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CASE #2718

The People v. Frank Summers.

- : I N D E X : -

December 10th and 11th, 1919.

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CASE #2718

COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part V.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

FRANK SUMMERS.

3225

New York, December 10th, 1919, etc.

Indicted for murder in the first degree.

Indictment filed July 23, 1919.

A p p e a r a n c e s:

For the People:

ASST. DISTRICT ATTORNEY JAMES E. McDONALD.

For the Defendant:

COLONEL WILLIAM HAYWARD.

Tried before HON. CHARLES C. NOTT, JR., J., and a
jury.

THE CLERK: Frank Summers, if you wish to challenge an
individual juror, you must do so when he appears and before
he is sworn. Do you waive the further giving of this notice?

COL. HAYWARD: Yes.

A jury was then examined and duly sworn.

JAMES E. LYNCH,
Official Stenographer.

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The Court then admonished the jury as follows:

Gentlemen, as you have already heard in other cases, the law requires that in every criminal case the Judge should instruct the jury in every criminal case not to form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted, and as I have before explained to other juries, that is so that juries may keep their judgment in balance, so that they may not become partisans or advocates of one side or the other, or go to their jury-rooms with their minds made up in advance. It is so that you can keep your minds open and free and discuss the case with each other as fair judges. That not only conduces to rendering a just verdict, but very often neglect of that caution causes the jury to lose a great deal of time in their jury-room, because you can readily see that when jurors go out with their minds made up in advance on one side or the other, they are not so likely to harmonize their views as they are when they keep their judgment free, simply go out with their memories stored with the facts of the case and discuss it in a judicial atmosphere.

Therefore, gentlemen, please keep your memories working, and store your memories with the facts in the case and do not form any judgment until all the evidence is in. Also, please do not discuss the case among yourselves or allow anybody to discuss it in your presence.

You are excused until to-morrow morning at 10:30 o'clock.

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New York, December 11th, 1919.

TRIAL RESUMED.

Mr. McDonald opened the case on behalf of the People, as follows:

May, it please your Honor, and Gentlemen of the Jury, as I have already told you, this defendant, Frank Summers, is indicted for murder in the first degree.

The People expect to prove that on the 12th day of July, 1919, the deceased, one John Owens, was in front of his residence, 408 West 36th street, at about eight o'clock in the evening. He was sitting there with his father-in-law, Mr. Givens, and a man by the name of Williams.

The defendant came along with a man by the name of Griffio or Grisso, or something like that. They passed the stoop where the deceased was sitting with his father-in-law, and near which Williams was standing.

The deceased asked Griffio for a cigarette. The defendant retaliated with some remark and the deceased retaliated back again, saying, "Well, that is no way to talk." The deceased got up from the stoop and went to where these two men were and an argument arose.

Williams went over to quiet the crowd and to quiet the deceased and the defendant and then went back again to the stoop. I should say Givens had gotten up from the stoop and sat down again, and when Givens looked around the defendant had the deceased, who was only wearing trousers and a shirt, had him by the throat and was stabbing him with a knife; that he

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did stab him, as the autopsy will show, four times.

One of these four stab wounds was fatal. It was in the neck, severing one of the muscles of the neck; that the defendant and Griffo then ran away, the defendant running into 424 West 36th street, and there meeting a man whom he had visited earlier in the evening by the name of Hicks.

The defendant then told Hicks he had just killed a man downstairs and wanted Hicks to let him stay in his room. Hicks refused and then Hicks took him over the roof and took him down through another house. As they were coming down - meanwhile, of course, an ambulance was called and an ambulance surgeon appeared, and the deceased was pronounced dead by the ambulance surgeon - detectives arrived on the scene, and through certain information that they received, they proceeded to search the house, and going up in the house, I think it was 418, they got Hicks and the defendant coming downstairs.

The defendant at one time said that he threw the knife away, that he did not know where he had thrown it.

The People will show that the defendant did this stabbing without any justifiable cause; that if anything else occurred it was nothing more than words, and that the deceased did not raise his hand to the defendant.

If the People prove these facts beyond a reasonable doubt they will ask you to bring in a conviction against this defendant.

SHAW-WALKER
CLERK
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S A L E M G I V E N S, called and duly sworn as a witness on behalf of the people, testified as follows:

(Residence 408 West 36th Street).

DIRECT EXAMINATION BY MR. McDONALD:

Q What do you work at, Mr. Givens? A The Pennsylvania.

Q What work do you do over there? A Longshoreman, handling freight.

Q Where did you say you live? A 408 West 36th Street.

Q 408? A Yes, sir.

Q With whom do you live there? A How long I been living there?

Q No, with whom do you live there? A I live there with my wife.

Q How long are you living there? A 3 years.

Q Talk up-louder, please? A About three years.

Q Did you know one John Owens? A Yes, sir.

Q Did he live there with you? A Why, he stopped there when he come back from the shore, stopped there.

Q Was he stopping there on the 12th day of July, 1919?

A Yes, sir.

BY THE COURT:

Q What is that number? A 408 West 36th Street.

BY MR. McDONALD:

Q Was he living on the 12th day of July, 1919? A Yes, sir.

Q Who else was living there? A Why, his wife and my

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wife and my wife's son, that was all.

Q Is that Ira Green? A Ira Green, yes.

Q Where is Ira Green now? A He is away out somewhere in Oklahoma, somewhere with a show.

Q What floor do you live on? A The first floor.

Q The first floor? A Yes, sir.

Q Near what avenue, nearest to what avenue? A Ninth avenue.

Q You live between Ninth and Tenth avenues, do you? A Ninth and Tenth, yes, sir.

Q Would you call that the ground floor? A The first floor.

Q The first floor, do you walk up the flight of stairs? A Just as you go on the stoop, it is the first floor.

Q It is a stoop house, is it? A Yes, sir.

Q How many steps up? A Three.

Q Had you had dinner before eight o'clock on the 13th of July, or supper? A Yes, sir, we had supper.

Q You and who else? A I and Owens.

Q And that was inside? A Yes, sir.

Q Then after that what did you do? A Well, we come out on the stoop.

Q And did you sit on the stoop? A Yes, sir.

Q You and Owens? A Yes, sir.

Q Anybody else? A Yes, sir.

Q Who? A Henry Williams.

Q Williams lived in the same house as you do? A Yes, sir.

Q In the same apartment? A Yes, sir.

Q Does he live with you? A No, sir.

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Q Do you remember what time it was that you came out of your apartment when you sat on the stoop? A In July -- between seven and eight o'clock.

Q Now, then, do you remember seeing the defendant at any time that night? A Why, I remember seeing him that evening.

Q About what time was it that you saw him? A About between seven and eight o'clock.

Q And where was he when you saw him? A Him and another gentleman, they call Brisk.

Q Brisk? A Yes, sir, was coming by.

Q Coming by where? A Coming by the stoop, and Chick Owens and me were sitting out there talking.

Q Where were they going, towards Ninth or towards Tenth avenue? A Towards Ninth avenue.

Q Now, then, did you know Brisk before this night? A I knew of him, yes, sir.

Q Did you know the defendant before that night? A No, sir.

Q I am talking about the night of the 13th of July? A No, sir, I didn't know him.

Q Now, did anything happen as they were passing the stoop of 408 West 36th street? A Why, Chick gets up and asks the defendant for a cigarette.

Q The defendant here? A Yes, sir, for a cigarette.

Q What did he say? A He replied he didn't have any.

Q What? A He said he didn't have no cigarette.

Q Who did? A That gentleman there (Indicating).

Q The defendant? A Yes, sir, he didn't have no cigarette.

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Q All right? A And Brisk says, "I haven't got any cigarette," if you want a cigarette I will give you the price of a cigarette."

Q Yes? A And Chick speaks up and says, "No, I wasn't speaking about that," he says, "I was only wanting a cigarette."

Q Now, keep your voice up, we all want to hear you? A Yes, sir, and he steps on down there about five or six steps from the stoop that I was sitting at.

Q Who did that?

MR. HAYWARD: Now, just a minute. Ask the witness if Chick was the deceased, so that the jury will understand who he means by Chick.

MR. McDONALD: He said Chick Owens.

MR. HAYWARD: That is the deceased, and the correct name of the other man was Griffin. He calls him Brisk.

THE WITNESS: That is all I know him by, Brisk.

Q You said Chick, do you mean that is the name of the deceased?

A The one that got killed.

Q A nickname of the deceased? A A nickname.

Q Chick Owens? A Chick Owens.

Q Now, go on, you were talking about his being five feet away, that Chick Owens got five feet away from the stoop where you were sitting? A Well, they got arguing down there.

Q Who did? A That gentleman (Indicating).

Q This defendant here? A Yes, the defendant and Owens.

Q Call him the defendant, please? A The defendant and Owens got arguing.

Q Where was Brisk then? A Brisk was standing alongside the

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defendant and I goes down there and just gets Owens and starts back on, with him to the stoop, and this gentleman you call Brisk says, "Come back and see what the argument is."

Q Whom did he say that to? A He was talking that to Owens.

MR. HAYWARD: I did not understand the witness's answer.

(The stenographer repeats the previous answer).

Q Then what happened? A Then Chick goes on back and starts arguing with him again, and this gentleman here raises his hand up this way (Illustrating), his right hand.

Q Which gentleman? A The defendant raises his right hand up.

Q Yes? A And then Owens grabbed him by his coat, and three licks was passed, and the third lick, I seen blood fly about this high (Indicating), on top of Owens' head, and this defendant, he tried to get Chick loose from him, and he turns around and sets him down on the white folks' stoop and says, "Man, turn me loose," right that way.

Q Who said that? A The defendant. He said, "Turn me loose." And some way or another he gets loose from him and runs on back up towards Eighth avenue and goes in some one's house up there.

Q Now, you say you saw three licks passed? A Yes, sir.

Q What do you mean by that? A Well, just striking the man that way (Indicating), that's all I can say.

Q Well, who was making those? A The defendant.

Q Well, why don't you say that? A The defendant.

Q You say that you saw the defendant make three licks? A Yes, at Owens, at Owens.

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Q At Owens? A Yes, sir, at Owens.

Q And was it at the third one you say you saw blood? A The third liock I seen blood fly off the top of his head.

Q Well, you saw blood coming from whom? A Coming from Owens.

Q Now, what did you do then? A Well, there was nothing to be done only they made an alarm and sent around to the station house there and policemen comes down and caught this young man.

Q How was Owens, your son-in-law, dressed, how was he dressed?

A How was who dressed?

Q Owend? A Well, he had on common clothes.

Q Well, did he have a pair of trousers on, pants? A Yes, sir.

Q Did he have a coat and vest on? A No, sir, he did not.

Q His dress was a shirt? A Shirt and trousers, that's all.

BY THE COURT:

Q What happened to Owens after he sat down? A Well, just laid back this way (Illustrating).

Q Well, was he alive when the ambulance came or was he dead?

A Why, he was dead.

Q When the ambulance came? A Yes, sir, he was dead.

BY MR. McDONALD:

Q Did you see where the defendant struck Owens? A (Witness indicating).

Q What is that? A Right along up there.

MR. McDONALD: Indicating the right part of the neck.

THE WITNESS: Let me get this thing right. Owens was standing, Owens walks up from the stoop this way and he struck

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him with his right hand (Illustrating), the defendant did.

Q Who did? A The defendant did.

Q The defendant struck him? A The defendant made a lick at Owens with his right hand.

Q And Owens, you say, was standing in front? A Owens was standing like down here on the street and the defendant was standing up on the sidewalk (Illustrating).

Q And you say you saw him strike him up here (Indicating)?

A Yes, stabbed him, on the left side, it was.

BY THE COURT:

Q You say now the left side of the neck? A The left side, right along here (Indicating).

Q Just at the base of the neck? A Yes, sir, right along here, the left side of the neck this way (Illustrating).

BY MR. McDONALD:

Q Was that immediately after you saw the defendant strike Owens on the left side of the neck that you saw blood spurting?

A The blood shoots up just right immediately.

Q Had you seen Owens do anything before that? A No, sir.

Q Did you see him strike the defendant? A No, sir, he didn't strike him at all. I didn't see him strike him.

Q Did you see the defendant afterwards? A Yes, sir.

Q Where? A Over to the station house, what I call it.

Q At the station house? A Yes, sir.

MR. McDONALD: That is all, you may examine.

CROSS-EXAMINATION BY MR. HAYWARD:

Q ~~Gives~~ Owens, how long have you lived in New York? A Pretty near

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about four years.

Q About four years? Where did you come from? A Paducah, Kentucky.

Q Paducah, Kentucky? A Yes, sir.

Q On the night in question, the 12th of July, this man you call Brisk, and I presume his real name is Griffin, and the defendant here were walking by your house, weren't they, the house where you live?

A Yes, sir.

Q Answer, the reporter cannot hear a nod of your head? A Yes, sir, walking by my house.

Q What part of your house do you live in, the front or back?

A Front.

Q The front part on the first floor? A Yes, sir.

Q Now, which direction were they going? A Towards Ninth avenue.

Q Going right along, walking right along, they did not stop in front of the stoop? A Never stopped.

Q Never stopped at all? They you said that the deceased boy, the boy that was called - you called him Chick? A Yes, Chick Owens.

Q You say he called down and asked one of them for a cigarette? A Yes, sir.

Q Is that right? A Yes, sir.

Q And that Griffin told him he did not have a cigarette but he had the price, is that right? A No, I didn't say that.

Q I understood you to say so? A Well, you understood wrong. I said that gentleman there said he didn't have no cigarette at first.

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Q Yes? A Then Brisk said he would give him the price of a cigarette.

Q Then what did Owens say? A What did Owens say?

Q Yes? A Well, Owens said, "Well, I was only just asking for a cigarette."

Q What? A Only just asking for a cigarette.

Q Well, then, how did he come to go down off the stoop? A Who, me?

Q No, Owens? A Well, he asked for a cigarette.

Q And the men told him they did not have a cigarette? A Well, then they started arguing.

Q What was the argument about? A I didn't hear the argument.

Q How far away were you? A I guess I was about as far as that window (Indicating).

Q The window back of the jury-box? A Yes, sir.

Q About twenty-five feet? A I don't know how many feet, but that's about the distance.

Q Well, toward Ninth avenue? A Yes, sir.

Q So that the defendant here and Griffin had gone on past your house? A Walking on past my house.

Q And Owens followed them down to where they were? A All three of them were walking along talking.

Q Well, answer the question, did Owens follow them past your house? A Owens must have followed.

Q After they passed your house? A Walking after them asking for a cigarette.

Q So you did not hear the argument? A No.

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Q So you don't know what went on as far as what they said was concerned, do you? A No, sir.

Q Then what did Owens do? A What did he do?

Q Did you go down and get him? A I went down and brought Owens back towards the stoop.

Q How did you do, drag him back towards the stoop? A Just caught him.

Q Caught him how? A Caught him around his waist.

Q And pulled him back? A Pulled him back.

Q Had you to take him around the waist, what did he do, struggle? A No, he didn't struggle at all.

Q Then why did you take him around the waist, why didn't you take him by the coat or shirt-sleeve? A He didn't have any coat on.

Q Why didn't you take him by the shirt-sleeves? A Well, I wanted to get him away.

Q Why did you want to get him away? A I didn't want him to get in any trouble.

Q Why did you think he was going to get in trouble? A Well, when I have to tell you what I heard, I wanted ^{to get} him away because I heard this gentleman had one man down there and had a knife around his throat and would have killed him if it hadn't been for some man that kept him from killing him. That's reason. I heard he had a bad record.

Q Well, you didn't hear that about Owens, did you? A No, I never heard that about Owens.

Q But you could not hear anything of what these men were saying

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on the sidewalk? A No, I didn't hear.

Q But you went down and grabbed Owens around the waist and dragged him back up on the stoop? A Brought him towards the stoop.

Q What condition was he in as to being drunk? A Being drunk?

Q Yes? A He wasn't drunk.

Q Was he at all drunk? A No, sir.

Q Had he been drinking? A No, sir, he had not been drinking.

Q Did not show any signs of it? A No, sir, no signs at all.

Q So it was not because you thought he was drunk that he was going to get in trouble? A No.

Q You thought he was going to get in trouble and then you brought him back? A That man was drunk. He wanted to drink a pint of whiskey. He come by there half drunk.

Q What? A He drank a pint of whiskey before he come down there.

Q Who drank a pint of whiskey? A The defendant.

Q How do you know? A Well, that man that come here as a witness told me was drinking up at his house.

Q Well, somebody told you that? As a matter of fact you do know that Owens had been drinking, don't you? A No, sir.

Q And was quarrelsome? A He never was quarrelsome.

Q And that is the reason you went back and pulled him back around his waist? A No, well, he was a gentleman all the way through.

Q You say that is what gentlemen always do? A No, he was a gentleman all the way through.

THE COURT: He said he was a gentleman all the way through.

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THE WITNESS: He has got the name everywhere like that.

Q Never mind about the name. We will prove that if it becomes necessary. I want to know if you could hear anything these men said when you were sitting on your stoop, before the time you went down to drag Owens away? A I never heard nothing said.

Q Then when you got him back to the stoop safely, what happened, how far away then were these two other men, Griffin and the defendant? A Well, they was not past awat very much then. They was not far away then. They had stepped back toward the stoop, talking to one another.

Q How far back? A About as far as from here to here, just about that far (Indicating).

Q A few feet? A Yes, talking to one another.

Q Then what happened? A Well, Griffin or Brisk, or whatever you call him, said, "Come back and see what the argument is," and when they come back --

Q When who come back? A When Chick went back Brisk says, "Come back and see what the argument is."

Q Did Chick go back? A He come back there.

Q Now, he got down off the stoop? A He walked down in the street.

Q Off the stoop? A Off the stoop in the street.

Q And then crossed the sidewalk? A Yes.

Q Into the street? A Into the street.

Q And went to where these men were? A Went there talking to Brisk.

Q After you had pulled him off and taken him back once? A Yes.

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Q Then what happened the second time when he got there?

A Henry Williams walked up and patted this young man on the shoulder.

Q What young man? A The defendant, and tried to get him to go on away, and he didn't go, and that's where the argument started.

