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COURT OF GENERAL SESSIONS OF THE PEACE,

In and for the County of New York,

Part 1.

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

JOHN De LUCA.

Indictment filed January 26th, 1905.

Charge; Robbery in the First Degree, Grand Larceny in the First Degree, Assault in the Second Degree and Receiving.

Tried before HON. JOSEPH B. NEWBURGER, J., and a Jury.

New York, February 9th, et seq., 1905.

Appearances;

JOHN H. ISELIN, RSQ., Assistant District Attorney, for the People.

T. S. MORGAN, JR., and CHARLES SULLIVAN, Esqs., for the Defense.

Geo. F. Flack, Official Stenographer.

MR. ISELIN (To the jury): Gentlemen, I am going to you on the question of robbery in the first degree only.

MR. MORGAN: I ask that any other witnesses than the one first called be sequestered.

THE COURT: Yes.

CHARLES SCHEITLIN, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q Where do you live?

A 537 Broome Street.

Q Do you live there?

A I live there.

Q And what are those premises; what are they occupied as?

A (No answer.)

Q Well, I will put it in another way: Are you connected with any firm in this city?

A Yes, sir. I am connected with John Rohner, at 37 Greene Street.

Q And their business is what?

A It is an importing house.

Q Now you remember the 22nd day of January this year?

A Yes, sir.

Q You remember that day?

A Yes, sir.

3

Q On the evening of that day did you see the defendant, at the bar, this young Man here (indicating)?

A Yes, air.

Q And where were you at that time, and what time was it?

A About half past six o'clock in the evening, and he attacked me in front of a school house.

Q In what street?

A In Clark Street.

Q In this city and County?

A In this city.

Q Had you ever seen the defendant at the bar before that time?

A Yes, sir, I did.

Q How often had you seen him?

A I passed him on Broome Street, when I went home for lunch and for supper, and I saw him in company with some other fellows, hanging around the corner.

Q Frequently?

A Yes; for the last two years.

Q On many occasions?

A No-- I didn't pay any attention to him at all.

Q No; but had you often seen him?

A I had often seen him.

Q Now on the 22nd of January about half past six o'clock, when you saw this defendant as you say on Clark Street, what was it that first attracted your attention to him?

A I was walking down Clark Street and at Grand Street I came behind some bricks where they were building a new school house there; and they came across the street and

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this fellow (Indicating defendant) knocked me down to the floor.

Q Where did he hit you?

A He hit me down here (indicating) and down here (indicating) and he loosened four of my teeth.

Q What did the defendant strike you with if anything?

A He struck me with his fist.

Q How many men were with him?

A I saw three men when I went up again.

Q Do you mean that you fell down when you were struck?

A I fell down on the floor.

Q On the street?

A Yes, sir, on that sidewalk, on the steps, and he laid down on me and put his hand on my breast, and then I had a chance to look up and I recognized this man.

Q This defendant?

A Yes, sir.

Q Look at him now and tell this jury on your oath whether there is any doubt in your mind it was this defendant?

MR. MORGAN: We object to that form of question.

Objection overruled.

Exception.

A This is the man who knocked me down and was lying down on me and put his arm around my breast and held me on the

5

floor and the other fellow want to work and robbed me of my watch and chain.

BY MR. ISELIN:

Q Where was your watch and chain?

A On the left side pocket was the watch and here (indicating) was the chain fastened, and here (indicating) I had my segar cutter too.

Q It was not a locket but a segar cutter?

A The locket was in the middle and the segar cutter was in the waist pocket.

Q What kind of a watch was this?

A It was a Waltham watch.

Q Had you bought it?

A I bought it myself.

Q What was it made of, if you know?

MR. MORGAN: Objected to; I object to that. (No ruling.)

BY MR. ISELIN:

Q Was it a gold watch or silver watch?

Objected to.

Objection overruled.

Exception.

A A gold watch.

Q Did you buy it yourself?

A I bought it myself.

Q How much did you pay for it?

A I paid \$50.

Q And how long ago was that?

A That was about two

6

years ago.

Q And the chain, what was that; was it a gold watch chain?

A It was a gold chain.

MR. MORGAN: That is leading, "was it a gold chain?"

MR. ISELIN: It is immaterial. I don't have to prove value.

MR. MORGAN: Than why do it? But do it legally if you do it at all.

MR. ISELIN: I want the Jury to know all about this case.

THE COURT: That is all right.

MR. MORGAN: Exception.

BY MR. ISELIN:

Q Did you buy the chain?

A No; ay brother gave it to me as a present.

Q Did you buy the locket?

A No; my aunt gave it to me.

And you had a segar cutter?

A That is a cheap thing; that is why I did not mention anything about it.

Q The things taken from you at that time were a watch, a chain, a segar cutter and locket?

A Yes, sir.

Q They were taken you say by some person who was with this defendant?

A Yes, sir.

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Q And the defendant you say held you while they were being taken from you?

A Yes, sir.

Q After the goods which you have described were taken from your person what did you do and what did the defendant do?

A The defendant ran away and I was standing up and I walked right down to my house, because I only live about one block further down.

Q A block away from where this happened?

A A block away from where it happened.

Q Have you ever seen the men who were with the defendant since?

A No, I have not.

Q You have never seen them since?

A No, I have not.

Q And when did you next see the defendant?

A I don't think so.

Q I ask you, when did you see him next?

A Within an hour, the same evening.

Q And where was it?

A He was standing in my hallway with the officer.

Q Now did you speak to the defendant at the time that he was standing in your hallway with the officer?

A I did not.

Q Did you hear the defendant say anything at that time?

A No. My brother called me down and told me--

Q Never mind that, but did you hear the defendant say

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anything?

A No.

Q Not a word?

A Not a word.

Q Did you hear the officer say anything to the defendant then?

A No, I did not.

Q Now tell us, Mr Scheitlin, whether, when this defendant knocked you down on Clark Street, he said anything to you?

A He didn't say a word to me. He just punched my face.

Q And knocked you down?

A Yes, sir.

Q And at any time while you were being knocked down, and later in the street, did the defendant say anything to you?

A No; he didn't say anything to me at all.

Q Now do you know a young man called Nicholas Hamm?

A No, I don't know him.

Q Did you ever see him before?

A I may have seen him but I didn't pay any attention to him.

Q Do you remember whether you saw him on the night that you were robbed?

A I think I saw him on the street, because there was a certain man--

MR. MORGAN: I object to that, "I think I saw him", and I move to strike it out.

THE COURT: Yes; strike it out.

BY MR. ISELIN:

Q Did you see a third man near there?

A I saw a third man.

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Q And where was the third man standing?

A In the middle of the street.

Q Now what did you do when you first got on your feet?

A I went straight down to my house and reported it to my brother and ray friends.

Q Did you speak about these other men then?

A No, because I thought that they were all running away.

Q Did you go to Police Headquarters with this defendant?

A Yes, air, I did.

Q You went up there with him?

A Yes, after the officer came to my house I went right up with the officer.

Q To Police Headquarters?

A No, not to Police Headquarters. To the Macdougall Street station.

Q In the 5th Precinct?

A Yes, sir.

Q Did you have anything to say to the defendant there?

A I made my statement there and that was all that I had to say.

Q Did the defendant say anything in your hearing there?

A He didn't say anything.

Q That you heard?

A That I heard.

A Nothing at all?

A Nothing at all.

Q Did you go anywhere else with the defendant?

A No, I didn't. I went right home from there, because I was bleeding.

10

Q From your mouth?

A From my mouth and nose.

CROSS EXAMINATION BY MR. MORGAN:

Q How long did you say that you had known the defendant, Mr Scheitlin?

A I think about the last two years.

Q Have you been living at 537 Broome Street during that time?

A Yes, sir, I did.

Q You had seen this defendant, both day and night, during those two years?

A I saw him many tints during those years.

Q Might and day?

A Night and day.

Q You have passed and repassed the defendant both day and night during those two years?

A Yes, sir.

Q About how many times, do you suppose?

A I didn't pay any attention to him, and I can't mention any times.

Q But it was practically two or three times a week, wasn't it?

A Well, I think so.

Q Yes?

A Two or three times.

Q You have passed him about where this robbery was supposed to have taken place too, have you not?

A No; I saw him on the corner of Sullivan and Broome Streets.

Q I mean during the two years you had passed him in that immediate neighborhood where you claim the robbery took place, two or three times a week for two or three years,

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had you not?

A Yes, sir.

Q Now these other men-- how many men do you claim attacked you this night?

A Two.

BY MR. ISELIN:

Q Besides this defendant?

A No. Only two men attacked me.

BY MR. MORGAN:

Q Only two?

A Only two.

Q That is, this defendant and another one?

A This defendant and another one.

Q They were the only ones concerned at all in any attack and robbery made upon you; this defendant and another person were the only ones?

A They were the only ones.

MR. MORGAN: I want the original complaint.

MR. ISELIN: Yes, I consent to its admission if you want it to go in.

MR. MORGAN: Yes.

THE COURT: It is admitted in evidence by consent.

The said paper is marked "Defendant's Exhibit A".

BY MR. MORGAN:

Q Now you are certain, Mr Scheitlin, that there were only two persons involved in this robbery, are you not?

A Two

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people attacked as in this robbery.

Q They were the only ones that had any part in it, weren't they?

A Yes.

Q Now I call your attention to your affidavit-- do you remember making the complaint before the Magistrate, do you not?

A Yes, I remember.

MR. ISELIN: Show him his signature.

MR. MORGAN: You admitted it, but I will show it, in order that there may be no mistake.

BY MR. ISELIN:

Q (Indicating on paper) That is your signature?

BY MR. MORGAN:

Q Now I read to you a complaint sworn to by you before the magistrate: "Charles Scheitlin"--

THE COURT: You need not read that part.

MR. MORGAN: No; the important part.

Q "Charles Scheitlin, now here, the deponent, was passing through Clark Street, having said property in his vest pocket, said vest being then worn by him, when deponent was attacked by three men acting in concert".

Did you swear to that or not?

A (No answer.)

BY MR. ISELIN:

Q Did you swear to it?

A I did.

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BY MR. MORGAN:

Q Therefore you were mistaken when, a little while ago, you said there were only two men?

A Because I saw three men on the street.

Q Because you saw three men on the street, you under your path, although the third man had nothing to do with it, swore that he was involved in the robbery?

A Well, read that question.

Q There were only two men that attacked you?

A Yes.

Q And if you saw a third man it was where?

A In the middle of the street.

Q How far away?

A About six feet.

Q About six feet?

A I think-- what do you call it?

BY MR. ISELIN:

Q Six yards?

A Yes.

BY MR. MORGAN

Q Now let me get that straight. The two men that attacked you and the man who was six feet away were the only three men in that street at that time?

MR. ISELIN: Six yards.

A Yes, sir.

BY MR. MORGAN:

Q Six yards; there is no question about that, is there?

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A No question about that.

Q Now had you ever seen the other man before, the man who you claim was with the defendant at the time he attacked you?

A I had not seen the other man.

Q Had you ever seen the other man who you claim was with this defendant?

A I don't know the other man.

