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CASE #3074

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

3634

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

THOMAS STILIMAN.

B e f o r e

HON. OTTO A. ROSALSKY, J.,

And a Jury.

New York, N. Y., December 21, 1921.

INDICTED FOR ROBBERY IN THE FIRST DEGREE, GRAND LARCENY IN THE
FIRST DEGREE, ASSAULT IN THE FIRST DEGREE AND CRIMINALLY
RECEIVING STOLEN PROPERTY IN THE SECOND DEGREE.

INDICTMENT FILED NOVEMBER 25, 1921.

APPEARANCES:

Theodore L. Waugh, Esq., Assistant District Attorney,
For the People.

Messrs. Fabricant & Collings, For the Defendant,
Lewis E. Collings, Esq., of counsel.

(A jury was duly impanelled and sworn.)

(Upon consent, witnesses in the case were excluded
from the court room.)

(Mr. Waugh opened the case for the People.)

H O P L E E, a witness called on behalf of the People, having
been duly sworn, testified as follows through an interpreter:

(Chin Yong, interpreter, duly sworn.)

(The witness stated that he resides at 313 West 145th St.,
New York City.)

DIRECT EXAMINATION BY MR. WAUGH:

Q Where do you reside? A 313 West 145th Street.

Q What is your business? A Laundryman.

Q Do you live in your laundry? A Yes, sir.

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Q Is it your own laundry? A Yes, sir.

Q Do you remember November 3rd? A Yes, sir.

Q What time did you close up your laundry on the evening of November 3rd? A About half past ten.

Q After you had closed your laundry, did you hear anything? A Three young men knocked at the door and say they lose their ticket.

MR. COLLINGS: I move to strike out the answer on the ground that it is a conclusion. He said he heard three men knock.

THE COURT: Strike it out. The jury will disregard testimony stricken out.

BY THE COURT:

Q You heard knocking at the door; is that right? A Yes.

BY MR. WAUGH:

Q After you heard the knocking at the door, what did you do? A I turned on a light and opened the door and they came in.

Q You turned on the light and opened the door. Before you opened the door, did you hear anything said from the outside?

A He knocked at the door and say he lose the ticket.

BY THE COURT:

Q Who said that? A This young man said so.

MR. COLLINGS: I object to that, your Honor. He says he was outside the door. How could he possibly know that?

THE COURT: He said some young men knocked at the door.

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Q Did you open the door? A I opened it afterward.

Q When you say that the defendant told you that he lost the ticket, did you speak to him; did you see his face? A I did not say anything. He said he lost the ticket.

Q Did you see his face? A Yes.

Q Was the door open at that time? A Opened afterwards.

THE COURT: You had better clear that up.

BY MR. WAUGH:

Q You opened the door, did you? A When he knocked at the door, I opened the door.

Q And what did you do to your light, if anything? A I turned on the light before I opened the door.

Q How many men came in when you opened the door? A Three.

Q Now, did they say anything after they got in? A He say again, "I lose my ticket".

Q Who said, "I lost my ticket" after they got in? A This young man here.

Q This defendant here, Stillman? A Yes.

Q Tell the jury what happened after that. A He put up a gun to me.

Q Who? A This young man.

Q Was there any light in your room, your front room?

A Yes, sir.

Q Did you see this gun you spoke of? A Yes, sir.

Q What kind of a revolver was it? A A black pistol.

Q What size? A About that size (illustrating).

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Q After that what was done? A The three of them pushed me in the back room.

Q The three of who? A The young men.

Q Was this defendant one of them? A Yes, this is one of them.

Q After you got in the back room what happened? A They searched my body and took out \$25. out of my pocket.

BY THE COURT:

Q Took out \$25? A About \$25.

BY MR. WAUGH:

Q Was that your money? A That was my own money.

Q This place of yours is in the city and county of New York? A Yes, sir.

Q When that happened, what was the defendant doing? A They put me in the toilet and locked me in.

Q When they searched your clothes and took your money, what was this man doing? A He was one of them who searched my body.

Q What did the other two do? A They do the same thing, searched my body, too.

Q What did the defendant do with his pistol, if anything, in the back room? A Then afterward they put me in the toilet.

Q What did the defendant do with his pistol, if anything, in the back room? A He took my money.

Q Did you see the pistol in the back room? A I see it.

Q Who had it? A This young man put it in his pocket.

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Q After your money was taken from you what happened to you? A They pushed me back to the toilet and locked me in there.

Q How long were you in the toilet? A About fifteen minutes.

Q While you were in the toilet did you hear any noises? A I heard them outside look in the money drawers.

Q You heard a noise outside, did you? A Yes, I heard a noise outside.

Q After you got out, did you go into your front room? A Yes, sir.

Q Did you see your money drawer? A I see it all broken when I came out.

Q What was broken? A The money drawers.

Q Before you went in the back room was there anything in the money drawer? A About twenty-four or twenty-five dollars.

Q Was that your money? A Yes, sir.

Q And when you got out of the toilet you went into the front room and you saw your money drawer broken open - you have so testified, haven't you? A Yes, sir.

Q State to the jury whether or not anything was missing.

THE COURT: You are speaking now of what?

MR. WAUGH: He testified he was robbed and locked in a closet and he heard noises while he was in there, and now he is out, and I am asking him what he found when he got out.

THE COURT: You are not trying this defendant for

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larceny. It must be property taken in his presence. You have shown that, from his person or in his presence. Now he was in a different room, as I understand.

BY THE COURT:

Q Where were you at the time? A Not very far off, about twenty-five feet.

Q He was in the closet at that time? A Yes, sir.

Q Was it in the same room? A The same store.

Q How far was the closet from the drawer, from the counter?

A About twenty-five feet.

Q In the same room? A Yes, same store.

Q In the same room? A No, not the same room.

THE COURT: Then strike it out, and the jury will disregard it.

BY MR. WAUGH:

Q How did you get out of the closet? A There was a hole on top of the closet and I got out from there.

Q And you got out through the hole? A Yes, sir.

Q After you came out into your front room you ran out into the street, did you? A Yes, sir; when I came out and I see the money drawers broken, then I went to the police officer.

Q Now, you say there was a light in your front room when the men came in? A Yes, sir.

Q State to the jury whether or not you saw this defendant plainly. A I recognized his face plainly.

Q Had you ever seen him before? A I never seen him before

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CROSS-EXAMINATION BY MR. COLLINGS:

Q Mr. Lee, how long have you been a laundryman at that address? A Over two years in that place.

Q How many rooms have you there? A Two.

Q Two rooms? A Yes, sir.

Q On the ground floor? A Yes, sir.

Q Now, what is in the first room; what do you keep there, your shop? A Ironing.

Q Do you have your door in the front room? A Yes, sir.

Q Then back of that room have you your living quarters?
A Yes, sir.

Q Now, where is this toilet room with reference to the other two? A It is near the middle part of the store.

Q Near the middle part of the store? A Yes.

Q How do you get into the toilet? A He put up the gun to me.

Q How do you get into the toilet; do you enter it from the living room or from the store? A From the store.

Q You go from the store into the toilet room? A Yes, sir.

Q That is, the door from the toilet room leads into the front room that he occupies, the store? A In the store you go into the closet.

Q Does the door of the toilet room enter his store?

A Yes, in the store.

Q Is that the front room? A Near the front part.

Q Now at ten-thirty at night you closed your store on

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November 2nd; is that right? A Yes; about half past ten I closed.

Q And had you put out all your lights in your store?

A Yes, I put out all the lights.

Q That is, the light in the living room and in the store, too? A Yes, sir.

Q Now, when the knocking on the door occurred, were the men standing in the street knocking on your front door? A On my front door.

Q Does that front door open right onto the street? A Yes.

Q Are there any windows in your front room, any store windows? A There is a window there.

Q There are windows? A Yes, sir.

Q Are they wide windows? A Yes, sir, wide windows.

Q When you heard the knocking and turned on the light, did you turn on the light in your store or in your back room? A In the front part of the store.

Q In the front room? A Yes, sir.

Q That is where your store is? A Yes, sir.

Q Now, could anyone see the light from the sidewalk; could you look right through the window and see the light in your store? A Yes, they can see inside.

Q See right from the sidewalk into your store? A Yes.

Q Did these men that knocked on your door say anything to you before they came in? A He say, "I lose my ticket."

Q They said that before they came into your store, "I lost

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my ticket"? A Yes, sir.

Q Before they came in? A Yes, sir.

Q And then you opened the door and let them in; is that right? A Yes, sir.

Q Who came in first, do you know? A I don't keep track of that.

Q Well, did this man come in first (indicating the defendant)? A I think he was.

Q Do you remember how he was dressed on that night? A I think it was black, but I don't keep track of it.

Q How did you first know that this man had been arrested; who told you first? A The police called me to the station house to see him.

Q Did a policeman come up to see you? A Yes, sir.

Q That was on November 8th? A Yes, sir.

Q That was five days after you had been robbed, the policeman came to your store; is that right? A Yes, sir.

Q What did he say to you when he came up to you? A He asked me, "Do you recognize this boy who came here?"

Q I cannot understand you. Speak a little louder. A He asked me, "Do you recognize this boy when I show him to you?"

Q What boy did he say he had. A The police say, "See if you know the boy who came here to rob you that night; do you recognize him?" That is the reason he called me over to the station, to see if I recognized the boy.

Q Did he tell you he had the boy who had robbed you?

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A He said he don't know whether he was the boy or not. He wants me to go over and see if that was the boy.

Q When you got down to the police station how many boys did you see down there? A I see a good many of them there.

Q How many of them? A About two of them.

Q One of them was this boy, wasn't it? A Yes, sir.

Q And the other one was a colored boy, wasn't he?

MR. WAUGH: Objected to.

A I don't keep track of that.

Q Well, you know a colored man when you see him, a negro, don't you? A I don't keep track of that. I only recognize this boy.

Q Now, when you came in there and saw this colored boy, or this other boy and this one, did you recognize him right away?

A Yes, sir.

