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# 3393

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

-----x

THE PEOPLE OF THE STATE OF NEW YORK ;  
vs. ;  
WILLIAM J. JACKSON. ;

Before:  
; HON. THOMAS C. T. CRAIN, J  
; and a jury.

-----x

Indictment filed May 19, 1920.

Indicted for manslaughter in the second degree.

New York, June 22, 1920.

A P P E A R A N C E S.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY JAMES E. McDONALD.

FOR THE DEFENDANT: MR. SAMUEL KOPPELL.

Peter P. McLoughlin,  
Official Stenographer.

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(Mr. McDonald opened the case on behalf of the People.)

CHARLES S. B. CASSASA, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he is attached to the Medical Examiner's Office.)

DIRECT EXAMINATION BY MR. McDONALD:

Q Your position as medical examiner is what? A Assistant Medical Examiner of the City of New York.

Q What are your duties as assistant medical examiner of the City of New York? A To determine the cause of deaths from violence, dying in prison, dying without medical attention, suicide and under suspicious circumstances.

Q Part of your duties is to perform autopsies? A Yes,

Q And ascertain the cause of death? A Yes, sir.

Q Did you see the body of Solomon Goldberg? A I did.

Q When? A April 29th, 1920.

Q Where? A 1:15 a. m.

Q Where was the body when you saw it? A At the 39th Precinct.

Q This body was identified to you by whom? A Albert Hand.

Q Patrolman? A A police officer attached to the 39th precinct, yes, sir.

Q Now, then, you say you made an examination? A Yes,

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...sir, I did.

Q Of this boy? A Yes, sir.

Q What did you find? A I found the boy had fractured ribs and intrathoracic injury -- injury to the organs within his chest.

Q Did you form an opinion as to the cause of death? A I did.

Q What was the cause of death? A Fractured ribs and injury to his lung and the sac which contains his lung.

Q What was the age of this boy? A Nine years old, a white boy.

JOHN J. O'DONNELL, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is attached to the District Attorney's office.)

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your profession? A I am a civil engineer.

Q Graduated from what? A Manhattan College, New York.

Q When did you graduate? A June, 1917.

Q You have been practising your profession since the time you graduated? A I have.

Q Did you draw a diagram of Third avenue and the streets from 105th to 110th streets? A I did.

Q Did you draw that diagram correctly? A I did.

Q Is this the diagram which you drew? (Showing witness a diagram) A Yes, sir.

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Q You drew 105th, 106 and 107th streets on one side of the diagram? A Yes, sir.

Q And then on the lower part of the diagram you drew 108th, 109th and 110th streets? A Yes, sir.

Q In other words this lower part of the diagram is a continuation of this end of it? A Yes, sir.

Q You have some red lines? A Those indicate the surface tracks.

Q Surface tracks? A Yes, sir, on the Third avenue railroad.

Q And these squares? A These represent the columns which support the superstructure of the elevated railroad on Third avenue. The round circles in black are hydrants several, some in the centre of the street and some on the side streets.

Q Round ones in red? A Where the red is the fire alarm box and the electric light pillar.

Q You have some figures there in green? A These are dimensions, lines giving the width of the side streets and the sidewalks, the length of the block from the northerly curb of one street to the southerly curb of the next street, indicated by an arrow point and then the building line from the northerly side of one street to the southerly side of the next street also indicated by arrows.

Q I notice a square with black lines at 106th street?

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A That is the station of the elevated road, this indicates the first landing-- as far as the first landing.

MR. McDONALD: Now subject to any correction that counsel may wish to place in evidence hereafter I offer the diagram in evidence.

(Marked People's Exhibit 1.)

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

(The witness states he lives at 69 Middleton street, Brooklyn.)

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business? A Stock clerk in a wholesale clothing house.

Q The name of the house? A Philip Walthour & Co.

Q Where is their place of business? A 808 Broadway, New York.

Q How long employed by them? A The last four and a half years.

Q Do you remember the 28th of April, 1920? A Yes, sir.

Q Keep your voice up? A Yes, sir.

Q In the evening between 8 and 9 o'clock of that day where were you? A Between 8 and 9 I was at Third avenue and 106th street.

Q Where had you come from? A I had come from Brooklyn on business.

Q You came uptown on the Third avenue Elevated Road?

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A Yes, sir, uptown on the Third avenue Elevated Road.

Q Where did you get off? A I got off at 106th street station.

Q 106th street and Third avenue? A Yes, sir.

Q What part of the stairs did you come down? A The northeast stairs at 106th street.

Q When you came downstairs where did you go? A I walked west to 106th street to the corner.

Q You crossed from the northeast side or where? A I did not cross no corners as yet.

Q Did you get off the sidewalk? A No, sir.

Q When you got off the elevated stairs did you turn south or what did you do? A I turned west.

Q Well, the stairs as I understand it are 106th street and Third avenue projecting up the avenue? A They point east up 106th street.

Q Now what did you do when you got downstairs and you turned west? A Yes, sir, I turned west.

Q Those stairs you speak of are they pointed east? A Yes.

Q On 106th street? A yes, sir. I went west over to the corner and as I reached the corner I heard loud noises back of me and I just turned in time to see the boy a couple of seconds before he was struck, by the machine.

Q Where was the boy then? A He was directly in front of the machine.

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Q Where was the machine? A The machine was right back of the boy.

Q Where was the machine, and the boy with regard to the street? A They were on the car tracks.

Q What part of the cartracks, near what street were they? A A few feet off 105th street.

Q 105th street? A Yes, sir.

BY THE COURT:

Q You were at the corner of 105th street? A yes, sir, and I looked back when I heard the loud noises, I just turned.

Q In other words you looked in a downtown direction?  
A Yes, sir; I looked in a downtown direction.

Q What you saw was about a block away <sup>from</sup> you? A Yes, sir; about a block away from me.

BY MR. McDONALD:

Q Was it the uptown side of 105th street? A The uptown side of 105th street.

Q Now you saw a boy? A Yes, sir.

Q Where was the boy? A Directly in front of the machine.

Q What part of the street or avenue was he on? A The boy was on the cartracks on the right hand side.

Q The cartracks you speak of, what cartracks do you mean? A The Third avenue Railway.

Q There are two sets, one going up and one down? A The right side, the north side of the cartracks.

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Q The cartracks run north and south? A Yes, sir.  
The tracks at the east side of the avenue.

Q Was it the track of the car running uptown? A Uptown  
and downtown.

Q I mean where you saw this boy, was it on the uptown  
or downtown side, the downtown track? A Uptown track.

Q Was he beyond the crosswalk? (No answer.)

Q Do you know what the crosswalk is? A The curb?

Q If 105th street were continued right across the ave-  
nue or if the sidewalk of 105th street continued right across  
the avenue would you say that he was right in line with that?  
A No, sir; a few feet off.

Q Where was he with regard to that imaginary sidewalk  
which we have projected across 105th street? A A few feet  
ahead of the imaginary sidewalk.

Q North of the imaginary sidewalk that runs across 3rd  
avenue there? A Yes, sir.

BY THE COURT:

Q What was he doing when you first saw him? A What was  
he doing?

Q When you first saw him? A I had no chance to do--

Q Standing, walking or running? A He was in kind of  
a daze as much as I could see of him.

BY MR. McDONALD:

Q The Judge asked you whether you were standing, walking  
or running. What was he doing? A Standing.

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Q You say just a few seconds before the car struck him? A Yes, sir.

Q Now after that car struck him, did you see what happened? A The car kept on going; I ran to the centre of the street where I knew the car would have to pass me; I yelled for him to stop, that there was somebody underneath.

Q Did you see anything underneath at that time? A Yes, sir.

Q What is that? A The boy holding on to something in front of the machine.

Q What kind of a car was it? A It was a big trucking car, a closed car.

Q Do you mean by that a commercial car? A I don't know what you would call a commercial car, a delivery car.

Q A delivery car? A yes, sir.

Q Was it closed on both sides with canvas or a wooden covering? A A wooden covering.

Q Do you mean by that was it a closed or open truck? A A closed truck.

Q When was it you saw the boy underneath the machine? A As he was struck, and as he passed me.

Q You ran out? A Yes, sir.

Q To the centre of the street you say? A Yes, sir.

Q As you ran out did you see the boy there then hanging on? A I kept on looking at the truck continuously until it

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passed me.

Q Did you see the boy? A Yes, sir.

Q Did you say anything to anyone as you ran out to the street? A Well, when I ran out I was continually hollering until the truck passed me and then I started in and chased it.

BY THE COURT:

Q What was the position of the boy after he had been struck by the truck and before the truck reached the point where you were? A The boy was holding on with one hand to the tender or bumper, I don't know what it is, and with the other hand kind of paddling himself and his feet were underneath the machine.

BY MR. McDONALD:

Q What was it you hollered? A I hollered to him, "Stop, as there was somebody underneath."

Q Did the man stop? A Instead of stopping he put on more speed.

Q What did you do then? A I started in to chase.

Q Then what did you do? A I chased him until he was at 110th street, and I was outdistanced about three-quarters of a block.

MR. COPPELL: I object to that. He does not identify any person.

THE COURT: The operator of the car.

Q Did you see who it was that was driving? A No, sir.

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Q The operator of this car you say he continued on, did he? A Yes, sir.

Q What did you do. Tell us what you did? A Well, after the truck had passed me I started to chase behind the truck I chased him and as he was at 110th street when I was out-distanced about three-quarters of a block. I don't know what happened then, but I noticed a mail truck coming along on the other side; I ran across to the other side waiting for the mail truck to pass and somebody stopped the mail truck before I did. As everybody was yelling after the mail truck it started the chase and there was one of the men that jumped off.

Q From the mail truck? A Yes, sir.

Q And did what? A Turned right around and started in and chased?

Q Whom? A This machine, that struck the boy.

Q That struck the boy? A Yes, sir.

Q Did you see where the boy fell off? A Yes, sir; I saw where the boy fell off, but I had no chance to see what happened to him.

Q Did you see the boy fall off the truck to the ground? A No, sir.

Q Did you see the boy on the ground? A After he had been struck.

Q I am talking now when you got to 110th street. Did you see the boy on the ground? A After the machine had passed him yes, sir.

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Q That was where? A That was at 110th street.

Q What did you do, get off the mail truck when you saw the boy there? A No, sir, kept on the mail truck.

Q What did the mail truck do? A Started to go uptown north in search of the machine.

Q What did you do? A Followed them up to 110th street where we picked up an officer.

Q Murphy? A We picked up Officer Murphy.

Q Then what happened? A Started to 117th street, turning east, I don't know the street up there, but after going about a block or two we started in zigzag fashion.

Q What is that? A Up and down.

Q Up one street and out through the other? A Yes, sir, north and south.

Q Now while you were running after this truck, was there anybody -- did you see anybody or hear anybody hollering? A Yes, sir.

Q Numbers of people? A Number s of people .

BY THE COURT:

Q Did you notice whether there was any name on the truck that you followed? A No, sir; I could not notice the name at that time, your Honor.

Q Did you notice how many persons, if more than one, were on that truck. I am referring now to the truck that you say hit the boy? A I did not see anybody on that until the machine had stopped; I went to 129th street and Third avenue.

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BY MR. McDONALD:

Q Now hoe many did you see in there then? A There was two colored fellows and one white fellow, and there was a number of children.

Q They were in the rear part of the truck, were they? A The children were inside of the truck.

Q Now you say that you were on this mail truck? A Yes,

Q Did you see the car stop? A What car?

Q The car that struck the boy? A Not until we had stopped there.

Q Then did you see it? A I seen it.

Q See anybody in the machine there then? A Well, one white fellow, Howard, jumped off and then I looked to see who was inside of it and I kind of made a dash at Howard who stepped on the curb.

Q Were you on the truck at the time the officer fired a shot? A Yes, sir.

Q You were on the mail truck then? A Yes, sir. I was.

Q You say that you started after Howard when he jumped off; when Howard jumped off this truck that struck the boy?  
A Yes, sir.

Q You started after Howard? A Yes, sir.

Q Did you see this defendant there at any time? (No answer.)

THE COURT: I don,t know who he means by Howard.

MR. McDONALD: That is the white man, sir, that

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has been described as being on the truck.

BY MR. McDONALD:

Q Is that whom you mean? A Yes, sir, that is the gentleman I mean.

Q You have seen Howard since? A Yes, sir, I seen Howard yesterday.

Q Up in my office? A Up in your office, yes, sir.

Q Will you tell us how this car was going, whether going fast or slow? A I am not a judge of speed; I never drove a machine.

Q So you don't think you cant ell us? A No, sir, I dont think I can tell you.

CROSS EXAMINATION BY MR. KOPPELL:

Q Howard is the white man in that car? A yes, sir.

Q How many times had you seen Howard since the day of the accident? A The following day when we were up in the court, the Municipal Court and twice since.

Q Have you spoken to Howard? A No, sir.

Q Where did you meet him those two subsequent times?

A Up in this building.

Q Up in this building? A Yes, sir.

Q In the office of the assistant district attorney?

A First in the Homicide Bureau and second yesterday.

Q Did you tell the assistant district attorney or anybody else in the District Attorney's office the entire testimony that you have testified to here today? A I beg pardon.

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Q Did you go over the testimony with any one since the day you were in the Magistrates' Court? A Yes, sir.

Q How many times? A Twice.

Q Was your memory very good at the time you testified in the magistrates' Court? A Yes, sir.

Q Was it better then with relation to this accident than it is today? A I would not say that.

Q It was more accurate? A I would not say that.

Q Do you mean to say your memory is more accurate now than it was when you were in the Magistrates' Court? A Yes, sir.

Q So you remember better now what happened at the accident than you did when testifying before the magistrate on May 4th? A Yes, sir.

Q In other words by the lapse of six or seven weeks you can remember better than if the accident was only a few days ago, is that correct?

Objected to; objection sustained.

Q Do you remember being asked this question at the Magistrates' Court, "Did you see how many men were on this car". You were asked that question," and you answered "yes, I seen them when I saw the fellow who jumped I seen the other fellow who was with me, I grabbed hold of a white fellow". Do you remember being asked that question, and, testifying to that? A Yes, sir.

Q Now was that correct? A Correct.

Q So that when you testify now you caught hold of a

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white ,an it was not correct? A I beg pardon. I didn,t say I grabbed hold of the white man, the white man stopped on the curb before I had a chance to grab him.

Q But you didn,t grab him? A No, sir;

Q You testified that you did? A No, sir.

MR. McDONALD: I object to that, sir.

Q You did not testify that you did?

Objected to.

A No, sir.

Q You say that you got off at 106th<sup>street</sup> station of the 3rd Avenue El.? A Yes, sir.

Q You came up on the uptown side? A Yes, sir; I came up on the uptown side.

Q You are not familiar with that section at all? A No.

Q You were familiar with it the day of the accident?

A No, sir; I was not familiar with the streets on the day of the accident.

Q You were not familiar? A No, sir.

Q You were standing on the northeast corner of 3rd avenue and 106th street? A Yes, sir.

Q About what time did you reach Third avenue and 106th street? A At 8.30.

Q Is that a crowded section of the city? A It was not crowded at that time.

Q Was there many people in the street? A Not many.

Q Where were you intending to go? A I intended to go

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to 110th street and park avenue.

Q You intended north and east? A I intended to go west first.

Q North and west? A Yes, sir.

Q Did you not intend to go south? A No, sir.

Q You say that you saw this boy at 105th street and 3rd avenue standing in the street? A A few seconds.

Q Were you in a hurry to reach your destination? A Yes.

Q Yet you stopped to see a boy standing in the street?

A I was attracted by the noises when I turned.

Q Well, at the time that you first saw the boy there wasn't any noise? A Yes, sir; people hollering there for the machine to stop, or for the boy to get out of the way from what I judged.

Q Where was the boy at the time? A I had a chance to see the boy a few seconds before he was struck.

Q He was standing in the street? A Standing, he must have been kind of--

Q What was all this hollering about, the boy had not been struck? A For the machine to stop or for the boy to get out of the way.

Q Was the machine behind the boy or in front of him? A A couple of feet away.

Q Behind him or in front of him? A In back of him.

Q This boy was standing facing towards you? A Well, I had no chance to see which way he was facing.

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Q Did the boy get out of the way? A He did not get out of the way as the machine struck him; he w

Q He was standing there in spite of the noise? A He must have been kind of dazed.

Q Never mind what must have been. Did you see him move in any way to get out of the way? (No answer.)

BY THE COURT:

Q During the seconds that you were looking at him, before the car struck him, so far as you can now remember, did the boy move? A No, sir.

BY MR. KOPPEL:

Q Using the court room as a measure, tell me how far distant was this boy from you at the time? A About from over here, from here to here from me; he was further than that wall. (Pointing to the rear wall of the court room.)

Q Further than that wall? A Yes, sir.

Q A distance of about two hundred feet?

THE COURT: He says this boy was a block away.

Q That is approximately 200 feet? A I don't know.

MR. KOEPEL: Will you concede that a block in that vicinity is about 200 feet?

MR. McDONALD: Yes.

BY MR. KOEPEL:

Q You heard the noise being made near the automobile?

A Yes, sir.

Q Now where was the automobile at the time? A The au-

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tomobile at the time was in back of the boy.

Q Still further away from you? A Yes, sir, still further away from me.

Q Than the boy was? A Yes, sir.

Q You heard these noises very plainly? A Yes, sir.

Q There was a lot of people in the street, congregating at the time? A No, sir.

Q What was the nature of the noises, do you remember anything that was said? A I was further away, and I could not tell you the nature of the noises.

Q What were they "Get out of the way"? A I could not make them out.

Q What kind of noises were they? A Yells or screams.

Q Were there many of those yells and screams? A Yes.

Q There were so many and so loud that you could hear them at a distance of about 200 feet from that boy? A They were pretty loud at the time I heard them.

Q You could hear them? A Yes, sir.

Q You say that the boy did not move from that place?

A I did not see him move.

Q Then you say he saw the boy being hit by the car? A Yes.

Q Was he hit by the front part of the car or by the side of the car? A By the front part.

Q What happened after you saw the boy hit by the front of the truck? A He kind of went under and threw his hands up.

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Q In front of the truck? A Yes, sir.

Q Then what happened? A We started to be dragged, the machine started to drag him.

Q Dragged him along and the boy still in the front?

A Yes, sir.

