

START

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I N D E X.

<u>NAME OF WITNESS.</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
John F. Devine	1	10	42	46
Dr. Norman C. Marbel	52	56	57	
Gilbert A. Secor	57	63		
Theodore Bradley	66	70	70	
Richard Cronin	71	75		
William Schaefer	77	79		

(DEFENSE)

Egbert Albertson	90	91		
Louis Raffo	93	102		
Mae Murphy	111	113		
Ralph Tussalo	121	125	130	131
John Dunn	131	132		
Mary Falso	136			

(REBUTTAL)

Frank A. Myers	139	141	169	176
William Schaefer				
(recalled)		185		
Richard Cronin (recalled)		188		
John F. Devine (recalled)	189	190		
George Sullivan	194	202		
James McIntyre	205	210	214	
Peter Thomas Hogan	218			
Harry L. Jones	219	222		
John F. Devine (recalled)	227	229		
Ralph Tussalo (recalled)	231			
John Dunn (recalled)	233			

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COURT OF GENERAL SESSIONS OF THE PEACE

IN AND FOR THE COUNTY OF NEW YORK

PART THREE.

2555

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

LOUIS RAFFO. :

B e f o r e:-

HON. THOMAS C.T. CRAIN, J.,

and a Jury.

-----X
New York, Thursday, September 9th, 1915.

THE DEFENDANT IS INDICTED FOR ASSAULT IN THE FIRST
DEGREE.

INDICTMENT FILED AUGUST 13th, 1915.

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

WILLIAM A. DeFORD, Esq., Assistant District Attorney,

For the People.

JOHN PALMIERI, Esq.,

For the Defendant.

A jury having been duly empanelled and sworn the
following proceedings were had:

Mr. DeFord opened the case to the jury on behalf
of the People.

JOHN F. D E V I N E, called as a witness on behalf of the People,
being first duly sworn, testifies as follows:-

DIRECT EXAMINATION BY MR. DeFORD:

Q What is your name? A John F. Devine.

Q Where do you live? A 190 West One hundredth street.

Q Mr. Devine, what was your employment on the 31st day of
July, 1915? A Patrolman in the employ of the New York

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Central Railroad.

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Q Were you engaged in the performance of your duties as such at about seven o'clock P. M. of that day? A I was.

Q Did you see the defendant Louis Raffo on that day? A I did.

Q Where did you see him? A In the yard, Thirtieth street, known as roundhouse yard, Thirtieth street and Eleventh avenue.

Q Did you have some conversation with him at that time? A I did.

Q What was he doing when you first saw him? A Going through the yard, up near a loaded car.

Q Did you speak to him? A I did.

Q What did you say to him? A I asked him where he was going.

Q What did he say? A "What the hell do you want to know for".

Q Go on and relate your conversation with him, stating what you said and he said and what he did at that time? A I asked him where he was going, "What the hell do you want to know for?" I then told him to get out of the yard, to get out and stay out. I walked down behind him to Eleventh Avenue. He went --

Q What did he say if anything when you told him to go out and stay out? A He said, "Some son-of-a-bitch of a railroad bull will be getting killed around here".

BY MR. PALMIERI:

Q What is that? A He said, "Some son-of-a-bitch of a rail-

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road bull will be getting killed around here".

BY MR. DeFORD:

Q What else did he say? A That is all.

Q What did you say to him when he said that to you?

A I told him to get out and stay out, he had nobody buffaloed, him or none of the Gophers down there.

Q Then what did he do? A He turned, went out on Eleventh Avenue.

Q At the time that you first saw him and had this conversation with him he was in the railroad premises, was he? A In the yards.

Q In the yards, of the New York Central Railroad? A Yes.

Q And how far from a loaded car? A They were then about where -- well, I should judge about seventy-five feet.

Q Was there somebody with him at that time at seven o'clock?

A At seven.

Q I am talking about the first interview? A No, he was alone at seven.

Q You have been telling me what happened when you first saw him? A When I first saw him.

Q There was nobody with him then? A There was nobody with him then.

Q He then went out on Eleventh Avenue, did he? A He then went out on Eleventh Avenue.

Q Tell the jury whether you saw him again that day? A I saw him again at about an hour afterwards, and hour and a

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quarter afterwards, somewhere around half past eight, it was then dark.

Q Where did you see him? A In the yard again.

Q Was he accompanied by anybody? A There was somebody in the car not with him at that time.

Q Where was he in respect to the car in which this person was? A About two hundred feet away.

Q Well, then, as I understand you, you saw the defendant about eight-thirty? A About eight-thirty.

Q Going in the direction of an empty car, wasn't it?
A Going east.

Q Going east? A Going east.

Q Through the yard? A Through the yard.

Q Nobody with him? A Nobody with him.

Q Now, you had a conversation with him at that time? A I had a conversation with him at seven.

Q Did you have a conversation with him when you saw him the second time? A I hollered at him and went after him.

Q What did you say when you hollered at him? A "Hey you, where are you going?"

Q What did he -- state what he said when you said, "Hey you, where are you going?" A I don't know what he hollered back but he kept on going, and him and me --

Q Tell the jury just what occurred after that, just relate it in your own way? A I followed him; he turned and

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jumped into a car, a car that contained hay, the hay was about a foot deep, as I came in the door I was hit.

Q You were hit? A I was hit.

Q As you got in the door? A As I got in the door, there was another man in the car. I grabbed Raffo. I held him. We fought around the car. The other man - a knife was used; I don't know which one of them used the knife.

Q When you got in the car you say you were hit? A I was hit.

Q Do you know who hit you? A I don't know which one of them hit me at the time.

Q What were you hit with, do you know? A I guess with a foot and was kicked in the chest.

Q After you got in the car? A I went in.

Q After you got in the car you say you had a fight? A I grabbed Raffo.

Q Go on? A I grabbed Raffo and we started fighting around the car. While we were fighting the other man was attempting or using something on me.

Q Do you know what it was? A I don't know. I was cut. I don't know which one of them used the knife.

Q Well, go ahead? A We battled around the car, we broke loose, I went at him again. I was hit with the bar. I went down to my knees.

BY THE COURT:

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Q Who hit you with the bar? A Raffo; I was hit with the bar.

BY MR. DE FORD:

Q Did you see the bar? A I did.

Q Did you see it in his hand? A I did.

Q What kind of a bar was it? A Well, it was an iron bar, I guess, I could not tell.

Q Did you see it there after he had left? A No, I didn't see it.

Q What happened after that? A I then went down and got up again. I grappled with him. I was knocked down and beaten across the back.

Q What with? A With the bar, around my kidneys and rib.

Q The same iron bar? A The same iron bar, I guess.

Q Who did that? A Who did that?

Q Yes. A Raffo, they jabbed me with it; I got up, got around; two shots were fired; I was down again.

Q Were you struck by either of the shots? A No, sir.

Q Did you see who fired the shots? A Raffo, backing out of the door.

Q Where was he when he fired the shots? A He was standing at the open door of the car.

Q Where was the other man while Raffo fired the shots? A Already out.

Q Did you lose consciousness there at all? A No, I didn't

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lose consciousness but I was dazed; my legs were kind of weak; I could not get up on them; I got up on my knees, and went down again.

Q After you fell to the ground, after you were beaten in the way you described, you made an effort to get up, did you?

A I made an effort to get up.

Q You could not get up? A I could not get up, no.

Q But you were not unconscious at that time? A No, I was not unconscious.

Q What did you next -- what next happened there, if anything? A Why, the car went up in flames.

Q What do you mean by "the car went up in flames"?

A They touched the car off with a match, going out.

Q Who did? A The only man that was in the car at the time.

Q Was there anyone at the door? A Raffo.

Q Did you see him do it? A I saw him do it from the inside at the time.

Q How much hay was there in the car? A Oh, about around a foot of hay, loose hay.

Q A foot of lose hay? A Yes, the way it lies after a car is unloaded; it was a box car.

BY THE COURT:

Q It was a box car? A Yes, sir.

Q A car without a roof? A A car with a roof, a box car.

BY MR. DeFORD:

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Q Was there any hay about you? A The hay was all over.

Q How close was it to you? A Yes, the hay was all over.

Q Well, did the fire reach you at all? A The flames went all up, all around my coat.

Q Were you burned at all? A I guess my lungs were burned, and my hands, I guess, scorched.

Q Then what happened? A Somebody came, I guess it was the yard-master; they started beating the flames out, pulled me out, my knees goes up, they had me down.

Q How long was it after Raffo left there that the yard-master and these other men came and put the flames out? A Around a minute or fifty seconds; it was not very long, because the shots had aroused them and they had seen the flames.

Q Had you ever seen Raffo before this time? A Never until that night.

Q Are you certain, beyond any question of doubt, that this man Raffo is the man that you saw at seven o'clock and the man who assaulted you, beat you, as you have described it, at eight-thirty? A I am positive he is the man.

Q You are perfectly certain of it? A I am certain, yes, sir, that is the man.

BY THE COURT:

Q When next after the night in question did you see Raffo?

A After the night of the assault?

Q Yes, after these things had happened? A I saw him at

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the West Forty-seventh street station house.

Q And that was how long after? A The next morning.

BY MR. DeFORD:

Q Had you ever -- you had not known Raffo before this time?

A I had never seen him before in my life. I had only been down there three or four days at that time.

Q Was the place in the yards of the New York Central Railroad where you saw Raffo and where you were assaulted and beaten as you have testified, in this county, New York County? A Yes.

MR. DeFORD: You may examine.

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CROSS-EXAMINATION BY MR. PALMIERI.

Q When you saw this defendant the next morning where was he? A In the station house.

Q Before you saw him at the station house the last time you saw this defendant was when he assaulted you; is that right?

A Yes, sir.

Q When you saw this defendant at the station house did you pick him from a line of about ten or fifteen persons that were drawn up as is usually so? A I didn't.

Q He was right there singly? A No.

Q Was he in company with anybody? A I believe he was.

Q With whom? A A couple of officers, I think.

Q Well, now, you know what I mean. You are a detective. When I say "anybody" I mean no other person besides a detective. You have seen a line-up? A Never; no.

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

Q How long have you been a detective? A Now six weeks.

Q At the time of this occurrence how long had you been a detective? A Four days.

Q During that time you did not know what a line-up was? A I didn't.

Q But you do know now what a line-up is, don't you? A I know what it is, yes, sir.

Q And no line-up did occur in this case; is that right? A They had me --

THE COURT: Yes or no to that.

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Q You can say "yes" or "no" cannot you? A No.

Q All right. Now, there are other detectives in with you, are there not? A All over the yard.

Q How many detectives are there in that yard? A The yard itself -- there are probably about four more. I have worked this yard alone at night.

Q How long has that yard been there? How long has the yard been there, do you know? A I guess for the last forty or fifty years.

Q And they have had detectives there for the last forty or fifty years?

MR. DeFORD: I object.

THE COURT: Sustained.

Q Have there been detectives before you got your job, for three or four days?

MR. DeFORD: Objected to as immaterial.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Do you know whether or not before you got this position as a detective that there had been other detectives there on that job?

MR. DeFORD: Objected to as immaterial.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q You say that on the night in question you relieved another detective for your night work; is that right? A No.

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Q Had there been a detective preceding you in this yard before you were assaulted? A I do not know.

Q Do you know a detective by the name of Hogan? A I do.

Q Don't you know that Hogan was there about seven o'clock and that you succeeded him? A I don't know.

Q Did you see Hogan there that night? A No.

Q Did you see anybody there that night? A I saw the remainder of the men going to work.

Q What is that? A I saw the remainder of them going to their positions in the different yards.

Q When you say "of them" who you mean by that, by "them"?

A The other patrolmen employed down there; I saw probably two or three.

Q What time did you see them? A Ten minutes of six. We go on at six.

Q At ten minutes of six? A Yes, sir, when we are reporting in.

Q How many of them did you see? I mean patrolling detectives of the yard? A About three I guess.

Q About what? A About three.

Q And their names were Hogan and who else? A Not Hogan; I had never met Hogan in my life until the Sunday that they brought me to the station house.

Q Well, now give me the names, please, of the three men that you saw go to their different positions before you were assaulted?

A I guess I saw Adams, Fowler, Secor, and I guess Jones the

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roundsman. I had to see him; he put me on the place.

Q And that was at ten minutes to six? A About that.

Q And at seven o'clock you saw this defendant? A I did.

Q For the first time in your life? A I did.

Q How long did you and this defendant stay together at seven o'clock, about three minutes? A Until I ran him out of the yard.

Q Was he dressed as he is now? A I think he had a dark coat, if I am not mistaken. I never paid much attention to his dress.

Q Has he dark clothes now; do you say these are dark clothes?
A Why, yes; they are not light.

Q Well, were they of the character and color which are now on this defendant? A Something on the order that I have got myself, and had a striped shirt on, no collar.

Q Would you call this shirt a striped shirt? A Possibly a black and white.

Q That is the same shirt he had on in the station house; isn't it? A I guess it is.

Q And it is the same shirt he had on at the time he assaulted you? A That I cannot say. It was in the light when I saw him at seven; in the night at half past eight it was dark. I had then not much chance to pay attention to his shirt.

Q But you did pay attention to him at seven o'clock and he had that striped shirt on, and did you pay attention to him when you

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identified him in the station house and he had on a striped shirt of the same kind and character that you did at the time you saw him at seven? A I did.

Q And you identified him because of the shirt, didn't you?
A I didn't.

Q Well, the shirt helped you in identifying him? A It didn't.

Q Well, did the clothes help you to identify him? A They didn't help me to identify him.

Q Did he have the same dark clothes on when you saw him in the station house?

MR. DEFORD: He did.

MR. PALMIERI: Your Honor, I object to the remarks of this prosecutor who, in the presence of your Honor and this jury, has stated I am bull-dozing this detective.

THE COURT: You were asking the question in a tone of voice that was unnecessarily loud. Now, proceed and ask another question.

MR. PALMIERI: How far was I permitted to go by the prosecutor before he interrupted me?

THE COURT: The stenographer will read the record.
(Last question and answer read).

THE COURT: The record affirmatively shows there was no interruption Judge Palmieri. You may proceed.

Q Well, now, we have it, Mr. Devine, that the man who assaulted you and whom you saw at seven o'clock, and whom you

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subsequently saw in the station house, had the same striped shirt and the same dark clothes on? A He did.

Q Did those two facts help you to reach your identification? A They didn't.

Q Now, will you be good enough to tell this jury if those two facts didn't help you in identifying a man whom you had never seen in your life?

MR. DeFORD: This is a mis-statement of fact.

He had seen him twice before.

A Yes, sir, I met him in broad daylight face to face, had him by the collar and put him out of the yard. I knew his face the next morning.

Q Exactly. Now, can you tell this jury whether there was any distinguishing feature or mark about the man's face that helped you to identify him? A Nothing.

Q Could you tell his Honor and the jury whether the man's face appears to you to be peculiar in form?

MR. DeFORD: I object to that as immaterial.

THE COURT: I will let him answer, yes or no.

A Why, no.

Q So that according to your own statement and your own idea, Mr. Detective, the man's face and the man's features, are not any different from any other human being, except his form and eyes? A No.

Q Is that right? A No he is no different.

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Q Now, were you alone when you spoke to this defendant?

A I was; I was alone and reported it right afterwards.

Q THE COURT: We will strike out "And reported it right afterwards. The jury will disregard it. Just answer the question.

MR. PALMIERI: Will your Honor pardon me? I did not hear what your Honor did strike out.

THE COURT: I struck out "And reported it afterwards" as not responsive.

MR. PALMIERI: With all due respect to your Honor's decision, I have no objection to have that fact remain on the record.

THE COURT: It is out already. You may proceed.

Q Did you see anybody around when you saw this defendant?

A I didn't.

Q Did you call anybody to help you to put this defendant out? A I didn't. After putting him out I called up my roundsman and reported the fact.

THE COURT: Strike out "After putting him out I called up my roundsman and reported the fact. The jury will disregard it. Just answer the question.

Q Did you have hold of this defendant when you first saw him?

A I did.

Q Did you have hold of him by the back or by the front? A By the shoulder.

Q Did you have both hands upon him? A I didn't.

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Q Now you say at the time you saw this defendant he was walking through the yard? A Yes, sir.

Q He was not doing anything? A He was not.

Q He hadn't taken anything? A Not that I knew of.

Q You told this defendant that you were a detective when you were putting him out? A I did.

Q And when you told him you were a detective he said to you, "Some son of a bitch of a railroad bull will get killed tonight"? A No, not tonight.

Q Well, then he said to you, "Some son of a bitch of a railroad bull will get killed"? A He did.

Q Well, now when he said that did you arrest him for saying that? A I had no authority to arrest him for saying that.

Q Did you call a police officer to have him arrested? A I didn't.

Q You had hold of him? A I was pushing him out of the yard.

Q When he said "Some son of a bitch of a railroad bull will get killed," and you had hold of him, did you search him? A I didn't have any authority to search him.

Q But you could have called in a police officer without any authority, couldn't you? A I could.

Q And caused this man to be searched? A I could.

Q And you didn't do it? A I didn't.

Q And there was no one within sight at the time this occurred between you and this defendant? A I don't think so.

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Q And the conversation was pretty loud when he said that? A An ordinary tone of voice.

Q Did you know his name? A I didn't.

Q You didn't ask him for it? A I didn't.

Q Now, Mr. Devine, here is a man who you say said that "Some son of a bitch of a railroad bull was going to be killed"-- by "bull" you understood that to be a detective, didn't you? You understood that? A I did.

Q And that is the common ordinary phrase -- I mean slang phrase -- isn't it amongst the Gophers? A Yes, sir.

Q Bull is the slang phrase for detective? A Yes.
at that time

Q Didn't you think in order to protect your life that it would be wise as you had this man in your hand, and he had threatened to kill a railroad bull, and you were one, that for the ordinary protection it would be proper for you to have him searched, if you didn't think you could search him, or to have him reported that here was a man who wanted to kill a railroad bull?

A That is an every day occurrence among these Gorillas down in that neighborhood.

Q How do you know that? A I don't.

Q How do you know that? A Why they are always threatening somebody.

Q How do you know that? A Why I have had them drop cobblestones at me from ^{the} roofs all over the yard.

Q Have you ever been threatened before? A No I have never been threatened.

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Q Have you ever seen anybody threatened? A Have I ever seen anybody threaten me?

Q Yes. A Nobody.

Q Then what you have testified to is from hearsay; what you heard from other detectives? A Yes, sir.

Q Other detectives told you that? A Yes, sir.

Q When did they tell you that? A I cannot give you the exact days; it is just common talk.

Q Was it before you got to this yard?

THE COURT: Well, now, we are traveling too far afield.

MR. PALMIERI: All right, your Honor.

Q I think you said you were hit with a crow bar? A A crow bar -- no.

Q With a crow bar? A If I had been hit with a crow bar I would have been dead.

Q Well, with an iron bar? A Yes, sir, with an iron bar.

Q If you were hit with an iron bar, the iron bar must have been found? A I don't know where it was found.

Q Well, you have got it here before you? A I didn't find it.

Q You had it in the police court, didn't you?

MR. DeFORD: We will have it in a minute.

MR. PALMIERI: That is just what I want.

Q Will you just show the mark to this jury where you were hit with an iron bar? A I was hit along here (indicating);

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there was no cut.

MR. PALMIERI: May the record with your Honor's permission show that the witness indicates across his forehead, toward the left side.

Q Now, just bring your finger over so his Honor may see, and say whether I was correct? A The right side.

THE COURT: The right side, not the left.

MR. PALMIERI: I beg your Honor's pardon. The right side is correct. Your Honor, am I correct in making that statement?

THE COURT: You are.

MR. PALMIERI: Now, if the District Attorney does not offer this in evidence, I will.

MR. DeFORD: I cannot offer it until I can prove it.

THE COURT: It is not receivable now.

Q Was it an instrument like this that I now hold in my hand that you were struck with? A It was.

Q No question about it? It looks exactly like the one I hold in my hand? A It does.

MR. PALMIERI: Now, I will offer it in evidence.

THE COURT: I will receive it.

(Received in evidence and marked Defendant's Exhibit "A")

Q Now, how were you struck with this, across your forehead on the right side, how? A How do you mean?

Q By a strong blow? A No.

Q Or by a right hand blow? By a right hand blow? A I don't

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know which hand.

Q By a hand blow. Now, I want to see the mark? A
There is no mark.

Q What? A There is no mark.

THE COURT: He has answered you. Another question.

Q MR. PALMIERI. Well, if he was hit with a crow bar,
Mr. District Attorney, he must certainly have received a
mark.

THE COURT: No comment, sir. You will ask another
question.

Q Now you did -- you don't know how this bar, this iron
bar, which is now in evidence, was produced in the police court
the next morning when this defendant was arrested?

THE COURT: Yes or no to that.

A I don't know.

Q You say that two shots were fired at you? A There were

Q And you are positive that this defendant fired those two
shots? A We were alone in the car at that time.

Q What is that? A There was just he and I in the car at
that time.

Q Now, will you please answer the question? A I am.

Q I asked you this question: Are you positive that this
defendant fired two shots at you? A I am.

THE COURT: He has answered you. No comment.

Q How far was this defendant away from you when he fired
two shots at you? A The width of the box car.

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Q Would you mind telling me how many feet that is?

A About fifteen.

Q About fifteen? A Fifteen.

Q Fifteen feet I said? A Yes, sir.

Q Was he facing you? A Facing me.

Q And you facing him? A Me facing him.

Q Then you were face to face? A We were.

Q Were you standing at the time that the two shots were fired at you? A I believe I was down.

Q What is that? A I believe I was down on one knee.

Q Right knee or left knee down? A That I cannot say.

Q And you were crouching? A I was.

Q And the defendant stood fifteen feet away from you; is that right? A Right.

Q And fired point blank perfectly at you, one or two shots?

A Two shots.

Q From a revolver? A Yes, sir.

Q You saw the shots; you saw a flash of the pistol; is that right? A I did.

Q And you heard the noises of the shots? A I did.

Q Have you got the bullets here? A Have I got the bullets?

THE COURT: Yes or no.

A No.

Q Did you look for the bullets? A I looked for nothing.

Q Well, the bullets didn't strike you? A They didn't.

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Q You were not even scratched, or at least the bullets didn't pass by your face, or in any way hurt you in the slightest degree? A The bullets didn't touch me.

Q Is that right? A They didn't touch me.

Q After this occurrence did you make an investigation in the yard with a view to learn wheth those bullets had located?

