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

THE PEOPLE

against

ROBERT BEHRMAN, indicted with SOLOMON COHEN and SMUEL HIMMELSTEIN.

Indictment filed June 3rd, 1920.

Indicted for robbery in the first degree, Grand Larceny in the first degree, and so forth.

For the People, ASSISTANT DISTRICT ATTORNEY CARDONE.

For the Defendant, SAMUEL FELDMAN, ESQ.

Tried before HON. OTTO A. ROSALSKY, JUDGE and a Jury on the 13th day of July, 1920, etc.

MARTIN SINITZA, called as a witness in behalf of the People, being duly sworn and examined, testified through the Official Interpreter, Mr. Landou, as follows:

(Residence 216 Cherry Street, New York City)

DIRECT EXAMINATION BY MR. CARDONE:

Q. What is your business?

A. Laborer on jobs.

Q. Are you married or single?

A. My wife is on the other side.

Q. How old are you?

A. 34.

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Q. Do you know Nicholas Svirida?

A. Yes, sir, I do.

Q. How long do you know him?

A. I know him from the old country.

Q. How long is that?

A. I am here about seven years and I know him sometime before.

Q. Do you remember the 15th of May of this year?

A. I do, yes.

Q. Where were you on the evening of May 15, 1920?

A. I was in the house of Nicholas Svirida.

Q. Where did you call to see Nicholas Svirida on the 15th of May?

A. I went to 90 Henry Street at the house of Nicholas Svirida on the first floor.

Q. What time did you arrive at Nicholas Svirida's house?

A. After eight.

Q. After eight or close to eight o'clock, which?

A. After eight.

Q. You mean in the evening?

A. Yes, in the evening.

Q. When you got there whom did you see in the apartment that you knew?

A. Basil Svirida; William, the second name I believe is Mackewicz. I am not sure about the second name -- I know his name was William. And the next one was Adam Mifidovich. I saw another fellow. I did not know him. I only know his first name Sachar.

Q. How many persons altogether were in the apartment of Nicholas Svirida when you got there?

A. With me, six.

Q. What was going on when you arrived at the house?

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A. Four of them were sitting at a table, around a table playing cards, and Nitika was sitting aside.

Q. You mean Nicholas?

A. Yes, sir, that is the Russian for Nicholas.

Q. Who were playing cards and who were sitting down?

A. Basil Sivrada, William, Adam Mifidovich and Sachar.

Q. Were playing cards?

A. Yes.

Q. You and Nicholas were not?

A. We were not. I was reading a newspaper.

Q. How many rooms are there in that apartment?

A. I don't know.

Q. You say the apartment is located on the first floor?

A. Yes, first floor.

Q. One flight up?

A. Yes.

Q. Is the apartment to the front of the premises or towards the rear?

A. To the rear.

Q. What happened when you were in the apartment with these five men you have already told us about?

A. One came in and he looked around. He was cross eyed.

Q. You say a man came into the apartment?

A. Came into the apartment and looked around and left.

Q. What time was it when that man entered the apartment?

A. I can't tell you exactly, it was about ten minutes to nine.

Q. Did you look at the man who entered the apartment?

A. When he came in I saw him.

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Q. Had you seen that man before?

A. I used to see him on the street sometimes, on the corner when I came home from work, but I did not know him.

Q. How often did you see the man that you say entered the apartment, before the night of the 15th of May of this year?

A. I saw him about two or three times, not more.

Q. And where was it that you saw him?

A. I saw him on the corner of Madison and Pike Street.

Q. In this city and county?

A. Yes.

Q. If you see that man again, in court, could you identify him?

A. Sure.

Q. Will you tell us how this man looked that you say entered the apartment?

A. He is not very tall, a little bit taller than I or you. (Referring to the interpreter) He was cross eyed and he had a little plaster on his face. (Indicating the lower part of the right cheek).

MR. CARDONE: Can we have Solomon Cohen brought before the bar for the purpose of having this witness look at him, just merely for the purpose of referring to testimony.

THE COURT: We are not trying Solomon Cohen but we are trying this defendant. How important is it? I prefer that you bring out evidence concerning this defendant.

MR. CARDONE: That is true, but I am going to refer to testimony --

THE COURT: Proof of identification of A is no evidence that B was concerned in the crime.

MR. CARDONE: That is true, but the People contend that before this hold-up took place one Solomon Cohen entered the apartment and at that time he was unmasked.

THE COURT: I will allow that, but you will have to show evidence concerning this defendant. The man who is cross eyed is Cohen?

MR. CARDONE: Yes, called Squint.

MR. FELDMAN: I take an exception to admitting this.

BY MR. CARDONE:

Q. What did you see this man do that entered the apartment, where did he go?

MR. FELDMAN: I object to all this testimony unless he can connect this defendant with Cohen.

MR. CARDONE: I will show that this defendant at the time of the arrest was found in the company of this man Cohen, shortly after the alleged hold-up, and I am trying to connect him with Cohen's entry into that apartment and the subsequent entry of other men with Cohen who were all masked.

THE COURT: It has been held that being in the company of the man who commits the crime is no proof. In the case of the People against Courtney, the man who forged the checks went into the bank, and met the other

man outside and the Court held that was not sufficient. You will have to show that this man at the bar was in the place.

MR. CARDONE: I will. Only I am trying to get connected circumstances, both before and at the time of the hold-up.

THE WITNESS: He came in and looked around and then he left the house.

BY THE COURT:

Q. Who came in?

A. The cross eyed fellow. The one was talking about.

BY MR. CARDONE:

Q. After he came in did he go out?

A. Yes, he went out again.

Q. When you saw this cross eyed man come in, did he have anything on his face, did he wear a mask?

MR. FELDMAN: I object to the question.

THE COURT: I sustain the objection to the form of the question.

BY MR. CARDONE:

Q. When you saw this man come into the apartment, how was he dressed?

A. He had a suit on and a shirt and looked around and he walked out again.

Q. Did you see his face?

A. Yes.

Q. Now, what happened after this man left the apartment?

Objected to as incompetent, irrelevant and immaterial.

Q. What happened in the apartment after this man left?

Objected to. Overruled and exception.

A. After he left, I cannot tell exactly, but about a half an hour, I believe, five men came in. They knocked at the door.

Q. What happened, never mind what you said?

A. Nicholas opened the door and the five entered.

Q. When you say Nicholas, do you mean the occupant of the apartment, the man who rented the apartment?

A. Yes.

Q. Was the game going on then, were the men playing cards?

A. Yes, playing cards.

Q. What kind of a game were they playing?

A. Casino.

Q. Were they playing for money or just pastime?

A. I don't know whether five cents or three cents.

Q. Was there any money on the table?

A. Yes.

Q. How much money about?

A. I did not count out how much.

Q. But you saw money on the table?

A. Yes, I did.

Q. When you heard the knock on the door what happened in the apartment and who entered?

A. As they came in they said "Hands up," all of them and had revolvers.

Objected to.

THE COURT: He said they said, and all of them. The objection is overruled.

BY THE COURT:

Q. Did they speak all at one time?

A. I don't know how

many men said it, but I heard "Hands up, hands up."

THE COURT: I will allow it.

BY MR. CARDONE:

Q. Go on.

A. All stood up and they rained their hands.

Q. Who raised their hands?

A. All of them, those who played cards and we who were sitting down.

Q. You mean the six of you?

A. Yes, sir.

Q. How many men entered the apartment when you heard the cry "Hands up, hold up your hands?"

A. Five men.

Q. And did you see any revolvers?

Objected to. Objection overruled. Exception.

A. I could not tell how many, but they had revolvers.

Q. Did you see revolvers?

A. I did.

Q. How many revolvers did you see?

A. As many men as there were, as many revolvers -- every man had a revolver in his hand.

Q. What happened when you heard the cry "Hands up"?

A. I told you before they all got up and they raised their hands and waited to see what was going to happen.

MR. FELDMAN: I object to the words "Waiting to see what was going to happen."

THE COURT: Strike out "To see what was going to happen."

BY MR. CARDONE:

Q. What else did you see besides revolvers that these five men had?

A. All of them had masks on.

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Q. Every one of them?

A. Yes, all.

Q. When the card players and you and Nick got up, what did these men with the masks and the revolvers do?

A. Then they put three of us on one side and three on the other side, on the opposite side of the table. One handed over his revolver to one of the men, and he started to search out pockets. Then, he, the same man, started to take out money and he reached me.

Q. Which same man?

A. I did not see his face. He had a mask on. I did not know him.

Q. You mean one of the five men?

A. Yes.

Q. Go ahead.

A. I saw one man had his coat sewed up.

Q. When you say you saw one man had his coat sewed up, to whom do you refer, the card players or the men who came in with guns and masks?

Objected to; overruled and exception.

A. One of those who came in.

Q. I show you a coat and ask you if you ever saw this coat before?

A. I did not see that before, not until the time he took out my money and the other men's money.

Q. Do I understand you correctly when you saw you never saw it before the night you and your companions were held up?

Objected to. Question withdrawn.

Q. Did you ever see that coat before the night of the hold up?

A. No.

Q. Did you see that coat on the night of the 15th of May when you say five men entered the apartment wearing masks and carrying revolvers?

A. I did.

Q. And who wore that coat that night if you know?

A. The man who took out the money.

Q. Took out what money?

A. Of the man who were standing opposite me by the table at the time and when he took out the money I noticed this coat.

Q. You are telling the truth, are you?

Objected to. Sustained.

The coat is marked for identification People's Exhibit 1.

Q. Tell us what you saw in the apartment, what happened?

A. He finished one side and then he came to my side.

Q. What do you mean by that?

A. When he reached me I said "Boys, we are being robbed" and I grabbed a chair.

Objected to.

THE COURT: Strike out what he said.

Q. Never mind what you said, what did you do?

A. I picked up a chair and then they started to shoot.

BY THE COURT:

Q. Who do you mean by "they"?

A. The others who had masks on who were in the house.

BY MR. CARDONE:

Q. When did the shooting begin, before you picked up a chair or after you picked up a chair?

A. As I picked up the chair they started to shoot.

Q. What did you do with the chair when you picked it up?

A. I struck one man and when I saw they did not stop I struck another blow and I don't know whom.

Q. With the chair?

A. Yes.

Q. And how many shots were fired?

A. I did not count.

Q. How many did you hear?

A. I didn't pay attention but I heard shots like there was a war.

Q. Did you hear more than one shot fired?

A. More.

Q. What happened while the shots were being fired?

A. They started to run away.

Q. Did any fight take place in the apartment?

A. No, when they saw I would not --

Objected to.

THE COURT: Strike it out.

Q. Did a fight ensue after you picked up the chair and when the shots were fired?

A. They were shooting.

Q. Did anybody else do anything besides yourself?

A. I did not see because as soon as they started to run I ran after them.

Q. Where did you run?

A. I jumped into the hall and met one man there and started to fight with him in the hall.

Q. What else happened?

A. I tore off his mask and I recognized him and it was the same man --

Objected to. Objection overruled.

A. (Continuing) It was the same man who was there before.

THE COURT: That part I will strike out, that he

recognized him -- he got hold of a man and knocked off his mask.

BY THE COURT:

Q. Where was that?

A. In the hall.

Q. How far away from the room?

A. Near the door.

THE COURT: Strike out the words that he recognized him.

(Solomon Cohen is now brought to the bar.)

BY MR. CARDONE:

Q. Do you know this man?

A. Now I know him.

Objected to.

THE COURT: Strike out the answer. The objection is sustained.

Q. Did you see this man on the 15th of May, and if so, where?

A. I saw him there in the house where I was.

MR. CARDONE: May we have the name of this man?

(The man gives his name as Solomon Cohen.)

Q. This is the man who first came into the apartment before the five men came in?

A. Yes, the same man.

Q. Is he the same man whose mask you knocked off?

A. Yes, sir, the same.

Q. After you got through fighting with this man what did you do?

A. He tore away and he run to the street.

Q. What did you do?

A. I ran out into the street.

Q. How soon after that did you run out, immediately, or did you wait?

A. I did not wait. Right as soon as he

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ran out I ran out.

Q. Did you see anybody's face other than the face of the man whose mask you knocked off, of the five men?

A. I did not see any other face.

Q. That was the only face you saw?

A. The only one.

Q. Did you see any other mask fall off, other than the mask you saw you knocked off Cohen?

Objected to. Objection sustained.

THE COURT: Let him state what he saw.

BY MR. CARDONE:

Q. How many masks did you see on the floor?

A. I did not count them because I ran right after, but I saw some masks on the floor.

Q. How many?

A. I don't know.

Q. Did you see one or two or three?

A. I did not count them.

Q. Was it more than one?

A. One or two. I did not pay any attention.

Q. After you ran out of this apartment, where did you run to?

A. The man who tore away from me run to Pike Street and I run right after him.

Q. Where did the other man run to?

A. When they reached Pike Street they ran in different directions. I did not see where.

Q. What did they do with the revolvers?

A. I did not see.

Q. Are you able to tell what the color of the masks

were that were worn by these men?

A. There were different kinds. The one I tore off was a white one. Some of them had dark, black ones.

Q. White and black, any other color?

A. I cannot tell you because I did not see them too much to observe all that.

Q. When you say white, do you mean white in color or light in color?

A. Not white, but not very dark. It was darkened, painted a little.

Q. Were you searched by any of these five men?

A. I did not permit him to touch my pocket.

Q. How soon after you ran out did you come back into the apartment?

A. About a half an hour. I don't know exactly.

Q. You came into the apartment a half an hour later?

A. About, perhaps twenty minutes. I don't know exactly.

Q. What did you do after you ran out of the apartment and got to the corner of Madison and Pike Street?

Objected to. Overruled and exception.

A. It was not Madison Street. It was the corner of Henry and Pike.

Q. What did you do as soon as you ran out of the apartment?

A. I stopped on the corner and looked around to see where they run to, but I did not see them.

MR. FELDMAN: I move to strike that out.

THE COURT: The objection is sustained. Strike it out.

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Q. Did you go for a police officer, what did you do after you ran out?

A. No.

Q. How long did you stand on the corner before you went back to the apartment?

Objected to as immaterial, overruled and exception.

A. I went to the other corner and stood about ten or fifteen minutes. I did not look at the watch and I can't tell you exactly, and then I went back.

Q. Altogether you say you were out of the house about twenty minutes before you returned?

A. About twenty minutes.

Q. When you got back to the apartment, what did you see?

Objected to.

Q. Who was in the apartment?

Objected to. Objection sustained.

MR. CARDONE: I want to show that there was a man lying on the floor shot.

THE COURT: Show it in another way. You are asking questions which open up an avenue of objection.

Q. When you got back to the apartment did you see any of the persons that had been playing cards there?

A. They did not allow me to go in the house.

Objected to.

THE COURT: Strike that out.

BY THE COURT:

Q. Did you go in?

A. No.

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BY MR. CARDONE:

Q. You did not enter?

A. I did not.

Q. Had the police arrived there when you got back to the hallway of the apartment?

A. The police were there and also an ambulance.

Q. I show you these masks and ask you if you ever saw them before?

Objected to. Overruled and exception.

A. I saw those masks when they were in the house the 15th of May, in the evening.

Q. When did you see them for the first time on the 15th of May?

A. In the house where I was I saw them.

Q. Where in the house?

A. On the faces of each man.

Three masks are now marked for identification, People's Exhibit 2.

Q. Did you see the masks after that?

A. After that I did not see them.

Q. Did you pick up any of the masks?

Objected to. Question withdrawn.

Q. Did you pick up the mask that you knocked off the face of one of those five men?

Objected to. Overruled and exception.

A. No.

MR. FELDMAN: I now ask to have the entire testimony of this witness stricken from the record upon the ground that no connection has been shown here between

the witness and this defendant.

Motion denied and exception.

CROSS EXAMINATION BY MR. FELDMAN:

Q. You say it looked like a war was on, when you saw the shooting going on?

A. Why, yes, of course it sounded like war, so many shots.

Q. Between the Poles and the Bolsheviki?

Objected to.

THE COURT: Strike that out.

MR. FELDMAN: I will withdraw that.

Q. You were quite excited, were you not?

A. Of course I was excited.

Q. You cannot tell us exactly what happened?

A. What do you mean by exactly.

Q. For instance, what kind of clothes they had on and the color of their clothes?

A. This I cannot.

Q. And therefore you do not know whether one had on a black coat or a white coat or a red coat, you cannot tell that?

A. There was no white coat. That I can tell you. There was some blue or dark green.

Q. It was dark to you, dark colors?

A. Yes, sir, dark colors.

Q. You could not tell if any had buttons on or not, on their coats?

A. I did not pay attention to that.

Q. You did not examine it so close to see whether they

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were torn or not, did you?

A. I only saw one man's suit sewed up.

Q. That man was standing how many feet away?

A. I don't understand your question.

Q. How far away was the man standing whose coat you could tell was sewn up?

A. About two feet. He was right opposite me on the other side of the table.

Q. You want to tell this Court and jury that at the time you were standing with your hands up, is that right, or with the chair in your hand?

A. I still had my hands up at the time.

Q. You were excited, were you not?

A. Yes.

Q. And afraid of your life -- shots were fired at the time?

A. When?

Q. When you stood with your hands up there and thought the war was on?

A. Not at that time they did not shoot.

Q. You stood there this way holding your hands up?

A. When he took out the money from the other side, on the other side I had my hands up.

Q. During that time you say you could observe a tear on this coat, is that right?

A. At the time he took out the money on the opposite side I saw this.

Q. Can you see the coat from there?

A. I was nearer the coat at that time.

Q. How near or how close were you, as close as this? (Indicating)

A. Nearer.

Q. Still closer?

A. Like that. (Indicating)

Q. As far as the foreman site from this?

A. I saw it when he stood on the other side and took out the money.

Q. You then and there could see that was sewn up in the coat?

A. I could see.

Q. That was the only thing you saw on that man who wore the coat, is that right?

A. That is all.

Q. Did you see if he had a cap on or a hat on?

A. A cap.

Q. Do you remember the color of it?

A. I don't remember the color.

Q. Do you remember what kind of shoes he had?

A. There was no possibility. It was impossible to look at their shoes and everything.

MR. FELDMAN: I ask to strike that out.