BY THE COURT:

Q Where was the boy when he dropped away from the car? A At 105th street.

Q I am not asking you now where the boy was when the car struck him, but I am asking you where was the boy at the moment that he fell, if he fell to the pavement? A Right in front of the machine.

BY MR. KOPPEL:

Q The boy was hit by the car? A Yes, sir.

Q After the boy was hit by the car or automobile the boy held on to a part of the car? A Yes, sir.

Q Where was the boy at the time that he dropped his hold of the car, and fell to the street? A At 110th street.

Q And Third avenue? A Yes, sir.

Q And Third avenue? A Yes, sir; still on the cartracks.

Q So that he had hold of the car according to you from the uptown side of 105th street and Third avenue to 110th street and Third avenue? A Yes, sir.

BY MR. KOPPEL:

Q I am using now people's Exhibit 1, and I want to ask you to say whether you were standing about over here (illus-

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trating) this is Third avenue running north, this is 105th, 106th, 107th, 108th, 109th and 110th.

THE COURT: Make a mark where you were at the time-- at the moment that you saw the boy before he was hit.

(Witness indicates.)

Q Mark a mark now where the boy at the moment when the car struck him. (Witness indicates with his initials and the word "boy".)

Q Is that right? A Yes, sir.

Q You have marked where you were standing with the initials C. W indicating the place where the witness was and the word boy is an indication where the boy was? A Yes.

Q Now, when you followed this truck, did you follow it from behind or in front of it? A From behind.

Q You were running? A Running.

Q You say that the truck outdistanced you by three-quarters of a block? A Yes, sir.

Q You think that the truck was running very fast? A Yes.

Q How fast do you run? A Well, I am an athlete from school days.

Q You ran very fast? A Yes, sir? I wouldn't say extra, but I kept up my pace.

Q Approximately how many miles do you run? A Well, that is according to the speed I am going at.

Q Were you going at a pretty good rate of speed? A A pretty good rate of speed.

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Q And he outdistanced you by about three-quarters of a block? A Yes, sir.

Q Now all the time that you were running did you have the truck right before you? A Yes, sir.

Q Did you make any outcry? A I made outcries that was being outdistanced, every time I was being outdistanced.

Q Well, can you say whether this boy was still on the truck? A No, sir; I was in the back of the machine and I lost sight of him.

Q You don't know where this boy was after the truck had struck him until the time that you caught the truck? A I beg pardon.

Q You don't know where this boy was after the truck struck him until the time you caught the truck? A I did not know after he passed me at 106th street.

Q After this truck struck the boy and you began following, you could see the boy until you got near the truck?

THE COURT: This witness did not begin to follow until the truck had reached 106th street, the witness himself being at 106th street, the witness started to run after the truck as it passed the witness at 106th street.

BY MR. KOPPEL:

Q Now, of course from the moment that you got behind the truck, and while you were running behind the truck you again did not see the boy? A No, sir.

Q Did you see the boy as the boy was in the act of fall-

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did you still hear an outcry of the boy?

Objected to; objection sustained.

Q Did you hear this boy's outcries after it struck him at 106th street? A No, sir.

MR. McDONALD: I object to that.

THE COURT: You may ask him whether he heard the outcries of the boy, if the boy made one after the truck had passed the witness.

BY MR. KOPPEL:

Q I ask you now whether you had heard this boy make any outcry after the truck-- after you had seen the truck pass you? A No, sir.

Q You did not? A No, sir.

Q Did you see how the seat of this truck was built?

A I had no chance; I was looking at the boy.

Q You didn't see it at all? A No, sir.

BY THE COURT:

Q Did you at any time that day? A Yes, sir.

Q Or that evening? A After the machine had stopped.

Q Did you take a look then at the seat of the truck, look at the truck. That is, did you take a look at it? A I took a look at the body of the car.

Q Are you able to describe to these twelve men as to the seat? A As to the seat?

Q Are you able to describe that truck to these jury-men? A It was a kind of a large truck, a closed wooden

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ing away from the truck to the pavement? A No, sir.

Q Did you see the boy at any time while he was on the pavement at Third avenue? A After I passed him.

BY THE COURT:

Q Yes or no to that? A Yes, sir.

Q At that moment where was the boy? A The boy was more to the truck, the second truck.

Q Upon what street, near what street? A Near to 110th street.

Q Did you see the boy in the act of releasing his hold upon the car? A No, sir.

BY MR. KOPPEL:

Q Did you hear this boy yell at any time after he had been struck by the car, and dragged along? A Slight yells coming from the boy.

Q You could hear the slight yells? A Yes, sir.

Q Wasn't there a big crowd at the time you commenced to run after the truck? A The crowd was not-- there was a crowd after, a big crowd chasing after the truck.

Q And there were noises made by the crowd? A Yes, sir.

Q Yet you could hear this boy's cries? A Yes, sir, as he passed me I could hear a slight yell as the truck passed me.

Q The truck only passed you at 106th street? A Yes, sir.

Q But I mean after you had seen the truck strike the boy

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body.

Q About how high from the street level was the driver's seat, the chauffeur's seat? A It was about this high to step up. (witness illustrating) one step here with the centre went this way, and that is as far as I seen.

BY MR. McDONALD:

Q Do you mean from where you are standing? A (Witness indicates about four feet)

THE COURT: During the progress of the trial will there be any picture of the automobile?

MR. McDONALD: No, sir.

BY MR. KOPPEL:

Q Where the driver was sitting were there any boxes or people around the street there? A I beg pardon. I don't know where the driver was sitting; I don't know where the wheel is on it even now.

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

Q You had not seen this truck after it had been stopped?  
A After it stopped I seen it; never looked inside to see where the chauffeur or anybody else was sitting?

Q Weren't you interested after having followed the truck for that long distance you described to see what kind of a truck it was?

Objected to; objection sustained.

Q Did you see who was sitting at the wheel at any time?

A No, sir.

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Q You don't know now who was driving that car ? A No.

Q You don't know now who was driving the car at the time that the boy was struck? A Not that I know of from personally seeing him but what I was told. I did not see him.

Q You don't know who? A <sup>no</sup> Yes, sir, I don't know who was driving.

Q You don't know who was driving after the boy had been struck? A No, sir, I don't know who had been driving after the boy was struck.

Q You don't know who was driving at the time the truck was overtaken? A No, sir.

Q Did you see this boy taken to the drug store? A No,

Q Did you come back to the scene after the truck was overtaken? A I passed the scene when the truck was being taken by the officer over to the station.

Q Who did you give your name to? A Officer Murphy of the 39th Precinct.

Q You told him what you knew about this case? A Yes, sir

Q You gave your name and address? A Yes, sir.

Q Were you subpoenaed to appear in the Magistrates' Court? A Yes, sir.

Q You were subpoenaed to appear here? A No, sir, he asked me in person to be here.

RE DIRECT EXAMINATION BY MR. McDONALD:

Q You gave your name to the officer at the police station. You were taken to the police station? A Yes, sir.

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Q Did you know the Goldberg boy or the father of this boy? A No, sir.

Q When the car passed you how close were you to the car? A Well, from about here to about here.

Q That is three feet? A Yes, sir.

A JUROR: Three and a half or three feet?

ABRAHAM STRUMLAUF, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he lives at 159 East 109th street.)

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business? A Chauffeur.

Q Employed by whom? A United States Mail.

Q Keep your voice up? A United States Mail.

Q How long have you been employed by the United States Mail? A Fifteen months.

Q You drive one of the mail wagons? A Yes, sir.

Q Were you driving a wagon on the 28th day of April, 1920? A Yes, sir.

Q About 8.30 p.m. on the evening of that day where were you? A Southbound on 3rd avenue and 110th street.

Q Did you hear anything at that time? A Yes, sir.

Q What did you hear? A The whistle of a car coming towards me attracted my attention, I looked up, and I seen a crowd of people coming after the car, and as I looked I happened-- my eye struck the front of the car and I seen a boy hanging on the front.

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Q You saw a boy hanging on the front? A Yes, sir.

Q Of what car? A Of this northbound car coming towards me.

Q You mean an automobile? A Yes, sir.

Q What kind of an automobile was it? A Commercial

Q A commercial truck? A Yes, sir.

Q Do you know the make of the car? A I did not take particular notice of the make of the car.

Q Did you see who was driving it? A Not until I stopped -- the car stopped.

Q Until this car stopped? A Yes, sir.

Q You say you saw a crowd following this car? A Yes.

Q This northbound truck? A Yes, sir.

Q Where was the boy hanging from? A Looked to me with a quick look as if it was on the axle.

Q The front part of the truck anyway? A Yes, sir.

Q What did you do then? A I stopped and one of the men hailed me as I stopped and I seen the child fall off as I was turning around.

Q As you were turning around-- you had been going south?  
A Yes, sir.

Q You stopped and somebody spoke to you? A Yes, sir.

Q You proceeded to turn north, did you? A Yes, sir.

Q And as you turned north you saw this child fall off this north bound truck? A Yes, sir.

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Q What did you do-- did you turn around? A Yes, sir, I turned around.

Q Which way? A Kept right on going after this truck.

Q After this northbound truck? A Yes, sir.

Q What did you do then? A At 112th street an officer stopped me and commanded me to give chase.

Q He got on? A Yes, sir.

Q Do you know who that officer was? A Not until afterwards, Officer Murphy.

Q Murphy? A Yes, sir.

Q And then what did you do? A We went north on 3rd avenue to 117th street, turned east on 117th street to Second avenue, and south.

Q Did you have this northbound truck in sight all the time? A Yes, sir.

Q It was continually moving? A Yes, sir.

Q Where? A South on Second avenue to 116th street, east on 116th street to Pleasant avenue, north on Pleasant avenue to 124th street and west on 124th street to Second avenue, north on Second avenue to 127th street, and that is where we stopped the other truck.

Q When you stopped him-- did you see anybody on the automobile truck? A Yes, sir.

Q That you had been chasing? A Yes, sir.

Q Whom did you see? A This man, the defendant and a white man and another colored man.

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Q Where was this defendant when you stopped the truck? A Behind the wheel.

Q Th drivers wheel do you mean? A Yes, sir.

Q Who was alongside of him? A I didn,t take particular notice, but a white man jumpdd off as we stopped.

Q Now how long have you been a chauffeur? A Four years.

Q Can you tell us about what speed this car was going at the time you saw it? A Well, at a rate between 30 and 35.

Q Miles an hour? A Yes, sir.

Q At the time that you started after it had it increased its speed? A Well, gradually.

Q About what speed was it going at just before you stopped it? A Just before I stopped it it slowed down at that time.

Q At that time were you crowding somewhat to the left side of the road? A No, sir; he had crowded me on the left side of the road.

BY THE COURT:

Q Can you describe that car. I am referring now to the truck in front of which you saw the boy. Can you describe it to the jury. Try and tell them how it looked so that they can tell what kind of a car it was, and about how large, its general appearance of it. See if you can describe it? A It seemed to me to be a ten and a half Garford; it had a long green body on it and the cab seemed to be high; it was a left hand drive. That is all I can re-

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member. I got a quick glance at it.

BY A JUROR:

Q Was it a gasoline or an electric truck? A Gasoline.

BY MR. MC DONLAD:

Q You say the cab was kind of high? A Yes, sir.

Q You say it was a left hand drive? A Yes, sir.

Q Was it on the left hand side that you saw the defendant behind the wheel? A Yes, sir.

Q Now, how high do you think this cab was from the ground?

A About three feet and a half.

BY THE COURT:

Q The man who was driving the truck, and who had hold of the wheel, what, if anything did he have in front of him in that truck? A He had a wind shield, I believe.

Q You saw that? A Yes, sir.

Q What kind of a night was this, clear or rainy? A Clear if I am not mistaken.

(At this point the Court admonishes the jury and takes a recess until 2 o'clock.)

AFTER RECESS 2 p.m.

A B R A H A M S T R U M L A U F, a witness for the People, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. McDONALD:

Q After you stopped the car or stopped the truck you say that the defendant was at the wheel? A Yes, sir.

Q What happened then? A The officers jumped on.

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Q Was the officer on your truck? A Yes, sir.

Q Did you hear him fire a shot at any time while on your truck? A Yes, sir.

Q Was that officer Murphy? A Yes, sir.

Q Where did you go then? A I went back to the police station.

Q You went to the police station? A Yes, sir.

Q You drove over to the police station? A Yes, sir.

Q Did you see the boy again after that? A No, sir.

Q Did you go to the drug store? A No, sir.

Q You say that you did not see the boy in the station house? A No, sir.

CROSS EXAMINATION BY MR. KOPPELL:

Q Did you ever see the defendant before this time? A No.

Q Wasn't there another colored man on the truck there?

A Yes, sir.

Q Are you sure now which of the two men were at the wheel? A Yes, sir.

Q Which one was it? A The defendant.

Q You say that because he is here now? A No, sir.

Q At the time that you first observed the truck did you observe who was at the wheel? A No, sir.

Q You don't know now whether it was the defendant at the wheel? A Not at the time driving.

Q What is the answer? (Repeated).

Q At the time -- the moment you saw the machine where

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did the defendant sit, at the time that you first observed the truck? A I couldn't tell you; I could not see that.

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

Q Do you remember testifying in the magistrates' Court?

A Yes, sir.

Q Well, your memory at that time very vivid as to what occurred at the time of the accident?

MR. McDONALD: I object to that as descriptive of the qualities of his memory.

BY THE COURT:

Q Was your memory good at that time? A Yes, sir.

BY MR. KOPPELL:

Q Was it better than as to what occurred on the day of the accident than it is now? A It was better than.

Q Do you remember being asked "Where were you when they were stopped? A. Two gentlemen jumped off." This is by the assistant district attorney "Q. Which two? A The white man (indicating the defendant Howard) and a dark colored fellow. Q. Which one do you mean? ", and you answered, "The middle man indicating the defendant Jenkins." Do you remember being asked this question and testifying in that way? A. Yes, sir.

Q You want to change your testimony now?

MR. McDONALD: I object to that, sir.

THE COURT: Yes or no.

A No, sir.

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Q Did you see these two men on thr truck when the machine was stopped, Jenkins and Howard? A Yes, sir.

Q You did not see the defendant there? A yes, sir.

Q You did not testify that way in the magistrates' Court?

A I was not asked that in the Magistrates' Court.

Q That is the only reason you did not answer? A Yes.

Q You knew then that the defendant was being held on that charge? A What charge?

Q A charge of manslaughter? A They had it murder at that time.

Q Murder? A Yes, sir.

Q Well, you didn,t say whether the defendant was on that car? A I was not asked.

Q Before you got on the stand in the magistrates' Court, did you discuss the case with the assistant district attorney in charge of it? A No, sir.

Q You got on the stand without having said a word to the District Attorney? A Just called the name.

Q And he immediately asked you questions without you telling him anything about the case? A Yes, sir.

Q Put you on without having spoken on e word to you? A He asked me if I was a witness.

Q Asked you if you were a witness? A Yes, sir.

Q Asked you anything you knew about the case? A Well, not in particular.

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Q Nothing in particular, what did he ask you? A Not that I recollect; I don't remember now.

Q Do you recollect anything? A Just as I told you he asked me was I a witness, did I see the thing so I told him yes.

Q Did he say how it happened? A No, sir.

Q Did he ask you whether you knew which man was at the wheel in the magistrates' Court? I mean before you got on the witness stand in the Magistrates' Court, did the assistant district attorney who prosecuted the case at that time ask you anything with reference to who was at the wheel?

A I don't remember.

Q Will you say now that he did not?

Objected to.

Question allowed.

Q Will you say now whether or not you did so? A I don't remember.

Q You say you were driving in a zigzag fashion?

MR. McDONALD: I object to that, sir.

THE COURT: I do not think this witness said that.

MR. KOPPELL: Yes, sir, he did.

THE COURT: I will allow you to ask the question.

Q Do you remember this question being put to you, in the magistrates' Court and you giving this answer. "Can you

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tell us how they were driving," and is this your answer--  
"were they driving in a straight direction or did they zig-  
zag as they were going through the street? A Straight di-  
rection. Q. They kept on going straight? A. Yes, sir".

MR. McDONALD: Read the next one now.

MR. KOPPELL: I am cross examining this man not you.  
I object to the assistant district attorney telling  
me what questions to read.

THE COURT: You have asked the question and he has  
answered straight.

MR. KOPPELL: I think the Assistant district at-  
torney should not make these remarks as to any ques-  
tion to ask the witness.

MR. McDONALD: I let counsel get away with it the  
first time.

MR. KOPPELL: I object to that.

MR. McDONALD: I withdraw that. I object to counsel  
asking questions without any objection, but he did  
not continue and it left the witness in a peculiar at-  
titude before the jury.

THE COURT: You may interrogate the witness later.

MR. KOPPELL: I will ask the next question, Mr. Mc-  
Donald.

MR. McDONALD: Thank you very much.

BY MR. KOPPELL:

Q Listen to this question and answer "Except for

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the various turns that you have described? A. Yes." Now what were the turns that this truck made? A Well, I have related that once before.

Q Will you kindly relate them once again? A North on Third avenue to 117th street, east on 117th street, towards Second avenue, south on Second avenue to 116th street, east on 116th street to Pleasant avenue, north on Pleasant avenue to 124th street, west on 124th street to Second avenue, north on Second avenue to 127th street.

Q You were following along with your truck? A Yes, sir.

Q At that time you were quite excited? A Not in particular.

Q You were not excited? A No, sir.

Q Just followed the truck along? A Yes, sir.

Q They were all following this truck? A Yes, sir.

Q Did you make any memorandum? A No, sir.

Q As to the streets that this truck had gone through?

A Well, no, sir, not in particular.

Q You just left it to your memory? A Yes, sir.

Q You now testify merely from memory? A Yes, sir.

Q Since you testified in the magistrates' Court have you told anybody anything about this case? A What do you mean anybody.

Q Anybody in the District Attorney's office? A Well, the District Attorney had questioned me.

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Q When did he question you last? A Yesterday.

Q You went over all these facts again yesterday? A Not over all the facts he just asked me for my testimony.

Q Well did you tell him yesterday what you have testified to here today? A Yes, sir.

Q When you told the District Attorney yesterday what you testified to today was anybody else present at the time?

A Well, I believe the District Attorney's assistant.

Q Any other witnesses in this case, were they there?

A Not inside.

Q You were just alone? A Yes, sir.

