

Q And is it a fact that you did that? A Yes sir.

Q And have you a clear recollection of the time it was when you looked at that clock? A Well I don't exactly remember. I know it was between 20 minutes or a quarter to eight, something like that; I couldn't exactly remember the minutes.

Q Now, then, if you looked at the clock enough to know whether it was between 20 minutes and a quarter to eight, what did you mean when you told the District Attorney that you were guessing at the time? A As I say now, I didn't exactly put down the minutes. I know it was between this hour.

Q Did you mean that you were guessing as between those two times? A Yes sir.

THE COURT:

Gentlemen of the jury:

Do not talk among yourselves, or permit any person to talk with you, concerning any subject matter connected with the case on trial; or form or express any opinion regarding the guilt or innocence of the defendant, until this case is finally submitted to you.

You may go until tomorrow morning, at half past ten o'clock.

(The trial was then adjourned until Wednesday morning, February 27th, 1907, at 10:30)

CASE # 632

THE PEOPLE vs. EDWARD J. LAVELLE.

TRIAL RESUMED.

New York, February 27th, 1907.

O S C A R R O E T H , his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. O'CONNOR:

Q Roeth, what time did you go down into that basement?
Did you say about half past 3? A Yes, sir.

Q Who went down with you? Hynes? A No, sir; myself.

Q And then Hynes came down afterwards? A Yes, sir.

Q Now, how many barrels of stuff did you move out of that basement? A About four.

Q And how long did it take you to remove those four barrels? A Well, about an hour, I suppose.

Q Well, then, what did you start to do? A Sweep the stairs and the cellar.

Q And how long did it take you to do that? A About

CASE # 632

an hour and a half, I suppose; I'm not sure; I can't remember how long each thing took.

Q And then where did you go? Left the basement?

A No, sir; I stayed down there.

Q Doing what? A Doing the work.

Q Now, there were several people down in that cellar; weren't there? A Yes.

Q And who else was down there, besides you and the defendant and Hynes? A The janitor.

Q Well, the janitor wasn't there all the time; was he? A No, sir.

Q Who else was down there? A That's all.

Q Do you mean to say that Monahan wasn't down there, in the boiler room? A No, sir.

Q Didn't you see him down there in the boiler room? A Not that I seen him; I didn't see him.

Q Will you swear that he was not down there? A I'll swear that I didn't see him.

Q Didn't he come down there, during the afternoon, when you were there, you and Hynes? A I don't know.

MR. CAMPBELL: Objected to.

THE COURT: Overruled.

MR. CAMPBELL: Exception.

A I won't swear that he wasn't there, but I'll swear

1297

CASE # 632

that I didn't see him there.

Q You know Monahan? A Yes.

Q And you were working there? A Yes.

Q Now, wouldn't you have seen Monahan, if you were there? A If he was down there, I would have seen him; yes.

Q Now, don't you know that he was sitting down in the boiler room, and that you were sitting there, and Hynes was there, and that the defendant was there? A No, sir.

Q Now, remember that you are under oath. A Yes; I didn't see him.

Q Who went for the beer? A I don't know, sir.

Q Do you mean to say that no beer was brought in?

A I don't remember.

Q Now, will you swear that no beer was brought in?

A I don't remember that there was any beer brought in.

Q Well, what do you remember? You remember that you looked at the clock, on the 13th day of January, in the tailor shop, and it was twenty minutes to eight? A Yes, sir.

Q Well, wouldn't you remember Monahan, if he were in the cellar? A Certainly, I would.

Q Well, how is it that you can recollect looking at a clock, at twenty minutes to eight, and not remember that Monahan was there? A Because I didn't see him there.

Q Do you say that he wasn't there? A No, sir; I

CASE 632

don't say that. I said I didn't see him. If he had been down there, I would have seen him.

Q And do you remember that no beer was brought down there, that afternoon? A I didn't see any.

Q Will you swear that none was brought down? A Yes, sir.

Q You will swear that? A Yes, sir.

Q And no beer was had by anybody in the cellar? A Not in that part of the cellar.

Q Well, in what part of the cellar? A I don't know.

Q Well, why did you say, not in that part of the cellar?

A Because I know I was in that part of the cellar, with the other three.

Q Now, how was the defendant dressed, when he was down in the cellar? A It seemed that he had-- I don't remember what dress he had.

MR. CAMPBELL: Now, if you don't remember, don't try to say.

BY MR. O'CONNOR:

Q You don't remember how he was dressed? A No, sir.

Q And you remember working down there with him for a period of about three and a half hours, and you can't tell this jury how he was dressed? A I didn't look at his clothes. I don't look at a man's clothes.

CASE # 632

Q And yet you say that you looked at a clock, and swear that it was exactly twenty minutes to eight, in a tailor shop? A Yes, sir.

Q And you can't tell whether he had his coat on or not? A He had his coat on.

Q He had his coat on? A Yes.

Q Now, he swore that he had his coat off. Now, which is right, you or he? Don't smile about it. Remember that you are under oath. A Yes, sir.

Q Now, who is telling the truth, you or the defendant? He swore that he had his coat off, and you swear that he had his coat on. A (No answer.)

Q It don't take you as long to fix the time at twenty minutes to eight, as to tell whether he had his coat on; does it? A No, sir.

Q When did you find out for the first time--
BY THE COURT:

Q What kind of a coat did he have on? A I don't remember.

Q The color? A It seemed pepper and salt, or something of that sort. I don't exactly remember that.

Q Did you hear the color of the coat talked about, or do you remember it? A Well, I thought it was a pepper and salt, or something of that kind. I don't remember exactly

what kind of a coat it was.

Q You don't know what kind of a coat it was? A No, sir.

Q Well, did he have a vest on? A I don't know.

Q You don't know? A No, sir.

Q Do you know what kind of a shirt he wore? A No, sir.

Q Was it yellow or black or white? A I don't know.

Q You don't know? A No, sir.

Q Do you know whether he wore a tie or not? A I don't remember.

Q You don't remember? A No, sir.

Q Do you know what kind of trousers he wore, that day?
A No, sir.

Q No? A No, sir.

Q Do you know whether he got any dust on his clothes or not? A Why, he must have got dust on his clothes.

Q Well, did he or didn't he? A Certainly.

Q How do you know? A Well, working around ashes.

Q Well, you don't know the color of the coat or shirt or tie or the trousers, and yet you paid particular attention to the time, and to the dust? A Well, it is understood that working around ashes, you will get dust on your clothes.

Q Well, he said that there was no dust on his clothes,

CASE # 632

because he wore a pepper and salt coat, and it didn't show.

MR. CAMPBELL: He said there might have been.

MR. O'CONNOR: Yes.

BY MR. O'CONNOR:

Q Now, where did you go, after you came up out of the cellar? A To the poolroom.

Q Now, didn't you go around to the agent's house, for fifty cents? A No, sir.

Q Well, he says that you, Roeth, went around to the agent's house with him, and stood down at the door, while he went upstairs for the fifty cents? A No, sir; I didn't go.

Q Then that is another mistake on his part? A Yes, sir.

Q Now, from the time you left the cellar until you went to the poolroom, the defendant wasn't with you; was he? A I don't know what you say.

Q From the time that you went to the poolroom, from the time you left the cellar, until you left the poolroom, you don't know where the defendant was; do you? A (No answer.

Q Do you understand that question? A No, sir; I don't quite understand it.

Q Now, you left the cellar? A Yes, sir.

Q You say you went to the poolroom? A Yes, sir.

Q Where the defendant went to, after you left him in

CASE # 632

the cellar, do you know? A He went up to the agent's.

Q How do you know? A Well, I don't know about that; because he went up to get the money.

THE TWELFTH JUROR: We can't hear a word this witness says, your Honor.

THE COURT: You must speak louder.

BY MR. O'CONNOR:

Q Do you know, of your own knowledge, where he went?

A Up to the agent's.

Q What for? A To collect the money.

Q How do you know it? A Because he told me.