Q Had you ever seen the third man who you say was six yards away during those two years?

A I may have seen him.

Q This (Indicating defendant) is the only man who was captured out of those three?

A Yes.

Q And he is the only man that you remember?

A Yes.

Q Why is it that you don't remember the other two men as well as you remember this defendant?

THE COURT: Why do you not let him finish his answer?

MR. ISELIN: He says he remembers him because he had his arms around his body.

MR. MORGAN: I didn't hear that.

THE COURT: Because you interrupted him (Indicating witness).

BY MR. MORGAN:

Q Why do you remember him (Indicating defendant)?

A Because he put his arms around my person and gave me a chance to look up at him and recognise him.

Q Yes, but out of the two people who you say attacked you he is the only one that was arrested?

A Yes, sir.

BY THE COURT:

Q The other man was gone away so far as you know?

A He has gone away.

BY MR. MORGAN:

Q What time did you leave 537 Broome Street that afternoon?

A At four o'clock in the afternoon.

Q Where had you been?

A Up Eighth Avenue to 42nd Street and then went down Sixth Avenue and right home.

Q Right home?

A Yes, sir.

BY MR. ISELIN:

Q Walking?

A Walking.

BY THE COURT:

Q What time was this?

A Four o'clock in the afternoon it was when I left my house.

Q No; when you met these men?

A At half past six.

Q At half past six o'clock?

A In the evening.

BY MR. MORGAN:

Q Had you not been out that day before four o'clock?

A Not in the afternoon. In the morning I was out.

Q What time did you leave the house that morning?

A About eleven o'clock in the morning.

Q And what time did you get back home then from your

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work?

A At twelve o'clock.

Q At twelve?

A Yes, sir.

Q And then you left at four o'clock again?

A At four again?

Q You live in a bachelor apartment?

A No, I do not. I live by private people in a family.

BY MR. ISERLIN:

Q In a family?

A Yes, sir.

Q Furnished room?

A Furnished room.

BY MR. MORGAN:

Q Well now, you left about four o'clock and this happened about half past six?

A Yes.

Q How do you fix the time, Mr Scheitlin?

A I was walking up to 42nd Street and went over to Broadway and then afterwards down Sixth Avenue.

Q Whom did you have with you?

A Who was with me?

Q Yes.

A I had two friends along with me.

Q Who?

A One is Mr Robert Walser, with H. B. Heine & Company, and the other was Gotleib Baumann, who works with Huffenes & Company.

Q Where do they all live?

A We passed each other.

Q Where did you all separate?

A We separated at 24th

MR. MORGAN: Now we get to a delicate point and

COURT OF GENERAL SESSIONS OF THE PEACE,

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Geo. F. Flack,

Official Stenographer.

MR. ISELIN (To the jury): Gentlemen, I am going to you on the question of robbery in the first degree only.

MR. MORGAN: I ask that any other witnesses than the one first called be sequestered.

THE COURT: Yes.

CHARLES SCHEITLIN, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q Where do you live?

A 537 Brooms Street.

Q Do you live there?

A I live there.

Q And what are those premises; what are they occupied as?

A (No answer.)

Q Well, I will put it in another way: Are you connected with any firm in this city?

A Yes; sir. I am connected with John Rohner, at 37 Greene Street.

Q And their business is what?

A It is an importing house.

Q Now you remember the 22nd day of January this year?

A Yes, sir.

Q You remember that day?

A Yes, sir.

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Q On the evening of that day did you see the defendant at the bar, this young man here (indicating)?

A Yes, sir.

Q And where were you at that time, and what time was it?

A About half past six o'clock in the evening, and he attacked me in front of a school house.

Q In what street?

A In Clark Street.

Q In this city and County?

A In this city.

Q Had you ever seen the defendant at the bar before that time?

A Yes, sir, I did.

Q How often had you seen him?

A I passed him on Broome Street, when I went home for lunch and for supper, and I saw him in company with some other fellows, hanging around the corner.

Q Frequently?

A Yes; for the last two years.

Q On many occasions?

A No-- I didn't pay any attention to him at all.

Q No; but had you often seen him?

A I had often seen him.

Q Now on the 22nd of January about half past six o'clock, when you saw this defendant as you say on Clark Street, what was it that first attracted your attention to him?

A I was walking down Clark Street and at Grand Street I came behind some bricks where they were building a new school house there; and they came across the street and

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this follow (Indicating defendant) knocked me down to the floor.

Q Where did he hit you?

A He hit me down here (indicating) and down here (indicating) and he loosened four of my teeth.

Q What did the defendant strike you with if anything?

A He struck me with his fist.

Q How many men were with him?

A I saw three men when I went up again.

Q Do you mean that you fell down when you were, struck?

A I fell down on the floor.

Q On the street?

A Yes, sir, on that sidewalk, on the steps, and he laid down on me and put his hand on my breast, and then I had a chance to look up and I recognised this man.

Q This defendant?

A Yes, sir.

Q Look at him now and tell this jury on your oath whether there is any doubt in your mind it was this defendant?

MR. MORGAN: We object to that form of question.

Objection overruled.

Exception.

A This is the man who knocked me down and was lying down on as and put his arm around my breast and held me on the

floor and the other fellow went to work and robbed me of my watch and chain.

BY MR. ISELIN:

Q Where was your watch and chain?

A On the left side pocket was the watch and here (indicating) was the chain fastened, and here (indicating) I had my segar cutter too.

Q It was not a locket but a segar cutter?

A The locket was in the middle and the segar cutter was in the waist pocket.

Q What kind of a watch was this?

A It was a Waltham watch.

Q Had you bought it?

A I bought it myself.

Q What was it made of, if you know?

MR. MORGAN: Objected to; I object to that.

(No ruling.)

BY MR. ISELIN:

Q Was it a gold watch or silver watch?

Objected to.

Objection overruled.

Exception.

A A gold watch.

Q Did you buy it yourself?

A I bought it myself.

Q How much did you pay for it?

A I paid \$50.

Q And how long ago was that?

A That was about two

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years ago.

Q And the chain, what was that; was it a gold watch chain?

A It was a gold chain.

MR. MORGAN: That is leading, "was it a gold chain?"

MR. ISELIN: It is immaterial. I don't have to prove value.

MR. MORGAN: Then why do it? But do it legally if you do it at all.

Mr. ISELIN: I want the jury to know all about this case.

THE COURT: That is all right.

MR. MORGAN: Exception.

Q Did you buy the chain?

A No; my brother gave it to me as a present.

Q Did you buy the locket?

A No; my aunt gave it to me.

Q And you had a segar cutter?

A That is a cheap thing; that is why I did not mention anything about it.

Q The things taken from you at that time were a watch, a chain, a segar cutter and locket?

A Yes, sir.

Q They were taken you say by some person who was with this defendant?

A Yes, sir.

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Q And the defendant you say held you while they were being taken from you?

A Yes, sir.

Q After the goods which you have described were taken from your person what did you do and what did the defendant do?

A The defendant ran away and I was standing up and I walked right down to my house, because I only live about one block further down.

Q A block away from where this happened?

A A block away from where it happened.

Q Have you ever seen the men who were with the defendant since?

A No, I have not.

Q You have never seen them since?

A No, I have not.

Q And when did you next see the defendant?

A I don't think so.

Q I ask you, when did you see him next?

A Within an hour, the same evening.

Q And where was it?

A He was standing in my hallway with the officer.

Q Now did you speak to the defendant at the time that he was standing in your hallway with the officer?

A I did not.

Q Did you hear the defendant say anything at that time?

A No. My brother called me down and told me--

Q Never mind that, but did you hear the defendant say

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anything?

A No.

Q Not a word?

A Not a word.

Q Did you hear the officer say anything to the defendant then?

A No, I did not.

Q Now tell us, Mr Scheitlin, whether, when this defendant knocked you down on Clark Street, he said anything to you?

A He didn't say a word to me. He just punched ay face.

Q And knocked you down?

A Yes, sir.

Q And at any time while you were being knocked down, and later in the street, did the defendant say anything to you?

A No; he didn't say anything to me at all.

Q Now do you know a young man called Nicholas Hamm?

A No, I don't know him.

Q Did you ever see him before?

A I may have seen him but I didn't pay any attention to him.

Q Do you remember whether you saw him on the night that you were robbed?

A I think I saw him on the street, because there was a certain man--

MR. MORGAN: I object to that, "I think I saw him", and I move to strike it out.

THE COURT: Yes; strike it out.

BY MR. ISELIN:

Q Did you see a third man near there?

A I saw a third man.

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Q And where was the third man standing?

A In the middle of the street.

Q Now what did you do when you first got on your feet?

A I went straight down to my house and reported it to my brother and my friends.

Q Did you speak about these other men then?

A No, because I thought that they were all running away.

Q Did you go to Police Headquarters with this defendant?

A Yes, sir, I did.

Q You went up there with him?

A Yes, after the officer came to my house I went right up with the officer.

Q To Police Headquarters?

A No, not to Police Headquarters. To the Macdougall Street station.

Q In the 5th Precinct?

A Yes, sir.

Q Did you have anything to say to the defendant there?

A I made my statement there and that was all that I had to say.

Q Did the defendant say anything in your hearing there?

A He didn't say anything.

Q That you heard?

A That I heard.

A Nothing at all?

A Nothing at all.

Q Did you go anywhere else with the defendant?

A No, I didn't. I went right home from there, because I was bleeding.

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Q From your mouth?

A From my mouth and nose.

CROSS EXAMINATION BY MR. MORGAN:

Q How long did you say that you had known the defendant, Mr Scheitlin?

A I think about the last two years.

Q Have you been living at 537 Broome Street during that time?

A Yes, sir, I did.

Q You had seen this defendant, both day and night, during those two years?

A I saw him many times during those years.

Q Night and day?

A Night and day.

Q You have passed and repassed the defendant both day and night during those two years?

A Yes, sir.

Q About how many times, do you suppose?

A I didn't pay any attention to him, and I can't mention any times.

Q But it was practically two or three times a week, wasn't it?

A Well, I think so.

Q Yes?

A Two or three times.

Q You have passed him about where this robbery was supposed to have taken place too, have you not?

A No; I saw him on the corner of Sullivan and Broome Streets.

Q I mean during the two years you had passed him in that immediate neighborhood where you claim the robbery took place, two or three times a week for two or three years,

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had you not?

A Yes, sir.

Q Now these other men-- how many men do you claim attacked you this night?

A Two.

BY MR. ISELIN:

Q Besides this defendant?

A No. Only two men attacked me.

BY MR. MORGAN:

Q Only two?

A Only two.

Q That is, this defendant and another one?

A This defendant and another one.

Q They were the only ones concerned at all in any attack and robbery made upon you; this defendant and another person were the only ones?

A They were the only ones.

MR. MORGAN: I want the original complaint.

MR. ISELIN: Yes, I consent to its admission if you want it to go in.

MR. MORGAN: Yes.

THE COURT: It is admitted in evidence by consent.

The said paper is marked "Defendant's Exhibit A".

BY MR. MORGAN:

Q Now you are certain, Mr Scheitlin, that there were only two persons involved in this robbery, are you not?

