

**START**

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**CASE**

**CASE #2717**

- I N D E X -

	Direct	Cross	Redirect	Recross
John P. O'Brien	2	6	8	
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CASE #2717

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

3238

-----X  
T H E P E O P L E

-against-

FRANK R. GAFFNEY.  
-----X

:  
: B e f o r e :  
:

: HON. OTTO A. ROSALSKY, J.,  
:

: and a Jury.  
:

New York, December 10th, etc., 1919.

Indicted for robbery in the first degree.

Indictment filed December 21st, 1917.

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

ASSISTANT DISTRICT ATTORNEY THEODORE H. WAUGH:

FOR THE PEOPLE.

FOR THE DEFENSE: MESSRS. ROBERT M. MOORE and

J. D. C. MURRAY, FOR THE DEFENSE.

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TRANSCRIPT OF STENOGRAPHER'S MINUTES.  
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Frank S. Beard,

Official Stenographer.

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New York, December 10th, 1919.

(A jury was empaneled and sworn.)

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2:30 o'clock.)

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AFTER RECESS:

JOHN P. O'BRIEN, of 271 West 158th Street,  
a witness called on behalf of the People, being duly sworn,  
testified as follows:

MR. MURRAY: May I have the witnesses on both sides  
retire, if your Honor please?

THE COURT: Yes, witnesses on both sides.

DIRECT EXAMINATION BY MR. WAUGH:

Q Who are you employed by now? A The Westinghouse Electric  
Manufacturing Company.

Q What is your title? A Repair shop foreman's assistant.

Q What was your title on the 10th of November, 1917? A Pay-  
master.

Q How long have you been employed by that company? A About  
four years.

Q And how long were you paymaster? A For two years.

Q Do you remember Saturday, the 10th of November, 1917? A I d

Q Did you have charge of the payroll of that company, that da  
A I did.

Q Was it part of your duty to take money over to pay off men

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who were employed by your company at work in the Interborough Power House, at 74th Street and the East River? A It was.

Q Did you make up that money? A I helped to make it up.

Q Tell this Court and jury what you did with respect to that money. A Well, I was helped by another party, Mr. Fulton, in the office.

Q What did you do? A I put the bills in the envelopes and he put the change in.

Q In envelopes for the men? A Yes, sir; correct.

Q How much did you put in the envelopes in all, about? A Why, that day, about \$2500.

Q Did you put in any the next day? A No, sir.

Q How much was there, to your knowledge, in those pay envelopes? A The day I put the money in?

Q The day you took it over to the East Side? A \$1100.

Q Where did you start from? A \$36th Street and Tenth Avenue, the office of the Westinghouse Electric & Manufacturing Company.

Q And you had \$1100 with you? A Yes, sir.

Q Belonging to the Westinghouse Electric & Manufacturing Company? A Yes, sir.

MR. WAUGH: Will you concede that is a corporation?

MR. MOORE: Yes.

BY MR. WAUGH:

Q What did you have the money in? A A black imitation leather bag.

Q A bag that you had been accustomed to carry money in?

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A Yes, sir.

Q What time was it when you left the place? A About ten o'clock.

Q Now, tell the jury what happened? A I left the building of the Westinghouse Electric & Manufacturing Company, at 36th Street and Tenth Avenue, about ten o'clock in the morning. I wished to get a car to take me across town, 34th Street, and went walking down Tenth Avenue, and I managed to get it at 35th Street and Tenth Avenue. The car took me across 34th Street, across town at Lexington Avenue, at which point I transferred to a Lexington Avenue car, going north. Upon reaching 74th Street, east, I alighted from the car and proceeded to walk east on East 74th Street, on the south side of the street. When reaching a point midway between First Avenue and Avenue A, I was about to cross the street -- just as I was about to cross the street -- I was attacked from the rear by some person who threw their arm around my neck, and stuck their knee, I think, in my back, and held me in a position which I couldn't move, while another person stood in front of me, and proceeded to pound my stomach and ribs violently. While I was in that position someone else grabbed the bag from my hand and got away with it. I was then held for a few moments after the bag disappeared, and the person in front of me said, "That's enough and they let me drop. Of course, I was exhausted and dazed, and for the time being, I fell to the sidewalk. Upon getting up, I spoke to a few that came around and asked me what was the matter,

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or could they do something for me and I tried to get the number of  
the car that I was told they got away on.

