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CASE #2159



COURT OF GENERAL SESSIONS OF THE PEACE

IN AND FOR THE COUNTY OF NEW YORK

PART ONE.

2617

-----x  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

F R A N K      A L B I N O.

B e f o r e:

HON. WILLIAM H. WADHAMS, Jr.

And a Jury.  
-----x

New York, Tuesday, February 8th, 1916.

THE DEFENDANT IS INDICTED FOR BURGLARY IN THE THIRD  
DEGREE, GRAND LARCENY IN THE FIRST DEGREE AND RECEIVING.

INDICTMENT FILED December 6th, 1915.

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

JAMES M. DONOHUE, ESQ., Assistant District Attorney,

For the People.

CRESENZO CAGGIANO, ESQ.,

For the Defendant.

(A jury is duly impaneled and sworn.)

T H E   P E O P L E ' S   C A S E

H Y M A N S C H W A R T Z, called as a witness on behalf of the  
People, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. DONOHUE:

Q Where do you live? A 1961 Mapea avenue, Bronx.

Q What is your business? A Shirtwaists, manufacturer of  
shirtwaists.

Q And what else? A Nothing else.

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Q Ladies wrappers? A No, shirtwaists only.

Q Where is your place of business? A 43 West 16th street.

Q What kind of a building is that, a loft building? A No, latest style building.

Q A loft building? A Yes, sir.

Q And do you occupy a loft there? A Half of a loft.

Q On what floor? A Fifth floor, front.

Q Will you give the jury a description of your premises in connection with the public hall there, how you get in and how you get out? A Yes, sir. We, of course, have the place on the fifth floor, and there is two elevators in there and one staircase, and in the back is one elevator, a freight elevator, and one stairs also in the back; so we left Saturday about four o'clock; I locked the place myself, because I am the manager of the place, I am the inside man, and we locked the public door in the hall, and then we always put bars on the elevators, and one door is locked, a Fox police lock, and in the back we always put in bars on the doors and a bar on the elevator door.

Q What day of the month was that? A It was about the 21st of November.

Q About what time did you leave the premises? A About four o'clock.

Q In the afternoon? A Yes, sir.

Q And did you lock the place yourself? A Yes, sir.

Q You went away then? A Yes, sir.

Q When was the next time you came back to those premises?

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A Monday morning.

Q About what time? A About seven o'clock, or half past seven.

Q Will you describe to the jury the condition you found your premises in at that time? A Yes, sir, we come up there, and all of a sudden one bar was taken away from one elevator, from the second elevator, in the hall, and a window was taken out of the public hall, a window about three feet square, and all the goods except in the safe - all the goods was out, stock, waists and all the centres we had was taken out, silks, chiffons, laces and crepe de chine, about \$1500 worth, and some change.

Q Will you describe that door to the jury? What kind of a door was it? How large, how much was glass, and how much was wood? A The glass is about like this, a little shorter, but wider (indicating window in court room).

Q Was the glass on the top, or bottom? A The floor comes this high (indicating), and on the top is glass.

Q And that led into your loft? A Yes, sir.

Q Where you had these goods stored? A Yes, sir.

Q What was the condition of that glass on Monday morning?

A The glass was taken out.

Q And how much space did that leave? A About square three feet.

Q What door did that lead to? A In the public hall, the elevators.

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Q On Monday morning you reported this to the police? A Yes.

Q And what happened after that? A After that the police come up, and he said -

THE COURT: Never mind what he said.

MR. DONOHUE: Go on.

BY THE COURT:

Q You had a conversation with the police, did you? A Yes.

Q And after that conversation what happened? A He went away to look it up.

BY MR. DONOHUE:

Q And he brought you back certain material and showed it to you? A No, he didn't brought it back. In Jefferson Market Court he showed us some wrappers from the goods, which we recognized as ours.

BY THE COURT:

Q Wrappers? A Yes, sir.

Q Things that you wrap the goods up in? A Yes, sir, wrappers from the goods; we recognized the numbers.

BY MR. DONOHUE:

Q That was material which you wrapped the shirtwaists in?

A Yes, sir, silks.

Q Did you ever see the defendant around those premises?

A Yes, sir.

Q When? A I seen him Saturday night, when I left the door, I told him good bye.

Q You told him good bye? A Yes, sir.

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Q Where was he standing then? A On the elevator.

Q How long had he been around those premises? A About three months, three or four months.

Q That was prior to this Monday morning? A Yes, sir.

BY THE COURT:

Q Was he employed there, in your employ? A Yes, sir.

Q In your employ? A Not in my employ. The landlord of the building.

Q What did he do there, do you know? A Yes, he was elevator boy.

BY MR. DONOHUE:

Q Did you see him after Monday? A Monday only.

Q Did you see him after that? A In the morning, yes. Then he left.

Q Did you have any conversation with him? A No, no conversation.

THE NINTH JUROR: May I be permitted to ask a question?

THE COURT: I would suggest that you bear in mind the question that you desire to ask, and when the counsel has finished with the cross-examination, then if the question is not asked you may ask it, but I always think it wiser for jurors to wait until the lawyers have finished with the examination of the witnesses.

BY MR. CAGGIANO:

Q There are certain marks on these papers. Did you make those marks, Mr. Schwartz? A No.

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Q You did not? A No.

MR. CAGGIANO: Then, I object to them being put in evidence.

MR. DONOHUE: I have not offered them yet.

THE COURT: The objection is premature.

BY MR. DONOHUE:

Q Now, Mr. Schwartz, did you ever see these papers before?

A Yes, sir.

Q Where did you see them? A They were in my place, and afterwards I seen them in Jefferson Market Court.

Q When did you see them before November 21st, 1915? A I seen them the 20th and the 19th.

Q And were they in your premises when you left on this Saturday afternoon? A Yes, sir.

Q And were they there Monday when you came back? A No.

Q When was the next time you saw them after Monday - after Saturday, at least? A Tuesday, in Jefferson Market Court.

Q Who showed them to you? A A detective.

BY THE COURT:

Q Was that Tuesday, or Thursday? A Tuesday.

BY MR. DONOHUE:

Q Do you recognize these wrappers? A Yes, sir.

Q Are they yours? A Yes, sir.

Q And were they yours on this Saturday in question? A Yes.

MR. DONOHUE: I offer them in evidence, if your Honor please.

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THE COURT: I will permit an examination now, counsel.

PRELIMINARY CROSS-EXAMINATION BY MR. CAGGIANO:

Q Did you make those marks on those wrappers? A No.

Q You don't know who made those marks? A Yes, I know who made them. They were made where we bought the goods.

Q But you did not make it? A No.

MR. CAGGIANO: Then, I object to those being introduced in evidence, as not properly identified.

THE COURT: He says he recognizes these articles, papers or whatever you might call them as things which were in his premises, but I think if you had made the objection that they have not in any way been connected with this defendant I would sustain the objection. It is not necessary that marks of identification should have been placed upon a given article by the witness himself, provided he recognizes the marks as having been on the articles, but I think that the offer is premature. I will sustain the objection upon the ground that they have not been connected with the defendant. They may be marked for identification.

(Same received and marked People's Exhibit No. 1, for identification, of this date.)

DIRECT EXAMINATION (CONTINUED) BY MR. DONOHUE:

Q When you saw these goods on this Saturday in question, where were they? A In our premises.

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Q What were they doing there? What were you using them for? A There was goods inside.

Q What kind of goods - silks? A Silks, messalines, and crepe de chine, and laces of course, is not in these wrappers, but messaline and crepe de chine.

Q When you came in Monday morning, were they in the premises? A No, sir.

Q The paper and the goods were both gone; is that correct? A Yes, sir.

Q Who was it showed you these papers or these wrappers? A The detective.

Q Do you know his name? A Burgess.

Q And where did he show them to you? A Jefferson Market Court.

MR. DONOHUE: That is all.

CROSS-EXAMINATION BY MR. CAGGIANO:

Q How many bundles were missing from your place of business on that Monday morning? A I can't tell how many bundles, but I have a statement of how many goods were missing, the yardage and everything; we have a record of everything. We mark down how many goods we have left.

Q But you made an inventory after this burglary was supposed to have been committed? A Certainly, I have a statement of everything that was missing.

Q Did you figure out how much was missing? A Certainly.

Q How much was missing? A There is a statement there.

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BY THE COURT:

Q He asked you how much was missing? A Goods?

Q Yes. A The amount, about \$1500.

Q Not the amount. The quantity? A I can't remember exactly.

Q Well, approximately? A I can't remember exactly; there was missing about three or four hundred yards of silk and crepe de chine; that means messaline and crepe de chine, and about 25 pieces of Venice edging.

Q How much is that silk worth? A Some 90 cents a yard and some 65 cents; the messaline is 65 and the crepe de chine is 90 cents, and there was laces, 25 pieces of edging, and chiffon about 10 pieces, in boxes.

Q Do you keep an inventory of that place? A And a Spring coat of mine, too.

Q Do you keep an inventory of the place? A What is that?

Q Do you keep the stock in the place? A Of course, we keep an inventory.

Q How much stuff do you keep in that place? A About \$10,000 stuff some times; some times more.

Q And do you look at that stock every day? A Every minute.

Q Every minute? A Certainly.

Q So, you could just tell what is missing from one day to another? A Yes, sir.

Q You said about that glass that was missing from that

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door - A Yes.

Q Was that glass broken before? A No.

Q When you left that Sunday night, that glass was there, intact? A Yes, sir.

Q It was not broken? A No.

Q And when you entered Monday morning you did not find the door broke, did you? A Yes, I found the glass taken out.

Q But the door was not open? A No.

Q Just the glass taken out? A Yes, sir.

MR. CAGGIANO: That is all.

BY THE COURT:

Q Where was the glass? A The glass was standing near the door.

Q Standing near the door? A Near the door.

Q And was it cut out smooth, or was it broken? A No, it was not broken. It was taken out of the molding.

Q The molding was taken out? A Yes, sir.

BY MR. CAGGIANO:

Q Isn't it a fact that this defendant here called your attention to the burglary? A Yes, he said in the morning we were robbed, and he wanted to call the police.

Q And who called up the police? A The shipping boy.

Q Did you see this defendant use the telephone? A I didn't see him use the telephone. He said himself he wanted to call up, but he didn't use the telephone, because we didn't let him.

Q You are not sure whether this defendant called the police,

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or whether somebody else did? A The shipping clerk did.

BY THE COURT:

Q Did you see him? A Yes.

Q Seen him telephone? A No, I didn't see him telephone, because I come in and I called up the police.

THE COURT: Strike out what he said.

Q You didn't see him? A No.

Q So, you didn't see who did call up? A No.

THE COURT: Now, does the juror desire to ask a question?

THE NINTH JUROR: If you have no objection, yes. In the first place - it may not be material, but I understood him to say the premises in question were on 14th street, and the other said 16th.

Q What street did you say? A 16th street, 43 West.

Q Did you say 16th, or 14th? A 16th.

THE NINTH JUROR: Secondly, you used the phrase, "As I came there the goods were out". I understood you to say they were removed from the place, stolen, or something to that effect; you found the goods out.

THE COURT: The goods were missing?

THE WITNESS: The goods were missing.

THE NINTH JUROR: That is what you meant?

THE WITNESS: Yes, sir.

EDWARD C. BURGESS, police officer,  
attached to the Second Branch Detective Bureau, shield No.  
451, called as a witness on behalf of the People, being

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first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. DONOHUE:

Q You are a policeman attached to the Municipal Police Department of the City of New York? A I am.

Q And you are doing detective work? A Yes, sir.

Q Did you have a conversation with Hyman Schwartz on or about November 23rd, 1915? A I think it was the 22nd.

Q 22nd? A Yes, sir.

Q And as a result of that conversation did you talk to the defendant? A I did.

Q Will you tell us what you said to the defendant and what the defendant said to you? A I asked the defendant if he had the keys to those premises No. - I forget the number exactly now, whether it is 16th or 21st streets.

Q It is Mr. Schwartz premises? A Mr. Schwartz premises.

Q Go ahead. A He said he had; that he and the other elevator boy took turns with the keys; one man had possession of them one week, and the other the following week, and that this past week they had been in possession of the defendant, Albino; and I asked him if he still had them. He said - I think he said he had given them up that morning; that that was the end of that week, but up until that morning he had had possession of the keys. So I asked him if he knew anything about the burglary in the premises of Mr. Schwartz, on the 4th or 5th or 6th floor, whatever floor it was, and he said no; he didn't know anything about it, that he had come there that morning at his

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usual time, seven o'clock, or eight o'clock, and had discovered that - had gone down to the engine room and had discovered a lot of wrappers and waists and goods had been there, and had gone up through the building and had discovered that a pane of glass had been removed from the door leading into the Schwartz loft; and I asked him whether he knew anything about it, and he said no. I asked him if he had loaned the keys to anybody. He said no. I then asked him when he had left the premises. He said on Saturday, and had not returned until that Monday morning, and I then questioned the other elevator man.

