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COURT OF GENERAL SESSIONS OF THE PEACE,

CITY AND COUNTY OF NEW YORK, PART II.

3255

THE PEOPLE

-against-

EINER TIFVERMAN
impleaded with
HARRY TIFVERMAN.

Before:

HON. OTTO A. RSALSKY, J.,
and a Jury.

New York, December 11th, etc., 1919.

Indicted for attempted rape in the first degree.

Indictment filed September 24th, 1919.

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

ASSISTANT DISTRICT ATTORNEY JAMES E. DONOHUE:

FOR THE PEOPLE.

W. G. KIER, ESQ., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,

Official Stenographer.

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New York, December 11th, 1919.

(A jury was empaneled and sworn.)

THE PEOPLES' TESTIMONY:

FLORENCE O'NEILL, of 3491 Third Avenue, the Bronx, called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Florence, how old are you? A Fourteen.

Q Now, talk up so this gentleman in the corner here can hear every word you say, please. A Fourteen.

MR. KIER: I object to that as hearsay, your Honor.

THE COURT: Objection overruled. The Court of Appeals has held that a person can testify to his or her age. A witness is competent to testify as to his or her own age. But, of course, the jury may look at the girl and tell from her appearance what her age is.

MR. DONOHUE: And her mother is here, too.

THE COURT: Objection overruled.

MR. KIER: Exception.

BY MR. DONOHUE:

Q You say you are fourteen? A Yes, sir.

Q When were you fourteen? A October 19th.

BY THE COURT:

Q What year? A 1905.

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BY MR. DONOHUE:

Q What year were you born? A 1905.

Q And in what year were you fourteen? This year? A Yes, sir.

Q This October you were fourteen? A Yes, sir.

Q Did you go to school last September? A Yes, sir.

Q What school did you go to? A P. S. No. 3.

Q Now, where did you live during the month of September?

A 3491 Third Avenue, Bronx.

Q Near what street is that? A 168th Street.

Q That is in the Bronx; is it not? A Yes, sir.

Q And who do you live with there? A My mother and father.

Q Now, do you remember the night of September 13th, 1919?

A Yes, sir.

Q Do you know what time you got home, that day from school?

A I didn't go to school that day.

Q Were you in your house about six o'clock that night?

A Yes, sir.

Q What time did you leave your house? A About a quarter to eight.

Q And where did you go to? A I went to my aunt's house.

Q Where does your aunt live? A 126th Street.

Q What number? A 300, I think.

Q On the east side or the west side? A East side.

Q Near what avenue is that? A Second Avenue.

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Q Do you remember how you went down there, Florence? A Yes, sir, I went down there in the car, a Willis Avenue car.

Q And how long did you stay at your aunt's house? A I waited until she came home from market.

Q No. About what time did you leave there? A At ten minutes to eleven.

Q At ten minutes to eleven, you left your aunt's house? A Yes, sir.

Q Now, just describe the streets that you walked through?
A I walked through 125th Street.

Q What Avenue did you walk on? A Second Avenue.

Q You walked on Second Avenue to 125th Street? A Yes, sir; and I walked down to get the car to go home, down to 125th Street.
at

Q And/what avenue were you going to get the car? A First Avenue.

Q You walked down Second Avenue to 125th Street? A Yes, sir.

Q And how far did you walk on 125th Street? A I walked in the middle of the block.

Q Did you meet somebody there? A Yes, sir.

Q Whom did you meet? A John McGowan.

Q And did you have a talk with John McGowan? A He asked me where I was going, and I said I was going home.

Q And what did he do to you at that time? A He took my money.

MR. KIER: I object to that.

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THE COURT: Objection sustained. Strike it out.

BY MR. DONOHUE:

Q Well, you had a talk with John McGowan? A Yes, sir.

Q What car were you going to get? A The Willis Avenue car.

Q And where did you get that car? A First Avenue.

Q And what street? A 125th Street.

Q Now, did you walk, or did you stand a while, while you were taking to McGowan? A Well, I walked.

Q And you walked with him? A Yes, sir.

Q Did you meet anybody while you were walking with him?

A Yes, sir, this here man Einer came along (indicating the defendant).

Q Did you meet anybody else? A No, sir.

Q Well, who walked then with you? A Einer. He walked down to 125th Street, to the corner.

Q And where was McGowan? A He was with me.

Q Did you meet anybody else beside Einer and McGowan? A No, sir.

Q Did you meet ever this Tiferman boy? A No, sir.

Q Where did you go then? A To 125th Street and First Avenue.

Q And where was Tiferman at the time, this defendant?

BY THE COURT:

Q Did you know John McGowan? A Yes, sir.

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Q For how long had you known him before this day? A About four months. He used to live in 125th Street.

BY MR. DONOHUE:

Q Did you know him to ~~talk~~ talk to? A Well, when I went past he just said, "Hello, to me."

Q And you were with Tiferman, this defendant, and McGowan, walking along? A Yes, sir.

BY THE COURT:

Q Did you know Einer Tiferman before that night? A No, sir. John McGowan said, "This is a short way to 129th Street to get the elevated." I wanted to get home quicker, and, as we were going to 129th Street --

BY MR. DONOHUE:

Q Wait a minute. Not so fast. Had you met anybody else up to this time? A No, sir.

Q Did you meet Harry Tiferman? A No, sir.

Q Now, who was it said, "This is a short cut?" A John McGowan.

Q And did Tiferman say anything at the time? A He was on the corner, and we just going in the lots.

Q Now was it dark or light there? A It was dark.

Q And did you go in the lots? A Yes, sir.

Q Who went in with you? A John McGowan and me.

Q And what did you go into the lots for? A Because it was a short cut. It is like a street. You can go through there

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to get the elevated.

Q Had you ever been through there before? A Yes, sir; I used to walk that way to get the elevated, in the day time.

Q And how far did you get into the lots before anything happened? A It was just at the end.

Q And how far had you gotten into the lots? How many feet would you say? A About twelve feet.

Q Now, had you met anybody else up to the time you actually got into the lots? A No, sir.

Q Then what happened to you at that time? Now, tell us everything in detail. A Then, as we were going in the lots, this man here, Einer, (indicating the defendant) ran and tried to get me down on the ground.

THE COURT: Strike that out.

BY THE COURT:

Q What did he do? A He grabbed me by the throat (illustrating), and he had his hand over my mouth, and was pulling me down on the ground.

BY MR. DONOHUE:

Q Go ahead. A And I was holding on to this John McGowan's coat, and he said, "Leave me alone, and I will help you," and I let him go, and he never helped me at all.

Q What was this defendant, doing all that time?

BY THE COURT:

Q He got hold of you by the throat, you say? A Yes, sir,

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this man, Einer (indicating the defendant).

BY MR. DONOHUE:

Q And did he drag you down to the ground? A Yes, sir.
And John McGowan left hold of me, and stood over there, to the side.

Q And did you grab McGowan? A Yes, sir.

BY THE COURT:

Q Who was choking you? A Einer.

BY MR. DONOHUE:

Q And what else was he doing? A And he pulled up my skirts
and --

MR. KIERN: I object to that. She was proceeding to
tell something, and I object to any leading.

THE COURT: He is not leading her. Objection overruled.

MR. KIERN: Exception.

BY MR. DONOHUE:

Q What else happened after that? A He pulled up my skirt,
and my skirt was half off me, and he pulled up my dress.

Q And where was he at the time, Einer? A He was on top of
me.

Q And where were you? A On the ground.

Q Were you lying flat on the ground? A Yes, I was holding
on to the skirts, and hollering for help.

Q Now, was there anybody else there up to this time? A No,
not up to that time. And then Harry came along, and he grabbed
a hold of my arm, and held me down by the left shoulder.

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Q Harry who? A Harry Tiferman.

Q And what happened after he came along? A Why, Einer said to John McGowan, "Give me that thing, and I'll hit her on the head with it."

Q Did you know what thing he meant? A No, sir.

Q Now, what happened after that, Florence? You were on the ground, and Einer was on top of you? A Then he pulled up my skirt, and I had my face swollen, the next morning. This man punched me, (indicating the defendant).

Q Einer punched you? A Yes, sir.

Q When did he punch you? A When he was on top of me.

Q And what happened then? A And then the detectives come.

Q Well, what was he doing all the time he was on top of you? A He said, "Are you going to give it to me," when he was punching me and lifting up my skirt.

Q What did he do with your skirt? A He pulled it up.

Q Over your head? A No, sir, he pulled it up straight.

Q And where were his hands? A He was holding my mouth with one hand, and with the other hand he was holding my skirt up.

Q And he was on top of you? A Yes, sir.

Q And did he do anything else? A No, sir.

Q Did you see whether or not his trousers were open? A No, sir.

Q It was very dark there, was it not? A Yes.

Q And you called out for help; did you?

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MR. KIER: I object to that last question, "very dark there", as leading.

THE COURT: Yes, strike it out.

BY MR. DONOHUE:

Q Was it light or dark there? A Dark. And then the detectives came.

Q And who were there when the detectives came? A Einer, John McGowan and Harry.

Q Did you see the detectives before they came into the lot?
A Yes, sir.

Q Where was Einer when he first saw the detectives? A On top of me.

Q And did he see --

BY THE COURT:

Q Where was the defendant? You say this defendant was on top of you when the detectives came into the lots? A Yes, sir.

BY MR. DONOHUE:

Q And what did he do then? A He got up and went to run.

Q When he got up did you see what he did? A No, sir.

Q Did you see him do anything with his trousers? A No, sir/
And then the detectives caught him and asked me to tell my story,
and I told my story.

THE COURT: Strike out what she said to the detectives.

BY MR. DONOHUE:

Q And where did you go after that, Florence? A I went to

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the station house.

Q And how long were you at the station house? A I don't know how long.

Q Well, did you go home that night? A Yes, sir.

Q Did you tell any of your family about this occurrence?

MR. KIER: I object to anything further than that, anything beyond that fact.

THE COURT: Well, you have testimony as to the arrival of the police, and it is competent in a rape in a first degree case to show disclosure or complaint was made. You have testimony that the police officers came there. You may ask her if she made a complaint to the police, when they arrived.

MR. DONOHUE: I asked her if she told her story.

THE COURT: But that is different. You cannot get the details.

BY MR. DONOHUE:

Q When the police officers arrived on the scene, did you make a complaint against these men?

THE COURT: Answer that yes or no.

A Yes.

BY MR. DONOHUE:

Q Were you allowed to go home, that night, or were you detained in some place? A I was allowed to go home, that night.

Q To your own house? A Yes, sir.

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MR. DONOHUE: She is your witness, Mr. Kier.

CROSS EXAMINATION BY MR. KIER:

Q Now, Florence, you knew John McGowan some time; did you not? A Yes, sir.

Q A couple of years? A No, sir.

Q A year? A No, sir.

BY THE COURT:

Q How long? A About five months.

BY MR. KIER:

Q During the five months you frequently saw John McGowan?

A Yes, sir.

Q Did you go to parties and dances with him? A No, sir.

Q Well, where did you usually see him? On the corners?

A Yes.

Q In the evenings? A Yes.

Q And you would stand there sometimes for an hour, chatting with him in the evenings? A No, sir.

Q Well, you would stand talking to him? A No. I just went past him and said "Hello" and that's all.

Q Well, did n't you sometimes chat with him for a few minutes?

A Yes.

Q And about how old is John? Is he twenty or thirty or what?

A About twenty-one.

Q Do you know where he lives? A No, sir.

Q Well, as I understand it, this place where this occurred,

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and where you met these people, that night, is in the neighborhood of where your aunt resides? A Yes, sir.

Q And she has lived there sometime? A Yes, sir.

Q Did you ever live there with her? A No, sir.

Q Did you ever stop there with her, days and nights at a time? A Yes.

Q And doesn't John McGowan live in that neighborhood? A I don't know where he lives.

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

Q Now, where did you say you first met John McGowan, that night? A 125th Street; in the middle of the block.

Q Between First and Second Avenue? A First and Second Avenue, yes.

Q And about what time was that? A About eleven o'clock.

Q Nearly eleven o'clock at night? A Yes, sir.

Q And now where had you been just prior to this? A What do you say?

Q When did you leave -- you left your aunt's house? A Yes, my aunt's house.

Q Where is that? A 126th Street.

Q And what avenue? A Second Avenue.

Q And Second Avenue? A Yes.

Q Now, did you walk down Second Avenue to 125th Street?

A Yes, sir.

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Q And then you met McGowan in the middle of the block? A Yes, sir.

Q Did he speak to you or did you speak to him? A He spoke to me.

Q How long did you remain with him there talking? A About ten minutes.

Q Were you at the moving picture show? A No, sir.

Q Well, now, what time did you go to your annt's house, that day? A I guess it was ^{about} a/quarter of eight. I left my house, and I got there about half past eight.

Q You got to your aunt's house about half past eight? A Yes, sir.

Q You didn't stay with your aunt until eleven; did you?
A Yes, sir, I did.

Q Are there any girls in her family? A Yes, sir.

Q What is your aunt's name? A Wright.

Q And the number is where? A 300 East 126th Street.

Q Has your annt any children, girls and boys? A Yes, sir.

Q Now, during the time -- from the time you arrived at your aunt's house, about a quarter of eight -- A No, half past eight.

Q About half past eight? A Yes, sir; I left my house at a quarter of eight.

Q Until you went down to 125th Street to go home, what were you doing till that time? A I was just sitting waiting for her.

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She went to the store to get some things.

Q Well, did it take her until eleven o'clock to get home? A Yes, I guess it did, because she had to go on different errands.

Q Was there any particular reason why you should go to her house, that night? A Yes, sir.

Q You were to carry a message, or something like that? A Yes, sir.

Q How long before that had you been there? A I don't know.

Q Were you there the day before or a week before? A No, sir.

Q Was it a long time before that that you were at your aunt's house? A Yes.

Q A month? A About three weeks.

Q Well, now, did you ever live there with your aunt? A No, sir.

Q Did you ever stop there a week or two at a time? A No, sir, I just went to see her.

Q Now, when did you first meet McGowan, the very first time? A In 125th Street.

Q And he said Hello to you? A Yes; and I said hello to him.

Q And you frequently saw him afterwards at different times? A Yes, sir.

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Q Did he ever have any relations with you? A No, sir.

Q Did he ever visit you at your house in the Bronx?

A No, sir.

Q Or at your aunt's house? A No, sir.

Q Did he ever go to the movies or dances with you?

A No, sir.

Q Then, whenever you had a talk with him, it was around the corners of the streets? A Yes, sir.

Q I asked you if you had any relations with him. Do you know what I mean? A Yes, sir.

BY THE COURT:

Q Sexual relations. A No, sir.

BY MR. KIER:

Q Were you friendly with him or affectionate towards him?

A No, sir. I just said hello to him.

Q And he is the only boy you knew in that neighborhood?

A Well, just a few more, his friends.

Q And you met and talked with them? A No, sir, I didn't.

Q Do you remember some of the boy's names around there?

A No, sir.

Q Now, what day of the week was this, Florence? A September 13th.

Q But I mean what day of the week? A Saturday night.

Q Saturday night? A Yes, sir.

Q Had you gone to school that week? A No, sir.

Q How long was it since you had gone to school? A I

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hadn't been to school since it opened.

Q Since the fall term opened? A Yes, sir.

Q Had you been to school the former part of the year, in the spring? A Yes, sir.

Q In June? A I got a suspension from the Board of Education.

Q For what purpose? A For nervousness.

Q Were you sickly? A Yes, sir.

Q Were you under a doctor's care? A Yes, sir, in the Harlem Hospital.

Q Did you have headaches or something like that? A No, sir.

Q Well, how were you sickly? In what way were you weak?
A I had heart trouble--- pneumonia in the heart.