THE COURT: No, strike that out.

BY MR. WAUGH:

Q Was the bag gone? A Yes, sir.

Q Did you feel it going from your hand? A Yes, sir.

Q And this \$1100 in money was in the bag? A Yes, sir.

Q Did you see any automobile there? A No, sir.

Q Did you get any idea of the men that robbed you? Did you  
see them? A I saw one, the person that stood in front of me.

Q Did you ever see him again? A No, sir.

Q Did you ever recover the money? A No, sir.

Q What happened to you after you were picked up? A I went  
down to the Interborough Rapid Transit Company's office, at East  
74th Street, and phoned to my employers what had happened to me.

Q Were you given medical treatment? A No, sir.

Q This was about midway in the block between First Avenue  
and Avenue A, in East 74th Street? A Yes, sir.

Q What sort of a block is that? A Well, just what do you  
mean by that?

Q What kind of houses are there? A Tenement houses and  
stores.

Q Stores underneath? A Yes, sir.

Q Were there many people there that day, if you remember?

A Yes, there were quite a few.

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CROSS EXAMINATION BY MR. MURRAY:

Q The first that you noticed, I take it, was that somebody from the rear threw their arm around your neck? A Yes, sir.

Q And by that process they checked you or stopped you, so that you couldn't make any outcry? A Yes.

Q And you made no outcry, did you? A No, sir.

Q And somebody in front pounded you violently in the stomach? A Yes, sir.

Q And then they took the bag from you and left? A Yes, sir.

Q Did you hear anybody else make any outcry? A No, sir; I didn't.

Q As matter of fact, there was no outcry from anybody, was there? A To my knowledge, there was not. I can't say that there was not, because I didn't hear it, being very much excited.

Q There was a large number of people on the street at that time, were there not? A Yes.

Q Men, women and children? A Yes, sir.

Q And, after you were attacked in the manner you speak of, and your bag was taken from you, people gathered around? A Yes, sir.

Q And they asked you what was the matter? A No, sir; they didn't ask me what was the matter.

Q Didn't you say, just now, on your direct, that they asked you what was the matter? A I may have said that.

Q Well, did you mean it? A I didn't mean that particular thing, no.

Q Well now, that is of some importance here. Didn't the

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people, when you fell to the sidewalk, after these robbers left you, came to you and talk to you about it, and say, "What's the matter?" A No, sir; they didn't say that.

Q But you remember using that expression, just a few moments ago, don't you, on your direct examination? A Yes, sir.

Q Well, how did you happen to use that expression, if nobody said it? A Well, I don't know just why I said that. There was no particular reason.

Q This was over very quickly, was it not? A Yes, it was.

Q And it was over so quickly that some of the people asked you what the trouble was, didn't they? A I don't remember that they did say that.

Q But you can't tell the jury why you used that expression?

A Well, no, sir; only a flow of language.

Q Well, there was a flow of language generally there, was there not? A No, sir.

Q Well, you fell to the sidewalk, exhausted, did you not?

A Yes, sir.

Q And some people picked you up? A Yes, sir.

Q And they said something to you? A Yes, sir.

Q And did they say to you, "What's the matter"? A No, sir; they didn't say that.

Q Didn't they say anything to that effect? A No, sir.

Q And then when you said that on your direct examination, that was a mistake? A Yes, sir. I admit that was a mistake.

Q You think that there were three men that attacked you,

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one way and another? A Yes, I think there were three.

Q And it was over so quickly, that you don't even know where they went? A No, sir; I don't know where they went.

Q Of course, you didn't lose consciousness at any time?

A No, sir; I was only dazed.

Q But it was over in less time than it takes you to tell it, was it not? A Yes, certainly.

Q And, as you now recall, you are quite certain that nobody made any outcry at that time? A I didn't hear any.