Q Was the defendant present at that time? A No.

Q What other conversation did you have with the defendant at that time? A I left the defendant then, and I arranged with Mr. Schwartz to notify me in case the defendant left the building that day, and about, I should imagine about eleven o'clock, when I left there, or a little earlier, half past ten, when I got back to the branch, around one o'clock that day, I got a message from Schwartz's brother, saying that the defendant had asked -

THE COURT: Don't state that. You got a message?

THE WITNESS: Yes.

Q And as a result of that, what did you do? A As a result of that message, I went to the vicinity of the defendant's home, at 112 Baxter street, I believe is the number, and I stayed around there, and about four o'clock in the afternoon I saw the defendant. He did not go into his home. He went around to a

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saloon in Hester street. He remained in that saloon for about an hour. He then came out of the saloon. He went around and went up into his home, and shortly thereafter I went up, knocked on the door, and the defendant was there. I had a few words of conversation with him about -

Q Tell us all he said and what you said?

MR. CAGGIANO: Did you tell this defendant -

MR. DONOHUE: I am not through yet.

MR. CAGGIANO: Just one question.

THE COURT: I cannot allow it now.

Q You had a conversation with the defendant? A Yes, sir.

Q In his own home? A In his own home.

Q Tell the Court what that conversation was. A As I came in, he spoke to me first, he said, "Well, I see you followed me down here". I says, "Well, yes, that hadn't ought to worry you any", and he said, "Well, it don't worry me any. I knew you would follow me; I knew that this morning, that you were going to follow me". I said, "I didn't tell you so this morning"; and he says, "No. Well", he says, "why are you following me?" Well, I says, "I am not exactly following you. I preceded you". I says, "The idea is this, that from my investigation I figure that you must know something about this burglary up there". So he says, "I do know something about it; I know all about it". He says - and he said, "I got trimmed"; he says, "I was to go back on the job this morning, so as to not direct suspicion toward me". - That was the substance of his conversation - "which

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I did, and when I was up there working, the other fellows sold the stuff for \$99. I was to get \$33"; and he says, "I have been trimmed out of it, and I am not going to get it". I says, "Who are the other fellows?" He says, "They are right around the corner now". I says, "Are they around in that saloon?" He says, "Yes". So he says, "Come on around and I will point them out to you. I will go right in there and point them out to you", and I says, "That might be foolish to do. Wait a little while". I was all alone. He says, "They are right around here; you can come around". Well, I walked around the corner with him, and he left and went across to the front of the saloon, to see if they were there. He came back to me, and I says, "Well, come on now, we will go up to Headquarters and talk this thing over". I took him up to Police Headquarters, and he there gave me the names of the two fellows. He said that he had been approached by these two fellows, that they had suggested to him, knowing that he had possession of these keys, they had suggested to the defendant that they go up there and get into some loft and do - and burglarize some loft; and he had finally gone up there with them, on Saturday night, I think he said was the night that he went up; that he had let them in with the keys, and that the other two men whose names he furnished me, one had come there with a truck that they had gotten over on the West Side, down in the Greenwich Village district. That a fellow whom he described as Johnnie the Crook had driven the stuff away, he and the other fellow whose

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name I don't recollect just now, and that they had all met later down in this saloon, in 122 Hester street; that the stuff had been stored in the little storeroom belonging to the saloon, the storeroom of the saloon.

Q Was that the saloon he went into while he was talking to you? A Yes, sir. So he said, "Those fellows are down there now, and we will go down and get them". This was the conversation in Headquarters. So Detective McMullen and Detective Moore and myself and the defendant went down. He there pointed out one man. However, he was not one of the two whom he had mentioned. We placed that man under arrest, and as a result of the information he gave me about this back room, I tried to get into that back room. He pointed out the room, and there was a ladlock on it; it was a room directly across the hall, in the rear of the saloon. We couldn't get in, so I went into the bartender and asked for the key, and he gave me a key to this ladlock, and I went in and found these wrappings in that room.

Q These papers (showing witness People's Exhibit No. 1 for identification)? A Yes, sir. I took those wrappings with me, and later showed them to the complaining witness, Mr. Schwartz.

Q Leave that out. What happened after that, Officer? Did you have any conversation with the defendant about those wrappings? A I did. The defendant said that the wrappings were the wrappings from the silks and waists and goods they had

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taken up in Schwartz's loft, and it had all been stored there; and in removing it they apparently left the wrappings. That is about all the conversation.

Q Is that all the conversation you had with him? A That is about all.

Q Did you tell him you were a police officer when you went to his house? A I told him that in the morning.

Q You told him that at 16th street? A Yes, sir.

MR. DONOHUE: Now, I offer these wrappings in evidence.

MR. CAGGIANO: I renew my motion, on the ground they have not been properly identified as being the wrappings.

THE COURT: The motion is denied.

MR. CAGGIANO: I take an exception.

(Same received in evidence, and marked People's Exhibit No. 1, of this date.)

CROSS-EXAMINATION BY MR. CAGGIANO:

Q You said that on that Monday afternoon you saw the defendant about four o'clock? A About that time, yes, sir.

Q And did you ask Mr. Schwartz when he called up the branch office at what time he had left those premises at 16th street? A Yes, he had not left at that time.

Q He had not left at what time? A He had not left at the time he 'phoned me first, which time I placed at about half past one. He said that he had asked permission to leave

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for the afternoon, giving as an excuse that his wife was sick, and then I said, "If he asks again, let him go", so I waited in the branch -

Q Now, you said you saw him go into that saloon on Hester street? A Yes, sir.

Q How long did he stay in that saloon? A He stayed in that saloon from three-quarters to an hour.

Q And where did you wait all during that time? A I waited around the neighborhood there, on that corner and through that block, from Baxter to I don't know what that next street is.

Q After he got out of that saloon, where did he go? A He went directly around and into his house.

Q And what did you do when he went into his house? A I waited about not over five minutes, and went in also.

Q And did you go directly into his home? A I went up and knocked on his door.

Q How did you know he lived in that particular house? A I inquired off somebody.

Q Who was in there when you went in with the defendant? A A person whom he said was his wife and an elderly lady whom he said was his mother-in-law and a little baby.

Q And as soon as you went in there did you tell this defendant if he knew anything about it to tell you all about it, because you was not looking for him, but you were looking for the other man who committed the burglary? A I didn't say that, no, sir.

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Q Did the conversation which you had with the defendant take place in the presence of his wife and his mother-in-law?

A Yes, sir.

Q Did they hear the conversation? A I presume they did; they were there.

Q Were they right near? A Yes, sir, right near.

Q Were you talking loudly at the time? A In a natural tone of voice.

Q Isn't it a fact that this defendant for fully ten minutes that you spoke to him in his home denied knowing anything about this burglary? A He did at first; he did deny it, yes, for possibly five minutes.

Q Didn't you say in your direct examination that as soon as you went in there you asked him the question, "I came here because I knew that you - I was under the impression that you knew something about this burglary", and he said, "yes, I know all about it"? A No, sir, I didn't say that.

Q Didn't you say that, in your direct examination? A No.

Q After the ten minutes that you had this conversation with him, did he walk out with you, or did you drag him out?

A He walked out.

Q Sure you did not drag him out, pull him out? A No, sir, he walked out; in fact, he is the one that suggested going out.

Q Did you threaten him in any way down the stairway? A No.

Q Did you ever punch him in the jaw? A No, sir.

Q You said you found these paper wrappings in that room

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on Hester street? A Yes, sir.

Q Were they loose, or were they -

BY THE COURT:

Q That is, the room next to the saloon, which had the pad lock on it? A Yes, sir.

BY MR. CAGGIANO:

Q Now, were these wrappers in a bag? A No, sir.

Q Did you put them in a bag? A I did.

Q What became of that bag? A The bag was so dirty and filthy that the following morning, I think the following morning, in Headquarters, I took the wrappers out of the bag and straightened the wrappers out and folded them altogether in a roll, as they are now, and threw the bag away.

Q And were these wrappers sticking out of the bag, or did they fit entirely in the bag? A They were jammed into the bag.

Q How were they jammed? Crumpled up? A Some were folded squarely and others were not folded at all, and they were just fixed up as we found them there and pushed into that bag.

Q When you say "folded up"; you mean this way, just one fold (illustrating with paper)? A Some of them were like that, yes, sir.

Q Is that the way they were (illustrating with paper)? A Some of them, yes, and others were decidedly mussed up. They have all been straightened out since.

Q They have not been pressed out, have they? A No, sir.

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Q How big a bag was it? A It was not a very large bag. I should think it was a bag about -

Q About a foot? A Oh, a little more than that. The bag stood up about that high (indicating), and it was not very large around; a bag about possibly a foot and a half in circumference, or in diameter, rather, and about 2-1/2 feet high, or possibly less.

BY THE COURT:

Q Do you know whether it was a potato bag? A It was a burlap bag, but it was much smaller than an ordinary potato bag.

BY MR. CAGGIANO:

Q When you went out of that place on Hester street in what way did you carry that bag? A Carried it in my hand.

Q Did you grab the bag in the middle of it? A No, sir, I grabbed it by the edge; it was stuffed full of those papers; the whole top of the bag was open. I just grabbed hold of the edge of the bag.

Q Were some of these wrappers sticking out of the bag, if you remember? A I don't remember distinctly whether they were or not. They might have been. If they were it was very little.

Q But you are sure they were not rolled up and put in the bag; they were all crumpled up? A They were pushed into that bag, so that they were all intact in that bag.

Q You said you questioned this defendant in the morning?

A I did.

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Q And he denied knowing anything about it? A Yes, sir.

Q Then you said, when he asked you to go with him to that place in Hester street, he went inside, and he left you outside of the place? A No, he left me over on the corner, and I think he only went over to the doorway of the saloon and looked in the window. I don't think he went in. He may have stepped inside the door.

Q And when he came back what did he say to you? A When he came back he said the two fellows were in there, "but when they saw me", he said, "they ran to the roof", or - yes, to the roof. I asked him if there were any other ways out of there, if there was a rear way out of there. He says no, that the only way would be either down in the cellar or to the roof.

Q These two fellows knew you then, didn't they? A I don't know.

Q If they ran away? A I don't know them, I am sure.

Q You know who Johnnie the Crook is, don't you? A No, sir.

Q You have heard of him, haven't you? A That day is the first I ever heard of him that I know of.

Q You said you did not go in there. You brought this defendant to Police Headquarters? A Yes, sir.

Q After that? A Yes, sir.

Q Did you ask anybody in Police Headquarters who Johnnie the Crook was and the other fellow named Dixon was? A Yes, sir.

Q And you found out all about them? A Yes, sir.

Q What kind of characters are they? A I found out, I

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was told that they are well known thieves, that Dixon is a well known loft thief.

Q And the police is very anxious to get them, isn't they - aren't they? They are very anxious to get hold of this Dixon?

MR. DONOHUE: I don't like to object, but I think counsel is taking up time on immaterial matters.

A We have set an alarm for him.

Q Previous to that, they were anxious to get him for some crime? A They did get him previous to that, several times.

Q And after you took this defendant from Headquarters again, and you brought him over to that place on Hester street again? A Yes, sir.

Q And you didn't find either Johnnie the Crook or Dixon? A No, sir.

Q But you arrested another person there? A Yes, sir.

Q And that person was subsequently discharged? A Yes, sir.

Q Now, didn't you tell this defendant that you wanted him to go against this Dixon and Johnnie the Crook; that you did not want him?

MR. DONOHUE: What do you mean, go against him?

Q You wanted him to testify against the other two? A This defendant made a statement as to goods in the case, and volunteered to take the stand against Dixon and Johnnie the Crook, in the event we apprehended them, also volunteered to take the stand against Clement Gulli, whom we arrested that night.

Q But he did not take the stand against them? A He didn't.

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THE COURT: G-o-o-l-e-y?

THE WITNESS: G-u-l-l-i.

Q Do you remember when you testified before the Magistrate I asked you the question whether this defendant was under the influence of liquor, and you said he looked as if he had been drinking? A I say that now, yes.