A Two

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people attacked me in this robbery.

Q They were the only ones that had any part in it, weren't they?

A Yes.

Q Now I call your attention to your affidavit-- do you remember making the complaint before the Magistrate, do you not?

A Tea, I remember.

MR. ISELIN: Show him his signature.

MR. MORGAN: You admitted it, but I will show it, in order that there may be no mistake.

BY MR. ISELIN:

Q (Indicating on paper) That is your signature?

A Yes, air, that is my signature.

BY MR. MORGAN:

Q Now I read to you a complaint sworn to by you before the Magistrate: "Charles Scheitlin"--

THE COURT: You need not read that part.

MR. MORGAN: No; the important part.

Q "Charles Scheitlin, now here, the deponent, was passing through Clark Street, having said property in his vest pocket, said vest being then worn by him, when deponent was attacked by three men acting in concert".

Did you swear to that or not?

A (No answer.)

BY MR. ISELIN:

Q Did you swear to it?

A I did.

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BY MR. MORGAN:

Q Therefore you were mistaken when, a little while ago, you said there were only two men?

A Because I saw three men on the street.

Q Because you saw three men on the street, you under your oath, although the third man had nothing to do with it, swore that he was involved in the robbery?

A Well, read that question.

Q There were only two men that attacked you?

A Yes.

Q And if you saw a third man it was where?

A In the middle of the street.

Q How far away?

A About six feet.

Q About six feet?

A I think-- what do you call it? Six walks or steps.

BY MR. ISELIN:

Q Six yards?

A Yes.

Q Now let me get that straight. The two men that attacked you and the man who was six feet away were the only three men in that street at that time?

MR. ISELIN: Six yards.

A Yes, sir.

BY MR. MORGAN:

Q Six yards; there is no question about that, is there?

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A No question about that.

Q Now had you ever seen the other man before, the man who you claim was with the defendant at the time he attacked you?

A I had not seen the other man.

Q Had you ever seen the other man who you claim was with this defendant?

A I don't know the other man.

Q Had you ever seen the third man who you say was six yards away during those two years?

A I may have seen him.

Q This (Indicating defendant) is the only man who was captured out of those three?

A Yes.

Q And he is the only man that you remember?

A Yes.

Q Why is it that you don't remember the other two men as well as you remember this defendant?

THE COURT: Why do you not let him finish his answer?

MR. ISELIN: He says he remembers him because he had his arms around his body.

MR. MORGAN: I didn't hear that.

THE COURT: Because you interrupted him (Indicating witness).

BY MR. MORGAN:

Q Why do you remember him (Indicating defendant)?

A Because he put his arms around my person and gave me a chance to look up at him and recognize him.

Q Yes, but out of the two people who you say attacked you he is the only one that was arrested?

A: Yes, sir.

BY THE COURT:

Q The other man has gone away so far as you know?

A He has gone away.

BY MR. MORGAN:

Q What time did you leave 537 Broome Street that afternoon?

A At four o'clock in the afternoon.

Q Where had you been?

A Up Eighth Avenue to 42nd Street and then went down Sixth Avenue and right home.

Q Right home?

A Yes, sir.

BY MR. ISELIN:

Q Walking?

A Walking.

BY THE COURT:

Q What time was this?

A Four o'clock in the afternoon it was when I left my house.

Q No; when you met these men?

A At half past six.

Q At half past six o'clock?

A In the evening.

BY MR. MORGAN:

Q Had you not been out that day before four o'clock?

A Not in the afternoon. In the morning I was out.

Q What time did you leave the house that morning?

A About eleven o'clock in the morning.

Q And what time did you get back home then from your

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work?

A At twelve o'clock.

Q At twelve?

A Yes, sir.

Q And then you left at four o'clock again?

A At four again?

Q You live in a bachelor apartment?

A No, I do not. I live by private people in a family.

BY MR. ISELIN:

Q In a family?

A Yes, sir.

Q Furnished room?

A Furnished room.

Q Well now, you left about four o'clock and this happened about half past six?

A Yes.

Q How do you fix the time, Mr Scheitlin?

A I was walking up to 42nd Street and went over to Broadway and then afterwards down Sixth Avenue.

Q Whom did you have with you?

A Who was with me?

Q Yes.

A I had two friends along with me.

Q Who?

A One is Mr Robert Walser, with K. B. Heine & Company, and the other was Gotleib Baumann, who works with Huffenes & Company.

Q Where do they all live?

A We passed each other.

Q Where did you all separate?

A We separated at 24th Street.

MR. MORGAN: Now we get to a delicate point and

I do not know whether to ask the witness or not.

MR. ISELIN: Oh, yes.

BY MR. MORGAN:

Q This was on Sunday night, wasn't it?

A It was on Sunday.

Q Now you say you were only struck by & fist?

A By a fist.

Q Did that blow knock you down?

A Yes; the last punch knocked me down, because I got it right up here (indicating).

Q You got it in the neck?

A Yes.

Q Did that knock you down?

A Yes, sir, it did.

Q Did it render you unconscious?

A No, I was not unconscious.

Q When were you struck in the mouth?

A Well, he gave me about four punches in my face.

Q When?

A Well, when he attacked me.

Q Where were you when you were struck in the face the blow that loosened your teeth?

A I was in front of the school house in Clark Street.

Q So when he struck you in the face he didn't knock you down?

A The fifth time it knocked me down.

Q But the blow in the neck did not?

A The blow down here (indicating) knocked me down.

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Q And when were you struck in the mouth?

A Before that.

Q You were struck in the face?

A About four times before, and the fifth time he knocked me down to the floor.

Q Knocked you down on the sidewalk?

A To the floor of the place-- on the sidewalk.

Q Yes; the man who did all of the striking was the same man, was he?

A All the same man.

Q The man who did the robbing made no attempt to strike you, did he?

A He did not.

Q All the robbery that was done was done by the other man when this man was down on the top of you on the pavement?

A Yes, sir.

Q Where did the second man come from; you don't know, do you?

A Yes.

Q Where did he come from?

A Behind the bricks.

Q Do you know whether this defendant ever saw the other man before or not?

MR. ISELIN: What other man?

MR. MORGAN: This other man that robbed him.

BY MR. MORGAN:

Q Do you know whether this defendant ever saw that man before or not?

A (No answer.)

BY MR. ISELIN:

Q Do you know whether the man that came from behind the bricks ever knew the defendant or not?

A I don't know.

BY MR. MORGAN:

Q And you had not seen neither of the other two men before this night this man (Indicating defendant) knocked you down?

MR. ISELIN: He stated that he had seen him frequently on the corner.

MR. MORGAN: Yes, you are right about that.

BY MR. MORGAN:

Q But just previous to this assault upon you you had not seen this man or the other man, had you?

A No.

Q And you don't know whether they were acquainted or you had ever seen them in your life before?

A If I saw the other man I could tell you, but I have not seen the other man.

Q You say this was about half past six?

A About half past six.

Q What was the condition as to light; about sun set?

A It was darkened.

Q Would you call it night?

A I wouldn't call it night.

Q Would you call it daylight?

A Kind of call it daylight. It was just darkened.

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Q Therefore it was the time of day when it is hardest for you to say whether it was night or day?

A Two lights were burning on the school house.

Q How far away?

A About here from the wall.

Q Two lanterns?

A Yes, sir.

Q They were gas lamps, were they?

A Yes.

Q About how far away? I didn't catch it.

A About from here to the wall.

Q About from you to that wall over there (indicating)?

A Yes, sir.

Q Now when you went-- after the assault took place you saw you went to the house?

A I went to the house.

Q When did you see the officer first?

A When he came in with this fellow (Indicating defendant).

Q Had you any communication with the officer?

A I did not.

Q Had made no complaint whatsoever?

A (Continuing) because I was upstairs and was washing my blood off.

Q Therefore you had made no complaint?

A No.

Q Now you are certain that when the officer was present at your house, this defendant and yourself, that the defendant made no statement whatever?

A No, he did not.

Q You are also absolutely certain that at the station house when you, the defendant and the officer were present,

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the defendant made no statement?

A He say he was not guilty, and he started to cry.

RE-DIRECT EXAMINATION BY MR. ISELIN:

Q That is all you heard this defendant say?

A Yes.

Q Now let me ask you one question more in regard to this complaint wherein you swore that three men attacked you. Three men were in that street at the time you were attacked?

A Yes, sir.

Q And the defendant at the bar held you down while you were being robbed?

A Yes; sir.

Q While the man who was with him took the articles from you; that is right?

A Yes, sir.

Q And a third man stood in the middle of the street?

A Yes.

Q Now tell the reason that you put into this complaint the third man who you said stood in the street?

MR. MORGAN: I object, it the Court please.

MR. ISELIN: They opened the door.

THE COURT: Yes, I will allow it.

MR. MORGAN: Opened the door?

MR. MORGAN: "I simply asked what he swore to before the Magistrate; and how is that opening the

door?

THE COURT: I have allowed it.

MR. MORGAN: Exception.

BY M. ISELIN:

Q Now tell the jury why you put the third man into this went up I saw three peoples, and saw there were three peoples in the case, and I just started to go home and reported the case at home? and I went home because I was full of blood.

Q At the time that you got up from the ground, after being robbed, up to the time that you went to the Magistrate's Court and made this complaint, you believed that the third man was with the two others?

MR. MORGAN: Objected to. He is asking what he believed.

THE COURT: Yes; objection sustained.

MR. ISELIN: Well, it is plain enough

BY MR. ISELIN:

Q Have you ever see than third man since?

A Yes-- the third man?

Q Yes; the man who stood in the middle of the street?

A Yes, sir.

Q He is in court now?

A In court now.

RE-CROSS EXAMINATION BY MR. MORGAN:

Q You mean the man that stood six yards away, that he is in court?

A Yes.

MR. ISELIN: He has been excluded from the MR. MORGAN: I understand that.

BY MR. MORGAN:

Q When did you first see him after this arrest?

A When I came down here the second time.

Q Came down to this court?

A Yes.

Q Did you have any conversation with him?

A No.

Q Was he in company with the officer?

A The officer brought him along.

BY MR. ISELIN:

Q You made no complaint of this robbery at the police station, did you; you yourself did not go and make a complaint?

A I went with the prisoner up to the station.

Q Before the defendant was arrested did you make a complaint?

A I did not.

Q Did your brother?

A I think my brother went up there.

Q Where?

MR. ISELIN: I object to that, if the Court please. If his brother made a complain; the complaint is the best evidence.

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A Because my brother--

MR. MORGAN: I don't mean a written complaint.

MR. ISELIN: It is hearsay.

(No ruling).

A My brother went around to hunt for an office.

THE COURT: Yes; strike that out.

BY MR. ISELIN:

Q When did your brother go out for an officer?

A Right after I came up there.

NICHOLAS HAMM, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q How old are you, my boy?

A Fourteen.

Q Have you been to school here?

A Yes, sir.

Q In this city?

A Yes, sir.

Q What school?

A King Street.

Q For how long?

A Ever since I was six years old.

Q Until when?

A To-morrow.