REDIRECT EXAMINATION BY MR. WAUGH:

Q This place where you were robbed, that day, was in the City and County of New York? A Yes, sir.

MR. WAUGH: That's all.

J O S E P H J E Z E K, of 1894 Avenue A, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WAUGH:

Q You are a butcher by trade? A Yes, sir.

Q And you are a Bohemian man? A Yes, sir.

Q On the 10th of November, 1917, you were in the butcher business? A Yes, sir.

Q Whereabouts? A 421 East 74th Street.

Q That is between what avenues? A Between Avenue A and First Avenue.

Q On the north side of the street? A Yes, sir.

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Q How far in the block? A That's the middle of the block.

Q Do you remember that day being a Saturday? A Yes, sir.

Q Saturday morning? A Yes, sir.

Q Did you see an automobile in that block that day? A Yes.

Q At what time? A Around ten o'clock.

Q Describe what you saw that automobile do. A I saw the automobile coming from First Avenue down to Avenue A, with four men.

BY THE COURT:

Q It came from First Avenue? A Yes, sir; down to Avenue A.

Q And you say it came from First Avenue and went towards Avenue A? A Yes, sir.

BY MR. TAUGH:

Q That is the first you saw of it? A Yes. And there was four men on it.

Q Did you see who was driving it? A Yes, sir.

Q Who was driving it? A That young fellow that sits over there (indicating the defendant).

Q The defendant Gaffney? A Yes, sir.

Q Go on. What did he do? A And they stopped on the corner of Avenue A, and three fellows got off, and the chauffeur turned the car, and went up to First Avenue again, and then I saw him come down again.

BY THE COURT:

Q When the three men left the car, what did the defendant do with it? A He turned the car and went up to Avenue A again.

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Q Did he come back through 74th Street? A Yes, sir.

BY MR. WAUGH:

Q Then what happened? A Then, when I see the car come down, I went in the store, and there was a customer there, and I talked to him.

Q After you saw the men get out of the car, you went back into your store? A Yes, and in that time I marked the number of the automobile on a piece of paper.

Q Which number? A The number on the back.

Q And you wrote that number down on a piece of paper? A Yes.

Q Did you take the paper into the store with you? A No.

Q Well, go ahead and tell us what you did. A And then the man that was inside of the store went out --

Q That is, the customer that you had in the store went out?

A Yes.

Q And what did you hear after that, if anything? A He is hollering to me, "Take the number, take the number."

MR. MOORE: I object to that. This is after the robbery, is it not?

MR. WAUGH: No, at the time of it, I think.

MR. MOORE: Then he is mixed up. He says he went into the store and took the number, and somebody told him to take the number, and I understand that he took the number before he went into the store.

BY MR. WAUGH:

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Q Is that right? A I took the number before I go in the store.

Q And then you went into the store and waited on a customer?

A Yes, sir.

Q And how long did you stay in the store? A I don't remember exactly now. It took me only a little while, but I can't remember just how long, because it is over two years now.

Q Some little time you were in there? A Yes, sir.

Q Now, just answer my questions, and don't go too fast. Now, what is the next thing you remember hearing? A When the man hollered, I take the number.

Q You say somebody outside of your store said, "Take the number"? A Yes.

Q And then what happened? A Then I take the pencil, and I want to write the number, and he just give me the number, and I say, "I've got that number on a piece of paper".

THE COURT: Strike that out, what the other person said to this man.

BY MR. WAUGH:

Q Did you go out of the store at that time, when somebody told you to take the number? A Yes, sir.

Q What did you see or hear at the time? A I see the bunch of the people on the other side of the street.

Q You saw some other people crowded together on the other side of the street? A Yes, sir.

Q Did you see the automobile anywhere? A Yes.

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Q Where was it? A Why, it was across the street, about three houses down from my place.

Q Was it moving or standing still?

MR. MOORE: I object to that as leading and suggestive.

MR. WAUGH: I will not lead him.

THE COURT: Objection sustained.

BY THE COURT:

Q Under what circumstances did you see the automobile after the customer left your place? A Well, that was the time that I go from my shop, and I see the crowd on the sidewalk, and the car started to go down towards Avenue A.