Q Now, then, you left school in June, or in May, or what time was it? A In June.

Q Had you gone all the year up to that time? A What do you say?

Q Had you gone to school up to that time? A Yes, sir.

Q How many years? A - don't know how many years.

Q Were you on parole or anything like that? A No, sir.

Q Were you on parole from a reform school or anything like that? A No, sir.

Q Nothing like that? A No, sir.

Q And you have never been on parole for anything? A No, sir.

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Q Were any complaints made by your parents for keeping late hours? A No, sir.

Q Nothing of that kind? A No, sir.

Q Your parents never made any complaint? A No, sir. No, sir. The only time I ever was out late was with my father and mother.

Q And where do they live? A In the Bronx.

Q They live together up there? A Yes, sir.

Q Now? A Sure.

Q And always? A Yes.

Q And you always lived with them? A Yes, sir.

Q You understand my question, that at no time did your parents or anybody else complain about your keeping late hours? A No, sir.

Q Nothing of that kind, at any place or any time?

A No, sir.

Q Now, then, you know some boys up in your own neighborhood, do you not? A Yes. I only stay down until a quarter after nine, and I see them at the door.

Q Did you go around with those boys at all? A No, sir.

Q Did you go to any dances with them? A No, sir. I don't know how to dance.

Q Or to the movies? A No, sir.

Q Now, you say that you met John McGowan on 125th Street, between First and Second Avenue, on the south side. A Yes, sir.

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Q And what did you do with him? A Nothing. He took my eighty cents out of my hand, and, of course I wanted my eighty cents, because I didn't have any fare to go home, and so I wanted to get it from him, and he said you go with me as far as the elevator.

Q And then where did you go with him, before you met the defendant? A He was just going to take me home, when this man came up (indicating the defendant).

Q Now, you met him between First and Second Avenue on the lower side of 125th Street? A I don't know which side you mean.

Q Was it the uptown or downtown side? You met on 125th Street between First and Second Avenue, that is, John McGowan? A Yes, sir.

Q Now, you know that the uptown side is towards the Bronx. Was it that side of the street? A Yes, sir, it was the uptown side of the street.

Q And which way did you go with him? Towards First or Second Avenue? A Towards First Avenue.

Q Now, you knew perfectly well how to get home, take a Willis Avenue Car at First Avenue and 125th Street? A Yes, but I wanted to take the elevator, that night, and get home quicker. The elevator will take me home much quicker.

Q But you would have to walk up to Third Avenue, wouldn't you? A No, sir.

Q Second Avenue? A Yes.

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Q And to 129th Street? A Yes.

Q Well, you could get on the El at 125th Street, couldn't you? A Yes, but you have to change.

Q Well, 129th Street was some distance from where you were when you met John McGowan? A Yes, but I didn't want to change.

Q But you could have got the Willis Avenue car right where you were? A Yes, but the elevator would take me home quicker, because the car stops at every corner.

Q Yes, but it stops at your door? A No, sir, at the corner.

Q Where do you live? A 158th Street.

Q Well, you had started to go on the Willis Avenue car; isn't that true? A Yes.

Q And then, when you were there, why did you change your mind? A I wanted to go home quicker.

Q Well, didn't you think of that before hand? A Yes. But, when he took my eighty cents, it would make me later to get home, because the car stops at every corner.

Q It is the same price on the El as it is on the surface car, five cents? A Yes.

Q And his taking your eighty cents had nothing to do with going on the elevator or the surface car? A Well, I didn't have any money.

Q And you couldn't have gone on either one? A No, sir.

Q Well, did you or he turn around to go towards Second

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Avenue at this time? Your or John? A Me.

Q Then where did you go after you met him? A Towards First Avenue.

Q You did go to where the Willis Avenue car turned there?

A Yes, sir.

Q And you didn't get on the car there, did you? A No, sir.

Q Then you left that corner where the car turns to go right to your home? A Yes, sir, and started to go to 129th Street, to get the 129th Street elevator.

Q Well, you didn't go up First Avenue, because it stops there? Doesn't it stop there at the bridge, First Avenue?

A Yes.

THE COURT: What are you trying to prove by this testimony?

MR. KIER: That she voluntarily went up into this neighborhood, and they all went to take a walk up there, and that she was in a position there to get on the car at that point to go right to her home, but she goes away out of her way, to get a 129th Street car.

THE WITNESS: It was only two blocks.

THE COURT: There is a count here of attempted rape in the second degree, and even if she consented, it would not relieve the defendant of criminal responsibility, because the law does not permit her to give consent.

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MR. KIER: Yes, sir, I understand, but I am trying to meet both counts.

Q Now, Florence, where did you meet, for the first time, Tifverman, the defendant, after leaving First Avenue and 125th Street, with McGowan? A 125th Street.

Q Where? A In the middle of the block.

Q But that was when you came back again. A No, sir, when we was going, this Einer came along.

Q And were you introduced to him? A No, sir.

Q You just started to talk to him; is that right?

A No, sir, I didn't know him at all. He come up to me, one afternoon, and he said, "Do you want to go to a dance?" And I said, "No." And walked away from him.

Q Isn't it a fact that you had seen Einer, and had spoken to him several times before that night? A No, sir.

Q You know a fellow by the name of Russell or Rossell?

A No, sir.

Q Isn't it a fact that a fellow of that name, or some name of that kind, a couple weeks before this occurrence, introduced you to Einer? A No, sir; I don't remember.

Q Isn't it a fact that you had seen Einer six or seven times, and had talked to him, prior to that night? A No, sir.

Q Now, then, you, McGowan and Einer went up 125th Street to where? A To First Avenue.

Q To First Avenue? A yes, sir.

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Q Where did you go from there? A Up to get the 129th Street elevator. You go right around the corner to go up to 127th Street to get the 129th Street elevator.

Q You don't mean that you went up First Avenue to 127th Street, do you? A Yes.

Q Are you sure now? A Yes, sir.

Q Don't First Avenue stop there at the Willis Avenue Bridge and 127th Street? A But I wanted to get home quick.

Q And isn't that the end of the avenue? A Yes.

Q Then you can't go up First Avenue above 125th Street, because there is no First Avenue above 125th Street; is there? A No, sir.

Q Well, what Avenue did you go up? A First Avenue.

Q Well, where did you go to then? A First Avenue into 127th Street.

Q First Avenue into 127th Street? A Yes, sir.

Q And then did you go along 127th Street with both these boys? A No, sir. With John McGowan. And on 126th Street he said, "I am going to leave you, and, as we were going through--

Q Now, wait a minute. A 126th Street corner and First Avenue. Einer said that.

Q 126th Street corner and First Avenue? A Yes, sir.

Q And there Einer Tifverman said, "I am going to leave you? A Yes, sir.

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Q And then did he leave you? A Yes, sir. He stood on the corner.

Q And that is the last you saw of him? A No. And, as we was going into 127th Street, he come running along, and he started pulling me down to get me on thr ground.

Q Then, as I understand it, he did leave you and McGowan? A yes.

Q And you and McGowan went towards 127th Street?
A Yes, sir.

Q Now, where do you say he attacked you? A On 127th Street and First Avenue.

Q On which side? The upper or lower side? Towards the Bronx side or the downtown side? Was it right in the street, or on the sidewalk? A Yes, sir.

Q And you say he choked you? A Yes, sir.

Q You tell these folks--- did you tell anyone that he choked you? A I told the detectives.

Q Did they examine your throat? A yes, sir.

Q But nobody discovered any marks? A But I couldn't get my breath for half an hour, and my face was swollen in the morning, and my lips too.

Q Was John McGowan there all the time? A Yes, sir.

Q Did he do anything? A No, sir. He was standing there.

Q Did he say anything? A No, sir.

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Q Your clothes were not torn, were they? A Yes, they were.

Q Well, no clothes were taken off? A Well, he pulled my skirt half off.

Q It is not the skirt that you are wearing? A No, sir.

Q The skirt was not torn? A No, sir.

Q Now, were you on the ground with your back on the ground at any time? You were not that far down; were you?

A yes, I was.

Q Were you sitting down? A No. He got me straight down on my back.

Q Was that on the pavement? A On the ground.

Q Was it a paved ground? A Dirt.

Q And at this time nobody was there but McGowan and Tifverman? A No, sir.

Q Did you have your hat on? A No, sir, it was pulled off.

Q Was it the same hat you have on now? A Yes.

Q Are the clothes that you have on now the same?

A No, sir.

Q Were your dresses longer or shorter? A No, sir, just as long as my skirt is now.

Q And is this skirt longer than the one you had on then? A No, sir, about the same length.

Q There were no bruises on you at all? A No, sir.

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Q And you say that he had his hands--- do you mean that your back was entirely on the ground? A Yes, sir, entirely on the ground.

Q And your shoulders on the ground? A Yes, sir.

Q Well, your head was up, I presume? A Yes.

Q Your head was pointed up? A Yes, sir.

Q And you say he had his hands--- what did he do with his hands at this particular time when you say you were down? A He pulled up my skirt and he had my middy blouse--

Q You had a coat on? A No, sir. And he had his hand over my mouth when I tried to holler.

Q Do you know which hand he had over your mouth? A No, sir.

Q But he had one hand over your mouth? A Yes, sir.

Q And what did he do with the other hand? A He was pulling up my skirt.

Q Did he get it up as far as your knees? A Yes, sir.

Q But he didn't get it any further? A Yes, away up to here (indicating):

Q Now, then, when you were in this position, with his hand over your mouth, as you say--- A Yes, sir.

Q Wait for my question. And he had pulled up your outer dress--- that one was pulled up? A Yes, and the skirt, too. My skirt and my middy blouse were pulled up.

Q And when you were in that position, you say you were then calling for help? A Yes, sir.

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Q. And then the officers came, is that true? A Yes, sir.

Q. Now, when the officers came up there, you were then on the ground; were you? A Yes, sir.

Q. Now, when the officers came, you were flat on the ground? A Yes, sir.

Q. That is, with your back flat on the ground? A Yes, sir.

Q. Were your clothes up when the officers came? A Yes, sir.

Q. How many officers were there? A Two.

Q. And were your clothes up then? A Yes, sir.

Q. You got up yourself, I presume? A Yes, sir.

Q. Nobody assisted you to get up? A No, sir.

Q. No officers assisted you to get up? A No, sir.

Q. Now, how far, after this occurrence did you go to talk ~~thix~~ to the officers? Where were they standing?

A Right by me.

Q. As near as I am to you? A Nearer. About to the end of that table (indicating the District Attorney table).

Q. And then you went over to them; is that right?

A Yes, sir.

Q. And then was this defendant still there? A Yes, he was on top of me when the detectives came.

Q. He was on top of you when the detectives came? A Yes, sir.

Q. So that was the situation, you were lying down and he

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on top of you, you say? A Yes, sir.

Q Flat on top of you? A Yes, sir.

Q And did you see what the officers did? Did they take hold of McGowan, the officers? A No, sir; he ran away.

Q As they came he ran away? A Yes, sir.

Q And what did this young fellow do (indicating the defendant)? A He got up, and he started to run, and the detectives got him.

Q About how far did he run? Are you sure that he didn't walk fast? A No, sir, he ran. One detective was nearly up to him, and then he ran, and the other detective grabbed him.

Q Well, can you tell us about how far he ran before he was caught. Now, show us in this room.

MR. DONAHUE: She said he started to run.

MR. KIER: Now, let her tell it in her own way.

Q Now, how far did he run before the officer caught him? Look at the wall besides you, and the wall across the court room. Which one (indicating the side wall nearest to her).

MR. KIER: About eighteen feet?

MR. DONAHUE: Yes, I suppose so.

BY MR. KIER:

Q And then the officer caught him? A Yes, sir.

Q And you are also sure of that, when the officers came

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up, you were on your back? A Yes, sir.

MR. KIER: That is all.

RE-DIRECT EXAMINATION BY MR. DONAHUE:

Q Florence, of course, you are not married to this defendant? A No, sir.

Q And did you call out pretty loud?

MR. KIER: Wait a moment, please. I object.

THE COURT: Sustained. Let her state what she did.

BY THE COURT:

Q What was the nature of your call? How did you call?

A "Help, help."

Q In a quiet tone? A No, sir, loud. And then he put his hand over my mouth and I couldn't holler any more.

RE-CROSS-EXAMINATION BY MR. KIER:

Q Well, you did call out when the hand was away from your mouth; did you? A Yes, sir, and then he put his hand over my mouth.

Q How did you call out for help? A I screamed out.

LOUISE O'NEILL, of 3491 Third Avenue, Bronx, called as a witness on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mrs. O'Neill, the girl who was on the stand just before you, is she your daughter? A Yes, sir.

Q Do you know when she was born? A On the 19th day

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of October, 1905.

Q Where? A New York City.

Q And what is your husband's name? A John O'Neill.

Q And where did you live at that time? A I think it was 426 East 122nd Street.

Q And do you know where your husband was born? A New York.

Q And you were born where? A New Jersey.

& MR. DONOHUE: Now, if your Honor please, I offer in evidence a certified copy of the records of the Board of Health, showing this girl's age.

THE COURT: Any objection to its admission?

MR. KIER: No, sir.

THE COURT: On consent, it will be admitted.

(Marked People's Exhibit No. 1.)

MR. DONOHUE: May I read it to the jury, sir?

THE COURT: Yes.

(Mr. Donahue reads exhibit to the jury.)

Q Where did you live, Mrs. O'Neill on December 13th of this year? A 3491 Third Avenue.

Q And did your daughter live there with you? A Yes, sir.

Q Have you any other children? A Yes, sir.

Q And you all live together, you and your husband and children? A Yes, sir.

Q Now, do you remember that night? A Yes, sir.

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Q About what time did your daughter leave your house, that night? A Something around a quarter of eight.

Q And when she left, did you notice her clothes?

A In good condition.

Q Were they all in good condition? A Yes.

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

THE COURT: Objection sustained. Strike it out.
BY MR. DONOHUE:

Q Did you notice her clothes?

THE COURT: Let her give a description.

BY MR. DONOHUE:

Q Did you notice whether she had any clothes on when she left the house? A Oh, yes.

Q And was the condition of the clothes good or bad?

A Good.

Q Were they dirty? A No, sir.

MR. KIER: I object to that.

THE COURT: Strike out the answer.

BY MR. DONOHUE:-

Q What did she wear, that night? A She had on a green plaid skirt and a pale blue middy blouse, with a loose collar and belt.

Q Did she have any hat on? A Yes, sir, a tam o'shanter.

Q The same hat that she is wearing today? A Yes, sir.

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Q And when next did you see her? A When she came home, around twelve o'clock that night.

BY THE COURT:

Q Describe her condition then.

BY MR. DONOHUE:

Q Please describe the condition of her clothes at that time, Mrs. O'Neill? A She was very dirty.

Objected to. Sustained.

BY MR. DONOHUE:

Q No, describe her condition. A She had dirt on the back of her dress, and green grass stains on her elbows.

Q Well, describe her condition fully, her clothes, is they were torn or not. A Well, they ripped in different places, around the sleeves.

Q Any place else, Mrs. O'Neill? A Around the neck here (indicating).

Q Go on. A Yes, and she had on a middy blouse, a low middy blouse, a low necked one, about to here (indicating).

Q And what kind of material was it made of? Light or heavy? A Very light goods.

Q And will you give us a description of the collar, how low it was? Just point out on your own neck, Mrs. O'Neill.

A About there (indicating).

Q And was that blouse in the same condition when she came home as when she left? A No, sir.

Q What was the difference about it? A It was ripped

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in the sleeves and ripped in the neck.

Q How much was it ripped in the neck? A I couldn't tell you how much. Down the front.

Q What was the condition of her skirt when she got home?