Q Oh, but he was going, wasn't he, towards Ninth avenue? A I didn't see him going, I don't know what his ambition was to do.

Q But you say he walked towards your house on his way to Ninth avenue awhile ago? A Well, I say that yet.

Q That is right, isn't it? A Yes.

Q Now, when Owens, Chick Owens go back to these two men the second time, what happened? A The second time?

Q Yes? A I didn't say nothing about no second time.

Q Well, you said you went down to him after they passed your house and got as far as this window (Indicating), and that then you went around and got your arms around the deceased, Owens' waist, and pulled him back to the stoop, and then he went down off the stoop and across the sidewalk and up to where the men were the second time, isn't that right? A Yes, that's what I said.

Q Now, when he got there the second time -- A (Interrupting) Here's what I said, when the gentlemen were passing the stoop he gets up and asks for a cigarette.

Q Well, we are all past that part of it.

THE COURT: Well, Mr. Hayward, you just asked him a question, if the question was correct as you put it. He says that was not correct, and he wants to say what was correct.

MR. HAYWARD: All right. I am perfectly willing if you

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wish, but I think he is evading the question.

THE COURT: I do not think so. You asked him what was the situation on going there the second time. Now, let him state what happened?

A Then two gentlemen was passing by the stoop. He stepped down and asked them for a cigarette.

BY MR. HAYWARD:

Q Yes? A And just kept talking like men will do, and walked down a little piece and started arguing. Meantime I goes and gets Chick and starts on back with him.

Q Yes? A Then big Brisk says, "Come on down back and see what the argument is."

BY THE COURT:

Q Then he came back? A Yes, sir.

BY MR. HAYWARD:

Q He came back the second time, went back the second time?

A Why, if you call it the second time, it was the second time.

Q Yes, that is what I call it, the second time. Then what did Chick Owens do when he got back there the second time? A What did Chick Owens do?

Q Yes? A He didn't do anything at all, only just when he got back the second time, this man made a strike at Chick Owens. Chick Owens just put up his hands.

Q Made a strike at Owens? A Yes.

Q Before Owens did anything? A Before he did anything, Owens never done anything at all.

Q All the way through he never did anything at all? A All

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the way through that boy never done anything.

Q Not a thing at all? A Not a thing at all.

Q Never took hold of the other man, never choked him or did anything to him? A Never hit him at all or did nothing at all.

BY THE COURT:

Q Did you not say he had hold of his coat? A He had hold of the gentleman's coat, that's all.

BY MR. HAYWARD:

Q Oh, he did take hold of him? A He had hold of his coat.

Q Oh, well, then, he took hold of him? A He took hold of his coat.

Q What part of his coat, up around his throat? A No.

Q Where, his coat tails? A No, he couldn't have coat tails, he had his face turned.

Q Well, what part of his coat? A Right along here on his coat (Indicating).

Q Just about here (Indicating)? A Yes.

Q Indicating the top button of that coat? A Right along here where he had hold of his coat (Indicating).

Q When did he take hold of Owens? A When he took hold of Owens?

Q That is, the second time? A You mean when the defendant took hold of Owens?

Q I should have said, when did Owens take hold of the defendant? A When he took hold of the defendant, when this defendant raised his hand this way (Illustrating), Owens made a grab at his coat.

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Q Made a grab at him? A Made a grab at his coat.

Q Now, Givens, didn't you say that night, and haven't you said on other occasions that Owens ran after the defendant? A Ran after the defendant?

Q Yes? A I never said Owens ran after the defendant.

Q What? A I ain't told anybody that he ran after the defendant.

Q You did not tell anybody that night or any other time that he did? A Big Brisk -- or that gentleman there, sitting right there (indicating at the counsel table), come into my house one night when I was in bed asleep.

BY MR. McDONALD:

Q Which gentleman? A That gentleman right there (indicating).

MR. McDONALD: Wait a minute. May we have whom the witness indicates?

MR. HAYWARD: He is in my office.

BY THE COURT:

Q Which gentleman do you mean? A That gentleman sitting right there (indicating at counsel table), he come to my house when I was in bed asleep and he says --

BY MR. HAYWARD:

Q Well, we will get down to that in a minute. I want to ask you first if on the night this first occurred, that this killing occurred, if you didn't tell people that night that the deceased Owens ran after the defendant? A That night?

Q Yes? A No, sir.

Q Did not tell anybody that night? A No, sir.

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Q Did you ever tell anybody that? A Ever tell anybody?

Q Yes? A I never told anybody he ran after that gentleman.

Q Did you ever tell anybody at any time that the deceased went up or ran up to the defendant and grabbed him by the throat?

A That gentleman (Indicating) tried to get me to say that. I never told that gentleman but he tried to get me to say it.

Q Did you tell anybody else besides this gentleman? A I never told anybody that. He tried to get me to say, "Didn't you see him grab him by the throat?" I said "No, I didn't see him grab him by the throat."

Q Didn't you tell anybody that he not only grabbed him, that the deceased Owens grabbed him by the throat, but that he put his hand back to his hip pocket like this (Illustrating)? A No, sir. That gentleman tried to get me to tell that down in the place, and he come back to my house and my wife turned up the lamp and he said, "Now, he ain't the man." He said, "What makes you run out of the office, I want to get all the story he is going to tell." He said, "No, he ain't the man." I said, "No, I ain't the man at all." He said, "Well, you come down here to Mr." - wait a minute, what is the gentleman's name that carried soldiers out? What is his name?

Q Perhaps you mean me, I am Colonel Hayward? A Colonel Hayward, that's it. He says, "Come down to Colonel Hayward's office and tell him the story." I said, "I haven't got any story to tell, I am not going to allow on either side, I only tell the truth." Then he started in - he saw he didn't have a soft thing, I guess, and he said - he sent another colored gentleman around

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to my house three or four times, that is out there now (Indicating), and he tried to get me to come down and tell a lie.

Q Why did you think he wanted you to tell a lie? Didn't they tell you they wanted you to come down to my office and talk to me and tell me the facts of this case, and didn't you, as a matter of fact? A That's what that gentleman said.

Q Wait a minute. Didn't you as a matter of fact come to my office one day? A Never been to your office in my life, don't know anything about your office.

Q You never came down there? A No, sir, never went to your office.

Q But that is what they were trying to get you to do, to come down to Colonel Hayward's office? A Trying to get me down to your office?

Q Well, you might be interested to know that I tried to get Mr. Brothers, the Assistant District Attorney, to get hold of you and asked him to subpoena you too, and came up here to do it, and that nobody could get hold of you, at least I couldn't.

MR. McDONALD: I move that that statement be stricken from the record.

THE COURT: Yes, motion granted. I understood counsel to say the witness had been at his office.

MR. HAYWARD: Well, if your Honor please, I don't know whether I have the right to put that on the record or not. I thought I had after this ^{discussion} instruction had come up.

THE COURT: No, any statement of fact should proceed from

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the witness ^{chair} there.

Q This woman you say you are married to, Givens, does she ever go by any other name? A Green.

Q Green? Why would they call your wife Mrs. Green? A Why, Mrs. Green, they call her Mrs. Green, her first husband's name was Green.

Q But your name is Givens? A Givens.

Q Well, when a woman who has been married to one man marries another, she takes the second man's name, doesn't she? A Well, there are several ways for people to marry in New York, you know.

Q Yes, as a matter of fact, are you married to this woman? A Common law wife.

Q Common lawwife? A Yes.

Q You never were married to her by any ceremony? A No ceremony, no, sir.

Q Is her first husband living? A No, sir.

Q I thought you said he was out in Oklahoma somewhere? A I said her son was out there.

Q Her first husband is dead? A Her first husband is dead.

Q And you have taken her as a wife? A Yes, sir.

Q But you have never married her? A No, sir.

C A T H E R I N E G I V E N S, called and duly sworn as a witness on behalf of the People, testified as follows:

THE WITNESS: I can't think of the address, I can't read.

It is the same as my husband's.

DIRECT EXAMINATION BY MR. McDONALD:

Q You are also known as Mrs. Green? A Yes, sir.

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Q Is that the name of your first husband? A Yes, sir.

Q You live now at 408 West 36th street? A Yes, sir.

Q On what floor do you live? A On the ground floor.

Q Do you know one John Owens? A Owens?

Q Yes? A Yes, sir.

Q Did he live with you on the 13th day of July, 1919? A Yes, sir.

Q Did Mr. Givens live there with you too? A Mr. Givens, yes, sir. I had just married Mr. Givens, I hadn't long married Mr. Givens.

Q Well, you did not have any ceremony in church, just agreed to live together as man and wife? A No, City Hall.

Q What? A Down to the City Hall.

Q The City Hall? A Down town, you know, to the Tombs, or down there.

BY THE COURT:

Q Keep your voice up so we can all hear you? A I have such a cold. No, sir, I am not a common law wife at all. I am not a common law wife at all.

THE COURT: Well, I do not think we need go into that any further.

THE WITNESS: No, sir, I am not a common law wife.

BY MR. McDONALD:

Q Do you remember what time you had supper that night? A Well, we didn't have supper, it was late and we had dinner and supper together.

Q I see. Pardon me. Well, what time was it you had dinner and supper? A I don't know, I didn't look at the clock at all.

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Q Was it in the evening? A Yes, sir, in the evening.

Q After you had supper do you remember whether you remained there in the house? A I remained in the house.

Q Did you remain in the house? A Yes, they came out.

Q Who came out? A Mr. Owens and my husband and the other young man all come on the stoop.

Q They were all out on the stoop? A All on the stoop.

Q Which other young man do you mean, Williams? A Yes, Mr. Williams.

Q I see. Now, who was left in your house at that time? A Who was left in my house?

Q Yes? A My son.

Q What is his name? A He was sitting there.

Q What is his name, Ira, is it? A Ira, was sitting down eating when I hollered.

Q Now, did you have occasion to go to the window of your house?

A Yes, sir, I was right to the window.

Q Was it open or shut? A It was shut down, I heisted it up, I threw the window up.

Q Before you opened the window did you hear anything? A No, sir.

Q When you opened the window did you see anything? A Yes, sir

Q Where was Owens when you opened the window? A Owens was standing right where we live, here is the white people's house next door, we live this side, and Owens was standing up at our railing.

Q Owens was? A Yes, sir.

Q Where was Givens? A Givens was seated on the stoop. They

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all was on the stoop.

Q This railing you talk about is the railing going up the stoop?

A No, sir. We live here, you see, and the white people live next door. The janitor lived next door.

Q Well, is that nearer Ninth avenue or Tenth avenue? A Yes, going towards Ninth avenue.

Q The white people live nearer Ninth avenue than you do? A Yes, sir.

Q Wait a minute. Do the white people live nearer Ninth avenue than you do? A We lived at Tenth avenue and they lived at Ninth avenue.

Q Now, is there a railing running in front of your house?

A There is a railing runs just like this, like two railings is going in the basement, you see, and our basement, we have a ^{tenant} ~~tenement~~ in the basement.

Q Yes, now, you say that Owens was standing near that stoop?

A Yes, sir, right at the stoop.

Q The stoop of your house? A Yes, sir.

Q But towards the white people's house? A No, towards the other house.

BY THE COURT:

Q Speak up? A Towards the white people's house, yes.

BY MR. McDONALD:

Q That is what I said, towards the white people's house?

A Yes, he walked that way. When I got to the window than I saw him walk down toward the white people's house.

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Q Now, then, what did you see happen, if anything? A When I got to the window they was all there, I seen when this man come up to Owens.

BY THE COURT:

Q What man? A I don't know his name. I just only know him when I see him.

BY MR. McDONALD:

Q Now, do you see him in court now? A I don't know him because I never had any dealings with him.

BY THE COURT:

Q Do you know him by sight? A No, I couldn't see him good because they jumped off so quickly, after they done the fighting.

Q Well, do you know him by sight? A Yes, sir.

Q Do you see him? A Yes, he is over there (Indicating).

BY MR. McDONALD:

Q Is that the man you mean, madam (Indicating)? A No, he is here somewhere, I know, because he is very dark. I just got a glimpse of him. I couldn't see him good, because after he cut the man, he dropped right down and said to the man, "Let go of me," and the man he cut had a death grip on his arm, and he cut the man across both hands to make him let go, and he slammed him down, and the white gentleman next door took an old handkerchief and put it around his neck and tried to stop the blood.

Q Now, wait a minute, madam. Do you see the man in court now? A I wouldn't know him if I saw him, I just only knew him that night.

Q Now, just answer yes or no? A You can't tie me up, I am

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just telling nothing but the truth.

Q Yes, now, when you opened your window did you see Owens?

A Owens, yes, I see him at the white people's stoop with the blood running from him.

Q I am talking about when you opened the window first? A When I opened the window first?

Q Where was Owens? A Owens and this gentleman, or Owens and the man were standing talking, I don't know what they said.

Q Owens and another colored man? A There was a big man, a light man with him.

Q You say that Owens was talking to a colored man, one colored man, and that this colored man that Owens was talking to was with another man? A Yes, a big man.

Q Rather light? A Yes, a big man out there now (Indicating).

Q You have seen him outside there? A Yes, outside there.

Q Do you know that man? A Yes, I am very well acquainted with Griff for the last five or six years.

Q And Griff was with this man who was talking to your son-in-law? A He was with him and this man --

Q Just yes or no? A Yes, he was with him.

Q Now, you say that you did not get a good look at the man, at the shorter man? A No, I did not.

Q Now, did you hear any talk between Owens and the shorter man? A No.

Q What? A No.

Q What was the first thing that you saw? A I told you the

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first thing I seen was the two men, seen this man out there once by his arm, the first thing I seen. I didn't see nothing just only the blood.

Q All right, wait. You say that you saw Owens or saw this other man have hold of Owens, is that right? A Yes, sir.

Q Or did you see Owens have hold of this other man? A This other man had hold of Owens by his two hands, see?

Q Yes, and what happened? A When I seen them, he walked up to him, when I seen him, then I see the blood running.

Q The blood running from whom? A From Owens's throat.

Q From his throat? A Yes, sir.

Q Yes? A Then he chucked him down, said, "Sit down there."

Q Wait, who chucked him down? A The man that cut him chucked Owens down.

Q Well, you see, we were not there, madam, and we don't know who did it? A Well, I am telling you, the man that cut Owens chucked Owens down, Owens held him and then he cut him.

Q Held him where? A Held him across his hands.

Q Owens had hold of whose hands? A Had hold of the man that cut him.

BY THE COURT:

Q Now, wait a minute. You say that blood was running from Owens's throat? A Yes, sir.

Q Did you see what made it run? A The man had a knife, but I just couldn't see how long the knife was and I couldn't see what handle the knife had onto it.

Q What made the blood run from his throat? A I guess he

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must have cut it:

Q Did you see it? A Yes, I seen him cut him.

Q Well, what did you see then? A Well, after he cut him he tried to put him down.

BY MR. McDONALD:

Q Now, you have not told us about the cutting? A Well, when you ask me a question I must get the questions you ask me, don't I?

Q Yes? A Well, I am telling you the questions you asked.

Q Yes? A I don't get scared. There is nothing scares me.

Q All right. Now, what did you see this man doing that cut Owens? A What did I see him doing?

Q Yes? A I saw him after he cut him --

Q Well, tell us about the cutting? A After he cut Owens --

Q No, before he cut Owens, now, just the time he cut Owens?

A I don't know what happened between the two of them, talking. I couldn't say that because I didn't hear that. I want you to understand me good. I didn't hear them, what were the words between the two of them because the window was down, but when I rushed to the window, I throwed the window up, and as I throwed the window up I seen this man cut Owens, and the blood was running.

Q Now, you say you just saw -- A (Interrupting) Yes, the blood was running from his throat. Then Owens goes and he held him like this (Illustrating), and when Owens held him he said, "Let go of me, man," and he cut him across both hands.

Q You say that Owens held him? A Certainly, Owens held him. He couldn't do nothing else but try to hold him.

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Q When you say that the short man cut Owens, how did he cut him, do you know? A No, I don't know.

Q Did you see this short man make any motion of any kind? A No, I did not.

Q Did you see him strike him up around the chest in any way? A No, I did not.

Q All you say you saw was the blood coming from the neck of Owens? A From the neck of Owens.

Q You did not see anybody strike Owens with a knife? A There was nobody but them two, nobody but them two.

Q Did you see a knife in the hands of anybody? A I seen a knife in the hands of the man that cut him, because I could see just the blade of it. I couldn't see the handle of it, but I could see the blade of it.

Q All right, yes. Now, what happened then after Owens fell to the ground? A There was nothing happened, only the man was dead. After he fell to the ground he just bled to death, that's all, and the white gentleman next door was trying to hold him up with a handkerchief around his neck. The blood was going through the hole. He says, "I can't do him no good, Mrs. Green." That's all he said to me.

Q Did you see where this short man went? A Right after he done it, I hollered and screamed, so he went right straight down in the next house where the other janitor was and ran up to the roof.

Q Where, or what? A He ran straight through in the next house where the janitor was and meets the light fellow and says, "Take me up."

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Q Well, you were not there? A No, the fellow told us in the station.

Q You mean Hicks? A Mr. Hicks.

Q Did you see him again after that? A Who?

Q Did you see this short man that did the cutting? A I didn't see him because I went to the station house. They shoved him back in a room. I see him when they brought him in after he killed him.

Q What?

A After he killed the man I seen the officer brought him in.

Q Brought who in? A Brought this man in and I was hooting and hollering and crying so I didn't take much notice of him.

Q Did Owens die? A Why, yes, certainly, he couldn't help but die.

Q Was he dead at the time that he was brought into your house?

A Yes, he was cold.

MR. McDONALD: That is all, you may examine.

CROSS-EXAMINATION BY MR. HAYWARD:

Q Mrs. Givens, that is the name you go by, Mrs. Givens? A Yes, sir.

Q You say Owens was your son-in-law? A Common-law son-in-law.

Q I do not hear you? A He was a common law son-in-law. He was not my own son-in-law.

Q He was not married to your daughter? A No.

Q But living with her? A Yes, they was away on the road. They never lived in my house, they lived on the road.

Q But you called him your son-in-law? A Yes, I called him

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my boy that night.

Q But you called him your son-in-law? A Yes.

Q Because he was living with your daughter? A Yes.