Q Mr. Lee, didn't you say at that time, "I don't know; I don't know."? Didn't you shake your head and say that? A No, sir. I told him to let me look plenty and then I can tell who it was.

Q You said what? A Let me look plenty.

Q Didn't the officer take hold of your shoulder and say, "That is the boy who did it."? A No, "See if this is the boy."

Q What did he say? A The police say, "See if this is the boy," and so I recognized this is the one.

Q Did he take hold of your shoulder and shake it? A I don't keep track of it.

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MR. COLLINGS: Do you speak any English at all?

THE WITNESS: No, not much.

MR. COLLINGS: Well, you understand English, don't you?

THE COURT: Let him try and see if he cannot speak a little English.

THE WITNESS: Not much.

Q You spoke a little English that night, didn't you? Was there any interpreter there that spoke Chinese on the night you picked this boy out?

THE COURT: Ask him if he understood the policeman.

A Nobody there.

Q Did you understand what the policeman said to you?

A I know what they said, but I can't say it myself.

THE COURT: He understands it, is that it? He can not speak English.

Q You understood the policeman; is that it? A Yes, sir.

Q You do speak a little English, don't you? A I know how to count.

Q Well, that night when you were held up, were you pretty much excited? A Yes, I was much excited.

Q Had you ever been held up before? A Never.

Q Do you remember what the other two boys looked like; I mean the other two boys you say held you up? A Some.

Q Would you know them if you saw them? A Maybe.

Q Now, are you sure this is the boy? A Yes, sir.

Q What makes you sure? A He was the first one put up

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the gun to me and I looked at him at that time.

Q Were the other fellows young boys, young men like this boy? A A little older than this one.

Q Older than this one? A Yes, sir.

Q Where did you have your money, in what pocket? A In my coat pocket.

Q In two pockets? Which pocket did you have it in?

A This one (indicating left pocket in a sweater).

Q How much did you have there? A About \$25.

Q When had you counted the money before? A When I closed up at night I count up the paper money and put it in my pocket.

Q You had it in your sweater pocket? A Yes, in the sweater.

Q Did this boy take the money out of the pocket? A Yes.

Q Did he have a gun in his hand at the time? A Yes, sir.

RE-DIRECT-EXAMINATION BY MR. WAUGH:

Q Tell the jury how they put you into the closet; give everything; describe it.

THE COURT: Didn't you go over that before?

MR. WAUGH: I did.

THE COURT: I don't see the necessity; it is only taking up more time.

A He put up the gun and told me to go into the toilet and then I go in.

Q That was after taking the \$25. from you? A Yes, sir.

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RE-CROSS-EXAMINATION BY MR. COLLINGS:

Q Did the policeman tell you that this was the boy at any time and that you must say this is the boy?

MR. WAUGH: I object to that.

THE COURT: Repeat the question.

A No.

MR. WAUGH: He has answered.

Q Did you know this officer before this night that you met him, November 8th? A That is not the policeman. That was not the same man. This is a different man.

Q Did you know Officer Shields? A I not know much English. I only know by the face. I not know by the name.

BY MR. WAUGH:

Q When you went into the station house, how many men were in the room? A A good many police in there.

Q How many other men? A About five or six others.

Q What did you do? A Do you mean how many police in there?

Q No. What did you do when you got in there with the five or six other men? A There were five or six police.

Q How many other men not police? A About two or three of them.

Q What did you do when you saw the defendant? A When I go in I pick out this one.

Q When you went in you picked out this one, but how did you do it; what did you do? A What do you mean?

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Q When you saw the defendant did you say or do anything?

A When I see him I say, "This is the one that robbed me the other night."

Q Did you do anything? A That is all I say or do.

Q Did you touch the defendant; did you touch him at all?

A I pointed my finger to him.

THE COURT: Of course, this last answer is competent in view of your cross-examination; otherwise it would be incompetent.

MR. COLLINGS: I brought that out for a purpose.

Q Are you sure this is the man that pointed the gun at you in your laundry? A I am pretty sure.

Q Positive? A Yes, I am very sure.

Q Have you any doubt about it at all? A What did you say?

Q Have you any doubt about it at all? A No, no doubt about it.

THE COURT: Mr. Collings, under the Bertilini case, 218 New York, I think you have opened the door.

MR. COLLINGS: I want it wide open, your Honor, so as to get the facts.

THE COURT: I only want it to appear that this evidence is not admitted under an erroneous theory. Now confine this police officer solely to the line-up in connection with the matters brought out by Mr. Collings.

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LOUIS FITZGERALD (Patrolman, 38th Precinct),
called as a witness on behalf of the People, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WAUGH:

Q How long have you been a policeman? A A little over
eleven years.

Q You are now a detective? A No.

Q You are a patrolman? A Yes, sir.

Q You were a patrolman on November 8th? A I was.

Q When did you arrest this defendant? A About 7:25 P.M.
November 8th.

Q You took him to the station house? A I did.

Q Did you go and get the witness Hop Lee yourself?
A I did.

Q Were you present when Hop Lee came into the station
house? A I was.

Q State to the jury what happened when he saw the defend-
ant. A Well, Stillman was in the detective room and there
was probably twelve men there.

Q Who? A Well, there was detectives and there was a
few men that was arrested for different things, and different
men there.

Q That is your best recollection? A Yes, sir.

Q What did the witness Hop Lee do when he came in? A The
detective says to Hop Lee, he says —

MR. COLLINGS: I object to what the detective said.

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THE COURT: Objection sustained.

Q Just say what Hop Lee did. A Hop Lee pointed to Stillman and said that was the man.

Q Now, on the way down from Hop Lee's laundry you came with him, did you? A I did.

Q Did you say anything to him? Did you threaten him or anything? A No, sir.

Q Did you put your hands on him at any time, on Hop Lee? A No, sir.

Q Did anybody do so in the station house in your vision? A No, sir.

CROSS-EXAMINATION BY MR. COLLINGS:

Q Do you mean to tell us, officer, that this man had what is called a line-up in the police headquarters? A I don't quite get you.

Q You know what a line-up is, don't you? A I do.

Q Did this defendant have a line-up? A I will have to get it a little bit plainer. There were ten or twelve men in the detective room and this Stillman was amongst these men. They were not lined up in a straight line.

Q I mean, how many men did you line up and ask the complainant to pick this man out from?

MR. WAUGH: I object to that. There is no evidence that anything like that happened. The question is founded on an erroneous assumption.

THE COURT: Why not phrase your question based on what

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actually took place?

Q Did you tell the District Attorney that you had given this man a line-up of twelve men? A Did I what?

Q Did you tell the District Attorney you had given this man a line-up with twelve men before this case was brought to trial? A I did not.

Q You never said that? A No, sir.

Q As a matter of fact, you did not give him a line-up, did you? A Well, if you call a line-up where there are ten or twelve men in the room; but if you call it a line-up where they are all lined up, he was not given a line-up.

Q You brought the complainant down to see if he could identify this man, didn't you? A We did.

Q As a matter of fact, weren't there only two boys in that room at that time? A No, sir.

Q This defendant and a colored boy? A No, sir.

Q What did Hop Lee say when you brought him in; did he say anything to you? A On the way?

Q No; in the room? A He didn't say nothing to me.

Q Did you hear any remark made? A Only picking out this man Stillman.

Q What did he say? A He said, "That is the man."

Q Just as soon as you brought him he went around among the twelve men and picked out this fellow and said "That is the man"? A As soon as he came in the door he seen this Stillman in amongst this crowd of men and he said, "That is the man," as

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soon as he seen Stillman.

Q Did you ever arrest this boy before, officer? A I did not; no, sir.

Q Did you know him before the night of November 8th?

A I never seen him in my life before.

Q Did you go up to the Chinaman's to bring him down on November 8th? A I did.

Q Will you tell us why you did that? A Because the detective asked me if I would go up, the detective who had this Hop Lee case, that is, the one it was reported to.

Q Hop Lee reported the robbery before? A Reported it to the Detective Bureau, and the detective asked me if I would go up and bring Hop Lee down, giving me the address of Hop Lee's place.

Q Was that the only case of robbery that had been reported to that detective division there? A I don't know that.

Q You don't know that? A I aint in the detective bureau.

Q Did he ask you to go to any place else to bring the defendant down? A He did not.

Q Just said, "Go up and get Hop Lee and bring him down and see if he knows this man."? A He looked up some papers there.

Q But he only sent you out to get Hop Lee? A Yes.

Q That is the only one he sent you out to get? A That is the only one he sent me for that night.

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BY MR. WAUGH:

Q The detective did not talk to Hop Lee when he came in, did he? A No, sir.

MR. WAUGH: The People rest.

MR. COLLINGS: In view of the fact, your Honor, that in this robbery the complainant says there was a gun used and there were accomplices present, I ask your Honor to submit it to the jury on the question of robbery in the first degree or nothing.

THE COURT: Surely.

THOMAS STILLMAN, the defendant, called as a witness, having been duly sworn, testified as follows:
(The witness stated that he resided at 626 Taylor Avenue, Borough of the Bronx, New York City, and that his true name is DAVID McCUE.)

DIRECT EXAMINATION BY MR. COLLINGS:

Q How old are you? A Twenty.

Q Where do you live? A 626 Taylor Avenue.

Q Is that in the Bronx? A Yes, sir.

Q Were you working in November of this year? A Yes, sir.

Q For whom were you working? A The Empire Express,

118 West 165th Street.

Q The Empire Express, 118 West 165th Street? A Yes, sir.

Q You were arrested on November 8th? A Yes, sir.

Q And this crime was committed on November 3rd? A Yes, sir.

Q That is what you were told. Now, were you working both

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November 3rd and November 8th? A Yes, sir.

Q What is the name of your employer there? A Mr. Barron.

Q How much did you earn there? A \$25 a week.

Q You were arrested November 8th, in the evening? A Yes.