A Those bullets?

THE COURT: Yes or no, now.

A No.

Q You didn't. ^{yes;} Oh! /you were stabbed? A Yes, sir.

Q I believe you have got the coat here to show how you were stabbed? I want you to produce it? A It is right here (indicating)

Q Just show me the cut?

MR. DeFORD: Where is the cut?

The Witness indicates on coat, which is produced.

Q I guess you know those cuts better than I do. Will you indicate those cuts? (Witness indicates)

THE COURT: Witness indicates a place on the left side of the coat on the top of a pocket, on the top of the left hand side breast pocket. You had better have that in evidence, if you desire to.

MR. PALMIEREI: I will offer it..

THE COURT: I will receive it. It will be Defendant's Exhibit "B".

(Received and marked Defendant's Exhibit "B").

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Q How long was the knife with which you were stabbed?

A I don't know.

Q Did you see the knife? A I didn't.

Q Who had that knife? A I don't know.

Q Did this defendant have the knife? A I don't know.

Q Did you have these cuts before you had a fight with this defendant, on this coat? A Never; never had a cut on that.

Q You discovered these cuts afterwards? A After they got me down Eleventh Avenue .

Q What is that? A After they got me down Eleventh Avenue, to a shanty; the coat was ripped.

BY THE COURT:

Q When you say, got you down to Eleventh Avenue, to a shanty, am I to understand by that, after you had been taken from the car in which you say the hay had been set on fire?

A Yes, sir.

Q And when you say they took you to the shanty, you mean those who came to your relief, or came to the place where the fire was after the defendant left; is that so? A Yes, sir.

BY MR. PALMIERI:

Q Well, you were not at all injured by any knife? A No.

Q You concluded from the fact that these cuts were on this coat that a knife was used, but you didn't see any knife and didn't see anybody use it? A I have told you that before.

Q That is only a conclusion, a surmise, on your part, from

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the fact that you have seen these cuts on your coat that a knife must have been used in this besides a pistol and besides an iron bar? A I know that a knife was used.

Q Please tell me if you know a knife was used, can you tell me how the knife was used? A I felt the gash on the side of the coat.

Q You felt the gash? A I did.

Q You are positive about that; you cannot be mistaken?
A I am not mistaken.

Q And the gash was down the coat, was it? A Somewhere

Q And you felt the pin prick of the knife, didn't you?

A I felt the pin prick?

Q Yes. A No.

Q Did you feel the knife? A No. I felt the gash; kind of pulling down.

Q Then it might have been torn by some nails or hooks?

A If they had that in their hand it might have been.

Q Then you didn't see any nails in their hands, did you?

A I didn't.

Q You had light there, didn't you? A There was light a light about seventy-five feet away.

Q Was it dark or daylight when this assault took place?

A Dark.

Q Well, how many lights were seventy-five feet away?

A One.

Q Didn't you say in the police court there were fifteen

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lights? A In the yards I was asked how many lights --

THE COURT: Now answer the question.

Q How big was that light seventy-five feet away?

A It is an arc light. I cannot give you the dimensions of it.

Q Well, did it give you sufficient light for you to see the persons who were assaulting you? A It gives -- yes, sir, it gives sufficient light.

BY THE COURT:

Q I understand that this fight you have been describing took place inside of a box car, with the exception of the kick that you say you received while you were in the act of going into the car; now I understand that a box car is a car that has a roof and floor and sides? A Yes, sir.

Q These sides extend up, do they, to the roof? A Yes, sir.

Q The opening in a box car is the opening that is created by an opened door, that is to say, there are no windows in a box car? A No.

Q The only opening in a box car is the opening that is made by the door when the door is opened? A Yes, sir.

Q And that door is in the side and not in the end of the car? A It is in the centre of the car.

Q In the centre of the car on the side? A One on each side.

Q Were both the doors, that is to say, the door on each side, open at the time that the fight took place? A Yes, sir.

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Q They were both open? A Yes, sir.

BY MR. PALMIERI:

Q Well, now, as I understand, your testimony is that you didn't see any knife, that you don't know whether a knife was used, and that you believe from the cuts on this coat a knife was used?

MR. DeFORD: Wait a minute. I object to that as repetition, being over it time and time again.

THE COURT: Objection sustained.

MR. PALMIERI: Exception.

Q Now, you said that when you saw this defendant a second time, there was a man two hundred feet away? A There was a what?

Q Another man in a car about two hundred feet away from this defendant, was that so? A Yes, sir, and there was a man in it.

Q How do you know that? A I didn't know it until I got in.

Q You got into a car and you saw a man? A Yes, sir.

Q Where were you at the time you saw a man in the car?

A In the car, getting into it.

Q And where was this defendant? A In the car.

Q When I first -- do you remember as follows on your direct examination -- I took it down as you testified -- "When I saw this defendant I looked and saw in a car two hundred feet away another man"? Didn't you testify to that before on your

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direct examination? A I was following to the car. I meant the car.

Q What did you mean by saying that you saw a man two hundred feet away from the defendant? A If I said that I didn't mean the man that was with him.

BY THE COURT:

Q You testified upon your direct examination, in substance, that about half past eight o'clock, you saw the defendant for the second time, and that when you saw him for the second time there was the man about two hundred feet away from the car?

MR. PALMIEREI: Didn't you say that before?

THE WITNESS: I guess I did.

Q Then you were two hundred feet away from the man in the car; is that right? A From the man in the car?

Q Yes. AI did not know who was in the car until I followed him in. There is plenty of men around the yards.

Q What you mean to say is that when you saw the defendant for the second time, at the moment you saw him, you saw another man who, at that time, was two hundred feet away from the defendant? A Yes, sir.

MR. DeFORD: I don't think that is exactly it. I think the witness misunderstands it.

THE COURT: I may be wrong.

MR. DeFORD: My understanding is that he didn't know that there was another man in the car when he

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saw the defendant, that he didn't find out there was another man in the car until he went to the car to crawl in. But, at the time he saw the defendant, the defendant was two hundred feet from the box car; is that right?

THE WITNESS: No. I was right behind the defendant chasing him up.

THE COURT: I understood this witness to say that at the time he saw the defendant the second time, he saw another man who was two hundred feet away from the defendant.

BY THE COURT:

Q You have also testified that when you got to the box car, you had a fight with two persons in such a car? A Yes, sir.

Q And it was not until you got to the box car that you saw the other person with whom you had the fight? A No, not until I got in the car.

Q But outside of the car and at the time when you saw the defendant for the second time, you did see another man two hundred feet away? A In the yard, some place around there; I don't know if he was with him, or who he was with.

BY MR. DeFORD:

Q Do you know whether the man you saw two hundred feet away from the defendant, when you saw the defendant, was the man that you saw in the car? A No.

BY MR. PALMIERI:

I think you said before that this yard contained many

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people who go through this yard at all different hours of the night? A Employees.

Q Well, was that man that you saw two hundred feet away from this defendant an employee? A I don't know.

Q Do you understand the question? A Yes, sir.

THE COURT: He says he does not know.

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

Q How far was this defendant from you when you saw that man two hundred feet away from you; how far was this defendant away from you? A Well, I don't know; we were traveling, the both of us.

Q Well, cannot you tell me about? Of course you did not take the measure, but you did say there was a man two hundred feet away that you saw; now how far from this defendant? A We were running; I guess he was ahead of me but I should judge about fifty to seventy-five feet.

Q Was the defendant running away from you within a distance of seventy-five feet, or fifty to seventy-five feet, upon the second occasion before this assault took place?

A Before the assault?

Q Yes. He sort of, he was headed for the car.

Q When you say the defendant was running, was that the time you were shouting at him; you said something about shouting at him? A Yes, sir.

Q And at that time the distance was between fifty and seventy-five feet? A Around that, yes, sir.

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Q Between you and this defendant? A Around that.

Q What did you shout at this defendant? A "Where the hell are you going? Hey"?

Q At the time you said to the defendant, "Where are you going, come here," was this defendant walking or running?

A I don't know; I would not say.

Q And you can tell the difference whether a fellow walks or runs, cannot you? A I can.

Q When you first got sight of this defendant, how far were you away from him? A About fifty or sixty feet, I guess; I was on the Avenue standing at the corner of the yard.

Q Cannot you tell whether this defendant was running or walking? A At that time he was walking.

Q Then as soon as you said "Hey"--"Where in Hell?" I think you said? A I did.

Q "Where in Hell are you going?" he started to run? A No, I started to run immediately on seeing him.

Q Towards him? A Towards him, yes, sir.

Q The other man you say was two hundred feet away from you; was he in the same direction in which this defendant was, or was he in the opposite direction? A He was in the opposite direction.

Q Did you see that man before you saw this defendant? A I didn't.

You mean to say that you saw this man in the opposite direction two hundred feet away from you, while you were chasing

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this defendant? A Yes, sir.

Q What made you turn to look towards the other way while you were chasing this defendant? I didn't say I turned and looked the other way. I said the man two hundred feet was east of me, and this man ran east.

Q Then, as I understand it, the man whom you saw two hundred feet was in the same direction that this defendant was?
A Yes, he was all the time.

Q Where was this defendant? A Going east.

Q From where? A From Eleventh Avenue in the yards.

Q What would you say, Eleventh Avenue -- Do you say that is West; he was going from west to east? A He must have come in the Eleventh Avenue way.

Q You have used the word east? A Yes, sir.
whether

Q Cannot you say this defendant was coming from the west?

A Coming east.

Q From where? A He might have come from the north, or the west, or the south, but he was going east.

Q Was he between you and the man that you saw two hundred feet away? A No the man was on an "oblike" position.

Q The man was on what position? A An "oblike" position.

Q I don't get that middle word? A "Oblike" -- slant.

Q An oblique position. What do you mean by an oblique position? Just explain it a little better? A A slant.

Q Slanting? A Yes, sir.

Q Well, then he was walking or running that man, two hun-

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dred feet away from you? A He was walking.

Q And he was going in a slanting position, you say? A He was.

Q If this defendant was between you and that man two hundred feet away, who was going in a slanting position, this defendant was in an opposite direction? A He was going straight from east, sort of like that (indicating). Here he is, and here is the man, an "oblique" position (indicating).

Q Then you say this defendant started to run and he started to run in what direction? A East.

Q And you followed him? A I did.

Q And you were running? A I was running.

Q As you followed him did you shout and call for help? A I did.

Q Did any one come to your rescue? A They didn't.

Q How far was the nearest detective from you at that time? A I don't know.

Q You say you saw three of them go on duty that night? A I did.

Q At ten minutes of six. Besides shouting you whistled? A I didn't have a whistle.

Q Did you have a gun? A I didn't have a gun.

Q Well, now how far did this defendant run before you reached him? A I reached him as he got in the car.

Q So you saw this defendant making for a car and go into it, go into a car, as he was being pursued by you? A I did.

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Q You saw him enter the car? A I did.

Q When you said to this defendant, "Where in hell are you going?" did this defendant turn? A I don't think he did.

Q Did he say anything? A I don't think so.

Q You saw him enter that car? A I did.

Q What became of the man two hundred feet away? A I don't know.

Q Did you see him run into that car? A The man two hundred feet away?

Q Yes. A No.

Q Well, did you see any other man enter the car besides this defendant? A I don't know.

Q How long after this defendant got into the car did you reach him? A About fifteen seconds; just time enough for him to get up.

Q And as you entered the car how did you -- what did you have to do to enter the car? Did you have to creep mething to enter it, or jump into it, or what? A I reached into it, put my hands on it, and jumped up.

Q As you put your hands on it, did this defendant take your hands off, or kick your hands or something? A Kick me? Kick my hands?

Q Yes. A No.

Q Didn't do anything? A He was going to get in.

Q He was just going in as you were right on top of him?

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A He had already been going in the car. He had to get up in the same position I did.

Q So he was just about getting up; is that right? A He was.

Q In a crouching position? A Correct.

Q As you got to him and you were right on top of him?

A I was.

Q And that is the time he kicked you in the face?

A I got a kick, I said, as I was getting in the car.

Q Well, he was the only man there; you didn't see anybody else there? A When?

Q In the car? A There was another man in the car.

Q Oh! I see, yes. Just show me the mark where you were kicked in the face? A I was kicked up around here (indicating).

Q Just show the judge where you were kicked, please?

A There is no mark from the kick.

Q I want you to show the judge where you were kicked?

MR. DeFORD: I object to these tactics. This is all stage play.

THE COURT: That is not a proper remark. You may point to the place you were kicked.

THE WITNESS: All around the side (indicating).

THE COURT: Just point to where you were kicked.

THE WITNESS indicates.

Q Just put your finger there at the place you claim you

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were kicked? A All over; I could not put my finger on any one spot.

Q All what? A All over. I put my hand on my head; that will cover it.

MR. DeFORD: If your Honor please, may I interrupt the stenographer to ask if the witness had not been asked the question repeatedly to show the mark where he was kicked. I am perfectly satisfied I was right about it.

(The stenographer reads from the record).

Q You have pointed under your jaw, under your right jaw, as the place where you claim you got the first kick, as you entered the car; is that right? A Some place around there; I said my head would cover the whole business.

Q I ask you again, didn't you put your finger, as Judge Crain was taking notes, didn't you put your finger right along your right jaw at the time I asked you where you were kicked, and you put your finger under your right jaw? A I put my finger here and pointed to my head.

Q Will you please put your finger where you put it before?

MR. DeFORD: I object to that question.

THE COURT: We have exhausted that subject. Proceed to something else.

Q Now, did you feel a kick at the place where you put your finger before on your right jaw; did you feel the kick there?

A I felt many kicks.

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Q Did you feel a kick there? A I could not tell you.

Q How did you happen to put your finger under your right jaw, if you cannot tell me where you were kicked? A I put my finger around here (indicating); I said around my head.

Q When you say "around your head", where do you mean; what part of your head do you mean you were kicked?

MR. DeFORD: I object to that.

BY THE COURT:

Q Well, what part of your head do you mean? A Here, around here, your Honor, I could not exactly tell where.

Q You cannot specify the part of your head; you mean all over? A All over where a foot hit me.

BY MR. PALMIERI;

Q Can you show the Court and jury any marks now, or any marks you had then?

MR. DeFORD: That is objected to for the reason that he said he didn't have any mark now.

THE COURT: Objection sustained.

MR. PALMIERI: Exception.

THE COURT: You may divide it up. Ask him if he can show any mark now?

MR. PALMIERI: I will do so, your Honor.

Q Will you answer the part of the question which his Honor will allow?

BY THE COURT:

Q Is there any mark which you can point to now as being

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the mark occasioned by any injury you received on the day in question? A No, your Honor.

BY MR. PALMIERI:

Q Don't you remember the Judge in Jefferson Market asked you to show any marks and you could not, only two days after that occurrence? A When I appeared in Jefferson Market I was bandaged up and had marks.

Q Where did you have marks? A Right there (indicating).

Q Show me? A Right here (indicating)

Q Indicating where?

THE COURT: Indicating about an inch below his eye on the right hand side.

Q Will you please show it to the jury? A Right here (indicating).

MR. DeFORD: I object to this constant performance of locating marks.

THE COURT: You have proceeded far enough along that line now. It is conceded he has no marks on his person now.

MR. PALMIERI: May I show a photograph to the witness Judge?

THE COURT: Yes.

Q Do you recognise this photograph as your own in a daily newspaper? A I do.

Q Just look at the date of the newspaper? A I do.

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Q Is that your photograph? A That is mine.

Q And the lady next to you is your wife? A It is.

Q This was three days before or rather after this occurrence?

MR. DeFORD: I object to this. He is asking whether his picture was in the newspaper with his wife three days before.

MR. PALMIERE: No. After.

MR. DeFORD: Do you say after or before?

MR. PALMIERE: After.

MR. DeFORD: Then it is competent.

THE COURT: It may be marked for identification.

(Received and marked Defendant's Exhibit "C" for identification.)

MR. PALMIERE: I offer it in evidence.

THE COURT: I do not think that is receivable, Mr. Palmieri.

MR. PALMIERE: I do not want to offer the entire article. The article I wish to cut out.

THE COURT: I will not receive the picture, and I do not receive it for the reason there is nothing to show the date on which it was taken.

MR. PALMIERE: The date does show on the top, Judge.

THE COURT: There is nothing to show the date upon which the picture is taken, and it is not received.

Q Did you permit the papers to publish your photograph three

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days after this occurrence? A They already had my photograph.

BY THE COURT:

Q In other words, the picture which appears on the face of the Exhibit, which has been marked for identification, Defendant's Exhibit "C", is a reproduction of a photograph that was taken of you before the date when this assault was said to have been committed; is that so? A Your Honor, the picture was taken; they already had that photograph.

BY MR. PALMIERI:

Q Now, did you send your picture to the papers?

MR. DeFORD: Objected to.

THE COURT: Sustained.

MR. PALMIERI: Exception.

THE COURT: The photograph of this witness, if properly proved, taken shortly after the alleged assault, is competent evidence bearing upon the question of what marks he may have had as a result of the fight that he says took place, but a picture that was taken before the date of the assault is not competent.

MR. PALMIERI: I cannot show that your Honor, except--

THE COURT: Now, proceed to something else.

Q You are fond of publicity, are you not?

MR. DeFORD: That is objected to as an improper question. That does not tend to degrade him. There are many people that are fond of publicity that are very eminent in

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in public life.

MR. PALMIERI: There are many men who are fond of publicity who will swear a man's life to State Prison for that purpose.

MR. DeFORD: I object to that statement.

THE COURT: Now, we will have orderly procedure from this time on. Counsel on both sides will see me at the conclusion of the case today with respect to this last incident. Now, we will proceed. Read the question.

(Question read by stenographer).

THE COURT: The objection to the question is sustained.

Q Did you and the railroad detective by the name of Hogan talk about this case between the time that this defendant assaulted you and the time you identified him in the police station?

A I didn't; no.

Q Did you meet Hogan between that time -- A Between the time I was assaulted and went to the station house?

Q Yes. A Yes, sir.

Q Did you speak to him? A The only words I had with him was coming up and coming down, and "See if you can identify the man." That is all.

Q Did Hogan tell you that he had identified the man before you went up there? A No.

Q Didn't Hogan tell you on this occasion this defendant

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told him as follows: "That if any trouble came that he carried a 38 calibre revolver as any of the other 'bulls', and that he would use it if necessary"? A Do you ask did he tell me?

Q Yes. Did you hear about it? A I heard him tell the District Attorney that; that is all.

Q This was after this occurrence? A After the occurrence.

Q But you and he never talked about it? A No.

Q How long after the occurrence did you hear Hogan say that he heard this defendant say this? A I don't know; it is when we were down in the District Attorney's office, I guess, after the Grand Jury, or before; I don't know which.

MR. DEFORD: How is this proper cross-examination?

THE COURT: Not material; not proper cross-examination.

MR. DEFORD: Hogan is here and subject to subpoena if they want to produce him.

THE COURT: I sustained the objection.

MR. PALMIERI: Exception. I think that is, all your Honor.

RE-DIRECT EXAMINATION BY MR. DEFORD:

Q Now, Devine, when these men came to your assistance where did they take you? A Out of the car.

Q And to what place? A To a shanty there. We sat down there, and then they brought me to the French Hospital.

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Q Did they carry you to the shanty or did you walk over unassisted? A No, helped me up under the arms.

Q Who were the men that came to your assistance?

A I think Secor was one.

Q And Bradley the other? A Yes, sir.

Q Who is Bardley? A The yard man.

Q Who was with him? Who was with him at that time?

A One of the detectives.

Q Were they the only two men that came to your assistance? A There was a couple of others there; I don't know who they were.

Q But you do remember Secor and Bradley? A Yes, sir.

Q There were a couple of other men? A Yes, sir.

Q When you say Secor and Bradley pulled you out of the car, describe what they did? A I was laying there and I believe it was Bradley reached in the car, pulled me out. When my feet hit the ground I gave in, went down; could not get my feet; could not stand on my feet.

Q Then did they assist you over to this shanty? A They took me under the arms.

Q Then when you got to the shanty where were you taken? A I stayed down there; they got water and threw it on me; washed my face up a little. Then they brought me up Eleventh Avenue, put me on a car and the conductor I believe and Secor took me off the car.

Q Where did they take you to? A Into the French Hospital

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Q Were you attended by a physician there? A I was.

Q Do you know the physician's name? A Dr. Marvel.

Q Did you stay in the hospital any length of time?

A Probably an hour.

Q Was any service rendered you? A Yes, sir.

Q Was your face bandaged or anything of that kind?

A The whole side of my face was bandaged over. The Doctor bandaged it over.

Q You didn't tell the magistrate when you were brought before the magistrate in Jefferson Market that you didn't have a bruise on your face? A I had it on my face.

Q I say you didn't tell the magistrate in the Jefferson Market Court that you didn't have a bruise? A No, I could not tell that.

Q The fact is, is it, that your face was bandaged up?

A It was.

Q When you appeared in the Jefferson Market Court how long had you been acquainted with officer Secor, who came to your assistance that night? A About three nights.

Q Had you known him three nights before this assault?

A That is all.

Q Had you been associated with him at all? A I worked four hours with him one night, that is all.

Q Is that the sum total of your acquaintance with him?

A That was.

Q Now, officer Hogan's name is Peter Hogan; is that right?

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A Peter Hogan.

Q He is a detective in the service of the New York Central Railroad Company? A He is.

Q How long had you known Peter Hogan before this assault?

A I had never known him.

Q When did you first meet Peter Hogan after this assault and for the first time in your life? A He came up to my house that morning.

Q How long was that before you charged the defendant?

A About half an hour.

Q About half an hour? A About half an hour.

Q And you had never seen him before that? A Had never seen him or anything else.

Q Who is Frank A. Myers? A A detective in the employ of the New York Central Railroad.

Q When did you see Myers for the first time in your life?

A I met him down around the yard to speak to him, that is all.

Q When did you meet him for the first time to speak to him?

A Up at my house.

Q Now, this Mr. Bradley who came to your assistance was an employee of the New York Central Railroad Company at that time, was he not? A He was.

Q In what capacity? A I think it is a train dispatcher.

Q And how long had you known him before this time? A I had never known him.

Q Had you ever had any conversation with him prior to that

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time? A No, sir.

Q And did you subsequent to that time, after the assault? A When I was taken out of the car?

Q Yes. A No.

Q Now, do you know H. L. Jones? A He is a roundman.

