A Yes, sir.

Q It was-- A It wasn't Christmas he showed them to me.

Q It was before or after Christmas? A Before.

Q About how long before Christmas was the last time he showed them to you? A It was not very long.

Q A month or two months? A About a week.

Q A week? A Yes, sir.

Q You were with Rosie the week before? A Yes, sir.

Q Have you a father, Mary? A Yes, sir.

Q And sisters? A Yes, sir.

Q Are you the oldest or youngest? A The oldest.

Q You are the oldest? A Yes, sir.

Q Haven't you got a married sister? A Yes, sir.

Q She is the oldest? A Yes, sir.

Q She is older than you are? A Yes, sir.

BY THE COURT:

Q You mean you are the oldest sister at home?

A Yes, sir.

Q Does your married sister live with you? A No, sir.

Q She lives away? A Yes, sir.

Q Do you know how old she is? A She is 20.

Q How old are you? A 13.

BY MR. MILLER:

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Q When you went over to Blandoli's apartment in 103rd street when he lived there, did the housekeeper chase you away from there? A No, sir.

Q Did she ever tell you to go away, you were a nuisance running around there? A No, sir.

Q The housekeeper did not? A No, sir.

BY THE COURT:

Q What is your birthday? A January 13th.

Q January 13th? A Yes, sir.

Q You were 13 this last month? A Yes, sir.

Q Is that it? A Yes, sir.

Q Are you going to school? A Yes, sir.

Q What school do you go to? A No. 72, East 106th street.

Q That is a public school? A Yes, sir.

Q How long have you been there-- what class are you in? A The 4A 2.

Q What does that mean? A The 4A class.

Q How many classes would you have to go before you finish, don't you know? A No, sir.

Q What is your teacher's name? A Miss Fox.

Q What do you study? A Geography.

Q Anything else? A History.

Q Anything else? A Read and write.

Q Read and write? A Yes, sir.

Q Do any figures or sums? A Yes, sir.

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Q Anything else? A Read and write.

Q Read and write? A Yes, sir.

Q Do any figures or sums? A Yes, sir.

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Q What kind of sums, addition, do you do addition?

A Yes, sir.

Q Subtraction? A Yes, sir.

Q Multiplication? A Yes, sir.

Q Division? A Yes, sir.

Q Long division or short division? A Long division.

Q Anything higher than that? A No, sir.

Q Fractions, have you had fractions? A Business fractions.

Q So that you learned to write and read English?

A Yes, sir.

Q And some Geography? A Yes, sir.

Q What does Geography treat of, what do you mean by Geography? A The study of the world.

Q How do you study that? A By maps.

Q From maps? A Yes, sir.

Q You have told us the truth here today, have you?

A Yes, sir.

Q What do you mean by the truth? (No answer)

Q What do you mean by saying a thing is true?

A Telling the truth.

Q What do you mean by that? Is the officer a black man there or a white man? A A white man.

Q Now if you said he was a black man would that be true? A No, sir.

Q He never hurt you, did he, the officer didn't hurt

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you, did he? A He didn't hurt me.

Q Now if you said he did hurt you would that be true or false? A It would be true.

Q It would be true? A Yes, sir.

Q Now if you told us now that he hurt you would that be truth? A No, sir.

Q What is that? A No, sir.

Q What would you call that? A A lie.

Q A lie? A Yes, sir.

Q Have you lied here today or told us the truth?

A Told the truth.

Q Is it any harm to lie? A Yes, sir.

Q It is a good thing to lie? A No, sir.

Q What is it, good or bad to lie? A Well bad.

Q Well why is it bad? A Because you don't tell the truth.

Q What is that, because you don't tell the truth?

A Yes, sir.

Q Did this man ever do any injury to you besides what you have told us, did he ever whip you or scold you? A No, sir.

Q Ever hit you for anything? A No, sir.

Q You have no grudge against him? A No, sir.

Q Is that so-- is he the only man ever did this thing to you, as you say? A Yes, sir.

Q No boy ever did it? A No, sir.

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Q Sure of that? A Yes, sir.

Q Didn't some boys in the moving pictures do it?

A No, sir.

Q The lawyer asked you about something that happened four years ago. Are you sure no such thing ever happened?

A No, sir.

Q Did you ever tell anybody that that happened? A I never told anybody.

Q Did you ever make a charge against anybody of having shown his privates to you in a basement? A No, sir.

Q Sure of that? A Yes, sir.

D R . S A M U E L A . B R O W N , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRYKER:

(The witness states he lives at 165 West 58th street.)

Q Dr. Brown, is it not? A Yes, sir.

Q Dr. Brown, you are duly admitted to practice physic and surgery in this state, under the laws of this state, are you not? A Yes, sir.

Q How long have you been a physician in this state?

A Since 1894.

Q You studied, did you, in the city of New York?

A Yes, sir.

Q What institution of learning did you attend in order

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to become a doctor? A The New York University.

Q The full course at New York University? A Yes, sir.

Q Graduated? A Yes, sir.

Q Got your diploma? A Yes, sir.

Q Afterwards passed your examinations to become a doctor and were admitted to practice, is that so? A Yes, sir.

Q Have you been practicing as a doctor in this city ever since that time? A Yes, sir, I have.

THE COURT: What time was that?

THE WITNESS: 1894.

BY MR. STRYKER:

Q That is 18 years? A Yes, sir.

Q What positions do you hold? A Assistant professor of medicine at the University and Bellevue Hospital medical college; assistant visiting physician Bellevue hospital and consulting physician at the New Rochelle hospital, examining physician for the children's society.

Q In addition to that you have your own private practice? A Yes, sir.

Q In the course of your professional duties have you had occasion to examine children, little girls? A Yes, sir. I have.

Q To ascertain whether or not intercourse had taken place? A Yes, sir.

Q How many times would you say, Doctor, that you have

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made such an examination? A I have made over a thousand

Q Over a thousand? A Yes, sir.

Q So that you are able, from your experience, your professional knowledge and from your reading and from your actual practice, are you not, to determine on an examination of a girl whether or not she has had intercourse? A Yes, sir.

Q Able to determine that fact? A Yes, sir.

Q Is that right? A Yes, sir; penetration.

Q Did you examine the little girl in this case, Mary Pollack? A Yes, sir; I did.

Q When did you make that examination, Doctor? A On the 29th day of December, 1911.

Q Doctor, just tell the Court, his Honor, and the gentlemen of the jury what you discovered as a result of that examination. Is this the little girl in court here (pointing to the complaining witness)? A Yes, sir.

Q That is Mary Pollack, is it? A Yes, sir.

Q Go on. A I found the genitals presented evidence of a recent penetration by a blunt instrument; the hymen was ruptured on the right hand upper corner and on the right hand upper corner of the hymen was a recent tear, triangular in shape, and the edges were red and bleeding.

Q They showed that penetration had been made and that it was recent? A Yes, sir.

Q This was on the 29th of December 1911? A Yes, sir,

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it was.

Q Can you state, with any degree of certainty how recent this penetration was? A Well I should say inside of ten days.

Q Prior to the 29th? A Yes, sir.

CROSS EXAMINATION BY MR. MILLER:

Q As far as you know, Doctor, it could have been upon the same day that you made the examination, could it not?

A No, sir; there were some evidences of the beginning of healing at the edge of the wound.

Q Those healing evidences take place within a very short time after the laceration? A Well yes, they begin to get-- in a clean wound you begin to get-- in a clean wound you begin to get a renewal of the epithelium in a short time.

Q Could that be done within 24 hours after the laceration had taken place? A No, sir; that is too soon.

Q Could it be within two days? A In a clean wound, in a couple of days you could begin to see it.

Q From your examination that you made of the person of this young girl could that laceration have taken place more than ten days previous? A I should not think so from the appearance of it.

Q You should not think so? A No, sir.

Q Now, you say that when you made the examination there was evidence of blood there? A Yes, sir; the edges of the

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wound were would bleed on the slightest touch.

Q. If those lacerations were made at the time they were made would the blood, wouldn't there be evidence of blood?

A. You mean if you examined it immediately after?

Q. At the time the lacerations were made, as a natural result wouldn't there be an amount of blood? A. The amount of blood would depend on the size of the tear and the blood supply of that particular part.

Q. If these lacerations were made during a particular time wouldn't there, after that time, wouldn't there be blood there? A. There would be a slight bleeding.

Q. Was the natural consequence of the laceration?

A. Yes, sir; certainly.

Q. Then in addition to that it would bleed at frequent intervals? A. No, sir.

Q. How frequently would it bleed again? A. It might not bleed at all unless you attempted to remove the clot which formed almost immediately.

Q. Well on that day that you made the examination wasn't there evidence of bleeding there? A. Yes, sir; when I would take a piece of cotton-- the structure of the tissue in a tear of that kind, if it is healed over, the mucous membrane is healed over a section of that surface will not cause any bleeding; if it is denuded and still a fresh tear a touching of it will cause a little oozing, capillary oozing.

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Q In what part of the person of this young girl was that laceration? A In the hymen, that is the protecting membrane at the lower end of the vagina.

Q How far would the penetration have to be to make that laceration? A That would depend upon the size of the penetrating object and the size, naturally, of the receptive object, that is the vagina.

Q Now was that wholly ruptured or partially ruptured? A What is that?

Q Was the laceration-- did it make a complete rupture of the hymen? A It was a tear from the apex to the base of the hymen on that side. That is a membrane with a perforation in the center and it was torn from the margin down to where it was attached.

Q Was that laceration such that it took the virginity away from the complainant? A It was a rupture of the hymen.

Q Was it a total or partial rupture? A It was a complete rupture of that portion of the hymen.

Q You could not say as to the exact time this took place, to a certainty? A No, sir.

Q Only within a day or two? A Approximately, that is all.

BY THE COURT:

Q From your observation of this girl's genitals would you say she was capable of performing sexual intercourse?

A I don't think that-- I think from the appearance of it

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my opinion would be that the penetrating object was too large to produce complete penetration but--

Q There had been some penetration? A Yes, sir.

Q What do you mean by the hymen? Explain that to the jury? A That is the marginal membrane which protects the vagina, differentiating the external and internal genitals.

Q That is in a woman's private parts? A Yes, sir.

Q Before you can enter the vagina the hymen must be broken? A Yes, sir; it is a thin membrane, in most cases with a hole in the center, and the introduction of a blunt instrument will tear the hymen.

Q That hymen cannot be torn without some penetration?

A Without pressure being put upon it.

Q That is penetration? A Yes, sir.

Q It is beyond the mouth of the genitals? A Yes, sir, the external genitals are the protecting surface which you can separate the lips of the external genitals and then make direct pressure against this thin membrane.

BY MR. STRYKER:

Q The penetration of the hymen, as you described, might be caused by sexual intercourse? A Might be caused by sexual intercourse.

BY MR. MILLER:

Q Could it be caused by anything else? A Any blunt instrument.

Q A person could use any blunt instrument, by the hand,

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and make this laceration? A Yes, sir; certainly.

Q Could it be caused by a fall or striking that portion of the anatomy? A Yes, sir; straddling a chair for instance.

MR. STRYKER: It is conceded on the record, your Honor, that the complainant Mary Pollack is not the wife of this defendant.

MARY POLLACK, a witness called on behalf of the People, being duly sworn, testified through Official Interpreter Fisher as follows:

(The witness states that she lives at 127 East 102nd street .)

DIRECT EXAMINATION BY MR. STRYKER:

Q Are you the mother of the little girl Mary Pollack who has been here today? A Yes, sir.—

Q You are her own mother? A Yes, sir.

Q You gave birth to that child? A Yes, sir.

Q Do you know the date of that child's birth? A January 13th she was 13 years old.

Q She was 13 years old this year? A Yes, sir.—

Q Have you a certificate there with you?

THE COURT: There is no question about that. The jurors have a right to see the complainant and in connection with the testimony given as to her age, consider her appearance as to the fact whether or not she is

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under 18 years of age. You are proceeding on the second count of rape in the second degree?

MR. STRYKER: Although we have the first count yet our case will develop largely under the second degree.

THE COURT: According to the complainant's own story.

CROSS EXAMINATION BY MR. MILLER:

Q How many children have you? A Three, one is married.

Q Mary is the second child? A Yes, sir.

Q You have had considerable trouble with Mary, haven't you? A She was only bad.

Q How long has she been bad? A Well she was a little flighty in school.

Q How long ago was that? A It is a year since that she is that way.

Q She don't always tell the truth, does she?

MR. STRYKER: I object to that on the ground it is not proper cross examination or the proper way to attack the credibility of the complainant.

Objection overruled; exception.

A She did not tell me the truth on account of this trouble here but sometimes, other times she tells the truth.

Q She used to stay away from your house at night, didn't she? A Yes, sir, she did remain away but after 9

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o'clock she came home and I looked after her.

Q Where did you go looking for her? A She always told me she goes to the girls' with whom she goes to school.

Q How many times was she away from your house all night? A Once.

Q She says-- then she was not away three times, was she? A No, sir; once and Christmas time when she had this fear that I knew about this then she was away again.

Q How long was she away then? A Two days; she was afraid to come home because the janitress came to tell me that she was with a man and I was trying to find out.

Q When did she come home after Christmas? A She went on Monday at 4 o'clock in the afternoon and Tuesday I went to the police station and Tuesday night I looked for her. I went to some acquaintances whom I know all the time in the candy store and then the man told me "Mrs. Pollack your Mary was here last night."

Q This man told you that? A Then I told him if she comes here give her anything she wants, I will pay for it, and I will call for her.

Q The police told you that? A The candy store man.

Q The man that runs the candy store? A Yes, sir.

Q Where is that candy store man? A The candy store is on Lexington avenue between 103rd and 104th streets.

Q Where did you find Mary Pollack after Christmas, where did you find her when you first saw her? A I went

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4.
with the children of the janitor to the police station;
then I went to the candy store thinking maybe Mary was there.

BY THE COURT:

Q Where did you find her is the question. A In the
candy store; she was there.

BY MR. MILLER:

Q What time was that? A 8 o'clock in the evening.

Q Was she alone or with anybody? A No, sir, she
was all alone.

