

START
2649
CASE

INDEX

	Direct	Cross	Redirect	Recross
Viola Muller	8			
(Resumed)	14	30		

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK:

Vs.

BENJAMIN SHERMAN.:

-----X
HON. JOHN F. McINTYRE, J.

And a jury.

Indictment filled May 15th, 1919.

Indicted for rape in the second degree, and abduction.

New York, June 17th, 1919.

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY WILLIAM J. A. CAFFREY.

FOR THE DEFENDANT: MR. ABRAHAM LEVY.

Peter P. McLoughlin,
Official Stenographer.

Mr. Caffrey, Assistant District Attorney opened the case on behalf of the people as follows:

With the permission of the Court, and you, gentlemen of the jury:

Mr. Levy in his questions touching upon your qualifications to act as impartial jurors in this case, gave a brief resume of what he deemed to be the facts leading up to and attendant upon the making of the charge in this case. Substantially it was correct but not, however, in every particular.

It is well perhaps in opening this case that I should just as briefly and as succinctly as possible- - because I think before getting down to the exact date it would be well that no misapprehensions concerning the antecedent facts in this case should be created-- to state the following facts: In April, about the 9th of April, the complaining witness in this case, whom we shall prove to be 14 years of age made the acquaintance of a man named Beatty over in Newark where the girl lived, and after going around quite some in Newark with him he invited her to come over here to New York to visit his sister's home. He said he lived at an address he gave up in 61st street somewhere among the sixties, and she, accordingly did coal over here. When she got over she did not see Beatty but as she went to his house, the house where Beatty said he

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resided, she was told that Beatty was not in. She came out. While walking on the street near Beatty's alleged residence a man who said his name was Hollingsworth approached her and asked her if she was looking for a man named Beatty and she said yes. They had some further conversation which she will narrate if necessary and this alleged Hollingsworth asked her to go to a restaurant. They had something to eat in the restaurant and she said that after having a drink of milk or whatever concoction she had in the restaurant she became dizzy and this man Hollingsworth took her to a room on 26th street, West 26th street, where she remained-- this being Wednesday night she said-- she remained there until the following Sunday night which was the 13th of April. She said during her stay in the house in 26th street that this Hollingsworth had absolutely and actually no sexual intercourse with her; that he did not in any wise molest her. As a result of stay there her purity was not, in any wise, impaired. I may say in passing that previous to the connection with the defendant that she had never known or had sexual intercourse with a man.

Now on the night-- now here is where the real part of this case begins, gentlemen-- on the night of the 13th

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of April, Sunday the 13th of April, 1919, she was walking along Broadway, wandering aimlessly about, not knowing just exactly where she was going, being afraid to go home because of what had happened, when this philanthropic gentleman, the defendant, in the pursuit of his philanthropic and his social service work upon Broadway, walked up to this unknown female and asked her where she was going. During the course of the conversation she told him that she had left her home; that she was an orphan; told him that she had no home, and he told her that he belonged to some order, and that he would take care of her. She did not tell him that she was a Jewess, nothing was said about religion in that conversation. And as I think you are, gentlemen, all over the age of fifteen, and perhaps most of you have spent some nights away from home after 9 o'clock, you may know that religion was the last thing thought of. This defendant said that he would get a room for the girl. At 11 o'clock that night he took this girl not to any social service institution or other philanthropic or eleemosynary house, but to a furnished room house at 27 Stuyvesant Place -- at half past eleven at night-- rang the bell, and a woman came to the door and said, "Hello Bennie" to the defendant or "Is that you Bennie" or some words to that effect. She said "What do you

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want"? He said, "I want a room." This woman took him to the back parlor and opened the door for him and let him and the woman or the female into the room. There upon after the girl was in the room his generous philanthropic nature was again spared and he showed his great philanthropic purpose by handing a two dollar note to the landlady - - not to the girl but to the landlady for the room. Now, gentlemen, the landlady will say that she let this man, the defendant, in the room because she knew him and she had known him for three years and there is no doubt about his being there. She said it was dark in the hallway; she knew that he had a female with him and she let him and that female into that room but that night she could not recognize who the female was but she did positively recognize the defendant.

Now the next proceeding or the next chapter in this case is the next morning, Monday morning. The landlady was cleaning out the front room, the front parlor, and she will describe to you that there was a little hallway between the front parlor and the rear parlor, and with her door open in the front parlor she could see the door that led from this little hallway into the rear parlor. About 8 o'clock in the morning the defendant came out of that rear parlor and this woman sitting down in her room could see

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him coming out of the room and he came up to her and he said he was very late, that he would have to hurry up to his place of business in 31st street. Then mark you, gentlemen, within half an hour after the defendant came out of this room the female came out of the room and walked into the parlor where the woman, Mrs. Voss by name was She had a conversation and that female is identified by her as the complaining witness in this case, Viola Muller. Now they went out and disappeared.

Now the next step gentlemen, is that this Viola Muller, the complaining witness, went up to the store on West 31st street kept by Sherman Brothers. When she got up there she had a little conversation and while she was there she left her vanity bag there-- or by the way, the night before he gave her a card in order to go up and see him and he gave her some of his letterheads to write letters on if she needed paper. Then this defendant took the complaining witness to a house - - the exact number is 113 fast 26th street in this county. The defendant took her there and put her in that house and told the woman to take care of her. This is the second house. He told the woman to take care of her and watch out for her and he paid ten dollars in advance, five dollars a week to look after this girl. He went there and visited her every night. In

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this second house, gentlemen of the jury-- I want to make myself clear about this-- there is no suggestion that any act of sexual intercourse took place. He went and visited her at the second house and continued his visits. We shall prove to you that Mr. Levy is in error when he said that it was the defendant that notified the police. The defendant did not do anything of the kind, but the police when they saw the name and picture of the girl in the paper instituted some detective work, and after a system of espionage they were able to get hold of this girl and lock her up, and they also placed the defendant - - under arrest. He said that through charity he took her to the house in East 26th street but he most studiously avoided any reference to the house at No. 127 Stuyvesant Place. He never once made any statement as to that house.

Now, gentlemen, that, in brief, is the case. If we prove these facts to you as we confidently expect to beyond a reasonable doubt we shall ask you to convict the defendant of the crime charged in the indictment, rape in the second degree.

MR. LEVY: For the purposes of the record I move that the District Attorney be required to elect under which count in this indictment he proposes to submit the case. There are three counts in the indictment. The

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first charge is rape in the second degree, the second assault in the second degree and the third abduction.

THE COURT: From what I have gathered from the District Attorney's opening he intends to rely on each count of the indictment, namely rape in the second degree, abduction and assault in the second degree.

MR. CAFFREY: That is the position of the District Attorney.

THE COURT: I shall not require him to elect now Mr. Levy. You may make your motion later.

VIOLA MULLER, a witness called on behalf of the People, being duly sworn, testified as follows: (The witness states she lives at 20 Baldwin street, Newark, New Jersey.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q Now, Viola, I want you to speak up so that the last juror over there can hear every word you say?

A Yes, sir.

Q How old are you?

A Fourteen years old.

Q When were you fourteen years?

A In 1918, August 1st.

Q 1918?

A Yes, sir.

Q August 1, 1918?

A Yes, sir.

Q Do you know the defendant, Benjamin Sherman?

A Yes, sir, I do.

Q How long have you known him?

A Since April 17th.

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Q April what?

A 13th.

Q April 13th?

A That is the day you met him?

A Yes.

THE COURT: April 13th or 17th?

THE WITNESS: Yes, sir, the 13th

BY MR. CAFFREY:

Q Are you married to the defendant, Benjamin Sherman or were you ever married to him?

A No, sir.

Q Where did you meet the defendant on the 13th of April?

A On Broadway.

Q Broadway, New York County?

A Yes, sir.

Q What part of Broadway?

A I don't know where.

Q You don't know where in Broadway?

A No, sir.

Q What time of the day or night was it that you met the defendant?

A About 10 o'clock.

Q Ten o'clock at night or morning?

A At night.

Q Were you alone or with somebody else?

A I was alone.

Q Now state to the jury under what circumstances you met the defendant?

A Mr. Sherman came up to me and spoke to me; he asked me if he could walk with me and I didn't say anything. He said I should not be afraid of him and he showed me his Masonic emblem and ring and said I should not be afraid of a Mason because he was a Mason.

Q Go right on.

A Then he walked a little and said he was going to take me to a lady that he knew on I don't know where it was but he took me to Stuyvesant street, and when he

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got there he said to the lady - -

Q This is what Sherman said to you?

A Yes, sir.

Q On Broadway?

A Yes, sir.

Q Now you got to the point where he said he was a Mason?

A Then he started walking with me and then he took me into a drug store and we got hot chocolate and then that was all there was to that question.

Q Was anything said?

A No, sir.

Q What did you say. Tell us what you said.

A I told him my name.

Q What is that?

A I told him my name.

Q What name did you give him?

A Viola Muller.

Q Told him your name was Viola Muller?

A yes, sir.

Q Did you tell him anything else about yourself?

A No, sir.

Q Did you tell him where you lived?

A No, sir.

Q Who did you tell him you were?

A I told him I was Viola Muller.

Q Did you tell him where you were coming from or anything about yourself?

A No, sir.

Q Did he ask you?

A No, sir.

Q Was there anything more said on Broadway?

A No, sir.

Q Did you go any place after that?

A Yes, sir.

Q Tell us where you went, you and the defendant?

A He took a car and got off at Wanamaker's and walked down a couple of blocks to Stuyvesant street and took me into a place.

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Q What place?

A A boarding house.

Q What was the number of the house?

A 27 Stuyvesant street.

Q In the county of New York?

A Yes, sir. He said he was going home to Brooklyn where he lived.

Q What time did you and the defendant get to 27 Stuyvesant street?

A It was between about ten and eleven o'clock.

Q What time did you arrive at 27 Stuyvesant street?

A It was after eleven o'clock.

Q Well, what did you do, was there a stoop or what?

A Yes.

Q Tell us what you and he did when you arrived at the stoop?

A When we got there he rang the bell and the lady came to the door and she had her face tied up because she had a toothache. He said to her she opened the door and she said, "Hello Bennie. I expected your earlier." He said, "Have you got my room ready?"

Q Who said that?

A Mr. Sherman. She said "yes but I expected you earlier, where were you, "and he said "to the theatre." She said, "Come in."

Q Then what?

A Then he had said he was going home to Brooklyn. She went out and closed the door.

Q Now before you get to that. Did the woman and the defendant have any conversation in the hall?

A Yes, sir-- it

was in the room.

Q What is that?

A In the room.

Q Before you got into the room, was there any conversation in the hall?

A No, sir, just at the front door when she opened the door.

Q When you got in was there any light in the hall?

A No, sir.

Q Then you and Bennie and the woman entered the room?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Now was there a light in the room?

A She made it, she turned on the gas and made a light.

Q Who did?

A The woman.

Q What did she say, if anything, and what did the defendant say?

A He handed her two dollars and said, "Here this is for the room for a little while." And she said something about her husband that he was sick, and he gave her a cigar for him.

Q What did he hand her for the room for a little while?

A Two dollars.

Q Then what was done?

A Then she left and I thought that he was going to- -

Q Never mind what you thought. The woman left?

A Yes.

Q What happened?

A Then he sat there and he said he couldn't go back to Brooklyn because it would be too late, he would have to go to work about half past eight, and he said it would take him a couple of hours to go to Brooklyn so he said
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he would stay there and I said he could not; he said if he- - he asked me if he would get another room and I said no. So he said he would sit in a chair for the night and I didn't know what to do.

Q Speak up. What else was said and done.

A Then he turned out the lights, and I had undressed and gone to "bed and he sat on the chair for a while. During the night when I was sleeping I woke up and I found him alongside of me in the bed, and then he had intercourse with me.

Q What did he do to you? (No answer.)

Q Was he dressed or undressed when in bed?

A He was undressed.

Q Now ten us what he did to you.

MR. CAFFREY: Your Honor, I hate to have to go into this.

THE COURT: Yon will have to do it because you must comply with the Statute.

Q You say he had intercourse with you?

A Yes, sir.

Q Tell us what you mean by intercourse. Speak up and let us get over with it. Tell us what he did to you. Won't you tell the jury just what he did to you. (No answer.)

THE COURT: We will take a recess at this time. Gentlemen you will not speak about the case or permit anybody to speak to you of it and do not make up your minds concerning the guilt or innocence of the defendant until the

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case is submitted to you.

The Court then took a recess until two o'clock.

AFTER RECESS.

VIOLA MULLER, resumes the stand, testified as follows:

DIRECT . EXAMINATION CONTINUED BY MR. CAFFREY:

Q Now, Viola see if you cannot recover your voice and speak up loud enough for us all to hear you.

THE COURT: You were asking her what the defendant did to her, and she said that she had intercourse with him.

Q Now, you said that he, the defendant, had intercourse with you. Now, tell the jury what you mean by that, just what he did to you. Tell us what he did.

A He put his privates into my privates.

Q And how long did he remain in that position?

A I don't know.

Q About?

A I don't know.

BY THE COURT:

Q Did he lay on top of you?

A Yes.

Q Can you state how long?

A I don't know.

BY MR. CAFFREY:

Q Well, what was done then?

A Well, I said that I shall scream.

Q Now, tell us what was said.

A I said that I would

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scream, and he said "I could if I wanted to, but that it wouldn't do me any good because there wasn't anybody there, all the windows were closed, and the people were asleep, and he said I couldn't do anything."

Q Now, can you tell us about how long the defendant remained on, top of you with his privates in yours?

A I don't know.

Q Then after he said just what you have narrated, what was then done or said.

A He didn't say anything.

Q Well, what did he do after that?

A Nothing.

Q Did he lie in bed all night?

A Yes.

Q And you remained there too?

A Yes, sir, but not near him.

Q What?

A I wasn't near him.

Q You were in bed with him, weren't you?

A Yes.

Q Now, did the defendant after that act you have just spoken of have any other act of sexual intercourse with you that night?

A Yes, once after that.

Q How long after that first act?

A Not very long.

Q Well, can you give us any idea about the time?

A I was just beginning to fall asleep I know.

Q Can't you tell us the length of time between the first act and the second?

A No.

Q Where were you when he had the second act of sexual intercourse?

A Well, I was sleeping when he woke me up.

Q Did he remain in bed with you after the first act?

A Yes.

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Q After he woke you up what did he then do to you? Now, tell the jury just what he did, now, tell it and we will get over it.

A (No answer.)

Q Now, you tell me about the first act. Now, you say. the second time he woke you up. Tell us, please, what he did the second time.

A The same as the first time.

Q Did he put his privates into your privates?

A Yes, sir.

Q Was he on top of you?

MR. LEVY: Please don't lead her.

Q Now, tell us Viola, what he did to you the second time?

A He put his privates into my privates.

Q And was he on top of you or what?

A Yes, sir, he was on top of me.

Q And how long did he remain in that position the second time?

A Not very long.

Q Now after he finished with that what did he do or what did you do? Now, go right along.

A I cried and he didn't do anything.

Q Did he say anything to you?

A No.

Q Well, then, what was done, did you remain in bed or what?

A Then in the morning when he got up he said I should come down to his place.

Q Well, did you remain in bed with him after that?

A Yes.

Q Until he got up in the morning?

A Yes.

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Q Now, when you got up he dressed?

A Well, he was dressed when I woke up.

Q So that when you woke up Sherman was up?

A Yes.

Q In the room and dressed?

A Yes.

Q Then he asked you to come down where?

A To his place of business on 31st street.

Q Did he tell you where his place of business did he tell you that?

A Yes, he gave me a card.

Q I show you a card. Look at the card which I now exhibit to you and state whether or not that is the card the defendant then gave to you?

A It is.

Q What did the defendant say when he gave you that card?

A He directed me to his place of business, and in case I should forget the number here was one of his cards

Q And he gave you this card?

A Yes.

MR. CAFFREY: I offer, it in evidence.

BY MR. LEVY: Is this the identical card he gave you?

A Yes.

MR. CAFFREY: I offer the card in evidence and I ask that it be marked people's Exhibit 1 in evidence.

(The card is marked People's Exhibit 1.)

BY MR. CAFFREY:

Q Then he handed you that card, and told you where to go. Now, tell us what next happened?

A He went out - -

MR. LEVY: Speak up so that I can hear you.

MR. CAFFREY: Yes, you must speak up. You are in a noisy room and it is very hard for everybody to hear you
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and you must speak up.

MR. LEVY: There may be some testimony that I might wish to object to, and which might not be properly be admitted because I cannot hear her.

THE COURT: That is the reason why I am insistent upon this young woman lifting her voice. You are entitled to hear every word she says. I don't want anything to get into this record that ought not to be there.

MR. LEVY: Yes, I cannot protect the defendant unless I hear what she has to say. (Addressing the witness)

Now, you can talk louder, no one will hurt you. We are going to be very kind to you.

BY MR. CAFFREY:

Q Now, come right out with your voice.

A Shall I tell you before he went out?

Q Yes. Tell us what he said before he went out. Now. turn that way and talk to the jury.

A He spoke to the lady of the place a Mrs. Voss, and he told her that he was late, and that he would have to hurry, and then after he told me about the card and how to get there, why, he left and told me to be down at his place of business by 12 o'clock, and after awhile I got dressed and I went down there.

Q Now, do you come out of that big room, that rear parlor?

A Yes.

Q And is there a hallway between the rear parlor and the

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rear parlor?

A Yes.

Q And does the' door from the front parlor lead out on to the same hall as the door from the rear parlor leads into?

A Yes.

Q And when you came out of the rear parlor could you see the door in the front parlor?

A The door was open.

Q The door of the front parlor was open?

A Yes.

Q Did you see Mrs. Voss, and the defendant talking together?

A No, only Mrs. Voss.

Q Did you hear them talking together?

A Yes.

Q You knew Mrs. Voss voice?

A Yes.

Q You heard it the night before?

A Yes, sir.

Q And you knew the defendant's voice?

A Yes.

Q And you heard the two of them talking together, is that right, now?

A Yes, sir.

Q Now, when you came out how long, at what time in the morning was it that the defendant left the room about what time?

A Between eight and nine.

Q Now, what time or about what time-- now, be careful -- did you leave the room?

A It was after eleven.

Q After eleven?

A Yes, sir.

Q Sure of that?

A Almost.

Q Now, between the time that the defendant left the room where you were and the time that he left the room, did any other person leave or enter that room besides yourself?

A No.

Q Was there anybody else in the room?

A No.

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Q Now, from the time that you entered the room with the defendant the night before until the time the defendant left the room in the morning was there any other person in that room besides you and the defendant?

A Only when we first came in to the room, the woman.

Q You mean Mrs. Voss?

A Yes, Mrs. Voss.

Q So then you had a talk with Mrs. Voss, and then what did you then?

A Then I left there and I went to his place of business on 31st street.

Q You mean by that the defendant's place of business, don't you?

A Yes.

Q When you went to his place of business did you see him?

A Yes.

Q Did you enter the place of business?

A I did.

Q At what time about?

A Oh, at ten minutes after twelve.

Q Now, while you were there did you leave any of your personal belongings there?

A Yes.

Q What did you leave there?

A A vanity box.

Q I ask you to look at this article and state whether or not that is the article you left there to which you referred as a vanity box?

A Yes, sir.

Q Is that the vanity box?

A Yes, sir

Q Is that the vanity box you left?

A Yes.

Q At the defendant's place?

A Yes.

Q Why did you leave it there?

A I had forgotten it.

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MR. CAFFREY: I ask that that be marked for identification.

(The vanity box considered as marked People's Exhibit 2 for identification.)

Q Did you go any other place with the defendant?

A No.

Q Did you remain in his place of business at 16 West 31st street?

A No, I went back to 26--

Q What is that?

A He took me to a lady in 26th street.

Q That is what I asked you. Then you did go someplace else?

A Yes, I thought you meant if I went out.

Q I asked you if you did go to any other place with him, did you?

A Yes.

Q From the business place. Where did you go?