Q You were asked what do you know about this case? A Yes.

Q You told him everything that you have testified here about? A Yes, sir.

Q Were there questions being put to you or did you tell him in narrative form? A Yes, sir, narrative form.

Q You just told what you knew about it? A Yes, sir.

Q Can you describe truck as you have seen it the first time? A The first time coming towards me or after it stopped?

Q When you saw it the first time was the truck coming towards you? A Yes, sir, when I saw it the first time the truck was coming towards me.

Q Tell us how that truck looked at that time? A Well, all I took notice of was the wind shield and the whistle; I heard the whistle; it went by me too fast to make any good

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account of it.

Q The truck went whistling past your truck? A Yes, sir.

Q Giving the signal right along ? A Yes, sir.

Q When did you first turn to follow the truck? A After the truck had passed me.

Q Then you swung around? A Yes, sir.

Q 110th street? A Yes, sir.

Q And followed the truck? A Yes, sir.

Q Did you see the boy in front of this truck at the time you first saw the car? A Yes, sir, just for an instant.

Q For an instant? A Yes, sir.

Q How was the boy, did he have his face towards you or was his face towards the car? A I could not tell you.

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

Q Did you see the boy drop from the car? A Yes, sir, as I looked at it he dropped.

Q Just at that moment at 110th street? A Yes, sir.

Q Then the power or truck began to commence to go?  
A Yes, sir.

Q And continued to go? A Yes, sir.

Q At what street was the revolver shot? A 124th street.

Q At what street did you say this revolver was shot?  
A 124th street.

Q What avenue? A Between First and Second avenues.

Q Was it going east or west? A West.

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Q Going west? A Yes, sir.

Q From what avenue did it go west? A From First avenue.

Q First avenue west towards Second avenue? A Yes, sir.

Q In 124th street? A Yes, sir.

Q Those are narrow streets, are they not? A Not exactly narrow.

Q Are they as wide as the avenues, the side streets?  
A No, sir.

Q Considerably narrower, are they not? A Narrower according to the avenue streets.

Q Are you familiar with that neighborhood? A No, sir.

Q You are not familiar with it? A No, sir.

Q Was this truck a wide or narrow truck? A Well, it was not wide and it was not narrow.

Q Well, what was it? A It was medium size.

Q About how wide would you say it was? A Five feet.

Q About five feet wide? A Yes, sir.

Q About how wide would you say the street was?  
A Well, that I can't say; I am no judge of that.

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

Q How many feet behind this truck was your automobile?  
A At what time?

Q At 124th street? A Almost alongside of it.

Q Almost alongside of it? A Yes, sir.

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Q Were you driving the automobile? A Yes, sir.

Q What kind of an automobile did you drive? A A Ford.

Q That is a very light car? A Yes, sir.

Q You could see very well from where you sitting at the wheel? A Yes, sir.

Q Did you see then who was at the wheel? A No, sir.

Q You were right alongside of it? A Yes, sir.

Q You had very good vision there? A Yes, sir.

Q You didn't see who was at the wheel? A No, sir.

Q You didn't see who was at the wheel? A No, sir.

Q Were you to the right or left side of it? A To the left side of the car.

Q To the left side of the car? A Yes, sir.

Q And the wheel was what side of the car? A Which wheel?

Q On the truck? A Which truck?

Q On the truck that you were following? A The left side of the car.

Q So that you were right next to it? A Yes, sir.

Q You didn't see who was driving that car? A No, sir.

RE DIRECT EXAMINATION BY MR. McDONALD:

Q You were asked a number of questions from a series of questions-- do you remember being asked in the Magistrates' Court this question-- just before you were asked the questions asked by Mr. Koppell on May 14, 1920. During all

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this time that you were chasing this automobile truck did you see the defendant, and did you answer "no." Do you remember that answer? A Yes, sir.

Q Do you remember the next question "When was the first time you saw the defendant (page 34) when was the first time that you saw the defendant", and you answered when they were stopped". Do you remember that? A Yes, sir.

Q Then the next question "Where were they when they were stopped, " and you answered, "two gentlemen jumped off". Do you remember that? A Yes, sir.

Q And the next question you answered "Which two", and you answered "The white man" (indicating the defendant Howard) and the dark colored fellow? A Yes, sir.

Q Do you remember that? A Yes, sir.

Q Do you remember this question being asked "Which one do you mean", and you answered "The middle man" (indicating the defendant Jenkins) .

Q Who was the colored man that jumped off Howard?

A Yes, sir.

Q Is that what you meant by that? A Yes, sir.

Q And the next question "They jumped off the truck", and you answered "yes". Do you remember that? A Yes, sir.

Q Do you remember being asked the next question, "Where was the other man", and your answer "at the wheel". Do you remember that? A Yes, sir.

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Q Do you remember this next question "Jackson was he at the wheel? A. Yes." Do you remember that? A Yes, sir.

Q At the Magistrates' Court? A Yes, sir.

Q Did you notice the condition of this defendant, I mean did you notice whether he was drunk or sober? A I did not notice.

JAMES J. SEARSON, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he lives at 1970 Third avenue.)

MR. KOPPELL: At this time I object to this witness being called on this trial as his name is not inserted on the indictment.

THE COURT: I will overrule the objection.

MR. KOPPELL: Exception.

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business? A Seaman.

Q When did you come back from your last trip? A The last trip we landed I think on the 11th of May.

Q The 11th of May? A Yes, sir; the 11th of June.

Q When did you go, April? A April, 29th we sailed.

Q Where did you say you lived? A 1970 3rd avenue.

Q Near what street is that? A That is right off 108th street.

Q Now do you remember being on 3rd avenue at anytime during the 28th day of April, 1920? A Yes, sir.

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Q During the evening of that day? A Yes, sir, I was.

Q About what time were you at 107th street and 3rd avenue? A About 8:30 p.m.

Q Keep your voice up? A Yes, sir.

Q Now which corner were you on? A I was on the northwest corner.

Q Now, did you see anything? A Yes, sir.

Q As you were standing there? A Yes, sir.

Q Tell us what you saw?

MR. KOPPELL: I object to that question on the ground that this witness's name is not inserted on the indictment, and the defendant is entitled to know the name of every witness that will be produced against him.

THE COURT: No, the point is not well taken, Counsel. The defendant is entitled to know the names of witnesses who appeared before the Grand Jury.

MR. KOPPELL: Exception.

BY MR. McDONALD:

Q Now answer that question. Please tell us what you saw? A Yes, sir, what I noticed was I heard, the first thing I saw was a lot of people hollering and screaming and that caught my attention to look around and see what was the matter. I noticed an automobile going off and a young boy hanging on to the front and so being no more than I saw that I ran towards the automobile and the first thing I done was

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I hollered with all my might.

Q You hollered? A I hollered for the chauffeur to stop. I hollered, I mudt have hollered at least three times and me seeing him fail to stop I ran towards the back of the automobile right away, and I happened to get my fingers in between the car, the bottom part of the tailboard and the upper part and I held on to the automobile and I ran with the automobile as far as 110th street when all of a sudden my foot hit something be neath, I don't know what it was until I looked around and what I saw was a boy laying there right in the cartrack. I knew then right away that it must have been the boy, he must have been on the front of the automobile.

MR. KOPPELL: I move to strike out what he knew.

THE COURT: Beginning with it must have been is stricken out.

Q When you say your foot hit the boy what did you do then, go on or what?

MR. KOPPELL: I object to that as leading.

THE COURT: That is leading.

BY MR. McDONALD:

Q Tell us what you did, everything you did? A Well, I hung on to the automobile until I got between 113th and 114th streets, on Third avenue, and I had to get off because the automobile was going too fast for me in order for me--

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THE COURT: Strike that out. Well, he got off.

THE WITNESS: The automobile was going too fast for me to keep up, and the last I saw of it it turned east at 117th street and Third avenue.

Q What did you do then? A I went back to where the boy was in the drug store at 110th street and Third avenue, and I noticed there that the boy was dead.

Q You remained there did you? A Yes, sir.

Q Did the ambulance surgeon come? A Yes, sir, the ambulance surgeon came.

Q Pronounced him dead, didn't he? A Yes, sir.

Q What did you do then? A I went down to the station house, and gave my name in as a witness.

Q You say that when you first saw this boy hanging on to this car you were at 107th street? A Yes, sir and Third avenue.

Q Now, then did you see how many men were on this car or this automobile in the drivers seat? A Yes, sir, three men.

Q Were they colored or white? A No, sir; there was one white man.

Q Now did you see who was driving? A A colored fellow driving, he seemed to be, one fellow seemed to be shorter than the other, the fellow driving the car seemed to be the shorter one.

Q Did you see that man in court whom you saw driving

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that car? A No, sir, I did not.

Q You did not? A No, sir.

Q Do you see him now in court? A Yes, sir.

Q Is that the man (pointing to the defendant) A Well, I could not exactly say.

Q How was this man dressed that night? A He had a sort of khaki shirt on and a khaki coat on.

Q You say you hung on to the back of this car?

A Well, from right between 107th and 108th streets as far as between 113th and 114th streets.

Q While you were hanging on what were you doing, walking or what? A I was running as far as 110th street and with that, when the boy went across my legs, hitting the boy, I felt as if I could not run or hold on, and hung on with my teeth up in the notch under the tailboard.

Q You held yourself up there? A Yes, sir.

Q During that time from 107th to 110th street when you felt the boy strike you in the leg what were you doing then, walking or running? A Running behind with the automobile.

Q Running pretty fast? A Yes, sir, as fast as I could; I had all that I could do to keep up.

Q Do you remember whether there were many people inside the covered truck? A I could not see because it was a covered van; I couldn't see inside the automobile because it was a covered van.

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## CROSS EXAMINATION BY MR. KOPPELL:

Q When you were running after this truck you caught up with it at the time it reached 113th street? A Yes, sir, I was going up.

Q So that the truck was not much ahead of you? A No, sir, it wasn't any more than about I would say three feet ahead of me.

Q The first time that you observed the truck was at 107th street? A Yes, sir, at 107th street.

Q On Third avenue? A Yes, sir.

Q Then you got on the back of the tailboard of the truck? A Yes, sir.

Q And you got off at 110th street? A No, sir, I did not.

Q You did not get off at 110th street? A No, sir.

Q What street did you get off at? A Between 113th and 114th streets.

Q Between 113th and 114th streets. A Yes, sir, on Third avenue.

Q At what street did you come in contact with the boy? A 107th street.

Q I mean at what street did the boy -- I withdraw that-- I mean at what street did the boy fall off the truck? A 110th street.

Q There you say you got your feet entangled with him? A With his body? Yes, sir.

Q At 110th street? A Yes, sir.

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Q Were you still on the truck at 110th street? A Yes, sir, I was still on the truck at 110th street.

Q So you let the boy lie on the ground, and you continued with the truck? A Yes, sir.

Q Did you attempt to get into the truck? A No, sir. I did not.

Q Did anybody prevent you from getting into the truck? A No, sir.

Q There was nobody in the truck-- A Because I could not get up.

Q Never mind the because and just answer the question-- nobody prevented you from getting into the truck? A No, sir.

Q There was nobody in the truck that you knew of? A Not that I know of, no, sir.

Q And the first time that you observed any of the men on the truck was where? A At 107th street.

Q Who did you-- did you see the defendant at 107th street? A Yes, sir, I saw him.

Q You saw who at 107th street? A The three of them was in the truck.

Q Did you see this man at 107th street? A I cannot say if that is the man or not.

Q You don't know now whether you saw him at 107th street? A I know I saw two colored fellows and a white fellow on the truck.

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Q Will you kindly answer my question. Do you know now whether you saw the defendant, Jackson, at 107th street?

A That I cannot say.

Q Did you see him at any time on the truck? A No, sir, I did not.

Q Did you ever see any of the men before this day of the accident? A No, sir.

Q You are not now positive whether this was the man that was on the truck? A No, sir, I am not.

Q Did you see any of the men after the truck was stopped? A I saw them in the stationhouse.

Q You saw three men in the stationhouse? A Yes, sir.

Q When you saw them there were you able to identify the man who was at the wheel? A What I could say was that it was the smallest negro.

Q They were all sitting in the front of the car?

A Yes, sir, they were all sitting in the front of the car.

Q You were in the back of the truck? A Yes, sir, I was in the back of the truck.

Q You were where the tailboard is, in the front? A Yes.

Q Could you see the men from the tailboard of the truck in front of you? A No, sir, I could not.

Q How do you know now that it was the shorter of the men who drove the truck? A Because when I heard the screaming and yelling and saw the boy hanging in front of the truck

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and I saw there were three men in there, and I could see for myself that it was the smallest man that was driving that car. At the first sight of the truck was when I saw who was on the car.

Q When you heard the boy screaming you were on the tail end of the truck? A No, sir, standing on the corner.

Q The truck was going fast? A Yes, sir.

Q And the fast way the truck was going you had an opportunity to observe that it was the shorter of the three men that was at the wheel? A Yes, sir.

Q That is correct? A Yes, sir.

RE DIRECT EXAMINATION BY MR. McDONALD:

Q The man at the wheel had a khaki coat and a khaki shirt on? A Yes, sir.

LOUIS De SPASIO, a witness called on behalf of

the People, being duly sworn, testified as follows:

(The witness states he lives at 2185 Second avenue.)

DIRECT EXAMINATION BY MR. McDONALD:

Q What are you working at? A Chauffeur and mechanic.

Q Talk louder than that? A Yes, sir.

Q Where are you employed? A 522 West 57th street.

Q Whose place of business is that? A The Roma Sales Co.

Q The Roma Automobile Sales Co.? A Yes, sir.

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Q How long have you been working there? A 9 months.

Q You are a licensed chauffeur, are you? A Yes, sir.

Q Now were you in the neighborhood of 109th street and Third avenue? A Yes, sir.

Q On the 28th of April, 1920? A Yes, sir.

Q Where were you going? A Taking a walk.

Q Where is it you left? A Second avenue and 112th street.

Q Were you with anybody? A Yes, sir.

Q Now did you see anything when you got to 109th street and Third avenue? A No, sir.

Q After you were there awhile did you notice anything happen? A Yes, sir; I heard people screaming and shouting?.

Q All right. A And a whistle blowing.

Q Where were you when you heard the screaming and yelling? A Corner of 109th street and 3rd avenue.

Q Which corner? A The northeast corner.

Q The northeast corner? A Yes, sir.

Q What did you do then when you heard this screaming and hollering? A I went out in the street to see what was the matter because people were running out in the street.

Q When you went out in the street did you see anything?  
A No, sir; I only saw people coming.

Q Did you see anything that night? A Yes, sir.

Q What did you see? A I saw a truck was coming up, blowing his horn, and he was going pretty fast. I noticed

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till finally the truck passed by me and I heard a boy was under there, screaming, everybody calling for help and in the meantime I couldn't exactly remember what they were saying but calling for help when I seen that they were chasing the truck between 109th and 110th streets I jumped on and ten or 15 feet from the corner I was thrown off the mail, truck, I couldn't exactly remember because I was kind of excited,

Q Did you see who was driving the truck? A William Jackson.

Q This defendant here? A Yes, sir.

Q What kind of a truck was it? A S Stewart or Service, I couldn't exactly remember.

Q What kind of a drive was it? A Left hand drive.

Q Now, did you holler anything at that while you were on the automobile? A Yes, sir.

Q What did you holler? A I says to him, "There is a live child under there, stop", and he come out with some kind of language; they were kicking me off and some funny language coming out I don't know who was doing it.

Q You told us while you were there and before they stopped this car that these men were kicking you off, is that what you mean? A Yes, sir.

Q And were they saying something to you? A Yes, sir.

Q Were they calling you things? A Yes, sir.

Q What was it? A I couldn't exactly remember what they

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were calbing me in my kind of language, they were swearing at me.

Q In your kind of language you call it swearing?

A Yes, sir.

Q Is that what you said? A Yes, sir.

Q Well, did you pick the child up? A Yes, sir.

Q Where was the child when you picked him up? A About ten or fifteen feet away from the 110th street corner.

Q Ten or fifteen feet away from 110th street corner?

A Yes, sir.

Q Between 110th and 111th streets? A About ten feet away from 110th street, going north.

Q What did you do? A Tried to talk to him; asked him if he was hurt; and he didn't answer; took him in the druggist, and while about opening the door of the druggist the boy--

Q Where was the druggist? A 105th street corner.

Q You opened the door of the druggist? A And the boy died.

Q You say you are a chauffeur? A Yes, sir.

Q Will you state at what speed this car was going at at the time you saw it first? A Twenty three to twenty seven miles an hour .

CROSS EXAMINATION BY MR. KOPPELL:

Q You say you are employed with the Roma Car Co.?

A Yes, sir.

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Q How long have you been employed by them? A Nine months.

Q Where were you employed before that? A Franklin, Simon & Co.

Q What capacity? A Department store, delivery.

Q Delivery boy? A Yes, sir.

Q How long were you employed with Franklin Simon & Co.?

A About a year and a half.

Q Where were you before Franklin Simons? A I was not working.

Q You were noth working? A No, sir.

Q What were you doing? A I was home.

Q How old are you? A 20.

Q 20 years of age? A Yes, sir.

Q Did you see Jackson before this day of the accident?

A No, sir.

Q You did not know him? at that time? A No, sir.

Q You did not know anybody on the truck? A No, sir.

Q Do you know who kicked you? A I could not exactly remember.

Q Was it the defendant Jackson that kicked you?

A No, sir, it wasn't him.

Q Somebody else there that kicked you? A It was between the black and white fellow that was sitting on the outside.

Q Did you see the man driving the truck? A Jackson.

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Q You are positive of that? A Yes, sir.

Q How long did you observe him? A Well, I don't know what you mean.

Q How long did you look at the truck and the men that were in the car? A How long? About a minute or two.

Q A minute or two? A Yes, sir.

Q The moment you saw them you knew that Jackson was driving the car? A I jumped on as I noticed Jackson at the wheel.

Q Jumped on back or front? A On that side.

Q Were you looking towards them when you jumped on the car? A Looking towards the truck.

Q So that you were having your face towards the three men? A I was going for the wheel.

Q What wheel? A The drivers wheel trying to make it stop.

Q Were you on the right or the left of the car? A Right.

Q You were on the same side with the driver? A No, sir; opposite.

Q The other side? A Yes, sir.

Q The driver on the left side? A Yes, sir.