Q Did she say anything to you at that time, where she
had been? A No, sir, nothing because the detectives im-
mediately came and I turned her over.

Q Did she say anything to you where she had been since
Christmas up to the time that you first saw her there?

A She always told me she had gone with the girls.

BY THE COURT:

Q But on this night in question, after Christmas, when
you found her did she say anything to you about where she
had been? A No, sir.

Q Did she say what she had been doing from the time she
left you on Christmas day up to the time that you saw her
there? A No, sir; because the detectives were there im-
mediately.

Q How long before that, how many times had she been
away from home all night? A Once.

Q When was that? A That was two weeks before Christ-

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mas.

Q Two weeks before Christmas? A I can't tell exactly.

Q At that time was Mary going to school? A Yes, sir.

Q Did you ever go to the principal of the school and complain about her? A Yes, sir.

Q What was your cause of complaint to the principal of that school? A I wanted to find out if she was in school and if she was learning all right.

Q What did you find out? A She was all right in school.

Q Didn't you go there to find out where Mary was getting the money from? A I never seen any money, not even half a cent.

BY THE EIGHTH JUROR:

Q You say that Mary was bad. Did you have any other meaning to say that only that she was flighty in school?

A I didn't want to allow her to go on the street because I know in the city of New York the children are not all right. I always wanted her to stay in the house. That is what I wanted; I didn't think of anything bad because I used to give her money myself and food was always in the house.

Q Never knew her to do anything bad? A No, sir; not at all.

Q Was there anything of that kind? A No, sir; never.

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R O S E R O T T E N B E R G , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 100th street.

Q What number? A 224.

Q East or west? A East.

Q Between what avenues is that? A 2nd and 3rd avenues.

Q Now Rose I want you to talk to me and just tell me--

MR. MILLER: If your Honor please, before this witness is interrogated by the District Attorney I would like to find out her age. I did not hear the age.

MR. STRYKER: 13.

Q Look right at me and simply answer questions, won't you? A Yes, sir.

THE COURT: You must remember only to ask her questions that concern the defendant-- ask her concerning transactions which affect the complainant or at which the complainant was present.

MR. STRYKER: Yes, sir, I will confine myself to that.

THE COURT: Not any others.

Q You see these 12 men in the jury, Rose, they want to hear what you are going to say. A Yes, sir.

Q His Honor the Judge wants to hear you and I want to hear you and the defendant is entitled to hear you. Try to keep your voice up. A Yes, sir.

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Q You know Mary Pollack, don't you? A Yes, sir.

Q A little bit louder. A Yes, sir.

Q Don't be afraid at all. Please look right at me.

How long have you known Mary? A Two years I know her.

Q About two years? A Yes, sir.

Q You played with Mary, haven't you? A Yes, sir.

Q Do you know this man sitting at the table, the defendant? A Yes, sir.

Q What is his name? A Blandoli.

Q Blandoli? A Yes, sir.

Q You have known him quite a long time, haven't you, Rose? A Yes, sir.

Q Is he your uncle? A No, sir.

BY THE COURT:

Q Is he your uncle? A No, sir.

Q Did you ever say he was your uncle? A No, sir.

Q Did you bring Mary Pollack to this man? A Yes, sir.

Q And introduce them? A Yes, sir.

BY MR. STRYKER:

Q You had known him before that? A Yes, sir.

Q About when was it, as near as you can say, how long ago? (No answer)

Q How long is it since you brought Mary Pollack to him?

A About one year.

Q About one year? A Yes, sir.

Q Was it sometime in January, sometime about a year ago?

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A About a year ago.

Q Now did you go with Mary to his rooms? A Yes, sir.

Q To Blandoli's room? A Yes, sir.

Q Where was his room in January 1911, where did he have it then? A 103rd street.

Q After that did he move to another place? A Yes, sir.

Q Where was that? A 104th street.

Q Do you happen to remember the number there? A 54.

Q 54? A Yes, sir.

Q Was it west or east, the same side as you were on?

A Yes, sir.

Q East side? A Yes, sir.

Q Between what avenues was it, do you remember that?

A Between 8th and Madison avenue.

Q How often did you go to Blandoli's room in 103rd street with Mary Pollack, many times, or not often? A Many times.

Q Many times? A Yes, sir.

Q Did Blandoli use to give you anything when you went there? A Yes, sir.

Q What did he use to give you? A He used to give us money for candy.

Q Money and candy? A Yes, sir.

Q Did he give you money in the presence of Mary Pollack?

A Yes, sir.

Q He also gave Mary Pollack money? A Yes, sir.

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Q How much money did he use to give you? A 50 cents.

Q 50 cents? A Yes, sir.

Q He gave you 50 cents? A Yes, sir.

Q And gave Mary Pollack 50 cents? A Yes, sir.

Q What days would you usually go there? A Sundays.

Q On Sundays? A Yes, sir.

Q What did Blandoli use to do to you in the presence--
when Mary Pollack was with you what did Blandoli use to do?

MR. MILLER: I object to that as incompetent, irrelevant and immaterial, what he did with this witness.

MR. STRYKER: In the presence of the complainant.

THE COURT: In the presence of the complainant--
I will allow it.

Exception.

Q What did he use to do?

THE COURT: Before Christmas 1911.

MR. STRYKER: During all that year what did he use
to do to you when you and Mary came there?

THE WITNESS: Took Mary on the bed.

BY MR. STRYKER:

Q Start at Christmas. We will go back from that.

Do you remember Christmas day? A Yes, sir.

Q Last Christmas day? A Yes, sir.

Q 1911? A Yes, sir.

Q Did you go to Blandoli's room with Mary that day?

A Yes, sir.

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Q Where was that room? A 104th street.

Q You and Mary went together? A Yes, sir.

Q About what time of day did you get there? A About 12 o'clock.

Q First? A Yes, sir.

Q You came back the second time and found him? A Yes, sir.

Q Is that right? A Yes, sir.

Q The first time he was not there? A Yes, sir.

Q The second time you came back you found him? A Yes, sir.

Q Was that in the afternoon? A Yes, sir; he was there in the afternoon.

Q Was Mary Pollack with you when you went there on that day? A Yes, sir.

Q Did you find him or not when you got there in the afternoon? A Yes, sir.

Q In his room? A Yes, sir.

Q What did he say to you, Rose, when you got there, what did he say to you and to Mary? A He told Mary to go on the bed.

Q Keep your voice up. A Told her to take her drawers off on the bed and he lay on top of her.

Q Did you see this man Glandoli lie on top of Mary Pollack? A Yes, sir.

Q Did he have off his trousers at that time? A Yes, sir

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Q Did you see him moving up and down on Mary Pollack.

A Yes, sir.

Q When laying on her? A Yes, sir.

Q Her drawers were off? A Yes, sir.

Q Did he lay on you that day? A Yes, sir.

Q Was it after he laid on Mary? A Yes, sir.

Q Where was Mary when he was lying on you? A Mary was on the lounge.

Q In the same room? A Yes, sir.

Q Was there a bed and a lounge there? A There was a bed and a lounge.

Q In the one room? A In two rooms.

Q But when you say he was lying on you where was Mary?

A On the lounge.

Q In the room? A Yes, sir.

Q You saw what he did to you? A Yes, sir.

Q You saw what he did to her? A Yes, sir.

Q Was that the first time he had done that to you, on this day? A Yes, sir.

Q Had he ever done that to you before?

THE COURT: In the presence of Mary.

MR. STRYKER: I will withdraw that last question.

THE COURT: The jury must understand that this defendant is not on trial for anything he did to anybody but to the complainant on the date stated in the indictment. The reason why this testimony is admissible,

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in my opinion, is that it tends to show the relation between Mary Pollack and the defendant. That is all.

BY MR. STRYKER:

Q Now, Rose, what I want to find out is and what the Judge wants me to find out is-- you had been there at the defendant's room before Christmas, hadn't you, on other days?

A Yes, sir.

Q Other Sundays? A Yes, sir.

Q I am talking about the days you went there with Mary Pollack. A Yes, sir.

Q You had gone before Christmas? A Yes, sir.

Q With Mary? A Yes, sir.

Q To the defendant's room? A Yes, sir.

Q Is that right? A Yes, sir.

Q You had gone up there on different Sundays during that year with Mary Pollack? A Yes, sir.

Q To the defendant's room? A Yes, sir.

Q Both at 103rd and 104th street? A Yes, sir.

Q Is that right? A Yes, sir.

Q Did he ever lie on you on any of those times when Mary Pollack was there? A Yes, sir.

Q And sometimes took out his private parts there?

A Yes, sir.

Q When Mary was there? A Yes, sir.

Q He lay on you a number of different Sundays? A Yes, sir.

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Q Before Christmas, is that right? A Yes, sir.

Q Did the defendant ever show you any pictures, when you were there? A Yes, sir.

THE COURT: Now that is excluded.

MR. STRYKER: In the presence of Mary Pollack, when Mary was there.

THE COURT: I will exclude the question.

Q Did you ever see him show any pictures to Mary?

A Yes, sir.

Q Did you see the pictures too? A Yes, sir.

Q Would you recognize those pictures now if you saw them?

A Yes, sir.

Q You think you could? A Yes, sir.

Q Now I show you this picture marked Exhibit 1. Look at it.

Same objection; objection overruled; exception.

Q Did the defendant show that to you in Mary's presence?

(No answer)

BY THE COURT:

Q Did he show it to Mary in your presence? A Yes, sir, (referring to People's Exhibit 1).

BY MR. STRYKER:

Q Exhibit 2 the same? A Yes, sir.

Q Showed it to Mary in your presence? A Yes, sir.

Q Look at Exhibit 3. I ask you same question-- the same as to this? A Yes, sir.

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Q I show you Exhibit 4, did he show that to Mary in your presence? A Yes, sir.

Q All these? A Yes, sir.

Q Exhibit 5 also? A Yes, sir.

Q Also Exhibit 6? A Yes, sir; he showed them to me.

Q He showed to you all these? A Yes, sir.

MR. MILLER: I wish to make an objection to all these exhibits and take an exception.

Objection overruled; exception.

Q Now these pictures I have shown you, did he ever say anything that you heard to Mary about these pictures? A Yes, sir.

Q Tell the Court and these gentlemen of the jury what he said to Mary when he talked with her about the pictures?

A I don't know what to say.

Q Tell the truth, that is all, whatever he said.

A He told Mary to do what is on the picture.

Q He told you that? A Yes, sir.

Q You heard that? A Yes, sir.

Q Did he do anything to you in the presence of Mary there? A Yes, sir.

Q What did he do? Tell the stenographer. You can tell this man if you don't want to say it out. Do you want to whisper it to this man here? Would you rather do that? Just tell this man here, you don't have to talk out so that all the men hear you. A What shall I tell him?

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Q What he did to you, whatever Blandoli did to you after he told you to do like these pictures? A He told me to take it in my mouth.

Q Take what in your mouth? A His thing.

Q His thing? A Yes, sir.

Q You mean his private part? A Yes, sir.

Q Did Mary see that? A Yes, sir.

Q Well what did you do then, did you take it? A Yes, sir.

MR. MILLER: I ask that the questions and answers be stricken out.

Motion denied; exception.

THE COURT: He is not on trial for that offense but it is part of the relation existing between him and the complaining witness. Any transaction between them prior to the 25th of December is admissible in evidence in my opinion.

CROSS EXAMINATION BY MR. MILLER:

Q Rose, how old are you? A 13.

Q Do you know when you were born? A No, sir.

Q No? A No, sir.

Q When did you first meet Blandoli the defendant?

A I knowed him when he came in my house.

Q Where was that? A I don't remember when it was.

Q Did you live in the same house where Blandoli lived?

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A No, sir.

Q How did he come to go to your house? A We were there the janitor and he asked us for a tenant.

Q What is that? A We were the janitor.

Q You were the janitor of the house? A Yes, sir.

Q He was one of the tenants? A No, sir; he was asking me for a tenant; he lived in 103rd street.

Q He inquired about a tenant? A Yes, sir; he asked me for a tenant and I showed him.

Q You showed him where the tenant lived? A Yes, sir.

Q That was the first time you met Blandoli, wasn't it?

A Yes, sir.

Q Now, you used to go there where Blandoli lived, didn't you? A Yes, sir.

Q How far was that from where you lived? A Well he lived on the same block, the next block, he lived in 103rd street.

Q You used to go there with Mary Pollack? A Yes, sir.

Q Did he use to give you money to go to the moving picture shows? A Yes, sir.

Q You used to go there quite often, didn't you?

A Yes, sir.

Q Now, you remember when he moved from 103rd street, don't you, he left the premises in 103rd street, didn't he?

A Yes, sir.

Q And he went to live in 104th street? A Yes, sir;

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he went to live in 104th street.

Q Now, did he tell you where he was going when he left 103rd street? A Yes, sir; he gave me the address.

Q He gave you the address? A Yes, sir.

Q Did you go to 104th street? A Yes, sir.

Q How long after he left 103rd street did you go to 104th street? A Well, I don't know, about three months I think.

Q About three months? A I think about three months.

Q You did not see him for about three months after he left 103rd street, did you? A Yes, sir; I didn't go to him for three months; I didn't go for three months to him.

Q You didn't see him then for three months? A Yes, sir.

Q Do you understand my question?

THE COURT: She says she did not see him for three months.

Q You didn't see him for three months. A Yes, sir.

Q You did or didn't? A I did not see him.

Q Now isn't it the fact that the first time you saw him you were going by on 104th street and you saw him in the window? A Yes, sir.

Q Did you know where he lived before you saw him at that window? A Yes, sir.

Q Did you know that he lived there before that? A Yes, sir.

Q Before that you don't know the defendant lived there?

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A I didn't know where he lived before.

Q You did not know where he lived? A No, sir.

Q Ever been to Sunday school? A No, sir; I was never in Sunday school.

Q Never was in Sunday school? A No, sir.

Q You live home with your father and mother? A Yes, sir.

Q Have you any sisters and brothers? A Yes, sir.

Q How many? A I got two sisters and two brothers.

Q Are you the youngest in the family, have you anybody else younger than you? A I got a younger sister.