Q He had been drinking quite some, hadn't he, according to your recollection? A He had been drinking, I don't know how much; he was not the man in the afternoon that he was in the morning.

Q He did not answer questions so clearly in the afternoon as he did in the morning? A He answered them more clearly in the afternoon than he did in the morning. If he had answered them as clearly in the morning I would have arrested him in the morning.

Q And you are positive you did not strike this defendant going down the stairway? A I had no occasion to. He was so willing to make the statement that there was absolutely no occasion to strike him or ill treat him in any way.

Q You met this defendant after he was arrested and indicted and was out on bail, you met him some place? A Yes, sir.

Q What was he doing at that time?

MR. DONOHUE: Objected to as immaterial.

MR. CAGGIANO: I want a certain conversation.

MR. DONOHUE: I have no objection to conversations.

BY THE COURT:

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Q Did you have a conversation with him? A I did.

Q What was it? A I asked him if there was any chance to recover this property. I says, if your two confederates that assisted in this burglary have that stuff hidden away, it wouldn't do any damage, or it wouldn't hurt his case any if he saw that that property was returned to the owner; that probably in time that would be considered by the District Attorney, the assistance he would give in the recovery of that property.

BY MR. CAGGIANO:

Q And what did he say to you? A He said he would see about it.

Q Didn't he tell you he didn't know anything about it? A He did not. He said he would see about it. He said he would see the complainant.

MR. CAGGIANO: That is all.

THE PEOPLE REST

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MR. CAGGIANO: I move to dismiss the indictment, on the ground the state has failed to prove a case against this defendant.

THE COURT: Motion denied.

MR. CAGGIANO: Failed to prove connection of this defendant with the commission of that crime.

THE COURT: The motion is denied.

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THE DEFENDANT'S CASE

R O S E     A C E R N O, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. CAGGIANO:

Q Where do you live? A 195 Hester street.

Q Do you remember the day when this defendant was arrested on Hester street? A Yes, sir, I do.

Q Do you remember the officer that arrested him? A There were two. Detectives, I think; they were not policemen.

Q Did you see any one of those officers here today? A There was one outside, yes, this one here (indicating last witness, officer Burgess).

Q Now, did you notice that officer, if he had anything in his hands at that time? A He did.

MR. DONOHUE: I ask that the witness not be led.

THE COURT: Don't lead the witness.

Q What did you see on that day? A I have seen a bag in his hand.

Q How big was that bag? A Half empty.

Q I mean, the bag? A It was like a potato bag.

Q And what was the condition of that bag? A It was dirty.

Q Did you see anything of these wrappers here in that bag (indicating People's Exhibit No. 1)? A Not at all.

Q Can you describe how big the bag was? A It was a long, but it was that far down with papers in, I suppose (indicating). They found it behind the stairway. They did not get

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it in the beer saloon.

MR. DONOHUE: I move "they found it behind the stairway" be stricken out.

THE COURT: Strike that out.

Q Can you describe how big the bag was? A It was not a potato bag; it was long, and it was that far down with papers (indicating).

Q How was the officer holding that bag? In what way was he holding it? A He had the paper that was not in, half of the bag was empty, hanging over his arm.

Q How much of the bag, more or less, was full? A There was a trifle all in; I don't know exactly how much was in; I don't know how many ounces it was, how much it weighed.

Q Did you notice this defendant at the time? A I did.

Q What was his condition? A He was very intoxicated.

MR. DONOHUE: I move to strike that out.

THE COURT: The motion is denied.

Q By observing him, could you tell whether he was intoxicated? A He was.

THE COURT: She said he was very intoxicated.

Q Was he walking by himself? A No.

Q In what way was he walking? A They were holding him.

MR. CAGGIANO: That is all.

CROSS-EXAMINATION BY MR. DONOHUE:

Q Do you live at 195 Hester street? A Yes, sir.

Q And that is where the defendant lives, too? A No, he lives

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in Baxter street.

Q You don't know what the officer had in this bag, do you? A No.

Q But you are sure he did not have these papers? A No, sir, I didn't see them.

Q You don't know whether he had these papers? A I didn't see the papers at all, but if they were in the bag it would be stiff.

Q They were not in the bag? A No, I don't think they were.

Q And did they bring the defendant to your house? A No, they did not bring any defendant to my house.

Q Wasn't he in your room when they came in? A I was by the door where I live.

Q Where does the defendant live? A He lives on Baxter street.

Q You know him pretty well? A He passes me by.

Q How did you come to be a witness in this case? A I know the lawyer and I know his mother-in-law.

Q Whose mother-in-law? A His mother-in-law, but I didn't exactly know it was Frank until I heard about it.

Q You recall seeing him on this afternoon? A I seen it, so I said I would come up.

Q And he was very drunk? A He was very intoxicated.

Q And two men were leading him along? A Yes, sir.

Q And one was this officer? A I think it was two detectives.

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Q One of the men was the man you identified before? A He was, and another fellow that had the beer saloon.

Q The owner of the beer saloon? A Yes, sir.

Q And they were leading the defendant along? A Then they went around the corner; they didn't follow him.

Q Where was this saloon? A It is on Hester street.

Q How near to you? A A few doors away.

Q And they just passed your house? A I was standing there, and I seen them come out.

Q Seen who come out? A The detective.

Q Come out of the saloon? A Yes, sir.

Q With whom? A With this fellow here, the short fellow that is away.

Q Did you see him go in the saloon? A Him, no.

Q Did you see that officer go in? A No, I did not. I just seen a big crowd standing there when he was coming out.

Q You don't know whether this man was in the saloon for a long time, or not? A No, sir.

Q Was the officer drunk? A No.

Q Who was carrying the bag? A The detective.

Q And how was he carrying it, you say? A It was half empty.

Q How was he carrying it? A Well, the last part, nothing was in it, it was hanging over his arm.

Q Do you remember what day this was? A No, sir.

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Q Do you remember how long ago? A About three months, I suppose.

Q When is the first time you told the lawyer about it?

A When I told the lawyer about it?

Q When is the first time you spoke to the lawyer about seeing these men? A I didn't see the lawyer until this morning, and his mother-in-law.

Q When did you tell his mother-in-law about it? A His mother-in-law seen me this week.

Q When is the first time you spoke to anybody about seeing this man pass your door? A Well, I knew the fellow afterwards.

Q Who did you speak to? A To his mother-in-law.

Q When? A Sometime this week.

Q For the first time? A About this case, yes. I thought he was out.

Q And that is the first time you spoke to anybody about seeing Frank being carried along, drunk? A Yes, sir, because I don't interfere with anybody's business.

Q Do you remember how long you were standing in front of your door that day? A About an hour and a half.

Q Do you remember what kind of day it was? A It was at night.

Q Where do you work? A I don't work.

Q Married? A Yes, sir.

Q Living with your husband? A Yes, sir.

Q At 195 Hester street? A Third floor, Room 11.

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Q You are a relative of the defendant? A I am no relative. His mother-in-law is a friend of mine.

Q His mother-in-law is a friend of yours? A Yes, sir, but we never hardly see each other.

Q And you recall seeing the defendant being led along by two men on November 21st or 22nd? A Well, I don't remember the date.

Q Do you remember seeing him? A Yes, sir.

Q And he was very drunk? A Yes.

Q Did the officer beat him? A No, I didn't see the officer beat him.

Q Did you hear them talk? A I didn't overhear nothing.

Q But you remember seeing this bag? A Yes, sir.

Q And you are sure these wrappers were not in that bag?  
A Yes, sir.

Q And the first time you spoke to anybody about this was a week ago, when you spoke to his mother-in-law? A Yes, and his mother-in-law told me why he was intoxicated.

Q Did you ever see him intoxicated before this? A No; his wife give birth to a baby, so they had a drink home.

Q When did they have a drink? A Well, the day the baby was born, I guess.

Q When was the baby born? A I don't know.

Q How do you know about the drink? A His mother-in-law said he drank home, but I didn't investigate what date.

Q When did she tell you that? A She told me that this

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morning.

Q And his wife gave birth to a baby? A Yes, sir.

Q About November? A It is about three months or three months and a half.

Q When was the first time you talked to the lawyer about seeing the defendant? A I spoke to him only this morning, with his mother-in-law, that is all, but I didn't say nothing to him, and he didn't say nothing to me.

Q He didn't know what you were going to testify to when he put you on the stand? A He didn't say nothing, but his mother-in-law said I seen him, that is all.

Q You were standing at your door, and these men came out of the saloon? A Yes, sir.

Q And they walked by you, did they? A They passed me.

Q You did not hear any conversation? A No, sir.

Q Do you recall saying that somebody said they found this bag in back of the hallway? A Some of the children that was around said that.

Q Around where? A Around the door, while they were following him up, said that the bag was found in a hallway.

Q They said the officer found it there? A That the detective found it.

Q Found this bag? A Yes, sir, some children standing there, not exactly children, boys about twelve or thirteen.

ROSIE COLUCCI, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

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## DIRECT EXAMINATION BY MR. CAGGIANO:

Q Where do you live? A 130 Mulberry street.

Q About the 23rd day of November, during the afternoon, were you in front of premises 192 Hester street? A There is a grocery store alongside of that saloon, and I was coming out of the grocery store, and I seen one of the officers, but I don't know his face, a tall man, had that fellow by the arm, and he had a potato bag in the other hand, but the potato bag there could not have been more than two or three pieces of paper in it. It was empty.

Q Did you see - A And he was drunk, yes, he was drunk at the time, and the officer was holding him. I know he was drunk, because I know that fellow in the neighborhood, but I never spoke to the fellow, and I never seen that fellow drunk like he was that night.

Q Do you remember having seen me down in the magistrate's court, in Jefferson Market? A Yes, sir.

Q During the examination of Gulli? A Yes, sir, I was there.

Q That was the time you told me about these facts? A Yes sir, I did.

Q And you were willing to testify in favor of Gulli? A The same thing, that I seen a bag, that is all, and there was hardly anything in the bag; there must have been about three pieces of newspaper in it.

Q You don't know what was in the bag? A No, because there wasn't much in the bag.

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Q You didn't see these wrappers in that bag? A No, it was all wrinkled up. How could they be in the bag when the bag was all wrinkled up?

MR. CAGGIANO: That is all.

MR. DONOHUE: No questions.

R O S E      A L B I N O, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAGGIANO:

Q Where do you live? A 121 Baxter street.

Q You are the wife of this defendant? A Yes, sir.

Q Do you remember the day when your husband was arrested in your home? A Yes, sir.

Q Who arrested him there? A The cop.

Q Did you see him at all today? A He was in the house.

Q Did you see that gentleman in your home on that day (indicating Officer Burgess)? A Yes, sir.

Q What time was it when he came up to your house? A About five o'clock in the night.

Q Five o'clock? A Yes, sir.

Q And how long before he came in had your husband been in the house? A My husband was in my house all day.

Q I mean, before the officer came in, how long had your husband been in there? A Oh, about twenty minutes.

Q And when the officer came in he had some conversation with your husband, didn't he? A Yes, sir.

Q Did you hear any part of that conversation? A No, sir.

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Q Where were they at the time? How were they seated? In what part of the room were they? A They were sitting near - just in the same room where I was.

Q How far away were you from them? A Oh, I was sitting down, and they were talking together.

Q Were they talking loud? A They were talking easy, whispering.

Q And for how long did they talk? A For about twenty minutes or half an hour.

Q And then what happened? A Then he took him away. I don't know nothing about it.

Q In what way did he take him away, can you describe? A I don't know nothing, in what way.

Q Did he walk out? Did your husband walk out with him, or did he pull him out? A He pulled him out, and he took him away with him.

Q And did you follow? A No, sir, I was in the house.

Q Were you inside? A No, sir.

MR. CAGGIANO: That is all.

CROSS-EXAMINATION BY MR. DONOHUE:

Q They had been talking in your rooms for about half an hour, hadn't they? A Yes, sir.

Q And they were talking very low and very quietly? A Very low.

Q And quietly? A And quietly.

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Q And all of a sudden the officer jumped up and grabbed hold of your husband and dragged him out of the house? A Yes, sir.

Q Is that right? A Yes, sir.

Q And you did not get excited at all about that? A No, sir.

Q It didn't worry you a bit? A No, sir.

Q You didn't care who dragged your husband out of the house, or what happened to him?

THE COURT: I sustain the objection.

Q Did you follow them? A No, sir; I was in the house.

Q You did not leave your rooms at all? A No, sir.

Q Didn't make any outcry? A (No answer).

Q Did you cry out for the police, or anything? A No, sir.