A He went to a man, I don't know what the man's name is, and he asked him if he knew of a good boarding place.

Q Who was that man, do you know?

A No, sir.

Q Was it Mrs. Gries's cousin-- where did you meet that man, you and the defendant?

A I don't know what he was - -

MR. LEVY: I object to this.

Objection sustained.

Q Were you with the defendant when he went to that house?

A But I was downstairs and he went up.

Q Did you hear the conversation between the defendant and this man, what they were talking about?

A Well, I didn't hear all of it, but I heard that he said he wanted - -

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Q Did you hear the conversation that took place between this man and the defendant?

A Not all of it.

Q Where did the conversation take place?

A Downstairs from where this man worked- -

Q On the street?

A Yes, sir.

Q Where did the defendant meet him?

A He went up to where he worked and asked him to come down.

Q Did he call him out on the street?

A Yes, sir; it was just at the noon hour.

Q Where was this place, what street?

A I don't know where it was.

Q Let me ask you. You are a stranger in New York?

A Yes, sir.

Q Aren't you?

A Yes, sir.

Q Previous to this time of coming to New York had you ever been in New York before?

A Yes, sir, with my mother.

Q How many times?

A About three or four times.

Q You don't know anything about the streets of New York?

A No, sir.

Q Now tell us the part of the conversation you heard between the defendant and this man, only what you heard?

A I heard this other man- -

MR. LEVY: I don't want to throw any obstacle in the way of developing the truth, but she only heard a part of the statement, and I cannot determine whether that is competent or relative Unless she heard the whole conver-
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sation I don't think she should be permitted to testify to it.

THE COURT: I would not let her testify to all of it because she said she did not hear all of it. I will let her testify only to the portion she heard.

MR. LEVY: She can testify to that part but the other part might be explanatory of that part which she heard.

THE COURT: I want you to tell us what occurred, that is to Say, tell what was said between that man and this defendant. You are to say only that which you heard and nothing else.

BY MR. CAFFREY:

Q Now you may go on.

MR. LEVY: I think that would be incompetent testimony.

THE COURT: Well, I cannot determine that until I have heard it.

MR. LEVY: Your Honor is right. I want to reserve the right to strike it out.

THE COURT: I will entertain a motion to strike it out if it is incompetent.

BY MR. CAFFERY:

Q Raise your voice. What conversation did you hear?

A Mr. Sherman was speaking to him and he said it will be all right. Then Mr. Sherman said, Well, how can I let her know and he handed him a card, and said, "Yes, I know, her place",

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and he said "everything will be all right".

Q Who said that?

A Mr. Sherman.

Q Were you there then?

A Yes, sir.

Q And the man said "I know her place"?

A Yes, sir.

Q What was this?

A A card with something written on it about my going there, it would be all right.

MR. LEVY: It may be, your Honor, that I might want this in the case, but I don't think it is competent.

THE COURT: It may stand conditional on any motion that you may want to make hereafter.

MR. LEVY: I assume the District Attorney will connect it.

THE COURT: I have assumed that he was going to connect it up and that is the reason I have allowed it to stand.

MR. LEVY: Do you intend to connect it?

THE COURT: Standing alone it means nothing.

MR. CAFFREY: I don't regard it as important enough to have any quarrel over it.

THE COURT: I think that what was just said concerning the card and something being written upon it and all relating thereto should be stricken from the record and the jury are directed to disregard it.

MR. LEVY: Before that is done, may I inquire about this card that has been spoken of.

THE COURT: I was curious to know about that.

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MR. LEVY: Was it the defendant's card or the other man's card?

THE COURT: There is nothing here to show what card it was. She has not stated that.

MR. CAFFREY: I don't know myself. I was going to try to bring that out.

MR. LEVY: Have you that witness?

MR. CARREY: No, because I don't know who he is. She doesn't know the man and there is no way of ascertaining who he is.

MR. LEVY: To conserve the defendant's rights I shall move to strike it out.

THE COURT: I will strike it out and tell the jury not to pay any attention to it.

BY MR. CAFFREY:

Q After the conversation with that man at that house, did you go any place with the defendant?

A Yes, sir, to this place where the man said, Mrs. Gries.

Q Where was that?

A On 26th street, 113.

Q 113?

A Yes, sir.

Q East or west?

A East.

Q East?

A Yes, sir.

Q In the county of New York?

A Yes, sir.

Q Now, when you got to Mrs. Gries place was the defendant with you?

A Yes, sir. He handed her this card.

Q He handed Mrs. Gries a card that he had received from the other man?

A Yes, sir; that he had received from the other man.

Q You don't know what was on that card, do you, say yes or no?

A No, sir.

Q Now after the card was handed to Mrs. Gries by the defendant what happened then?

A Then she said it will be all right to Mr. Sherman and Mr. Sherman said that he knew her cousin, then they got into conversation. They were talking German and some parts of it I understood.

Q Do you understand German?

A I do.

Q Ever talked in German?

A Yes, sir.

Q You understood what they said?

A Yes, sir.

Q Tell us what they said.

MR. LEVY: object to that.

Objection overruled.

Q Now tell us what was said?

A He said that he wanted her to take care of me because I did not have any relatives or any one to take care of me and she said she would; then they were talking about business and something I did not understand that.

Q During the course of the conversation between Mrs. Gries and the defendant was there anything said as to who you were?

A He said I was a distant cousin of his.

Q Who said that?

A Sherman.

Q He said that to Mrs. Gries?

A Yes, sir.

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Q Was there any money paid to Mrs. Gries?

A Yes, sir, ten dollars.

Q Who paid that ten dollars?

A Mr. Sherman.

Q When he paid the ten dollars to Mrs. Gries what did Sherman say?

A He said, "Here this is for the room and I want you to take care of the girl." That is all.

Q Now, during the evening did you remain at Mrs. Gries house?

A From Monday until Friday.

Q From Monday until Friday?

A Yes, sir.

Q That was Monday the 14th of April?

A Yes, sir.

Q Until the following Friday?

A Yes, sir.

Q Is that correct now?

A Yes, sir.

Q While you were there did the defendant visit you?

A He came once; he was only speaking to Mrs. Gries.

Q During this time from Monday to Friday he came once?

A Yes.

Q Did he see you on that occasion?

A Yes, sir; that was downstairs with Mrs. Gries.

Q You were down there?

A Yes, sir.

Q Did he talk to you?

A No, sir, he did not have anything to say to me just then; he was talking to the woman.

Q You had no private conversation with him?

A No, sir.

Q And no immoral acts took place between you and him while in that house?

A No, sir.

Q The only act was in the other house?

A Yes, sir.

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28

Q In 27 Stuyvesant street?

A Yes, sir.

Q Is that correct now?

A Yes sir.

Q Were you placed under arrest on this Friday?

A Yes, sir.

Q Who was present when you were placed under arrest? (No answer.)

Q Who was present when you were placed under arrest?

A Mrs. Gries son.

Q Mrs. Gries son?

A Yes. sir.

Q Is that all?

A Yes, sir, and two little children two girls.

BY THE COURT:

Q In Mrs. Gries you didn't have sexual intercourse with him at all?

A No, sir.

Q Now did you receive any other papers from the defendant at any time?

A Yes, sir.

Q When?

A The day that I was up there on that Monday, April 14th.

Q Up where?

A In his office.

Q What papers were they?

A It was a letter head.

Q I ask you what did he say to you when he handed you these letterheads?

A He just said that if I wanted to I could use them and write notes on or something if I wanted to.

Q I ask you to look at the papers which I now exhibit to you, and state whether or not these are the papers and the letterheads that the defendant gave you?

A Yes, sir.

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28

Q Look at them?

A Yes, sir, they are.

Q What did you do with them afterwards?

A I took them up to the house on 26th street.

Q Did you give them to anybody?

A No, sir.

Q What became of them after that?

A They were just upstairs in the room on 26th street.

Q Did you see anybody take them?

A No, sir.

Q Did you give those papers to anybody?

A No, sir.

Q Did you give them to the police, I mean Mr. Pizarra?

A No, sir.

Q They were in your room?

A Yes, sir.

Q Is that it?

A Yes, sir.

MR. CAFFREY: I ask to have these marked for identification.

MR. LEVY: Did I understand you to say that he gave you his letter paper, these here?

A Yes, sir.

MR. LEVY: He told you that you could use it?

THE WITNESS: Yes, sir

MR. LEVY: Is that right?

THE WITNESS: Yes, sir.

MR. LEVY: He gave her according to her statement his letter paper and said she might use it, is that correct?

THE WITNESS: Yes, sir.

(The papers referred to are marked for identification

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People's Exhibit. 3.)

Q He said you might jot down notes or memorandum if you wished to?

A Yes, sir.

MR. LEVY: May I ask when it was he gave her these letterheads.

THE COURT: I haven't the faintest idea. I cannot hear a word she says.

MR. LEVY: When was it the witness said the defendant gave her these letterheads?

MR. CAFFREY: On Monday, April 14th.

MR. LEVY: The 14th, the day after you met him the first time?

THE WITNESS: Yes, sir.

BY MR. CAFFREY:

Q That was while you were up in his office?

A Yes, sir.

Q Visiting at his office?

A Yes, sir.

Q Before you went to the house on 26th street?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q When you saw Mrs. Voss at 27 Stuyvesant Place where there any bandages ground her head?

A Yes, sir.

Q She had her head tied up?

A Yes, sir.

THE COURT: She said that. She said she had something around her head which indicated that she had a toothache.

CROSS EXAMINATION BY MR. LEVY:

Q You say your name is Viola Muller? Is that right?

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31

A Yes, sir.

Q Now, Viola you will do us all a favor if you will be good enough to try to speak louder than you have been speaking. Will you try to do that like a good girl?

A I will.

Q Now, you say that you are over fourteen years old, is that right?

A Yes, sir.

Q Don't be afraid, I want to be as kind as I possibly can be. You were fourteen years old on the first of last August?

A Yes, sir.

Q So that you are nearly fifteen years old now?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Of course, you have gone to school, haven't you?

A Yes.

Q What school did you attend?

A The Robert Treat School, Newark, New Jersey.

THE COURT: I will have every answer repeated.

Q Did you graduate from that school?

A No, sir.

Q In what class were you at the time you left home?

A I was in the junior High.

Q Now, what is your father's name?

A George Muller.

Q What is his business?

A A physician, a medical doctor.

Q What is your mother's name?

A Regina Muller.

Q What?

A Regina Muller.

Q Now are there any other members of your family, brothers or sisters?

A No, sir, I have none.

Q Are you the only child?

A Yes, sir.

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Q You are sure about that?

A Yes, sir.

Q Do you remember how you were dressed when you left home?

A I do.

Q Do you remember that?

A Yes, sir.

Q Do you remember the dress you wore?

A Yes, sir.

Q How were you dressed, Viola?

A I had a brown Georgette dress on.

Q How were you dressed?

A I had a brown georgette crepe dress on.

Q Was it long?

A No, sir.

Q Was it as short as the skirt you have on now?

A It was shorter.

Q What kind of a hat did you wear?

A A blue hat, a navy blue Georgette.

Q How was your hair dressed?

A Something like this.

Q You can tell me, was it dressed like that or was it dressed differently?

A Well, I couldn't fix it any different; it is cut.

Q Was it dressed differently from it is now dressed. How did you wear your hair?

MR. CAFFREY: May I have her last answer read. She started to give an answer.

(The last answer read as follows: I couldn't fix it any different; it is cut.)

Q Was it dressed on the top of your head or was it hang-

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32

ing as it is now?

A Like it is now.

Q What is that?

A Like it is now.

Q Like it is now?

A Yes, sir.

Q When you left home did you have any money with you?

A Yes, sir.

Q How much did you have?

A I don't know how much I had, but I had a couple of dollars.

Q A couple of dollars?

A Yes, sir.

Q Now before we go into that I want to ask you since you have been arrested have you been in the care of the Children's Society?

A Yes, sir.

Q Where have you been living since that time, at what place? Where did you sleep and where did you eat?

A When do you mean?

Q Since the time you were arrested?

A In the Society.

Q Arrested on the 19th of April, where have you been since that time?

A In the care of the Children's Society.

Q What place?

A 23rd street and Fourth avenue.

Q Where did you sleep, in that building?

A YES, sir.

Q You have met a lot of people connected with the Society?

A Yes, sir.

Q Now can you give me the names of those whom you have met and with whom you have talked since that time, since last April?

A Pizarra and Mr. Moore and Mrs. Hirach.

Q She is a matron, one of the matrons there, one of the lady attendants, is that right?

A No, sir, a probation officer.

Q Who else?

A Mrs. Shiels.

Q Anyone else?

A There were others, but I don't remember their names.

Q Now you have talked to some of these people about your case, haven't you?

A Some of them, yes, sir.

Q Now, with whom have you talked about the case?

A Mr. Pizarra.

Q Who else?

A Detective Sherwood.

Q Just think you are out in the school yard romping with the girls, and you can talk louder than you are doing now. Give me the names of those who spoke to you about your case?

A Mr. Pizarra and Mr. Sherwood.

Q He is one of the agents of the Society?

A Yes, sir, a detective.

Q Who else. Did you talk to these ladies there, the matron or probation officers?

A No, sir.

Q About your case?

A No, sir; none of the matrons.

Q Did you tell them your story of how the thing happened, did you or didn't you?

A No, sir, only to those whom it concerned.

Q Well, who did you regard as being concerned?

A Well, I mean Mr. Pizarra.

Q No one else?

A No, sir, the detective.

Q Mr. Sherwood and who else?

A And Mr. - -

Q Perhaps I can help you. You know Mr. Moore, don't you?

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A Yes, sir.

Q Did you talk to him about it?

A No, sir, I did not.

Q What is that?

A No, sir.

Q Did you talk to any detective who came from Newark about your case?

A Yes, sir.

Q With whom did you talk that came from Newark?

A Mr. Brady.

Q Let me see if you can't talk louder?

A Brady.

Q How is it I can talk as loud as I do. You can talk loud.

A I cannot.

Q Mr. who?

A Mr. Brady.

Q Did you know Mr. Brady?

A No, sir, I didn't know him.

Q Didn't you know him in Newark?

A No, sir.

Q Brady, any one else?

A That is all and Mrs. Dugan.

Q Who is Mrs. Dugan?

A She is a police woman in Newark.

Q Now did you tell them what you have just told these twelve gentlemen here?

A No, sir.

Q You lied to them didn't you?

MR. CAFFREY: I object to that.

A No, sir.

MR. CAFFERY: I object to that question.

THE COURT: She said she did not lie to them.

Q You didn't tell these people who came from Newark and those here from New York-- you didn't tell them the same story you told these gentlemen?

A I didn't tell them anything.

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Q I asked you particularly if you told your story to any one and you said you did, to Mr. Pizarra, and those who were concerned to use your own words, is that so, did you or didn't you?

A I did.

Q What is that?

A Yes, sir.

Q You did or did you not?

A I did.

Q Well, now to whom did you speak, to whom, did you tell your story?

A To Mr. Pizarra and Mr. Sherwood.

Q Now, did you tell both of these gentlemen, or either of these gentlemen the same story that you now tell his Honor today and these twelve men?

A Yes, sir.

Q The very same thing?

A Yes, sir.

Q Now let us see when you were arrested, you were taken into the police court, weren't you?

A Yes, sir.

Q You appeared as a witness before his Honor, Judge Sweetser, City Magistrate, didn't you, when this defendant was arrested, didn't you?

A I don't just remember the name of the magistrate.

Q You don't remember?

A She probably would not know the name of the Magistrate.

Q Leave his name out. You did go before a Magistrate or Judge?

A Yes, sir.

Q Sitting on the bench when Sherman was arrested?

A Yes, sir.

Q You gave your testimony before that Judge whatever his name may have been?

A Yes, sir.

Q Did you not?

A Yes, sir.

Q You gave your testimony under oath, didn't you?

A Yes, sir.

Q You were sworn to tell the truth?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Did you when you called as a witness intend to tell the truth in this proceeding before that Judge?

A Yes, sir, I did.

Q Now you know what an oath is, don't you?

A Yes, sir, I do.

Q Viola?

A Yes, sir.

Q Have you had any religious instruction?

A Yes, sir.

Q What religious instruction have you had?

A Well, I am a Catholic.

Q I know, but what instruction have you had?

MR. CAFFERY: She said she is a catholic.

Q Are you a communicant with any church?

A Yes. sir.

Q Have you attended?

A Yes, sir.

Q That church and have gone to confession?

A Yes, sir.

Q Have you

A Yes, sir.

Q How long before you ran away from home?

A Well, about a month.

Q A month before?

A Yes, sir.

Q So when you swore to tell the truth before that Judge in the Police Court you meant to tell the truth, is that correct?

A Yes. sir.

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Q Now, did you tell that Judge before whom you appeared under the sacredness of an oath and testified-- did you tell the same story that you now tell his Honor here and these twelve gentlemen?

A I did.

Q What is that?

A I did.

Q You did?

A Yes, sir.

Q Now let us see You saw a stenographer sitting alongside of the Judge's bench, didn't you, writing down what you said?

A Yes, sir.

Q Did you see him?

A Yes, sir.

Q You saw that he wrote down every word that you said, every answer you made to the questions that were put, is that right?

A Yes, sir.

Q You saw that, didn't you?

A Yes, sir.

Q Don't nod your head. Answer me. You did?

A Yes, sir.

Q Do you remember swearing before the Judge you say you don't know his name - - that when you went to the house in Stuyvesant Place that the defendant spoke to the woman in a foreign language and you did not understand it? (No answer.)

Q What are you crying about. That is a simple question. Do you remember saying that?

MR. CAFFREY: I resent the suggestion that the girl is crying because he has asked her that question. I don't want him to put the girl in that attitude before the Court and jury.

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38

MR. LEVY: Don't make yourself absurd.

MR. CAFFREY: I am not making myself absurd. You are not going to bulldoze me.

THE COURT Order. I will rule.

MR. CAFFREY: Now, if it please your Honor, I object to that remark to this girl. This girl has broken down there because of her position on the stand and not because of any question that counsel has asked her.

THE: COURT: I will give her an opportunity to recover herself. Do you feel that you can testify now, Miss Muller?
(No answer.)

MR. CAFFREY: I again take exception to any suggestion here that the question that he asked provoked this. It is clear that the girl's position has brought about this. Mr. Levy infers that when that question was put to her she immediately broke down giving the implication that she was caught in a lie. and at once broke down.

MR. LEVY: What is she sitting there that way for now.

MR. CAFFREY: Because of the girl's position on the stand. Any modest girl in the world would-- anybody but you would understand that.

MR. LEVY: I have more regard for the sacredness of woman than you have. Now what is there about that question Miss, that you don't like?

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MR. CAFFREY: I object to that. She has not said that she didn't like the question.

THE COURT: I exclude it.

MR. LEVY: I withdraw the question.

BY MR. LEVY:

Q You answer my question. Miss.

THE COURT: You may call her attention to what you want. I understand you want to cross examine her on the record before Magistrate Sweetser, is that it, for the purpose of showing variances and contradictions.

MR. LEVY: And contradictory statements and denials now.

THE COURT: You may proceed.

MR. LEVY: That is the purpose of it.

BY MR. LEVY:

Q Now, Miss, I want to be kind to you. Did you tell the Judge under oath in that other court that when this defendant took you to that house in Stuyvesant Place that he spoke with the woman in a foreign tongue that you did not understand. Did you swear to that?

A Yes, sir, I did, but they spoke half English and half German.

Q Did you swear to it?(No answer.)

Q Do you understand German?

A I do, yes, sir.

Q What part of what you overheard that you told in answer to the District Attorney's questions was spoken in English and spoken in German -- what part of it was spoken in a Foreign

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tongue, and in what tongue?

A I don't know what you mean.

Q You don't know what I mean. All right we will pass from that for the moment. You know Howard Beatty?

A I do.

Q How long have you known him?

A Since the last day of March.

Q What?

A Since the last day of March.

Q March?

A Yes, sir.

Q The last day of March was the 31st, didn't you know him before?

A No, sir.

Q Where did you meet him?