MR. CARDONE: I ask that it be allowed to stand.

Q. You could not tell if it was white, yellow or black shoes?

A. White shoes they were not -- but I can't tell you if they were yellow or black.

Q. But you could tell that the coat was sewn and there was a tear there?

MR. CARDONE: Sewn or torn.

Q. It was sewed up?

A. Yes, this I could see.

Q. Was it torn?

A. It was sewed up. I saw that a tear was sewed up.

Q. Could you tell us how long a tear it was? The size of it?

A. I can't tell you how long it was. All I saw it

was sewed up. The tear was sewed up.

Q. That was on Saturday?

A. Yes.

Q. Were you working on that day?

A. Until noon.

Q. What do you work at?

A. On the dock.

Q. Had you had any drinks on that day?

A. No.

Q. Do you work with these other people on the dock, do you work with the others who live at 90 Henry Street?

A. No.

Q. You came to visit them?

A. Yes.

Q. By arrangement or invitation?

A. I came there myself, no invitation.

Q. You did not know you would meet those five there?

A. No.

Q. Did you drink anything?

A. No.

Q. You do not drink?

A. Nothing at all.

Q. You do not drink?

A. I do drink, but that day I did not drink. At that time I did not.

Q. You drank some on that day?

A. No, not that. (The witness now says in English "Nothing doing.")

BY MR. FELDMAN:

Q. How long are you in this country?

A. Seven years.

Q. You understand English?

A. (In English) No, I no understand English.

Q. What is that?

A. I no known English.

Q. You saw you were there about a half an hour in the house?

A. Not more than a half an hour.

Q. When you came in your friends were already playing

cards?

A. Yes, they were playing cards.

Q. Were some drinks served at that time?

A. Nothing at all.

Q. Did you see Vodka at that time or whiskey?

A. There was nothing to drink there.

Q. They are Russians, are they?

A. Russians and Poles.

Q. You mean to say they were playing cards and nothing to drink?

A. Nothing to drink.

Q. When you came in who was sitting at the table, how many men were sitting there?

A. Four of them were sitting at the table playing cards and Nick sat aside.

Q. Money on the table?

A. There was some money, ten cent pieces and pennies.

Q. Did you take part in the playing during the half an hour you were sitting there?

A. No.

Q. You were looking on?

A. I looked at them and then I read the paper.

Q. When you were there was a young lady there?

A. No woman was there.

Q. Do you remember when Cohen came in as you say, did he say something?

MR. CARDONE: You mean the first time?

MR. FELDMAN: Yes.

A. I don't know. He did not say anything to anybody. He came in and looked around.

Q. Did he speak to Nick?

A. No.

Q. Don't you know he said to Nick "Have you got the woman home, is the girl home?"

A. No, he said nothing to anybody at the time.

Q. You mean to say he came into the house -- did he knock at the door?

A. Who, him?

Q. Cohen.

A. Yes, he knocked at the door and he came right in.

Q. Who opened the door for him?

A. He opened the door himself.

Q. And he walked in?

A. Yes, came in.

Q. And didn't say anything at all?

A. No, he came in and looked around and then he went out again.

Q. He did not say a single word?

A. I am telling you all he did, he came in and looked around and went out again.

Q. Did you ever see Cohen before?

A. I saw him before, about three or four or two times in the street.

Q. Was anything said after Cohen left by any of your friends as to who the man was who just come in and walked out again?

A. Nothing but those who were playing cards said "What did that man want?" he came in and went out again.

Q. Then you say about half an hour later five men came in?

A. Yes.

Q. Did they knock at the door?

A. Yes.

Q. Who opened the door for them?

A. Nick.

Q. Who is Nick?

MR. CARDONE: The occupant of the apartment.

BY MR. FELDMAN:

Q. Five entered and you say all at once they said "Hands up?"

A. Yes, all said it.

Q. Every one kept up their hands?

A. Yes.

Q. You never saw a thing like that before, did you?

A. No, not before.

Q. When they said "Hands up", they held revolvers in their hands?

A. Yes, all of them had revolvers.

Q. Up went your hands also, is that right?

A. Yes.

Q. Who was looking for money, searching for money?

A. The man on whose coat I looked was the man who looked for the money, on the other side.

Q. That was the only man who was looking for the money?

A. Yes, he was the only one.

Q. Did he search everyone?

A. Everyone who stood on the other side of the table until he reached me.

Q. He was the only man who searched them, the others did not do any searching at all?

A. Only one.

Q. What did the others do, the other four men, with the revolvers in their hands?

A. They stood there and they held the revolvers and they said "Keep still."

Q. When did they start to shoot?

A. When I grabbed the chair, at that time they started to shoot.

Q. Who the man was you hit with the chair you don't know, do you?

A. No, I do not know.

Q. Do you remember being before the magistrate's Court,

Second Street and Second Avenue?

A. Yes.

Q. And do you remember the question was put to you "Did you ever see this man before, the defendant Robert Behrman?"

MR. CARDONE: I object to the form of the question as indefinite -- before meaning when -- I don't know.

MR. FELDMAN: I mean before the day he was before the Magistrate.

BY MR. FELDMAN:

Q. Do you remember that question put to you by the Magistrate "Witness look at this defendant and tell me where and when did you see him?"

A. They asked me did you see him before and I said I did see him before in the street, but I did not know him.

Q. Didn't you say "I never saw this boy before"; yes or no?

A. I said that I saw him in the street. I did not know nothing more about him.

Q. Was that all that was asked you, and was it all that you testified to at that time?

A. They asked me which one did you see and which one did you grab and I told them.

Q. Did you ever mention a syllable about the coat, yes or no?

A. I did not say anything about the coat there.

Q. Do you know of your own knowledge that after the coat you said you saw a tear on, you never said a single word to the officer or Magistrate about it?

A. I did not say anything about this suit, only what I am telling now.

Q. When was the first time you spoke about the coat and

a tear in the coat?

A. Now I am telling about the suit.

Q. You mean to say from the 15th day of May until today you never spoke about the tear in his coat?

A. I did not say about the suit or anything about the suit to anybody until today.

Q. Did you speak to the officer about it?

A. And the policeman I did not tell.

BY MR. CARDONE:

Q. You say these five men wore caps?

A. Sure.

Q. And did you see any caps on the floor as you were running out after these men?

Objected to. Overruled and exception.

A. I did not see any hat. What I saw I told you.

BY MR. FELDMAN:

Q. When you saw the men running out of the house, did you run after them?

A. Why he ran out of the house and I took off his mask, I ran after him into the street.

Q. When you say him, whom do you mean?

A. The cross-eyed man.

Q. Cohen, the man who was brought before you?

A. Yes.

Q. You ran after Cohen?

A. Yes.

Q. What became of the other four men?

A. They ran ahead of him and on the corner of Pike Street they ran in different directions.

Q. How long were you running after him?

A. About two minutes from No. 90 to the corner.

Q. Did you make any outcry, police, murder?

A. I did not scream at all.

Q. After you were running two minutes, what did you do, stood still?

A. I stood on the corner and looked.

Q. Up or down, where were you looking?

A. Whom could I see up?

Q. What were you looking for and what was it you were waiting for?

A. In the direction where they ran.

Q. You don't know today what became of them?

A. I don't know what happened to them afterwards, when they ran away.

Q. How long were you standing there?

A. I told you already about fifteen or ten minutes.

Q. You were out of breath from running?

A. I was excited and I stood there and I looked around.

Q. After the excitement was over you went back again?

A. I came back and there was lots of people there.

Q. You did not look for any policeman?

A. I did not look for any policeman when I came --

Q. You did not say anything to anybody?

A. I did not say anything to anybody.

Q. You were just getting over your excitement and walked back to the place, is that right?

A. I stood there and then went back to the house.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes an adjournment until tomorrow morning, July 14, 1920 at 10:30 o'clock.

New York, July 14, 1920.

Trial resumed.

MAX MACKEWICZ, called as a witness in behalf of the People, being duly sworn and examined, testified through the official interpreter Mr. Landou, as follows:

(Residence 80 Monroe Street.)

DIRECT EXAMINATION BY MR. CARDONE:

Q. How old are you?

A. Forty.

Q. Are you married or single?

A. Single.

Q. What do you do for a living?

A. Laborer in a sugar factory.

Q. Where?

A. Arbuckle Company, Brooklyn.

Q. Do you know Nicholas Sivirida?

A. Which one do you mean?

A. Nicholas Sirvirida, not Basil, but Nicholas?

A. yes, he used to come to my house.

Q. How long do you know him?

A. I know him from the other side and I know him since he is in this country.

Q. Did you see him on the 15th of May of this year?

Objected to as incompetent, irrelevant and immaterial.

THE COURT: When did you last see him -- do not state the date, Mr. Cardone.

Q. When did you last see him?

A. Whom?

Q. Nicholas Sivirida, the man we are talking about?

A. You mean now?

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Q. Yes, now.

A. In the court when we were together.

Q. Did you go to the premises 80 Henry Street on the 15th of May?

Objected to. Overruled and exception.

A. I was.

Q. What time did you go there?

A. I came there about eight o'clock.

Q. Whose house did you go to?

A. Nick Sivirida.

Q. When you arrived there at Sivirida's house, whom did you see there?

A. When I came there there was nobody else but Nick Sivirida and Basil Sivirida.

Q. Who is Basil?

A. A brother of Nic.

Q. How long did you remain in that house that night?

A. After I came in two more men came and we stayed there. About a half an hour later they came.

Q. What are the names of these two men?

A. Martin Sinitza, Adam Chisadovicz.

Q. Altogether there were five men there then, is that so?

A. And another man by the name of Zachar -- I don't his surname or family name.

Q. What did you do in the house that night?

A. Four of us playing cards, pinochle.

Q. Pinochle or casino or what?

A. Pinochle. Two were sitting there in the house.

Q. Who were the ones playing cards?

A. I, Basil Sivirida and Adam Chvadovicz.

Q. How many of you played cards?

A. Four, and also Zachar played with us.

Q. You, Zachar and Chadovicz, and who was the other man?

A. Basil Svirida.

Q. What did Nick Svirida and Martin Sinitza do?

A. They were sitting in the house reading papers and talking among themselves.

Q. Did you play a friendly game, just to past time or what?

A. Five cents a hundred and for pastime.

Q. You were playing for money, is that what you mean?

A. Yes, sir, five cents.

Q. What happened while you were playing cards for money?

A. We were playing, four of us, playing cards and one man came running in and looked around and did not say anything, but I don't know his name; looked around and left. Did not say anything.

Q. Did you know that man before that night?

A. I knew it, yes.

Q. Had you see him before that night?

A. I did, in the street.

Q. How many times had you seen the man that you say came into the apartment first, before that night?

A. About five or six times, perhaps more.

Q. Do you know his name?

A. The name I don't know, only by sight I know him.

Q. What did this man do that came into the house?

A. Nothing, didn't say anything, looked around and turned back.

Q. After this man entered the house, did he go out?

A. Yes, he went out right away.

Q. Then what happened?

A. About fifteen minutes afterwards or twenty minutes, I did not look at the watch, five of them came in.

Q. Five of whom?

A. Five men. They said "Hands up."

Q. What did you see and what did these men do that came in?

A. They said "Hands up" and one fellow handed his revolver to one of the men and started to search for money.

Q. What did you notice about these men?

A. I was wondering what they were going to do.

Q. Never mind what you were wondering about, what did you notice about these men?

A. I did not notice anything upon them because they had masks on.

Q. How many of them had masks?

A. Five of them, all of them had masks on.

Q. What else did you see?

A. Nothing else.

Q. When they said hands up, did you see anything?

A. He went to take out the money and the coat, I saw the coat in the back was torn.

Q. How many men did you see in the apartment that came in with masks?

A. Five men.

Q. Did you see anything in their hands, in the hands of any of those five men?

A. Revolvers they had.

Q. How many of them had revolvers?

A. Five of them

came in and five revolvers.

Q. Did all of these five men enter the apartment or did some stay out in the hall and some enter the apartment?

A. All inside.

Q. Did they shut the door?

A. They closed the door and all five were in.

Q. Tell the Court and jury what you saw happen in that room, as these men were there, tell what happened?

A. He searched some of us and then when they reached Martin Sinitza he said what is the matter with you, what are you doing.

THE COURT: With whom was this conversation?

MR. CARDONE: He is telling what happened. It is not a conversation.

THE COURT: That is admissible.

MR. CARDONE: He is telling just what happened in the apartment; he is not talking about any conversation.

THE COURT: Proceed.

BY MR. CARDONE:

Q. You say he searched, whom do you mean when you say he searched some of the men?

A. I can't tell. All I know the coat he had on was torn.

Q. When you say he searched the men in the apartment, do you mean you cannot tell which of the five men did that?

A. I do not know him, all I know is he had the coat, his coat torn, for they all had masks on.

Q. You say you saw a coat, what kind of a coat did you

see and what was the matter with the coat?

THE COURT: Let him describe it without showing him any coat.

BY THE COURT:

Q. Where were the cuts?

A. In the back part here. (Indicating the left part of the back)

THE COURT: Stand up and show.

A. I can't tell you exactly, but about here. (Pointing to the left side of his back)

Q. How many cuts did you notice?

A. I can't tell you that.

Q. You said you noticed the coat was cut, how many cuts did you observe?

A. I can't tell you. I know it was torn.

BY MR. CARDONE:

Q. Describe the appearance of the coat as you saw it on the man whom you say went around and searched these men in the room?

A. A short coat, checked and dark material.

Q. I want you to describe the cuts, what did the cuts look like and how many cuts did you see and so forth?

A. I can't tell you in how many places it was torn. All I know the coat was torn.

BY THE COURT:

Q. In what particular place was it torn?

THE COURT: You see, Mr. District Attorney, if you are going to rely upon identification evidence with respect to the coat worn by this defendant, such testimony

Must be as far reliable as it is certain for a human being to express an opinion thereon.

MR. CARDONE: That is what I am trying to get from this witness.

BY MR. CARDONE:

Q. Cannot you give this jury some ideas to where the coat was cut and what the cuts were that you saw on the coat of this man that you say was going around the room searching?

A. I know it was torn in the back. I did not take the coat in my hand to examine it.

Q. Did you see the man's back?

A. After he took out my money and started to take out money of the other men, I saw his back at the time.

Q. How near were you to this man that you say wore a coat that was cut?

A. Right near him. We were standing one next to the other.

Q. How far away were you from him, or how near to him, at the nearest point?

A. One near the other.

Q. That does not mean anything to me, how near?

A. We were all standing together.

Q. Were you a foot away from this man that wore the coat that was cut, how many feet or inches away from you was the man that had on a coat that was cut, at the time you saw it?

A. For instance, the man is here and I am where I am now, the distance of from my chair to this gate. (Indicating)

Q. Did you ever see this defendant in your life before that night or at any time?

A. I saw him before and that night.

Q. Where did you see him before?

A. I saw him coming from work or to work, on the corner of Madison Street and Pike Street. I saw them.

Q. I am not talking about them, I am talking about Robert Behrman, this defendant, did you ever see this defendant before the 15th of May, yes or no?

A. I did see him.

Q. Where did you see him and how often did you see him?

A. A few times on the corner of Madison Street and Pike Street.

Q. You say you saw this defendant before the 15th of May, is that correct?

THE COURT: Which defendant?

BY MR. CARDONE:

Q. This defendant?

A. Yes, sir.

THE COURT: Was that before the occurrence?

MR. CARDONE: Yes, before the occurrence.

Q. How many times did you see the defendant before the 15th of May of this year?

A. I can't tell you how many times. I did not count them. I saw him many times.

Q. How many times about?

A. I did not count and I cannot tell you.

Q. Was it more than a half a dozen times?

A. Perhaps more and perhaps less.

Q. Was it more than twice that you saw him?

A. More.

Q. Was it between three and six?

A. I can't tell you

that.

Q. When you say it is more than three and less than six, what do you mean, how many times altogether, about, I just want to get an idea?

A. I am telling you I did not count. I used to see him and that is all. I did not take no special attention.

Q. Did you know him personally to speak to?

A. I knew him but I did not speak to him.

Q. You say you saw him on the 15th of May, where did you see him and how do you know it was him, if you say you saw him?

A. When their masks were torn off in the house I saw him.

Q. You saw the defendant?

A. After his mask was torn off I saw him, it was the same man.

Q. Did you see his face?

A. Oh, yes.

Q. You are sure this man's mask was torn off that night?

Objected to. Question withdrawn.

Q. Did you see the defendant in the apartment on the 15th of May?

MR. FELDMAN: He has testified before that he did not see the face at all.

MR. CARDONE: That is what I want to find out.

THE COURT: I think there is confusion in the mind of the witness.

BY MR. CARDONE:

Q. Referring to this defendant, this defendant here,

did you see him in the apartment May 15th, when the five men came in with the masks and the revolvers, yes or no?

A. I did.

Q. And how do you know it is this man, how did you see him?

A. When they knocked his cap off and mask I saw it was him.

Q. Did you see the defendant's face when the mask fell off him?

A. I did.

Q. Do you say you saw the defendant's face?

A. Yes, sir.

Q. What was the defendant doing when you saw his face?

A. When he started to run the lost his cap and the mask was taken off and I saw his face.

Q. What kind of a cap did he wear?

A. He had a black cap.

Q. Had on a cap, what kind?

A. A cap.

BY THE COURT:

Q. How many men lost their masks, do you know?

A. We found only two masks in the house.

Q. Did you see two masks fall from the men?

A. Yes.

BY MR. CARDONE:

Q. Did you see any masks in the hallway outside of the apartment?

A. No, not in the hall.

Q. Who picked up the masks?

A. Nobody touched them until the policemen came.

Q. When you say the policeman do you mean Detective Gray?

A. Yes, sir.

Q. Did you see anybody else's faces when the mask fell

off?

