

**START**

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**CASE**

**CASE #1810**

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COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York, Part V.

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THE PEOPLE OF THE STATE OF NEW YORK,

Before:

-against-

HON. JOSEPH F. MULQUEEN, J.,

EDWARD CISZENSKI alias EDWARD CHICHOU-  
SKY.

And a Jury.

New York City, January 7th, 1914

Indicted for Grand Larceny in the Second Degree, and  
Receiving, as a Second Offense.

Indictment filed November 17th, 1913.

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

For the People:  
GEORGE N. BROTHERS, ESQ., Assistant District Attorney.

For Defendant:  
SAMUEL FELDMAN, ESQ.

(A Jury is duly impaneled and sworn.)

Counsel for the defendant concedes that heretofore  
as charged in the indictment, the defendant was convicted  
before the Hon. Norman S. Dike, Judge in the County Court  
of Kings County, on the 11th day of June, in the year 1909,  
of a felony, to wit, Burglary in the Second Degree, and  
was thereafter sentenced by the Hon. Norman S. Dike to  
be imprisoned in the State Prison at Sing Sing under an  
indeterminate sentence, maximum six years and minimum  
three years.

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BARTONI MAJELLA, called as a witness in behalf  
of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your address? A 282 East 10th street.

Q What business are you in? A Coal man.

Q Where is your place of business? A Same address,  
East 10th street.

Q On the 5th day of September, 1913, were you in Tompkins  
Square, in the City and County of New York? A Yes.

Q About five o'clock in the afternoon? A Between  
half past four and five o'clock. It was not night time, it  
was day.

Q What were you doing in Tompkins square at that time?  
A I was on my way home.

Q Did you stop anywhere in the Park, and if so where?  
A I was walking along with my vest over my shoulders (wit-  
ness indicating with his right hand over his shoulder), and  
one man came on one side of me and another one on the other  
side, then one of the fellows dropped a button and he  
says to me ---

Q Were you in a comfort station that afternoon, that is a  
toilet, the public toilet? A Yes.

Q Did you see this defendant at any time while you were in  
the toilet? A Yes.

Q What were you doing at the time you saw the defendant?  
A I was there having a call of nature.

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Q Were you seated, were you on the toilet? A Yes.

Q Where did you have your vest at that time? A I had the vest hanging over my head.

Q How far from you? A Just the regular height of the toilet where you hang your vest.

Q Was there a door to this place? A No.

Q What happened while you were sitting there? A I seized hold of my pants quick and my vest.

Q First say what happened before you did that, if anything?

A They took my money and they ran away

BY THE COURT:

Q Well, who got your money? A This defendant (witness pointing at the defendant).

BY MR. BROTHERS:

Q Well, tell us how he did it? A By putting the hand over the toilet into the toilet and going to my vest pocket and taking the money (Witness indicating how they closed the hand with his right hand).

Q What did this man put his hand over? A Over the vest.

Q Was there more than one toilet there? A No, one next to the other.

Q Where was the man <sup>standing</sup> who took your money? A A He was on my left side; the fellow on the left side, off my toilet (witness indicating with left hand).

Q Did you see him reaching over the partition? A Yes, immediately I saw him.

Q Did you see his face? A Yes. That is the reason I

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ran after him.

Q Was there anybody else there at that time? A There were two of them.

Q What if anything did the other man do? A The other man asked me to pick up a button in front of me off the floor, and while I went to pick it up the other man went on my vest.

Q What became of these two men? A They both ran away.

Q Was your vest taken or only the money from it? A Only the money.

Q How much money did you have? A \$200.

Q Was it in bills or silver, or in what amount? A Four twenty dollar bills, and some ten dollar bills, and some two dollar bills and some one single dollar bills.

Q And it was all in paper money, was it? A All in paper money.

Q In which pocket of your vest did you have it? A (Witness indicating the right inside vest pocket).

Q When you saw the defendant taking your money tell the jury what you did? A I quick seized my vest and my pants -- I pulled up my pants and I ran after this defendant and I seized hold of him.

Q How far did you chase him? A When I ran after the defendant and the other man in one direction, but I didn't want the other man as I wanted this man (indicating defendant) and I ran about half a block and I got him.

Q Into what street did he run? A 9th street.

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Q Did you catch him in the street or in the house? A  
Top floor of the house at No. 618.

Q Did the other man get any of your money, if you know?

A They did something with their hands when they were running  
but I don't know what they did.

Q In which direction did the other man go? A He went  
towards uptown.

Q In whose house did you overtake the defendant? A Premi-  
ses 618, on the top floor.

Q On the top floor? How many floors or stairs up was that?  
A Five floors.

Q When you got up on the top floor did you catch the  
defendant in the hallway or did he go into a room? A In the  
hallway.

Q What happened then? A Then it happened that one of  
my countrymen happened to be in the hallway with a woman and  
we seized hold of the defendant and we attempted to take the  
money away from him, but all the money was not found on the  
defendant.

Q Well, did you take any money from the defendant? A  
\$117, found in the possession of the defendant; he had it  
right in his leg (witness pointing to his left leg.)

Q How was it in there? A He had placed the money inside  
his pants and some of it came through at the bottom of the  
pants on the floor.

Q Is that how you came to search inside of his pants?

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A Because I saw him in the park, - while he was running he was placing the money in his pants.

Q Who was the woman who was there at that time? A She is a country woman of mine, and I don't know who she is, but she is an Italian.

Q Do you see her here today? A Yes, she is here.

Q Did you know that Italian man that was there? A I don't know where he is. I don't know where he works.

Q Is here here today? A No, he is not here. He has come several times, but this time I couldn't find him. He went before the Grand Jury.

Q Did a police officer come? A Yes.

Q And took you all to the station house, did he? A Yes.

Q Who got the money? A The policeman got it.

Q He still has it? A Yes, sir.

CROSS EXAMINATION BY MR. FELDMAN:

Q How old a man are you? A Fifty-two.

Q How long are you in this country? A Twelve years.

Q You say you are in the coal business and working for yourself? A Yes, sir.

Q Where is your coal cellar? A 10th street.

Q What time did you arrive there that day?

THE COURT: Arrive where?

Q In your coal cellar? A At six o'clock in the morning.

Q And were you working all day? A I work until nine o'clock at night, waiting for some customers that might need

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some coal.

Q How far is the coal cellar away from the place in Tompkins square? A There is a church and then two yards and then comes the toilet in the park.

Q You carried that money all the time, did you? A Keep it to do business with, buying coal and selling.

Q Well, how long a time did you have it in your pocket? A That night I had it.

Q Where did you take it from? A From a nephew of mine.

Q Then it was not your money at all? A Certainly it was my money, because I borrowed it and I owed it. And I paid three dollars a month interest for it.

Q You paid interest at \$3 a month to him, - to your nephew? A Certainly.

Q And the money belonged to your nephew?

THE COURT: He said it was his money. He borrowed it and he owed it.

A He trusted me with \$200, and I owe it to him, but when I borrowed it, it was my own money.

Q And he gave you that the night previous to the day that it happened, is that right? A The night before, and I gave him a contract for it.

Q You say it was \$200 he gave you? A Yes, \$200.

Q And you told us before it was four twenty dollar bills, is that right? A Yes.

Q Now, if you take four twenty dollar bills that is \$80

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off of \$200? A Yes.

Q And the other money was also bills, of what denomination?

A They were all mixed up, - tens, fives, twos and ones.

Q Did you have them wrapped up, or in your pocket book?

A They were just rolled up.

Q Where did you see the money last before you sat down in the toilet? A That same moment that I sat there the money was there.

Q Did you count the money there? A No. I had it in my pocket. I felt in my pocket, and I saw it in my pocket.

Q You felt the money when you hung up your vest, is that right? A Yes.

Q These toilets are separated by partitions, are they not? A There is a very short partition. (Witness indicating the height of the partition)

Q Do you mean to say when you are sitting down in the sitting position that you can see the next man who sits next to you? A Yes, there is a small partition. I can see him when he sits there.

Q You told us there were two men at each side, or one at each side at the time you were sitting there? A One was on one side and one on the other. The one dropped the button towards me, and asked me to kindly give it to him and while I was doing so I saw the other one's hand put over the ---

BY THE COURT:

Q Do you mean a collar button? A A collar button.

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BY MR. FELDMAN:

Q The one that dropped the button, did you see him? A I saw him but I do not know him. It was a stranger.

Q Why, do you mean to say at the time when you stopped down, - you stopped down to pick up the button, that at that time you saw the other man put his hand in your vest? A Yes.

Q Why, you couldn't see the man who took the money? A Yes, on my raising the button from the floor, and looking up, I saw the man had it in his hand.

Q At the same time you saw the man and his hand reaching for the money, is that right? A Right away I saw him.

Q Well, did the hand come over the partition? A Yes, on the vest.

Q On the vest hanging there? A Yes.

Q And you saw the hand on the vest, is that right? A I saw the hand on the vest.

Q Was the hand above the vest, above the head, or just in the same position with the head? A A very small distance between the height of the hand and the head.

Q Which was above the head? A Above the head.

Q Was the man who took your money, as you say, standing upon this seat, or standing on the floor? A On the ground, he was standing on the ground.

Q Did you hand the other man the button? A Yes, while I was handing the button to the other man I saw that.

Q When you came in to sit down were these two men sitting

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there before? A They came afterwards.

Q So at that time you didn't see the faces of either of them? A Yes, I saw them both, when they came in, and I saw one in the face, and I saw the other face, but I didn't pay any attention.

Q You mean to say that the man who sat at your right-hand passed you before he sat down? A The one, the defendant, sat to my left first.

Q What man did you see first, the man on the right or left? A Both at the same time. I was sitting in the middle and these two men at the sides.

Q And still you say that you saw both men at the same time?

A Yes.

Q When you saw the hand reaching into the pocket, did you see him extracting the money? A Yes.

Q Did he get it over the partition? A He seized the money over the partition and took it away.

Q Was it taken up in the air or did he take it over the partition? A Over the partition into the vest.

Q What was the first thing that you remember doing when you saw the money going over the partition? A While my pants were down yet, I rushed out and I seized hold of these men, and I said "Please give me my money back", and just then the defendant I had in my hand, - and just then the other man gave me one push and knocked me back again and this defendant got away from me.