Q Do you know, as a matter of fact, that he had a wife and two children in the South? A I don't know anything about it. When these men are on the road they do anything, I don't know anything about it, but he didn't live in my house. Now, there.

Q You say that Owens had the other man by the hands when you saw them, is that right, Mrs. Givens? A Do you think I am lying back and forward for you?

BY THE COURT:

Q Now, just answer questions? A I told you he had him by the hands, that's all I could say, but I didn't hear any words between them. There was men out there and I didn't hear any words between them.

BY MR. HAYWARD:

Q Now, Mrs. Green, if you will just answer questions I will be very brief with you. I ask you a very simple question. A Anything you ask me right I will answer.

Q Yes, I will not ask you anything that is not right. So that he had hold of the defendant's hand with one each of his own, did he?

A He had both defendant's hands. The defendant said, "Let go of me, man," and throwing him up on top of the steps. He wouldn't let him go, he held him so tight, I suppose there was death in him, he held them so tight, and he cut him right across the hands, and he was getting so weak from the blood he had to let go of him.

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BY MR. McDONALD:

Q Who had to let go of him? A Owens, he was getting so weak.

BY MR. HAYWARD:

Q And he had, for instance - Owens with his right hand had taken hold of the other man's left hand, and with his left hand he had taken hold of his right hand? A When I seen him he had both of the man's hands, then he was bleeding.

Q If he had hold of both hands, how could he have been cutting him the knife? A He said, "Let go of me, man," and he cut him just like that (Illustrating).

Q All the time trying to get away? A Trying to get away.

Q Yes, that is all, madam.

HENRY A. WILLIAMS, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence: 408 West 36th street).

DIRECT EXAMINATION BY MR. McDONALD:

Q Where did you live on the 12th day of July, 1919? A 408 West 36th street.

Q Did you live in the same house as Givens? A Yes, sir.

Q Did you know one John Owens? A Yes, sir.

Q Did you live with Givens? A No, sir. I lived in the same house they did.

Q You say that you knew John Owens? A Yes, sir.

Q Were you with him on the 12th day of July, 1919? A Well, me and him and Mr. Givens was sitting out on the stoop in front of 408.

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Q In front of 408? A Yes, sir.

Q About what time were you out there? A Well, I guess it was about between five and six, somewhere along there, I couldn't tell exactly the time.

Q Do you know the defendant? A No, sir.

Q Did you ever see him? A Never seen him to know him until that afternoon.

Q You mean the afternoon of the 12th of July? A Yes, sir.

Q And where did you see him then? A Seen him passing along 36th street.

Q Was the defendant with anybody at that time? A Yes, sir.

Q Do you know with whom he was? A He was a fellow that called Griffo.

Q Did you know Griffo? A Well, I have seen him along the river front. He is a longshoreman.

Q Where were these two men going? A They were going towards Ninth avenue.

Q Now, then, did they stop? A Well, no, sir, they didn't stop exactly, when Chicko asked --

Q Chicko, do you mean John Owens? A Owens, yes, sir.

Q The dead man? A Yes, sir.

Q Yes? A He asked the big fellow for a cigarette.

Q Who was the big fellow? A Griffo.

Q I see, and what was said? A Well, Griffo told him he had no cigarettes. So the little fellow, Frank, he spoke up and says, "We ain't got no God damn cigarettes."

Q By Frank you mean this defendant here? A Yes.

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Q What did he say? A He told him he didn't have no God damn cigarettes.

Q I see; what happened then, did Owens say anything? A Owens says something then.

Q What did he say? A Owens spoke up and said, "Well, you oughtn't to talk to me that way," he said, "I wasn't speaking to you." He said, "I was speaking to the big fellow," and so one word brought on the other.

Q Well, then, where was Owens and Griffio at that time? A Where was Owens and Griffio?

Q Yes, where were they? A Owens - Owens was not with Griffio.

Q I mean where was Summers and Griffio? A Well, they was -- they stopped then.

Q How far away from the stoop where you were sitting? A Well, it was about, I didn't have no rule or nothing, I couldn't measure it, you know.

Q I understand? A I had to guess at it.

Q Yes? A It was about ten feet, I reckon, something like that.

Q Then what happened, did Chick go on the stoop? A He was not sitting down, no, sir.

Q Did he get up from the stoop? A He was not sitting down when he asked him for the cigarette.

Q Oh, he had gotten off the stoop, had he? A Yes, he was standing up in front of the stoop.

Q Then what happened after Chick said, "I was not talking to you, I was talking to the big fellow," what happened then? A Well, they stopped and then the argument come up.

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Q Who stopped? A Griffo and Frank Summers stopped.

Q Well, did you hear what they were saying? A Well, they was arguing about Frank cussing him, you know. They kept arguing, and going on, so I told Frank to go ahead and not argue with him.

Q With whom? A With Chicko, with Owens.

Q Yes? A And I patted him on the shoulder and asked him what do you want to have trouble for. I told him he was a little intoxicated and to go ahead about his business and not to have any trouble with him.

Q Who did you tell that to? A I told that to Frank, so Frank then said, "N ~~own~~, let him come back here, I am going to cut his God damn throat". I said, "If you are going to do that, that is up to you, if you want to kill him that is up to you." So I turned around and walked on back in front of 408 and sit down, but before I could get to set down again on the stoop I seen Chicko was standing down beside the curb; and he was standing on the curb.

Q That is, Frank Summers? A Frank was standing on the curb and Chicko was down like in the ditch like.

Q In the gutter there? A Yes, and he reached out after Chick.

Q Who did? A Frank there, he reached out after Chick and grabbed him and when he grabbed at him he cut at him.

Q He cut at him? A What?

Q Who cut at him? A Frank did.

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Q Frank cut at Owens? A Yes, sir. He cut him up here the first time and then Chicko tried to rush to him, and by him being a little intoxicated he stumbled on the side of the curb and he kind of fell over and then he stuck the knife here in his neck (indicating).

Q Who stuck the knife in his neck? A Frank did.

Q You mean in Owens neck? A Yes, sir.

Q In there (indicating)? A Yes, sir.

Q You are pointing to the left side there? A Yes, sir.

Q Then what happened? A Well, then Chicko he stumbled over on the side of 406, on the bottom step and fell over and Frank, he ran towards 10th Avenue.

Q Yes, did you see Frank again that night? A Yes, sir.

Q Where? A After the detectives caught him and brought him back.

Q Did you see any mark on him at that time? A On Frank?

Q Yes. A No, sir.

Q Were you there when the ambulance came? A I was, yes, sir.

Q Did you hear the doctor say that Chick was dead?

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

THE COURT: Yes, objection sustained.

MR. HAYWARD: I have no doubt he was dead, that was proven.

MR. McDONALD: All right, I withdraw it.

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BY THE COURT:

Q Did Owens keep hold of the defendant with his hands after he was out in the neck? A Well, I couldn't tell you that, Judge.

Q Did you hear the defendant say, "Turn me loose" or "Let me go"? A No, sir.

Q Did you see the defendant cut Owens in the wrist?
A No, sir, I did not.

BY MR. McDONALD:

Q How many blows or stabs did you see the defendant give him? A Only two.

Q That was all you saw? A Yes, sir.

CROSS EXAMINATION BY MR. HAYWARD:

Q Why, Williams, you were there all the time, weren't you, from the very start of it on the stoop? A Yes, sir.

Q You and Givens and Owens? A Yes, sir.

Q After this talk about the cigarette took place, then Owens got down and went to where Grisso and the defendant were, didn't he? A Well, they walked up, he walked up the street, sure.

Q Yes, he walked over towards 9th Avenue? A Yes, Grisso called him, see?

BY MR. McDONALD:

Q What did you say then? A Grisso called him.

BY MR. HAYWARD:

Q Called whom? A Called Owens.

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Q To come to him? A To come back and see what the argument was.

Q Well, let me get it straight? A I am only telling the truth.

Q Do I understand you correctly that Owens went down to where these two men were once, and that then Givens put his arm around Owens' waist and dragged him up on the stoop?

A He did so.

Q He did? A He did so.

Q And after that Owens went back, again to where the men were, is that right? A Griffio called him.

Q But whether he called him or not, or didn't call him, he went down, didn't he? A Oh, yes, sure he did.

Q Now, you say that being intoxicated, and I could not understand which one you meant was intoxicated -- A (Interrupting) Well, Chicko was intoxicated.

Q The man who was killed was intoxicated, and that was the reason that you tried to get the crowd to separate? A Yes, sir.

Q Because you knew he was intoxicated? A Yes, sir.

Q Because you knew he was in an ugly mood? A Yes, sir.

Q Had you been with Owens previously? A No, sir, I saw him around in the house, you know.

Q You don't know how much he had had to drink? A No, sir.

Q But he was perceptibly intoxicated, you could tell that

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35 by his actions? A He was, sure, he was on the way. 40

Q Yes, that is all.

RE-DIRECT EXAMINATION BY MR. McDONALD:

Q He was able to talk all right, was he? A Sure, certainly.

Q He was able to go back when Griffo called him? A Yes, sir.

RE-CROSS EXAMINATION BY MR. HAYWARD:

Q Didn't you say he staggered a little, Williams? A No, sir.

Q I thought I understood you to say he staggered a little? A He didn't stagger until that boy reached out after him and he done cut him. The first time, he stumped his toe against the curb and he was bound to stagger then.

Q But before you told us that he struck at him there, I thought you told us that being intoxicated he stumbled and staggered?

MR. McDONALD: No, that was after the defendant had made an attack upon him first.

MR. HAYWARD: May I have that part of the record read?

(Stenographer repeats part of the testimony on direct examination).

MR. HAYWARD: Yes, that is all.

W A L T E R H I C K S, called and duly sworn as a witness on behalf of the people, testified as follows:

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(Residence 414 West 36th Street).

DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live, Hicks? A 414 West 36th Street.

Q Do you know the defendant? A No, sir, I don't know his name.

Q What? A Who is the defendant?

Q This gentleman here (indicating the defendant)? A Yes, Monk, I know him.

Q What do you call him? A Monk, that's all I know him.

Q You know him by the name of Monk, eh? A Yes, sir.

Q How long do you know him? A I got acquainted with Monk in the spring of last year.

Q Did you see him on the 12th of July, 1919? A Yes, sir.

Q About what time was it that you saw him first? A I seen him, he come to my house about I guess around 9 or 10 o'clock, or about 10 or 11 o'clock.

BY THE COURT:

Q In the night or day? A In the day.

BY MR. McDONALD:

Q Yes? A Him and myself worked together on the 11th of July and I got hurt and I had to go home, I couldn't work all night.

Q You and the defendant worked together? A Yes, sir. He worked all night but I got hurt, so bad, I couldn't work all night, and went home. He came around next morning to see me to see how I was feeling.

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Q That was about what time? A About 10 or 11 o'clock.

Q Did he bring anything with him? A He brought some whiskey.

Q Did you and he drink it? A Yes, sir.

Q How much did he bring? A He bought one half pint and I bought one half pint.

Q Did you send out for it or what? A I sent out for it, yes, sir.

Q What time did he leave your house that day? A He left my house around 12 or 1 o'clock.

Q Now, then, did you see him again that day? A No, sir.

Q Do you remember seeing the body of John Owens? A Yes, sir.

Q About what time was it that you saw the body? A I guess it was around half past seven.

Q Where was this body that you saw? A Lying in front of 408.

Q In front of 408? A Yes, sir.

Q Do you mean 408 West 36th Street? A Yes, sir.

Q Did you see any, or did you see the defendant at that time? A No, sir, not until I went up in my hall.

Q Well, did you look at, or how long did you remain looking at the body of Owens? A About 10 or 15 minutes.

Q Did you know Owens previously to the time you saw his body on the stoop? A Yes, did I know he did kill him?

Q What? A Did you say did I know he did kill him?

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Q No, I said did you know Owens before you saw his body?

A No, sir.

Q Where did you go then after you saw it? You remained and looked at the body or around the body of Owens 15 minutes and then where did you go? A I went home.

Q What floor do you live on? A One flight up in the back.

Q Now, then, did you go into your apartment? A No, sir.

Q Now, did you see anybody there? A I seen Monk there.

Q Where was it you saw Monk? A In the hallway.

Q What did he say to you? A He said, "Hicks, let me in your house, I done killed a man on the street".

Q What did you say? A I said "no".

Q Then what happened? A He said, "Well, supposing we go across the roof?" I said, "Go across the roof yourself".

Q Keep your voice up? A He said, "Supposing we go across the roof?" I said, "Go across the roof yourself".

Q Yes? ^A And he fell up against the door hollering "Poor me", take me across the roof, man". Then I went with him across there.

Q Did you go upstairs to the roof at your house? A Yes.

Q Then you crossed how many houses *on the roof of* how many houses? A Went over 16 and come down 18.

Q Went over 16 and came down 18? A Yes.

Q Did you see anybody as you came downstairs? A I didn't see nobody *but the policeman and plain clothes man, the detective.*

Q Was the defendant with you that time? A Yes, sir.

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Q The defendant was then placed under arrest, Monk was placed under arrest? A Yes, the policeman grabbed me first and I said, "I ain't the guy you want; that's the guy you want."

Q Pointing to whom? A To Monk.

Q I see. Then did they place him under arrest? A Yes.

Q And took him downstairs, did they? A Yes, sir.

Q Did they take you also? A Yes, sir.

Q Where did they take you? A 37th street.

Q Did they first take you over to where Owens was, did they take the defendant here? A No, sir, they carried me and him along together.

Q Well, you saw the defendant in the station house? A Monk, yes, sir.

Q Did the defendant say how he came to cut this man? A No, sir.

BY MR. McDONALD:

Q He did not tell you how he came to cut him? A No, sir, *he didn't hear it until he got down to the station house. He* told the officer, the man that asked him.

Q Now, did you see any cuts on the defendant? A No, sir.

Q Did you see any marks on the defendant? A No, sir.

MR. HAYWARD: No questions, Hicks.

MICHAEL J. SULLIVAN, (32nd Precinct, Shield No. *26993*), called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police Department of the City of New

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York and you were such on the 12th day of July, 1919? A Yes, sir.

Q What post did you have between the hours of 6 and 9 o'clock on the evening of that day? A I was on house duty.

Q You were on house duty? A Yes, sir.

Q And as a result of being ordered by your Lieutenant, did you go any place? A Yes, sir.

Q About what time did you go? A About 8:45 P. M.

Q Where did you go? A 406 West 36th Street.

Q Did you see anything there? A I did, sir.

Q What did you see? A I saw John Owens.

Q Where was John Owens? A He was lying on the sidewalk in front of 406 with his head resting on the stoop.

Q And what was the condition of the body? A He was bleeding, there was a couple of marks, one here on his neck and one on his chest, and he was bleeding.

Q Did you send in a call for an ambulance? A Yes, sir.

Q And the ambulance doctor came? A Yes, sir.

Q And pronounced Owens dead? A Yes, sir.

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MR. HAYWARD: I move that that be stricken out, if your Honor please, ~~that~~ this witness' testimony as to what the surgeon did about pronouncing the man dead when he got there, as hearsay.

THE COURT: Well, yes, it may be stricken out.

Q Did you afterwards see the body of John Owens? A Yes, sir.

Q When? A ^{next} The morning at the morgue.

Q There did you identify the body as the body of the man that you found at No. 408 the night previous? A Yes, sir.

Q To Dr. Schwartz, ^{the} Assistant Medical Examiner? A Yes, sir.

Q Is that all you know about this, Officer? A That is all.

Q That is all, Officer Sullivan.

MR. HAYWARD: No questions, Officer.

DAVID B. LAMBERT (22nd Precinct, Detective Division, Shield No. 274) called and duly sworn as a witness on behalf of the people, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Were you attached to the Detective Bureau on the 12th day of July, 1919? A I was.

Q Did you have occasion to go to the premises 408 West 36th Street? A I did.

Q About what time did you go there? A About 8:30 in the evening.

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Q Did you see, or what did you see when you arrived there?

A When I arrived in front of the premises 408 West 36th Street I saw a man by the name of Chick Owens, the deceased, lying on the stoop, bleeding from the throat.

Q What did you do then? A I tried to question the deceased.

Q Now, you talked to several citizens? A I met several citizens on the stoop and asked them what they saw --

Q No, you cannot tell us what they said. After they told you something did you go any place? A I did, I went to the premises 418 West 36th Street.

Q Then what did you do? A I went looking through different floors and when I got to the third floor of the premises 418 West 36th Street I met the defendant Frank Summers, accompanied by a witness named Hicks. I asked Hicks what he had out the man lying on the stoop for and he said he didn't out him, and pointed to Summers stating that he was the man that out him.

Q You then placed the defendant Summers under arrest?

A I then placed the defendant Summers under arrest.

Q And took him to the station house? A I brought him to the station house.

Q That is all, Officer.

MR. HAYWARD: No questions, officer.

MR. McDONALD: (Calling) Dr. Schwartz.

(No answer).

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MR. McDONALD: I am waiting for the Assistant Medical Examiner, who was subpoenaed.

THE COURT: Well, apart from that do you rest?

MR. McDONALD: Apart from that I rest, except that I would like to call back the officer just for one question.

OFFICER DAVID B. LAMBERT, being recalled, testified as follows:

BY MR. McDONALD:

Q 406 and 408 West 36th Street are in the County of New York? A Yes.

Q All right, that is all, Officer.

MR. McDONALD: Now, apart from that, the people rest.

THE COURT: Well, there is some proof of death here now. You will go on now and you may call the medical examiner when he appears.

MR. HAYWARD: Yes, I would be perfectly willing to have him put on the stand when he comes. We have gotten through with the case somewhat quicker than I anticipated. Could I have ten or fifteen minutes?

THE COURT: Do you want to consult with the defendant?

MR. HAYWARD: I would like to consult with him and my associate here.

THE COURT: Very well, gentlemen, we will take a recess for fifteen minutes. You may step out in the hall.

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(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a recess for 15 minutes.)

After recess, Trial resumed.

MR. McDONALD: The doctor is here now, may I call him?
B E N J A M I N S C H W A R T Z, M.D., called and duly sworn
as a witness on behalf of the people, testified as follows:
(Residence 261 Clinton Street).