Q Is that the only reason why you know? A Yes, sir.

Q And now I am asking you, of your own knowledge, where he went to? A That's all I know; he went to the agent's.

Q From the time you left the cellar, until you went to the poolroom, you have no knowledge of where this defendant was? A (No answer.)

Q You understand that plainly enough. You were not with him?

MR. CAMPBELL: Objected to. He says that all he knows about it is what the defendant told him.

THE COURT: Overruled.

MR. CAMPBELL: Exception.

CASE # 632

BY MR. O'CONNOR:

Q Now, I am asking you where the defendant went to, if you know, of your own knowledge? A I know that he went up to the agent.

Q Did you see him go up to the agent? A No, sir; I don't remember that.

Q Well, then, why do you swear that you know it of your own knowledge? Are you swearing as exactly to that as you did to the twenty minutes to eight on the clock?

A Well, I know he went there. He locked the cellar.

Q Did you see him go up to the agent's? A No, sir.

Q And then you don't know where he was, after he left the cellar, until he came into the poolroom? A No, sir.

Q And you kept tabs on the clock, from twenty minutes to eight until he came to the poolroom? A No, sir.

Q Well, what time did he come to the poolroom? A Well, it only seemed a few minutes.

Q Well, how soon after? A Well, I'll say five or ten minutes.

Q And were you there when the police officer came in? A Yes.

Q Now, where was the defendant standing when the police officer came in? A He was standing by the middle table.

CASE # 632

Q What middle table? A The third table.

Q And how many people were in there? A Oh, about twenty, I should say.

Q And the defendant was standing at the third table?

A Yes, sir.

Q Now, did the officer pass him by, with the complaining witness? A No, sir; he walked-- there was three of them, I think.

Q Three people came in? A Yes, sir.

Q And they passed by? A Yes, sir.

Q Had you known this police officer? A No, sir.

Q Well, then, what attracted your attention to this defendant standing at the third table in that poolroom?

A Because the officer walked in and he said, "Do you see him here?"

Q And then you looked around? A Yes, sir.

Q And then you looked to see this defendant at the third table, when you heard the officer say that? A No, sir.

Q Then what attracted your attention to him? A Because this Mr. Miller pointed out Lavelle, and he walked over, and took Lavelle out.

Q Well, didn't he pass him by, first? Or did he walk right over and say, "That's the man?"

CASE # 632

A No, sir; he looked around, first.

Q Now, you have got a good recollection. You swore by the clock that it was exactly twenty minutes to eight on that tailor shop clock, and your recollection is very clear on that, and as to everything else it is very hazy; isn't it? A No; I can remember.

Q What? Do you know what you are doing here, to-day?

A Yes.

Q Well, what are you doing? A Swearing.

Q Swearing what? A To the truth.

Q Swearing to tell the truth; isn't it? A Swearing to the truth.

Q Do you know what the truth is? A Yes.

Q And now I ask you, isn't all your other testimony, outside of that twenty minutes to eight by the clock, hazy?

MR. CAMPBELL: Objected to.

MR. O'CONNOR: Withdrawn.

BY MR. O'CONNOR:

Q Now, you live down in 86th Street? A Yes.

Q What were you doing in this poolroom, around 97th Street? A I knew all the fellows there.

Q That is the hang-out for thieves; isn't it?

MR. CAMPBELL: Objected to.

CASE # 632

BY MR. O'CONNOR:

Q Do you know that? A No, sir; I'm no thief.

Q Don't you know that thieves hang out there? A No, sir; I don't know.

Q You never ascertained that? A No, sir.

Q You had to come from 320 East 86th Street, between First and Second Avenue, up to 97th Street and Third Avenue, where the colored colony ~~is~~, for your place to hang out, in the poolroom? A Well, all my friends live there.

Q Where do you live? A At 86th Street. I used to live at 96th Street.

Q And then you came back to your friends in the poolroom? A Yes.

Q And now the poolroom has gone out of there? A Yes; they moved.

Q When did they move? A I can't remember.

Q You can't remember when the poolroom moved? Why, you came up there to visit your friends. A Well, it was a good while ago, it seemed; I don't remember the date.

Q But you are swearing that, on the 13th day of January, 1907, you looked at a clock in the tailor shop, and that it was exactly twenty minutes to eight, and now you say that it is so long ago since the poolroom moved that you can't recollect. A Well, I never looked at the date when the poolroom

CASE # 632

moved.

Q Well, but can't you tell approximately? You have a very good memory for the clock. A Well, it seemed--

Q Not what it seemed. How long after these men were arrested, did the poolroom vacate? A About two weeks afterwards.

Q Well, it was about the 1st of February, wasn't it? You have been up there regularly; haven't you? A Something around that time.

Q Something around that time? A Yes, sir.

Q That is not as clear in your mind, as to the 13th of January, and it being twenty minutes to eight by the clock, in the tailor shop? A I've got something to remind me of that.

Q What reminded you? A Lavelle's arrest. ✓

Q When did you ascertain for the first time the defendant was charged with committing the crime in question, about half past seven? A I don't understand you.

Q When did you learn that this defendant was charged with having, on the 13th day of January, held up Miller, at half past seven, at the corner of 99th Street and Park Avenue? A I first learned it, the next day; two days after.

Q From whom? A From the newspapers.

Q Do you mean to say that you read in a newspaper that

CASE # 632

it was at seven thirty; that the time was mentioned in the newspapers? A No, sir; I was there when he was arrested.

Q You were in there, the night he was arrested?

A Yes, sir.

Q And then you didn't learn from the newspapers that he was arrested, two days afterwards? A You asked me when he was arrested.

Q I asked you, when you learned that he was arrested for committing a robbery, on the night of January 13th, 1907, at 99th Street and Park Avenue.

MR. CAMPBELL: No. The question was, when he learned what he was arrested for, not the fact of the arrest.

MR. O'CONNOR: I mentioned the whole thing, what he was arrested for, and when.

Q Now, what did you learn from the newspapers that he was arrested for? A For highway robbery.

Q Didn't you learn that in the poolroom? A No, sir.

Q Didn't McAvoy come around, that night? A I don't remember.

Q Now, didn't McAvoy come around with the watch, that night, and that fellow Monahan was there? A I didn't see him with it.

Q You can recollect the 13th day of January very clearly?

CASE # 632

A Yes, sir.

Q And you will swear that McAvoy didn't come around, with the watch, and that Monahan was there? A I didn't see him.

Q You didn't see him? A No, sir, I didn't see him; I didn't see McAvoy.

Q You were in the poolroom? A Yes, sir.

Q But you didn't see McAvoy? Did you or did you not? You know McAvoy? A Yes; I know him.

Q He's one of the gang there; isn't he? A Yes; I suppose so.

Q And did you see him there, that night? A (No answer.)

Q You can't recollect; can you? A It's so hard to remember. There was so many.

Q It's hard to remember a man that you have known beforehand, but it isn't hard to remember that you looked in the tailor shop window, and saw it was exactly twenty minutes to eight? A No, sir.

Q You remember that all right? A Certainly.

Q Did you go to the Police Court then? A When?

Q Two days afterwards? A No, sir.

Q Didn't go there? A No, sir.

Q Have you ever been in the Police Court? A Yes, sir.

Q Well, when did you go? A That was at Levalle's

CASE # 632

trial.

Q When? A I don't remember the date.

Q Can't remember when you went to the Police Court, at Lavelle's trial? A No, sir; I don't remember the date.

Q Wasn't that important? You can remember the clock, on the 13th of January, and you can't remember when you went to Lavelle's trial, in the Police Court? A (No answer.)

Q Was that the 14th of January? A No, sir.

Q 15th? A I don't know.

Q 16th or 17th? A I don't know.

Q Now, tell us where you were on the 6th of January, 1907? A What?

Q (Question repeated.)

MR. CAMPBELL: I object to it, as immaterial, irrelevant and incompetent.

THE COURT: For the purpose of testing the recollection of the witness, it is allowed.