Q Tell the jury the circumstances surrounding your arrest; just tell them what happened.. A I was standing on the corner of 143rd Street and Seventh Avenue, about half past seven or eight o'clock it was, when four officers come from the direction of 144th Street and Seventh Avenue towards the direction of 143rd Street and Seventh Avenue. They grabbed hold of me and they had some Italian man with them, and they asked this Italian man if I was the fellow and he says "No." They said, "All right, we will bring him down to the station house anyway." So they put me in a wagon and I was going down past about two streets when the officer - I don't just remember his name - one of the officers, anyway, started to hit me without saying a word.

Q Where was that? A In the van.

Q Four policemen came to you while you were on the street?

A Yes, sir.

Q Were they in uniform? A Yes, sir.

Q And they asked another man that they had with them if you were the man that had done what? A Stuck him up or something.

Q Had robbed him? A Yes, sir.

Q And he said no? A He said no.

Q And they said to you, "We will take you to the police

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station anyway"? A They searched me first for a gun.

Q Did they find any gun? A No, sir.

Q Then they said, "We will take you to the police station"?

A Yes, sir.

Q Did they put you in some sort of a wagon? A Like a big van.

Q Like a big van? A Like a moving van. It was standing at the corner of 143rd Street and Seventh Avenue.

Q And you say in that van they beat you? A One officer started in to hit me --

BY THE COURT:

Q Did he hit you? A Yes, he started in to hit me --

Q Did he hit you? A Yes, sir.

BY MR. COLLINGS:

Q Where did he hit you? A In the face and all over my body.

Q Did you see that officer here today? A I didn't see any of them.

Q Did you see any of those officers that were in that van today? A Only the one on the stand.

Q Did he hit you? A Yes, sir, he hit me once.

Q What did he do? A I was half dizzy from getting hit and I jumped out from the van and I landed on the back of my head.

Q You landed on the back of your head in the street?

A Yes, sir. I ran into the hallway and I told them I would not

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go with them.

Q Who ran after you? A The one that was doing the hitting ran after me.

Q Not this officer? A No, sir.

Q You said to him you would not go to the police station?
A Yes, sir.

Q Then what happened? A They put me in the van anyway, and then when I got in there he left me alone, and this officer who just left the stand hit me once with a stick and told me to shut up.

Q What happened at the police station? A They kept on trying to make me say I was the man that stuck this Italian fellow up.

Q That was the man who had met you on the street? A Yes, and I said no. While I was there, they said to this officer who was just on the stand, "Go up and get Hop Lee," and I was standing there in the station-house when Hop Lee and the officer came in about twenty minutes after, and Officer Buckley, the detective at the station house, says to Hop Lee, "Is this the man?" and he said, "I don't know; three fellows." He said, "One this way (illustrating) and one short, stout fellow," and so and so.

Q That is what the Chinaman said? A That is what the Chinaman said.

BY THE COURT:

Q What officer asked him? A Officer Shields.

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MR. WAUGH: You said Buckley.

THE WITNESS: The one that is captain in the station house of the detectives.

Q Was it the officer who testified here? A No, sir.

Q What is the name of the man? A Officer Buckley.

Q What did Officer Buckley say? A He says, "Is this the man." He put his hand on his shoulder and he turned me around towards me and he said, "Is this the man?" and Hop Lee said, "I don't know." He started in saying about the three fellows, the way they looked, and then they said, "Is this him?" and he said, "I don't know." And then after a while he said, "Yes, that is him."

Q He said twice, "I don't know"? A Yes, sir.

Q And then he said you were the man; is that right?

A Yes, sir.

THE COURT: Where is the officer in this case?

(Officer Fitzgerald stood up in the court room.)

THE COURT: What is your name, officer?

OFFICER FITZGERALD: Fitzgerald.

Q Was Officer Fitzgerald present? A Yes, sir; he was there, your Honor.

Q And what other officer? A Officer Buckley.

THE COURT: Get Buckley here, too.

BY MR. COLLINGS:

Q How many people were in that room; about how many?

A There was Officer Buckley and his assistant or helper and

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myself.

Q That is in that room? A In that small detective room.

Q When this complainant came in, this Officer Fitzgerald, the officer you call Buckley, his assistant -- A Yes, sir.

Q And yourself? A And myself. That is all that was in that room.

Q Were there twelve men there? A No, sir; three men counting myself.

Q Was there a colored boy there?

MR. WAUGH: I object to that as leading. That is distinctly leading and suggestive. The defendant has been here all the while in the court-room.

Q Was there any colored boy there? A There was one colored boy there.

Q Was he under arrest, do you know? A He was under arrest as suspicious. He was under the influence of liquor.

Q He was there at that time? A Yes, sir, he was there at that time.

Q And there was the Chinaman and yourself and this colored boy and the other three?

MR. WAUGH: Objected to as leading.

Q How many were there besides the colored boy and yourself? A Four altogether.

Q Four besides yourself and the colored boy? A Yes, sir.

Q Now, Stillman, you have been convicted, haven't you?

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A Yes, sir.

Q How old are you now? A Twenty.

Q In 1917 were you convicted? A Yes, sir.

Q What were you convicted for? A Carrying a gun.

Q Carrying a gun without a permit? A Yes, sir.

Q How old were you then? A About sixteen.

BY THE COURT:

Q In what court were you tried? A I was tried once in General Sessions and once in Special Sessions.

Q On that charge? A On a gun charge.

MR. COLLINGS: He was convicted twice, your Honor. I will bring that out.

BY MR. COLLINGS:

Q You were convicted first of having a gun without a permit? A Yes, sir.

Q And where was that; in Special Sessions? A Yes, sir.

Q And what was the sentence? A New York City Reformatory.

Q And how long were you there? A Eight months.

Q And you were convicted a second time in 1918, was it?

A Yes, sir.

Q And what was that conviction for? A Unlawful entry.

Q And what was the sentence at that time? A House of Refuge for two years.

Q Have you ever carried a gun since that time you were arrested? A No, sir.

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Q You were guilty at that time; you had a gun, had you?

A Yes, sir.

Q What were you going to do with that gun? A It was a broken gun; it was no good.

Q You were sixteen years old then? A Yes, sir.

Q And you had a broken gun? A Yes, sir.

Q Now, who have you worked for since you came out of the House of Refuge? A For the Community Hospital, the Fordham Hospital and the Empire Express.

Q And you were actually working at the time you were arrested? A Yes, sir.

Q How long had you been working at that time? A About two months.

Q Now, do you remember, Stillman, where you were on the night of November 3rd, the night this robbery happened? A I quit work at six o'clock.

Q And where was that place of business? A 65th Street.

Q Where did you go after six o'clock? A I went up to see Dan Sullivan.

BY THE COURT:

Q You quit work at six? A Yes, sir.

BY MR. COLLINGS:

Q Where does Dan Sullivan live? A 513 West 145th St.

Q About what time did you get up there? A About ten minutes to seven.

Q On the night of November 3rd? A Yes, sir.

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Q How long did you stay in his apartment? A I left his apartment about ten minutes to eight.

Q You were there about an hour, then, were you? A Yes.

Q What did you do while you were in his apartment? A He wasn't working that day, he didn't feel good, and we was talking a while and I played a game of Casino with him; I played Casino with him for a while.

Q Where did you go after you left his apartment at eight o'clock? A I went to the Roosevelt Theatre at the corner of 145th Street and Seventh Avenue.

BY THE COURT:

Q What time did you go to the theatre? A I got there about ten minutes after eight.

BY MR. COLLINGS:

Q What kind of a theatre is that; a moving picture theatre, or what? A A moving picture theatre.

Q How do you remember that you went there on November 3rd; is there anything that fixes it in your mind? A It was only five days since my arrest and I figured back.

Q That is, when you were arrested on November 8th, you figured back? A I figured back five days as close as I could figure.

Q Do you remember the play? A Yes, sir; and another thing, it was on my mother's birthday, November 8th.

Q It was your mother's birthday? A November 3rd.

Q November 3rd was your mother's birthday? A Yes, sir.

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Q Where does your mother live? A 626 Taylor Avenue, with my sister.

Q I notice that you are credited with living at 826 Taylor Avenue on this blank. Is that correct? A 626.

Q Now, how long did you stay in that theatre that you went to at eight o'clock that night? A I came out of the theatre about a quarter to eleven and I took a car at 145th Street and rode home.

Q Where did you go? A Home.

Q What time did you get home? A About twenty minutes to twelve; that was the latest.

Q Now, I want you to tell the jury truthfully if you had anything to do with robbing this complainant, this Chinaman?

A I hadn't anything at all to do with that. I never knew anything about it.

Q Did you ever see him until the night of November 8th?

A I never saw that man until they brought him into the station house.

Q Were you ever in his place of business? A No, sir.

Q Were you ever at any time with two men when they held up a Chinaman or anyone else? A No, sir.

CROSS-EXAMINATION BY MR. WAUGH:

A You say you never carried a gun after you were convicted? A Not after I was convicted.

Q When was it you were convicted of having a revolver?

A I can't remember the dates.

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Q Forgotten. When was it you were convicted of unlawful entry? A 1919.

Q Was it before the unlawful entry or afterwards that you went up for a gun charge? A Before.

Q What do they call you for short; have you got a nickname? A No, sir.

Q What is your real name? A David McCue is my real name.

Q You are not Thomas Stillman at all? A No, sir.

Q Do they call you "Puggy"? A No, sir; they don't call me no "Puggy".

Q Or "Ruggy"? A No.

Q Hang around the pool rooms a good deal in Harlem, don't you? A Very seldom. I don't know how to play pool.

Q Do you know the pool room at 147th Street and Seventh Avenue? A Yes, there is one there.

Q Have you been in there a good deal? A No, sir.

Q On the night you were arrested, didn't you go in there with a gun? A I never bothered that man.

Q You know him, don't you? Reeves, his name is. A I don't know what his name is.

Q You said on your direct examination you never carried a gun since you were convicted. A No, sir.

Q And you say now that on the night you were arrested you did not go in there with a gun? A No, sir; I did not go in there with a gun.

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Q You told this jury on your direct examination that you worked on November 3rd, did you? A Yes.

Q And that you worked on November 8th? A Yes.

Q And that was Election Day. You didn't, did you? A No.

Q What were you doing all Election Day? A I wasn't doing anything.