MR. HAYWARD: If your Honor please, I will admit the
qualifications of this surgeon, to save time.

DIRECT EXAMINATION BY MR. McDONALD:

Q You are Assistant Medical Examiner of the County of New
York? A Yes, sir.

Q And did you as part of your duty as Assistant Medical
Examiner, or what are your duties as Assistant Medical Examiner?

A To make examinations and perform autopsies in order to
determine the cause of death.

Q Now, then, did you perform an autopsy upon the body
of one John Owens? A Yes, sir.

Q And this body was identified to you by whom? A By
Officer Michael Sullivan.

Q Now, you say that you did perform an autopsy? A Yes,
sir.

Q What did you find, Doctor? A I found a superficial
stab wound on the left side of the chest in front. I found
a superficial stab wound on the left side of the neck, located

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four inches to the left of the middle line. The stab wound was one inch in length.

BY MR. HAYWARD:

Q I do not hear you, Doctor. A It was one inch in length and about half an inch in width, located four inches to the left of the middle line. There was a wound in the chest, in front of the left side of the chest, and that measured two inches in length and somewhat more than half an inch in width, and its direction was downward and inward. It was over the region of the second and third ribs. This stab wound was very superficial. It merely went through the skin.

There was a stab wound on the back of the left hand, this measured one inch in length, and occupied the direction from the middle finger down to the ring finger.

Then there was a stab wound of the neck, transverse, which measured one inch transverse, and a quarter of an inch in width, at its inner end, and ranged from three-eighths of an inch to an inch at its outer end. This stab wound, the inner end was located an inch and three-quarters to the left of the middle line, and five-eighths of an inch below the margin of the lower jaw.

This was the deep stab wound, and the direction of this wound was downward, backward and inward, and penetrated the main artery in the neck, the internal carotid artery, and the main vein of the neck, the internal jugular vein. It also penetrated the gullet, the oesophagus and also penetrated the

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thyroid cartilage of the larynx.

Q Doctor, did you form an opinion as to what was the cause of death? A Yes.

Q What was it? A Hemorrhage, and stab wound of the neck, penetrating the internal carotid artery, the internal jugular vein, the esophagus and larynx.

Q That is all, Doctor.

BY THE COURT:

Q What is the date of the autopsy, Doctor? A July 13, 1919.

MR. HAYWARD: No questions, Doctor.

BY MR. McDONALD:

Q Just a moment, Doctor, what was the height of this body?

A 5 feet 5 inches.

Q 5 feet, 5? A Yes, sir.

Q And the approximate weight? A About 145 pounds.

Q This man was a colored man? A Yes, sir.

MR. McDONALD: That is all, the people rest.

MR. HAYWARD: If your Honor please, may I make a brief opening statement?

Gentlemen of the Jury, you have heard the testimony thus far.

We expect to disprove very little of what has been testified to, but expect to prove some additional facts which these witnesses have not testified.

One feature of the testimony which we expect of

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course, absolutely to disprove, is the testimony of the man Williams as to any threats made by the defendant of what he would do to the deceased. We will prove that that statement is absolutely false.

So far as I recall the testimony of the people's witnesses, the other testimony of these people is easily explainable by their bias and their interest in the deceased, and and their anxiety to secure a conviction here against this defendant.

We will show you, gentlemen, that this boy here, Summers, the defendant, and another man whose name was Griffin or Griffio, and who has been variously called by that name and by other names by the witnesses for the people, but whose name is undoubtedly Griffin, and the defendant, those two were passing by, coming from work, both working along shore. Griffin is the boss, the longshore boss, having one or more gangs as we call it under his supervision, he and the defendant were coming along there. They had been talking about their pay, which of course Griffin knew about.

The testimony will show that this defendant did not know the deceased, Owens, except by reputation. He had had no dealings with him, had had no trouble with him, had never had a quarrel with him nor anything of the kind, and the same with Griffin.

Those two men, they were walking by this house that

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night when a colloquy similar to the one testified to about the cigarette occurred. They went on past the house and this Owens, who was drunk, dashed off the stoop and pursued after them and followed them to pick a quarrel and make trouble, so apparent was it that his own friend, his own associate, the man who is -- how shall I describe the relationship that existed there? -- the man who was living with the mother of the girl he was living with, in this house, came down and went and got him forcibly, that is, Owens, and pulled him back, and pulled onto him up off the stoop, where they had originally been.

Griffin and the defendant by that time were at least as far as the people's witnesses have testified, 25 or 30 feet down the street, in the direction which they were previously going, towards 9th Avenue.

Owens broke away from Givens, and in spite of all Givens could do, rushed down the stoop and pursued after them.

The testimony will show that this defendant backed away, backed away, backed away, backed away (indicating), not wanting any trouble. The testimony will show that this drunken little Owens pursued those men, and when he got close enough, that he ran towards this defendant and clutched him in the throat with one hand, at the same time reaching back for the hip pocket of his britches, and that at that time, the defendant having a knife,

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which was not a weapon as we know the meaning of a danger-
out weapon, but was such a knife as you and I carried when
we were boys, a bigger knife than a gold knife or pen-
knife, to be sure, but not bigger, gentlemen, than a man
working along shore carries, what we call a jack knife,
a two-bladed jack knife, one blade of which was broken
off, had been broken off previously in opening a can of
sardines or a can of stewed fruit or something of the kind,
leaving the other blade, and as this Owens rushed at the
defendant, the defendant took this knife which he had,
a jack knife, and opened it, and in the encounter it hap-
pened exactly as this police ^{surgeon} ~~sargeant~~ has described these
wounds to you, in defending himself from this other man he
struck one or more blows, probably two, at the man, ~~and at~~
^{as he defended} ~~the defendant~~ himself (illustrating) with this knife in
his hand, and the testimony will show that this Owens,
whether by, as you know, artificial stimulus, ^{which} ~~xxx~~ alcohol
or drug often give a man, continued, so that all the
defendant did was to work trying to get away, to get away
from this man who was trying to injure him, and as the
defendant supposed when he reached back to his hip
pocket, tried to kill him.

Now, that is the case, gentlemen, and that is the
testimony that we will show you by what we believe to
be credible testimony, by witnesses that we believe,
gentlemen, you will credit, when you hear them on the wit-

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ness stand.

It will be on that state of facts and the directions that his Honor will give you covering those matters, that we will rely.

O S C A R G R I F F I N, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence 227 West 18th Street)

DIRECT EXAMINATION BY MR. FAYWARD:

Q Griffin, how long have you lived in New York? A I guess about 25 years, 30 years.

Q About how old a man are you, Griffin? A I was born in 1880, July 18th. I will be 40 my next birthday.

Q What is your occupation, Griffin? A Longshore.

Q How long have you been at that? A About 25 years.

Q In what capacity do you work down there? A My position is foreman down there.

Q How many men have you under you on the job? A Now?

Q Yes, sir, or have you had the last year? A Well, I have had as high as a hundred, fifty, two hundred, something like that.

Q What people did you work for in the last year? A I have been working for Carter & Weeks and I am working at Pier 45 now for Mr. Gleason.

Q Where were you working in July, 1918, or 1919, I mean, this last summer, July last summer? A I was working on Pier B,

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Q Are you acquainted with the defendant over here, Frank Summers? A Yes, sir.

Q How long have you known him? A Four or five years, I guess.

Q Has he worked for you? A Yes, sir.

Q And for how long has he been associated with you in that work in one of your gangs? A For the last three or four years, off and on.

Q Did you know the man who got killed up on 36th Street, the man by the name of Chick Owens, John Owens? A I didn't know him personally.

Q You knew of him? A I knew of him.

Q You knew where he was living then? A Well, I knew where he was stopping at, but to say he lived there, I didn't know, I knew where he was stopping at.

Q Now, do you remember on the night in July, July 12th, of last summer, passing by the house where he was staying, with the defendant? Do you remember that incident when something occurred there? A Yes, sir.

Q Well, now, I want you, Griffin, to tell these gentlemen here in the jury box in your own way just what occurred that night, telling them only what you saw yourself, what you heard and what you know yourself, and about what occurred that night, if you will, please? A Well, I came in the street. I worked all night Friday night. I come down there Saturday

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afternoon and I came in the street, up to 416, to see if my wife was up there, and she was up there. I spoke to her through the window.

Q Well, I do not care about that preliminary, Griffin, but come down to the point where you first met the defendant?

A Well, I met him ~~thx~~ there.

Q Then where did you go? A Then we came down the street.

Q Down what street? A Down 36th Street by 408.

Q Going which way? A Towards 9th Avenue.

Q Towards 9th Avenue, yes? A And Monk was behind me.

Q Now, you mean by Monk the defendant Frank Summers? A I mean Mr. Summers, and this fellow tackled me and asked me for a cigarette.

Q What fellow? A I don't know this fellow's name but the one who stayed in 408.

Q Chick Owens? A Chick Owens, whatever his name is.

Q The one that got killed? A Yes, the dead man. I told him "I haven't got a cigarette", ~~he~~ ^{he} says, "But I will give you the price of one". He said he didn't want that.

Q Now, just a minute. You are getting a little ahead of yourself. Did you pass the house on the stoop of which Owens was sitting or standing? A Yes, sir.

Q How many other people were with him there? A I only saw two.

Q Two others besides himself? Did you know who they were?

A No, I only saw one besides himself.

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Q Who was that? A That was this gentleman sitting down there (indicating).

Q Which one, the little one with his hand up to his face?

A Yes, sir.

MR. HAYWARD: Stand up, Mr. Givens.

(A person present sitting in the court room stands up, one of the previous witnesses).

A Yes, sir, Mr. Givens.

Q Is that the man that was with him on the stoop? A Yes, sir.

Q That was the only man that was with him on the stoop?

A That was the only one.

Q Now, what did you do, did you go on past the stoop?

A We passed right on by.

Q You were walking on the sidewalk? A Yes, sir.

Q Yes, go on now. A And he asked me for a cigarette. I told him, "I haven't got one. So at that time Monk walked behind me, he was coming on behind me.

Q He was behind you? A Yes, he said to him, "You give me a cigarette". He said he hasn't got one, he says "But I will give you the makings". He said, "I don't want no makings, I am going to have a cigarette or something". So I says to Monk, "Monk, come on, this man is looking for trouble". And at that time this man grabbed him and pulled him towards the stoop.

Q Now, wait a minute. What condition was Owens in, was

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he intoxicated more or less? A Well, I didn't know because I didn't know the man that much, I didn't know him personally that much to tell whether he was drunk or not drunk, but he didn't seem like a man that had his good mind no how, in attacking a man that way, so I says to Monk, "Come on, Monk, lets go, this man is looking for trouble". He was pulling him.

Q Who was pulling who? A He was pulling the dead man.

Q You mean Givens was pulling Owens ? A Yes, to the stoop. We walked on away.

Q In the same direction you had been going? A Towards 9th Avenue, yes, sir, as he walked on he got loose from this fellow and jumped off the sidewalk and come running down and grabbed at Monk with one hand, with his other hand behind him, and I still walked right on towards 9th Avenue.

Q You kept on going? A Yes, sir, I said, "They are looking for trouble, I ain't going to stay there". Where he killed him I don't know but I know when he grabbed at him I kept on still going to 9th Avenue.

Q You kept right on the wrong way? A Yes, sir.

Q After the fight started? A Yes, sir.

BY THE COURT:

Q How did he grab him? A Well, he grabbed at him with one hand.

Q Whereabouts? A Well, I don't --

Q Got hold of his coat? A Well, he was backing off from him, Monk was, backing off from him.

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Q He got hold of him with one hand? A Yes, sir.

Q What part of him did he get hold of? A It is about the middle of the coat.

BY MR. HAYWARD:

Q Up towards his chest (indicating)? A On his breast like.

Q Monk was backing away from him? A Backing away from him coming towards 9th Avenue.

MR. HAYWARD: That is all, your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q Where did you live in July? A Where did I live at in July?

Q Don't you hear me? A Yes, sir.

Q Please answer the question? A All right, sir.

Q Where did you live in July? A I lived in 18th Street.

Q At the same address? A Yes, sir.

Q Where were you working in July? A I was working over at Pier B for Punch & Edye.

Q That is where the defendant worked? A Yes, sir.

Q Was he one of your gang? A Yes, sir.

Q You met him where, you say that night? A I met him that evening.

Q At what time? A I guess about 7 o'clock. I guess 6 or 7 o'clock, something like that, it was in the evening.

Q What time did you quit work? A What time did we quit work? We worked all night Friday night until Saturday morn-

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ing.

Q You didn't work Saturday at all? A No, sir.

Q Now, 416, what place is 416, what apartment were you?

A What apartment did I go to?

Q Did you see the defendant in on the night of the 12th of July? A To Mrs. Gerty's house, where I used to live, on the ground floor front.

Q That is where the defendant lived too, is it? A No, I didn't say he lived there. He was there.

Q Well, he was there, was he? A Yes, sir.

Q In Mrs. Gerty's house? A Yes, sir.

Q Mrs. Gerty occupied what floor? A The ground floor front on the east side.

Q Is it an apartment there of flats? A It is a whole house, I mean it is an apartment on each side, four rooms.

Q You lived with Mrs. Gerty when, when did you live with Mrs. Gerty? A I didn't live there.

Q You said you formerly lived with Mrs. Gerty? A I said I went down there to see if my wife was there.

Q Did you say that you formerly lived at Mrs. Gerty's? A I said I went down to Mrs. Gerty's house to see if my wife was there. I didn't never lived in there.

Q Where were you going? A Where was I going?

Q Yes, when you went up towards 9th Avenue? A I was going home.

Q With the defendant Summers? A I was on my way home,

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yes.

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Q With the defendant Summers? A Yes, sir.

Q Taking Summers along with you home? A Well, I was going to tell him about how much money we had drawn.

Q Yes, did you have anything to drink at Mrs. Gerty's?

A I didn't go in, I was only to the stoop.

Q Did he come out? A He came out to the stoop.

Q He was not drunk, was he? A No, sir.

Q Had he been drinking? A Not that I know of, I hadn't seen him before that day until then.

Q Well, I know, did you smell anything from him? A I did not.

Q No smell of intoxicating liquor? A I did not.

Q You were near enough of course to get the odor from his breath, weren't you, near enough to him? A Yes, sir.

Q Why did he get behind you? A Why did he get behind me? Well, when I left him, when I left the stoop walking, he came out behind me, he was coming behind me going towards 9th Avenue.

Q Why didn't you wait for him? A Well, I thought, I didn't think that it was necessary to wait, that I could tell him how much I drew. So he said he had sent after his money and I could have told him any time how much the money was.

Q Well, why didn't you walk with him when he came out or when he came out of Mrs. Gerty's apartment that at 416? A Well, just because he didn't catch up with me.

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Q Is that it? A That's just about all.

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Q When was it that you told him how much money you had to draw? A Well, I was going to tell him. I didn't tell him.

Q Oh, you had not told him? A No, sir, I had not told him.

Q When you were out on the sidewalk, did he ask you to wait and that he was coming out? A Yes, sir.

Q From the window? A Yes, sir.

Q But you did not wait? A No, sir. I came towards 9th Avenue. I came on away after I saw my wife from the window.

Q Did your wife talk to you through the window? A Yes, sir.

Q So then you did not know that Summers was coming out at all, did you? A No, I was not sure whether he was going out or not.

Q Well, did he ask you to wait for him? A I think he did. I think he said something, he said afterwards wait for him a minute, that he would be out, and I spoke to my wife what I had to say and I come on towards 9th Avenue.

Q Did you look behind then? A I saw him, yes, sir.

Q Did you see him come out? A Yes, sir.

Q Why didn't you wait for him then? A Well, it was not necessary, I didn't think.

MR. HAYWARD: I object, your Honor, he has asked that over and over again.

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THE COURT: I will allow it on cross examination.

A It was ^{not} necessary for me to wait for him because I had plenty of time to tell him.

Q What? A He was coming right on behind me and I had plenty of time to tell him how much money we drew.

Q Well, you didn't wait to see him come out, though?

A I did not wait, no, sir.

Q When you passed 408 did you look behind then to see if he was behind you? A No, this gentleman had stopped me then and asked me for a cigarette when I got to 408.

Q Before you got to 408 did you look behind to see if Summers was following you? A I did, I saw him after I turned away from the stoop, after I had turned away from the sidewalk or from the window, then I looked behind and saw him when he came out the door.

Q Oh, you saw him coming out the door? A He was coming down behind me all the time.

Q And when you stopped in front of 408 did he pass you?

A No, sir.

Q How far behind was he when you stopped at 408? A Well, when I stopped he was as close to me as I guess from here to the post (indicating).

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Q Then you said you did not have any, is that right?

A I told the other man I didn't have any cigarettes.

Q Then you walked on? A I walked on.

Q Then did Owens stop Summers? A He stopped and asked him for a cigarette too. He asked him for a cigarette behind me and I looked back.

Q You what? A I looked back when he asked him for a cigarette.

Q I see, and He told him he didn't have no cigarettes, that he had the makings? He told him he didn't want that.

Q You kept right on walking? A Yes, I kept walking, going towards 9th avenue.

Q Going towards 9th avenue? A Yes sir.

Q And/did Owens get up after he spoke to Summers and ask Summers for a cigarette? A He was already up.

Q When did he get up? A He got up when he asked me for a cigarette.

Q And did he remain on the stoop? A No, he was standing on the sidewalk when he asked me.

Q Near the railing? A I beg pardon?

Q Near the railing? A No, he was in the middle of the sidewalk between the railing and the curb.

Q And the gutter? You say that Owens was in the middle of the sidewalk? A Yes.

Q Then you left him after that, didn't you? A May I understand you good? Who is Owens? Is Owens the dead man?

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Q Yes.

Q Yes, he was in the middle of the sidewalk asking for a cigarette.

Q Yes, I will call him the dead man, so there will not be any misunderstanding between you and me. A Yes sir.

Q The dead man was between the railing and the curb?

A Yes sir.

Q Was he between the railing and the curb when he first spoke to you? A He got up off the stoop and walked toward me and asked me for a cigarette.

Q You had known him by sight, hadn't you? A In passing, yes.

Q Well, did you pass that way frequently? A I used to live at 416, where I went to look for my wife.