A There was dry dirt on it.

Q When you say dirt, what do you mean? A Dry dirt from the ground.

Q And did you notice her underclothes? A No, I didn't take notice of her underclothes. She didn't change until she went down to the Society, the next morning.

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

THE COURT: Yes. Motion granted. Strike that out.

BY MR. DONOHUE:

Q Did you notice anything about her underclothes?

MR. KIER: I object. She said she didn't look at them.

THE COURT: She may give a description of the under-clothing when the child returned, if she noticed anything.

BY MR. DONOHUE:

Q Did you look at her underclothing when she returned?

A I did not.

Q You did not? A No, sir.

Q Did she at that time tell you what happened to her?

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

THE COURT: Well, in a case of this kind, this testimony is mere surplusage, because the first opportunity she had to complain was to the police, and therefore, to I think it is unnecessary to attempt/introduce this testimony.

BY MR. DONOHUE:

Q Who was home when your daughter returned? A Her father myself and the two children.

Q And you had a talk with her? Did you or did you not?
A yes.

MR. DONOHUE: She is your witness.

CROSS EXAMINATION BY MR. KIER:

Q Now, did you know John McGowan? A No, sir.

Q Never saw him before? A No, sir.

Q Never heard of him until this time? A No, sir.

Q Did you ever make any complaint about your daughter being incorrigible, or anything of the kind? A No, sir.

Q Was she on parole? A No, sir.

Q At any time? A No, sir.

Q Or place? A No, sir.

RE-DIRECT EXAMINATION BY MR. DONOHUE:

Q Oh, Mrs. O'Neill, one question I neglected to ask you.

Did you notice the condition of her face and body? A Yes, sir.

Her mouth was swollen and there bruises and scratches around

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her mouth.

Q Now, when she left the house, that night, were there any bruises or marks on her face? A No, sir.

Q As far as you can say, it was all right?

Objection sustained.

Q What was the condition of her face when she left your house that evening? A All right.

THE COURT: strike that out. She may state the condition of her face, and the jury must determine whether she was all right or not.

BY MR. DONOHUE:

Q What was the condition of her face? A There was nothing the matter with her face.

THE COURT: strike that out.

BY THE COURT:

Q Can't you state her condition, Madam? Simply state her condition? A Good condition.

Q No, no, if you said when she returned her face was swollen, and there were marks and bruises upon her face, when she returned home? A yes, sir.

Q Is that right? A Yes, sir.

Q Now, when she left your house, what marks, if any, were on her face? A Not any.

Q Was her face swollen? A No, sir.

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RE-CROSS-EXAMINATION BY MR. KIER:

Q At the time when your children go out to take a walk--- withdrawn. You didn't examine her particularly when she left you, that night; did you? A Why, I was sick when my daughter left me, that night, with nervousness.

Q Were you pretty badly sick? A Well, I am nervous at times, and must take to my bed.

Q And then you didn't notice her particularly when she left; did you? A There was nothing the matter with her.

Q Well, I mean, you didn't make any particular examination? A No.

Q You didn't notice anything in particular? You were sick enough to be in bed? A Yes, sir.

S I L V I O A . R E P E T T O , Main office, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q What is your rank in the Police department, sir?

A Acting Detective Sergeant, Second Grade.

Q And to what particular bureau are you attached?

A The Main Office Division, Second Deputy Commissioner's office.

Q And how long have you been so assigned, officer?

A For about six months.

Q And you work in citizen's clothes or in uniform? A In

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citizen's clothes.

Q Now, were you in the neighborhood of 127th Street on the night of September 13th of this year? A Yes, sir.

Q And who was with you at the time? A Detective Miraglio.

Q Did you have a talk with somebody there, officer? A Yes, sir.

Q Was it a woman or a man? A It was a uniformed officer.

Q Did you talk to a woman then? A No--- yes, a young girl.

Q But I mean was your attention attracted to 127th Street, and to Florence O'Neill? A It was attracted first by---

THE COURT: Now, one moment. Stop. Come right to the issue.

BY MR. DONOHUE:

Q Did you see Florence O'Neill, that night? A Yes, sir.

Q Where and when and under what circumstances? A I saw her lying on the ground in 127th Street, between First and Second Avenues, on the north side of the street, up against the park wall of Sulzer's Harlem River Park.

all
Q Now, tell us that you saw at that time, officer, please.

A As I and officer Miraglio were walking west on 127th Street, from First Avenue, and as we got near where Florence O'Neill

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was lying on the ground, I saw the defendant, Einer Tifvelman, jump up and run, and he run in my direction, and I stopped.

Q Where was he when you first saw him? A He was standing in front of Florence O'Neill, who was lying on the ground, and, when we were about nine or ten feet from them, he got up and ran.

BY THE COURT:

Q You say he was standing in front of her? A He was kneeling down.

BY MR. DONOHUE:

Q Now, just in what position did you find the defendant?

A The defendant was apparently kneeling down in front of the girl, who was lying on her back.

MR. KIER: I object to that, if your Honor please, what he was apparently doing.

THE COURT: Yes, strike that out.

BY THE COURT:

Q Describe the condition in which you found the defendant.

Was he standing erect, or was his body bent down? A When I first observed the defendant, he was kneeling down right in front of the girl, who was lying on her back; and, as I got about nine or ten feet nearer them, then he got up and ran, and he ran in my direction, and I stopped him.

BY MR. DONOHUE:

Q Where was Miraglio, the other officer, at that time?

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A He was at my right, and he stopped another defendant, Harry Tifvelman.

Q When this defendant was running, did you see him do anything? A Well, I could only see him holding the girl--

Q I mean when he got up and ran? A Why, he had his hands up in front of his trousers, as if he was buttoning them up.

MR. KIER: I object to that.

THE COURT: Strike out the latter part of the answer, and the jury will disregard it.

BY MR. DONOHUE:

Q Where did he have his hands? A In front of his trousers, as he was running towards me.

Q Where was the girl at the time? A She was just getting up from the ground.

Q Now, describe the condition of her clothes. A Her skirt and petticoat were loose, and were hanging down. She had to grab them with her hands to hold them up (illustrating) and her middy blouse was torn here (indicating), in front, and her lips were swollen, and there was a little blood on it, and her back of her dress was all dirty from the dirt on the ground, and she had grass marks on her sleeves.

Q Did you speak to her at that time? A Yes, sir.

Q What did she say?

MR. KIER: Objected to.

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Q Well, did she make a complaint to you?

MR. KIER: Objected to.

THE COURT: The objection to the former question is sustained, and the testimony stricken out, but the District Attorney has a right to ask the officer if the girl made a complaint to him, yes or no, but the details cannot be given.

MR. DONOHUE: I am not asking for any details.

Q Did this girl make a complaint to you on that night?

A Yes, sir.

THE COURT: In a case of rape in the first degree, an outcry or a disclosure made by the girl at the first opportunity which presented itself to her, is permissible. But the details connected with the disclosure are not permissible. But here the testimony is limited to an answer of yes or no, as to whether the girl made a complaint. Answer that question, officer.

BY MR. DONOHUE:

Q Did she make a complaint officer? A yes, sir.

Q And did you place the defendant under arrest at that time? A yes, sir.

Q And was the defendant walking or running at the time you stopped him? A He was running; just starting to run.

Q What did he say to you? Don't tell us what you said to him. A He said, "I am not doing anything."

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Q And what did you say to him? A And I said, "Well, what have you got that girl on the ground for?"

THE COURT: No, strike that out. Give only what the defendant said.

BY MR. DONOHUE:

Q What did the defendant say? A "I am not doing anything."

Q What else did he say? A He said he was just sitting down with the girl, waiting for a friend of his to come back. And I said, "Who is your friend?" And he said, "McGowan," and I said "Where did he go?" And he said, "He said he was going over to Second Avenue to buy something."

And then I searched him and I took this rock out of his pocket (indicating), and I said, "What are you doing with this rock in your pocket?" And he said, "I don't know how it got there."

And I said, "You don't mean to say that a rock got in your pocket, without your knowing how it got there?" And he said, "Well, I don't know." Can I tell you what the girl said about it?

MR. KIRK: I object.

THE COURT: Objection sustained.

BY MR. DONOHUE:

Q Now, will you describe the condition of the girl at that time? A Her face was all flushed, and her lips were swollen.

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len, and there was a little spot on it, the lower lip.

Q And did you see any hat there? A I saw the hat lying on the ground, and she went and picked it up.

Q When you first saw the girl, was her hat on or off?

A Off. I asked her if she had a hat---

Q No. Where did you see it? A On the ground.

Q What kind of a place is this, officer? Describe the physical condition there, officer. A It is a street that is not used for traffic. They store trucks and wagons in it. It is not paved. It is a very dark street. There are hardly any lights in the block at all.

Q And was it dark or light there? A Very dark.

Q Are there any benches or places to sit down there?

A No, sir.

Q Did you find any other rocks like the rock you have in your hand at that place that night? A Well, I didn't look for any.

Q Who did you say was with you, officer? A Officer Michael Miraglio.

MR. DONOHUE: Your witness, Mr. Kier.

CROSS-EXAMINATION BY MR. KIER:

Q What is your name officer--- though I know it very well, give it to me again--- A Repetto.

Q Mr. Repetto, was the girl half way up or how? A She was lying on her back, and, as the defendant got up, she straightened up.

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Q Is there a wall there? A Yes, there is a wall there, and the ground there is slightly inclined, and there is a small hill there.

Q Were her back and shoulders resting against the wall?

A No, sir.

Q Now, the situation as to him was, you say, that he was kind of on his knees? A When I saw him, he appeared to be right on his knees, and bending over the girl.

Q Not on top of her? A Well, in the act of--

Q Well, you haven't said that before. You didn't say at any time that he was on top of her. A Well, bending over her, and holding her down.

Q And you say he ran towards you? A As he got up, he ran, and ran in my direction.

Q Well, he didn't do any running at all, did he? He started to do it? A Well, he was nine or ten feet away from me when I first saw him, and he had only to make a couple of steps before I had him.

Q Well, you say he started to run. A Well, he was beginning to get into a fast run.

Q But you mean to say, from the situation described in, he was just getting ready to run? A Well, he had made one or two steps.

Q And where was McGowan at this time? A We didn't see McGowan. I saw somebody running, but I didn't see who it was.

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Q And you didn't see anybody there but this man?

A His brother, Harry Tifverman, he was sitting on the ground when my partner arrested him.

Q How far away from the girl and the defendant was he?

A The three of them were together.

Q He was sitting on the ground? A He was sitting alongside of the girl, right close to her. He had hold of her arm.

Q He was close to her when you came up? A Yes, sir.

Q Was the officer who was with you in a position to see all that you saw? A Well, I think he could see more than I did, because he was two feet ahead of me. I was two or three feet to the left of him, and a little further back.

Q Do you know where McGowan lives? A We arrested him.

Q But where does he live? A 224 East 122nd Street. I may be wrong about the address, but, if you will let me refresh my memory, I can give you the right address.

Q Yes, I wish you would, if you can do so, without troubling yourself too much. A 240 East 122nd Street.

MR. KIRK: Yes, thank you. I think that is all.

Q Oh, do I understand that, when you got there, her clothes were down below her knees? A They were disarranged and loose, and she had to hold them with her hand in order for them not to fall to the ground (illustrating). She was standing up when I saw her clothing in that condition.

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Q Then you say that you didn't see McGowan that night, at all? A No, sir, I saw a man running away from this group of three that was on the ground.

Q In what direction did he go? A West, towards Second Avenue.

Q Sometime before you came up? A No, sir, just as we were approaching them.

Q Neither you nor your partner attempted to run after him? A Well, we couldn't. We had these two to look after.

Q He was arrested afterwards? A Yes, sir we got him three days later.

MR. KIEB: That is all.

MR. DONAHUE: That is all.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Friday morning, December 12th, 1919, at 10.30 o'clock.)

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TRIAL RESUMED:

New York, December 12th, 1919.

M I C H A E L A M I R A G L I A, of the Main Office Division Detective Bureau, called as a witness in behalf of the People, being duly sworn, testified as follows:

By MR. DONOHUE:

Q Are you a member of the police department of the City of New York? A I am.

Q Talk up so that we all can hear you. With what rank, officer? A Patrolman.

Q And were you attired in citizens clothes on the 13th day of September, 1919? A Yes, sir.

Q And were you with another officer on that night? A Yes, sir.

Q What was the officer's name? A Reppeti.

Q And where were you? A On September 13th, about 11:30, officer Reppeti and I were standing at the southwest corner of 125th Street and First Avenue.

Q Now, tell us what happened there, officer? A We saw an officer standing at the same corner, talking to a female, and so we had a conversation --

Q Did you have a talk with those people? A Yes, sir. I had a talk with the officer.

Q And after that what did you do officer? A We walked

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northerly to 127th Street and first Avenue underneath the Willis Avenue Bridge. We looked around under the Willis Avenue Bridge, and we saw nothing.

And then we looked west in 127th Street and we saw persons moving about.

Q Where was this, officer? A At 127th Street, near First Avenue, between First and Second Avenue.

Q And was it a dark or light spot at that particular time where you saw these forms? A A dark spot.

Q And was it on a dirt road or a public street? A It isn't a paved street, and it is along the river front.

Q A dirt road; is it? A Yes, sir.

Q Now, tell us what you saw, officer? A And we saw a few people moving about and we walked in that direction.

BY THE COURT:

Q Is that an open area way or is it enclosed? A It is closed. And we walked in that direction. And, when we were about six or seven feet away from these people, I saw the defendant, Einer Tifverman, and another defendant by the name of Harry Tifverman.

And, the defendant, Einer Tifverman was kneeling down, and was right on top of a girl there. We saw a girl on her back there, and saw Harry Tifverman holding her down by the shoulders, (illustrating) and the defendant, Einer Tifverman was kneeling down, bending over (illustrating).

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BY THE COURT:

Q Is that an open area way or is it enclosed? A It is closed. And we walked in that direction. And, when we were about six or seven feet away from these people, I saw the defendant, Einer Tifverman, and another defendant by the name of Harry Tifverman.

And, the defendant, Einer Tifverman was kneeling down, and was right on top of a girl there. We saw a girl on her back there, and saw Harry Tifverman holding her down by the shoulders, (illustrating) and the defendant, Einer Tifverman was kneeling down, bending over (illustrating).

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Q Bending over whom? Do you know? A Over this little girl here.

BY THE COURT:

Q Describe to the jury, illustrate the position in which you found the defendant. Just get down on the floor, will you and illustrate. A I saw Einer Tifverman kneeling down in this position (illustrating).

Q With his knees on the ground? A With his knees on the ground. And I saw Harry Tifverman holding the girl down by the shoulders and she was shouting, "Please leave me alone. Don't. Leave me along." And when we walked in that direction they got up and the girl's dresses were falling down, and her waist was up.

So Reppeti grabbed this Einer Tifverman, and I --

BY MR. DONOHUE:

Q Did you see Einer Tifverman do anything when he got up?

A I saw him button up his trousers.

Q You saw that yourself? A Yes, sir.

Q You are positive of that? A Yes, sir.

Q What did he do then? A Officer Reppeti asked him, "What is this?" And he said, "This is nothing. We were just sitting down here." And officer asked the girl how she came to be there and she said --

(Objected to. Objection sustained.)

Q Did she have a hat on? A No, sir.

Q Did you see the hat after that? A Yes, sir; on the

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ground.

Q How near the hat was it? A Well, right near her.

Q Now, did you notice the condition of her dress at that time, officer? A I did. Her dresses were loosened and falling off her, her petticoat and her outside skirt.

Q And what was the condition of her waist at the time, officer? A Well, it was up (illustrating) and on her back there were stains of grass and dirt.