Q Floating around Harlem? A Not Harlem.

Q Where? A I was over home until about five o'clock that night.

Q Don't you hang around Harlem all the while? A I don't hang around Harlem all the time.

Q Around Sullivan's neighborhood, where Sullivan lives?

A No, sir, I don't hang around Harlem all the time.

Q When you quit work you went up to see Sullivan? A Yes.

Q That is, the night of November 3rd? A Yes, sir.

Q Did Sullivan go out with you and hold up that laundry?

A No, sir.

Q You say Sullivan was not feeling well and didn't work?

A That is right.

Q And you went up to visit him? A Yes, sir.

Q Didn't you go up there to get him to crack off this laundry with you? A No, sir.

Q Wasn't he one of the men with you? A No, sir.

Q Did you have any of your laundry in this place to be washed? A No, sir.

Q Did you have any laundry there? A No. My mother washed for me.

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Q Did you commit the crime of burglary in 1918? A Yes.

Q Where? A It was on Eighth Avenue somewhere.

Q When? A In 1919.

Q Which was it? A Unlawful entry; what I was sent away for.

Q In what year was it? A 1919.

Q Now, did you commit the crime of burglary in 1918?

A I don't know which burglaries you are talking about.

Q Did you commit the crime of burglary in 1921? A No, sir.

Q Which is your right name, McCue or Stillman? A David McCue.

Q When you were arrested you gave the name of Thomas Stillman? A Yes, sir.

Q And didn't you give a wrong address? A No, sir; 626 Taylor Avenue.

Q Didn't you say 826? A 626.

Q First you said you were working on Election Day and now you say you were not; is that right? A I didn't work Election Day, no; but I worked previous up until Election Day.

Q You say one of the policemen chased you when you jumped out of the wagon? A Yes.

Q Was that the same policeman who had been beating you?

A That is the one who was beating me.

Q Did he beat you with a club? A He used his hand.

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

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Q Weren't you captured by a fireman in uniform? A I don't know what he was.

Q At any rate, the man who captured you was the same policeman who beat you with a club? A Yes.

MR. COLLINGS: I object to the use of the word "capture".

Q Do you understand what I mean by the word "capture"?

A No, sir.

Q Have you ever heard the word? A Yes, sir.

Q Do you know what it means? A Yes.

Q To catch you, doesn't it? A Yes.

Q Who was it beat you? A The man who caught me.

Q When you jumped out of the wagon you fell down? A Yes.

Q And a policeman jumped out right after you? A I don't know; I was dizzy.

Q Do you know the policeman broke his arm in two places when he landed on the sidewalk? A If he broke it, he broke it on my body.

Q You know it, do you? A In the station house, yes. He told me.

Q How far did you run when you jumped out of the wagon?
A From the mud gutter into the first floor of a house.

Q You ran into a house, a cabaret, didn't you? A Yes, sir.

Q Do you know that place? A No.

Q Have you ever been there before? A No, sir; it is a colored place.

Q Where did you try to hide? A On the top of the stairs.

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Q Hadn't you been drinking all Election Day? A No, sir.

Q And you say you were not in the pool room at 147th St. and Seventh Avenue at a quarter to five Election Night with a gun? A No, sir. I did not leave home until five o'clock Election Night.

Q And do you say you did not hold up a saloon at 144th Street and Seventh Avenue just before you were arrested? A I say I did not, yes, sir.

Q Go into a saloon and show your gun and say, "Hands up"; did you do that? A No, sir.

Q When was it you were convicted with a gun; can't you remember? A I can't remember.

Q Was it before 1920? A Yes, sir.

Q Did you carry another gun in 1920? A Not that I know of; no, sir.

Q Did you commit the crime of carrying a gun without a license in the year 1920, also; you don't remember? A Not that I remember.

Q Well, do I understand you to say now that this detective whose arm was broken in chasing you, broke his arm in beating you?

A Yes, sir.

Q That is the way he broke his arm? A Yes, sir.

Q You didn't see him when he fell on the sidewalk? A No.

Q Did you land on your feet when you jumped out of the van? A No, sir.

Q How did you land? A On the back of my head.

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Q How long did it take you to get up and run? A I got up --

Q Right away? A Right away.

Q Did you attempt to commit the crime of burglary in a pool room at five o'clock on Election Eve at 147th Street and Seventh Avenue? A No, sir.

Q Did you attempt to commit the crime of burglary on the same night, Election Eve, at a saloon at 144th Street and Seventh Avenue? A No, sir.

Q When were you twenty? A November 28th.

Q After this thing happened? A Yes, sir.

Q So, at ten thirty or thereabouts in the evening, when this crime was committed, you say you were in the Roosevelt Theatre, at where? A 145th Street and Seventh Avenue.

Q You didn't get out of there until a quarter to eleven and you got home at twenty minutes to twelve? A Yes, sir.

Q When you left Sullivan's place you went over to the theatre alone? A Yes, sir.

Q That was all on November 3rd? A Yes, sir.

Q Was Sullivan with you on Election Eve when you were arrested? A No, sir.

Q Who was with you? A I was all by myself. I was standing on the corner of 143rd Street when the officers came walking over to me.

Q 143rd Street and Seventh Avenue? A Yes, sir.

Q And you live over in the Bronx? A Yes, sir.

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Q How long had you been in Harlem that evening? A It took me about thirty minutes to come from home at five o'clock. I left home at five o'clock.

Q Where were you going? A Nowheres in particular.

Q You were not going out to hold up places on Election Eve? A No, sir.

Q Why were you going over to Harlem? Tell the jury, if you can, any reason why you left home and went over to Harlem on Election Eve? A I don't know anybody in the Bronx. I am only living there four months.

Q You did not go to Sullivan's place and were not on the way to Sullivan's place? A No, sir.

Q You were just standing on the corner when you were arrested? A Yes, sir.

Q You were not over there waving a gun at five o'clock in a pool room? A No, sir.

Q Did you drink any on that day? I will ask you again. A No, sir, I did not.

RE-DIRECT-EXAMINATION BY MR. COLLINGS:

Q When you were arrested, when the officers came up and spoke to you, did they ask you where you had been? A No, sir. They just searched me and asked me if I was the fellow.

Q Did they take you any place? A They took me into the ice cream store.

Q Why did they take you in there? A I told them I was just after coming out of the ice cream place.

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Q Did this officer here take you in? A Yes, that is the officer.

Q Did he ask the proprietor if you had been in there?
A Yes, sir, he did.

Q What did he say? A The proprietor said yes, I just came out of there.

THE COURT: Gentlemen of the jury: Do not discuss this case among yourselves nor permit any person to talk to you about it, nor form or express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you. Be here, gentlemen, at 2:15.

(Whereupon a recess was taken until 2:15 P.M.)

AFTER RECESS.

FRED BARROW, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:
(The witness stated that he resided at 366 St. Nicholas Avenue, New York City.)

DIRECT EXAMINATION BY MR. COLLINGS:

Q Are you the proprietor of the Empire Express? A Yes, sir.

Q Where is that business located? A 118 West 65th St.

Q Do you know this defendant, this boy here? A Yes, sir.

Q Did he work for you? A Yes, sir.

Q What period did he work for you; what time? A From around July until November.

Q Do you know the date that he stopped working? A The 3rd of November.

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Q What kind of work did he do there? A He was a helper on a truck.

BY THE COURT:

Q Did you say he stopped working for you on the 3rd of November, or did he work for you on that day? A He worked on that day.

BY MR. COLLINGS:

Q Did he work up until Election Day, do you know; do you remember Election Day? A I hurt my back and I wasn't there at the time; but I know he worked after that. I am not sure.

Q When did you hurt your back? A The 27th of July, the 25th of July.

Q Do you know whether he worked between the period November 3rd up to November 8th, Election Day?

MR. WAUGH: I object to that, if the Court please. He has said he has no personal knowledge.

THE COURT: Objection sustained.

Q Have you any records in your office to show the time during which he worked? A Only the payroll.

Q Have you the payroll with you? A No, sir.

Q Have you looked at it to see the day he quit? A No, sir; my bookkeeper takes care of that.

Q Your recollection is that it was the 3rd of November; is that right? A Yes, sir.

Q Did you know any other people with whom he was acquainted? A No, sir; I only know him from working.

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Q How much wages did he receive while working for you?

A \$25 per week.

Q Did he used to go out on the wagon; was that his duty?

A On automobile trucks.

Q What kind of goods do you convey? A Automobile tires.

Q And he worked for you, then, from along in July until November 3rd, helping on the wagon? A Yes, sir.

MR. WAUGH: I object to that and move to strike out the answer. The witness has no personal knowledge, and says so.

THE COURT: Strike it out.

Q Do you know of your own knowledge whether or not he worked on your wagons as a helper? A Yes, sir.

Q You know that of your own knowledge? A Yes, sir.
BY THE COURT:

Q Do you know whether he was working on November 3rd?
A I couldn't tell you.

Q You have no records with you? A No, sir.

Q How many people did you employ in November? A About twelve; eleven or twelve.

Q How long did this defendant work for you? A From July.

Q Of what year? A 1921.

Q Up to when? A Until around November.

Q Did he work steadily or was he an extra? A Well, every day. He was not on the payroll as a steady man, but mostly every day he went to work.

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Q He was an extra, then? A Yes, sir.

Q Do you know whether he worked November 3rd, of your own knowledge? A No, sir; I couldn't tell you.

CROSS-EXAMINATION BY MR. WAUGH:

Q Where did he live? A Sir?

Q Where does he live? A We had his address as 142nd St.

Q What number? A I couldn't give you the number. It is between Seventh and Eighth Avenue, 200.

Q In Manhattan? A Yes, sir.

Q He never lived in the Bronx? A I don't know, sir.

Q Have you ever been convicted of a crime? A No?

Q Yes. A No, sir.

BY MR. COLLINGS:

Q Did he give you that address when he came there to work for you? A Yes, sir.

BY MR. WAUGH:

Q That is the only address he ever gave you? A Yes, sir.

BY MR. COLLINGS:

Q Did you ever go to his home? A No, sir.