Q That is what I asked you in the early part of the examination, if you did not live -- A (Interrupting) I did not live with Gertie, though. I lived in the apartment that she lives in. I did used to live there.

Q I beg your pardon. Then it was when that you lived up there at 416? A Well, last year I lived up there. I guess I moved from there, I guess I moved from there the last -- well, about the last of last fall.

Q The last of last fall? A Yes, about.

Q You mean before Christmas? A Just before Christmas, yes.

Q Just before Christmas. How far had you gotten towards

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9th avenue before the dead man spoke to Summers? A I had only got about one step from Monk, whenever he asked for a cigarette.

Q And what did the dead man say? A He said -- he asked him "Give me a cigarette." He said he had to have something. He said "~~Monk~~ give me a cigarette, one of you is going to give me a cigarette, I got to have a cigarette or have something."

Q You already had passed on then? A Yes, I am about two steps or one step from him, then, going towards 9th avenue.

Q You turned around then? A I looked back.

Q Didn't you turn around to see if there was anything going to happen to your friend after you heard the dead man saying "Someone of you has got to give me a cigarette or something"?

A This gentleman had got him then and was pulling him into the stopp.

Q Well, you were looking then at them all the time, were you? A I was looking at him pulling them in.

Q You were glancing behind, were you? A Yes sir.

Q And did he get him over to the stoop? A Well, I never noticed how far he got him. He got him near the stoop, for I saw him break loose from him.

Q And you were still glancing behind? A Yes sir.

Q Then he broke away, you say? A Yes sir.

Q The dead man broke away from Givens? A Yes sir.

Q And what happened then? A He ran down off the sidewalk

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and up to the curb.

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Q Who did? A The dead man did, to run towards us. At that time, Monk -- that time Monk was going backwards away from him, coming back on towards 9th avenue, and I walked right on and never looked back.

Q Well, did you see or did you turn around at all?

A No, I only looked back.

Q Is that all you did? A That's all.

Q When you saw all this occur, Summers backing -- backing himself towards 9th avenue with his back to you?

A Yes, I looked back this way (illustrating).

Q You looked back and saw him? A I did.

Q Where was he then, on the sidewalk? A He was on the sidewalk.

Q And how far away from you then was he? A Well, I guess he was as far from me then as from here to the corner over there where that gentleman is (indicating).

Q To the window? A Yes, to the window.

Q Well, I don't know, you know.

MR. HAYWARD: He said the corner where that gentleman is sitting.

Q I say I don't know, I am just asking where you mean, which is it now? A Where the hat is there (indicating).

Q Now then, will you ^{say} that's about 8 or 9 feet? A Yes sir.

Q Then what happened? A Well, he was backing back, I

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5 don't know what happened then, I went on around 9th
avenue, around the corner, and whenever he ran to him and
grabbed at him with one hand, he grabbed at Summers.

Q Wait a minute, you say you don't know what happened?

A I say I didn't know what happened after I saw him grab him
with one hand.

Q I didn't ask if you saw him grab him with one hand. I
asked you what happened? A Well, I told you he grabbed him
with one hand.

Q Did you see that all in looking behind? A Yes sir.

Q You didn't turn around? A No, no further than just
to one side (indicating).

Q And just turned your head and you saw what? A I saw him
where he grabbed at him with one hand.

Q Which hand did he grab at him with? A Well, I couldn't
say positively which hand it was but it was one. I never took
that much notice to see whether it was the right or left.

Q One hand, you say was extended forward? A Yes sir.

Q And the other was where? A With his hand behind him.

Q Behind him? A Yes sir.

Q What do you mean by "behind", just like that (indicat-
ing)? A I mean running with his hand out this way (ind-
icating) towards him.

Q Was one hand extended forward? A Yes, one hand in
front of him like this (indicating).

Q How did he have his hand when shoving it forward? A He

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had his hands open that way(indicating).

Q Open? A Yes sir.

Q You could see that, could you? A Yes sir.

Q There was nothing in that hand, was there? A No sir.

Q And the other hand was behind his back, was it?

A Yes.

Q Just show us how it was behind his back, get up and show us, turn around and let the jury see. A (Standing and illustrating) This way.

Q And you could see that, could you? A Yes sir.

REDIRECT EXAMINATION BY MR. HAYWARD:

Q You say, Griffin, he was -- At the time that you saw the dead man Owens grab the defendant, Summers, with his hand, what was the farthest that you were away from Summers, were you always within earshot of them all the time, were you? A Yes, I was no further -- up until that present time I was no further than that hat (indicating).

Q That would be eight or nine feet away? A Yes sir.

Q I want to ask you specifically, if you heard Summers here make any threats towards the other man? A Not at all, we wasn't speaking to him at all.

Q What I specifically asked, did you hear Summers say to the other man "I will cut your throat" or make any other threat of any kind? A I did not.

Q No, that is all.

BY THE COURT:

Q Did Givens come down and take hold of the dead man?

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A No sir.

Q And pull him away? A No sir.

Q Then did you tell him to come back and see what the argument was about? A No sir, I did not. I never stopped.

Q Well, why did you stop looking after you saw the dead man with his hand behind him? A Why, I thought there was some trouble when I seen him following him around.

Q You thought there was going to be trouble? A Yes sir.

Q When you saw this man running with one hand out and one behind him? A Yes, I saw him following him around. I told Monk to come on, that there was going to be some trouble.

Q Then you did not look any more? A Yes, I looked around again, then this dead man had got away from this man.

Q And was he lying on the stoop then? A No, he was not hurt then, there was nothing more then. He had got away from Givens and ran off the curb into the street, down towards this man, and he was walking backwards away from him.

Q Is that the time he had one hand behind him? A Yes sir.

Q That is what I am trying to get at. You saw him advancing against your friend with one stretched out and one hand behind him? A Yes sir.

Q And after that you did not look any more? A I kept away, I never turned my head back.

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Q Why did you not look? A Well, I was near the corner then, I was near 9th avenue, near enough then to turn around the corner around 9th avenue.

Q Did you not think there was going to be some trouble?
A Well, I didn't know, I didn't have any reason to think there was any trouble. We were never attacked before.

Q You did not think there was going to be any trouble, so you kept on about your business? A I thought there would be trouble by him following him around if he stayed there, so I kept on about my business.

Q Well, that is all.

BY MR. McDONALD:

Q Didn't you hear Summers say "Now, keep away from me"?

A No sir.

Q What? A No sir.

Q Not a word? A No sir.

Q When Summers was backing away he did not say a word to this fellow, did he, the dead man? A If he said it I didn't hear it.

Q I am not asking you anything about that. I say, did Summers say anything to the dead man or did the dead man say anything to Summers as he was backing away? A I didn't hear it.

Q Well, did Summers say anything to the dead man as he was backing away? A I didn't hear that.

Q All right, that is all.

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BY MR. HAYWARD:

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Q You did not hear any words passed between the two men at all, did you? A No, I did not.

MR. HAYWARD: If your Honor please, I do not want to appear to take more time, but it is five minutes to one and my next witness is the defendant.

THE COURT: Yes, we will take a recess now.

form or
Gentlemen, please do not/express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you and do not discuss the case with anyone or allow anyone to discuss it in your presence.

We will take a recess until two o'clock.

AFTER RECESS -- TRIAL RESUMED.

F R A N K S U M M E R S, the defendant, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence, 341 West 36th street.)

DIRECT EXAMINATION BY MR. HAYWARD:

Q Frank, you are the defendant here, charged in this case, you are the defendant? A Yes sir.

Q And how old are you? A 33.

Q Where were you born, Frank? A Charleston, South Carolina.

Q How long have you been up north? A 1909, between

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1909 -- 1909, yes sir.

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Q Where have you lived since you have been up here?

A I lived in Freeport, L. I., I lived in New York City the balance of the time.

Q Freeport, in New York? A Yes sir.

Q How long did you live down in Freeport? A Pretty near two years, I guess.

Q What work did you do down there? A I was working with an automobile man.

Q Trucking? A Trucking.

Q And what work have you done in New York? A I worked in the subway, the 7th avenue subway, and along shore.

Q Are you married? A No sir.

Q Now, do you remember on the Night of the 12th of July, the evening of the 12th of July when you were up on 36th street?
A Yes sir.

Q Something happened, you had some trouble up there, Frank, do you remember that? A Yes sir.

Q Now, I want you to tell these 12 gentlemen here in the jurybox just what happened that night. Start at the time

when you first met Griffin, we will say, and if Mr. McDonald wants to go further back than that, all right, but you start in right now at this point and tell these gentlemen in your own way just exactly what happened. Now, do not try to be too fast but speak up distinctly, go right ahead, take your time and tell them just exactly what occurred. A Well,

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I was in 416 on the ground floor, east side front, and that afternoon there was a man worked alongshore with me --

Q Who, what is his name, Griffin? A No sir, another fellow working with us, he works days and I work nights, I don't recall his name now.

Q Well, it does not make any difference. It is not important if you can't remember it. A Willie Williams, Gertie Williams' husband, he works alongshore in the day and I worked at night, and I left there that Friday morning, I knocked off and I gave him my check to bring my money home that night when he knocked off, and I went to stop at Hicks' house, going home, because he had got hurt on the job Friday night, and he had knocked off, and I stopped by his house to see how he was getting along next morning.

Q Hicks was in the same gang alongshore work that you were? A Yes sir, and I went over there and I went home and went to sleep, I went home and went to bed. I got up around about half past five or six o'clock in the afternoon, and changed and put on my clothes and went back down to 416, to Willie Williams' house, to see has he got home yet to bring the money. I was sitting down there about 15 or 20 minutes, and after I got --

Q Who all were there when you got there? A There was Griffin's wife, Gertie Williams, and that's all when I was there.

Q Yes. A About 15 or 20 minutes after that there comes

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Griffo, the boss there, and looked in the window and I says "Hey, you done come here, have you done got your money?"

He said, "Yes, I done got my money." I said "Wait a minute, I am going to the corner with you".

BY MR. McDONALD:

Q Wait a minute, we cannot hear you back here.

BY MR. HAYWARD:

Q Now, Summers, talk so that these two gentlemen at the farthest end can hear you and then all can hear you. A Well, 15 or 20 minutes after I got in there Griffo came to the window.

Q You mean by Griffo, the big fellow that was on the stand, with the jumper on, this morning, Griffin? A Yes. He come to the window. I said, "Here, you done come, did you, did you get your money yet?" He said "Yes,". I said, "Wait a minute, I will go with you as far as the corner." So he didn't wait but went on. So I came out of the house and got behind him and as I get's out of the house I seen him down the street talking with one young man.

Q Who was the young man? A The same fellow that got killed.

Q Owens, you mean? A Owens, he was on the street talking with Owens.

Q A little ahead of you? A Ahead of me.

Q Yes, and in front of what house, do you remember what number?

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MR. McDONALD: I object to that as leading.

MR. HAYWARD: I do not think it was leading.

THE COURT: Well, the only question is, "Do you remember the number of the house?"

A Yes sir, it was between 408 and the next house down.

Q Which way, towards 9th avenue or towards 10th avenue?

A Towards 9th avenue, he was there, and what they were saying I didn't hear, I didn't know. When I got up there this man said to me, "Give me a cigarette." I said "I ain't got no cigarette, I use Bull Durham".

Q What man said "Give me a cigarette?" A. The dead man.

Q Owens? A Owens, I said "I ain't got no ready made cigarettes, I use Bull Durham tobacco, and I ain't got no cigarette paper." So then Griffio said to this guy "I will give you a dime and you can buy some cigarettes." He said "You don't have to be that way about it." So Griffio told me to come on and we was about to go and at that time he rushed towards me, this fellow did, and that man, his stepfather --

Q What man? A His stepfather, that man over there (indicating).

Q Sitting back there, Mr. Givens? A Mr. Givens, he come and grabbed him away from me and he carried this man away from me.

Q Where did he carry him to? A He carried him towards 408.

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Q Yes. A And Griff said "Come on". I turned to go and looked back behind there, so -- and saw him coming again behind me. I wheels around and backs back away from him. He was coming for me with his hand back there in his pocket, and his coat throwed back. I backed away from him. I said, "What's the matter, what's the matter?" And Griff said "Come on, don't mind that man, I am going on," and he walked on, and he runs at me and grabbed me right in the coat like that (illustrating) and he held me there. I said "Turn me loose, turn me loose, what's the matter with you?" And I put my hand in my pocket to get my knife out.

Q What kind of knife was it? A I had a small penknife with one blade half off, one blade broke off on a can of beans.

Q What we call a jackknife? A Jackknife, I had it in this pocket here (indicating). I opened the knife and I said "Turn me loose, turn me loose." He didn't turn me loose, I didn't know what he had in his pocket and I cut him. I thought if I cut him he would turn me loose. He didn't, but he held me tighter, and I couldn't get away from him and I had to cut him, I didn't mean to kill the man, but I was trying to break away from him and that's all I was trying to do.

Q Well now, you struck at him with the knife in your hand? A Yes sir.

Q You held the knife in your hand and struck at him?

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A Yes sir.

Q He held you here (indicating)? A Held me right here, yes sir.

Q And finally when did he let go of you, when did you succeed in getting away from him? A I pulled him away from me altogether, then he came way from me like that (indicating) and I just turned and wheeled around and went into 414. I didn't even look behind to see the fellow or nothing. I went in 414 and stayed right in the hallway there for about three quarters of an hour.

Q What did you do with the knife, drop it or throw it away or what? A I dropped it.

Q You do not know where it is? A No sir.

Q You have not got it? A No sir.

Q You got in this hallway and what happened there? A I stayed in that hallway about three quarters of an hour and pretty soon I seen --

Q Before you went in there -- well, go on. A Pretty soon I seen an officer and a cop come in. The officer in plain clothes and a policeman come in there and I went back in this hallway and stayed in there and I see them go on upstairs. They went on up towards the roof, I never see them come down, I stayed right in that hall there and come back to the doorway and lit a cigarette and I looked on out, there was so much of a crowd out there I went on back in the hallway and about three quarters of an hour after, this Hicks come

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in and Hicks said "Do you know that man is dead?" just that way. I said "Well, I can't go out there now", I said, "There is too much of a crowd out there and I'm afraid I might get mobbed."

Q Then what did you do? A I said "Let me go in your house and sit down until after the crowd is broke away." He said "No, go on over the roof and go on some where." I said "I didn't mean to kill that man".

MR. McDONALD: I object to that as being a self-serving declaration.

THE COURT: Yes, objection sustained.

Q Yes, do not relate all your conversation with Hicks. Tell us what you did after that, Summers? A Hicks said "Well, come on."

Q Don't tell us any more about the conversation you had with Hicks, but what happened, the things that you did, not what you said or what he said. A Well, I went on up to the roof then, me and Hicks, and started on down three flights of steps and met the officer on top.

Q In the next building? A Next building, the same ones I saw going up, I saw them coming down in the next building.

Q And he arrested you? A He arrested me.

Q Now, when you turned around, when this Owens came down the second time, after ^{he} broke away from Givens and came at you, either at that time or at the first time he came at you, or at any time, will you tell this gentlemen whether

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you made any threats that you would cut his throat or anything else? A Never made a threat at him. I never said a word to him, never said a word to him.

Q Never threatened him at all? A No sir.

Q What did you say to him with regard to letting go of you? A I said "Turn me loose". I said "Turn me loose." I said that two or three times, "Turn me loose". I tried to get away from him, I couldn't get away from him.

Q When he reached back to his hip pocket what had you in mind that he was going to do? A I thought he might have a gun or do something or a razor or something, I didn't know what he had, he had me so tight and I tried to get away from him and I couldn't get away.

Q What condition was he in, did you notice, as to whether he was more or less intoxicated, drunk? A He was either drunk or crazy or something of the sort.

MR. HAYWARD: That is all, you may examine.

CROSS EXAMINATION BY MR. McDONALD:

Q Had you been drinking that day? A That day, yes sir.

Q Had you had anything to drink that night? A No sir, I hadn't had time.

Q When you were drinking in the earlier part of the day, you were drinking in Hicks' house, weren't you? A In the morning, yes sir.

Q When you were to Gertie Williams' house, were you drinking there? A No sir, I didn't have time.

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Q You were there how long? A About 15 or 20 minutes before Griff come up.

Q And that was not time enough for you to get any drink?

A Well, what I mean by I didn't have time, I didn't get my money to go out and get nothing to drink, that's what I mean.

Q Then you said you would go out to the corner, what were you going to the corner for? A Well, after Griff had his money and I didn't have mine, I knew if I would go to the corner with him I would have got a drink, see?

Q You were going for a drink at that time? A Yes sir.

Q Now, just where was Griff or Griffin rather when the dead man stopped you? A Griff and this man was talking when I walked up.

Q Well, had they stopped talking or did they pass you or what? A I didn't pass them. At the time I walked up this man said to me "Give me a cigarette, will you?"

Q Was Griff standing there at that time? A Standing there at that time, yes sir.

Q Standing in front of the dead man? A The man was not dead then.

Q No, he was not dead then. Well, what do you know him as?

MR. HAYWARD: Chick Owens.

A That's all I know him.

Q Chick Owens? A Chick Owens, yes.

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Q Was Griffin talking to Chick Owens when you passed?

A I didn't pass, no sir.

Q Well, when you stopped? A I stopped, yes sir. The time I went up there, yes sir.

Q Now, was Griffin still talking to Chick Owens? A No sir.

Q Had Griffin walked on then towards 9th avenue? A No sir, not yet.

Q Was he standing there still? A Yes sir, he was standing there when I walked up.

Q And then he was facing the same way as you were, was he? A I was going towards 9th avenue and they were standing up there.

Q Where was Chick Owens standing? A Between 36 or between 438, let's see, yes.

Q Do you mean 408? A 408 and the next house.

Q 408? A 406, in between there.

Q I see, and that is where he was when you came up to them? A Yes sir.

Q Did you hear any of the talk between Griffin and Owens? A No, only Griff said to him "I will give you the price of a cigarette." That's all the talk I heard between them about a cigarette.

Q Then what did Owens say to you? A "Give me a cigarette". He asked me for a cigarette.