A. There was another man who lost his mask and I saw him. He has yellow hair.

Q. Yellow or red?

THE INTERPRETER: He said yellow.

Q. I never knew anybody to have yellow hair, do you mean red hair, or blonde?

A. Sort of reddish, yellowish.

Q. What happened, tell us all about it?

A. I have told you all about it, what else do you want. When I was shot I was looking around who did it.

Q. Did you see any shooting?

A. They stood near me and I was shoot of course.

Q. How many shots did you hear fired?

A. I can't tell you how many times. I know not once, not twice, but more.

Q. Where were you shot?

A. Right here through the coat.

Q. Did the bullet strike your body?

A. Yes, and I have a mark.

Q. And the bullet came out after you were shot?

A. I took it out myself.

Q. Did you go to the hospital that night?

A. An ambulance came and bandaged me and the next morning I went to the hospital.

Q. Didn't you go to the hospital that night?

A. No, the next morning.

Q. Were you not taken away in an ambulance to the hospital?

A. No, I told you I stayed home.

Q. Where were you dressed, in the room in this apartment

or in the station house?

A. The same hose where this happened.

Q. You were never unconscious from the time you were shot until you took the bullet out that night?

A. No.

Q. How much money was taken from you by the man that went around searching?

A. They took \$15 from me.

MR. FELDMAN: Didn't he say Russian rubles.

THE INTERPRETER: He called the dollars rubles.

Q. Did you have United States money on your person or was it Russian rubles?

A. Where can I take Russian rubles? Of course, it was American.

Q. Where was this money, where did you have it?

A. In my right hand trousers pocket.

Q. Who took the money from you?

A. I can't tell you who. The one who had his coat torn took my money. I cannot identify him.

Q. You say you saw this defendant in the house that night?

A. I did. He was there.

Q. You say you saw his mask fall off, didn't you say that a moment ago?

A. Yes, sir, as I looked around two of them had their masks off and their caps.

Q. Which one wore the coat that was cut, which one of the five men?

A. I can't tell you, because they got mixed up afterwards.

Q. When you say you saw two men with their faces uncovered and unmasked, did you see either one of those two men

with the coat on that was cut?

A. No, I can't tell you that.

Q. Are you able to say which one of the five men were the coat that was cut?

A. No, this I cannot tell.

Q. Didn't you say a moment ago that the man that went around searching everybody had on the coat that was cut?

A. Yes, the man who searched had his coat torn, but I couldn't tell you which one it was afterwards.

Q. Who was the man that had his mask torn off his face?

A. This defendant and another man.

Q. Who had on the coat, was it this defendant or the other man that had his mask torn off, or one of the other three?

A. This I can't tell you. When the fight started, after they all got mixed up, I can't tell you which one.

Q. When you saw the defendant's face, where was he standing?

Objected to. Overruled and exception.

A. Beyond the door.

Q. What do you mean by that, beyond.

A. As they were running out of the house they started to fight and there they lost their masks.

Q. Where did they lose their masks, in the house or in the hallway?

A. In the house.

Q. In the room where the hold-up took place?

A. Yes.

THE COURT: Strike out the words "Where the hold-up took place."

Q. Where this occurrence took place?

A. Yes.

Q. I show you this coat and I ask you if you ever saw that coat on the night you were shot?

A. This is the coat. (Indicating People's Exhibit 1 for identification.)

Q. Who wore that coat that night if you know?

A. This I can't tell.

Q. Are you able to say whether this defendant or any other of the four men had the coat on --

Objected to. Question withdrawn.

Q. I show you these masks and I ask you If you ever saw those on the night of the 15th of May when you were shot?

A. The black mask was on this fellow, and the black cap. The black cap and the black mask this defendant had.

Q. Sure about that?

A. Sure.

Q. You say the black mask was worn by this defendant?

A. Yes, sir, and black cap.

Q. Did you see that?

A. Yes.

Q. You are not guessing?

A. I am sure.

MR. CARDONE: I offer the mask in evidence.

Objected to. Overruled and exception.

Received and marked People's Exhibit 3.

CROSS EXAMINATION BY MR. FELDMAN:

Q. You are not sure the man who wore the coat was the man whose face you saw?

A. No, I cannot tell you that.

Q. Didn't you any before to the District Attorney that you did not see any of the faces that came into the room

because they all had masks on?

A. Yes.

Q. When did the masks fall off, after he took your money or before?

A. After they took the money and after Martin Sinitza had the fight.

Q. You told us during the time they took the money you observed the coat, is that right?

A. When he took the money off the other men I noticed it.

Q. Afterwards you say you saw the face because the mask fell off?

A. Yes, sir, and the cap.

Q. And you are not able to say that the man whose face you saw was the man who wore the coat?

A. No, this I can't tell.

Q. You were quite excited, were you not?

A. I was frightened but I knew all about what happened. I felt the blood coming out.

Q. Did you fight with them?

A. No, I didn't do anything.

Q. Why did he shoot at you?

A. When Martin started to fight, that is the time the shot was fired and it hit me. When Martin grabbed the chair that is the I was shot.

Q. What time did you come into the house?

A. About eight o'clock. I did not look exactly at the clock.

Q. You understand that you have to tell the truth now, you are under oath, you understand that?

A. I am telling the truth. What I did not see I am not telling you.

Q. You understand if you testify falsely the judge might

punish you for it?

A. You can even give me the electric chair if I tell you any untruth. I am telling the truth.

Q. How long are you in this country?

A. Nine years.

Q. You do not speak English at all?

A. No, because I work in a sugar factory all the time and they speak my own language, even the foreman.

Q. They are all your friends, Basil and Nick, they are all your friends, and Martin?

A. We come from the same place. We are all friends.

Q. You see them quite often, don't you?

A. Of course, why not.

Q. Then was the last time that you saw them before you came to this court?

A. Who?

Q. These friends, Martin and the others?

A. Which one?

Q. Martin.

A. I see him every day and Basil is my boarder.

Q. You spoke to him last night, didn't you?

A. What did we have to speak about?

Q. You saw him last night, didn't you, and you spoke to him?

A. Martin I did not see. Yesterday afternoon after we left court, because he lived away from me, but I saw Basil and he lives with me.

Q. You saw him today?

A. Yes.

Q. And he told you what he testified to yesterday in this court?

A. I did not ask him and he did not say anything.

Q. You did not speak about this case at all, did you,

today, here in the court room or out in the hall?

A. We were seated together and of course we had some conversation, but did not have to talk about this case.

Q. Didn't he say to you about the coat, that the coat was torn in the back?

A. No. Why did he have to tell me? I saw it myself.

Q. You were a witness in the magistrate's court, were you not?

A. Yes.

Q. Do you remember that you testified anything about the coat?

A. We did not say anything about the coat in the other court. We waited.

Q. Did you say in the other court that you saw the face of this defendant at any time?

A. I did. I said that he is one of them.

Q. Did you tell the judge, the magistrate presiding at that time, that he was the man whom you saw in the house, yes or no?

A. I did tell him the same.

Q. Are you sure of it?

A. Sure.

Q. And never mentioned anything about the coat to him, about the tear in the coat?

A. We talked among ourselves that we will talk about it when the trial will come up.

Q. Did you say to the judge about the tear in the coat, that you saw it?

A. No, not there.

Q. When did you see the face of this young man before you were shot or afterwards?

A. After I was shot, the fight started and then I saw his face.

Q. First you were shot?

A. At the time when Martin picked up the chair.

Q. You were shot in the house, in the room, is that right?

A. Yes, in the room.

Q. You say you felt the blood oozing out, coming out?

A. Yes.

Q. What was the first thing that you did?

A. I didn't do anything. They all ran after the man and I stayed in the house.

Q. After the shot was fired they ran out of the house?

A. Yes, they ran out and the party ran after them.

Q. In other words, how many men were inside the room of your friends, six of them?

A. We were six men.

Q. How many men came in?

A. Five.

Q. So you saw then ten men running or rushing out of the room, is that right?

A. Yes, one after the other. They started to run and the party ran after them.

Q. And until then you did not see any of their faces, did you, until you were shot?

A. No, sir, they had masks on.

Q. In other words, you saw, as you claim, if you did see, this defendant's face, as you say, when he was about to run out?

A. Yes.

Q. At that time you were already shot and taken care of your wounds?

A. Yes.

Q. You held your hand to your wound, did you not?

A. I wanted to grab one of them, because it was all the same to

me whether I died or lived.

Q. Life is not worth anything to you, is that so?

Objected to. Sustained.

Q. All of them ran out of the house and you stayed home?

A. I remained because I was shot, wounded, but I did not fall to the ground.

Q. You were kind of weak -- you were excited and frightened?

A. Not much. I was shot, that is all.

Q. You say you picked up some masks, where did you pick them up?

A. No, we did not pick up the masks. Basil went to the station house and officers picked them up and also a bullet.

Q. You did not see the masks fall off?

A. I saw their faces after the masks fell off.

Q. When did they fall off, as they ran out of the house?

A. Yes, when they started to fight.

Q. You did not pick them up at all?

A. No, neither the caps nor the masks.

Q. You were very careful in observing the coat?

A. Yes. I was not shot at the time when I looked at the coat closely.

Q. You were very careful to see the face of the man from whom the mask fell off?

A. I saw them well, this man and the other.

Q. And notwithstanding your observation, you cannot tell whether the man whose mask fell off is the same man who wore the coat?

A. No, this I cannot tell. Started to run out

and the fight started and there was a mix up and I can't tell you.

BY THE COURT:

Q. Where were you at the time you claim you saw this defendant in the room?

A. I was in the room.

Q. What part of the room were you, were you on the floor or were you standing at the time?

A. I was standing.

Q. When did you see the face of the defendant, before or after you were shot?

A. After I was shot.

BY MR. FELDMAN:

Q. When they were all running out of the house?

A. When he picked the chair up and I was shot, they all started to run out of the house.

Q. And what is the time you claim you saw the face of this defendant?

A. Yes, sir.

Q. And that was the time when the mask fell off, is that the idea?

A. Yes.

Q. Where were the masks, in the hall or in the room?

A. Two masks and two caps were found in the room.

Q. Near the door?

A. Yes, near the door.

Q. In other words they fell off when they ran out, is that right?

A. Yes, when they started to fight.

Q. They were turned with their backs to you?

A. Yes, sir.

Q. Were you at that time sitting down or standing up?

A. When they came in they ordered us to stand up, hands up,

and we were standing.

Q. I mean when they ran out, after you were shot and you saw them running out, were you sitting down or standing up at that time?

A. There was a fight and we had to stand up. There was a fight.

Q. And the blood coming out of your body, is that right?

A. There was very little blood because --

Q. Didn't you put your hand at the spot where you were shot?

A. No, I wanted to grab one of them.

Q. In other words you did not care what happened to yourself, only that you had somebody to get hold of?

A. I knew I was shot, but I wanted to get hold of one of the men.

Q. And all went out?

A. Yes.

Q. Did you run after them?

A. No, not I. I stayed there.

Q. How did you expect to get hold of somebody if you did not run after them?

A. Why, I talk about when they were still in the house.

Q. I talk about when you were shot, after you were shot you were trying to get somebody, is that right?

A. Yes.

Q. But you did not run after them?

A. No.

Q. Why didn't you?

A. I figured may be I will fall in the street and who will know where I belong. So I decided to remain in the house.

Q. You said you did not feel the pain so much, you were good and strong, and you were not afraid of it?

A. Yes, it was all the same to me but I wanted to stay in the house.

I did not care to go.

Q. Is it not a fact you say you saw this young man's face there, because you had seen him before that day in the neighborhood?

A. I saw him before and I also saw him at the time when his mask was off.

Q. Is it not a fact you had seen him ten or twenty times in the saloon on the corner?

A. Yes, sir, I used to see him in the saloon where I used to take a glass of beer occasionally.

Q. And therefore you say that was the face of the boy you saw?

A. Which one?

A. I don't know.

MR. CARDONE: Now be fair, Mr. Feldman, which one do you talk about?

MR. FELDMAN: The defendant at the bar.

THE WITNESS: He was in the house, too.

Q. Did you tell that to your friends, that you saw him in the house?

A. Maybe some of them saw him, too. I can't tell you.

(Solomon Cohen, a co-defendant is now brought to the bar.)

Q. Do you know that man?

A. Yes. He came to the house first and then with the company.

Q. What did you see him do in the house that night? (Cohen)

A. He was there with a revolver.

Q. Go on.

A. What else -- he was there.

Q. That did you see him do?

A. One took out the

money and they were all standing until the fight started with revolvers.

Q. Did you know Cohen before that night?

A. I did.

Q. How long did you know him?

A. I don't know how long, but I knew him.

Q. Do you know him personally?

A. No, I don't know their names.

Q. When I say personally, did you ever speak to them?

A. No.

Q. You never spoke to Cohen before the 15th of May?

A. No.

Q. Where was it you saw Cohen before the 15th of May?

A. Cohen and this defendant used to be together.

Q. Where?

A. In the street, sometimes here and sometimes there.

MR. FELDMAN: I ask to strike that out from the record as having no bearing on the case.

THE COURT: Yes, motion granted.

BY MR. CARDONE:

Q. How many times did you see Cohen before the 15th of May?

A. I can't tell you how many times.

Q. Did you see him more than a half a dozen times before the night that you were shot?

A. How can I tell you. I did not count. I saw him perhaps once, twice or three times, perhaps more times.

Q. Did you see Cohen in the house the night you were

shot?

A. No.

Q. You say you did not see Cohen, this man that just came to the rail, in the house, the night that you were shot?

A. I did not see him in the house. I know he came there first.

Q. That is when you say you knew he came there first, what do you mean?

A. He was in the house before they came in with the revolvers.

Q. When he came in there, did he have on a mask, when Cohen came in first, did he have on a mask?

A. No.

Q. When the men came in with revolvers, how many men entered?

A. Five.

Q. You said two of the men had masks torn off their faces, is that right, two of the five, which two of the five were they?

A. This one the defendant was one of them and another man, I don't know who the other man was.

Q. Did Cohen's mask fall off of his face?

A. Martin Sinitza took off his mask in the hall.

Q. How do you know that, you did not see it?

A. The door was open and I saw it and I looked.

Q. How do you know who the man was that had the mask torn off while he was in the hallway, while you were in the room?

A. Why, I was standing here and there is the door, opposite is the hall and I could see. It was near the stairs in the hall on the first floor.

Q. What could you see?

A. In the hall on the steps they started to fight among themselves.

Q. Did you go out into the hall or did you stay in the room all the time?

A. No, I was standing in the room and I looked on.

Q. What did you say a moment ago -- what did you mean when you said a moment ago that you did not see his face, Cohen's face?

A. They came in with masks and I saw that he had plaster on his face. (Indicating the right side on the lower part of the cheek.)

Q. How did you know that was Cohen when he was going out?

A. He came up without a mask and then when he came in with the masks on I could see the same plaster.

RE CROSS EXAMINATION BY MR. FELDMAN:

Q. You saw the plaster on his face before the 15th, also, didn't you?

A. No, not before.

Q. You said one man had yellow hair, kind of reddish colored, is that right?

A. Yes.

Q. Was he a tall or a short man?

A. Short man, not tall.

Q. Reddish hair, red?

A. Yes, sir.

Q. What business are you in?

A. What do you mean?

Q. What do you do for a living?

A. I work in a factory.

Q. What do you do there, are you superintendent there, or vice president or what do you do there?

A. I am a laborer there.

Q. What kind of a factory is that?

A. Sugar factory, Arbuckles.

Q. Do you know how to read and write?

A. No.

Q. You are not married?

A. No.

Q. How old are you?

A. Forty.

Q. You say you are nine years in this country?

A. Yes.

Q. Where do you come from?

A. Russia.

Q. What part of Russia?

A. The Government of Volhynia.

Q. You never went to school there?

A. No.

Q. Do you go to church?

A. Yes, sure.

Q. Can you read the bible?

A. No, I never went to school.

Q. Can you read the Russian language?

A. No, neither Russian or Polish. Never studied any grammar.

ROBERT P. GRAY, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. CARDONE:

Q. You are attached to the Detective Division, 7th President?

A. Yes.

Q. What station house is that?

A. Madison Street near Clinton.

Q. How long have you been attached to the Madison Street station house?

A. A little over two years.

Q. On the night of the 15th of May of this year, were you assigned to the case that took place at 90 Henry Street?

A. Yes.

Q. What time did your assignment commence?

A. About

10:30 P. M.

Q. What did you do as soon as you received your assignment in reference to this case?

A. I interviewed the complainants in the case and Mackewicz.

Q. The last witness?

A. Yes.

Q. Who else did you interview?

A. The two Sivorida brothers.

Q. Nicholas?

A. Nicholas and basil.

Q. Who else?

A. That is all that was there at the time.

Q. Where did you go?

A. I took Nicholas Sivorida and we walked on Madison Street.

Q. Where did you meet these three men?

A. In the Madison Street station house.

Q. Did they come to the station house?

A. They did.

Q. The three of them?

A. Yes.

Q. And you had a talk with them?

A. Yes.

Q. After you had this talk with Nicholas and Basil Sivorida and this man Mackewicz, where did you go?

A. I took Nicholas Sivorida and walked on Madison Street.

Q. With Sivorida?

A. Yes.

Q. You and he alone?

A. Yes.

Q. Where did you and he go to?

A. He walked about 15 feet ahead of me until we reached the corner of Pike and Madison Street.

THE COURT: Mr. Cardone, you are going into ground which is liable to violate a very important decision of

the Court of Appeals.

MR. CARDONE: I do not want any conversations.

THE COURT: Something else you are alluding to.