Q The car did what? A Started to go down towards Avenue A.

Q And then what happened? Where did the car go? A Uptown.

Q Did you see the car turn at the corner? A Yes, I saw it because I stay outside, and I see it was the same number that I took before.

Q Which way did the car turn, north or south? A North.

Q Describe how it went away, how it turned and went away.

A Well, it was about half a block from me, and I can't say exactly how they go around the corner.

BY THE COURT:

Q Well, what he wants to know is whether it went around the corner fast or slow. A Fast. It goes down to the corner, and then I can't see how it goes around the corner, because it was half a block away.

BY MR. WAUGH:

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BY MR. WAUGH:

Q Have you got a business there still at the place you mentioned? A Yes.

Q What business have you now? A I am a saloonkeeper.

Q Where is your place now? A 1394 Avenue A, on the corner of 74th Street.

Q Which corner? A The northeast corner.

Q Well, what do you mean by saying down Avenue A? Which way do you call down Avenue A? A If I come from First Avenue -- what do you mean?

Q You told me just now that the car went down Avenue A. Do you mean -- A No, it went down to Avenue A, and then it went downtown. They went down to Avenue A and then they turned.

BY THE COURT:

Q Do you know the difference between up and down? A Well, they always call from First Avenue to Avenue A down, because it is down towards the river.

Q Tell me how fast that car went around the corner. A I don't know that. I see the car go fast when he starts.

Q Well, what happened after that? A Well, the next thing was--

Q What did you do? A Well, I attend to my business, after that.

Q Did you go over to where the car was? A No, because there was nobody else in the store, and I can't leave the store.

Q How many men were in the car when it went away, do you know? A Well, there were three men and a chauffeur.

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THE COURT: Let him describe the car.

BY MR. WAUGH:

Q Describe that automobile. What did it look like? A Well, it was a small car, like a Ford car.

Q Did it have the roof up? A Yes, sir.

Q Was it what they call a touring car? A A little touring car, but I don't know the name of the car. I didn't mind that.

BY THE COURT:

Q Was the cover up or down? A The cover was up.

Q What kind of a day was it? A Well, it was a nice day.

BY MR. WAUGH:

Q And it was around ten o'clock in the morning? A Yes, sir.

Q Did you see this young man who testified before you there?

A No, I didn't see him before.

Q Did you see him after that, after that day? A No, sir; not that day, because the people took him down to the power house in 74th Street.

Q Now, I want you to go back when you first saw the car in that block. How many times did it pass your house? A Three times.

Q Did you see the people in the car talking to each other at all? A No. I saw them people when they come down first, then I saw them, the two men that sat in the back, they talked to the chauffeur and the man that sat by the chauffeur. They were all in one bunch.

Q That is, you saw some of the passengers talk to Gaffney?

A Yes, sir.

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Q And three times it went by your place? A Yes. One time with three men in, and the next time he come up to First Avenue, and it was only the chauffeur in.

Q And then you went into your shop to sell some meat?  
A Yes, sir.

Q Before you went into the shop what did you do about the number? A I see that, you know, and I mark the number on a piece of paper when I went in the shop.

Q Did you keep that paper? A I keep it until the policemen come in, the first policeman come in, and he asked me for the number and I give it to him.

Q Afterwards you gave that number to a policeman? A Yes, sir.  
CROSS EXAMINATION BY MR. MURRAY:

Q Now, you were running a butcher shop on East 74th Street, weren't you? A Yes.

Q And how long had you been engaged in that butcher business?  
A Well, it was nine and a half years.

Q In the same block? A Yes, in the same block.

Q And Saturday morning, November 10th, 1917, was a pretty busy morning for your shop? A No, sir; not that time. My busy time was between eight and nine o'clock, because people are all working at ten o'clock. The business wasn't no extra, that day, and I didn't have much to do.

Q Well, what kind of a day was it, warm or cold? A It was a nice day, not warm or cold.

Q Do you wear a cap? A No, sir.

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Q You were in your bare head? A Yes, sir.

Q And you were outside your butcher shop on the street?

A Yes, sir.

Q What were you doing on the street? A Just looking around.