Q Yes. A I told him I didn't have any, that I don't smoke

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20 ready made cigarettes, that I use Bull Durham tobacco but 84
I didn't have no cigarette paper.

Q Did you offer him any money? A No sir, Griff offered him for the cigarettes.

Q Was Griff still standing there when you said to Owens that you had some Bull Durham? A Yes sir.

Q Still standing there talking to him? A Yes sir.

Q And when you told Owens that you had some Bull Durham, what else did you say? A I said "I ain't got no papers."

Q Now then, Griffin still remained? A Right there, yes sir.

Q You three just stood around, is that right? A Four was right down there then.

Q Who was the fourth? A That man back there that pulled him away.

Q Well, he didn't pull him away as soon as you arrived there, did he? A No sir.

Q Givens, as I understand you, came up there to Owens sometime after you had been talking to Owens? A Yes, who is that Givens?

Q Givens, the stepfather? A Givens was right there.

Q Well, was he there when you got there? A Givens, yes sir, Givens, Griff and --

Q Was Givens with Owens and Griffin? A Yes sir, the three of them standing there.

Q Three of them standing there talking together, is that right? A Yes sir, that's right.

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Q And when you got there of course that made four?

A That made four, yes sir.

Q And when was it that Givens pulled Owens away as you say? A After me and him got into talking about cigarettes.

Q Well, what happened between you and Owens? A Between me and --

Q You told Owens that you only had Bull Durham tobacco?

A Yes sir.

Q And that you did not have any papers? A Yes sir.

Q Now then, what else happened? A Well then, he said/^{that} I refused to give him a cigarette. I told him I didn't have any, and furthermore he started talking and arguing to me.

Q What did he say? A He said I refused to give him a cigarette.

Q Yes. A And this man told him "Don't quarrel about a cigarette."

Q Who said that? A Givens, and Givens pulled him away then.

Q All right, he pulled him away? You made a motion with your hand, what did you mean by that? A No sir, I said Givens pulled him away from me.

Q Is that what you meant, he pulled him away? A Yes, he grabbed him and pulled him away from me.

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Q Around the waist? A I don't know where he grabbed him but I know he pulled him away.

Q And Griffin was still there at that time? A Griffin spoke to me --

Q Now, Griffin was still there at that time? A I will tell you in a minute, I said Griffin said to me --

Q No, no, I just want to know whether Griffin was there.

MR. HAYWARD: Your Honor, I think the witness is trying to answer fairly.

THE COURT: Well, that is not an answer to the question. He is asking if Griffin was still there and he started to tell what Griffin said.

BY THE COURT:

Q You were not asked what he said, you were asked where Griffin was? A Yes sir, Griffin was there.

BY MR. McDONALD:

Q Did you see Givens pull Owens down to the stoop of 408?

A He pulled him away, I don't know whether he took him to the stoop or not, Griffin said "Come on, let's go." Then Griffin walks on.

Q Now, did you walk with Griffin? A No, I started to walk behind.

Q Why did you want to walk behind? A Well, when he said "Come on", he walked off and then it was for me to walk behind.

Q When you walked behind you saw Griffin looking back

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all the time, didn't you? A He looked back, yes sir. He said "Come on".

Q Well, was that after he had left this place where the four of you were standing together? A Yes sir.

Q As you were going on by up the street Griffin turned around again and said "Come on"? A Yes sir, "Come on". Yes sir.

Q Now then, what happened, why didn't you go along with him? A I said he said "Come on". He walked off and that leaves me to walk to catch up with him.

Q Well, did he get very far away from you? A Just like if me and you were standing up there and you said "Come on" and you walked off ahead of me, that is for me to walk a little behind you to catch up with you.

Q Yes, then what happened? A Then I walked off, I looked behind, I heard something coming behind, I looked behind and I saw this man.

Q What did you hear? A Something like footsteps coming behind.

Q Then did you look around? A Yes sir.

Q What did you see? A I see Chico.

Q Was he walking? A Running.

Q Running? A Yes sir.

Q Where was he running from? A From the way at 414.

Q From 414? A From where he stayed at, 408.

Q Now, 408, do you mean? A Yes, 408, I got them mixed

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up, yes, 408 where he was staying.

Q Where he was staying with whom, his home, do you mean?

A Yes sir.

Q When you looked around and heard this pattering, was he just leaving the stoop of 408 or was he in front of 408?

You say you heard the sound of footsteps? A Yes, well, I couldn't say just where --

BY THE COURT:

Q Where was he when you first saw him? A When I first saw him he was as near to me as where that window is there (indicating).

BY MR. McDONALD:

Q That window (indicating)? A Yes sir.

MR. McDONALD: Well, about 20 or 25 feet?

MR. HAYWARD: Well, what is it?

MR. McDONALD: We will take the jury's statement.

What is it, Mr. Foreman, please, estimate that?

THE FOREMAN: About 15 feet.

Q And then what happened? A Then I turned around and I backed about, I backed back from him, he was still coming.

Q Where was Griffin? A Griffin was near the corner.

Q Near the corner? A Yes sir.

Q And you say you kept backing then? A Yes sir, I backed from him, yes sir.

Q You kept backing and this man was still running after you? A Yes sir, running.

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Q Owens, I mean? A Yes sir? Owens?

Q Yes. A Chicko.

Q Chick Owens? A Chicko.

Q Chicko, is that the way you know him best? A I just know him by hearing his named called today, sir.

Q Well, Chick Owens? A Yes sir.

Q You say that he was still running after you while you were backing up? A Yes sir.

Q How far from the corner were you when he grabbed you?

A About from here back there to the end of that partition (indicating).

Q What? A About from here to the end of that partition.

Q You say back to the iron partition there? A Yes sir, about that far.

Q Where was Griffin? A Griffin was there, near there, (indicating).

Q At the corner? A Near the corner.

Q How near the corner? A I don't know, sir.

Q One house from the corner? A I don't know whether he was a house from the corner or not, sir.

Q What time was this? A In the afternoon.

Q What time in the afternoon? A I couldn't readily say what time it was, sir.

Q Well, was it at dusk? A No sir, it was not dusk.

Q What time does the husband of Gertie Williams quit work? A Six o'clock, sir.

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Q It was after six, was it? A Yes, oh yes, it was after six.

Q After seven? A No, I don't think it was -- I don't know the right time what it was, I tell you, sir.

Q Well, you had been drinking, hadn't you, most all that day? A No sir, in the morning, yes sir, and I went home and went to sleep.

Q Most all the day is what I said; had you been drinking most all the day? A No sir.

Q You say that you heard footsteps of somebody running? A Yes sir.

Q And when you looked around Owens was coming from 408? A Yes sir.

Q And was Owens on the sidewalk at the time that you saw him running? A Yes sir.

Q And you were on the sidewalk? A Yes sir.

Q What did he do then? A He ran to me and grabbed me.

Q Well, did he run to the street then? A Run to the street, no sir.

Q Just before he grabbed you was he on the curb or the gutter, you know what the gutter is, don't you? A Yes sir.

Q Was he on the gutter? A No sir.

Q He was not on the gutter? A No sir.

Q He was right on the sidewalk? A Yes sir.

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Q And then he grabbed or put his hand out, did he?

A Yes sir, he grabbed me right here, yes sir (indicating).

Q What was he wearing at that time? A Do you mean what kind of clothes he was wearing?

Q Yes. A I don't know, sir.

Q Did he have a coat on? A Yes sir, he had a coat on, yes sir.

Q Now, when he made a grab at you did he grab you by the coat? A He grabbed me, yes sir, right by my coat and shirt and everything else.

Q What hand did he grab your coat with? A His left.

Q He grabbed you on the right or left side of your coat? A He grabbed me on this side right here (indicating).

Q That is your left side? A Yes sir.

Q And then what did he do with the other hand? A He had it back here (indicating) under his coat.

Q You say he had a coat on? A Yes sir.

Q What kind of coat? A I don't know.

Q Well, was the coat as long as this, a ^{sack} black coat?

A Yes sir, an everyday coat.

Q An ordinary coat? A An ordinary coat, yes sir.

Q You saw him push his coat back (indicating)? A Yes sir.

Q Did you see him put his hand in his hip pocket?

A I don't know whether he had it in the Pocket or not, he had his hand in under the coat like that (illustrating).

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Q Under the coat? A Yes sir.

Q He didn't have it around like this (Indicating)?

A No sir.

Q Where was Griffin then? A Griffin was near the corner, sir.

Q He still remained near the corner, did he? A Yes sir, he didn't come back there to the fight or nothing like that.

Q What is that? A He didn't come back there, sir.

Q What happened then after Owens had hold of you by the lapel of your coat with his left hand? A I tried to back away from him, I tried to get away from him.

Q This man was drunk, was he? A Who was drunk?

Q Owens, Chick? A I couldn't say that he was drunk, sir.

Q Well, what was he? A I don't know, sir.

Q He was not drunk then, was he? A I couldn't say that he was not drunk, sir.

Q When you say, or didn't you say on your direct examination that this man was intoxicated? A Did I say so?

Q Yes. A I said he acted that way.

Q He was either drunk or crazy? A Yes sir.

Q Is that what you said? A I said he acted that way, yes sir.

Q Now, you did not see him put his hand in his hip pocket? A I didn't know where he put it, he put it behind under his coat.

Q And it was underneath his coat then, was it? A Yes sir.

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Q Now then, what else happened? A I told you, I hollered and told him to turn me loose, to turn me loose, I tried to back away from him.

Q You could not get away from him? A I couldn't get away from him.

Q By the way, what height are you? A I don't know.

Q Stand up, please. A (The witness rises).

Q You don't know how high you are? A No sir.

Q Do you know what you weigh? A The last time I knowed what I weighed, yes sir.

Q When was it you were weighed last? A About a year ago.

Q Now, when you said to Owens "Let go", he did not let go, did he? A No sir.

Q He still held to you, did you try to get away? A I tried to get away, yes sir.

Q He had hold of you just like that (indicating)? A No sir, he had hold of me like that (indicating).

Q He had hold of your clothes? A My shirt and all, yes sir.

Q Shirt and coat? A Yes sir.

Q Did you wear a vest that day? A No sir.

Q And you couldn't get away from him? A No sir.

Q Is that right? A That's right.

Q You struggled, did you? A Yes sir.

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BY THE COURT:

Q Did he have hold of you with one hand or both hands?

A One hand.

Q All the time? A All the time one hand, one hand right behind his coat.

Q He never took hold of you with both hands? A No sir.

Q He never took his hand away from behind him? A No sir.

Q All the time? A No sir.

BY MR. McDONALD:

Q You could not get away from him? A No sir.

Q You are a longshoreman, aren't you? A Yes sir.

Q And this fellow was an actor? A I don't know what he was, sir.

Q Owens, don't you know that he was? A No sir, I don't know what he was.

Q Now, did you say anything else to him after he grabbed you and you said "Let go of me"? A Did I say anything to him?

Q Yes? A No sir.

Q Well, did he do anything else? A No sir, he didn't do nothing else.

Q Did he take his hand away from his hip? A I don't know, sir.

Q What? A I don't know, sir. I was scared of him bringing that hand out, I didn't know what he had in that hand, I didn't know what was in that hand.

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Q Did he bring it away at any time from his hip? A I didn't see him.

Q Did you see him pull his coat down? A No sir.

Q Didn't you see him bring out anything? A No sir.

Q You saw the other hand, didn't you? A What other hand?

Q You say that hand that he had in his hip pocket?

A No sir, I saw the one that he had me here with (indicating).

Q And that is the only one you saw? A Yes sir.

Q When was it that you opened your knife? A Just when he ran up on me and grabbed me here, I said "Turn me loose, turn me loose", then I opened my knife.

Q Was that the time you opened your knife? A Yes sir.

Q Didn't you open it with one hand? A No sir, I opened it with both hands.

Q Are you sure? A Yes sir.

Q Where did you keep your knife? A Kept it in my fob pocket right here (indicating).

Q Fob pocket, didn't you? A Yes sir.

Q And you opened it with both hands, did you? A Yes sir.

Q You didn't have any difficulty in opening it? I mean it was not hard for you to open it, was it, it was very easy, wasn't it? A Yes sir, it was an ordinary pocketknife, yes sir.

Q Your counsel called it a jackknife, was it a jack

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knife? A Yes sir.

Q A jackknife is a little bit larger than an ordinary pocket knife, isn't it? A I don't know, sir.

Q Now, when you, or you say you opened it and he still had hold of you? A Yes sir.

Q And his hand was still behind here, wasn't it, back here (indicating)? A Yes sir.

Q Still back there while you were opening it? A Yes sir.

Q It didn't take you very long opening this knife, did it? A I said no, didn't take me long to open it.

Q Now, you opened it very quickly, didn't you? A Yes sir.

Q Then after you opened it what did you do with it?

A I told him to turn me loose, to turn me loose.

Q You asked him to turn you loose again? A Yes sir, and he wouldn't turn me loose and I cut him.

Q He would not turn you loose and his hand was still back here all this time (indicating)? (A No answer)

Q Answer that question. A Sir?

Q Answer that, please? A I said yes sir.

Q His hand was still back here after you opened this knife?

A Yes sir.

Q And he could see the blade? A I wanted him to see it so he would turn me loose and he wouldn't turn me loose.

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Q And there isn't any doubt that Chick Owens saw that knife and saw you open it, is there? There is no doubt about Owens seeing that knife in your hand, is there?

A No sir.

Q Then what did you do then, after you said the second time, "Let go of me"? Didn't you do that? A Yes sir.

Q That is after you opened the knife? A Yes sir.

Q You said a second time "Let go of me " and he wouldn't let go, would he? A No sir.

Q He still had hold of this coat and shirt? A Yes sir.

Q With his left hand? A Yes sir.

Q All right. Now then, what did you do? A Then I cut him.

Q Where did you cut him? A I don't know, sir.

Q What did you do, how did you use the knife? A I used it this way, sir (illustrating).

Q Which way? A This way (illustrating).

BY THE COURT:

Q Did you have the blade so that the blade came out from your little finger or was the blade opened up to the thumb?

A This way (illustrating).

Q The blade came out from the little finger? A Yes sir.

BY MR. McDONALD:

Q Then why didn't you cut at his hand? A I don't know, I didn't know where I was cutting. I was so scared,

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the man had me so I didn't know what that man would do to me, he might have killed me or something.

BY THE COURT:

Q How many times did you cut him? A I cut at him ~~twice~~.

Q After you cut at him the first time did he still keep his hand behind him? A Yes sir.

Q His other hand, his right hand, did he keep that behind him after you cut him the first time? A Yes sir.

Q He did not take his hand away at all? A No sir.

Q He was hanging on to you with his left hand? A Yes sir.

Q And you cut him with the knife, but he kept his right hand behind him? A Yes sir.

Q He never moved it? A No sir.

BY MR. McDONALD:

Q When you cut him the second time did you see where you cut him? A No sir, I didn't see neither time where I cut him.

Q And after you cut him the second time, or at least after you cut him the second time what happened then? A Well then, I just pulled him away, he kind of weakened away from me like that. (Illustrating)

Q Did you see blood coming out of his neck? A No, I never see blood, no sir.

Q What? A No sir.

Q Sure about that? A I am sure of that, yes sir.

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BY THE COURT:

Q Did you not see it spurt out? A No sir.

Q Up as high as the top of his head? A No sir.

BY MR. McDONALD:

Q Well, you did not see any blood at all, did you?

A I didn't look for any blood?

Q Well, did you see any? A No sir.

Q Didn't you see any on his clothes or his shirt?

A No sir.

Q Well, when did he let go of you? A He weakened away from me.

Q What do you mean by he weakened away, did he let go of your coat? A Yes sir, I just touched him --

Q You what? A Just pulled him away.

Q Threw him one side? A I didn't throw him one side, I just pulled him away from me.

Q You pulled him away and dropped him? A No, I didn't drop him.

Q Didn't you drop him? A I went right away from him and went back in to 414 in the hallway. I didn't even look back, at the time I got there I heard the whistle blowing for the officer.

Q What did you do with the knife? A I don't know what I done with the knife.

Q Did you throw it away? A I guess I did.

Q Well, why did you throw it away? A I don't know what

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I done with it.

Q What? A I don't know, no sir.

Q You don't know what you did with it? A No sir.

Q Well, do you know whether you threw it away or not?

A I didn't have it and I must have throwed it away.

Q Did you tell Hicks that you had killed a man downstairs? A No sir, Hicks told me.

Q Hicks told you? A Yes sir.

Q Well, Hicks is your friend, isn't he? A No sir, he ain't no friend of mine, just working on the dock.

Q Well, weren't you drinking with him that morning?

A Yes sir.

Q And you brought ^{him} in half a pint of whiskey? A He had been hurt that night. I didn't bring in no whiskey.

Q He was hurt the night before? A He got hurt Friday night.

Q And you were up paying a visit to him to find out how he was? A That Saturday morning, yes sir. I didn't take any whiskey, though.

Q Well, Hicks is a friend of yours, you were interested in him, weren't you? A Well, he just got hurt on the job.

Q And you were interested to find out how Hicks was?

A Yes sir.

Q You paid him a visit the following day? A Yes sir.

Q Did you tell Hicks that you had thrown the knife away?

A No sir.

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Q You did not tell him anything about it? A No sir.

Q About the knife? A No sir.

Q You did not tell Hicks that this man came at you or that you thought this man was going to pull a gun or razor on you, did you? A I didn't tell him anything, sir.

Q Did you tell anybody? A Nobody but the officer.

Q When was that? A That night.

Q That this man pulled a gun on you? A I didn't tell him he pulled no gun on me.

Q What did you tell him? A I told him he had his hand in his pocket and I didn't know whether he had a gun or razor or knife or what he had.

Q Which officer did you tell that to? A I don't know, one in the station house.

Q The detective, the fellow who arrested you? A No sir. I told it around there to the gentleman that sits down there and writes.

Q You told it to Mr. Joyce, did you? A Mr. Joyce? I don't know who it was.

Q Do you remember talking to a man who said he was Assistant District Attorney? A No sir.

Q What? A No sir, I don't remember.

Q Do you remember a man who took down things the same as the stenographer is now taking down what you say?

A There was more than one taking down things.

Q Do you remember a stenographer taking down something

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that you said in the station house? A It looked like to me everybody was taking down things.