Q He was in the service of the New York Central Railroad at that time, was he? A He was in the service, yes, as a roundman in charge of the detectives.

Q How long had you known him? A Just three days. He put me on.

Q And your connection with him simply consisted of the fact that he was your superior and directed your work? A Yes, sir, he was my boss; that is all.

Q Now, had you ever heard of the defendant prior to the first meeting with him at seven p. m. on the 31st of July? A I never knew him. I knew none of them.

Q Had you learned who he was, what his name was during the interval between seven o'clock when you first met him and the time when the assault occurred, had you learned anything about him at all? A No, sir.

Q So that he was a total stranger to you at both meetings? A Positively.

MR. DeFORD: That is all.

RE-CROSS-EXAMINATION BY MR. PALMIERI:

Q You did say that Hogan and who else came to your house half an hour before the defendant was arrested? A I don't know

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when he was arrested. Half an hour before we went down to the police station.

Q Well, who came for you to the house besides Hogan?

A Myers.

Q Myers is your other witness, isn't he? A Yes, sir.

MR. DeFORD: I object to that. It is not his other witness, and Judge Palmieri knows that very well. He is the People's other witness.

THE COURT: The objection is sustained.

MR. DeFORD: I object to the method. They are the People's witnesses.

MR. PALMIERI: I wish to object to the remarks of the District Attorney at this time. I was within my rights in asking that question, and it is your Honor's right to overrule it, but it is not the right of the District Attorney to sum up every time I ask a question.

THE COURT: You have the right to ask any question, and then it is open to the Assistant District Attorney to take an objection, and if objection had been taken it would have been sustained.

Q Did Myers speak to you before you and Myers and Hogan went to the police station to identify this defendant? A I don't quite understand your question?

Q Did you have any conversation with Mr. Myers when he came to your house one half hour before you identified this defendant

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at the station house; is that clear to you? A That is clear, certainly.

Q What did Myers say to you and what did you say to Myers? A Just talked about the topics of the day on the way down; that is all.

Q Talked about what? A Topics of the day, anything.

Q Do you mean how the weather was? A Yes, sir, the topics of the day.

Q Didn't he talk to you about the case? A About how I was injured.

Q And they wanted you to identify the man that had assaulted you, as you claimed? A They wanted me to come down and identify him.

Q Well, that is what Myers told you? A No.

Q Well, he told you that they wanted you to come down to the station house and try to identify him?

MR. DeFORD: I object to that.

BY MR. DeFORD:

Q That was the witness's language, his own method of telling what the witness Myers said to him? A Just to come down to the station house and try to identify the man. I am expressing it to you in my own way.

BY MR. PALMIERI:

Q And what did Myers tell you on the question of seeing the defendant at the station house? A "Get dressed and come down to 47th Street." That is all.

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Q And what did he tell you further? A That they had a man arrested for it and to come down and I went down.

Q Didn't Myers tell you, or didn't Hogan tell you, that this defendant lived about two blocks away from the railroad yard? A He didn't.

Q Didn't you know that when you got to the station house?
A No.

Q Or learned it there? A No, sir.

Q Don't you know it now? A Yes, sir, I know it now.

Q Do you remember making this answer to the magistrate in the police court -- before I ask you that I want to know if you remember being sworn in the magistrates' court; do you? A Yes, sir.

Q And you remember being asked many questions about this case? A Yes, sir.

Q Do you remember making this answer -- on page Mr. DeFord -- do you remember stating as follows to the magistrate:

"A I am going into the box car and I was struck with a bar and 'rassled' around the car with another defendant. A knife was used".

A Yes, sir.

Q And do you remember saying also as follows:

"A Went 'rassling' around the car. Struck across the back. I went on the floor. Got up again. Standing with his back south. My back was north. Two shots were fired".
A Yes, sir.

Q Did you say that? A I did.

Q "I again was struck and went down to the floor. Was stunned. Did you say that? A I did.

Q Why didn't you say then that the two shots were fired

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by the defendant, as you said today? A I was not asked.

Q All right. You were not asked? A No, I said his back was south and I was north when the shots were fired at me.

Q Let us see. Your back was south? A No, his back was south -- the defendant's.

Q And your back was north? A Yes, sir.

Q Then you had your back to this defendant? A No.

MR. DeFORD: Why they were face to face, weren't they? That is the way, I figure it.

Q And that is what you meant, just what the District Attorney said, is it? A Yes, sir.

Q "The car was touched off with a match." Did you say it was done by the defendant, in the magistrates' court? A I did.

Q Well, you saw the defendant light a match? A Yes, sir, draw a match. The match was struck and thrown in the car.

Q Yes. He struck the match and lit the hay when you arrived there? A Yes, sir.

Q And how long was the hay burning before any one came to your rescue? A Oh, I don't know; about half a minute.

RE-DIRECT EXAMINATION BY MR. DeFORD:

Q Now, did you see this iron bar that night? I am referring now to Defendant's Exhibit "A"? A It looks like the bar.

Q Well, was this bar similar in form and appearance to the bar that the defendant used when he struck you? A Yes, sir.

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Q Did you see that bar at any time that night except when he was using it on you? A No, sir.

Q You didn't make search that night, to locate the bar?
A I went to the hospital and was taken home.

RE-CROSS EXAMINATION BY MR. PALMIERI:

Q When did you see this bar next, after the assault?
A I guess I seen it down here the other day.

Q Is that the only time you saw it? A I think it is.

Q Did Hogan ever tell you that he found it? A I was told that the bar was found and the police had it. Officer Schafer had it.

Q Who told you that? A I don't remember.

Q Didn't Hogan tell you he found it? A He did not.

Q THE COURT: Now, that is all, Mr. witness. You may step down.

MR. PALMIERI: I didn't ask for the production of the knife. I would like to have the knife produced.

MR. DeFORD: I cannot do it all at once. I will produce everything that we have got in due time.

THE COURT: Very well. Proceed.

MR. DeFORD: I want to call the Doctor, because he wants to get away, before I call Mr. Secor.

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D R. N O R M A N C. M A R B E L, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DeFORD:

Q Doctor, were you a physician and surgeon attached to the French Hospital on the 31st of July, 1915? A I was.

Q And that night did you meet John F. Devine, the gentleman standing back by the rail there? A I did.

Q Did you render him certain medical or surgical aid? A Surgical aid.

Q Now, will you tell the jury just in what condition you found him and what you did for him that night? A When I found him he was sitting in the accident room, waiting for a doctor. I came down, and he was supported by some attendant -- I don't know who, some man who was with him. And after I examined him I found that the entire cheek bone had been bruised, and there was some abrasion, also bruises over the right eye.

Q What was the nature of the bruises? Can you describe them any more particularly than you have? A There were no cuts, simply the skin was rubbed off and swollen.

Q Swollen? A Swollen very much.

BY THE COURT:

Q About what hour did you see him? A As far as I can remember, your Honor, it was about nine o'clock.

Q In the evening? A In the evening.

Q Did you observe other portions of his body? A He complained also --

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Q No, did you look him over? A Yes, to a certain extent
He complained also --

Q No, not what he complained of, what did you find? A Yes,
I examined him on the ribs, on both sides and I found nothing of
the nature of a fracture of the rib -- but he complained --

MR. PALMIERI: Objected to.

THE COURT: Sustained.

BY MR. DeFORD:

Q You examined around his ribs you say? A Yes, sir.

Q Is that the bowels or stomach or where that you described
as having examined? A The upper abdomen and also the ribs.

Q Did you find anything there? A Nothing.

Q Now, did you notice anything about him, anything peculiar
about him? A Outside of the bruises on the head which were very
pronounced his entire body smelled of smoke.

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

THE COURT: I think I will receive it in the light of
the other evidence in the case. There is some testimony here
about a fire.

MR. PALMIERI: Exception.

A (continued) I examined him also as to his mouth, because --
BY THE COURT:

Q No. You examined him as to his mouth? A Yes, sir.

BY MR. DE FORD: Q Did you find anything there? A I found nothing
in his mouth.

Q Was that the extent of your examination? A Yes, sir.

BY THE COURT:

Q How long was he under your observation, about? How long

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were you looking at him from the time you first laid your eyes on him until he passed out of your sight? A From half to three quarters of an hour.

Q And that was the first occasion upon which you had seen him as far as you know? A Yes, sir.

Q And from that time did you see him again until you saw him in the court room today? A No, sir.
BY MR. DE FORD:

Q What was his appearance with respect to pallor or otherwise?

MR. PALMIERI: I object to that your Honor. Let him describe his physical appearance from the standpoint of nervous excitement or his complexion. I object to that as an incompetent question and as calling for an opinion.

THE COURT: I will allow this witness to state what he may have seen, what he observed by looking at the complainant.

BY THE COURT:

Q Now, tell us what you observed. Now did you look at his clothes? A Yes, sir.

Q Well, how was he dressed? Voice up now, those twelve men on the jury want to hear you? A As far as I can remember he was dressed very cleanly; that is the impression that I received and I think he had on a jersey shirt.

BY MR. DeFORD:

Q Now, did you notice whether his coat was cut or not? A I did not observe that.

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Q Now, did he say, did he appear to be laboring under emotional excitement?

MR. PALMIERI: I object.

THE COURT: Allowed.

MR. PALMIERI: Exception.

A He did.

BY MR. DeFORD:

Q What was his condition with respect to nervousness, if you can describe it?

MR. PALMIERI: Same objection.

THE COURT: Objection overruled.

MR. PALMIERI: Exception.

A He seemed to be afraid that he had been burned internally.

Q Well, I mean did he say, did he not give evidence of --

MR. PALMIERI: I object to that, what he seemed to be afraid of.

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

Q Was he nervous or calm? What was his condition with respect --

MR. PALMIERI: Same objection.

THE COURT: Allowed.

MR. PALMIERI: Exception.

A He was pale and nervous only from excitement as far as I could tell.

MR. DeFORD: That is all.

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CROSS-EXAMINATION BY MR. PALMIERI:

Q Doctor, everybody that goes into a fight or has had excitement of some kind is usually nervous, isn't he? A I should think so.

Q And all you found, if I have this right, were bruises and abrasions which in common ordinary English means the rubbing of the skin, that is that the skin had been rubbed? A Hit.

Q Is that all you found, doctor, that is that the skin had been rubbed? A He had been hit.

Q Is that all you found? A I have stated what I found.

Q You examined his mouth and you examined his abdomen, and you examined his manner and his color, and you found he was pale, I think you said? A Yes, sir.

Q By the way, since we have got all this color and everything else may we have also his pulse?

MR. DeFORD: Now, I object to that statement. It is not a proper part of the question.

THE COURT: No, that is not so.

MR. DeFORD: And it is intended to create atmosphere in this case, and I object to it on that ground.

MR. PALMIERI: Have I the right to ask for the man's pulse?

THE COURT: Yes. Now, yes or no.

A I did not take his pulse.

Q Well, will you give the jury a reason why you didn't? If you thought that it was a serious case, I suppose you would have, and if not you would not have?

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MR. DeFORD: I object to the form of the question.

THE COURT: Sustained.

Q I simply ask you now, Doctor, why you did not take the man's pulse? A Simply, because, in my opinion, the bruises would not demand any change in pulse.

MR. PALMIERI: Thank you, Doctor.

RE-DIRECT EXAMINATION BY MR. DeFORD:

Q Now, Doctor, did you consider the case a serious case or not when you first saw the complainant, Devine?

MR. DeFORD: I withdraw the question. That is all, Doctor.

GILBERT A. SECOR, called as a witness on behalf of the People, being first duly sworn, testified as follows:

(I reside at Ossining, New York).

DIRECT EXAMINATION BY MR. DeFORD:

Q What was your employment on the 31st of July, 1915? A I was employed by the New York Central as patrolman.

Q Are you in the service of the New York Central now? A No, sir.

Q What are you doing now? A I am a plumber and steamfitter by trade.

Q Are you engaged in carrying on that business at Ossining? A No, sir, I am working at Croton-on-the-Hudson.

Q Do you know John F. Devine? A Yes, sir.

Q The complaining witness herein (indicating Mr. Devine)? A Yes, sir.

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Q How long have you known him? A I have known him for a period of about two months?

Q You heard of this assault upon him, did you not? A Yes, sir.

Q Do you know the date of the assault? A Yes, sir, the 31st of July.

Q How long had you known him prior to that assault? A Three days.

Q And when did you meet him? A The first night I met him was the night he came to work in the Yard.

Q What was the extent of your acquaintance with him after you met him? A Why simply breaking him in for his duties.

Q And how long did that require your being with him? A One night.

Q Did you see him at all after that night before the assault? A I seen him that night before he went to work, the night of the assault.

Q So you saw him twice before the assault? A Yes, sir.

Q Did you have any talk with him the night he went to work before the assault? A Not that I remember.

Q Now, did you see him again that night, the night of the assault? A Not until I was called to that Yard.

Q Well, I mean, did you see him again that night? A No, sir.

Q What? A Why, yes, sir, when I was called over to the Yard.

Q Well, that is what I mean. Did you go to the Yard that night? A Yes, sir.

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Q And did you see Devine that night again? A Yes, sir, and I found him lying in the car.

Q Now, why did you go to the car, tell the jury? In the first place, what did you see when you got there? A I was patrolling the Yard, adjoining the Yard in which Devine was working, and I was notified by the night assistant yard-master --

THE COURT: No. You heard something?

THE WITNESS: Yes, sir.

THE COURT: And then what did you do?

Q (Interposing) Now, I don't want you to tell us what somebody said to you. Did you hear anything before that? A Yes, sir, I heard two shots.

Q What did you do? A I did not do anything at the time. I was not supposed to leave my Yard, and I was patrolling my Yard when I was notified by the night assistant yard-master --

MR. PALMIERI: Objected to.

THE COURT: Sustained.

Q Well, did you see the ^{assistant} yard master? A Yes, sir.

Q And did you go somewhere with him? A Yes, sir, to the adjoining Yard where Devine was working? He notified me that a car ---

MR. PALMIERI: Objected to.

THE COURT: Sustained.

Q Now, did you go anywhere with the assistant yard master? A yes, sir.

Q What is his name? A Richard Cronin.

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Q And did you go anywhere with him? A Yes, sir.

Q And where did you go with him? A To the adjoining yard.

Q Where did you go in the adjoining yard? A About the centre of the yard.

Q And to what place or point? A An empty box car.

Q And how long was it after you heard the shots that you started for this yard, with Cronin, approximately? A Twenty minutes or half an hour.

Q And what did you do when you got there? A I saw the car was full of smoke, and Devine's feet were sticking out of the car.

Q And was any one else there? A Yes, sir, Cronin was there.
BY THE COURT:

Q How long was that after you heard the shots? A About twenty minutes, or half an hour.
BY MR. DE FORD:

Q And who did you find there when you got there? A I found patrolman Devine lying in the car.

Q And anybody else? A Yes, sir, the night train dispatcher was also over there.

Q Anybody else? A That is all I remember.

Q And was Cronin the night dispatcher? A No, sir, he is the night assistant yard-master.

Q And where was Devine? A Lying in the car.

Q And what were these other men doing? A Standing by the car

Q And Devine was lying in the car? A Yes, sir.

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Q Now, what did you observe about the condition of the car? A Why the car was full of smoke, it evidently had been afire.

Q Well, did you look around the car? A Not at that time. I was interested in getting Devine out.

Q Now, what did you do after you got there? Just tell the jury briefly what you did and what Cronin did and what the other people did then? A Well, when I got there and saw the car had been afire and saw Devine lying inside he could not get out without assistance, and so I climbed into the car and managed to get him out and took him up to the corner, assisted by Mr. Cronin and Mr. Bradley the night train dispatcher.

Q And where did you take him? A And from there I took him to the French Hospital about ten minutes afterwards. I could not get him up at that time, because he could not walk alone, and I assisted him to the French Hospital and from there home.

Q Now, did you observe his appearance, Devine's appearance when you found him in the car? A Yes, sir.

Q What was his appearance? Describe to the jury his appearance? A Well, I could not just tell what his trouble was. When I got him from the car he was all covered with burning hay and his face was badly bruised over one eye, but I could not tell just what it was until I assisted him off, and then I saw he had a couple of bad bruises, one over the eye, and the other under the eye, and he complained of his lungs and smoke, paining him; he could not get his breath.

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Q And did you clean him up after you took him to this shanty? A Yes, sir.

Q Brush him up and clean him off? A Yes, sir.

Q Now, did you make a search about the car after you took the defendant out? A Yes, sir.

Q Then at that time or later? A Later.

Q And did you find anything when you got there? A Yes, sir, a knife lying outside of the car.

Q And did you find an iron bar there? A No, sir.

Q Is this the knife you found there (showing) A Yes, sir, it was open and lying outside of the car on the ground.

BY THE COURT:

Q How near the car? A Right under the edge of the car. The car sides about four feet above the ground.

BY MR. DeFORD:

Q Which blade was open? The knife has two blades. A The large one.

MR. DeFORD: It is offered in evidence as People's Exhibit 1.

THE COURT: Admitted.

MR. PALMIERI: No objection.

(Received in evidence and marked People's Exhibit No.1.)

Q Now, did you find anything else there when you made that search?

A No, sir.

Q Did you examine the car at all? A Not until daylight.

Q Did you examine it in daylight? A Yes, sir.

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Q Did you find anything then? A No, sir.

Q Did you find any evidences of holes in the car, or anything of the sort? A Why, the car was full of holes, from the nails of packing cases carried in the car.

Q Well, did you find any traces among the holes of bullet holes or what you believed to be such bullet holes? A No, sir.

CROSS-EXAMINATION BY MR. PALMIERI:

Q Now, you do not know anything about this assault outside of what Devine has said? A No, sir.

Q You don't know of your own knowledge? A No, sir.

Q Whether any assault was perpetrated on Devine or not? A No, sir.

Q Now, with respect to where you found Devine, where was the flames, if any, in the car? A There was no flames in there, the hay was just simply smouldering.

Q Well, was the smoke coming from where Devine was? How far was Devine coming from the smoke? That is what I mean. A Well, the smoke completely covered him. There was only one door open in the car and there was no draught to blow the smoke and the smoke was lying very low near the floor.

Q Where was the smoke coming from? A From right around Devine where the hay was smouldering.

Q Well, where was the smoke from the hay coming from? A Why, it was right in the centre of the car where Devine was lying.

Q Right in the centre? A Yes, sir.

Q And how far is that from the door? A Why, about four feet.

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Q Well, and did it reach the clothing of Devine?

A He was lying in the smouldering hay.

Q Well, I know. But you did observe his clothing? A Yes, sir.

Q Was it burning? A His coat was burning around the sleeve; it was charred.

Q Is this the coat (indicating a coat)? A Yes, sir, it looks like it.

Q Well, will you just show me where it was burned; that is the coat? A Yes, sir.

BY MR. DeFORD:

Q Well, then he asked you a question? (No answer).

BY MR. PALMIERI:

Q Yes. Just show me where it is burned? A It has evidently been brushed off considerably ^{since} then. There is a place there (indicating).

THE COURT: He indicates a place upon the inside of one of the sleeves.

Q So that the fire got on the inside of the sleeves. A The sleeves were rolled up.

MR. PALMIERI: Thank you.

MR. DeFORD: Will you look at it, gentlemen (addressing the jury).

MR. PALMIERI: Why I brought it out for you.

MR. DeFORD: But you did not intend to do so.

THE COURT: Now, gentlemen. No more colloquy. Pro-

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ceed with the case.

MR. PALMIERI: Oh, I wish to ask him whether any part of the coat was burned that night, before he goes, your Honor.

THE COURT: The witness may be recalled.

GILBERT H. SECOR, being re-called by Counsel for the defendant, testified as follows:

CROSS-EXAMINATION CONTINUED BY MR. PALMIERI:

Q Was any other part of that coat burned except that which you have shown to us? A Not that I saw. I did not examine the coat closely because he had it on.

RE-DIRECT EXAMINATION BY MR. DeFORD:

Q Were his sleeves turned up when you found Devine, and is that why you came to notice this scorched place? A Yes, sir.

THE COURT thereupon admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until half past two o'clock.

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THEODORE BRADLEY, was called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DE FORD:

Q Where do you live? A I reside at 539-541 West One Hundred and Sixtieth street.

Q What was your employment on the 31st of July? A Train Despatcher, New York Central.

Q And how long have you been in the service of the New York Central? A A little over two years.

Q Are you acquainted with John S. Devine, sitting here? A Yes, sir.

Q How long have you known Devine? A I should judge a little over a month.

Q When did you first become acquainted with him? A When he first came to work for the New York Central.

Q When was that with reference to this assault, that is the subject of the charge here? A That I could not just say.

Q Did you become intimately acquainted with him? A No.

Q What was the extent of your acquaintance with him? A Just a nodding acquaintance.

Q Where were you employed as train despatcher, where had you actually worked? A Thirty-second street, right off Eleventh avenue.

Q Thirty-second street? A Yes, sir.

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Q Now do you remember the night of July 31st? A Yes.

Q 1915? A Yes, sir.

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

Q Just state to the jury the circumstances under which you saw him, how you came to see him, the condition in which you found him? A Well, about 8:30 I heard two shots. I looked up at the door. I said, "There is some trouble in the yard." Just a few minutes after Mr. Cronin came over and asked --

THE COURT: Not what anybody said. Just what you did.

Q Did you see Mr. Cronin within a few minutes? A Yes. This is exactly how I came to hear and how I came to go over there. He asked me --

THE COURT: Not what he said to you.

Q What did you do after you saw Cronin? A Told Mr. Devine that there was some trouble over on the south side, and immediately ran over.

Q Told who? A Secor.

Q Now you had some conversation with Cronin after you heard those shots? A Yes, sir.

Q What did you do after you had the conversation? A Went right over to the car.

Q How did you know where to go? A Because he said, the Fifth Roundhouse.

Q Who said so? A Mr. Cronin.

Q Then you went over to the car, did you? A Yes.

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Q Did you find Devine there? A Devine was in the car.

Q Now describe the condition of the car and Devine's condition, and tell the jury what you and Cronin did after you got there? A When we got over there, they were just putting the fire out; Devine was helpless on the floor.

Q Who was putting the fire out? A That I could not tell you. We tried to get Devine out of the car.

Q When you got there then there were some other men there? A Two other men.

Q Were they employees of the New York Central? A Yes.

Q Do you know what their names were? A No, sir.

Q Was Secor there when you got there, or he came after?
A Came after.

Q So when you and Cronin got there, there were two men there whose names you do not know? A I do not know them.