Q Who was taking care of your butcher shop while you were in the street? A Well, if I stand in front of the shop I don't need anybody to attend to my shop, if nobody is inside.

Q And you stood in front of your shop? A Yes, sir.

Q And you had no hat on? A No, sir; I never wear my hat.

Q And you had no coat on? A No, sir.

Q And it was on the 10th of November? A Yes, sir.

Q And how long had you been standing in the street before you saw this car? A I don't know exactly because it's over two years ago. I don't know if it is five or ten minutes. Sometimes I stand there for half an hour, if I don't have anything to do inside.

Q Well, you remember everything in great detail that happened that morning. A Not exactly on the minute. That's hard to say.

Q Well, don't you know how long you stood on the street before you saw the automobile? A I can't tell you how long I stood there.

Q You can't? A No, sir.

Q How many customers did you have before half past nine or ten o'clock that morning? A I don't count the customers.

Q Do you remember about how many you had? A No, sir.

Q Did you have one or five? A Maybe I had 35 or 39. I don't know exactly, but because that is hard to remember.

Q You had between 35 and 39 customers that morning before

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ten o'clock? A I can't recollect that exactly.

Q How many persons were in the street at the time, in East 74th Street on that morning? Or how many other wagons or automobiles or vehicles? A (No answer.)

MR. WAUGH: I think he does not understand the word "vehicles". Do you?

THE WITNESS: I understand, yes. But I don't watch every wagon.

BY MR. MURRAY:

Q But how many automobiles did you see on that street at that moment, right there? A I don't know.

BY THE TENTH JUROR:

Q Were there any other automobiles on the street at that time? A I don't know whether there were some or not. I didn't look.

BY MR. MURRAY:

Q Were there any wagons on the street at that time? A I don't know.

BY THE TENTH JUROR:

Q How did you come to notice that automobile? A Because I see there was four men, and the two that sat in the back talked to the chauffeur and the man in the front, and that was the reason I watched that car.

BY MR. MURRAY:

Q The reason you watched the car was because you saw two men in the rear seat speak to the chauffeur, and a man seated in the

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front seat with the chauffeur? A Yes, sir.

Q Was there anything suspicious about that? A Well --

Q Was there, in your opinion? A It looked funny to me, and I wanted to know where they go, and where they get off the car.

Q You wanted to know what? A Where they go.

Q Where they were going? A Yes.

Q Did you go out and follow the car? A Sure.

Q Where did you follow it to? A Well, the car stopped on Avenue A and 74th Street, and three men got off the car, and the chauffeur passed my store, and went up towards First Avenue.

Q Did you walk down to where the men got out? A No.

Q Well, what did the men do that got out of the car? A I don't know. I only watched the car when the car came up again, only with the chauffeur in it.

Q There was no one in the car but the chauffeur when you watched the second time? A Yes, sir.

Q And there was nothing suspicious in your mind, was there, about seeing a chauffeur drive an empty car, was there? A I don't know, but I always watched the cars when they pass.

Q You do? A You always watch passing cars on your street? A Yes, sir.

Q Well, how comes it then you can't tell us whether you saw any car but this particular car there on that day, if you watch all the passing cars? A Well, I don't know if there is cars passing before that time or not.

Q But you say you make a practice of watching passing

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automobiles. A Yes.

Q Now, tell us whether or not one or more automobiles passed at that moment, on that day. A Well, I don't know if others are passing at that time or not. Sometimes five or six cars pass down, and sometimes not for an hour, any car. I had nothing to do, and I watched the cars when I wasn't busy.

Q But though you were watching passing cars you don't know whether any other car than this automobile passed on that street, that morning? A I know there were some others passed, but I don't know how many.

Q You don't know? Now, you say that the reason particularly that you looked at it was because two men in the back leaned over and talked to the two men in front? A Yes.

Q What kind of an automobile was it? A A small car.

Q How many seats? A One seat in the back and one in the front, a four seat car.

Q What kind of seats in the back? A Oh, I don't know. I didn't watch what kind of seats there was, because two men was in the seats.

Q Well, were there long seats, or seats like chairs? A No, long seats; no chairs.