MR. CAMPBELL: Exception.

BY MR. O'CONNOR:

Q Tell us. A The 6th day of January?

Q Yes; the 6th? A I don't remember that.

Q You can't remember that? A No, sir.

Q That was a Sunday. I made it easy, and just brought you back one week, to Sunday. A Well, I didn't figure that.

CASE # 632

Q Well, you didn't have time to figure; did you?

A No, sir.

Q Well, I'm telling you now it was Sunday, one week back. A Yes, sir.

Q Now, did you meet Lavelle, on Sunday? A On that Sunday?

Q Yes. A I don't remember.

Q I'll make it easier for you. Where were you on the 12th day of January, 1907?

MR. CAMPBELL: The same objection.

MR. O'CONNOR: To test his credibility.

THE COURT: Overruled.

MR. CAMPBELL: Exception.

A (No answer.)

BY MR. O'CONNOR:

Q You can't recollect that? A No, sir.

Q And yet you are willing to come to this court, and swear that, on the 13th day of January, 1907, you looked at a clock in 97th Street, and it was exactly twenty minutes to eight, and you can't tell the jury where you were on the 12th day of January, 1907?

MR. CAMPBELL: Objected to, as argumentative.

The changes have been wrung on that about fifty times, now.

CASE # 632

MR. O'CONNOR: And I am going to keep on ringing them.

MR. CAMPBELL: It is really a summing up, and there ought to be a limit to it.

THE COURT: Allowed.

MR. CAMPBELL: Exception.

A (No answer.)

BY MR. O'CONNOR:

Q Were you in that place when the watch was passed?

A When the watch was passed?

Q Yes. Now, Lavelle was at the table, and describe to the jury what he did at the table, and name the man who stood alongside of him? A I name the man who stood alongside of him?

Q Yes; the man who stood alongside of Lavelle? A No; I never named the man.

Q Why can't you? A I don't remember who was standing next to him. There was people all around the poolroom.

Q Did you see what the defendant did, when the officer came in? A He just stood up. He was leaning over, and stood up when the officer came in.

Q Would you swear that he didn't put his hands in his pockets? A I don't know.

Q Would you swear whether or not he passed the pistol

CASE # 632

at that time? A No, sir; I don't know anything about that.

Q Will you swear that he didn't pass the watch and pistol to a man alongside of him, at the time? You were looking at him all the time, you say? Will you swear to that?

MR. CAMPBELL: Objected to. I object to the form of the question.

MR. O'CONNOR: I will withdraw the form of the question.

MR. CAMPBELL: There is no evidence whatever in this case that Lavelle put his hand in his pocket, or passed anything, and it really assumes that something of the kind was done.

THE COURT: Objection overruled.

MR. O'CONNOR: I will withdraw the question.

BY MR. O'CONNOR:

Q Were you looking at Lavelle? A When the detective come in, I was.

Q Yes. And from the time the detective came in until he went out, were you watching Lavelle? A No, sir; I just saw him when he walked over to Lavelle.

Q You say you saw him leaning over the pool table like this (illustrating)? A Yes, sir.

Q And there were twenty fellows in the place? A Yes.

CASE # 632

Q And then you saw him raise himself up from the table like this? (Illustrating) A Yes, sir; that was when the officer took hold of him.

Q And then you don't know what he did, before the officer took hold of him; do you? A No, sir.

Q Now, who talked to you about this case, about coming down here and telling what you have, about the time? A Who talked to me?

Q Yes; who talked to you? A Nobody talked to me.

MR. CAMPBELL: Oh, talk up, Roeth. I can't hear a word you say.

BY MR. O'CONNOR:

Q Didn't Hynes have a talk with you about it being twenty minutes to eight, when you left the cellar? A He didn't talk to me about that. I knew it myself.

Q And didn't you talk to Hynes about this case, at all? A Yes; I always talked to him.

Q About this case? A Yes.

Q Now, didn't you tell Hynes that it was twenty minutes to eight, or didn't he tell you it was that time? A No, sir; he didn't tell me, or anybody.

Q Well, who subpoenaed you as a witness? A Mrs. Carroll.

Q Who is Mrs. Carroll? A Lavelle's sister.

CASE # 632

Q Miss or Mrs. Carroll? A Mrs. Carroll.

Q Mrs. Carroll? A Yes, sir.

Q How did she know? A Know what?

MR. CAMPBELL: That's objected to.

MR. O'CONNOR: Question withdrawn.

BY MR. O'CONNOR:

Q Did Mrs. Carroll come to see you? A Yes, sir.

Q And you talked about the case with Mrs. Carroll?

A Yes, sir.

Q Now, I want to find out how you came down to fix the time at twenty minutes to eight, when you looked at the clock?

A How I come to fix the time?

Q Yes. A Well, I saw it.

Q I know. But when did you learn that it was between seven twenty and seven forty-five that it was claimed that this defendant held up Miller? A Not until lately.

Q Ah, not until lately? A No, sir.

Q How long ago? A Since I come down here.

Q Since you came down here? A Yes, sir.

Q And your recollection as to the time by the clock was never refreshed until you came down here? A No, sir; I knew it all the time.

Q And the first time you appeared here was when?

MR. CAMPBELL: Objected to.

CASE # 632

THE COURT: Overruled.

MR. CAMPBELL: Exception.

THE COURT: Did he say he appeared in the Magistrate's Court?

MR. O'CONNOR: Yes, sir. But the first time that he knew the time was fixed between seven twenty and seven forty-five was when he came down here.

BY MR. O'CONNOR:

Q Is that right? A No, sir; I found out when I come down here that the holdup was at twenty minutes past seven.

Q Yes; when you first came down into the Criminal Court Building? A Yes.

Q Now, I don't want to take any undue advantage of you. The first time that you knew that the defendant was charged with committing this crime between the hours of seven twenty and seven forty-five was when you came to this building, the Criminal Court Building? A No, sir; I think it was up in the Harlem Court.

Q You learned that up in the Harlem Police Court?

A Yes.

Q It was at the Harlem Police Court? A Yes.

Q And then you and Lavelle; did you go as a witness in the Police Court, the Harlem Police Court? A Yes.

CASE # 632

Q To testify as a witness there? A Yes.

Q So that you and Lavelle-- and who else testified there? I don't mean Lavelle. I mean Hynes. A The janitor and the agent.

Q The janitor and the agent? A Yes.

Q What agent? A Of the house.

Q Do you know what his name is? A Kischner, I think it is.

MR. CAMPBELL: Do you suppose, your Honor, you could caution this witness, this young man, to speak louder? I can't hear a word he says, and the jury constantly complain that they can't hear him.

THE COURT: You must speak louder, Witness.

BY MR. O'CONNOR:

Q Now, you learned that up there; did you? A Yes.

Q And did you go back to the poolroom, every night, after? A No, not every night.

Q But you go there; don't you? A Yes.

Q Now, where is the poolroom located, at the present time? A It's right near Third Avenue, in 97th Street.

Q What? A It's right near Third Avenue, in 97th Street.

Q It was on Third Avenue, at this time? A Yes.

Q Now it is moved around the corner? A Yes.

CASE # 632

Q To the opposite side of the street? A Yes.

Q 201? A Yes.

Q And you were there, last night? A Yes.

Q Yes. And the night before, too; weren't you?

A Yes.

Q And you had a talk about the case, last night, in the poolroom; didn't you? A Yes.

Q A full discussion held there? A Yes.

RE DIRECT EXAMINATION BY MR. CAMPBELL:

Q Did you talk about it as much there as the District Attorney has talked to you about it, to-day, here? A No, sir.

Q Did you talk any louder there than to-day? A No, sir; not very much.

MR. CAMPBELL: I have another witness to the merits, your Honor, but I have some character witnesses, who are anxious to get away, and I'll put them on first.

THE COURT: Very well; as you please.

WILLIAM SIMONTON, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q What is your business, Mr. Simonton? A Civil

CASE # 632

engineer and foreman.