Q You mean to say you don't know who kicked you?

A Well, no, sir.

Q You were on the left side where you kicked? A Yes.

Q You don't know the man who kicked you? A There

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were four legs there , I couldn't exactly know whose legs they were.

Q Do you know which was the outside man to the right?

A The white fellow.

Q Well, did he kick you? A Well, I couldn't say I couldn't remember, I don't know.

Q Was it the man next to you who kicked you? A I don't know.

Q Did Jackson kick you? A I know it wasn't Jackson because he was stepping on the gas.

Q What is that? A He was stepping on the gas.

Q You say he said some words to you? A Yes, sir.

Q You don't remember them? A No, sir, I know it was fight something-- I don't remember.

Q You couldn't tell? A No, sir.

Q Were you angry at him? A If I had him in my power there wouldn't have been any thing to him.

Q So you were very much excited? A What is that? No, sir, I was not at what he said to me, but to see a boy alive under the truck and he wouldn't stop.

Q Were you angry because these men said to you something was white-- A No, sir, I was not angry at that at all. I don't mind that.

Q You ran after the machine and you say if you had him that would be an end to him, the man who kicked you? A The well the whole three of them.

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Q So you wanted to do away with the three of them?

A If I was in charge, sure.

Q You were going to do away with the three? A Yes, sir.

Q You were not angry at the man who kicked you and said those words to you? A If I knew who said it it would be different.

Q Let me see if I understand you correctly; you don't know the man who kicked you or who said the words to you but you do know this is the man who drove the truck? A Yes.

Q Outside of that your memory fails you?

Objected to. Objection sustained.

Q You don't remember now who did any of these things, kicked you or called you a name? A No, sir, the whole three of them were saying something.

Q The three were talking? A Yes, sir.

Q You didn't say that at first. You said one man said it?

Objected to as argumentative.

THE COURT: Objection sustained.

Q You state now that one of the three men was talking to you? A The whole three were talking.

Q You didn't hear what they said? A No, sir.

Q Who is the man who said "White" something to you? A I could not tell you.

Q Was it the three of them that said that? A No.

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THE COURT: Proceed to something else.

BY MR. KOPPELL:

Q How fast did you say the truck was going? A 23 to 27

Q Did you have a speedometer with you? A No, sir.

But you could judge the character of the speed of a truck pretty well? A I ought to.

Q It is about 23 to 27? A Yes, sir.

Q At what street did you first observe this truck?

A 109th street.

Q And Third avenue? A Yes, sir.

Q Tell me what did you do at the moment you observed the truck? A I kept on the chase, tried to make him to stop.

Q You were chasing the truck from behind? A No, sir alongside of it.

Q Alongside of it? A Yes, sir.

Q How many blocks did you run with the truck? A Oh, I ran about fifteen feet or twenty feet and I jumped on.

Q You jumped on? A Yes, sir.

Q The boy was still on that truck, wasn't he? A Yes,

Q Where did you jump? A I was kicked off about fifteen feet away from the-- ten or fifteen feet away from 110th street.

Q As you jumped on the truck, did you see the boy there? A I could not see him, no, sir.

Q You did not see the boy? A No, sir.

Q When did you first see the boy? A After I was kick-

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ed off I was getting up, I noticed him fall right off 110th street.

Q Well if you say that you did not observe the boy until after you jumped on the truck what made you jump on the truck? A I saw the boy alive under the truck, and I looked up at the --

Q That is what I asked you before. Did you see the boy on the truck before you jumped on the truck? A I did.

Q You saw it at first at 109th street? A Yes, sir.

Q You jumped on it at 110th street? A No, between the block.

Q Between 109th and 110th? A Yes, sir.

Q How long were you on the truck? A Well, I was about a minute or a second, I don't know what you want to call it.

Q When did the boy fall off, after you caught your truck or after you got off? A After I fell off.

Q When you fell off or when you got off the truck?  
A Yes, sir.

Q Did you continue to run after the truck? A No, sir, I was picking myself up and I noticed the boy he fell on the seat and I ran back not knowing it was the boy--.

Q You ran back? A And then kept going north.

Q You kept going north? A Yes, sir.

Q Well, was the boy dropped after you fell off the car? A He dropped after I was thrown off the car.

Q So that when you got off the truck the truck was

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still going and the boy fell? A Yes, sir; I don't know if he fell or not.

Q He got off the truck? A Yes, sir.

Q You saw him fall? A Yes, sir, about fifteen or twenty feet away from where I fell.

Q You went after it? A I went up to meet it.

Q He fell ahead of you?

THE COURT: The witness has made it perfectly plain The boy fell off somewhat further uptown than where you were at the time that you were kicked off or got off the truck?

A Yes, sir.

Q The truck going uptown? A Yes, sir.

Q You got off of it or was kicked off? A Yes, sir.

Q And about twenty feet further uptown the boy dropped off? A Yes, sir.

BY MR. KOPPELL:

Q That was above 110th street? A Yes, sir.

Q You took the boy into the drug store? A Yes, sir.

Q Do you know what time it was when you first observed the truck? A About 8.30.

Q About 8.30? A About that.

Q After you took the boy in the drug store did you follow the truck? A No, sir.

Q You didn't see any more of the truck? A I seen it at the police station.

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Q Later on? A Yes, sir.

Q So that the only time you had observed who was on the seath of thst. truck was during the few moments you were on the truck? A Yes, sir.

Q Is that correct? A Yes, sir.

BY MR. McDONALD:

Q How was the man dressed when y u saw him driving that night? A An Army coat.

J O H N U M B A C H, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he lives at 1956 Third avenue.)

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business, Mr. Umbach? A Truckdriver.

Q What do you drive, a horse truck or an automobile truck? A A horse truck, a team of horses.

Q A single horse truck? A A team two horses.

Q By who are you employed? A The Rapid Delivery Express.

Q Where is their place of business? A 365 Canal street.

Q Were you working for them on the 8th day of April, 1920? A Yes, sir.

Q Were you in the neighborhood of 107th street and 3rd avenue? A Yes, sir.

Q At any time that night? A Yes, sir, 107th street and 3rd avenue.

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Q Did you see anything while you were at 107th street and 3rd avenue? A Yes, sir, seen this automobile come down with a boy under it.

Q Keep your voice up. You saw an automobile coming by? A Yes, sir.

Q Is that what you say? A Yes, sir.

Q What kind of an automobile was it? A A truck, a big truck, automobile.

Q Where was it when you saw it? A In the north bound track.

Q Now then did you see anything about this truck? A Yes, sir, seen this boy hanging on the truck.

Q What is that? A Seen this boy hanging on the truck.

Q What part of the truck was he hanging on? A The front part.

Q Did he hang on the front portion, is that what you mean? A Right in the front part of it.

Q Where were you when you saw that? A I was standing on the corner of 107th street.

Q Were you on your truck or on the sidewalk? A No, sir, I was finished working.

Q You had finished work? A Yes, sir.

Q Were you living in that neighborhood? A Yes, sir, 107th street, and 3rd avenue.

Q Now what happened then? A I seen this boy on this automobile and I jumped out and I hollered to this chauff-

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feur, and he didn't pay no attention to me.

Q What did you holler to the chauffeur? A Sir?

Q What did you holler to the chauffeur? A I says  
"Stop, you have got a boy in the front."

Q How near to the chauffeur did you get when you hol-  
lered that? A Right running out to the car.

Q Running out to the cartracks? A He passed me by.

Q Where were you when he passed you by? A He was about  
a quarter of a block or something like that.

BY THE COURT:

Q How far away were you from the truck at the time you  
hollered? A How far away?

Q yes. How far away were you? A The truck was  
in front of me when I hollered.

Q What is that? A The truck was in front of me when I  
hollered.

Q Well, were you on the southbound tracks when you  
hollered at the truck as it was going by? A Pretty near the  
southbound tracks; I just started to run out after the truck.

BY MR. McDONALD:

Q Now did you see any people on this truck? A I didn't  
look or take notice to no people; I wasn't watching the  
people; I was watching the boy; I didn't pay no attention,  
to who drove the car.

Q Did you see anybody in the drivers' seat of this  
truck? A I didn't look at anybody in the drivers seat.

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Q Did you see anybody in the drivers seat? A No, sir, I did not see anybody.

Q At the time that the truck passed you or before the truck passed you did you hear anybody hollering? A I heard people shouting in the street.

Q Quite a number of people hollering, were they?

A Quite a number, yes, sir.

Q Were they hollering very loud? A Yes, sir, they were hollering very loud.

Q What did you do then after the truck passed you? A I started to run after the truck.

Q You ran as fast as you could? A Yes, sir, but I couldn't catch up to the truck.

Q How far did you run? A I ran from 107th street to between 114th and 115th streets on Third avenue.

Q Then during that time did you get up to the truck?

A No, sir; I was out of wind, and the truck was about three blocks away from me or two blocks something like that.

Q Then you got out of wind? A Yes, sir, I could not run any more.

Q What did you do then? A I stayed in 14th street and was watching the truck and he turned into some block around 117th street, I guess.

Q Did you go to the drug store? A I went back and

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looked into drug store, a bunch of people there; I couldn't get nowhere inside; I tried to get inside to find out the boy's name.

Q Do you remember seeing the boy fall off the truck?

A I couldn't see the boy fall off the truck; a crowd of people gathered around and I could not see him.

Q Was this car going fast or slow at the time you saw it? A Well, I ain't no judge of speed of cars because I doin't know nothing about them.

Q You are not a good judge of speed? A No, sir, as far as cars are concerned, no, sir.

CROSS EXAMINATION BY MR. KOPPELL:

Q You say that when the boy fell there was a crowd around the boy? A A crowd started to gather around the boy and I could not see the boy at all.

Q About how many people were gathered around the boy? A I couldn't just say; I didn't pay no attention ; I did not step in, I kept right along after the truck; I wanted to get the number of the truck.

Q Would you say there were fifty people? A I couldn't say.

Q Would you say there were sixty? A About thirty five or forty people.

Q You say between thirty five and forty people congregated there at the time the boy fell? A Yes, sir; there was

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a big frowd running after the truck.

Q Was this crowd on the side of the truck or in front of the truck? A In the back of the truck, running after the truck.

Q You say that you had at no time observed who was at the wheel of the car? A No, sir, I don't know who was; I didn't pay no attention.

Q You don't know who was at the seat at the truck? A No, sir.

Q How long were you employed by the Rapid Delivery Express? A Going on six years.

Q Do you know ne Scasio? A No, sir.

Q Do you know any witness in this case? A Jimmie Searson.

Q You know him? A Yes, sir.

Q Did you discuss with him this case? A No, sir; he had been on the corner with me when this happened; I was talking to him and he had been telling me he was going away.

Q You were not a witness in the Magistrates Court, were you? A Yes, sir.

Q You were? A Yes, sir; but I didn't get up on the stand, but I made my statement.

Q You were on the witness stand?

MR. McDONALD: He was a witness but he wasn't put on the stand.

THE WITNESS: I was not put on the stand.

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Q. Did you testify in the Magistrates' Court? A I just made my statement to some attorney in there, I don't know who it was.

Q. But you were not sitting in a chair in the court room and testifying? A No, sir, I wasn't put on the chair.

MR. McDONALD: I will concede that he was not called.

Q. When was the first time you told the District Attorney anything about this case? A In 121st street.

Q. 1 1st street? A Yes, sir.

Q. What is that? A 121st street.

Q. How many times were you down in this building? A I was down, this is the fourth day.

Q. Did you speak to anybody down in this building about this case? A No, sir, only the attorney, the District Attorney.

Q. Only to whom? A The District Attorney, Mr. McDonald.

Q. Mr. McDonald? A Yes, sir.

Q. How many times have you spoken to him about this case? A Once.

Q. When was that? A Yesterday.

Q. Before yesterday you spoke to nobody about this case? A I spoke to another attorney, another District Attorney, I don't know his name.

Q. Where? A In this court here, in this building.

Q. When was that? A That was the other day.

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Q Did you speak to anybody else besides those two?

A No, sir.

Q Members of the District Attorney's staff? A No, sir.

Q Were those the only times you spoke to anybody about this case? A Yes, sir, in this building.

BY MR. McDONALD:

Q Mr. Marro was the other assistant you spoke to, this gentleman here? A Yes, sir, that is the man.

M I C H A E L C A V O L I N A, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states that he lives at 2112 Second avenue.)

DIRECT EXAMINATION BY MR. McDONALD:

Q 2112 Second avenue is near what street? A Near 109th street.

Q What do you work at? A Clerk.

Q Clerk? A Yes, sir.

Q What were you working at on the 8th day of April, 1920? A The same as I am now.

Q Employed by whom? A Oriolo Capoletto; 100 Vessey street.

Q What line of business are they in? A Fruit business.

Q Now, then do you remember being on Third avenue near 109th street on the 28th day of April? A Yes, sir.

Q About between 8.30 and 9 o'clock in the evening of

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that day? A Yes, sir.

Q Now, did you see anything or hear anything? A Yes, sir.

Q What did you hear? A As I was standing at 109th street and Third avenue, that night, I heard people screaming and I just **turned** towards downtown and I heard a kid hollering mamma, and stepped in front of the machine,

Q Keep your voice up. A I just stepped forward by the truck and I told the chauffeur, "Stop", and he paid no attention to me at all, just kept on going. I followed the machine as far as 110th street and Third avenue when I saw the U. S. Mail car coming down, and I ordered the man to stop to follow up the machine.

Q You yelled at whom? A At the United States mail truck, and I told him to stop and follow the machine up; he turned around and followed it up. I got on the car with him and as far as 112th street and Third avenue we met Officer Murphy, and he jumped on the car and he chased the machine as far as 117th street and Third avenue, from Third avenue down 117th street to Second avenue, Second avenue down to 116th street, 116th street to Pleasant avenue, Pleasant avenue to 124th street where Officer Murphy, between Pleasant and First avenue, fired a shot and the machine stopped. We followed them up there to 124th street and First avenue, as far as 125th street, and on 125th street we turned at

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125th street, First and Second avenues, and that is where the machine, still and all was going ahead yet. We turned 125th street towards uptown where we got the machine at 127th street by Sulzer's dancing hall.

Q Sulzer's dance hall? A Yes, sir, 127th street and Second avenue.

Q Now, who was driving the machine? A Jackson.

Q At the time that the car stopped? A Jackson, the fellow who killed the kid.

MR. KOPPEL: I move to strike that out.

THE COURT: Yes, the jury will disregard that.

Q Did you see the boy after he fell or came from underneath the wagon? A Yes, sir, when I came back with Officer Murphy.

Q When you came back? A Yes, sir.

Q To where? A To 104th street station.

Q Is that the time that you say you saw the boy?

A In the station house I gave my name and address and I went back to the drug store at 110th street and Third avenue and the kid was in there.

Q You went back to the drug store? A Yes, sir.

Q You accompanied the officer and the defendant to the station house? A Yes, sir, I accompanied the defendant and the officer to the station house.

Q Did you know the boy? A No, sir.

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Q Did you know his father? A No, sir.

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal procedure and adjourned the further trial of the case until tomorrow, Wednesday morning , June 23, 1920 at 10.30 o'clock.)

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New York, June 23, 1920.

TRIAL RESUMED.

M I C H A E L C A V O L I N A, a witness for the People  
resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. McDONALD:

Q After you left the station house where did you go?

A The drug store.

Q Did you see the boy in there? A Yes, sir.

Q The drug store is where? A 10th street and Third ave-  
nue.

Q Where you there when the ambulance surgeon came? A No,  
sir; I went away.

Q Did you notice the condition of this man, the defendant  
at any time? A The chauffeur?

Q This man here, the defendant, did you notice whether  
he was drunk or sober?

MR. KOFFLER: I object to that, if your Honor  
please, as characterizing the condition of this de-  
fendant.

A No, sir, I did not notice.

THE COURT: I will let his answer stand.

MR. KOFFLER: I take an exception.

BY MR. McDONALD:

Q Do you remember how this man was dressed, this man  
who was driving the automobile truck? A Yes, sir.

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Q How was he dressed? A He had a uniform on, a jacket.

Q A khaki coat? A A khaki suit-- only the jacket on.

Q Was he the only one who had a uniform like that?

A Yes, sir; he was the only one.

Q At the time that you saw this car about how fast was it going? A Well, it was going about thirty miles an hour.

CROSS EXAMINATION BY MR. KOFFLER:

Q You say the truck was going thirty miles an hour. Did you have a speedometer with you at the time? A No, sir.

Q Did you ever operate an automobile? A No, sir.

Q Every operate a truck? A No, sir.

Q You don't know the speed at which this car was going or this truck? A Well, I knew the speed when I got on the little Ford, and if our Ford was going thirty five, the truck was going more than that after he dropped them kid at 110th street and Third avenue.

Q You were in a Ford car? A Yes, sir.

Q That was going thirty five? A Yes, sir; I asked the chauffeur and he said it was going thirty five.

Q You don't know except that you say you asked the chauffeur? A No, sir.

Q Of your own knowledge? A I don't know, but he was going about thirty.

Q How many times have you been in an automobile? A About

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a number of times.

Q In what capacity have you been, as a passenger or chauffeur? A Passenger.

Q A passenger in an automobile? A Yes, sir.

Q Did you take automobile rides? A Yes, sir, once in awhile.

Q Where do you work? A Oriole Cappello.

Q Now what do you do there? A Clerk.

Q Clerk? A Yes, sir.

Q What do you do? A Sell.

Q You sell? A Yes, sir.

Q Where, in the store or outside? A In the store.

Q You take automobile rides? A Yes, sir.

Q When, week ends or Sundays? A Week days.

Q If you have any time off you take an automobile ride?

A About twice, a week or three times.

Q Do you pay for it?

MR. McDONALD: I object to that as immaterial.

THE WITNESS: Delivery truck.

MR. KOFFLER: I have a right to go into the credibility of this witness.

MR. McDONALD: Is it a question of asking this man whether he paid for these car rides or not-- that is immaterial.

MR. KOFFLER: I take an exception.

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Q Do you have friends of yours who have automobiles?

A No, sir.

Q You never saw Jackson before this day, did you?

A No, sir. On what day do you mean?

Q The day of the accident? A The last time I saw him in the station house.

Q But before the date of the accident? A I never seen him.

Q You never saw Jackson? A No, sir.

Q You never saw any other men that were on that seat?