Q Fourteen; how many years have you been to that school?

A I have been to that school about seven years.

Q Do you work?

A No, sir.

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Q Do you remember the 22nd day of January of this year?

A Yes, sir.

Q Let me ask you first, my boy, before I ask you that: Whom do you live with?

A With my mother.

Q Have you got brothers an. sisters?

A Got two brothers.

Q Older than you?

A One older and one younger than me.

Q Now on this 22nd day of January, 1905, did you see Mr Scheitlin the complainant in this case, and the defendant here, or either of them?

MR. MORGAN? Now if the Court please, that fixes the date in the very body of the question; it is leading.

THE COURT: I will allow the question.

MR. MORGAN: I take an exception.

MR. ISELIN: He ought to be allowed to tell.

How can I introduce it, Mr Morgan?

THE COURT: Let the stenographer read the question to the witness.

THE STENOGRAPHER (Reading): "On this 22nd day of January, 1905, did you see Mr Scheitlin the complainant in this case, and the defendant here, or either of them?"

A Yes, sir.

BY MR. ISELIN:

Q Whom?

A Seen the two of them.

Q You saw both of them?

A Yes, sir.

Q Where?

A In Clark Street, and Broom, right up on the fence.

Q And which of them did you see first, this defendant or the complaining witness?

A I seen Mr Scheitlin first.

Q Mr Scheitlin?

A Yes.

Q That is the gentleman who was last on the stand?

A Yes.

Q What were you doing there?

A I was watching a lock for a watchman while he went to supper.

Q How near to the public school was that lock?

A Right across the street.

Q What was Mr Scheitlin doing when you first saw him?

A He was coming down Clark Street.

Q In what direction?

A Towards the south.

Q Towards South Street?

A Yes, sir.

Q And do you know what time this was?

A About half past six in the evening.

Q Where were you standing?

A In the middle of the street.

Q Right in the middle of the street?

A Yes.

Q And how long after you saw Mr Scheitlin came walking

down the street as you say did you see this defendant here?

A In about five minutes.

Q And was the defendant lone or was somebody with him?

A Somebody was with him.

Q A man or a woman, which?

A A man.

Q Then tell the jury what you saw happen. Speak to them loud now and tell them just what you saw happen?

A I saw De Luca take the man by the throat and throw him down and then kneel down and hold him while the other fellow took his watch and chain; and then the other fellow said, "Come on"; and he said, "No, you are slow".

Q Who said?

A De Luca said, "No, you are slow"; and the other fellow said, "Look at the man behind you"; and then the two of them ran, and Mr Scheitlin hollered, "Police" three times? and I went across the street and found a link of the chain and brought it over to him and he gave me a quarter.

Q Is that all you know about it?

A Yes.

Q Tell us whether you had ever seen Mr Scheitlin before that night?

A Yes, sir.

Q Where had you seen him?

A I had seen him at his door when he used to go to work.

Q Where is his door?

A In Broome Street.

Q And where do you live, my boy?

A Vandam Street.

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Q How far is that from where Mr Scheitlin lives?

A Two blocks and a half.

Q Did you ever see the defendant here before that night?

A Yes.

Q Where had you seen him?

A On the corner of Clark and Broome Streets, every Sunday.

Q Is there a saloon on that corner?

A There used to be.

Q Had you ever seen the man who was with De Luca before?

A Not very much.

Q Well, had you ever seen him?

A Yes.

Q Where had you seen him?

A Around Broome Street every once in a while.

Q By him you mean the defendant?

A Yes, sir.

Q You have seen him?

A Yes sir.

Q How long before the night of this alleged robbery had you seen De Luca?

A I couldn't tell you how many times saw him.

Q Often?

A I couldn't tell you how often.

Q As often as ten times?

A I seen him more than that.

Q And is there any doubt, my boy, in your mind, as you speak under oath to these gentlemen of the jury, that DeLuca is the man that you saw holding Scheitlin down, as you have testified, on that night?

A Yes, sir.

Q No doubt?

A No, sir.

Q No doubt; is that right?

A Yes, sir.

CROSS EXAMINATION BY MR. MORGAN:

Q How do you remember that it was about half past six?

A Because I was watching a look for a watchman and he told me it was around that time, and he says he hasn't ate anything since morning.

Q What watchman was that who told you that?

A His name is Mr Volker.

Q When did he tell you that, Mr Hamm, that it was half past six?

A When he told me to watch the lock he says, "I am going home; it is about half past six, and will you please watch the lock for me until I come back?"

Q Describe to the jury what the condition of that lock was?

MR. ISELIN: Objected to as immaterial.

THE COURT: I will allow that.

BY MR. MORGAN:

Q They were building a school house there, weren't they?

A Yes, and they had a lot of beams ready.

Q And these lights were simply lights hung there to prevent horses from running into them?

A No. There are lamp posts there.

Q How far away?

A Two by the school on the Other side

and one on the building.

Q But on the side where you say this took place, what kind of a lamp was there?

A Two lamp posts; three all together; one on the corner.

Q Where the school house was being built, was that on the same side where you saw this man knocked down, or was it on the other side?

A On the other side.

Q So, as far as the place where he was knocked down was concerned, it was all built up all right?

A Yes, sir.

Q Now you referred to a fence in your testimony. What fence do you mean?

A It is a place where they put wagons.

Q A kind of a stable back from the street?

A No; it is a lot, and it has got a fence there.

Q Is that on the same side of the street where this man was knocked down?

A Yes, sir.

Q About how far from where he was knocked down was that?

A Just alongside of the fence.

Q On what side of the street were you?

A I was in the middle of the street.

Q In the middle of the street?

A Yes.

Q What were you doing?

A I was walking. I wanted to go down through Broome Street.

Q Which way were you walking?

A I was walking towards the south.

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Q You were walking towards the south?

A Yes, sir.

Q That was away from where the man was knocked down?

A No, sir.

Q Was it towards that place?

A Sir?

Q Was it towards where the man was knocked down or was it away from where the man was knocked down?

A It was near where the man was knocked down.

Q But was your back or face turned towards the place as you were walking?

A I had my face towards the man.

Q How far from the corner was it that he was knocked down?

A About 50 feet.

Q About 50 feet?

A Yes.

Q Well, after the man was knocked down did you remain there?

A I remained there until he got up, and then I walked over and I picked up the piece of chain and walked over to the house and gave it to his brother.

Q Did you do that right then and there?

A Yes, sir.

Q Did you tell him that you had seen it?

A Yes.

Q You were not a witness before the Magistrate, were you?

A No, sir.

Q You were not a witness before the Grand Jury, were you?

A No, sir.

Q Now when was it that you first knew that you were to be a witness in this case?

MR. ISELIN: I object to that.

THE COURT: Objection sustained.

MR. ISELIN: Naturally.

BY MR. MORGAN:

Q You were not a witness either before the Magistrate or the Grand Jury?

A No, sir.

Q Now when did you first make a statement about what you had seen?

A When the policeman asked me did I see anything and I said, "Yes, sir".

Q When did the policeman ask you that?

A After he locked De Luca up.

Q. On what day was that?

A January 22nd.

Q January 22nd?

A Yes, sir.

Q Now how do you fix that date?

A It is on my birthday and I can remember it.

Q What day is today?

A Today is the 9th.

Q Now who told you to say that if you were asked?

THE COURT: He says today is the 9th.

BY MR. MORGAN:

Q Who told you to say that, if you were asked?

MR. ISELIN: I object to that.

THE COURT: Objection sustained. It is apparent that this case will probably take the balance of the day; therefore no other case will be called

and the jurors are excused until tomorrow morning at half past ten o'clock.

BY MR. MORGAN:

Q How long have you known Mr Scheitlin?

A Known him for about two months.

Q About two months?

A Yes, sir.

Q Before this happened, had you ever talked to Mr Scheitlin?

A Yes, sir.

Q Since that time you have talked with him?

A Sir?

Q Since this attack and robbery you have talked with him?

A Yes.

Q Talked about this case?

A Yes, sir.

Q About what you had seen and what you had heard?

A Yes, sir.

Q You have also talked to the policeman about it?

A Yes, sir.

Q You were served with a subpoena to come down here?

A Yes, sir.

Q Who served you with a subpoena?

A A boy brought it up to my house.

Q Now where do you live? I didn't catch it.

A No. 8 Vandam Street.

Q About how far is that from where this took place?

A About two blocks.

Q When you went over to the house with this piece of chain that you picked up whom did you see over there?

A I seen Mr Scheitlin's brother.

Q Was he the one who gave you the quarter?

A Yes, sir.

Q Now you only saw two men attack this Mr Scheitlin, did you?

A Yes, sir.

Q You say you had known the defendant?

A Yes, sir.

Q By sight?

A Yes, sir.

Q And he knew you?

A I don't know whether he had known me.

Q You had been around there?

A Yes.

Q And he had just as good an opportunity to see you as you had to see him?

A Yes, sir.

MR. ISELIN: Well, well-- go ahead.

BY MR. MORGAN:

Q You were standing how far away?

A Standing in the middle of the street.

Q About how far away, would you judge it to be?

A About ten or fifteen feet.

Q Now, with the exception of yourself and the two men who attacked Mr Scheitlin, and Mr Scheitlin himself, you were the only ones upon the street, were you?

A Yes, sir.

Q You are certain that there was no third man who attacked Mr Scheitlin?

A There were two men that attacked

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him.

Q Only two men?

A Yes, sir.

Q Now when did you see the defendant first-- that night, I mean?

A When he came from Broome Street around the corner.

Q Came around the corner?

A From Broome on to Clark Street.

Q This defendant, before he attacked Scheitlin, came from around the corner?

A Mr Scheitlin came from Spring Street.

Q And this defendant came around the corner?

A He came from Broome Street.

Q You are certain about that?

A Yee, sir.

Q Do you remember a pile of bricks?

A Yes, sir.

Q Where were those bricks?

A On the other side of the street.

Q Not on the side that the defendant or Mr Scheitlin was?

A No, sir; on the other side.

Q So you are perfectly certain that the defendant did not come from behind a pile of bricks, ain't you?

A No, sir.

Q You are sure about that?

A No.

BY MR. ISELIN:

Q One moment; did he come from behind a pile of bricks or not?

A No, sir.

MR. MORGAN: Now I object. The witness says that he did not come from behind a pile of bricks.

BY MR. MORGAN:

Q Now when the defendant came around the corner was he going south or north?

A North.

Q You saw him when he came around?

A Yes, sir.

Q Was any one with him when he came around the corner?

A Another fellow.

Q Another fellow was with him?

A Yes.

Q Now then, what did you see happen?

A I seen that fellow (Indicating defendant) take the man by the throat and throw him down.

Q You saw him take him by the throat?

A Yes, sir.

Q You could see that perfectly plainly, could you not?

A Yes, sir.

Q The first thing this defendant did was to grab Mr. Scheitlin by the throat?

A Yes, sir.

Q And throw him down?

A Yes.

Q Now you are certain that is all the defendant did?

A Then he knelt down.

Q Yes, but before Scheitlin got upon the ground all that the defendant did was to take him by the throat and throw him to the ground; that is correct, isn't it?