DANIEL SULLIVAN, called as a witness in behalf of the defendant, having been duly sworn, testified as follows: (The witness stated that he resides at 513 West 145th Street, New York City.)

DIRECT EXAMINATION BY MR. COLLINGS:

Q Mr. Sullivan, do you know this defendant, who is indicted as Thomas Stillman? A Yes, sir.

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Q How long have you known him? A Well, I know him, I should say, since around October 15th, around that time.

Q How did you happen to meet him? A I was introduced to him by a friend of mine.

Q That is, a friend of yours introduced him to you?
A Yes, sir.

Q Where was that; at your home? A No, that was not at my home where he was introduced to me.

Q Under what name was he introduced to you? A Thomas Stillman. Mr. Stillman he was introduced to me.

Q Have you been told he has another name? A Why, from hearsay I have heard he has another name.

Q Do you know what that is? A McCue.

Q Do you remember November 3, 1921? A Yes, sir.

Q Do you know whether or not you saw this boy Stillman on November 3rd? A Yes, sir, I seen him.

Q Where did you see him? A I seen him at my house.

Q Do you know about what time of the day? A Well, between the hours of six and eight.

Q What was he doing there? A He was playing cards.

Q Did he leave your house about eight o'clock?

THE COURT: Don't testify. Let the witness testify.

Q When did he leave your house? A Around eight o'clock; sometime around eight o'clock, because I left myself at nine and he had left previous to that.

Q You had only known him, then, before that, about two

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weeks? A About two weeks previous to that time.

MR. WAUGH: I object and move to strike out the answer on the ground it is incompetent, irrelevant and immaterial, and has no bearing upon the alibi.

THE COURT: I deny your motion, for the reason that the defendant, in offering the evidence in respect to an alibi, is entitled to show as a part of the history of his case where he was that day. He has a right to account for the time spent by him that evening.

CROSS-EXAMINATION BY MR. WAUGH:

Q Who introduced you? A I couldn't say. There were three or four gentlemen.

Q Where? A I think it was 145th Street or 146th Street, on Seventh Avenue.

Q On the street? A Yes, sir.

Q You do not remember who introduced you? A I couldn't tell you. There were three or four boys there who come up to my house and play cards, and they introduced this gentleman to me.

Q To get him to come up and play cards? A I always run a game of cards on Thursday. It is my day off and we generally play cards in my home.

Q You run a game of cards up there? A Yes, sir, every Thursday.

Q How do you know it was this Thursday he was there?

A Well, I remember it because I heard about this boy being arrested just a week or so afterward, and I remember he was in my

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house on that Thursday previous, it being my day off.

Q You went and told him so? A I told who so?

Q Anybody? A No, sir, I didn't tell anybody. Tell anybody about his being arrested?

Q Tell anybody about his being with you on November 3rd?

A No, sir.

Q Not a soul? A No, sir; not that I can remember of.

Q Who else was there that night? A Friends of mine; one by the name of George Mansfield, my own brother was there, a party by the name of Thomas Bommer, myself and this man here, I think; there might have been a couple of more there.

Q Who left with him? A I am not sure whether he left alone or whether he went out with anybody.

Q Did you have anything to drink? A No, sir, there was no drink. It is not allowed there.

Q Did he show a gun while he was there with you? A No, sir. I seen no sign of a gun.

Q You live at 513 West 145th Street? A 513, yes, sir.

Q That is between what avenues? A Between Amsterdam Avenue and Broadway.

Q Which way did he go when he went, do you know? A I couldn't really say which way he went.

Q Do you know this Chinese laundry at 313 on the same street? A No, sir, I do not.

Q You never knew there was one there? A I knew there was a laundry there, but I don't know anybody in the laundry.

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Q How do you know it is there? A I pass that way.

Q On the way to the elevated station? A No, I go to 145th Street and Seventh Avenue.

Q You pass there every day? A Every morning around ten thirty.

Q At night? A At night I go home in the car.

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

Q You say you have only known him since October 15th?

A 15th or 16th, somewhere around that time.

Q Who told you he was arrested? A There was a rumor around there he was arrested. I couldn't say who told me.

Q All your friends knew it? A People that way around there knew all about it. Friends of mine knew it, too.

Q When was he arrested? A I really couldn't say what date he was arrested on.

Q Do you know where he was arrested? A No, sir; I really couldn't tell you just where he was arrested.

Q Where does this man McCue, or Stillman, live? A I couldn't tell you where he lives.

Q Haven't you any idea where he lives? A No, sir, I don't.

Q Doesn't he live down there near you? A Not that I know of.

Q Did he ever tell you where he lives? A No, sir.

Q Does he live in the Bronx, to your knowledge? A I couldn't tell you.

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Q You never heard at all? A No, sir.

Q What does he work at? A I couldn't tell you what he works at.

Q You never asked him that? A I never asked him, no, sir.

Q When he left your place did he tell you where he was going? A No, he did not.

Q Did you play cards with him during those two hours? A Maybe an hour or an hour and a half.

Q Did he lose very much money? A There wasn't very much money to be lost there.

Q Did he lose much? A No, sir; I don't believe he could have lost over ten or fifteen cents, if he did. It was only a penny ante game.

Q You played two hours? A Yes, sir, two hours. I wouldn't say two hours exactly.

Q You did not clean him out, did you? A I don't know. I don't know what he had in his pocket.

Q You don't know how much he had when he came in? A No, sir, I couldn't tell you.

Q And you haven't any recollection as to what he lost? A No, sir, I couldn't tell you.

Q And yet you are positive that he came there at a certain minute and he left at a certain minute? A I didn't say a certain minute.

Q Well, a certain hour? A Between these hours, yes, sir.

Q And you are positive this was the day? A I am positive

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because that was my payday, and that is my day off on a Thursday.

Q Was it his payday? A I couldn't tell you.

Q Who else was there? A I told you there was a party by the name of Mansfield, Thomas Bonner, my own brother and myself and there might have been somebody else there that I can't just recollect.

Q And all the crowd played? A They were all playing cards, yes, sir.

Q Was there much money lost or passed? A No, sir, very little.

Q Mostly playing for fun? A Well, out of penny ante you don't get much.

Q How many times had he been there? A That was the first time he had been at my house. I only met him about two weeks previous.

Q That was the last time he came? A Yes, sir, that is the last time he has been at my house. I haven't seen him since.
T H O M A S S T I L L M A N, the defendant, recalled, testified as follows:

DIRECT EXAMINATION BY MR. COLLINGS:

Q When you went to work for Mr. Barron, what address did you give, do you remember; where were you living at that time?

A I was living on Lexington Avenue.

Q Near what street? A 130th Street.

Q 130th Street? A Yes, sir.

Q Did he ask you for your address when you went there?

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A I don't remember if he asked me right away or until that night.

Q Do you remember whether you gave him your address or not? A Yes, I remember giving him an address.

Q Have you moved since then? A Yes, sir.

Q Where did you move to? A 626 Taylor Avenue.

Q In the Bronx? A Yes, sir.

Q When you went to work for him were you living in the Borough of Manhattan? A I was living at 130th Street and Lenox Avenue, Lexington Avenue.

Q Then afterwards you moved to the Bronx? A Yes, sir.

Q At the time of your arrest were you living in the Bronx, at Taylor Avenue? A Yes, sir.

Q Who did you live with? A My sister and brother-in-law.

Q At the time you were arrested did you have anything on your person; did you have any money with you? A No, sir; about fifteen cents.

Q Did you lose any money at this card game? A About twenty-two cents is all I lost.

Q And you had about seventeen when you were arrested? A On that night when I was arrested I had about seventeen cents or twenty-two cents.

CROSS-EXAMINATION BY MR. WAUGH:

Q You lost twenty-two cents at the card game, did you? A Something like that, twenty-two cents.

Q And you had the same amount on you when you were arrested? A About fifteen or twenty cents I had left.

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Q How do you fix the amount? A I don't know what you mean.

Q What are you doing; just guessing at it? A No. When I was arrested I had about seventeen cents.

Q Pretty near broke, weren't you? A Yes.

Q You were pretty near broke after you got through with that card game, too? A I only lost twenty-two cents.

Q How much did you have then? A I had fifteen or seventeen cents left.

Q Almost broke? A Yes, sir.

Q You say you live on Taylor Avenue; what number? A 626 Taylor Avenue.

Q Where is Taylor Avenue? A Away up in the Bronx.

Q Where; how do you get there? A I take the 145th St. crosstown car to Third Avenue and I transfer. I take the Boston Road car there and get off and take the Taylor Avenue car.

Q The Taylor Avenue car? A Yes, sir, the West Point car.

Q What part of the Bronx is Taylor Avenue in, do you know?
A I don't know much about the Bronx.

Q How long did you live there? A About four months.

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

Q Didn't you tell the clerk in the Police Court that you had only lived there five days? A No, sir; I told him four months.

Q Did you sign a statement in the Police Court? A No statement or nothing I didn't sign.

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Q Are you sure about that? A Positive.

Q Did you read anything? A No, sir.

Q What kind of a house is 626 Taylor Avenue? A It is a one-story house, six families on a floor.

Q What did you work at when you worked for Barron?

A Helper on a truck.

Q You gave your occupation as laborer when you were arrested? A That is a laboring job.

Q I show you a piece of paper and ask you if you see your name signed by you anywhere on it (handing witness a paper)?

A Yes, here (indicating).

Q Did you write that? A "Not guilty"?

Q No; the name underneath it? A I don't remember.

Q "Thomas Stillman" is written there, isn't it? A Yes, sir.

Q Do you deny you wrote it? A No, I don't deny I didn't write it.

Q You don't remember? A I don't remember.

Q Look above there and see if you see "626 Taylor Ave." written above your signature in the blank. A "626 Taylor Ave." is written here.

Q Do you see "five days" after it? A Yes, sir.

Q You did not tell the clerk you had lived there five days, or you don't remember, which? A Which clerk?

Q The clerk where you signed that paper. Did you tell him you had only lived there five days? A I don't remember.

Q How long have you lived there? A Four months I lived on

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Taylor Avenue.