Q What were your husband's regular hours of business? A Half past six every night.

Q Half past six every night? A Yes, sir.

Q Do you know what time he came home on this day from business? A Half a day.

Q About what time did he get in the house, Mrs. Albino?

A He come in about one o'clock.

Q About one o'clock? A Yes.

Q And you testified when your husband's lawyer asked you that he was there all day; is that correct? A In the morning he was with me.

Q He was with you in the morning. Had he been in the house all day, Mrs. Albino? A He had went out; he was glad because I give birth to a baby.

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MR. DONOHUE: That is all.

REDIRECT EXAMINATION BY MR. CAGGIANO:

Q I mean, on this Monday morning, did your husband go to work? A Yes, sir, he went to work.

Q And what time did he come home? A In the night.

Q And what time on that Monday, the Monday that he was arrested? A Five o'clock in the night.

Q Did he see you before five o'clock? A (No answer).

BY THE COURT:

Q Do you understand the question? A Yes, sir.

Q What did he ask you? A I didn't hear it.

BY MR. CAGGIANO:

Q Your husband went to work on that Monday morning, is that correct? A Yes, sir.

Q And what time did he come back from work? A Five o'clock.

Q Did you see your husband before five o'clock on that Monday when he was arrested? A He was home half a day with me.

Q And why did he come home, do you know? A Because I was sick.

Q And had you had a conversation with him the night before? A No, sir.

Q About coming home?

MR. DONOHUE: Now, if your Honor please, I must object to that.

THE COURT: The objection is sustained.

Q You were sick on that day? A Yes, sir.

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MR. DONOHUE: I object to that as immaterial.

THE COURT: I will allow it.

Q Had you been sick the day before? A Yes, sir, I was sick.

Q And did you have any talk with your husband about your sickness? A Yes, sir.

Q What was it?

THE COURT: I will sustain the objection to that.

That is what I did sustain the objection to.

Q Did you go anywhere with your husband on that morning when he was arrested? A To the doctor's he took me.

Q What time did you go to the doctor's? A In the afternoon.

Q In the afternoon. Do you remember the time? A Two o'clock.

Q And after you went to the doctor what did you do? A Came home again.

Q Did he come home with you? A Yes, sir, he come home with me.

Q And did he go out after that? A He went out.

Q And the next time you saw him, what time was that? A Five o'clock.

Q When he was in the house that afternoon, didn't you see him drink any liquors, any stuff? A All kinds of drinks.

MR. DONOHUE: He is leading again. I want to be perfectly fair.

THE COURT: I will allow it.

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Q How much of it? A Oh, a lot of it. I couldn't keep him up.

Q And to you, did he look as if he was drunk, or sober?

A He was drunk.

RECROSS-EXAMINATION BY MR. DONOHUE:

Q He was drunk quite often, wasn't he, Mrs. Albino? A No, sir.

Q Never drunk before that day? A The first time, that day.

MR. DONOHUE: That is all.

BY THE NINTH JUROR:

Q Do you know what is meant by the expression, "He dragged him out"? A No, sir.

Q You answered before to that question. You were asked whether the policeman had not dragged him out? A (No answer).

BY THE COURT:

Q How did the policeman take him out when he went? A He just dragged him along with him.

Q What do you mean by that? A I don't know nothing; <sup>he</sup> just took him.

Q Just describe how he took him. You say he dragged him out. Describe what you mean by that? A He was forced, because he was drunk when the policeman came in the house.

CARMELLA CASTATORA, called as a witness

on behalf of the defendant, being first duly sworn and examined through the Official Interpreter, Mr. Diadato

Villamena, testified as follows:-

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## DIRECT EXAMINATION BY MR. CAGGLIANO:

Q Where do you live? A 121 Baxter street.

Q Do you remember the day when your son-in-law was arrested?

A I don't remember the date, but I know that I was in the house at the time.

Q And what did you see on that day in that house? A In the morning my son-in-law went to work, and came back at twelve o'clock, and he didn't go out of the house any more. His wife didn't feel well, because she give birth to a child, and he was very happy at the occurrence, and he started to drink a little

Q How much did he drink? A Telling the truth, he drank a great deal that day. He wanted to go out, and I put my hands on the back of the door (witness illustrates by placing left hand on rail of witness-box), and says, "No, you will not go out". He said, "Yes, I feel good, and I want to go out". I said to him, "No, you stay inside". In the mean time the officer came in, and he found me with my daughter behind the door, holding the door, forbidding him to go out.

Q Did anybody come in the house after that? A A policeman.

Q And did the policeman talk to your son-in-law? A Yes, "Hello, hello, Frank", and he says, "What is the matter? What do you want?".

Q And how long did the policeman talk to your son-in-law?

A About ten or fifteen minutes.

Q And then what happened? A And the officer says, "You must come along with me". Frank says, "What did I do? I didn't

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do nothing". He said, "It don't make any difference, come along with me".

Q In what way did the policeman take him out? A Got hold of him by the arm and pulled him. In the hallway the policeman attempted to strike him also.

MR. CAGGIANO: That is all.

CROSS-EXAMINATION BY MR. DONOHUE:

Q Frank came home about twelve o'clock that day, is that correct? A Yes, he worked, and then he came home.

Q And then he didn't leave the house until the officer went out with him? A Yes, he was always in the house.

Q And you kepthim in, did you? A Yes.

Q And was he drinking in the house? A Yes, yes.

Q Was your daughter there? A Yes, sir, the three of us was there.

Q You, your daughter and Frank were in the room when the officer was talking to Frank? A Yes.

Q And then they were talking for about half an hour? A No; about fifteen minutes.

Q They were very excited, weren't they? A Yes, they talked very quiet, but when the policeman wanted to take him away there was a little row.

MR. DONOHUE: That is all.

REDIRECT EXAMINATION BY MR. CAGGIANO:

Q You don't live in the same house with your son-in-law, do you? I mean, in the same rooms? A Not in the same

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rooms, but in the rear of the apartment.

Q On that afternoon you wasn't in your son-in-law's house all the time, were you?

MR. DONOHUE: I object to that as leading. Ask her where she was.

THE COURT: The objection is sustained.

Q On that afternoon, were you in your son-in-law's house all the time? A Always, always, always.

Q Did you go out at all? A No, no.

Q What time did you go to the house, to his house? A About mid-day.

Q When you went in there did you have any conversation with your son-in-law and your daughter? A Yes.

Q Did they say anything about going to the doctor?

MR. DONOHUE: I object to that.

THE COURT: The objection is sustained.

MR. CAGGIANO: That is all.

F R A N K      A L B I N O, the defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. CAGGIANO:

Q Where do you live? A 121 Baxter street.

Q Do you remember the day you were arrested? A Yes, sir, I do.

Q What time did you go to work on that day? A At a quarter after six I left the house. I had to be there at seven.

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Q And when you got to work what did you notice? A When I got there -

BY THE COURT:

Q What do you mean by "there"? Where was it? A At work.

Q Where? A At 43 West 16th street. When I got there the engineer, the chief, called me; he says, "Come on down here, Frank, there is a whole lot of trouble down here". So I went down, and I seen a whole lot of wrappers and all such stuff laying around where the elevator switches were. Well, he says, "Things look pretty bad". I found all the doors open, and I don't know who is robbed, and I run upstairs and see who is. So I threw the switch on the elevator, ran the car and went up. While going upstairs the doors were all locked up, see. So I couldn't get in, because they had them braced, bars in back of the door; they call them Otis bars, or Holmes bars; and you couldn't open the door unless they were opened through the back way, but there was a window out, see, and I peeked through, and I seen another window, Mr. Schwartz's window, broke off. I went through there, and I seen it. I didn't go right through the window, but I just seen this window, and his window broke, and I went downstairs again, and I said, "Schwartz Brothers is robbed". He said, "Don't let nobody through the stair way until they come. So I says, "All right". That is about all.

BY MR. CAGGIANO:

Q After that, did the police come over there? A Why, yes. When Mr. Schwartz come over, not him, but his brother, he was

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there first, and it was about eight o'clock when he come over. All the girls were waiting downstairs; they were quite late that morning, that Monday morning. When he came there I told him about it. I run him up to the fifth floor, and I couldn't get through, see; so I rode him down again, and he had a key for that door, and he got through, and he says, "My God, somebody ruined me". I said, "I will telephone Police Headquarters and have an officer here", so I did so.

Q Did the officer come there? A Yes, sir.

Q Did the officer have any conversation with you? A Yes, he called me downstairs, in the engine room, and he questioned me, and he asked me where I worked last. I told him. And was I married, and such stuff, and I said yes. He said, "Who had the keys the week before?" I said, "I did". We changed them off a week apiece, see? One week late and one week early.

Q And when is the end of the week, what day? A On Monday morning.

Q And what time did you leave that place after that in 16th street? A Pretty near one o'clock or so.

Q And what did you do after that? A I took a Sixth avenue car and come right straight home.

Q And then what did you do? A And then me and the wife had a talk, because she told me that morning to come home, and I told the chief that, too, so he says, "The other boy has to go to dinner". I says, "He can go to dinner, and after he goes to dinner, I will go home, take my wife to the doctor, and come

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back again; if you give me two hours I will make it". So I intended to come back about five o'clock, see? And me and my wife went to the doctor in the mean time. She was all right, and I got home, and I was feeling good, and I had about another hour to get back, and I went down and got a pint of beer. I had one, and I had a few more afterwards.

Q Did you drink anything else besides the beer? A I celebrated. We had a little whiskey left over, and I started in with that a little.

Q Did you go out from your home after you and your wife came back from the doctor? A No, stayed right there.

Q Did you ever go in that saloon on Hester street on that day? A No, sir, I don't go around no saloons. I always go to work and come straight back home.

Q When the officer came to your house that day, what conversation did you have with him? A He come in and he said, "Hello, Frank". He says, "I thought I would get you". I says, "What do you mean?" He says, "I just got a wire that you come home and are out selling the stuff". I said, "My wife is going to the doctor", so he asked my wife, and my wife told him yes, that she was. So we talked, and finally he says, "Well, come with me", so I went out with him.

Q Do you remember him doing anything to you, or saying anything to you, on the way out? A To tell you the truth, I know on Monday morning I had a swollen lip, but I don't remember him hitting me, or anything like that. I was pretty well filled

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up, see? I was drunk.

BY THE COURT:

Q What morning? A Monday night, rather. It was that Monday night. I am mistaken.

BY MR. CAGGIANO:

Q Do you remember him taking you to headquarters? A Well, he took me around there. I know I got into a saloon, and out through another saloon, and then I don't know. I found myself in Headquarters, and I really don't know where I was taken, or where I was not taken, because I know I had a few drinks with him in Flannigan Brothers, on Centre and Grand, right in front of Police Headquarters.

Q Do you remember anything that was said to you? A Well, I was drunk, see? I don't remember very much of it. I was just staggering along, you know. I was pretty - I don't drink very much. It catches me quick, see?

Q And do you remember him mentioning any names to you? A Yes, that following morning he mentioned Johnnie the Crook, and he mentioned Dixon, and I seen a little boy there by the name of Clement, I don't know who he is; so this boy says, "Gee, I was arrested". He said, the officer said I told him he was one of the parties. I says, "Oh, I never said nothing of the kind. In the first place, I don't know you, and I don't know what I am here for myself. " I was drunk.

Q Did you ever have anything to do with this Dixon or Johnnie the Crook? A No, I never - since I came back from

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St Louis, Missouri, from my brother, I went to work in March, and I never hung around the corner at all, never paled out with any of the fellows; I just minded my own business.

MR. CAGGIANO: That is all.

CROSS-EXAMINATION BY MR. DONOHUE:

Q Why didn't you go back to work at 43 West 16th street?

A Well, I will tell you; I couldn't go back to work, because the detective came to the house before I had a chance to go back to work.

Q You knew the place had been robbed on Monday morning? A Yes, I did.

Q Wasn't that the reason you got off, so you could go and sell the goods? A What goods?

Q Please answer my question? A Yes, I didn't sell no goods.

Q What did you get off that day for? A To take my wife to the doctor's.

Q You didn't take her to the doctor's, did you? A I did.

Q Your mother-in-law said you did not? A She wasn't there when I did.

Q She made a mistake? A Yes, they are all excited there.

Q She didn't keep you in the house all day? A Yes, after I come back from the doctor's.

Q What time did you go to the doctor's? A Just as soon as I got to the house.

Q What time was that? A About half past one or so.

Q Where is your doctor's?

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A On Canal near Bowery.