Q So that in the rear -- A I don't see no chairs there.

THE COURT: Mr. Murray, do you really think it is necessary to go into all this detail?

MR. MURRAY: Perhaps not.

MR. MOORE: No, sir; and I was about to suggest two

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or three questions on another line. May I be permitted to do that?

THE COURT: Yes.

BY MR. MOORE:

Q The top was up on this car, was it? A Yes, sir.

Q Do you know whether the back part of the car was enclosed; that is, that there was a curtain at the back, so that the person sitting in the car couldn't see what was happening behind him?

A (No answer.)

Q That is, the back -- A The back was closed, but the side was open.

Q So that the person sitting in the car couldn't see what happened in the rear of it, could he? A (No answer.)

Q A person sitting in the car couldn't see what happened in the rear? A Well, I don't know that. I had nothing to do with that.

Q But my question is, when the top was up, did it cut off the view of anything, of anyone sitting in the car? They couldn't see what happened in the rear of it, could they? A I don't know if he can see it or not.

Q But the top was up? A Yes, sir.

Q Now, do you know whether the back was one of those -- whether the back of the top was up or down? A Well, the top was up. I don't know if they can see or not some thing in the back.

Q Can you recall whether or not the back curtain was up or down? A (No answer?)

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BY MR. WAUGH:

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Q Do you remember about the back curtain? A Well, I know the back curtain was down, but I don't know if they can see anything or not.

BY MR. MOORE:

Q Now, you say that three men got out of the car, didn't you?  
A Yes.

Q And very soon after the three men got out of the car, you saw the men start again, didn't you? A In the same time.

Q Well, they got out, and after they were out for a few minutes, or a short time, then the car started again? A When the three men got off the car, the car turned around right away, in the same time, and goes uptowards First Avenue.

Q Now, did you see anything between the time the three men got out of the car, and the chauffeur drove around, and came back to the starting point? A No, sir.

Q You didn't see the three men hold up this man or choke him, or kick him? A No, sir.

Q You were within forty or fifty feet from the place, were you not? A Yes, about that.

Q You saw a whole lot of people on the street? A Well, that was after, when the man hollered to me to get the number.

Q There were a lot of people on the street at that particular moment when the car stopped, and the three men got out of it?

A That happened down on Avenue A.

Q (Question repeated). A Well, I didn't notice; I sup-

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pose so.

Q Well, you didn't see anybody hold up this paymaster, did you? A I don't say that. I didn't see when they hold up.

Q You didn't hear anybody make any outcry at the time he was held up, did you? A It must be in the same time --

Q No, I am talking of the time he was held up.

BY THE COURT:

Q Did you hear any outcry? A Well, I heard something. The man that went out of my shop said, "Take the number."

Q Well, did you hear anything else? A Well, I heard some hollering, but I don't know what it is.

BY MR. MOORE:

Q And you heard somebody say, "Take the number," when you heard that, the car was going away?

MR. WAUGH: I object to that, if your Honor please? I don't think that you are intentionally trying to confuse him, but he was in the store when it happened.

BY MR. MOORE:

Q Wasn't the car moving away, when you heard somebody holler "Take the number, take the number"? A I was in the store when --

Q And when you heard somebody say, "Take the number", the car was then moving, with all the men in it, wasn't it, moving away? A Moving away?

Q Yes. A That's the time when I go out, and I see the car go down to Avenue A.

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Q Yes, and that's the last time you saw the car? A Yes, sir.

Q And that was after the robbery was completed, when you heard, you say, somebody say, "Take the number"? A Yes, sir.

Q Now, before you heard anybody say that, did you heard anyone make any outcry whatever? A Well, I hear something, but I don't know what they are hollering on the other side, because sometimes a bunch of boys are hollering, you know.

Q I don't care about a bunch of boys. Is that the first that you heard? A What?

Q Somebody you heard -- you say this -- you saw this car moving away and you heard somebody say, "Take the number." Now, did you hear anybody make any outcry before that? A No.

Q And yet you were within forty or fifty feet of the place where the man was held up? A That was across the street, about three houses away.