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Q When you ran out? A Yes, sir.

Q Were other men running with you? A Yes, hundreds were running.

Q Did you all go out of the toilet? A No, in the street they started to run.

Q How far were you running before you got hold of these two men? A Two or three paces, a very few paces.

BY THE COURT:

Q Were you in the street or in the toilet when you got him?

A Outside of the toilet.

Q But in the room where the toilet was? A I immediately seized in the toilet my vest and pulled up my pants, and I ran. Outside of the toilet I got hold of this defendant.

BY MR. FELDMAN:

Q You held with one hand on to your pants and vest, is that right? A I put immediately my vest on and I ran.

Q And within three paces, as you say, you got two men?

THE COURT: He said he got one man.

Q Were you running fast when you ran out of the toilet?

A Yes.

Q And you do say you caught hold of one man? A I caught one, yes.

Q Who is the man? A This defendant (witness pointing to the defendant).

Q You will say it was only three paces away from the toilet? A I first seized hold of him three paces away from

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the toilet; then he escaped again.

Q And at the time when you caught hold of him you say there were people with you, is that right? A No, no.

Q Was there nobody there at the time when you ran out of the toilet and caught hold of the man? A No, only these two. The defendant and the one that escaped.

Q So after, as you say, you caught hold of him he broke away from you? A Yes, you know, he went away.

Q And then you ran after him, the defendant? A All the time kept him in sight.

Q Tell us how far you were running? A About half a block; he ran in that No. 618.

Q And by that time there were hundreds of people with you? A I was going after these men, but there was hundreds of people in the street.

Q Anybody running besides you? A Curiosity seekers, yes, looking around.

Q Was there anybody running besides you at the time you ran after this defendant? A There were several running too, yes.

Q And there were other people besides this defendant running ahead of you? A No, only this defendant was ahead of everybody.

Q Who caught hold of this man the second time, the second time when he ran, can you tell me? A The second time I seized hold of him and my friend upstairs.

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Q How many friends did you have? A Two.

Q Where were these friends? A They were in the middle of the street; they were just going shopping. This woman was going marketing.

MR. FELDMAN: I object to it and ask to have it stricken out.

THE COURT: I will allow it to stand, you asked him where they were.

Q Did you know that these friends were on the street?

A I don't know whether they were there or not. They happened to be there.

Q Did you have any knowledge that your friends, - at the time you were sitting in the toilet, - that two of your friends were outside on the street? A No, I did not.

Q And when you saw them, both of them, they were on the run, after you were running after this defendant? A Yes.

Q Are they good friends of yours? A They are not friends, exactly, but they are honest people who helped me to seize hold of this defendant.

Q Have you known them for some time? A I knew them by sight, but I was not aware where they resided.

Q Did you tell them about your trouble at the time? A Yes. That is the reason I was running and I told them.

Q Did you tell them on the run, when you were running after this man? A When I was running after the defendant they just said, "What is the trouble?", and I said, "This man just took my money."

Q What did the friends do to this man, if anything? A They

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were holding him fast while I was searching for the money.

Q And did they beat him? A No, no.

Q Did they knock him down to the ground? A No, he could not move; we had him tight, three of us, and he couldn't move.

Q When did he break away from you after you had him tight?

Objected to. Sustained.

Q That happened on the street?

THE COURT: The first time he broke away occurred outside of the toilet.

BY THE COURT:

Q Where did you get him the second time? A In the premises 618, top floor.

BY MR. FELDMAN:

Q Is it not the fact that these friends of yours and fifty more people ran into the hallway and he ran away from you? A No, no.

Q Isn't it a fact that after your friends held him tight, that he broke away and ran into the hallway? A No.

Q Did you see a woman at that time with this man? I mean at the time when you got and caught hold of him on the street? A I didn't get him on the street; I said outside of the toilet.

Q Did you see this man in the company of anybody or was he all alone?

THE COURT: He said there was another man with him.

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MR. FELDMAN: That was in the toilet, but not on the street or in the hallway.

Q Did you see anybody at the time you caught him in the hallway with him? A No, nobody. When the one ran away in one direction, and this defendant ran in another direction, I kept my eyes on him continually. I never missed sight of him.

Q Do you remember him making an outcry, and saying, "What are you robbing me for"?

THE COURT: Do you mean the defendant making an outcry?

MR. FELDMAN: Yes.

A This is a pack of lies; it is not so. He was all alone, and he was running, and all alone I seized him.

Q Who put his hand, you or your friend, in his pocket? A My friend; not me.

Q Was he fighting with him? A Yes, he struggled a good deal, but we had him.

Q Did you see where the money was taken from? How many places was the money extracted from this man clothing? A \$2 from a little side pocket in the fold of the pants, on the left side (witness indicating towards the left side), and all the other money took out from inside his pants towards the leg.

Q So they were taken out of two places?

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THE COURT: He has told you that now.

Q Did you see him putting the money there at any time?

A I saw him placing the money towards his leg when he was running.

Q And you never lost sight of this man at all from time that you left the toilet until the time you caught him with the money? A Yes, I kept my eye on him from the time that I first seized hold of him.

Q And you say you had \$200, is that right? A Yes, I had \$200.

R O S A L A F O R C I A, called as a witness in behalf of the People, being first duly sworn, testifies as follows:  
DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your address? A My address is 140 East 7th street.

Q Where did you live on the 5th of september of last year? A 131 Avenue B.

Q Do you remember seeing Mr. Majella and this defendant in East 9th street, near the Park? A Yes, I was in the Park with the baby, - my children, walking around with the baby, and I see a man was running. This man run, and that other man, you know -- Majella after this one (indicating defendant), hollering "Thief! Thief! Policeman!", and I said, "What is the matter?", and he says ---

Q Did you go along after the crowd? A Yes, and I left

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the baby with the big girl, and I go with this man (the complainant), he says "Help me."

Q Did you see him caught? A I caught him upstairs.

Q Where? A On the roof I caught this man.

Q Upstairs? A Yes, I caught him by the waist, by the coat; and I see \$5 drop on the floor, by the legs, on the left side leg; \$5 he dropped on the floor.

Q Out of whose trousers did it drop? A Yes, below.

Q Do you mean this man here in court? A Yes, that man.

Q The defendant. What was Mr. Majella doing at that time? A He was hollering "Policeman! Policeman!"

Q Hollering? A Majella.

Q How was Majella's clothes at that time? A Open, and he was doing doing like this.

Q Holding them up? A Yes.

Q Did you see any more than five dollars taken from the defendant? A Yes.

Q How much did they take away? A I was asked to put my hand on this man, in the pants, and I said to another Italian fellow -- and I said, "You see in the pants, you just see in the pants." And the other fellow, he put the hand inside and he found the money, \$117, and this man, he says, "Give me the rest." We counted the money, you know, and I says to him, "Give me the money."

Q Who did you say that to? A I said to him.

Q To the defendant? A Yes, and I says, "Give me the money--"

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give the money to the man, and we will let you go." And he said "No, Missus, I ain't got no money." I said, "What is this money here?" And he said, "This is my money"; he said, "Another Jew fellow sent me over"; he said, "To meet this man." And we say we will see if he has got more money, and we don't find any more money, only \$117.

Q Did the policeman come? A Yes, and we gave the policeman the money. Mr. Lexquadi was the other Italian man.

Q Do you know where he is now? A I don't know.

Q Did he live near you? A No, no.

Q Did you know Mr. Majella at that time? A No, now I know.

BY THE COURT;

Q That was the first time you met him? A That was the first time I met him.

CROSS EXAMINATION BY MR. FELDMAN:

Q You are not related to him, are you? A No.

Q You do not know his people either? A No, - what do I know about his people? This man did not wear glasses before (indicating defendant).

Q You say you were sitting with a child there? A Yes.

Q And saw a man running? A Yes, this man was first (indicating defendant), and that man was after him (indicating complainant).

Q He passed you by, did he, ran by? A Yes, this defendant did pass by me. passed right in front of me.

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F O C I

Q And tell us that that was the man? A Yes, I seized hold of him, and therefore I know it is him.

Q You did not know at the time that he was running, did you? A The complainant, with his pants wide open, in a hurry told me that "This man robbed me of my money."

Q In the hurry he told you, and at the same time you grabbed the defendant? A Yes; I went and caught him on the roof, and then I brought him downstairs.

Q When you saw him the first time was he running? A Yes, and I ran after him.

Q Anybody else running? A There were other people in the street running, and everybody in the street said "That is good, you get him."

Q And you were the first who caught the defendant? A Yes.

Q Running very fast, were you? A Yes. I ran after him, and I even tripped, and I got up and I ran yet and I got him.

Q And you say you caught him on the roof? A Yes, from the roof I dragged him down to the top floor.

Q How many flights did you walk up to catch him? A Fourth floor; four flights.

Q Anybody else was with you? A Yes, that Italian, the complainant, and some other Americans afterwards which came.

Q But you were the first one who got hold of him? A Yes.

Q What did you say to him when you caught him? A When I seized hold of him I said, "Give back the money to that man,

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and I will let you go." He said, "No, I haven't got any money, I haven't got any money."

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Q You spoke in English to him? A Yes, he said "I don't understand." "Well", I said, "You don't understand!" When I spoke to him in English he said "I don't understand you", but I said, "When you took the money you understood it, didn't you?"

Q Then what happened? A We seized hold of the lapel of the defendant's coat. I said to him, "Now give up that money." And he says, "I didn't take it, honest; some other Jew took it", and when I was dragging him down from the roof, on the first floor, then \$5 fell out of his pants. I said to the other Italian, I said, "Place---"

Objected to.

THE COURT: All in the presence of the defendant. I will allow it.

A (Continuing) I said "Place your hands in his pants," because the defendant had his pants open, and I didn't care to place my hand. Both had their pants open, the complainant and the defendant.

Q Then what was done, did you have any fight? A No, no fight; we didn't touch this man.

Q Did he allow you to go through his pockets without saying anything?

THE COURT: She didn't say she went through; she told you the other man from the roof.

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Q Well, did the other man go through his pockets without doing anything to him? Was there any fight going on? A No fight; no fight at all.