Q Do you remember a stenographer taking down what you said in the station house? A Who is the stenographer?

Q A man who writes shorthand the same as you see that man there (indicating).

MR. HAYWARD: I submit, your Honor, the witness has tried to answer the question. It has been asked four or five times and he said there were several people writing and he does not know which was which.

THE COURT: Yes, I think he says that he does not know what a stenographer is.

MR. HAYWARD: He does not know what a stenographer means.

MR. McDONALD: Well, I will not go into that then.

Q Did you ask Hicks to take you up over the roof? A No sir. I asked him. He told me that. I asked him to let me go and sit down in his kitchen until the crowd broke outside. He said no. He said "Why don't you go over the roof." I said "I don't know how to get over there." He said "I will take you over there."

Q So then you went with him, did you? A Yes sir.

Q Why didn't you stay in the hall? A Well, if he didn't come up there I would have stayed in the hall, but by him coming up there he told me to go over there, then I went on

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over there with him.

Q Let's see, you remember being in a little fight, don't you, a short time previously to the 13th of July? A No sir.

MR. HAYWARD: Now, wait a minute, Summers. Now, we are going to have fair play here. I object to that.

MR. McDONALD: Now, I object to the statement of counsel as to fair play.

THE COURT: Well, make your objection.

MR. HAYWARD: I object to the question as incompetent, immaterial, irrelevant and improper.

THE COURT: Well, on cross examination a witness may be asked as to any other criminal acts he has committed and if he denies it of course that ends the matter.

MR. HAYWARD: If they are to show a previous conviction, why, let him ask the question.

MR. McDONALD: Well, it does not make any difference whether it is a previous conviction or not.

Q Do you remember being out up one time, do you?

A Being out up?

Q Yes. A No sir.

Q What? A No sir.

Q Are you sure now? A Yes sir.

Q You understand me, don't you? A Yes sir.

Q Do you remember being or coming home one night and waking up next morning and the woman with whom you were living saying

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"What happened to you last night, your clothes are all out?"

MR. HAYWARD: Wait a minute. I object to that as incompetent, immaterial and irrelevant.

THE COURT: I will sustain the objection to that. If somebody assaulted him that does not affect his credibility.

MR. McDONALD: Well, it is pertinent to show, sir, of course -- it is pertinent to the issue.

THE COURT: If he assaulted somebody else I will allow you to ask as to that, but if somebody else assaulted him that has no probative force.

Q Do you remember you assaulting or fighting with somebody? Did you tell Mr. Joyce, the Assistant District Attorney, that you had a fight with somebody?

MR. HAYWARD: Wait a minute, do not answer that. I object to that as incompetent, immaterial and irrelevant.

THE COURT: Yes, I sustain the objection to the form of the question. A man might have a fight without the slightest fault on his own part.

Q What time was it that you were found by the officer?

A I don't know rightly what time it was, sir.

BY THE COURT:

Q Did you see this man's body when you went down to the street? A No sir, they took me into the doorway in the house, the officers.

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BY MR. McDONALD:

Q When you were examined in the station house at about eleven o'clock on the evening of July 12th, do you remember being spoken to, do you remember this man talking to you (indicating) in the station house, and Assistant District Attorney Joyce? A No sir.

Q You do not remember that? A No sir.

Q Do you remember being asked what your name was?

A Yes sir.

Q Do you remember a man writing close beside you as a question was asked of you and you made reply? A (No answer)

BY THE COURT:

Q Do you remember anybody in the station house that was writing while you were being asked questions? A Your Honor, yes sir, there was so much writing, I was questioned from the time I was ⁱⁿ there until I left there.

Q There were several people writing? A Yes sir, so I don't know which one he means.

BY MR. McDONALD:

Q Do you remember being asked what your name was?

A Yes sir.

Q Do you remember giving the answer "Frank Summers"?

A Yes sir.

Q Do you remember being asked where you live? A Yes sir.

Q Do you remember being asked how old you were and saying

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you were 33, going on 33? A Yes sir.

Q Do you remember that? A Yes sir.

Q Do you remember being asked were you married and your answer "I was married, my wife died"? A No sir, I was not married yet.

Q Do you remember being asked where you worked? A Yes sir.

Q You said "longshoreman"? A Yes sir.

Q And that you worked for Fumh Edye & Company?

A Yes sir.

Q At Pier B, Jersey City? A Yes sir.

Q Do you remember being asked "Do you know Owens?" and you said "No sir"?

MR. HAYWARD: Now, I object to this inquiry as incompetent, immaterial and irrelevant.

MR. McDONALD: It is preliminary inquiry, sir.

THE COURT: Objection overruled.

Q Do you remember being asked "You were in 36th street tonight about half past eight?" and you answered "I guess so." Do you remember being asked that question that night?

A I want to find out now did I say whether I did.

Q What is that? A I say I would like to think before I say yes or no. I don't want to say nothing that ain't no.

Q All right, I do not want to hurry you. A I do think I said that.

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Q Do you remember being asked who you were with and you said "A fellow they call Griffo"? A Yes sir.

Q You were asked that, do you remember that? Do you remember being asked "Where does he hang out", and you said "He lives in 18th street, I don't know where he hangs out." Do you remember saying that? A Yes sir.

Q All that is true? A He does live on 18th street, yes sir.

Q Do you remember being asked "Where does he work?" You said "He works for Funch Edye too?" A Yes sir.

Q Do you remember being asked this question "You came through 30th street from what avenue?" And you answered "From 414 coming towards 9th avenue". Do you remember that? A From 30th street? 36th street, you mean, ain't it?

Q No, that question Mr. Joyce asked you in the station house "You came through 30th street from what avenue?" And you said "From 414." A 36th street, you mean, ain't it? Q Yes sir, 36th street.

MR. HAYWARD: Well, you said 30th street.

MR. McDONALD: I am reading exactly what the record shows.

THE WITNESS: I said 36th street.

Q You said from 414 going towards 9th avenue? A From 416, I said.

Q From 416, all right. Do you remember being asked "Where had you been before you started to 9th avenue"? And

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you answered "At 414 visiting Charlie Hicks"? A 416. 108

Q Do you remember that question being put to you and you making that reply? A 416.

MR. HAYWARD: Now, just a minute. I want to renew my objection.

THE COURT: On what ground do you object?

MR. HAYWARD: I do not know what the purpose is of this, but it is a lot of immaterial, irrelevant matter.

THE COURT: Objection overruled.

Q Do you remember making that reply? A 416, yes sir.

Q Just yes or no. If you do not remember, say so.

THE COURT: He says he said 416.

Q All right. Do you remember being asked "Had you had any drink?" And you answered "Not tonight, I know where to get a drink, I guess." Do you remember saying that?

A I know where to get a drink? No sir.

Q Do you remember being asked what happened? A Yes sir.

Q Do you remember making this reply: "I meet this" --

MR. HAYWARD: Now, wait, I object as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

Q "I meet this fellow, I don't know who he is. He said, 'Give me a cigarette.' He said, 'Hello there, give me a cigarette.' I said 'I smoke Bull Durham.' He said 'I don't smoke Bull Durham, I smoke Piedmonts.' I said 'It looks like a man begging for a cigarette, smoke anything he can get.'

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From that it bring on an argument." Do you remember saying that? A No sir.

Q Do you remember this question: "Q What did he say?" And the next question, and do you remember this reply, "He says a man has a cigarette, a man can buy what he wants, a man can run, he run out. I says, I never run out. I smoke something, I don't run out. You smoke Piedmonts, you run out all the time. I said "I never leave one pack out from another. Talk bring on talk. He started talking, he was kind of half drunk anyhow." Do you remember telling that? A No sir.

Q Don't remember that at all? Do you remember the next question, "Who was?" And you answered "This fellow. I don't know his name, the fellow who asked for a cigarette said, don't be so smart about it. I said, I ain't smart, I haven't got any, if I had I would give you one." Now pay attention to this because that is a long answer.

MR. HAYWARD: I submit the witness is paying close attention.

MR. McDONALD: Well, I do not mean to correct him, but it is a very long one and I thought I saw him looking around.

BY THE COURT:

Q Keep your attention on it to the end, if you can.

BY MR. McDONALD:

Q "Furthermore I don't know if I will give you one or not. Everything going up now. If you want Bull Durham you can

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get that. I takes Bull Durham out of my pocket. He started
cussing. I went on. Griffo said "Come on, leave this man,
he is drunk." It was another fellow pulling him on. I don't
know who he is. He cut away from this fellow and come on
towards me and he struck me somewhere up here (indicating
on the upper part of the arm). After he struck me, me and
him started in the middle of the street, we started fighting.
I had my knife in my pocket (indicating pocket in front just
under a man's belt). I took my knife out, I go after him.
Once he closed me. Then I cut him again. When I cut him
again this guy, I don't know who he is, he run up there and
grabs him. I turn away and went back to 414, and went in
414. " Do you remember that? A No sir.

Q Do you remember this question "At the time that you
were fighting with him you did not see anything in his hand,
did you?" And you replied, I didn't see anything in his
hand." Do you remember that? A No sir.

Q You don't remember that at all? A No sir.

Q Do you remember being asked "Why did you take out your
knife, he didn't have anything"? And you answered "I didn't
know what he had." Do you remember that? A No, sir, I don't
remember that.

Q Do you remember this question "You didn't see anything?
A No." Do you remember that? A No.

Q Do you remember this or what? A No sir.

Q You don't remember it? Do you remember this ques-

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tion, "Did he punch you at all?" A No sir. 111

Q Wait a minute. Do you remember this question, "Did he punch you at all" and you answered "He knocked me in the breast, he had a cap on, he had his cap thrown out. I know that I was standing in that block six or seven years, I never seen him there before. He said he lived there now. I know I was living in 416 for pretty near two years, I had never seen him. I moved from 416 to 341 where I am living now. I never see him before. So I didn't know what he was going to try to do." Do you remember that? A No sir.

Q What is your answer? A No sir.

BY MR. FAYWARD:

Q Instead of shaking your head or nodding your head answer yes or no because the court reporter there that is writing it down cannot hear a shake of your head? A Yes sir.

BY MR. McDONALD:

Q Do you remember this question, "What did he get sore at you about?" And you answered "Because I told him I didn't smoke Piedmonts." Do you remember that? A No sir.

Q Do you remember being asked this question "Was he sober?" and you said "He didn't look to me like he was sober. The first time I ever met him." A No sir.

Q You don't remember that? Do you remember this question, "How many fellows was he with?" And you answered "When he asked for the cigarette he looked like to me he come

off around there about 410. There was a crowd of fellows¹¹²
on 410." Do you remember saying that? A No sir.

Q Well, were there any fellows there at 410? A I don't
know, sir.

Q What? A I don't know, sir.

Q As you passed by were there any fellows there? A I
don't know, sir, I didn't notice.

Q Well, before you met him were there any fellows at 410?
A That's what I say, I don't know, I don't remember now
whether there were any fellows at 410 or not.

Q Do you remember this question "When you and your friend
Griffo came down he was standing on the sidewalk?" And you
answered "I don't know whether he was standing on the side-
walk or not." A No sir.

Q Do you remember that? A No sir.

Q Do you remember this question "Was he standing with
any other fellows?" And you answered "Two or three fellows"?
A No sir.

Q Do you remember that? A No sir.

Q Do you remember this question ^{When} "You started striking at
him with the knife didn't he try to get away from you" and
your answer "No, we were holding one another." Do you remem-
ber that? A No sir.

Q Do you remember this question "At the time you were
holding, you tried to cut him", and you answered "Yes."
Do you remember being asked that question and you made

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that reply? A No sir.

Q Do you remember being asked this question "Why did you use the knife on him" and you made this reply "Around at 41st street one night we were up in a house, he and a guy, we got in an argument there and in this argument we came out to fight bare fists, and me and this guy were fighting. The first thing I got cut on my hand, a guy cutting at me all the time. So anyhow pretty soon I started around about one or two o'clock that night. After that I went home and went to bed. I was living at 416 then. That was last winter. When I woke up next morning, I never knew anything, I never knew but the little cut I had on my hand. This woman I was with said, what is the matter with you last night? I said, why? She said, your clothes are all cut up. My coat, vest and everything was cut across here, (indicating) and everything. I said, I might have been killed fighting this man bare fist and this man cutting me all the time. I said, this guy got a knife. I said, well, I won't take any more chances. " Do you remember that? A No sir, no sir.

Q Were you cut up? A No sir, no sir, I ain't got a cut on me.

MR. HAYWARD: Wait a minute, I object to that as incompetent, immaterial and irrelevant, already having been asked and answered.

THE COURT: Well, I will allow it. He is now giving that as a reason for his action. I will allow him to be

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asked about that, whether it really happened.

MR. HAYWARD: I take an exception.

Q Do you remember? A No sir, I ain't got no out on me.

Q Do you remember your clothes being out? A No sir.

Q With whom did you live last winter? A Some part of last winter I was in Wilmington, Delaware, and the other part I was living in West 36th street.

Q Weren't you in 41st street one night with a fellow and got into a fight with him? A No sir.

Q Never? A No sir.

Q You don't remember telling the District Attorney anything like that? A No sir.

Q Do you remember the next question: "You meant your next mixup you got into you would use something?" Do you remember that? A No sir.

Q Do you remember being asked what kind of looking knife was it? A What kind of looking knife I had?

Q Yes, do you remember the District Attorney asking you what kind of knife you used? A Yes sir.

Q And do you remember making this reply, "A knife with one blade, I have it about two years. It was a two blade knife, I broke a blade over a year ago, opening a can. I had this knife in my pocket." Do you remember that? A I remember saying I had a knife, yes sir.

Q Do you remember telling the District Attorney that you

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broke the blade opening a can? A That's the way I broke it,
I must have, yes sir.

Q Well, did you tell him that? A I guess I did, yes
sir.

Q Well, that is what you have told us today, that is how
it was you broke it? A Well, that's what I say, I guess
I told him because that's the way it broke.

MR. HAYWARD: He has said that before.

Q Well, that is what you tell us today, too, isn't it?

A Yes sir.

Q Do you remember being asked how long a blade it was?

A Yes sir.

Q Did you tell him? A Yes sir.

Q Do you remember being asked this question, "Did you
use this over on the work?" And you answered "Yes, on deck".
Do you remember that? A Use the knife over at work? Yes,
I have used it on the work.

Q Well, do you remember being asked the question and
giving that reply "Use it over at the work" and you said
"Yes, over on deck"? A Yes sir.

Q Did you tell them that? A Yes sir.

Q Do you remember being asked this question "How did
you get it open, you say he had hold of you", and you
answered "I just ran my hand in my pocket and opened it".

A Ran my hand in my pocket and opened it, no sir.

Q Do you remember saying that? A No sir.

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Q Do you remember being asked this question: "Did you have your hand around him?" And you answered: "Not when he came. I put one hand in my pocket to get the knife open, and opened my knife." Do you remember that? A No, sir.

Q Do you remember being asked this question: "Where was she when you got your knife open?" And you answered, "He was right there." Do you remember being asked that question and giving that answer? A Yes, I think I did.

Q That was true, was it? Do you remember being asked this question: "Did you have hold of one of his arms?" And you answered "No, sir?" Do you remember being asked that question? A No, sir.

Q Did you have hold of one of his arms? A No, sir.

Q Do you remember being asked this question: "How many times did you jab at him altogether?" And you answered, "Couldn't tell you." Do you remember that? A Twice, I said.

Q Do you remember this question being asked and you making this reply: "How many times did you jab at him altogether?" And you answered, "Couldn't tell you?" A No, sir.

Q Do you remember being asked this question: "A dozen times?" And you answered "No." A No, sir.

Q Do you remember being asked the next question: "Five?" And you answered "Not that much." A No, sir.

Q You don't remember that? Do you remember being asked "Where did you stab him?" A No, sir.

Q And you answered, "Couldn't tell you?" A No, sir.

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

Q Do you remember this question: "After you stabbed him what

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did he do?" And you answered, "He grabbed me, knocked me again, I don't know whether he was knocking at me." Do you remember that?

A No, sir.

Q Do you remember being asked, "Did he fall?" A No, sir.

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

Q Do you remember answering, "Not when I was there?" A No, sir.

Q Well, did you tell Mr. Joyce that this man --

MR. HAYWARD: Now, wait a minute. He is asking the question does he remember, and the witness said "No."

THE COURT: Does he remember what, the question or the fact?

MR. HAYWARD: Well, I do not think the witness knows half the time which he is asking about, but the question was asked, "Did you hear this question asked you and did you make this answer?" And the witness said "No," he didn't remember. He has denied it or he said he did not remember because that is the form of these questions, that they have been put in, "Do you remember?" And he said "No."

THE COURT: Well, if he says that, that answers the question.

Q You understand me, don't you? A Yes, sir.

Q There is not any doubt in your mind as to what I am talking about? I am talking now about what you said in the station house on the night that you stabbed this Chick Owens? A Yes, sir.

Q You understand that, don't you? A I understand that part, yes, sir.

Q You remember being asked this question: "What did he do after you stabbed him?" And you answered, "He went towards Ninth avenue."

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Do you remember that? A No, sir; no, sir.

Q You don't remember telling the District Attorney that, do you? A No, sir.

Q Do you remember this question: "Did he say anything, that he was stabbed?" And you answered, "No, sir." A No, sir.

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

Q Well, as a matter of fact, did he say anything when he was stabbed, did Chick say anything when he was stabbed? A I don't know what he said when he was stabbed.

Q What? A I don't know whether he said anything or not, sir.

Q Do you remember being asked this question: "Did he yell out?" And you answered, "No." Do you remember that? A No, sir.

Q Do you remember this question, "Where did you go to?" And you answered, "414." A I answered "416," sir. I didn't say 414, because I was not in 414.

Q You don't know the numbers very well, do you? A I know them all, yes, sir.

Q You had difficulty in remember which is 408? A Well, 408 is where this Chick stayed. 414 is where this other boy stayed.

Q You mean Hicks? A Hicks stayed at 414.

Q All right. Do you remember this question, "Back to Hicks' house?" A No, sir.

Q You said "No, I went through the basement. From 414 there is a hall running back to 418 on the ground floor." Do you remember that? A No, sir.