Q You are the youngest? A No, sir; I got other sisters younger, 7 years old.

Q How long have you known Mary Pollack? A Two years.

Q Two years? A Yes, sir.

Q Where did you meet Mary Pollack? A In the house.

Q At her house? A Yes, sir.

Q You used to go out with Mary Pollack frequently?

A Yes, sir.

Q Ever go out and stay all night with Mary Pollack?

A Yes, sir.

Q How many times? A Only one night in his house.

Q In his house? A Yes, sir.

Q Did you ever go out after that? A No, sir.

THE COURT: After what?

MR. MILLER: After the night she stayed all night.

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in his house.

Q Did you ever stay out any other night? A No, sir.

Q Never stayed out any other night? A No, sir.

Q You were with Mary Follack in Blandoli's house on Christmas, weren't you? A Yes, sir.

Q You went there at 12 o'clock in the day? A Yes, sir.

Q How did you come to go there? A Mary told me to go to him.

Q Mary told you to go there? A Yes, sir.

Q You didn't tell Mary to go there? A No, sir.

Q When you went there you didn't find Blandoli home, did you? A No, sir.

Q What time did you come back? A About 1 o'clock.

Q About one o'clock? A Yes, sir.

Q Did you find Blandoli home then? A Yes, sir.

Q Then the first time you saw Blandoli on Christmas was 1 o'clock, wasn't it? A Yes, sir.

Q It was not at 4 o'clock? A No, sir.

Q It was 1 o'clock? A Yes, sir; it was 1 o'clock; he was not in his house.

Q Didn't you go there at 12 o'clock? A I think around 4 o'clock I went there.

Q When was the first time you went there? A 12 o'clock.

Q 12 o'clock? A Yes, sir.

Q You didn't go there at 1 o'clock, did you? A I didn't go 1 o'clock.

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Q You went there at 4 o'clock, is that it? A Yes, sir.

Q Did you find Blandoli there that time? A Yes, sir.

Q Who was with you then? A Mary Pollack.

Q Mary Pollack? A Yes, sir.

Q What did you do when you first went there at 4 o'clock? (No answer)

Q What did you do when you went there?

A Well he told Mary to go on the bed.

Q What is that? A He told Mary to go on the bed.

Q Mary went on the bed, did she? A Yes, sir.

Q You had not gone on the bed before that, had you?

A No, sir.

Q Mary went on the bed first? A Yes, sir; he told Mary to go first on the bed.

Q That was the first thing that was done, Mary and he went on the bed? A Yes, sir.

Q Is that it? A Yes, sir.

Q Where were you at the time? A Sitting on the lounge

Q You were sitting on the lounge? A Yes, sir.

Q That was in the front room, wasn't it? A Yes, sir.

Q Then after Mary and Blandoli went on the bed you went on the bed? A Yes, sir.

Q Is that it? A Yes, sir.

Q Now up to that time, Rosie, Christmas, had Blandoli ever done anything to you? A Yes, sir.

Q Do you know what I mean, ever do anything bad to you?

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A Yes, sir.

Q When? A It was on Christmas day.

Q Before Christmas? A Before Christmas he done it too.

Q What did he do before Christmas? A Well, he did the same thing.

Q Did the same thing? A Yes, sir.

Q Who was there at that time? A Mary Pollack.

Q Mary Pollack? A Yes, sir.

Q Then before Christmas Blandoli done the same thing to you on the bed that he did to you on Christmas? A Yes, sir.

Q Is that it? A Yes, sir.

Q How many times? A Many times.

Q Many times? A Yes, sir.

Q Was Mary Pollack there all the time? A Yes, sir.

Q Every time? A Yes, sir, every time I was there she was with me.

Q Every time that Blandoli lay down with you on the bed Mary Pollack was present, was she? A Yes, sir.

Q Now, when you left Blandoli's house Christmas after noon where did you go then? A To the moving pictures.

Q The moving pictures? A Yes, sir.

Q About what time of day was it you left there? it was in the night time.

Q The night time? A Yes, sir.

Q What time? A Around 7 o'clock.

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Q About 7 o'clock? A Yes, sir.

Q How long were you in the moving pictures? A Till 9 o'clock.

Q Till 9 o'clock? A Yes, sir.

Q Where did you go then? A Home.

Q You went home? A Yes, sir.

Q Where did Mary Pollack go? A She went up to her house.

Q What is that? A She went up to her house.

Q To her house? A Yes, sir.

Q Did you see her go in her house? A Yes, sir.

Q Did you go with her up to her house? A No, sir.

Q How far did you leave Mary Pollack from her house?
A I only live one block away from her house.

Q One block away? A Yes, sir.

Q You went home, didn't you? A Yes, sir.

Q Did you say anything when you went home about what had happened at Blandoli's house? A No, sir.

Q You did not say a word? A No, sir.

Q After this happened were you brought into the police court on Christmas day-- how long after that were you brought into the police court? A I think it is about two weeks.

Q Two weeks afterwards? A Yes, sir.

Q Did you say anything to anybody between Christmas day and two weeks afterwards? A No, sir.

Q You didn't say a thing to anybody? A No, sir.

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Q When did you next see Mary Pollack after Christmas?

A I seen her on the street.

Q When, how long afterwards, was it the next day, the same night, the next morning or when? A It was the next day.

Q The next day? A Yes, sir.

Q Where did you see her? A I seen her on the street.

Q Where, what street? A Up where she lived, around her block.

Q On her block? A Yes, sir, 102nd street.

Q Did she tell you she had not been home? A No, sir.

Q She did not? A No, sir; she did not.

Q Did she say where she was stopping? A No, sir.

Q What did she say? A She said she was up to Mary's sister's house-- Mary's sister's house she said she was.

Q Up to her sister's house? A Yes, sir.

Q Is that all she told you? A Yes, sir.

Q Now, when you laid on the bed with Blandoli did he do anything there? A Yes, sir.

Q What did he do? A He laid on top of me, took his thing out, and he lay on top of me.

Q He laid on top of you? A Yes, sir.

Q Did he do anything? A Yes, sir.

Q What did he do? A He took his thing out.

Q Took his thing out? A Yes, sir.

Q What else? A He put it in.

Q Put it in? A Yes, sir.

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Q Into what, where did he put it? A Into me.

Q Into your private parts? A Yes, sir.

Q Did you feel anything? A A little bit.

Q Did you see any blood anywhere? A No, sir.

Q Had you ever seen a man's private parts before that time? A No, sir.

Q Did you ever see any portion of a man? A No, sir.

Q How long have you been going to these moving pictures? A I don't remember how long.

Q What is that? A I don't remember how long.

Q Well has it been a year? A I think about a year.

Q Go in the night, do you? A No, sir; not lately.

Q Not lately? A No, sir.

Q Did you ever go there and stay out all night?

A Only one night I stayed in his house.

Q You only stayed in his house one night? A Yes, sir.

THE COURT: She says that is the only night she was out.

MR. MILLER: I am asking how long she stayed out at the moving pictures.

THE WITNESS: Till 9 o'clock.

Q Did you go alone or with anybody? A With Mary.

Q Always went with Mary? A Yes, sir.

Q Every time you went to Blandoli's house Mary was with you? A Yes, sir.

Q Are you in the custody now of the Children's Society?

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(No answer)

Q Are you up there in the rooms corner of 23rd street and 4th avenue? A Yes, sir.

Q Have you and Mary talked about this case? A No, sir

Q Have not said a word to her? A No, sir.

Q She hasn't said a word to you? A No, sir.

Q Have not said what you were going to say here today?

A No, sir.

Q Sure about that? A Yes, sir; sure.

Q Do you go to school? A Yes, sir.

Q Where? A 96th street.

Q What class are you in? A 4A.

Q 4A? A Yes, sir.

Q In the same class with Mary? A Yes, sir; Mary goes to 106th street and I go to 96th street. I go to a different school.

Q Did Mary ever tell you about being out with any young man? A No, sir.

Q Never told you about going with any man outside? A No, sir.

Q Never told you about getting money from anybody to go to a picture show? A No, sir.

Q Did you ever get any money to go to a moving picture show? A No, sir.

Q Did your mother give you any money? A My mother used to give me some.

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Q Did you ever get any from anybody except Blandoli?

A No, sir.

Q Sure about that? A No, sir.

Q You know what the truth is, do you not? A Yes, sir.

Q Do you know the difference between a lie and the truth? A Yes, sir.

Q Did your mother ever whip you for staying out too long? A Yes, sir.

Q She has? A Yes, sir.

Q How many times? A Only once.

Q Only once? A Yes, sir.

BY MR. STRYKER:

Q That was the time that you and Mary spent the night at Blandoli's house? A Yes, sir.

Q You have a little sister named Bella, haven't you? A Yes, sir.

Q She was with you Christmas day, wasn't she? A Yes, sir.

Q She was there at Blandoli's rooms? A Yes, sir.

Q She is younger than you are? A Yes, sir.

Q You began going to the moving pictures when Blandoli began giving you the money? A Yes, sir.

BELLA ROTTENBERG, a witness called on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. STRYKER:

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BY THE COURT:

Q Where were you born? A Russia.

Q How long ago? A I don't know.

Q Did you ever have a birthday? A Yes, sir.

Q How do you know you are 11 years old? (No answer)

Q Can you speak English? A Yes, sir.

Q You are 11? A Yes, sir.

Q Go to school? A Yes, sir.

Q What school? A Public school 150.

Q Where is that? A 96th street.

Q What class are you in? A 2B.

Q 2B? A Yes, sir.

Q What do you study? A Reading books.

Q Writing? A Yes, sir.

Q Do sums? A Yes, sir.

Q What kind of sums? Did you ever hear of addition?

A Yes, sir.

Q Subtraction? A No, sir.

Q You don't do any Arithmetic? A Yes, sir; we do.

Q What do you do in Arithmetic? A But I don't go to school now.

Q Do you know where you are now? A Yes, sir.

Q Where? A In the Society.

Q This minute where are you, what is this place?

A The station house.

Q You are here to tell the truth, to answer questions?

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A Yes, sir.

Q What do you mean by the truth? A To tell the truth.

Q What is that, the truth, what is that? A To tell the truth.

Q Is it raining now? A No, sir.

Q If you said it was raining would that be true?

A No, sir.

Q What would it be? (No answer)

Q If you said it was raining now would you have told the truth? A No, sir.

Q What would that be, if it isn't the truth, what is the other thing called when you don't tell the truth, when you say what is not the truth? Did you ever hear of a lie?

A Yes, sir.

Q Is it right to lie? A No, sir.

THE COURT: I don't think we had better swear this witness. Take her statement.

DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 100th street, east, 224.

Q Bella, I want you to look at me. Don't be afraid because you know I won't hurt you. Talk so that every one of these gentlemen, all of these 12 men can hear you. A Yes, sir.

Q And I want the Judge to hear you and I want to hear you

A Yes, sir.

Q Tell us all the truth you know. A Yes, sir.

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Q Will you? A Yes, sir.

Q Now, you are a sister of Rosie Rottenberg, are you not? A Yes, sir.

Q Do you know little Mary Pollack? A Yes, sir.

Q She is a friend of your sister's, isn't she? A Yes, sir.

Q How long have you known her? A I know her long.

Q A long time? A Yes, sir.

Q Where do you live? A 224 East 100th street.

Q East? A Yes, sir; between 3rd and 2nd.

Q 3rd and 2nd avenue? A Yes, sir.

Q Did you ever see this man here sitting at the table before? A Yes, sir.

Q This second man? A Yes, sir.

Q The man I am pointing to just now? A Yes, sir.

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

Q What is his name? A Blandoli.

Q What is that? A Blandoli, Mr. Blandoli.

Q Is that right? A Yes, sir.

Q Have you ever been to his room? A Yes, sir.

Q Do you know where his room was? A Yes, sir.

Q Where was it? A It was in 104th street.

Q 104th street? A Yes, sir.

Q Did you go there with anybody else? A Yes, sir.

Q Who did you go there with? A With Mary.

Q Mary who? A Mary Pollack.

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Q Mary Pollack? A Yes, sir.

Q Did you also go with your sister? A Yes, sir.

Q Do you remember Christmas day? A Yes, sir.

Q You remember Christmas, don't you? A Yes, sir.

Q Did you go around there in the afternoon of Christmas day to 104th street, to Blandoli's room? A Yes, sir.

Q Do you remember going there? A Yes, sir.

Q What did you see Blandoli do to Mary Pollack and Rose that day? A She laid on the bed.

Q Did he lay Mary on the bed? A Yes, sir.

Q What about his trousers, what did he do with them?

A He took them off.

Q What about Mary's drawers? A He took Mary's drawers off.

MR. MILLER: I object to that as leading.

Q What happened with the drawers? A He told Mary to take the drawers off so Mary took the drawers off and he took his blouse off and he laid Mary on the bed and he laid on top of her.

Q Where were you? A At a seat by the window.

Q In the same room? A Yes, sir.

Q Did you see all this? A Yes, sir.

Q Did he move up and down or lie still when on top of her? A He moved up and down.

Q Now, did he show you any pictures there that day, or did he show Mary any? A Yes, sir; he showed everybody

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pictures.

Q Would you know the pictures if you saw them?

A Yes, sir.

Q How about that? Is that one of them? A Yes, sir.

Same objection; same ruling; exception.

Q Here is Exhibit 2. Is that a picture he showed?

A Yes, sir.

Q Exhibit 3. Did he show that one too? A Yes, sir.

Q Exhibit 4? A Yes, sir.

Q Exhibit 5? A Yes, sir; he showed us all these

pictures.

Q Exhibit 6? A Yes, sir.

Q These dirty pictures here? A Yes, sir.

BY THE COURT:

Q Did he show these pictures to Mary and to Rosie?

A To everybody.

BY MR. STRYKER:

Q Where were you when he showed them? A I was sitting on a chair and everybody was sitting on a chair.

Q Looking at them all together? A Yes, sir.

Q Do you remember going around to Blandoli's room after he was arrested, sometime, with officer Butts? A Yes, sir.

Q Do you know Mr. Butts? A Yes, sir.

Q The big tall gentleman? A Yes, sir.