Q What is his name? A I don't know his name.

Q Isn't he your family doctor? A Yes.

Q You don't know his name? A It is a long name; I can't pronounce it very well.

Q An Italian doctor? A No, sir; Jewish.

Q You don't know the name at all? A I can't make it out very good. It is some long name.

Q You can't remember it at all? A No.

Q But you do remember your mother-in-law keeping you in the house all that day? A Yes, sir.

Q You remember that? A Yes, sir.

Q You remember her testifying that you came home at 12 o'clock and stayed in there until 5 o'clock? Did you hear her say that on the stand? A Yes, I heard her say that.

Q That was wrong? A Yes, it was wrong. She made a mistake.

Q She is mistaken? A Yes, sure.

Q Your testimony here is that you were so drunk - A Yes.

Q During all this afternoon that you don't recall what happened at all; is that right? A Yes.

Q You don't recall talking to the officer at all? A Yes, I remember talking to the officer, and after I got a few drinks, well, I don't remember nothing.

Q Where did you drink with that officer Flannigan Bros., Centre and Grand.

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Q Did you pay for the drink? A No, he paid for the drink.

Q He brought you in the saloon and bought you drink?

A Sure.

Q You didn't buy any? A No.

Q How long were you in it? A Quite some time.

Q Was that before you had been to the doctor's, or after?

A Way after.

Q About what time was that? A A little before four, before I had to go to work.

Q Then, it was not five o'clock when the officer got you that afternoon? A It was not five o'clock when he got there.

Q You said before it was five o'clock? A Not me.

Q What time was it? A It was pretty near half past three when he came.

Q About half past three? A Well, I am not sure of the time.

Q And where did you go right after he brought you out of the house? A He started to talk to me, and I spoke to him, and he said, "Why don't you tell me? Be a good fellow. I will let you off easy, and I will see that everything is all right. That Johnnie the Crook and Dixon, we want to get them fellows. You just say it was them."

Q He wanted you to frame them up? He wanted you to testify in a case you knew nothing about? A No, I didn't know nothing about it.

Q He wanted you to say you did? A Yes, sir.

Q And he wanted you to say you knew Johnnie the Crook

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and Dixon, and that they robbed these premises? A Yes, sir.

Q You never saw these papers before (referring to People's Exhibit No. 1)? A No, sir.

Q They were not in the cellar when you went down that morning? A In the cellar where I worked, yes, sir.

Q Were they in there? A Yes, sir.

Q Were they there? A I don't know if they were there.

Q Anything that looked like them? A Yes, sir, a whole pack of them.

Q What did you do with them? A They sent a boy downstairs to put them in a box and take them upstairs again.

Q What time was that? A After the officer came there.

Q What time was that? A I don't know; I don't quite remember.

Q Was it an hour, or two or three hours, after you discovered the burglary? A Pretty near eleven o'clock or so.

Q Eleven o'clock? A Yes, sir.

Q And that was the last time you saw any papers that looked like these at all? A Yes, sir, that was the last time.

Q You didn't tell the officer that you and two others burglarized these premises? A No, sir.

Q You didn't tell the officer that they made \$90 out of it and didn't give you your share? A No, sir, I did not.

Q Everything that officer said on the stand this morning, he is lying? A That is about it.

Q He is trying to send you away to prison for something you

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did not do? A I don't know if he is.

Q He must be if he is so testifying? A If he is talking that way, he must be.

Q Where did you have your first drink that day? A Up at the house.

Q What time? A When I came back from the doctor's.

Q That was what time? A I don't quite remember.

Q About what time? A I don't quite remember what time.

Q Was it two o'clock? A It might have been about half past one. No, about two o'clock.

Q And how long was that before the officer came in? A About 2 hours or 2-1/2 hours.

Q You got back about two o'clock? A Yes, sir.

Q And the officer came in about two hours after? A Well, it was about four or a quarter after.

Q And he stayed in your house about half an hour? A No, fifteen or twenty minutes or so.

Q He spoke to you very nicely on that occasion? A Yes, sir.

Q Very quietly? A Yes, sir, very.

Q How long were you talking to him? A About ten or fifteen or twenty minutes.

Q You remember that? A What?

Q You remember talking to him fifteen minutes. A Yes, sir.

Q You were not so drunk you forgot that? A No.

Q What time did you talk to him? A About ten, fifteen or twenty minutes.

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Q What did you talk about? A About the place being robbed, and things like that; that I had the keys, and I knew something about it, and I told him I didn't know nothing about it.

Q You knew he was an officer? A Yes, sir.

Q You knew he suspected you of robbing these premises?

A He suspected me?

Q Yes, you knew he did. A No, I didn't.

Q He never told you he suspected you of robbing these premises? A No, he didn't say he suspected I robbed the place.

Q Didn't he tell you he heard you had been paid some money for these goods? A He?

Q Yes. A No, sir, he never heard of me getting any money from these goods.

Q You had your first drink after you came from the doctor's?

A Yes.

Q And where did you have that? A At the house.

Q What was it? A A little whiskey.

BY THE COURT:

Q What was it the officer said when he first came in, Monday? A Into my house?

Q Yes. A "Hello, Frank".

Q What else? A I says, "Hello". He said, "What are you doing here?".

Q What did he say next? A He said, "What are you doing here?".

Q What did he say then? A He said, "What are you doing

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here?", so I says, "I -"

Q Is that all he said? A No, he started talking. That started the conversation between me and him.

Q What else did he say? A He says, "What are you doing here?", and everything like that.

(Record read by stenographer, as follows: "Q. When the officer came to your house that day, what conversation did you have with him? A. He come in and he says, 'hello, Frank'. He says, 'I thought I would get you.'").

Q Now, did the officer say that - "I thought I would get you"? A "I thought I would get you"?

Q Yes. A Yes, he said that.

BY MR. DONOHUE:

Q Then, you did know that the officer suspected you? A I don't know if he meant it.

Q What did you think he meant when he said that? A I don't know what he meant. He come in smiling.

Q He came in smiling and said, "I thought I would get you"? A Yes, fooling.

Q You didn't know what that meant at all? A No, sir, I did not.

Q Do you recall on your direct examination saying that the chief of this building called you down to the cellar and showed you some wrappers? A Yes, sir, sure.

Q You did see some wrappers down in the cellar? A Yes, sir.

Q And when Mr. Schwartz came in were you the one to notify

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him about the burglary? A I took him downstairs, because I was there. After we get through cleaning the brass we go to work on the elevators, and he came in and seen the stuff there, and he said, "What is the matter?".

BY THE COURT:

Q Did you take Mr. Schwartz down where the wrappers were?

A He went downstairs in the engine room, where the wrappers were, and I had to run the elevator.

Q You were in there where the wrappers were? A No, I was not there when the wrappers were there.

Q How do you know then, that he was where the wrappers were? A How do I know?

Q Yes. A He went downstairs to see.

Q And if the wrappers were there he ought to have seen them there? A Sure, it was all laying all over the floor.

BY MR. DONOHUE:

Q How many drinks did you have between the time you get back from the doctor's and the time the officer came? A I don't know how many drinks I had.

Q About how many? A I don't really know. I know I had about three pints of beer or so.

Q Three pints of beer? A Yes, sir.

Q No whiskey? A Yes, sir, I had two or three glasses of whiskey.

Q And then the officer came in? A Yes, sir.

Q And from that time on your memory is blank as to what

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he said? A Not exactly. I knew very, very little, until I got a few more drinks in me.

Q You don't remember telling him you knew who committed this burglary, and how it was committed, and where the goods were?

A No, sir.

Q You didn't take him to the saloon? A No, sir.

Q You didn't go to the saloon with him at all? A No, I don't remember going to no saloon with him.

BY THE COURT:

Q What do you mean, that you don't remember going to any saloon with him? A I went into saloons, yes, before going into Headquarters, but not in that saloon he is saying.

BY MR. DONOHUE:

Q How did you know what saloon I meant? A You just said into the saloon.

Q How did you know what saloon I meant?

THE COURT: I will sustain the objection to that.

MR. DONOHUE: All right.

Q Now, you said you intended to go back to your work after you had been to the doctor's? A Yes, sir.

Q You had an hour to spare after you got back from the doctor's? A Yes, a little over an hour, about.

Q What time did you intend to go back? A About half past four or five o'clock.

Q What time did you quit? A About one.

Q What time did you usually quit work? A At night?

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Q Yes. A That was my erly week off, half past five; and my late week on would be half past six.

Q Didn't you lock up? A No, not me. The other fellow locked up that week, see?

Q There was no occasion for your coming back at half past four for half an hour's work? A Sure, that would be the rush hour. That is just the time all the people go home.

Q You say Monday is the end of your week over there? A Yes.

Q And you left your employment that day? A Yes, sir.

Q Never went back to that place? A No, I didn't have no chance to go back.

MR. DONOHUE: That is all.

BY THE COURT:

Q Where were these wrappers in the premises at No. 43 W. 16th street, on Monday morning? A When I got there? You mean when I got there?

Q Yes. A Right down in the cellar, where the elevator switches are and where the boiler is and the fire room and pumps.

Q That is all one place you are describing? A Yes, sir.

Q They were all in the same room? A Yes, sir, in one big room, see, where the boiler and pumps and everything are combined, see?

Q And that is the engine room, too, is it? A Engine room and everything, yes.

Q You testified that you talked with the officer in the engine room? A Yes, he called me downstairs.

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Q So that at that place where the officer talked with you in the engine room was the place where the wrappers were? A Yes sir, there is a big, long desk.

Q What kind of papers were there? A Papers like that (indicating People's Exhibit No. 1), pieces of cloth and such stuff.

Q Pieces of cloth? A Yes, sir; you know them cloths they wrap silk in, and then paper over it, see?

Q Were you working there on Saturday? A Yes.

Q Before this Monday? A Oh, yes.

Q And what time did you arrive there Saturday morning?

A Saturday morning?

Q Saturday, yes. A In the morning?

Q Yes. A Going to work?

Q Yes. A I have to be there at seven o'clock.

Q Were you there Saturday morning? A Yes, sir.

Q November 21st? A Yes, sir.

Q At seven o'clock? A Yes, sir.

Q And how long did you stay? A When, Saturday morning?

Q Yes. A Oh, I think we closed up about five o'clock, I think, or four, I am not positively sure; it is pretty near three months now.

Q You were there on Saturday until four or five in the afternoon? A Yes; that is the time they closed up, yes.

Q You had the keys, did you, to these premises? A Yes, sir, I had the keys.

Q What did these keys open? A The keys opened the

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front room and the elevator doors and the engine room door.

Q Now, did you look at these premises on Saturday when you left? A Oh, yes, I got to look all over and see that all -

Q I asked you whether you did? A Oh, yes, I always do, every night.

Q I didn't ask you whether you always do. I ask you whether you did. A Yes, sir, I did.

Q On a Saturday? A Yes, sir.

Q What was the condition of the premises? A The conditions were all right.

Q Was the window in the door? A Why, yes.

Q How was that glass taken out? A I don't know how it was taken out.

Q Didn't you see it? A No?

Q Yes. A Yes, I seen that glass, but I didn't go around looking how it was taken out, or how it was not taken out. There must be staples inside it, or something like that, or some other way. You see, when I leave there at night -

Q Did you go there on Sunday? A No, the chief goes there himself on Sunday sometimes, and sometimes he don't.

Q I asked you whether you went there on Sunday? A No, sir, I did not.

Q You say you had the keys on that week ending Saturday? A No, ending Monday morning.

Q Ending Monday morning? A Yes, sir.

Q On Monday morning, when the police officer came there,

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did you have the keys then? A Yes, sir.

Q When did you give them to the other boy? A The minute - about half past seven - after we got through polishing up.

Q The police officer did not get there at half past seven, did he? A No, he came after.

Q Did the police officer come there at half past seven Monday morning? A No, sir.

Q Did you give the keys to the other boy at 7:30? A Yes.

Q Then, you did not have the keys when you came? A No.

Q Didn't I just ask you if you had the keys when the police officer came, and you said "yes"? A Well, I didn't get you right.

Q Now, which is it? Did you, or did <sup>not</sup> you, have the keys?  
A No, I didn't have the keys with me, no.

Q Will you listen to my question, and then you will get me right, as they call it. Just listen. A Yes, sir.

Q (Continued) Did you have the keys when the police officer came on Monday morning? A No, sir.

Q Do you know where they were? A Yes, I know where they were.

Q Where were they? A The other boy had them.

Q What is his name? A I don't know his name. I called him a nickname.