Q After you got there, what were the two men doing and where was Devine? A Devine was lying on the car floor, helpless. We tried to get him out of the smoking car; they were just putting the fire out.

Q What were the two men doing when you got there?
A Putting out the fire. We got Devine out, tried to get him to stand, but he could not stand, he was perfectly helpless. We walked him down as far as the nearest shantys and sat him down. Secor and another man took him to the hospital.

Q What was the condition of the car with reference to

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atmospheric conditions? A Very smoky.

Q Afire and smoking? A Yes, sir.

Q Did you see any blaze there? A Yes, sir, put it out when we got there.

Q What was afire in the car? A Hay.

Q And how much hay was in the car? A That I could not tell you, it was all heaped up in one side of the car. I should imagine about that much (indicating one and one-half feet).

Q Did you examine the interior of the car? A No, sir.

Q When you saw Devine he was lying on the floor? A Yes, sir, on the floor of the car.

Q And you took him out of the car? A Yes, sir.

Q Did you observe his appearance when you took him out?
A Yes, sir.

Q Now describe it to the jury as near as you can. A You would not recognize him. He was all black with the charred hay, from the smoke.

Q What was the condition of his face, was it cut or bruised? A One eye was bruised and hanging over. It seemed to me as if it was about to close.

Q And you say he was black? A Yes, sir.

Q What was the condition of his coat and trousers? A I could not see his coat.

Q Did you examine his coat at all that night? A No, sir, I did not have time.

Q After you took Devine out and took him over to the shanty

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did you make an investigation about the car, make a search?

A No, sir, I had no time.

Q You never saw this rod, Defendant's Exhibit A, before?

A No, sir.

Q Never seen it? A No, sir.

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

Q Now did you subsequently see the defendant? A No.

Q You have told us all you know about it, have you?

A Yes, sir.

CROSS EXAMINATION BY MR. PALMIERI:

Q Just one question: You saw a blaze? A I saw them putting out the fire.

Q Well, that is not an answer to my question. You are a very intelligent man. I ask did you see a blaze? A That was a blaze, the fire.

Q There was a blaze? A Yes, sir.

Q How far away was the blaze, away from Mr. Devine?

A I should imagine about two feet to two and a half feet.

MR. PALMIERI: That is all.

RE-DIRECT EXAMINATION BY MR. DEFORD:

Q It was about how long after you heard shots before you started for the car? A Fifteen to twenty minutes.

MR. DEFORD: That is all.

RE-CROSS EXAMINATION BY MR. PALMERI:

Q Did you mean to say that it was fifteen minutes after you heard the two shots that you started for this car? A

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I should judge, I cannot tell you exactly. I say from the time I heard the shots until I reached the car it may have been fifteen to twenty minutes.

BY MR. DeFORD:

Q You found two men when you got there? A Yes, sir.

BY MR. PALMIERI:

Q Mr. Devine was still on the floor? A On the floor.

MR. PALMIERI: That is all.

R I C H A R D C R O N I N , was called as a witness on behalf of the People, being first duly sworn, testified as follows:
(I reside at 476 Tenth avenue, New York City.

DIRECT EXAMINATION BY MR. DE FORD:

Q Mr. Cronin, what was your employment on the 31st of July of this year? A Yardmaster, foot of Thirtieth street and North River.

Q Was the witness John F. Devine a subordinate of yours in the service of the New York Central? A Sir?

Q Was the witness Devine employed by the New York Central at that time? A Yes, sir.

Q Was he under your direction? A Not under my authority, no, sir, under the heading --

Q Of a roundsman? A Yes, sir.

Q You are the yardmaster? A Yes, sir.

Q How long have you known Devine? A I did not know the man until the night in question.

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Q Did you see him on the night in question, the 31st of July, 1915? A In the condition I reported to you.

Q Did you see him that night? A Not before the accident.

Q I mean on that night? A The time of the accident.

Q Would you call it an accident? A Yes, sir.

Q How was your attention attracted to him? A By the men calling, "There is a car afire in the roundhouse." Going over there I found it is this Mr. Devine in a helpless condition.

Q Who did you go over with? A I went over alone, when they called my attention to the fact that the car was afire in the roundhouse.

Q Did you go to the car before you took Bradley over, or went over with Bradley? A Yes, sir, I went there first.

Q And then went to Bradley? A Yes, sir, inquired for the yard detectives.

Q You saw somebody who told you the car was afire? A Yes.

Q Did you hear any shots fired that night? A Yes, sir, two shots fired.

Q Now how long after was it after you heard the shots fired that you were informed that the car was on fire? A Three to five minutes.

Q What did you do? A Went there when the men called my attention that the car was afire.

Q Who called your attention to that? A Mostly all the men in the yard hollered, because there was quite a cloud of smoke drifting south.

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Q You don't know who the men were? A No, sir.

Q You went to the car? A yes, sir.

Q Tell this jury just what you found when you got to the car? A I found this man in a helpless condition, gentlemen. I asked him if he needed a physician, and he told me --

THE COURT: Not what he said, what you found.

Q Not what you heard, what you saw? A I found this gentleman in a helpless condition and I asked him if he needed a physician.

THE COURT: Not what you said or what he said; what you found; what you saw.

Q Where was he in the car? A Yes, sir. With his left hand leading up against the side of the car and his coat slung on his right hand.

Q What was the condition of the car, full of smoke for the time being? A Yes, sir.

Q Anything in the car? A Burning hay.

Q What did you do after you found Devine there? A I went and inquired for the yard detectives, not knowing that Mr. Devine was a yard detective.

Q What did you do with Devine? What was the first thing you did with him? A Helped him, with the assistance of Mr. Bradley, to get out in the yard.

Q Bradley was not there when you went the first time? A No.

Q What did you do with Devine? A Left him there to find out

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if the man was a yard detective, I not knowing he was a yard detective.

Q Then, as I understand it, you got there three or four minutes after you heard the shots fired? A Yes, sir.

Q Your attention having been called to the matter by an employee? A Yes, sir.

Q Your attention having been called to the fact of the car being on fire? A Yes, sir.

Q And when you got there you found Devine there? A Yes.

Q You left him where you found him? A Yes, sir.

Q And went back and got Bradley? A Yes, sir.

Q Did you have any talk with Devine when you first found him there and before you went to Bradley?

THE COURT: Yes or no.

A No, sir.

Q You just saw him there and saw the car in that condition? A And asked who the gentleman was in that condition. They told me that he was a yard detective.

Q When you got there was the fire out or still burning? A It was smouldering. Two yard switchmen under my employ were beating the fire out.

Q When you found this car there were two of the switchmen and Devine, and the two switchmen were beating the fire out?

A Yes, sir, with brooms.

Q Do you know the names of the two men? A Yes, sir, they are still employed by the New York Central.

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Q What are their names? A W. Fromheld and George Sullivan.
van.

Q Can you produce them here tomorrow? A Yes, sir.

Q Will you do so? A Yes, sir.

Q Now, after you went to get Bradley, and came back with Bradley? A Yes, sir.

Q What was done with Devine after you got back with Bradley? A Took him to Eleventh avenue. I tried to get him over to the time house, to give him a bath of cold water, to help to revive him.

Q Did you notice the condition of his face? A His features were all blackened up. There was a bruise on his right arm.

Q Did you notice any ~~contusion~~, any contusions, bruises or swellings? A Yes, sir, his right eye was greatly bruised up.

Q Did you notice his coat? A His coat was hanging on his left hand. I didn't examine it.

Q Did you see any bar of iron that night? A No, sir.

Q Did you make any search for one? A No, sir, just merely asked the switchmen --

THE COURT: No.

Q Did you ever make any search of the car? A No, sir.

Q For the purpose of discovering anything? A No, sir.

Q Now have you told us all you know about this? A Yes.

CROSS EXAMINATION BY MR. PALMIERI:

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Q You don't know how Devine came to get into the car, or whether this was an accident, or whether this was an assault, or whether this was a put up job or anything?

MR. DeFORD: I object to that question. Don't answer it, Mr. witness.

MR. PALMIERI: Don't answer it until I finish my question.

MR. DeFORD: I beg your pardon. I thought it was finished.

(Question read)

Q And all you knew about it is the fire in the car? A Yes.

MR. DeFORD: I would like to get a ruling. I object to it as to its form.

THE COURT: I will sustain the objection as to form.

MR. PALMIERI: Exception.

BY THE COURT:

Q You have no independent knowledge of what transpired in the car, what happened in the car before you got there? A No, sir.

BY MR. PALMIERI:

Q Just one more question, Mr. Cronin: You said when you went over to the car you found the car full of smoke? A Yes.

Q You didn't say anything about flames. I wish to ask you did you see flames when you went there? A The car was full of smoke and the two switchmen were trying to beat out the burning hay in the car.

THE COURT: You did not answer the question.

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THE WITNESS: There was no flame.

Q No flame? A No, sir.

Q And you got there before Bradley got there? A Previous to that, yes, sir.

Q The first time? A Yes, sir.

Q You saw the car full of smoke but no flame? A Yes, sir.

Q And it was about how long afterwards that you brought Bradley there? A Well, that was from three to five minutes.

Q How long? A From three to five minutes.

Q Now is that all you know about this case? A Yes, sir.

MR. PALMIERI: That is all.

MR. DeFORD: The People rest -- just one minute. I have another witness. I want to establish the finding of this bar of iron.

WILLIAM SCHAEFER, (32nd Precinct) was called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DeFORD:

Q Are you an officer of the Municipal Police Force and were you such on the 31st of July, 1915? A Yes, sir.

Q Did you see the witness Devine, John F. Devine, on that date? A No, sir.

Q Did you make a search of a box car in the New York Central Yards on the next day? A Yes, sir.

Q The 1st of August, 1915? A I did.

Q About what time did you go there? A About 10:30.

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BY THE COURT:

Q In the morning? A In the morning.

BY MR. DeFORD:

Q Were you accompanied by anybody? A Yes, sir.

Q By whom? A Officer Hogan of the New York Central.

Q And what did you do when you got there? A We looked into the box car, and found a rod of iron there.

Q Is this the rod of iron you found, look at it (showing defendant's exhibit A)? A (after examining) Yes, sir.

Q And where did you find it in the box car? A Lying on the floor.

THE COURT: Designate the rod.

Q The rod referred to is Defendant's Exhibit A. Did you make an investigation, Mr. Schaefer, for the purpose of ascertaining whether there were any bullet holes in the car?

A At that time I did not know of any shots being fired; I was only informed of it later.

Q You did not make any search then? A No, sir.

Q Did you ever make a search of the car for the purpose of determining that? A No, sir.

Q Did you arrest the defendant here? A Yes, sir.

Q When and where was he when you arrested him? A I arrested him on the south-east corner of Thirty-first street and Tenth avenue.

Q At what time? A About ten-thirty.

Q In the morning? A Yes, sir.

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Q What day? A The 1st of August.

Q That was the day after the assault? A Yes, sir.

Q Did you have any conversation with him? A Yes, sir.

I walked him through the yard and I asked him, "What was you up to now?" He said, "I do not know what you are talking about." I said, "They want you down here for an assault on a detective." He said, "I don't know anything about it." I took him down to Eleventh avenue and from there to the station house.

Q Did you notice him do anything on the way down?

MR. PALMIERI: I object.

Q Did you notice that he did anything out of the ordinary while you had him in your custody? A No, sir.

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

MR. DEFORD: You may cross examine.

CROSS EXAMINATION BY MR. PALMIERI:

Q Officer Schaefer, when was this assault reported to the police office? A Ten o'clock on the 1st of August.

BY THE COURT:

Q Ten o'clock in the morning? A Yes, sir, on the 1st of August.

BY MR. PALMIERI:

Q And the assault is alleged to have occurred at 8:30 the night before? A Yes, sir.

Q Who reported it? A I don't know, but I believe Officers Hogan and Myers.

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Q Is Hogan here? A Yes, sir.

Q And that is the first time you as a police officer knew anything of an alleged assault at these yards? A Yes.

Q Did Hogan tell you who perpetrated this assault?

MR. DeFORD: Objected to as not proper cross examination.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Did you have a talk with Hogan? A Yes, sir.

Q Well, as a result of that talk, where did you go with Hogan?

MR. DeFORD: Objected to as not proper cross examination.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Well, your Honor has permitted evidence in here to show that this defendant was arrested and that Hogan was present at the time of this defendant's arrest. Now under the rules of evidence I have a perfect right to cross examine him upon this proposition and upon this fact.

MR. DeFORD: As to the details of the arrest -- I withdraw my objection.

MR. PALMIERI: That is the reason I --

MR. DeFORD: I withdrew my objection.

THE COURT: Proceed.

Q And Myers I think you said was with Hogan; now is that right? A Yes, sir. I left Officers Hogan and Myers on the

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northwest corner of Thirty-first street and Tenth avenue and walked over to the southeast corner of Tenth avenue and Thirty-first street, where I saw the defendant Louis Raffo, and placed him under arrest.

Q Well, at the place where you arrested Louis Raffo, where, with respect to that place, was his house, his residence, where he lived? A On the corner.

Q How far was the residence of Louis Raffo, the defendant, from the place where you arrested him? A He was standing right at the door of his residence.

Q How far is the residence away from the yard where this assault is alleged to have been committed? A About one city block.

Q Were Hogan and Myers in your company at the time you arrested this defendant at the door of his residence? A No, sir; they were on the opposite corner.

Q When you placed the defendant under arrest, did you confront him with Myers and Hogan? A After I placed him under arrest and started across the avenue, Myers and Hogan walked through the railroad yard towards Eleventh avenue and Thirty-first street. I took the defendant down there, and Hogan said: "That is the fellow."

Q And after Hogan told you, that is the fellow, you instructed Hogan to go and get Myers and Devine? A I took the defendant to the station house, and took him in the back room. Hogan and Myers were ^{sent} uptown for the complainant, Devine, and came back

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at about one o'clock.

Q Well, then it was after Hogan told you, "That is the fellow", that you told Hogan and Mayers to go and get the complainant Devine? A The Lieutenant instructed them to get the complainant.

Q Well, whoever it was -- you were ^{with} the lieutenant? A Yes, sir.

Q What went on between Hogan and Devine you know not? A No, sir.

MR. DEFORD: I object. It is perfectly obvious --

THE COURT: The witness has answered he does not know.

That finishes that.

Q Was this iron bar found in the burning car, do you know, the bar which is now in evidence? A Found it in the box car, lying on the floor.

Q Was that box car the car where the fire had taken place? A Yes, sir.

Q And who found it? A Officer Hogan.

Q That is the man whom you say is here now? A Yes.

MR. DEFORD: He is outside.

Q Did he find it in your presence? A Yes, sir.

Q Did you ask him why it was that he made no search from 8:30 that night until 10:30 the following morning; he waited until you got there and made this search for the first time and discovered this iron bar?

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MR. DeFORD: I object to the question both as to its substance and form.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Do you know any reason why this bar was not discovered before, if you know?

MR. DeFORD: Objected to.

THE COURT: I will allow the answer, yes or no.

A No, sir.

Q Was the defendant present when you found the bar, the iron bar? A No, sir.

Q Well, when the complainant, Devine, came to the station house at one o'clock, did he come there in the company of Myers and Hogan? A yes, sir.

Q Were you present? A I was, I was in the rear room of the station house.

Q Was the defendant brought out? A Yes, sir.

Q Before them? A Yes, sir.

Q And did you or somebody else ask him, "Is this the man?"

A I asked him was this the one who was wanted for assault, and he said, "Yes, sir, that is the man that assaulted me."

MR. DeFORD: That is the man that assaulted him?

THE WITNESS: Yes, sir.

Q Was this defendant placed in the line with other persons when brought out for identification? A No, sir.

Q What did this defendant say, if anything, with reference

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to the assault, to you or anybody else? A He denied all knowl-⁸⁴
edge of being at the scene.

Q Well, you asked him whether he had assaulted Devine? A
Yes, sir.

Q And did he tell you he had not? A Yes, sir.

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

Q Didn't you think that was important, Mr. Schaefer?

MR. DeFORD: I object to that as not proper cross
examination. It does not make any difference whether the
witness thought it was important. He did not do it.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Did you have that knife, which is now in evidence --
was this knife shown to you by Hogan and Schaefer that day of
the arrest?

MR. DeFORD: Not Schaefer.

Q (continuing) Myers and Hogan and Devine, the three de-
tectives, the three yard detectives? A No, I only had the bar
in my possession. It is kept in the possession of the Police
Department as evidence.

Q How about the knife? A I didn't have no knife.

Q Was any knife produced at the station house? A Not
at the station house, no, sir. The only thing entered on the
blotter was the bar, the iron bar.

Q Did you see that knife before today, Mr. Schaefer?

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A No, that is the first I saw the knife.

Q Did anybody tell you that they found a knife? A No.

MR. DeFORD: I object to that.

THE COURT: Sustained.

MR. PALMIERI: Object to what? The officer was about to give some opinion which I consider very valuable in this case.

THE COURT: I know. I have ruled on it. The question apparently was not a proper one.

MR. PALMIERI: Your Honor, I respectfully bow to your ruling.

THE COURT: Conversation between this witness and somebody else in the absence of the defendant is not receivable.

Q Did the complainant tell you that anybody had found the knife that night?

MR. DeFORD: Objected to.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q But you know these railroad detectives carry revolvers, Mr. Schaefer? A They do when they are sworn in, yes, sir.

Q Do you know the calibre of the revolver they carry?

MR. DeFORD: Objected to.

THE COURT: Not proper cross examination. I sustain the objection.

MR. PALMIERI: Exception.

Q Do you know anything else of this case, Mr. Schaefer?

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A No, sir.

Q That you would like to tell the Court and jury? A No.

MR. PALMIERI: That is all.

(Witness excused)

MR. PALMIERI: Oh, pardon me, your Honor, I would like to ask another question.

(Witness returned to the stand)

MR. PALMIERI: On the question of identification.

Q Did you ask Mr. Devine how he particularly remembered this defendant when you brought him before him?

MR. DeFORD: Objected to.

THE COURT: Sustained.

MR. PALMIERI: Why, your Honor, this is very important to us.

THE COURT: Entirely incompetent.

MR. PALMIERI: I respectfully except.

THE COURT: It may be important, but it is incompetent.

MR. DeFORD: Whether it is important depends on the witness's answer, not upon the question.

MR. PALMIERI: With all due respect to your Honor's opinion, I believe I have the right to ask the question in the interest of my client.

THE COURT: You have asked it and I have ruled.

MR. DeFORD: I will state, your Honor, that Officer Hoganis here and was subpoenaed by the People, but I

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don't propose to use him unless it is necessary on rebuttal, but if defendant's counsel wants to use him, Hogan is on hand.

The People rest.

MR. PALMIERI: I want Mr. Hogan examined. He is a very important man.

THE COURT: The People rest.

MR. PALMIERI: I am taken very much by surprise, your Honor, by the abrupt ending of this case. I expected Mr. DeFord to call this man Hogan.

THE COURT: Any motion?

MR. DeFORD: Your Honor, he has no right to expect anything about my case.

MR. PALMIERI: I thought you would try the case in the regular way.

MR. DeFORD: I object to that statement.

THE COURT: The statement is objectionable.

MR. DeFORD: You are not the judge of how I should try my cases.

MR. PALMIERI: I thought the District Attorney had evidence to introduce here.

THE COURT: The People rest.

MR. PALMIERI: Your Honor, then I must ask your indulgence to give me until tomorrow morning to decide as to whether I shall put in any defense at all. In view of the abrupt ending of this case I will probably rest on the People's case.

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THE COURT: I will give you until tomorrow morning to determine what course you care to pursue.

Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial or form or express any opinion thereon until the same is committed to you.

The court stands adjourned until half past ten tomorrow morning.

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COURT OF GENERAL SESSIONS OF THE PEACE

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IN AND FOR THE COUNTY OF NEW YORK

PART THREE.

-----X
THE PEOPLE OF THE STATE OF NEW YORK

: B e f o r e:-

--against--

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

L O U I S R A F F O .

:
-----X

New York, Friday, September 10th, 1915.

THE DEFENDANT IS INDICTED FOR ASSAULT IN THE
FIRST DEGREE.

INDICTMENT FILED AUGUST 13th, 1915.

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

WILLIAM A. DeFORD, Esq., Assistant District Attorney,

For the People.

JOHN PALMIERI, Esq.,

For the Defendant.

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DEFENSE.

ROBERT ALBERTSON, called as a witness on behalf of the Defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you reside? A 62 West 106th Street.

Q Are you a married man? A Yes, sir.

Q And how long have you lived in this country? A Born here, sir.

Q Have you any occupation? A I am foreman for John P. Clarkson.

Q Do you know the defendant at the bar, Louis Raffo?

A I do.

Q Has he worked under you for this company? A Yes, sir, for the last year, off and on.

Q As what? A As a laborer.

Q And was he working for you up until the month of July last? A Yes, sir, off and on, working up to the month of July last.

Q And what were his hours of work, from what time to what time? A Seven to six. Of course sometimes we have work for him at nights.

BY THE COURT:

Q Seven in the morning? A Yes, sir, seven in the morning until six at night.

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BY MR. PALMIERI:

Q Do you know whether it was September of last year that he began his work with you? A Now, I could not answer that; I have so many men to employ, sometimes one hundred to one hundred and fifty.

Q It is at least that long he has been working for you? A I think from last year.

Q When you say from last year, you mean one whole year? A Working for me off and on same as all the employees, not a steady man.

Q When you say off and on, you mean whenever there is a ship in? A Whenever there is work.

Q When there is no ship, there is no work? A Yes, sir. Then they go somewhere else.

MR. PALMIERI: That is all.

CROSS-EXAMINATION BY MR. DeFORD:

Q How many days did this defendant work for you altogether? A I could not answer that.

Q How many days off and how many days on during that period? You said "off and on". A We might have a ship in this week. That is the only way I can explain it.

Q Can you tell me approximately how many days this defendant has worked for you in the past year? A No, I could not answer that question.

BY THE COURT:

Q About. For example, how many days a week did he work?

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A We will say for the last year one hundred and fifty.

BY MR. DeFORD:

Q When you say, "We will say that", are you saying that to make me an answer? A No, not to make an answer. I should judge one-hundred and fifty days.

Q You think he has worked five months steadily during the past year? A Yes, sir.

Q When did he begin to work for you? A I could not answer that.

Q What month? A Well, I do not know that.