THE COURT: It depends upon what you mean by a fight. She has told you over and over again what she did. Now, you may call it a fight, or anything you like, unless the question is to be what a fight is.

Q Well, wasn't there a struggle?

THE COURT: She said she dragged him down from the roof. Whether there was a struggle or not makes no difference.

Q Well, the other man helped you? A Well, because he had the pants open in the front.

THE COURT: She dragged him down from the roof.

BY THE COURT:

Q Did anybody else bring him down from the roof but you?

A This Desquadi helped me.

Q He went up to the roof too? A Yes.

BY MR. FELDMAN:

Q Who got the money out of his pockets? A Not his pocket, he had it in his legs, - between his skin and his underwear.

Q Did you see it taken out? A Sure we saw it.

Q And some from his pocket here? A No, we counted the money, and counted \$117. And he said "There is more money", and Majella says, "I give the other man the money", I don't say that. Just I see when he pulled the money from his legs, and we counted, and it is \$117. And before that he said, "I

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ain't got no money," before we had the money out he said, "I  
ain't got no money, I ain't got no money; another fellow took  
it; not me, not me."

Q You cannot be mistaken that is the man? A Sure I cannot  
make no mistake. Before I told you he had no eye glasses.

Q What impresses you so much that that is the man when he  
passed you by in the Park? A When I first saw him passing  
in front of me I saw his face, and when I dragged him from the  
roof I saw him; I didn't have my eyes closed, I had them wide  
open, and in the station house I had occasion to look at him  
again.

BY THE COURT:

Q You held him until the policeman came and saw him taken  
to the station house? A yes, sir.

BY MR. FELDMAN:

Q How long did you hold on to him before the policeman  
came? A While I brought him down from the roof and the hall-  
way, and into the hallway, the policeman came, and I bring  
him down to the station house. I was going with him too.

BY THE COURT:

Q You went to the station house? A Yes.

H A R R Y R A P H A E L, called as a witness in behalf of  
the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a member of the police force of this City, are

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you? A Yes, sir.

Q On the 5th of september did you see this defendant, -  
that is last year? A Yes, sir.

Q At what place? A On 9th street, between Avenues B and  
C.

Q On the street or on the sidewalk? A On the sidewalk.

Q Who was with him at that time? A There was a woman --  
in the crowd of persons who were talking to me about this  
defendant was a woman, and a man, and a young man.

Q Have you seen any of these people here today? A Yes.

Q Who? A There is one of them sitting there.

Q Majella, the complainant? A The complainant; and a  
lady with the baby in her arms.

Q That just went out of the room? A Yes, sir.

Q And this defendant was there? A Yes, sir.

Q Did you see any money there? A Yes, sir.

Q Who had the money? A A young man who is not in court  
at present.

Q That is Lesquadi? A Yes, sir.

Q The missing witness. A Yes, sir.

Q How much money did he have? A \$117.

Q And you arrested the defendant, and took him to court?  
A yes, sir.

Q And he was held for the Grand Jury? A yes, sir.

Q And you have had this money in the property clerk's  
office ever since? A Yes, sir.

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Q You have counted it yourself? A Yes, sir; I and Barney Pflaster.

THE COURT: You offer the money in evidence?

(The money is offered, received and marked in evidence.)

Q Lesquadi was down here under subpoena once before, was he? A Yes.

Q Do you know where he is now? A No.

Q You have not been able to find him, and you do not know where he is? A No, sir, I do not know where he is.

Q Did you have any conversation with the defendant when you placed him under arrest? A I asked him whose money it was, and he said "It was mine."

Q That is, he said it was his money? A Yes, sir.

Q How was the complainant dressed at that time? A He only had a vest on, and no coat, only a vest.  
BY THE COURT:

Q How about his trousers? A He had his pants on.

BY MR. BROTHERS:

Q Did you get the defendant's address from him? A The defendant's address? They got that in the station house.

Q Do you recollect what it was? A I haven't got my memorandum book with me.

Q Were you in the police court, Officer, when he was arraigned before the clerk, and his pedigree taken? A The detective officer Pflaster was there to give the matter.

Q You were not there? A No, sir.

Q That is all you know about it? A Yes, sir, all I

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know about the case.

GROSS EXAMINATION BY MR. FELDMAN:

Q When you came there was a crowd collected? A Yes, sir.

Q What attracted your attention to the crowd? A People running towards 9th street.

Q People running? A Yes, from Avenue C.

Q A good many of them? A Yes, sir.

Q How many about? A Well, I couldn't count them.

Q Twenty? A I couldn't say how many, because I didn't count them.

Q Well, they did run and collected a crowd. You mean because people were running you ran after them, is that right? A Yes.

Q You didn't know what was going on? A I heard people hollering "Stop thief!"

Q And then you saw him running? A Yes, sir.

Q You did not know who the thief was at the time? A No.

Q You didn't know who the complainant was at the time? A No.

Q Where did they stop? Did you stop first, or did the crowd stop first? A Well, the crowd was there when I came there.

Q The crowd was still standing there at the time when you arrived there? A Yes.

Q A big crowd? A Well, yes, a big crowd.

Q What was the first thing that you saw when you came there?

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A The first thing I saw was they had this defendant by the shoulder.

THE COURT: What difference does that make. He said that that woman and that complainant had this defendant there.

MR. FELDMAN: He didn't say that, your Honor.

Q But you have hold of him ---they had hold of him, who is "they"? A The complainant, and the woman, and this other fellow, - the three of them had hold of him.

Q Was there any policeman? A Yes, sir.

Q Who had the money? A One of the missing witnesses, Lesquardi.

Q Who gave you the money? A Lesquardi.

Q Isn't it a fact that the other policeman handed you the money? A No, sir.

Q And didn't the other policeman have the defendant and the money, and give it to you? A Lesquardi had the money, and I says, "Whose money is this," and he said "This is the complainant's money.

Q Lesquardi said that? A Yes, sir, the complainant.

Q What did the other policeman say to you? A The other policeman said nothing to me.

Q Who is the other policeman? A Barney Pflaster.

Q What precinct? A He is attached to the Detective Bureau; detailed to the 17th Precinct.

Q Did he go along with you? A Yes, sir.

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Q He went to the station house with you? A Yes, sir

Q Did you hear what this defendant said? A He said "It was ~~my~~ money".

Q Anything else besides that? A Yes, --

Q Didn't he say he was attacked by these Italians, and they tried to rob him? A He never told me that at all.

Q Didn't he say he was never near that toilet room? A He didn't say anything at all to me. The only thing he did say was that the money was his, that's all he said.

Q That's all you know of the case? A That is all I know of the case.

B E R N A R D P F L A S T E R (Detective Division, 17th Precinct), called as a witness for the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Tompkins Square Park is in the City and County of New York, is it? A Yes, sir.

Q And there is a public comfort station there? A Yes, sir.

Q Did you assist in the arrest of this defendant at East 9th street on the of last september? A Yes, sir.

Q Were you present when he was arraigned before the clerk in the police court, before Judge Nolan? A Yes, sir.

Q Did you hear him give his address there, where he lived?

A Yes, sir.

Q What was it? A I do not remollect exactly the address of his house.

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Q Did you hear him tell the clerk? A Yes.

Q Will you refresh your recollection? A Yes, sir; this is correct, 406 East 16th street.

CROSS EXAMINATION BY MR. FELDMAN:

Q Did you say you were present when this man was arrested?

A Yes, sir, I was in 9th street.

Q Are you sure of that? A Yes, sir.

Q Did you arrest him, or did you not?

THE COURT: It doesn't make any difference whether he arrested him or not.

THE WITNESS: I was with Officer Raphael at the time when he placed him under arrest.

Q Where was that? A In East 9th street.

Q Did you see where he came from? A No; I seen a crowd.

BY THE COURT:

Q When you saw him first, where was he? A He was in the front of 618 East 9th street, on the street.

BY MR. FELDMAN:

Q And a crowd around him? A Yes, sir.

Q What was going on? What did you see was going on? A When I got there I seen this lady and another man, the last witness was on the witness stand, they had hold of him.

Q What else was going on? Anything else? A Yes, the complainant -- I asked what the trouble was, and the complainant told me that this man stole \$200 from him.

Q Did you see the money there? A Yes.

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Q Who had the money? A The officer, and the officer handed it to me, Officer Raphael.

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

Q Anything else asked of the defendant? A I asked him in the station house.

Q Did you ask him any questions there? A In the station house I asked him.

Q No questions asked in the street there? A No, I asked him the questions in the station house.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q What did you ask him? A I asked him where he got the money from, and he told me that it was his own money, and I said, "Why did you put the money in your leg, so long as it is your money?" Why he told me he was afraid of being robbed, that is the reason he kept the money down in the leg of his trousers.

Q He was afraid of being robbed? A Yes, sir.

BY MR. FELDMAN:

Q You mean to say by the Italians who were trying to rob him? A No, he didn't say that but he said he was afraid of being robbed, that is the reason he placed the money in his leg of his trousers.

PEOPLE REST.

MR. FELDMAN: If your Honor please, I ask that the case be adjourned until tomorrow.

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THE COURT: I do not happen to know what witnesses you have.

Mr. Feldman now opens to the Jury in behalf of the defendant.

E. D W A R D C I S Z E N S K I, called as a witness in his own behalf, being first duly sworn, testifies as follows:

Q What is your address? A 406 East 16th street.

Q How old are you? A Twenty-four.

Q Where do you live? A I live in East 16th street.

Q What do you do for a living? A I am working in a butcher shop, 335 Third avenue.

Q Did you ever see this complaining witness? A Never.

Q When was the first time that you saw him? A I saw him September 5th, 1913, after five o'clock; I walked with my wife and some friends walked with me.

Q Where did you see him first? A I saw him first time on Avenue B, and corner of 9th street. I want to explain first. September 5th I am working at 335 for Mr. Joseph Chewska. I think Mr. Feldman has got the address, and I gave him -- I am working at five o'clock, and I come home and my wife says to me --

Q Never mind that. A Well, I took the money from home, \$110, and I got \$7 in the little pocket here, and she say, "We go to the bank".

THE COURT: Never mind what she said, now. You went

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out?

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THE WITNESS: Yes, I, my wife and another person.