Q And where is your place of business? A Well, I work all over, New York and Brooklyn.

Q Are you connected with any particular concern, or are you a free lance? A I am working now for the Reebing Company.

Q And how long have you been engaged in that business in and about New York? A Oh, for a number of years.

Q Where is your present place of business? A 26 Cortlandt Street.

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

Q How long have you known him? A About a year.

Q Has he ever worked for you? A He worked for me when I was connected with the New York Central Railroad, two years ago.

Q And for how long a time did he work for you?

A He worked from about February until about June; until we finished the work there.

Q In 1906? A Yes.

Q And then did he work for you after that? A No; he came to my house, once, for some work, and I sent him on a small job; about the first part of January of this year.

Q Of this year? A Yes.

Q That covers the entire period of his employment with you? A Yes.

CASE # 632

Q Do you know other people who know him? A Only the men that were working there on the work.

Q And do you know what his reputation is for honesty and truthfulness? A I never heard anything against him while he was with me.

Q His record was good with you? A Yes.

CROSS EXAMINATION BY MR. O'CONNOR:

Q Mr. Simonton, you don't know who his associates are, at night? A Well, only while he worked with me.

Q I mean, after he left the work, you didn't know where he went to, or anything about him? A No, sir; didn't know where he went to.

Q Didn't Monahan work on that job? A Yes. There was a man by the name of Monahan that worked there, too.

DANIEL HYNES, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q Where do you live, Hynes? A 224 East 109th Street.

Q 224 East 109th Street? A Yes, sir.

Q With whom do you live? A My mother.

Q Now, talk up loud, so that everyone can hear you.

CASE # 632

A All right; I'll talk loud enough.

Q Are you working anywhere now? A No, sir.

Q How long have you been out of work? A About two months.

Q Where did you work before that? A I was working in Georgia.

Q Doing what? A Machinist's helper.

Q How long? A Ten days.

Q Where did you work before that? A I worked with my uncle.

Q How long did you work for him? A About a year and a half.

Q Where was that? A Produce business.

Q What were you doing for your uncle? A I was driving.

Q Where did you work before that? A I don't remember.

Q How old are you? A Seventeen.

Q Your mother been supporting you during the past two months? A Yes.

Q Do you know this defendant? A Yes.

Q Did you meet him on January 13th, 1907? A Yes.

Q Were you present in the poolroom when he was arrested?

A I was.

Q Had you been with him before that, on that day?

A Yes.

CASE # 632

Q Where? A Down in the cellar, cleaning up the cellar.

Q And when did you start to work? A Between two and three o'clock in the afternoon.

Q How do you fix the time? A Well, I knew it was that time, because we asked the janitor.

Q And how long did you work there with him? A Until half past seven.

Q What did you do down there? A We cleaned up the cellar, and mopped down the hallways.

Q And you left the cellar at what time? A At half past seven-- at least, we asked him the time at half past seven, and then he went upstairs for the money.

Q And where did you go with him then? A Well, he went upstairs, and then me and him went into the poolroom.

Q Who else was down there with you? A Oscar Roeth.

Q Anyone else? A Yes, sir; a few others, but they weren't working.

Q Who were they? A Monahan.

Q Who else? A A fellow named Jonesy, and Willie Allen; that's all.

Q How long were they down there? A About an hour.

Q What part of the cellar were they in? A The engine room.

Q And where were you working? A We was working all

around the cellar, cleaning out the cellar.

Q Was there any beer sent for there? A Not that I know of.

Q Sure about that? A Yes.

Q Now, at the time you left the cellar, at half past seven, you say, who went out together? Did you all go out together? A No, sir. Oscar Roeth went out first, and I waited until he came down with the money.

Q Where did you wait? A Right down by the door, 202 East 97th Street.

Q Where is the agent's house? A 202 East 97th Street; and I waited down by the stoop, and he went up for the money.

Q You waited on the agent's stoop, until he went up for the money? A Yes, sir.

Q And that's right close by the place where you cleaned up the cellar? A The next house.

Q The next house? A Yes, sir.

Q Had the defendant Lavelle been out of the cellar at all just prior to half past seven, until the time he left there? A Not that I know of.

Q He had been in the cellar with you, all the time? A Yes, sir.

Q And left the cellar with you? A Yes.

Q And went to the agent's house with you, as far as the

CASE # 632

stoop; you accompanied him to the stoop? A Yes.

Q And you waited on that stoop until he came out?

A Yes.

Q Then where did you go? A We went into the poolroom.

Q And then what happened? A Well, we was in there a couple of minutes when the detective come in and arrested him; a fellow pointed him out.

Q Now, tell us just what happened then? A Well, he was standing in the back of the poolroom, and a fellow came in, with two detectives, and walked around the poolroom, and looked at everybody; and then he walked back to Lavelle, and said, "This is the man here."

Q That was Lavelle? A Yes.

Q Was anybody standing close to him at the time, that you noticed? A No, sir; not that I noticed.

Q Well, will you swear that anybody was standing close to him, or didn't you notice that? A Well, there was nobody around him at all. He was on one side of the table, and all the others were on the opposite of the table.

Q And you will swear that there were no other people on the same side of the table with him? A No, sir.

Q How close did the nearest person stand to him?

A About six feet.

Q Did you see Lavelle pass anything to anybody?

CASE # 632

A No, sir.

Q Did you testify as a witness in the Harlem Police Court? A Yes.

Q Who was the lawyer up there? Who subpoenaed you?

MR. O'CONNOR: Objected to.

MR. CAMPBELL: Withdrawn.

A Baker.

BY MR. CAMPBELL:

Q Ben Baker? A Yes.

Q How many times did you appear there? A Once.

Q And did you give the same testimony that you give here?

MR. O'CONNOR: Objected to.

A Yes, I did.

BY MR. CAMPBELL:

Q Well, did you talk to Mr. Baker about the case?

A No, sir.

Q But he put you on the stand, and you testified?

A Yes.

Q Now, when did you first know what the charge was against the defendant, what he was arrested for? A I read it in the morning paper .

Q Did you know when he was arrested, what he was getting arrested for? A No, sir.

Q You found out, the next morning? A Yes, sir, in

CASE # 632

the paper.

Q What paper did you read it in? A The "World."

Q Then you learned that he was charged with holding a man up on the street? A Yes, sir.

Q Are you any relation to this boy Lavelle? A No, sir.

Q How long have you been a friend of his? A Oh, I know him about three or four years, just from around the neighborhood.

Q Do you go to the poolroom often where he was arrested?

A Oh, once in awhile.

Q Well, pretty near every night? A Oh, no; not every night.

Q Well, pretty often? A Well, whenever I feel like shooting a game of pool.

Q Your friends go there? A Yes, sir.

Q Now, you have told us the absolute truth about this case; have you? A Yes, sir.

Q Now, how do you fix the time at half past seven?

A Because we asked the janitor what time it was, and he told us half past seven.

Q Mr. Samuels? A Yes. And then we walked up the street, and I looked in the tailor shop, and it was twenty-five minutes to eight, when he came down from the house.

Q You looked in the tailor shop, and it was twenty-five

minutes to eight, when he came down from the house? A Yes, sir.

Q From the agent's house? A Yes, sir; and it was about a quarter to eight when he got arrested.

Q So that if Roeth testified that it was twenty minutes to eight, when he passed the tailor shop, he is mistaken; is he? A Well, I don't know about that, but I looked at the clock, and it was twenty-five minutes to eight.

Q And you looked at the clock in the tailor shop?
A Yes, sir.

Q Who asked you to go as a witness to the Police Court?
A I went myself.

Q I know. But who subpoenaed you? A The lawyer.

Q Did you talk with Mrs. Carroll before you went up there?
A No, sir.

Q Or with anybody else? A No, sir.

Q But you had-- what day was it you appeared in the Police Court? He was arrested on Sunday night. A Well, I don't know as it was Wednesday or Thursday.