Q Was the waist torn; did you notice? A I didn't notice whether it was torn or not, but I noticed that it was open here (indicating).

Q Did you notice the condition of her face? A Yes, sir; she had a blow here in her face (indicating). I saw that.

Q Officer, will you tell us just what the condition of her face, as you noticed it in the light, that night, was? A Well, her face was dirty, and she had a sore right here, about her mouth (indicating).

Q What do you mean by that? A Like she was hit a blow.

THE COURT: Now, strike that out. Officer, let the jury infer how the injury was inflicted. Give us a description of what you saw.

THE WITNESS: She had a little blood there, and officer Reppeti asked her --

MR. DONOHUE: No, no; don't tell us that.

Q What was the condition of here face? Was there any

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laceration or wound on it? A Yes, a little out by her mouth.

Q And was she bleeding? A A little bit.

Q Was her face dirty? A It was.

Q And what was the condition of her dress, as far as that went?

THE COURT: He has described that.

MR. DONOHUE: Very well, sir.

Q Now, did you have any talk with, or did you hear the defendant have any talk with the other police officer? A I did.

Q What did he say? A Officer Reppeti asked the defendant -- he said, "What is this?" And he said, "Oh, we are just sitting here." And then he asked the girl, "What are you doing here?"

THE COURT: No. Strike that out.

BY MR. DONOHUE:

Q No, just tell us what the defendant said? A And then he frisked him, he searched him, he found this stone in his pocket (indicating).

Q In your presence he found that? A Yes, sir. And he asked him what he was doing with a stone in his pocket, and he said he didn't know how it got there; and the officer said, "What do you mean? That you don't know how it got there?" And he made no answer.

Q Did you ever have any further talk with the defendant at any time at all after that, either with him personally or between him and Reppeti in your presence? A No, sir.

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Q Now, did the girl make a complaint to you, that night, and officer Reppeti? A Yes, sir.

Q Did you see anybody else there, officer, when you came along? A Well, when we first appeared on the scene I saw the two defendants, Einer and Harry Tifverman, and, three or four feet away I saw the shadow of a man running, but I don't know who that was.

Q You don't know who that was? A No, sir.

CROSS EXAMINATION BY MR. KIER:

Q When this girl appeared in the Magistrates' Court -- was that the next day or two days after the arrest of the defendant? A The next day.

Q The next day? A Yes, sir.

Q Do you remember then she didn't show any marks before the Magistrate on her face; did she? A Yes, she did. She had a little mark on her face.

Q Was it shown to the Magistrate? A Well, nobody asked for it.

Q Although she had appeared and testified? A Yes, sir.

Q And the magistrate didn't examine her face, or ask anything about the marks on her face? A Nobody asked her.

Q And she didn't say anything? A No.

Q Now, you say that Reppeti --

BY THE COURT:

Q Was there an examination in the Magistrates' Court? A There

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was, yes, sir.

BY MR. KIERN:

Q Now, you say that you and Mr. Reppeti turned the corner, and went up to First Avenue and 127th Street? A Yes, sir.

Q Now, this scene that you have described, a girl on her back, and a man kneeling down, how far up on 127th Street were they located, whereabouts? That is in relation to First and Second Avenues? A Well, I should just about 30 feet away from the Willis Avenue Bridge, on the south side of 127th Street, alongside the Harlem River Casino Bank or slope, there.

Q Well, you say when you first glanced up there, you saw some figures moving? A Yes, sir.

Q And you have said it was dark there? A Yes.

Q Now, was it dark or light? A It was dark.

Q Well, how did you see figures moving, if it was dark?

A Well, there is lights every fifty or seventy-five feet, and we could see them from the lights either at Second Avenue or First Avenue.

Q About how many minutes before you reached the scene that you have described, did you first see some persons up at this scene, moving around? A Just as we went further.

Q Well, you say you and officer Reppeti came up to a certain scene, where a girl was on her back and a man on his knees. Now, prior to that, how many minutes before that, did you see these parties come down the street? A Oh, it was a few seconds; just

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as we got there.

Q Now, you have said that as you looked up the street, you saw some people moving around? A Yes, sir.

Q And when you saw that about how far were you and Repetti away? A Well, about twenty or twenty-five feet I should judge.

Q And that was how long before you reached the scene you have described? A Right after that. We walked up, just right after that.

Q And the motions merely you saw were a man sitting down and getting up? A The motions we saw were that we saw the parties moving around; and, when we walked up there, and were about eight or nine feet away, this defendant got up and walked toward us, and Repetti grabbed him and the other fellow got up and walked toward us, Harry Tifverman and I grabbed him.

Q And those motions that you saw did not strike your attention, did they? A Yes, sir; they did.

Q They were just a man and a girl and another man practically getting up and standing and sitting down again, or walking around?

A No, sir; I saw the defendant when he was on his knees get up, and Harry Tifverman was holding the girl by her left shoulder, and the girl was hollering, "Please let me along. Don't do that."

Q Well, but what were the motions when you first saw them, before you came up to them? A When we first saw them we seen motions about. That time we could see the heads moving like.

Q The motions were indistinct? A Yes, sir.

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Q You couldn't describe them exactly? A No, sir.

Q Just mere motions of people? A Yes, sir.

Q And when you first saw them you were eight or nine feet away? A Yes, sir.

Q And you can't even describe what they were -- just motions of two men and a woman? A Yes.

REDIRECT EXAMINATION BY MR. DONOHUE:

Q But the form that you saw leaning over Florence O'Neill, was in direct line with that form?

(Objected to. Overruled. Exception.)

A Yes, sir.

Q And did you keep it in your eye all the time? A Yes, sir.

Q And that form was the form of whom? A The defendant.

Q And you are positive of that? A Yes, sir.

Q You and officer Reppeti placed the two Tifvermans under arrest at that very spot?

MR. KIER: I object to that as leading.

THE COURT: Sustained.

BY MR. DONOHUE:

Q Where did you place them under arrest, officer? A Right there and then, right at that spot.

Q And about how far from the place where you saw forms, the first time? A I should judge about fifteen or twenty feet.

RECROSS EXAMINATION BY MR. KIER:

Q What did you say about nine feet? Is it now fifteen or

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twenty feet? A By nine feet I mean that was the time when we were walking over, and saw the defendant in the position he was in.

Q And what about the fifteen or twenty feet? A That's where we questioned them, took them under a light, and questioned them.

Q Were you eight or nine feet away when you first saw any motions at all? A No, sir; when we first saw motions ^{we} were about twenty feet away; and then we seen the motions; and we walked up toward the scene, and within eight or nine feet, I saw the defendant and the girl and Harry Tifverman in the positions they were; and when they got up and walked toward First Avenue, it was about ten feet, and then we place them under arrest.

Q You can't describe the motions you first saw, twenty feet away? A No, sir.

Q And this is an open spot; is it not? A Yes, sir.

Q And men and women pass through there, do they not? A Yes.

Q And wagons go through it? A No, sir. It is a passage-way for pedestrians. You can get through there. It is very dark and along the waterfront. It is on the bank or slope of Sulzer's Casino.

BY THE COURT:

Q How far is the street railway car from this place, the Willis Avenue car? A That's about two blocks south, on 125th street.

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Q Does this lot lead to 125th Street? A No.

RECROSS EXAMINATION BY MR. KIER:

Q Don't you know, Mr. Miraglia, the place where these men were arrested, and you found the girl, is a public street, where horses and wagons and everything pass? A Well, it is a thoroughfare, but I don't know as to whether wagons pass through or not.

BY THE COURT:

Q Is it a used thoroughfare? A No, sir.
neighborhood?

Q How long have you been in that? A Well, I haven't been in that neighborhood, but I know the conditions very well. I live around that neighborhood myself.

BY MR. KIER:

Q That is, 127th Street and First Avenue? A Yes, near First Avenue.

MR. DONOHUE: That is the People's case, if your Honor please.

MR. KIER: I move, if your Honor please, that the indictment be dismissed, because the People have not produced sufficient evidence to support the indictment.

THE COURT: Motion denied.

MR. KIER: Exception.

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THE DEFENSE:

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J O H N M C G O W A N, of 240 East 122nd Street, called as a witness, on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q McGowan, what is your first name? A John.

Q Where do you live, John? A 240 east 122nd Street.

Q You know Florence O'Neill, do you? A Yes, sir.

Q How long have you known her? A Well, about two months, from living around the neighborhood.

Q Did you go with her a good deal? A No, sir.

Q How often? A I never went with her.

Q Well, you met her this night? A Yes, sir.

Q Just state what happened that night? A All I know, the girl, is to talk to her; that is all.

Q Well, go on and tell us what happened that night? A That night I went to Proctor's, and I came out of Proctor's about a quarter past eleven; and I was walking through 125th Street, between First and Second Avenue, when I met this girl. I started to talk to her, and I was talking to her for about five minutes when Einer Tiferman came along, and he stopped, and he started to talk to me, and so we were talking there a couple of minutes, when I asked the girl could I take her home, and she consented, and I asked Tiferman to go along with me.

We walked through 125th Street to First Avenue, but we were going to take the car at 128th Street, that's where she wanted

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to go. She said she lived in the Bronx.

Then, while we were going to 127th Street, on the Second Avenue corner, we stopped there and we sat down there, and the young woman sat down too. I told Einer I would be right back. I went to get a pack of cigarettes, and, five minutes later, when I came back, he wasn't there.

Q Now, John, you went with Einer and the girl, and you all sat down on the bank? A Yes.

BY THE COURT:

Q You sat down where? A On the stone there, near Second Avenue, in 127th Street.

Q How did you happen to sit down? A Well, there was Sulzer's Casino there, and they had a racket there, and we were talking there a while; and we told the girl we were going away, we were going to leave her.

And we were talking a while, and we sat there.

Q First you said you were going to take her home? A Yes, sir.

Q And she consented that you should take her home? A No, sir; she consented she would be able to go the rest of the way along.

Q Alone? A Yes.

Q And then you suddenly said you would go and get a package of cigarettes? A We sat down there for two minutes and started talking, and I said, "Einer, I'll be back in a minute. I want to get a pack of cigarettes." And, when I returned in about five

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or ten minutes, they were gone.

BY MR. KIER:

Q Did Einer in your presence throw the girl down and attempt to ride her? A No, sir.

Q What were they doing when you left them? A They were talking. There was a big stone there, and we were sitting there, talking.

Q In a friendly way? A Yes.

Q Did the girl say anything about helping her, that Einer was attacking her, and for you to assist her? A No, sir.

Q Do you know a fellow named Gaffney? A Yes, sir.

Q He knew her pretty well, didn't he? A Yes, sir. There was a fellow around that neighborhood that knew her.

Q Was he very friendly with her?

MR. DONOHUE: Objected to. Evidently the purpose is to prove something indirectly.

THE COURT: Yes. I will allow him to answer the specific question.

BY MR. KIER:

Q Do you know that Gaffney and she were very good friends?

MR. DONOHUE: I object to that.

THE COURT: You want to show that she was a girl dissolute character?

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MR. KIER: I don't know, your Honor. I ask the witness to find out.

MR. DONOHUE: I have no objection if Mr. Kier asks the question directly, but I do object to his trying to get in an inference, because I am prepared to meet that issue.

THE COURT: Proceed.

BY MR. KIER:

Q Do you know whether Florence had a friend named Gaffney? A Yes.

Q And were they friends? A Yes. They knew each other. That's all.

Q And have you any knowledge of any relations between them? A Well, I don't know anything about that sort of thing. I couldn't tell you.

Q You have no knowledge of anything of that kind? A No, sir.

BY THE COURT:

Q Did this girl ever make an indecent proposal to you? A No, sir.

Q Or any other person, in your presence? A No, sir, not that I know of.

CROSS-EXAMINATION BY MR. DONAHUE:

Q Where do you live? A 240 East 122nd Street.

Q Do you know this girl's aunt? A No, sir.

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Q How did you get acquainted with this girl? A Well, I got acquainted through other fellows. I lived around that neighborhood at that time, and she lived across the street.

Q And you were introduced to her in the ordinary way; were you not? A Yes, sir.

Q And, so far as you know, she is a girl who used to live in your neighborhood? A Yes, sir.

Q And that is all you know about it; isn't it?
A Yes, sir.

Q Now, as I understand it--- by the way, what do you do for a living? A Tinsmith helper.

Q Were you working on this particular day? A Yes.

Q Where were you working on that day, September 13th?
A In the shop.

Q Where? A 345 East 105th Street.

Q And what is the name of the shop? A The Sheet Metal--- East River Works.

Q How long did you work there? A I am working there about nine months now.

Q And that is in the neighborhood where you live?
A No, sir, I live in East 122nd Street.

Q You say, you were in Proctor's Theatre? A Yes.

Q Where is Proctor's Theatre? A 125th Street, and Third and Lexington Avenue.

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Q And did you wait until the show was over? A Yes; eleven o'clock the show was out.

Q Were you alone? A No, sir, with another fellow.

Q With another fellow? A Yes.

Q Where did you first meet this girl, that night?

A 125th Street, between first and Second Avenue.

Q What were you doing there? A I walked down with this fellow. I generally walk down second Avenue.

Q Then you were not alone when you met the girl?

A Oh, I left the fellow when I met the girl.

Q Where was he then? A I left him on the First Avenue corner.

Q And why did you walk down to Second Avenue? A Just walking down, to see if I could meet any of my friends.

Q Well, you were going down to that pool room, weren't you? A No, sir. I generally go down there when I come from the movies.

Q See the crowds; is that the idea? A Yes.

Q And you had no intention of going home at eleven o'clock?

A Yes, I did, in a couple of minutes, at half past eleven I could go home.

Q Now, you and Einer Tilverman are pretty good friends?

A Yes, sir.

Q And you hang out together? A Yes, sir.

Q And you hang out with him in the pool room? A I met him

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in there, yes.

Q Is it not a fact that you are all one crowd, and that you go into that pool room down there? A I don't hang out in there. I may have went in there.

Q Well, you have been in there many times, haven't you? A Oh, no, not so many times.

Q Well, you met Tefverman there a number of times? A Yes.

Q And his brother, are you friendly with him? A Only to speak to.

Q You are interested in this case, are you not? You are very anxious to see Tefverman acquitted, aren't you?

MR. KIER: Objected to.

THE COURT: Sustained.

MR. DONOHUE: May I confer with your Honor for a moment?

THE COURT: Yes.

(District Attorney confers with the Court.)

THE COURT: Counsel for the defense, are you aware that this young man is indicted for the same crime?

MR. KIER: Yes.

THE COURT: Then you should have warned him as to his rights. Having appeared voluntarily as a witness, anything that he now says can be used against him.

THE COURT: (Addressing the witness) Who is your lawyer?

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THE WITNESS: Franklin. He is in Part III.
I would like to have him here.

THE COURT: Young man, inasmuch as you have imparted to the Court information to the effect that you are under indictment, charged with aiding and abetting Tifverman in the commission of the alleged crime of an attempt to commit the crime of rape in the first degree, I should advise you as to your rights. You have a right to decline to answer any question which may tend to incriminate you or convict you of a crime.

But, if you voluntarily answer any questions, then the questions can be used against you on your own trial. Now, you are the judge to determine whether you will answer any questions, but if you do, they may be used against you on your own trial.

THE WITNESS: There is my counsel now, Mr. Franklin (indicating).

THE COURT: Well, I was unaware that this boy was under indictment when he was called by the defense; and at this time, a question pressed by the defendant for the purpose of showing the interest of the witness in the outcome of the case, and now, for the first time, he explains to me that he is a codefendant in this case, and I have advised him as to his rights, that, under the constitution, he is privileged to refuse to answer any question that may tend to

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incriminate him or convict him of a crime; and that, if he voluntarily answers any questions, it may be used against him on his trial.