A Yes, sir.

Q So therefore you are perfectly positive that the defendant

did not strike Scheitlin four or five blows in the face, ain't you?

A Yes.

Q Yes. Now, when he took him by the throat how did he hold him; did he take him by one hand or two?

A By one hand.

Q The right or left?

A By the right.

Q By the right hand he took him by the throat and threw him on the ground?

A Yes, sir.

Q Then he knelt upon him, you say?

A Yes, sir.

Q With which knee did he kneel upon him?

A Both knees.

Q You are certain that he did not lay upon him and throw his arms around his neck?

A No, sir.

Q That is correct. Now when was it that the second man appeared upon the scene?

A He was with him, and as soon as he threw him down he got down and knelt down, and the other fellow took the chain and watch away from him.

Q But Mr Scheitlin was down with this defendant with both of his knees upon him, before the other man took anything away from him?

A Yes.

Q Now what do you say that you heard?

A I heard the man when he got up; he hollered, "Police" three times.

Q But what did the defendant and the other man say?

A I didn't hear what they said?

Q You didn't hear what they said?

A No, sir.

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Q You never heard a word that the defendant or the other man said at all?

A No, sir.

Q Then why, young man, did you testify a little while ago that you heard the defendant say to the other man, "You are slow"?

A Yes; after they took the things.

Q Oh, well, now, didn't you understand my question before?

A (No answer.)

Q I asked you point blank as to whether you heard these two men say anything and you said no. Now which is right?

A After they took the watch he said, "You are slow".

Q Now Mr Scheitlin could have heard that as well as you?

MR. ISELIN: I object to that. Counsel knows that is improper.

THE COURT: Objection sustained. That is argument.

MR. MORGAN: Yes; I concede that.

BY MR. MORGAN:

Q What else do you claim to have heard?

A The other fellow says, "Come on; there is a man coming down; he is right behind you; you had better run".

Q And was there a man coming down?

A Yes, sir.

Q Did you see him?

A Yes.

Q Did you say anything to him?

A No, sir.

Q Never mentioned the subject, that this man had been

robbed at all?

A No, sir.

Q Never said a word to this man about this robbery at all, did you?

A No, sir.

Q How close did he pass to you?

A He was right along side of me.

Q How long after the robbery did he pass?

A No more than they run when he was right beside me.

Q And you don't know who that man was?

A No, sir.

Q You had never seen him before and have never seen him since, have you?

A No, sir.

Q Now after the robbery took place as you call it where did this defendant go?

A He went in a pool room.

Q When this man Scheitlin shouted out that he was robbed did you holler back?

A No, sir.

Q You never said a word?

A No, sir.

Q Now where did they go after the robbery?

A Mr Scheitlin went in the house.

Q I am referring to the defendant and the other man who was with him?

A They went down in a pool room.

Q How far is that pool room from there?

A Two blocks down.

Q Now did you see them go into the pool room?

A Yes, sir.

Q How?

A Him and the other fellow run--

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Q How--

MR. ISELIN: Let him finish.

THE COURT: Let him finish his answer.

A Him and the other fellow ran down until they got to the pool room and then they jumped down the stairs.

BY MR. MORGAN:

Q And you saw that two blocks away about 6:30 o'clock at night?

A Yes, sir.

Q You have never heard anyone state that they went into a pool room afterwards?

A No, sir.

Q But you stood there and you saw these men at this time of night, even two blocks away, go into a pool room?

A Yes, sir.

Q Did you see Mr Scheitlin, who is said to have been robbed, again that night?

A Yes, sir.

Q At his house?

A Yes, sir.

Q Did you go up the stairs where he was?

A No, sir; he came into the hall.

Q He came down into the hall?

A Yes, sir.

Q Now did you have any talk with him there?

A No, sir.

Q You didn't say a word?

A No, sir.

Q You didn't tell him that you had seen this robbery take place?

MR. ISELIN: He said he didn't say a word.

BY MR. MORGAN:

Q You didn't let him know that you were a witness in the case at all?

A No, sir.

THE COURT: He has answered that.

MR. MORGAN: It seems so remarkable. But possibly I ought not to dwell upon it.

MR. ISELIN: People of ordinary intelligence ought to understand it.

MR. MORGAN: Well, people --

THE COURT: Gentlemen, please stop this discussion.

MR. MORGAN: I don't think counsel really means--

THE COURT: Proceed with your examination.

MR. MORGAN: Yes; it is really unworthy of notice. I agree with your Honor.

Q Now when was it that you first saw the policeman?

A After he locked De Luca up.

Q Did you go down to the police station?

A No, sir.

Q How did you and the policeman happen to have any talk about it?

A He met am in Broome Street and he asked me.

Q He met you in Broome Street?

A Yes, sir.

Q That wasn't the place where you were on watch; you were on watch on Clark Street, were you not?

A The place

runs all the way around to Broome Street.

Q I understand that, but how long did this man who went off, ask you to watch the place for him?

A He was off about an hour.

Q So that it was more than an hour after this took place before you saw the policeman?

A Sir?

Q It was more than an hour after you say this robbery took place that you saw the policeman first, wasn't it?

A Yes, sir.

Q And how did he happened to speak to you about it?

A He seen me in Broome Street and he says to me, "Do you know anything about that robbery?" and I says, "Yes, sir".

I says--

MR. ISELIN: Don't tell us, my boy. I object to that.

BY MR. MORGAN:

Q He asked you first about whether you knew anything about the robbery?

A Yes, sir.

Q Did you know that policeman before?

A Yes.

Q How long had you known him?

A I knew him for about six months.

Q Now is that all the business you do, young man; just watching this place?

A No, sir; I go to school.

THE COURT: He said he went to school.

BY MR. MORGAN:

Q But you knew that this defendant was locked up before you said anything to the policeman, did you not?

A Yes.

RE-DIRECT EXAMINATION BY MR. ISELIN:

Q How did you know that, my boy?

A Because I seen him getting locked up.

Q You saw him arrested?

A Yes.

Q Where?

A He brought him into Mr Scheitlin's hallway and Mr Scheitlin identified him and then he locked him up.

Q Who brought him in?

A The policeman was Hennessy.

Q Police Hennessy of the Macdougall Street station?

A Yes, sir.

RE-CROSS EXAMINATION BY MR. MORGAN:

Q Now before you ever said anything about this defendant being the man that you saw rob Mr Scheitlin you had heard him identified, had you not?

A Yes.

Q When you went down to the station house you did not say anything to the sergeant about having seen this?

A I didn't go to the station house.

Q But you never said anything to the policeman before this man (indicating defendant) was identified?

A No, sir.

MR. ISELIN: Does any member of the jury wish to

question this witness?

(No response.)

BARTHOLOMEW HENNESSY, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q Hennessy, you are a member of the Police Force of this city attached to the 10th Precinct?

A Yes, sir.

Q And how long have you been on the Force?

A Seven years and a half.

Q And on the 22nd day of January, 1905, were you attached to the Macdougall Street station, the 10th Precinct?

A Yes, sir.

Q On that day did you arrest the defendant at the bar?

A Yes, sir.

Q Where?

A On Broome Street between Thompson and Sullivan.

Q On the street or in a building?

A Getting off a car.

Q Had you received any information in regard to this defendant at that time; yes or no?

A Yes, sir.

Q From whom?

A From a citizen, and from the complainant

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in the case.

Q Mr Scheitlin?

A Yes, sir.

Q Where did Mr Scheitlin speak to you about this a case; where?

A In his own house.

Q And about what time of day was it when he so spoke to you?

A About eight o'clock in the evening.

Q Eight o'clock in the evening?

A Yes-- between half past seven and eight.

Q And what time was it when you arrested this defendant?

A I got into the station house, and that is two blocks away, at ten minutes past eight.

Q When you arrested the defendant he was on a car?

A He jumped off the front platform of the car on my name being called out.

MR. MORGAN: Objected to.

(No ruling).

A (Continuing) A companion called to him, "Look out, John; there is Hennessy"; and he jumped off the front platform of the car and attempted to get into the basement.

MR. MORGAN: Objected to.

MR. ISELIN: In the presence of the defendant.

THE COURT: Yes; objection overruled.

MR. MORGAN: It does not follow that the defendant heard a word that was being said.

THE COURT: I will allow it.

MR. MORGAN: Exception.

BY MR. ISELIN:

Q How far was the man who called this out from the defendant when he called it out?

A He stood on the sidewalk, and the car--

Q On the sidewalk or car?

A He stood on the sidewalk, and De Luca was on the car, I should judge about 10 or 15 feet away.

Q On which side of the way did he stand?

A On the north side of the street.

BY THE COURT:

Q Through what street was the car going?

A The car was going east through Broome Street at the time.

BY MR. ISELIN:

Q And this strange man stood on the north side of the street and De Luca was on the front platform of the car?

A Yes, sir.

Q And where were you?

A On the north side of the street going east.

Q How far were you from the strange man?

A The strange man was the companion of De Luca.

Q Well, whoever he was, how far were you from him?

A May be about the length of the horse car.

Q Now what did the strange man call out?

A De Luca jumped on the front platform, and he said, "Come on, Barno!"

Q Do you know whom he spoke to?

A Yes, sir.

Q To whom?

A His companion.

Q This person that I have referred to as the strange man?

A Yes; and Barno was the man that was with him.

MR. MORGAN: That is a conclusion, from the very nature of things, and I move to strike it out.

THE COURT: No; I will let it stand.

MR. MORGAN: Exception.

BY MR. ISELIN:

Q Was there anybody else on the platform?

A Nobody but this strange man.

Q And De Luca jumped on the car and called out, "Come on, Barno"?

A Yes; and Barno came out of the basement; and when he saw me he said, "Look out, John; there is Hennessy!" De Luca jumped off the car and attempted to get into the basement, and I said, "Hold on, John"; and I placed him under arrest.

Q How long before this had you known De Luca?

A I have been on that post for seven years, and when he was not away I have met him almost every day.

Q Where?

A I have met him on Thompson Street, on Sullivan Street, Spring Street and all over the neighborhood.

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Q Had you ever spoken to him before?

A Yes. I advised him one time to give up his ways.

MR. MORGAN: I object to that.

THE COURT: Strike it out.

BY MR. ISELIN:

Q Just answer my question. You had spoken to him?

A A hundred times.

Q You had spoken to him before this time that you arrested him; yes or no?

A Yes, sir.

Q Now you placed him under arrest when he got off this car?

A Yes, sir.

Q And what became of Barno?

A I don't know. I have never seen him since.

Q Let me ask you this question: Do you know what sort of a place this basement was out of which Barno and De Luca cans?

A I know it is a resort where several crooks make a hang-out.

MR. MORGAN: I object to that.

THE WITNESS: It is a pool room.

THE COURT: That is stricken out and the jury are instructed to disregard it.

MR. ISELIN: Certainly. I didn't call for that answer.

Q Is it a theatre?

MR. MORGAN: I object.

THE COURT: Officer, if you simply answer questions and do not volunteer and make speeches we will get along much better.