A In the Terminal Building in Newark.

Q What time of the day?

A Noon.

Q Meet him by appointment?

A No, sir.

Q Met him accidentally?

A Yes, sir.

Q Do you know his full name?

A I do.

Q What is his full name?

A Howard J. Beatty.

Q How did you learn his name?

A He told me.

Q Where did he tell you, and when did he tell you his name?

A At first he didn't tell me his right name.

Q Was it a flirtation between you?

A Yes, sir.

Q What is that?

A Yes, sir.

Q He wanted to pick you up, is the idea?

MR. CAFFEREY: I object to that.

THE COURT: That is asking for the mental operation of that man. I will exclude that.

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Q He met you in the Terminal Building. Weren't you at tending school then?

A I was.

Q What is that?

A Yes, sir.

Q Did you meet him there by appointment?

A No.

Q Where did he take you to?

A He didn't take me any place.

MR. LEVY: I would like this witness to speak up.

This is the most crucial part of this case.

BY THE COURT:

Q Now, did you hear Mr. Levy?

A Yes, sir.

Q Now answer that question.

A He asked me if I would show him around the drug stores because he was a stranger.

BY MR. LEVY:

Q Did you go to the drug store with him?

A Yes, sir.

Q Did you go to a hotel with him?

A No.

Q From the drug store where did you go with him?

A I went to a moving picture.

Q What time of day was that?

A Afternoon.

Q After the moving picture where did you go?

A I went home.

Q What is that?

A I went home.

Q Then when did you meet him again?

A On Tuesday.

Q Tuesday?

A Yes, sir.

Q When?

A Tuesday.

Q How long after that first meeting?

A The next day.

Q Where did you meet him?

A In the Newark Hudson Ter-

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minal.

Q Where?

A The Tube.

Q Was that by appointment?

A Yes, sir.

Q That you met him the next day?

A Yes sir.

Q What is that?

A Yes, sir.

Q What were you to meet him the next day for?

A I was going to show him around to the drug store.

Q Show him the drug store again?

A Yes, sir.

Q Is that what you mean?

A Yes, sir.

Q What were you to show him the drug store for?

A Because he was a stranger in Newark, and he had some business with those places for an ice cream, and he had to take orders at those places and he didn't know, where they were.

Q Did you tell him your name?

A Yes, sir.

Q Tell him where you lived?

A He didn't ask me.

Q What were you to meet him for-- you were to show him around different drug stores?

A Yes, sir.

Q You did meet him?

A Yes, sir.

Q Did you take him to drug stores?

A Yes, sir.

Q What drug stores did you take him to?

A I took him to drug stores downtown, and showed him the street.

Q How did you know these drug stores?

A Because I was a resident of Newark.

Q What is that?

A I was a resident of Newark, and I knew my way about there.

Q You felt he couldn't find his way around and he need-

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ed somebody to guide him to find the drug stores?

MR. CAFFREY: I object to that as based upon matters which are not in evidence.

THE COURT: I will allow it. I am not going to hold him down-to strict rules. I want the truth in this case. I have ruled.

Q Why did he want you- - is my question to put it again to show where the drug stores were.

A He didn't know his way about Newark.

Q About how old a man was he do you know, to the best of your knowledge?

A About around thirty.

Q Around thirty?

A Yes, sir.

Q What was his color?

A He was dark.

Q He was a negro, wasn't he?

A No, sir.

Q What is that?

A No, sir.

Q A colored man?

A No, sir.

Q You mean that you don't know that he was a colored man?

A No, sir, he was a Porto Rican.

Q Tell you he was born in New York?

A No, sir.

Q Where did he say he was born?

A He said he was born in Brazil.

Q Didn't you know he was a negro?

A No, sir.

Q After you showed him some drug stores then what did you do?

A I went home.

Q Then you made an arrangement to meet him again, didn't you?

A Yes, sir.

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Q Where were you to meet him again and when?

A On Thursday.

Q On Thursday?

A Yes, sir.

Q The next day was Tuesday and you were to meet him on Thursday?

A Yes, sir.

Q Where were you to meet him again?

A The same place, where I met him Tuesday.

Q What was the purpose of your meeting him again on Thursday?

A The same as the first time.

Q What is that?

A The same as the first time.

Q To show him the drug stores?

A Yes, sir.

Q Did you show him the drug stores that day?

A I did.

Q Now before we go on. When you showed him the drug stores what did you do, simply say to him, "This is the drug store", is that what you mean?

A No, sir.

Q What did you do?

A He would tell me what drug store he wanted and where, what street it as, and I would show him.

Q He showed you what drug store he wanted and what street he wanted it on?

A Yes, sir.

Q Is that what you meant to say?

A Yes, sir.

Q What drug store did he want and what street did he want the drug store on?

A I don't remember the names of the drug stores; there were so many.

Q Did he give you the names of the drug stores he wanted and give it to you each time that he wanted to go to a drug

Store?

A He had the name of the drug stores written down on a piece of paper.

Q When you got to the drug store would you and he go in to the store?

A Yes, sir.

Q Did you see what he did in the drug store?

A He took orders.

Q What did you do while he was in the drug store?

A Waited for him.

Q Waited for him where?

A Outside or inside.

Q How much time did you spend with him on Monday, the first time you met him?

A I was with him from between 12 until 5.

Q On the second day, Tuesday, how long a time did you spend with him?

A About the same time.

Q On the third time, Thursday, how much time did you spend with him?

A About the part five.

Q During that time weren't you required to go to school or were you playing truant?

A No, sir, I was not playing truant.

Q Playing hockey?

A No, sir.

Q Didn't you have to go to school?

A I had not been feeling very well; I had trouble with my voice, my throat.

Q Did you tell your mother that you were going out?

A Yes, sir.

Q Did you tell your mother where you were going to go?

A No, sir.

Q Did you go out with her knowledge or go out without her knowledge?

A I don't know what you mean.

Q Did you go out with your mother's knowledge on these different occasion or did you go out without her knowledge?

A She knew I was out.

Q She knew you were out?

A Yes, sir.

Q She has had a lot of trouble about keeping your home, hasn't she?

A No, sir, she has not.

Q Never complained about it?

A No, sir.

Q Was your father home?

A No, sir.

Q Where was your father?

A Father does not live with my mother.

Q Don't you know where your father was?

MR. CAFFERY: I object to that. She says he doesn't live with her mother.

THE COURT: I don't think we will inquire into some unfortunate relation that might exist between the father and mother.

Q Did you know where your father was is my question?

THE COURT: I think I will exclude that, Mr. Levy, on the ground that it is absolutely immaterial.

MR. LEVY: Exception. It is for the purpose of showing the incorrigibility of this girl. I have a right, it seems to me, with all due deference, to show the family situation and the household conditions. I don't mean to go in-

To the affairs of her parents, but it is merely to show if there was any discipline exercised over the whether her incorrigibility was a matter of complaint.

THE COURT: I do not see that the misfortune of the family tend to establish her incorrigibility.

MR. LEVY: I want to know if this girl knew where her father was.

THE COURT: I think that is immaterial.

Exception.

BY MR. LEVY:

Q No when was it before you first met Beatty that you last attended school?

A I don't remember; it was a couple of weeks because I had been sick. I had been home.

Q Were you sick abed?

A Yes, sir; I had trouble with throat, laryngitis.

Q Were you sick in bed yes or no?

A No, sir.

Q Were you out?

A No, sir, I wasn't out; I had laryngitis.

Q Did you invite Mr. Beatty to your home?

A I did.

Q Did he call?

A No, sir.

Q Well after 5 o'clock on that Thursday did you go home?

A I did.

Q When did you meet him again?

A The next Monday.

Q Where did you meet him?

A In the Hudson Tube in Newark

49

Q Tell me where was it you met him that night, Monday?

A In the Tubes at Newark.

Q The entrance to the Tube at Newark?

A Yes, sir.

Q Now, how long were you with him there?

A I don't remember.

Q You don't remember?

A No, sir; just until in the afternoon.

Q Did you go anywhere with him?

A Yes, sir, to the drug stores.

Q He wanted you to go to the drug stores again?

A Yes, sir.

Q How many drug stores did you go to with him that day?

A Three or four.

Q Do you know the names of any?

A I don't.

Q Can you give me the name of any one?

A No, sir.

Q You say that you knew Newark pretty well?

A I did.

Q Give me the name of any drug store you visited with him?

A No, sir, but I know whereabouts they are.

Q Repeated.

A I said no, but I know- -

Q Did you go to any place with him besides a drug store?

A No, sir.

Q Did you get anything to eat?

A No, sir.

Q With him?

A No, sir.

Q Well, on Monday after you left him what time was that that you left him?

A About 5 o'clock.

Q What is that?

A 5 o'clock.

50

Q Where did you go?

A Home.

Q Did you meet him again?

A Tuesday.

Q Where?

A The same place I met him before.

Q At the Tubes?

A Yes, sir.

Q What did you meet him there for?

A To go around to the drug stores with him.

Q So you did meet him again to take him to the drug stores?

A Yes, sir.

Q Were you expected to do anything more than to be a guide to him or for him, take him to these drug stores - - would you go into the drug stores with him or help him in any way?

A No, sir.

Q The answer is no, is it?

A Yes, sir.

Q The answer is no?

A Yes, sir.

Q How many drug stores did you visit on Thursday?

A I don't remember.

Q Do you know the name of any one you went to?

A No, sir.

Q Well, when did you meet him again?

A I didn't meet him after that.

Q Now, Viola, you know that Beatty was arrested, don't you?

A Yes, sir.

Q Do you know what he was arrested for?

A I think I do.

Q Well, what was he arrested for?

A Because he had persuaded me to come to New York.

Q You didn't tell me he had persuaded you to come to New

York. When did he persuade you to go to New York?

A Almost every time he saw me.

Q Did he tell you what he wanted you to in New York?

A Yes, sir, he said he wanted me to meet a sister of his.

Q You say he was arrested because he asked you or invited you to go and meet his sister, is that what you mean?

MR. CAFFREY: I object to that. She didn't say that.

Q Tell me what you mean.

MR. CAFFERY: She said he was arrested because he persuaded her to come to New York .

BY MR. LEVY:

Q Don't you know what he was arrested for. Br frank with me viola, please, tell us what he was arrested for?

A Because he had persuaded me to come to New York.

Q Is that all?

A Yes, sir, that is all.

Q Wasn't he arrested because he had taken advantage of you?

A No, sir.

Q You like him, don't you?

A No.

Q Well, when he was arrested - - where was he arrested, in New York?

A I don't know.

Q In Brooklyn? (No answer.)

Q Did you point him out?

A No.

Q How long after that last time which you said was on Tuesday how long after that was it that you saw him again?

A In the court house in Newark, New Jersey.

Q When he was on trial?

A Yes, sir.

Q You were a witness in that case?

A Yes, sir.

Q You gave testimony against him under oath, didn't you?

A Yes, sir.

Q What is that?

A Yes, sir.

Q You were sworn in that case before a Judge in Newark, in Essex County, Oyer and Terminer Court - - you were sworn to tell the truth in the case of the people of the State of New Jersey against Howard James Beatty, isn't that right?

A Yes.

Q Do you remember the name of the Judge before whom you made oath in New Jersey?

A No, sir.

Q Didn't you as a witness in that case swear that Beatty by force did unlawfully take you out of the custody of your mother and father for the purpose of abusing you and of having carnal intercourse with you. Now, I want you to understand that question, Viola. If you don't understand it, I will try to make it clear to you. So stop until you do thoroughly understand it.

MR. CAFFREY: I Object to that question.

THE COURT: I will overrule the objection . I am going to have the truth developed in this case. I think in a case of this character the jury is entitled to hear the whole truth.

MR. CAFFERY: I think your Honor ruled the other day that these question would have to be read, from a copy of the testimony and that is why I made the objection.

THE COURT: Counsel for the defendant is reading from the contents of a complaint lodged against that defendant in a court of foreign jurisdiction.

MR. LEVY: The indictment.

THE COURT: You may interrogate her concerning the contents of an affidavit that she made.

MR. CAFFERY: Does counsel purpose to read from an affidavit? Now, I want to keep myself within your Honor's ruling made the other day. And that is why the objection was made.

THE COURT: The Court is entitled to know just what there is in this case, and the jury should know everything that that surrounds this case as well as everything that surrounds this girl. The purpose of this cross examination of counsel for the defendant, I suppose is for the purpose of establishing something that will affect her credibility. Am I right?

MR. LEVY: Absolutely so..

THE COURT: Well, you have perfect right to do it.

MR. CAFFREY: May we not know what paper he is reading from?

THE COURT: He may ask the question. Now, Mr. Caffrey I have said frequently that a prosecuting officer should never make an effort to suppress anything that the jury is entitled to know.

MR. CAFFREY: I am not doing that. I ask counsel to keep within the rules of law.

THE COURT: Liberality and generosity is a virtue in a prosecuting officer. I was at this bar as a prosecuting officer for fourteen years, and I never saw the time that I ever thought I was doing the righteous thing when I made the slightest effort to keep out something which the jury were entitled to know.

MR. CAFFREY: I am not afraid of any question being asked but I think it is my duty to at least ask that counsel be kept within the rules of law.

THE COURT: I know the rules of law. I believe, and certainly I have had a long experience, and I doubt whether anybody will question my knowledge of the rules of law.

MR. CAFFREY: Then I misapprehended your Honor's ruling made the other day.

THE COURT: Now Mr. Levy you may proceed. If there is anything in that record to which you are now referring which in your judgment is calculated to affect the credibility of this witness you may ask the question and I rule upon it.

MR. CAFFREY: May I ask your Honor that we know what the record is that he is reading from.

MR. LEVY: Will you be good enough to read the last question?

Q (Question repeated as follows) Didn't you as a witness

In that case swear that Beatty by force did unlawfully take you out of the custody of your mother and father for the purpose of abusing you and of having carnal intercourse with you. Now the question is, did you swear to that.

A I don't know what it means.

THE COURT: She says she doesn't know what you mean.

Q Now what is there about that question you don't understand?

THE COURT: Is it work carnal you don't understand?

THE WITNESS: No, sir.

BY MR. LEVY:

Q Do you know what sexual means?

A Yes, sir.

Q Sexual relations with you?

A Yes, sir.

Q Now, then I will change the work carnal to sexual relations for the purpose of having sexual relations. Did you swear to that?

A Yes, sir.

Q That he took you for the purpose?

A Yes, sir.

Q Away from your father and mother?

A Yes, sir - - no, sir, he took me to see his sister.

Q Now wait a moment. Do you want to tell the truth in this case?

A Yes, sir.

Q Do you?

A Yes, sir.

Q Sure now you want to tell the truth?

A Yes, sir, surely.

56

Q Now Beatty was tried in that court, wasn't he?

A Yes.

Q Was convicted and sent to State prison, wasn't he?

A Yes, sir.

Q Do you know what he was sent to State prison for?

A I don't know.

Q You don't know why you were a witness against him, is that what you mean to tell me?

(No answer.)

Q Wont you answer me please?

A No, sir; I said no.

Q You don't believe he was sent to State prison because he asked you to go and see his sister, do you. Think about that.

Now you tell me the truth about it, please. Question repeated. (No answer.) - - I don't know.

Q You don't know?

A No, sir.

Q Hadn't you any idea when you were a witness in that court what he was being tried for or prosecuted for?

A No.

Q Did you understand the questions that were asked you by the public prosecutor in Newark?

A Yes, sir.

Q When that man was being tried?

A Yes, sir.

Q You did not understand his questions?

A Yes, sir.

Q You know Mr. Harrison who is prosecutor of Please in Essex County, Newark, don't you?

A Yes, sir.

Q He was the lawyer representing the state who tried the case on your behalf?

A Yes, sir.

Q Against Beatty, wasn't he?

A Yes, sir.

Q And Mr. McDermott was the lawyer for Beatty, wasn't he?

A No, sir.

Q You know that Mr. McDermott lives in Newark, doesn't he?

A Yes, sir.

Q And they both asked you questions, didn't they?

A Yes.

Q Both Harrison and Mr. McDermott, the lawyer for Beatty?

A Yes, sir.

Q Didn't you swear in that case that by force Beatty took you away from the custody of your parents for the purpose of having sexual connection with you; didn't you swear to that, Viola?

A I don't remember.

Q Don't you understand that?

THE COURT: She says she does not remember.

Q You don't remember? (No answer.)

Q Do you mean to say you don't remember or you don't know, which will you have?

A I don't know whether I did or not.

Q Was it true or wasn't it true?

A All the testimony I gave was true.

Q Was it true that he did take you away from your parents for the purpose of intercourse, sexual intercourse, was it true or not true?

A He only took me to see his sister.

Q Well that does not answer the question. Was it true or was it not true that he took you away from your parents for the purpose of sexual intercourse?

MR. CAFFERY: I object to that question as already

Answered.

THE COURT: I will allow her to answer it again. Now young woman answer that question yes or no.

Q Question repeated as follows: Was it true or was it not true that he took you away from your parents for the purpose of sexual intercourse?

A Yes, sir.

Q It was true?

A Yes, sir.

Q Now you know that the reason he was sent to prison was for doing that?

A I didn't know.

MR. CAFFREY: I object to that. The records of the court are the best evidence.

THE COURT: I will exclude that.

Q Now when you went over to New York, did you to meet him here, Beatty?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Where were you to meet him and when. Won't you tell me?

A I don't know; he told me where to go over to - - it was in the morning.

Q Did he give you any money?

A No, sir.

Q Where did you get money from with which you paid your expenses to come to New York?

A Well, I had my allowance that my mother gave me.

Q You had your allowance?

A Yes, sir.

Q When you got to New York you did not meet Beatty?

A No.

Q Now as a matter of fact, Viola, throughout all these proceedings in Newark, and in the giving of your testimony and

In your statements to the Society's representative, Mr. Pizarra and others, and in your statement to the New York Police and in your statement to the Newark police, didn't you try at all times to shield Beatty?

A No, sir, I don't think I did .

Q You did not?

A No, sir.

Q You understand that question?

A I think I do.

Q What is that?

A I think I do.

Q Do you understand that question?

A I think I do.

Q I will have it read to you again because I want a truthful answer. Do you want it read again, or do you understand?

MR. CAFFREY: I want to make an objection because this is not for the purpose of affecting this young woman's credibility but it is trying the case of the People against Beatty. It seems to me that if anything is to be shown in reference to that case it must be shown by the Court's record.

THE COURT: Will your contention be that this girl was a pure girl before she met this defendant?

MR. CAFFREY: She says that to me. Beatty was not convicted of any crime, as far as I understand, in Jersey that would negative that.

MR. LEVY: He was convicted because of his seduction of this girl.

MR. CAFFREY: It wasn't anything of the kind.

THE COURT: I wouldn't state it unless it is a fact, supported by the conviction.

MR. LEVY: But the conviction was predicated upon the seduction of this witness. Even if she was not seduced if I can prove anything in the shape of contradictory statements with regard to her relations with Beatty it goes to her credibility as a witness.

THE COURT: It goes to credibility but it wouldn't make a particle of difference if this girl had intercourse with a hundred men before she met this defendant. If the defendant had intercourse with her on the dates mentioned and described in the indictment he would be guilty of rape in the second degree, but the jury has a right to know her previous character in order to give such weight to her testimony as they deem proper.

MR. CAFFREY: Now, if your Honor please- -

THE COURT: I have heard enough.

MR. CAFFREY: Will your Honor permit me - -

MR. LEVY: May my last question be repeated.

Q Question repeated as follows: Now, as a matter of fact, Viola, throughout all these proceedings in Newark and in the giving of your testimony and in your statements to the Society's representative, Mr. Pizarra and others, and in your statements to the New York police and in your statements to the Newark police, didn't you try at all times to

Shield Beatty?

A No, sir, I did not.

Q We will pass from that. Now, then, when you came over to New York you went to this address you say he gave to you, and you didn't meet him, is that right?

A Yes, sir.

Q Did you meet any one else?

A Yes, sir.

Q Whom did you meet?

A Mr. Hollingsworth.