Q Did you go around to Blandoli's room in 104th street, did you go around with Mr. Butts? A Yes, sir, and three

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more men.

MR. MILLER: I object to that as incompetent, immaterial and irrelevant.

Objection overruled; exception.

Q You went there, didn't you, sometime after Christmas? A Yes, sir.

Q Did you see them look in his trunk, in Blandoli's trunk? A Yes, sir; three men and Mr. Butts.

Q Is that where these pictures came from? A Yes, sir.

CROSS EXAMINATION BY MR. MILLER:

Q What is your first name? A Bella.

Q How old are you? A 11.

Q Where are you, up in the Children's Society?

A Yes, sir.

Q Are you there with your sister? A Yes, sir.

Q Have you and your sister talked about this case?

A Where?

Q Up in the Society rooms, have you talked over this case? A Some girls know it but some went home.

Q Did you and your sister talk it over together?

A I didn't tell Rosie, I told them.

Q Did Rosie tell you? A No, sir; I know the case.

Q Did she tell you what she was going to do here today?

A No, sir.

Q Didn't she tell you what she was going to swear to?

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A No, sir; she didn't tell me.

Q Did she say anything about these pictures to you?

A No, sir.

Q You knew nothing about the pictures until you were asked by the district attorney? A He showed me the pictures.

Q Who showed you the pictures? A Mr. Blandoli.

Q The defendant? A Yes, sir.

Q Do you go to Sunday school? A No, sir.

Q You go to public school, don't you? A Yes, sir.

Q How long have you been going to public school? A I always go to school.

Q Blandoli never did anything to you, did he? A Yes, sir.

Q He did something to you? A Yes, sir.

Q Do you mean that? A Yes, sir; he took me on his lap

Q That is all? A Yes, sir.

Q He took you on his lap? A Yes, sir.

Q Well, how often have you been over there? (No answer)

BY THE COURT:

Q What do you mean by saying he took you on his lap? You just sat on his lap and did nothing, is that what you mean? A Yes, sir.

Q Did he do anything? A Put his hands under my clothes.

BY MR. MILLER:

Q Did you ever tell anybody about that? A No, sir.

Q Did he ever give you any money for the moving pictures?

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A Yes, sir.

Q How much? A 25 cents, 15 and 10.

Q 25, 15 and 10? A Yes, sir.

Q Did you ever see him give Mary Pollack any money?

A Yes, sir.

Q How much? A Just the same, 25, 15 and 10.

Q 25, 15 and 10? A Yes, sir; sometimes he used to give her more money but she didn't show the money to me.

Q You didn't know it, did you? (No answer)

Q You didn't know how much he gave her? A Yes, sir.

Q She did not show it to you, did she? A But sometimes she went by herself; she didn't take anybody.

Q You don't know what took place when she went there by herself, do you, you were not there. A No, sir.

Q But when you were there he gave her, 10, 15 and 25 cents? A Yes, sir; sometimes he used to give 30 cents.

Q Was that the most he ever gave her, 30 cents? A No, sir.

Q What is that? A He didn't give me but he gave Mary more, he used to give Mary 50 cents.

Q How many times did you ever see him give Mary 50 cents? A Not a lot of times.

Q Not a lot of times? A No, sir.

Q Were you there every time Mary was there? A Yes, sir.

Q And Rosie was there? A Yes, sir; Rosie didn't go so very often to him.

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Q Rosie didn't go so very often? A No, sir.

Q But you and Mary went very often? A Yes, sir.

Q Were you with Rose when she and Mary were there on Christmas day? A Yes, sir.

Q What time did you go there? A Well, 3 o'clock.

Q 3 o'clock? A Yes, sir.

Q Was that the first time you went there? A Sometimes we went a little later.

Q On Christmas day what was the first time you went there Christmas day? A I can't remember what time we went.

Q How many times were you there that day, four or five or six times that day? A Two times.

Q You were there twice that day? A Yes, sir.

Q When was the first time? A The first time he was not in.

Q Was that the morning or afternoon? A In the morning.

Q You went back in the afternoon? A Yes, sir.

Q Do you know what time in the morning it was? A No, sir.

Q Was it 10 o'clock or 11 o'clock, do you remember?

A No, sir.

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

Q What time of the afternoon was it you went there?

A In the afternoon we went late, before night.

Q About what time? A About 6 o'clock.

Q 6 o'clock? A Yes.

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Q Then the only time you were there with Mary Pollack and Rose was there was in the morning and at 6 o'clock at night? A Yes, sir.

Q Sure about that? A Yes, sir.

Q That is as true as anything you have stated, is it? A Yes, sir.

Q Those were the only two times you were in Blandoli's rooms? A Yes, sir.

Q That day? A Yes, sir.

Q Christmas? A Yes, sir.

Q Now, when you got there at 6 o'clock with Rosie and Mary Pollack, did you knock at the door? A Yes, sir.

Q Blandoli came to the door? A Yes, sir.

Q He let you in? A Yes, sir.

Q Well, what was the first thing that you saw there, what was done? A Well, he had a Christmas tree and things around and everything so then there was my brother, he ran in; my brother saw us, the way we went in, and he ran but Mr. Blandoli closed the door because he saw the ladies look; so then my-- we wanted to hide ourselves and my brother caught me. Mary ran away so he ran after them and took them home.

Q You went into Blandoli's rooms about 6 o'clock, there was a Christmas tree there? A Yes, sir.

Q You and Rose and Mary Pollack were together at the time? A Yes, sir.

Q Then your brother ran in? A No, sir; he saw us,

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my brother, outside, we were going to go in. My brother saw us outside, we were going to go in; we did not go in but wanted to go in.

Q Your brother saw you outside? A Yes, sir.

Q He saw you wanted to go into Blandoli's rooms, is that it? A Yes, sir.

Q Did you go in Blandoli's rooms? A No, sir; because my brother he was there.

Q You never were in Blandoli's rooms, were you?
A No, sir.

Q Christmas day? A No, sir.

Q You ran out, didn't you? A My brother caught me in the hall and Mary and Rosie ran away.

Q At your own house or Blandoli's house? A Blandoli's house.

Q Were you ever in Blandoli's room at all? A Yes, sir.

Q You told me you were not. A Yes, sir.

Q What did you mean by saying you were not in his room?
A I was in his room.

Q On Christmas day? A Christmas day we wanted to go in but we didn't go because our brother was outside; we didn't know it; he caught us.

Q How did you know that was Christmas day? A Because I remember.

BY THE COURT:

Q What was the last time you were there? A Christmas

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night; we went to go; my brother was there at the time.

Q Didn't you say you saw him put Mary on the bed and lie on her, what day was that? A That was the day before Christmas.

Q The day before Christmas? A Yes.

BY MR. STRYKER:

Q You are not absolutely sure of the dates, but sure you saw him lying on the bed? A Yes, sir.

Q You know you were in his room? A Yes, sir.

Q There was a Christmas tree when you were there?

A Yes, sir.

Q Is that right? A Yes, sir.

Q Then afterwards your brother found you in the hall, is that right? A Yes, sir.

Q Then you ran away, but you had been in the room before that? A Before that, yes, sir.

BY MR. MILLER:

Q When was the last time you were in Blandoli's house?

A Christmas night.

Q Well on Christmas night you did not go into his apartment, did you? A We wanted to go in but we did not.

Q You were there with Mary Pollack, weren't you, and you were with your sister, Rosie, and you never went into his apartment Christmas night? A We want to go but we did not.

Q Did you go in? A No, sir.

Q Well before that what was the time you went into his

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apartment? A The day before Christmas.

Q The day before Christmas? A Yes, sir.

Q Who was with you then? A Mary and Rosie.

Q Well who else? A And me, only us three was there.

Q That was the day before Christmas? A Yes, sir.

Q Sure about that? A Yes, sir.

Q What time of day was that? A That was early in the morning.

Q Early in the morning? A Yes, sir.

Q About what time in the morning? A I can't remember what time.

Q 10 or 11 o'clock? A I can't remember.

Q Was it 9 o'clock, was it before dinner, do you know whether it was before dinner, was it 10 o'clock or 9 o'clock?

A No, sir.

Q Was it 7 o'clock, do you know what time it was?

A No, sir.

Q Now are you sure you were there the day before Christmas, why are you sure about it? A Because I know I was there.

Q Because you know you went there? A Yes, sir.

Q Was that the only thing? A Yes, sir.

Q How long before that time had you been in Blandoli's house? A We went a lot of times.

Q You are positive you were not there Christmas day, that Mary Pollack wasn't with you and your sister Rosie was

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not with you? (No answer)

BY MR. STRYKER:

Q You were there on Monday, was it? A Monday.

Q Monday was it, that you saw Blandoli lying on top of Mary Pollack? What day of the week, if you remember, was it, Sunday? A He always used to lay on top of her.

Q Well on this particular day-- do you remember whether it was Monday or Sunday, can you remember that? A No, sir.

Q You do remember you were there with the two girls and that you saw him lie on Marry Pollack? A Yes, sir.

Q Move up and down? A Yes, sir.

Q There was a Christmas tree in the room? A Yes, sir.

Q And some day after that it was that your brother was in the hall and you didn't go in? A Yes, sir.

Q Is that right? A Yes, sir.

BY MR. MILLER:

Q You say that you don't know what day it was, do you?

A No, sir.

Q But you know what time it was, don't you-- do you know what time of day it was? A No, sir.

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

Q Well then this time that you say you saw this defendant lay upon Mary Pollack were you there at that time?

A Yes, sir.

Q Do you know what time of day that was? A No, sir; he told us to come at 3 o'clock.

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Q I am not asking you what he told you. Just answer the questions. Do you know what time of day that was?

A No, sir.

Q Now at the time you were there with Mary Pollack and you were there with your sister, Rosie, weren't you? A Yes, sir.

Q You went into the apartment of Blandoli? A Yes, sir.

Q Now, what took place, the first thing, what was done? Did he take Mary Pollack into a room, in the back room?

A In the second room, in the second room was a bed.

Q In the bed? A Yes, sir.

Q Did he first go with Mary Pollack on the bed?

A First he said if she wants to go on the bed.

Q Who did he say that to? A To Mary.

Q The first thing he said was to Mary, he wanted her to go on the bed? A Yes, sir.

Q Did Mary go on the bed? A Yes, sir.

Q Then afterwards did your sister Rosie get on the bed? A Yes, sir.

Q After he had been in the back room with Mary Pollack, wasn't it, at the time? A Yes, sir.

Q How, where were you, in the front room? A I was in the front room.

Q Was there any door between the front and back room? A Yes, sir.

Q A door? A Yes, sir.

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Q Was the door shut or closed? A It was shut.

Q The door was shut? A Yes, sir.

Q All that you saw was Mary and Blandoli go in the bath room then they shut the door, is that it? A Yes, sir.

Q Positive about it? A Yes, sir.

Q That is the truth? A Yes, sir.

Q You know the difference between telling the truth and telling a lie, don't you? A Yes, sir.

Q You have been told that at home, haven't you? A Yes, sir.

Q You know now that you are supposed to tell the truth to these 12 gentlemen on this jury, don't you? A Yes, sir.

Q And that is the absolute truth what you have just said, is it? A Yes, sir.

Q That Mary and Blandoli went into the room, they shut the door, and then your sister Rose went in afterwards and shut the door, and in the meantime you stayed out on the sofa in the front room? A Yes, sir.

Q And that was the day before Christmas? A Yes, sir.

BY MR. STRYKER:

Q Do you understand what the lawyer is saying to you? All I want to get is the truth.

THE COURT: You have been over that.

MR. STRYKER: I want to see if she understands.

I will put one question.

BY MR. STRYKER:

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Q What I want to know is you said you saw Blandeli on top of Mary? A Yes, sir.

Q Did you see that? A Yes, sir.

Q Then you could not see through the door, could you? (No answer)

Q You could not see through the door, could you, or through the wall could you? A No, sir.

Q Where were you, in the room where it happened?

A No, sir; there was two rooms.

Q Was the door shut so that you could not see through it? A There was no door in the middle.

Q When you say a door do you mean a doorway? A Yes, sir.

Q There is an entrance between the rooms?

THE COURT: She says there was no door.

Q You saw what happened? A Yes, sir.

BY THE COURT:

Q There was an opening between the rooms? A Yes, sir.

Q What covered that opening if anything? A I saw everything that they did.

Q You saw everything that they did? A Yes, sir.

Q Sure of that now? A Yes, sir.

J O H N C . B U T T S , - a witness called on behalf of the People, being duly sworn, testified as follows:
(The witness states that he lives at 297 4th avenue.)

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DIRECT EXAMINATION BY MR. STRYKER:

Q Mr. Butts, what is your business? A Special officer for the New York Society for the Prevention of Cruelty to Children.

Q You have been connected with that society for about how long? A 8 years.

Q You know the little girls in this case, the little girl Bella who just left the stand? A Yes, sir.

Q Did she go with you at any time to the premises 54 East 104th street any time after Christmas last year?

A Yes, sir.

MR. MILLER: I object to that as incompetent, irrelevant and immaterial.

THE COURT: I will allow that.

MR. STRYKER: She has already testified she did.

Q Did you go into a room that was shown to you as the defendant's room? A I did.

Q Looked for a trunk in that room? A Yes, sir.

BY THE COURT:

Q Was the defendant there? A No, sir.

BY MR. STRYKER:

Q The room was pointed out as being his room?

MR. MILLER: I object to that as incompetent, if your Honor please. I cannot see the relevancy of this testimony as binding upon the defendant.

MR. STRYKER: I am going to prove that these pict-

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ures were found in the defendant's room.

MR. MILLER: Not in his physical possession.

Q On what floor was the room you went into? A The ground floor.

THE COURT: You will have to call the housekeeper.

MR. STRYKER: Shall I call her now? I think that is the better order.

THE COURT: This witness may be withdrawn. Strike out his testimony.

LENA DESTELLI, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRYKER:

(The witness states she lives at 54 East 104th street.)

Q Madam, do you know this defendant at the bar?

A Yes, sir.

Q Did he ever live at your house? A Yes, sir.

Q Where is that? A 54 East 104th street.