A No, sir.

Q When did you first find out that his name was Jackson?

A Well, in the station house.

Q In the station house? A Yes, sir.

Q There were two colored men and one white man? A Yes.

Q Can you describe the other colored man? A Sure I can.

Q Well, describe the other colored man? A All I know one that is outside was with him; there was one outside who was with him; there was one outside who was with him.

Q Sure that is the man? A Yes, sir, a white fellow.

MR. KOFFLER: I will ask the District Attorney to produce that man.

THE WITNESS: The white fellow is outside that was with him, I don't see the colored fellow yet.

BY MR. KOFFLER:

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Q You don't see the colored man? A No, sir.

Q Can you describe the other colored man that was with him?

Q Yes. A Describe him?

Q Tell us how the other man looked, how high was the other man? A I couldn't tell you; all I know was he was out with a round face. If you bring him up here I will show you the other fellow.

Q The other man was stout? A Yes, sir.

Q Stout with a round face? A A little stouter than the defendant.

Q A round face? A Yes, sir; a little shorter man.

Q Will you just arise (pointing to the defendant) As tall as him? A About the same size.

Q Was he about as stout as he is? A No, sir, a little stouter than him.

Q Was he about as dark as he is? A Well, dark, I could not tell you that. If you bring him up to me I will tell you the fellow; I couldn't have him in my head. I had my face on him this fellow here.

Q The defendant? A Yes, sir.

Q And the other colored man sitting right next to him?  
A No, sir; the white fellow was sitting in the middle.

Q The other colored man there? A Yes, sir.

Q But you didn't see the other colored man before? A No,

Q Before the day of the accident? A I saw him in the

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station house with him.

Q Not before the day of the accident? A The last time I saw him was in 21st street.

Q You never saw the white man before the day of the accident? A No, sir, 121st street.

Q You hadn't seen him before that day of the accident? A When in the station house, 123rd street.

Q Bot not at any time before the accident? A No, sir; never seen him.

Q At what street did you first see the truck? A 109th street and Third avenue.

Q At that time was the truck going fast or slow? A It was going fast.

Q Fast? A Yes, sir.

Q What did you do? A I jumped up-- when I heard people hollering I jumped for the truck, I heard a number of the boy hollering "Mamma, stop", and I hailed him to stop and he didn't pay no attention to me he went right ahead.

Q Where were you standing at that time? A In the middle of the track, I couldn't get in front of him.

Q The middle of the track? A Yes, sir.

Q Was this car going very fast? A Yes, sir, excuse me I was standing on the corner of 109th street and I heard the people yelling and I jumped at the truck.

Q I show you People's Exhibit 1 this diagram of Third avenue running from 105th to 111th street. Now this is 3rd

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avenue running from 105th to 107th street, and this is 108th and 109th streets. Where were you standing. This is 3rd avenue, and this is 109th street? A Well, I was standing on the corner of 109th street.

Q Will you mark or indicate with a pencil where you were standing? A I can't tell you by looking that. I can explain to you where I was.

Q I will explain this chart to you. Just sit down I will try and explain this chart to you. This is 3rd avenue running from south to north. You know where South is? A No.

Q You don't know south from north, uptown or downtown?

A Yes, sir.

Q You know that? A Yes, sir.

Q Now on this diagram this line is Third avenue and 108th street. You know where that is now? A Yes, sir.

Q On the side that goes towards the river, the East River?

A I was on the side of the west river.

Q You were going to the side towards Lexington avenue?

A Yes, sir.

Q Now that is this side (indicating). A Yes, sir.

Q Now this side is towards Lexington avenue? A Yes, sir.

Q Here is 109th street? A Yes, sir.

Q Now there is the corner of 109th street, and that is called the southwest corner? A That is where I was.

Q Will you point out with your pencil where you were?

MR. McDONALD: At what time?

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MR. KOFFLER: At the time you first saw the truck.

THE WITNESS: If you say this is 109th street, the southwest corner I was standing there. (Witness indicating)

Q Mark the point with your initials.

(Witness does so.)

Q I don,t know if you were there. You just told us that you say you were there? A Well, I will tell you where I was.

MR. McDONALD: This is the sidewalk.

A 109th street, the southwest corner, that is where I was standing. (The witness writes his name M. Cavolina on the diagram) indicating the place where he was standing.

Q He was standing there? A Yes, sir.

MR. KOFFLER: That is the place where Cavolina was at the time he saw this truck pass by the southwest corner of Third avenue and 109th street.

MR. KOFFLER: What time was that?

A I could not tell you the time; I don,t know what time it was; but it was late enough.

Q About what time? A About 8.30 or something like that.

Q About 8.30? A Yes, sir.

Q You were standing on the street there? A Yes, sir, I was standing there.

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Q Then you saw this truck coming along there on Third avenue? A Yes, sir; I was standing there, and I heard people hollering, and I turned around and I saw the truck coming up, and I jumped between the tracks; I was on the left side of the truck, the truck going downtown.

Q Were you inside at the time? A I was not inside. I just jumped on the truck, and I saw the kid under the bumper hollering "Mamma " and "stop".

Q You were not excited? A No, sir.

Q How long were you on the truck? A On the truck?  
Which truck?

Q On the truck which was driven by-- how long were you observing the truck that caused the accident? A I don't get you.

Q You say that you saw Jackson at the wheel? A Yes, sir.  
How long

Q Did you look at that truck? A How could I look at it .  
It just went right ahead of me.

Q You didn't see it at all? A Sure I seen the truck.

Q Did you see Jackson? A Yes, sir, sure I seen him.

Q How long did it take for you to, look at that truck?

A Well, just about a minute.

Q Just about a minute? A Yes, sir.

Q Did you see how the other colored man was dressed?

A No, sir.

Q In that minute you say you saw one dressed in a khaki suit? A Yes, sir; but the other fellow had an apron on I

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believe or something.

Q What did the other man wear, the white man? A I think a raincoat or a coat, I don't know what he had, I had my ideas on those fellows.

Q You didn't put your eyes on those fellows? A I just looked the way they looked.

Q You just had your eye on Jackson? A Yes, sir.

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

(The witness states he lives at 59 East 117th street.)

DIRECT EXAMINATION BY MR. McDONALD:

Q What do you work at? A My real trade is cutter, but it is slack now, and I am working as a chauffeur.

Q For whom? A For the Majestic Coat & April Supply.

Q Can't you talk louder than that? A Yes, sir.

Q How long have you been a chauffeur? A Going on two years I have had a license.

Q Now on the 28th of April, 1920, about 8.30 p.m. where were you? A I was walking with my friend on 108th street, going down Third avenue.

Q Did you see an automobile coming up? A Yes, sir; I saw it.

Q Where were you when you saw this automobile? A Between 107th and 108th streets, walking down.

Q When you saw the automobile where were you? A I

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was about three-quarters of a block away from 107th street.

Q Now then before you saw this automobile did you hear anything? A Yes, sir, I heard a lot of people hollering and running in back of the machine.

Q Now just tell us what you saw from then on? A Well, I saw a child underneath the car, and a lot of people running in front of it.

Q Now keep your voice up? A I saw a lot of people running in back of the machine, and I saw the child holding on to the machine.

Q What part of the machine? A The child was on the bumper.

Q The front part of the machine? A Yes, sir. I ran out in front of the roadway, my hands up in the air, hollering out, "There is a child underneath the car, stop, and instead of stopping he put on more speed and kept going, and I--

Q Where was this car when you ran out to try to stop it? A Well, a little way -- well, I tried to stop it in the centre of the block between 107th and 108th streets on Third avenue.

Q What part of the avenue was it on? A Well, where I was do you mean?

Q The truck that you saw with the child underneath?

A On the uptown side of the track.

Q When you ran out from the sidewalk-- which sidewalk

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were you on? A I was on the south side going downtown.

Q Do you mean the side nearest the East River? A No, sir; the other side, the Hudson River.

Q Were you on the west. Do you know which is the west side? A Yes, sir; I was on the west side.

Q Now what happened after you ran out and put your hands up and yelled at this man to stop? A Well, he didn't stop; he paid no attention; he kept on going west.

Q What did you do? A I chased the machine to 110th street and a lot of people gathered and the child dropped off, and I saw the child drop off, and the people ran, gathered in, and somebody picked the child up.

Q Gathered around the child? A Yes, sir; somebody picked the child up, and brought it in the drug store, and I stayed in the drug store-- I tried to get on the machine, but there was so many people on there, on that mail truck, they ran after it.

Q The mail truck? A Yes, sir; so many people were there, I couldn't get on there. It was a Ford.

Q What kind of a car was this that had the child underneath? A It was a big truck, a closed truck.

Q Do you know what kind of a drive it was? A Yes, sir; a left side drive.

Q Did you see who was driving the car? A Yes, sir.

Q Who was it? A Well, I recognized a man with a sol-

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diers coat.

Q Was he colored or was he white? A He was a colored man.

Q About how fast was this car going when you first saw it? A It must have been going about twenty, and he kept on putting on more steam and it must have been about twenty five miles he was making.

Q Do you know Goldberg? A No, sir.

Q The officer took your name-- were you taken to the station house? A I gave my name to the policeman; I gave my name to the policeman.

Q You remained there until the ambulance surgeon came?

A Yes, sir.

Q And pronounced the boy dead? A Yes, sir, I asked the doctor--

Q He pronounced him dead? A Yes, sir.

Q He gave your name to the police officer? A Yes, sir; I walked down to the police station, and gave it there.

CROSS EXAMINATION BY MR. KOFFLER:

Q How long have you been employed by the Majestic Coat & Apron Supply Co.? A Going on three weeks.

Q Where were you employed at the time of this accident?

A Necomesky and Musica, a waist manufacturing house. I worked for them.

Q How long did you work for that firm? A One month.

Q Where did you work before that? A I worked for the

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Fair Waist Co.

Q How long did you work for them? A Three months.

Q Where did you work previous to that place? A Previous to that place I had been in the Army Transport Service.

Q The Army Transport Service? A Yes, sir; my trade was slow.

Q How old are you? A 21, past 21.

Q How long were you a chauffeur? A I have got a license going on the second year.

Q You were not a chauffeur for the last two years then, were you? A Because my trade got slack, and I --

Q Where did you first see this truck? A Well, I first saw it on the street, in 107th and 108th streets coming up and the child underneath the car.

Q Where were you at the time? A I was on Third avenue, walking down with my friend, going to go to a moving picture.

Q Were you on the west side or east side? A On the west side.

Q I show you People's Exhibit 1, this diagram of Third avenue running from 105th to 110th streets. Do you know the difference between the north side and the east and the west?

A Yes, sir.

Q Now, this is Third avenue and this is 107th street, commencing here, and going right up so far? A Yes, sir.

Q Now this is 107th street and this is 108th streets?

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A Yes, sir.

Q Now this is the west side of the street? A Yes, sir.

Q Now, tell me where you were standing? A I was standing--

Q This is 107th and this is 108th? A Yes, sir.

Q This connects together (referring to the diagram)

A That is the ending of 107th street.

Q This means 107th street here and it goes up here?

A Yes, sir, I was possibly up here three-quarters of a block.

Q About here? A Yes, sir.

Q Mark that with your initials? A Yes, sir.

(Witness marks the spot A and K.)

Q Now, you say that automobile was going fast at that time? A Yes, sir.

Q About how fast was it going? A It was making twenty miles an hour when I saw the child underneath, I was hollering out to him, he was making twenty five.

Q He was going twenty or twenty five? A When I first saw the car it was making twenty, and when I hollered to him, put my hands in front of him he put on more speed, making about twenty five.

Q Would you say it was making thirty or thirty five miles an hour? A That I couldn't say.

Q You don't think so. You are not judge of the speed of a car? A I would not say that I am a good judge about that.

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Q But you would know approximately? A Yes, sir, about that.

Q You would not say it was going thirty five miles an hour? A No, sir, I would not say.

Q And before that about twenty? A Yes, sir.

Q How long did you observe this truck? A Up to 110th street, running after it.

Q When you were running after it? A Yes, sir.

Q From behind or the side of it? A From behind.

Q Then you didn't see -- you were sitting on the seat of the truck? A I was not sitting on the truck.

Q You did not see who was on the truck? (No answer.)

Q Did you see who was on the truck? A Two colored men and one white man.

Q Two colored men and a white man? A Yes, sir.

Q Do you know which one of the colored men was at the wheel? A The light, pale colored one.

Q Now I ask you how long did you look at these men, how long did it take you to see them? A Well, I was three-quarters of a block away and the machine was right in the centre of the block.

Q Could you say that a pale, colored man was at the wheel -- you say that because you have seen him three-quarters of a block away, is that right? A Well, I have seen him when I came close to him and I put my hands in front of him.

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Q How close to him were you? A Well, he passed me and I was in the centre of the block.

Q You were in the centre of the block? A Yes, sir; I was walking down.

Q What block have you reference to? A Between 107th and 108th streets; I was on those two blocks.

Q How near were you to the car or the truck? A How near? Well, I have seen him in the centre of the block and I ran out.

BY THE COURT:

Q When you got closest to it, at the moment that you were closest to the truck, how near to it were you? A Well, I was in the centre of the block.

Q At the moment when you were nearest to the truck how near to it were you? A Well, I was in the centre of the block.

Q At the moment when you were nearest to the truck than at any other time how far away from you at that time was the truck? A Well, right next to me there was --

Q Just show with your hands. A (Witness indicating) You see the truck was coming on the uptown side, and was in the centre of the block, and I was walking down and I ran out right in front of the machine with my hands up in the air telling him to stop that there was a child underneath the car. That is how near I was.

BY MR. KOFFLER:

Q Did you see the defendant before the day of the acci-

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dent? A No, sir.

Q Did you see the other two men on the street before the day of the accident? A No, sir.

Q Did you observe how the other two men were dressed? A Well, I really did not take notice.

Q You did not take notice? A No, sir.

Q Well, it is possible that the other colored man also wore a khaki uniform? A No, sir; I don't think so; I will tell you that one was a dark fellow and the other was pale, but I recognized him.

Q I am now speaking about the dress. Is it possible that the other colored man wore a uniform? A He did not, because I was down at the police station, and I seen him sitting at the back of the police station.

Q You mean after the accident? A Yes, sir.

Q Now you are quite certain that the man who was at the wheel wore a khaki uniform? A Yes, sir.

Q Sure about that? A Yes, sir.

Q You had never seen him before? A I never saw him before.

Q You had never seen either of the other two men before? A No, sir.

Q At 9th street when you asked them ~~to~~ to stop, did you continue to go after the car? A I went up to 108th street.

Q Did you follow the car? A I ran after the car.

Q How long a distance? A I ran after to 110th street

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the child dropped off, and the people got around and somebody picked the child up, and brought it in to the store.

Q When you reached 110th street was the truck near you or away from you? A Away from me, making speed, I could not keep up with the machine.

Q You could not get up to it? A Keep up with it.

Q Was that a crowded section of the city? A Well, a lot of people there, they ran from 105th street all the people who ran up.

Q I asked you now if there was a lot of people there? A Yes, sir, a lot of people.

Q Ordinarily there are a lot of people around that section at that hour? A Well, I can't say, but it brought everybody together.

Q Everybody on the street? A A lot on the side you see after the machine reached 11th street and the child dropped off they all closed around the child, and so they brought the child in.

Q Before the machine reached 110th street were there many people in the street? A Yes, sir.

Q Quite a busy thoroughfare there? A Yes, sir.

Q You are familiar with that neighborhood? A I live around there.

Q You live around that section? A Yes, sir.

Q For how long a time have you lived there in that sec-

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tion? A I lived there twelve years.

Q You are quite familiar with it? A Yes, sir.

CHARLES T. HOWARD, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he lives at 173 East 99th street.)

DIRECT EXAMINATION BY MR. McDONALD:

Q What work do you do? A I work in the press room of a New York newspaper, sir.

Q You were on this truck? A Yes, sir.

Q Driven by this defendant on the 28th of April?

(No answer.)

Q You were on a truck, an automobile truck, on the 28th day of April, 1920? A Yes, sir.

Q Where did you get on this truck? A 99th street and 3rd avenue, on the northwest corner.

Q What part of the truck did you get on? A On the side nearest the cartracks, sir.

Q Did you get on the drivers seat? A I sat on the seat, yes, sir.

Q Who else got on the truck besides you? A A man by the name of Jenkins, and there was also a man on the truck at the time by the name of Jackson.

Q This defendant? A Yes, sir.

Q Now, then did you go any place? A No, sir, I was going to go to some place, the theatre, sir.

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Q Well, did you leave 99th street at Third avenue?

A Yes, sir.

Q Then you went some place, didn't you? A Yes, sir.

Q Where did you go? A Up Third avenue, sir, as far as I can remember, as far as 102nd street.

Q Now, who was driving the car when you left? A When I left?

Q Who was driving the car when you left 99th street?

A Jackson, sir.

Q Now, just tell us what happened from the time you got in this car? A Well, I got on the car at 99th street, I was on my way to the theatre; my intention was to go to 107th street.

Q Tell us what happened? A I took a ride on this car, and fell asleep around 102nd street, and all I remember was sir, after that, was around 12<sup>th</sup> street I heard a crowd yelling, and everything like that. I just woke up then, sir, I wanted to know what was the matter, I looked around and I heard the crowds yell, "Lynch him, throw him off the wagon" and all like that. I sat on the seat and started to puzzle out what it could be, I really didn't know what was the matter, s r.

Q This crowd was standing in front of the machine, was it? A No, sir, at 126th street, when we were ordered down by the officer.

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Q Who was driving the machine when the crowd was yelling? A Jackson.

Q That is when you woke up? A Yes, sir, around at 12<sup>o</sup>th street.

Q Had you been drinking? A Four glasses of beer in the morning, sir.

Q Four glasses of beer in the morning? A Yes, sir.

Q This was at what time at night? A Around a little before 8.

Q In the evening? A Yes, sir.

Q That is all you had to drink? A Yes, sir.

Q How was Jackson dressed that night, do you remember that? A How was he dressed, sir? Well, we were in court together, and in prison one week, in jail, he had the same things on.

Q I am not asking you how long you were in jail? A Well I mean I had --

Q How was he dressed when you got on the driver's seat?

A He had a soldiers coat on, and a cap.

Q That is when you sobered up? A Yes, sir.

Q What was Jackson's condition, was he drunk or sober?