Q What was his first name?

A Mr. Henry Hollingsworth.

Q Henry?

A Yes, sir.

Q How old a man is Henry Hollingsworth?

A I don't know, about around 22.

Q Where did you meet Mr. Henry Hollingsworth?

A Near Mr. Beatty's home.

Q Did you meet him in the his home?

A No, sir, I never was in his home.

Q Did he come up and talk to you?

A Yes, sir.

Q Without any introduction?

A Yes, sir, he said - -

Q Did he tell you his name right off the reel?

A Yes, sir, he said- -

Q He said his name is Henry Hollingsworth right away?

A No, sir.

Q How did it happen?

A He said that he thought he knew me.

Q He said he knew you?

A Yes, sir.

Q Did you recognize him?

A No, sir.

Q Never seen him before?

A No, sir.

Q When he said he knew you did you ask him where he had met you?

A No, sir, I did not.

Q Weren't curious enough to know where he had met you when he said he knew you?

A Yes, sir.

Q Did you inquire where he met you?

A I didn't know where he said he met me.

Q How near Beatty's home was it that you met him?

A A couple of blocks away.

Q What time of day was it that you met him?

A I don't remember.

Q Was it in the morning?

A I think it was.

Q Are you sure?

A No, sir, I am not sure.

Q Was it in the afternoon?

A I think it was noon time.

Q Noon time?

A Yes, sir.

Q That wasn't by any appointment was it?

A No, sir.

Q Didn't Beatty introduce you to Hollingsworth?

A No, sir.

Q Did he mention Beatty's name to you, Hollingsworth?

A Not that I know of.

Q Did you mention Beatty's name to Hollingsworth?

A No, sir.

Q Did you tell him what you were doing in New York?

A No, but I told him I wanted to go back to Newark, and he said- -

Q Did you tell him what you were doing in Newark?

A No, sir.

Q Did he inquire of you what you were doing in New York?

A No, sir.

Q Did you tell him where you lived?

A I told him I lived in Newark.

Q Well, then you told him where you lived in Newark, what did he say to you?

A In Newark.

Q When you told him you wanted to go back to Newark?

A He said he would take me back because I didn't know the way.

Q What street was that on?

A I don't know.

Q Near what avenue was it?

A I don't know.

Q You knew how you had come there, how you had gotten there, is that right?

A I think I do.

Q You knew the road that you took to get to where you were, didn't you?

A Yes, sir, I did.

Q Didn't you know you could return the same way that you came?

A No, sir, I didn't know.

Q You didn't know that?

A No, sir.

Q When you saw him, when you told Mr. Hollingsworth that you wanted to go back to Newark, what happened?

A He said he would take me back.

Q He said he would take you back?

A Yes, sir.

Q What did you say?

A I asked him if he would take me back, and he said he would.

Q What happened?

A Well, then he said that we would go and have something to eat before he would take me back and

We went into a restaurant.

Q Do you know where it was located?

A No, sir.

Q What did you get to eat?

A I didn't eat anything.

Q What did you drink?

A I only had a glass of water.

Q Only a glass of water?

A Yes, sir.

Q That was about the noon hour?

A Yes, sir.

Q Then what happened?

A Well, then I had a headache and he gave me something, and he said it was a headache powder.

Q Gave you this in the restaurant?

A Yes, sir; he put it in the water and he said I could drink it.

Q You could drink it?

A Yes, sir.

Q Did he eat anything?

A Yes, sir.

Q Do you remember that every distinctly, don't you?

A Yes, sir.

Q What is that?

A Yes, sir.

Q Up to that time your memory is perfectly clear, is it?

A Yes, sir.

Q Sure now?

A Yes, sir.

Q Now have you ever had any lapses of memory?

A No, but after I was arrested- -

Q Now, have you ever had any lapses of memory? Answer yes or no.

A I was going to answer your question.

Q Well answer it now then. I asked you whether you ever had any lapses of memory. You can tell me whether you did or not, won't you please. Do you understand my question. please

Answer. Did you ever have any lapses of memory? (No answer.)

Q Now you are composed, please tell me whether you ever had any lapses of memory.

A No, sir.

Q What address did you give Mr. Hollingsworth as the place that you lived at?

A I didn't give him any address; I only told him I lived in Newark.

Q Now, after he gave you this headache pills or powders, what happened?

A I got sick then.

Q Sick at your stomach or sick in the head?

A Sick at the stomach.

Q Then what happened?

A Then he said that before I went home I should go to a place in 26th street.

Q Did you ask him what that place was?

A No, sir.

Q Did he tell you what the place was?

A He told me it was a place where a lady had a boarding house.

Q Did he tell you the name of the lady?

A No.

Q Did he tell you the number of the house?

A No.

Q Told you 26th street?

A Yes, sir.

Q Did he tell you whether it was east or west?

A No.

Q Did he tell you whether it was east or west?

A No.

Q Didn't you say to him "I would rather go home"?

A I felt too sick.

Q How did that sickness affect you. Tell me.

A It made me feel sick at my head and at my stomach.

Q Now, did you feel like vomiting?

A I don't remember.

Q How was your head, dizzy?

A Yes, sir.

Q It was as though your head was going around all the time?

A Yes, sir.

Q Could you stand on your feet?

A Hardly.

Q How far away from this house in 26th street was this restaurant where you took the pills or powders, whatever it was?

A I don't know. We had to take a car.

Q How long did you travel on the car?

A Not very long.

Q About a half an hour?

A No, sir, not as long as that.

Q How long would you say?

A About fifteen minutes.

Q Was it a street car or the elevated road?

A A street car.

Q All the time that you were on the car for the fifteen minutes you felt that same sickness at your stomach and some dizziness in the head?

A Yes, sir.

Q Why didn't you ask him to take you home?

MR. CAFFERY: I object to that. I am prompted by a sense of my duty to object to this testimony as irrelevant, incompetent and immaterial. It cannot by any stretch of the imagination affects this girl's credibility.

THE COURT: I will allow it.

Q Why didn't you ask him to take you home?

A I did ask him.

Q Did he refuse to take you home?

A He said he would not take me there until I felt better.

Q When you got to the house on 26th street what kind of

A house was it? Private, tenement or flat house?

A A private house.

Q Was it a high stoop?

A Yes, sir.

Q How did you get in. Hold up your head please.

A Through the door.

Q I knew you did. Did you ring the bell or knock at the door or how? Rang the bell.

Q Who came to the door?

AA Woman.

Q Do you know her name?

A No, sir.

Q Then what happened when she got to the door?

A Then I do not know what he told her and then - -

Q What happened when you were there. Tell us what was said when you got to that door, and the woman came to the door at the place in 26th street, with Mr. Hollingsworth. Tell me all about it?

A The woman took me upstairs.

Q Didn't he say something to her before that?

A Yes, sir; that is what I was telling you.

Q You said the woman took you upstairs?

A Yes, sir.

Q Wasn't something said at the door, a greeting, or something said by her, was there anything, did you say hello Henry?

A No, sir; I don't know how she greeted him.

Q Was there anything said at the door?

A Nothing that I remember.

Q Well, then the only thing that you remember is that she took you upstairs?

A Yes, sir.

Q Into what kind of a room?

A It was a bedroom.

68

Q A bedroom?

A Yes, sir.

Q Did he go up with you?

A No.

Q Then what happened up in the bedroom?

A I was there from Wednesday until Sunday.

Q That was on Wednesday, what time did you say it was on Wednesday that you got into that room?

A I don't remember what time it was.

Q Was it the middle of the day, was it midday, evening or afternoon, or morning?

A It was in the afternoon.

Q How late in the afternoon?

A I don't know.

Q Was the sun set?

A No, sir.

Q That was long before you met this defendant, Benjamin Sherman?

A No, sir, it was only four days before.

Q Now, when you got up to the room what did the woman say to you, or you say to the woman?

A She said I should lay down.

Q Did you undress yourself?

A No, sir.

Q You didn't lie down in your clothes did you?

A I just took my coat out.

Q Had you had anything to eat that day?

A Yes, sir, I did in the morning.

Q This was in the afternoon?

A Yes, sir.

Q Weren't you hungry, didn't you say you were hungry?

A No, sir, I was not.

Q What is that?

A No, sir, I was not.

Q Now did this illness continue all the time, this sickness at your stomach?

A Yes, sir.

Q What is that?

A Yes, sir, it did.

Q Did she give you any medicine or anything to relieve you of that sickness at the stomach and the dizziness in the head?

A No.

Q Did you ask for any medicine?

A No, I did not that day.

Q She gave you nothing?

A No, sir.

Q Now when was it that Hollingsworth came up to that room?

A He didn't come.

Q Did you ask the woman how much it would cost to occupy the room?

A No, sir.

Q Did you hear any conversation between the woman and Hollingsworth as to who would pay for the room?

A No, sir- - yes, sir, I did.

Q What did you hear?

A He handed her some money. I don't know how much it was.

Q Do you know how much?

A I don't just remember.

Q Was it bills?

A No, sir.

Q He handed her some money the first time?

A Yes, sir.

Q Where did he hand the money to her in the hallway or upstairs?

A In the hallway.

Q Before you went upstairs?

A Yes, sir.

Q Did you tell him your name?

A Yes, sir.

Q What name did you give him?

A Viola.

Q Where did he hand the money to her? In the hallway or upstairs?

A In the hallway.

Q Before you went upstairs?

A Yes, sir.

Q Did you tell him your name?

A Yes, sir.

Q What name did you give him?

A Viola Muller.

Q You didn't tell him where you lived in Newark?

A No, sir, I told him I lived in Newark, that is all.

Q Give him any street number?

A No, sir.

Q No street number, is that right?

A Yes, sir.

Q He brought you there, gave the woman some money, how much you don't know and then the woman took you upstairs?

A Yes.

Q You stayed there Wednesday, Thursday, Friday, Saturday and Sunday. Did you pay the woman any money?

A No, sir.

Q You told this jury that in those days this man never came to see you, Hollingsworth?

A No, sir, he did not.

Q You did not see him?

A No, sir.

Q You have not seen him since?

A No, sir.

Q Did he tell you what business he was in?

A No, sir on the card it was some manager by the name of Simms.

Q What kind of business?

A I don't know; he didn't say.

Q Do you know why this man should have taken you to that place, and given money to that woman?

MR. CAFFERY: I object to that.

Q Do you know why?

MR. CAFFREY: I object to that as calling for the operation of the witness's mind.

THE COURT: If she knows why she may state.

Q You don't know why?

A What do you mean?

Q What is that? (No answer.)

Q Well, I want to know if you know why that man who was an absolute stranger to you, and whom you had never met before that afternoon, and to whom you complained you were sick would take you to a restaurant and then take you on a car to this 26th street house, pay the landlady- - I want to know why he paid the landlady to go to Newark and after he gave me the headache powder I was so sick he said I should go to that woman and that is why he told me to go there.

Q Being there four days didn't you learn the woman's name?

A No, sir.

Q Did you eat anything in that house those four days?

A I did.

Q Who furnished you with the food?

A She did.

Q Where?

A Down in the dining room? A was downstairs wither.

Q At the table?

A Yes, sir.

Q Who sat at the table besides yourself?

A Another little girl.

Q Anyone else?

A And a little boy four years old.

Q Now when you went into that house, Viola, did you have any money in your pocket?

A I did.

Q How much did you have in your pocket?

A I don't remember, I had a couple of dollars.

Q Did the woman or anybody else in that house during the four days that you were there restrain you of your liberty in any way?

A What do you mean?

Q In other words were you able to go out if you wanted to, or come back if you wanted to or walk around the house if you wanted to or go on the street if you wanted to?

A Yes, sir.

Q You could go wherever you liked?

A Yes, sir.

Q Nobody stopped you, is that right?

A Yes, sir.

Q Why didn't you go home then with a couple of dollars in your pocket?

A Because I didn't feel well.

Q You mean to say that the sickness continued for four days?

A Yes, sir.

Q And the dizziness continued for four days?

A It did.

Q Now, you thought that it would be necessary for you to pay your board and lodging in that place?

A She told me that it was paid.

Q Didn't you take his address?

A No, sir.

Q Wasn't you curious to know where he lived and who he was, and why he did this?

A I told you why he did it because I felt sick.

Q When did your sickness leave you?

A Sunday.

Q What time did your sickness leave you?

A In the afternoon.

Q What time in the afternoon did your sickness leave you?

A I don't remember.

Q Can't you fix approximately the time, or about the time?

THE COURT: Is that very material the precise time?

MR. LEVY: Now, you see your Honor, I have a purpose. It is upon that evening she claims to have met this defendant.

Your Honor sees the point of that.

THE COURT: But it is not very material.

MR. LEVY: I won't press it if your Honor doesn't think so.

THE COURT: I only wanted to save time.

MR. LEVY: I will take your Honor's suggestion.

BY MR. LEVY:

Q Now did you go out into the street during those four days?

A Only once.

Q You got there Wednesday was it the next day or the day after, Thursday or Friday?

A I don't know what day it was.

Q How long were you out on the street?

A Just a little while.

Q How long is a little while?

A About half an hour.

Q Where did you go to?

A Just took a little walk.

Q What is that?

A Just took a little walk.

Q Where did you walk to?

A I don't know.

Q Weren't you afraid you would lose your way going and couldn't find your way back?

A I just walked a few blocks and then walked back again.

Q Do you remember the names of any avenue you crossed?

A No, sir, I didn't see it.

Q Do you remember how many blocks about you walked?

A About eight or nine.

Q Can't you tell me the streets you crossed?

A No, sir.

Q Were you alone?

A Yes, sir.

Q You found your way back?

A Yes, sir.

Q In all those four days didn't you learn the name of the name in whose house you were?

A No, sir.

Q Didn't you ever ask her?

A No, sir.

Q You want these gentlemen and myself to understand as well that you sat at the woman's table with her children there and you slept in her house?

A Yes, sir.

Q And you never inquired what the woman's name was?

A No sir; only what I heard them call her.

Q What is that?

A Only what I heard them call her.

Q What did they call her?

A Miss Hannah.

Q The first name, the Christian name?

A I don't know if the was her first name, but they would sometimes inquire for her and ask for Miss Hannah.

75

Q Miss Hannah?

A Yes, sir.

Q Did you answer the door?

A No, sir.

Q You heard somebody inquire for Miss Hannah?

A Yes, sir.

Q Did you know the names of the children?

A Yes, sir.

Q That you knew?

A Yes, sir.

Q You played with the children during the day, didn't you?

A Yes, sir.

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow, June 18th, 1919, at 10.30 o'clock.)

PEOPLE vs. SHERMAN.

New York, June 18, 1919.

TRIAL RESUMED.

VIOLA MULLER, the complaining witness resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. LEVY:

Q We will go to that Sunday you left the house of the woman on 26th street before you met Sherman. You understand what I mean. Why did you leave that house that day?

A To take a walk.

Q What?

A To take a walk.

Q Did you intend when you left that house to return to it?

A I did.

Q Did you know the number of the house?

A No, sir.

Q Did you know how you could find it again?

A Yes, sir.

Q Had you any clothes with you other than those that you wore, have another skirt or anything of that sort?

A No, sir.

Q Did you during that walk that you took while living in the house with the woman whose name you don't remember buy any articles to wear?

A I did.

Q What?

A On the afternoon that I took the walk.

Q Do you remember what you bought?

A I do.

Q What did you buy?

A I bought some underclothing.

Q How much did you pay for the underclothing?

A I don't remember.

Q Can you give me any idea of about how much?

A Two or three dollars.

Q Two or three dollars?

A Yes, sir.

Q Do you remember the store that you went into to buy the clothes?

A Yes, sir.

Q Besides the underclothes what else, if anything, did you buy?

A Nothing.

Q Where did you get the money to pay for the underclothes?

A I had the money; it was my own.

Q You told me when you left Newark to see the sister of Beatty that you had about two dollars with you, do you remember telling me that yesterday?

A No, sir; I didn't say the amount that I had.

Q What is that?

A I did not name the amount that I had.

Q Do you remember telling me yesterday that you had about two dollars in your possession?

A I said I had a couple of dollars.

Q Did you take those clothes back to that boarding house on 26th street?

A Yes, sir.

Q Did the woman in that house during the time that you were there, four or five days, ask you your name?

A Yes, sir.

Q Did you give her your name?

A Yes, sir.

Q What name did you give her?

A Viola Muller.

Q Did she ask you where you lived?

A No, sir.

Q Did you tell her where you lived?

A No, sir.

Q Did you while there read the newspapers?

A No, sir.

Q Did you woman whom you lived with in that house speak

78

English?

A Yes, sir.

Q Did you see any other people in that house except that woman and her two children during those four or five days?

A No, sir.

Q Did you ever express to that woman a desire to go home?

A No, sir.

Q What is that?

A No, sir.

Q Now to go back just a moment, Viola, please, you say that Hollingsworth did not mention Beatty's name to you, is that right?

A Not that I know of.

Q Do you remember swearing in the police court or testifying in the Police Court to the effect that Hollingsworth came up to you and asked you whether you were looking for Beatty?

A I don't remember.

Q You don't remember?

A No, sir.

Q Did he or did he not ask you whether you were looking for Beatty?

A I don't know.

Q You don't know?

A No, sir.

Q When you came to New York to find Beatty's sister did you have any paper with you, any writing?

A I don't know.

Q And address or something of that sort?

A I don't know.

Q Did he write down the address of where his sister lived for you?

A I had it down on a piece of paper.

Q You had it on a piece of paper?

A Yes, sir.

Q Are you able to tell me which way it was that you took to get from Newark to this place, the address of which you had

Written upon a piece of paper, which way you came, what cars you took?

A I don't remember the cars I took; I know I came over in the subway, and when I got out I asked how to get the place.

Q Do you remember what station it was that you got off at?

A No, sir.

Q Now, you remember all the facts and circumstances that you have told this jury that happened to you between the time that you left work and up to the time that you Sherman, is that right?

A Yes, sir.

Q Do you remember all these things that you told us about?

A Yes, sir.

Q Do you?

A Yes, sir.

Q What is that?

A Yes, sir.

Q Don't nod your head, answer.

A I said yes.

Q What?

A Yes.

Q Do you remember all these things that you have been giving testimony about, that you have been telling these twelve gentlemen about that happened to you, and what was said to you and what you said between the time that you left Newark and the time you met Sherman?

A Yes, sir, I do.

Q You do remember all of them?

A Yes, sir.

Q Now, let me see. Do you remember under oath testifying before the Magistrate in the police court - I am talking of when you were arrested - - you were taken to the police court,

you remember that, don't you?(No answer.)

Q Don't you remember it?

A I think I do.

Q You remember that you took an oath to tell the truth, do you remember that?

A Yes, sir.

Q Now were these questions put to you, and did you make these answers: I want you please to pay close attention to my reading of them, and if you don't understand them stop me. I will try to read them to you again. I am reading from page 19 "Your mother testified that you left on the 9th of April. Do you remember what happened to you on that day?

A No, I don't.

Q The 9th of April -- before the ninth of April were you sick?

A Not that I know of.

Q Do you know who you went with from your home to New York?

A No.

Q Did you meet with any one?

A.I don't remember.

Q Do you know a man named Harry Beatty?

A. I have heard that name.

Q How did you come to hear that name?

A Well, I don't know. I had it on a piece of paper."

Do you remember testifying to that.

A I do.

Q Was it true?

A It was.

Q Was it true that you could not remember who you came from Newark to New York with?

A No, sir; I could not.

Q Was it true or not true?

A True.

Q Who did you come from Newark to New York with?

A I

81

came by myself.

Q Then what did you mean when you swore in that other court:

"Q Do you know who went with you from your, home to New York", and you said no.

Q Did you go with anyone.

A.I don't remember."

Now which is the truthful story that which you swore to there or that which you are swearing to here?

A When I was up in the police court it was a shock; I could not remember.

Q What shock are you referring to, being arrested?

A No, sir.

Q Well, what shock did you have on that day?

A Not on that day.

Q When you went to the police court?

A It was from the house in Stuyvesant street.