MR. FRANKLIN: I told him, this morning, your Honor, that he was under indictment.

MR. KIER: Of course, counsel may call any witness, whether he is under indictment or not.

THE COURT: Yes, but common courtesy should have induced you to confer with his lawyer, and you should have told me that he was under indictment.

MR. KIER: The District Attorney knew it.

THE COURT: But I have no means of communicating with him, unless I call him up here, as I would call you.

Now, after giving you that advice, the question may be asked.

MR. FRANKLIN: Will your Honor allow me to confer with the witness and advise him as to his rights?

THE COURT: I will advise him. You may come around here, and stand besides him. He is now a witness, and a witness is not entitled to counsel, but I will give you the privilege of standing alongside of him.

BY MR. DONOHUE:

Q Are you interested in the outcome of this case, Mr.

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McGowan?

MR. KIER: Objected to.

Overruled. Exception.

THE COURT: you can ask him the specific question.

MR. DONOHUE: Yes, sir, I will, in a minute,
but I want to find out what his open mind is.

THE COURT: You may decline to answer that question,
if you think it will tend to convict you of a crime.

A Well, I don't know how I could be interested.

Q Yes, or no. Are you interested? You know whether
you are or not? A No, I am not interested.

Q You have been indicted, and charged with the same
offense by the Grand Jury of this County; have you not?

A Yes, sir.

Q And are you not interested in what happens to
Mr. Einer Tifverman's case?

MR. KIER: I object to that.

Overruled. Exception.

A Yes, I am interested in that part.

Q And naturally you want to see him acquitted; don't
you?

MR. KIER: Objected to.

THE COURT: I will allow it, in view of the fact
that the witness says he is under indictment for the
same offense. Allowed.

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MR. KIER: Exception.

A Well, I didn't see nothing happen while I was there.

Q But you are naturally interested in the outcome?

A yes.

Q And you are naturally anxious to see the young man acquitted; are you not? A Yes, sir.

Q Now, as you said before, you have known him very well for many years? A Yes, sir.

Q And have been with him practically four or five nights a week? A Well, not so many nights, no.

Q And he comes to your house and you go to his house? A Yes, sir.

Q And you know his family? A Yes, sir.

Q And you know his brother Harry, don't you? A All I know him is to speak to him.

Q Now, you don't know this girl very well, you didn't know this girl very well that night? A No, sir.

Q How many times had you seen her before that? A Well, I seen her pretty near every night when I lived in that neighborhood.

Q Well, you never had had any long talks? A No, sir.

Q You just knew her as a neighbor? A Yes.

Q And very seldom did you ever speak to her or she to you? A Yes, sir.

Q You hadn't spoken to her more than half a dozen times

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all together, had you? A Well, about that.

Q You had never taken her home before, had you?

A No, sir.

Q Well, what was your interest in taking her home, that night? A Well, she moved up in the Bronx before that, and we were talking.

Q And you knew she lived quite a distance up in the Bronx? Where did you understand she lived? A In 164th Street.

Q And you were then at 125th Street? A Yes, sir.

Q And it was then about half past eleven? A About a quarter after.

Q What time did you have to get up in the morning?

A Half past seven.

Q And you ordinarily went home about half past eleven; is that right? A Yes, sir.

Q Well, what was your interest in taking this girl, this young girl, from 125th Street, at that hour of the night, away up in the Bronx where she lived? A Well, because I met the girl and was talking to her, and she was alone, and I wanted to take her home.

Q Well, just why did you subsequently abandon the girl on this rock, and say that you would not take her home?

A Well, this was no lot. It was a street.

Q (Question repeated) A Well, the girl considered with

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Q And this road is a well used road, is it not?

A Yes, it is right near Second Avenue.

Q And was it well lighted? A No, it wasn't so very well lighted. It is an ordinary street.

Q Well, isn't it known as a short cut? A Well, it isn't a short cut, it is a street.

Q Well, where you were sitting, there was a dirt road, was there not? A Yes.

Q And you were going to the elevated station, weren't you? A To take the car at 125th Street.

Q And you were greatly interested in this girl at 125th Street, and anxious to see her home?

MR. FRANKLIN: May I interrupt and object to these questions, your Honor?

THE COURT: You have been standing by your client and you have been remaining mute. You have not objected before. Do you want him to decline to answer?

MR. FRANKLIN: Yes, sir. I ask the Court to strike out all the questions and answers asked by the District Attorney.

THE COURT: Well, what are you here for? Are you an idle spectator or counsel for this witness. You have not objected before. I told him distinctly and clearly his rights, and also gave you the privilege, because of his youth of standing by him, so that you could advise

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him.

MR. KIER: Will your Honor permit me for a moment? I understand that it is for the witness to say whether what he says will tend to incriminate him or not.

THE COURT: I have told you what the law is. You are looking after your client; are you not?

MR. KIER: Yes, sir.

THE COURT: And this lawyer's business is to look after his client. Here is a boy that does not know the difference between tending to incriminate and not doing so. You are trying to use this boy against his will.

MR. FRANKLIN: I ask your Honor to strike out the answers made by the witness in the cross-examination of the District Attorney.

THE COURT: I decline to do so, because the witness has been repeatedly told that he can avail himself of his constitutional privilege; that, if any answer tends to hurt his case, or tends to convict him of a crime, it can be used by the District Attorney.

Now, specifically I will again instruct him.

As to the last question, you decline to answer it, because it may tend to incriminate you, or put you in a position where the District Attorney can use your testimony in your own trial?

MR. FRANKLIN: And I advise the witness not to

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answer.

THE COURT: And I will allow you to do that, on account of his youth.

Do you wish to answer the question?

THE WITNESS: No, sir.

MR. DONOHUE: Does he decline to answer any more of my questions?

THE COURT: No, put your questions and that will be determined.

BY MR. DONOHUE:

Q Now, you say you met the girl in 125th Street, between First and Second Avenue?

MR. FRANKLIN: Objected to.

THE COURT: Sustained.

MR. DONOHUE: May I ask whether counsel expects to object to all my questions hereafter?

MR. FRANKLIN: I don't know, but I expect to.

BY MR. DONOHUE:

Q At what particular point in 125th Street, between First and Second Avenue, did you meet the girl?

MR. FRANKLIN: I advise him not to answer that question.

BY THE COURT:

Q You decline to answer on the ground I stated to you?

A Yes, sir.

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BY MR. DONOHUE:

Q How long were you talking with this girl, if you were talking to her, before Einer Tifverman came along?

MR. FRANKLIN: Objected to.

THE COURT: Sustained. Did you know that this boy was under indictment and had a lawyer?

MR. KIER: I knew that he was indicted, but not that he had a lawyer.

THE COURT: I want to find out about this. Here is a young boy, eighteen years of age, and, up to the present moment, he answered questions which may be used on his own trial. While a defendant may call a co-defendant, the co-defendant may decline to answer questions which he thinks will tend to incriminate him.

MR. KIER: My client told me to subpoena him, and he said he was willing to go on the stand when I talked to him, that he was innocent, and feared nothing, so I put him on.

THE COURT: The jury will disregard the remarks of the counsel.

BY MR. DONOHUE:

Q Did you walk together, after you met Tifverman and this girl on 125th Street?

MR. FRANKLIN: I object to the question; and, to save time, I say now, that any question asked as to the

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witness's own conduct, I will object to.

MR. DONOHUE: Well, the direct examination is all in, and all the good which can be done the defendant is already done, and it puts the District Attorney in a rather embarrassing position.

THE COURT: That cannot be helped. I would not cross-examine him any further.

MR. DONOHUE: Will you put your instructions to your client on the record please?

THE COURT: It is not necessary. I only allow counsel to appear as a matter of courtesy.

MR. DONOHUE: Then I will stop my cross-examination, on the ground that counsel has told me that he will not allow the witness to answer any further questions, as to this occurrence, is that correct, sir?

MR. FRANKLIN: Yes, that's the fact. I will object to them.

MR. KIER: Before the next witness is sworn, I want to say that he is under indictment, if your Honor please.

THE COURT: Are you his counsel?

MR. KIER: Yes. And I have advised him. I advised him to be sworn, and to answer the questions in this case.

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HARRY TIFVERMAN, of 534 East 134th Street, Bronx, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q Now, Tifverman, this is your brother, is it not (indicating the defendant)? A Yes, sir.

Q Have you been indicted with him on this charge of attempted rape; is that it? A Yes, sir.

Q You are a co-defendant in this indictment; is that true? A A co-defendant, yes.

Q And you have been indicted, and you are on bail now; are you not? A Yes.

Q Now, I am your attorney; am I not? A Yes.

MR. KIER: Now, I advise you that, if any questions are asked you by anyone in the court room, and the answers would tend to incriminate you in relation to the charge against you, you may legally refuse to answer any question of that kind. Do you understand me?

THE WITNESS: Yes, yes, I understand you.

BY MR. KIER:

Q now, will you proceed to answer questions in relation to this case, within the understanding that any question that may tend to incriminate you, you have the right to refuse to answer?

THE COURT: Oh, no, that is not the rule. When you

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put him on the stand as a witness, and he is prepared to give testimony voluntarily, ~~xxx~~ you cannot put in your side of the case, and then have the District Attorney estopped from putting in his side of the case. He is the judge to determine whether he is willing to answer on such subjects as he testifies to.

MR. YIER: But, on the other hand, as any question may come to him, is he not the judge himself whether the answer will tend to incriminate him?

THE COURT: Yes, he is the judge, of course, and it must be a question material and relevant to the inquiry.

BY MR. KIER:

Q Now, Mr. Tifverman, what business are you in? A Carpenter.

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

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AFTER RECESS.

HARRY TIFVERMAN, recalled for further examination, testified as follows:

BY MR. KIER: (Continued)

Q What is your age? A I am eight years older than my brother.

Q Well, how old are you? A Twenty-nine.

Q What do you do for a living? A Carpenter.

Q Carpenter? A Yes.

Q Working now? A No, I only just come out of the hospital. I had to go through an operation.

Q Now, you must talk louder, so that all these gentlemen can hear you. Now, do you remember the night of this occurrence in question on 125th Street? A Yes.

Q Tell us now what happened. Now, listen, unless you speak in a loud tone of voice, there is no use of your talking at all. A Saturday night, September 13th, about 11.25 p.m. I was walking through 125th Street, going towards home.

Q Now, you must talk louder. You are speaking too rapidly and in a low tone. Now, do better, won't you? I have told you that, unless it is loud there is no use of your talking at all. A On my way going to 125th Street I met a few friends of my brother's, and my brother Miner, and asked if they had seen my brother, and they said yes, at First Avenue, that he walked up First Avenue towards 127th Street.

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Q Go on. A Well, I had an appointment with my brother to go crabbing next morning, and I thought I would meet him and go home together, being that I live on the other side of the Willis Avenue Bridge.

Q Now, proceed. A While walking through 127th Street, between First and Second Avenue, I met the brother, and the complainant, sitting down together.

BY THE COURT:

Q Where? A In 127th Street, between First and Second Avenue. So I asked my brother if he was going home with me, and he said yes. Then he asked the girl to take a walk with him up towards Second Avenue, as he may meet McGowan, on the way up; and the girl responded no. She said, "We might as well wait here; Johny McGowan said he would be right back."

So I sat down on the stone about six feet away from where the brother and the girl were sitting. After about a minute or so we were put under arrest by two detectives, and one uniformed policeman.

Q Were you in a sitting position when you were put under arrest? A Yes.

Q And who was in a sitting position? A The three of us.

Q Well, name the parties, and how they were sitting.

A The brother and the girl were sitting down together, and I was sitting fully six feet away from a stone.

Q Did you brother make any attack at all on this girl?

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A No, sir, not in my presence.

Q Did you have anything to do with assisting in any attack of any kind? A No, sir.

Q Were you ever convicted of anything in your life?

A No, sir.

Q I mean any crime or offense? A No, sir.

MR. KIER: You may cross-examine.

CROSS-EXAMINATION BY MR. DONOHUE:

Q You don't know this girl at all, you didn't know her?

A No, sir.

Q You had never seen her before in your life? A No, sir.

Q Did you live with your brother at that time? A Yes.

Q And why were you so anxious to go and find ~~out~~ him, that, night. You had told him you were going crabbing with him, hadn't you? A Yes.

Q He knew you were going crabbing the next day, didn't he? A Yes.

Q You had agreed to go next day crabbing? A Yes, about nine o'clock.

Q And what was the occasion for your seeking him that particular night, and telling him you were going crabbing?

A Well, I thought we would go home together. It is quite a walk across the Willis Avenue Bridge. I have been accustomed to meeting him before, the same way.

Q Well, you didn't go home this way before, did you?

A Yes, sir.

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Q And pass along through that same dirt road? A Not through 127th Street; no, sir.

Q You passed this spot, at night, before? A Yes, several times.

Q Well, wasn't it a rather unusual way to go to Willis Avenue? A No, I lived on the other side of the bridge.

Q Wouldn't it take you out of your way to go that way? A No, sir.

Q Wasn't it better to go up to 127th Street direct, without crossing these rocks? A I was looking for the brother. I met a few of his friends, and they told me he went towards the river.

Q Well, that was going away from your usual route; was it not? A Yes, but I wanted to pick him up. I was told he went in that direction.

Q What was the fellow's name that told you where he was? A Monahan. And another fellow named Gallagher. They said he went towards Second Avenue.

Q Where were they when they told you that? A Right near First Avenue and 127th Street.

Q That was about 11.30? A Yes, sir.

Q And they told you your brother had gone towards the river? A Up towards 127th Street.

Q And did you know where to go and find him, when they told you that? A Well, I figured out that was only one way of going towards the river.

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Q When they told you that, did you know where he would be? Yes or no? A I took it for granted he would be up by the river there.

Q ^{did} Why/ you take it for granted? A Because everybody in that locality hangs around the river there.

Q But you were going home. A Yes, sir.

Q And were you rather anxious to get to bed early, to get up early? A Yes, that was my intention.

Q Why did you go looking for your brother? A Because we had an appointment to go crabbing at Clason Point. A friend of mine has a boat there.

Q And you had made arrangements earlier in the evening? A Yes, sir, about nine o'clock.

Q And then what was your idea in going back, at half past eleven, to make the arrangements all over again? A Why, I thought I would have company to go home, so that we would get up early to go on our fishing trip.

Q Now, in this particular spot, where ~~did~~ you find your brother, it was out of your way in going up to Willis Avenue, wasn't it? A Well, it wasn't a direct course, but it was an indirect course.

Q And you wouldn't have been near that spot if you hadn't been looking for your brother? A No, sir.

Q How did you find your brother in the dark? A I found him sitting down.

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Q Did you have any trouble in locating him? A Well, I went to 127th Street, and met him half way in the street there.

Q Well, it was very dark, was it not? A Not so very.

Q Well, could you see him for some distance?

A No, sir.

Q Isn't it a fact that you couldn't see him until you got within ten or fifteen feet of him? A Yes, that is correct.

Q Did you know at what spot exactly he would be?

A No, sir. I thought I would catch him around 127th Street and Second Avenue, and that is what brought me there, through that street.

Q Did you see McGowan? A No, sir.

Q But you did see your brother sitting down with this girl? A Yes, sir.

Q Did you talk with the girl? A No, sir.

Q Did you talk with your brother? A I asked him if he was going home, and he said yes.

Q Did you see the girl? A Yes.

Q Did she have her hat on? A I couldn't say that exactly.

Q Did she complain to you about her skirts and waist being torn? A No, sir.

Q Did you see her waist torn? A No, sir.

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Q Did you see her when the officer came along, with her waist torn? A No, sir.

Q Do you say that her waist was not torn? A I didn't look at her waist, and I don't know whether it was torn or not.