Q Did you hear Mr. Barron testify - of course you did; you were here when Mr. Barron testified. What did he say you gave as your address? A I couldn't hear him.

Q Somewhere on 142nd Street? A I couldn't hear him.

Q And you say you lived at 130th Street and Lenox Avenue?
A Lexington Avenue.

Q When you went to work for Barron did you give your true address? A Yes, sir.

Q You did not give your true name, did you? A No, sir.

Q Now, are you sure you gave your true address? A Yes, sir. I was living on Lexington Avenue at that time.

Q Under which name? A I was living under the name of Prose, my sister.

Q Do you want this jury to hear what you are going to say?
A I was living under the name of Prose.

Q You gave him the name of Thomas Stillman when you got your job? A Yes, sir.

MR. COLLINGS: He did not testify to that.

Q Did you give Barron the name of Thomas Stillman when you got your job? A Yes, sir.

Q And you gave the address 130th Street and Lexington Ave.?
A Yes, sir.

Q And you were living there under the name of Prose?
A Yes, sir.

Q When you were arrested you gave the name of Thomas Stillman? A Yes, sir.

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Q And you gave your address as 626 Taylor Avenue, Bronx?

A Yes, sir.

Q What name were you living under there? A Prose.

Q The same name? A Yes, sir.

Q When you were convicted in court, as you have already testified, for carrying a revolver, the year you don't remember, but the year in which you got eight months sentence, what name was that? A David McCue.

Q When you were convicted of unlawful entry - if I am not right, correct me; was it unlawful entry, the second conviction?

A Yes, sir.

Q Was that a plea? A I believe it was.

Q Don't you know? A I don't remember.

MR. COLLINGS: The defendant may not know what a plea is.

Q You know it well? A Yes, I know what a plea is.

Q You do not know what name you pleaded under? A David McCue.

Q Under what name were you convicted in Special Sessions for carrying a gun? A David McCue.

Q When did you change your name? A When I was in the station house.

Q Here in this case? A Yes, sir.

Q That is the first time you used the name of Thomas Stillman? A Yes, outside of where I worked.

Q Didn't Sullivan know you as Stillman? A Yes, sir; Sullivan knew me as Stillman.

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Q So there is another place where you used the Stillman name. When you were introduced to Sullivan on the street you were introduced as Stillman? Which is it, now; don't you know?

A My right name is David McCue.

Q And you said a minute ago you only used the name of Stillman when you were arrested and where you worked. You said that, did you? A Yes, sir.

Q Now you say you used the name of Stillman when you got acquainted with men to play cards? A That is the truth. I used the name Stillman.

Q You can't remember which address you gave when you went to work, can you? A Went to work where?

Q With Barron. A I gave 2250 Lexington Avenue, corner of 130th Street.

Q You can't remember when you were convicted of carrying a gun, what year it was, even? A I can't remember.

Q You can't remember when you pleaded guilty to unlawful entry? A No, sir, I can't remember.

Q What year was it? A I don't remember.

Q Yet you remember distinctly you did not go into this laundry and hold up this Chinaman? A Yes, sir.

Q In 1921 did you commit the crime of burglary?

MR. COLLINGS: I object to this. He went over that, your Honor, on cross-examination.

MR. WAUGH: I am testing his recollection.

A 1921? For that burglary I was not guilty.

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FRANCIS J. M. BUCKLEY (38th Precinct, Detective Division), called as a witness on behalf of the People in rebuttal, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WAUGH:

Q How long have you been a policeman? A 14 years.

Q Do you remember Election Night? A I do.

Q You were then assigned to what precinct? A The 38th precinct, Detective Division.

Q Do you know this defendant? A I do.

Q How long have you known him? A Four years.

Q Were you present when Hop Lee came into the station house (Hop Lee standing in court room)? A I was not.

Q Were you present when this witness was in a room with this defendant? A I was not.

Q Did you say anything to this witness? A No, sir, I don't know him.

CROSS-EXAMINATION BY MR. COLLINGS:

Q Have you an officer named Shields there? A Yes, sir.

Q Is he here now? A I haven't seen him. I just arrived here.

Q Do you mean to say that you were not in the station house that night? A I was.

Q Did you see this defendant? A I did.

Q Have you any particular animus against this defendant?
A I have not.

Q None whatever? A None whatsoever.

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Q What room were you in, officer? A I saw the defendant in the station house. A uniformed policeman had him in a rear room of the 38th Precinct station house.

Q Was that before or after the complainant had come in?
A I don't know.

Q Did you see the complainant that night? A I did not.
BY MR. WAUGH:

Q What time was it when you saw him? A Around eight or half past eight in the evening; about that time.

BY MR. COLLINGS:

Q Then you were not in the room when the complainant was brought in to identify this defendant? A I was not.

Q Do you know who was there? A I do not.

Q Were you in the station house at that time? A At what time?

Q Were you in the station house at that time? A When the identification was made?

Q Yes. A I was not.

Q You do not know who was in there? A I do not.

L E O M. B U R G E R, a witness called in behalf of the People in rebuttal, having been duly sworn, testified as follows:
(The witness stated that he resided at 630 East 135th St., New York City.)

DIRECT EXAMINATION BY MR. WAUGH:

Q How long have you been a fireman? A Nine years next April 4th; since 1913.

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Q And on Election Eve you were attached to Hook and Ladder No. 30, which is on 130th Street near Lenox Avenue? A Yes, sir.

Q Were you on duty Election Eve? A Yes, sir.

Q What doing? A I was detailed at six P.M. to go around with a moving van and three officers to put out street fires Election Night.

Q Had a hose with you? A We had two lengths of hose, nozzle and wrenches, different paraphernalia for assistance, hooks and axes and things like that.

Q In a moving van? A In a moving van.

Q Do you remember being that evening on 144th Street between Seventh and Eighth Avenues? A Yes, sir.

Q Engaged in your duty on a street fire? A There was a fire on 144th Street between Seventh and Eighth Avenue, on the north side of the street, about dead center.

Q Did you see this defendant brought up to the moving van?
A After the fire was out we had our van --

Q Just answer my question. A Yes, sir.

Q Did you see this defendant come to the moving van?
A Yes, sir.

Q Who brought him, do you know? A Two officers and a sergeant of police.

Q Do you know who the officers were? A Officer Millar and Officer Fitzpatrick.

Q The officer here? A Yes, sir.

Q What was done with this defendant? A He was told to

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get in the van and I put down a box for him to step up in the van.

Q He got into the van? A He got into the van.

Q Who got in with him? A Two citizens whose names I do not know, three citizens, the two officers got in and I sat on the back running board of the van.

Q You sat on the tail board? A I sat on the tail board, yes, sir.

Q And the van started off? A The van proceeded south on Seventh Avenue.

Q How far before anything happened? A Well, around between 39th and 40th Streets.

Q You mean 139th? A 139th and 140th Street.

Q Then what happened? A Without any warning whatsoever I seen the two of them out in the street.

Q Who? A This young fellow here.

Q You mean the defendant? A The defendant and the officer.

Q What officer? A Officer Millar.

Q Did anything touch you at the time? A I was sitting on the back of the van and I was looking this way (illustrating) for fires and watching south. I had hold of the chain on the back of the van, looking south, and the first thing I knew I heard a bump-bump, like that, and before I found out, I don't know how it happened, I seen an officer stretched out in the street and I seen this prisoner getting up and he ran in a circle and then he started towards the sidewalk.

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Q Tell us what happened as to him. A He ran in a circle and he looked back at the van and they hollered, "Get him; get him," either the citizens or the officers, I don't know which one, and I jumped off and ran after him and a citizen jumped off and ran after him. So he ran in this house on 139th or 140th Street on the west side. It seems --

THE COURT: Do not state what it seems.

A (Continued) It is a tea-room and cabaret for colored people. The prisoner ran up one flight of stairs and I ran after him with a civilian and he stood right inside of the door. I ran right in with him and I said, "Come on; what do you mean by this?" I said, "That aint going to get you nothing."

Q Did you sit inside the van with this man at all? A No, sir; I sat on the running board, on the tail board.

Q But you were the man who captured him in the room?

A Yes, sir, I was the first one in the room.

Q Did you sit inside the moving van when he was sitting in there at all? A No, sir.

Q Did you beat him up with a club at any time? Answer yes or no. A No.

Q Did you have a club when you chased him? A No, sir.

Q You did not beat him? A No, sir.

BY THE COURT:

Q Did you see anybody else beat him? A No, sir.

BY MR. WAUGH:

Q You saw this defendant when he was brought to the van

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to be put in when they started off? A Yes, sir.

Q On 144th Street? A Yes, sir.

Q And you saw the defendant when you captured him in this upper room? A Yes, sir.

Q State to the jury whether or not it was the same man.

A It is the same man.

CROSS-EXAMINATION BY MR. COLLINGS:

Q Did the defendant say anything to you up there on the landing, officer? A Yes, sir.

Q What did he say? A He said, "Oh, my God, don't bring me back to them; let me go."

Q Did he say why he did not want to go back? A No, sir.

Q At any time whatever did you see anything from which you could draw the conclusion that he had been beaten by anybody? A I could not draw any conclusion. I did not see it. I heard an officer say to him, "So you are a stick-up man, are you? Who was with you? Come on, tell me who was with you," and I was disinterested right there. I did not want to be a witness.

Q This defendant never told you he said you beat him up, did he? A No, sir.

Q He never made any charge that you beat him up? A No, sir.

RE-DIRECT-EXAMINATION BY MR. WAUGH:

Q But you are the man that captured him? A Yes; that is, after he jumped out of the van.

Q You were brought here under subpoena? A Yes, sir.

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EUGENE REHAN, called as a witness in behalf of the People, having been duly sworn, testified as follows:
(The witness stated that he resides at 21 West 137th Street, New York City.)

DIRECT EXAMINATION BY MR. WAUGH:

Q Mr. Reeves, what is your business? A I own a billiard parlor.

Q Where is your billiard parlor? A 147th Street and Seventh Avenue.

Q How long have you been there? A Going into two years.