Q Did you rent a room or two rooms to him? A I rented two rooms to him.

Q What floor were they on? A The ground floor, the parlor floor.

Q Was it the parlor floor? A Yes, sir.

Q What is known as the parlor and the room behind the parlor? A Yes, sir.

Q Do you know Mr. Butts here? A Yes, sir.

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Q Of the Society, officer Butts, do you know who he is?

A Yes, sir.

Q A tall man. Do you know him by sight? A Yes, sir.

Q Did he come to your house sometime on Christmas with a little girl? A Yes, sir.

Q Did you show him the defendant's room? A Yes, sir.

Q That is you took him into Blandoli's room? A Yes, sir.

Q Were you there when they looked in the trunk?

A Yes, sir.

Q Did you recognize that trunk as Blandoli's trunk?

A Yes, sir.

Q As the defendant's trunk? A Yes, sir.

MR. MILLER: I want to ask your Honor to direct that the answers of this witness be stricken out on the ground that the conversation which the officer had was in the absence of the defendant.

THE COURT: Why if there is any conversation it may be stricken out. I did not hear any conversation.

MR. STRYKER: I did not ask for any conversation.

BY THE COURT:

Q You know that man, do you? A Yes, sir.

Q He lived in the same house with you, you are the janitress? A Yes, sir.

Q On what floor did he live? A The ground floor.

Q How many rooms did he occupy? A Two.

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Q Anybody live there with him? A Me and my husband and three children.

Q But in his rooms, who lived? A Nobody.

Q He had no wife or anybody? A No, sir.

Q Lived all alone? A Yes, sir; lived all alone.

Q Did you see officer Butts in that place? A Yes, sir; I saw him in my place on Thursday.

Q You saw officer Butts in your place? A Yes, sir.

Q When? A Thursday.

Q Last Thursday? A No, sir; the following Thursday that Mr. Blandoli was taken out of the room.

Q Did you point out to Mr. Butts an article-- or do anything with Mr. Butts? A I didn't do anything to him.

Q Did you see him do anything? A He just asked me to show him the defendant's room.

Q Did you show it to him? A Yes, sir; I showed him the room.

Q You were not with him at the room? A Yes, sir.

Q You saw officer Butts go into his room? A Yes, sir.

CROSS EXAMINATION BY MR. MILLER:

Q That is all you did? A Yes, sir.

Q You pointed out the room of this defendant?

A Yes, sir.

Q You saw Butts go into the room? A Yes, sir; and I went in.

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Q That is all you did see? A Yes, sir.

BY THE COURT:

Q Did you go in with him? A Yes, sir.

BY MR. STRYKER:

Q Did you see him open the trunk there? A Yes, sir;
I was there when they opened the trunk.

Q Did you see what they found in the trunk? A Yes,
sir.

Q I don't want you to look at these things now as they
are too filthy. Did you see the pictures they took out?

A Yes, sir.

Q Nasty pictures? A Yes, sir; they were looking at
them.

BY MR. MILLER:

Q Who was there beside you? A Nobody but my two
little children.

Q And officer Butts? A Yes, sir; that is all.

Q There was a trunk there in that room? A Yes, sir;
his trunk.

Q They opened the trunk? (No answer)

BY THE COURT:

Q Who opened the trunk? A Officer Butts.

Q Was one of the Rottenberg girls there? A She was
there too.

Q Can't you keep in mind who was there? Please tell
us all the people who were in that room, as you remember it?

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A Mr. Butts was in the room and the little girl.

Q What little girl? A Bella Rottenberg.

Q And you too? A Me, yes, sir.

Q And your two children? A Yes, sir.

Q Anybody else? A Three detectives.

Q Three other detectives? A Yes, sir.

Q Do you know their names? A No, sir, I don't.

Q Any one else that you think of? A That is all.

Q When you saw them open the trunk-- did you see them bringing in a trunk into the house? A No, sir.

Q They did not bring anything into the house? A They did not bring anything into the house.

Q You let them in the room? A Yes, sir.

Q Opened the door for them with a key? A Yes, sir.

Q They went in? A Yes, sir.

Q Day or night time? A In the day time.

Q About what time in the day? A 1 o'clock, half-past 12 or 1 o'clock.

Q You saw what they did in that room? A Yes, sir.

BY MR. MILLER:

Q How long have you known this defendant? A About 7 or 8 months, I could not exactly say.

Q He was one of your tenants? He is a tenant of the house of which you are the housekeeper? A Yes, sir.

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

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Q Well other tenants know him? A Yes, sir; all the other tenants know him.

Q What was his reputation for morality there while he lived with you, do you know what his reputation was?

A They all respected him highly.

Q What was it, good or bad? A It was all good.

BY MR. STRYKER:

Q In hearing his reputation discussed did you hear anything about the visitors that he had to that room? Did you talk to people about his reputation? A Yes, sir.

Q What others said about him? A Yes, sir.

Q Did you ever talk about who came to see him there at that room? A Who came to see him?

Q Yes. A There was people, his friends.

Q Did you ever hear it said who it was that came there to his room? A No, sir.

Q You knew, sometimes, didn't you? A Yes, sir, sometimes, not always.

Q Did you hear it discussed that little girls came there? A I heard little girls came there.

Q You heard that discussed when his reputation was discussed? A Yes, sir.

BY THE COURT:

Q Did you see little girls go in there? A Yes, sir, I seen them.

Q In spite of that you think his reputation is good?

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A Well I never--

Q Did the neighbors know about these pictures found in his trunk when they said his reputation was good?

A I told them about when I heard of it.

Q And they still thought his reputation was good?

A They didn't think no more about it.

BY MR. STRYKER:

Q You didn't hear his reputation praised very highly after they found these pictures in his trunk? A No, sir.

J O H N C . B U T T S , a witness for the People, resumed the stand.

BY MR. STRYKER:

Q You were already sworn? A Yes, sir.

Q You have said you were an officer for the Society for the Prevention of Cruelty to Children? A Yes, sir.

Q Have been connected with it for 8 years. Did you go to the premises 54 East 104th street? A Yes, sir; I did.

Q After Christmas time? A Yes, sir.

Q Do you remember the day you went there? A Well I can't recall exactly the day without referring to a memorandum

THE COURT: Have you got anything to refer to?

THE WITNESS: Yes, sir, I can refer to the complaint there, it was on the day that the defendant was held.

BY MR. STRYKER:

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Q If there is anything that will refresh your memory.
Will the complaint refresh your memory? I show you the
complaint before the magistrate. Look at that and see if
your recollection will be refreshed? A Yes, sir.

Q Is that the day you went there to the defendant's
room? A Yes, sir; December 28th 1911.

Q Was the room of the defendant pointed out to you by
Mrs.-- (No answer)

BY THE COURT:

Q You went to the defendant's room? A Yes, sir.

Q Who else was there? A Officer Kruse and Mantini
from the detective bureau.

Q Did you see any woman? A Mrs. Bestelli.

Q The last witness? A Yes, sir.

Q Did she point out the room of the defendant to you?

A Yes, sir.

Q Was it on the first floor? A On the ground floor.

Q The parlor? A Yes, sir, parlor and an alcove room
off the parlor.

Q That she pointed out to you as the defendant's room?

A Yes, sir.

BY MR. STRYKER:

Q Was little Bella Rottenberg there at the time?

A Yes, sir.

Q With you? A Yes, sir.

Q She pointed it out as the defendant's room? A Yes,
sir.

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Q Was there a trunk pointed out to you also? A Yes, sir.

Q Did you look into that trunk? A Yes, sir.

Q I show you these pictures, running from 1 to 6; look at them carefully please, and tell us if you found those pictures in the defendant's trunk? A Yes, sir.

BY THE COURT:

Q Did you ever see those pictures before? A Yes, sir.

Q Where? A I have had them in my custody.

Q Since the 28th of December? A Yes, sir.

BY MR. STRYKER:

Q You produced them in court today and handed them to me? A Yes, sir.

Q You recognize those pictures, you personally had charge of them, found in his trunk? A Yes, sir.

BY MR. MILLER:

Q Mr. Butts, this defendant was not there at the time, was he? A No, sir.

BY MR. STRYKER:

Q You went there in pursuance of certain information you received? A Yes, sir.

BY THE COURT:

Q You had a talk with these girls before you went there? A Yes, sir; up in the magistrate's court.

Q Yes or no. A Yes, sir.

Q Did you have a talk with the complainant here and the

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two Rottenberg girls? A Yes, sir.

Q Before you went there? A Yes, sir.

BY MR. MILLER:

Q And in pursuance of that fact you went to the rooms of this defendant? A Yes, sir.

Q Is that it? A I did.

Q There was pointed out in that room a certain trunk, wasn't there? A Yes, sir.

Q By Mrs. Bestelli? A By the girl, Bella Rottenberg.

Q Who pointed it out, the girl or Mrs. Bestelli?

A The girl.

Q Did Mrs. Bestelli say anything to you? A Anything regarding the trunk? Nothing regarding the trunk.

Q She did not say anything regarding the trunk?

A No, sir.

Q You opened the trunk? A Detective Mantini opened the trunk.

Q Was the trunk locked or was it open? A Well, it was locked.

Q It was locked? A Yes, sir.

Q How did he open it? A He had the key he had taken from the defendant.

Q Well he had certain keys, had he? A Yes, sir.

Q Do you know what keys they were? A I know that the key fitted the trunk, that is all.

Q Did you see him get the key from any one? A No, sir.

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Q Were you there when the pictures were actually taken out of the trunk? A I was.

Q Did you see these pictures taken out of the trunk?
A I did.

Q Now who took the pictures out of the trunk? A Mr. Mantini, detective Mantini; I stood by his side.

Q What part of the trunk were the pictures in? A In the top tray.

Q In the top tray? A Yes, sir.

Q Were they in any book? A No, sir.

Q Were they exposed? A No, sir.

Q What were they in, were they in an envelope? A No, sir; they were in a package there, a book.

Q A book? A Yes, sir; a small pamphlet in Italian.

Q Were they in between the pages of this pamphlet?

MR. STRYKER: Here is the pamphlet now.

BY MR. STRYKER:

Q Is this it? A Yes, sir.

BY MR. MILLER:

Q Were they in between, folded in between the pages, were they not? A I think they laid on top of them; they looked like ina package.

Q You are not positive? A No, sir.

Q They have been in your custody ever since? A Yes, sir.

MR. MILLER: I renew my motion, if your Honor

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please, to strike out all the testimony in relation to the taking of pictures from a trunk found in the apartment of the defendant, Blandoli, which pictures have been used as exhibits before the jury in this case, on the ground that the pictures were not found in the physical possession of the defendant.

Motion denied; exception.

THE COURT: This evidence is only offered in corroboration of the girl's story, that is all.

MR. MILLER: To which I respectfully except.

BY MR. STRYKER:

Q Did you see these other things, Officer? A Yes, sir.

MR. STRYKER: I ask that they be marked for identification.

THE WITNESS: I went right over to the station house and asked for an envelope and I put them in an envelope.

(The envelope referred to is marked People's Exhibit 6 for identification.)

Q You say that was an alcove room? A It is what I call an alcove room, a front parlor and a back parlor, there is no door, a recess, some call it a recess room.

BY THE COURT:

Q There was a swinging door there? A No, sir; no doors at all.

Q Portieres hanging across the wall? A Light portieres

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Q What is that? A Thin ones.

Q Do you mean linen? A Yes, sir.

Q Not heavy silk ones or velvet ones? A No, sir, just across the corner, not covering the whole space, just draped across in this manner (illustrating).

Q When you went there these were up there? A Yes, sir.

Q You could see from the front room into the back room without any trouble? A Yes, sir.

BY MR. STRYKER:

Q This was in the county of New York, these premises?

A Yes, sir.

MR. STRYKER: The People rest.

THE COURT: How many witnesses have you?

MR. MILLER: I have only one witness, your Honor, but I expect his examination will take some time.

That is the defendant. I shall make a motion now that the People have rested, and that is that the second count in the indictment be taken from the jury.

MR. STRYKER: Your Honor will see that the second and third counts charge rape in the first degree but charge it not by force but that it was done because of her immaturity in not then offering resistance to the act because of her immaturity. The first count says that by reason of her youth and ignorance being then and there unconscious of the act. I think on those grounds the second and third counts are sustained.

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THE COURT: I will deny that motion with permission to renew. I will give it further consideration. Do you want an adjournment now?

MR. MILLER: Well I am ready to obey the order of the Court.

THE COURT: It is now 20 minutes after 4 and the examination will take some time?

MR. MILLER: I don't think we could conclude it by 6 o'clock, the examination of this defendant and the summing up. The cross examination of the defendant-- I anticipate this defendant will be on the stand quite a while, your Honor.

THE COURT: Well I think we had better adjourn until Monday morning at half-past 10. Gentlemen of the jury, the court will take a recess now until Monday morning at half-past 10. Meanwhile be extremely careful not to discuss the case among yourselves or with anybody else and if anybody attempts to talk to you about it notify the Court. You must not visit the scene of this alleged occurrence nor come to any conclusion as to the guilt or innocence of the defendant until you hear the evidence on both sides and until the case is submitted to you by the Court for your decision. That is the time for you to make up your mind and not before.

(The Court then adjourned the further trial of the case until Monday morning, Feb. 19, 1912. at 10.30.)

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New York, February 19, 1912.

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

MR. MILLER: I ask your Honor to take from the consideration of the jury the first count in the indictment.

THE COURT: I will take the first count from the jury except in so far as the allegation of time and place is concerned.

MR. MILLER: I ask your Honor to take from the consideration of the jury the second count in the indictment.

THE COURT: I will submit it to the jury on rape in the second degree.

MR. MILLER: Excluding all the other counts.

MR. STRYKER: I don't want to make a particular point of this your Honor, but it would seem to me that under the allegations of the second count, charging rape in the second degree, not offering resistance by reason of her immaturity might be submitted.

THE COURT: No.

MR. STRYKER: I don't make any special point of it but it would seem to me so.

THE COURT: The girl was thirteen years of age and she was a girl of considerable intelligence as shown by my own examination. She was fully aware of what she was doing.