Q Didn't you see the officers assist her to readjust her clothing? A No, sir, I didn't.

Q Well, then, she readjusted her own clothing? A Yes.

Q You saw the girl there, didn't you? A Yes.

Q Now, did you see her clothing at that time? A I seen the dress she had on.

Q Was it falling down or torn? A No, sir.

Q Was she dirty? A No, sir.

Q Any marks on her at all? A How could I see whether she was dirty or not.

Q Did you notice the condition of her face? A No, sir.

Q Well, did you see her in the station house? A Yes.

Q Didn't you see somebody in the station house fix her face for her, wipe the blood off her mouth.

Q Didn't you see any blood at all? A No, sir.

Q Do you say that there was no blood on her? A I failed to noticed any.

Q Well, you noticed the girl, didn't you? A Well, I only looked at her once, just saw her.

Q Well, you were very much interested in her, weren't you, when the officer told you they were arresting you, and

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charging you with rape? A Yes.

Q Well, you thought that was a great outrage, didn't you; you were very indignant, weren't you?

Objected to. Allowed. Exception.

A I wasn't indignant, no.

Q Well, were you glad they were arresting you? A Why, I simply told the officers, "We are gentlemen," and went along with them. That is all.

Q (Question repeated) A No, sir, I wasn't glad.

Q You were very much concerned, weren't you? Were you surprised or not? A To get arrested?

Q Yes. A No, sir.

Q Why not? A I didn't see where we were doing anything wrong by sitting there.

Q If you were doing nothing wrong by sitting there, and the officers charged you with rape, weren't you indignant?

A No, sir.

Q And you were not disturbed in the least? A No, sir.

Q And you weren't interested in who made the complaint against you? A Can I say what she said in the station house, the girl?

Q No. (Question repeated) A The girl didn't make any complaint against me in the station house.

Q Weren't you interested in knowing who made the complaint against you?

MR. KIER: Objected to. Let him finish his answer.

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MR. DONOHUE: I ask an answer yes or no.

Q Were you interested in the person who made the charge against you? Yes or no? A Well, there was no charge made against me in the station house. The girl said I wasn't in their company, and I had nothing to do with it. She said that in the presence of her aunt, Mrs. Wright and her married cousin.

Q Were you arrested that night, by the police officers?
A Yes.

Q Arrested on the spot, and never released, and you haven't been released since; have you? A No, sir.

Q And you saw the girl in the Magistrates' Court?
A This was in the station house.

Q Now, answer my question. Did you hear her testify in the Magistrates' Court? A Yes, four days later.

Q And did she at that time accuse you or not? A She accused me of holding her hand.

Q And didn't she also accuse you of putting your hand on her shoulder, and keeping her down on the ground? A No, sir, she only said in the station house that I had nothing to do with it.

BY THE COURT:

Q Who was present at that time? A Her aunt, Mrs. Wright, and her married cousin.

Q And were the detectives there? A Yes. She told the

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Lieutenant in charge, and I should think he would put that on the blotter, that I had nothing to do with it,

BY MR. DONOHUE:

Q And did you endeavor to subpoena those people any of those people of the Magistrates' Court? A No.

Q Did you ever mention that fact to the Magistrates' Court? A Let me explain myself. I will tell you.

Objected to. Overruled. Exception.

THE COURT: I will sustain the objection to that question, unless you can show that he was a witness there.

MR. DONOHUE: Yes, sir, he was. I have the minutes right in front of me. He was a witness there.

THE COURT: Then: If that is the case, the question is admissible.

MR. KIER: Exception.

BY MR. DONOHUE:

Q You testified in the Magistrates' Court, didn't you?

A Yes, sir.

Q Did you say anything in the Magistrates' Court about this girl being in the station house that you had nothing to do with it? A I started to dictate to the Magistrate, but the Clerk Hines up there said, "Wait a while you have a chance later on." And the Magistrate said, "Have you got any questions to ask?" And it slipped my mind then, and I

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failed to do that in the Magistrates Court.

Q When you were on the stand, you failed to tell that to the Magistrate? A No, I told him that on the stand.

Q Will you please look at these minutes, look them over, and point out any spot where you said that. A No, I failed to ask that question. I told you that before.

Q You were put on the stand and asked both by the District Attorney and the Magistrate what your story was; weren't you? A Yes.

Q And you told your story, didn't you? A Yes.

Q And you failed to mention anything about this particular fact that you are now testifying to? A Yes, sir, it slipped my mind, and it isn't too late to say it now, is it?

Q Slipped your mind? A Yes.

Q Didn't you think it was important? A I started to dictate, but I didn't mention that question.

Q What is that? A I meant to say that I forgot to tell something, failed to ask about that.

Q It slipped your memory? A Yes. And a thing like that could be overlooked; couldn't it?

Q It wasn't important in your mind? A Yes, it was important, but it was too late to tell that.

Q Did you tell your lawyer about that? A Yes, sir.

Q In the Magistrates' Court? A Down here. I didn't

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have no counsel in the Magistrates' Court. I engaged a lawyer down here.

Q Didn't you notice anything about this girl at all at the station house, or at the spot where you were arrested? A No, sir.

Q You didn't notice her clothes at all? A No, sir.

Q Did you notice her face? A No, sir.

Q Did you know what kind of a girl she was? A Well, I will tell you. I wouldn't know the girl if I fell over her. She was a perfect stranger to me at the time.

Q Did you look at her, the night you were arrested?

A Why, in the station house I got a glance at her.

Q Only a glance? A That's all.

Q The officers walked you and your brother and this girl from the spot where this thing was supposed to have happened to the station house, didn't they? A The girl was walking in front of me. How could I see her?

Q You passed through well lighted streets? A Yes.

Q And you say you didn't look at the girl?

A No, sir, not until I got to the station house.

Q Did you look at her clothes? A No, sir, there was nothing the matter with her clothes.

Q Then, as you came along, and found your brother sitting with this girl, were you surprised to find him in that spot with a girl of that age? A I never expected to find him with

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anybody.

Q Did Monahan and the other fellow tell you who your brother went up with? A No, sir; I didn't ask any questions because it didn't concern me, who he was with.

Q These men didn't tell you who he was with? A No, sir.

Q And, when you went in to 127th Street, you found your brother sitting on the rock with this girl? A Yes, sir.

Q Was it very dark there? A No, there was plenty of light there. It was a public thoroughfare.

Q (Question repeated). A No, sir.

Q Well, was it very light? A Well, it was juts about medium.

Q Well, where were the lights coming from? A From Sulzer's Harlem River Park and the Willis Avenue Bridge.

Q And you considered it fairly well lighted, is that the idea? A Yes.

Q And what was your brother doing with the girl? A Just sitting down there, talking with her, I should think.

Q And did the girl have her hat on? A That I didn't notice; I didn't notice whether she had a hat on or not.

Q Well, anyway, when you came along, you found the two sitting there together? A Yes, sir.

Q And you were there only a few seonds when the officers came? A A few minutes.

Q What were you doing when the officers came along?

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A I was sitting down.

Q On the same rock that they were sitting on? A No, sir; a different rock altogether.

Q How big was the rock that you sat on? A Well, I should think about 15 inches in diameter.

Q And what were you sitting on the rock for? A He told me he had to wait until McGowan came back. And I wasn't in a sitting position for more than a minute.

Q And when the officers came were you standing up or sitting down? A Sitting down.

Q Where was your brother? A Sitting about eight foot away from where I sat, with the girl.

Q On a rock? A Yes, sir.

Q Was he putting his arms around this girl, or anything of the kind? A No, sir.

Q He didn't try to kiss her while you were there?

A No, sir.

Q Can you tell us how this girl's clothes were torn? A I was only there a minute and I didn't see any clothes torn.

Q Or the mark on her face? A I didn't see no marks at all.

Q How old did you say you were? A 29.

Q Where do you work? A I'm not working at present at all.

Q When did you last work? A Why, I was working previous to my arrest.

Q Where were you working? A I was working -- I'll have

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to think. I worked in the building line, and I was working at 784 West End Avenue.

Q Did you ever have a steady job? A Yes, always did. But a steady job in the building line is broken time. I'm a carpenter and also a derrick man, a rigger.

Q Did you do anything else? A No, that's enough for the building line.

Q Do you know these police officers? A Well, I know them since they put me under arrest.

Q Did you ever see them before that night? A No, sir.

Q Did you ever see this girl before that night? A No, sir.

BY THE COURT:

Q How far away were you from the prosecutrix, the little girl, at the time that the police officers approached? A Why, I was over six foot away from where the girl was sitting.

Q At that time what was the girl doing when the police came? A She was sitting there waiting for John McGowan to return.

Q And what was your brother doing? A He was sitting down alongside of her.

Q And the girl was not down on the ground, on her back? A No, sir.

Q At any time that evening did you hold the girl by the shoulder? A No, sir.

Q Did she make any outcry? A No, sir.

BY MR. DONOHUE:

Q Do you know what brought the officers there? A No, sir.

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Q Did this girl make any sound at all? A No, sir.

Q Were your brother and the girl talking? A I should presume they were, when they were sitting down, but I was six feet away.

Q Did you hear them talking? A No, sir.

Q You couldn't hear anything that they said at all? A No, sir.

Q By the way, did you see that rock -- did you see your brother have that rock, the rock that he had in his pocket?

A I seen it after the detective said he took it out of his pocket, but I don't know anything about that.

Q You saw the detective take it out of his pocket, didn't you? A No, sir; but he stated he did.

Q Weren't you present when he took it out of his pocket? A I didn't see him take it out.

Q (Question repeated)? A No, I didn't see him take it out.

Q And how do you know that he took it out of his pocket?

A Because the detective said so. I was there at the time, but I didn't see him take any stone out of my brother's pocket.

Q Did you know that he had a stone in his pocket? A No, sir.

Q You didn't hear your brother say, "Give me that thing, until I knock her on the head"? A No, sir.

Q Are you married? A yes, sir; but my wife abandoned her two children six months ago.

Q You didn't abandon her, I suppose? A Well, I don't

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have to tell you this, do I?

MR. KIER: I object to this, if your Honor please, unless we go into the whole facts.

THE COURT: I will allow it.

MR. KIER: Exception.

BY MR. DONOHUE:

Q Now, do you remember whether this girl talked to your brother, in your presence or not? A They were speaking there yet.

Q What did they say, if you heard anything? A I didn't hear a word they said, not one, because it didn't concern me, what they were speaking about. I never butt into anybody, when they are speaking.

BY THE COURT:

Q Did your brother introduce you to this girl? A No, sir.

Q Did you say anything to him? A Only if he was going home.

BY MR. DONOHUE:

Q Now, did you hear your brother say anything to this girl, from the time you arrived until the officers arrived and took you away? A He simply asked the girl to take a walk up to Second Avenue, and she may meet McGowan on the way up, and she responded, "No, we may as well wait her, seeing that Johnny McGowan said he was coming right back."

Q Do you know Johnny McGowan? A Yes.

Q You know him very well, don't you? A Well, about five

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years.

Q He is a great pal of your brother's here, isn't he? A I don't know. I couldn't say who he pals with.

Q Did you know anything about the eighty cents that McGowan had taken from this girl? A No, sir.

Q Did you ever know anything about it? A No, sir; only what I heard, later on.

Q On that particular night, up to the time you were arrested, did you know anything about the eighty cents? A No, sir; not until Wednesday morning.

Q You didn't know a thing about it until Wednesday morning?
A No, sir.

Q And this happened on Saturday night? A Yes, sir.

Q Don't you remember testifying in the Magistrates' Court about the eighty cents? A All I told there was what the detective said, that McGowan was supposed to take eighty cents off the girl.

Q Do you remember testifying to this effect: "No, she might as well wait there, because McGowan said he would be right back, being as he took eighty cents from her"? A Yes, I said that. That's what the girl said.

Q Then you did know about the eighty cents that night?
A No, sir; she stated that in the Harlem House. I testified after the girl there.

Q Well, didn't your brother tell you that McGowan had

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taken eighty cents from her? A No, sir.

Q Did the girl tell you? A No, sir; I heard that Wednesday morning, before we had a hearing there, that he was supposed to take eighty cents.

Q No. Didn't you say that your brother said that? A Well, maybe if he stated it.

Q And maybe you stated it, too? A Well, I don't know whether McGowan had eighty cents, whether McGowan took eighty cents from the girl or not.

Q Didn't your brother tell you that, that particular night, just before the officers came along? A I don't remember whether he did or not.

Q Well, what is your best recollection; that you knew about the eighty cents before the officers came, or you did not know about it? A Unless the girl said that herself, when she said, "Wait here for Johnny McGowan," and that he had taken eighty cents from her. I've been through a serious case of sickness and I may forget a little bit; but, as long as it is on the paper I must have said it.

Q MR. KIER: Now, I would like that read off, what he said.
BY MR. DONOHUE:

Q Now, what did these fellows tell you about your brother?

A That he went up First Avenue to 127th Street; that's where the Harlem River is.

Q You had some difficulty in finding him, didn't you?

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A No difficulty at all. I walked to 127th Street and I met him half way in the street.

Q Now, listen to this. Did you give this testimony: "I inquired his whereabouts. He told me he went up First Avenue. I went up First Avenue and looked on 126th Street, and didn't see him"? Is that right? A Yes, sir.

Q Did you testify you found him in 126th Street? A No, but I looked in that street.

Q Now, did you testify in these words: "I went up to 127th Street, and about 75 feet west of Second Avenue, I met my brother, sitting down with the complainant." Did you so testify? A Yes, sir.

Q Could you see where he was sitting down? How far away were you when you first saw him sitting down? A About ten feet.

Q Well, it was because it was dark in that place, was it not? A No, sir; because I wasn't looking in that direction.

Q Well, what was the reason? A I was fully ten feet away when I asked him if he was going home.

Q But you said before that you saw him when you got within ten feet of him? A Ten or fifteen feet.

Q Well, if it was as light as you claim it was, why couldn't you see him a distance of forty or ^{fifty} feet away? A Well, there was plenty of light there.

Q Plenty of light? A Yes, sir.

Q But still you couldn't see him until you got within

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ten or fifteen feet of him? A Yes, that's when I first noticed him.

Q But this particular spot was in direct line with Second Avenue, wasn't it? A Well, it's like a sidewalk, but it is a dirt road.

REDIRECT EXAMINATION BY MR. KIER:

Q Now, you have been asked about your wife by Mr. Donohue.

A Yes.

Q She abandoned you and your two little children? A Yes.

Q When? A About six months ago.

Q What are the ages of your children? A Six and eight years old.

Q Did she leave you? A Yes, sir.

Q Who did she go away with? A With a man named Otto Fleik.

Q And that's the reason you are not living with her? A Yes, sir.

Q Now, after your arrest, Tifverman, you were taken sick, weren't you? A Yes, sir.

Q How long were you in the hospital?

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

A 38 days.

THE COURT: What do you wish to prove?

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MR. KIER: I want to prove that he was workingman.

THE COURT: Well, that doesn't prove it, if he was in a hospital.

BY MR. KIER:

Q What hospital were you in? A The Lincoln Hospital.

Q Then for 38 days you were not working? A No, sir.

Q Where were you? A In the Lincoln Hospital.

Q What was your trouble there?

MR. DONOHUE: I object to that as immaterial.

THE COURT: I sustain the objection.

A Broken appendix.

THE COURT: Don't answer a question, witness, when there is an objection.

BY MR. KIER:

Q How long are you out of the hospital? A About three weeks, and I go to the dispensary yet for treatment.

Q And you say that you are a carpenter? A Yes, sir.

Q And have you always worked for a living? A Yes, sir.

Q Are you a Union man?

MR. DONOHUE: Objected to.

THE COURT: That is immaterial.