Q And there were a whole lot of people/nearer when you say the man was held up, was there not, that you? A Yes, sir.

Q So that you first saw the car and then saw the men get off the car, and saw the car move away, and, whatever happened, it happened without your seeing it, didn't it? A I don't see that, what was happened.. I only see the car in the street, and I took the number, and after I saw the car going down Avenue A.

BY THE FOREMAN:

Q Did you take the number of the car the first time it passed your place? A No, sir; it was the second or third time. I don't remember exactly now.

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BY MR. MOORE:

Q I suppose a great many cars pass your place in the course of a day? A Yes, sometimes, and sometimes not many.

Q And sometimes there are four or five in ten minutes?

A Oh, no; not in that time.

Q Well, you see four or five in the block at the same time, sometimes, don't you not? A No, not so many.

Q In other words, a lot of cars pass through every day, don't they? A Well, sometimes they are passing and sometimes not.

Q No, no. But what we want to know is if it is not a place where cars are passing with great frequency. You said to Mr. Murray that sometimes four or five pass in as many minutes.

A I didn't notice that. I didn't notice how many cars passed in the day.

REDIRECT EXAMINATION BY MR. TAUCH:

Q That is a block built up with tenement houses? A Yes, sir.

Q With stores underneath? A Yes, sir.

Q And with Bohemian people living upstairs? A Well, it's all kinds of people.

Q Nobody there owns an automobile that you know of? A No, sir.

Q Did you see a touring car there that morning? A Yes, sir; that one.

Q How many times did this car patrol up and down before your place? A Three times.

Q And you took the number the last or next to the last time?

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Q Why did you take that number? What was your reason for taking it?

(Objected to. Sustained.)

Q Now, don't answer these questions until there is an opportunity to rule upon them. Did you ever take the numbers of other cars under those circumstances?

(Objected to. Sustained.)

Q When the car went down by your place, was it moving fast or slow? A Yes, slow.

Q Slow enough for you to see that Gaffney drove in? A Yes.

MR. MOORE: There will be no dispute as to that.

BY MR. TAUCH:

Q You were in your shop when the holdup occurred? A Yes, I was in the shop.

H A R R Y P E A R L, of 416 East 74th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TAUCH:

Q That place where you live, that is in the block between First Avenue and Avenue A, is it not? A Yes, sir.

Q Are you a Bohemian fellow? A A Jew, a Hebrew.

Q Do you remember the 10th day of November, 1917, a Saturday morning? A Yes, sir.

Q Speak up, so that we can all hear you. Do you remember it? A Yes, sir.

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Q Did you see this young man, O'Brien, there that day  
(indicating the complaining witness)? A Yes, sir.

Q In that block where you live? A Yes, sir.

Q What were you doing just before you saw him? A I just  
came down from the house, and I stood at the stoop.

Q Were you working anywhere then? A I wasn't working that  
day.

Q That was Saturday, was it not? A Yes, sir.

Q And when did you first see O'Brien? Where was he?

A I seen him walking down with a handbag in his hand.

Q What happened to him? Now, speak up loud, so that the last  
gentlemen in the jury box can hear you. A He was walking by, and  
I turned my face on the other side, and then I looked back and I  
seen two fellows aside of him, punching him. I thought it is a  
moving picture, as they generally do in that block. They call that  
the "swamp" block, and so I didn't pay any attention. But there  
was a woman there started hollering, and so I jumped over to the  
fellow and picked him up, and I seen he couldn't get his breath,  
and I thought there was no moving picture about that. I thought  
it is a real picture.

THE COURT: Strike out the observation of the witness.  
BY MR. WAUGH:

Q Well, what happened then? A Well, then I let go of the  
officer, and an officer come along through the crowd, and I walked  
ahead and minded my own business.

Q All right. Now, did you see the man have a black bag

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in his hand? A Yes, some kind of a bag.

Q O'Brien had a bag in his hand? A Yes, sir.

Q Was there any automobile there, do you remember? A There was about three or four standing in a line there.

BY THE COURT:

Q You saw three or four automobiles there? A Yes, sir.