Q That was when they had the examination? A I don't remember what day it was.

Q Well, was it one day or two days or three days after the arrest? A It was Friday, I think; Thursday or Friday.

Q You are not positive about the date? A No, sir.

CASE # 632

Q But you did receive a subpoena from the lawyer to go to the Police Court? A Yes, sir.

CROSS EXAMINATION BY MR. O'CONNOR:

Q You live at 204 East 109th Street? A 224.

Q 224? A Yes, sir.

Q And this poolroom is located twelve blocks away from where you live? A Yes, sir.

Q What brings you down to that poolroom? A Well, I used to live around that neighborhood.

Q Well, there are other places to shoot pool, from 109th Street to 97th Street? A Well, I used to live around there, and I am always down there.

Q Now, isn't there a poolroom between that place and where you live? A Yes, sir.

Q And there are poolrooms on Third avenue, between 107th and 108th Street? A Not that I know of.

Q Is there a very large one at 106th Street? A Yes; pretty large.

Q At the southwest corner? A Yes, sir.

Q And one at 105th Street, too? A No; I don't know anything about that.

Q Along Third Avenue? A I don't know.

Q You don't know? A No, sir.

2019

CASE 77 632

Q So that you have got to go from 109th Street and Third Avenue down to 97th Street to a poolroom? A Yes.

Q Because your friends play down there? A Yes.

Q How long ago is it since you moved from there?

A About seven months.

Q And, during the seven months you were continually going back to the poolroom? A No, no. I've only been going around that poolroom for the last two months, or so.

Q Oh, since you have been out of work? A Yes.

Q And, since you have been out of work, and hanging around the poolroom, your mother has been supporting you?

A Well, no, not actually supporting me. I make a few pennies on the outside.

Q At what? A At anything I can get to do.

Q And most of your friends there don't do any work; do they? A I don't know whether they work or not.

Q Well, don't you talk to them about whether they are working or not? A No, sir.

Q What do you do there? A Just shoot pool.

Q Who owns the place, or keeps it? A Mr. Taylor and Mr. Sullivan.

Q When did the poolroom move? A The 15th of January.

Q Well, Roeth said it was about the 1st of February, about two weeks after. Is he right or wrong? A No, sir;

CASE # 632

the poolroom moved the 15th of January, because it had a sign in the window.

Q It went out, two days after the defendant was arrested in the place? A Yes.

Q And then Roeth wasn't correct when he said it was about the 1st of February that the poolroom moved? A No, sir; not to my opinion.

Q Now, you have known Roeth how long? A Three or four years.

Q Three or four years? A Yes, sir.

Q And very friendly disposed towards him? A No, sir; he's a friend of mine, but I never hung out much with him.

Q What do you mean by that, hang around with him?

A Well, went around with him.

Q Well, he was one of the fellows that came into the poolroom almost every night? A Yes; but there is plenty of people that comes in there that I don't know.

Q Well, now, you knew McAvoy and Monahan, too; didn't you? A Yes.

Q And now Monahan was down in the cellar, that night; wasn't he? A Yes.

Q And you saw him down there? A Yes; I saw him.

Q And Roeth was there; wasn't he? A I don't know that he was. Roeth was down there when we cleaned the cellar.

CASE # 632

Q Well, when did he leave? A At half past seven.

Q How do you know? A Because I saw him going out.

Q How do you know it was half past seven? A Because we asked the janitor what time it was.

Q What janitor? A Samuels.

Q Did he have a watch? A I don't know if he had a watch or not, but he said it was half past seven.

Q Now, he swore on the stand, yesterday, that he had no watch. A No, sir.

Q And you say he looked at his watch? A I didn't say he looked at his watch. I said we asked him the time, and he told us half past seven.

Q And then you went up out of the cellar? A Yes.

Q Now, Roeth went out ahead of you, didn't he? A Yes.

Q Well, he said that, when he looked at the clock, it was twenty minutes of eight? A Well, he wasn't in the poolroom when we were in there, but he came in after we came in.

Q He came in after you got into the poolroom? A yes; after we got in the poolroom.

Q Well, he left the cellar first? A Yes, sir.

Q And he said that, when he left the cellar, he came out first, and looked at the clock, and it was twenty minutes of eight? A Well, when I looked at the clock, it was twenty-five minutes of eight.

CASE # 632

Q Now, what clock was it? A In the tailor shop.

Q And how long has that clock been in the tailor shop?

A Well, I don't know that.

Q Well, did you ever look at the clock before that?

A Plenty of times.

Q Plenty of times? A Yes.

Q And you can tell the time when you looked at it?

A Why, certainly, I can tell the time.

Q When was the time you looked at it prior to the 13th of January, 1907? A Well, I looked at it every time I wanted to go home to my supper.

Q You looked at it every time you wanted to go home to your supper? A Well, I looked at it on a Friday night, and on a Saturday night, and on a Monday night.

Q Well, this was of a Sunday night? A Yes; the week before this.

Q The week before this, you looked at the clock?

A Yes, sir.

Q On what night? A On Monday night, Friday night and Saturday night.

Q And you can't tell us exactly what time it was when you looked at the clock on Monday night, and Friday night and Saturday night? A Oh, no; I don't remember that.

Q And, when you waited for this young man to come down

from the agent's house, did he have any money with him? A Yes.

Q How much? A Half a dollar.

Q How much did he give you? A Nothing.

Q Did he give any money to any of you? A No, sir; not that I know of.

Q Where did you go to? A Into the poolroom.

Q Into the poolroom? A Yes.

Q And where did you go, when you got into the poolroom?

A Stayed in the poolroom.

Q And Monahan was in the poolroom, when you got in there?

A I don't know. I saw him there when Lavelle got arrested.

Q You saw him there when Lavelle got arrested? A Yes.

Q Now, were you near the defendant when he was arrested?

A No, sir.

Q Where were you? A I was away up in front of the room, when he was arrested.

Q You weren't watching him? A No, sir.

Q And you don't know who was alongside of him; do you?

A Yes, I do. When Miller come in, he went right in the back of the room, with the detective, and pointed him out.

Q How many officers came in with Miller? A Detective Brenner and another detective.

Q Do you know McAvoy? A No, sir.

Q Do you know Meyer? A Yes; I know him.

CASE # 632

Q Now, you say you read it in a paper, the next day?

A Yes.

Q Roeth says he read it in the paper, two days afterwards. A Well, I can't help what Roeth says.

Q What paper did you read it in? A The "World".

Q And who did you go to, to speak about the case, when you read about it in the paper? A Nobody.

Q Nobody? A No, sir.

Q Did the defendant's sister come to see you? A No, sir.

Q Who came to see you? A Nobody.

Q Nobody? A No, sir.

Q You got a subpoena to go to court? A Yes.

Q And you went to court? A Yes.

Q Now, where did you work prior to going into the cellar, on the 13th of January? A No place.

Q Never worked? A Oh, I worked before, but not inside of two months.

Q I asked you, where do you work? If you don't understand the word prior, I will modify it. Where did you work before working in the cellar, on the 13th of January?

A Where did I work?

Q Yes. A I was working for my uncle, for a few days.

Q Where? A In 143rd Street.

CASE # 632

Q For a few days? A Yes.

Q Now, where did you work before that? A In Georgia.

Q Where? A In Atlanta, Georgia.

Q And when did you work there? A Well, I don't remember when it was. I know the day we come back was the Governor Election Day, Tuesday.

Q That was about November 7th, of this year? A Yes.

Q Well, when did you work in Georgia? A Well, I don't know what time it was, but I know we was down there, and come back on Election Day.

Q Well, how long did you work there? A Ten days.

Q Ten days? A Yes, sir.

Q And where did you work before that? A For my uncle.

Q What doing? A Produce business.

Q And for how long? Where? Around the market in 102nd Street, or 101st Street, around with the gang there?

A Well, I didn't have nothing to do with the gang there. I was in the market there.

Q How long did you work there, around the market?

A A year and seven months.