Q But you had been living for five days nearly in the house of that other woman?

A Yes, sir.

Q Did you have any shocks there?

A No, sir.

Q Did this defendant do anything to you there?

A No, sir.

Q Make any approach to you at all while there?

A No, sir.

Q You were treated in that house in a very kindly way, were you not?

A Yes, sir.

Q You were treated as if you were a member of the family, were you not?

A I was.

Q You mingled with the children of the household, didn't

82

you?

A Yes, sir.

Q You ate at the same table with the family?

A I did.

Q You took part in all their family affairs. didn't you?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q They are some religious observances, didn't they, at that time, some ceremonies at the time you were living there. Perhaps I can remind you it was a Jewish holiday, wasn't it, the Passover, is that right?

A Yes, sir.

Q Answer me please?

A Yes, sir.

Q They sat in the evening of the Passover around a table and had a service relating to the Passover in the family, didn't they?

A Yes, sir.

Q You sat with them as a member of the family, and took part in these services with them, didn't you?

A Yes, sir.

Q You were given a book to read, and you read the service out of the book while these services were going on, didn't you?

A No, sir.

Q Well, you heard the services read, didn't you?

A Yes.

Q Did you?

A Yes, sir.

Q Now then you say that in the police court when you got there that was on the 23rd of April, which was several days after you were arrested, isn't that so?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q Where were you between the time of your arrest and the

time you went to the police court?

A In the hospital.

Q In the hospital?

A Yes, sir.

Q Well, what shock were you suffering from on the day you gave your testimony in the police court. Can you tell me?

A Just what I told you.

THE COURT: What did you tell him. What was it?

MR. LEVY: Answer the Judge's question. What was the shock?

THE WITNESS: The shock of the day in Stuyvesant street.

MR. LEVY: Your Honor heard me read certain contradictory statements?

THE COURT: Yes.

BY MR. LEVY:

Q Now, I will go on. Were these questions put to you and did you make these answers: "Did you have any other name written on the piece of paper?"

A I don't remember.

Q. Had you ever met this man whom you told a police officer was Harry Beatty?

A I can't remember anything. I never met him here."

Did you say that?

A I don't remember.

Q Under oath?

A I don't remember.

Q Were these questions put to you "Never met him here- - here where I am in New York.

Q Where did you meet him? A I don't know. Did you say that?

A Yes, sir.

84

Q Was it true?

A I couldn't remember that.

Q You couldn't remember that?

A No, sir.

Q Now Miss Vinola have you ever been in Boston?

A No.

Q Did you ever got to Boston with Beatty?

A No.

Q Now then were these questions put to you, and did you answer under oath "Did you go with him to Boston?"

A Not that I know of."

Q Was that the answer? Did you say that?

A "No that I know of. Did you testify to that as I have read it to you just now?"

A Yes, sir.

Q Were these questions put to you, and did you make answer under oath as follows: "Do you know what happened to you from the 9th day of April until today (that day being the day that you were being examined in the police court.) I will read it again. "Do you know what happened to you from the 9th of April until today. Do you know what has been happening to you?"

A No; but I know since I have been here --

Q Since you have been where?

A Here in New York, Since I met Mr. Sherman.

Q When did you meet him?

A On Sunday.

Q What date, do you know?

A No, I don't know the date.

Q You said last Sunday?

A No, it wasn't last Sunday, it was the Sunday before. The last Sunday I was in the hospital.

Q And the Sunday before was the 13th, do you know that?

A I don't know what date it was.

Q Do you know what happened to you from the day you left

your mother in Newark until you met this man Sherman in New York?

A No, sir, I don't remember.

Did you answer that that way?

A Yes, but I remember now.

Q What is that?

A Yes, but I remember now.

Q Didn't you remember what happened to you from the time you left your mother until you met Sherman?

A I did not remember then.

Q Well, has your memory come back to you?

A Yes.

THE COURT: Let me ask you this question. Does that question which you just propounded cover the period when she says that intercourse was had with her?

MR. LEVY: It brings us up to that evening, from the time she left home including the time she was with Hollingsworth?

MR. CAFFREY: It includes the period before she left Sherman.

BY MR. LEVY:

Q Were these questions put to you: "Do you know what happened to you". This was in the police court on the 23rd of April.

Q Do you know what happened to you at all?

A No.

Q Nothing at all?

A Nothing at all.

Q Your mind is a blank?

A I don't know.

Q What were you doing in New York that day? A I don't know". Now did you answer those questions as I have read to you from these official minutes?

A I don't remember.

86

Q You don't remember that at all?

A No, sir.

Q Did you lose your memory again?

A No, sir.

Q You don't remember then what you swore to in the police court before the Magistrate?

A Not sir.

Q Then I want to ask you- - when you were arrested did the police ask you your name?

A I don't remember.

Q Did the police ask you when you were arrested where you lived?

A I don't know.

Q Did you give any one the name of Mayton or Martin?

A No.

Q Pause a moment and think. Try to recollect?

A Not that I know of.

Q Did you give that name to any policeman, the defendant Sherman or anyone else?

A No. sir, not that I remember.

Q You say no or you don't remember?

A Not that I remember.

Q Now, then, coming down to that evening of the 13th, that is the date, isn't it?

MR. CAFFREY: Yes, the 13th of April.

Q (Continuing) What time was it that you left the house on 26th street, the house of the woman whose name you do not remember?

A It was late in the afternoon.

Q How late in the afternoon?

A Between five and six.

Q What time was it, that you met Sherman, the defendant?

A It was near 10 o'clock.

Q So there were about five hours time elapsed between the

time that you left the house and the time that you met the defendant?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Now I want you to tell his Honor and the jury what you did and where you went during those five hours?

A I was only just walking.

Q Walking for five hours?

A Yes, sir.

Q Do you know where you walked. Did you stop in any place. Did you get any refreshments?

A No.

Q Did you get anything to eat or drink at all?

A No.

Q Why didn't you go home?

A I don't know.

Q You had money in your pocket, didn't you?

A Yes.

Q You knew that the tube would take you to Newark, didn't you?

A No.

Q You didn't know that?

A No.

Q Didn't you come from Newark in the tube?

A Yes.

Q Then you knew the tube would take you back again?

A I don't know.

Q You didn't know that?

A No, sir.

Q Now when you met Sherman where were you and where was he?

A I do not know where he was.

Q Was it in a store or on the street?

A On the street.

Q Don't you know whereabouts?

A On the sidewalk.

Q Whereabouts, what street?

A Broadway.

Q How long had you been on Broadway that evening before you met the defendant

A Not very long.

88

Q About?

A I don't know.

Q Were you there an hour walking Broadway?

A No.

Q Do I understand you during all those five hours you walked all the time?

A I did.

Q Did you sit down anywhere to rest?

A I did once.

Q Where?

A I don't know, some park.

Q How long did you sit there?

A Not very long.

Q An hour or half an hour or ten minutes?

A Just a couple of minutes.

Q Will you please tell these gentlemen why, for what purpose, if any, you took a five hour walk, Give me some explanation, the best you can?

A I don't know.

Q Were you afraid to go back to that woman's house again?

A No.

Q You had not quarreled with the woman?

A No.

Q Now when you saw him on the sidewalk was he alone?

A Yes.

Q Did he approach you or did you approach him?

A He came up to me.

Q You do remember what he said to you. Do you remember what he said to you?

A Yes.

Q That you can remember?

A Yes, sir.

Q You weren't dizzy then, were you?

A I don't remember.

Q You don't remember?

A No, sir.

Q You weren't feeling sick at the stomach then, were you?

A No.

Q Were you feeling sick at the stomach then?

A I don't know.

Q You don't know?

A No, sir.

Q Now you say you remember what he said to you, what was it that he said to you?

A He asked me if he could walk with me.

Q What did you say?

A I didn't reply anything, but I kept on walking.

Q Before I go on, I want to ask if you were dressed any differently then than when you met the defendant?

A Yes sit.

Q About your hair or your hat. Did you have your hair done up?

A I had it just like this.

Q Just as it is now?

A Yes, sir.

Q You kept on walking, did he walk with you?

A Yes, sir.

Q How far?

A About a block.

Q Did you have a veil on?

A No, not then.

Q When did you put on the veil?

A When I went in the house in 26th street.

Q Whose house?

A Mrs. Gries.

Q The woman whose name you can't remember?

A Mrs. Gries.

Q Did you go out and buy the veil?

A Yes, sir.

Q What is that?

A Yes.

Q Did you want to conceal your appearance?

A No.

Q So that you could not be recognized that you put on that veil?

A No.

Q Now you kept on walking about a block then what was done.

You talked together while walking, did you?

A No. He started showing his Masonic emblem.

Q Hadn't you been crying just before that?

A No.

Q Weren't your eyes somewhat swollen from crying?

A No.

Q Do you remember going up to him and saying to him, "I see you are wearing a Masonic emblem. My father is a Mason, and I want you to help me?"

A No.

Q Try and recollect.

A No, sir, I remember that distinctly; I did not go up to him; I remember that distinctly.

Q Well, leave out the words "you went up to him". Do you remember saying to him, "I see that you are wearing a Masonic emblem." My father is a Mason, and I am in trouble and I want you to help me."

A No.

Q You say you did not or you don't remember?

A No, sir, I did not.

Q What is that?

A I did not. My father is not a Mason.

Q You say that this man himself volunteered to you the statement that he was a Mason?

A Yes.

Q Was there anything which led up to it, that induced him to tell you that?

A Yes; he said that he was a Mason, and that I should not be afraid of him, he said, "because all Masons are good men."

Q Wasn't that brought on by the statement that you said your father was a Mason, and you were in trouble?

A No.

Q Did you speak about your father being a Mason?

A No.

Q Your mother being connected with the ladies part of

Masonry or anything of that sort?

A No.

Q Nothing of that. sort?

A No.

BY THE COURT:

Q Where was your father born?

A I think it was in Germany.

Q What part of Germany?

A I don't know.

Q Where was your mother born?

A I don't know if my mother was born here or not.

BY MR. LEVY:

Q Did you tell this man you were an orphan?

A No.

Q Did you tell anyone among all those people whom you met during this unfortunate period, did you tell any of them that you were an orphan?

A No.

Q What is that?

A No, but--

Q Well, but what?

A Mr. Sherman told me to say that, that I was an orphan.

Q Did he ask you where your parents lived?

A No.

Q Or where you lived?

A No.

Q Did you tell him that you were a Jewess?

A No.

Q Think now, did you tell Mrs. Gries that you were a Jewess?

A No, sir; he told her.

Q Did you tell her that?

A No, sir. Mr. Sherman told her I was.

Q Well I am asking you whether you told her as well that you were a Jewess

A No.

Q What do you say to that yes or no?

A No, sir.

Q Did you tell the other woman in Stuyvesant Place that you were a Jewess?

A No.

Q Did you have any talk with the woman in Stuyvesant Place at all?

A She told me about her tooth; she complained about it.

Q Where did you get your breakfast the morning that you left the Stuyvesant street house?

A In a restaurant.

Q Do you know where that restaurant is located?

A Yes.

Q What is that?

A Yes.

Q Where?

A A place near Stuyvesant street.

Q Now after he said Masons are all good men what did you say to him?

A I didn't say anything.

Q Did you keep on walking?

A Yes.

Q How long did you keep on walking?

A Not very long.

Q About, how long, you know the time don't you, you can tell the time, can't you?

A Yes.

Q You know the difference between a minute and an hour, don't you?

A Yes.

Q How long did you keep on walking?

A I don't remember.

Q Well, give me your best idea?

A Well about a half an hour.

Q During that half an hour you kept on talking to each other, didn't you?

A No.

Q You don't mean to say you walked together about conversing or talking to each other?

A He talked to me.

Q Didn't you make any answer?

A No.

Q Was he asking you questions?

A I don't remember.

Q What was he talking about?

A Well, telling me all about that he was a Mason; showed me a ring and showed me a watch.

Q But it didn't take half an hour to tell you that, did it?

A No.

Q What else did he talk about?

A He didn't talk about anything.

Q Nothing?

A No, sir; he said that he was going to take me to this lady's house, Mrs. Voes.

Q He told you he was going to take you where?

A Mrs. Voss's.

Q Mentioned her name?

A No, sir; not then.

Q Did he say to you when he was going to take you to Mrs. Voss's house?

A No, sir.

Q Did you ask him why he was going to take you there for?

A No.

Q Weren't you curious to know why he wanted take you to that woman?

A I don't know.

Q What is that?

A I don't know.

Q Didn't you ask him what kind of a place it was where he was going to take you, and what he has going to take you there for?

A He said it was on Stuyvesant street; he told me.

Q Did he tell you what he was going to take you there for?

A No.

Q Didn't he tell you anything, or give you any reason for wanting to take you there?

A No.

Q Did you tell him that you had a home?

A No.

Q Did you tell him where you were living?

A No.

Q Did he say anything to you about staying in that place or sleeping in that place over night?

A Yes.

Q Did you tell him that you had a place to go to sleep?

A Yes.

Q What did you say about that, tell me what you said about it?

A I don't just remember what I said about it. He said I shouldn't go there, I should come to this place on Stuyvesant street.

Q Didn't he say that you didn't want to go to Stuyvesant street?

A I didn't say anything.

Q He merely was suggesting to you that he would take you to a room in Stuyvesant street, and you willingly went along, is that what you mean to say?

A Yes.

Q While you were walking - - you say you met him about 10 o'clock - - did you stop in any place?

A Yes.

Q Where did you stop?

A In a drug store.

Q Do you know where that drug store was located?

A No.

Q Did you get any refreshments in that drug store?

A Yes

Q What did you get?

A A hot chocolate.

Q Now did you have in your mind Viola,-- pay attention to this question - - did you have in your mind anything that would

enlighten you as to what the purpose was for going to Stuyvesant street?

A I do not know what you mean.

Q I will have to put it simply. What did you think you were going to Stuyvesant street for?

A I don't know.

Q Was it for a good purpose or a bad purpose that you had in your mind that you were to go to Stuyvesant?

A I had no bad purpose.

Q He didn't say anything bad to you, did he?

A No.

Q He didn't use any bad language to you?

A No.

Q He spoke kindly to you, didn't he?

A Yes.

Q In all the time that you saw him did he say one word that was bad or wrong to you?

A No.

Q Now after getting that chocolate you went down to see this woman at Stuyvesant street, but before doing so did he talk with you in the drug store about any matter or anything?

A No.

Q No.

A No, sir.

Q Did he say to you that he was going to put you in good hands?

A Yes.

Q Do you know what it was that you said to him that caused him to say to you, in that drug store, "I will put you in good hands"?

A No. He said "tomorrow morning I am going to take you to another lady and see that you are put in good hands". I don't know why he said that.

Q Didn't he say to you, "I will get you a place to sleep tonight but tomorrow I will be able to take you to a good woman

who will take care of you?

A No.

Q Anything like it?

A No.

Q Didn't you say something about it being late at night, and it would be hard to get some place to sleep?

A No.

Q Didn't he say he didn't want you to go to a hotel?

A No sir, he didn't say anything about a hotel.

Q Did you understand what he meant when he said that he was going to see that you were placed in good hands. What did you understand by that?

A I don't know.

Q Now didn't you tell him that you had no one to take care of you?

A No.

Q I will read to you from page 92 of the official minutes in the police court, and ask you if these questions were put to you, and did you make these answers. Please pay close attention to my reading. Were these questions put to you and did you answer them as I shall read to you. Do you understand that, do you, you understand what I am saying to you?

A Yes.

Q You do understand. Now then all right. List en. "Can you remember any conversation had between yourself and this defendant while walking from the drug store where you had this chocolate

A He said he would take care of me, and put me in good hands.

Q He said he would take care of you, and put you in good hands?

A Yes.

Q Had you said anything to him before that?

A I don't

remember anything. I said I didn't have any one." I am reading to you now from the official minutes taken stenographically in that court. I ask you did you so testify-- that you didn't have any one, that you told him that you had no one?

A No.

Q You didn't tell him that?

A No.

Q You didn't say this in the court?

A No, sir; he told me to tell that lady where I was that I didn't have any one.

Q I am not talking of that. Here you were under oath before a Judge, and you were sworn to tell the truth. Now, before this Judge you swore, according to this official record, that you told this defendant that night when you were leaving the drug Store that you didn't have any one?

A I don't remember.

Q Did you tell that to the Judge in that court, did you swear to that?

A I don't remember.

Q Is that the best answer that you can give me, that you don't remember?

A Yes, sir.

Q Is your story now true or is the story you told up there true that you didn't have any one?

A I am telling you all the truth.

Q Do you remember what was said when you got to Stuyvesant street by the defendant Sherman to the woman and by the woman to him, or by either one of the three of you?

A Yes.

Q Now you tell me what was said?

A Mr. Sherman rang the bell, the woman came to the door, and she said,-- called him by his name, and she said, "Helloe Bennie", and he said,

"have you got my room", and she said, "Yes, I expected you earlier", and she asked him why he was late, and he said, he had been to the theatre. Then she let him in and she complained about her tooth and the neuralgia. She opened the room.

Q I want nothing but what was said.

A That is all.

Q The language?

A Yes, sir.

Q Is that all that was said?

A Yes, sir.

Q Sure now?

A Yes.

Q You understood it all, didn't you?

A Well, she said that half in English.

Q Well, English you understand?

A Yes, sir.

Q German you understand?

A I understand some German.

Q Some German?

A Yes, sir.

Q Did you understand what she said that night?

A Yes.

Q Sure about that?

A Yes.

Q Now I again read to you from page 10 of the official minutes of what you swore to before the Magistrate:

Q Did he say anything to the lady?" (No answer.)

Q I am asking you whether you gave this answer in court under oath: "Did he say anything to the lady?"

A. He wanted a room. That is all.

Q What did the lady say?

A I don't know what she said. She didn't say it in English."

Did you swear to that?

A Yes, I could not remember.

Q Was it true that you didn't know what she said?

A I

couldn't get all of their conversation.

Q You have given what purports to be the conversation now "How are you Bennie, why are you late", and all that sort of thing?

A Yes, sir.

Q Did she speak in English?

A That was half in English. Some words were in English, and some were not.

Q Now then we will pass from that. You were going into the room?

A Yes, sir.

Q Was it a large room?

A Yes, sir.

Q How was it furnished?

A It had two dra were and a desk and a chair and a rocker.

Q One chair?

A I don't remember how many.

Q Are you able to tell this jury according to your best recollection what time that was that you got to that house?

A Between ten and eleven.

Q You told me it was ten o'clock when you met him on Broadway?

A Yes.

Q How long after the time you went into the drug store was this?

A What do you mean?

Q How long after you left the drugstore and got the hot chocolate was it that you reached the house?

A Just a couple of. minutes.

Q A couple of minutes?

A Yes, sir.

Q You don't mean that?

A Yes, sir.

Q You must bear in mind it was on Broadway you had the chocolate?

A Yes.

Q Isn't that so?

A Yes, sir.

Q Uptown on Broadway wasn't it?

A I don't know.

Q You had to take a car to come down?

A Yes, sir.

Q Isn't that so?

A Yes.

Q How long did you ride on the car?

A About fifteen minutes.

Q So it was quite a distance to come down when you took the car you got down and then you walked east, didn't you?

A Yes, sir, three blocks.

Q So it was not a couple of minutes after you got the chocolate, it was quite some little time wasn't it at least a quarter of an hour?

A Yes.

Q Now when you got up in the room, did he come up after you?

A Yes.

Q Did you have a wrap or coat?

A Yes, sir.

Q You took that off, didn't you?

A Not as soon as I walked in.

Q I don't mean that minute but you did take your coat off?

A Yes.

Q Did you say to the woman anything about not wanting to sleep there?

A Yes.

Q Did you tell her anything about having a home to which you could go?

A No, she didn't speak to me at all.

Q When you went into that room did you have it in your mind that you were going to sleep there that night?

A Yes, sir.

Q What is that?

A Yes.

Q When did you make up your mind you were going to sleep there that night?

A I don't know.

Q What is that?

A I don't know.