Q Where did you have this \$110? A I had that money in my pocket here, \$110.

Q Which pocket? A Here, right on the left side (indicating left side trousers pocket), and here I have got \$7 (indicating right hand fob pocket), a five and a two in this pocket (fob pocket); and \$110 in this pocket (left side trousers pocket).

BY THE COURT:

Q You did not have it inside your trousers at all? A No, sir. And we walked together with my wife and the different person to a bank in Houston street, 313; and we wanted to put that money in the German bank, but before that a man come to my house; he asked I should write a letter to Europe.

BY MR. FELDMAN:

Q Never mind that. Tell us what happened on the street, there; that is all we care about. A Well, we walked through to 16th street and Avenue B. After Avenue B we walked to Houston and right at the corner of 9th street and Avenue B we stopped over there, and one lady meet my wife, and she started to talk to her, and said "Where are you going?"

Q What happened? Do not say anything your wife said or you said. What did you do? A We stopped there, and stand a couple of minutes and talk, and we see a big crowd running from the east side of the Park, and about fifty or sixty young

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fellows walked fast and after about sixty or seventy walk after them, and then go and run around in the middle, and he started to holler and I looked at him, and I thought he was crazy because he hollered. I don't know what he hollered. And he come close to us, and one young fellow, I believe a Jewish fellow, and he said "Here, Guinea, this man stole your money, this man stole your money." I looked at him; I do not know this man; he is a stranger; I thought he was crazy. I said, "What do you mean?", and after that a large, big Italian man hit me, and I fell down, and I got up from the sidewalk, and I started to run.

BY THE COURT:

Q How did you get up on the roof? A I never been on no roof.

Q The woman is mistaken when she says she caught you on the roof? A No, she never caught me on the roof, and I ran in the hall, and I stopped over there, and about five or six young Italian fellows jumped behind me and grabbed me, and two hold me. And one take a knife, and he say, "You son-of-a-bitch, I kill you", and looking over on my pocket find here \$7, and take it out. And after finding here all the money, and take it out, and they wanted to run, and I ran behind them, and started to holler, and just then a big crowd come, and an officer, and say "What is the trouble?" I talk to the officer, I say "Those people robbed me." And the officer says, "Where is that money?" I said, "This money not yours, and

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that man", and I pointed at that man "has got my money"; a young Italian man. And the policeman took from that man money, and they was following them, and the policeman took me and carried me to avenue C, and he met this officer, - I do not know which one over there, - still he sit down before -- he gave me to the officer, and the money, and said, "Take this man to the police court", and took me to the Houston street police court, and the other officer was there, and he say, "Who you are? What nationality?" I said, "Polish". He said, "Where you got that money?" I said "I carry it to the bank", this and that place, and he asked the Italian, "How much money you lose?" And he say "I don't know." After that this man took and arrested me, and I do not know nothing else.

BY MR. FELDMAN:

Q Did you steal that money? A No, sir.

Q Did you put your hand in his vest pocket? A No, sir, I never see him in my life. After these men bumped me at 9th street, corner of Avenue B I ran, I can say, about two houses, because I was in danger. The man took a knife and say "I kill you", and called me a bad name.

Q Why did you have the money? A Well, I put my money -- I wanted to give it to my wife, and she say "No, carry you that money", and I walked to the Houston street bank, and I wanted to put it in the bank.

Q Were you in the toilet that day? A No, sir.

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(The court now declares a recess until 2 o'clock p. m., first duly admonishing the jury in accordance with law.)

After Recess, Trial Resumed.

EDWARD CISZENSKI, resumes the stand for further examination, and testifies as follows:

CROSS EXAMINATION BY MR. BROTHERS:

Q. Were you ever convicted of any other offense than burglary in the second degree, as stated by your counsel?

Objected to.

MR. BROTHERS: Well, I will leave off "as stated".

THE COURT: well, there is nothing improper in that.

It is stated by the defendant that he was convicted of a crime charged in this indictment, isn't it?

MR. FELDMAN: Not in this, but in another indictment of burglary in the second degree.

Q. Were you ever convicted of any other crime? A. No, sir. I was arrested but I have never been convicted.

Q. Were you ever convicted over in New Jersey? A. No, sir.

Q. What is your right name? A. My right name is Chickowsky.

Q. And your first name? A. Edward.

Q. And you spell it Chickousky? A. Yes, sir.

Q. And you gave the name of Edward Ciszemski? A. The officer spelled that name.

Q. Did you ever give the name of Edward Chaser? A. Yes, I

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spell the name.

Q And that is the best they could make of it, was it, -  
Chaser? A (No answer)

Q Did you ever give the name of Joseph Kaiminsky? A No.

Q Did you not serve 90 days in the penitentiary in Hoboken?  
A No, sir.

Q Beginning your sentence on the 12th of December, 1912?  
Isn't that right? A No, sir.

Q Were you not arrested by an officer and taken before  
the Recorder and convicted of grand larceny, and sent to  
the penitentiary? A No, sir.

Q That is not true? A No.

Q How long did you stay in sing sing? A Three years.

Q And you went there on the 14th of June, 1909, did you?  
A Yes.

Q When was it you came out? A I came out 1912, September  
the 3rd.

Q So that, as I have read here, in december you were out  
of Jail? A Yes, the fall.

Q What did you do when you came out? A Working.

Q Where did you work? A 335 Third avenue, for Mr. Chiw-  
ska a butcher store.

Q Did you work for him all the time? A Yes.

Q Continuously, every day? A Yes.

Q How much a week? A First he paid me \$12, and the last  
few months he paid me \$14 a week.

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Q How long have you been married? A How long have I been married?

Q Yes. A Over a year time.

Q How many children have you? A Two.

Q How long is it you have been married? A Only one year.

This one child does not belong to me, because my wife, she had a child and the husband is dead.

Q This other child is not your child? A Yes.

Q Only one of them is yours? A Yes.

Q There is only one child that is your child? A Yes.

Q What was the name of the bank that you were going to put your money in? A Here is the name, - Deutsch Brothers (handing paper to Mr. Brothers).

Q What is the number? A I think it is 319.

Q When did you get this envelope? A Well, I get that envelope long ago. I have a couple of envelopes from home. I used to address letters on his bank.

BY THE COURT:

Q When did you get that particular envelope?

BY MR. BROTHERS:

Q When did you get that particular envelope? A Oh, about four or five months ago; I have got this in my pocket.

Q You had it in your pocket? A I have a couple here.

Q When did you write this on the back of it? A Oh, I wrote it because I remember what time I was arrested.

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Q You could not remember without putting it down? A Yes.

THE COURT: Read what is written on the back.

Q (Reading) "September 5, I was been arrested after 5 o'clock, co. Avenue B co. 9th street. Edward Cheser." Is that your name? A They spell it all ways.

Q Who wrote this? Can't you write it right? A Yes, I can write.

Q Why didn't you put it down right? A Well, I put ---

Q What is your right name? A My right name is Chichowsky, and they pronounce it all kinds of names.

Q Why, then, if your right name is Chichowsky did you put down Chaser on your memorandum? A (No answer)

Q Have you ever been convicted of any other crime? A No, sir.

Q Why, then, if your right name is Chichowsky did you put down Chaser on your memorandum? A Well, because it is very hard for them to pronounce my name, just the same as the officers spelled my name. I could pronounce it myself.

BY THE COURT:

Q You say you wrote that simply for yourself. You did not write that to show to any one? A Yes, I wrote that for fun.

Q Why did you write that for fun? A Oh, one day I sat down in the cell and I write for fun.

Q Then you did not need to be reminded of the day you were arrested -- you remembered the day you were arrested?

A Yes.

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Q You could not forget that, could you? A Oh, no, I could not forget that.

Q And you wrote down Edward Cheser just for fun? A Yes, sir.

Q You did not write that to show it to some one? A No, sir.

Q So that you might remember when you were arrested? A No, sir; I wrote that for fun, in my cell.

Q Did you have any account in that bank? A No, sir. I had an account before, before I go to the City Prison in Brooklyn.

Q But you never had any money in this bank in Houston street? A No, that is the first time I carry money in that bank.

BY MR. BROTHERS:

Q Have you ever put any in that bank? A No, sir.

Q What day of the week were you arrested on? Remember that? A September 5th, Friday.

Q You did not work that day? A Yes, I worked that day until five o'clock.

Q You were arrested at five o'clock, weren't you? A No, after five o'clock I was arrested.

Q How long after five o'clock? A I do not know. I haven't a watch with me.

Q And you left the store at what time? A Because I know at five I reached home.

Q What time did you leave the store? A A few minutes to

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five, because it has been between 23rd and 24th street.

Q Was the store closed up when you left? A Six o'clock the store is closed.

Q And you quit at five? A Yes, because I used to carry orders from the butcher store.

Q Did you have this money in the store? A No, sir, I have only \$7 with me.

Q Where did you have the money? A Home. My wife, she got that money.

Q How long had you had it? A Oh, I do not know how long she saved that money.

Q But she had saved it? A Yes.

Q Does she work? A I am working and I gave it to her, all the money, and she saved it.

Q How do you know she saved it? A Maybe ten months.

Q Why were you going to put it in the bank that day? A \$110.

Q Why that day? Had anything happened? A No, nothing to happen. She told me we take that money and put it in the bank.

Q And you put it in the left-hand pocket of your trousers? A Yes, sir.

Q The same trousers you have on now? A No, sir.

Q Was there anything the matter with your pocket? A No, sir.

Q The money was all right? A Yes.

Q And why, then, was the money down inside of your

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drawers when you were arrested? A No, sir, I have the money in my pocket.

Q Some of it fell out the bottom of your trousers up there on the stairway? A No, sir.

Q Did you know that lady who was here this morning? A No, sir.

BY THE COURT:

Q You saw the lady on the stand with the baby? A Yes, sir.

Q She said she saw a five dollar bill drop down from under the leg of your pants. A Yes.

Q Did she see a five dollar bill drop down under the leg of your pants or not? A I do not know whether she did or not.

Q Well, did any drop? A Yes, because I also took a two dollar bill and a five dollar bill from here (indicating).

Q No, she said when she had you on the roof, before they found the money, and before this complainant came up, she saw five dollars. You said you had no money, and then she saw five dollars drop down through the leg of your pants.