BY MR. ISELIN:

Q Now, tell us what nature of place this is, whether it is a theatre or a Turkish bath or a seraglio, or what it is?

A It is a pool room.

BY THE COURT:

Q You mean by a pool room a place where they have tables at two and one half cents a cue; is that it?

A Yes, your Honor.

MR. ISELIN: Not the other kind.

BY MR. ISELIN:

Q Where did you then go with De Luca? One minute; I withdraw that. What did you say to De Luca?

A Nothing but "I want you, John"; and he said, "What for?"

Q What further was said?

A And I said, "I will tell you after".

Q And where did you take him?

A To the house of the complainant.

Q Scheitlin?

A Yes, sir.

Q Where is that?

A In Broome Street; that is within about a block of the place where I arrested De Luca, at

the foot of Clark Street.

Q And what did you do with him there?

A Scheitlin's brother opened the door.

Q Tell us what you said to him and what he said to you?

A He called his brother down.

Q The complainant?

A He called the complainant down, and I said, "Is this the man?"

MR. MORGAN: I object to that, if your Honor please.

THE COURT: Objection overruled.

MR. MORGAN: Do you claim the defendant was present?

MR. ISELIN: Why of course. He says he took him there.

A (Continuing) I says, "Is this the man?" and before I could finish the sentence he said, "Yes, that is the man that assaulted me".

BY MR. ISELIN:

Q What time was this?

A About eight o'clock. It was ten minutes after eight when I got him to the station house.

Q Did De Luca say anything?

A I brought him out--

Q Answer my question, Officer. Did De Luca say anything when the complainant said, "That is the man that assaulted me"? Yes or no.

A He said, "Is it me?"

Q Who said that?

A De Luca.

Q He said, "Is it me?"

A Yes.

Q Anything else?

A The complainant says, "Yes, it is you".

Q Was anything else said right then and there?

A No, sir; he said nothing more.

Q Then what did you do with the defendant?

A I brought him to the station house.

Q And on the way to the station house from Scheitlin's residence did you say anything to De Luca or did he say anything to you?

A I said, "John, you are up against it this time. If you had taken my advice this would not have happened".

He said, "If that Dutchman sends me away, his blood will pay for it when I come out!"

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

Motion denied.

BY MR. ISELIN:

Q Was anything else said?

A I said, "What happened to your hand?" The knuckles of his left hand I meant. He held it up and said, "Nothing".

There was two outs on the knuckles of that hand.

Q On the left hand?

A Yes, sir.

Q And was that all that was said on the way to the station house?

A That is all that was said.

Q When you got to the station house with De Luca what did you say to him and what did he say to you, and what was said in his presence about this affair, if anything?

A I made the usual charge of assault and highway robbery, and the defendant in the case said it was not him that did it.

Q He said it was not him that did it?

A Yes, sir.

Q Was anything else said at the station house?

A Mr Scheitlin identified him there as the man that assaulted and robbed him.

Q Was anything else said at the station house?

A Not that I can remember.

Q This was in the evening, wasn't it?

A That was in the evening at ten minutes after eight.

Q What did you do with the defendant?

A Had him locked up and the next day brought him to court.

Q To what court?

A The Second District Court.

Q And a complaint was made against him, wasn't it?

A Yes, sir.

Q What did the defendant say in the Polios Court, if anything?

A The complainant--

Q No; what did the defendant say?

A The case was

laid over until the following day, and the defendant made no defense there only to say that it was not him that did it.

Q Where else did you take the defendant?

A I didn't see him after that time until I saw him down here.

Q Did you ever see him at Police Headquarters?

A Yes; we took him to Headquarters and he made a statement there.

Q When?

A The following day-- I believe that was the 24th of January.

Q Who took him up to Headquarters?

A I did.

Q And did you have any conversation with the defendant on the way to Headquarters?

A No; I didn't have any conversation with him.

Q Did he say anything to you?

A No.

Q Did you say anything to him?

A No, sir.

Q Now when you got him to Police Headquarters-- that is in Mulberry Street, isn't it?

A Yes.

Q --did you hear the defendant say anything? Yes or no.

A Yes, sir.

Q Now to whom did the defendant say what you heard him say?

A To Mr Sheridan.

Q To whom?

A Sergeant Detective Sheridan.

Q Detective Sergeant Sheridan?

A Yes, sir, that takes the records.

Q Tell us what you heard this defendant say to Detective

Sergeant Sheridan at Police Headquarters on the 24th of January, 1905, if anything?

MR. MORGAN: That is objected to, if the Court please, upon the ground, in the first place, as to what the defendant may have said, the form of the question is objectionable because there is nothing here to show whether it relates to this transaction.

THE COURT: I am going to get to that. I will permit this question to be answered if it refers to this transaction. Anything else I will not permit at this time.

MR. ISELIN: Let me see if I understand your Honor. You mean in regard to whether it refers to this robbery?

THE COURT: Yes, sir, if it refers to anything else I will not permit it.

MR. ISELIN: Wait a minute, Officer. I withdraw the question under his Honor's ruling.

BY MR. ISELIN:

Q Did you hear anything said by the prisoner in Police Headquarters or by anybody else to the prisoner in regard to this transaction?

MR. MORGAN: I object to that, if the Court please.

THE COURT: I will allow that.

MR. MORGAN: As to the point as to what anybody else said to the prisoner?

THE COURT: Only in the presence of the defendant.

MR. ISELIN: To him.

MR. MORGAN: But as to what anybody else may have said, it may have been said by some one to whom the defendant was not in any wise related.

Objection overruled.

Exception.

BY MR. ISELIN:

Q Did you hear anybody?

A Yes.

Q You did?

A Yes.

Q In regard to this case?

A Yes.

Q Now state who said it and what it was?

MR. MORGAN: We object to it upon the ground that this defendant was under arrest at that time, if the Court please, and there is no proof that the defendant was informed of his rights, that anything that he might say at that time would be used against him in the trial of this case. We claim that the defendant should have been informed of every right he has under the Constitution of this State.

MR. ISELIN: It would take three months to do that.

Objection overruled.

Exception.

A Mr Sheridan asked him as to his past record--

THE COURT: Do not speak of that.

BY MR. ISELIN:

Q Don't tell us about that. Did he say anything in regard to this case?

A No.

CROSS EXAMINATION BY MR. MORGAN:

Q What car do you refer to, Mr Hennessy, as the one upon which the defendant was?

A A Spring Street car.

Q In which direction was it going?

A Going east.

Q That was about half past seven you say?

A Between half past seven and eight o'clock; may be about a quarter to eight.

Q Was that going towards where the defendant lives?

A I don't know where he lives. Where he claims he lives, it was ten blocks away.

Q Was it going in that direction, Mr Hennessy?

A No, sir. It was going in the opposite direction.

Q The car was lighted, wasn't it?

A Lighted?

Q Yes.

A Well, the usual lights in a street car were

there.

Q I would naturally suppose to. The defendant was standing where on the car?

A I saw him get on the front platform.

Q He could be readily seen from the street by anyone looking at him?

A Yes.

Q You saw him, did you not?

A I saw him getting on.

Q What is that?

A I saw him getting on and getting off, but I didn't see him when he was on the platform.

Q You saw him getting on and getting off, but didn't see him on the platform?

A No.

Q Well, was he on the platform?

A I saw him get on the platform.

Q And you saw him get off?

A I saw him get off.

Q But you never saw him on the car?

A No.

MR. MORGAN: That is too deep for me.

Q You say you never saw Barno before?

A Several times.

Q Have you ever seen him since?

A Not since that night.

Q Now you say the defendant asked you what you wanted with him?

A (No answer.)

Q Did you have a warrant that night to arrest him?

A No.

Q And when this defendant asked why it was that he was arrested, and you without a warrant, do you mean to say that you refused to tell him why he was arrested?

MR. ISELIN: Objected to as already answered.

THE COURT: I will allow it.

MR. ISELIN: Go ahead.

BY MR. MORGAN:

Q Do you mean to say that you arrested a citizen of this town without a warrant, and when he asks you why he is arrested you decline to tell him?

A I have the right to arrest--

MR. ISELIN: I object to that, as to form.

(No ruling.)

A I have the right to arrest anybody on suspicion.

BY MR. MORGAN:

Q And when he asks you, when you arrest him on suspicion, why it is that you arrest him, you refuse to tell him?

A I didn't refuse. I said, "You know what I arrest you for".

Q Did you tell him what you arrested him for?

A I said, "You know what I arrest you for".

Q Then what else did you say?

A Then he broke into another conversation.

Q And then what did you do with him?

A Then I said,

"John, over the robbery of that watch".

Q Did you say that before?

A I said that before I brought him to the complainant.

Q Did you say that before in your testimony?

THE COURT: Yes.

MR. MORGAN: About the watch, if the Court please?

THE COURT: About the robbery.

A I said about the robbery.

Mr. MORGAN: I think the minutes will bear me out. He said that his answer to the defendant was, "If you come with me you will find out".

THE COURT: And he stated that afterwards he said to him, "About the robbery down the street".

MR. MORGAN: That was after he got him to Scheitlin's house, if the Court please.

THE COURT: No; on the way to the house.

BY MR. MORGAN:

Q You found nothing upon this defendant?

A No, sir.

Q Found no property whatever?

A No.

THE PEOPLE REST.

MR. MORGAN: If your Honor please, it is twenty minutes to four. Would you allow this case to go over until morning? I would be much obliged to the Court if you would, and I think possibly it may be a saving of time, if your Honor kindly would.

THE COURT: All right.

The Court admonished the jury according to Section 415 of the Code of Criminal Procedure.

Adjourned to Friday, February 10th, 1905, at 10:30 A. M.

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Friday, February, 10th, 1904, 10:30 A. M.

TRIAL RESUMED.

THE DEFENSE.

JOH***N De LUCA, defendant, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SULLIVAN:

Q Where do you live?

A 36 Laight Street.

Q How long have you lived there?

A About 17 years.

Q Were you born in this country?

A Yes, sir.

Q Are your father and mother living?

A My father; I got a step-mother.

Q And you live with them?

A Yes, sir.

Q How old are you?

A Going on 20; I will be 20 this July.

Q What have you done for a living?

A I have been working for Kimball, as packer, and for Moyn***ahan's Express Company and for John Blood, truckman, after the last four and one half months I was just out of work two days; I got a job Monday at a laundry 32 East 9th Street; I worked there at the time of my arrest.

Q You heard Mr. Scheitlin testify here yesterday?

A Yes, sir.

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Q And you heard this boy testify?

A Yes, sir.

Q As a matter of fact did you have anything to do with this affair at all?

A No, sir.

Q Mr. Scheitlin says that you knocked him down and robbed him.

A That it a falsehood. I have got proofs where I was at the time.

Q Where were you?

A In the poolroom in charge of my uncle's place.

Q Where?

A 528 Broome Street.

Q Who was there at the time?

A There was a bunch of them; I should say about fifteen fellows down there at the time; they all came from a ball.

Q From a ball?

A Yes, sir, at half past five.

Q This was a Sunday, was it?

A It was on Sunday.

Q Sunday afternoon and evening you were there, were you?

A Yes, sir.