BY MR. WAUGH:

Q What kind of automobiles? A Commercial trucks.

BY THE COURT:

Q Well, we are speaking now of touring cars. A No, sir; I didn't see any touring cars, then, I don't think.

Q Now, you say that you saw two men engaged in striking the complaining witness, O'Brien? A Yes, sir.

Q Did you at that time see any touring car on that block?

A No, I didn't pay any attention. I didn't look for one.

Q Did you see what became of the two men? A Yes, after I did.

Q Now, what did you see? A I noticed that there was a butcher across the street, and he started to look. So I looked myself, and I seen an automobile going towards Avenue A.

Q And did you see any of them get into that automobile?

A No, I couldn't, I haven't.

Q Well, weren't you interested in what you thought was a moving picture, at that time? A Well, I was; but I seen that the man got so bad that he couldn't get his wind, that I didn't pay any attention to anything else.

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Q Did you see the men who assaulted O'Brien run away? A No.

Q Or walk away? A No, sir.

Q Did you see what became of them? A No, sir.

Q Did you see O'Brien with a bag in his hand? A When I picked him up I didn't see no bag.

Q Well, what part of this affair did you see? Tell the gentlemen what occurred, in detail, minutely. What did you notice?

A I noticed when that bookkeeper or paymaster bent down, you know, when he got punched in the belly (illustrating), and so I jumped over to him, to help him, and I helped to pick him up, and took him aside to the stoop. Right in front of a stoop, he got hurt.

Q But before you took hold of him, what became of the two men? A Why, I haven't paid any attention to them.

Q Well, do you know what became of them? A No, sir; only when I seen the automobile flying away, I know they got into it.

THE COURT: Strike that out.

Q Did you see these men leave the scene? A No.

Q You don't know what became of them? A No.

Q Whether they were swallowed up by the ground or flew up to the skies? A No.

BY MR. WAUGH:

Q Did you see where they came from? A No, sir.

BY THE COURT:

Q How many people were near O'Brien at the time you saw him being struck? A Two.

Q And when did you go near O'Brien, before the men left him

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or afterwards? A After.

Q How soon thereafter? A About a minute or so.

Q Well, how long did this whole affair take? A Oh, about ten minutes.

Q Do you mean that they were striking O'Brien for ten minutes?

A No, they just struck him for about -- I didn't see when they started at him, but I only seen him when they whacked him, and O'Brien laid down to the sidewalk.

BY MR. VAUGH:

Q And you went over to pick him up? A Yes, sir.

Q And you didn't see what became of the men that struck him?

A No, sir.

Q And you were bending over him? A Yes.

Q And is that the reason why you didn't see what became of the men?

(Objected to. Sustained.)

CROSS EXAMINATION BY MR. MOORE:

Q Now, as matter of fact, this was all over so quickly that you don't know how it happened, hardly? A No.

Q Do you mean yes or no? It was over so quickly that you didn't notice how it happened? A No, sir.

Q These men grabbed him, and, before you knew what happened, they had taken the bag and gone? A Yes, I didn't pay any attention to that.

Q I say, it was over so quickly that you didn't realize what had happened until you saw the man down on the ground, and then it

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occurred to you that something was wrong? A Yes, sir.

Q And you didn't hear anybody make any noise or outcry until the men left? A No, sir.

Q The Judge asked you how many men were near him. There were the two men that you speak of, but there were a whole lot of other people on the street there? A No, sir. Maybe there were some people walking by, but I hadn't seen any.

Q Yes, passing through the street. That is a busy place, and there were people going back and forth in the street? A Yes, naturally.

Q And you didn't hear anybody make an outcry until the two men had gone? A No, sir.

Q And they went away so quickly that you didn't even know where they were? A Yes, sir.

REDIRECT EXAMINATION BY MR. WAUGH:

Q Now, don't answer this question until there is an opportunity to object. Did you ever see moving picture operators take pictures in that street before? A Yes, sir.

Q You have? A Yes, sir.

Q How many times? A Once.

MR. WAUGH: That is all.

MR. MOORE: That is all.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Thursday morning, December 11th, 1919, at 10:30 o'clock.)

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