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MR. STRYKER: I think it is just as well to submit it to the jury as rape in the second degree.

MR. MILLER: That is excluding all the other counts?

THE COURT: Assault in the second degree and abduction will be submitted, that is, all the counts charging rape in the first degree are withdrawn from the consideration of the jury.

MR. MILLER: Now I ask your Honor to direct the jury to acquit the defendant on the ground that the people have failed, by legal proof, to prove the acts alleged in the indictment beyond a reasonable doubt.

Motion denied; exception.

Mr. Miller opens the case on behalf of the defendant.

N I C H O L A S D E L A G I, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness gives his address as 114 Center Street).

Q Mr. Delagi, what is your business? A I am an attorney.

Q An attorney and counsellor at law? A Yes, sir.

Q Duly admitted to practise in the courts of this State?

A Yes, sir.

Q Where is your place of business? A 114 Center Street.

Q Do you know the defendant in this action, Brandoli?

A I do.

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

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

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Q Have you conversed with those people about his morality?
A Well not about his morality. He has been recommended to me.

Q He has been recommended to you? A Yes, sir.

Q What relation did he bear to you? A He was a teacher of mine.

Q For what? A Latin.

MR. STRYKER: I object to this. The witness is not competent to testify concerning his reputation for morality. He said he never discussed it.

BY MR. MILLER:

Q What is his general reputation? A Very good.

Q He was your teacher of Latin?

THE COURT: He has said that once.

BY MR. STRYKER:

Q Weren't you retained by him as attorney first?

A No, sir; I was not.

Q You were not? A No, sir; I refused to take his case.

Q He asked you to take his case? A Yes, sir.

Q You would not take his case? A Yes, sir--

Q You turned his case down? A I did not turn it down.

BY MR. MILLER:

Q You did not refuse to take it on account of his morality?
A No, sir.

0600

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C E S A R E B R A N D O L I, being duly sworn in his own behalf, testified as follows: (through official interpreter Mustaki).

DIRECT EXAMINATION BY MR. MILLER:

Q Brandoli, how old are you? A 64.

Q Where were you born? A Italy.

Q When did you arrive in this country? A Ten years ago.

Q What was your business in Italy before you arrived here? A I was a bookkeeper.

Q Do you speak several languages? A Yes, sir.

Q What are they? A French, Italian, German and Latin and a little English.

Q Now in addition to being a bookkeeper have you at different times given instructions? A Yes, sir.

Q In the families of your countrymen? A Yes, sir.

Q In those different languages that you spoke of?

A Yes, sir.

Q Where were you living about a year ago last January?

A 129 East 103rd street.

Q How long did you live there? A Eight or nine months.

Q Where did you move to from East 103rd street? A 54 E. 104th street.

Q Where were you living at the time you were arrested?

THE COURT: That is all in evidence, unless you want it all over again.

Q Where were you living. Answer the question? A 54 E.

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104th street.

Q Do you know Bella Rottenberg? A Yes, sir.

Q Do you know Rosie Rottenberg? A Yes, sir.

Q Where did you first meet Bella and Rosie Rottenberg?

A When I moved into that house at 103rd street.

Q How did you come to meet them there? A I wish to explain to you.

THE COURT: Do not have any discussion with the witness. Put the question again. How did you come to meet Bella and Rosie Rottenberg? A An Italian gentleman asked me, a friend of mine asked me to take care of some embroidery to occupy myself in his behalf, because he could not do it, and in the house were these girls who were occupied with that line of business and they were daughters of the janitress and, consequently, this workingman used to send these girls to me as a messenger for work.

Q Where were you working at that time? A Sometimes I used to be a bookkeeper but not steady.

Q Where were you working at the time you first met Bella and Rosie Rottenberg? A Sometimes I used to work in Mr. Delicio's and sometimes I used to work in the day time for Mr. Sachs, because I was with Sachs five or six years keeping his books.

Q Bella and Rosie Rottenberg met you in the premises at 103rd street because they came there to see some people about embroidery, is that it? A The reason why they came there was

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this, because they were friends with the daughter and the son of the landlady of the house.

Q They were friends of the daughters of the landlady and son in the house? A Yes, sir; Mrs. Lang.

Q When did you first meet Mary Pollock? A I do not remember exactly when, two or three months after I met this girl.

Q Who introduced Mary Pollock to you? A Bella Rottenberg.

Q Bella Rottenberg? A Yes, sir.

Q Where was that? A 103rd street.

Q Where were you living when Mary Pollock and Rosie Rottenberg -- tell us where you were living the last time you saw Bella Rottenberg and Mary Pollock? A 54 East 104th street.

Q How long after you left the premises in 103rd street and moved to 104th street did you see Bella Rottenberg and Rosie Rottenberg and Mary Pollock? A About five or nine months -- nine or ten months.

Q Nine or ten months? A Yes, sir.

Q How did you come to meet them in the premises in 104th street? A They came there unknowingly to me.

Q When? A A few months ago.

Q How long prior to the 25th of December did they come to the premises in 104th street? A Two months before.

Q What were the circumstances under which they came there?

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A They used to come sometimes for a short period to ask for five or ten cents to go to the moving picture.

Q Who was with Mary Pollock at the time she came to the premises in 104th street, the first time? A Rosie.

Q What time of the day was it that they came there? A They used to come only on Sundays at two o'clock, three or four o'clock, whenever they found me there.

Q Do you remember the night that Mary Pollock and Rosie Rottenberg came to your premises, your apartments and stayed all night? A Yes, sir.

Q Now what were the circumstances under which they came there? A They came there it was about half past ten o'clock they came praying and begging to let them sleep in the next room.

Q What did you do? A I said, I absolutely refused to let them in.

Q Well they stayed there that night, didn't they?

A Then they came two hours afterwards to me again and said they were afraid to go home and they wanted to sleep there.

Q What did you do then? A They insisted to sleep on the lounge and I said no, "I rather get out of bed and dress myself and I will sleep on the lounge". They went and slept on the bed, I dressed myself and then I went myself -- dressing myself completely up to my collar and tie and everything complete, then I went in the next room and slept on the lounge.

Q Did they sleep in your bed that night? A Yes, sir;

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they slept there; they were wholly dressed.

Q What time did they leave your apartment the first morning? A As I could not sleep that night at daylight I woke them up and sent them home.

Q What time in the morning was that? A Five o'clock or six o'clock.

Q Now, did you give them any money that morning? A I think I gave them fifty cents.

Q They went home? A I gave them the fifty cents so that they could have a cup of coffee.

Q When did you next see Rosie Rottenberg and Mary Pollock? A Never saw them again --

Q Do you remember the 25th day of December, 1911? A Yes, sir.

Q That was Christmas Day wasn't? A Yes, sir.

Q Were you home all day Christmas Day? A Yes, sir, except a half an hour when I went to lunch. Can I say why? In the morning a nephew of the landlord's said his aunt dead and I had to go to Brooklyn and instead of that I stayed home and played with the children of the aunt.

Q Did you have a Christmas tree in your room? A It belonged to the landlady of the house.

Q Answer the question? A Yes, sir.

Q Did you have a Christmas tree in your room? A Yes, sir.

Q Now when did you see Bella Rottenberg or Mary Pollock or Rosie Rottenberg on Christmas Day? A I did not see them

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that morning at all except at the court of 121st street.

Q Did you meet Rosie Rottenberg, Bella Rottenberg or Mary Pollock in your apartment on the 25th day of December, 1911 ?

A No, sir. except Mary Pollock came that same night, wanted to enter my room.

Q What time of night was it? A Half past eleven or twelve o'clock.

Q Was she with anybody or was she alone? A All alone.

Q What did she do when she came to your apartment at half past eleven? A I did not even open the door; I shouted to her to go out "I don't want to have any griefs or trouble, get away from here". I sent her away without even opening my door.

BY THE COURT:

Q Do you wish an interpreter or not? A Yes, sir; I wish an interpreter.

BY MR. MILLER:

Q What took place when Mary Pollock came to your apartment at half past eleven the night of Christmas? A I chased her away because I didn't want to even open the door, didn't want any trouble, I told her to get away and I told her henceforth she must never come again to my door.

Q Did you see Rosie Rottenberg and Bella Rottenberg that day? A I did not see them except in the court.

Q I am asking you that day.

BY THE COURT:

Q Christmas Day? A No, sir.

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BY MR. MILLER:

Q Did you at any time ever take Rosie Rottenberg in your back room and have her to submit to any indignities at your hands? A No, sir.

Q Did you take Mary Pellock into your back room and have her submit to any indignities at your hands? A No, sir; I never done anything likethat.

Q Are you physically capable of consummating any act of sexual intercourse?

MR. STRYKER: I object to that on the ground that the question is not competent.

Objection overruled.

A If you wish to examine me now you will find out.

Q How long since you attempted to have sexual intercourse with any person of the opposite sex? A Two years ago I tried it with a widow and she told me "Never again, for you are not capable of doing anything."

Q Now explain to the jury about these pictures that have been introduced on behalf of the People as a part of their exhibits in this case? A Mr. Morell went to Europe a year ago and gave me a present -- two years ago he went away and he presented me with a suit of clothes and a basket full of books. I had these books some time and then at the end of-- I took them out of the basket, put them in my trunk. It was some kind of French and Italian romances in these books. And three or four months ago a son of the banker Brusoffi established

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a club where I am employed, and he asked me whether I had any books for the library of his club, and on a holiday I had nothing else to do and I ransacked this trunk and took out all the books and fixed them all up to bring them to the club. Then I found out with all these books there is one book where it contained indecent pictures, and I put it one side and I said, "The next time I will have a chance I will destroy it by burning it up." Then I brought these books to Mr. Brusofi and the pictures that these girls claim to have seen is nothing else but a reproduction of some old paintings. Then these girls will -- you know how girls are they will look around, they were looking at this book and immediately I noticed they were looking at these indecent pictures. I snatched it away from the hand.

Q I show you these exhibits and ask you if those are the ones? A Those are the ones.

Q That were in the trunk in between the leaves of the book is that it? A There is another one there I would like to see.

THE COURT: They are reproductions of old paintings.

THE WITNESS: The ones that the girls saw is a reproduction of pictures that are in the Museum of Art.

By MR. MILLER:

Q They were in your trunk in addition to those pictures, were they not? A No, sir; they were not.

Q They were outside? A There is another piece of paper in here, I would like to take out. It is not a photograph

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This is the only that I want to take out from that envelope.
That is a reproduction from the School of Delizzio (referring
to people's Exhibit 7)

THE COURT: This was not introduced in evidence.

THE WITNESS: This is from the School of Delizzio.

THE COURT: Do you wish to introduce it in evidence?

MR. MILLER: I am perfectly willing.

(The picture referred to is marked People's Exhibit
7.)

BY MR. MILLER:

Q You say that is a mere reproduction from some book?

A Yes, sir; this is a reproduction from a book, an English
book.

Q It was in your trunk with the others? A Yes, sir;
I had placed them there expecting to burn them up, to destroy
them.

Q Now, did you ever show those pictures to Mary Pollock
or Rosie Rottenberg? A Never.

Q When did you first see Mary Pollock after the 25th of
December? A At 121st street when I was arrested.

Q How long after was that? (No answer)

Q How long after the 25th? A The 30th of December.

Q The 30th of December? A Yes, sir.

Q You think that is so? A I think it was the 28th or
the 29th.

Q The 28th the papers are marked, is that the correct

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date?

BY THE COURT:

Q Does the clerk have brains enough to mark the correct date?

MR. MILLER: I hope so.

THE COURT: Well show him his signature if you like.

BY MR. MILLER:

Q Is this your signature? A Yes, sir.

Q Ask him if that is his signature? A Yes, sir.

Q And the date you wrote that you saw Mary Pollock in court? A Yes, sir; that day.

Q Then you can see the date on it if you like? A Yes, s the 28th of December.

Q Where were you arrested, at your apartment, yes or no?

A Yes, sir; at the time I was going to bed.

CROSS EXAMINATION BY MR. STRYKER:

Q What is your business? A Bookkeeper.

Q Have you made your living by bookkeeping in the years since you have lived here? A Yes, sir; and a professor.

Q Also a professor of languages? A Yes, sir.

Q You are quite a fluent scholar in languages, are you not? A Only about lessons.

Q Well you know enough about languages to have master-
own
ed Latin, Italian, French and German in addition to your native tongue, is that so? A Yes, sir; I think so.

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Q You have lived in the United States for ten years where they speak English and yet you desire to talk through an interpreter? A I had made an agreement with my lawyer that I should have an interpreter because I might not understand some legal aspects of the case.

Q You thought it would be easier to crawl behind an interpreter than to come out and talk in the language you understood? A Far better to ~~be~~ under cover of an interpreter as I do not understand you personally now.

Q You don't understand me now talking to you? A Sometimes.

Q All right. Are you a rich man, Mr. Brandoli? A No, sir.

Q How often did these girls used to visit you? A Rarely because I was always busy.

Q Now you have told us that you knew the girls about a year you have know them for about a year altogether, or a little more, isn't that the fact? A More than a year.

Q More than a year? A Yes, sir.

Q How many times Mr. Brandoli, would you say -- give us your best belief--of course you can't know the exact number of times, how many/^{times}would you say did Mary Pollock and the others visit you at your rooms? A I could not tell you that.

Q Would it be twenty? A If they came there they didn't come to me.

Q Won't you answer the question Mr. Brandoli. That was

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not an answer. A I can't state, impossible.

Q Do you deny, Mr. Brandoli, that these girls had been in your rooms more than twenty times? A Yes, they must have come more than twenty times.

Q They went there as many as forty times, Mr. Brandoli?

A No, sir; I didn't count them.

Q Do you deny that these girls had been in your room forty times?

THE COURT: He has answered that.

MR. STRYKER: Very well I won't prese it.

THE COURT: He said he did not count them.

Q Why did these girls come to your room Mr. Mrandoli?

A They didn't come there for myself; they came there to play with the children of the landlord and whenever I was happened to be there they used to come upstairs too.

Q Did the children of the landlord, Mr. Brandoli live in your room? A No, sir, they are in the next room.