A Well, that I couldn't say, I never saw the gentleman before that day in my life, I couldn't tell you in what condition he was or anything because I was just introduced quick to him; that is all. I never saw the man before in

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my life until that day; I didn't know how he looked.

BY THE COURT:

Q Where were you introduced to him? (No answer.)

Q Whereabouts were you when you were introduced to Jackson? A 99th street and Third avenue.

Q On the street? A Standing down on the street before I got on the truck, sir.

BY MR. McDONALD:

Q Where had you come from? A From off the corner, from the opposite corner, from the northeast corner, I think it was, the northwest corner, across the street, on my way up to Lexington avenue, sir.

Q What time did you have your supper that night?

A About half past six, sir.

Q What did you do that afternoon, after you had finished your supper? A Stood on the corner right out on the corner, outside.

Q Which corner was that? A The northeast corner.

Q Of what? A Of 99th street and Third avenue.

Q You stood there until about what time? A Well, as near as I can figure somewhere around ten minutes to eight.

Q Did you hear any whistle of any kind at the time that you took your supper? A No, sir.

Q You were arrested and arraigned in the magistrates Court? A Yes, sir.

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Q After that hearing you were discharged? A Yes.

Q Jenkins also discharged? A Yes, sir.

Q After a hearing? A Yes, sir. I was discharged first and Jenkins about a half an hour after me.

Q Didn't you hear anybody holler from the time that you got to 105th street, did you hear anybody yelling? A No.

Q You did not wake up? A No, sir, because I worked the night before, sir, I was up all day, had gone to bed and as soon as I struck that car I fell asleep, sir.

BY THE COURT:

Q As you got on the seat of that car, on which side of the street were you seated? A The car was pointing--

Q On the right or left hand side of the seat? A I was sitting on the left hand side, sir, with the car pointing downtown because the chauffeur's wheel was on the right hand side, that side, I was seated on the opposite side from the chauffeur.

Q Where was Jenkins seated? A In the middle, sir.

Q Did you at any time, while you were on that car, take hold of the driver's wheel, or run the car? A No, sir; I don't know the first thing about tending the wheel or running a car or anything of that sort.

Q Did you while on the car change your seat with either of the other men? A No, sir; I stayed in the same place there, sir.

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Q When you woke up as you say, whereabouts was Jenkins seated? A In the middle, sir, right in the middle, right in between me and the defendant.

CROSS EXAMINATION BY MR. KOFFLER:

Q You say that you never met Jackson before? A Yes, sir; never met him before in my life until that night.

Q Were you a friend of Jenkins? A Yes, sir, a passing acquaintance, sir, going past the house I would say how do you do, and he would say how do you do or bid him good morning, never what you would call sociable. What I mean is I never hung out with him or anything, I just said good morning because he only lives a couple of doors away, I saw him go in and out.

Q How long has he lived a couple of doors away from you? A Well, that I couldn't say, maybe living there for twenty years as far as I know; it is about a year and a half ago that I saw him go in and out.

Q How many times would you see him during the week? A Well on an average of twice a week.

Q You talked to him, said how do you do to him? A Yes, sir, just to pass, sometimes he would give me a salute and sometimes he passed me by.

Q Did you know what Jenkins was doing for a livelihood? A He was down driving a truck for the warlem and Morrisania, I have seen him on a truck.

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Q He is a chauffeur? A Yes, sir.

Q Jenkins knew how to drive a car? A Well, I should think so, sir, because I have seen him.

MR. McDONALD: Will you kindly finish your answer. I object to counsel interrupting.

BY THE COURT:

Q Did you ever see Jenkins while Jenkins was at the wheel of an automobile, running an automobile? A Yes, sir, I seen him go down the avenue at the wheel, nobody else on the car.

BY MR. KOFFLER:

Q This man knew how to drive a truck too, didn't he? A Yes, sir.

Q You say you saw Jenkins drive a truck or an automobile before? A For the Harlem and Morrisania, going down the avenue, I have never been on the truck with him.

Q Did he drive fast or slow-- at the time that you saw Jenkins driving a car or truck? A He seemed to drive very carefully with me, sir, because lots of children on the street.

MR. McDONALD: Never mind the because.

BY MR. KOFFLER:

Q He drove very carefully? A Yes, sir.

Q How did you know that the truck on which Jenkins and Jackson were on was in 99th street and Third Avenue?

A Because I was going through 99th street to the Lexington

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avenue car to go to the Star Theatre, and I saw Jenkins standing on the street and Jackson sitting at the wheel of this car. I was going ahead, and they called me over, this here Jenkins called me over, and he says, "Where are you going" and I said "to the Star Theatre", and he said, "jump on here and we will give you a ride up".

Q Did you expect to have that automobile ride? A Well, after he invited me sir, I expected to have it, yes, sir.

Q You expected to go to the Star Theatre? A Yes, sir, 107th street and Lexington avenue.

Q How many blocks is that from where you first started to get on the car? A 108th street-- one avenue block.

Q So you expected to get off that car in a very few moments? A Yes, sir.

Q Where did you fall asleep? A At 102nd street, I remember just after passing the movies there at 102nd street.

Q You fell asleep? A Yes, sir around that neighborhood.

Q Sure it was 102nd street? A I passed that movies and I seen the movies show place there, and I happened to doze off there.

Q You knew that was 102nd street? A We only travelled three blocks.

Q It was around 102nd street? A Yes, sir.

Q Was the car going fast or slow? A Well, I am no judge of speed, I don't know anything about it.

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Q You are not a judge of speed? A No, sir, I don't know anything about automobiles, I could not tell you.

Q You don't know whether the car was going fast or slow? A Well, a moderate rate of speed I would say.

Q A moderate rate of speed? A Yes, sir.

Q When you passed 102nd street, did you anticipate going to that theatre that evening? A Well, that I didn't know, I don't think I did when I fell asleep.

Q You fell asleep? A Yes, sir, at 102nd street there, I don't remember anything else, sir.

Q You woke up at 120th street? A Yes, sir.

Q What caused you to wake up? A Well, the shouting, it was a lot of yelling and one thing and another, and I thought to myself, "What is that", and rubbed my eyes and glanced out the side and heard the crowd yelling, heard somebody say, "Lift him, grab him, and I got back again in the street like that, and started to figure it out; I didn't really know, sir, that anything was the matter with the truck at the time.

Q At 120th street and what avenue did you wake?

A Well, I don't know what avenue, sir, I can't say, I don't remember what avenue because it had me puzzled, I remember it was 120th street because I saw lampposts "120."

Q You saw it distinctly? A Yes, sir, 120 on the lamppost, but at what avenue I could not say.

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Q Do you say now that the wheel was on the right side of the truck? A Well, that-- driver's wheel, which side of the truck was it on? A Well, now, when going uptown, sir, that is the left hand side, at the side going uptown of the truck, sir.

BY THE COURT:

Q Which side of the truck was the driver's wheel on?

A This side here, sitting over here.

BY MR. KOFFLER:

Q Which side is that? A The left hand side going uptown, the driver's wheel on the left hand side.

Q Are you sure now that driver's wheel was to the left or to the right hand side of the truck? A The driver's wheel on the car going from here --

BY THE COURT:

Q Was the driver's wheel on the left side? A Yes, sir, on the left hand side.

BY MR. KOFFLER:

Q When you said in response to the District Attorney's question it was on the right you made a mistake? A That is where I got puzzled because it was the opposite way, I was figuring I was going uptown.

Q Were you going uptown? A No, sir, the car pointed downtown when I got on and when we got started on the car it turned around and went uptown.

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Q How many blocks did you go downtown? A Just at 99th street, about a half a block down, I should say, an elevated post there, we went around that way, and came uptown.

Q When you got on the truck on which side of the truck did you enter? A Which side did I enter on? Well, I got on the side there is a newsstand there.

Q Did you get on the side of the truck on which the wheel was? A No, sir.

Q Did you get on the other side? A Not on the --I got on the side without the wheel, that is the side next to the newsstand, the car pointing downtown.

Q Who got on first? A Jenkins got on and Mr. Jackson was sitting there. Jenkins got on and I fell in afterwards and Jenkins got in the middle and I fell in the end seat, the furthest from the wheel, sir.

Q When you were introduced to Jackson was Jackson on the car? A Sitting there with his arms across the wheel like that (illustrating).

Q Who commenced to drive the car? A He started the car off, yes, sir.

Q You don't know then whether there was any shift in the seat by Jackson and Jenkins? A Shifts in the seat, I don't understand.

Q You don't know whether they changed places, Jenkins and Jackson? A You mean change positions, sir, no, sir, I don't.

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

Q Is it possible that they did?

Objected to; objection sustained.

Q Are you positive now at what street you fell asleep?

A Certainly, positive, 102nd street.

Q At 102nd street you were still awake? A Yes, sir, as we reached that drug store, and the moving show on the other side, that is where I went off the street, sir.

Q That is when you reached the drug store, that is the time you fell asleep? A Around the drug store, around there, because that is where I eat breakfast every morning, around 102nd street.

Q Have you seen Jenkins since the day of the accident?

A Yes, sir, he was up with me, up town.

Q Seen him since you have been released from the Magistrates' Court? A No, sir, before, positively not, sir.

Q So that Jenkins still lives in the same place where he lived before the accident? A Well, that I could not tell you, sir, he has his own apartment there, a couple of doors from the corner, where I am, sir.

Q Living in the same place now where you were living as before the accident? A Did I?

Q Yes. A No, sir, I stopped somewhere else.

Q When did you move? A About five weeks ago, sir.

Q It was right after the accident? A Well, it was after I had been discharged up above, sir.

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Q Right after you moved? A Yes, sir.

Q At what number did you live, where did you live at the time of the accident? A That family has moved out.

Q Where did you live at the time of the accident? A 106th street, 169.

Q 169 East? A Yes.

Q 106th street? A Yes, sir.

Q Where do you live now? A 173 East 99th street.

Q Where did Jenkins live at the time of the accident?

A Well, I could not tell you now, maybe I can figure it out if you give me a moment, 1789 Third avenue, sir.

Q 1789 Third avenue? A Yes, sir.

Q Do you remember that? A Yes, sir, because I have been at that house, up around that neighborhood for years.

Q You were around the house? A I am around that neighborhood for years in 99th street and 100th street.

Q That is between 99th and 100th street? A Yes, sir.

Q Now, you are living nearer to Jenkins than you did at the time of the accident? A No, sir, I am not living near Jenkins at all, sir.

Q You said Jenkins lived at 1789 Third avenue? A Yes.

Q You live now you say at 173 East 99th street? A Yes.

Q You say 1789 is between 99th and 100th street? A Yes.

Q Is 173 East 99th street -- A Yes, sir, that is nearer

to him.

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Q Nearer to Jenkins now than you did at the time of the accident? A Yes, sir.

Q When you lived at 106th street you say you saw Jenkins very frequently? A I didn't say about living in this street at all when I met him standing on the corner, sir, that is the only time.

Q How often did you see Jenkins when you lived in 106th street? A Passing in an automobile from the Harlem & Morrisania, and coming out of the house where he lived, 1789 twice a week.

Q Now if you lived nearer to Jenkins you haven't seen him since the day that you and he were discharged in the Magistrates' Court? A I have not laid my eyes on him.

MR. McDONALD: I object to that as already answered and argumentative.

THE COURT: He has already told you that he has not seen him.

Q That is a fact? A Yes, sir.

Q You hadn't seen him at any single time?

MR. McDONALD: I object to that as already answered.

THE COURT: You have that already.

Q Have you ever written to Jenkins? A Never write to him, sir, I don't know where he is; I don't know anything about the man.

Q Has he ever written to you? A No, sir.

Q Are you interested in Jenkins are you not? A Why,

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no, sir, not in that line-- how do you express yourself.

Q Are you friendly towards him? A Just a passing acquaintance, sir, the same as I could see you coming out of the house, and say good morning, how do you do.

Q You are more friendly to Jenkins than you are to Jackson?

Objected to.

THE COURT: I will allow it.

BY THE COURT:

Q Do you know Jenkins better than you know Jackson?

A Yes, sir, because this is the first time I saw Jackson was that day.

BY MR. KOFFLER:

Q When you woke up at 12<sup>0</sup>th street was the truck still going? A Yes, sir.

Q Did you see where it went to? A No, sir, I did not.

Q When you saw 12<sup>0</sup>th street on the lamppost, did you think about the lamppost? A I was trying to figure out something else at that time, I was trying to figure out what the crowd was yelling and hollering about.

Q Didn't you think you missed your show? A Yes, sir; it came to me then, sir.

Q Did you ask Jenkins or Jackson? A No, sir.

Q To stop the car, and let you off? A No, sir, I didn't think of nothing, I jumped back in the corner again and I put my hands like this (indicating).

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Q You didn't think anything of the kind? A No, sir, I fell back in the seat like this and I was trying to figure out what the thing was.

BY MR. McDONALD:

Q Did you figure out what it was? A No, sir.

Q You did not? A No, sir.

Q Did you get off the car after you looked around and saw the crowd gathering at 120th street? A No, sir.

Q You stayed on the car until you got to 126th street?

A Yes, sir.

Q Don't you remember a policeman firing a shot? A No,

MR. KOFFLER: I object to that if your Honor, please as leading.

MR. McDONALD: Yes, it is leading.

J O H N M U R P H Y, a witness called on behalf of the

People, being duly sworn, testified as follows:

(The witness states he is a police officer attached to the 39th precinct.)

DIRECT EXAMINATION BY MR. McDONALD:

Q You were a member of the police department of the city of New York? Yes, sir.

Q On the 28th day of April, 1920? A Yes, sir.

Q What post were you attached to? A Post 19.

Q Your tour of duty was what? A From 4 p.m. to 12

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midnight.

Q Now about 8.30 p.m. where were you? A I was standing on the southwest corner of 112th street and Third avenue.

Q Now did you hear or see anything? A I heard some people shouting and screaming.

Q What did you do? A I went and investigated around Third avenue and as I reached the cartracks, an automobile truck, a commercial, passed me out on Third avenue.

Q Which side of the street did you cross from, which side of the avenue? A From the west to the east side, and right behind there was a United States Mail wagon, and I put hand and signaled to the chauffeur to stop, and asked him what happened --

Q After the chauffeur told you what did you do?  
(No answer.)

BY THE COURT:

Q After you had spoken to him what did you do? A I commanded the chauffeur in pursuit of the automobile that had passed north on Third avenue.

BY MR. McDONALD:

Q Go on. A Pursued the automobile to 127th street and Third avenue -- also 117th street, Second avenue, south on Second avenue to 116th street, east on 116th street to Pleasant avenue, north on Pleasant avenue to 124th street, west on 124th street between First and second avenue where I discharged my revolver to attract his attention so the chauff-

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four would stop. He did not do so. North on Second avenue to 127th street where he slowed down. I jumped from the United States Mail wagon in front of the auto truck where the two men had already left the seat, a man by the name of Howard and Jenkins. I also held my revolver at them and demanded them back on the seat and the chauffeur at the wheel, Jackson.

Q How was he dressed? A He had a uniform on, a United States Army uniform, a jacket or a coat. I asked Jackson why he didn't stop when he had run down a boy on Third avenue. He made no response. I commanded him to bring his automobile to the East 104th street station house. Before he had started the machine I asked him if he had heard my revolver that I had discharged between First and Second avenue, and he stated he did. I asked him why he didn't stop when he heard the revolver shot, and he said that he did not have the machine, he was not operating the machine at the time.

Q Did you notice the condition of these men at the time?

A Well, the condition that the men presented to me at that time-- they apparently had been drinking.

Q The appearance of Jackson, did he appear to you as if he had been drinking? A Yes, sir, he appeared to me as if he had been drinking, but he was not drunk.

Q Did he sometime later tell you that he had had something to drink? A In the back room of the 39th Precinct he admitted to me, in the presence of Officer Quinn that

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he had three blackberry brandies.

Q You arraigned these three men in the Magistrates Court, did you? A Yes, sir.

Q After a hearing Howard and the defendant Jenkins were discharged? A Yes, sir.

CROSS EXAMINATION BY MR. KOFFLER:

Q When you first apprehended the three men who were on this truck did you ask them which of the three had been operating the truck? A No, sir, I did not.

Q In the presence of Jenkins and of Howard, didn't Jackson say that he did not operate the truck? A Yes, sir, he admitted in their presence that he did not operate the automobile at that time.

Q Did Jenkins or Howard at that time deny what Jackson said? A No, sir.

Q Did Jenkins say that Jackson operated the car? A No, sir.

Q Didn't Howard say that Jackson operated the car? A No, sir; Howard did not make any statement.

Q Did Jackson state that he did not operate the car? A At the time, yes, sir.

Q Were you asked in the Magistrates Court this question?  
(Page 26) "Q. So that neither Jenkins nor Howard denied at the time that Jackson was at the wheel?

MR. McDONALD: I object to that question.

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THE COURT: Objection sustained. It does not appear from what has been testified to already by this witness.

Exception.

MR. KOFFLER: But there is another question. There is more to this question, and I think I have a right to ask him.

THE COURT: I will hear the balance of the question.

MR. McDONALD: I understood him to give the answer of the witness.

MR. KOFFLER: (Reading) Did they deny it afterwards. That is the balance of the question.

MR. McDONALD: I object to that.

THE COURT: I will allow it.

MR. KOFFLER: (Reading) Jackson denied at the station house that he was operating the machine up on Third avenue. Jenkins denied that he was on the truck; he said he was not operating the machine; Jackson claimed he was and that he did operate, it, meaning Jenkins. I asked him why you are the chauffeur why did you allow that man to operate your machine. You know you are held responsible, why did you allow him, and he said I couldn't do anything with him, he took the machine away from me and I could not stop him; I said, why did you travel in such a direction after he had injured a boy, didn't

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you know that. He said, I could not stop him. I said after I fired a shot why couldn't you stop, didn't you hear, and he said yes. I said, why didn't you get the wheel yourself from the man, didn't you know there was something wrong, and he said he couldn't give me the wheel, at the time I arrived on the scene Jackson was sitting in front of the wheel like this. That was instantly after I had apprehended him.

THE COURT: That answer is true.

A That answer is true.

Q Now that was said by Jackson to Jenkins in Howard's hearing, in their presence and they said nothing? A No, sir.

MR. McDONALD: I object to that, "Jackson denied at the station house and so forth.