Q That is, from about two or three o'clock in the morning? A No, no. We started down to the market, and got our load of stuff, and sold it.

CASE # 632

Q Then you didn't work in the market? A No, sir.

Q You peddled? A Yes.

Q And you worked for your uncle? A Yes.

Q Off and on? A No, no, steady; I worked all the time.

Q And that's the only time you ever had worked, for your uncle? A No, sir; I worked for the Western Electric Company, and the New York Telephone.

Q Now, have you ever been convicted of any crime?

A No, sir.

Q Misdemeanor or disorderly conduct or felony?

A No, sir.

Q You know what I mean; don't you? A Yes.

Q And you have never been convicted of any crime?

A No, sir.

Q Or misdemeanor? A No, sir.

Q Now, you say that you saw this defendant on all the time that he was down in that cellar, that day? A Yes.

Q And that you looked at that clock? A Yes, sir.

Q Now, did you look at the clock, the day before?

A Yes.

Q What time was it by the clock, when you looked at it, the day before? A I don't know. It was going on to seven o'clock.

2027

CASE # 632

Q It was going on to seven o'clock? A Yes, sir.

Q And you had come out of the poolroom? A Yes.

Q Now, had you looked at it, the day before that, which was Friday? A Yes.

Q And what time was it then? A I don't remember then.

Q Was it going on six or seven? A I don't know.

Q Do you stay in the poolroom all day? A No, sir.

Q Did you look at the clock, yesterday? A Yesterday, No, sir.

Q No? A I wasn't around there, to look at it.

Q Were you around there, the day before that?

A No, sir.

Q When were you around there last? A Last Sunday.

Q Did you look at the clock, when you came out of there, last Sunday? A No; I generally go down Second Avenue to go home, but that Sunday I went down Third Avenue.

Q Have they a clock in the poolroom? A No, sir.

Q Did they ever have a clock in the poolroom? A No, sir; not that I know of.

Q Do you know this Dreschnack? A Yes.

Q Was he in the poolroom, the night this defendant was arrested? A No, sir.

Q Or the night after? A No, sir.

Q When was he there? A I don't know. I never seen

CASE # 632

him in the poolroom.

Q You never saw him in the poolroom? A No, sir.

Q Well, was there a club there at the time? A A club where? In the poolroom?

Q Yes. A No, no.

Q There never was a club there? A No, sir.

Q Did you belong to any club there? A No, sir.

Q Do you know how this defendant was dressed, while he was down in the cellar there? A No, sir; I don't remember.

Q You don't recollect that? A No, sir.

Q You can't? A No, sir.

Q Well, who took up the ashes? A It was me and Jonesy took up the ashes, I think. I ain't sure who took up the ashes, but I know there was four barrels of ashes there.

Q I don't mean the physical carrying, but who filled up the barrels with ashes, and helped to clean up? A Well, Roeth was sweeping and Jonesy was putting the stuff in the barrels; and the rest of us mopped down the hallway and the stairs.

Q But you say that it took you from three o'clock until half past seven to take four barrels of ashes out of the cellar, and mop down the stairs and clean the cellar, or sweep out the cellar? A Certainly. We had a lot of work there.

Q And how many of you were working at that job?

2029

CASE # 632

A Four.

Q And it took you from five to five hours and a half to take out four barrels of ashes, out of the cellar, and sweep it up, and mop down the hallway? A yes; that's what it took us.

Q And you worked five hours and a half, the four of you, for fifty cents? A yes, sir.

Q You were working for fifty cents? A Yes.

Q Did you know how much money you were going to get, before you went into the job? A No, sir.

Q What? A I didn't know.

Q Did you ask Lavelle what you were to get? A No, sir.

Q And you didn't get anything? A No, sir; not a cent.

Q Now, did you notice how he was dressed? A No, sir, I didn't.

Q Did he have a hat on? A I don't remember.

Q Did he have a coat on? A Yes.

Q He did? A Yes.

Q What kind of a coat did he have on? A I don't know; I don't remember what kind of a coat it was.

Q Did he have a vest on? A I don't know.

Q Do you know what kind of a shirt he wore? A I think it was either a blue or a black shirt he wore.

Q You think it was either a blue or black shirt he wore?

A Yes; I ain't sure.

Q And do you know the color of the trousers he wore?

A No, sir.

Q You don't know that? A No, sir.

Q Now, the defendant swears that he had his coat off, and you say he had it on? A Well, I can't remember everything.

Q Well, but you can remember looking at that clock, and that it was exactly twenty-five minutes to eight, on the 13th of January? A Yes.

Q And, when you are working with a man for four or five hours, you will notice whether his coat was on or off?

A No.

Q You wouldn't? A No.

Q You wouldn't notice that? A No, sir.

Q And he also said that he had a soft white shirt, and you say that he had a blue or black? A Well, I said I couldn't remember.

Q Now, will you explain to this Judge and jury, if he had his coat on, how you could tell the color of the shirt he wore; can you? A Eh?

Q Can you explain to this Judge and jury how you could tell the color of his shirt, if he had his coat on?

CASE # 632

A Well, I said I didn't remember what kind of a shirt he had on.

Q You said that it was either a blue or a black shirt.

A Well, I didn't know. A couple of days before that, when we were down there before, he had a blue or black shirt on.

Q What were you doing down there, several days before?

A Sitting by the fire, waiting for the poolroom to open up.

Q Now, how long have those buildings been undergoing alteration there? A I don't know.

Q And now there are three buildings right there?

A Yes.

Q And who kept the saloon on the corner there?

A Flanagan and-- I don't know the other name.

Q And McFarland? A I don't know.

Q And the buildings became vacant, from top to bottom?

A Well, I don't know about that.

Q Well, you know about that; don't you? A No; there are families living in the house.

Q And, when they cleaned up the house, wasn't it painted from top to bottom? A No, sir.

Q On the outside? A No, sir.

Q What color is it? A White.

Q Do you remember when it was painted? A No, sir.

Q What was the color of it before? A I don't know.

CASE # 632

Q Why, you have been around there for a good many years? A Well, I never seen the building getting painted at all, on the outside.

Q You never saw it getting painted? A No, sir.

Q And you have been around there several years?

A Yes, sir.

Q Now, you say you were down in that cellar several days before. Now, when were you down there before?

A Well, I was down there, Thursday morning.

Q What date? A I don't know what date it was.

Q Why? A Well, I don't remember.

Q You recollect pretty clearly as to the time when you looked at the clock, and you could tell us it was twenty-five minutes to eight, and that it was going on to seven, when you looked at it, on Friday night, and you can't tell us the date when you were down there, on Thursday? A No; I don't recollect that.

Q You don't recollect the date? A No, sir.

Q And yet you told us that you were down there, on Saturday night, and looked at the clock in the tailor shop?

A Yes, sir.

Q And looked at it, on Friday night? A Yes; and on Monday night, too.

Q The Monday after the arrest? A No, sir; the Monday

CASE # 632

he was arrested.

Q The Monday he was arrested? A Yes.

Q Did you look at it on Tuesday night? A No, sir.

Q You didn't look at it on Wednesday night? A No, sir.

Q, You were not around there, Tuesday or Wednesday?

A Yes; I was around there.

Q Well, do you make a memorandum of every time you look at a clock? A No, sir.

Q Well, how are you able to tell us that you looked at it on Monday night, January 7th, 1907? A Because I always passed down that street.

Q And is that the only reason why you can say that you looked at it, on Monday night? A Oh, no.

Q And what did you do, down the cellar, you fellows? A Just to keep warm, until that poolroom opened up.

Q Well, it was a regular hangout for you fellows, to wait until the poolroom opened up? A Only a couple of minutes, at a time.

Q And when did this poolroom open up? A Well, half past ten or eleven o'clock; about eleven o'clock.

Q And when did you young fellows get there, usually? A About ten or half past ten o'clock.

Q And did any of you go around looking for work?

CASE # 632

A No, sir.