Q Who was your uncle?

A Joe; he goes under the name of Joe Wagner; that is the name he fights under.

Q He is bantam weight of New York?

A Yes, sir.

Q And champion, and he runs a poolroom?

A Yes, sir.

Q And you were in charge of it at this particular time?

A Yes, sir.

Q Is he an uncle of yours?

A He is an uncle of mine.

Q Were you with any man on Clark Street at half past six?

A No, sir; I could not have been.

Q Were you on Clark Street that afternoon at all?

A No, sir.

Q How long had you been down in the poolroom?

A Well, I had dinner about 12 o'clock and left home about one. I started down and I reached the poolroom about half past one; I ain't sure about the exact time; and I stayed there playing pool. I had about 40 cents in my pocket, and about quarter past two my uncle says "Are you going anywhere?" I said, "No." And he said to me "Will you take charge of the poolroom, because I am going to the ball." He had nobody to take charge, and on account of my being his nephew he asked me to take charge. It ain't the first time I took charge for him.

So I took charge of the place; and he came back about half past five and he said "Have you any place to go?" I said, "Not at present"; and he asked "Will you stay till I have supper?" "All right" I said; and I stayed till about a quarter past seven; and I was still collecting money, it was about a quarter to eight o'clock, and I handed him the money and said, "I am going out to go home, because I am going to work next morning;" and I gave him the money in the door; and there was a dog in the poolroom, and I ran out of the poolroom, ran outside, and as I did so I heard "Dewey" and I jumped on the car, and then the dog went down into the poolroom, and when the dog

jumped down into the poolroom officer Heney says "Come here, Johnnie;" and he comes over to me.

I says "What do you want?" And he says "I want to see you." I says "For what?" He says "You are under arrest."

I says "Wait until I tell somebody downstairs that I am arrested;" and I asked him what he had me arrested for. He gave me no explanation; didn't say nothing to me.

Well he takes me away from Broome Street, where the poolroom is, from there to this man's house in 537, right across the way from Clark Street. That is only about 110 yards away; and so when I reached there he says to this man "Is this the man?"

This man looked at me. I says "What man?" He would not even tell me what was the crime I was arrested for. He said, "Is this the man?"

The man didn't say nothing at all. He goes upstairs and calls his two friends that was with him, and then he comes down and says "All right".

I didn't even find out till we got to the station house what I was arrested for, and then I told him, I says "Now are you sure it was me?" And he says "Don't ask any questions;" and I says "Don't put a man in trouble;" I says to this man who said he was robbed. Then the officer told me to shut up; and the other two friends that was with him says "Are you sure

this is the feller?" And he looked around and says he ain't quite sure; and I said "This officer had me arrested because he don't like me;" and to he took me to this man to be identified. He took me at a murderer I guess, and just said it was me because he knows me.

Q Have you ever been in any trouble before?

A Yes, one time, when I ran a little ball myself.

BY MR. ISELIN:

Q What is that?

A A dance in the Casino Hall, one time, me and my partner; and he was a watchman at the time. At that time the officer says to me "Didn't I tell you to get out of here?" I says "No, I just came;" and I says "I am in nobody's way;" and he says "Go on." I says "What for?" He says "I will put a moon on you!"

I says "Take your time;" and he had me arrested, and he made a charge of assault against me in the station house, and when I went to Jefferson Market he changed it to disorderly conduct; and he has never liked me since.

Q Have you ever had any other trouble with him?

A He always said "hello" to me and looked at me after that, and I suppose he didn't like me.

THE COURT: Strike out what he supposes.

THE WITNESS: Well, ever since I had no trouble with him, then. You see?

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BY MR. SULLIVAN:

Q Did you get any property from this man Scheitlin?

A No; I didn't get nothing.

CROSS EXAMINATION BY MR. ISELIN:

Q How old are you?

A 19.

Q How long have you been in New York?

A I was born here.

Q Have you got your father living?

A I have a father and step-mother.

Q Any brothers and sisters?

A I have got sisters -- I have a sister from my first mother, and another sister and two brothers from this one I got now, my step-mother.

Q Do you live with your parents?

A Yes, sir.

Q And where?

A 36 Laight Street.

Q What do you say you do for a living?

A I drive; I work as a packer and drive for Moynahan's Express, and was driving trucks. That is the most I done.

Q You say you were working when you were arrested?

A Yes, at 32 East 9th Street, in a laundry.

Q How long were you working there?

A One week when I was arrested.

Q What is the name of the man who employed you?

A Cordell; I ain't well acquainted with the place.

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Q And is Mr. Cordell in court to-day?

A I don't know whether he is or not.

Q Look around and see; did you see him?

A No.

Q Well, is Mr. Cordell in court?

A No.

Q Whom did you work for before you worked for the laundry?

A John Blood.

Q How long before that?

A About four and one half months.

Q How long was it that you went to work for the laundry?

A Before I went to work for the laundry four and one half or five months I worked for him.

Q And before you were arrested how long was it that you had left him?

A It was Saturday I left him and Monday I got this job.

Q You had been working for him four and one half months?

A Four and one half months.

Q Why did you leave him?

A I worked four days in the week; never worked less than that. Monday was off. I didn't leave him that Saturday.

Q You must have left his employ if you went to be employed by the laundry?

A I left him Monday when I saw I had a steady job, working all the time during the week. I worked for this party for \$8 a week steady.

Q What is the business of the person for whom you worked

four and one half months?

A Truckman.

Q And is he in court?

A Well --

Q What is his name?

A John Blood.

MR. ISELIN: Is John Blood in court?

MR. MORGAN: : I object to this method. It is immaterial whether he is here or not this is only a display now.

MR. ISELIN: Let me play my part.

MR. MORGAN: I know you are playing a part.

MR. ISELIN: Every man in his time plays many parts.

THE COURT: I will strike out that.

BY MR. ISELIN:

Q Have you told your lawyer to send for these people?

A He asked me was I working, and I told him yes, I was working, and I told him who I was working for.

Q Have you told your lawyer to send for these people?

A What shall I tell him for?

Q Have you told your lawyer to send for these people?

THE COURT: He has answered that question.

MR. ISELIN: What did he say?

MR. MORGAN: What has that got to do with this case? I object to the question.

THE COURT: Objection overruled.

MR. ISELIN: I didn't exactly hear the question.

THE COURT: I think you have spent enough time on that.

BY MR. ISELIN:

Q Do you remember the 22nd day of January?

A Yes, sir.

Q You remember that day?

A Yes.

Q What day of the week was it?

A Sunday.

Q And where were you that afternoon?

A In the poolroom.

Q And where is the poolroom?

A 528 Broome Street.

Q Down in the basement?

A Yes.

Q And how far is it from this school, that is the public school in Clark Street?

A School?

Q This new school?

A I don't know what is made public there.

Q You did not know it was a public school?

A No.

Q Have you ever been in Clark Street?

A Oh, I have been in Clark Street, sure.

Q But not on this Sunday, not on the 22nd?

A No.

Q Were not anywhere near Clark Street that day?

A Well, from the poolroom is only a little ways.

Q How far is it?

A About 110 yards, just across from one gutter to the other, and this address where he lives is 529, while the poolroom is 528.

Q Where who lives?

A The complainant.

Q How do you know where he lives?

A I was taken there

to be identified.

Q Had you ever seen him before the 22nd?

A Not as I know of; I don't think I did.

Q What time did you go to the poolroom?

A I went there -- I couldn't place the time; within a little after one o'clock.

Q In the afternoon?

A In the afternoon. I stood there --

Q Please answer the questions and don't give us a lecture on it. And whom did you go there with?

A Alone.

Q And when did you leave there?

A I didn't leave there. I got outside and was arrested.

Q You came outside the poolroom?

A Yes -- five minutes to eight I think it was.

Q And did you come out alone?

A I came out with a dog.

Q A dog, but no man?

A No.

Q Did you get on a car?

A I jumped on a car and jumped off as soon as the dog went down into the poolroom.

Q When was it that you first saw Hennessy?

A The first?

Q Yes.

A As soon as he saw me I saw him.

Q And were you on the car then when he called you?

A No; I was just going down into the poolroom; just on the very top step. There (indicating) is the step, and I was like that (indicating).

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Q Had you been on the car?

A Yes.

Q So you jumped on the car and jumped off?

A Yes, sir.

Q And you were just going back into the poolroom when you saw Hennessy?

A The dog was going downstairs.

Q You saw Hennessy?

A I didn't see him till he called me.

Q But I mean he called you when you were just going down into the poolroom?

A Yes, sir.

Q You were going down into the poolroom after you jumped on a car and jumped off?

A Yes, sir.

Q Is that right?

A That is right.

Q And afterward Hennessy took you to where Scheitlin lived?

A Yes.

Q And then he took you to the police station?

A Yes, sir.

Q And afterwards he took you from this court?

A In the morning.

Q From this court in the morning?

A To headquarters first.

Q Now when you got to headquarters what was said to you up there?

A I don't know -- by the Captain?

Q By anybody; tell me who spoke to you first when you got up there?

A I was taken and set down in the room where they shine shoes on the stairs, and then they took me upstairs

and they asked me, was I ever arrested. I told them I was arrested one time and that was for having a weapon in my pocket. I was 13 years old and fooling with it in the street and an officer had me arrested and my people got me committed and sent me to the Refuge.

BY THE COURT:

Q Sent you to the House of Refuge, you mean, do you not?

A Yes, sir.

BY MR. ISELIN:

Q How long did you stay in the House of Refuge at that time?

A I think about a year and seven months at that time, when my people got me out.

Q And you told them about that up at headquarters?

A Yes, sir.

Q What else did you tell them?

A He asked me was I arrested any more, and I said "Yes, when I was looking for work, me and another companion, when I went out in Washington Market to look for work I had a box in my hand, and I put this box in a barrel to take some wood hone and I was arrested for stealing from barrels in Washington Market, but was discharged, and then my people had me sent to the Protectory.

Q To the Catholic Protectory?

A Yes, sir.

Q How long did you stay there?

A A year and five months.

Q How about the time that Mr. Justice Holbrook was down

in Special Sessions -- you remember that, do you not?

A Yes, sir.

Q That was in October, wasn't it; last October?

A I don't remember the date.

Q You know what year it was, do you not?

A I don't know even that. It is about two years ago, I think.

Q Well, call it two years ago. What were you there for?

A For taking a tub of water.

Q And what did Judge Holbrook do with you?

A Paroled me with Mr. Willard.

Q He is the probation officer, isn't he?

A He was the probation officer at the time.

Q Now, how often besides the times you have told us have you been sent away for being convicted of a crime?

A I was after that, never convicted after that, only for disorderly conduct, for being drunk once.

Q You were arrested for being drunk?

A Yes, sir.

Q How much did you get?

A I got one month.

Q One month where; in the Penitentiary?

A No, sir; in the work house.

Q That is on Blackwell's Island?

A That is on Blackwell's Island.

Q And you got one month for being drunk?

A Well, the officer made a charge of disorderly conduct.

Q what was the charge on which you were sent away?

A Disorderly conduct I tell you.

Q And you only got one month?