MR. KOFFLER: He said he was not operating the machine. That was at the station house. I am speaking of the question put by the officer to Jackson at the time that he was apprehended.

THE COURT: Now, counsel, I think that what you read did not make the intention of the witness entirely plain; in other words, I did not quite understand the questions and answers as you have read them.

MR. KOFFLER: Well, I have only read it as it is in the minutes.

THE COURT: I say I did not quite understand the questions that are being referred to in that answer.

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MR. KOFFLER: Well, I will ask the witness who the persons are referred to in the answer.

THE COURT: When the word "he" is used or the word "him" it is not entirely plain. At least it was not to me. It may be to the jury.

MR. KOFFLER: Well, with your Honor's permission I will read the question and answer and ask the witness to make comment when necessary to identify the persons.

THE COURT: Very well.

BY MR. KOFFLER:

Q This was asked you, Mr. Murphy, in the Magistrates Court, and these were the answers that you made. By the suggestion of the Judge I will ask you to explain whom you mean by "he" to the jury. "So that neither Jenkins nor Howard denied at the time that Jenkins was at the wheel. Did they deny it afterwards." Now this is your answer "Jackson denied at the station house that he was operating the machine north on Third avenue." By he you mean Jackson?

A Yes, sir, I mean Jackson.

Q "Jenkins denied that he was on the truck." Then you mean that Jenkins denied afterwards or that he denied at the time it was said. A Jenkins did not deny at the time I asked Jackson if he was operating the automobile on Third avenue. Jackson denied that he was operating the automobile and Jenkins said nothing.

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Q Jenkins said nothing? A No, sir.

Q And Howard said nothing? A Howard said nothing; he seemed to be a non interested party.

Q Who said he was not operating the machine?- that was Jackson? A Yes, sir.

Q Jackson blamed the man at the wheel--

MR. McDONALD: Now read that statement again.

MR. KOFFLER: (Reading) Jackson claimed he was at the wheel and by "he" you mean Jenkins, is that correct?

A Yes, sir.

THE COURT: I think it is not plain; I do not understand it.

MR. KOFFLER: (Reading) Jackson claimed "according to this witness's testimony" Jackson claimed that Jenkins was at the wheel."

THE WITNESS: I cannot understand it myself, but if your Honor will allow me to testify in the same way as I testify in the same way as I testified in the Fifth District Court I will indicate who he is.

Q Go ahead. A At the time that I apprehended the defendant Jackson at 127th street and Second avenue, two of the men riding on the reuck had left the seat with the chauffeur. Those two men were Howard and Jenkins. They were standing right in front of the machine, and I held them at

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bay with the point of my revolver. At that time the defendant now here present had his two hands on the steering gear. I demanded the two men up on the seat which they done so. I asked Jackson if he was aware of the fact that he had an accident on Third avenue and he made no response. I said are you the chauffeur of this truck and he said yes. I asked him if he had heard a shot between First and Second avenue on 124th street and he said yes. I said why didn't you stop, and he said I didn't have the wheel, I could not stop him, meaning that Jenkins was operating the automobile at that time. I said you are responsible you are a licensed chauffeur, for this automobile why should you allow Jenkins to operate your automobile. He said he would not give me the wheel. I commanded him then to drive to the East 104th police station which he done so. Now on the way to the station house, as we were going south on Third avenue, Jackson emphatically denied at that time that he was operating the automobile, meaning Jenkins. Jenkins heard this but did not deny it. At the station house Jenkins remarked he was not on the automobile at the time, but Jackson claimed that he was operating it at the time.

BY MR. KOFFLER:

Q Did Howard deny after Jackson told you that Jenkins was operating the car? A Howard, as I said before, was a disinterested party.

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Q He said nothing? A No, sir, he said nothing at all concerning this; had nothing to say.

Q Do you know how Jenkins was dressed? A Well, I described it as a black coat to my knowledge; I would not swear to it now.

Q You don't know? A No, sir, I could not very well swear to it.

Q You couldn't say he had a khaki coat? A No, sir.

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

Q You had an opportunity to observe Jenkins? A Yes, sir, I had.

Q Both at the time that you arrested him and subsequently in the Magistrates Court? A Did I? Yes, sir.

Q You don't know now what kind of a coat Jenkins had on? A No, sir, I can't remember.

Q You don't say now that it isn't possible that Jenkins had a khaki colored coat? A (No answer.)

Q You won't say now that Jenkins did not wear a khaki colored coat? A Well, it was a drab colored coat.

Q It is possible it was a drab or an olive colored coat? A Well, it was a jumper, what it was I could not say.

BY THE COURT:

Q Pardon me a moment. Which, if you know, was the taller of the two men, Jenkins or Jackson? A Jenkins was the taller of the two and the stouter man.

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Q Which, if you know, was the darker of the two men, Jenkins or Jackson? A Jenkins was the darker man.

Q Was there much difference between the color of Jenkins and Jackson? A Not so much.

Q So that a person seeing them for the first time would not say, possibly, that there is a great deal of difference between Jenkins and Jackson? A There is a great deal of difference.

Q I mean in the color? A In the features all the way, yes, sir.

Q Observing, and for the first time, the features, you could not tell the features? A You could, yes, sir.

Q You could? A Yes, sir.

Q Assuming that it was just for a few moments? A Yes, sir, you could tell.

Q You could tell? A Yes, sir.

BY MR. KOFFLER:

Q You never saw Jackson or Jenkins before this accident? A No, sir, not to my knowledge.

Q Was there much difference in height between Jackson and Jenkins? A No, sir, not in height but in build.

Q In build? A Yes, sir.

Q Much difference in build? A Yes, sir, Jenkins was a much stouter colored man.

MR. McDONALD: I can't hear you.

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THE WITNESS: Jenkins was a much stouter man.

Q Did he have a mustache? A Jenkins, no, sir.

Q No mustache? A No, sir.

F E R D I N A N D J. R O S S, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he is a police officer attached to the 43rd Precinct.)

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police department of the City of New York? A Yes, sir, I am.

Q How long have you been a member? A Nine years, going on nine years.

Q You are also a chauffeur and a mechanic? A Yes, sir.

Q An automobile mechanic? A Yes, sir.

Q That is the work that you do in the Police department? A Yes, sir.

Q Part of your duties to test the cars in cases of death? A Yes, sir.

Q Did you test a truck on the 28th or 29th day of April, 1920? A yes, sir, I did.

MR. KOFFLER: I object to that question as incompetent, immaterial and irrelevant.

Objection overruled; Exception.

Q What kind of a truck was it? A A service, truck, that is the make of it.

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BY THE COURT:

Q Tell us something more about it. Describe that truck to the jury. A It was a service truck about a ton and a half or two ton truck, a delivery truck with a big wooden body.

Q About how wide was the body of that truck from side to side? A About five feet.

Q About how long was that truck from end to end, the extreme length? A Probably twelve to fifteen feet.

Q About how high was the drivers seat of that truck above the surface of the ground? A Three and a half to four feet.

Q About how wide was that drivers seat? A Approximately three feet.

Q About how far in front of that drivers seat did any part of the truck project? A Well, in front of the drivers seat probably about four feet, three and a half to four feet.

Q What if anything was in front of the drivers seat and on a level with it; in other words what, if anything, in the ordinary operation of the truck, would be in front of a person sitting at the wheel? A The motor, the hood and the radiator.

Q Any wind shield? A Yes, sir.

Q About how much above the level of the top of the hood was the seat of the driver? A About a half a foot.

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Q What lights, what headlights? A Oil lamp, ordinary oil lamps on the side.

Q Was there a top over the drivers seat? A Yes, sir

Q Were there enclosed sides on either side of the drivers seat? A There were not.

Q Was it a right hand drive or a left hand drive?  
A A left hand drive.

Q Now, if you don't understand this question which I .  
out to you, let me know. Are you able to say from your  
examination of that truck how many feet of pavement or roadway  
immediately in front of the truck was concealed from the  
right side of a man of we will say five feet four inches  
in height seated on the wood of the drivers seat at the wheel?  
A Well, I should judge a foot and a half.

Q Not more than that? A Well, a foot and a half or two  
feet, not more than that.

Q You would not say that as much as at least six feet  
would be? A No, sir, no possible chance of anything more  
than two feet then again, your Honor--

Q Now, just listen to me now. You mean to say that  
a man of the height suggested by the question, sitting on  
the drivers seat at the wheel would be an object -- or could  
see the level of the street at a point a foot and a half or  
two feet away? A Yes, sir.

Q From the forward end of the hood? A Yes, sir.

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BY MR. McDONALD:

Q Did you test the steering gear of this car? A I did.

Q How did you find it? A In good condition.

Q Did you also test the brakes? A I did.

Q How did you find those? A In good condition.

BY THE COURT:

Q Are you able to say, within how many feet the car that you saw, if going at a rate of twenty miles an hour, could be stopped? A Well, this car --

Q On a level surface? A Well, within its own length.

BY MR. McDONALD:

Q When did you make this examination? A About 9.35 p.m. on April 28th.

CROSS EXAMINATION BY MR. KOFFLER:

Q How long did it take you to make this examination?

A Oh, about ten to fifteen minutes.

Q Ten to fifteen minutes.

Q Did you take a look at the steering gear? A I did.

Q Did you look at the brakes? A I did.

Q Did you try the car? A I gave it a road test, yes, sir.

Q Where did you give it a road test? A I took the car from the 39th street precinct station house in 104th street west through Lexington avenue, north on Lexington avenue, east on 106th street to First avenue, and back on First

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avenue to 104th street and west to the station house.

Q Did you drive it yourself? A Yes, sir, I did.

Q Do you know the name of the car? A Yes, sir, a Service truck.

Q Now the Court asked you how many feet the drivers seat was built on that truck? A You mean the height from the street? Q Yes. A Probably three and a half to four feet.

Q You said that a chauffeur sitting there about five feet four inches tall would have a vision of one and a half feet or two feet to the pavement away from him? A Yes, sir, I did.

Q That is correct? A Yes, sir.

Q Did you say that because of the test you have given us or because that is your opinion? A No, sir, it is from the test and my opinion both.

Q How many times have you tested a Service truck? A That is the only time I ever tested a Service truck.

Q How many times have you tested a truck or car with the kind of a drivers seat on it that was on this truck? I just can't tell, quite a few times.

Q About how many times? A Oh, I should say fifteen or eighteen.

Q You tested them about fifteen or eighteen times? A Yes, sir.

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Q Have you been asked before how many feet of vision on a seat of that kind a chauffeur of the height described to you by the Court? A I have not.

Q So this is the first time that you have been asked such a question? A Yes, sir.

MR. McDONALD: I object to that as already answered.

THE COURT: Yes.

Q But you were driving this car how much of a vision did it take away from you? A I just don't know, probably about a foot and a half.

Q You are taller than five feet four inches? A Five feet eight and a half inches.

Q You are about four inches taller than the description given to you by the Court? A Yes, sir. I am.

Q Assuming that a driver of five and a half or five feet four inches tall was seated in that car on that seat would that take away from his vision one and a half to two feet or would it take away less vision from a taller man? A It would.

Q So that if it took away from you about two feet of vision it would take away from the vision of a man five feet and a half less?

Objected to. Objection sustained.

Exception.

MR. McDONALD: The people rest.

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MR. KOFFLER: On behalf of the defendant I now move to dismiss the indictment on the ground that the people have failed to show beyond a reasonable doubt that the defendant has been guilty of any crime whatsoever.

THE COURT: The people have made a case for the jury.

MR. KOFFLER: May I urge no motion?

THE COURT: Yes.

MR. KOFFLER: In the first place in order for this defendant to be held on the charge of homicide it must be shown that at the time that this boy was killed this defendant was violating some law. So far the People have not established that at the time that this boy was hurt or thrown down that this defendant was violating any law whatsoever or that this defendant was on the street or that he had anything to do with respect to bringing about the death of this boy. And assuming for the purpose of this argument that this car had been speeding immediately after the death of this boy that is no evidence on which this defendant can be convicted of the crime of manslaughter, because at that time the boy was then down. There is no proof here that the defendant had been driving the car in a reckless manner or in violation of any law and that this death was purely accidental, and therefore this man cannot be liable for man-

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slaughter.

THE COURT: On the evidence in the case the Court is of opinion that it is a case for the jury as it now stands. Your motion is denied.

MR. KOFFLER: Exception.

(Mr. Koffler opens the case on behalf of the defendant.)

WILLIAM J. JACKSON, the defendant being duly sworn, in his own behalf, testifies as follows:

(The witness states he lives at 2118 Madison avenue.)

DIRECT EXAMINATION BY MR. KOFFLER:

Q You are the defendant? A Yes, sir.

Q Were you employed by the Crystal Chemical Co.?

A Yes, sir.

Q Keep your voice up. The jurymen cannot hear you.

Let these men hear you. At what were you employed there?

A A chauffeur.

Q What kind of a truck did the Crystal Chemical Co. give you to operate? A A one ton Service.

Q Now will you describe this truck as best as you possibly can? A Yes, sir. This truck had a great big long peek, glass here the same as a moving van on each side. We had a window that came about this far on a car like this, a window on each side. This side was open about a foot and a half enough to pass in, to get on. This wind shield in front of it, about four feet five, and about four feet wide and

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about five feet high and about a foot and a half from the bottom of the radiator is another little piece of glass to look through. Then this seat is about three and a half feet wide or long; just room enough for about three to sit in there. That is the way the car is built. Two lights, head lights out on the centre, that is the running board, the dashboard like, that is how the car was built. And in the back it is all closed.

Q What was this truck used for? A Used for drugs, delivering drugs.

Q How long had you been operating this truck? A I operated that truck, I guess about nine weeks.

Q Did you operate it that day? A Yes, sir.

Q From that time until what time? A From 8 o'clock until around about five-thirty according to when we get through, I used to have a Jersey run.

Q What is that? A I used to run out to Jersey.

Q Did you ever have an accident with this truck? A No,

Q Did you ever run any one down with this truck? A No.

BY THE COURT:

Q How long have you been a chauffeur? A A chauffeur three years, sir.

Q You have been a licensed chauffeur for about three years? A Yes, sir, a licensed chauffeur for about three years. I got my card.

Q How old a man are you? A I am 38 years old.

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BY MR. KOFFLER:

Q Did you ever have an accident in the three years that you have been a chauffeur? A No, sir.

Q Ever run any one down? A No, sir.

Q Ever run into any other automobile? A No, sir.

Q Where had you been working before this time? A The last place I worked was from Max

Q In what employ? A A chaffeur.

Q Also operating a truck? A Yes, sir.

Q About the same time as a truck? A Yes, sir.

Q Ever have an accident with that truck? A No, sir.

A three and a half ton truck that was, that I used to ride 60 or 65 foot girders on it, and I used to go to Newark, N.J., all over, I never had an accident in my life.

Q Are you a married man? A Yes, sir.

Q Live with your wife? A Yes, sir.

Q Have you children? A No, sir.

Q Where do you live? A I live at 2118 Madison avenue.

Q Do you remember the day of this accident? A I remember the day it happened, yes, sir.

Q Do you remember Jenkins and Howard coming on to your car? A Yes, sir.

Q Will you tell the Court and jury how they came to be on your car? A Yes, sir.

Q Tell us. A I was just coming from the ped Bank boat, that is down at the foot of Franklin street, west side, North

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River, I left there around about half past four or quarter to five. I came up on the west side as far as 125th street, and I came through 125th street to Third avenue, and I went up Third avenue as far as 129th street. I met Jenkins and he asked me where I was going, and I said going to the garage.

Q Where was the garage? A My garage was between 128th and 129th streets and Morris avenue. I met Jenkins and he said where are you going, and I said going to the garage, and he says, "How much spare time have you got", and I said, "a little", have you time enough to run me down to the house and back up again, I will be back up with you again". I said, "Yes, all right, I ain't got much time, I want to get in early tonight." He said, "all right", and he jumped in and I drove down Third avenue and he talks a little going down he is telling me his troubles, all his troubles with him and his wife and I was listening to him. We goes down and pulled out there at the east side of Third avenue and 99th street by the elevated station, and he said, "I am going up in the house to get some packages to take to my mother." He says, "I will be right down", and I says "all right" and I waited there. And Howard came over and some little children related to Howard, and they stayed there and so Jenkins stood there playing with them for awhile, and gave them some pennies, and Howard -- Jenkins went away and Howard stood there talking and so the kid says to me, "Give us a ride, M<sup>ster</sup>", and I said yes, and I gave them a ride down as far as 96th street and back again and left

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the car standing there, shut off the motor, Jenkins had not come out of the house yet and Howard says, "Where is Jenkins", and I said, "I don't know", he said he would be right down, it is getting late I wish he would show up". Jenkins came on down and he says, "Get tired waiting", and I says "Sure, a little bit". So Jenkins came down and he got on the truck, and he says "ready" and I says "yes". so I turned the automobile around and lit my lights and started to the car up. When I walked to the back light I lit the light and he lit the one on the front, I lit another light, and when I got to go in the car Jenkins was at the wheel and I said, "all right go ahead" just like that. So I got in next to him, I sat right alongside of him, and he says, "Do you want to take a ride" to Howard, and he says, "Yes, I will, I am going up the avenue, and I will be right down". Howard fetched in the kids and they asked me again will you give me a ride, and I said I would and they jumped in, about four of them, a boy and a couple of girls, they jumped in, and they got on top of a shelf with some small packages, they got up there, and we turned around.

Q They got into the body of the car? A Yes, sir.