A No.

Q That was not true? A No.

BY MR. BROTHERS:

Q Didn't this Italian man open your trousers, and pull out \$100 out of the inside of your clothes? Out of the inside of your drawers? A No, sir. These two men were holding me.

Q Did he attempt to take the money out of there? A Not

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this Italian, - a different person.

Q Did anybody take it from the inside of your trousers leg? A No, he took it from my pocket.

BY THE COURT:

Q Were your trousers open? That woman said that your trousers were open, - is that so? A No, sir.

Q They were not open? A No, sir.

BY MR. BROTHERS:

Q What was the name of this man that was walking with you and your wife? A Frank Mondrak. He lives in East 8th street, No. 315.

Q What does he do? A I don't know; he works some stable; I don't know where he works.

Q What ~~was he~~ walking with you for? A He wanted me to write a letter to Europe to his wife, and he waited for me because I was home.

Q Is he the man that helped you steal this money from Majella? A No, he never helped me steal any money.

Q Didn't he run away? A No.

Q What became of him? A He walked with me and my wife.

Q After you saw these people what became of Mondrak? A I do not know what became of him.

Q What became of your wife? A I don't know what she did after; she say she go looking for a policeman.

Q A policeman came, didn't he? A A policeman came in different times.

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Q Didn't she come back after you went to the police station?

A Yes, she came back and found I had been arrested.

Q Did she come to the police station? A Yes, she came after to the police station.

Q And that is the first she knew about it, isn't it?

A Yes.

Q Near where is that bank, near what avenue? A Houston street; I think between Attorney street -- I can't remember -- between Attorney street and some different street, and Houston street.

Q Why didn't you take the car down there? A Well, it isn't far away; I can walk; I am a young man.

Q You were coming from 16th street, weren't you? A Yes, sir, far away from 16th street you can walk.

Q You didn't go down to the bank, did you? A Yes, I know that bank.

Q I say you didn't go as far as the bank? A No.

Q You stopped in the park? A Yes, we stopped on the corner of 9th street.

Q How long were you over in the park before the trouble came? A I never have been in the park; I stopped at 9th street and Avenue B.

Q How long did you stop there before anything happened?

A About ten or fifteen minutes.

Q What were you doing all that time? A Well, I talked to one lady, because she walked to 11th street.

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Q What was her name? A Marie Maklicka.

Q Where does she live? A She live on East 4th street.

Q She was there too, was she, at the time? A Yes.

Q What did she do? A She walked past, because she lived before near 11th street, and she went home.

Q When did you first put eye-glasses on? A I wear them the last four years.

Q You didn't have any on the day you were arrested?

A Because I am working there.

BY THE COURT:

Q Did you have any on the day you were arrested? Yes or no? A Glasses, no; I have them in my pocket.

BY MR. BROTHERS:

Q Why didn't you have them on? A I have them in my pocket, the glasses.

Q Why didn't you have them on? A Because when working the eye-glasses fall down.

Q You see very well without them? A No; I have weak eyes.

Q Have you the case those glasses came in? A Yes.

Q Did anybody suggest that you put glasses on? A Oh, yes, many people.

Q While you were in prison? A No, sir.

Q Anybody tell you that if you put eye-glasses on the witnesses would not recognize you in court, did they? A No, never, I wore glasses very well.

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Q You say that it is not fact that the money was down  
inside of your trousers? A No, in my left pocket here.

Q Did you ever have any trouble with the lady that was  
here this morning? A No, sir.

Q Did you ever see her before? A No, sir.

Q Is she the woman that caught you up in the house? A I  
never see her.

Q Never saw her until today? A No, sir. Maybe she has  
been in some different place and I never see her.

Q Who did catch you up in the house? A A couple of  
young Italian fellows.

Q Was not there a woman there? A No, sir. I didn't  
see the woman. They grabbed me and held me, and took the  
money away from me.

Q Is that the man (indicating complainant) who said you  
took the money from him? A Yes.

Q That is the same man, isn't it. A Yes.

Q How long have you lived in East 16th street? A I  
lived there a few months.

Q How long about? A About six or seven months.

Q Where did you live before that? A I lived on 5th  
street.

Q What kind of work did you do up in the butcher shop? A  
I used to work Saturday behind the bar and every other day I  
used to carry orders to restaurants and all kinds of people.

Q You said you worked up there in this butcher shop every  
day for three years. Now you are talking about some restau-

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rants? A Yes, well, I say I used to carry from that store orders to the restaurants.

Q You were a delivery clerk -- you delivered meat? A Well, I don't know delivery, because if I had a chance --

Q When some one bought meat you would take it over to their place? A Yes, sometimes.

Q You didn't do any work in the shop, did you? A Yes.

Q What did you do there? A Well, I cut meat, and all kinds of work, and many times I used to carry orders by horse and wagon.

Q What is that butcher's name again? A Mr. Joseph Ghnitka, No. 335.

Q Have you seen Frank Mondrak since that afternoon?

A Yes, I saw him in my home; I came home and I meet him in my house.

Q Since you were arrested? A Yes, sir.

Q Did you go home after you were arrested? A No. I left my work and I come home.

Q That is what you mean? A Yes, I come home, and I ---  
BY THE COURT:

Q He said the day you were arrested. Do you know what arrested means, or don't you? A Yes.

BY MR. BROTHERS:

Q Have you seen him since? A No, sir, I never saw him.

Q Do you know where he lives? A I know he lives in 8th street, and I believe he is still living over there,

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Q Why were you running away? A Because we stopped up there on the corner and I see some crowd --

Q Why did you run away? A Well, because a man knocked me, and I fell down.

Q Who knocked you down? A An Italian man.

Q Was that Mr. Majella? A No, sir, it was a big, young man.

Q Was anybody there then? A Yes, many people, about one hundred people, a big crowd there.

Q What were they saying? A He come, and the man point to me, "Here, Guinea, this man stole your money." He talked English and I understand, and this man, I don't know what he talking because he is talking his own language.

Q Did you start to run at once? A No, but after a man come and he say to him, "Talk to him in Italian" - I don't know what he asked him, because I cannot understand, and he told him something and that man jumped and hit me in my head, and I fell down on the sidewalk, and after I don't know where I was because he hit me very strong, and after I got up from the sidewalk and run, I do not know where.

Q Didn't the big crowd try to stop you? A They don't try to stop. After this whole crowd run behind me; one lady stood on the steps and I jumped in that house. And I think four or five young Italian fellows grabbed me, and two held me, and one took a knife that long and say "I kill you", and searched me all around, and I got a five dollar and a two

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dollar in this pocket, take it from me. And they searched me, and in this pocket I have \$110, and they take away from me that money and run away, and I run behind them, and I started to holler, and just that time officer come, and I never see that officer here.

Q Didn't you tell Mrs. La Forcia that you didn't take it, some other Jew fellow took it? A No, never.

Q You didn't say that? A No, sir, I never talked to her.

Q When she first grabbed hold of you didn't you say to her that you didn't have any money at all? A No, sir, she never grabbed me.

Q You were shot once in the left-hand, weren't you? A Yes.

Q When was that? A In Europe. That was when I was a boy.

Q How long have you been here in this country? A Seven years..

Q What was the year that you came here? A I can't remember.

(The court now declares an adjournment to Thursday, January 8th, 1914, at 10:30 o'clock a. m., first duly admonishing the jury in accordance with law.)

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New York, January 8th, 1914.

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TRIAL RESUMED.

EDWARD CISZENSKI, resumes the stand, and further testifies:

CROSS EXAMINATION BY MR. BROTHERS (Continued)

Q Do you recognize the police officer standing here at the Bar, Officer Lindner of Hoboken, do you remember him?

A I cannot remember him.

Q Do you still say that you were not convicted of petit larceny in December, 1912, in Hoboken, by Recorder McGovern, and that this is the officer who arrested you? A I cannot remember that time. Maybe I was drunk that time.

Q Well, were you sent away to the penitentiary there for 90 days? I am giving you this opportunity to straighten the matter out.

BY THE COURT:

Q Were you drunk for 90 days? A I was been drunk; I can't remember if this officer arrested me.

Q Cannot you remember whether you were in prison in Jersey for 90 days or not? Now, tell the truth. A I think, yes.

BY MR. BROTHERS:

Q Those are your finger prints, aren't they? A I do not know.

Q Isn't that the name that you were under, Joseph Kaiminsky,

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don't you remember?

BY THE COURT:

Q Is that your handwriting or not? Look at it. A Yes.

BY MR. BROTHERS:

Q Now, you were convicted there and sent away for 90 days in the penitentiary, weren't you? A Yes, sir.

BY MR. FELDMAN:

Q You say you were drunk? A I can't remember because this officer asked me if-- I remember this officer, and I can't remember whether he arrested me or not.

BY THE COURT:

Q You mean you were drunk when you were arrested, and you do not know which officer arrested you, is that right? A (No answer).

Q You understand that you must tell the truth? If you know the truth and do not tell it, you are liable on another charge, of perjury. Do you understand that? A Yes.

Q Now, that is a very serious crime also. Do you mean to tell the Court you were drunk for 90 days? A I having been drunk and I can't remember.

(The following questions are put and answers given through Interpreter Meratchnik)

Q Do you mean to say you were drunk for 90 days? A At that time when the office arrested me I do not know whether it is the same one or not - I was drunk at that time.

Q But you did not stay drunk for ninety days, did you?

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A No.

Q And you were in prison there in Jersey for 90 days?

A I do not know how many days I was there, but I was there.

Q And yesterday you did not tell the truth when you were asked that question, did you? A Somebody told me I was staying there for four months, or something like that.

Q But why didn't you say so yesterday? A Because they asked me some other things.

BY MR. FELDMAN:

Q How long is it since it happened? How long is it, do you remember? A I do not remember that. It was about a year ago.

F R A N K M O N D R A K, called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

(Through sworn Interpreter Samuel Meratchnik)  
DIRECT EXAMINATION BY MR. FELDMAN:

Q Where do you live? A 315 East 8th street.

Q What is your business? A I work in a stable.

Q How long are you in this country? A Two years.

Q Do you know this man here (indicating the defendant)?

A I do.

Q For how long a time have you known him? A About eight or nine months.