Q Did he begin to work for you last year? A I don't keep track of these things. I am not the bookkeeper; I am the boss.

Q When did he last work for you? A In July.

Q And when did he commence to work for you? A I do not know when he started.

Q Cannot you tell me whether he began to work this year, or the Fall of last year, or the Summer of last year? A I don't know whether he started in the Fall or Summer of last year.

Q All you know is that he worked for you one hundred and fifty days and worked for you the last time in July? A Yes, sir

Q What kind of work did he do? A Longshoreman, pulling a truck, carrying bags in the hole, or anywhere else.

Q Just a common laborer? A Yes, that is what he done.

MR. DeFORD: That is all.

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LOUIS RAFFO, the defendant, called in his own behalf,
being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you live? A 460 Tenth Avenue.

Q Mr. Raffo, how old are you? A Twenty-two years.

Q Where were you born? A Brooklyn.

Q Are your father and mother living? A Living.

Q Now, during the twenty-two years of your life have you
lived in New York and Brooklyn all the time? A New York and
Brooklyn.

Q You never moved out of the State? A No.

Q Have lived always in this City or Brooklyn? A Yes, sir

Q Now, tell the jury all the truth, they want to know all
of it? A Well, gentlemen of the jury, I was arrested once for
taking a package, and I was arrested once for taking some pigeons.

Q Now the first time you were arrested for what? A For
a package.

Q And the judge gave you how long? A The judge gave me
a year in the penitentiary.

Q And then you were arrested for what after that? A The
second time I was arrested for pigeons, and I got nine months
and the penitentiary, and since I came out of the penitentiary--

Q And you came out when? A Last September.

Q Of last year? A Yes, sir.

Q Now, outside of those two occasions have you ever had

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any trouble at all? I mean by trouble, arrested or convicted of any crime outside of these two unfortunate occasions? A No, sir.

Q Have you ever been arrested for assault? A No, sir.

Q Or for hitting anybody? A No, sir.

Q When you came out last September, did you go back to your mother's on Tenth Avenue to live? A Yes, sir.

Q And your sister's? A Yes, sir.

Q And how far is that from the railroad yard? A About a block and a half.

Q Your mother has kept a stand I believe right there in the neighborhood, has she not, a vegetable stand or store? A She keeps it in 34th Street.

Q How far is that from the railroad yard? A That is about three blocks, I think.

Q Only three blocks away? A Yes, sir.

Q And for how many years have your mother and sister lived in that neighborhood, how many years? A Seven or eight years.

Q And during all that time, outside of the two times that you happened to be so unfortunate as to be in prison, you were always living there? A Always lived there.

Q Outside of the two times you were in prison? A Yes, sir.

Q During all those seven or eight years, did you have any trouble with these railroad detectives? A No, sir.

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- Q Did you associate with them in any way? A No.
- Q Did you have any fight with them in any way? A No, sir.
- Q When I say "fight" I mean trouble of any kind? A No, sir.
- Q Did they ever charge you with anything? A No, sir.
- Q Did you know who these detectives were? A No, sir.
- Q Did you know them at all? A No, sir.

Q Now, Mr. Raffo, you have heard the charge here yesterday, did you not? You are charged with striking Mr. Devine with an iron bar, with a knife, kicking him with a shoe, shooting at him twice with a revolver, point blank at him, and then setting fire to the railroad car, or box car, containing hay; did you do anything of the kind? A No, sir, gentlemen of the jury, I didn't do anything of the kind.

(The witness during the last answer rose from the witness chair).

THE COURT: Sit down.

Q Now, you restrain yourself, Mr. Raffo, and the judge and the jury will give you a square deal. Now, can you tell the circumstances of your arrest? A Yes, sir.

Q That Sunday morning? A Yes, sir.

Q When you went to bed that Saturday night, did you go to the same bed you slept in all the time while you were working for the Panama Railroad? A Yes, sir.

Q Did you change your clothes in any way? A No, sir.

Q From Saturday to Sunday? A No, sir.

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Q Did you have the same striped shirt and the same striped dark suit that you have on now, that you had on that Saturday and Sunday? A Yes, sir.

Q You made no effort to change or disguise yourself?

A No, sir.

Q On that Sunday morning did you come down from the house? A Yes, sir.

Q I mean the Sunday morning of your arrest? A I came down.

Q And when you came down, about what time was it? A Nine o'clock.

Q And where did you go? A I went down around the corner to buy a newspaper.

Q And did you buy a newspaper? A I bought a newspaper.

Q And where did you go that day? A I was going around to the house, and then while I was walking there was a man looking at me, so I was looking at him.

Q Pardon me. Did you know who that man was at that time?

A No, I did not know him.

Q Now, after that, did you stay in front of the house?

A I stayed in front of the house on a pipe, that big, (indicating) right next to my brother-in-law's barber shop.

Q And began to read the paper? A Yes, sir.

Q And how long had you been reading the paper before anything happened? A Five or ten minutes, and this man who had been looking at me came over and asked me, "Young fellow," he said, "what do you want?" --

Q Just a minute. Is Mr. Hogan in Court? I thought all

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of the witnesses were excluded from the Court room.

MR. DEFORD: The people rested their case.

Q Is this gentleman (indicating Mr. Hogan) the one whom you saw walking up and down the street in front of you? A Yes, sir.

Q And finally after reading the paper over about ten minutes he came up to you? A Yes, sir.

Q That is Mr. Hogan? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, when he came up to you, don't answer this question until his Honor has ruled, if there is any objection: will you tell this jury all that transpired between you and Hogan, all he said to you and all you said to him, now, if there is no objection?

(No objection).

THE COURT: I think I will allow him to tell the circumstances under which the arrest was made.

A Gentlemen of the jury, at nine o'clock Sunday, I came down out of the house. I walked around the corner to buy a paper. When I bought this paper, on my way back, this man was looking at me. In the meantime, I walked around the corner, I sat down by my brother-in-law's barber shop on a big pipe, that wide, indicating, and I sat down on that. I read the paper about ten minutes and this fellow comes over. He said to me: "Eh, you! What is your name?" I said, "My name is Louis Raffo." I said, "Why?" He said: "Where were you last

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night? I said, I was on the corner last night." He said, "You were on the corner last night, eh? I said, "Yes." He said, "You know you are wanted for assault." I said, "What do you mean for assault? He said, "For hitting a railroad detective." I said, "You are going crazy, I never hit a railroad detective." He said, "You, on the corner last night! I said, "Yes, talking to a girl. Her name is Mae Murphy." So in the meantime he goes away.

Q Now, wait a moment. When you said, "I was talking to a girl by the name of Mae Murphy," what did he say to you before he went away?

MR. DeFORD These were conversations that preceded the arrest.

THE COURT: I think that is so.

MR. DeFORD: I have introduced no evidence concerning them at all, and I would not have been permitted if I had.

THE COURT: I think I will exclude it.

MR. PALMIERI: I would have had no objection if you had. Exception.

Q After Hogan went away and told you about assaulting somebody in the railroad yard, did you run away? A No, sir.

Q Did you continue to read the paper. A I continued sitting down where I was.

Q For about how long? A About when he went away; I continued there about ten minutes. I had to go up into the

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toilet. When I came down it was about a quarter after ten, and I stood there. In the meantime there was an officer came over to me.

Q About what time did the officer approach you? A About half past ten.

Q Who was that officer, what name? A Mr. Schafer.

Q You were right in front of your door at that time?

A Yes, sir, same spot as I was when reading the paper.

Q What did Schafer tell you? A He said, "Young man, you are wanted under arrest." I said: "What do you mean, under arrest?" He said, "You assaulted an officer." I said, "Not me." He said: "Come with me, anyhow." I said, "All right, I will walk with you." So Mr. Scahfer took me down to the railroad, and Mr. Schafer called the railroad detective, not that detective, spoke to him, Mr. Hogan. Then he said, "Mr. Hogan, go up and call Devine," which I did not know Devine until he said the name. He goes up and gets Devine, brings him into the station house, and I was lying in the back. The officer gets up, walks in the station house. When he sees Devine come in leaves me in the back, comes in the back, takes me up and puts me in the front where the judge was in the station house.

Q You mean the lieutenant, not the judge. A The lieutenant. Hogan said, "Aint this the man?" Devine turned around and said, "That is the man."

Q And was Hogan right there with Myers? A Yes, sir,

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in the station house.

Q They did not give you any line-up? A No line-up.
The cop took me out and Hogan said, "Is that the man?"

Q What did you say? A I said, "You got me wrong."

Q Now, Mr. Raffo, have you any cuts on your face? A Yes, sir (indicating).

Q Will you show it to Judge Crain and then show it to the jury?

(The witness shows his face to the Court)

Q Now just show that to the jury?

(The witness shows his face to the jury)

Q Now, Mr. Raffo, after your unfortunate experiences in prison, you came out last September, and you went to work for whom? A The Panama Line.

Q Under who? A Under Mr. "Al." We call him "Al."

Q The previous witness, you call "Al" for short? A Every workman calls him "Al."

Q This foreman? A This foreman who was sitting in the chair.

THE COURT: Albertson.

A We called him "Al."

Q You worked for the Panama Railroad from September to when? A From September to the date I got arrested.

Q Were you working on that day? A I was not working Sunday. I worked on Saturday and got off on Saturday.

Q Was a ship in? A Yes, sir.

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Q Were you working as a longshoreman? A Yes, sir, that is it.

Q From what time to what time? A Seven to six.

Q And after you got through with your work you came home?

A Yes, sir, I went home.

Q Did you have your supper? A Yes, sir.

Q And after you came down from your supper where did you go? A I went down on the corner.

Q And on the corner did you meet anybody? A Yes, sir, I met a girl.

Q What is her name? A Her name is Mae Murphy.

Q And did you stay with her any length of time? A Stayed with her to about a quarter to eleven.

Q And then where did you go? A Then she asked me if I would walk up with her, I said, yes.

Q I only want to know where you went after that. Where did you go after a quarter to eleven? A Where did I go?

Q Where did you go after that? A I went home.

Q During that time were you drunk or getting drunk? A No, no.

Q Now, you had Mae Murphy in the police court? A Yes, sir, in the police court.

Q Is she here? A Yes, sir, she is here today.

Q Is there anything else? A No, nothing else.

Q Oh, had you ever known Devine in your life? A No, never seen him in my life.

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Q Or Hogan? A No, sir.

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CROSS-EXAMINATION BY MR. DeFORD:

Q Now, Mr. Raffo, you were where about seven o'clock on this Saturday night, July 31st, 1915? A Up in the house.

Q Your house? A Yes, sir.

Q And who were you with in your house about seven o'clock that night? A My sister and my mother.

Q And how long did you stay in the house? A I went on the corner.

Q Then where did you go? A I went on the corner.

Q Out on the corner? A Yes, sir.

Q And why did you go out on the corner? A Why did I go out?

Q Yes. A I went out to get some air.

Q Did you have an appointment when you went out on the corner? A With nobody.

Q Had no appointment? A No, sir.

Q During that time in the house from seven to half past, what were you doing? A What was I doing?

Q Yes. A I had just come in from work about six o'clock. I went up in the house, washed myself, cleaned myself, had something to eat, and my mother was talking about did you work hard.

Q I understand you went home from work at six o'clock, and from that time until half past seven you were in the house with your mother and sister, cleaned up and was sitting around?

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A Yes, sir.

Q And then about half past seven you went downstairs?

A Yes, sir.

Q And then you met the Murphy girl? A I met the Murphy girl at eight o'clock.

Q Now, between half past seven and eight o'clock where were you? A Between half past seven and eight o'clock?

Q I understood you to say -- I don't want to confuse you-- I understood you to say you left your house about half past seven? A Half past seven.

Q And went down on the corner? A Yes, sir.

Q And that you had no appointment, that you met the Murphy girl at eight o'clock? A Eight o'clock.

Q I am asking you to tell the jury where you were between half past seven and eight o'clock? A I was on the corner.

Q And were you talking to anybody? A I was talking to Mae Murphy at eight o'clock.

Q Well, no. I am trying to get you to tell us where you were between half past seven, when you came downstairs, and eight o'clock when you met Mae Murphy? A Before I met Mae Murphy I was on the corner talking to a fellow. In the meantime --

BY THE COURT:

Q What is his name? A Ralph.

BY MR. DeFORD:

Q Is he here? A I do not know. Mr. Palmieri ought to

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know. I think he is here.

Q Go ahead. A (Continued) I was speaking to him. In the meantime while I was speaking to him on the corner this Mae Murphy passed. I stopped her off. I said, "Mae, when would you think my girl would be in from the excursion?" So she said, "Louis, I cannot tell you what time she will be in from the excursion." So she said, "She is liable to be in any minute." In the meantime, while I was speaking with this girl, her and her mother passed up on the car, while I was speaking with this girl, and she waved her hand at us.

Q Who is that you mean? Your girl and her mother passed on the car? A My girl and her mother passed on the car.

Q And they waved their hands to you while you were talking with this other girl on the corner? A Yes, sir, while we were speaking about this excursion. Mae Murphy said, "There goes your girl. I think I had better go home, it is getting late." So she goes over and looks at the time in the beer saloon. You can look through the window -- it is on the wall. She said, "Louis, it is a quarter to eleven. Do you want to walk up with me?" I said, "Yes, I will walk up with you." I gets up by the door and leaves her there. Wishes her good-night. I gets up at eleven o'clock, and I get home at a quarter past eleven.

Q Now, let me see, Louis, you met this girl at eight o'clock? A Yes, sir.

Q And you stood and talked to her until eleven, did you?
A Yes, sir.

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Q What! A No, I stood there until a quarter to eleven.

Q Then you stood from eight o'clock to a quarter to eleven talking to your girl's friend? A Yes, sir.

Q On the corner? A Yes, sir.

Q Now, you realise that was two hours and three quarters you stood there talking to her? A Well from half past eight to a quarter to eleven.

Q You stood on the corner talking to your girl's friend?
A Yes, sir.

Q What is your girl's friend's name? A My girl's friend's name?

Q Yes. A Mae Murphy.

Q And what is your girl's name? A Her name is Anna Schultz.

Q And Mae Murphy and Anna Schultz go together a great deal? A Yes, sir.

Q And are intimate friends? A Yes, sir.

Q Who goes with Mae Murphy, who is Mae Murphy's fellow?
A I don't know who she goes with. She goes with some fellow I don't know.

Q Have you ever gone out with Mae Murphy, your girl, and another fellow? A No, sir.

Q You don't know who Mae's friend is? A No, sir.

Q You know she is an intimate friend of your girl? A Yes.

Q What were you talking about to Mae during the two hours and three quarters? A I told her, stopped her off. I

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said, "When do you think my girl will be in from the excursion?" She said, I cannot tell. She ought to be in." So, in the meantime, while we were speaking --

Q I am not asking that. You told me about those people passing up while you were talking to Mae, I am asking you what you talked about during the two hours and three quarters before you went home? A That is what I am talking about.

Q Go ahead. A (Continued) I told Mae Murphy "When do you think my girl will be in?" She said, "She ought to be in any minute." Meantime, while I was speaking to her, Mae, her and her mother passed by on the car.

Q That is what you were saying. You just described that. A Sir?

Q Did they pass, I mean at the time when you asked Mae about your girl? A No.

Q How long was it after you asked Mae when did she think your girl would come back from the excursion, that her and her mother passed on the car? A One hour and three quarters.

Q You stood talking with Mae an hour and three quarters until your girl passed on the car, is that right? A No, just as my girl and her mother went by the girl went over and looked at the time. She came over to me and said, "Louis, will you walk up with me?" She said, "It is a quarter to eleven; I got to go home."

Q You met her at eight o'clock? A Yes, sir.

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Q And have you narrated all the conversation you had with her from the time you met her up until the time you started home? A I was speaking to her.

Q Have you told me all that you said to her during that time? A We were joking, joking along, standing.

Q You were with her about two hours and three quarters on that corner, is that correct? A Yes, sir.

Q Now, when you left your house at about seven o'clock, about half past seven, whom did you leave in your house? A I left my mother and my sister.

Q Did you say anything to them when you left? A No, I didn't say anything to them.

Q Did they see you go out? A From what they said they did. They saw me go out of the door.

Q Did you have your hat on? A Yes, sir.

Q And the same shoes you have got on now? A Yes, sir.

Q And you returned to your house about what time? A A quarter to eleven -- a quarter after eleven.

Q Did you see your mother and sister when you went in? A My mother was sleeping. My sister was up waiting for me.

Q Did you talk to your sister? A I told my sister where I was.

Q Told her where you had been? A Yes, sir.

Q Is that all the conversation you had with her? A That is all.

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Q Now, how long have you been going with this girl of yours? A For the last two months.

Q Engaged to her? A Yes, sir.

MR. PALMIERI: Is this material? I don't like to object, but the fact as to whether they are engaged --

THE COURT: I will hear the next question.

Q Now, you were convicted, were you not Louis, of stealing pigeons? A Yes, sir, I was.

Q You were convicted of that? A Yes, sir.

Q You were guilty of that? A I am guilty of it.

Q And you also stole a package worth \$87.00 from the Wells Fargo Express Company? A Yes, sir.

Q Took it from the wagon of the Express Company, didn't you? A No. It completely fell off, and I ran with the package down to him. He thought I was going away, and the people on the corner saw me, and he thought I was running away with the package and grabbed hold of me.

Q Did you take the package from the Wells Fargo wagon? A No.

Q Where did you find the package that you were accused of stealing? A In the middle of the block.

Q In the road? A In the middle of the street where the wagon was going.

Q Then you saw the package in the middle of the street? A Yes, and I picked it up and ran towards the wagon.

Q You picked it up and was taking it back to the true owner? A Yes, sir, and the owner jumped off and took the pack-

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age. In the meantime, the policeman grabbed me while I was running, and he said, "You are under arrest." So, I went under arrest.

Q And you were convicted, were you not, of taking the package from the wagon? A Yes, sir.

Q And I presume you swore at that time, did you not, that you hadn't taken the package from the wagon, but picked it up in the street and was running after the Wells Fargo wagon to put it back? You told that story. Is that correct? A Yes, sir.

Q Now, how long was it after you got out, after serving your term for stealing pigeons until you were arrested for stealing the package? A I cannot exactly tell. The first time I came out in October, that I can remember.

Q You don't know how long it was from October -- A (Interrupting) At the time I was arrested?

Q Until January, wasn't it? A Yes, sir.

Q You were out three months before you were sent back for stealing this package? A Yes, sir, the package.

Q Now, I will ask you if you were in the New York Central yards at any time from the time you left your mother's house at half past seven, or at any time from six o'clock of July 31st until the time you were arrested? A No, sir.

MR. DeFORD. That is all. Oh, just a moment.

Q Do you know Owney Madden? A No, sir.

Q What? A No, sir.

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Q Never heard of Ownny Madden in your life? A No, sir.

Q Don't know Owney Madden lived in the neighborhood in which you lived? A I don't know; I don't know him.

Q Never heard of him? A No.

Q Where did you get that cut which you have got on your face? A Since I was a boy.

Q Did you get that cut on your face when you were a baby?
A Since I was ten years old.

Q Is that a knife cut? A A glass cut. I fell on some glass.

Q It is not a knife cut? A No.

Q It was not given to you by anybody in a saloon fight?
A No, sir.

Q And this knife cut you have had on your face since you were ten years old? A A glass cut.

Q Were you living with your mother when you got that cut? A Yes, sir.

Q How did you get it? A I fell down and I fell on the glass.

Q What glass? A The glass that was lying on the street.

Q What kind of glass was lying on the street? A It was a bottle; you could see the rim of the bottle -- it was lying on one side.

Q You were running along the street and stumbled?

A We were playing.

Q You were playing on the street and stumbled and fell

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on the glass and you got that out? A Yes, sir.

MR. PALMIERI: Your Honor, may the record show how big that cut is for the purpose of perfecting the record?

MR DeFORD: It is about an inch and a half or an inch and three quarters in length.

MR. PALMIERI: Show where the cut begins and ends.

THE WITNESS: It ends right here (indicating).

THE COURT: Mr. Foreman, I will let you state the length of it.

THE FOREMAN: An inch and a half to an inch and three quarters.

MR. PALMIERI: I concede that.

MR. DeFORD. That is all.

M A E M U R P H Y, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you work, Miss Murphy? A Western Electric.

(The witness stood up in the witness chair).

Q You must not rise when you come to Court. Is this your first experience as a witness? A Yes, sir.

Q You work for whom? A Western Electric, in Twenty-third street.

Q How long have you been working there, Miss Murphy?

A About a month.

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Q Where were you working before that? A Thirty-Seventh Street, right off Fifth Avenue, dress-making.

Q Dress-making? A Yes, sir.

Q How long were you working at dress-making? A Two years.

Q And do you live with your mother and father? A Yes, sir

Q Where do you live? A 493-1/2 Tenth Avenue.

Q Would you mind telling us your age? A I am sixteen years old.

Q Do you know Mr. Raffo, the defendant at the bar, do you know him? A Yes, sir.

Q Have you ever been in his company? A Yes, sir.

Q Do you remember the Sunday that he was arrested in July? A No, sir.

Q Did you hear of Mr. Raffo's arrest? A Yes, sir, Sunday afternoon.

Q The day before you heard he was arrested had you been anywhere? A Well, I was on Saturday night. I was going down to the dance about a quarter to eight, with that I passed about a quarter to eight; I passed about eight o'clock. With that Ralph and Louis was standing up the street, and with that they called me. I stood there and I waited until they came down with me. So Louis asked me where was his girl. I told him on the Victoria Revue excursion. So we stood there talking all the time until a quarter to eleven, about that. I said to Louis, "I guess I will be going home." Louis said, to this

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fellow, "We will walk up with her." We met his girl there.
That is the 1st I saw of Louis Raffo.

Q Has Joe been here as a witness? A No, sir.

Q What is his name? A Ralphie.

Q Where is Ralphie? A He is outside.

MR. PALMIERI: All right. Your witness.

CROSS-EXAMINATION BY MR. DeFORD:

Q How long have you known Ralphie? A Not very long.

I know him through Louis. Got an introduction to him.

Q Had you ever gone out any place with Joe, with Louis, before? A Only one time, went over to a picnic like over in Jersey. That was the only time, and he took his girl.

Q Did you go along? A Yes, sir.

Q Who went with you? A Well, a friend.

Q What? A A boy friend.

Q What is his name? A Frank Hillgarten.

Q Frank went with you? A Yes, and Louis with Katy Schultz.