Q Right in back of you? A Yes, sir. So we turned around and started up Third avenue, gets in to the track and the kids was singing and hollering like that and I said "don't be hollering", I turned around and said "don't be hollering "

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so I had some packages there, some returned goods and I picked them, they were untied and so forth, some stuff like that, and I was fixing them so they would not break the packages, so when I turned around again Jenkins was laughing and talking and so they started, started up and so after awhile I heard Howard, looking outside of the car, he said, -- Jenkins said, are they coming, like that to Howard, and Howard said, yes, keep going. I said what is the matter and they said nothing, just like that. They said, keep on going. I didn't pay any more attention, I kept on talking and chewing the rag with them. So when I got up to 117th street and Third avenue Jenkins starts to swing over to the east of Second avenue, and I says, "What are you going that way for", and he says "nothing", he says just like that to me. So when he gets to Second avenue he started back on south again on Second avenue, and I said, "What are you doing; you are going wild, what is the matter with you, which way are you going", and he says nothing, nothing, he says, "Here he says you take the wheel like that, and I says all right. He got up out of the wheel seat like this, got up off the seat and slid over and slipped me over and he says, "Go ahead." he says "go right through 116th street to First avenue." So I went through 116th street to First avenue and in First avenue to 124th street. I says what is the matter George, did you

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hit anybody", and he says, "no, no no," he says, "no, no, I didn't hit nobody. So, I went to 124th street, and just as I struck there at 124th street, the middle of the block, I heard a discharge from a revolver, and I said to him, "Oh, George, my God, somebody shooting, let us stop and see", and he said, "No, don't stop, go ahead, keep going, if anything is the matter", he says, "we will pull to the 126th street station house", and I said, "Don't say that there must be something the matter, I am going to stop", and he says, "No, don't stop", and I says, "Yes, I am going to stop", and he says, "all right, if you feel so stop, all right." So I pulled over between 126th and 127th streets on Third avenue to the curb, and stopped. Then when I stopped I seen this other automobile coming down like that, and I looked around and then I seen Jenkins and Howard was gone with the children. So the officer came up and he sais, to me, "Why didnt you stop down the avenue", and I said, "stop down the avenue, I was not driving the car down the avenue." I said, "what is the matter", and he said, "You know what is the matter", and I said, "No, Officer, I didnt know what was the matter, that is what I stopped for. He says "didnt you hear me fire a shot, and I said yes, that is what I stopped for", and so I stopped then and he ~~said~~ he put Jenkins and Howard back

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into the car again, and I said what is the trouble, and he said, you are after hitting somebody down in the avenue there. And I said, whereabouts, and he said, somewhere down the avenue 105th street, and I said, "My God, I wasn't driving the car at all at that time", I says, "My God do you see what you have done" just like that, and he says, that's all right, I didn't know anything, he said, that is all he said. So I went down Third avenue. I pulled through 127th street, and pulled on down Third avenue and when going down Third avenue I seen a crowd down the avenue so I pulled in where the crowd was to see what was the matter. So Jenkins said to me, he said, "My God don't stop there we will get lynched", and I said why not, and the officer. "No," "keep on going to the 104th street station house." I went on down to 104th street station house and I was arrested and when arrested we went on downtown and had finger prints taken. They asked me if I was ever arrested before, and I told him no, sir. So they asked Jenkins was he ever arrested before, and he said, no, sir, so we goes on down and Jenkins said, "Its all right if they dont find out about this other case of mine", and I said "What case is that", and he said "this other case" he says, "I got into about a year ago."

MR. McDONALD: I object to this.

Objection sustained.

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Q Continue with the conversation, but don't say anything of the case of Jenkins before? A Well, then we were brought to 121st street court then, and we stayed up there until the day that the thing went on, Thursday, we went out for a car, and then we went on down and Howard or Jenkins didn't say nothing on the stand and Jenkins and Howard had a lawyer and they didn't say anything, sir-- that they was not driving the car.

Objected to. Objection sustained.

BY THE COURT:

Q As I understand it, doing your employer's business you had been on that day with the car to the Red Bank boat? A Yes.

Q That was at the foot of Franklin street? A Yes, sir.

Q You had driven in that car from the foot of Franklin street over acrosstown, you told us, intending to go to a garage on 148th street? A Between 148th and 149th streets on Morris avenue.

Q Where the car was kept? A Yes, sir.

Q On your way to that garage at a point which you mentioned, you met Jenkins and a man whom you knew? A Yes, sir.

Q As a result of a talk with him, you took him on board of your car and did not get to the garage? A Yes, sir.

Q But proceeded in the course that you have told us about until you got to 99th street and Third avenue where you

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stopped? A Yes, sir.

Q And that at that place Jenkins left you alone on the car? A Yes, sir.

Q Going up as you understood to his house? A Yes, sir.

Q To get some packages? A Yes, sir.

Q But while he was away, and your car was at 99th street and Third avenue the witness Howard -- A Yes, sir.

Q Came to where you were? A Yes, sir.

Q And began to talk to you? A Yes, sir.

Q And there were some children there who asked you to take them for a ride? A Yes, sir.

Q You got off of the car to light your lights? A Yes.

Q Jenkins returned and got on the car, while you were there? A Yes, sir.

Q And he sat down on the driver's seat right back of the driver's seat, right back of the driver's wheel?  
A Yes, sir.

Q When you got back you found him at the driver's wheel?  
A Yes, sir.

Q And the boy and girls got inside of the body of the car? A Yes, sir.

Q And in the body of the car there were packages which were to be delivered? A Yes, sir, to be returned.

Q That you seated yourself next to Jenkins? A Yes, sir.

Q And that on the other side was Howard? A Yes, sir.

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Q That then the car started with Jenkins at the wheel?

A Yes, sir.

Q Up Third avenue? A Yes, sir.

Q But while you were going up Third avenue the boys and the girls inside of the car were singing and calling out?

A Yes, sir.

Q Then you turned back from the driver's seat to arrange the packages that were inside of the car? A Yes, sir.

Q That were to be returned? A Yes, sir.

Q But you were not driving the car while the car was going up Third avenue or to 117th street, was it? A Yes, sir. I was not driving the car.

Q Now that if I understood you correctly is what you intend to say? A Yes, sir.

BY MR. KOFFLER:

Q Your driver's wheel was on what side of the car? A The left hand side.

Q When you told Officer Murphy that Jenkins was driving the car, in the presence of Jenkins and Howard Jenkins deny it?

Objected to. Objection sustained. Exception.

THE COURT: You have that already in evidence. You have it from this witness as I remember it. If I am in error as to that I will allow you to ask it.

MR. KOFFLER: I have not got it from this witness.

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THE COURT: I will allow you to ask it.

BY MR. KOFFLER:

Q Did Jenkins say anything when you said to the officer that Jenkins is driving the car. Did Jenkins say anything at that time? A No, sir; he would not open his mouth.

Q Did you know that a boy was knocked down near 107th street?

MR. McDONALD: I object to that as leading.

THE COURT: No, I will let him ask it.

MR. McDONALD: I withdraw the objection.

You may answer the question.

A No, sir, I did not.

Q Did you know that any accident took place at the time you left Third avenue at 126th street? A No, sir, until Officer Murphy told me.

Q Did you hear the sound of a crowd? A No, sir, I didn't hear the sound of no crowd.

Q A crowd was back of your car?

Objected to. Objection sustained.

Q Did you see any crowd? A No, sir.

Q Can you describe how high the chauffeur's seat is from the ground? A Well, it is about three feet and a half from the ground.

Q How much of a vision-- how much can you see, how many feet can you see when sitting on that car? A Well, I always

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put a coat underneath.

Q What is that? A A little cushion to raise myself up.

Q To be able to see further? A Yes, sir.

Q But the way you ordinarily sit, how many feet of vision would you have? A Well, say from the radiator back until the seat about three feet and a half.

Q About three and a half feet? A Yes, sir.

BY THE COURT:

Q As the car was going up Third avenue from 99th street to 107th street what was your position in the car? A Well, I was sitting right in the middle looking right out.

Q Ahead? A Yes, sir.

BY MR. KOFFLER:

Q How long do you know Jenkins? A I know Jenkins around about fourteen or fifteen years.

Q Have you ever received letters from him? A Yes, sir, I received letters; I only received one letter since I have been in here.

Q Did you receive a letter from him in the Tombs? A Yes

Q Do you know his signature? A Yes, sir.

Q I ask you whether that is his handwriting?

Objected to.

Q Did you receive letters from Jenkins? A Yes, sir.

Q Is this one of the letters you received? A Yes, sir.

Q I ask you whether that is his signature? A Yes, sir,

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that is his writing.

Q That is his handwriting? A Yes, sir.

(The letter referred to is offered in evidence.)

(Marked defendant's Exhibit A for identification.)

MR. KOFFLER: May I offer it in evidence, your Honor.

THE COURT: Mark it for identification. I will not receive it in evidence.

MR. KOFFLER: May I read from it.

THE COURT: You may not.

Q Is this the envelope in which it came? A Yes, sir.

(The envelope referred to is marked defendant's Exhibit B for identification.)

Q How tall was Jenkins? A Why about five feet four.

Q How tall are you? A Five feet two.

Q Is he much darker than you? A Not much.

Q What is that? A Not so much.

Q A little bit darker? A Yes, sir.

Q Do you know what he wore on the day of the accident?

A Yes, sir.

Q What did he wear? A He wore, he had on a pair of Army pants and a khaki coat the same as myself; his was dirty; mine was a little lighter.

Q Yours was lighter and his was dirty? A Yes, sir.

Q You both wore a khaki colored coat? A Yes, sir.

Q Was Howard sleeping? A No, sir.

Q Did Howard tell you that he was going to a theatre

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at 107th street and Third avenue? A No, sir.

Q Was this the first time that you met Howard? A This is the first time I met Howard.

Q You never knew him before that? A No, sir.

Q Did he fall asleep, or did he wake at 120th street and third avenue? A He was awake all the time because he was talking to me.

CROSS EXAMINATION BY MR. McDONALD:

Q What speed was this car going at? A I guess a rate about fourteen or fifteen miles.

Q Do you know what the law is as to the record of the speed of your car? A yes, sir.

Q Do you know speed limit is fifteen miles an hour?  
A Yes, sir.

Q Isn't that the speed limit in that district? A No, sir; I don't think so.

Q What is that? A I don't think so, I think the speed limit of a commercial truck is only ten or twelve, I am not sure.

Q You were driving fourteen at this time? A I said I guessed that is what the car was going; I was not driving.

Q But the car was making-- was it making fourteen?  
A I guess it was making about that.

Q This car was in your care and custody, was it?  
A yes, sir.

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MR. KOFFLER: I object to that question as calling for a conclusion.

THE COURT: It was in his care.

MR. McDONALD: When counsel gets up to object do not answer the question.

THE COURT: We will take a recess now.

(At this point the Court admonishes the jury and took a recess until two o'clock.)

AFTER RECESS.

WILLIAM J. JACKSON, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. McDONALD:

Q Didn't you see anybody stop in front of your machine and hollering and putting their hands out? A If I did around about 108th or 109th street?

Q Why didn't you stop then? A I told you I asked Jenkins what was the matter, why didn't he stop, and he didn't make no offer to stop.

Q Why didn't you stop the car then? A I didn't have the wheel at the time.

Q You didn't have the wheel? A No, sir.

Q Were you next to Jenkins? A Yes, sir.

Q How did you start the car? A How did I start the car? I started the car down at 99th street and Third avenue.

Q Started it with a switch, didn't you? A Yes, sir.

Q Why didn't you turn off the switch? A It was -- the

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ground wire was off.

Q The ground wire? A Yes, sir.

Q Well, when you started the car don't you turn your ignition down? A Yes, sir.

Q Why didn't you turn it off right in front of you, when he wouldn't stop, and you saw people putting their hands up?

A That is around about 108th or 109th streets, he just kept on going.

Q Why didn't you turn off your ignition? A Well, I didn't think of turning it off; I didn't think he had done anything.

Q Didn't you see anybody jump on your car? A No, sir.

Q Did you see anybody kicking a man off the car? A No.

Q When was it you saw people standing in front of the car and hollering? A I was about 108th or 109th streets.

Q What was it you saw these people do? A I just saw them go like that; (witness putting his hands up.)

Q Standing in front of the car or at the side of the car?

A Down in front and on the side of the car.

Q Didn't they holler to you to stop? A No, sir, I didn't hear anything.

Q Didn't hear a word? A No, sir, I didn't hear anybody holler stop.

Q When was it the first time you heard anybody holler? A Well, I didn't hear nobody hollering until I got

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around about 108th or 109th streets.

Q Now, above 108th and 109th streets, did you hear anybody hollering? A No, sir.

Q The next time you heard anybody holering was at 120th street, is that right? A No, sir.

Q Didn't you hear anybody holler then? A No, sir.

Q What caused you to stop there? A Well, the shots from the revolver that I heard in 124th street.

Q Didn't you stop at 120th street? A No, sir.

Q When was it that you changed places? A 117th, 116th street and Second avenue.

Q Then where did you go? A I went to 116th street and east through First avenue.

Q Why did you go that way? A Well, that is where Jenkins gave me the wheel, 116th and 117th street on Second avenue.

Q You went over to Pleasant avenue, didn't you? A No, sir, First avenue.

Q You went over to First avenue from Second-- and this avenue is where Jenkins gave you the wheel? A No, sir, 117th street, 116th street and Second avenue.

Q On Second avenue? A yes, sir.

Q When Jenkins gave you the wheel? A yes, sir.

Q Did you say that then you went east? A Yes, sir.

Q Why did you go east? A He told me to pull east to First avenue.

Q Why? A I don't know; he told me to pull over that way

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I asked him what was the matter and he didn't make no attempt, he said nothing, that's all him and Howard said.

Q You took his word? A Yes, sir.

Q You heard a number of people hollering? A Yes, sir.

Q Is that right? A Yes, sir.

Q At Second avenue too? A Yes, sir.

Q And 117th street, is that where you changed? A Yes.

Q With Jenkins? A Yes, sir.

Q Now your garage was where? A 149th street and 148th street on Morris avenue.

Q Is that further west? A Yes, sir, right across to Third avenue.

Q Why did you go east? just because Jenkins told you, is that it? A Yes, sir.

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

Q Why didn't you go south? A South?.

Q After you got to First avenue? A No, sir.

Q What did you do, turn north? A Turned right up north yes, sir, up First avenue.

Q When you say that you turned north you kept right on First avenue? A Yes, sir.

Q Where were you stopped? A on 127th street, 125th street, I think, and Second avenue.

How  
Q Did you go from First to Second avenue? A Through 124th street.

Q Why did you go through there, did Jenkins tell you

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to go there? A He just kept on telling me, he said "just keep on going", he said, "if there is anything the matter " he says "pull to the 126th street station house, and the minute he said that I heard a shot from a revolver, and I said "My God".

Q That was at 124th street? A Yes, sir.

Q You kept on going until you got to 127th street and Second avenue? A Yes, sir, 126th and 127th streets on Second avenue. He kept on saying "nothing", and I said, "No, George I must stop and see what is the matter."

Q What street were you going on? A Well, it was something about 14 or 15 miles I guess.

Q Did you see a truck following you? A No, sir, I did not.

Q How did you change seats with Jenkins while the car was in motion? A Just like this, he got up from his seat on this side and he slid across my lap and shoved me over like that and he kept his hand on the wheel.

Q That is the way you changed seats with him? A Yes.

Q While your car was in motion? A Yes, sir.

Q At fifteen miles an hour? A Yes, sir.

Q Was it then he asked you to take the wheel, is that it? A He said, "Here take the wheel " yes, sir.

Q Didn't he let go one hand on the wheel and let you go by him into the driver's seat? A He just pulled me over like this, and he said, "Here", pulled me like this, and said,

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"here take the wheel", and I stepped over and took the wheel.

Q A pretty congested neighborhood, wasn't it, Third avenue at that time of the night you saw passengers or pedestrians walking up and down crossing the streets? A Yes, sir.

Q You say that you didn't see the boy struck at all?

A No, sir, I did not.

Q Did you hear anybody hollering at any time that this boy was underneath your wagon? A No, sir.

Q Sure about that? A Yes, sir.

Q Didn't Howard tell you that the boy had been struck?

A No, sir.

Q Did you ask Howard? A I asked Howard both of them.

Q You asked both of them? A Yes, sir.

Q What did Howard say? A He said no.

Q How long have you been a chauffeur? A Three years, sir.

Q When you heard somebody say "they are coming" or "are they coming" was that Howard? A That was Jenkins hollered to Howard and Howard said, "Yes, keep going."

Q Jenkins at the wheel then? A No, sir, he had been at the wheel -- I had the wheel -- that was on First avenue.

Q Didn't you realize then that something had happened?

A Well, no, sir, I did not at that time, until I heard a shot from the revolver.

Q By the way, had you been drinking that day? A Well I told the officer I had a couple of drinks of blackberry.

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Q Had you been drinking that day? A Yes, sir, I had been drinking two drinks I had down at the boat there.

Q Blackberry brandy? A Blackberry is what they call it, blackberry cordial they call it.

Q Is that all that you had to drink? A Yes, sir.

Q Was Jenkins drunk? A Not to my knowledge, no, sir.

Q Was this man Howard, was he drunk? A Well, he didn't look like a man who was drunk, or had been drinking; I couldn't say that he had been drinking.

BY MR. KOFFLER:

Q What time did you have this blackberry brandy? A That was about 3 o'clock.

Q Did you have any since then? A No, sir.

MR. KOFFLER: I have subpoenaed two character witnesses. I don't know whether they are here yet or not. My young man went up to serve them. Mr. McDonald says yesterday his case would take all day. I subpoenaed them yesterday, but I sent out subpoenas for them this morning and they are not here as yet.

THE COURT: If you give their names to Mr. McDonald he possibly may concede that if called they would testify to what you suggest.

MR. KOFFLER: One is the Crystal Chemical Co. and H. B. Bahr Trucking Co.

THE COURT: I suppose it will be conceded that if a representative from each one of these companies appeared

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as a witness he would testify that the defendant had been in the employ of those concerns, and that the witness was acquainted with other employees of the concern who knew the defendant, and generally that the defendant was of a peaceable disposition?

MR. KOFFLER: Will you concede that?

MR. McDONALD: Yes, sir.

MR. KOFFLER: That is the defendant's case. I renew the motion.

THE COURT: Do the people rest?

MR. McDONALD: There is only one thing. I would like to put in the City Ordinances, the general provisions of the Ordinances of the City as to the speed limit.

THE COURT: I think Mr. Brothers said the other day that the Court might take judicial cognizance of that. I believe it is made so now by statutory provision. We will regard them as in evidence.

MR. KOFFLER: I now renew the motion, if your Honor please, to dismiss the indictment on the ground that the People have failed to prove beyond a reasonable doubt that the defendant has committed the crime of manslaughter.

THE COURT: I will let it go to the jury. I will deny your motion.

Exception.

MR. KOFFLER: I ask your Honor for a direction of a

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verdict of acquittal.

THE COURT: Motion denied. Exception.

(At this point the Court adjourned the further trial of the case until tomorrow, Thursday morning, June 24, 1920 at 10.30 o'clock.)

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