Q Do you remember the day when he was arrested -- yes or no? A I do. I remember that.

Q Were you with him on that day? A I was working nights

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at that time, and I come over to the defendant's place and asked him to write for me a letter to Europe. I was there at the time when the wife gave him some money to take it away to the bank.

Q Did you see how much was given to him? A \$110.

Q Where did you go with him after the money was given to him? A The defendant's wife asked me to accompany the defendant to the bank; we went over to 9th street, through the Park, at the time when the defendant was arrested.

Q Where was he arrested? A I do not know. He received some beating from somebody.

THE COURT: strike out the last part. Where was he arrested, - that is the question.

THE WITNESS: Avenue B, corner of 9th street.

Q Do you know what happened at the time he was arrested?  
Under what circumstances was he arrested?

THE COURT: That is cross examination. You may have an exception.

Q What happened at the time he was arrested?

THE COURT: I will sustain the objection to that. I will not have this man's opinion. You can ask him if anything happened, and that is all.

Q When he was arrested what did you see, what did you do?

THE COURT: I will sustain an objection to that as leading.

Exception.

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Q How far did you walk with him from his house?

THE COURT: It has not appeared he has walked at all as yet. You are leading the witness all the time.

Exception.

Q How long were you in his house that day? A About half an hour.

Q Did he write a letter for you.

THE COURT: That is a leading question.

MR. FELDMAN: He said he came there to write a letter.

THE COURT: I will exclude that question. You do not have to lead this witness.

Q After you left the house how long were you walking with him?

THE COURT: It doesn't appear that he walked with him at all.

Q What did you do after you left the house?

THE COURT: Let him tell his story.

A We were walking together until he was caught on the corner of 9th street. A whole bunch of them; about thirty of them.

CROSS EXAMINATION BY MR. BROTHERS:

Q Have you ever been convicted? A No.

Q Never been in prison? A No, not in the old country and not in this. I was in the soldiers five years and I was never arrested.

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Q How long have you known this defendant? A About nine months.

Q Where did you meet him? A I knew him at the time when I left the church. I walked with him to his house, with the defendant.

Q Where did you meet him is the question?

THE COURT: Where did you become acquainted with him?

A From the church we got acquainted with them together; 7th street Church, near Avenue A.

Q Did you see this man arrested that day? A Yes.

Q You saw the defendant when the officer took him? A I do not know.

Q What did you do when the defendant ran away? A I did not run away.

Q Were you in the toilet that afternoon in Tompkins Square Park? A No. We walked through the Park. I didn't go into the toilet at all. I seen a whole lot of people jumping on the defendant.

Q What did you do when they jumped on him? A I walked away. I went away.

Q Anybody else there that you knew? A Yes, there was another woman. She is here now, and she seen them that time.

Q What is her name? A Meklitchka. She has seen, -- she isn't here today.

Q Well, who is the woman that is here? A I do not know their names.

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BY THE COURT:

Q How long were you in the park that day? A I was not there at all.

Q You said you walked through the Park? A We walked on the sidewalk on the park, to 9th street.

BY MR. BROTHERS:

Q Did you go through the Park? A No, I didn't go through the Park. Only through Avenue B.

Q Did you see this man (indicating complainant) that afternoon? A No, I did not see him.

Q Isn't he the man that hit the defendant? A No, a big fellow, a whole bunch.

Q You didn't see him there at all? A No.

MR. BROTHERS: May he wait in the room, if your Honor please, and not leave the room?

THE COURT: Yes.

L I Z Z I E W I S C H N I W S K Y, called as a witness for the defendant, being first duly sworn, testifies as follows, (Through Meratchnik as Interpreter):

DIRECT EXAMINATION BY MR. FELDMAN:

Q What is your address? A 194 Orchard street, second floor.

Q Do you know the complainant here? Look at him and tell us whether you saw him ever before? A I never did.

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Q Do you remember the day when this man was arrested?

A I do.

Q Where were you at the time when he was arrested? A

A I met the defendant in the street when I was walking to the Butcher store. I asked the defendant where he was going, and he said ---

Objected to. Excluded.

Q What did you see at the time he was arrested? A I have seen a lot of people running out from the Park, and children; and I seen a man that said he lost some money running after the defendant.

Q Well, did you see that man again? A Yes.

BY THE COURT:

Q You did see the defendant run, did you? A I did, your Honor.

BY MR. FELDMAN:

Q Was he running when you first saw him? A No, he was running between the children.

Q Well, he was running? A Yes.

Q When you first saw him that day he was running? A Yes.

Q Well, now, tell us what you saw after that. A That other man that claimed he lost the money was running, without a coat and without a hat.

BY THE COURT:

Q Well, how far did the defendant run?

MR. FELDMAN: She didn't say the defendant ran. She said the man who lost the money ran.

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THE COURT: No, she said repeatedly the defendant ran.

Q What name do you know this man by? A Albert.

Q Albert what? A I forget the second name.

Q Did you ever know it? A I forget.

Q Did you ever know his last name? A I did not.

BY MR. FELDMAN:

Q Tell us again who was running: this man (indicating defendant) or the other man? A No, he didn't run; the other man ran, and he was walking with his wife.

Q Who is the other man?

THE COURT: She said before she did see the defendant running. See if she cannot tell us about him. We do not care about anybody else.

Q What did you see this man (indicating defendant) do?

A This man did not do anything. I did not see him do anything. He was walking with his wife and somebody came over and he struck him.

Q Where were you at the time when you saw him walking with his wife? A Avenue B. I was in avenue B that time. I was walking to the butcher.

Q How far were you at the time when he was struck by somebody? A About the end of this court room, or probably a little further.

Q Did you see this man run at any time (indicating defendant) A No.

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CROSS EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 194 Orchard street.

BY THE COURT:

Q Did you meet this defendant in church, too? A I have seen him in church, but I did not pay any attention to him.

BY MR. BROTHERS:

Q How do you know he was with his wife? A I know that they were going through the street, they had some money to deposit in the bank.

Q How do you know that? A I met him in the street, the defendant with his wife, and I said, "Hello," they said to me "Hello." I asked where they were going; they said they were going to the bank.

Q Where was that that you met them? A It was at the Park, near 9th street.

Q Was it right in the park? A They were running out from the Park.

Q Who was running? A The man that lost the money was running ---


Q You were asked if this man here (indicating defendant) whose name you do not know ---

BY MR. BROTHERS:

Q Now, again: where were these people when you first met them, this man and his wife?

THE COURT: This defendant, that person over here?

A He was walking with his wife.



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Q Where? A They were walking from their home. It was near the Park.

BY THE COURT:

Q When you saw them? A In the middle of the Park, near 9th street.

Q They were in the middle of the Park when you first saw them? A Near the Park, about the middle of the Park, near 9th street.

Q Where do they live, do you know? A They were living somewheres in 11th street. I do not know their number.

Q Had you ever spoken to either this defendant or his wife before that day? A No.

Q You had never said a word to him, had you? A No.

Q And that day they stopped and told you they were going to the bank, is that right? A Yes.

RE-DIRECT EXAMINATION BY MR. FELDMAN:

Q What do you mean, they stopped?

THE COURT: Well, the word is sufficient of itself.

MR. FELDMAN: I think, if your Honor please, sometimes she did not understand me.

Q Do you know them? A I know the woman for the last couple of months.

BY THE COURT:

Q Since the arrest or before the arrest? A I do not know about that, whether he was arrested or not.

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BY MR. FELDMAN:

Q Well, when you saw the woman coming along with her husband what was said?

THE COURT: Please do not lead the witness. You stated that these witnesses do not need any prompting.

MR. FELDMAN: Yes, sir.

M A M I E C H I C H O U S K Y, called as a witness in behalf of the defendant, being first duly sworn, testified as follows: (Through Interpreter Meratchnik)

DIRECT EXAMINATION BY MR. FELDMAN:

Q What is your address? A 406 East 16th street.

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

Q How long are you married? A One year.

Q Have you any children? A Yes, sir; this is my second husband. I have got children from my first husband.

Q Do you remember the day of his arrest? A Yes.

Q Where were you at the time? A I was with the defendant together.

Q Where were you? A Avenue B.

BY THE COURT:

Q What part of Avenue B? A Corner of 9th street.

BY MR. FELDMAN:

Q Tell us what happened. A A gentleman, an elderly gentleman came to my house, - that is an acquaintance of my husband, and he asked me where is the husband ---

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Objected to, what the witness said.

THE COURT: Strike it out.

BY THE COURT:

Q What did your husband do that day? A My husband came home from work; I told him I got some money at home, I want to take it down to the bank. Let us take it away, because I am afraid to keep it in the house. And then we left the house. We walked, and this other gentleman walked with us. I met the woman, an acquaintance of mine, on Avenue B; she was coming from the butcher shop. She asked me where we were going, and I told her that we were going to the bank and deposit some money, and this other gentleman walked with us, together, that left the house with us together. We were standing and talking altogether, and then people were running out from the Park. Some man they took out from the park, and ran between us. One gentleman came out from the park and pointed with the finger at my husband, and then the other one struck him; he fell down and was unconscious. I was frightened, and I went over to look for a policeman. I didn't know what became of my husband, but I found out that he was arrested.

BY MR. FELDMAN:

Q From the time that you left your home, until the time that your husband was arrested, did you lose sight of him?

A Yes, yes; sure.

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CROSS EXAMINATION BY MR. BROTHERS:

Q Was your husband working that day?

THE INTERPRETER: She didn't understand the question. She said, "I was home all the time when he was working." She didn't answer the question.

BY MR. FELDMAN:

Q From the time ---

THE COURT: Your question has already been answered by her, and you cannot cross examine your own witness.

MR. FELDMAN: I insist she did not answer that question.

THE COURT: She stated they walked with him from her house, to this place, and they were standing there when some one came up and struck him and knocked him down, and she went over to hunt a policeman.

MR. FELDMAN: I want to know if she lost sight of him from the time she left the house, until he was struck down.

THE WITNESS: Yes, all the time, yes.

BY MR. BROTHERS:

Q Where were you when your husband was knocked down? A I was there, but I was frightened, and I had to get a policeman.

Q Were you on the corner? A Yes, on the corner.