Q If they came to call on the children of the landlord, why did they come to your room? A They used to come and play with the children of the landlord, then they used to go out in the hallway and play also and used to see a light in my room and they used to come in there.

Q What is that landlady's name? A Mrs. Lang.

Q Have you made an efforts to have Mrs. Lang in court?

A I do not know where she is.

Q Or the children with whom you say these girls came

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to play? (No answer).

Q You were in your room on Christmas Day, Mr. Brandoli, except when you went out to lunch? A Yes, sir.

Q You had a Christmas tree there? A Yes, sir.

Q But nobody visited you that day? A No, sir.

Q Why did you have a Christmas tree there? A It was the landlady's Christmas tree. She begged me to put it in the front room.

Q Have it put in your room? A Yes, sir.

Q Now, Mr. Brandoli, during the time that you knew these girls when they came to your room twenty times at least as you have said, did you never kiss one of them? A Never.

Q Did you never hold one of them on your lap? A Yes, sir in fooling I might have done that.

Q You held each one of them on your lap twenty times, Brandoli, didn't you? A No, sir.

Q Didn't you use to take them on your lap and show them these pictures, and say, "Isn't that nice", that picture there, People's Exhibit 1? A No, sir.

Q Never? A No, sir.

Q That is a copy of a famous painting, is it? A I did nothing.

Q Is that answering the question? A No, sir.

THE COURT: What is the answer to that question?

THE INTERPRETER: No, sir.

Q I show you Exhibit 1, Now look at it.

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THE COURT: He told me they were all copies of famous paintings.

BY MR. STRYKER:

Q Is that a copy of a famous painting? A No, sir.

Q I show you Exhibit 6. Is that a copy of the famous painting? A No, sir.

Q You used to show them to them sometime, didn't you?

A No, sir.

Q Now People's Exhibit 4 I show you. What painting is that a copy of? A No, sir, no painting at all.

Q No painting? A No, sir.

Q People's Exhibit 5, is that a copy of some painting in the Museum? A It is a postal card cut in four parts.

Q Is that a copy of a painting yes or no? A No, sir.

Q People's Exhibit 2, how about that? A No, sir.

Q People's Exhibit 3 how about that? A No, sir; that is a postal card cut up.

Q A postal card? A Yes, sir.

Q So that no one of these exhibits from one to six, no one of these filthy pictures is a copy of a painting on your own statement? A No, sir, no, sir. The one that the girl saw was a reproduction of picture. (Witness indicating)

BY THE COURT:

Q The girls never saw these pictures? A Rosie and Mary Pollock never saw them.

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Q Never saw them at all? A No, sir.

BY MR. STRYKER:

Q These pictures were kept where you kept all the other pictures which your friend left you, weren't they? A Yes, sir; they were altogether in a box.

Q So if the girls found the box they found these too?

A Yes, sir; they were all together, they were all rolled up in a paper.

Q In the trunk? A Yes, sir; in the trunk.

Q In your trunk? A Yes, sir.

Q Now, sometimes wouldn't the girls lie on the bed with you just for fun? A No, sir; never.

Q Why did you give these girls money, Brandoli? A I could not tell you why; they used to ask me for five cents or ten cents.

Q And the night that they spent the night there in your room you gave them fifty cents? A Yes, sir; only that once I gave fifty cents.

Q That is the only time you gave them fifty cents? A Yes sir.

Q Are you a married man? A No, sir.

Q Now, Mr. Brandoli, when these little girls came there to your room that night, all alone and friendless, why didn't you take them home to their parents instead of keeping them there in your room? A How could I? I did not know where they lived. I used to chase them away.

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Q You did not know where they lived? A No, sir.

Q Didn't you tell us on your direct examination that you had gone to find a tenant once and one of the girls helped you find the tenant and she was the daughter of the landlady in that place that you went to? A She was not the daughter of the landlady; they used to come and play with the children of the landlady.

Q Used to play with the children of the landlady? A Yes, sir.

Q That is your answer? A Yes, sir.

Q How about this book. This is the cover of it. (Referring to People's Exhibit 8 for identification) A They were altogether in that book; I hardly looked at them.

Q Don't you know that that book is one of the rottenest that was ever printed in the Italian language? A I know; that is the reason I put it at the bottom of my trunk.

Q Don't you know that it is one of the filthiest, dirtiest things that ever was printed? A Yes, sir.

Q And a description of this rotten scene here this picture, it tells all about that in the book? A That I do not know.

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

Q You have read that book time and again, Brandoli?

A I read it when I was sixteen or seventeen years old; I read it twice.

Q Why it is so much used that it is all falling apart,

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Brandoli who did that? A I do not know.

Q You had it in your possession anyway, didn't you?

A It was given to me together with the package there.

Q You had it in your possession? A Yes, sir.

MR. STRYKER: I offer the book in evidence together with the filthy pictures that it contains.

(Marked People's Exhibit 8.)

Q Now, Brandoli, didn't you use to take this book and take the little girls on your knee and put your hand up under their clothes and then read them the rotten, dirty stories in this book, and showed them these filthy pictures?

THE COURT: Leave out the remarks.

MR. STRYKER: I will withdraw the adjectives.

Q Didn't you use to take these children on your knee and translate the stories in this book to them? A That book was never out of the trunk, only one minute and I snatched it away from the hand.

Q You snatched it from whose hands? A Bella; the only that had it in her hands.

Q Bella? A Yes, sir.

Q But the other girl Mary Pollock was there at the time Bella had it? A It was on a Sunday when I was looking in the trunk for an English grammar that Bella pulls that book there and I snatched it away from her hand.

Q Did you used to tell the parents of these girls, Brandoli that they used to come to your rooms. Did you tell the

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father or mother that you used to entertain them in your rooms, and give them money? A No, sir; I never knew the parents.

BY THE COURT:

Q Did you ever tell the parents? A No, sir; I don't know them.

Q Did you ever tell them, Yes or no? A No, sir; I don't know who they are.

BY MR. STRYKER:

Q After these girls began coming to you many times, did you ever make any attempt at all to find out their parents to tell them about their girls? A I did not have any interest in the matter.

Q So you never told their parents? A No, sir; I never did so, but I never knew them.

Q Therefore you did not tell them? A No, sir; I did not know who they were.

Q Did you spend very much time of the day or night trying to find out who they were? A No, sir; because I was not doing anything wrong and they used to come there for a few minutes.

Q Mr. Brandoli you said that on Christmas Day you chased one of these girls away because you didn't want any griefs and troubles or words to that effect, didn't you? A In that way.

THE COURT: He has answered that way.

Q What did you mean by saying you didn't want any griefs

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or trouble on that day? A Because ^{if} the lady next door could have seen the girl in my room she may be suspicious and make some nasty remark.

Q Although these girls had been coming to you for more than a year, more than twenty visits, this was the first time you feared any one suspicion? A No, because at 103rd street I had arranged with the landlady not to allow them near me. The three of them would not come in but would stand under my window and bother me under the window.

Q Although you complained to the landlady nevertheless when they continued to come you continued to give them money for coming? A After for a year and a half.

Q All that time? A Yes, sir.

Q Was this widow with whom you attempted intercourse your wife? A No, sir.

BY THE COURT:

Q You are not married to Mary Pollock? A No, sir.

BY MR. STRYKER:

Q You never lifted up Mary Pollock's dress at all?

A No, sir.

Q Not at all? A No, sir.

Q Not when she sat on your lap? A No, sir.

Q Put your hands on her legs? A No, sir.

Q Did not at all? A No, sir.

Q Not at all? A No, sir.

Q Why were you so eager to have these girls get out of

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your apartment the night they spent the night with you. You said you got them out at five o'clock in the morning? A Because I wanted them to get and be in time to find the doors open of their apartment to get in.

Q Don't you know the reason you sent these girls out at five o'clock in the morning was because you knew it was wrong to have them there that night, and you didn't want ^{any one} to see that they had been there? A I only received them out of pity.

Q Out of pity? A Yes, sir; I did not do anything to them.

BY THE COURT:

Q You never injured these girls in any way? A No, sir; never, and I can not.

Q You never made the girls anygry? A What for?

Q Did you or did you not I say? A No, sir.

Q Never did anything to them except be kind to them and give them money? A No, sir; whenever they used to bother me to go to the moving picture show I always used to give thrm five or ten cents."

BY THE TWELFTH JUROR:

Q Did the landlord in 103rd street house have any children? A Yes, sir; a boy and a girl.

Q Did the children play with these girls, Mary Pollock and Bella and Rosie Rottenberg-- did they play with the landlord's children in 103rd street? A Yes, sir; but not in my room.

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Q If you did not see Mary Pollock on Christmas Day long before that was it that you saw them last? A About a month and a half before.

Q Now, how did they know that you had a Christmas tree in your rooms? A Well, that I do not know; they may have seen it because it was at the window.

A JUROR: A point of information.

THE COURT: You must not have anything to say unless you wish to ask a question.

THE JUROR: I wish to ask a question not from this witness.

THE COURT: You must not say anything further. Do you understand me. When a witness is on the stand you may ask a question. You must pass upon the evidence brought out before you and weigh that evidence in connection with the law as it will be stated to you by the Court. There must not be any discussion now. If there is any witness on the stand of whom you would like to ask a question or any witness that you would like to have recalled with the consent of both parties that witness may be recalled.

THE JUROR: Yes, your Honor that is what I wish.

THE COURT: Do you wish a witness to be recalled?

THE JUROR: I would like to have the officer of the Society recalled.

THE COURT: Will there be any objection to that?

MR. MILLER: No objection.

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THE COURT: recall him.

THE FIFTH JUROR: I would like to ask a question of Mr. Brandoli.

THE COURT: Any objection?

MR. MILLER: No objection.

BY THE FIFTH JUROR:

Q Now the first time you met these girls, Mr. Brandoli, did you have any opinion about them, whether they are good or bad?

A I did not form any opinion but later on I found that Bella was a fresh girl.

Q After you had found this out you still communicated with her, you had seen her? A Then I talked with the landlord, and I told her to prohibit her from coming in the house.

J O H N C. B U T T S, a witness called on behalf of the People, recalled.

BY A JUROR:

Q You had this girl in the Society's charge since the 28th of December last? A Yes, sir.

Q Were these children permitted to mingle with one another while in your charge or are they kept separately?

A The two girls Mary Pollock and Rosie Rottenberg are in one department and the other child is in another.

Q The younger one in another? A Yes, sir.

Q Are the father and mother of these children allowed

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to see them? A Yes, sir; once a week.

Q They are allowed to converse with these children while in your charge? A Yes, sir.

(Testimony closed.)

Mr. Miller closes the case on behalf of the defendant.

Mr. Stryker closes the case on behalf of the People.

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THE COURT'S CHARGE.

MULQUEEN, J.-

Gentlemen of the jury: This defendant has been indicted by the Grand Jury of this county of the crime of rape in the first degree, the crime of rape in the second degree, the crime of assault in the second degree, and the crime of abduction.

I have already, on motion of the defendant's attorney, taken from your consideration the crime of rape in the first degree, because that crime involves elements which have not been established. I am going to submit the case to you on the count of rape in the second degree and abduction. The crime of assault in the second degree is also taken from your consideration because if this defendant has not been proven guilty to your satisfaction, of rape in the second degree, ^{or} abduction then he is not guilty of any crime.

The count charging rape in the second degree alleges that on the day and in the year mentioned in the Borough of Manhattan, County of New York he feloniously made an assault upon Mary Pollock, who was a female, not his wife, and that the said Mary Pollock at that time was a female under the age of 18 years, to wit, the age of twelve years, and that at that time and place he then and

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there feloniously did perpetrate an act of sexual intercourse with her under circumstances not amounting to rape in the first degree. The count charging abduction I might as well present to you at the same time because it is practically the same count, except that it does not allege that the act was consummated.

The grand jury charge in this count that the defendant on the day and year aforesaid, the 25th day of December 1911, in the county of New York, feloniously did take, receive, harbor, employ and use Mary Pollack, a female, under the age of 18 years, to wit, the age of 12 years, for the purpose of sexual intercourse, the said Cesare Brandoli not being then and there the husband of the said Mary Pollack, against the form of the statute in such cases made and provided.

You understand, gentlemen, that the defendant is not to be convicted because he has been charged with crime. Men are not to be convicted simply because they are charged with crime. It is very easy to make a charge. Men are only to be convicted when the charge has been made good in the manner prescribed by law.

An indictment in itself is no proof of guilt. It is not an item of evidence at all. It is a charge made by the People of the state of New York against the defendant. - You know that the term "The People of the

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State of New York" means organized society, all the people living within the borders of this State, all who have their own notions of right and wrong and who carry out those notions and secure the blessings of government make laws. They charge that this defendant has violated the laws in the manner set forth in the indictment. This Court is established to try the truth of that charge. You must not proceed upon the theory that the defendant is guilty because he stands indicted. You must merely use the indictment to let you know what the charge is. Now what is the charge which you have got to keep in mind? The indictment, in effect, says that Mary Pollack is a female under 18 years of age, to wit, 12 years of age. She was 12 years of age on the 25th of December; secondly, she is not the wife of this defendant and never was his wife. And that under those circumstances it is said that the defendant feloniously did perpetrate an act of sexual intercourse with her. These are simple things to remember. The sex, the age, not his wife, an act of sexual intercourse. This act was not done under circumstances amounting to rape in the second degree.

The Court charging abduction is practically the

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same, as I told you, excepting that nothing is said as to an act of sexual intercourse but the purpose of the defendant in dealing with the child is alleged to be criminal, namely that he did feloniously take, receive, harbor, employ and use the said Mary Pollack, a girl of 12 years of age, not his wife, for the purpose of sexual intercourse. It is silent as to the accomplishment of the purpose. That is the difference between abduction and rape.

You understand that the defendant is presumed to be innocent. The defendant is not brought in here and required to establish his innocence. He may sit mute; he may take the stand as he did in this case, and the law is that in the absence of testimony sufficient to satisfy you gentlemen of his guilt beyond a reasonable doubt he is entitled to be acquitted. That is known as the presumption of his innocence, which is the basic principle of our criminal law. The People bear the burden of proving the defendant's guilt, and through their lawyer, known as the district attorney, they produce evidence before you. The law further states how much proof is required-- proof beyond a reasonable doubt. There must be evidence satisfactory to you which convinces you of guilt beyond a reasonable doubt, otherwise he is entitled to an acquittal. That is the law.