Q His girl? A Yes, sir.

Q Did you ever go out with Louis any time after that?

A No, sir.

Q That was the only time you ever went any place with Louis? A Yes, sir.

MR. PALMIERI: I object, he is trying --

MR. DeFORD: I am not trying to deceive anybody.

Q Now, how long have you known Katy Schultz? A I am

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going with her as a girl friend. She lives across the street from us.

Q Have you gone with her a good deal? A Yes, sir.

Q Visited at her house? A Yes, sir.

Q And has she visited at your house? A Yes, sir.

Q Have you seen Louis with her frequently? A Yes, sir, while she used to go down about twice a week or three times a week to meet Louis.

Q Did you see her go down? A Yes, sir, I was with her.

Q So you and she went down two or three times a week to meet Louis? A Yes, sir.

Q Where did you meet him? A On the corner of 31st street, and then I would leave Katy and go down to 28th street sometimes to go over to the dance hall there.

Q You said you met Louis with Katy, go with her two or three times a week. For how long a period of time did you meet them; how long have you known Louis and gone with Katy to meet Louis? A About three months.

Q So you saw Louis very frequently during the three months? A Yes, sir.

Q Did you know he had been convicted of petit larceny and sent to the penitentiary? A No, sir.

Q Did you know that? A No, sir.

Q Did you know he had been convicted of burglary and sent to the penitentiary?

MR. PALMIERI: He was not convicted of burglary.

MR. DeFORD: Larceny.

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MR. PALMIERI: Quite a distinction.

MR. DeFORD: I will make the distinction and give him the benefit.

Q Did you know he had been convicted of larceny? A No, sir.

Q Were you introduced to him by Katy Schultz? A Yes, sir.

Q Have you talked this case over with Katy since you heard Louis was arrested? A Yes, sir.

Q What have you said to Katy about it? A She didn't have nothing to say.

Q When you talked with Katy about this case, did Katy ask you what you would testify to? A No, sir.

Q Did you tell Katy what you would testify to? A Yes, sir, that I was going as a witness.

Q Did you tell Katy what you were going to testify to when you came down here as a witness? A No, sir.

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

Q Who did you tell what you were going to testify to before the Magistrate -- you were there? A Yes, sir.

Q Did you tell anybody what you were going to testify to before you went to the Magistrate? A Yes, sir, the lawyer.

Q Who did you see? A The lawyer, and his pals.

Q The lawyer sent his pals? A Yes, sir.

Q Did the lawyer send his pals? A Yes, sir.

Q Did the lawyer come to your place? A No, sir.

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Q Did you go to his office? A I met the lawyer down in the Court, Tenth Street.

Q Who told you to be down in the Court in Tenth Street?

A That Sunday that Louis got arrested, well Sunday night I met this fellow by the name of Ralph, he came up around our way, and told me, would I go down as a witness on account I was standing with Louis on Saturday night on the south-east corner of 31st street and Tenth Avenue, and I said I would go.

Q Then you went to the police court next night.? A Next morning.

Q That was Monday morning? A Yes, sir.

Q Had you seen Katy Schultz between the time you heard Louis was arrested and the time you appeared in the police court? A No, sir.

Q And you never talked over this case with Katy except to tell her that you were going to be a witness? A That is all, sir.

Q Where did you start from the Saturday night you met Louis? A I started from home at about a quarter to eight to go down to the dance in 28th street.

Q Did you start alone? A Yes, sir, because Katy was gone to the Victoria Revue excursion.

Q You were going to the dance alone? A Yes, sir.

Q Did you have a fellow? A No, sir.

Q Had you any arrangements to meet a fellow? A No, sir.

Q Where was this dance to be held? A On 28th Street,

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near Ninth Avenue.

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Q And then you met Louis on the way down? A Yes, sir.

Q And you became so interested in your conversation with Louis you did not go to the dance? A Yes, sir.

Q Now, did you see Louis' girl that night, Katy Schultz?
A When we went up home, about a quarter to eleven, about that, we met Louis' girl. Then we stood talking.

Q Did you see Louis' girl that night until you went home and met Louis' girl? A No, sir.

Q Did you hear anything about her that night? A No, sir.

Q Until you met Louis' girl? A I did not meet her until I went up the Avenue.

Q Did you hear or see Louis' girl that night until you went home about a quarter to eleven? A No, sir.

Q Now, where did you meet Louis' girl when you went home about a quarter to eleven? Just where was she? A Between 37th and 38th streets on Tenth Avenue.

Q Was she on the street? A Yes, sir.

Q And did you stop and talk to her? A Yes, sir, and Louis was talking to her.

Q Who? A Louis.

Q So that you met Louis' girl and you and Louis met the Schultz girl and had quite a talk with her? A I only stood there fifteen minutes. Louis made a break to go home, so I went upstairs. I don't know where he went to then.

Q About what time was it, you think, that you and Louis

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met Louis' girl, the Schultz girl? A About eleven o'clock.

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Q Where did you meet her? A Between 37th and 38th streets on Tenth Avenue.

Q Was she with anybody? A No, sir, she walked over to us.

BY THE COURT:

Q Did you see the mother of Louis' girl that night? A No, sir. I only saw his sister looking out of the window about a quarter to nine.

Q Did you see Mrs. Schultz, the mother of the Schultz girl that night? A No, sir.

Q Did you see her at any time from the time you left your house until you went to bed that night? Did you see Mrs. Schultz? A No, sir.

BY MR. DeFORD:

Q Did you hear anything about Mrs. Schultz from anybody that night? A No, sir.

Q About the girl? A We saw the girl.

Q You saw the girl and you had a fifteen minute talk with her? A Yes, sir.

Q She came across the street to you and Louis? A She didn't come across the street. Between 37th and 38th, we were just about going down and she walked over to us.

Q Was she alone? A Yes, sir.

Q How old is she? A About sixteen.

Q And she came over towards you and Louis? A Yes, sir.

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Q And you had a fifteen minute talk with her? A Yes, sir. We didn't stand very long.

Q Did you go home alone then or did Louis and Katy take you home? A I just live across the street. I ran up.

Q And you left Louis and Katy up there together.? A I don't know -- standing there. I know I said good night, and I walked across.

Q When you said good night and walked across the street were Louis and Katy together? A No, sir; Louis was walking alone.

BY THE COURT:

Q Did you see the Schultz girl on a wagon or a car that night? A Yes, sir, she was going by in the Belt Line. We were not sure whether it was her or not. Somebody waved out.
BY MR. DeFORD:

Q Why didn't you tell me that a while ago? I asked you if you had seen or heard of the girl that evening? A Well, we didn't know if it was really the girl on the Belt Line car.

Q Did you see her mother that evening? A No, sir.

Q Did you hear anything about her mother from anybody that evening? A No, sir.

Q You think now you saw somebody in the car whom you thought was Louis' girl waving to you? A Yes, sir.

Q On a Belt Line car? A Yes, sir.

Q About what time was that? A About half past ten.

Q About half past ten? A Yes, sir.

Q And that was about an hour or two hours after you had met Louis, wasn't it? A No, before.

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Q You met Louis about half past eight, didn't you? A About a quarter to eight or eight o'clock. I left the house at a quarter to eight, and about --

Q (Interrupting) You met Louis at eight o'clock. It was about half past ten before this girl waved from a Belt Line car to you? A About ten o'clock.

Q About two hours after you met Louis, and then you stood there three quarters of an hour after; is that right? A We met her at half past ten, and with that it was a quarter to eleven. I said, "I had better go home." So Louis said, "Walk up with me as far as the door." With that they walked up and we saw Katy by the door. So she walked over to us.

Q During all the time you were talking to Louis, you were standing out there? A Yes, sir. It is like one of those New York Edison lights.

Q And you stood up and talked to him during all that time? A Yes, sir, and about eight feet away was a lot of fellows sitting by the door of the saloon, but we didn't pay any attention to them.

Q You said a fellow by the name of Ralphy was there? A Yes, sir.

Q Did you meet him at the same time you met Louis? A Louis called him. I stood on the corner. I didn't move from the corner so Ralphy and Louis walked to me.

Q They stood there and talked to you? A Yes, sir.

Q How long did Ralphy stay there? A All the time that

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Louis stood there.

Q Ralph stood there until you and Louis met Louis girl; is that right? A No, sir, we didn't meet Louis girl.

Q Louis' girl met you? A We were walking up home; I was going home.

Q You saw her then? A Yes, sir. She was between 37th and 38th streets.

Q Was Ralph with you then? A Yes, sir.

Q So that you and Louis and Ralph walked up the street together and met Louis' girl? A Yes, sir.

Q And then you had this fifteen minutes talk? A Yes, sir.

Q Did Ralph stay there during the fifteen minutes talk? A Yes, sir -- I don't know I made a break.

Q Was he there when you left with Louis and Katy when you left? (No answer).

BY MR. PALMIERI:

Q Is Ralph outside? A Yes, sir.

R A L P H T U S S A L O, called as a witness on behalf of the Defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you live? A 440 West 31st Street.

Q Ralph do you know the defendant? A Yes, sir.

Q Do you know this girl, Mae Marphy? A Yes, sir.

Q How long have you known Mae Murphy? A Oh, about three months.

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Q About three months? A Yes, sir.

Q How long have you known this defendant? A About ten years.

Q About how long? A About ten years.

Q Is Mae Murphy, your girl? A No, sir.

Q Do you remember when Raffo was arrested? A Yes, sir.

Q When was he arrested? A August 1st.

Q When? A August 1st.

Q August 1st, was that on Sunday? A Yes, sir.

Q On the Saturday where were you Ralph? A We was on the corner speaking to the girl.

Q What are you, a driver? A Yes, sir.

Q You speak a little louder to the horses you drive than you are now doing? A Yes, sir.

Q Will you just speak now as you speak to your horses?
A Yes, sir, all right.

Q Tell me what time did you meet Mae Murphy, if you know?
A About eight o'clock.

Q When you say "about", you think it was about eight o'clock? A It was eight.

Q That is according to your own opinion? A Yes, sir.

Q And you were interested in Mae Murphy, or what? A We walked over to Mae Murphy, and we asked her where she was going. She said she was going down to a dance, so I asked her what dance. She said 28th street to dance.

Q Repeat that answer? A We asked her where she was go-

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ing. She said down to 28th street to dance.

Q Well, she stayed there quite a while, I think? A Yes, sir.

Q And would you mind telling us what caused her to stay there with you? A Yes, sir. We were asking about Louis' girl. She went out to an excursion.

THE COURT: We will take a recess now.

Whereupon at one o'clock an adjournment was taken until two-thirty P. M., after the Court had admonished the jury in accordance with Section 415 of the Code of Criminal Procedure.

A F T E R R E C E S S.

2:30 P. M., September 10.

R A L P H T U S S A L O (continued):

THE COURT: You may proceed.

DIRECT EXAMINATION (continued)

By MR. PALMIERI.

Q Would you kindly tell me how long you have lived in this country? A How long?

Q Yes. A About fifteen years.

Q Fifteen years? A Yes, sir.

Q And you said you were a driver. Are you employed by anybody? Are you working as a driver? A Yes, sir.

Q For whom are you working as a driver? A Pirnak.

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Q How long have you been working as a driver? A Two years

Q Have you ever been convicted of any crime whatsoever?

A No, sir.

Q Now, you met Raffo, you say on a Saturday night -- I mean the day before he was arrested which was a Saturday night?

A Yes, sir.

Q Now, tell us as far as you can of your movements with the defendant? A Yes, sir. We were standing on the corner of 31st street and Tenth Avenue, south east corner, and this girl, Mae Murphy, came down, so Louis and I stopped her off --

THE COURT: Will you have the kindness to talk louder I can hear you, but some of the jurors find it difficult to hear you. Will you kindly raise your voice so that all the jurors can hear you easily. If you do, we will be very much obliged.

A (continued) We see Mae come down. We stopped her off. We asked her where she was going. She said she was going to 28th Street to dance. So we started to speak to her. She forgot about going down to the dance. We stayed there until a quarter to eleven.

Q Stayed there until what time? A Until a quarter to eleven.

Q What were you doing, joking with the girl? A She was speaking about Louis' girl and other friends. About half past ten Louis' girl came up in the car. So she waved out in the car, and she went right up with her own mother.

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CROSS-EXAMINATION BY MR. DeFORD:

Q Now, tell me how long have you known Raffo? A Ten years.

Q Ten years? A Yes, sir.

Q Gone with him a great deal during that time? A What?

Q Gone with him a great deal during that time? A Yes, sir.

Q He has been your pal, hasn't he? A Yes, sir.

Q Now, how long have you known Mae Murphy? A Mae Murphy about three months.

Q And where and with whom did you meet her? A With the other girl.

Q Katy Schultz? A Yes, sir.

Q And Katy is the defendant's girl? A Yes, sir.

Q Have you ever been any place with Katy and Mae and the defendant? A No, sir.

Q Have you ever been in a place with the defendant and Katy Schultz? A No, sir.

Q Did you hang out with the defendant a great deal? A Yes sir.

Q Do you know Owney Madden? A No, sir.

Q You never heard of Owney Madden? A No, sir.

Q You know where Owney Madden's club house is in your section? A No, sir.

Q You never heard of Owney Madden in your life? A No, sir.

Q Have you ever been with Owney Madden? A No, sir.

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Q Have you ever seen the defendant with Owney Madden?

A No, sir.

Q Now, you met the defendant at eight o'clock on this corner on the 31st of July, this year? A Yes, sir.

Q What corner? A South east corner of 31st street.

Q Near what kind of a place, saloon or drug store? A A Saloon.

Q And when you got there what was he doing? A The two of us went over together.

Q Did you meet together, meet him at his house and walk over? A Met him on the corner.

Q At eight o'clock? A Yes, sir.

Q Accidentally? A Yes, sir.

Q Didn't have any appointment with you? A No, sir.

Q Where had you come from? A From in the house.

Q Your mother's house? A Yes, sir.

Q Had you worked that day? A No, sir.

Q Now, what time did you leave your mother's house?

A About a quarter to eight.

Q Looked at your watch? A No, sir.

Q Did you look at your watch on the corner? A No, sir.

Q Then how did you know the time? A I guessed the time.

Q What did you base your guess on? A What?

Q Why do you say eight o'clock? A I just guessed.

I left there at eight o'clock.

Q You left the house at eight o'clock? A A quarter to

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eight.

Q You looked at a clock? A No, sir.

Q Looked at a watch? A No, sir.

Q Then how do you know? A Just guessed at it.

Q How long after you met Raffo at this corner was it before the girl came, Mae Murphy? A It was about ten minutes; it was about ten-eight.

Q She got there at eight ten? A About eight o'clock.

Q You got there about ten minutes to eight, not eight o'clock? A I did not say I got there at eight o'clock. I said I left the house at a quarter to eight. I only live half a block away.

Q Then you made it in five minutes? A I was speaking to a guy on 31st street.

Q You got there ten minutes before Mae Murphy did? A No, we got there the same time. He was on the corner there.

Q Didn't you tell me just a minute ago that you had been there ten minutes when Mae Murphy came there? A I told you I came down at ten minutes of eight. When Mae came the two of us walked over..

Q Mae came after you got there? A Yes, sir.

Q What was the first thing that was said to Mae? A He was speaking to her. First, he asked her where was his girl. So she said she went to an excursion.

Q Then what was the next thing said? A I could not exactly remember.

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Q Tell me one other thing that you talked about during those two hours, one other question? A We were speaking about friends.

Q What friends were you talking about? A All the friends we knew.

Q What were you talking about? A Talking about a lot of things.

Q What? A Asked a lot of things.

Q Did you ask her about a lot of people? A Yes, sir.

Q Name one of the persons? A Frank McArdle.

Q You were asking about Frank? A Yes, where was he.

Q How long did that take? A Not long.

Q Do you mean to say you were talking about friends, all the time, you got there at eight o'clock, until a quarter to eleven that night? A Yes, sir.

Q Who else did you ask her about? A We asked her about a lot of friends.

Q You cannot remember them? A No, sir.

Q Can you remember anything she asked you about? A Certainly.

Q Now, you are acquainted with the people in that neighborhood, aren't you? A Yes, sir.

Q You are pretty well known around there? A Yes, sir.

Q And you know the people around there? A Yes, sir.

Q Did anybody go by on the corner while you were talking to this girl that you knew? A Yes, sir.

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Q Who? A A fellow down the back there (indicating).

Q That is a pal of the defendant there, Dunn? A Dunn.

Q His name is Dunn? A Dunn.

Q He is the fellow that went by? A Yes, sir.

Q He is another pal of this defendant, isn't he? A Yes, sir.

Q You stayed there until a quarter to eleven? A Yes, sir.

Q Did you see his girl, the defendant's girl? A Yes, sir.

Q Where did you see her? A Going by in the car about half past ten.

Q What? A About half past ten.

Q Did she get out of the car? A No, sir.

Q Did she wave at you? A Yes, sir.

Q Did she speak to any of you? A No, sir.

Q Did either of you speak to her? A No, sir.

Q Are you sure it was her? A Yes, sir.

Q Did you see her again that night? A When we went up with the girl about eleven, up there.

Q So you went up and saw this girl that night? A Yes, sir.

Q Did you say anything in your direct examination about meeting this girl that night? Did you tell the Judge ^{Palmieri} that you met this girl that night?

MR. PALMIERI: I did not ask him as to that.

A No, sir.

Q Have you seen May Murphy since she was on the stand here? A No.

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Didn't you see her out in the hall and talk to her?

A No, sir.

Q When she left the stand? A No, sir, I was not down there.

Q You have never seen her since she went off the stand?

A No, sir.

Q Nobody told you what she swore to? A No, sir.

Q Now, what did the Schultz girl say when you met her at a quarter to eleven? A We didn't stay long to say anything.

Q And you went away with whom? A I went with Louis Raffo and came home. We just said "hello" to her and left her.

Q Where did you leave the Schultz girl and Raffo? A No more than we got up she said "hello" and went.

Q You said "hello" to the Schultz girl and you and Raffo walked on? A Yes, sir.

Q Did Mae Murphy stop and talk to her? A No.

Q She met the Schultz girl at a quarter to eleven said "hello" and went on? A Yes, sir.

Q Sure about that? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. PALMIERI:

Q Pardon me. Ralph, do you know whether or not any other person was arrested for this crime? A Yes, sir.

MR. DeFORD: Objected to.

THE COURT: I will let the answer stand.

Q Do you know the name of that person? A Yes, sir, John Dunn.

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Q Is he here? A Yes, sir.

RE-CROSS EXAMINATION BY MR. DeFORD:

Q He was arrested under suspicion of being the fellow in the box car? A Yes, sir.

Q And do you know whether or not this defendant carried his picture around with him? Had you ever seen this defendant wearing Dunn's picture on a watch charm? A No, sir.

Q Were you with the defendant when he was arrested? A I was across the street.

Q Were you? A Yes, sir.

Q Did you see him take a picture off his watch charm, throw it away after tearing it up? A No, sir.

Q Did you tell this jury you never saw him with this man's picture on a watch chain? A No, sir.

MR. PALMIERI: The officer was interrogated and said it is not so.

THE COURT: Pardon me. That ends that.

MR. PALMIERI: Now, let me state that the very officer was asked these questions, and said no such things happened.

MR. DeFORD: There is an officer here that does know about it.

JOHN DUNN, called as a witness on behalf of the Defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you live, Mr. Dunn? A 400 Tenth Avenue.

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Q Mr. Dunn, have you ever been convicted of any crime?

A No, sir.

Q You have been arrested in this case, have you not?

A Yes, sir.

Q On what day were you arrested? A August 4th.

Q August 4th? A Yes, sir.

Q You live in that neighborhood, I believe? A Yes, sir.

Q And did you ask the officer why he was arresting you, when you were arrested? A No, sir, he just said they wanted me up in the station house.

Q And how long did they keep you in jail? A Three days.

Q Did they bring you before a judge? A Magistrate McQuade.

Q How many times did they have you before a judge? A Twice.

Q And upon the last occasion what went on before you were discharged? A Nobody came to appear against me, and I was discharged.

Q Nobody came to appear against you and you were discharged? A Yes, sir.

Q When you walked outside of the court room, who did you find? A I seen Mr. Hogan and Mr. Devine outside of the door, a little away from the court door about ten or fifteen yards from the court door.

MR. PALMIERI: That is all.

CROSS-EXAMINATION BY MR. DeFORD:

Q Mr. Devine never identified you as the other man? A No.

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Q Were you shown to Devine? A No, sir.

Q Did he come and look at you? A No, sir.

Q He saw you when you went outside? A Yes, sir.

Q Is that the only time you ever saw Devine? A That is the only time.

Q Did this defendant ever wear your picture? A I don't know about it.

Q Now, just think it over. Did he ever wear your picture? A I don't know about that.

Q Did you ever give him your picture? A No.

Q Did you ever see him wear a picture of yours? A No, sir.

Q Now, why did you say you didn't know about it? A I don't know; never saw him with a picture of mine.

Q Never had any reason to believe he had a picture of yours? A No.

Q Mr. Devine never appeared and identified you as the other man? A No, sir.

Q How long have you known this defendant? A I know him about ten years.

Q Have you gone with him a great deal? A No, sir.

Q Are you a pal of his? A No, sir. Just know him by living around the neighborhood.

Q Never gone any place with him? A No.

Q Never gone to a moving picture with him? A No.

Q Or picnic? A No, sir.

Q Do you know his girl? A I know his girl; not to speak to her.

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Q Do you know Owney Madden? A No, sir.

Q Know where his club house is? A No.

Q Never heard of Owney Madden? A I heard of him but
den't know him.

BY MR. PALMIERI:

Q Mr. Dunn, when you were brought before the Magistrate
by the officer who arrested you, did you hear what he said to
the Magistrate?

MR. DeFORD: Objected to.

THE COURT: Sustained.

Q Well, then I will put it in this form. Do you know
why you were discharged?

MR. DeFORD: Objected to.

THE COURT: Sustained.

BY MR. DEFORD: Q Now, where were you at eight o'clock on Saturday
night, July 31st of this year? A At 31st street corner
at Tenth Avenue.

Q Was this the same corner that this defendant was on?
A Yes, sir.

Q Were you with him? A I was not with him, sitting down
there.

Q How long did you stay there? How long did you stay
there? A From half past seven until half past ten?

Q You saw him come there? A I saw him come there.

Q And you were there when he went away? A Was I there
when he went away?

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Q Yes. A I left there when he was there.