Q Where did you go to find a policeman? A On Avenue B.

Q You understand English perfectly, do you not? A No.

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Q Where you answer before I speak ---

THE COURT: This is not an English woman, not one difficult to question on any subject.

Q How long have you been in this country? A I am here about twelve years, but I do not understand any English language.

Q Where did you go to find the policeman? A Avenue B.

Q Which way? Up or down town? A I do not know which side I went, - I was on avenue B.

Q Well, you had to go up town or down town; now which way did you go? A Uptown side.

Q How far did you go? A About three blocks or more.

Q Did you go back? A Yes.

Q And when you came back what did you see? A Nobody was there when I returned.

Q How long were you gone? A About twenty-five minutes.

Q And you only went about three blocks and back? Is that right? A Three or four blocks; I was walking very slowly.

Q You were looking for a policeman and walking very slowly? A Yes.

Q Why did you walk so slowly? A Because I could not find no policeman. I am looking.

Q Did you call out? A No, I was crying.

Q Who told you your husband was arrested when you came back? A Some one came from the station house and asked me whether my name was so and so, and I told them yes, and they told me that my husband was arrested.

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Q And you were home at that time? A Yes.

Q And that is the first you heard about it? A Yes.

Q And you never were down at 9th street and Avenue B at all that afternoon, were you? A No.

Q And what you have told us about seeing some one hit your husband is what he told you over in the prison, isn't it?

MR. FELDMAN: Objected to. I object to the form of the question, and as leading.

THE COURT: On cross examination it is proper.

MR. FELDMAN: I object to the form of the question.

Exception.

A No, I have seen that because I was walking with him together.

Q Where was your husband working that day? A In the butcher store.

Q Where is that? A Third avenue some place.

Q What number? A I think it is 335?

Q How do you know he was working? A I know he was working there because he told me he was working there.

Q Did you ever see him working there? A I was not there; I did not see him; but I know he was working there.

Q Was he working every day? A Yes.

Q All through the summer time was he working? A Yes, he went away every day to work; he was working there.

Q That was a butcher shop? A Yes, sir.

DEFENDANT RESTS.

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J O S E P H S M I T K A, called as a witness in behalf of the People, in rebuttal, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q You run a butcher shop there, do you? A Yes, sir.

Q Look at the defendant; you know him, do you? A Yes.

Q Did he work for you in September of last year? A No, sir.

Q Did he work for you at all during the year 1913 at any time? A He may have worked the first part of 1913, and the latter part of 1912.

Q But he has testified, and his wife has testified that he worked every day at your shop all through the year 1913, up to and including the 5th of September; is that a fact?

A Not to my recollection.

BY THE COURT:

Q Well, don't you know who worked for you? A Yes, I do.

Q How many men have you got working for you? A Three.

Q He was not one of them? A He was not, no, sir.

CROSS EXAMINATION BY MR. BROTHERS:

Q When was he working for you? A He was working some before the latter part of 1912, and the first part of 1913.

Q Steady? A At first he worked steady, and afterwards he didn't because he was sick.

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P A S Q U A L E L A S Q U A R D A, called as a witness in  
behalf of the People, in rebuttal, being first duly sworn,  
testifies as follows, (Through Official Interpreter Moustacki):

Q Where do you live? A 238 East 6th street.

Q What business are you in? A Coal business.

Q On the 5th of september, 1913, did you see the defendant?

A Sure I saw him.

Q At what place? A At 9th street.

Q Near what avenue? A Between Avenue B and Avenue C.

Q What was he doing when you first saw him? A Running.

Q Did you run after him? A Yes.

Q Tell us what happened? A I asked the complainant ---

Q No, not what anybody said.

BY THE COURT:

Q Tell us what you saw this person do, and what you did to  
him? A He stole the money ---

THE COURT: Stricken out.

Consented to.

Q You say you saw him running, where did he run? A In  
the middle of the street, in 9th street.

Q Who caught him? A A woman and myself together.

BY MR. BROTHERS:

Q Where did you catch him? A At No. 618 9th street.

BY THE COURT:

Q Where did you catch him, - in the cellar or where? A On

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the top, the last floor.

BY MR. BROTHERS:

Q He ran up into that building, did he? A Yes.

Q And you followed him? A Yes.

Q And you caught him? A Yes.

Q What happened after you caught him? A As soon as we seized the defendant I asked him "Where is the money?", and the defendant says, "I have not got it", and the woman said to me, "Search him." So I searched him, and I found in his right trousers pocket (indicating left side) two dollars, and then I found five dollars coming down from his pants, under his left foot (Witness indicates foot), five dollars, and the balance of the money at the back of his left leg. (Witness indicates the calf of his left leg)

BY THE COURT:

Q Inside his clothes or outside? A Inside the under-drawers.

CROSS EXAMINATION BY MR. FELDMAN:

Q Do you know the complaining witness? A Only know him by seeing him crying at that time. That is all the knowledge I have of him.

BY THE COURT:

Q You never saw him before that day? A No, never.

BY MR. FELDMAN:

Q You are in the same business he is in? A Yes, I am a

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coal man and he is a coal man.

Q What were you doing at the time when you saw this man Ciszenski running? A I had a pail of ice on my left shoulder. (Witness indicates his left shoulder)

Q Were there other men besides this defendant running?  
A I only saw this defendant running and the complainant after him. Of course there were others who were running behind us.

Q Did you see where the defendant came from? A From the park.

Q Was he all alone, the defendant?

THE COURT: The prisoner.

A Alone he was running.

Q And you ran after him? A Yes.

Q What did you do with the pail of ice? A I placed it on the floor.

Q And how far were you running? A About two paces.

Q Are you sure this is the man that you ran after? A Sure it is the man.

Q Did you knock him down? A No.

Q Did you hit him? A No.

Q Did you see anybody else hit him? A Nobody else.

Q Did you see a man have a knife in his hand? A Nobody.

Q Did you run up to the roof too? A Altogether I and the woman went upstairs.

Q When did you see the complaining witness in this case

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the last time, - when did you speak to him?

(The complainant is brought to the Bar.)

BY THE COURT:

Q Do you see him now? A Yes.

Q When did you see him before now? Did you see him yesterday? A No, no. When we came once before in this building.

Q You were down here as a witness, were you not? A Sure.

BY MR. FELDMAN:

Q How many times were you down here? A Six or seven or eight times, - I can't remember.

Q And you were not here yesterday, were you? A No, because I was not aware that the case was coming up.

Q Who brought you here today? A I went from my business to my house last night, and I heard that the case was yesterday already, I was informed, and that it is going to be continued today.

Q By whom were you informed? A My sister.

Q Did you speak to your sister about this case? A Why, sure. She received the subpoena, the paper to come here as a witness.

Q Did you tell her what you saw and heard? A No, I did not. She has nothing to do with it.

Q You spoke to nobody from the time it happened until today? A Nobody.

PEOPLE REST IN REBUTTAL.

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## DEFENSE RESTS.

(Counsel now close to the jury.)

T H E C O U R T ' S C H A R G E .

MULQUEEN, J.:

Gentlemen of the jury: This defendant has been indicted by the grand jury of the crime of grand larceny in the second degree, as a second offense. The indictment charges that on the 5th day of September, 1913, in the county of New York, with force and arms, the sum of \$200 in money, lawful money of the United States of America and of the value of \$200, of the goods chattels and personal property of one Bartoni Majella, then and there being found, then and there feloniously did steal, take and carry away against the form of the statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

The indictment further says that prior to this felonious taking of the \$200 from Majella he had served a term of three to six years in State Prison for the crime of burglary in the second degree, having been sentenced to prison by Judge Dike in the County of Kings. The defendant has admitted that, and that part of the indict-

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ment is conceded, so that if you find him guilty, you may find him guilty as a second offense.

You understand that there is a sharp line of division between the power of the Court, and your powers and duties. We are all subject to the law. That is what this court represents, - the law. And we cannot make laws for ourselves. The law is binding on every one in the community; it is binding on the Court and binding on you. And it is your duty to take the law from the Court without question, and then to determine the facts in the matter from the evidence, and to decide what witnesses, if any, told the truth here. Those are your powers, and they are great powers, and very important. There is no work that you will ever be called upon to do as citizens in this republic, of greater importance than the work you are doing here today.

It is most important work, because on the way that you do it depends not only the fate of individuals, but the fate of the State itself, and if the law is not obeyed by jurors, then our whole system of government is a farce. So that you gentlemen must approach the discharge of your duties with a full sense of your responsibilities, with a full sense of the dignity and importance of your work. You may disregard law and evidence, and become anarchistic if you wish to, but if you do desire to be efficient, good Americans, and do your duty, you have to

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be very careful and keep the law in mind, and give an honest verdict.

Now that is all the law asks. Every one of you gentlemen, after you listen to this evidence here, and weigh it in the light of the law, will know what you believe about it. You will know whether you believe the complainant or not, or whether you believe the defendant or not; and you will know whether you believe the complainant's witnesses, or the defendant's witnesses, and if you give a verdict according to your honest belief, a verdict that your reason and conscience approve of, then you are doing your duty. But, if you believe one way and vote another for secret reasons, or for reasons of prejudice, or for any other reason, why then you are doing a great wrong, - committing a great crime.

So I say, therefore, we are all bound by the law. The law requires me, -- my duty is to tell you what the law in this case is. In the first place, this defendant is charged with a crime. A charge is no proof of guilt at all. An indictment amounts to nothing as proof; it is not intended as evidence. It is merely the form in criminal procedure by which a defendant is brought here charged with a crime, and it is one of the methods which the American people have adopted to protect persons charged with crime, to give them a fair trial. The law requires the indictment to contain a plain statement of the charge

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against him, and nothing could be plainer than the charge here, that he took \$200 from Mr. Majella and ran off with it. Any man could understand that; the defendant understands it. And then the other charge, that before he did that he was in prison on conviction of a previous crime. There is nothing difficult about that. It is put in writing so the defendant may know exactly what the charge is, and so that you may know.