MR. KIER: But I am trying to show that this was a workingman. Mr. Donohue said that he didn't work.

THE COURT: I did not hear any such question.

MR. DONOHUE: No, sir; I asked him if he did work.

BY MR. KIER:

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Q And do you always work when you are well? A Yes, sir.

Q At what? A I am a carpenter and a derrick man also.

Q Now, when you were in the station house and this girl Florence was in the station house -- now, take your time -- and tell us just exactly what was said. First, who was present there and mention the details? A Do you mean behind the desk?

Q No. When you went to the station house. A There was two detectives, Florence O'Neill, the complainant, I and the brother, and the complainant's aunt, Mrs. Wright, and Mrs. Wright's married daughter; I don't know her name.

Q Well, what did she say about you there, the girl? A Well, first the Lieutenant took the brother's name and address, and then the Lieutenant asked the complainant, "What about the other fellow?" not knowing that I was Ina's brother. Nobody knew that I was his brother. And she stated, "Why, he wasn't in my company. He had nothing to do with it." She said that in the presence of her aunt and married daughter.

Q Were you present at the -- yes, you were present at the Magistrates' Court when Florence testified in this case? A Yes, sir.

Q And you had no lawyer or anybody to help you? A No, sir; no counsel at all.

Q Was it the first time you were ever arrested? A Well, I was arrested in the Magistrates' Court for being intoxicated; that's all.

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THE COURT: Why do you ask such a question of your client? I have warned you several times that that question is improper, because jurors might be under the impression that you had the right to question a man as to whether he had ever been arrested before. But the law is clear that you cannot do that. You have the right to ask him if he has heretofore been convicted of crime.

BY MR. KIER:

Q Were you ever convicted of a crime in your life? A No, sir.

Q But you say you were charged with intoxication once?

A Yes, sir.

Q Is that all? A Yes, sir.

Q Nothing else in all your life? A No, sir.

RECROSS EXAMINATION BY MR. DONOHUE:

Q Were you convicted of that charge in the Magistrates' Court? A Well, I received a suspended sentence.

Q Now, just give me the names, please, of those witnesses who were present. The two officers and who else? A The girl was there and the brother was there.

Q Two officers and the girl? A Yes, sir.

Q And who else? A Her aunt, Mrs. Wright, and her married daughter. I don't know her name.

Q How did you know it was Mrs. Wright? A My brother told me that in the cell, afterwards.

Q Is that all? A Yes, sir; that's all.

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MR. DONOHUE: All right.

BY MR. KIER:

Q Now, I am going to read to you just that part of your testimony as to what you said about eighty cents. Now, tell me if that is what you said before the Magistrate. This is what took place before the Magistrate, at the hearing before the Magistrate. I am going to read your whole statement.

MR. DONOHUE: Yes, you may do so.

Q "Harry F. Tifverman, defendant, being duly sworn, deposes and says:

"Q What is your name? A Harry Tifverman.

"Q Where do you live? A 594 East 130th Street.

"Q What is your occupation? A Carpenter.

"Q What are the facts about this charge? A I was on my road to go across Willis Avenue bridge, and met a few friends of my brother; and I inquired of his whereabouts. He told me he went up First Avenue. I went up First Avenue and looked on 126th Street, and I didn't see him. I went up to 127th Street, and about 75 feet west of Second Avenue, I met my brother, sitting down with this complainant. I asked him, 'Do you want to take a walk home?' He said, 'Yes.' With that he asked the girl if she wanted to go up Second Avenue and she said no, she might as well wait there, because McGowan said he would be right back, being as he took eighty cents from her.

"Q What else happened? A The first thing I knew we were

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under arrest, that's all. While we were there, there was no harm done, or anything out of the way.

"Q Did you see these two officers? A Yes, sir."

Did you testify in that way before the Magistrate? A Yes.

MR. DONOHUE: And is that all the testimony he gave before the Magistrate? Do you stipulate that?

MR. KIER: Yes.

Q "By Mr. Burns: Q What position were you in? A I was fully five feet away from the girl.

"Q Weren't you beside the girl? A Fully five feet away, yes."

MR. KIER: And that was all the testimony that he gave.

BY MR. DONOHUE:

Q And that was all the testimony you gave before the Magistrate; is that correct? A Yes, sir.

MR. DONOHUE: I am through with the witness.

MR. KIER: That's all.

E I N E R T I F V E R M A N, of 534 East 134th Street, the defendant, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q What did you say your name is? A Einer Tifverman.

Q How old are you? A Twenty-one.

Q Now, listen. There is no necessity of speaking at all,

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unless you speak loudly, because everybody here must hear you.

Do you understand that? A Yes.

Q Where do you live? A 534 East 134th Street.

Q With whom do you live? A With my mother.

Q Your father is dead? A Yes, sir.

Q Where were you born? A I was born in the United States.

Q Well, I mean in New York City? A Yes.

Q You are not ashamed of New York, are you? It is a great city. And have you lived over there -- have you lived every day of your life until now with your parents? A Yes.

Q And were you ever convicted of any crime in your life?

A No, sir.

Q What do you do for a living? A I am a carpenter's helper at present.

Q Are you working now? A Yes.

Q And you have been working since you have been out on bail?
A Yes, sir.

Q Now, proceed and tell his Honor and gentlemen of the jury just what happened that night, in your own way. A When I was walking through 125th Street, I met McGowan and this girl Florence?

Q Now, keep up your voice. A In 125th Street, between First and Second. I was on my home. And we kept on walking towards First Avenue, and got there, and McGowan asked me to take a walk. So I took a walk with McGowan and we walked along First Avenue up to 127th Street.

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Q Speak up louder. These gentlemen are straining their ears.

BY THE COURT:

Q You took a walk with McGowan? A Yes, sir.

Q Go ahead. A Up to 127th Street, between First and Second, and we sat down there. We no more than sat down more than two minutes, before McGowan said he was going to Second Avenue, to get something, and he would be right back again. I waited there with the girl, and about five minutes later the brother came along and asked me was I going home, and I said yes. And then I asked the girl, "Take a walk up Second Avenue. We might meet him, McGowan, on the way up." And she said, "No, we might as well wait here/" And she stated he had eighty cents of hers. That was something I didn't know anything about. And in a couple of minutes detectives come down and locked us up.

Q Well, did you attempt to have any sexual connection with this girl? First, do you know what I mean by sexual connection? You know the act between a male and a female? A Yes.

Q You know what I mean? A Yes.

Q Did you have anything to do like that with this girl?

A No, sir.

Q Or attempt to? A No, sir.

Q When she appeared in the Magistrates' Court, did she show the Magistrate, when she testified, any clothes, or refer to any clothes being torn or disordered? A No, sir. The Magistrate

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asked her that, and she didn't show nothing torn or nothing at all.

Q And you say you made no attack upon her, or assaulted her in any way at all? A No, sir.

MR. KIER: You may cross examine.

BY THE COURT:

Q In what position were you found by the police? A I was sitting down with the girl.

Q Show this jury how you were seated. A I was sitting down on the side of her, waiting for McGowan to come back. He said he would be right back.

Q You were not in a kneeling position? A No, sir.

Q Your knees were not on the ground, in the manner described by the second officer? A No, sir: No, your Honor, I wasn't kneeling at all.

Q How long had McGowan been away before the police arrived? A Why, he was gone about five minutes or so, your Honor.

Q Did you run away? A No, sir; no, your Honor.

Q Did you make an attempt to do so? A No, your Honor.

Q Was this rock found in your pocket, (indicating)? A That's a mystery to me, how it got into my pocket. And why should I want to have a rock in my pocket?

Q Did the girl say, "Please stop; leave me alone"? A No, sir.

Q Were your trousers buttoned or unbuttoned? A Just the same as I am now.

Q It is quite a lonely spot, is it not? A Well, it's a

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public street. It's lighted.

Q It was on 127th Street, between First and Second Avenues?

A Yes, sir.

Q Well, on which side is Sulzer's Harlem River Park?

It is on the southerly side of the street, is it not? A Yes.

Q And did you see any persons pass through that neighborhood, that night, other than your brother, McGowan, and the two police officers, and the girl? A No, sir.

Q Did you? A No, sir.

Q How long were you there? A I only was sitting there for five minutes, or so.

Q Did you see any persons pass other than your brother and McGowan? A No, sir; there is a stable right there, McAvoy's stable. I used to work there one time, and people come down to that stable.

Q Was there an affair in Sulzer's Park that night? A Yes, sir.

CROSS EXAMINATION BY MR. DONOHUE:

Q Did you ever know this girl before? A I had met her six or seven times before.

Q Six or seven times? A Yes, sir.

Q And you knew her by sight, didn't you? A Yes; just to say "Hello" once in a while.

Q That was the limit of your acquaintance with her? A Yes.

Q And when you saw her and McGowan together, did you know that they were going home together, that he was bringing her home?

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A Sure. He must have been bringing her home as they were going up there.

Q Well, why did you walk along with them? A He asked me to take a walk. I live up in the Bronx myself.

Q You live up in the Bronx? A Yes, sir.

Q What part of the Bronx? A 124th Street.

Q But you usually walk home from 125th Street, don't you?

A Well, being I wanted to take the car, I do. If I haven't any money I don't.

Q (Question repeated). A I usually walk home if I haven't any money, but if it is raining I'll ride over. It's according to the weather.

Q This was a clear, night, was it not? A Yes, sir.

Q And you intended to walk to your home? A Yes. But he asked me to take a walk, and I didn't know where they were going to go, only he asked me to take a walk.

Q Where were you going? A I was going up that way, home, in the Bronx.

Q Now, will you tell us how you got to the spot where the police officers found you, if you were going home? A Well, McGowan sat down there, and I sat down with him.

Q Well, wasn't that off the course you usually take to go home? A I understand that the girl says --

Q Yes or no. Answer my question, please. When you were walking home? A Well, it's according to the way I want to go.

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Q (Question repeated). Yes or no. A Well, I can take Willis Avenue Bridge.

Q (Question repeated). Won't you answer my question, please? A Well, it wasn't off the course. I could go any way.

Q It wasn't off the course? A Well, there's the Willis Avenue Bridge, and the Third Avenue Bridge.

Q Well, you were going over to Third Avenue? A Well, I didn't know which way they were going. They were going west. That's the way.

Q Didn't you hear your brother say that was off your regular course when you were going home? A Well, anybody can go that way. It is a public thoroughfare.

Q Well, so that you were off the usual road you take to go home? A Well, I could go over the Bridge.

Q Well, could you have got to any bridge, walking straight along where the officers picked you up? You were on Second Avenue and -- A It was on 127th Street between First and Second.

Q You were on Second Avenue, with these people, weren't you? A No, sir; in 127th Street.

Q Did you walk up First or Second Avenue? A First Avenue.

Q And weren't you at 127th Street and First Avenue? A No, sir. And then we went up 127th Street.

Q Weren't you on First Avenue and 127th Street when the -- with the girl and McGowan? A Yes.

Q And they wanted to take the train, didn't they? A I don't

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know. McGowan asked me to take a walk; that's all.

Q When you were at 127th Street and First Avenue, where did you want to go? A McGowan asked me to take a walk, and I took a walk with him.

Q And when you went 75 feet east on 127th Street, where would that lead you? Wouldn't you go into the river? A Oh, yes, it is over 75 feet. Close on to 200 feet.

Q If you had continued east on 127th Street and First Avenue, where would you wind up? A There is an entrance to the place there. It is only a couple of blocks away; at least there is a bridge there in 125th Street.

Q Now, listen to my questions. You are on 127th Street and First Avenue? A Yes.

Q And, if you go directly east, where would it land you? A But, we were going south, north -- the way we were going.

Q Now, I am asking you if you were 127th Street and First Avenue, and went directly east, where would it land you? A Well, there is a river there, and you would walk in the river.

Q But, you went 75 feet east of First Avenue? A We went west.

Q Toward Second Avenue? A Toward Second Avenue.

Q Well, didn't you hear your brother say you went east?

A No. We didn't go east. We went through 127th Street. We walked from 125th Street up to 127th Street, and walked up toward Second Avenue.

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Q Where were you going then? A Well, we sat down there, at least McGowan sat down.

Q How did you happen to sit down? A Well, he was talking to her.

Q Who talked to her? A McGowan.

Q What did he say to her? A I can't remember.

Q And what were you doing at the time? A I was sitting there

Q Just sitting there? A Yes.

Q What was your idea of stopping in that particular place to sit down? A I wasn't in the company of the girl, he asked her to take a walk.

Q But you sat down there with her? A Yes.

Q And he asked you to take a walk to 125th Street? A Yes.

Q And, when you got in to 127th Street between First and Second Avenue, you sat down on a rock? A Yes, sir.

Q Didn't that seem to you peculiar, out of the ordinary?

A No, it wasn't out of the ordinary.

Q Wasn't it dark there? A No, there is light from the bridge, and from the Interborough, and Sulzers'.

Q And did you sit down beside the girl? A Yes.

Q McGowan did, too? A No, he no more than sat down when he got up, and said he was going to get something, and went away.

Q Didn't you talk to McGowan on the way up from 125th Street?

A Yes.

Q It was in the back of the girl, was it not? A No, sir.

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Q Didn't you arrange to bring this girl over to this dark spot, so as you could attack her? A No, sir.

Q Well, when you saw her at 125th Street were there any marks on her face? A No, sir.

Q What was the condition of her clothes? A She had a black skirt on.

Q Was anything the matter with her clothes? A No, sir.

Q And, can't you tell us how her clothes were torn and dirty?

A No, sir; I can't. What do I know about her clothes?

Q Were they torn or not? A No, sir; they were not torn.

Q And was her face discolored? A No, sir.

Q And, her mouth was not cut or bleeding? A No, sir.

Q Well, when the officer arrested you, how near to the girl were you? A I was sitting about that much from her (illustrating).

Q And did you have your arm around her? A No, sir.

Q Did you hear her cry out? A No, sir.

Q Did she make any noise at all? A No, sir.

Q Well, do you know how these officers were attracted to this place? A I don't know.

Q There was no noise there at all? A No, sir.

Q Where was your brother at this time? A My brother?

Q Yes. A After we went up there, the brother come by, about five minutes or so after McGowan was gone, and asked me if I was going home?

Q Did you introduce him to this girl? A Introduce him?

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Q Yes. A He don't know the girl, no. He just come up and asked me if I was going home.

Q And what did he do then? A The girl said, "You might as well wait here, because McGowan said he would be right back." And when I asked the girl to take a walk up Second Avenue, and we might meet him there, she said, "No, he might be back again here."

Q Did you make your brother acquainted with this girl? A No, sir.

Q How long was your brother there with the girl and you? A Only about a few minutes.

Q And where was he sitting? A He was sitting about five or six feet away.

Q And you didn't introduce him to the girl? A No, sir.

Q Did you tell the girl who he was? A What did I want to do that for?

Q (Question repeated). A No, sir.

Q And you sat there for a few minutes, you say? A We had no more than sat there a few minutes, when the detectives come down.

Q Did you see them coming along? When did you know first that the detectives were there? A Well, they happened to come down by the girl.

Q Did they place you under arrest while you were sitting down? A Yes.

Q You were not standing up, trying to get away? A No, sir.

Q Were you sitting on a rock? A Yes, sir.

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Q And the girl was sitting on the same rock? A Yes, sir.

Q And you say her clothes were all right? A Yes, sir.

Q Did you go to the station house with this girl? A I seen her up at the station house, in the Magistrates' Court, yes.

Q Did you see her -- here after you were placed under arrest at this particular spot at 127th Street, did you see her when the officers placed you under arrest? A What do you mean, did I see her?

Q You were arrested right at the spot where you were sitting with this girl; weren't you? A Yes.