Q What nickname did you call him? A Robbie.

Q Is he working there yet, do you know? A I don't know.

Q Robbie? A Yes, sir.

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Q Is that his name? A Robert.

Q And you called him Robby? A Yes, sir.

Q Do you know where he lives? A No, sir, I don't.

Q What is the name of the engineer? A Frank Mashers,  
or something like that.

Q Did you see any bag that the officer had? A Yes, I seen  
it next morning in headquarters.

Q Did you see papers in it? A No, sir.

Q Where was the bag when you saw it? A He had it in  
his hand, in Headquarters.

Q Nothing in it? A There was a lot of straw, or something,  
I don't know what it was.

Q Do you know what he was carrying a bag around with a  
lot of straw or old papers in it for? A I don't know. He had  
something in it; it was not much.

Q Did you know he was carrying this bag with something in  
it, but nothing much? A Did I know he was carrying it?

Q Yes. A Yes, I seen it.

Q What was he carrying it for, do you know? A I don't know.

Q Carrying an empty bag with just a little in the bottom?  
A Yes, a little in the bottom.

Q What was he doing with this bag? A I don't know what  
he was doing with it.

Q What did you see him do with it? A He didn't do any  
thing until we got down to Jefferson Market court, and then he  
put that in evidence, and he didn't have the bag with him no more

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Q What did he do with that bag? A I don't know what he did with it. He threw it away. I don't know what he did with it.

Q Did you see him throw it away? A No, sir, I did not.

Q When you were with him in the saloon did he have a bag with him? A No.

Q Did you see him get the bag? A No, I didn't see him get the bag.

Q When did he get the bag? A I don't know when he got it.

Q When did you first see it? A Monday morning, in Headquarters.

Q You don't mean Monday morning? A Tuesday morning, rather yes, Tuesday morning.

Q Where did you spend Monday night? A Monday night?

Q Yes. A In Police Headquarters.

Q When you were with the officer, you say you went to a saloon and had drinks with him, at Flannigan Brothers? A Yes, sir.

Q How many drinks did you have there? A Oh, a few.

Q Do you know the waiters there? A Me, no, I don't know nobody there.

Q Do you remember the officer hitting you in the hall? A No.

Q Don't remember anything about that? A No, sir.

Q But you had not had any drinks with him in the hall? A Sir?

Q You had not been out with him at that time? A No, sir.

Q You had not had many drinks at that time? A I had quite a few. Well, I don't drink much; it don't affect me right

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away; I don't drink very often. It comes over me once in a while; maybe a year or so.

Q Now, did you go with the officer and point out two fellows who were in a saloon? A No, sir.

Q Did you go with him to a saloon where you said there were two fellows? A No, I didn't go nowhere with him.

Q Did you tell him that they had gone to the roof? A No, no; I didn't tell nobody that.

Q What? A No sir, I did not.

Q Do you know how Clement Gulli came to be arrested? A I seen him there in the morning.

Q That was not what I asked you. Do you know how he came to be arrested? A No, I don't know how. No, I don't.

Q Do you remember that you were out on bail? A Yes, sir, I was out on bail.

Q Did you see the officer when you were out on bail? A Yes.

Q Did you talk to him? A Yes, sir.

Q What did you say to the officer? A I didn't say nothing to him. He seen me first and says "hello". I says, "hello". He says, "What are you doing?" I said, "I am driving a wagon." I was working for Day's express at the time, and I had a delivery on the corner of Canal street, cigarette boxes, and I stopped there. So he says, "How is everything?" I says, "All right". He says, "Are you working?" I says, "Yes". So he says, "If I were you - " No, he says, "Did you hear when the trial will come up?" I said, "No". So he says, "You are

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a fool. If I were you I would return that stuff". I said, "I don't know nothing about the stuff". He said, "Put it in a case and send it to Headquarters, under my name, and you will get out of it." I says, "I don't know nothing about it. I am a married man. I wouldn't do anything like that. I have a wife and baby, and I wouldn't go around stealing, or anything like that. I never was arrested. You can go to my last employment, 71 Wall street, and you can find out how long I worked there, and what kind of fellow I was there". Then he said, "I am in a hurry. Good bye." I said, "Good bye".

Q Is that all the conversation? A That is about all.

Q He did ask you to locate the property? A Yes, sir, and I said I didn't know nothing about it.

Q Did you say you would see about it? A No, sir, I didn't say I would see about it.

Q Did you say you would see Mr. Schwartz about it? A No, sir, I did not.

THE COURT: Any other questions?

BY THE EIGHTH JUROR:

Q Do you leave that building on Saturday night before the engineer, or after the engineer? A After him.

BY THE COURT:

Q Who shuts down the elevator? A The one that is on late. I shut it down that Saturday.

Q That is, after the engineer has gone? A Certain

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Saturdays he stays there with his friend, or something, and certain Saturdays he don't, see, but this Saturday he was not there, see, and I just threw out the switches, locked the door, and went home, and I left other people in the building, and there is other people in the building that have keys to that place, see? I am not the only one who has keys to that place.

Q Who was there on Saturday that you left in the building?

A Geiss and Lamb, third floor, front.

Q Do they have keys to Schwartz's place? A No, to the door leading to the sidewalk, they have keys to that place.

Q Did you have keys that admitted you to Schwartz's? A Me, no, sir, I did not.

Q Nobody had those? A No, nobody.

Q Except Schwartz? A Except he himself.

Q The keys you had were to the front door? A And to the engine room.

Q And to the engine room? A Yes, sir, and besides the engineer's tool-box was open, and nobody had a key to it. I got no keys, and all the tools were taken out of it.

BY THE TWELFTH JUROR:

Q Did you say this is the first time you have ever been arrested? A Yes, anything like this.

BY THE COURT:

Q What do you mean by "anything like this"? A Five days in the Work House, for being intoxicated, some seven or eight years ago, that is about all.

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BY THE TWELFTH JUROR:

Q Have you ever served time? A No, sir. Yes, in the New York Catholic Protectory, for truancy, some six or seven years ago

Q For what? A Truancy, for not going to school. I had to go to work. I didn't have no father, and I had to support my mother.

BY THE COURT:

Q Besides being in the Protectory, for truancy, and in the Work House five days, for intoxication, were you ever convicted of a crime? A Me, no, sir.

BY MR. DONOHUE:

Q Albino, when you told your counsel, in your direct examination, that you never were arrested, you were mistaken?

A What do you mean, mistaken?

MR. CAGGIANO: Did I ask that question?

Q Did you tell your counsel that you were never in any trouble before? A Well, that is not trouble. That is a misdemeanor. That is not trouble.

MR. CAGGIANO: Your Honor, I don't think the record shows I asked such a question. I may be mistaken.

MR. DONOHUE: He asked him if he had ever been in trouble before, is my recollection.

MR. CAGGIANO: I did not.

MR. DONOHUE: I will withdraw the question.

BY THE SEVENTH JUROR:

Q Did you say the engineer was there on Sunday? A No.

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Q He couldn't have gotten in? A Oh, if he wanted to, yes, he has got keys to go all over the building if he wants to. He has got his own keys.

MR. CAGGIANO: I again renew my motion to dismiss the indictment.

MR. DONOHUE: Do you rest?

MR. CAGGIANO: Yes, I rest.

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REBUTTAL TESTIMONY

EDWARD C. BURGESS, being recalled on behalf of the People, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. DONOHUE:

Q After you left the house with the defendant, did you stop in any saloons with him on the way to Headquarters? A No.

Q Did you stop at Flannigan Brothers, at Centre and Grand streets? A No, sir.

Q Did he have any drinks at all while he was with you? A No.

MR. DONOHUE: That is all.

BY THE COURT:

Q Officer, were you in the engine room of the premises No. 43 West 16th street with this defendant? A Yes, sir.

Q On Monday morning? A Yes, your Honor.

Q Were there any wrappers or wrappings upon the floor there? A There were.

Q What were those? A They were wrappings similar to these here in evidence, and also pieces of the goods, and card-

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board wrapped with laces of different colors, an assortment of different materials that they had discarded there.

Q Several witnesses have stated that you were seen on Monday with a bag described as a potato bag which had a little something in the bottom, some said newspaper, another witness said straw, I think, or something of that kind, and that it was not filled. What bag did you have on Monday? A I found in the cellar of that saloon a bag, in Hester street.

Q What saloon? A 122, I think is the number where I found these wrappings, a saloon that the defendant took me to, I found a bag there also, in this same store room. That bag was too small to be a potato bag. It was a bag that I described, about 2 feet or 2 feet and a half long, and about a foot and a half in diameter, and I took all this evidence, these wrappings here, and stuffed them into that bag. We filled that bag completely, and I then carried that stuff, those wrappings in that bag, to Police Headquarters. When I got to Headquarters I found out my clothing was covered with lime or some other substance that had been in this bag, and for that reason we removed all these wrappers from the bag, and threw the bag away, and folded these wrappers, spread them out and folded them, or rolled them into a roll.

Q That bag was how deep? A (Witness illustrating with paper) that bag was just about as high as that roll.

Q Have you got that bag here? A I haven't the bag at all. I threw the bag away.

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Q What is this (indicating cloth)? A That is also pieces of material that I found down where the wrappers were, which pieces the complainant has identified as being -

MR. CAGGIANO: That is objected to.

Q You found that where? A With these wrappers.

Q Where? A In the saloon; I think the number is 122 Hester street. There may be more there. Still, I guess this is about all, at that.

Q Just show me how you put that in a bag (handing paper, part of People's Exhibit No. 1, to witness)? A (Illustrating with paper) this is about the way we put it in the bag, wrapped it up any way, later on laid them on top of each other and rolled them into a roll.

Q Were all these in that bag? A I believe so, your Honor, yes.

Q What? A They were all in that bag.

Q Look at them? A (After examining paper, People's Exhibit No. 1) This is the roll I took out of the bag and folded it. I have kept it as evidence in the case, and all that I found there; I had detective O'Connell and lieutenant McFullen with me.

Q This seems to be rather stiffer than those (indicating)?

A Yes.

Q Do you remember that? A I don't remember that distinctly.

Q Did you put any marks upon those papers? A I did not.

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That one apparently has not been folded like the others, for some reason; I can't say why.

Q Did you put them in the bag yourself? A I did. I asked the complainant, when he identified them, to satisfy my own mind that he could positively identify -

THE COURT: I can't take that - conversation with the complainant - it is not admissible.

Q Now, at the time you were in that saloon with this defendant, who else was there? A Detective Lieutenant McMullen and Sergeant O'Connell, a detective, and there were - I brought this other defendant, Gulli - I arrested him right at the entrance. He was employed in that saloon as a porter and bartender - just as I entered the side door, for the purpose of arresting any person that this defendant pointed out as having been implicated in the burglary. As I entered the hallway a man in a white bartender's jacket came through the hall and started to go upstairs. This defendant nudged me and says, "Grab that fellow; he is one of them", he whispered to me. I spoke very lowly, and I dragged this defendant up after me about three stairs, and got the fellow Gulli by the belt of his trousers, and pulled him on down stairs again, and I brought him back in the saloon with us; that is, brought him into the saloon for the first time, in company with this defendant, McMullen and Sergeant O'Connell, and there was another bartender there, a brother of this Clement Gulli, I believe, and possibly six or eight customers.

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Q Who gave you the key to that padlock door? A The bartender, who I was told was a brother of the other defendant, Gulli.

Q Did he go in with you when you went in and found these things there? A No, he just handed me the key.

Q Who was with you when you found these things? A Lieutenant McMullen and Detective O'Connell.

Q Anybody else? A The defendant, Albino.

Q Did anybody see you go out with these things, other than the police officers? A Yes, there were a number of persons there.

Q Was that bartender there? A No, I don't believe he was.

Q Do you know the name of the man who gave you the key to the padlock door? A His name was Gulli.

Q Can you get him, Officer? A I think I could.

THE COURT: Have him here in the morning.

BY THE TWELFTH JUROR:

Q Did I understand you to say you folded up all these papers, as you showed his Honor, and pushed them in, one after the other, into the bag? A Not necessarily one at a time.

Q I simply ask you how did you do it? A Just gathered them up.

Q You folded them up and put them all in? A Pushed them all in the bag, the best way -

Q Which was the best way? A Different, some one way and some another.

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Q I asked you which way did you put them in? A Just as I picked them up.

Q You showed the Judge that you folded them up and put them into the bag. Now, did you do that to every one of them? You said afterwards you took them and straightened them out.