Q What does your trade consist of? A White.

Q White people?

MR. COLLINGS: If your Honor please, I object to this testimony.

MR. WAUGH: All right; I consent that that be excluded.

THE COURT: Objection sustained and the testimony will be stricken out. The jurors are instructed to disregard the evidence.

Q Do you know this defendant, Thomas Stillman? A Yes, sir.

Q Do you know him as --

MR. COLLINGS: I object to that.

THE COURT: I think that is immaterial. You see, you have a right to show aliases, under the case of People vs. Colmey, 107 Appellate Division, where the object is to identify the defendant; but there is no such question here. I sustain the objection.

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Q How often had you seen him previous to Election Night?

MR. COLLINGS: I object to all this testimony, your Honor, on the ground that it is incompetent if the purpose is to contradict the testimony the defendant gave regarding that pool room. I contend that the District Attorney made the defendant his witness as to those other charges and cannot now contradict him.

THE COURT: I will sustain the objection.

MR. WAUGH: In respect to the situation I spoke to your Honor about before I called this last witness, the two police officers have not arrived. The necessity for their appearance arose during the trial. I ask your Honor to continue the case until tomorrow morning.

MR. COLLINGS: That is agreeable to me.

THE COURT: Gentlemen of the jury: Do not discuss this case among yourselves nor permit any person to talk with you about it, nor form nor express any opinions as to the guilt or the innocence of the defendant until the case is finally submitted to you. Be in your seats tomorrow at 2:10 P.M.

(Whereupon, at 3:10 P.M., the case was continued until 2:10 P.M., tomorrow, December 22, 1921.)

New York, N.Y., December 22, 1921.

TRIAL RESUMED.

MR. COLLINGS: I want to make a motion, if your Honor please, and that is to withdraw a juror and declare a mistrial on

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the ground that the production of that last witness before the jury was so prejudicial that the defendant cannot get a fair trial.

THE COURT: Motion denied.

MR. COLLINGS: Exception. May I reopen the direct case to get Mrs. McCue's testimony?

THE COURT: Surely. I believe the District Attorney in good faith called the witness Rehan, believing that you had opened the door. I feel, though, that this witness should not be allowed to give any testimony. It is unlike where the District Attorney willfully parades a witness before a jury. I think that whatever was done here, as you will agree with me, was done in good faith. The jury, however, will disregard the fact that the witness was called to the stand and will give such incident absolutely no consideration whatsoever. It has no bearing upon this issue.

MARGARET McCUE, called as a witness in behalf of the defendant, having been duly sworn, testified as follows:
(The witness stated that she resides at 626 Taylor Avenue, Borough of Bronx, New York City.)

DIRECT EXAMINATION BY MR. COLLINGS:

Q Mrs. McCue, are you the mother of David McCue? A Yes.

Q Who is being tried here as Thomas Stillman? A Yes, sir.

Q Do you know where he lived at the time of his arrest?

A Yes, sir; he lived at the same address.

Q What address is that? A 626 Taylor Avenue.

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Q How long have you lived there? A Growing on five months.

Q You have lived there nearly five months, have you?

A Yes, sir.

Q Do you know where he works, Mrs. McCue? A He worked for the Empire Express.

Q Do you know the name of his employer there? A Mr. Barron I think his name is.

Q Mr. Barron? A Yes, sir.

Q Mrs. McCue, do you remember November 3rd, 1921? A Yes, sir, I do.

Q Do you know whether your son was working or not at that time? A As far as I know, he was working. He left the house in the morning to go to work.

Q He told you he was going to work? A Yes, sir.

Q Do you remember on November 3rd when he came home?

A Yes, sir.

Q About what time at night? A Between twenty minutes past eleven and half past. I just couldn't say; it was near that.

Q By the way, who lives there with you at that house?

A My married daughter, Mrs. Prose.

Q Are you working any place? A Yes, in 129th Street, No. 18.

Q Now, do you stay at the house 626 Taylor Avenue or at the place where you work? A Some nights I go home and some nights I remain where I work.

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Q Were you home on the night of November 3rd? A Yes, sir.

Q Is there any particular reason why you remember that night? A Yes, it is my birthday and my son-in-law had borrowed some money off me and he told me to come over on Thursday and he would pay me.

Q November 3rd was your birthday? A Yes, sir.

Q And you remember you were home on your birthday? A I was home on my birthday.

Q Have you a married daughter living there? A Yes, sir.

Q What is her name? A Jane Prose.

Q Prose? A Yes, sir.

Q Now, has your son lived with your married daughter?

A Yes, sir, he has lived with her.

Q And her name is Prose? A Yes, sir.

CROSS-EXAMINATION BY MR. WAUGH:

Q Do you know where he was Election Day? A No, I do not know where he was Election Day.

Q Did you see him Election Day at all? A No, I did not.

Q Did he work Election Day? A Not to my knowledge he didn't work.

Q Do didn't see him all during the day at all? A I did not see him all day Election Day. I didn't see him.

Q Did you see him the day before Election Day? A No, I had not seen him from Sunday afternoon.

Q And Election Day was Tuesday? A Election Day was Tuesday, yes.

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- Q He did not come home? A I was not home myself.
- Q You were working? A I was working.
- Q Were you working Election Day? A Yes, sir, I was.
- Q What do you work at? A I am a cook.
- Q Where are you employed? A In 18 West 129th Street.
- Q Private family? A Yes, sir.
- Q What sort of a house is this house on Taylor Avenue?

A It is a two story house.

Q Where is Taylor Avenue? A It is this side of Classon Point, half ways.

Q It is a two story house? A Yes, sir.

Q It is not a big tenement house? A No; it is a two story house.

Q You say on November 3rd he came in between twenty past eleven and half past eleven? A Yes, sir.

Q You have it down to ten minutes? A As near as -- I guess twenty minutes past eleven.

Q From twenty minutes to half past eleven is ten minutes?
A Yes, sir.

Q And you are sure he came in? A Yes, sir.

Q How do you remember? A I passed the remark what was keeping David and I wanted to see him.

Q I thought his name was Daniel? A David.

Q Isn't his name Daniel? A No, his name is David McCue.

BY THE COURT:

Q What time did you see him on the 3rd? A Between twenty

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minutes and half past eleven.

BY MR. WAUGH:

Q I thought he said his name was Daniel McCue? A No, it must be a mistake. His name is David.

Q If he said Daniel, it must be a mistake? A I don't know. He has never went under the name of Daniel to my knowledge.

Q And you passed the remark between twenty minutes past eleven and half past eleven on the night of November 3rd, "What is keeping David?" A Yes, sir.

Q How soon afterwards did you hear that he was arrested?
A I didn't hear it until the Saturday night following after him being arrested.

Q The Saturday night after Election? A Yes, sir.

Q And that must have been about the 11th of November?
A I don't know just what date it was.

Q You first heard he was arrested on the Saturday night after Election Day? A Yes, sir.

Q That would be somewhere about the 12th of November?
A Whatever date it was I don't know.

Q And this happened on the 3rd of November, when he was coming home between twenty minutes past eleven and half past eleven? A Yes, sir.

Q So it was about a week later? A Yes, sir.

Q You were not here yesterday, were you? A No, sir. My daughter and son-in-law were here.

Q We can't hear. A I was not here, but my daughter and

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son-in-law were here, though.

Q When did you first know you were going to be a witness?

A This morning.

Q And it was this morning that you remembered that you passed the remark "What is keeping David" on November 3rd?

A No, sir, it was not this morning.

Q When did you first mention that to anybody? A I have not mentioned it to no one.

Q You never mentioned it to anyone? A No, sir.

Q Not until you got here on the stand? A No, sir.

Q Never mentioned the fact until you told me just now that at about twenty minutes after eleven you said "What is keeping David?" on November 3rd? A I never gave it no thought.

Q And the way you recollect it was twenty minutes past eleven is that you made the remark "What is keeping David"?

A Yes. I was intending to go back to work that night, it is such a long ways to get to work in the morning at six o'clock.

Q I would like you to tell me something more about where Taylor Avenue is. A I can't just describe a whole lot to you about the place. I only know I am out there when I am there.

Q How long have you been living there? A Four months. I don't live there all the time.

Q How do you get there from where you work? A It takes most of an hour, three quarters of an hour.

Q How? A I go across 125th Street and then get a Westchester car up to 149th Street and change there at Simpson

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Street and get a West Point car.

Q Where do you get off? A At Taylor Avenue, and the house is at --

Q You are sure this is a two story house? A Yes.

Q It is not a big tenement? A It is not a big tenement but there are quite a few families in it.

Q How long have you lived there? A Over four months, growing onto five. We are into our fifth month there.

Q What room did David have? A He had the dining room.

Q Slept in the dining room? A Yes, sir.

Q Have you ever been convicted of a crime, Mrs. McCue?

A No, sir.

Q How old is David? A Nineteen years old.

Q When was he nineteen? A The 28th of November.

Q He is not yet twenty? A Not that I know of. I am counting him nineteen always.

Q You are pretty sure of that, of course? A Well, I don't know --

Q Don't make any mistake; I do not want to catch you?

A About 1901, the 28th of November.

Q That would make him twenty, wouldn't it? Well, it is not very important. What time did David leave the house that evening? A Well, he had left before I got there.

Q What time did you get there? A Nine o'clock about.

Q He had been there and left, had he? A Yes, he had been home for supper and had gone out.

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Q You are sure he did not go right out from work? A Well, I don't know that.

Q Do you know Dan Sullivan? A I don't know much about him. I have known him for a couple of weeks, since this case.

Q Not before? A Not before.

Q Did Dan Sullivan talk to you about this case? A No, he never spoke to me about it.

Q Didn't he ask you to remember that it was twenty minutes after eleven? A No, he never asked me anything of the kind.

Q Sure about that? A Certainly I am sure.

Q Were you here yesterday to hear your son testify on the witness stand? A No, sir.

Q When he got home that night at either twenty minutes past eleven or half past eleven, did he tell you where he had been? A No, sir.

Q Did you ask him where he had been? A No, sir, I did not ask him.