Q Did you see the girl then? A I was sitting with her then.

Q Did you notice her clothes as the officer came along?

A There was nothing the matter with her clothes.

Q Yes or no. Did you notice them? A Yes, sir.

Q Did you see her holding them up in her hands? A She wasn't holding no clothes in hands.

Q And her clothes were not falling down? A No, sir.

Q And did you notice her waist? A No, sir.

Q Did you notice whether she had on a waist or not? A She had a waist, sure.

Q Was the waist torn? A No, sir.

Q Did you see whether it was torn or not? A How could it be torn?

Q (Question repeated). A Her waist wasn't torn.

Q You are sure of that? A Yes.

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Q You noticed that? A Yes.

Q Was there any dirt on her clothes? A Unless the dirt that was on the stone, sitting down.

Q Did you notice whether there were any green spots on her back? A Well, I couldn't notice anything the matter with the girl. There was no dirt on her at all.

Q Did you hear the girl charge you with having attempted to have intercourse with her? A Yes, but the girl was lying, when she said I had anything to do with her.

Q (Question repeated). A Well, she said that to the Magistrate.

Q Didn't she tell the police officer that, on this particular spot, you tried to have intercourse with her? A No, sir.

Q What did she say? A She didn't say anything. The officers come along and grabbed us right there.

Q And did they tell you why they were arresting you? A I don't know. That's a funny thing to me. Reppeti punched me in the jaw, and the other officer punched my brother in the jaw. That's all they did. Then they locked us up.

Q They didn't tell you why they were arresting you? A No, sir.

Q And you were innocent, as you thought, at the time? A Yes.

Q And you didn't make any inquiries from these officers as to why they were arresting you? A I asked them what was the idea. They asked the girl, I guess --

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Q And what did they say to you? A They locked us up, didn't say a word at all until we got to the station house.

Q And you didn't hear the girl say anything to the officers either? A No, sir.

Q They didn't say a word to you, and you didn't say a word to them? A No, sir.

Q And you didn't hear the girl say you knocked her down, and tried to have intercourse with her? A I don't know whether she told him that or not.

Q Didn't you hear it? A No, sir.

Q By the way, where did you get that rock? A Why, that's a mystery to me, your Honor.

Q But where did you get it? A I don't know how the rock got in my pocket.

BY THE COURT:

Q Are you in the habit of carrying rocks? A No, sir. I have a good character. I never carried anything, any weapons or anything.

BY MR. DONOHUE:

Q There is no question that the officer took the rock from your pocket; is there? A (No answer).

BY THE COURT:

Q Did he take the rock out of your pocket? A No, sir; I didn't see it.

Q Did he pick it up from the ground? A No, sir. I don't

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know how it got in my pocket.

BY MR. DONOHUE:

Q And the officer, then, didn't take it out of your pocket?

A No, sir.

Q And you were here when the little girl testified; weren't you? A Yes.

Q Didn't you hear her say that something was said about that: "Give that thing to me and I'll knock her on the head"? A Well, she can say anything, because she is lying.

Q That was not said at any part of this occurrence, when you were sitting on the rock next to the girl, or close up to the girl? A No, sir; she didn't say nothing of that kind then. She said it on the stand here. No, sir; it was a lie.

Q And you have no idea how the rock got in your pocket? A No, sir; it's a lie.

Q How long have you known the girl? A I've known her for sometime, just to say "hello" to her. I know her cousins, the Wrights.

Q Did you ever have any trouble with her or the Wrights, or the police officers? A No, sir.

Q Do you know any reason why this girl should come into court and tell us this story that she told us about you?

THE COURT: One moment please, that question is objected to. Why didn't you object to it, counsel?

MR. KIET: Because he has a good answer for it, that he

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gave me, and I wanted him to give it to the District Attorney.

THE COURT: No, a lawyer should always object when his technical rights are invaded. The question asked by the District Attorney is incompetent, and has been condemned by the Court of Appeals. That question is objected to. You can't ask the witness to give reasons for something that some one else did.

BY MR. DONOHUE:

Q Where do you work? A I work up at 141st Street, the Industrial Engineering Company.

Q As what? A Carpenter's helper. I am working there now since I came out on bail.

Q And before that where did you work? A For Lee Brothers, and a couple of other places.

Q And where were you working at the time this occurred?
A Lee Brothers.

Q Were you working that very day? A I worked half a day.

Q Were you working for this particular firm on this day?

A Half a day.

Q And did you work the whole week before? A Yes, sir.

Q What is the name of that firm? A Lee Brothers.

Q Where are they? A 210 East 125th Street.

Q How long had you worked there? A I worked there about three years and a half, off and on.

Q Doing what, if on? A Helper's work.

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Q And how much on? A Well, working pretty steady.

Q Doing what? A Handling furniture. When slack, we get laid off.

Q They are furniture movers? A Yes, sir.

Q And you worked by the day? A Yes, sir; and I worked steady, because I had a lot of other places to work. I worked on City Island, at the camps and on Governor's Island.

Q Now, this three years you worked for Lee Brothers, did you work in other places, too? A Well, I worked in McAvoy's trucking business at 127th Street.

Q Did you work anywhere else than at Lee Brothers while you worked for them? A Well, I was working pretty steady there, four or five days a week. Maybe I would work a month or two without losing a day. They have fifteen automobiles, and I was a helper. They bought out the Northside Storage people.

Q And in September how many did they have? A Three or four--no, fifteen.

Q Are you sure of that? A Yes, sir.

Q And isn't it a fact that you went around there and got odd jobs by the day? A No, sir. That's a big firm, Lee Brothers. That's no corner affair. They are a big firm.

Q Did you know at the time you were sitting on this rock that McGowan had taken eighty cents from this girl? A No, sir; I didn't know anything about the eighty cents.

Q But you did know of it that night? A What the girl claimed.

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The girl said to me she lost eighty cents, but I didn't know nothing about no eighty cents.

Q Didn't you tell the Magistrate that McGowan took eighty cents from the girl? A No, sir. When I said to walk on, and we might meet him, she said that.

Q Didn't you say this in the Magistrates' Court: "And the girl was talking to me and said McGowan took eighty cents, or something like that." Did you say that? A I didn't say nothing about no eighty cents. When McGowan went away, she said, "We may as well wait here because he has eighty cents of mine." She said that when I was sitting there with her.

REDIRECT EXAMINATION BY MR. KIER:

Q Were you and the girl frightened when the officers came up and arrested you? They came up suddenly, didn't they? A Yes. But why should we be frightened, when we weren't doing anything wrong?

Q Well, was that girl frightened at the arrest? A There was nothing the matter with the girl at all. She must have been frightened. There seemed to be something the matter with her.

Q Did you expect officers to come up to you, while you were sitting there? A No, sir; there was nothing out of the way.

Q Well, were you frightened? A No, sir; but I didn't know what happened to me when I was under arrest.

Q Was the girl excited? A Yes, she was excited when she had to go to the station house. That was all.

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Q Well, weren't you excited there, too? A Well, yes.

Q Was the girl excited? A I guess she was.

Q You were sitting there, and never expected these officers to come up and arrest you, did you? A No, sir.

RECROSS EXAMINATION BY MR. DONOHUE:

Q You wouldn't have gone there, if you had expected officers to come there after you, would you?

(Objected to.)

THE COURT: Well, that is speculative. Objection sustained.

R O B E R T D A H L, of 177 East 123rd Street, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q Mr. Dahl, what is your business? A I run a carpenter shop.

Q A carpenter shop of your own? A Yes.

Q Are you a carpenter? A Yes, sir.

Q How long have you been in business? A The last eighteen years -- that is in the trade, not for myself. I have been in business for myself for the last eight years.

Q In New York here? A Yes. Sub-contracting.

Q Tifverman is a relative of yours, I believe? A A cousin.

Q And you have known him from birth, haven't you, from his

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childhood? A Yes.

Q And do you know others who know him in the neighborhood?

A Well, not all of them.

Q Not all, but you know some people who know him? A Yes, sir.

Q And do you know what his reputation is for decency, and his reputation as a law abiding citizen? A As far as I know I always heard he was all right.

Q Well, is it good or bad? A Good, as far as I know.

Q Well, that's what you are asked, as far as you know. A Yes.

MR. KIER: That's all.

CROSS EXAMINATION BY MR. DONOHUE:

Q How are you a cousin of his? A His mother is my father's sister.

Q And you are intimate with his family? A I only go up there once in a while.

Q And how many times have you seen him in the last year?

A Say about an average of once a month or so, probably.

Q And you have seen him at home, haven't you? A Yes.

Q And you don't know who he associates with; do you? A No, sir.

AUGUSTA TIFVERMAN, of 534 East 134th Street,
a witness called on behalf of the defendant, being duly
sworn, testified as follows:

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DIRECT EXAMINATION BY MR. KIER:

Q Mrs. Tifverman, is this your son, the defendant, Einer Tifverman? A Yes.

Q You are a widow, I believe, are you? A Yes, sir.

Q And does he live with you, your son? A Yes, sir.

Q How old is he? A Twenty-one.

Q Twenty-one? A Yes, sir.

Q Do you know other people who know him in the neighborhood, neighbors and all that know him where he lives? A Yes, sir.

Q Is his reputation there good or bad for decency and peace and quiet? A As far as I know, he's all right.

A N D R E W B O R G E N D A H L, of 2013 Fifth Avenue, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q You are a clergyman, I believe? A Yes, sir.

Q Where is your church located? A 126th Street, on the west side, 74 west.

Q And you have been there how many years? A Well, we have been there about three years in that church. I am pastor for the Swedish Congregation.

Q Now, do you know the defendant, Einer Tifverman, this defendant? A I know him.

Q How long have you known him? A Well, I guess I've known

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him for about fourteen years.

Q Now, do you know other people that know him in the neighborhood, other persons? A Yes, I do.

Q Now, do you know what his reputation is for decency and peace and order? A What I have heard, I have heard nothing but good about him; and his own mother has spoken highly of him, and he was in my confirmation class about five years ago.

CROSS EXAMINATION BY MR. DONOHUE:

Q Doctor, are you basing what she said here upon what the mother told you? A Yes.

Q Entirely? A Yes.

THE COURT: I don't think the doctor understood your question.

BY MR. DONOHUE:

Q Are you basing, doctor, what you tell now, about his being a good boy, on what his mother alone told you? A Alone, yes. She told me that he had been a good boy.

BY THE COURT:

Q In other words, the District Attorney would like to know, doctor, whether, in estimating the reputation of the defendant, whether you are basing your judgment upon what his mother told you only, or upon what other persons have said regarding him, including his mother? A I have talked to very few people about him, very few persons.

Q And then you base your opinion solely upon what his mother

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said to you? A Yes, and my own experience with him. He was in my confirmation class, too, and was always, a good, obedient boy.

BY MR. DONOHUE:

Q Now, you haven't seen the defendant since when? When did you last see him? A I think this about a week ago.

Q No, before he was arrested, doctor. When was the last time you saw him before he was arrested? A I don't remember that.

Q Was it one, or two or three years? A Oh, no. Inside of a year, because he used to come to the church, but I can't always notice people that come to the church.

Q You didn't know him when he was away from you, did you -- that is, you didn't know his movements or associates in the last five years, did you, doctor? A No, I can't say that I did.

Q Doctor, about how many times would you say that you saw the defendant in the last five years, since he left your confirmation class? A Well, I can't exactly say.

Q Well, what is your best recollection, doctor? A This is hard for me to say, because I have only met him now and then.

Q I will put it another way to you. I ask you how many times did you see him in the last five years? A Well, a few times.

Q Well, about how many times would you say those few times were? A Well, when I shook hands with him, and talked to him-- well, I can't say exactly how many times?

Q Well, how many times, about, in the last five years? A Well

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very few times. I visited their home, once in a while, but they live in the Bronx, and I live in Harlem.

Q And can't you give us your best recollection or your best judgment, as to how many times you have seen the defendant in the last five years? A Well, I would meet him and speak to him --

Q No/. Just approximately the number? A This is very hard for me to tell, the number.

Q About how many times? Ten times in the last five years, doctor? A This is very hard for me, because we see so many people.

Q Well, do you say that you saw him ten times in the last five years? A I am afraid to say that it is that many times.

Q Well, when you saw him where would you see him? A Well, I met him in the street or in his home.

Q In his home? A Yes, sir.

Q And when you met him on the street, it would be nothing more or less than "Good evening, doctor," and "good evening" from you -- whatever his name was? A Yes, I'd been asking him how he feels and so on, and he is always sober, and so on.

Q Now, how many people have you talked with about this defendant as to his habits and conduct in the last five years, outside of his mother? Give us an idea about that? A Well, this is very few because we have so many people, and we can't speak to them all.

Q Now, doctor is it not a fact that you are here today, tes-

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tifying for the defendant, because you are sorry for his mother, and in sympathy with her?

(Objected to. Allowed. Exception.)

A Yes.

Q And it is not because you personally recall having spoken to anybody about this defendant at all, outside of his mother; is it? A No, sir; we very seldom talked to individuals or persons.

Q And you are basing what you say about him mostly on what the mother has told you since these boys have been arrested; is that right? A (No answer).

Q Do you understand my question? A Yes, I guess I do.

Q You have testified here for this boy? A Yes.

Q And you are basing that upon what the mother has told you almost wholly, aren't you? A Well, not exactly. This is on my own behalf and on behalf of the good work I have been trying to do for these boys. His brother was in my confirmation class, too.

Q And that was some years ago? A Yes. And I feel sorry for them, and I am working under the law, and I am going in the gospel way.

Q In other words, you are trying to do what good you can?

A Yes.

REDIRECT EXAMINATION BY MR. KIER:

Q Now, doctor, how many years have you known the defendant?

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A Well, I think I've known him about fourteen years. It was fourteen years ago when I came to Harlem, and I know the family.

Q You first knew him fourteen or fifteen years ago? A Yes, sir.

Q And had you ever heard anybody say a word against the defendant? A No, sir, not that I can remember.

Q Well, you are not a pal of his, you don't go around with him? A Well, I am around the people.

Q (Question repeated). You don't go around to the school-rooms and other places where he goes to? A Oh, no, sir. And I warn my boys not to go to places like that.

Q And you confirmed him, did you? A Yes.

Q And you want to see him turn out right, don't you? A Yes. Can I address the Court, to give him back to his mother? I am his pastor.

THE COURT: No, it is improper to make that statement at this time, and that remark should not have been made, and the jury will utterly disregard it.

Your duty, gentlemen, is to listen to the evidence, and, when you retire to deliberate upon it. Questions of fact will be submitted to you, and you must consider them alone. You must steel your hearts, and permit your minds to work freely. No attempt to have the heart warp the mind should be allowed. You are here to decide a personal fact, did the defendant violate the law of the state.

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MR. KIER: And will your Honor's remarks be made applicable to the complainant?

THE COURT: Certainly. And they must not be prejudiced in the slightest degree by the charge made by the prosecutor. This is not a case for sympathy for the prosecutrix, or prejudice against the defendant because of the nature of the charge. But it is your duty to impartially weigh all the evidence, and determine whether the laws of the state have been violated by the defendant.

MR. KIER: We rest.

THE COURT: Any rebuttal?

MR. DONOHUE: Yes, sir. However, we rest.

THE COURT: Do both sides rest?

MR. KIER: Yes, sir.

MR. DONOHUE: Yes.

MR. KIER: Will your Honor hear me now? The time has come to sum up, but I have been sitting up very late, several nights past on some legal matters, and I am very tired, and would your Honor adjourn now? It is the hour of adjournment.

THE COURT: Certainly, I will adjourn now, because the summation and charge will take at least an hour and a half, and it is now four o'clock.

(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 Monday morning, December 15th, 1919, at 11 o'clock.)

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