A I don't mean to say I folded each one, as I told the Judge into such small rolls. I just simply got them together and pushed them into the bag. We first gathered them all together in a pile.

Q How long did it take you to put them into the bag? A Then I just took the bag and picked them up and stuffed them in there. They were more or less folded, all of them, they were not spread out.

Q But they were rolled when you picked them up? A No, they were flat, folded. Where the silk - I can show you.

Q Folded just as this is? A The silk that is in - that shouldn't be creased in the centre.

Q There was no silk there when you picked them up? A No, I mean the original folds; it is about that wide (illustrating), and that is folded over, that way (illustrating), but not creased, and then it is folded again, this way, but not creased (illustrating).

BY THE COURT:

Q He is asking you how they were when you found them in that saloon? A That is the reason I wanted to describe

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that that is the way I found those, but they were flatter. About in that position I found these wrappers (illustrating).

BY THE TWELFTH JUROR:

Q One on top of the other? A How is that?

Q One on top of the other? A No.

Q Distributed all over the room? A They were lying around in different parts, along the north side of that room. I think it would be the north side of that room, laying around the wall, covering a distance of about six feet.

Q I am not particular about that. I simply wanted to know how you folded these papers up and put them into the bag. Now, I would like to know whether you did that with every one, or whether you did that with only this one? A No, I won't say I did that. I picked it up and folded it like that (illustrating), and stuffed it into the bag, and, as I found the bag was too small, I stuffed them all tighter down in the bag.

Q Pushed them in as hard as you could? A Well, not as hard as I could, but so the bag could contain all of them.

BY MR. DONOHUE:

Q You had no particular arrangement to put them in the bag? A No.

Q Just picked them up and stuffed them in? A Yes, sir.

Q And you made room the best way you could in the bag? A Yes, sir.

Q And these were not rolled up, like they are now, when you picked them up? A They were not.

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Q They have been rolled this way because they have been in the Property Clerk's room?

MR. CAGGIANO: That is objected to.

THE COURT: The objection is sustained.

Q How did they come to be rolled in this way? A For the reason that the bag soiled my clothing; I took them out of the bag myself and spread them out and rolled them, so they would be convenient to carry.

BY MR. CAGGIANO:

Q You are not stationed at that part of Manhattan, around Hester street? A No, sir.

Q But Detective McMullen and Lieutenant O'Connell are stationed there? A They are not.

Q In Headquarters? A No, sir.

Q Where are they stationed? A Lieutenant McMullen has charge of the loft squad, a squad of detectives known as the loft squad, and he covers the entire loft district, wherever it may be, principally up above 17th street; and detective O'Connell is my partner, assigned to the East 37th street detective bureau.

Q But Lieutenant McMullen is well acquainted with these burglaries of lofts? A He is thoroughly interested in loft burglary work.

Q Had you any conversation with this lieutenant about Johnnie the Crook and Dixon? A I did.

Q And he told you that he knew them? A Yes. No,

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I don't believe he did say that he knew them; he knew of them.

Q And he knew where they were and where they could be found? A No, he inquired and learned from others.

Q And that was before you took this defendant to Hester street, wasn't it, when these inquiries were made? A No, that was after. That was after.

Q You are not sure about it, whether it was before, or after? A I am positive that it was after.

Q But you took this defendant to Headquarters before you took him to Hester street, didn't you? A No, I took him to -

Q Didn't you testify in your direct examination that you did not go to the saloon first when he told you that they had run away, but you took him to Headquarters, and then afterwards you went to Hester street? A No, I testified I went around into Hester street with him, and remained on the corner while he went up and looked in the saloon, and then came back to me, and we then went over to Centre street, and up Centre street to Police Headquarters.

Q And you stayed in Police Headquarters for about an hour before you went back? A Yes, sir.

Q And at that time you had a conversation with Lieutenant McMullen? A No, sir.

Q Didn't see him? A I was waiting for him; that is why I took an hour.

Q But you did have some conversation with the lieutenant? A I acquainted him with the facts that had developed.

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Q And he told you he knew of this Dixon and Johnnie the Crook? A No, he did not.

Q Didn't you say a while ago he said he knew of them? A I did not. I said I gave him that information about this defendant implicating a man named Dixon and Johnnie the Crook, and he then went into the First Branch, which is Centre street Headquarters, and made inquiries of men that are in that branch, and was there informed as to the character of these two men.

Q And, as it is occasionally called, the hang out of these men? A Yes, they were known to hang out there.

Q They were known to hang out in that saloon? A They were known to hang out around that neighborhood.

MR. CAGGIANO: That is all.

THE COURT: Gentlemen, the hour being late, we will not examine any other witness this evening, and you are admonished, in accordance with the statute, that you are not to converse among yourselves or with any person on any subject connected with this trial, neither are you to form or express any opinion thereon, until the same is finally submitted to you and you have received the instruction of the court. You may be excused until tomorrow morning at 11:30. Gentlemen, you are also admonished that you are not to visit any of the premises mentioned. You are not permitted to visit the premises unless you go in a body.

(The Court then accordingly adjourned the further hearing of this case until tomorrow, Wednesday, Feby. 9, 1916, at 11:30 A.M.).

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New York, Wednesday, February 9th, 1916.

TRIAL CONTINUED

J O H N        M c M U L L E N, Lieutenant of Police, attached to Police Headquarters, called as a witness on behalf of the People, in rebuttal, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. DONOHUE:

Q Lieutenant, you are the lieutenant in charge of the squad known as the "Loft Squad", are you? A Yes, sir.

Q On November 23rd - A 22nd.

Q Did you have a conversation with Officer Burgess? A I had, on the telephone.

Q As a result of that conversation, where did you go? A Police Headquarters.

Q And who was there when you got at Police Headquarters? A This defendant.

Q And who else? A Officer Burgess.

Q And who else? A Officer O'Connor came after.

Q What did you do after that, bearing in mind the defendant? A After having a conversation with the defendant, I went to 197 Hester street.

Q When you say you went, who went? A I and Officer O'Connor, and Burgess.

Q And who else? A I think it was -

Q Was the defendant there? A The defendant was in Police Headquarters when I got there.

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Q Did he go to this saloon in Hester street? A He brought me there.

Q Go ahead. A 187 Hester street, he brought me there.

Q Tell us what happened? A When we entered the saloon, a young man was in the hallway, and he ran away. He pointed him out to the detectives.

Q Who pointed who out? A Pointed out another man whom we arrested at that time.

Q Who pointed him out? A Albino said he was the man that was with him at the time he committed the crime. He ran across, in the hallway, across the street, and arrested him and brought him back into the saloon, 187 Hester street, and then we asked for the key of a room leading from the hallway.

Q Who did you ask, A We asked the bartender behind the bar. He told us the bartender had that key.

Q Where was the defendant at this time? A He was still present, and he asked me to get the key from the bartender behind the bar, and Burgess asked for the key, took the key from the bartender, and he led us to this room leading from the hallway to my right; there was a padlock hanging on the door; we went in there, and there was a table which we went to first, and under that table, over to the other side, we found those papers and other pieces of stuff laying there, where it had been all strewed over the floor.

Q Describe to the jury where those papers were on the floor?

A As I entered the room -

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Q You have seen this paper before? A I have seen it.

Q Where was it? A There was a table, and I asked him what that table was used for. He said they used to play cards on it.

Q Tell us about those papers? A And these papers were laying to my left.

Q What did you do with the papers? A I didn't touch the papers at all.

Q Who touched them? A I directed officer Burgess to look what those papers consisted of.

Q Tell us the arrangement of those papers on the floor?  
A They were behind the table and over against a few chairs along side of that room.

Q Were they on the floor? A Yes, sir.

Q Were they thrown about the room? A Yes, sir.

Q And who picked them up? A Officer Burgess picked them up, and there was a bag laying there.

Q What kind of a bag was that? A A bag known as - what those fellows that carry away stuff from loft buildings generally has.

THE COURT: Strike out that characterization.

Q Give a description of that bag? A It was a common bag.

Q Was it made of paper, or cloth, or what? A No, it was a kind of canvas bag.

Q And that was the bag that Burgess put these papers in?

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A When he rolled them up, he put them in the bag.

Q And where was the defendant all this time? A Present in the room.

Q In the same room? A Yes, sir, picking up part of it himself.

Q He helped pick it up? A Yes, sir.

Q How did Burgess pick the papers up? A He picked them up and put them on the table and rolled them up afterwards.

Q Did he fold any of them up? A He rolled them up. I didn't pay so much attention to that.

MR. DONOHUE: That is all.

CROSS-EXAMINATION BY MR. CAGGIANO:

Q You say when you went there this defendant pointed out somebody to you? A Pointed out to the other detectives, and they ran after him. I still held on to him.

Q Did you run after him? A I did not.

Q Where was the other man who was arrested at that time? A He run over into a hallway, and the detectives brought him back.

Q How was he dressed? A He had no coat on.

Q You said this defendant pointed him out to you? A Pointed him out to us, I said.

Q Didn't Officer Burgess at that time go in the saloon? Didn't you tell him to go in the saloon and get the key? A Afterwards. He brought him in to get the key.

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Q Was it before you arrested the other man, or after you arrested the other man? A After.

Q You say that you went into the room with Officer Burgess when you got the key? A Yes, sir.

Q And you saw papers laying around? A Yes, sir.

Q You did not examine any of those papers, did you? A I did.

Q You did not examine any of those papers laying on the floor? A I did.

Q Did you notice anything, any marks on those papers? A I seen some writing on them, yes.

Q Some what? A Some writing on them, different marks.

Q And after that? A I asked Officer Burgess then if he had -

THE COURT: You can't give the conversation, unless the defendant took part in it.

THE WITNESS: The defendant was present, your Honor.

THE COURT: Did he say anything at all?

THE WITNESS: Yes, he was telling us all about the others what had done the job.

THE COURT: I will allow it.

Q You did not pick up those papers? A No, I did not.

Q You went right out as soon as you saw the papers? A No, I stayed in the room until everything was through. I seen Officer Burgess bring the key back to the man in the bar room.

Q Who was holding the other man? A Officer Moore brought him to Headquarters.

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Q Didn't you just say you, Officer Burgess and Lieutenant O'Connor? A I didn't say Lieutenant O'Connor? I said Officer O'Connor come afterwards. I said we sent the other prisoner to Headquarters after we made that arrest. That never was brought out until now.

Q I understood Officer Burgess to say when he went there he went there with you and Lieutenant O'Connor? A He went there with Sergeant O'Connor.

Q Now, you say Officer Moore was there? A I said Officer Moore was there, come there afterwards, and I sent the prisoner to Police Headquarters with him, with the man that we arrested before we went into this room.

Q But at that time these papers had already been picked up? A Not until afterwards; this defendant brought us there with that key to a room.

Q And you were there with Officer Burgess? A Yes, sir, and Officer O'Connor.

Q The three of you were in there? A Yes, sir.

Q And where was the man who had been arrested? A We sent him to police - this man was arrested previous to that.

Q I am saying the other man who was arrested? A I sent him to Police Headquarters.

Q Who brought him there? A Officer Moore brought him there.

Q You said that you went there yourself, Sergeant O'Connor and Officer Burgess, and Officer Moore was not there, but he

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got there afterwards?

THE COURT: Whereabouts is "there"?

MR. CAGGIANO: At the saloon.

THE COURT: You better say the saloon, instead of saying, "there", because the last place you referred to was Police Headquarters.

MR. CAGGIANO: Yes, sir, I beg your pardon.

Q At the saloon, on Hester street? A We arrested the man outside, on Hester street, and I directed Officer Moore to take him to Police Headquarters, and we tried to find where the stolen property was, because this man was going to bring us to the property. When we got there he said "they must have disposed of it. There is the papers".

Q I am asking now whether Officer Moore did go to that saloon on Hester street with you, Sergeant O'Connor and Officer Burgess all at the same time? A I didn't see Detective Moore in the saloon. After the man was arrested I directed him to bring the defendant to Police Headquarters, and keep him there until I got back.

Q But I am asking, did he go there with you at the same time? A He come there at the same time, because this defendant was going to point out a certain man; we didn't know who the man was at the time, and he said, "There he goes", and we went after him, to get him.

Q I understood you to say before that the first time when you went there that this defendant, Officer Burgess and Ser-

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geant O'Connor was there with you, and Officer Moore was not, that he came there afterwards? A He was not like with me. I took three men with me. They were not all in one place. I was not going to put them all in front of the saloon. I was going to put them around the block, so I could get who I was after.