Q. Did you see the defendant Behrman that night?

A. Yes.

Q. Did you arrest him?

A. Yes.

Q. Where?

A. The corner of Pike and Madison Street.

Q. Do you know Solomon Cohen?

A. I do.

Q. Did you arrest him that night?

A. I did.

Q. Where?

A. Corner of Pike and Madison.

Q. When you arrested the defendant Behrman and the defendant Cohen, were they together?

A. Yes, they were.

Q. Where were they standing?

A. In front of a saloon at the corner of Pike and Madison Street.

Q. Was Nicholas Svirida with you?

A. Yes, he was.

Q. After you arrested the defendants, where did you take them?

A. Madison Street station house.

Q. Did you have any talk with the defendant Behrman?

A. I did.

Q. What was the conversation that you had with the defendant Behrman?

A. I asked him whether he had been on the stick up--

THE COURT: Strike that out. Strike out this conversation and the jurors are instructed to disregard it and give it no weight or consideration whatsoever. You may ask what this defendant said.

BY THE COURT:

Q. Did he say anything to you?

A. No, he did not.

THE COURT: Then, gentlemen of the jury, you will disregard the officer's testimony.

MR. CARDONE: As to what the officer said?

THE COURT: Yes.

MR. CARDONE: Only in relation to that question that he asked the defendant.

THE COURT: Yes.

Q. I show you this coat and I ask you if you saw that coat on the night that you arrested the defendant Behrman and Cohen?

A. I did.

Q. Where did you see it?

A. He had it on.

Q. Who had it on?

A. The defendant Behrman.

Q. This coat in question?

A. Yes.

Q. What time was it when you made the arrest?

A. About 11:30.

Q. When you arrested the defendant you say you took him to the station house immediately?

A. Yes.

Q. And he had on this coat?

A. Yes.

Q. Did you observe anything as to the coat at that time?

A. I did not.

Q. There in the station house?

A. I did not.

Q. When did you take possession of this coat?

A. If you let me have that slip of the pocket of it.

Q. Which slip?

A. In the top pocket of the coat -- on June 28th.

Q. That is you took that coat from whom?

A. From Robert

Behrman.

Q. Where was it that you took the coat from Behrman?

A. In the Toms Prison.

Q. This same coat?

A. Yes.

The coat is offered in evidence.

THE COURT: You have not identified this to be the same coat.

MR. CARDONE: It was identified by the first witness. He said this was the coat that had the cuts in and was worn by the man that went around taking the money. Out of the pockets of the men that were in the room. Now, I show by this officer that this coat was worn by the defendant, in the company of the defendant Cohen, about an hour after this alleged occurrence.

MR. FELDMAN: He wore it at the time of the arrest. He wore it in the presence of the witness. He did not take the coat at that time from him. Nothing was said about the coat at that time, but six weeks later the officer goes to the Tombs and takes the coat off the man. He wore it all the time. He wore it at the time of the arrest.

THE COURT: Do you think you have sufficient identification of the coat? Of course, the question as to the probative value of the testimony is for the jury, but yet, do you think that any witness here has identified this coat with a degree of certainty that would

Justify you in offering it?

MR. CARDONE: The first witness has, Martin.

THE COURT: I will allow it in evidence and overrule your objection, Mr. Feldman, but, instruct the jury that the probative value of this testimony with respect to the identification of the coat is exclusively for their determination. In other words, gentlemen, you must be satisfied in your own minds that the witness identified this coat as the one having been worn by one of the men who entered the premises on the night in question.

MR. FELDMAN: I take an exception.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes an adjournment until tomorrow morning, July 15, 1920, at 10:30 o'clock.

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New York, July 15, 1920.

Trial resumed.

ROBERT P. GRAY, resumes the stand:

DIRECT EXAMINATION CONTINUED BY MR. CARDONE:

Q. You say you arrested this defendant and the defendant Cohen on the 15th of May?

A. Yes.

Q. For the purpose of refreshing your recollection, what time do you say you made the arrest?

A. About 11:30 P. M.

Q. When you arrested the defendant Berman, did you take a cap from him?

A. I did.

Q. Which one of these two caps did you take from the defendant Berman?

A. This cap. (Indicating)

The cap is offered in evidence, received and marked People's Exhibit 4.

Q. The other cap you say you took from whom?

A. Cohen.

This cap is now marked for identification People's Exhibit 5.

Q. When, before today, did you last see Nicholas Sivirida?

A. Last Thursday.

Q. You mean a week ago today?

A. A week today.

Q. Where was it you saw Nicholas Sivirida?

A. In this court room.

Q. Did you on that day give to Nicholas Sivirida a subpoena issued from the Court of General Sessions for the purpose of attending this court?

MR. FELDMAN: I object.

THE COURT: Mr. Cardone wants to account for the absence of that witness.

MR. CARDONE: I intend to lay a foundation for the introduction of his testimony in the magistrate's court.

THE COURT: The objection is overruled. Exception.

Q. Did you?

A. Yes, I did.

Q. Your yourself handed him the subpoena personally?

A. I did.

Q. When was that subpoena returnable, do you know?

A. The 13th.

Q. Tuesday of this week?

A. Tuesday of this week.

Q. Did you see Nicholas Savirida in this court room on the 13th of July?

A. I did not.

Q. Have you seen Nicholas Sivrira since you handed him the subpoena you have already testified to?

A. No, I have not.

Q. Have you made an efforts to locate Nicholas Sivrira and if so, what efforts did you make?

Objected to; overruled and exception.

A. I have.

Q. What did you do in relation to finding Nicholas Sivrira?

A. I went to 320 East 11th Street, where Nicholas Sivrira lived and I learned there from the man in charge of the place --

Objected to.

THE COURT: State what you did.

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A. I went there and found Nicholas Svirida had left the premises last Friday morning. Said he was going to Rockaway.

Objected to.

THE COURT: Strike out that he said he was going to Rockaway.

BY MR. CARDONE:

Q. Did you find Nicholas Svirida at 320 East 11th St?

A. No.

Q. You say you received certain information?

A. I did.

Q. In consequence of the information you received, where did you go?

A. I went to the Café Royal, 12th Street and Second Avenue.

Q. Did you make any inquiries there about Nicholas Svirida?

A. Yes.

Q. Did you find him there?

A. No, I did not.

Q. Who was with you when you were out looking for Nicholas Svirida?

A. Nobody.

Q. Did you go anywhere else looking for him?

A. I did not -- yes, to Pike and Madison Street.

Q. Where in Pike and Madison Street?

A. A saloon on the corner.

Q. Did you go to Rockaway?

A. No, I did not.

Q. So far as you know you do not know where he is?

A. I do not.

CROSS EXAMINATION BY MR. FELDMAN:

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Q. You say you made the arrest in this case?

A. I did.

Q. You say you arrested Berman?

A. I did.

Q. And you arrested Cohen?

A. I did.

Q. That was on the night of what day?

A. The 15th.

Q. About 11 o'clock?

A. About 11:30, between 11:30 and 12 o'clock.

Q. In your company at that time was Sivirida?

A. Sir?

Q. Who was in your company at that time when you arrested them?

A. Nicholas Sivirida.

Q. You took him to the station house?

A. Yes.

Q. And when did you bring him before the magistrate?

A. Monday morning.

Q. Were all the witnesses there?

A. I do not think so, I don't remember.

Q. Was Nicholas Sivirida there?

A. I don't remember.

Q. Why don't you remember that?

A. No, I don't remember if they were or not.

Q. What happened on the 19th of May you can't remember?

A. It happened on the 15th.

Q. And you cannot remember whether you had the witnesses before the magistrate?

A. No.

Q. No one?

A. On the 15th day of May the crime occurred.

Q. I mean after you brought them before the magistrate, do you remember any witnesses being there?

A. That was Monday morning, the 17th.

Q. Who was there?

A. I don't remember. He was held on

a short affidavit that day.

Q. Did you see the defendant before the magistrate?

A. I did.

Q. You brought him up?

A. Yes.

Q. You heard the witnesses testify?

A. On the 19th.

Q. The witnesses were there?

A. They were.

Q. You heard what they said?

A. I did.

Q. Now look at that coat, where did you get that coat?

A. In the Tombs Prison.

Q. When?

A. The 28th day of June.

Q. Until that time, that was about five or six weeks later, that happened on the 17th before the magistrate -- that is about a month and ten days, is that right?

MR. CARDONE: A month and eleven days.

Q. After Berman was incarcerated in the Tombs?

A. Yes.

Q. You say you went there and got the coat?

A. Yes.

Q. Up to that time did you hear anything about a coat?

A. No.

Q. You heard nothing from any witness about the coat?

A. Possibly a half an hour previous --

Q. Do not use possibilities, did you or did you not?

A. I did.

Q. Did you hear anything said before the magistrate in reference to it?

A. No, I did not.

BY THE COURT:

Q. That is with respect to the coat?

A. I did not.

BY MR. FELDMAN:

Q. None of the witnesses in your presence, who testified before the magistrate, mentioned anything about the coat?

A. They did not.

Q. You say in a month and eleven days later you went to the Tombs to get the coat?

A. Yes.

Q. What did you do when you took the coat, what did you do with it?

A. I brought it to Mr. Cardone's office.

Q. Who was there?

A. I think three of the witnesses in this case.

Q. Three of the witnesses; Mackewicz was there?

A. I think he was.

Q. And Martin Sinitza was there?

A. He was there.

Q. You took the coat from the man's back in the Tombs?

A. No, he handed it to me out of the cell.

Q. You left him there without a coat?

A. Yes.

Q. It was hanging there in the cell?

A. Yes.

Q. You said nothing to him when you took the coat?

A. No.

Q. You brought it to Mr. Cardone's office, you say?

A. Yes.

Q. Did you examine the coat there?

A. Yes.

Q. Every part of it?

A. Yes.

Q. That was the first and the last you heard of the coat?

A. Yes.

Q. You have had it in your possession after that?

A. I have.

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Q. It was still in your possession until you came to court?

A. Yes.

Q. Do you also remember having Cohen in the office of the District Attorney?

A. Yes.

Q. A couple of times?

A. Once.

Q. Do you remember the time I was present?

A. That was the time.

Q. That was the only time?

A. That was the time.

Q. Not afterwards?

A. No.

Q. How many times did you have Berman over there?

A. Never.

Q. Do you remember Cohen making a statement in your presence?

A. Yes.

Q. And in the presence of Mr. Tekulsky and myself?

A. Yes.

Q. What did Cohen say at that time?

MR. CARDONE: I object to anything Cohen said in the presence of Assistant District Attorney Tekulsky and this officer.

Objection sustained. Exception.

THE COURT: Mr. Feldman, you cannot get it in that way.

MR. FELDMAN: I understand.

Q. Do you remember Cohen mentioning to you the names of the four men that we were with him, yes or no?

Objected to. Sustained and exception.

REDIRECT EXAMINATION BY MR. CARDONE:

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Q. Did you receive any masks from anybody?

A. I did.

Q. From whom did you receive the masks?

A. Nicholas Sivirida.

Q. Where was it that the masks were delivered to you by Nicholas?

A. 7th Precinct station house.

Q. You do not know where the masks came from?

A. Only what I was told.

THE COURT: Strike that out.

Q. You just received three masks from Nicholas Sivirida?

A. Yes.

Q. Did you receive any hats from Sivirida?

A. I did.

Q. How many?

A. Two.

Q. Not the two you took off this defendant and the other defendant Cohen?

A. No.

Q. Have you got these hats?

A. They are in here. (Indicating)

Two hats are now produced or two caps that were delivered by Sivirida to the witness, and marked for identification People's Exhibits 6 and 7.

BY MR. CARDONE:

Q. I show you People's Exhibit 2 for identification and I ask you if those are the three masks you got from Sivirida?

A. They are.

RE-CROSS EXAMINATION BY MR. FELDMAN:

Q. Do you remember at the time of the arrest, of arresting

this defendant and Cohen, there was another detective -- what was his name?

A. Gordon.

Q. Do you remember Nicholas Svirida was with you at that time and said to you it was not this young man?

A. No, he did not.

Q. Sure of that?

A. Positive.

Q. Do you remember Gordon said let him go if he cannot identify him?

A. He did not.

Q. Where is Gordon now?

A. I imagine he is in the 7th Precinct.

Q. What is his first name?

A. David.

Q. David Gordon -- didn't you say to that "Well, I will take him in anyway?"

A. I did not.

Q. No such conversation took place?

A. No.

Q. When you came along at the corner only Cohen and Behrman were standing there?

A. Yes.

Q. That was on the 15th about 11 o'clock?

A. Between 11:30 and 12.

Q. How far is that corner from the place where the thing happened as it is claimed?

A. Henry Street is the next block from Madison and they were standing at the corner of Madison. No. 90 Henry Street is near Birmingham Street, about a block and a half way from where they were standing.

Q. Standing calmly talking to each other?

A. Yes.

Q. You had known them before?

A. I had known Behrman, but I did not know Cohen.

Q. You are sure that you did not hear such a conversation, Svirida saying that is not the boy?

A. I am positive.

Q. And that Gordon said let him go?

A. No.

Q. Did you ask any questions of Behrman?

A. I did.

Q. At the time of the arrest?

A. Yes.

Q. What did he say?

A. He denied that he was there>

Q. What did he say to you?

A. I asked him was he in on the stick-up and he said no.

Q. Anything else he said to you?

A. No.

Q. Did you ask him any other questions?

A. I don't remember.

Q. Don't remember?

A. No.

Q. Your memory is so short?

A. No, but I have had a lot of cases since that time.

Q. You remember when he said, let him go?

A. I don't remember. He did not say that, no such conversation.

Q. And possibly he did say so?

A. I am positive it was not said.

Q. You are positive of that?

A. Yes.

Q. But as to any other conversation you don't remember?

A. Well, I don't know.

Q. Did you search the boy?

A. I did.

Q. Did you find anything upon him?

A. I did not.

Q. Nothing?

A. Nothing.

Q. Not a cent?

A. Not a cent.

Q. Any implements or burglars' tools?

A. No.

Q. Any revolver or anything at all?

A. Nothing.

Q. Nothing?

A. I said nothing.

Q. Did he ask you where this took place when you arrested him and led him to the station house?

A. I know where it took place.

Q. Did he ask you what he was charged with and what you were taking him in for?

A. No, I don't remember.

Q. You don't remember that?

A. No.

Q. You mean to say you grabbed him and dragged him and he did not say a word to you?

A. No.

Q. Or you don't remember?

A. I don't remember any conversation of that kind.

Q. Did he say anything?

A. No.

Q. Nothing, did you ask him where he lived?

A. I knew where he lived.

Q. Did you ask him?

A. I did not.

Q. Did you ask him what he was doing on the corner there?

A. I did not.

Q. Did you ask him if he knows something about the incident that happened?

A. I did.

Q. What did he say?

A. "No."

Q. He did not know anything about it, is that right?

A. Yes.

Q. He was not excited, can you remember that part of it?

A. I am not able to judge his state of mind.

Q. He walked along with you?

A. Yes.

Q. Did he have the same coat on that you have now in your possession?

A. He did.

Q. You did not observe the coat at that time, you yourself?

A. I did.

Q. Did you observe the coat?

A. Yes.

Q. Did you examine the coat?

A. I did not.

Q. Did you see anything on the coat?

A. I did not.

Q. In other words you don't know whether there were any cuts there or not?

A. No, I do not.

Q. Your attention was not called to it at all?

A. No, it was not.

Q. When you took the coat from the defendant in the Tombs did you ask him any questions there?

A. I did not.

Q. What did you say to him when you came in for the coat?

A. I just said to him is this the same coat that you had on that night and he said yes, and when I looked at the back of it, at the cut in the back of it, he said that cut occurred last April.

Q. As far as you know that was the first time that you saw a cut on his coat?

A. Yes.

Q. When you took it from the Tombs?

A. Yes.

Q. Did you tell him you were going to take it to a tailors or not -- what did you say to him when you took it?

A. I did not tell him anything.

Q. Just took it?

A. I just took it.

MR. CARDONE: I would now like to call the official

stenographer who took the testimony in the magistrate's court.

THE COURT: You have not proved due diligence, yet.

MR. CARDONE: Not yet, but I am going to put some witnesses on the stand to show that. I am going to put his brother on the stand and the process server on the stand and then another process server on the stand. Does your Honor want me to keep this witness here all day.

THE COURT: No, but in case you do not prove it his testimony is not admissible.

MR. CARDONE: Then we will strike it out. I am just offering his testimony --

THE COURT: You say strike it out as if it were so easy. In the case of the People against Smith, a murder case, the Court of Appeals reversed the judgment because of the fact that a judge kept it in the record and then struck it out. You can take out the nail from the hole but the hole remains. The jury hear prejudicial testimony and you cannot retract it. However, the point is this, I do not like to keep any public officer here, and if Mr. Feldman will consent that this witness be examined out of order, then I will allow it. While it is true that the conduct of a trial is within the sound discretion of the Court, that discretion must be exercised very cautiously.

MR. CARDONE: I can call this witness later on.

It is only a matter of convenience.

THE COURT: Do you consent, Mr. Feldman?

MR. FELDMAN: I consent to it.

LOUIS FRANK, called as a witness in behalf of the People, duly sworn and examined, testified as follows:
(Residence 15 Post Avenue.)

DIRECT EXAMINATION BY MR. CARDONE:

Q. What is your official position in this county?

A. I am an official stenographer of the City Magistrate's Court, City of New York.

Q. How long have you been connected with the Magistrate's Court?

A. Since the first of January, 1920.

Q. On this 19th of may of this year, to what Magistrate's Court in this City were you assigned as stenographer?

A. Third District Attorney Court, Essex market.

Q. Where is that located?

A. Second Avenue and Second Street in this City.

Q. On that day did you perform the duties as an official stenographer in that court?

A. I did.

Q. Can you recollect now whether or not you took any testimony in an examination in the case of the People against Robert Behrman, Solomon Cohen and Samuel Himmelstein before Magistrate Joseph E. Corrigan?

A. Yes, I do.

Q. Was there any such examination had before Magistrate

Corrigan on that day?