A One month. There was 31 days in that month, too.

Q There was the House of Refuge first, then the Catholic Protectory, then Judge Holbrook in Special Sessions, and then one month for disorderly conduct?

A Yes, sir.

Q Now is that all that you have ever got?

A That is all I can remember. May be for disorderly conduct again; I ain't sure; I wouldn't say I was arrested any more.

Q I am asking you.

A That is all I can remember.

Q You have told us about four times that you were arrested and convicted. Now what I want you to tell me is about the other time.

MR. SULLIVAN: I object to that if your Honor please.

(No ruling)

BY MR. ISELIN: Is that all?

THE COURT: Objection sustained as to his being arrested.

MR. ISELIN: Of course.

Q I want to know whether you have ever been sent away -- ever been convicted any other time?

A No.

Q You art perfectly sure of that?

A Yes.

Q Not even to the Reformatory or to the work house?

A One month to the work house I told you.

Q I say, except that time?

A No, sir.

Q Sure about that?

A Yes.

Q So those four convictions are all you can remember now; is that right?

A Yes, sir.

RE-DIRECT EXAMINATION BY MR. SULLIVAN:

Q At the time you went up it was long after you gave a bond for \$100?

A I was under a bond.

MR. ISELIN: Isn't that leading?

MR. SULLIVAN: I think it is permissible under redirect.

A (Continuing) For good behavior.

DOMINICK CHIARELLO, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MORGAN:

Q Do you know the defendant in this case?

A (No answer)

Q Do you know this man, DeLuca?

A Yes, sir, I know him.

Q Did you see him on the 22nd day of January of this year?

A Yes, sir.

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Q Did you see him on the afternoon of that day?

A Yes, sir.

Q Did you see him at 6:30 o'clock on that day?

A Yes, sir.

Q Where did you see him?

A Down in a poolroom.

Q Whose poolroom was that?

A Joe Wagner's.

Q On what street?

A Broome Street.

Q How far was that from 357 Clark Street?

A Well, that is one block.

Q I should say 537 Clark Street, how far was it?

A I should say it was one block.

Q Now what did you see the defendant doing?

A What is that?

Q What was the defendant doing at the time you saw him?

A He was attending to the poolroom.

Q Was he in charge of the poolroom?

A Yes, sir.

Q He was manager?

A Well, the boss was out.

Q How long did you know him to be in charge of that poolroom?

A From half past four to half past six.

Q I say, for what length of time had he been manager of the poolroom?

A That day only so far as I know.

Q You don't understand me.

THE COURT: He says he only knows him as having been there on that day.

MR. MORGAN: No, he did not say that, your Honor.

THE COURT: He did say that; I beg your pardon.

MR. MORGAN: I beg your Honor's pardon; I did not so understand him.

THE COURT: That is different.

BY MR. MORGAN:

Q Have you ever known him as manager of the poolroom before that day?

A Yes.

Q How long have you known him as manager?

A Every time the boss went out he left him in.

Q Every time the boss went out he was left in charge of the poolroom?

A Yes, sir.

CROSS EXAMINATION BY MR. ISELIN:

Q Where do you live?

A 185 West Houston Street.

Q And what is your business?

A Tailor.

Q Where do you work?

A I used to work in Simpson's.

Q How long ago?

A About five months ago.

Q Where is Simpson's?

A 13 and 15 Lispenard Street.

Q About five months ago?

A Yes, sir.

Q And you left him about five months ago?

A Yes, sir.

Q What have you done since?

A Been working for my father.

Q What is your father's business?

A He owns a house.

Q You have been doing house work for him?

A Yes, sir.

Q What kind of work do you do?

A Collect his rents.

Q Is that all the work you do?

A If there is any painting to be done or roofing or plumbing I hire a man to do it.

Q That is your work for him?

A Yes; that is my work for him.

Q How long have you been doing that work?

A About four months.

Q How long have you known the gentleman here?

A I know him since he was a boy.

Q How many years is that?

A I have known him since he was 15 or 15 years old.

Q And you have seen him quite often, have you not?

A Yes, sir.

Q At least every week?

A Yes, sir.

Q Played pool with him?

A Once in a while.

Q How often have you seen him in this poolroom?

A How often have I seen him?

Q Don't repeat my questions, please. Answer then if you can truthfully. How often have you seen him in this poolroom?

A I have seen him at times when I went down.

Q Well you saw him there on Sunday, the 22nd of January, when this trouble happened?

A Yes, sir.

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Q Did you see him there Saturday, the day before?

A No, I was not down there.

Q Friday?

A Friday?

Q Yes.

A I was not down there.

Q What was the last time before you had seen him in the poolroom?

A The last time before, I seen him the last time about two weeks before at 9 o'clock at night.

Q Did you ever see him in the daytime before this 22nd of January?

A Well, I never was down there in the daytime except this Sunday.

Q Have you ever been convicted of a crime?

A No, sir.

Q Never?

A Never.

Q Sure about that?

A Yes, sir.

MR. ISELIN: A juror would like to ask you a question, with his Honor's permission.

THE COURT: Yes.

BY THE TENTH JUROR:

Q What time in the afternoon did you see him?

A From half past four till half past six.

BY MR. ISELIN:

Q How do you know what time it was?

A How do I know what time it was?

Q Don't repeat my questions, Mr. Witness, How do you know what time it was?

A I looked at the time.

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Q Where?

A Where? Before I went down.

Q Where?

A In the saloon.

Q Where?

A In Broome Street.

Q Where?

A Corner of Thompson Street.

Q Broome corner of Thompson?

A Yes, sir.

Q You had been in a saloon at the corner of Broome and Thompson Streets?

A Yes, sir.

Q How far is that from this poolroom?

A Half, a block.

Q Half a block?

A Yes, sir.

Q And you looked at the time there?

A Yes, sir.

Q And what time was it?

A It was about twenty-five minutes after four.

Q What made you look at the time?

A What made me look?

Q Yes.

A I was on my way home, and on my way I stopped down.

Q On your way home you stopped down in the poolroom?

A Yes, sir.

Q And you stayed there two hours?

A Yes, sir.

Q Were you ever before on your way home when you stopped down?

MR: MORGAN: I object.

(No ruling)

MR. ISELIN:

Q How do you know what time it was that you left the

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poolroom?

A How do I know? I asked a friend of mine.

Q And who as that friend?

A Who was that friend?

Q Yes; who was that friend?

A I can't think of his name just now. I will tell you in a minute. Antonio Petrichelli.

Q Did he pull out his watch?

A Yes, sir.

Q A silver watch?

A No; an Ingersoll watch.

Q Did you look at it?

A Yes.

Q Long enough to see that it was an Ingersoll watch?

A Yes, sir.

Q And what time was it?

A What time was it? Half past six.

Q Just exactly?

A Just exactly.

Q And then where did you go?

A Where did I go? I went home to my supper.

Q You started off?

A Yes, sir.

Q And when you left was John DeLuca in that poolroom?

A Yes.

Q How long did you say you have known John?

A I know him at least 15 or 16 years.

NATHANIEL NATALE, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MORGAN:

Q Where do you live?

A 125 Sullivan Street.

Q On the 22nd day of January, in the afternoon, did you see the defendant?

A Yes, sir.

Q Where?

A Down in a poolroom?

Q Where was that poolroom?

A In Broome Street.

Q Broome Street?

A Yes, sir.

Q What was the defendant doing?

A Tending that poolroom.

Q Tending the poolroom?

A Yes, sir.

Q When you say tending the poolroom do you mean that he was in charge of it?

A In charge of it, yes.

Q How long had you known the defendant to be in charge of that poolroom?

A Well, I just knew him for that day. That is the first time I ever stopped in that place.

Q What were you doing in there?

A Well, I played a couple of games of pool.

Q What time did you leave?

A When I left there it was around seven.

Q Around seven o'clock?

A Between half past six and seven.

Q And during all the time that you were in there did you see the defendant in there?

A Yes; I paid him for a couple of games of pool.

Q You paid the defendant for a couple of games of pool?

A Yes, sir.

Q How long were you in there?

A Well, I was in there about -- I wasn't in there more than about an hour.

Q About an hour?

A Yes, sir.

Q Are you certain whether or not during the time that you were in there that the defendant was there all the time?

A Yes, sir.

Q When you left you paid him and he still remained there?

A He still remained there.

CROSS EXAMINATION BY MR. ISELIN:

Q What do you do for a living?

A I work in a blanket place in full Brothers.

Q Are you working there now?

A No, it is two weeks that I am out.

Q How long did you work there?

A Three years.

Q What time did you go to this poolroom on the 22nd of January?

A Well, it was around 6 o'clock.

Q How do you know?

A Well, I know, just as I could judge of time.

Q You judged the time?

A Yes, sir.

Q And that is the only way you know?

A That is the only way I know.

Q And you saw John DeLuca, the defendant, there?

A Yes, sir.

Q Do you know John DeLuca?

A I Know John DeLuca.

Q How long do you know him?

A Well, I know him for about three or four years.

Q You are an Italian too, are you not?

A Yes, sir.

Q You know that John has been convicted of four different crimes, do you not?

MR. MORGAN: I object to that.

MR. ISELIN: I press the question.

(No ruling)

A No, sir.

Q You know him for three or four years and never knew --

A No; I didn't know that he was ever arrested.

Q You heard him say so this morning?

A Yes, sir.

Q But you never knew that?

A I never knew it.

Q Now, how often have you been convicted?

A Never.

Q When did you leave this place?

A It was around between half past six and seven.

Q And John DeLuca was there?

A Yes; I played a couple of games and I paid him for them.

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Q And you left him there?

A Yes, sir.

Q After you paid him?

A Yes, sir.

Q And this was the first time you had ever been in the poolroom?

A Yes, sir.

Q Who is boss of the poolroom; do you know?

A Well, his name is known outside as Joe Wagner.

Q But you paid DeLuca?

A Yes, sir.

Q How old are you?

A 24.

THE DEFENSE RESTS.

TESTIMONY CLOSED.

MR. MORGAN: I make a motion that the defendant be discharged from the accusation of robbery, for very good reasons to my mind. The first is, there is absolutely no proof on the part of the prosecution that there was any resistance made on the part of the complaining witness to prevent the taking of his property from his person. I concede that the evidence --

THE COURT: I do not care to hear any argument upon it. Will you please state the ground of your motion and I will pass upon it.

MR. MORGAN: Yes, sir. On the ground, first, that there is no proof of robbery, that this property was taken violently from the person of the complainant. Secondly,

upon the ground that there is no proof that the two men were acting in concert. On the contrary the whole proof is that this defendant had nothing to do with the taking, but that the other individual did.

THE COURT: Motion denied.

MR. MORGAN: And then I move to dismiss upon the ground that there is a reasonable doubt.

THE COURT: Motion denied.

MR. MORGAN: I take exception to each of your Honor's rulings.

(During People's counsel's summing up):

MR. ISELIN: The defendant is a typical thug and crook.

MR. MORGAN: I except to that statement of the District Attorney's and ask your Honor to instruct the jury to disregard it.

Motion denied. Exception.

The jury found the defendant guilty.