Q Did you go with him? A No, sir.

Q Who else was there? A A young fellow named Frank McArdle.

Q Who else? A That is all I know.

Q Is that all you saw him with, just another young fellow?

A Yes, sir.

Q How long was you standing and talking with that young fellow? A I was there from half past seven until half past ten, and with a young girl.

Q You said a young fellow before? A There was two -- three altogether.

Q And you stayed there for three hours and watched them? A I stayed from half past seven to ten.

Q About three hours? A Yes, sir.

Q Where were you sitting? A About eight feet away.

Q Who with? A I was with Francis McArdle.

Q Where is Francis? A Here.

Q Is he a friend of yours? A He is a particular friend of mine.

Q You were never convicted of anything? A No, sir.

BY MR. PALMIERI:

And that is why you were arrested because you were on that corner? A Yes, sir, because I came around the neighborhood; because I live around the neighborhood.

Q That is where this defendant lives? A That is where he lives.

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MARY FALSO, called as a witness on behalf of the Defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you live? A 460 West 31st street.

Q Mary, you are a sister of this defendant? A Yes, sir.

Q Are you a married lady? A Yes, sir.

Q And the mother of children? A Yes, sir.

Q And you live with your mother at the residence you have given to this jury? A Yes, sir.

Q How far is it from the freight yard? A About a block away from the freight yard.

Q And how long has your brother-in-law lived with you at this house? A Six years.

Q Now, during those six years your brother was away?

A I believe he was? A He was.

Q On two occasions? A Yes, sir.

Q Once for stealing pigeons and another for stealing a package? A Yes, sir.

Q That is he was a year and nine months away? A Yes, sir.

Q Outside of that year and nine months during those six years was he living with your mother, you and your husband?
A Yes, sir.

Q Do you remember the Sunday your brother was arrested?

A That was the first of June -- the first of August.

Q The first of August? A Yes, sir.

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Q Where was your brother? Did you see your brother on the day before he was arrested, the Saturday night? A The Saturday night he was arrested? The Saturday night he was working. 137

Q What time did he get through work? A At six o'clock he came home at a quarter after six.

Q And what did he do when he came home? A He washed himself and had supper by seven o'clock and he went down at half past seven.

Q Did you look at the clock? A Yes, sir, I looked at the clock. The clock is right over the mantelpiece.

Q And when he went downstairs, did you see him again after that? A After half past seven?

Q Did you see your brother after half past seven? A No, sir I did not. I was upstairs looking out of the window, and at a quarter after nine I seen my brother standing on the corner talking to a girl and fellow. I was at the window with a baby.

Q Was it a warm night? A Yes, sir.

Q What time did your brother come home? Did he come home that night? A At half past eleven.

Q Did he go to bed? A Yes, sir.

Q What time did you get up in the morning? A At nine o'clock he got up. He went down and was standing down at the door reading a paper. He came up at ten, and said he was going to the toilet. About ten minutes he went down again, and then my little girl came up.

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MR. DeFORD: This is alibi testimony. I presume 138
it is not material what he did next morning.

MR. PALMIERI: But your Honor, I --

THE COURT: Proceed with something else.

Q Then you heard he was arrested? A Then my little
girl said, "Mamma, the cops took Louis off the corner."

Q That is all you know about it? A Yes, sir.

MR. DeFORD: That is all. No cross examination.

MR. PALMIERI: The defendant rests, your Honor.

Peter P. McLoughlin,
Official Stenographer.

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REBUTTAL.

FRANK A. MYERS , was called as a witness on behalf of the People, being first duly sworn, testified as follows:

(I am a State Railroad Detective, No. 93.)

DIRECT EXAMINATION BY MR. DeFORD:

Q Do you know the defendant here? A Yes, sir

Q Did you see him on Saturday, July 31st, 1915? A I did see him.

Q Where and when? A About 7 p.m. the evening of July 31st I was sitting on the steps of what is known as the yard delivery office of the New York Central Railroad, in company with Detective Jones of the aforesaid railroad company. I saw this defendant going south on the opposite side of the street towards Thirtieth street, where the defendant turned east on the north side of the street. I remarked to Jones --

THE COURT: No, not that.

Q Where did he go when he turned east? A Towards 10th avenue from 11th avenue.

Q And that was about what time? A It was seven to seven fifteen p.m.

Q And these streets are a part of the yard? A Yes, sir.

Q They are in the yard? A The company has a franchise to run cars across the streets.

Q I want to know whether the streets constitute a part of the New York Central yards? A 11th avenue does not constitute

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such --

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Q Did you see him at any point around seven o'clock in or near the New York Central Yards? A Why, yes, he would only have to step his foot on the other side, to walk in the yard.

MR. PALMIERI: That would not be in the yard --
if --

THE COURT: Ask him if he saw him nearer.

MR. PALMIERI: I move to strike out the answer as not responsive.

THE COURT: I will let it stand.

Q Did you hear the testimony given by the defendant as to where he spent that Saturday evening from eight o'clock until a quarter to eleven? A Yes, sir, I did.

Q How far was the place where you saw the defendant at that time from the place where he said he was standing? A Why that was one block through the freight yard. He was standing opposite the yard, according to his testimony.

Q And would he have to pass ^{you} /in order to get to the point you saw him ~~from~~ the place where he said he was passing through the yards? A Yes, sir.

Q The yards intervene between these two points? A Yes.

Q Was he with anybody at the place you saw him, at the place you describe? A No, sir, he was alone.

Q How far was he from you when you saw him? A That was about thirty-six feet, I should judge, across the street. It might be forty feet.

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Q Are you positive that the man you saw was the defendant?

A Oh, yes, sir, I know him well.

Q How long have you known him? A I know him there in the neighborhood for about eight months or so, of late.

Q What is that? A In the neighborhood of eight months.

Q You have been in the service of the New York Central that length of time? A Yes, sir, longer than that.

Q Have you seen the defendant frequently during that time?

A Yes, sir.

Q Where have you seen him? A Why, he can most always be found in the vicinity of the yards.

Q Do you know what part? A The part where he testified to. They generally hang around that saloon there -- Madden's.

CROSS EXAMINATION BY MR. PALMIERI:

Q You associated with this defendant? A Did I associate with him?

Q That is what I am asking you? A Why, no, I should say not; not in my line.

THE COURT: Strike that out, "not in my line".

Q Will you tell me what your line is? A Yes, sir, I am a State Railroad Detective.

Q How long have you been a detective? A I have been sworn in by the State of New York for a period of two years.

Q Do you carry a revolver? A Yes, sir, all equipment.

Q Do you know whether Devine carried a revolver?

MR. DeFORD: Objected to.

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A No, sir, Devine had not been sworn in.

Q He had not yet been sworn in? A No, sir.

Q Why not?

MR. DeFORD: Objected to.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Do you know the reason why Devine had not been sworn in?

MR. DeFORD: Objected to.

THE COURT: That is the same question.

MR. PALMIERI: Exception.

Q Then, as I understand it, Devine was acting as a detective without being sworn in on this night in question?

MR. DeFORD: Objected to, "being sworn in".

THE COURT: Yes or no to that.

MR. DeFORD: Your Honor, I don't consider this proper cross examination at all. I did not ask about Devine or whether Devine was sworn in, or if he carried a revolver. I object to it on the ground it is not proper cross examination, does not relate to the subject/of the testimony that I elicited from the witness.

MR. PALMIERI: This is perfectly proper and a competent and material question.

THE COURT: It is competent evidence as part of the defense's case, competent evidence as bearing upon the character of Devine, and, therefore, upon his credibility.

MR. DeFORD: It is purely collateral from that stand-

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point. You could not assail a witness's character by saying he carried a gun. The witness has denied it. It would not be proper defensive matter because it does not go to any essential element of the crime.

THE COURT: Oh, yes. I will take it. Before a man can act as a detective he must receive a certain license.

MR. DeFORD: I will withdraw the objection, if there is anything in it.

THE COURT: Now, proceed.

MR. PALMIERI: Now, Mr. DeFord, I am awfully glad that I am so pleasing.

THE COURT: Will you kindly ask the next question.

MR. PALMIERI: What was the question I asked before my friend interrupted.

THE COURT: Read the question, Mr. Stenographer.

(Question read)

BY MR. PALMIERI:

Q You will answer that by direction of the Court; yes or no.

MR. DeFORD: Now I object to the testimony on the further ground that it is not the best evidence of the fact -- he does not know.

THE COURT: Sustained. That objection is well taken.

MR. PALMIERI: What becomes of my question, your Honor.

THE COURT: I said the last objection to your question is well taken. The last objection taken to your question is, in the opinion of the Court, properly taken.

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MR. PALMIERI: Why, your Honor ruled on my question. 144

I was asking a particular question and your Honor ruled on it.--

THE COURT: A certain objection was taken to your question. I held that objection not well taken. Another objection was taken to it, and I held that objection was well taken. In the light of that objection the witness will not answer the question.

MR. PALMIERI: We are not trying to prove anything by any evidence except legal evidence, may it please your Honor, and since this witness has volunteered a statement that this complaining witness was not sworn in as a detective, I have a perfect right to ask him the question whether or not this man was acting as a detective that night and I will put it in this form:

Q Was Devine acting as a detective on the night of this occurrence, yes or no?

MR. DeFORD: Devine has already sworn he was.

THE COURT: I will allow the witness to answer that question.

MR. PALMIERI: Now, since you told him, I know what his answer is.

MR. DeFORD: Your Honor, he has cast the imputation that there is something material in that.

THE COURT: I will allow the witness to answer.

MR. PALMIERI: If it was not material the Judge would

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not allow it.

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THE COURT: I will allow the witness to answer it.

Mr. Stenographer, read the question.

(Question read)

A Yes, sir.

Q When, do you know, was Devine to be sworn in?

MR. DeFORD: I object to that as not proper cross examination.

THE COURT: Sustained.

MR. PALMIERI: Exception.

BY THE COURT:

Q Were you present at the time Devine was sworn in, were you there at the time Devine was sworn in? A No, sir.

BY MR. PALMIERI: Q Do you know when he was sworn in, do you know how long after this occurrence?

THE COURT: He said he was not present when Devine was sworn in.

MR. PALMIERI: If he knows by any other means.

MR. DeFORD: That would be hearsay. We will ask Devine about it.

BY MR. PALMIERI:

Q You do not know? A No, sir. I thought your question related to firearms when I answered it.

MR. DeFORD: We will put Devine on and he will tell you all about it.

MR. PALMIERI: All right.

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MR. DeFORD: You may then have the pleasure of asking him.

BY MR. PALMIERI:

Q Did you and Devine talk this matter over, this case over?

A No, sir. Hogan didn't know Devine, neither did I until Sunday morning I was introduced to him.

THE COURT: Strike out all except "No, sir."

MR. DeFORD: In order that the question may not be misleading, if he will ask this witness whether they talked it over before the arrest or now, so the witness may know.

MR. PALMIERI: May I ask my own questions in my own way without any suggestions.

MR. DeFORD: I want them made sufficiently definite.

THE COURT: The witness has answered the question.

(Last question and answer read)

Q Now, the Police have testified here that this case was not reported to them until 10:30 that day; do you know anything about any report to the police authorities in this case? A Yes.

Q What time was there a report made to the police authorities? A It was about 10 A. M. Sunday, because I reported it to Captain Conboy of the 22nd Precinct.

Q You made the report yourself? A Yes, sir.

Q And you told the Captain the name of the man, did you not?

A No, I asked the Captain for assistance, for one man.

MR. DeFORD: Just a moment. I object to this as not proper cross-examination, asking for purely hearsay conver-

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sation.

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THE COURT: Sustained.

MR. PALMIERI: Exception.

Q You were in this yard the night of this occurrence, were you not? A No, not in that particular yard, across the way from it. Eleventh avenue intervenes between the two, though the cars run over them.

THE COURT: Strike out everything except the word, "No".

Q What time did you stop work that night? A Why I imagine eight o'clock, thereabouts.

Q Then you were working across the street, is that it, from this yard? A Yes, sir.

Q You worked from what time until what time? A The customary hours. You mean on that particular day or customary hours?

Q The customary hours? A I was not working the customary hours, I was working on general detail.

Q What are the customary hours? A The customary hours are from seven to six in the freight service.

Q Well, then, how did you happen to work until seven o'clock on the night in question? A As I before stated to you, I was working on general detail at the time, all hours, any time I was needed.

THE COURT: Gentlemen of the Jury, we will now suspend. You are admonished not to converse amongst yourselves, nor form or express an opinion on the case until it is finally

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submitted to you.

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(Whereupon an adjournment was taken at 3:20 P. M.
until Monday Morning, September 13, 1915, at 10:30 A.M.)

New York, Monday, September 13, 1915.

T R I A L R E S U M E D .

THE COURT: I think the case is with you, Judge Palmieri.

MR. PALMIERI: I was examining the witness when we adjourned.

THE COURT: That witness will come back to the stand.
His name is Myers.

F R A N K A . M Y E R S , was recalled.

CROSS EXAMINATION CONTINUED BY MR. PALMIERI:

MR. PALMIERI: Your Honor, I have a photograph here of this yard.

THE COURT: Show it to Mr. DeFord.

(Photograph handed to Mr. DeFord.)

MR. DeFORD: Is it a correct photograph?

MR. PALMIERI: Yes, I was there myself.

Q I will ask, Mr. Myers, will you look at this picture and tell me whether that is a correct view of the yard where this burning car was discovered by you, or at least where you found or saw this defendant? A Yes, sir, this is an exact photograph.

Q That is a view from Tenth avenue from a height on Tenth avenue, from a roof? A Yes, sir.

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Q On Tenth avenue, looking toward Eleventh avenue, and the yard between Thirtieth and Thirty-first street, is it not? A Yes, sir, Thirty-first and Thirtieth -- it is taken from the right side.

Q Now will you indicate to this jury on this photograph where you were sitting when you saw this defendant in the yard?

THE COURT: Judge Palmieri, I think you had better have it marked for identification.

MR. PALMIERI: I offer it in evidence.

(Received without objection and marked Defendant's Exhibit D in evidence.)

Q I believe you stated before that you were seated on the steps of the Delivery Depot, or house? A Office.

Q Is that right? A Yes, sir.

Q Now that delivery depot and house is on Eleventh avenue and Thirty-first street, is it not? A On the other side of the street, nearer Thirtieth street.

Q Now you answer my question. Did you hear my question? I want to get that location settled on the record? A This is what I am giving you. I am giving you the location.

THE COURT: Where is it?

THE WITNESS: It is on Eleventh avenue near Thirtieth street. I should judge about 150 yards.

Q Is it divided by the avenue, does the avenue itself, Eleventh avenue, cross, go through that avenue between the place where you were seated and the yard where you claim this defendant

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was; in other words is the place where you were seated and where this defendant was, separated by the avenue, by the length of the avenue? A The width of the street, yes, sir.

Q And don't you know that the width of the street is over fifty feet, don't you know that? A Why, I don't know it; it probably is.

Q Isn't it a wide avenue? A Not exceptionally so.

Q Isn't it a fact that two lines of cars, that is, the Belt Line car, goes through it? A No, sir.

Q Aren't there any cars going through Eleventh avenue?
A Not Eleventh avenue. They have them on Tenth avenue.

Q How wide would you say that avenue is? A Well, I imagine it might be nearer forty than fifty feet.

Q Then you say about forty feet? A I may not be correct.

Q That is from curb to curb? A Yes, sir, from the edge of the sidewalk to the edge of the sidewalk.

Q Now you were not sitting on the curb? A No.

Q Further back? A On the steps.

Q How far back from the curb are the steps? A About nine feet or ten feet, I guess.

Q Then from the curb of the other side of the avenue, Eleventh avenue, to the steps where you were sitting, you would say it would be forty-nine feet, that is, counting the width of the avenue, which is forty feet, and nine feet from the curb, nine feet from the curb to the steps, is that right? A Yes.

Q Show on the picture the way those steps were, where they

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were? (Witness came down from the stand and showed the jury 151
where the steps were.)

Q Tell the stenographer and he will repeat it --

THE COURT: Suppose he mark the place with a pencil.
Mark where the steps were with a blue pencil.

THE WITNESS: This pencil does not take.

THE COURT: Well, here is a lead pencil. (handed to
witness.)

(Witness indicates with pencil.)

BY MR. PALMIERI:

Q Where did you indicate, please. Show me. You say there
are steps there (indicating)? A Yes, sir.

Q Where? A (Witness indicates on photograph where the
steps are.)

Q You say you were on that step (indicating)? A Yes.

Q You indicate the steps? A I cannot do it with that
picture.

THE COURT: Sit down please.

(Witness did as requested)

Q Well, all right. You just put your pencil through there
so that the jury can see what you are pointing at, please.

(Witness points out)

Q Where are you pointing? A To the yard delivery office,
Eleventh avenue, about 150 yards from Thirtieth street.

BY THE COURT:

Q Do you mean yards or feet? A I mean the Yards.

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Q A yard is three feet? A Yes, sir, I understand that.

(Mr. Palmieri shows picture to the jury.)

(Jury examines picture.)

Q Were there cars there about the yard that night just as they are on this picture? A That I cannot say.

Q Were there any cars in the yard that night? A Certainly.

Q About how many would you say? A I have not the slightest idea. You can never tell. They vary.

Q Were there any cars in the yard between Tenth and Eleventh avenues? A I didn't observe at the time; I had no occasion to.

Q Why, didn't you observe this burning car the next morning?
A No, not me.

Q Didn't you see this car at all? A No, I didn't go to look at it.

Q You never took a look at the burning car? A I had nothing to do with it.

Q Never made any examination as to whether there were any bullet holes in that car?

THE COURT: Yes or no.

A No, I made no examination of the car.

Q You didn't take enough interest to see where that car was the following morning?

MR. DeFORD: Objected to. There is no evidence that he was assigned to that the next day, as to what he was assigned to do.

THE COURT: Sustained.

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MR. DeFORD: I only put him on to testify to one fact.

Q So you cannot tell how many yards there were that night when you saw this defendant there? A How many yards?

Q I mean cars, of course. I beg your pardon.

MR. DeFORD: I object to that as repetition. He has answered that two or three times.

THE COURT: I will let him answer, yes or no.

THE WITNESS: No, I didn't observe the number of cars.

Q Would you say there were a great number of cars there?

A No, I would not say anything.

Q Well, you saw this defendant whereabouts in the yard the first time at seven o'clock? A On Eleventh avenue, going south towards Thirtieth street, where he turned east in the direction of Tenth avenue, on the north side of the street.

Q Well, you first saw him, you say, on Eleventh avenue?

A Yes, sir.

Q In the width of the street? A The width of the street.

Q Did you talk to him? A No.

Q Did you ever talk to this defendant in your lifetime?

A No, I never talked to this defendant.

Q Where was this defendant coming from when you first saw him on Eleventh avenue --

THE COURT: I think you asked that question, Mr. Palmieri.

MR. PALMIERI: I looked at my notes and I could not find it. It is, however, important to me.

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Q Where was he coming from? A That I could not say.

Q Was he in the middle of the street on Eleventh avenue, or on the sidewalk? A On the sidewalk.

Q On your sidewalk? A On the far side, opposite me.

Q That is, the sidewalk on the opposite side is City property, is it not? A Yes, sir, a public thoroughfare.

Q This is a public thoroughfare through which people go to and fro? A Yes, sir, up and down, pass to and fro.

Q And you first observed him on the other side of the street, right opposite or away from you? A Well, away from me, a trifle opposite; in a way it could be both.

Q Well, how far did you see him go on the avenue before he got in front of you? A I didn't see him until he had passed me. I was facing the same direction he was going south -- he was going south.

Q You didn't observe him until he passed you? A Yes, sir.

Q And did he turn his back to you? A He continued to walk, he didn't stop.

Q Did he turn his back to you when you first saw him? A His back was already to me, naturally, going south.

Q The first time you ever observed this man was when his back was towards you, you had not observed him before that time?

THE COURT: Yes or no. In other words, when you first say him his back was towards you, yes or no?

THE WITNESS: No.

Q Well, now, do you remember what I asked you before? A Yes.

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Q I asked you whether you had seen him before he had passed you, whether you had seen his face before he passed you and you said the first time you observed him was when his back was towards you, and he had passed you, didn't you?

THE COURT: I think I will let him go ahead.

A When?

BY THE COURT:

Q When he was opposite? A Both opposite, on the side and away from me, going in the same direction I was facing.

Q Well, was his back towards you then? A It was after he passed. At first his side was to me; at no time was there a full view.

Q In other words, the first time you saw him, you saw his side? A Yes, sir, just as I am sitting to your Honor.

Q And then? A His back.

Q And then walked along by you and what you saw was his back?

A Yes, sir.

BY MR. PALMIERI:

Q At no time had a full view of this man?

THE COURT: Of his face.

Q Of his face? A No.

Q Was he walking? A Yes, sir.

Q And what distance did you observe him walking on the avenue, about? A Until he reached the corner of Thirtieth street and Eleventh avenue, where he turned east on the north side of the street.

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Q Well, now, how many feet did you observe him walk?
At that time his back was turned towards you, is that right?

A Yes, sir.

Q How many feet did you observe him walking when his back was turned towards you? A The remainder of the block, as I imagine about, I could not say the exact number of feet, it is half a small city block.

Q When he got to the corner, was that city property on the corner a public thoroughfare? A A public thoroughfare and corporation property.

Q I mean on the corner of the sidewalk he was on that?
A Yes, sir.

Q When he got to the corner what did you observe him do? I mean the corner of Thirty-first street? A No, in the opposite direction.

Q Thirtieth street and Eleventh avenue? A Then he turned east, towards Tenth avenue, I paid no other attention to him.

Q You say you observed him going on the corner, as far as the sidewalk? A Yes, sir, and turned on the sidewalk.

Q And then you saw him turn east on the same sidewalk, which is a public thoroughfare, is that right? A Yes, sir, that is correct.

Q You didn't become suspicious of him? A Certainly not.

Q He was not doing anything to attract your attention, or that would cause you to suspect anything? A No, sir.

Q And he was alone? A He was alone.

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Q You made a report -- wait a moment. Are the records of the New York Central here (addressing a person in the court room)?

Q You make a report of your time, don't you, when you are on duty? A Sometimes.

Q You say sometimes you make your report and sometimes you don't as to when you work? A Not on the exact day.

Q Don't you know that the New York Central records the exact time in accordance with your own memorandum which you file in there of the exact time that you go on duty and the exact time you go off duty; don't you know that? A No, I don't know it. I am pretty familiar with their methods.