Q You don't know?

A No, sir.

Q Did you make up your mind when you met Sherman after you got the soda and while riding on the street cars-- when was it you made up your mind you were going to sleep in Stuyvesant?

A I don't remember.

Q What is that?

A I don't remember.

Q Did you think it was right for you to leave the other place, and sleep in this place?

A I don't know if it was right.

Q Were you afraid?

A Well, I was going to be there all alone I thought.

Q Were you afraid to sleep there at this Stuyvesant street house?

A No, because- -

Q Were you afraid to sleep there?

A No, sir, because I thought I was going to be all alone.

Q You were not afraid to sleep there?

A No, sir, not if I had been alone.

Q Well, once again I must ask you why didn't you go back to the house on 26th street where you had a room?

A Because he told me he wanted me to go to this place on Stuyvesant street.

Q Were you in love with him?

A No.

Q Did he fascinate you, do you know what that word means?

A Yes.

Q Did he fascinate you?

A No.

Q Did he give you any reason or argument why the Stuyvesant street house was a better place to sleep in than the 26th street place you were sleeping in?

A No, sir.

Q How long after that was it that you undressed yourself?

A A couple of minutes after.

Q Before you undressed yourself did you turn out the light.

A Yes.

Q Who turned out the light?

A Mr. Sherman.

Q Did you ask him to turn out the light?

A Yes.

Q Did you ask him to leave the room?

A I think he told he was going to go back to Brooklyn where he lived and then when the woman went out he said it was too late now to go back because he would have to be in his place of business by half past eight; he said he was going to stay there.

Q Did you protest against his staying there?

A I did.

Q Object to it?

A I did.

Q What?

A I did.

Q What language did you use, tell me, what did you say?

A I said he couldn't stay there unless he would have another room.

Q Then what did he say?

A He said he could not bother her to fix up a room.

Q What did you say?

A Then I didn't say anything, then he said he would sit up in a chair.

Q Was this conversation about his sleeping in a chair or sitting in a chair before the light was put out or after?

A Before the light was put out.

Q Did he undress himself?

A I don't know.

Q You don't know?

A No, sir.

Q Did you see him undress himself?

A I could not.

Q You did not?

A But he did.

Q When the light was turned out he was fully dressed?

A Yes, sir.

Q Did he wear an overcoat?

A I don't know, if he did.

Q As a matter of fact do you know how he was dressed at all?

A I don't know.

Q Do you know what kind of a hat he wore?

A I think it was a derby hat.

Q What is that?

A I think it was a derby hat.

Q Aren't you sure of that?

A I think it was

Q You don't know the color of it?

A Black.

Q You can't remember whether he had an overcoat on?

A I don't remember.

Q This was in April?

A I don't know.

Q Then while you were in bed the lights were out, did he light the light again?

A No.

Q Have you any idea as to how long a time it took you to fall asleep?

A I don't know.

Q During the time that you were lying in the bed in the dark, didn't he speak to you at all?

A No.

Q Then did you speak to him?

A No.

Q Are you able to say whether you fell asleep immediately or very soon, or a long time after you got into bed?

A Quite awhile after I got into bed.

Q Quite awhile?

A Yes, sir.

Q What do you call quite awhile?

A I don't know.

Q Would you say an hour was quite awhile?

A I don't know; it took me sometime to fall asleep.

Q While you were lying in bed in the dark this man seated, as you say, in a chair and you undressed in the bed were you afraid at all?

A Well, I took his word that he was going to sit on the chair.

Q The question is were you afraid, yes or no.

A Afraid of what?

Q Afraid of him?

A I took his word.

Q Now you say that you were awakened during the night?

A Yes, sir.

Q What was it that woke you up?

A Mr. Sherman.

Q How did he wake you? Shake you or holler at you?

A I don't remember.

Q Did he speak to you when you awoke?

A I don't know.

Q You don't mean to say that you don't remember anything was said by him when he awoke you?

A I don't think anything was said.

Q Nothing at all?

A I don't remember.

Q Now you told his Honor and the jury yesterday that this defendant-- you used the word-- had intercourse with you at that time. Now do you know what intercourse is?

A Yes.

Q Who told you what intercourse was?

A A lady by the name of Mrs. Wingate.

Q Where did Mrs. Wingate tell you what sexual intercourse meant?

A She told me before I went before the Grand Jury.

Q Who is Mrs. Wingate?

A A matron in the Society.

Q Did she tell you if the Grand jurors were to ask you what it meant that you should explain it to them?

A Yes, sir.

Q Did she tell you in explanation that sexual intercourse meant a man putting his private parts into the private part of a woman?

A Yes, sir.

Q That is what she told you?

A Yes, sir.

Q She told you when, you got before the Grand Jury that you should say that that was what he did to you that night?

A No, sir, she didn't tell me to say it because I knew he did it.

Q What did she tell you to say about it?

A She asked me if I knew what it meant.

Q What else, go on. Tell me what she told you?

A She told me what it meant.

MR. CAFFREY: When the witness started to answer I bent forward to catch her answer and "Mr. Levy said, "Don't do that again" inferring that I was acting improperly, and then he tells the witness not to look at me as though

she was looking for some suggestion or signal from me. Now I resent that. The witness was not looking at me. I simply bent forward not to convey any impression to the witness but only to catch her answer. I think these little tricks as we go along ought to be stopped. We all know why it is done. It is for the benefit of the jury but it isn't fair to me.

MR. LEVY: There was an apparent signaling to the witness.

MR. CAFFREY: It isn't so, and I resent it. If this thing is going to go on I will be on my feet the rest of the day.

THE COURT: You will not without the Court's permission.

MR. CAFFREY: I am going to get on my feet every time he makes an insulting remark of that kind and I will ask the Court's protection from such insults. Now, I made no signals and never attempted to do such a thing. I simply bent forward to catch her answer.

THE COURT: I don't suppose you did anything like that or anything intentionally wrong. I don't think the District Attorney ought to be so sensitive.

MR. CAFFREY: I am not sensitive, but I don't think these remarks ought to be allowed to be made. I hope the jury will watch me from now to see if I give any signals.

BY MR. LEVY:

Q Now Viola we were discussing Mrs. Wingate. Did she tell you, Mrs. Wingate, that very likely the Grand Jurors would ask you what you understood by sexual intercourse. Do you understand?

A No, sir.

Q I will put it again in another way. Did she tell you why she explained what sexual intercourse meant?

A Yes, sir.

Q Now what did she say was the reason that she explained what sexual intercourse means?

A She said because the Grand Jury because the Grand Jury always asked what sexual intercourse Meany so that I would know what they were talking about and what it meant.

Q Did she tell you something more?

A No, sir.

Q Then what did she say to you sexual intercourse meant, what did she tell you?

A She said that intercourse was when a man puts his private into a woman's private.

Q Is that all she said?

A Yes, sir.

Q Stop and think now?

A Yes, sir.

Q Is that, all she said?

A Yes, sir.

Q Take your time and think now. Tell us what she told you about your testimony, if you should be questioned about it before the Grand Jury?

A She just told me to tell the truth about it, that is all.

Q What else?

A I don't think she said anything more about it.

Q She said nothing more?

A I don't think so; I am not

Q Now you said here yesterday, Viola, that he did put his privates into yours. You remember that don't you?

A Yes.

Q To you remember what you said about that when you were a witness before the Magistrate, in the police court testifying under oath. Did you say the same thing then?

A I don't know.

Q You don't know?

A No.

Q Is that the best answer that you can give me?

A Yes.

Q Didn't you say in the police court, under oath, that he didn't have intercourse with you?

A I didn't say it.

Q That you wouldn't let him?

A No, I didn't say that.

Q Now let us see at page 12 of the minutes I am going to read you some questions and answers purporting to have been made by you under oath. Pay close attention if you please, and then I will ask you whether you swore to what I am going to read to you before the Magistrate in -the police court. You understand that?

A Yes, sir.

Q You understand what I am saying to you now. Why do you hesitate?

A I said yes.

Q Please now pay attention to these questions: "Did he do anything in bed?"

A. No, I didn't let him.

Q You say you didn't let him do, anything?

A No, I didn't let him do anything to me.

Q So he didn't do anything to you in bed?

A He touched me."

Were those questions put you and did you make the answers I just read before the Judge under oath?

A Yes.

THE COURT: She said yes she testified to that.

Q Was it the truth?

A Yes, sir.

BY THE COURT:

Q Having told the truth in the Magistrates Court how do you reconcile that with what you testified to here when you say he did have something to do with you?

A Well, they put the questions different then.

THE COURT: Will you find out who put the questions to her in the Magistrates Court?

MR. LEVY: Yes. sir. I have the record here. The District Attorney's office was represented by the Assistant, Mr. Daniel Drenzo. This was before Judge William.

A Sweetser on the 23rd of April, 1919, in the Fourth Magistrates Court. The defendant was represented in that examination by Mr. Barnett Koppelman of 320 Broadway, and the record which I have here was taken by "Frederick A. Baker; Official Stenographer of the court.

Q Now when you say that they put the questions to you differently what do you mean?

A I didn't understand.

Q Now let me see, one of those questions was repeated twice-- they were in English, were they not?

A I don't know.

Q Isn't that so?

A What is that?

Q You don't mean to say that you don't understand English?

A I do.

Q Now let me read it to you again, three times now. You said the same thing, "Did he do anything in bed?"

A No, I didn't let him."

You understood that question, didn't you, put to you in plain English?

A No.

Q Didn't you understand it?

A No.

Q You understand it now?

A Yes.

Q You mean to say you answered when the question was put to you "Did he do anything to you in bed?"

A No, I didn't let him", you didn't understand that question?

A I didn't understand it.

BY THE COURT:

Q What did you mean when you said you didn't let him, what did you mean?

A I told they meant did he touch me with his hands.

BY MR. LEVY:

Q Now the next question was put to you? "You say that you didn't let him do anything?"

A No, I didn't let him do anything to me." You added the words in the second answer "to me". Did you make that answer? "No, I didn't let him do anything to me." Is that true, was it true or wants it true?

A Well, I didn't let him touch me with his hands, did I?

Q You understood the, question, didn't you, as to whether he did anything to you, and you said no, you wouldn't let him?

A I didn't understand it thoroughly.

Q Well the question was put to you two or three times and you answered the same way, didn't you, that you wouldn't let him touch you, that you wouldn't let him do anything to you?

A I didn't understand it.

Q Now these other questions. You say he touched you, is that right?

A Yes. You understood that, didn't you?

A I didn't understand you.

Q You did not. I will read it again.

Q Was this question put to you and this answer made by you "You say he touched you, is that right?"

A Yes.

Q On what part of the body did he touch you?

A He wanted to kiss me.

Q What else, anything else. Tell the stenographer if you don't want to tell me?

A He wanted to touch the private part of my body.

Q Did he?

A Yes.

Q With his hand only?

A Yes.

Q Is that all he did?

A Yes."

A No, sir.

Q Now did you understand those questions?

A I was afraid to say it.

(At this point the witness begins to cry.)

(After a lapse of several minutes.)

THE COURT: Are you sufficiently composed to go on.

(No answer.)

MR. LEVY: If it will help the young woman to compose herself I would be glad if we had an adjournment now.

THE COURT: Are you sufficiently composed to go on.

THE WITNESS: I do not want to go on.

(At this point the Court takes a recess for fifteen minutes.)

(At 12.30 the Court takes a recess until 2 o'clock.)

AFTER RECESS (2 p.m.)

SELMA VOSS, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAFFREY:

Q Where do you live?

A 26 Stuyvesant Place.

Q New York County?

A Yes, sir.

Q Now did you conduct a rooming place at 27 Stuyvesant street, in the County of New York on April 13th, 1919?

A Yes.

Q Do you speak English perfectly?

A No, sir, I wish to talk German.

Q Are you still keeping a furnished room house?

A Yes, sir, I am the housekeeper.

Q Still conducting it?

A Yes, sir.

Q Now do you know the defendant that the bar, "Benjamin Sherman?"

A Yes, sir.

Q How long have you known him?

A Three years.

Q Do you remember the night of the 13th of April, 1919?

A Yes, sir.

Q Did you see the defendant at your house that night?

A Yes, sir.

Q Sherman, at your house that night?

A Yes, sir.

Q About what hour?

A About 11 o'clock or half past 11.

Q Now, did the defendant come in the house?

A Yes, sir.

Q Tell the jury how he came in.

A He rang the bell, I go upstairs, I open the door, and Mr. Sherman came in and said, "Mrs. Voss, you go a room for me", and I let him right into the parlor.

Q He rang the bell?

A Yes, sir.

Q Where were you downstairs in the basement.

Q You came up?

A Yes, sir.

Q One flight of stairs?

A Yes, sir.

Q How many rooms on that floor, the first floor?

A There is in the front part of it, only the front and then the back.

Q Parlors?

A Yes, sir- - a small room and then the back parlor.

Q A small room or two small rooms?

A Then the back parlor, a small room in the front where the boss lived.

Q How many rooms have you there?

A Two rooms the back parlor and a small room where the boss lived.

Q Who is the boss, your husband?

A No, sir.

Q The boss of the house?

A Yes, sir; he lived in the house, a friend of my husband.

Q Then is there anything between those two rooms, the

back and the front is there a hall there?

A Yes, sir, a small hall, between the back parlor there is a small hall and the front room.

Q How about a door?

A Two doors, right here, this is the back parlor and here is the front room.

Q What is between them a small hall?

A A small hall.

Q Now, when you went upstairs you opened the door?

A Yes, sir.

Q Who was at the door?

A Mr. Sherman, and a lady.

Q Who was the other person?

A A lady was there.

Q A lady?

A Yes, sir.

Q Now tell us exactly what was said by the defendant, what Bennie Bald?

A Bennie told me, Mrs. Voss, you have a room for me, and I told him I got the back parlor empty, that is what I told him.

Q Did you say that to him?

A Yes, I got the back parlor empty.

Q Now then what did you do after you told him that?

A I opened the door and Mr. Bennie goes in.

Q You opened the door?

A Yes, sir.

Q The back parlor door?

A Yes, sir.

Q With a key?

A Yes, sir, with a key.

Q And Bennie and this woman went into the room?

A Yes.

Q Now was there a light in the hall?

A No, sir, the hall was dark; I couldn't see the lady in the face.

Q And after you got into the back parlor what was done there, what was said in the back parlor?

A He gave me two dollars on the room and I go downstairs.

Q Who gave you the two dollars?

A Mr. Bennie.

Q What did Mr. Bennie say when he gave you the two dollars?

A He gave me two dollars deposit on the room, and I go downstairs.

Q Did he say anything when he handed you the two dollars?

A He gave me it in the hand.

Q He gave it to you in the hand?

A Yes, sir.

Q What did he say when he handed you the two?

A I was excited and I went downstairs.

Q Now when you got in the room, did you light the gas?

A Mr. Bennie makes the gas and I go downstairs.

Q Did you say anything to Mr. Bennie about your husband?

A No, sir, Mr. Bennie gave me a cigar for Mr. Voss, won't you take a cigar for your husband.

Q He gave you then a cigar for your husband?

A Yes, sir.

Q Was he sick that day?

A He had rheumatism.

Q Did you tell that to Bennie?

A Yes, sir.

Q He handed you a cigar for your husband?

A Yes, sir.

Q At the time you spoke to these, two people were you sick?

A I was very sick, I got on this same night the doctor.

Q What was the matter?

A I got neuralgia.

Q Did you have any bandage around your head?

A Yes, sir.

I had a bandage on my head.

Q Now when you left the room and went downstairs, this back room, was Bennie and this woman-- was Bennie and this woman, whoever she was in the room-- that he came in with-- in this room when you left to go downstairs, were they in the back parlor?

A Back in the back parlor.

Q Did you close the door?

A Yes, sir, and I go downstairs.

Q You closed the back parlor door?

A Yes, sir.

Q Went downstairs?

A Yes, sir.

Q Now do you remember seeing the defendant the next morning, Mrs. Voss, do you remember seeing Bennie the next morning?

A Yes, sir.

Q Where were you when you saw him?

A In my front room.

Q In this room called the boss's room?

A Yes, sir.

Q Is that where you were?

A Yes, sir.

Q Now was the door to that room opened or closed?

A My door is every time closed.

Q On that morning?

A No, sir.

Q Was that door while you were sitting there on that morning, was the door leading into the hallway from your little room open or closed?

A My room was open.

Q From where you sat in that little room could you see the door leading from the hall into the back parlor. Do you understand that question. I from where you eat in your room

with your door open could you see the door leading from the back door to the parlor?

A It was closed.

Q Could you see it, that door?

A Yes, sure I could see it.

Q Now then, did you see anybody come out of the front room?

A No, sir, why only this morning Mr. Bennie came out.

Q What time was that?

A Between eight and half past eight o'clock.

Q Now, when Bennie came out did you have a talk with him?

A Mr. Bennie looked on the watch and told me "It is late, I must go in my business.

Q Did he say that to you?

A Yes, sir.

Q Now after that did you see anybody else come out of that room?

A Nobody I didn't see; nobody didn't come out, but after came the lady out.

Q How long after Bennie came out of that room did the lady come out?

A The lady comes out at nine or half past ten nine or half past nine.

Q You are getting along now. Tell us how long after Bennie went away was it that this lady came out?

A Between nine and half past nine she came out.

Q Is this the girl that came out of that room?

A Yes, sir (identifying the complaining witness).

Q Did you have a talk with her?

A Yes, sir. She asked me- -

Q She asked you something?

A Yes, sir.

CROSS EXAMINATION BY MR. LEVY:

Q Now Mrs. Voss, you know Bennie how long?

A Three years.

Q He is a friend of - -

A To my husband.

Q You are a married woman?

A Yes, sir, I am married.

Q How long have you been married?

A In November, the 13th of November, twenty five years.

Q Twenty five years?

A Yes, sir.

Q How many children have you got?

A The children is dead I got no children.

Q In that house where you lived in Stuyvesant street, were there any children there in the house?

A In my house no children.

Q It is a private house, isn't it?

A A furnished room house.

Q How big is it, three stories or two stories?

A Your flights up.

Q You have the whole house?

A Yes, sir, I am the housekeeper.

Q Who is the proprietor, who is the owner of the building?

A The boss is Mr. Brick, August Brock.

Q He engages you as housekeeper?

A I am the housekeeper.

Q How long were you housekeeper?

A Three years for three years.

Q Now your husband and Bennie were good personal friends?

A Yes, sir.

Q You keep a respectable house?

A Yes, sir.

MR. CAFFREY: I object to that.

THE COURT: I will allow it.

Q You are careful to see that everything is all right?

A I got only gentlemen in my house.

Q Now that night you were sick with neuralgia?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Do you know a man by the name of Levindick?

A Yes, sir.

Q Who is Mr. Levendick?

A He is a friend of my husband's too.

Q A friend of whom?

A A friend from Mr. Voss.

Q Mr. Levendick owns the house, does he, or did he run it for Mr. Brock?

A Yes, sir.

Q He gave a lease to Mr. Brock of the house?

A Yes, sir.

Q And Mr. Brock engaged you as housekeeper?

A Yes, sir.

Q Now, when you say they are friends they meet many times they play cards together?

A Yes, sir.

Q He visits your house?

A Yes, sir.

Q They visit each other like friends?

A Yes, sir.

Q Mr. Levendick who runs the place or leases it to Mr. Brock also is in the same circle? (No answer.)

Q Now you say you only let these rooms to men?

A Yes, sir.

Q Now when Bennie came there that night with a young woman or with a woman you did not see her face? (No answer.)

Q Did he make an explanation to you of why he brought the woman?

A No, sir.

Q What did you think?

Objected to; objection sustained.

Q What did you think was the purpose of that woman being there?

MR. CAFFREY: I object to that. That is for the jury to determine.

THE COURT: Excluded.

Q Was there anything said about this girl that you should take care of her or look after her?

A Nothing.

Q Now you went up to light the light in the parlor, is that rught?

A Yes, six; they made a light.

MR. LEVY: I would sooner have the interpreter.