Q Do you remember the next question: "Back into the yard?"

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And you said, "No, sir, after you leave the front of the house, before you get to the back or rear in the hallway there is a part from the ground floor running back from 414 to 418. I was in back of 416. I went up one flight and I seen standing at the door an officer and a plain clothes man come in there. They come in the house. I went back in the hallway and stayed in the dark one flight up. I said, "I am going to beat it to the station house before they take me around there." So they went on upstairs. I never seen this officer come down." Do you remember that? A What house was that you say that was in, sir?

Q I have read the whole answer that was given by you when they asked you that question about back into the yard. I will read it again, didn't you get it all? A That house part.

THE COURT: He says he did not get the number of the house.

Q I see. "After you left the front of the house before you get to the back or rear in the hallway, there is a part from the ground floor running back from 414 to 418. I was in back of 416."

MR. HAYWARD: I submit he has already been asked that question and said he does not remember the question.

MR. McDONALD: No, he asked me to read it over; that is why I was reading it.

THE COURT: Well, I will allow it to be read.

Q Didn't you ask me to read it again? A I said "No, sir."

Q Now, you say, "No, sir?" You don't remember saying that to the District Attorney that night, the night of July 13th, in the station house? A No, sir.

Q Do you remember being asked this question: "What house were

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you in?" And you answered "416, I never seen him come down."
Do you remember saying that? A 414.

Q Do you remember being asked this question in the station house on the 12th of July at 11 o'clock at night? A No, sir.

Q What house were you in? A 414. That is the house the officer come in, 414.

Q Do you remember being asked this question: "What house were you in?" And you answered, "416?" A No, sir.

Q Do you remember being asked this question: "They went up in the house you were in?" Do you remember the District Attorney asking you this question on the 12th of July, 1919, at the station house: "They went up in the house you were in?" And you answered, "I went in the same floor in 416, I saw them come in 416. They went upstairs. The plain clothes man and the officer. I was in the hallway, in the dark, standing up. If they come on the back they would have found me. They didn't come back. I stayed there about ten or fifteen minutes and they didn't come back." Do you remember saying anything like that?, A No, sir.

Q Do you remember saying, "When I got to the door I saw a big crowd outside. I saw if I go out again they might know me. One man said to go toward Tenth avenue. Another man said, better not go. I went back again. Then I meet Charley Hicks in 416. I said, "What's the matter with that guy?" He said, "That guy will die." I said, "What?" He said, "Yes." I said, "If I get to the station house, but I didn't want to be taken around there." He said, "I will tell you what you do. You better get out of here and beat it, I will

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show you how to get out of here." So then Charley Hicks took me up from 416 up to the roof. Then he said, "You come down here and come across in 418, that is the last roof you could get in coming down the stairs. I think it was either one flight or two flights. There was a plain clothes man and a cop coming up again. He didn't say anything to me. He said to Hicks, "What are you doing, come out of here." Hicks said, "I live in here." He said, "I ain't the man you are looking for, this is the man" - meaning me - "you are looking for." So then I said, "Yes, I am the man you are looking for. I tried to beat you around there." Do you remember saying that to the District Attorney? A No, sir.

Q Do you remember being asked this question: "What did you do with the knife?" And you answered, "I threw it away." Do you remember that? A No, sir.

Q Do you remember being asked this question: "Did anybody fight with you but this one man?" And you answered, "Not that I see." Do you remember being asked by Mr. Joyce, "Did anybody fight with you but this one man?" And you answered "Not that I see?" A No, sir.

Q Now, you did not tell the District Attorney anything about Owens coming at you with his hand in his back pocket, did you?

MR. HAYWARD: Now, I object to that as incompetent, immaterial and irrelevant, what he told the District Attorney.

THE COURT: Objection overruled.

Q Answer, please? A Sir?

Q (Question repeated by the stenographer). A I told him if

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I see him, yes, sir.

Q Well, what does that mean? A The District Attorney, you said?

Q Yes, Mr. Joyce here? A I don't remember seeing Mr. Joyce, sir.

Q You don't remember seeing Mr. Joyce at all? A No, sir.

Q Well, you were not intoxicated, were you? A No, sir, I was not intoxicated, but I was beat up so much and I didn't just know what I was talking about.

Q What is it you said, "I was not intoxicated?" A But I was just beaten up so much I didn't know what I was talking about, I didn't know what I was doing."

Q Beaten up? A Yes, sir.

Q You did not know what you were talking about? A No, sir.

Q When you were talking to the people in the station house you did not know what you were talking about, when you were beaten up? When was that? A That same night, that same night.

Q Who beat you? A People in the station house beat me, even men coming out of the street kicked me, and it was in the papers I was sent to the hospital but I just didn't reach the hospital.

Q Well, Chiko didn't beat you? A His brother or whoever he is down in the station house there.

Q In the station house? A Yes, sir.

Q I mean when he was fighting with you he did not beat you up? A No, sir, I got beat in the station house.

Q Well, even in the station house, even when you were beaten up

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and after getting beaten up by men coming in from the street, even then you didn't tell the District Attorney that you saw this man coming at you with something in his back pocket?

MR. HAYWARD: I object to that as having been asked and answered.

THE COURT: He said if he saw the District Attorney he did tell him. That is the answer he made when you asked him a minute ago.

THE WITNESS: I don't know the District Attorney --

Q Well, I will put a fresh question: *It* was after being struck by somebody, and you say it was the police? A The police and all, yes, sir.

Q Was it then that you told the District Attorney that you saw Owens coming at you with one hand behind him and the other hand in front?

MR. HAYWARD: Do not answer. Are you through? I object to it as incompetent, immaterial and irrelevant, and predicated on a false question. He has not said that at all. Counsel tried to put it in his mouth.

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THE COURT: Objection overruled.

Q (Question repeated by the stenographer).

MR. HAYWARD: Now, I object to the question. I insist he has not said that at all.

THE COURT: Well, that is for him to say. I will overrule the objection.

THE WITNESS: The District Attorney was not there.

Q No, just answer the question.

Q (Question again repeated by the stenographer).

A I don't know whether it was that time or before.

Q Did you see where Griffio went? A No, sir.

Q Why didn't you run to the corner where Griffio was? A I turned back the other way.

Q Why didn't you run to the corner where Griffio was? A I didn't see where Griffio went.

Q Well, didn't you see him at the corner? A I seen him there the first time, yes, sir.

Q Well, at the time that you stabbed Chicko, was Griffio on the corner? A Near the corner, yes, sir.

Q Well, now, after you saw him near the corner, or after you had stabbed Chicko, why didn't you run to the corner? A I didn't run anywhere, I just turned back.

Q Why didn't you run to the corner where your friend Griffio was? A I just turned back the other way.

Q As a matter of fact, Griffio was alongside of you when you stabbed this man? A No, sir.

Q And Griffio ran towards Ninth and you towards Tenth? A Yes.

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sir.

Q Well, you did go towards Tenth, didn't you? A I go towards Tenth, yes, sir, I did.

Q And Griffo ran towards Ninth? A Griffo was standing up near the corner of Ninth, he didn't run anywhere. He was not nowhere around me then.

Q He was standing on the corner? A Near the corner.

Q Standing? A Yes, the last report I saw of him.

Q He was standing then? A Yes, sir.

Q Looking right at you? A I don't know whether he was looking or not.

Q Well, couldn't you see him? A After I had done stabbed this man?

Q Yes? A I turned around and went on back to 414.

Q Well, you didn't have to turn around, did you? A I had to turn around. I was going towards Ninth avenue, then I had to go around and go towards Tenth avenue to 414.

Q To 414? A Yes, sir.

Q Well, you were backing up, though, towards Ninth avenue when you stabbed this fellow? A Yes, sir.

Q So that you were facing Tenth avenue, weren't you? A Yes, sir.

Q So you didn't have to turn around at all, did you? A Well, I was going to Ninth avenue, then I turned back and went to Tenth avenue.

Q Yes, but at the time this man came at you with one hand ex-

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tended forward and the other one behind, you were backing up towards Ninth avenue, weren't you? A Yes, sir, but I had to turn --

Q Then you were facing Tenth avenue? A But I was going towards Ninth avenue and I had to turn back to Tenth avenue.

Q You didn't have to turn when you were facing Tenth avenue, did you? You were facing Tenth avenue, weren't you? A When I wheeled around to him, yes, I was facing Tenth avenue.

Q When you stabbed him you were facing Tenth avenue? A Yes, sir.

Q When you stabbed Chiko you were facing Tenth avenue, is that right? A Yes, sir.

Q So that you didn't have to turn around? A Well, I turned around. I was going to Ninth and I had to turn around to go towards Tenth avenue, sir.

Q After you stabbed him you didn't have to turn around? As a matter of fact, didn't you turn around to see where Griffo was, if he was going to help you, didn't you? A No, sir.

MR. HAYWARD: I object to this as incompetent, immaterial and irrelevant where Griffo was, as not having any bearing on this case, as the witness has already been asked this question and answered it to the best of his ability three times.

THE COURT: I will allow him to answer just once.

Q Do you remember Griffo telling or calling to Chiko? A Do I remember Griffo calling to Chiko?

Q Yes? A No, sir.

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

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Q Well, that is all.

MR. HAYWARD: That is all, Frank, come back around here.

R A L P H Y O N G E N, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: Freeport, Long Island).

DIRECT EXAMINATION BY MR. HAYWARD:

Q Mr. Yongen, how long have you lived down at Freeport? A About nine years.

Q Are you in business down there? A Yes, sir.

Q For yourself? A Yes, sir.

Q What is your business? A Trucking.

Q Are you acquainted with this colored boy over here named Frank Summers? A Yes, sir.

Q How long have you known him? A Around about nine years.

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

Q How long did he work for you? A Between two and a half and three years.

Q And he lived during that time down there at Freeport, in your community? A Yes, sir.

Q Do you know what his reputation is in that community, Mr. Yongen, as being a law-abiding citizen, of good moral character?

A Why, it was all right as far as I know.

Q Well, it was good or bad? A Good.

CROSS-EXAMINATION BY MR. McDONALD:

Q As a matter of fact, you don't know much about him, do you?

A Why --

Q I say, you don't know much about him, do you? A Why, it was

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always good as far as I could hear around town. Well, I knew him while he was in Freeport.

Q He was employed driving a truck, wasn't he? A Helper on a truck.

Q And that's all you know about him, isn't it? A Yes.

Q And he came to work at nine o'clock, or whatever time he came to work, and he quit at quitting time? A Yes, sir.

Q That's all you know about him, isn't it? Now, just yes or no, please? A Yes, sir.

MR. HAYWARD: That is all. That is all he is supposed to know.

MR. McDONALD: Now, I was not asking you, Colonel.

THE COURT: Now, please proceed with the case.

Q When did he quit working for you? A Why, about four years ago.

Q Four years ago? A Yes, sir.

Q Well, that is pretty far back. All right. Thank you.

CLAUDE JENKINS, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: 3 Olive Boulevard, Freeport, Long Island).

DIRECT EXAMINATION BY MR. HAYWARD:

Q Mr. Jenkins, how long have you lived down there at Freeport?

A I lived between Freeport and Rockville Centre about seven years.

Q Now, I can hardly hear you, and how do you expect these gentlemen in the back to hear you? A About seven years.

Q You know the defendant Summers here, Frank Summers?

A Yes, sir.

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Q How long have you known him? A About seven years.

Q Did you know him when he lived in Freeport? A Yes, sir.

Q Have you known him since he has lived in New York? A No, sir.

Q Well, have you continued your acquaintance with him after?

A Well, I know him from the time he was in Freeport.

Q During the time he lived there you knew him? A Yes, sir.

Q And do you know what his reputation was in that community when he lived down there, do you? A Yes, sir.

Q Now, what was it, good or bad? A Good.

CROSS-EXAMINATION BY MR. McDONALD:

Q That was also four years ago, was it? A About that, yes, sir.

Q Have you seen him in New York since? A No, sir.

Q Have not seen him since he left Freeport? A No, sir.

O S C A R G R I F F I N, a witness for the defense, recalled, testified further as follows:

BY MR. HAYWARD:

Q Griffin, you are the same man that was on the stand here this morning? A I am.

Q How long did you tell us you had known the defendant, Frank Summers? A Four or five years.

Q Since you came up to New York? A Yes, sir.

Q How much of that time has he either worked for you in one of the gangs you are boss of or with you? A Well, he has been working with me off and on, I will say about a year or year and a half with the gangs I got.

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Q Do you know what his reputation is in the community in which he lives and where he works, for being of good moral character and as a law-abiding citizen, do you? A As far as I know it is good.

CROSS-EXAMINATION BY MR. McDONALD:

Q Do you remember hearing about him cutting somebody last winter?

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

THE COURT: I will allow it.

A I did not.

Q Nothing at all? A No, sir.

Q Do you remember him showing you a cut in his hand at any time last winter?

MR. HAYWARD: I object to that, your Honor. That might have come a thousand ways.

THE COURT: Yes, objection sustained.

A No, sir.

BY MR. HAYWARD:

Q Now, after I make an objection you wait until his Honor rules on it, Mr. Griffin. A Yes, sir.

BY MR. McDONALD:

Q Did you go around with Summers frequently? A Did I go around with him previously?

Q Frequently, do you understand me? A No, I didn't understand what you meant. I understand what you say but I don't understand what you mean.

Q Well, I will try and make it a little plainer for you. Did

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Q Did you go out with him evenings? A When I would meet him, I did.

Q Did you go out with him frequently, often? A No, never made it my business to go out with him often. If I met him on the road I would generally go along the road with him, or something like that, but I never kept no company with him, that is to say, I mean specially.

Q You were foreman of his gang, that's all? A That's all.

Q And you treated him the same as you would any other of the men under you? A All the rest that is underneath me, yes, all the same.

Q You don't know what the men underneath you do when they are away from the job, do you? A I do not.

Q You don't make it your business to find out what they do, do you? A It don't concern me.

Q I see; I think that's right, thank you very much.

MR. HAYWARD: If your Honor please, we are prepared to rest, and it is so near the closing hour I do not know whether your Honor wishes to go on now. I am willing to if the Court is.

THE COURT: I shall not send the case to the jury to-day, and I think it is better for you to sum up on the same morning when it is submitted. How long do you want to sum up?

MR. McDONALD: Do I understand that Colonel Hayward has not rested yet?

THE COURT: I understand he has rested.

MR. HAYWARD: Yes, I have rested.

MR. McDONALD: Well, I have some rebuttal, your Honor.

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SAMUEL DANZIGER, 132 called and duly sworn as a witness on behalf of the people in rebuttal, testified as follows:

(Residence: 334 East 94th street).

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the administrative force of the District Attorney's office? A I am.

Q What position do you occupy? A Stenographer and typewriter.

Q How long have you been attached to the District Attorney's office? A Four years.

Q Previous to that what was your occupation? A Stenographer.

Q By whom were you employed? A The United States Attorney's office.

MR. HAYWARD: I admit the qualifications of the witness, if the Court will permit, I do not know whether you care to have it done that way, but I will admit ^{that} this witness, if he testifies here, will testify that he was present on the night of the 13th of July at the station house, and the questions that have been read here by Mr. McDonald, whether the defendant says he remembers making answers to them or not, that those questions were propounded to the defendant, and that the defendant made the answers, and that this witness took them down. I do not admit the truth of them, but that this man will testify to that, if Mr. McDonald will agree to accept that, to save that much time.

MR. McDONALD: And that the witness took them down correctly?

MR. HAYWARD: Yes, I will admit that he will testify that he

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took them down correctly.

MR. McDONALD: We do not say of course that the defendant told the truth. All we say is that he took down correctly what the defendant said occurred.

MR. HAYWARD: Well, I will admit that this man will testify that he took ^{them} down, that his transcription and in taking down is correct, and that these questions were put and these answers given by the defendant.

THE COURT: That is, as read by the District Attorney?

MR. HAYWARD: Yes, as read by Mr. McDonald, and I think he marked the passages, if he wants to put them in the record again.

MR. McDONALD: Very well, then, I think that is all, thank you.

DAVID B. LAMBERT, a witness for the People, recalled, testified further as follows:

BY MR. McDONALD:

Q Officer, did the defendant Summers ever tell you that the deceased placed one hand behind his coat, to his hip pocket, and the other hand extended forward? A He did not.

MR. HAYWARD: Now, wait a minute. I object as incompetent, immaterial and irrelevant, and no foundation for it laid.

MR. McDONALD: It is proper rebuttal, I think, sir.

THE COURT: Did the defendant say he did tell the officer?

MR. McDONALD: Yes, sir, you will remember I propounded that question.

THE COURT: Well, on your statement that he said so I will

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allow it.

MR. McDONALD: That he told the officer and the District Attorney.

MR. HAYWARD: It is not my recollection, but I will not take issue with Mr. McDonald about it.

MR. McDONALD: Well, it is not so important anyway. I think that is all, Officer.

I do not know, sir, whether the concession as offered by Colonel Hayward there would cover the matter. I do not know whether it does or not, but I would like to have it plainly on the record, that it would cover the fact that the defendant did not state to the Assistant District Attorney- that it was not taken down stenographically, and therefore it was not said by the defendant, that he saw the deceased put his hand to the rear, and one hand extended forward.

MR. HAYWARD: I will add to the stipulation, if your Honor please, that that witness who was on the stand would testify that he did not hear the defendant say that statement that Mr. McDonald has made, or that the defendant did not make it while he, the witness, was present, which is all he could testify to.

MR. McDONALD: Yes, well, all right. The People rest.

THE COURT: Both sides rest. Now, how long will you want to sum up in the morning?

MR. McDONALD: I suppose we could finish with half an hour apiece?

MR. HAYWARD: I will try not to be long, your Honor, but I hate absolutely to agree now on that plan.

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THE COURT: Well, there is no doubt that both of you will not take more than the morning anyway?

MR. HAYWARD: Oh, no, sir.

THE COURT: Very well. Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you, and do not discuss the matter or allow it to be discussed in your presence over the adjournment.

You are excused until 10:30 o'clock in the morning.

(The Court then adjourned the further trial of the case until FRIDAY, DECEMBER 13, 1919, at 10:30 o'clock A.M.).

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