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You must take the law from the Court as it is given to you by the Court. You are not concerned with the law or with the wisdom or folly of the law or with the opinion of the Court on the law, but you must take the law from the Court and you must keep the various charges in the indictment in mind and then decide the facts for yourself. The facts are proved by witnesses who are brought here before you. You must pass on their credibility which means worthiness of belief. What witnesses have come here who were worthy of belief? You are to consider the intelligence of the witness, the opportunity of the witness for knowing the matter concerning which he or she testified, and the motive that any witness might possibly have for stating what was not true, and generally noting the demeanor of the witness on the cross examination and how his or her testimony compares with the fact which you deem to be established in the case, and in that way determining what witnesses you will believe if you think they ought to be believed. Then if the testimony of such witnesses produces in your mind a firm conviction to a moral certainty that the defendant is guilty the burden placed on the People is met, and that is what is meant by proof beyond a reasonable doubt. If after weighing all the evidence on both sides, carefully, calmly and without any bias, without any passion or prejudice, you find

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yourself unable to say that you are convinced to a moral certainty by the evidence that the defendant is guilty then you must acquit him. Your minds are then in a state of reasonable doubt. Reasonable doubt, is, therefore, the state of a juror's mind, an honest juror's mind, where after a careful and calm deliberate investigation and weighing of all the evidence in the case he is unable to say he is satisfied, that he is thoroughly convinced, that he is convinced to a moral certainty, as the law says, that the defendant is guilty. Mere proof of suspicious circumstances, however strong, is not proof beyond a reasonable doubt.

The Court has said that in considering questions of this kind it behooves us to make every effort to be fair. There are some charges which, in their nature, are such that they inflame men's minds. Now there must be no passion in the administration of the law; there must be no prejudice; there must be nothing but a cool, calm, deliberate judgment. The law you must take from the Court as the Court gives it to you. The statutes are very plain. On the facts your jurisdiction is supreme and conclusive.

Rape in the second degree is defined in section 2110 of the penal law as follows: "A person who perpetrates an act of sexual intercourse with a female not his wife, under the age of 18 years, under circumstances

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not amounting to rape in the first degree is guilty of rape in the second degree."

There is no question of force there. It is the intercourse that the law *prohibits* The legislature in its wisdom, and very properly so in my opinion, has passed this law for the protection of the female sex. The welfare of the nation, the perpetuity of the race depends upon the purity of our women and the law throws protection around them. This law takes from the female under 18 the power to give herself to a man. It is a crime under our law for a man, even at the request of a female under 18 years of age, to have intercourse with her. The law says to her "You must not" and to the man "It is rape in the second degree if you do". Now what are the elements there? The mere intercourse, unless the female be the wife of the defendant, the merperpe-
tration of an act of sexual intercourse with a female not his wife under the age of 18 years, and the law goes further and states what will be considered sexual intercourse. Section 2111 says "Any sexual penetration however slight is sufficient to commit the crime". Physical ability is presumed in a man above the age of 14 years. If a boy under 14 is charged the law says "No conviction for rape can be had against one who is under the age of 14 years at the time of the act alleged, unless his physical ability to accomplish penetration is

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proved as an independent fact beyond a reasonable doubt".

It is for you to say what facts have been established here under this count. Do you believe that Mary Pollack is a female? Do you believe that she is under 18 years of age? Has that been established? Are you satisfied, beyond a reasonable doubt, that she is not the wife of this defendant? Has that been established? If all these facts have been established are you satisfied, from the evidence beyond a reasonable doubt that this defendant perpetrated an act of sexual intercourse with her. You saw Mary Pollack on the stand. You heard the answers that she made to questions of the Court intending to show what degree of intelligence she had. You know whether she answered those questions intelligently or not. You saw her manner of testifying. You must decide whether she is worthy of belief. Did she in testifying here tell the truth or was it because she had some grudge against this man, some motive to lie? What motive could a girl have to come here and proclaim her shame unless she was telling the truth? It is for you to say. Consider the motives of the witnesses. You may take the character of the witnesses into account and the relations that existed between the different parties. Now, this man is not on trial for showing these pictures to these girls if you believe that he did show them to them. I allowed the pictures

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proved as an independent fact beyond a reasonable doubt".

It is for you to say what facts have been established here under this count. Do you believe that Mary Pollack is a female? Do you believe that she is under 18 years of age? Has that been established? Are you satisfied, beyond a reasonable doubt, that she is not the wife of this defendant? Has that been established? If all these facts have been established are you satisfied, from the evidence beyond a reasonable doubt that this defendant perpetrated an act of sexual intercourse with her. You saw Mary Pollack on the stand. You heard the answers that she made to questions of the Court intending to show what degree of intelligence she had. You know whether she answered those questions intelligently or not. You saw her manner of testifying. You must decide whether she is worthy of belief. Did she in testifying here tell the truth or was it because she had some grudge against this man, some motive to lie? What motive could a girl have to come here and proclaim her shame unless she was telling the truth? It is for you to say. Consider the motives of the witnesses. You may take the character of the witnesses into account and the relations that existed between the different parties. Now, this man is not on trial for showing these pictures to these girls if you believe that he did show them to them. I allowed the pictures

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to be introduced in evidence because these girls said he did show them to them, did show them to Mary Pollack and the two others. In the trial of a case of this kind any acts done between the complainant and the defendant prior to the date fixed in the indictment are a proper subject for your consideration as showing the relations between the parties. She said he told her about the things represented by these pictures. He is not on trial for any act committed on any of the other girls but if he behaved towards the other girls as they have testified, in the presence of this girl, you,-- it was on that theory that I allowed that in-- that may be considered by you as showing the relationship existing between the complainant and the defendant. The defendant is only here on trial on the charge of having intercourse with Mary Pollack, not with any one else. These other acts are only allowed to enable you to decide whether her testimony is true or false. It is not to convict him of rape but merely to show you the relations existing between this girl who makes the complaint and the defendant. It also is a rule of law that a witness's credibility must be determined by the jury. In determining the defendant's credibility you may consider any criminal or disgraceful act in his career. It is testified that he committed sodomy with one of the Rottenberg girls. He denied that, and that

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he showed them these pictures. He admits the possession of the pictures and explains it and it is for you to pass on that testimony. Any criminal or disgraceful act in his career may be admitted on the question of his credibility. The fact that he had these pictures is no proof that he had intercourse with the girl. That must be established and there is a rule of law relating to that, "No conviction can be had for rape or defilement upon the testimony of the female defiled unsupported by other evidence." What does that mean? If you believed Mary Pollack's story, and she was the only witness here, this defendant would have to go free. You have heard his testimony. If there is any corroboration in his testimony why you may consider it. You have heard the testimony of the other girls who say they saw him in the act of committing this act of intercourse. Do you believe that or not? You have heard the testimony of the physician that this girl's private parts had recently been penetrated by some blunt instrument; that the hymen had a fresh rupture; that there had been a slight penetration; that the organs were small and while the mouth of the vagina was inflamed that the hymen had been ruptured as if with a blunt instrument within a short period. You have heard all the testimony.

It is necessary, therefore, for the People to prove

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beyond a reasonable doubt the following propositions: that Mary Pollack is a female; that she is under 18 years of age. You have heard the testimony of the mother as to her age and you have seen her and you have seen the girl on the stand. You may form your own judgment about her age. You have seen her and her testimony about the class she was in in the school and her studies. That she is not the wife of the defendant. The defendant says she is not his wife and she said he was not her husband. If all these things are shown to you then does the evidence prove beyond a reasonable doubt that he had an act of sexual intercourse with her. There is no necessity of proving force, but simply an act of intercourse with a female under the age of 18 years, not his wife. That is rape in the second degree. If you are satisfied beyond a reasonable doubt on all those points it is your duty to say so, by a verdict of guilty of rape in the second degree. If you have a reasonable doubt on any of the elements it is your duty to declare the defendant not guilty.

The crime of abduction is defined in section 702 of the penal law as follows:

"A person who takes, receives, employs, harbors or uses or causes or procures to be taken, received, employed, harbored or used a female under the age of 18 years for the purpose of prostitution, not being her husband,

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for the purpose of sexual intercourse, or without the consent of her father, mother or other person having legal custody of her person for the purpose of marriage, is guilty of abduction."

Part of that law which concerns us is that the indictment charged that on the 25th of December the defendant did feloniously take, receive, harbor, employ and use Mary Pollack for the purpose of sexual intercourse." The statute says that any one who takes, received, employs, harbors and uses a female under the age of 18 years for the purpose of prostitution, or for the purpose of sexual intercourse, without being her husband, is guilty of abduction."

Now if he had a room in 104th street and he allowed Mary Pollack to come to that room and remain there for the purpose of having acts of sexual intercourse with her the crime is complete. The question arises as to how you may prove the intent of any person or the purpose of any person. That is the operation of a man's mind. You can prove that Mary Pollack is a female by a doctor or by her appearance on the stand. You may prove that the defendant is of the male sex. Now if he had any dealings with her the intent which animated him in dealing with her is a thing which cannot be seen, but it may be shown by his acts. It is not necessary to prove that the man took the girl into his room and said "Come

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in here so that I may have sexual intercourse with you" or "Come to me and I shall receive this girl for the purpose of having sexual intercourse with her". The rule is that his acts may be studied by you and from them you may infer his intent. If the man is sound in mind, that is mentally sound and is not under the influence of some drug or intoxicant so that his judgment is interfered with or his reason obscured why it is a safe rule to say that he intended the natural consequences of his act. It is for you to say what a man would take a girl into his room for under the circumstances disclosed in this case. If you are satisfied from the evidence about all those points then you may find the defendant guilty of abduction. You cannot find him guilty of both crimes--either one or the other. There is a rule of law which says "No conviction can be had for abduction, or compulsory marriage upon the testimony of the female abducted or compelled, unsupported by other evidence." That is the same rule which applies to the charge of rape. If this girl's testimony was alone in the case the defendant would have to be discharged whether you believed her testimony or not. If you don't believe Mary Pollack's testimony you must acquit the defendant. If you do believe her testimony you must say whether the other testimony is sufficient to convince you of the guilt beyond a reasonable doubt. This ques-

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tion of corroboration is a matter of law which has been approved of by the Court and it is a question for the Court to decide. The fact that I am submitting the case to you does not mean that I am presuming to pass upon the weight to be given to that evidence. I simply tell you that certain testimony has been produced here intending to corroborate her story. Whether it does or not is for you to decide. What weight you will give to that evidence is for you to decide. The Court does not pass upon any facts. The amount of corroboration is discussed in the case of the People against Page, 162 N. Y. page 274 where the Court said: "The rule in such cases is that all the corroborating evidence, whether consisting of acts or admissions must at least be of such character and quality as tends to prove the guilt of the accused by connecting him with the crime. The corroboration must extend to every material fact essential to constitute the crime."

Now that is it must be shown that all the elements, as I have told you before exist. It is not incumbent upon the People to have enough evidence to convict the defendant of the crime without taking into consideration the girl's story. It is not required that the corroborative testimony alone should be sufficient. The burden placed on the People by the statute is met when the statement of the female placed along with the other ev-

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idence in the case is sufficient to satisfy you of the guilt beyond a reasonable doubt. That corroboration must extend to every material element in the case, the age of the girl, the sex of the girl, the fact that she is not his wife, and the act of sexual intercourse in the charge of rape in the second degree and the age and the sex of the girl, her relations with him, whether married or not, not his wife, and the purpose for which he took her, if he did take her or receive her into his room in the abduction charge.

I have tried, gentlemen, to make this matter as clear to you as I could so far as the law is concerned. You must not think that the Court has expressed any opinion one way or the other. The Court has no opinion and besides that it is your duty to ignore any opinion expressed by counsel on either side unless they are deductions drawn from the evidence and are deductions which coincide with your own views on the evidence. You know what has been testified to. If you have any doubt on that point why you can have the testimony read. If there is any dispute as to what the testimony was each juror should be guided by his own recollection of it unless you should decide to have it read. Your duty is to be calm and careful in the consideration of the case and to reach an honest verdict. It does not concern you what the penalty may be. That is not your con-

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cern. It does not concern you what will happen to society if this defendant should be acquitted. The only thing that concerns you is to do your duty and be honest, weigh the testimony calmly, coolly, keeping the law in mind as given to you by the Court and keeping in mind the allegations of the indictment. If you are satisfied of the guilt of the defendant beyond a reasonable doubt of rape in the second degree say so. If you have reasonable a doubt on any element in that crime you must give the defendant the benefit of that doubt. If you are not satisfied beyond a reasonable doubt of his guilt of rape in the second degree take up the charge of abduction, taking for the purpose of sexual intercourse. If you are convinced of his guilt of that crime beyond a reasonable doubt say so by a verdict of guilty-- if not say so by a verdict of not guilty. Any requests to charge?

MR. MILLER: No, sir.

MR. STRYER: I think not, your Honor.

(The jury retire at 1.15.)

(The jury return to court at 3.35 and the following took place:)

THE COURT: Gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN: No, sir.

THE COURT: Do you think there is any possibility

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of an agreement if you have further time for discussion?

THE FOREMAN: I think there is, sir.

THE COURT: Do you wish to go to lunch now?

THE FOREMAN: Some jurymen are not very well and feel the need of it now.

THE COURT: Any objection to having the jury go out to lunch?

MR. MILLER: No, your Honor.

THE COURT: Of course, gentlemen of the jury, you understand that when you go out you must not discuss the case with anybody or among yourselves. All discussion must cease and you must not come to any decision or conclusion on the facts until you retire and discuss the evidence.

(The jury return to court at 5.40 p. m. and state that they find the defendant guilty of rape in the second degree.)

THE COURT: I will remand the defendant for one week.

MR. MILLER: I reserve all my motions until the day of sentence.

(Defendant remanded.)

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