(The balance of the testimony of this witness was taken through an official interpreter, Mr. Fisher.)

Q Who lit the light?

A Mr. Bennie.

Q When he came there with the young woman did you get a chance to see her face, who ever it was?

A No, sir; I went downstairs immediately.

Q Now, if you only let these rooms to men how did it come about that you let a woman come in there?

A Why Mr. Bennie is a friend of my man, and that is the reason I rented it; I wouldn't have rented it to anybody else even at night.

Q Did he say anything about his remaining in the house or whether he was going to go away, and whether he was going to

come back again or anything like that?

A No, sir; he didn't say anything.

Q Now during the night after you went in there and the li was lit did you hear any person leave the house?

A There are people in the house that go in and out and therefore I can't tell whether anybody went out.

Q Did you hear a slamming of the door at all?

A Yes, sir, it seems to me as if a door had been closed down in the basement because we live in the basement.

Q How long after Bennie came into the place did it seem to you you heard a door closed?

A That I can't say; I was so sick.

Q About how long?

A That I can't say, I don't know.

Q About half an hour?

A I can't say.

Q Was it very long after or not?

A I can't say; I don't know.

Q Now the entrance to that door, how is it located, does a person require a key to get in?

A The front door naturally.

Q Well, who opens the door when the bell rings besides yourself?

A I open the door.

Q If you do not who does?

A If I don't hear the boss opens the door.

Q When you speak of the boss whom do you refer to?

A The landlord, Mr. Brock.

Q Where does Mr. Brock live, what room did he occupy?

A In the front room.

Q In the front of the room that this young woman was taken to?

A Yes, sir.

Q Do you know whether or not the bell was rung and any person was admitted into that house around 8 o'clock the following morning?

A No, sir.

Q What does she say no, or she doesn't know?

A The people go to work and it is possible that somebody did come in.

Q About how many tenants as a general thing occupy that house?

A I have thirteen rooms to rent.

Q In the morning what time was it that you saw this defendant?

A Between eight and half past eight.

Q Where was it that you saw him?

A I was in the front room.

Q Where did you see him?

A He came to the door of the front room and he stood there.

Q Did you see where he came from?

A From the back parlor.

Q What did he say to you and what did you say to him?

A He looked at his watch and he said, "It is late, I must go to work.

Q Did he say anything to you about taking care of that girl?

A Nothing at all. I went back immediately.

Q How long after that was it that you saw this young woman whom you have just identified?

A Between nine and half past nine the girl came out.

Q What was it she said to you and you said to her?

A She came out and asked me where she could go and get breakfast.

Q You told her?

A Yes, sir, I told her to go around the corner.

Q Did she return again?

A No, sir.

Q Did she make any complaint to you?

A Nothing at all.

Q Did you hear any noise or any unusual sound coming from that room during the night?

A Nothing at all. Everything quiet.

BY THE COURT:

Q Did you go into the room in which the girl slept the following morning?

A No, sir; after they went away the following morning I cleaned up the room.

Q Did you notice the bed sheets?

A Nothing, everything very clean.

Q Did you see any blood or anything of that sort in the bed?

A No, sir, no blood nothing at all.

BY MR. LEVY:

Q And the coverings on the bed were in perfect order?

A Everything was in order.

Q In order?

A Yes, sir.

Q Did you hear any door slam, the front door slam at about half past seven in the morning or any footsteps approaching the back room?

A I told you there were people going in and out, and the door was closed all the time.

Q Well one more question. You say the bed and its coverings were in perfect order each morning when you went in?

A Yes, sir, in good condition everything clean.

RE DIRECT EXAMINATION BY MR. CAFFERY:

Q You say that the bed was in good order the next morning. You don't mean that the bed was not used, do you?

A I mean the bed was used, but it was clean.

Q The bed was mussed up?

A Yes, sir; somebody had slept in it.

Q People to get into your house would have to go and ring the bell, wouldn't they?

A Yes, sir.

Q You say the people who came in and out were tenants of your house?

A Yes, sir.

Q They must have had keys?

A Yes, sir.

Q Now in the morning around half past seven or any other hour in the early morning before you saw this defendant, did you hear the bell, the front door bell ring?

A No, sir, nobody.

Q What is that?

A No one.

Q You are sure nobody rang the bell?

A No, sir, nobody.

Q Did Mr. Brock the lessee occupy that front room on the night in question?

A Mr. Brock, my landlord, lives in the front room.

Q Was he in that room, does he sleep in that room that night that you let these two in?

A Yes, sir.

Q Do you know what time he left the next morning?

A Yes

sir, he goes to work at half past six in the morning.

BY MR. LEVY:

Q In what language did the defendant speak to you, and in what language did you speak to him?

A German.

Q Now did you speak English to him at all?

A No, sir, not a word, only German.

Q Did he say to you that he only wanted the room for a little while?

A No, sir, nothing at all.

BY MR. CAFFREY:

Q Did he say to you here is a cigar for your husband?

A Yes, sir.

Q You told him that your husband was sick?

A Yes, sir.

Q Then he pulled out a cigar?

A Yes, sir.

Q He did give you a two dollar note?

A Yes, sir.

THE SECOND JUROR: May I ask Mrs. Voss what was the two dollars for, one night or for one week?

A It was a deposit for that room, the room is five dollars and he gave me a deposit of two dollars.

Q Did he give you the rest of the three dollars balance?

A No, sir, I was not afraid, I thought he would come back and pay it.

BY MR. LEVY:

Q The juror wants to know what this deposit was for. You said a deposit, does that mean for the use of the room that night or for the week or for the month?

A The first payment

for the room.

Q You mean payment on account or payment for the night?

MR. CAFFREY: I object to that. I ask that the witness be confined to stating what the defendant said to her when he handed her the money and not be allowed to speculate as to what she thought it was for.

THE COURT: It isn't what she thought it was for, but what the second juror has in mind is the significant fact that will ultimately become very important in this case - - was there anything said about taking that room for a week or for a night, whichever it was. I am going to let the question stand as I think the juror is entitled to know the fact.

MR. CAFFREY: I don't object to the question, but I think she ought to be permitted to tell us what was said about it.

BY MR. LEVY:

Q The juror desires to know whether there was anything said when the two dollars was paid what the payment was for, whether it was for the night or whether it was on account for a longer time or whether it was for a little while or whether it was for the engagement of the room for any certain period of time.

MR. CAFFREY: I understand that the juror wants to know what was said about that.

THE JUROR: What was said about that, yes.

THE WITNESS: The two dollars was paid to me on account; I don't rent any rooms by the hour, day or night, I only rent rooms by the week.

MR. CAFFREY: I move to strike out the answer as not responsive. She was asked plainly what Bennie said, and she is not telling that, if it please the Court.

THE COURT: I want to know whether this man hired that room for one week or for twenty minutes. That has an important bearing on this case. If true it would go largely to sustain the contention of the learned gentleman for the defendant when he opened his case to the jury. Now, I am going to know the facts. I will not exclude anything on this important branch of the case.

MR. CAFFREY: I am not asking to exclude anything, but I would like to get what the defendant said.

THE COURT: Tell us what the defendant said.

THE WITNESS: He gave me two dollars and said nothing.

BY MR. LEVY:

Q Now, Mrs. Voss, he was a friend of your husband's. When he paid you those two dollars did you understand that the payment was on account of a week's engagement of that room?

MR. CAFFREY: I object to that on the ground that it is irrelevant, incompetent and immaterial, what she understood.

THE COURT: I will allow it because her understanding may have been based upon something which was said or done.

MR. CAFFREY: May we know what was said, and upon what she based that understanding. She says that he said nothing but handed her the two dollar note.

THE COURT: Tell us what you understood the two dollars to be for, Madam.

THE WITNESS: I thought he would bring me the balance of the money.

THE COURT: For the rest of the week?

THE WITNESS: Yes, sir, for the week.

BY MR. LEVY:

Q Now then, one other question, Mrs. Voss, did you say to him when he rang the bell and you met him at the door that night "Bennie, your room is ready why are you late, you come late for your room" or something to that effect?

A God forbid; I didn't say anything.

THE COURT: That is what the girl said.

Q Now you say you did not say it?

A No, sir, I said "Good evening Bennie, and that was all.

Q You did not say the other thing?

A No, sir.

BY MR. CAFFREY:

Q Now just a moment. Did "Bennie ever come back to your house after the night he paid you the two dollars?

A No, sir.

Q Did he ever pay you any more money besides the two dollars?

A No, sir.

Q Did Bennie ever have a room with you before that?

A Long before that he had the front room for himself.

Q How long before that?

A It was the first year before I came there.

Q How long before is that, the first year you came there?

A About two years.

Q How long did Bennie occupy that room?

A Fourteen days.

Q Did he bring any woman to the room?

A Nobody.

Q Never brought a woman up there?

A No, sir.

Q Didn't live there fourteen days with the woman?

A No.

WILLIAM TRAVIS GIBB, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he resides at 42 West 75th street)

DIRECT EXAMINATION BY MR. CAFFREY:

Q Dr. Gibb, you are a physician and surgeon duly licensed to practice in the State of New York?

A Yes, sir.

Q How long have you been engaged in that practice, Doctor?

A Thirty three years.

Q You are the examining physician for the new York Society for the prevention of Cruelty to Children?

A Yes, sir.

Q You have been engaged in that capacity how long?

A 28 years.

Q Now on the 21st day of April, 1919, did you make a phy-

sical examination of the person of Viola Muller, the complainant in this case?

A Yes, sir.

Q Stand up. (Referring to Viola Muller) That is the girl over there.

Q Indicating Vila Muller?

A Yes, sir.

Q Will you tell us the result of your examination?

A I examined her in the Psychopathic Ward of Bellevue Hospital on the 21st day of April.

Q The 21st?

A Yes, sir, at half past nine in the morning.

Q Will you tell us what your examination disclosed?

A I examined her private parts, and I found that the Hymen was ruptured indicating complete penetration of her genital organs by some blunt object.

Q Could you say from such an examination how recently that rupture was made?

A No, sir, the part seemed entirely healed; I couldn't say; the child was exceedingly nervous and it was difficult to examine her, but the parts seemed to be perfectly healed so that it is impossible to say how recent the original rupture was.

BY THE COURT:

Q Doctor you made the examination in the psychopathic Ward?

A Yes, sir.

Q In Bellecue?

A Yes, sir.

Q Where people are confined who are under observation to determine whether they are suffering from any mental disease?

A Yes, sir.

Q At that time did it appear to you that she was normal or what she mentally abnormal?

A She would not talk; she would not say anything to me. I was only sent there to examine her sexual organs, and I did not examine her mentally except that she would not answer any questions; she wouldn't say anything to me at all.

CROSS EXAMINATION BY MR. LEVY:

Q Did you get any impression with regard to her mentality at all?

A The impression that I got I thought she was feigning; she was putting on.

Q Pretending?

A Yes, sir.

Q An injury?

A Yes, sir.

BY THE COURT:

Q Was it your opinion from your examination of her at the time that she was malingering, to make it appear that she was of unsound mind?

A That seemed so to me. I remained with her a matter of fifteen minutes, and did not go into that very carefully. I simply made a note on my slip that it was my opinion that she was malingering, pretending.

Q As to her degree of mentality you had no opportunity of forming an opinion?

A No, sir.

BY MR. LEVY:

Q But the impression that you got was that she was pretending, she was faking, to use a slang word?

A yes, sir.

Q Malingering?

A Yes, sir.

Q Now one other thing about this, how soon after a rup-

Q How soon after a rupture, as a general thing of the hymen of a female ought the parts to heal?

A From three to ten days usually.

Q There no longer any evidence of any rupture there?

A No, sir.

Q It might have been a very old rupture?

A It might have been any kind at all.

Q Might have been months before?

A Yes, sir.

Q So there wasn't anything found there that would furnish us with any illumination as to when that rupture took place?

A No, sir; I couldn't tell about when it took place.

Q Doctor, the last time I examined you I asked you about how many females you had examined, whose privates you had examined, and you told me about twenty thousand. Has that increased in number since?

A Well, perhaps, it has doubled up since then.

Q About how many would you say now?

A I would say fifty thousand.

MR. CAFFREY: Your Honor I am awaiting your instruction as to whether I shall recall the complainant now.

THE COURT: Have you any other witnesses?

MR. CAFFREY: Yes, sir.

THE COURT: I am going to give the complainant all the time she needs to compose her self. I want to give her complete time for composure.

WILLIAM J, HAUPTMAN, a witness called on behalf of the people, being duly sworn, testified as follows:
(The witness states he is a police officer attached to the 36th Precinct, Detective Division.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q You are a police officer attached to the Police Force of the City of New York?

A Yes, sir.

Q Were you such in April, 1919?

A Yes, sir.

Q You are also a member of the Detective Bureau?

A Yes.

Q Now, Officer, on a date in April, 1919, did you meet the complaining witness in this case, Viola Muller?

A I did.

Q What date was that?

A Friday, April 18th.

Q Did you have a conversation with her?

A I did.

Q Now in consequence of that conversation, did you go any place with her?

A No, sir, I did not. My partner Detective Mullahey went.

Q Were you with him?

A I was with Mullahey when I met the complainant.

Q Then did Mullahey go somewhere with the complaining witness?

A No, sir. I remained at the place with the complaining witness, 113 East 26th street.

Q Now, where did you meet the complaining witness?

A At 113 East 26th street.

Q New York County?

A Yes, sir.

Q Do you know who the landlady of that house was?

A I

134

Do

Q What was her name?

A Betty Gries.

Q Now did you go to Viola Muller's room?

A I did.

Q I show you people's Exhibit 3 for identification and ask you whether or not you ever saw that before?

A That was lying on a dresser or cheffonier in room 5 on the third floor of this furnished room house.

Q Whose room was that?

A That was Viola Muller'S room.

Q I ask you to look at People's Exhibit 1, and state whether you ever saw that before?

A That was there too.

Q In Viola's room?

A Yes, sir.

(People's Exhibit 3 for identification is marked people's Exhibit 3 in evidence.)

Q Now, Doctor, you remained in that place with the girl, Viola Muller and did officer Mullahey go away?

A Officer Mullahey went away.

Q With whom?

A With Siegel, a man by the name of Siegel.

Q What is his first name?

A Nathan.

Q Before you went into this house at 113 East 26th street did you have a conversation with this Nathan Siegel?

A Myer Siegel.

Q Did you have a conversation with this Myer Siegel?

A Yes, sir, I did.

Q Then you and Mullahey went into the house?

A Yes, sir.

Q Is that it?

A Yes, sir, and Siegel.

Q You remained in the house with Siegel while Mullahey went away?

A Mullahey went away with him, with Siegel.

Q You and the girl remained there?

A Yes, sir.

Q Now after that did anybody come to the house?

A Detective Mullahey and Myer Siegel and the defendant Sherman.

Q What time did they reach the house where you were?

A That was about I should judge about one o'clock p.m.

Q Did you have a conversation with the defendant or did Muller in your presence have a conversation with the defendant Sherman?

A Well, we asked him, - -

Q Did you have a conversation with him?

A Yes, sir.

Q Who was at the conversation?

A Mullahey, myself, Sherman and the girl.

Q All took part in it?

A Yes, sir.

Q Now, Officer, I want you to give that conversation. State exactly what each person said, and the answers that were made, so that when you say something was said, and what somebody else said, state who said it, and what the reply was so that we will get it exactly.

A The defendant Sherman was brought there by Detective Mullahey, and we asked him about the girl.

Q Will you as far as you can recall state who asked him and as yearly as you can recollect the language that you used to him in the question.

A Detective Mullahey asked the defendant, Sherman, did he bring the girl to that house. He said

yes, he had met her on Broadway Sunday night about 10 p. m. between 36th and 37th streets, and she said that her father was a Mason.

Q Now that is what she said to him?

A Yes, sir.

Q Go ahead.

A That she was going to 42nd street to meet at Childs Restaurant, that the name of the friend was unknown that he walked her then down Broadway to 23rd street and he left her there. She walked west. So I said "Well, did you bring her to this house," and he said yes. I asked Sherman, I said, "Did you bring this girl to this house", and he said "Yes, I brought her here Monday morning." That was on the 14th. I said "Why did you bring her". He said, "I felt sorry for the girl". I said, "Well, you didn't know the girl", he said "No, but she told me her father was a Mason." I asked the girl her name, and of course, her mind seemed to be a blank, in a daze. I did not know her name at first when I questioned her, and I asked her name, and she said her name was Viola Maton. May I look at a memorandum?

MR. LEVY: No objection.

THE WITNESS: Viola stated that she met a man whom she doesn't know, of whom she could give no description, who brought her to New York on the train.

MR. CAFFERY: Does your Honor want to hear all that?

THE COURT: Yes.

THE WITNESS: He gave her twenty five dollar's and left

her at a place unknown. She stated he bought a newspaper and looked for a furnished room which she found on 23rd street near 9th avenue, number unknown, and the name of the person unknown, where she remained until April 9th. She appeared to be under the influence of a drug and suffering from loss of memory.

Q Now, what did the defendant say to you. Resume from there?

A Well, the defendant says "I just brought her in this room." I said to him, "Well, she is no relation of yours". He said "No, but I felt sorry for the girl". So then we brought him over to the 21st Precinct station house where we made an identification of the girl as being Viola Muller. She denied that she was Viola Muller at first.

Q Now the defendant said to you that he left the girl on Sunday night on the corner of 23rd street and where did you say?

A 23rd street and Broadway.

Q And that he had brought her to this house in 113 East 26th street, the next day?

A Yes, sir.

Q Monday morning?

A That was on Monday.

Q That was Monday morning?

MR. LEVY: Brought her to what house?

THE WITNESS: 113 East 26th street on Monday morning.

BY MR. CAFFREY:

Q Did the defendant say where he met this girl on Monday morning?

A At his place of business.

Q Did he say anything about having spent the night with

her, Sunday night?

A No, sir, he did not.

Q He said nothing about that

A No, sir.

Q Did the defendant tell you he had taken the girl to No. 27 Stuyvesant Place or Stuyvesant street?

A No, sir.

Q He did not?

A No, sir.

Q He didn't say anything to you about it?

A No, sir.

Q Have you told everything about this case?

A That is all I know about it.

CROSS EXAMINATION BY MR. LEVY:

Q Now, Officer, I shall be very brief with you. How did you ascertain the whereabouts of this girl. Make that clear to the Court and jury. Perhaps I better withdraw the question and ask you this: Hadn't a notice been sent out through police channels that a girl by the name of Viola Muller had been missing from Newark?

A Yes, sir, the Police Department of the City of Newark.

Q Communicated to the Department here saying that a young girl named Viola Muller was missing from home?

A Well, it wasn't just an alarm; it was on the sheet.

Q The newspapers were printing different accounts and descriptions of this girl, is that right?

A Yes, sir.

Q Then you in the performance of your police duty had that in your mind as well as any other matters relating to missing persons?

A Yes, sir, I did.

Q The question I wanted to ask you before was how did you

come to locate this girl and her whereabouts. Make It clear to his Honor and the jury.

A I was on duty, Friday morning, that is on April 18th about 9.15 or 9.30 and the private telephone rang in the office, and a man that I had known for about six years called me up.

Q The name of the man please.

A Myer Siegel.

Q The same Siegel you have been talking about?

A Yes.

Q A friend of this defendant's?

A I don't know if he is a friend.

Q Call him an acquaintance?

A He called me up, and he said, "Say Bill, I think I know where that missing girl is, that is in the newspapers". I said, "What do you mean you think." I said, "Do you know. Well", he says, "her picture is in the papers, and it looks like her." So I got interested in it, and I said, "Well, where are you now". He says, "I am downtown on Hester street. Down out the place that I used to work, when in uniform." I said, "Well, where is she". He said "Up in a place in 26th street. I can't tell you the number because I don't know. "So I said, "Can you meet me in twenty minutes or thirty minutes", and he said "I will meet you in three-quarters of an hour", and I said, "where". He said, "Meet me at 28th street subway station and Fourth avenue." I then got Detective Mullahey and we went down there and we met Myer Siegel, and I said, "Meyer, you go up", I says, "and you point out the house."