Q I asked you whether you went there all at the same time? A I couldn't answer that question. We all started from Headquarters at the same time. Sometimes I will start with forty men and put them all in different directions.

Q You started together? A Yes, sir.

Q Did you go there together? A I couldn't answer that question. I didn't have my eye on all of them. I had my eye on the man this defendant was going to point out.

Q Did he point out the man to you, or Officer Burgess? A He said, "There he is; go get him."

Q Did you arrest the other man? A I did not.

Q Who arrested him? A I couldn't tell you. I was still in front of the saloon, to see if somebody else would come out.

Q Wasn't you in the hallway at the time when the other man was arrested? A He was not arrested in a hallway. He was arrested on the corner, I think. I wouldn't be positive where he was arrested, but I know he was arrested, and I directed where to take him.

Q But you were there when that man was pointed out? A I heard some one say, "There he is; go get him". This defendant

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said so.

Q But you don't know where the man was at the time he was pointed out? A He was in a hallway leading from the saloon. He works in the place.

Q He was in the hallway? A I seen a man without a coat on, his sleeves rolled up; he said, "There he is".

Q Who got him? A I don't know who got him.

Q You were in the hallway at the time? A I was not. I was on the street, in front of the place.

BY THE COURT:

Q What was this man's name? A His name was Gulli, and we arrested him also.

Q "There he is", and he was in a hallway? A He said, "There he is; go get him". He was in a hallway.

Q What did Gulli do? A He started to run.

Q Run where? A Across the street.

Q You say he was in a hallway, and some one said "There he is; go get him". Now, what happened? A The defendant said, "There he is; go get him".

Q What did Gulli do? A Gulli ran.

Q Where did he run? A I don't know.

Q Did you see him run? A I saw him start.

Q Where did he start? A Started outside the hallway.

Q On to the sidewalk? A No, out of the hallway as you enter the saloon.

Q He was inside a hallway? A Leading from the saloon; as

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he come out the door he started to run.

Q Where did he run? A Run across the street.

Q Anybody run after him? A I didn't see -

Q Did you see anybody run after him? A I seen the detectives run after him.

Q Did more than one run after him? A I think O'Connor and Moore run after him; I wouldn't be positive.

Q How many ran after him, do you know? A No, I do not.

Q Do you know whether more than one ran after him? A I do not.

Q Do you know whether one ran after him? A I know one ran after him, but I couldn't tell you which one, because the crowd gathered.

BY MR. CAGGIANO:

Q But you are positive you saw him run across the street?

A I saw him run around the corner to the other side of the street

Q You saw him run across the street? A I am sure he went over there, yes.

Q You say you saw Officer Burgess put those wrappers in a bag? A Yes, sir.

Q How big was that bag? A It was a common bag.

Q Was it about that big (indicating)? A It was that big (indicating), that long, and that width (indicating).

Q Was it about two feet? A Probably more. I didn't measure it.

Q It was a clean bag? A I couldn't tell you how clean it

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was.

Q Did you see the bag? Did you examine the bag? A I seen the bag, yes.

Q Don't you remember whether it was a clean bag, or a dirty bag? A I wouldn't swear it was either.

Q You don't remember? A I do remember, thoroughly.

Q You saw the bag at that time, didn't you? A I certainly did.

Q If the bag was dirty, would you have noticed it? A If it was real filthy, certainly, but it seemed to be a bag that was used for the purpose of carrying stuff in.

Q And you say it was about two feet? A It might be.

Q When you went out of that saloon in Hester street, Officer Burgess was carrying the bag, was he? A Yes, sir.

Q Now, at the time you had the conversation with Officer Burgess at Police Headquarters in regard to this case, there were certain names mentioned, namely, Johnnie the Crook and a fellow named Dixon, was there not? A Yes, sir.

Q How long have you been in charge of the loft squad? A 10th of March, 1915.

Q And during that time how many burglaries have you investigated? A A good many, numerous.

Q Was the name of this Johnnie the Crook and Dixon connected in any way with some of the other burglaries?

MR. DONOHUE: I think we are taking up a lot of time here on immaterial matters.

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MR. GAGGIANO: It is to show motive.

THE COURT: I will allow it.

A This defendant -

Q I am asking whether the name of Johnnie the Crook and Dixon were connected with any of the other burglaries? A Not that I know of, but I have heard their names mentioned, and probably a couple of others.

Q And the police have been very anxious to get this Johnnie the Crook?

MR. DONOHUE: They are anxious to get all crooks.

Q I understand, but especially Johnnie the Crook and Dixon.

A This defendant told me he brought them up there, that he was the elevator man there.

Q I am asking you the question -

THE COURT: We will assume that the Police Department is desirous of apprehending any crook, including - what is the name -

MR. DONOHUE: Johnnie the Crook.

THE COURT: Now, what is the next question?

Q You have heard of these two before? A I have heard of them. Previous to the defendant telling me about them, I have heard about them before, yes, sir.

Q And when Officer Hurgass spoke to you, you went to the First Branch Detective Bureau and asked somebody there where this Johnnie the Crook and this Dixon could be found, is that correct? A After having a conversation with the defendant.

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Q After Officer Burgess spoke to you about the case? A The defendant told me all about the case.

Q Did you go to the First Branch Detective Bureau, in Headquarters, and inquire where Johnnie the Crook and Dixon could be found? A I went and sent two detectives there that was supposed to know him, and told them I wanted them to bring them in.

Q And what did they tell you? Did they tell you where they could be found? A They did not tell me where they could be found. They said if they seen them they would bring them in.

Q Did they tell you more or less any street or any place where they could be found? A The defendant told me he thought they were over in Jersey.

Q Where? A The defendant told me he thought they were over in Jersey.

Q Jersey? A Yes, sir.

Q When you walked out of that place, who had charge of this defendant? A The defendant didn't have anybody in charge of him at all. He walked along with all of us.

Q Didn't somebody take him by the arm? A I wouldn't answer that question, because I am not positive of it.

Q Did you handcuff him? A No.

Q Did any other officer with you handcuff him? A Not that I know of.

Q And you didn't notice who had charge of this defendant

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at the time? A He was willing to tell us; he said he brought the people up there to commit the burglary; he was the elevator man there, and we were not afraid of him running away; there were too many of us there to be afraid of him running away.

Q Who had charge of the other man who was arrested? A I sent him by an officer to Police Headquarters, to Police Headquarters. I answered that question three times.

Q At the time did you ever bring this defendant before the other man who was arrested to Police Headquarters? A Certainly, we did.

Q What did this defendant have to say? A He told, in the presence of the other defendant, that he knew where the stuff was. He didn't say the other defendant had committed the burglary.

Q The man who was arrested? A The other man he had arrested, but he said he knew where the stuff was, and he was the receiver, where we found the stuff, in the rear of the room leading from the saloon. That was in the presence of the other defendant, but we had no corroborative evidence, only this evidence when we got him to court.

Q Was the other man who was arrested there in the presence of this defendant when he said it? A In Police Headquarters, yes, sir.

MR. CAGGIANO: That is all.

BY THE COURT:

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Q Where was this room in which these papers that are here were found, People's Exhibit No. 1? A This defendant said in the saloon, he said, "Go and get the key from the bartender, and I will show you the room where the stuff was taken to". I ordered Officer Burgess to get the key. The bartender handed the key to Officer Burgess. This defendant brought us through from a door leading into the side hallway of the building to a room which was padlocked.

Q Where was that room? A That room was on the opposite side of the hall, to the right, 197 Hester street, and there was a table when we entered the place, and these papers -

THE COURT: Officer Burgess, please step outside in the hall.

(Officer Burgess leaves the Court room.)

Q Where was this room? A We left the saloon; there was a door leading to the right. We went into the saloon, and we went over to the opposite side of the hall, about five feet; there was a door to the right of the hall; he showed us the door; there was a padlock on that door.

Q The door opened into the hall? A The door opened from the hall into a room. We went into that room, and we found those papers on a table in that room. I said to the defendant, "What do they use that table for?" He said, "They play cards here".

Q This hall that communicated with this room, was that on the same floor as the saloon? A No, it was on the opposite

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side of the hall.

Q Was it on the same level? A On the same level.

Q To from the saloon into that hallway, you go right through a door? A You go up two steps from a saloon.

Q Go up two steps? A I think it was two steps; I would not be positive.

Q To go from the saloon into this hall? A Yes, you go through a door leading to this hall, and then you go about five feet to a room.

Q So, you did not go down any steps to get into that room?

A No.

Q It was not in the cellar? A No.

Q It was not one flight up? A No, sir.

Q It was on the same floor with the saloon? A Yes, sir.

Q You are sure it was not in the cellar? A Oh, no, sir.

Q When those papers, People's Exhibit 1, were found, what was done with them? A They were put by Officer Burgess into a bag which was there, and he carried them under his arm.

Q What is that? A Put into a bag which was found there also.

Q Where? A In this room.

Q You say the bag was found in that room? A Yes, sir.

Q Did you see the bag? A Yes, sir.

Q Where was it? A Laying on the floor.

Q Was the bag on the floor near these papers? A Oh, yes, in the same room.

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Q In the same room? A Yes, sir.

Q Had anybody gotten the bag and brought it in there? A No.

Q It was found there? A Everything was found there.

Q Including the bag? A Yes, sir.

Q You are sure of that? A I wouldn't be positive, but every thing we seen we took out of there.

Q I am asking you whether the bag was found there, or whether somebody brought the bag there? A I am pretty positive the bag was there.

Q When was the first time you saw the bag? A In the place, when the stuff was picked up.

Q Where was it when you first saw it? A Underneath the chairs.

Q Was it lying on the floor? A It was lying on the floor; I am pretty sure of that.

Q Was there anything in the bag? A No, there was nothing in the bag. I am pretty sure there was nothing in the bag.

Q What kind of a bag was it? A It was one of those thin bags that is generally used for potatoes of such stuff.

Q Did you notice whether there was any straw or papers in the bottom of it? A No.

Q Was there, or not? A I don't think there was. I seen these papers after they were rolled up, standing in the bag, and brought to Headquarters.

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Q When these papers were put in the bag, did they stick out of the bag, or were they all inside the bag? A No, they were sticking out of the top of the bag.

Q Are you sure of that? A Yes, I am pretty sure they were sticking out of the top of the bag.

Q Do you remember seeing it? A Yes, sticking out of the top, about the same length as the bag; I think some were a little longer than the bag.

Q Who put them in the bag? A I think it was Burgess.

Q Did you help? A No, I stood there; I only told them to pick up everything, and I asked Burgess if he had an inventory of all the stuff that was stolen, and if any of the pieces represented the stuff which was taken out of the place in 16th street.

THE COURT: Strike out the testimony about the inventory.

Q Who was present at the time that Burgess was putting these papers in the bag? A The only ones present were the defendant and Sergeant O'Connor and I, that I remember of. There might have been some one looking through the door. I don't believe the door was closed to the hallway.

Q After the papers were put in the bag, what was done with it? A It was brought to Police Headquarters.

Q Who brought it? A Burgess.

Q Did he carry it? A Yes. I wouldn't be positive whether he or O'Connor carried it, because I didn't pay much

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attention to it.

Q Was the defendant intoxicated, or was he sober, did you notice? A He was as sober as he looks to me now. He might have had a drink, for all I know.

BY MR. CAGGIANO:

Q You said a little while ago that you saw Officer Burgess roll up these papers and put them in a bag. Are you sure about that? A I seen him roll up the papers on a table, I said, and put them in a bag.

Q You saw him roll them up? A Yes, folded them and put them in the bag.

Q Did he roll them up, or fold them? A I seen him rolling them.

Q You saw him rolling them? A As far as I know.

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MR. DONOHUE: If your Honor please, in view of the testimony, on behalf of the District Attorney I ask a verdict of acquittal be directed on behalf of the defendant.

THE COURT: I think that is a very proper motion. The conflicting testimony of these officers is such that there is no doubt there is a reasonable doubt here. I would not ask any jury to convict a defendant upon testimony of this character. The method of the finding of these papers is differently described, the way they were put in is differently described, the condition of the defendant is differently described. One officer says the bag was found in a

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cellar, and the other officer says it was found in a room on the same floor. The discrepancies are so great that it leads me to have considerable doubt whether those papers were not found in the basement of that loft building. Arise, Mr. Foreman. You are directed to find a verdict for the defendant, not guilty.

THE CLERK OF THE COURT: How say you, do you find the defendant guilty, or not guilty?

THE FOREMAN OF THE JURY: Not guilty.

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Amos G. Russell,

Official Stenographer.

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