A. Yes, sir, it was.

Q. And is Joseph E. Corrigan a City Magistrate?

A. Yes.

THE COURT: I assume that you will concede all that, Mr. Feldman?

MR. FELDMAN: Yes, it is all conceded.

BY MR. CARDONE:

Q. Have you the original minutes that you took with you, on the day of the examination?

A. Yes, I have it right here.

Q. Did you transcribe the original minutes that you took at that examination to writing?

A. Yes.

Q. I show you minutes which you handed me this morning and I ask you if these minutes which you handed me this morning are a correct and accurate transcript of the original notes that you took at the examination in the case of the People against Robert Behrman, Solomon Cohen and Samuel Himmelstein?

A. Yes, they are.

MR. FELDMAN: That is conceded.

CROSS EXAMINATION BY MR. FELDMAN:

Q. You also handed a correct copy to Mr. Breitbart?

A. I did not hear you.

Q. You also handed a copy to Mr. Breitbart?

A. Yes.

MR. FELDMAN: You concede that this is also a correct copy.

BY MR. CARDONE:

Q. The copy I submitted to you just now is identical and similar to the copy that you submitted to Mr. Brietbart?

A. Yes, sir, a carbon copy.

BY MR. FELDMAN:

Q. Do you remember all the three defendants were at the bar?

A. I only one defendant I recognized. I do not see the other two.

Q. You remember at the time when you took those minutes there were Robert Behrman, Solomon Cohen and Himmelstein before the Magistrate at that time?

A. There were three defendants by that name, yes.

BY MR. CARDONE:

Q. This defendant was one of the defendants that was arraigned?

A. I think he is one, I am not absolutely sure.

BY MR. FELDMAN:

Q. You know he was?

A. There are so many defendants in Magistrate's Court that I cannot recollect very clearly whether he is the one or not.

MR. CARDONE: May we have the minutes just handed to me by this stenographer this morning marked for identification.

The minutes are marked for identification People's Exhibit 8.

MAX MACKEWICZ, recalled by the defence:

BY MR. FELDMAN:

Q. Do you remember being before the magistrate in this case and testifying to the following questions at page 6:

"Q. Do you see the defendant from whom the mask was knocked off, do you see him here? A. No, after I was shot I didn't pay any attention to it."

A. No.

THE COURT: He did not so testify?

THE WITNESS: No.

THE COURT: Tell him (speaking to the Interpreter) you are reading from a court paper and that this paper is a transcript of the testimony as testified to by the stenographer.

THE WITNESS: No, it is not so. I told him what I tell you here.

Q. You mean to say to these gentlemen that in the magistrate's court you testified that you saw the face of this defendant?

A. Yes, sir, I said I saw him.

MR. CARDONE: The preceding question, I think, should be put, because that question qualifies -- put the preceding question and the answer and see if that does not qualify it.

BY MR. FELDMAN:

Q. "Q. And you did not pay any more attention to the defendant Himmelstein or to any of the defendants? A. No, I could not." Did you say that?

A. I did not say so.

Q. And the next question: "Q. And before you were shot by the defendants you did not see their faces, did you", and

you answered "The mask was knocked off by one of them from one of the people who were in the room. I saw his face." Did you testify to that?

A. No.

BY MR. CARDONE:

Q. What do you mean by "No."?

A. I don't know whether I said so. I am telling you the truth here.

THE COURT: (To the Interpreter) Tell him it is very important for these gentlemen to know what he said on another occasion. Counsel for the defence is reading from a court record consisting of the testimony given by him in the Magistrate's court on another day, and it will be for the jury to determine which testimony is the truth, the testimony given in the Magistrate's court or the present testimony.

THE WITNESS: I testified there the same as I testified here yesterday. I did not say anything different.

THE COURT: You need not pursue it any further, Mr. Feldman. It is a question for the jury.

MR. FELDMAN: That is all.

THE COURT: Mr. Feldman, do you want the District Attorney to pursue the regular course -- why not make a concession that an effort has been made by the District Attorney to locate the whereabouts of the complainant, and after diligent effort being made he has been unable to locate him, and that you consent that his testimony

be read.

MR. FELDMAN: That is conceded.

THE COURT: You see, under the cases of the People against Fish and People against Qualey, the burden is upon the District Attorney to show that a diligent effort was made to locate there whereabouts of the witness who gave testimony, and if it be established that a witness is dead or insane or without the state and cannot be located, and that an opportunity was afforded to the defendant to cross examine the witness who testified against him, then such testimony may be read to the jury. That question has been passed upon.

MR. CARDONE: And if anything is incompetent, it can be stricken out.

THE COURT: Then there will be an objection.

MR. FELDMAN: That is what I mean.

THE COURT: Do you make that concession? Do you concede that an honest and diligent effort was made to locate Nicholas Svirida and that the People were unable to locate him?

MR. FELDMAN: It is conceded by the defence that an effort was made to locate Nicholas Svirida.

THE COURT: You have to use the words of the statute.

MR. CARDONE: Counsel for the defendant concedes that an honest and diligent effort was made to locate

the witness Nicholas Svirida and that his present whereabouts are unknown to the People and that the testimony that was given by Nicholas Svirida in the Magistrate's court upon the arraignment of this defendant, shall be read in evidence at the trial here subject to objection and rulings of the Court as to its admissibility.

MR. FELDMAN: Yes.

MR. CARDONE: I will now read from the minutes: "NICHOLAS SWIRIDA, a witness called in behalf of the People, being duly sworn, testified as follows:

"DIRECT EXAMINATION BY MR. PANGER:

"Q. What is your name? A. Nicholas Swirida.

"Q. Where do you live? A. Nicholas Swirida.

"Q. Where do you live? A. 145 Madison Street.

"Q. What is your business? A. Laborer.

"Q. On May 15th did you live at 90 Henry Street? A. Yes.

"Q. Do you speak English all right? A. Yes.

"Q. You were there in the evening when five men came up all masked, were you? A. Yes, sir.

"Q. First someone else came in, didn't he? A. We were sitting there, six men, four men playing cards and me and another fellow sitting and one fellow came in by himself at first.

"BY THE COURT:

"Q. Which fellow? A. The biggest one here. (Mr. Panger) Indicating Sol. Cohen.

"A. (Continuing) Came in by himself -- he just walked in. The door was not locked and he just walked around, turned around and went out again, never said one word. About 15 or 20 minutes -- I can't tell exactly, in a short time afterwards, came in five men masked, all masked. They jumped in the door and said throw up your hands. One of them said, line them up. They lined them up and they went through the pockets and got the money out. After they got out of me the first thing -- I was the first man -- they went to me, got money, and then another man -- they came to the next man and the next man said, 'I wouldn't give it, dead or alive, I wouldn't give in.' They started in, you know. After this fellow came to this man, this fellow said 'We will kill them all.'"

"BY THE COURT:

"Q. Who said that? A. The little fellow.

"Q. On the end? A. Yes, and he had two guns and he started to fire.

"BY MR. PANGER:

"Q. What makes you so sure it was the little man, the man that you indicate there, indicating Sam Himmelstein, as having said that? A. Of course I know him. He started, you know, to scuffle. After he went out his cap fell off and after he lost his mask; I saw him when he jumped in the door.

"BY THE COURT:

"BY THE COURT:

"Q. Which one? A. The little one.

"Q. Is he here now? A. Yes, sir.

"Q. Which one is it? (The witness indicates)

"BY MR. PANGER:

"Q. You say you saw his face? A. Yes."

THE COURT: Is that referring to Himmelstein?

MR. CARDONE: Yes.

THE COURT: How about this defendant?

MR. CARDONE: I have it later on the next page.

(Mr. Cardone continues reading from the testimony as follows:)

"Q. You say you saw his face? A. Yes.

"Q. In the hall? A. No, in the house.

"Q. When he had lost his hat? A. Yes, sir.

"Q. And did you recognize -- A. (Interrupting) His cap fell out when that one man hit him.

"Q. Where did he lose his mask? A. In the house.

"Q. And you saw him in the house? A. Yes, sir, in the house.

"Q. And you say he said something there? A. When this fellow started --

"Q. Just a minute, how do you know that it was he that said something? A. Well, I know --

"Q. There were two short men there; do you know this defendant's voice? A. Yes, I know his voice because I heard

him several times signing.

"Q. You heard him singing? A. Yes, very well.

"Q. You knew him before that night? A. Yes, sir.

"Q. Where did you hear him sing? A. In the saloon.

"Q. Did you ever speak to him before that? A. No.

"Q. Did you ever hear him speak before? A. Yes, sir, I heard him talking to another man there.

"Q. Whose mask fell off in the hall? A. This man in the middle. (Indicating)

"Q. Indicating Robert Behrman; and you saw his face there? A. Yes, after he ran out.

"Q. You saw his face there? A. Yes, sir.

"Q. And do you know him? A. Yes, sir.

"Q. How long do you know him? A. I guess I know him for about months -- may be over a month.

"Q. And you are sure this is the man you saw? A. Yes.

"MR. PANGER: That's all. That is the People's case.

"CROSS EXAMINATION BY MR. BREITRART:

"Q. When these five men came into that room you say they were all masked, is that right? A. Yes, sir.

"Q. How many short men were there? A. How do you mean, short men?

"Q. How many short fellow among the five? A. Three shorter fellows and two big men.

"Q. There were three short fellows and two big men as

you say? A. Yes, sir.

"Q. When the shooting was done did the masks fall off or did the masks remain on their faces? A. After the shooting commenced they started to run and the masks fell off and their hats fell off.

"Q. All the five masks fell off or how many? A. No, it fell off from that little man, (Indicating) and that little man. (Indicating)

"Q. Are you sure the little man was there and the mask fell off him? A. Yes, sir.

"Q. You are not sure about that? A. I am sure.

"Q. Do you realize you are under oath and do you realize that you charge this boy with a serious offence? A. Yes.

"Q. How long do you know this boy? A. Maybe a month, something like that.

"Q. And the other short men -- the other two -- how did they look; did they have a collar on? A. That I didn't have no chance to look I was scared so bad I didn't get a chance how they were dressed and like that.

"Q. You were so scared you didn't look at these men? A. I was scared, yes.

"Q. And you don't exactly remember these short men, do you? A. Yes, I remember the men all right.

"Q. When is the first time you told anybody about a little man being among those five? A. You mean who was the first one.

"Q. Yes, who is the first one you told it to? A. About three little men, I told myself.

"Q. To whom did you say that? A. When we got to the police station, that's where I said.

"Q. Did you know the little man's name? A. No, I did not know his name. I just pointed him out.

"Q. You said that a certain man that you know -- A. (Interrupting) I pointed him out.

"Q. Where did you point him out? A. In the court house.

"Q. That is, that you knew him before this time, is that what you mean? A. Well, I pointed him as the man I knew in my house who commenced the shooting.

"Q. After the shooting was begun, did the masks fall off these five men or not? A. Not all of them."

THE COURT: As to whom is this testimony given?

MR. CARDONE: As to Himmelstein.

THE COURT: You want to be sure. Let us be careful. Of course proof of the identification of Himmelstein and Cohen is no evidence as to the identification of the defendant.

MR. CARDONE: No, absolutely none.

(Mr. Cardone continues reading as follows:0

"Q. After the shooting was begun did the masks fall off these five men or not? A. Not all of them.

"Q. Not from the little man? A. Yes.

"Q. From the little man? A. Yes, his cap fell off.

"Q. Which little man's cap fell off? A. This one. (Indicating)

"Q. Where did it fall off? A. His cap fell off in the house.

"Q. Did you fight with him or did you strike him? A. No, another man struck him.

"Q. Where did he strike him, in the face? A. No, he struck him with a chair.

"Q. Where, on the head? A. No, right in his back.

"Q. Where else did he strike him? A. I don't know.

"Q. Did he strike him in his face? A. No.

"Q. He didn't strike him, only on the head he struck him? A. Yes.

"Q. On the back or on the head? A. No, in the back.

"Q. And what did the little man do, did he remain in the house? A. When he started to hit him he run outside the door.

"Q. Did he have the mask on when he ran outside of the door? A. When he came to the door the mask was already off of him, when he go for his cap.

"Q. Where was his cap? A. In the house.

"Q. He came back for his cap? A. No, not come back for his cap. He lost the mask at the time.

"Q. How tall would you say the three little men were that you saw in the place? A. I can't tell the size.

"Q. Do you know the other two little men that were

there? A. No, sir.

"Q. Isn't it a fact that you have know that boy about a year in that neighborhood? A. No, sir, I never know him a year.

"Q. You knew him, you spoke to him several times? A. I never spoke to him, but I hear him speaking to another man and I hear him singing; that is all I know."

MR. CARDONE: I think that makes it clear that refers to Himmelstein.

THE COURT: You may argue that in the summation, but not now.

(Mr. Cardone continues reading from the testimony as follows:)

"Q. Who told you that he was among the five men? A. Nobody.

"Q. Did anybody speak to you and say the boy Himmelstein was in it? A. No."

THE COURT: Will you gentlemen mark off the testimony that refers to this defendant. There is a good deal of testimony that refers to a little man and the little man has been identified as Himmelstein.

MR. CARDONE: Yes, the testimony that refers to Behrman is on a page that I can refer to right now -- on page 13 --

THE COURT: Read that again. Is that direct examination?

MR. CARDONE: Yes.

(Mr. Cardone reads as follows) from page 13)

"Q. Whose mask fell off in the hall? A. This man in the middle. (Indicating)

"Q. Indicating Robert Behrman. And you saw his face there? A. Yes, after he ran out.

"Q. And do you know him? A. Yes, sir.

"Q. How long do you know him? A. I guess I know him for about months -- may be over a month.

"Q. And you are sure this is the man you saw? A. Yes."

MR. CARDONE: That refers to Behrman. The other testimony refers to Himmelstein.

THE COURT: There was something in there about singing.

MR. CARDONE: Yes, that is on Page 17. That is the second reference the witness makes to the signing -- it is on Page 16, as follows:

"Q. You knew him, you spoke to him several times? A. I never spoke to him, but I hear him speaking to another man and I hear him singing that is all I know."

MR. FELDMAN: That will be objectionable.

THE COURT: It is not objectionable.

MR. CARDONE: The next question qualifies it.

"Q. Who told you that he was among the five men? A. Nobody.

"Q. Did anybody speak to you and say the boy Himmelstein

was in it? A. No."

MR. FELDMAN: That is objectionable.

(Mr. Cardone continues reading)

"Q. Did anybody say anything about that? A. No, nobody said that boy Himmelstein."

MR. FELDMAN: All these questions are objectionable.

THE COURT: The objection is overruled. Exception.

(Mr. Cardone continues reading as follows)

"Q. You had many talks with this boy Himmelstein before, didn't you? A. I did not.

"Q. And did you not have several arguments with him before this time? A. No, sir.

"Q. You say he had a cap? A. Yes.

"Q. Did he have an overcoat on? A. No, none had overcoats.

"Q. Did he have a collar on or what? A. Yes -- I can't tell the collar.

"Q. You don't remember a collar on? A. No.

"Q. Outside of his losing his hat and run out to the door, you didn't see him have anything in his hand, did you? A. No, I didn't see. I never been outside.

"Q. You didn't see him have anything in his hand inside or outside? A. I saw the little man have a gun in his hand.

"Q. He had two guns? A. Yes, sir.

"Q. You say you saw the little man have two guns?'

THE COURT: Who is the little man there?

MR. CARDONE: Himmelstein -- that is the man he is always talking about.

(Mr. Cardone continues reading)

"Q. You say you saw the little man have two guns? A. Yes, sir. One man searched the pockets and give him one, and he hold the two guns and another man searched the pockets.

"Q. Did he have a mask on when he had the two guns? A. Yes, sir.

"Q. How did he come to lose his mask? A. Because the little man started fighting with him.

"Q. Did he hit him on the head or face? A. No, he hit him with the chair.

"Q. How did he come to lose his mask, did he tear it off his face? A. No, when he go for his cap he lost his mask."

MR. FELDMAN: That is objectionable.

THE COURT: The objection is overruled. Exception.

MR. CARDONE: That is all, and then a conversation nesued between counsel for the defendant and the Court which is not material here. That is all of that testimony. I have one other witness and that is the brother of Nicholas Sivirida.

Shall we continued with his testimony today, and I will conclude the People's case today.

THE COURT: What do you want to prove by him?

MR. CARDONE: What occurred in the room and the

identification.

THE COURT: Of this defendant?

MR. CARDONE: Yes.

THE COURT: Call him.

BASIL SVIRIDA, called as a witness in behalf of the People, being duly sworn and examined, testified as follows; through the Official Interpreter, Mr. Landou.

(Residence 80 Monroe Street.)

DIRECT EXAMINATION BY MR. CARDONE:

Q. Are you the brother of Nicholas Sivirida?

A. Yes.

Q. Where is your brother?

A. I do not know.

Q. Why didn't he come to court?

A. I can't tell you, I don't know.

Q. Do you know where he is now?

A. No.

Q. When did you see your brother last?

A. I did not live with him and I don't know where he is.

Q. When did you see your brother last?

A. When we were hear the last time on the floor together.

Q. Did you see your brother in the court room here a week ago?

A. Since that time I did not see him.

Q. You saw him last in the court room, is that right?

A. Yes.

Q. What has become of him, where is he?

A. I don't know.

Q. Where did your brother live on the 15th of May of this year?

A. My brother lived at 90 Henry Street.

Q. Is that in the Borough of Manhattan, City and County of New York?

A. Yes.

Q. Were you in the house when something happened?

A. Yes.

Q. Tell this jury all that you saw happen in the house from the time you got there up to the time the police arrived?

A. At eight o'clock in the evening I and William Mackewicz, the last witness, came together with my brother to his house and then Nick came and Xachara came. Four of us were playing cards, pinochle, five cents a hundred. Then Sinitza came. HE was the last one. As we were playing cards Cohen came in, knocked at the door, Nick opened the door. He said come in. He came in and looked around and left the house. Turned around and left the house.