Q Well, did you ever do any cleaning in that cellar before? A No, sir.

Q And when did you notice that he wore a different shirt from the one he had on, that day? A Well, on the Sunday before, he had a blue shirt.

Q Now, young man, from the time you were upstairs-- were you upstairs? A Yes; mopping down the stairs.

Q And you have no knowledge of where the defendant was, while you were doing that? A Well, I know he was in the cellar.

Q When did you start to mop down the house? A Three o'clock.

Q And what time did you get through mopping down the house? A About half past four.

Q And then you went down into the cellar? A Yes.

Q And do you mean to say that it took you fellows three hours to take four barrels of ashes out, and sweep that cellar; from half past four to half past seven? A Yes.

Q It took you three hours, four fellows, to sweep up a cellar, and take out four barrels of ashes? A Yes, sir.

Q Do you know what you are swearing to? A Yes; I know it.

Q And it took you three hours, four of you doing the

CASE # 632

job? A Yes.

Q To sweep up that cellar, and get out four barrels of ashes? A Yes.

M O S E S E . B L O O M , a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q Where do you reside, sir? A 155 East 90th Street.

Q How long have you lived there? A About eight months.

Q What's your business? A Theatrical scene painter.

Q And how long have you been engaged in that business in this city? A Twenty years.

Q Twenty years? A Yes, sir.

Q How long have you known the defendant? A About fifteen years.

Q Fifteen years? A yes, sir.

Q Do you know other people who know him? A Yes.

Q Do you know what his reputation is for honesty and truthfulness? A Well, ever since I have known him, since he was a boy, I've always known him to be honest. I've never known anything against him.

CASE # 632

CROSS EXAMINATION BY MR. O'CONNOR:

Q Mr. Bloom, you don't know who he associates with, at night, do you, of your own knowledge? A Well, I see him about once a week, on the average, at his sister's home.

Q And that's about all you know about him, seeing him at his sister's home, about once a week? A Well, I've seen others that he associates with, but I don't know that I know everybody he knows.

Q Well, you are in business for yourself; are you not? A Yes.

Q And the people with whom he associates, you don't associate with; do you? A Well, his own immediate folks, I do.

Q Well, yes. You know his own immediate folks? A Yes, sir.

Q But you don't go to this poolroom, in 97th Street; do you? A No, sir.

Q And you don't know who goes there? A No, sir.

Q You don't know anything about that poolroom; do you? A No, sir.

Q And you don't know anything about this cellar in the corner house, going down there at ten o'clock in the morning, and staying there until the poolroom opens? A No, sir; I don't know anything about that.

2037

CASE # 632

MR. CAMPBELL: The Defense rests.

MR. O'CONNOR: The People rest.

MR. CAMPBELL: May I recall the complaining witness, for just a moment, sir, for further cross examination; just a few questions?

THE COURT: Yes.

ALBERT GEORGE MILLER, being recalled for further cross examination, testified as follows.

CROSS EXAMINATION CONTINUED BY MR. CAMPBELL:

Q Mr. Miller, you have seen Monahan since his arrest; haven't you? A Yes.

Q And are you able to identify him as the man who stood leaning up against the fence? A Yes.

Q You are positive of your identification of him? A Yes, sir.

Q Just as positive as you are of this defendant, at this time? A Yes, sir.

Q Did you testify in the Police Court, in the Harlem, that you couldn't identify him, because he held his hand over his face? A Since then I've identified him, seeing his full face.

Q Did you so testify, in the Harlem Police Court?

CASE # 632

A I didn't say that I couldn't positively identify him, but I said that the part that I didn't see of him, you understand, he was the other party that held me up.

Q Did he hold his hand over his face fully, when he held you up? A No, sir; not all over his face; just held his hand up to his nose. (Indicating.)

Q And did you say that, on that account, you couldn't identify him? A No, sir; I didn't say that I couldn't identify him. I said that he had a full face, and taller than me, and big shoulders, well built.

Q And were you at that time positive about him? Now, be frank with us? A Yes; I was positive about him.

Q And then why did you say that you were not positive of the defendant's identity, in the Police Court? A I didn't say that I wasn't positive. I said that the identification that I gave of him, after seeing him in the Police Court, the identification that I gave him then, led me to say that he was the other gentleman that was in the holdup.

Q And, when you got into the poolroom, you looked all around the poolroom? A Yes.

Q And you didn't recognize him in the poolroom, did you, Monahan? A No.

Q And yet you are just as positive as you are of this

CASE # 632

man's identification, to-day? A Yes.

RE DIRECT EXAMINATION BY MR. O'CONNOR:

Q And you are under oath, young man. You understand that? A Yes.

Q And, realizing the solemnity of this occasion, and realizing that the defendant is on trial for his liberty, you are positive that this was the man that held the gun to your stomach, and held you up? A Yes.

Q No doubt about that? A No, sir.

Q And you had a full, square look in his face?

A Yes, sir.

Q Right under the lamp post? A Yes.

Q With the light shining right into his face? A Yes.

RE CROSS EXAMINATION BY MR. CAMPBELL:

Q You say the light was shining right into his face?

A Yes; he stood under the lamp post, and the light shined right out.

Q And he wore a hat; didn't he? A Yes, sir; but the light shined out.

Q And you are infallible; are you? A Yes.

MR. O'CONNOR: I don't think he understands the meaning of the word at all.

CASE # 632

MR. CAMPBELL: Oh, yes, he does. He said
that before.

BY MR. O'CONNOR:

Q Now, do you know the meaning of the word infallible?

A Yes.

Q Do you mean that you couldn't make a mistake?

A In this case, I couldn't make a mistake.

Q That is, you mean that you cannot err, that you are
infallible, as to the identification of the defendant?

A Yes.

Q That is, that you can't be mistaken here, and that
you are positive of the identity of this defendant?

A Yes; that's what I mean.

MR. CAMPBELL: I renew my motions, made at
the close of the People's case, as matter of law.

THE COURT: Motion denied.

MR. CAMPBELL: Exception.

(The Court then admonished the jury in
accordance with Section 415 of the Code of
Criminal Procedure, and took a recess until five
minutes after 2 o'clock.)

CASE # 632

AFTER RECESS.

THE COURT'S CHARGE.

Gentlemen of the Jury:

The magnitude of the offence charged against this defendant must not be under estimated by you; but the enormity of the offence charged against this defendant should not in the slightest degree withdraw your attention from an honest, fair and impartial consideration of the case. Nothing extraneous should divert your minds from the evidence in this case. Jurors best serve the State and their own consciences, when they record their finding upon the legal and sworn testimony in the case. Jurors are not responsible for the law. Jurors are only responsible to their oaths and to their duty.

Your duty is simple. It is to record the finding of certain facts.

The People claim that the defendant committed the crime of robbery in the first degree. The defendant contends that he is innocent. There are certain safe-

CASE # 632

guards which envelope a person charged with crime, which neither the Court nor the jury can take from him; and, in performing your duty, you are to consider the law as charged by the Court, you, however, being the exclusive judges of all questions of fact. You are to give such consideration to the facts in the case as your best judgment dictates. You may interpret the facts as you believe them to have been established; and it is your duty to apply the law as charged by the Court to the facts in the case, and to make your finding accordingly.

The indictment charges this defendant with the crime of robbery in the first degree, grand larceny in the first degree, assault in the first degree, and criminally receiving stolen property, knowing the same to have been stolen.

Robbery is the unlawful taking of personal property from the person, or in the presence of another, against his will, or by means of force, or violence, or fear of injury, immediate or future, to his person or property.

To constitute robbery, the force or fear must be employed either to obtain or to retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.

CASE # 632

When force is employed, the degree of force employed is immaterial.

The taking of property from the person of another is robbery, when it appears that, although the taking was fully completed without the knowledge of the person robbed, such knowledge was prevented by the use of force or fear.