Q Did you ask him then, "David, what has been keeping you?" A No, sir, I did not.

Q You did not ask him that? A No, sir.

Q Was he sober when he got home? A Yes, he was sober. He came in and said, "Hello, mama. Going to give me the price of a new overcoat?" and sat down on my knee and started hugging me, for to get the price of a new overcoat, I guess.

Q Did he say he was broke? A No, he did not. He knew it was my payday, or a couple of days afterward.

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Q Did he say he had his pay with him? A No; he didn't say anything about it.

Q Did he tell you he came home because he only had seventeen cents? A No, sir.

Q Did he tell you he had been in a card game that night?
A No, sir.

Q Does he tell you much about what he does? A Not a wonderful lot.

Q Is his name Thomas Stillman at all? A No, his name is not Thomas Stillman. His name is David McCue.

Q Did you know he was called Thomas Stillman by himself?
A No; I never heard it until this case.

Q Did you ever live at Lexington Avenue and 130th Street.

Q Did he live there with you? A Yes, sir.

Q Did you ever live at 142nd Street? A No, sir.

Q He never lived there with you? A No, sir.

W I L L I A M M. M I L L A R (Patrolman, 38th Precinct) a witness called on behalf of the People in rebuttal, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WAUGH:

Q You are on sick leave now with a broken arm? A I am.

Q How long have you been a policeman? A Four years.

Q You were one of the arresting officers of this defendant named McCue on Election Night? A I was.

Q You were in a van riding with him south on Seventh Ave.?
A I was.

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Q About what time? A About 7:25 P.M.

Q State to the jury what happened between you and him in that van as you were riding in it that night. A The defendant Thomas Stillman, which he gave me as his name, was in a very hysterical condition and constantly said --

MR. COLLINGS: I object to the words "very hysterical condition".

THE COURT: Strike them out.

Q I am asking you, not what he said, but while you had him in the van, riding him down, did you have hold of him? A I did.

Q How? Illustrate it. A I had him by both breasts of his coat, holding him down on a box.

Q You had hold of the lapels of his coat? A Not the lapels. The sides of his coat.

Q What did he do? A He lurched forward and said "You will have to kill me; I won't go to the station house" and he caught my elbow. I had my hand up against his breast and he pulled in on my elbow, putting a strain on my wrist, and forced me back to, well, about ten feet from the tail board, and then I broke loose from him, struck him a couple of times and broke loose, and he turned and jumped out of this van and I jumped after him.

Q Jumped over the tail board? A Yes, sir.

Q The tail board was laying flat? A Yes, sir.

Q Held by a chain? A Yes, sir.

Q And he jumped out, and where did he land? Did you see

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how? A He landed on the street. I don't know just how he landed because I landed right alongside of him.

Q What did you do when you saw him jump? A I jumped right with him.

Q What happened to you? A What happened to me? Why, I fell and I don't just know if it was then, but when I got up my arm was broken, my wrist was broken. The X-ray showed it was broken in three places, more than three places.

Q That is the broken arm you are still suffering from?
A Yes, sir.

Q Now, were you beating up this prisoner in this van when he started to get away? A No, sir.

Q Did you have a club and hit him? A No, sir.

Q Did you see anybody hit him? A Why, I struck him a couple of times with my right arm, with my fist.

Q After he began to push on your arm? A Yes, sir.

Q Before that? A Before that I was holding him.

Q And you were not hitting him? A No, sir.

Q Did you see anyone else hitting him? A No, sir.

CROSS-EXAMINATION BY MR. COLLINGS:

Q Are you the officer that said to him, "So you are a stick-up man, are you?" A I did.

Q You said that to him? A Yes.

Q Did you strike him before you said that or afterward?

A I didn't strike him at all when I said that. I said, "You are a stick-up man, aren't you?"

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Q Did you strike him before or after you said that?

A I didn't strike him at all.

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

Q I thought you said you did strike him? A Not at that time.

Q Was it before or after you said that that you struck him?

A Afterwards.

Q How many people were in that van? A Why, there was Patrolman Fitzgerald and a fireman sitting on the tailboard.

Q And that is all? A On the front of the van, which was not in the enclosure, there was Sergeant Neeley and the driver.

Q Sergeant Neeley and the driver were two, yourself was three, Fitzgerald was four -- A We were not together. Sergeant Neeley was in front with the driver.

Q I asked you how many were in that van, in any part of it? A Four, to my recollection.

Q Haven't you named five or six already? There was the driver and Neeley, two; yourself, three; Fitzgerald, four; the fireman, five, and the defendant is six. Is that all that was there? A I didn't count the defendant in.

Q Was there anybody else there, any citizens there? A Not that I remember.

Q Don't you remember two citizens being in there? A No, I can't recollect whether they were on the van at the time or not.

Q You wouldn't say they were not there, would you? A No, I wouldn't.

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Q There were four officers, then, in the van besides the fireman; is that right? A No, there were three officers.

Q Three officers besides the fireman? A Besides the fireman, yes.

LOUIS FITZGERALD (Patrolman, 38th Precinct) recalled as a witness in behalf of the People in rebuttal, having been previously sworn, testified as follows:

BY MR. WAUGH:

Q You testified on your direct examination, officer, that you were in the van when the defendant jumped out? A I was.

Q State to the jury whether or not anybody beat up the defendant in the van before he attempted to get away. A No.

Q Have you at my request, since the court adjourned yesterday on this case sometime in the middle of the afternoon, proceeded to Taylor Avenue in the Bronx? A I did.

Q State to the jury what you found as to Taylor Avenue. Speak up loud. Where is it; where does it begin and what is it? A I went over on the 180th Street car and the 180th Street car crosses Taylor Avenue. I don't know what street that is the 180th Street car crosses, but just north of that the numbers was 1400. So I proceeded south on Taylor Avenue. There is about four blocks there, four short blocks of two-family houses, until I come to Gleason Avenue. Gleason Avenue runs east and west; Taylor Avenue runs north and south. When I get to Gleason Avenue, there are only two houses on the other side of Gleason Avenue, that is, south of Gleason Avenue, and then there is a

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long stretch of swamps and dumps. The Street Cleaning Department is filling in a vast area of swamp there.

THE COURT: What do you want to show by this?

MR. WAUGH: The officer could not find the house, as requested by me, where the defendant says he lives.

Q Proceed. A The two houses south of Gleason Avenue had no number on. The first house north of Gleason Avenue was number 1219. I asked a postman there --

THE COURT: No, no.

Q What other search did you make to find a house 626 Taylor Avenue? A I went all the way down through the dump and the only houses then is a whole lot of bungalows, small bungalows, before you come to the Sound.

Q Will you state to the jury whether or not you were able to find the house 626 Taylor Avenue? A I was not.

CROSS-EXAMINATION BY MR. COLLINGS:

Q Do you mean to tell the jury there isn't any 626 Taylor Avenue? A I do.

Q I ask you to look at this little book I now hand up to you. (Handing book to witness) Will you look at that and see if you can find Taylor Avenue in it? Do you know what that book is that I hand up? A A street directory.

Q Street directory of the streets in the Borough of the Bronx? A Yes, sir.

Q Do you find Taylor Avenue listed there? A I do.

Q Does it tell what number Taylor Avenue begins at? A It

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. does.

THE COURT: Suspend on that; that is not necessary. We all know the Bronx is out up; we can take judicial notice of that. Read it into the record.

MR. COLLINGS: (Reading) "Taylor Avenue, from 240 Bronx River Avenue north to 574 Morris Avenue; beginning at No. 600 and running to 799 Morris Park Avenue."

CHIN YONG, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

(The witness stated that he resides at 584 Atlantic Avenue, Brooklyn, N. Y.)

MR. COLLINGS: Does your Honor want to examine this witness?

THE COURT: You may examine him.

DIRECT EXAMINATION BY MR. COLLINGS:

Q What is your business? A Chop suey restaurant.

Q Where is that located? A That is where I live.

Q What is the address? A 584 Atlantic Avenue.

Q Where is that; in Brooklyn? A Yes, sir.

Q How long have you known the complainant here, Hop Lee?

A I know him several years.

Q Do you know where his place of business is? A I heard him. I have never been there.

Q How did you happen to come here as an interpreter? A He wants me to come here as an interpreter for him.

Q Did he ask you to come? A Yes, sir.

Q You are a friend of his, are you? A Yes, sir.

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THE COURT: Why didn't you get a regular interpreter?

MR. WAUGH: I thought he was.

THE COURT: I assumed you knew.

MR. COLLINGS: I move, your Honor, --

THE COURT: A little common sense should be exercised.

We do not want interpreters brought by complaining witnesses.

CROSS-EXAMINATION BY MR. WAUGH:

Q Did you interpret truthfully between the Chinese language and the English language what he said? A Yes, sir.

MR. COLLINGS: Your Honor, in view of the fact that his interpretation was as to the identity, "I am pretty sure that this is the man," and then after he talked with him saying that he is sure of the man, I think that the defendant is entitled to have somebody else act as interpreter. His interpretation was that he was pretty sure he was the man.

THE COURT: I never heard it --

MR. COLLINGS: Your Honor, I never dreamed of it until I was told this man was in business with the complaining witness.

BY THE COURT:

Q Are you in business with the complaining witness? A No.

Q Does he work for you? A No, sir.

Q You have no interest in his business? A No, sir.

THE COURT: If the defendant had consented --

MR. WAUGH: I certainly would have asked for a regular interpreter. Of course, your Honor knows there is no court inter-

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preter for Chinamen. As a rule, we get a college professor to interpret.

MR. COLLINGS: With regret, I move that a juror be withdrawn for this reason. I do not believe it is fair to the defendant to put him to trial after that interpretation.

THE COURT: We have got to know something about the interpreter. I am sorry that we spent a day on this case. Gentlemen, I feel that I am constrained to grant the motion made by counsel for the defense that a mistrial be declared. Motion for a mistrial is granted. Put this case on for Wednesday and see if you can get some professor in languages. We will have to go through another trial. Gentlemen, you will be in your seats Tuesday morning at 10:30 o'clock.

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