Q Did you ask him how he knew?

A Yes, sir.

Q What did he tell you?

A He said that he brought her home.

Q What is that?

A Brought her home the night previous.

Q He had been out with her?

A He went as far as the Strand Theatre with her, and she got a headache and came back about 10 o'clock at night, and he left her there and he says, "I am positive it is her because "he says" the picture is exactly the same". "The hat she is wearing is the same as the picture."

Q Did he tell you he knew Sherman?

A Yes, sir.

Q That is what I want to develop?

A He said a friend of mine met her on Broadway, and so he says he got a room for her there.

Q What is that?

A He got a room for her there, and she looks like the girl from Newark.

Q Is that what Sherman said? (No answer.)

Q Now, did he say that Sherman said that?

A Well, I do not understand your question.

Q I will put that plainly. Did he say that Sherman says he looks like the girl from Newark?

A No, sir, Sherman didn't say that, he said that.

Q I want to develop the fact whether the information Siegel was communicating to you was what Sherman said as to the identity of this girl?

A That I do not know.

Q What did he tell you about Sherman. "Let us have the whole truth. A He said a friend of mine had her, it was him put her in this house in 26th street.

Q What do you mean by that? A Got her a room.

&R. CAWHRY: I object or that. He said he is using now the language that Siegel gave him. Mr. Levy wants the witness's construction of the language used by another and I object to it I ask that the language that Siegel used stand, that is, that he put her in a house ,got her a room.

MR. LEVY: Did he use that word?

THE WITNESS: I don't know whether he did or not.

THE COURT: Use names. Don't use personal pronouns that might apply to anybody. Use names.

THE WITNESS: Myer Siegel said that Benjamin Sherman said that he got her a room in 26th street.

BY MR. LEVY:

Q That's different.

A Yes, sir.

Q Now what else?

A He said, "I am pretty sure it is the girl". We proceeded to the place on 26th street, on the first floor of a three story and basement house used for furnished rooms and private families. We went to the first floor and rang the bell. Nathan Gries came out, the proprietor's son. I then asked for Viola Mayton, the name that Myer Siegel had given me. He brought me into the front room, the parlor, and

Viola Mullerm then under the name of Mayton, was sitting at the piano in a kimono.

Q In a kimono?

A Yes, sir. I said, "How do you do." She looked at me. So I says, "Is your name Viola Mayton" She says "Yes." I questioned her for awhile and she denied that she was Viola Muller.

Q She did what?

A Denied, her mind was in a daze. I then asked whether she was I showed her the picture in the paper, and she looked at it in the paper, and I was looking at it, and so she looked over my shoulder, and I said, "Isn't that a good picture of you", she says, "I don't know." I said, "Is that your name", she said "not that I know of; she said the man told me I was an ohphan."

Q A man told her that she was an orphan?

A Yes, sir. I said, "What man", and she said, "I don't know his name." Then I went to her home, Detective Mullahey had left and went to Sherman's place of business.

Q Now you found these papers in the room?

A No, sir, not these papers.

Q Did you ask her whether she knew where she lived?

A Yes, sir.

Q What did she say?

A She didn't know.

Q Asked her whether any wrong had been done to her?

A Yes, sir, she said no.

Q Did you ask her whether she knew Sherman?

A No man-

tion of the name of Sherman.

Q Did she way Sherman had done any wrong to her?

A She said nobody did any wrong to her.

Q This house in which you were on 26th street it is a respectable place as far as you know?

A Well, as far as I know. The first time I was ever in the place.

Q A family there by the name of Gries?

A Yes, sir.

Q You saw the wife?

A Yes, sir.

Q And some children?

A Two of the children.

Q I show you a photograph, and ask you whether this is the photograph of the woman you saw there as Mrs. Gries?

A Four of them I recognized, the man, wife , son and daughter; the only three I do not know.

Q What part of the house did they occupy?

A Well, they occupied the floor that we were on.

Q And it was in their apartment that this girl was living?

A I did not see- -

Q This girl Viola was living in that apartment occupied by this family?

A She slept in that apartment.

Q Where was she sleeping?

A Sleeping on the third floor Room 5.

Q Did she eat at their table?

A Yes, sir, so Mrs. Gries said.

BY MR. CAFFREY:

Q Do you know whether she ate at their table?

A So Mrs.

Gries told me.

MR. CAFFREY: I asked him if he would answer yes to anything.

THE WITNESS: I said so Mrs. Gries told me.

THE COURT: Counsel asked if this girl ate their table.

A I do not know.

MR. LEVY: Of course, he does not.

(The photograph referred to is marked Defendant's Exhibit A for identification.)

MR. LEVY: I offer it in evidence.

MR. CAFFERY: I object to it as irrelevant, incompetent and immaterial. We are not making any charges against this woman's family.

MR. LEVY: Merely to indicate to the jury the kind of a family it is.

THE COURT: It is offered, I suppose, on the theory that she was not included to go to this house for an improper purpose; in other words under the abduction count, on the theory a man would not take a girl with whom he intends to consort to a house that is occupied by respectable people, particularly where there are young children. I will not allow it because it is incompetent, but if I were the prosecuting officer in this case I would allow it to go in.

MR. CAFFREY: We don't make any charges that there was anything wrong done in that house. It was in the other house 27 Stuyvesant Place.

THE COURT: When the Legislature passed the Abduction Statute it contemplated taking a girl to a place which of itself was a place of bad repute. Now it is a strong probability against a man if he takes a girl to a house of that kind or to a house where there are decent people, particularly children of tender years. However, I will exclude it.

MR. CAFFREY: The Prosecution concedes that he did not take her to the house 113 East 26th street for that purpose.

THE COURT: I have made some rulings here that perhaps would not be justified under a strict construction of the law, but this being a most extraordinary and most unusual case, I have determined to throw the doors wide open so that the truth may be ascertained, I don't know, by hook or crook, so that this jury will become intelligently informed on the issue here and everything surrounding it and everything that would lend probability or improbability to the story of the complaining witness because probabilities in my judgment are always approaches to the truth.

MR. CAFFREY: Your Honor will understand my posi-

tion here. While I might be broad I want to see that nothing is done, from my standpoint, that might prejudice the lights of the People.

THE COURT: We have an extraordinary case here. The Doctor who testified before this Society, a most conscientious doctor he is, intimated in the course of his testimony here that the girl was malingering at one time, he stated that she was feigning or faking, I don't know which word he used. Then you have the testimony of this officer that the girl appeared to be dazed which would lead to a reasonable inference that she was somewhat irrational. Now the question is whether the jury would be justified in relying on the testimony of a person whose mind is not clear or whose mind is affected. She was put in the psychopathic Ward, I don't know why.

MR. CAFFREY: For observation.

THE COURT: She was put there and something must have occurred which induced the Society to put the girl in the psychopathic ward.

MR. LEVY: And another thing, your Honor, is it likely if he intended putting a girl in a house for the purpose of prostitution that he would give her his business card, and give her his letter paper and furnish her with full information as to where he was?

THE COURT: If I determine to send this case to the

jury you may argue those matters to the jury.

MR. CAFFREY: I will concede that so far as the 26th street house is concerned there was nothing wrong done at 113 East 26th street, and that he did not take her there for immoral purpose. I will concede that. I will rest the case upon the house 27 Stuyvesant Place.

THE COURT: I shall confine you to that because I don't think I would be justified in submitting the matter to the jury whether the crime of abduction was committed in taking the girl to the house 26th street.

MR. CAFFREY: I agree with that reasoning.

BY MR. LEVY:

Q So far as you know is there anything against there cord or reputation of Mrs. Voss, the housekeeper of the house, 27 Stuyvesant Place?

A I never met the woman in my life, I don't know.

Q You don't know anything about that?

A No, sir.

Q Did this girl at any time in her conversation with you, the complainant, Viola Muller, did she ever make a charge against the defendant that he had attempted or did perpetrate an act of intercourse - - sexual intercourse with her?

(No answer.)

Q Do you understand that?

A No, sir, I didn't just get that.

Q I want to make it clear Officer. You say you question-

ed her as to whether or not she had any improper relations with any one that she made no charges against any one, is that right?

A Not at that time.

Q I am talking of that time?

A Yes, sir.

Q I am talking of the time - -

A In 26th street she did not.

Q Did she say at that time that this defendant had had any improper relations with her?

A No, sir, not at that time.

Q It was only after the police court proceeding?

A Yes.

Q And after she was in the care of the Society?

A Yes.

BY THE COURT:

Q Did you hear her testify in the police court?

A Yes.

Q Did you hear her there testify that the defendant, Sherman did not perpetrate an act of sexual intercourse with her.

A That I could not say.

BY MR. LEVY:

Q Were you in court when I read the minutes?

THE COURT: I excluded all the witnesses.

MR. LEVY: She testified before the Magistrate, with your Honor's indulgence - - perhaps this is out of the regular order, but I think in the interest of justice I should state it- - she testified according to the minutes before the Magistrate that when the defendant got into bed with her that night in the Stuyvesant street house the she would not let him have anything to do with her; that

he simply touched her. Do you remember hearing that?

THE WITNESS: Well, that was after the case was put over for character witnesses in the fourth Court.

Q Did you hear her say that in the police court?

A No, sir; she said something to that effect.

Q Now, then with regard to her dazed condition. She was sent to the psychopathic ward in Bellevue Hospital? Conceded.

Q Do you know why she was sent to the psychopathic ward at Bellevue Hospital which is the department intended to inquire into mental disturbances, why was she sent there?

A I don't know what ward she went to.

MR. CAFFREY: I object to that. The officer is not qualified to testify to that.

THE COURT: I will take judicial notice of the fact that people are sent to the psychopathic ward where they are suspected of psychosis, disease of the mind. They are sent there for observation as to their mental condition.

MR. LEVY: And the case presents the question whether a man ought to be convicted upon the testimony of an irresponsible person, I mean one who is mentally irresponsible. That is what I am trying to develop.

THE COURT: I want to know what this girl's condition was.

Q Did you have anything to do with her being sent to the

psychopathic ward?

A No, sir.

Q Did you take any part in it?

A No, sir, I did not.

Q Did she tell you she had a father and mother living?

A She did after a while.

Q I mean in the beginning?

A No, sir, her mind was dazed.

Q Did she tell you that she told this defendant that she was the daughter of a Mason, and that he helped her out because of the distress she was in?

A No, sir, Siegel told me that - - Sherman told me that.

Q Did she say her father was dead?

A She said she didn't know where her mother and father were.

BY MR. CAFFREY:

Q Now when you placed the girl under arrest, did she tell her what she was arrested for?

A A After I made the identification by Lieutenant Brady of the Newark police I charged her with improper guardianship.

Q Did you say anything to Viola about Sherman?

A Yes, sir.

Q What did you say to her about Sherman?

A I said do you know Sherman, and she said she knew Sherman.

Q At that time was there any charge against Sherman, I mean in this case, was there any charge against Sherman with regard to him committing a crime against this girl?

A No, sir.

Q At that time you had no suspicion?

A No, sir.

Q That there was any charge against Sherman

A No, sir, I did not.

Q You were seeking her arrest on a charge against a man named Beatty in Newark?

A Beatty was arrested the day before.

Q You were looking for her in the Beatty case?

A Yes, sir.

Q So therefore at that time you had no idea of Sherman?

A No, sir; I had no idea of Sherman whatever.

Q You hadn't heard anything about Sherman?

A No, sir. I didn't know about him having brought her there.

Q Did you ask her whether Sherman had had sexual intercourse with her?

A I did.

Q Why did you ask her that?

A Well, I asked her because she was in the room with him. I asked her if anybody had any intercourse with her.

Q Did you ask her specifically whether Sherman had had any sexual intercourse with her or whether anybody had any intercourse?

A I said to her "now tell me did Sherman have anything to do with you", I put it that way?

Q That is what I want to get at. Did you put it that way?

A Yes, sir She said no. When I brought her to the police station she spoke to me; she called me over and she said "Are you a married man?"

A I said yes. She said, "I want to tell you something. I just got sick." She was menstruating. So I called up the police matron and I went around to the drug store, and I got her some bandages. On the way I says, "Now tell

the truth. We are here to help you. not to harm you. Did anybody have anything to do with you, and she said no. I says, tell Die, Viola, she says, no at that time.

Q Now, officer, did you at any time after that hear her say that Sherman did have intercourse with her?

A No, sir, not until after awhile I heard it from the Society.

Q You knew there was a complaint in the Magistrate's Court against Sherman, didn't you?

A Yes.

Q You saw her sign that affidavit that she signed, the corroborating affidavit on the abduction charge?

A Yes, sir, on the abduction charge.

Q Against whom?

A Benjamin Sherman.

Q In the Magistrates Court?

A Yes, sir.

Q You knew that, didn't you?

A Yes, sir, at the time that was drawn up we knew nothing about the other place.

Q There was an examination in the Magistrates Court on this abduction charge?

A On the abduction charge.

Q So there was nothing said about the rape charge in the Magistrates Court?

A No, sir, nothing at all.

Q The only testimony that was given in the Magistrates, Court was on the abduction charge?

A The last day of the trial.

Q Was there any examination on any rape charge in the Magistrates Court?

A One witness on the last day.

Q In what case?

A In this case here.

153

Q You mean the abduction case?

A Yes, sir there was a witness Selma Voss.

Q That was the abduction case?

A Yes, sir.

Q There was no rape case in the Magistrates Court, was there?

A No, sir.

MR. LEVY: There wasn't more than one case, was there one complainant and one defendant, the complainant is Viola Muller and the defendant was Sherman?

A Yes, sir.

BY MR. CAFFREY:

Q And that case was the abduction case in the magistrates Court?

A Yes, sir charged with abduction.

MR. CAFFREY: I offer the complaint in the Magistrates Court in evidence.

MR. LEVY: I object to it as being incompetent.

MR. CAFFREY: The purpose of it is to show that the rape charge on which you are proceeding and about which there has been so much testimony on cross examination - - there there wasn't any examination on the rape charge in the Magistrates Court. This defendant was held on the abduction charge in the Magistrates Court.

THE COURT: I noticed that.

MR. CAFFREY: Afterwards the defendant was indicted by the Grand Jury for rape and abduction, the rape occurring in 27 Stuyvesant Place.

THE COURT: I noticed that.

MR. CAFFREY: The objection is predicated upon what happened in 113 past 26th street.

FRANCISMULLAHEY, a witness called on behalf of the people, being duly sworn, testified as follows:
(The witness states he is a police officer, attached to the 36th Precinct, Detective Division.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q Now, Officer Mullahey, you are an officer of the police force of the city of New York, and were such on the 13th of April, 1919?

A I was.

Q You were at that time attached to the 32nd Precinct?

A Yes, sir.

Q And also to the Detective Bureau?

A I was.

Q You arrested the defendant?

A Yes, sir.

Q In April?

A Yes, sir.

Q What date?

A April 18th, 1919.

Q Where did you arrest him?

A No. 14 West 31st street.

Q At the time you placed him under arrest did you find Peopled Exhibit L, that vanity case, in his office?

A I did.

Q Did you have a conversation with the defendant?

A I did.

Q State to the Court and jury what it was?

A Sherman stated that he had met Viola puller at 37th street and Broadway

about 10 p.m. on April 30th, 1919; she told him she was an orphan, had come from Boston, had friends living in Newark, and that she had an appointment with a photographer name not given, in Child Restaurant at 42nd street and Broadway. Sherman and Viola walked to 23rd street and Broadway and the Viola walked west and he told her to call at his place of business the next day, Monday, April 14th.

Q Is that all the conversation you had with him?

A He said that he brought the girl to 113 East 26th street, a furnished room house the following morning at 10 a m., that is April 14th; that he hired a room for the sum of ten dollars for two weeks for the week's board; he took this vanity case from a drawer in the desk and said here is a vanity case I had an argument with her last night." That is all the conversation we had there.

Q Did you at any time after that have any conversation with him?

A Well, I did.

Q Where?

A In the 21st Precinct station house.

Q When was that?

A On the same day.

Q Let have that?

A About the same conversation, the same story told over again.

Q The same story?

A Yes, sir.

Q That is all you know about the case, do you know anything further about the case? You had no further conversation with the defendant?

A No, sir.

156

Q That is all your know about the case?

A That was all the conversation I had with him.

MR. LEVY: No questions.

MR. CAFFREY: Now, if your Honor please, that is my case.

THE COURT: Where is the mother of the girl?

MR. CAFFREY: I only needed to call the mother to prove the age and it is admitted.

THE COURT: I want to know the exact age.

REGINA MULLER, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 20 Baldwin street, Newark, New Jersey.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q Mrs. Muller, what is your name?

A Regina Muller.

Q Are you the mother of the complaining witness in this case Viola Muller?

A Yes, sir.

Q How old is Viola Muller?

A Fourteen years.

Q Fourteen?

A Yes, sir.

Q When was she born?

A August 1st, 1904.

Q Where was she born?

A In Newark.

MR.CAFFREY: While the witness is on the stand may Mr. Pizarra, the Society man, Mr. Levy and myself have a conference with your Honor in the presence of this woman?

THE COURT: Yes.

(At the conclusion of the conference.)

MR. LEVY: Shall I continue the cross examination of the complainant?

THE COURT: The Court has directed the witness Viola Muller to come back to the stand for further cross examination, but she declines to take the stand.

MR. CAFFREY: She is suffering from a female complaint that has just come upon her. I expect to get word from Mr. Pizarra in a couple of moments, if your Honor will will wait.

If it please your Honor of course, this has been a somewhat lengthy trial, having occupied two days, and some might think, in view of the motion that I am about to make, that that time has been needlessly spent. Now, the charge was made in this case, and it was supported by what the District Attorney believed to be ample corroboration. I made a very careful examination of the complaining witness, and during my very rigid examination she did not present the frailties and the contradictions that she did in her testimony upon this trial. I believed that the charge against this defendant was justified, I believe that the girl told the truth. I believed that the defendant was guilty of this charge, and I say that because I am thoroughly convinced that any action that was taken in this case by the complainant and by the Socie-

ty was thoroughly justified. Now, after these two days spent and going into the case very carefully it does appear that the complaining witness was suffering from some hallucinations, and we are unable to determine the exact condition of her mentality, at least it is somewhat dubious. She has been for a period of ten days in the observation ward of Bellevue Hospital, and she was discharged, as it appeared she was shamming. Now, on the witness stand she has made contradictions, and I may say for the purposes of the record, that the representatives of the Society told me this afternoon that they received information that at the time the girl was placed under arrest that a number of powders were found upon her person - - one powder was found concealed upon her person, and that was sent to the City Laboratory for chemical analysis and they reported that the contents of that powder were heroin, a habit forming drug. Now, under the circumstances I feel that it would be unsafe to ask to proceed further with the trial. On the evidence as presented, there seems to be such a reasonable doubt as would justify the jury in acquitting the defendant, and the cause of that anomalous position I am constrained not to take up any further time of the Court - - and in this I am joined by the representative of the New York Society for the Prevention of Cruelty

to Children - - I move that your Honor instruct the jury to acquit.

THE COURT: I feel that the girl's mind is disturbed Judge O'Brien in the case of the People against Ledwon reported in the 153rd New York said that "Where the evidence was of a doubtful character - - or even though the evidence was of doubtful character tends to connect the defendant with the commission of some alleged crime that the Court should not send the case to the jury. His language in that case was this: If the evidence shows either that there was no evidence whatever or that the evidence did not, as a matter of law, come up to the standard which the law required to warrant a conviction it would be error if the Court denied a motion made by counsel for the defendant to take the case from the consideration of the jury."

I feel that the evidence in this case comes clearly within the rule laid down by Judge O'Brien of the Court of Appeals, who was in his time one of the most forceful Judges we had in the higher court of this state. I am entirely in accord with you that there is not enough here to sustain a conviction. If this case should go to the jury and this defendant was convicted I am quite certain the Appellate Division would reverse the judgment The motion is

160

granted.

(The jury return a verdict of not guilty.)