In this case, the People claim that the crime committed by the defendant was robbery in the first degree. Robbery in the first degree is defined as follows:

"An unlawful taking or compulsion, if accomplished by force or fear, is robbery in the first degree, when committed by a person being armed with a dangerous weapon, or being aided by an accomplice actually present."

The People claim that not only was this defendant armed with a dangerous weapon, which he aimed and pointed at the body of the complaining witness, but that there was a confederate actually present at the time that the complaining witness was put in fear of his life, and when he was compelled to deliver to this defendant personal property belonging to him.

Grand larceny in the first degree is committed when a person, with intent to deprive or defraud the true owner of his property, or of the use and benefit thereof,

CASE # 632

or to appropriate the same to his own use, takes property of any value, in the night time, from the person of another, and appropriates the same to his own use, and without the consent of the person from whom the property is taken.

In grand larceny in the first degree, no force is employed, and no fear, or violence is necessary; but the mere taking of property, of any value, from the person of another, without his consent, in the night time, constitutes grand larceny in the first degree. While, in robbery in the first degree, there must be fear, force or violence accompanying the taking of the property.

The third count in the indictment charges the defendant with the crime of assault in the first degree. A person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, assaults another with a loaded firearm, or any other deadly weapon, or by any other means or force likely to produce death, is guilty of assault in the first degree.

In this case I charge you that the law is plain that, when a person commits an assault upon a human being, with a loaded firearm, while engaged in the commission of a felony; that is to say, for the sake of illustration,

CASE # 632

if I aim a loaded firearm at a human being, with the intent to commit a felony upon his person, that is, to take from him property, and, under the law the taking of property from the person of another, in the night time, of any value whatever, is a felony, grand larceny in the first degree; that person is guilty of a felony.

The fourth count in the indictment charges the defendant with criminally receiving stolen property, knowing the same to have been stolen. To constitute the crime of criminally receiving stolen property, there must be evidence satisfactory to a jury, beyond a reasonable doubt, that, at the time of the taking of the property, the person receives the property criminally, knowing the same to have been stolen; that is, that he had knowledge, at the time, of the criminal character of the property and, with that knowledge, he so receives it.

The law authorizes a jury to convict a person charged with a crime of any one of the crimes embraced in the indictment; that is, where the charge is robbery in the first degree, grand larceny in the first degree, assault in the first degree and criminally receiving stolen property, knowing the same to have been stolen, the jury is empowered to convict the defendant of either of the crimes charged in the indictment. But,

CASE # 632

while the jury is vested with such authority, it must not be arbitrarily or capriciously exercised. The verdict of a jury should be based on the evidence in the case, and consistent with the degree of crime charged.

The People's case rests upon the testimony of a single witness. It has never been the policy of the law of this State to measure the quality of testimony by the number of witnesses. If a witness tells a clear and consistent story, which carries with it conviction as to the credibility of the witness, a story which bears the stamp of truthfulness, and if the jury believes that it unerringly points but in one direction, the testimony of such a witness is as effectual and binding as the testimony of a dozen witnesses whose stories may not be as consistent, as clear, and as much entitled to the credit given to the testimony of a single witness in the mind of the jury. Therefore, it is the quality of the testimony that is to be considered, rather than the quantity.

This young man, the complaining witness, claims that he was peacefully walking on a public highway in the County of New York, when suddenly he was approached by this defendant and another person; that this defendant aimed a revolver at his person, and made some

CASE # 632

threat, in pursuance of which the complaining witness parted with his property, stating at the time that he was in fear.

That, thereafter, the defendant and his confederate ran away, or walked rapidly away; and that, when the complaining witness observed the defendant and his confederate were at a safe distance, and that the defendant was in no position to discharge his deadly firearm at him, he followed the defendant and his confederate for some distance, and then made a complaint to the police.

That, within about twenty minutes after the alleged robbery, accompanied by a police officer, whom, as I understand the evidence, the defendant knew, the complaining witness went to a pool and billiard parlor on Third Avenue, in the City of New York, and there pointed out the defendant as the person who had aimed at him this revolver, and taken from him a portion of the property that he lost. The defendant was apprehended, and now he has his day in court.

He claims that he is innocent of the crime charged. He contends that he is a victim of circumstances; and that, although the complaining witness was deprived of his property, and that that property was taken by force

and violence, that the complaining witness is honestly mistaken as to his identity. He says, "I am not the man that committed this robbery. I am not the man who aimed this revolver at the complaining witness."

So there, you will observe, is presented a sharp question of fact for your determination. Who is telling the truth? If you answer that question to your satisfaction, on the evidence, you answer the principal question in this case.

The defense is called in law that of an alibi, meaning that, at the time of the commission of the alleged crime, the defendant was elsewhere. An alibi is one of the best defenses that an innocent person, charged with crime, can interpose.

Assuming that a person is charged with wrongdoing committed at a certain place, at, say, three o'clock in the morning; and, if he can prove that he was elsewhere, at that time, it will certainly exculpate him of the charge of wrongdoing.

But it is a defense which may be easily fabricated, and is often wrongfully interposed, the Court have said. But, if the evidence satisfies you, gentlemen, as to its truthfulness, it is a good defense; and it is sometimes the only defense that an honest and innocent person can

CASE # 632

interpose. Nor does the law require that such a defense be proved beyond a reasonable doubt; nor does the burden rest upon the accused to prove that defense; because the burden of proving a defendant's guilt does not shift from the People to the defendant. It is incumbent upon the People to prove the guilt of the defendant, beyond a reasonable doubt. In considering whether or not the defendant is guilty or innocent of the crime charged, you are to carefully weigh all of the evidence in this case. You may consider that, within a short time after the alleged commission of this crime, this defendant was apprehended; and that thereafter property belonging to the complaining witness was returned to him.

Who had an interest in the return of that property? That is a matter which you are to consider, as well as all the other evidence in this case. The identical property belonging to the complaining witness, taken from his person as the result of his having been put in fear, and the attempt to use violence towards his person, after this defendant is apprehended, and charged with the commission of the crime, was returned to the complaining witness.

Who returned the property? At whose instigation was this done? Did the individual who caused the

CASE # 632

return of the property have knowledge as to who was the taker of the property, as to who was the individual who feloniously stole and took this property?

So, gentlemen, you should carefully and honestly consider all this evidence, and weigh it, and determine whether any fact that has been testified to bears the stamp of reliability or truthfulness, or whether it is susceptible of a different interpretation, whether it is consistent or inconsistent.

The complaining witness says that he is positive in his identification; that he realizes the enormity of the offence charged against this defendant; that he is positive that this defendant was the person who robbed him, because he had an opportunity to look at his face while the revolver was aimed at his person.

If you believe that the People have established the guilt of the defendant, beyond a reasonable doubt, it is your duty, upon your oath, to render a verdict accordingly. If you believe that the People have failed to do that, it is your bounden duty to acquit the defendant.

But you must not, I caution you, allow the consequences of your verdict, if any, to influence you, because that is something with which you have no concern

CASE # 632

whatever.

The defendant is presumed to be innocent, until the contrary is proved to your satisfaction.

He is entitled to the benefit of every reasonable doubt arising on the evidence in the case. But jurors cannot use a reasonable doubt as a subterfuge, in order to avoid the performance of a disagreeable duty. A reasonable doubt is such a doubt as reasonable men may entertain, after a careful and honest review of the evidence in the case.

Evidence of good character has been offered. The law declares that good character is no excuse or justification for the commission of crime. But evidence of good character is always of great importance in a criminal case, whether the offence charged be ordinary and trivial, or the most heinous offence known to the law. Good character may be considered by a jury as any other probative circumstance in the case; and is of value not only in doubtful cases, but where the evidence appears to a jury to be strongly against the defendant.

Your verdict, therefore, will be, guilty of either one of the degrees of crime that I have defined, or not guilty.

Any requests or exceptions?

2052

CASE # 632

MR. CAMPBELL: None.

THE COURT: You may retire, gentlemen.

(The jury found the defendant guilty of robbery
in the first degree.)

CASE # 632