Q. Had you seen Cohen before that day?

A. I saw them every day on the corner of Pike Street and Madison.

Q. I speak about Cohen now, never mind about them.

A. Yes.

Q. How often had you seen Cohen before the 15th of May?

A. Every day I see him.

Q. Go on -- did you know the defendant Behrman?

A. I knew him, too.

Q. Personally or by sight?

A. I had an accident with the Arbuckle Company where I work --
Objected to.

THE COURT: Strike that out.

MR. CARDONE: I want to show that a few days before this happened, this witness met Cohen in a saloon

and that he and Cohen had a conversation about some money that he was to get from the compensation committee, I think it was \$2,000 -- that is what I want the witness to tell about.

THE COURT: The objection is sustained.

MR. CARDONE: It is material in this respect --

THE COURT: You have heard my ruling. Proceed.

BY MR. CARDONE:

Q. Tell the witness never to mind what happened in the saloon between him and Cohen and Behrman, but confine himself --

THE COURT: Was Behrman there?

MR. CARDONE: Yes -- just a minute.

Q. Did you see the defendant Behrman in a saloon before the 15th of May, with Cohen?

A. I saw him the 13th of May. I had a letter.

Q. Who?

A. Him.

Q. To whom do you refer?

A. I saw him (Pointing to the defendant) and Cohen.

Q. Where did you see them?

A. In the saloon I saw them.

MR. CARDONE: Do you hold the evidence is material?

THE COURT: If you can show he participated in the conversation. You have to show that he participated in the conversation.

MR. CARDONE: I was going to do that, but I thought you held --

THE COURT: If you can show that there was some talk regarding the compensation commission giving this man money, and this conversation was had with this defendant, I will allow it.

BY MR. CARDONE:

Q. Did you have any conversation with this defendant and Cohen about some case or claim that you had with the compensation commission?

A. Yes, that day when I came home from that court, where my case was pending, he asked me was your case settled.

BY THE COURT:

Q. Who asked you?

A. Behrman. He said is your case settled and I said no, and I went home and I did not say much to him.

BY MR. CARDONE:

Q. What other conversation did you have with the defendant Behrman about your case?

A. No other conversation except he asked me if it was settled and I told him no and I went home.

Q. Who asked you?

A. Behrman.

Q. Was Cohen there?

A. Cohen was there, too.

Q. In this saloon was this?

A. No, he was outside in the street, on the corner, at the time when I came back from court.

Q. Was that in front of the saloon?

A. In the front.

Q. Who runs the saloon there?

A. Kalman Sapristein.

Q. Tell what happened now on the 15th of May?

A. After the cross-eyed man was in looked around and left, about ten or fifteen minutes afterwards the five of them came in. Five came in with revolvers and said hands-up. All raised their hands and they started to search the pockets. Three of them stood with revolvers and one of them had a black mask on and another one searched, and they said keep still. There were different colored masks, black, light and pink ones.

Q. How many had masks?

A. Five.

Q. How many had revolvers?

A. Five revolvers.

Q. Go on.

A. When they reached Martin Sinitza, he started to fight. They said "I will shoot." He said, "You can shoot" and all of them started to shoot, and when shots were fired William Mackewicz said "Well, I got it" holding his hand on his abdomen. Then some of them had their masks torn off. They lost their caps and they went out through the door. The one who had the black mask on had his coat torn on the left side.

Q. Go ahead.

A. They ran out and Martin after them. I, too. I screamed police and there was no policemen and so we went to the police station.

Q. Before you did that did you see who these five men were that came in with revolvers and masks or any of them?

A. I identified Cohen, because Cohen was there before and he had a plaster on, and the second time he had a white mask and plaster was visible, it was not covered.

Q. Did you see anybody else there?

A. There was the one who had a black mask on and his coat torn and a third one who had reddish hair.

BY THE COURT:

Q. Did you recognize the man with the coat, who was the man that wore cut coat?

A. The one who had the black mask on.

BY MR. CARDONE:

Q. Did you see his face?

A. The face was covered.

Q. Did you see anybody's face after the mask fell off?

A. I saw Cohen's face after Martin Sinitza tore his mask off, because I ran after them.

Q. Did you see anybody else's face, yes or no?

A. The red hair man also had some pimples on the right side of his neck or face.

Q. I do not care about the red headed man, did you see anybody else's face other than Cohen's, yes, or no?

A. No, I did not see because they ran out of the house.

Q. Did you see any masks around there?

A. No, I went to the station house. Therefore I did not see them.

Q. Who picked up the masks, did you or your brother?

A. When we came back from the station house the police detectives picked them up?

Objected to.

MR. CARDONE: I consent that it be stricken out.

Q. You did not pick up any masks?

A. No.

Q. The only one you saw there was Cohen?

A. Yes.

Q. You say you saw the man who had on a coat which was cut, with a black mask and black cap?

A. Yes, sir, black cap and black mask.

Q. What was the matter with the coat, if anything?

A. Torn in the back.

Q. I show you a coat and I ask you if that is it -- I show you this coat and I ask you if you saw that on the night of the 15th of May, yes or no?

THE COURT: That is not fair.

MR. CARDONE: I withdraw the question.

THE COURT: Do not ask a man what kind of color a black cap is, but ask him to look at this coat and let him state if he has seen it before.

Q. Did you ever see that coat before?

A. I saw at that time the same coat that was torn, the same coat.

Q. Who wore that coat?

A. The black mask.

Q. You don't know who it was?

A. And the black cap.

Q. You don't know who that was?

A. I cannot tell you that, because I could not see.

CROSS EXAMINATION BY MR. FELDMAN:

Q. Didn't you see that coat before the 15th?

A. Before I did not pay any attention. Had no reason to.

Q. Didn't you see the coat when it was torn in a saloon in a fight between Behrman and his brother?

A. I saw his

suit but I did not see it should be torn.

Q. You knew this boy, didn't you?

A. Yes, certainly.

Q. He was coming up to your house a good many times?

A. Who?

Q. Behrman.

A. No, he did not come to my house only after they were up there with the revolvers.

Q. What do you do for a living?

A. I am being paid compensation, insurance, \$15 a week.

Q. You live with your brother, don't you?

A. No, I live in 80 Monroe Street, and at that time I did not live with my brother.

Q. When did you live with your brother?

A. About a half a month before this happened.

Q. Do you know the young lady who lives in that house, Katy, from Jersey, a blonde young lady?

A. I don't know.

Q. Don't you know that this young man, Cohen, Behrman and the whole neighboring boys came up to see the lady, yes or no?

A. No, there was no Katy living there.

Q. Did you not and your brother throw out this boy from the house because he slept with Katy and did not pay you the money?

A. That is not true. I did not see anything of the kind.

Q. Is it not a fact since that time until today you have a grudge against him because he insists upon it that he paid and you said no, and you threw him out of the house?

THE COURT: Why are you examining this witness

Concerning the defendant?

MR. FELDMAN: Because we have not go the other man. He got away.

THE COURT: He has not identified this defendant. Why do you examine him. Do you not understand that you are trying to convey to this jury that this man is biased against this defendant, and notwithstanding that he is biased against him, that he is not identifying him? He identifies a cut in that man's coat.

MR. FELDMAN: I want to show that he knew about the coat.

THE COURT: That you may ask, whether he had not seen it.

BY MR. FELDMAN:

Q. You were in the police court?

A. They did not call me.

Q. You never spoke to anyone about the coat, did you?

A. No, I did not tell it to anyone.

Q. Did you call the attention of the other witnesses to the tear in the coat?

A. I did not tell it to anyone, I noticed it myself.

BY THE COURT:

Q. Were you a witness in the Magistrate court?

A. I was not called.

THE PEOPLE REST.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, July 16, 1920, at 10:30 o'clock.

New York, July 16, 1920.

Trial resumed.

MR. FELDMAN: Now, if your Honor please, at the close of the People's case I ask your Honor to direct the jury to acquit, as it seems to me there is no proof sufficient, as matter of law, to go to the jury, as to the proper identification of this defendant.

THE COURT: The complainant, who was not here, but whose testimony was read into the record, indicates, according to his testimony that the defendant was one of the men concerned in this alleged crime. The weight of his testimony will be for the jury. Then there is a second witness, the man who was injured. He testified that the defendant was one of the men who was there. That he saw his face. While it is true, in the Magistrate's Court he testified to no such fact, nevertheless all of this testimony must be passed upon by the jury.

The motion is denied and, Gentlemen of the Jury, in denying the motion made by counsel for the defence to advise you to acquit his client, you must not draw any inference that the Court expresses any opinion as to the guilt of the defendant. The Court merely rules as matter of law that there is a question of fact for you decision.

MR. FELDMAN: I taken an exception.

SOLOMON COHEN, called as a witness in behalf of

the defendant, being duly sworn and examined, testified as follows:

(Residence 103 Monroe Street.)

DIRECT EXAMINATION BY MR. FELDMAN:

Q. How old are you?

A. 18.

Q. Where were you born?

A. In New York.

Q. What place?

A. Forsythe Street.

Q. With whom did you live here?

A. My sister.

Q. What do you do for a living?

A. Truck driver.

Q. For whom are you driving?

A. For M. Price, 68 Bayard Street.

BY THE COURT:

Q. Is he still living?

A. Yes.

BY MR. FELDMAN:

Q. How long have you worked for him?

A. I was working there for the past two months before I got arrested.

Q. Were you ever convicted of any crime before?

A. No.

MR. CARDONE: What do you mean by before?

Q. Before this -- he has been convicted now -- he pleaded guilty. This is your first time?

A. Yes.

THE COURT: Is he convicted now?

MR. FELDMAN: He pleaded guilty before your Honor.

THE COURT: There must be a sentence to make a conviction.

MR. CARDONE: Under the case of the People against Fabyan --

THE COURT: That is one of the cases. The Fabyan case held that a suspension of sentence was the judgment, but in the Marrendy case, 213 New York, the Court of Appeals held that there cannot be a conviction until a judgment is pronounced either by way of suspension of sentence or confinement in a prison.

MR. CARDONE: Cannot Mr. Feldman refer to the plea of guilty of this witness?

THE COURT: He did, but I would not allow you to, but, that is not a conviction.

BY MR. FELDMAN:

Q. You pleaded guilty in this case?

A. Yes.

Q. You remember the day when you were arrested?

A. Yes.

Q. When was it?

A. May 15th.

Q. That was what day of the week?

A. Saturday.

Q. Do you know the people Basil Savirida --

A. Well --

Q. And Martin Sinitza, and Nicholas Savirida, the people who saw you in 90 Henry Street, do you know that place?

A. Yes -- I know the place.

Q. Before the 15th of may you had been there?

A. Yes.

Q. How many times?

A. Twice.

Q. Do you remember the dates you were there before?

A. I was there on Monday, May 10th.

Q. May 10?

A. May 10.

Q. What were you doing there Monday?

A. This man Nicholas had a prostitute working up there and I was standing on

the corner --

Q. Louder?

A. This man Nicholas had a prostitute working up in his house and I was standing on the corner of Madison and Pike Street outside of a saloon, when he came over to me and said to me that he has a girl working for him and if I wanted to pay \$2 to go up there. I told him yes, and I went up there with him.

Q. That was on the 10th?

A. On the 10th.

Q. Five days before?

A. Five days before the hold up.

Q. You went up there?

A. I went up there and he took me into the house and he said to the woman, all right, go inside with him. I went inside and I stood up there for about ten minutes and I went downstairs and I went over on the corner and bought a pack of cigarettes and a glass of soda and went home.

Q. Did you have a good time there for what you went up?

A. Yes.

Q. Did you pay your money?

A. Yes.

Q. That was on the 10th?

A. On the 10th.

Q. When was it besides the 10th that you were there?

A. I was there on the 13th, Wednesday -- or 12th, Wednesday.

Q. What happened then?

A. Well, I knew that he had a prostitute working for him and I said I was going to go up there myself and I went up there myself on Wednesday, which I seen his brother in there, Nicholas himself and a girl and I said this time one dollar.

Q. You had no more money, is that why?

A. No, I asked her if she wanted to take a dollar and she said yes, she will take it, because I did not have any more. Well, after I got through this Nicholas called me in the kitchen and he said to me that he wanted me to do a job for him about some woman on Madison Street having a thousand dollars in her stocking carrying with her, and I told him I would not do the job. He said all right, and I left the house and went down to the corner to get a pack of cigarettes and went to a moving picture show in the Strand Pictures, under the Manhattan Bridge and when I came out of there it was half past ten and I went home to sleep.

Q. That was on Wednesday?

A. Yes.

Q. That was two days --

A. Two days before the hold up.

Q. You went up there on Saturday?

A. Yes.

Q. Tell us what took place on Saturday, the 15th of May?

A. On Saturday at 8 o'clock I went up to this Nicholas' house, 90 Henry Street, knowing that he had a prostitute working for him. I went up there. Inside I seen six men playing cards, which five men were playing and this fellow Nicholas was standing there collecting the money. Inside I did not see the prostitute but I saw them playing cards there and I went downstairs and I seen a fellow by the name of Lobisch -- I don't know his second name, and another fellow by the name of Morris Silanter.

Q. Do you know where Morris Silanter lives?

A. Well,

he lives on Market Street, I don't know the number. He lives on Market Street.

Q. Whom else did you see?

A. And I seen a fellow by the name of Jack Kiviat, and this fellow lives on Pike Street, I think it is 28 Pike or 24 Pike, and other fellow, dark complexioned fellow with a gash on the left side of his face, which I don't know his name, and I told them about the game.

Q. You say you first went up and saw these men playing cards?

A. Yes.

Q. You went up for the purpose of seeing the lady up there?

A. Yes.

MR. CARDONE: Do you call her a lady?

MR. FELDMAN: Never mind --

Q. Instead of that you found those men playing cards?

A. Yes.

Q. Then you say you came down and where did you meet these men?

A. On Henry and Pike.

Q. You did not make any arrangements before you went up?

A. No.

Q. Mere accident they were there?

A. Yes, met them on the corner after I came down.

Q. They also live in that neighborhood?

A. Yes.

Q. You live in that neighborhood?

A. Yes.

Q. You were raised there?

A. Yes.

Q. What happened?

A. I told them about the game and they told me if I wanted to hold that place up, and told

them I would lead them to the house but I would not go inside with them. They told me to wait for them for fifteen minutes, they would be back in fifteen minutes. They went away and they came back in fifteen minutes and I led them to the house. I went upstairs with them and they put their masks on in the hall, on the first floor. I opened the door and put my hand over my face and they entered. I closed the door and stood on the outside and I heard about five minutes later, I heard four or five shots fired and the door opened and I ran downstairs. I did not look behind me and ran downstairs.

Q. Did you also have a mask on?

A. No, sir, I did not have no mark at all.

Q. Did you have a revolver?

A. No.

Q. Did you see the others have revolvers?

A. No, I did not see revolvers but I saw the masks.

Q. When you led them to the house, they put their masks on after they entered the house?

A. Yes, but, they did not take guns out until they entered inside.

Q. You did not go in?

A. No.

Q. Where did you stand?

A. Outside in the hall. I ran downstairs when I heard four shots fired. The door opened and I ran to Henry and Pike and while passing by Pike Street I saw this fellow Lobisch and a fellow with dark complexion face running up 25 or 27 Pike Street. This Lobisch was bleeding in the back of his head, and I went over on the corner of Madison and Pike, which I saw Robert Behrman speaking

to the stand keeper.

Q. You mean the defendant?

A. Yes, sir, speaking to the stand keeper. I said to him hello, and I asked him if he was working and he told me yes, and I stood there with him speaking, and I sung some songs with him, too.

Q. Did you mention anything to him about this hold-up?

A. No, I did not mention anything about -- I did not tell him anything about it.

Q. When you left the premises 90 Henry Street, when you heard the shots and went away from there, how soon after did you see Behrman standing there?

A. I saw him from quarter after nine until half past nine.

Q. You say you were talking to the candy store man?

A. Yes.

Q. Do you know who he is?

A. He was talking to the lady there, by the name of Annie Brown.

Q. She keeps the stand there?

A. Her mother keeps the stand there and she stays there for awhile until her mother goes away.

Q. You got up to Behrman?

A. Yes. I did not speak to her and I came over to him and I said hello and I asked him if he was working and he said yes, and I stood there awhile with him singing a couple of songs, and half past ten Sam Himmelstein came over with a friend. I don't know the friend and he said to me, also, hello, and asked me if I was working and I said yes.

Q. That was also at the stand?

A. Yes.

Q. That was what?

A. A candy stand.

Q. A place where you could congregate?

A. Yes.

Q. A congregating place?

A. There was a small place there.

Q. Right in front, not very far from the candy store?

A. Yes. Sam Himmelstein came over with a friend and asked me if I was working and I said yes, and he told me he was going home to sleep. Sam Himmelstein left me and I stood there talking to Berman on the corner.

Q. Did you mention anything to Himmelstein about this?

A. No, I did not mention anything to him. About a half an hour later the officer Roy came over to me and Robert Behrman.

BY MR. CARDONE:

Q. You mean officer Gray, not Roy?

THE WITNESS: Detective Gray came over to me and Behrman standing on the corner and this Nick, the fellow from the house did not identify Robert Behrman on the corner.

Q. Wait, you were standing with Behrman talking and you say the officer came over?

A. Yes.

Q. What were the first words said either by you or the officer?

A. The officer came over and said to us, put our hands up, and we did.

Q. Put your hands up?

A. Yes, sir, and he looked through our pockets and did not find anything upon us, any money or

nothing.

Q. Was Nick Sirivida there?

A. Yes, he was standing on the side there and Nick says to the detective Gray that Robert Behrman was not the man but I was the man, and Gray says all right, I will bring him down for the others fellows to identify him, and he brought me over on the other side where Detective Gordon was standing by the stand there, and he asked -- told Detective Gordon that he was going to bring--asked us where we got our caps -- we had new caps on -- both of us had new caps, and I said I bought it on Pike Street, 27, I would bring him over there and show him the place where I bought it. I went over with Gordon and Detective Gray to the place where it was closed at 11 o'clock and I told him I would go upstairs and call the man down which owned the store. He told me no, he would take us down to the house to identify her. They told us down to the house and the other men identified us for the stick-up, for doing the hold-up.