And now he is here for trial, and the People are obliged to assume the burden of proving that he is guilty. They do not require him to prove his innocence, but the People of the State of New York in their intention to be fair have said unless the evidence convinces you that this man is guilty beyond a reasonable doubt, he must be acquitted. The People have called witnesses here, and they have told you their story in their own way. It is your duty to determine whether by their manner, by their simplicity, by the clearness of their statement, and their demeanor, they have impressed you to the extent that you believe them, or not, and after you have weighed this testimony and the testimony of Edward Ciszensky and his witnesses, you must decide whether he is guilty or not. Every one of you will know in his heart what impression, as I said before, the testimony produces on him, and all he is bound to do is to declare that impression.

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The law of larceny is very plain. Larceny is the taking of property with felonious intent. There are two elements in it: First the taking of property. You know our law is intended to encourage men to save, to be thrifty, and you can imagine what self-denial and what toil the complainant had to undergo to save \$200. You know he said he borrowed that from his nephew to help him in his business, but it was his \$200, and he was responsible for it, and the law of this State says that a man who saves the money shall be entitled to enjoy it, and that no man can take it away from him with criminal intent unless he is willing to be a criminal, - that the taking of money from one person by another with felonious intent is a crime.

So the taking is the first thing the People have to prove, and the second is the intent of the taker. If you should walk into a restaurant and put your coat on a rack, and then when coming out take somebody else's coat in mistake for your own, that would not be a crime. You would not have any felonious intent, although you would take the property. But, if somebody else saw your coat there and liked it better than his coat, and took it, knowing that it was yours, and walked off with it, then that would be a crime, because that taker intended to deprive you of the property and use it himself.

So the law requires these two elements: the taking of personal property, and second, by one who has a felonious intent, - the intent to deprive the owner of it, and

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appropriate it to the use of the taker, or any one other than the true owner. That is very simple.

Felonious intent must be judged from acts. Intent is locked up in the mind, but I do not think any of you gentlemen would have any doubt if you were riding in the subway and a man put his hand in your pocket and took \$200 and ran away with it. You would not for an instant doubt what he intended to do; you would not think he wished to help you at all, and you would not have any doubt that he meant to keep your money and deprive you of it. So you can judge felonious intent by acts. You can see \$200 or \$100, but felonious intent is locked up in his mind, and the only way you can judge of his intent is by what he does. That is a plain and ordinary rule.

So, then, you have to decide first here whether any one took any money at all. Do you believe Majella? Was he in the place? Did he remove his vest, and did any one take the money from him? And if you have a reasonable doubt about it, then you must acquit this defendant, because the People must first prove there was a taking of personal property.

Second, the intent of the taker: Majella says he didn't ask any one to take the \$200, and if any one took it, as he has said, from his vest while he was engaged in the comfort station, and ran off with it, you have the right to find that the person intended not to help Majella with the money, but to use it for himself, or somebody

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other than Majella. In other words, there is evidence from which you may find that there was a taking, and a felonious taking, if you wish.

If the evidence satisfies you, as honest men, that there was a taking here, and a felonious taking, and therefore a larceny was committed, then the question is, does the evidence satisfy you by whom the money was taken? Majella says that this man took it, that he saw him take it, that he was sitting in the comfort station, and that a man who was on the other side, dropped a button, and asked the complainant to pick it up. That he stooped to pick up the button and that this defendant put his hand over and took this money out of the inside vest pocket, and ran off with it, and that he Majella immediately gave chase; that he ran at once, without waiting to arrange his clothing. You remember that the Italian woman who was not in the court room when he testified said that Majella did not have his pants buttoned and that the defendant did not either.

However, you must decide which of these witnesses you will believe; you have to pass on the credibility of witnesses.

You understand that the law does not think that you have any greater wisdom this month than you had last month, or will have next month, when your term of duty has expired. You do not get any inspiration when you become jurors. But the law asks you to use your own good common

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sense and judgment, the same as you use in the important affairs of your own life. A business man every day has to decide what is a good thing or a bad thing for his business; ladies have to decide between what is good or bad in the conduct of their households; you have to use your common sense, and if you do that, it is all that the law requires in the matter, and whatever your verdict may be, it is an honest verdict.

While there is no rule, as I said, which binds you in the determination of the credibility of witnesses, there are some circumstances which may be taken into consideration. For instance, if you have a man who has never been convicted of crime, telling one story, and one who has been convicted of crime telling a different story, you may take into consideration that fact and that condition in determining which one of the two you will give credence to. The word credibility means worthy of belief. What witness here was worthy of belief? And that bears, as you know, to some extent on the character of the witness, and the witness who has been in prison, as I said before, may have that fact considered in determining his credibility. You are not bound to reject his testimony on that account, but you may consider it and weigh it, and that is why the Assistant District Attorney asked him as to his imprisonment in jail, and you know that he denied that yesterday positively and unqualifiedly, and today admitted it. If he

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forgot it yesterday, as he may have done, why, of course, if a man forgets, he cannot be accused of perjury, but the law is if a man knows the answer to a question on a material point in the case, and wilfully lies about it, conceals his knowledge, or denies the truth, he is guilty of a crime, and the jurors in such a case may reject all the testimony of such a witness, although they are not obliged to. You may believe, however, notwithstanding the fact that he lied, and that he may have told the truth about the other matters to which he testified. It is something that you, as honest men, must take into account in determining how much weight you will give his testimony, how much credence you will give him.

You may consider the intelligence of the witnesses. You will decide what witnesses here were intelligent, gave clear, prompt answers, and seemed to know what they were talking about, and what witnesses evaded every question, That is another point you may take into account and decide what weight you will give to them, if there were such witnesses.

And weigh the motive of the witnesses. You will have to decide why Majella pursued this man. He says he picked him out of all the men there. The defendant's wife says they came up and struck him. Why did they strike him? Majella said he went after him because he saw him take his money, and that was the most powerful motive Majella had to go after him. You will have to decide

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whether Majella was mistaken or not, - whether any one took his money away or not, and whether the defendant is the person who took it, if you find that it was taken.

You must decide whether or not to believe this woman who came here this morning, and who was not here yesterday, - whether the woman's story is true, or whether Majella's story is true. You will have to decide how much weight you will give to all their testimony, and what motive, if any, they had. And so with the defendant's witnesses: whether his relatives and friends have any motive to tell the truth, or not, or whether they have a motive for lying; and you will have to decide whether this man is of such a character, that, having been in prison once, he possesses a motive strong enough to make him tell you a story that is not true. You have to take that into account, whether he has a very strong motive to lie, and you have to decide whether he has lied or not in any matter, or whether he is lying on the whole story. In other words, you will have to decide who is telling the truth here. The same test must be applied to all the witnesses on both sides.

You may believe all or any part of a witness's testimony. The law requires you to do your work honestly and without any thought of doing anything but your duty. You have no power to disregard the law; you have no power to be swayed by prejudice or by sympathy; you have no right to be influenced by such motives. It is your sworn duty

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to take this evidence and weigh it carefully, and view it in the light of the law, and then, if your minds are firmly convinced to a moral certainty, as honest men, that this defendant took \$200 from Mr. Majella, with intent to deprive Majella of it, and appropriate it to his own use, he is guilty of larceny in the second degree. That is what proof beyond a reasonable doubt means. The statute does not require the People to prove him guilty to a mathematical certainty. The law declares that unless this man is found to be guilty of the offense beyond a reasonable doubt he must be acquitted. A reasonable doubt means the state of mind when an honest juror is not satisfied by the evidence that he is guilty to a moral certainty. It is not necessary to show that his hand was caught in the complainant's pocket. Crimes are committed by stealth. It is impossible to have a photographer present to see them doing it, you know, so the law does not require mathematical certainty, or absolute certainty. Such proof is rarely, if ever, possible. But the law does require that the testimony must satisfy the minds of the jury that the defendant is guilty to a moral certainty. That is the condition of mind which the law requires the People to produce in your mind here, by the evidence. In other words, you take and weigh all the evidence; and you must not go outside of the evidence; you must not speculate what might have been proved, or what might not have been proved, but if all the evidence on both sides satisfies you that

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Majella was in that place, that he had \$200 in his vest, that this defendant took it; and ran off with it, then he is guilty of grand larceny, in the second degree. If you have a reasonable doubt on any of these elements, then you must acquit him.

And then if you find him guilty of larceny in the second degree, you must take into account his admission that he has been previously convicted of the crime set forth in the indictment, and you may find him guilty as a second offender. That is a provision of the law; the People have deemed it wise to make that law, and you cannot question it. The Court has to take the law as he finds it. So you may find this defendant guilty as charged in the indictment, of grand larceny in the second degree, as a second offense, or not guilty. Any requests?

(No requests.)

THE COURT: Now, if you gentlemen have any dispute, or difference of opinion as to what has been testified to, you may have the evidence read to you. Meanwhile you will retire and discuss the evidence.

(The jury now retire to deliberate upon a verdict, and upon their return render a verdict finding the defendant guilty of the crime of grand larceny in the second degree as a second offense.)

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STATE OF NEW YORK, )  
City and County of New York ) ss:

M. F. HASELHURST, being duly sworn deposes and says: That she is a public stenographer and has a place of business at No. 5 Beekman Street, in the City, County and State of New York, and she has been such public stenographer for the last 15 years. That she was well acquainted with Stewart Liddell, who was one of the official stenographers of the Court of General Sessions of the Peace in and for the County of New York, and that for a period of 5 years preceding his death on August 8, 1914, she acted as his amanuensis and transcribed stenographic notes of testimony taken by the said Stewart Liddell, and that she is familiar with the system of shorthand used by the said Stewart Liddell. That by reason of her ability to transcribe the stenographic notices of the said Stewart Liddell she received from Peter P. McLoughlin, an official stenographer of said Court of General Sessions, an order to transcribe the testimony in the case of the People vs. Edward Ciszewski alias Edward Chichousky which was taken by said Stewart Liddell as official stenographer and in which she was informed a notice of appeal was filed by the said defendant. That pursuant to the said order she transcribed the minutes of the testimony in such case, and in doing so she was aided by an abstract of the testimony in said case which was filed in the office of the Clerk of said Court by the said Stewart Liddell. That she verily believes that the copy she made of the said testimony is an accurate and true transcription of the stenographic notes of the proceedings on said trial.

Sworn to before me this )  
2nd day of April, 1915. )

Frederick Steinberg  
Commissioner of Records, City of New York

Mary F. Haselhurst

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