BY THE COURT:

Q. Who identified you?

A. The other two men with Nick.

BY MR. FELDMAN:

Q. Do you know their names?

A. No.

Q. Was there anything said by you or Behrman at the time of your arrest?

A. No, sir, nothing was said, we just stood there and sang a couple of songs.

Q. You mean to say during the singing you were arrested?

A. Well, we were not singing at the time we were arrested.

Q. You stopped singing when you were placed under arrest?

A. Stopped singing when the officer came over. He brought us down to the house and the other two identified me and Robert Behrman. I stood there and Robert Behrman stood in a big room and about an hour later they brought Sam Himmelstein in and the three of them, Nicholas and the other two identified Sam Himmelstein for being in it too, and about fifteen minutes later or a half an hour later they brought in another man. I don't know his name, who claims he was hit on the head with one of the guns, he claimed, and he only identified me, but did not identify Robert Behrman or Sam Himmelstein.

BY THE COURT:

Q. Where you in that room?

A. What room?

Q. In the room where these other men were?

A. Yes.

Q. Did you enter the room, the apartment?

A. No, sir.

Q. Who entered the room?

A. These four fellows, Lobish and the others.

Q. They were all armed with revolvers?

A. I did not see the revolvers.

Q. You heard the report of the pistols?

A. Yes, sir, I heard the shots.

Q. Did you know for what purpose they were going there?

A. I did not have no money, I did not work for a week.

Q. Did you know for what purpose these men went to that place?

A. They went to steal money on these men.

Q. And you went with them?

A. Yes.

Q. What was your part, what were you to do?

A. I was to be the look-out standing on the outside.

BY MR. FELDMAN:

Q. Did you get anything for it?

A. I did not get a penny out of it. I did not see them after the thing was done.

Q. These men did not identify Himmelstein, is that right?

A. Yes -- well, the fourth -- I said the fourth man which came in only identified me but did not identify Behrman or Himmelstein.

Q. I ask you now, in the presence of this court and jury, you are under oath remember, was Robert Behrman with you?

A. No.

Q. Or Sam Himmelstein?

A. No.

Q. Did they know at any time, as far as you were concerned, about this so-called stick-up or hold-up?

A. No.

Q. Did you ever mention anything to them?

A. No.

Q. What happened after that?

A. When we were taken before the magistrate, we were taken before the Magistrate on Tuesday and Wednesday.

Q. A couple of days later?

A. Yes.

Q. You don't remember whether it was three or four days later?

A. They took us in the Magistrate's Court Monday and the Magistrate put the bail upon me.

Q. You say you were not present in the room during the time these men were held up and money was taken from them?

A. No.

Q. You say you at no time entered the room where these four men were?

A. I did not enter the room, I stood outside.

Q. Did you hear what Nicholas Sivrada said before the Magistrate?

A. Nicholas claimed that Sam Himmelstein held two guns and gave the command, "kill them all", which is not true.

Q. What did he say besides that, anything else?

A. I don't remember what he said besides that.

Q. You remember when you were in the District Attorney's office?

A. Yes.

MR. CARDONE: Which one -- there was two, Mr. Tekulsky and myself.

Q. You remember when you were in this gentleman's office, do you remember seeing him before?

A. Yes.

Q. Where?

A. Up in the office.

Q. You know it is Assistant District Attorney Cardone, do you know that?

A. Yes.

Q. Did you say anything to him?

A. I made a confession which I just told.

Q. Is that the same you have told us now upon the witness stand?

A. Yes.

Q. You told the same story to me?

A. Yes.

Q. And upon your own statement and upon the advice of

counsel you came before the Honor and you pleaded guilty, is that right?

A. Yes.

Q. And you are now awaiting sentence?

A. Yes.

CROSS EXAMINATION BY MR. CARDONE:

Q. What is the name of the girl that you saw in Nick's apartment when you say you went up there for the first time on the 10th of May?

A. I don't know her name, but I know a full description of the woman but don't know her name.

Q. Did Nick Sivirda introduce you to this woman in his room?

A. Yes, he did.

Q. What name did he introduce this woman to you?

A. He did not say no name at all.

Q. When you entered the apartment that night, had you spoke to Nick Sivirda about the woman?

A. No, sir, not at all.

Q. How did you know there was a woman in his apartment unless you had spoken to someone about her?

A. Well, I spoke to Nick on the corner of Madison and Pike before I went up there.

Q. You had a conversation with Nick Sivirda out on the street?

A. Yes.

Q. When, on the same day that you went up?

A. On May 10th, Monday.

Q. Where was this conversation held, on the street or in the saloon or where?

A. On the outside of the saloon, on

the corner.

Q. Was there anyone present when you say Nick Sivirda told you he had a prostitute up in his rooms?

A. No, sir.

Q. There was nobody present who heard this conversation between you and Nick Sivirda?

A. No.

Q. What did he say to you about this woman?

A. Nick told me that he has a girl working for him and if I want to pay \$2 he would take me up there.

Q. This was what time when you had the conversation with Nick?

A. This was 8 o'clock.

Q. In the evening?

A. Yes.

Q. When did you go up to the apartment to have a good time with that woman?

A. I went up there -- I had a conversation with him six o'clock and I went up there with him eight o'clock.

Q. How much did you pay for the intercourse that you had with this girl?

A. \$2.

Q. To whom did you give the money?

A. Gave the money to the woman.

Q. Not to Nick?

A. No.

Q. You gave the money to the woman?

A. Yes.

Q. When you reached the apartment that night at 8 o'clock on the 10th of May who else besides the woman was in this apartment?

A. Nick's brother was in the apartment.

Q. Nick, the woman and Nick's brother?

A. Yes.

Q. Basile Sivirda?

A. Yes.

Q. You are sure about that?

A. Yes, there was only three there.

Q. In what language did you speak to this woman, the prostitute?

A. I spoke to her in Jewish.

Q. She did not speak English at all?

A. No.

Q. And in what language did you speak to Nick?

A. I spoke to Nick in English.

Q. Nick speaks English very well, doesn't he?

A. Yes.

Objected to. Overruled and exception.

Q. He speaks English very well?

A. He don't speak -- he speaks pretty fair.

Q. When he testified in the Magistrate's Court against you and this defendant and the other defendant, he testified in English, didn't he?

A. Yes.

Q. He did not need an interpreter?

A. No.

Q. You say you paid this woman two dollars for one act of intercourse?

A. Yes.

Q. How long did you remain in Nick's apartment on the 10th of May?

A. Remained there about ten minutes.

Q. And did anyone else come into the apartment while you were there with this woman, Nick and his brother Basil?

A. No.

Q. When you returned to these premises on the 12th of May who was in the apartment besides this woman?

A. His brother and Nick himself.

Q. Nick and Basil?

A. Yes.

Q. Any one else?

A. No, sir.

Q. What time did you go there on the 10th of May?

A. The same time, eight o'clock.

Q. How much did you pay for your act of intercourse then?

A. This time I paid a dollar.

Q. To whom did you give the money?

A. I gave it to the woman.

Q. Not to Nick?

A. No.

THE COURT: Mr. Cardone, you are going into purely a collateral matter. Assuming that Nick was a panderer or a procurer of women, assuming that he was the most abject human being, what difference would that make, except on the question of his credibility as a witness? Here is a man who takes the stand and tells you that he with others went to that place for the purpose of despoiling certain men of their money. So, why waste time on that.

MR. CARDONE: I only offer that testimony for the purpose of discrediting the witness, but I will not refer to it any more.

THE COURT: It will save time.

BY MR. CARDONE:

Q. When did Nick ask you to hold-up the woman with a thousand dollars?

A. It was on Wednesday.

Q. Did his brother Basil participate in the conversation about holding up this woman?

A. No.

Q. Nick did not let his brother hear anything about this

alleged hold-up he wanted you to participate in about the woman?

A. No.

Q. He did not?

A. No.

Q. Now, where did Nick tell you this woman lived?

A. Nick told me this woman lives on Madison Street. I don't know the number.

Q. Did he tell you how much money she carried on her person?

A. He told me she carried about a thousand dollars in her sock.

Q. What did he tell you he wanted you to do to this woman?

A. Wanted me to get her in a hallway or something and take her money.

Q. Choke her, knock her down?

A. Knock her down or something and take the money on her and I told him I would not do it.

Q. You refused to hold up this woman?

A. Yes.

Q. And yet you did not refuse to go into Nick's house on Saturday night with these four men that you speak of?

A. I did not refuse -- I just told them they would go in and I would stay outside and I would not go inside.

Q. You were willing to hold up Nick and his friends who were playing cards and unwilling to hold up the woman whom Nick referred to, is that right?

A. Yes, I was willing on that Saturday.

Q. How do you reconcile your going to Nick's house with these four men to hold up this place, with your refusal to

hold up this woman?

Objected to. Sustained.

THE COURT: You may ask him why he did not go to the other place, but he does not have to reconcile it. You may prove the other fact.

BY THE COURT:

Q. The District Attorney wants to know why did you refuses to hold up the woman?

A. Well, I had money at that time and did not want to do it. I never done anything before.

Q. When you were out of money you were willing to do it at this place here?

A. Yes.

BY MR. CARDONE:

Q. What time was it when you went to Nick's house on Saturday night, May 15?

A. Eight o'clock.

Q. What did you go up there first for?

A. I went up there knowing he had a prostitute working for him and that was why I went up there.

Q. You went there Saturday night for the purpose of gratifying your sexual desires just the same as you had on two previous occasions, is that right?

A. Yes.

Q. Did you see the woman there on Saturday night?

A. No.

Q. Did you have a talk with Nick?

A. No.

Q. Did you say anything to a living soul in that room that night?

A. No.

Q. Why didn't you ask Nick where the woman was?

A. Well, I seen she wasn't there and I said to myself I would not ask

him but I would go down.

Q. You walked out without saying anything, is that so?

A. Yes.

Q. You had a plaster on your face?

A. Yes.

Q. That is true, you had a plaster on your face?

A. Yes.

Q. And you are known under the name of Squint?

A. Yes.

Q. Nick knows you and Basil knows you?

Objected to. Overruled and exception.

Q. Nick knows you?

A. Yes.

Q. And Basil knows you?

A. I don't know who Basil is.

Q. His brother?

A. Yes.

Q. Does his brother know you?

A. Yes.

Q. When you walked into the house looking for this prostitute, you saw they were gambling?

A. Yes.

Q. Did you see any money on the table?

A. Yes.

Q. How much money did you see on the table?

A. I can't tell you how much I saw, but I saw change in dollar bills on the table.

Q. Did the hold-up originate in your mind or was the hold-up suggested by someone else?

A. Well, I told them fellows about the game and I told them fellows and they told me they were willing to go up there.

Q. Did you suggest that hold-up to them, or did they suggest it to you?

A. I told them about doing the job.

Q. Where did you meet these men that you say you went with you to this house for the purpose of holding it up?

A. I met them on Henry and Pike.

Q. On the street?

A. Yes.

Q. What time?

A. This was about quarter after eight.

Q. Who was the first one of those four men that you have mentioned as the persons who were guilty of this hold up with you, that you met?

A. A fellow by the name of Lobisch.

Q. What is Lobisch's right name, true name?

A. I don't know.

Q. How long do you know him?

A. I guess for about two months.

Q. Where does he live?

A. He lives some place on Cherry Street, I don't know his address.

Q. What number?

A. I don't know.

Q. When did you see Lobisch before that night?

A. Well, I saw Lobisch once before.

Q. When?

A. I can't remember the date when I met him.

Q. You only have met him twice?

A. Twice.

Q. You spoke to him about holding up somebody and you only knew him twice, is that right?

A. Twice.

Q. Do you know where he is today?

A. No.

Q. When you were arrested on the night of your arrest did you tell the police anything about these four men?

A. No.

Q. When you were arraigned in the Magistrate's Court the next morning, did you tell the clerk of the court anything about these four men?

A. No.

Q. Or the Magistrate?

A. No.

Q. When was the first time that you ever made a statement about these four men?

A. Well, that was on June 6th.

Q. You waited from the 15th of May until the 6th of June before you made your disclosure about these four men?

A. Yes.

Q. At no time did you send for the police to inform them that Behrman and Himmelstein were innocent and that they were lodged in cells in the Tombs?

A. No, sir.

Q. You knew they were innocent?

A. Yes.

Q. You knew the statement you had made in the Magistrate's Court that you were not guilty was false?

A. Yes, sir, I knew it.

Q. And you made that statement with intent to deceive and mislead the clerk of the court, is that right?

Objected to. Overruled. Exception.

Q. Didn't you, you made that statement with intent to deceive and mislead the clerk of the court?

A. I don't know what you mean by that.

Q. You mentioned the names of Jack Kiviat, and Lobish and Morris Silanter as the men implicated in the hold-up with you?

A. Yes.

Q. Who is the fifth man, give us his name?

A. A fellow with dark complexion face and a gash on the left side of his face, I don't know his name.

Q. Why don't you?

A. I only know him for about a month.

Q. Don't you know his name?

A. No.

Q. Don't you know where he lives?

A. He lives in 27

Pike Street. I saw him go up there.

Q. What is his nationality?

A. Jewish.

Q. You don't know his name?

A. No.

Q. Where did Morris Silanter live?

A. He lived on Market Street, I don't know the number.

Q. Why don't you know the number?

A. I never was up to his house or any place. I don't know the number.

Q. You don't know who the fourth man was?

A. No, sir, I just know him by description but don't know his name.

Q. When you spoke to Lobish about holding up this house, who was present besides Lobish?

A. Jack Kivait and Morris Silanter and a fellow with dark complexioned face, they were all there, the four of them.

Q. And who suggested getting the masks and the revolvers?

A. Well, Lobish says that -- he said to the other three fellows, come on and we will go and get the guns and masks and told me to wait there.

Q. Lobish said to the others they were going to go for the masks and the guns, is that right?

A. Yes.

Q. And you waited on the corner until they came back?

A. Yes.

Q. Did the four leave you?

A. Yes.

Q. Where did they go to?

A. They went up Henry Street, I don't know where they went.

Q. And you remained standing until they came back?

A. Yes.

Q. How long after they left you before they returned?

A. They returned in fifteen minutes.

Q. Did they have the masks with them?

A. Yes.

Q. Did they take them out and show them to you?

A. No.

Q. Did they have revolvers?

A. I don't know, I did not see them.

Q. At any time did you see a revolver displayed by any one of those four men that you have mentioned?

A. No.

Q. How many masks did they bring back with them?

A. Well, they had four masks.

Q. Did you get a mask?

A. No.

Q. You agreed to go up into this house without a mask, is that right?

A. Yes, I agreed to stand on the outside but I did not care to go inside.

Q. You were not afraid, notwithstanding the fact that Nick and Basil knew you, that you might be recognized by some of these men?

A. Well, I put my hand over my face and thought they would not recognize me.

Q. You are willing to say now you did not go inside with these four men with a mask on and a gun, notwithstanding that three or four witnesses have sworn here that five men went in with masks and revolvers?

A. No, they are lying.

Q. They are lying and you are telling the truth?

A. Yes.

Q. What color were the masks?

A. One was a black one. I seen him put on -- a pink one and two white ones.

Q. A black, a pink and two whites?

A. Yes.

Q. You don't know where the other pink, one came from?

A. No.

Q. You had the plaster on your face when you went into this apartment the first time?

A. Yes.

Q. Do you know which one of these four men wore the different masks?

A. No, sir, there was a little light in the hall and I did not see quick, because they put it on fast.

Q. Who wore the pink mask?

A. I don't know, I think it was this fellow with the dark complexion face.

Q. You don't know his name?

A. No.

Q. Who wore the black mask?

A. This fellow by the name of Lobish.

Q. What kind of a mask did you wear?

A. I did not wear no mask at all.

Q. Now, when you went up to this apartment on the second occasion, how did you approach the door, how did you go towards the door?

A. When was that?

Q. On the second occasion when you went there with these four men?

A. Well, I opened the door. I did not knock at the door but I opened it and they went right in.

Q. Where did you stand in the hallway?

A. I stood about two feet from the door on the outside.

Q. How long were these men in that room before you heard shots fired?

A. Well, they were in there about five minutes.

Q. Didn't they put the masks on in the hallway?

A. Yes.

Q. And didn't they take out their revolvers in the hallway, if what you say happened, is true?

A. No.

Q. They did not take out their revolver in the hallway?

A. No.

Q. You did not see the guns at all?

A. No.

Q. While you were standing in the hallway after these four men had entered, what was the first thing that you heard said in the apartment?

A. I heard somebody holler, put your hands up.

Q. Who was it said that?

A. Well, it sounds something like this fellow Lobisch's voice.

Q. What else did you hear?

A. I didn't hear nothing at all.

Q. How soon after you heard the words, hold up your hands, did you hear the pistol shots fired?

A. About three or four minutes later.

Q. How many shots did you hear fired?

A. I heard four shots fired.

Q. Were they fired one after the other, fast, or were they fired intermittently?

A. One after the other.

Q. Did you hear anybody cry out that he was shot?

A. No.

Q. When the shots were fired, did you stand there?

A. No, sir, when the shots were fired the door opened and I ran downstairs.

Q. You ran downstairs?

A. Yes.

Q. Did you see them run out?

A. No.

Q. You ran first?

A. I ran first.

Q. You did not come out of the apartment?

A. No, sir,

I was outside.

Q. You were never in the apartment that night?

A. Never was inside.

Q. When you opened the door did you look in?

A. I put my hand over my face.

Q. Did you look in?

A. No.

Q. Who closed the door after these four men entered?

A. I closed the door.

Q. Did you open the door wide in order to permit these men to enter?

A. I opened the door wide in order to let the four men go in.

Q. Did they rush in or walk in one at a time?

A. They walked in.

Q. How long did it take you to open the door and shut it?

A. Took me about two minutes.

Q. So you were standing in front of that door for two minutes with your hand over your face while these four men entered?

A. Yes.

Q. And you did not see what was going on inside?

A. No.

Q. There was a light in the hallway?

A. Yes.

Q. There was a light in the room, there was, wasn't there?

A. No, sir -- well, there was a light.

Q. You don't think they were playing cards in the dark, do you -- you were standing in front of this door for two minutes while, they were entering, but you remained there for an additional five minutes before any shots were fired and

then the shooting took place?

A. Yes, sir, the shooting took place when I was in the hall five minutes.

Q. These men all wore caps?

A. Yes.

Q. Everyone of them?

A. Yes.

Q. So did you?

A. Yes.

Q. Did you see any of those men run out with masks off their faces, after the shooting?

A. No.

Q. You did not see that?

A. No.

Q. Where did you run to?

A. I ran down Pike Street -- down Henry Street until Pike.

Q. Go on.

A. While passing up Pike Street I see this fellow by the name of Lobisch and this fellow with the dark complexioned face running up 25 or 27 Pike Street.

Q. You saw Lobisch and this dark complexioned man running?

A. Yes.

Q. The fellow you don't know?

A. Yes.

Q. Is not that fifth man Behrman?

A. No.

Q. When you saw Lobisch and this unknown man running through the street, did you see any revolvers in their hands?

A. No, I only saw Lobisch's head bleeding in the back.

Q. Did you see any masks?

A. No.

Q. Did you see anybody pursuing these men?

A. No.

Q. Then you calmly and gently went to the corner of Madison and Pike and stood on the corner?

A. Yes.

Q. And you began to sing and hum a nice little tune?

A. Yes, sir.

MR. FELDMAN: There is no evidence there was a nice little tune, and I move to strike it out.

THE COURT: Strike it out.

Q. You began to sing?

A. No, I did not, I went over to him and I said hello, and asked him if he was working.

Q. You saw Behrman immediately after the hold-up?

A. After the hold-up.

Q. Right on the corner?

A. Standing on the corner speaking to the stand girl.

Q. That was the first time you saw Behrman that night, right after the hold-up, on that corner?

A. Yes.

Q. You and Behrman began to sign?

A. Well, yes, we started to sing. I said to him hello and asked him if he was working, and we started in to sing.

Q. You had just gotten through with a hold-up and you began to sing a song?

A. Yes.

Q. You were feeling very cheerful?

A. I was very cool. I did not know what happened inside.

Q. You were very cool?

A. Yes.

Q. You were not excited?

A. No.

Q. You were enjoying yourself singing?

A. Yes.

Q. What were you singing?

A. Well, I sang "Was there ever a pal like you" and "Just break the news to mother."

Q. Behrman sang with you?

A. Yes.

Q. Sort of a duet -- there is nothing the matter with your head, you are all right mentally?

A. Yes.

Q. You are all right mentally, you are not insane?

A. Nothing is the matter with my head.

MR. FELDMAN: That is not a proper question put by the District Attorney.

MR. CARDONE: I will withdraw the question and answer.

Q. How long did you stand on that corner with the defendant Behrman before you and the defendant were placed under arrest by Detective Gray?

A. I stood there for about two hours.

Q. You were waiting around the neighborhood to find out what happened in that apartment, weren't you?

A. No.

Q. Weren't you afraid that you might be arrested for this hold-up?

A. No, sir, I did not think they were going to identify me.

Q. The Sam Himmelstein came over?

A. Sam Himmelstein came over half past ten with a friend which I did not know his friend.

Q. The hold-up happened what time?

A. Quarter to nine to nine.

Q. At half past nine Himmelstein came over and joined you and Behrman?

A. Half past ten it was.

Q. And Himmelstein went hom?

A. Said to me hello and asked me if I was working and he went home.

Q. And you and Behrman remained on the corner?

A. Yes.

Q. Did you go over to 27 Pike Street to find out about

Lobisch and this dark complexioned fellow?

A. No.

Q. Now, this coat was worn by Behrman that night, wasn't it?

A. Yes. (Referring to People Exhibit 1).

Q. The coat with the cuts in it?

A. Yes.

Q. He had it on when you were at the stand?

A. He had it on when I came over.

Q. While you were in the Tombs, from the day that you were held by Magistrate Corrigan up to the present time, with whom have you been occupying your cell over there?

A. Sam Himmelstein.

Q. You and Himmelstein have been occupying the same cell?

A. Yes.

Q. Not with the defendant Behrman?

A. No.

Q. You have seen Behrman and you have seen Himmelstein practically every day?

Objected to. Overruled and exception.

Q. You have seen Behrman and Himmelstein practically every day, while in the Tombs?

Objected to. Overruled and exception.

Q. Haven't you?

A. yes, I seen him once in a while, but I don't see him every day.

Q. You knew from the night of this arrest, that the two men whom you claim were innocent, were walking around the yard over there and you could see them, you knew you could talk to them -- you could talk to Himmelstein, he was in the same cell with you?

A. Yes.

Q. You knew when Himmelstein was arrested that morning at half past one, when they brought Himmelstein in the station house, that he was an innocent man, if what you say is true?

A. Yes.

Q. Why didn't you tell Detective Gray that you were the guilty one and that Himmelstein and Behrman were innocent?

A. I figured these other four fellows would get me a lawyer or something and try to beat -- try to get me out of this case, and that was why I did not want to tell them.

Q. You were willing to have Behrman and Himmelstein stay in jail until you got ready to make up your mind to tell this story?

A. I figured while I was there awhile, that I got two innocent men with me and why should I let them go to jail when I knew they were innocent.

Q. Did you communicate with any representative of the District Attorney's staff, before you made your statement to Mr. Breitbart, the lawyer?

Objected to. Sustained.

Q. Who was the first person you ever spoke to about Himmelstein and Behrman's innocence in this case?

A. Well, I did not speak to nobody at all.

Q. You wrote a letter?

A. Wrote a letter.

Q. To Mr. Breitbart?

A. Yes.

Q. That letter was written on the 8th of June and not 6th of June?

A. On the 8th of June.

Q. You wrote a second letter on the 10th of June?

A. I

Q. When you wrote the letter what Hammelstein there?

A. Himmelstein was sitting right next to me.

Q. He was present when you wrote the letter?

A. Yes.

Q. Did he read the first letter?

A. After I got through writing it he read it.

Q. Did he dictate it?

A. No, he did not say nothing about it.

Q. Who wrote it, you or Himmelstein?

A. I wrote it.

Q. Did you see Behrman at any time and talk to him about the letter?

A. After I wrote the letter, when I sent it to Mr. Breitbart I told him what I wrote.

Q. You told Behrman when for the first time?

A. I told Behrman, it was the 7th of June, I think it was.

Q. The 7th of June you told Behrman that he was innocent, on the 7th of June, that was the first time?

A. Yes.

Q. When you were brought down to the Tombs, what day was it -- you were held in the Magistrate's Court on the 19th of May?

A. Yes.

Q. You were brought down to the Tombs the same day?

A. Thursday morning after.

Q. The day after?

A. The day after.

Q. And you were put in the cell with Himmelstein immediately?

A. Yes.

Q. At no time from the 20th of May up to the 8th of June did you tell Himmelstein he was innocent of this charge?

A. No, sir, I did not. I did not tell him anything about it,

because I knew he was innocent and I did not tell him nothing.

Q. Why did you wait so long before you made known the names of these four persons?

A. Well, I figured them fellows would get me a lawyer or something to get me out of this case.

Q. Did you wait so long because you wanted to give those men an opportunity to get away?

A. No.

Q. Why didn't you tell your story immediately on the night of your arrest?

A. Well, I just told you I figured on them to get me a lawyer and that was why I did not want to tell it.

Q. When Nick came along with Detective Gray, just at the time you were arrested, you walked up to Nick and you said what is the matter, didn't you?

A. No, sir, I did not walk up to him at all.

Q. Nick walked up to you with the police officer?

A. No, Nick stood on the corner and says to Roy, I was the first fellow and Robert Behrman was not with me.

Q. He said Robert Behrman was not with you and yet they arrested Behrman?

A. Yes.

Q. In the station he said Behrman was one of the men?

A. He was the first one to identify him and when he said so the other fellows said no, too.

Q. The other fellows were not in the room when Nick identified this defendant, they were not in the same room?

A. Yes, the three of them were in the room. Nick came over

first and then the other two came over.

Q. You say that Nick said Behrman was not one of the men, but he did say he was one of the men in the station house?

A. Yes, sir, in the house he said it but did not say it in the street.

Q. How soon after you were arrested at the street corner did you go to the station house?

A. About half an hour.

Q. It was a half an hour after that that Nick said that Behrman was in this stick-up?

A. Yes.

Q. The coat that Behrman wore that night was slashed?

A. Yes, sir, it was knitted up.

Q. It was cut and the cuts were sewed?

A. Sewed up, yes.

Q. Himmelstein is a little fellow, isn't he?

A. Yes.

Q. What visitors have you had in the Tombs since you have been incarcerated there?

A. I have had visits from my brothers and sisters and nobody else but my brothers and sisters.

Q. Is that all?

A. Yes.

Q. Nobody came to see you outside of your brother and sisters?

A. Only my brother and sisters>

Q. You say you are 17 years of age?

A. I am getting 18 years October.

Q. How old is Behrman?

A. I don't know.

Q. How old is Himmelstein?

A. I don't know.

Q. Did you communicate with any of these four men which participated in this hold-up with you, Kiviat and Silvanter

and the dark complexioned fellow or Lobisch, you never wrote to them?

A. No, since I was arrested I did not see them at all.

Q. Did not send anybody to see them?

A. No.

Q. Did not tell anybody you were going to equal upon them?

A. No.

REDIRECT EXAMINATION BY MR. FELDMAN:

Q. I show you a couple of letters and I ask you if they were written by you, look at them carefully?

THE COURT: The letters are admissible under the case of the People against Katz.

MR. CARDONE: Do you admit those letters?

THE COURT: Yes.

MR. CARDONE: I object.

THE COURT: Objection overruled.

Q. Look at them, are they yours?

A. Yes.

Q. Look at the other one?

MR. CARDONE: Those are self-serving declarations written by a co-defendant.

THE COURT: This would be a self-serving declaration if he were on the stand himself.

MR. CARDONE: Is not the subject matter of the testimony this witness gives the evidence that should be admitted and not the letters. He has practically testified to everything contained in the letters.

MR. FELDMAN: I offer them in evidence.

MR. CARDONE: But I do not want to keep anything from the jury.

THE COURT: It is not in general permissible to support a witness by evidence that he has made former statements similar to his testimony, but, when his testimony is charged to have been given under the influence of some improper or interested motive, or to be a recent fabrication, and in other like cases, it may be shown that he made similar statements before the motive existed or before there could have been any inducement to fabricate. Of course, the ultimate arbiters of this question will be the jurors, but Mr. Feldman has the right to show that long prior to this occurrence he related circumstances as he does now.

MR. CARDONE: You mean subsequent to the occurrence.

THE COURT: Yes. You are now impugning his motive. Your argument is that this defendant and the witness are friends and he is assuming the responsibility for the act.

MR. CARDONE: I contend also the statement made by this witness is so distant and so remote from the actual time when the occurrence took place as to discredit him.

THE COURT: That will be a question for you to argue to the jury, but that does not render this statement

inadmissible.

MR. CARDONE: I will look at the letters. I have no objection to having the letter of June 8th read to the jury or the other letter.

The letters are marked in evidence Defendant's Exhibits A and B.

(Mr. Feldman reads Exhibits A and B to the jury)

BY MR. FELDMAN:

Q. Tell me, did you see Officer Gray in the District Attorney's office?

A. Well, the first time when he brought me over that was when I saw him.

Q. Do you remember the first time you were brought over--whom did you see there?

A. Well, I was brought -- I was not brought over to his place, but to a different District Attorney.

Q. Mr. Tekulsky, did you see there Mr. Tekulsky, a gentleman at the desk?

A. With dark face.

Q. Yes.

A. Yes, he was there.

Q. And do you remember seeing Officer Gray?

A. Yes.

Q. You remember seeing me?

A. Yes.

Q. We had a conversation together?

A. Yes.

Q. Did you give the names to Officer Gray at that time in my presence?

A. Yes.

Q. You remember that?

A. Yes.

Q. Did you tell him who they are?

A. Yes.

Q. Did you tell him where they could be located?

A. Yes.

Q. Could you give me some description of the man Lobish?

A. He is a white, pale faced fellow.

Q. A tall fellow or a short fellow?

A. Short.

Q. Dark or light?

A. Light complexion.

Q. Did you tell that to Officer Gray?

A. Yes, he said he knows him himself.

Q. He told you that he knows him himself?

A. Yes.

Q. Did you give the name of Kivait?

A. Yes.

Q. Did you describe him to him?

A. Yes.

Q. And he made the same remark that he knows him?

A. No, he did not say he knows Kiviat.

Q. He does not know Kiviat?

A. Yes.

Q. Did you tell him where Kiviat could be found?

A. Yes.

Q. Where?

A. I gave him his address where he lived.

Q. Did you give a description of the other two?

A. I told him where they hung out, where he could get the other two.

Q. Do you remember him sitting there and marking everything down?

A. Yes.

Q. That was the first time you were taken over?

A. Yes.

Q. The second time you were taken over to Mr. Cardone's office, do you remember that?

A. Yes.

Q. Who was there?

A. Some officer came over and brought me over to his office.

Q. Who was there, Mr. Cardone, yourself?

A. Mr. Cardone and myself and the officer and the stenographer.

Q. I was not there at that time?

A. No.

Q. You made some statement to Mr. Cardone in the presence of the officer?

A. Yes.

Q. What took place there the second time?

A. He had a stenographer writing down what I was telling him.

Q. What did you tell him?

A. I told him everything I told before, that I made in the statement.

Q. The same you are telling us now?

A. Yes.

Q. The same you wrote to Mr. Breitbart?

A. I did not tell him much of it because I wrote a letter. I told him when I was speaking to him.

Q. Did Mr. Breitbart see you since you wrote the letter to him?

A. No, never saw me at all.

Q. Do you remember when you were brought in this court before Judge Crain, in Part I, do you remember that?

A. Judge Nott.

Q. You remember that?

A. Yes.

Q. You remember I was assigned to your case?

A. Yes.

Q. How many times did you see me?

A. I saw you about four or five times.

Q. You saw me twice, once up in the District Attorney's office?

A. Yes.

Q. You saw me in court and once in the Tombs?

A. Yes, I saw you twice in the Tombs.

Q. I ask you again, was this defendant, at any time, before you went up there, in your company?

A. I did not see him all day until after the hold-up.

MR. CARDONE: You mean before the 15th?

MR. FELDMAN: No, on the 15th, did you ever speak to him about it before?

A. No.

Q. You never said a word?

A. No.

Q. At the time you were standing with him on the corner?

A. No.

Q. You came over and you say you started to sign a song?

A. Yes.

Q. That is a place where the boys come together generally and meet, on the corner?

A. Yes, there are a couple of fellows there.

Q. My friend showed you a coat, did you see that coat before?

MR. CARDONE: Before what?

MR. FELDMAN: Before that day?

MR. CARDONE: Before the 15th of May?

MR. FELDMAN: Yes.

THE WITNESS: He was wearing that every day. I saw it for a month straight.

Q. Do you remember seeing that tear in the coat?

A. Yes, I saw that every day he was wearing it.

Q. You saw it before the 15th?

A. Yes.

Q. Do you know how it came to be torn?

A. Well, I was in the saloon at that time when he was cut.

Q. How long ago was that before the 15th?

A. A month

before the 15th, he was in a saloon and somebody came in and cut him. I don't know the fellow who cut him. He ran outside after he out him.

Q. There was a fight there?

A. Yes.

Q. And you saw the tear at that time?

A. He went to the hospital and after he came back I saw.

Q. Did you ever hear any remarks or statements or words spoken in reference to the coat, during this trial or before the Magistrate, or said by anybody?

A. No, sir, I did not hear nothing about it.

Q. Never heard about it?

A. No, nothing about it until you just showed it to me.

Q. Just now?

A. Yes.

Q. The second time you came to the District Attorney's office was Officer Gray there?

A. No.

MR. CARDONE: You mean in my office?

MR. FELDMAN: In your office.

BY MR. FELDMAN:

Q. Did Officer Gray have any conversation with you afterwards?

A. No, sir, I didn't see him at all.

Q. He didn't come near you?

A. No.

Q. You don't know if these boys were apprehended or not?

A. I don't know what you mean by that.

Q. You did not hear from them?

A. No.

RE-CROSS EXAMINATION BY MR. CARDONE:

Q. The statement you made to Assistant District Attorney

Tekulsky was made to him after you had written the letters to Mr. Breitbart?

A. Yes, sir, after I had written the letter.

Q. That was an oral statement you made, there was no stenographer present taking it down?

A. No, sir, just Mr. Feldman and the lawyer himself.

Q. Mr. Gray and the District Attorney Telkusky and Mr. Feldman?

A. Yes.

Q. The statement you made to me was made after you wrote the letters to Mr. Breitbart?

A. Yes.

Q. You made the statement to me on the 8th of July?

A. Yes.

Q. You say in one of these letters, I don't know which on it is, - I cannot point it out now -- that when you went up to this house on Saturday, May 15th, you were broke?

A. Well, I had two dollars to pay my way in.

Q. Were you broke or did you have the money to go up and pay for the prostitute?

A. I had two dollars. I had money.

Q. What do you mean when you say in your letter that you were broke that night?

A. After I went downstairs I spent it and was broke.

Q. Were you broke when you went up the first time looking for the woman, or did you have two dollars?

A. When was that, May 15th?

Q. Yes.

A. I was not broke at all, I had two dollars.

Q. You went up there to meet a woman?

A. Yes.

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The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until Monday morning next, July 19, at 10;30 o'clock.