Q You mean to say that there are no records in the New York Central which we can produce today to show what time you got off that night? A I hardly believe so; as I was on special detail, I entered no time. At the time I was on special detail, public service. My time shows from the time I was on that detail, and the results of same, but it does not show anything that relates to freight service.

Q Were you working with Hogan? A No, Hogan was working in the freight service on the day detail.

Q What time did you get on duty that morning, the 31st of July? A Well, I guess I got up about 11 o'clock and I didn't go on until, I guess, about 9 o'clock, at 160th street -- 160th street and Riverside Drive, I believe it was.

Q Where did you work from that time on? A After I arrived

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there?

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Q Yes? A I remained up there then.

Q Up to what time? A To check trains until 5:30 or so the next morning.

Q At what street, what place? A Up where Audubon Place branches off, I guess 160th street, it is 158th street as far as it goes. They meet in a trunk line.

Q On July 31st you worked from 9 o'clock in the morning until what time? A Now wait.

Q I will wait. A (continuing) No, I stated before that was in the morning; it was in the night, but I said I got up, I believe --

BY THE COURT:

Q Now state whether or not on the morning of July 31st -- did you do any work before 9 o'clock that morning, yes or no.

A I don't recall as I did, no. I believe I was in bed; I don't recall exactly.

Q Now from 9 o'clock until noon of July 31st, did you do any work, yes or no? A Well, I am not prepared to answer that. I will have to look it up.

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

Q Now from noon of July 31st, until 6 o'clock in the evening of July 31st, did you do any work? A From noon I believe I went to the New Haven freight station at North River, or East River, I should say.

Q Where were you about six o'clock on the night of July

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31st? A Six o'clock I believe I was in a restaurant, eating supper.

Q Whereabouts? A Why, I think it was in Goldsmith's, at 36th street and Eleventh avenue. I think it was there. I am not sure. I don't always eat in the same place..

Q And where were you at seven o'clock on the evening of July 31st? A I was hanging around the yard then to kill time with Jones.

BY MR. PALMIERI:

Q What time did you enter that restaurant at 36th street?

A That I cannot say; I can't say that was the one I went in; I didn't take no note; I had no occasion to do so.

Q You don't know what restaurant it was? A No.

Q All you know is that you didn't go in there? A That is what I say; I had no occasion to jot down such things as that.

Q What do you mean by joke? A Jot.

Q Now you don't know whether you were in the restaurant at six o'clock or not? A No; I imagine I was, I generally go in about that time, if I have nothing else to do.

Q You stayed up to what time? A As long as I have to stay up; I cannot say exactly how long.

Q Do you know whether you worked that night at all on July 31st? A Yes, sir, I believe I did. I am not positive. I could not say. Yes, I think I was. On that thing you should ask me to be ready to submit that report.

Q Do you want to look up the records of the New York Central?

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A Yes, sir, I would have to get a duplicate report to find out where I was.

Q The records were made from your duplicate? A I retain the duplicate.

Q So you have the duplicate? A No, I have nothing to do with it.

Q Have you the original? A I have no occasion --

MR. PALMIERI: I subpoenaed and paid the regular fee to the New York Central Railroad at 59th street & North River freight yards and the record should be here.

Q You say you have the original records? A I said it is customary to retain a duplicate.

Q Did you retain the duplicate, since it is customary to do so?

MR. DeFORD: I understand they are here.

Q In the meantime, did you retain your duplicate, yes or no? A Why I suppose I did.

Q Where are they? A I have to look them up; I don't know where to get them.

Q When you came here to testify about the freight duty on July 31st, did you look up your records? A Certainly not. What did these have to do with my work.

Q This applies to the date of July 31st? A I came here to testify as to the evening of the 31st. What I do has got no bearing on this case, it is the corporation's business.

MR. PALMIERI: It is for the Judge to say, not you.

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THE COURT: We will have no colloquy.

Q I want to know when you came here weren't you prepared to swear that you were working at seven o'clock on July 31st?

A No, positively no.

Q Didn't you consult your own records before you went on the stand here? A No, I did not. It was not necessary. There was not enough consequence attached to it.

Q Now I ask you again -- now you know you are under oath?

A Yes, sir, I realize I am under oath.

Q I ask you again, did you know that you were to be asked with reference to July 31st when you -- where you went to on July 31st? A Of the evening of July 31st, just whether I had seen this defendant, that is all I know one way or the other.

Q Don't you know you were to find out whether you were working in that yard at that hour on that night? A I know I was not working; I had nothing to do with the yard.

Q You know you stopped work at six o'clock that night?

A No, I don't.

Q What time did you stop work? A I told you I believe I went on at nine, I believe it was.

Q Nine in the morning? A Nine at night I believe it was.

Q Then you were not working at seven o'clock? A I told you that in the first place. Is there any occasion for these things?

THE COURT: You have that on the record, Mr. Palmieri.

Q You want to consult your records, you say?

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THE COURT: I do not see what that has to do with it.

It is conceded this man was not working.

THE WITNESS: I said I was not working, your Honor.

THE COURT: It is conceded he was not working at seven o'clock that night.

Q You had nothing to do in that yard at all at seven o'clock that night? A No, nothing to do with it.

Q How did you come to sit on those steps on the opposite side of the yard if you were not working and your business didn't call for it? A May I go into detail.

THE COURT: Yes.

A (continuing) Why, I am a single man and I board, and in the evening when I have nothing else to do, and nothing to start to do, it is customary for me to go and talk with the boys, as is natural, and that is why I happened to be there. As before stated, I had nothing to do with the yard. I don't know what men really had charge of the yard that night.

BY THE COURT:

Q In other words, you were going to go to work in that yard at 9 o'clock that night? A No, sir, I believe I was going to Riverside Drive.

BY MR. PALMIERI:

Q You didn't even belong there that night? A Just as any of the workmen.

BY THE COURT:

Q Where do you live? A 446 West 57th street, near Tenth

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avenue. All I have to do is to jump --

Q And you expected to go to work at nine o'clock, uptown at Riverside? A At Riverside.

Q Then why did you go from your house down to 31st street and Eleventh avenue on that evening if you were not at work down in that neighborhood? A To tell you frankly, to borrow money, to attempt to borrow money.

BY MR. PALMIERI:

Q So you were sitting on the steps at Eleventh avenue and 30th street, on the other side of this yard, intending to borrow money there; is that what you said to the Judge? A Not that particular point, at any place I could.

Q Is that the reason you were sitting on those steps, to borrow money? A Not the particular reason.

BY THE COURT:

Q In other words, you went down to see some people whom you thought would loan you money? A Yes, sir, that is what I did.

BY MR. PALMIERI:

Q Were those people with you at the time this defendant passed on the sidewalk? A No, there were no people; there was one man.

Q What is his name? A Harry L. Jones.

Q Jones was sitting there?

MR. PALMIERI: Is Jones in the court room?

AN ATTENDANT: He is outside.

Q Jones was sitting on those steps with you; is that right?

A Yes, sir.

Q And did you ask Jones for money? A No, I didn't, because I didn't think he had it.

Q Did you talk with Jones about anything? A Oh, we talked about different things happening among the men and one thing and another.

Q Does Jones hang around there just about as you did? A No, Jones is in charge of all the yard. That night he was a sergeant of the railroad police, in charge of them all.

Q Did you when this defendant passed by, say to Jones, "Why look, there is Raffo." A No.

Q Did you point him out to Jones? A No. If I can answer that question without boasting --

THE COURT: You have answered it. You said no.

Q Did Jones point him out to you?

THE COURT: Yes or no.

A He didn't point him out, no.

Q Now the following morning you went to the house of Devine, Mr. Myers? A Yes, sir.

Q With Mr. Hogan? A No.

Q Didn't you and Mr. Hogan go together? A The second time. The first time was with Captain Braun.

MR. DeFORD: I object to that as not proper cross examination.

THE COURT: Sustained.

MR. PALMIERI: Now, your Honor, I propose to show

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that there was a talk between this defendant and Hogan before the identification of my client.

THE COURT: You mean this witness and the complaining witness. You said this defendant.

MR. PALMIERI: I mean the complainant. I wish to amend that by saying instead of defendant, the complainant, and I wish to ask that question now.

MR. DeFORD: Treat him as your own witness?

MR. PALMIERI: Yes.

MR. DeFORD: Then I have no objection. I withdraw the objection, and you make him your witness.

Q Did you and Hogan go to the house of the complaining witness? A Yes, sir.

Q And talk with him in reference to the arrest of this defendant? No, I did not talk with him.

Q You didn't say a word to him? A We told him to get dressed as quickly as he could, under the circumstances and accompany us to the 32nd Precinct.

Q You didn't tell him you had seen the defendant?

MR. DeFORD: He is leading his own witness. Let him tell what happened. You cannot cross examine your own witness.

Q Did you tell Mr. Devine that you had seen this defendant, that you went to his home with Hogan at seven o'clock that night, on the sidewalk of Eleventh avenue, passing by you to the corner?

MR. DeFORD: Objected to as leading.

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THE COURT: Sustained. Just tell us, if you care to tell us, what was said.

MR. DeFORD: To that I have no objection.

THE WITNESS: As nearly as possible, it was about nine o'clock A. M., in company with Captain Braun I visited the home of John F. Devine on Amsterdam Avenue, I believe in the vicinity of 95th Street. Devine escorted us to the parlor and at the request of Captain Braun gave full particulars of the occurrence of the night before. I questioned Devine regarding --

MR. PALMIERI: That is not the question I asked you. I move to strike out the answer as irresponsible.

MR. DeFORD: I understood you to ask him concerning what conversation he had with Devine when he went to his house the next morning.

THE COURT: The objection is, this witness has stated certain conclusions as to whom he had the conversation with, etc. You want to elicit from him what was said?

MR. PALMIERI: Exactly, your Honor.

THE COURT: Now you tell us what was said in Devine's house. Talk so the jury can hear you. Nothing else now.

MR. DeFORD: He started to tell us who was there.

THE WITNESS: Do you mean his own relatives?

BY MR. PALMIERI:

Q At Devine's house?

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THE COURT: Now you are at Devine's house. Who are you there with?

THE WITNESS: I was there with Captain Braun.

THE COURT: Who else?

THE WITNESS: With Devine and myself; no relatives present.

THE COURT: Tell us what was said and who said it.

THE WITNESS: Well, as near as I can recall, after Devine had described what had happened, I asked him regarding--

THE COURT: Strike that out. You will tell us what was said.

MR. DEFORD: State what Mr. Devine said, and what happened. Then what you said, and follow up with the conversation.

MR. PALMIERI: That is not what I want. I want to know what he said.

THE WITNESS: What who said?

THE COURT: What did you say to Devine?

THE WITNESS: I cannot recall precisely what I said at the time; I did a whole lot of talking.

BY MR. PALMIERI:

Q Let me refresh your recollection; did you tell Devine that you had seen this very defendant at seven o'clock that night while you were sitting on this step at Eleventh avenue, pass by, going up from Eleventh avenue, at Thirtieth street, toward Tenth Avenue; did you tell him that? A I told him that; I didn't say where.

Q Well, did you tell him you had seen him that night? A

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Yes, sir, I believe I did.

Q And when you went there on the second occasion, did you tell Devine that the very man that you saw at seven o'clock that night had been arrested?

MR. DeFORD: I am perfectly willing that this witness tell everything. It does not seem to me, however, that he ought to interrogate him in this manner. It is not cross examination to start with.

MR. PALMIERI: I told you I made him my own witness. There is no objection to that. I have a right to examine him.

MR. DeFORD: It is cross examination. Will you take his narrative of the conversation? I have no objection to this witness saying anything, but let him refresh his recollection. Counsel is not giving him an opportunity to state what occurred.

BY MR. PALMIERI:

Q You stated when you got there at nine o'clock that morning, you told Devine that this defendant was seen by you at seven o'clock, that you went back there with Mr. Hogan; did you tell him that the very man whom you had seen at seven o'clock that night had been arrested? A No.

Q Now you have seen this defendant --

MR. DeFORD: Will you let him state the conversation. Is he to be led persistently and treated as a hostile witness?

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THE COURT: I think you had better not lead him unless it is necessary.

BY MR. PALMIERI:

Q Had you seen this defendant before you went the second time to Devine's house; yes or no? A Yes, sir.

Q You had seen him under arrest, had you not? A Yes.

Q Now, I ask you again: When you went back to Devine's house did you not tell Devine that the very man whom you had seen that night at seven o'clock had been arrested? A No, I didn't tell him that.

MR. PALMIERI: All right.

Q Now just one more question, Mr. Myers.

MR. DeFORD: I object to that, to his manner, your Honor.

THE COURT: Just ask the question, Mr. Palmieri.

Q You made an application to become a police officer, did you not? A Yes, sir.

Q And that application is now pending, isn't it, in the police department? A Yes, sir.

MR. PALMIERI: That is all.

REDIRECT EXAMINATION BY MR. DeFORD:

Q Now, Mr. Myers, will you tell this jury everything that was said by you or by anybody else from the time you got to Devine's house until you left there. I want you to tell us everything as far as you recollect it, and give it literally, and withhold nothing.

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MR. PALMIERI: Now I object to anything that Devine said. I have no objection to his stating all that he said. He may state all that you want him to state, but I do object --

THE COURT: You brought out a part of the conversation. I think the balance becomes admissible.

MR. PALMIERI: I respectfully except, and I wish to call your Honor's attention to the fact that I asked this witness for all he said. I didn't ask him what Devine said or anything else.

THE COURT: I know, but you cannot bring out from a witness what he may have said in a talk with somebody else, without making what the other person said admissible, because what other persons may have said may explain everything that the witness said.

MR. DeFORD: I withdraw the question temporarily.

Q How did you come to go to Devine's house? A On request or order. I took Captain Braun to the defendant's home.

Q Who gave you the order? A Captain Braun.

Q And who is Captain Braun? A Captain of the Railroad Police.

Q So that you and Captain Braun, your superior officer, went to Devine's house? A Yes, sir.

Q What did you go there for? Tell the jury that? A To find out what occurred precisely on the same evening. We had a vague idea what was what. They knew a car was on fire and

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someone had been assaulted.

Q Had the defendant been arrested when you went there? A Not the first time, no.

Q Have you been testifying, in answer to Judge Palmieri, the question concerning the first time or the second time that you went to the defendant's house? A Why that --

Q He has been asking you --

MR. PALMIERI: I object to that interruption while he is about to give an answer.

BY MR. DeFORD:

Q Answer the question. A Well, on that point I am somewhat confused. If you would let me make a statement myself I could make it clear.

Q How many times did you go to Devine's house after the assault? A Two.

Q Did anybody accompany you the first time? A Yes.

Q Who? A Captain Braun.

Q Now what time did you get there?

THE COURT: The first time.

Q The first time I am talking about now. Altogether about the first time? A Approximately nine o'clock.

Q Now when you got there, did you find Devine there? A Yes.

Q Did Captain Braun have some conversation with him? A Yes.

Q Was that conversation referred to in answer to Judge Palmieri's question? A Yes, sir.

Q The conversation that you had with him when you first went

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to his house? A Yes, sir.

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Q Will you tell the jury here what conversation you had with him, or Braun had with him in your presence?

MR. PALMIERI: I object to any other conversation but the conversation which this witness had with Devine.

THE COURT: Yes. I will sustain the objection.

Q State everything that you said to Devine and Devine said to you on this occasion?

MR. PALMIERI: Objected to.

THE COURT: I will allow this witness to tell everything that he said to Devine, everything that Devine said to him in that first conversation. Limit yourself to that.

MR. PALMIERI: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled, and you have an exception. It is made competent by your queries.

THE WITNESS: I first said to Devine, as near as I can recall, "would you know this man again if you seen him?" He said, "Yes." "Did you ever see him before?" He said, "Why, yes." "When?" "The same night before that, yes." "How often?" "On two or three occasions before." "Well," I said, "Now how about how high is he?" and entered into details regarding the description which he gave. At the time I had another in mind besides this defendant.

Q Now you cannot tell what you had in mind. Tell what

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was said.

THE COURT: That is all you can do. Tell us what you said and what he said to you.

THE WITNESS (continuing): So after having received the information we were after --

THE COURT: No.

Q What did he say to you when you asked him whether he had seen this man before?

MR. PALMIERI: Objected to as incompetent, irrelevant and immaterial. I except to any conversation Devine had with this witness on the ground that it is incompetent, irrelevant and improper evidence.

THE COURT: I will receive it for the reason that it is made competent by the questions which you put to the witness. In other words, where a part of the conversation is called for, the balance may properly be received.

Go ahead and tell us.

(Previous question read by stenographer)

THE WITNESS (continuing): He said, yes, on two or three occasions and on the same night --

Q And on the same night? A Yes, sir.

Q Go ahead. A (continuing) He said he had ejected him from the premises early in the evening. I said, "Did you get a front view of him? Would you be able to identify him?" He said, "Sure I would. It was broad daylight." I said, "Very well." I then went to the 32nd Precinct.

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THE COURT: Now you seem to have told us all that was said there.

Q Was that all the conversation you had with Devine? A Yes.

Q Did you in that conversation say anything to him about a prisoner? A At that time the defendant had not been arrested.

Q Did you subsequently see Devine? A Again?

Q Yes? A Yes, sir, after the defendant had been arrested on instructions from the desk officer in the 22nd Precinct.

Q In answer to Judge Palmieri you have only referred to a conversation you had with Devine in the first instance? A In one part I answered in reference to the second. When he asked me if I told Devine this was the man that was arrested.

Q I don't want to go into the second conversation. I don't know whether I laid the foundation. If Judge Palmieri will ask what was said on the second conversation I will be content. I am afraid --

THE COURT: I am not, because Judge Palmieri interrogated him in reference to both conversations. This witness purported to tell what was said on both occasions. Therefore I will allow it.

BY MR. DeFORD:

Q You went to Devine's house a second time. A Yes, sir.

Q And who accompanied you the second time? A P. J. Hogan.

Q And hadn't you seen the defendant at that time? A Yes, sir, I had.

Q And where had you seen him? A At Eleventh avenue and

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Thirtieth street.

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Q Now when you went to Devine's the second time, will you tell this jury what was said by you to Devine and by Devine to you?

MR. PALMIERI: Same objection upon the ground that I did not elicit any conversation that Devine had with this witness, but I did ask this witness what conversation or what he said to Devine with reference to having seen this defendant, and for that purpose only did I examine this witness. I object to your Honor permitting a concession upon this record prejudicial and incompetent matter with reference to the conversation with Devine which was not elicited by the defendant's counsel.

THE COURT: I am clear that the evidence is receivable, for the reason that you interrogated the witness regarding his part in certain conversation. The balance is receivable and is allowed, and the objection is overruled.

MR. PALMIERI: Exception.

Q State the conversation with Devine upon the occasion of your second visit to his house? A As nearly as I can recall, when Devine came in response to his mother's calling, I said to him, "Devine, meet Hogan, this is one of our men, and put your clothes on as quickly as possible and accompany me to the 22nd Precinct to see if you can identify this man that we think is the man that you put out of the yard."

Q Did you name the man to him? A No, I didn't know his

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name. I only knew him as "The Turk". I didn't know his name, so Devine went into the other room; there was a stranger at that time present. He was a considerable time dressing.
BY THE COURT:

Q Is that the only talk you had with him? A Except re-
turning on the "L" train.

THE COURT: I think he was limited to the conversa-
tions in the house.

MR. DeFORD: That is all.

RE-CROSS EXAMINATION BY MR. PALMIERI:

Q Didn't you say before that when you went to Devine upon
the first occasion you told Devine that you had seen this defend-
ant at seven o'clock that night? A I told him --

Q Yes or no. Did you say so or did you not? A Yes.

Q Now in your conversation and in your answer which you
gave to the District Attorney here, did you forget to state about
this part of it? A No, I told the District Attorney that I
did not know his name.

Q But did you tell Devine that you had seen the party that
had assaulted him at seven o'clock that night? A No.

Q At any time? A No, I didn't tell him that. I told
him "I think we have an idea who it was that had been around the
yard two or three nights there" but I had another party -- that
is irrelevant.

Q Did you tell him that party had been arrested? A No,
he hadn't been arrested at the first conversation, when the first
conversation occurred.

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Q On the second did you tell him that the party whom you thought had been around the yards two or three times had been arrested? A One of them.

Q And that was before Devine identified this defendant?

A Yes, sir.

BY MR. DeFORD:

Q Did you tell Devine either in the first or second conversation, that the defendant, the man whom you were taking him to identify, or look over, was the man you had seen in the yard Saturday evening at seven o'clock, did you tell him that? A I believe I told him, "We have 'The Turk'".

Q Did you tell him the man whom you were taking him to see was the man you had seen in the yard at seven o'clock the night before; did you tell him that? A Now I could not say as to the exact wording -- "I think we have one of them".

Q Did you tell him in substance or effect, did you tell him the man you were taking him to see was the man you had seen at seven o'clock on the night before in or near the yards? A I don't know just what I said at the time.

Q Well, do you say that you didn't say that, or you can't remember what you said? A I cannot recall just precisely what it was, there was so much to it that I don't remember what I said exactly.

MR. DeFORD: That is all.

BY MR. PALMIERI:

Q How many people did you see on that sidewalk, walking to

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and fro besides this defendant? A Well, not very many; it is not much so after business hours.

Q How many did you see? A Well, during the time I was there I don't think there was more than thirty people. It is a warehouse and freight district.

Q How many of those thirty people had moustaches? A Well, I didn't take note of everyone who passed by.

Q You took no notice of these people? A Only ones I knew, those were the only people naturally that I paid any attention to, to their passing.

Q Who was in charge of this coat which is now in evidence from the time it was discovered until this day of the trial?

A Why, Devine had that. That is something I left out of the conversation.

Q Oh! I am glad I refreshed your mind. Go ahead.

MR. PALMIERI: Do you want him to say something?

MR DeFORD: Ask him something.

Q Go ahead. A Yes, sir, Devine had the coat he wore at home from the hospital; he had to have it.

Q And how about the knife, did he wear the knife too?

A I don't suppose he wore the knife because I don't believe he had the knife, which was produced by another officer.

MR. PALMIERI: I move to strike out "I don't believe he had the knife", etc.

MR. DeFORD: I consent.

THE COURT: I think I will let it stay in.

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Q You saw who had the knife, another officer? A Yes, sir.

Q Now don't you know the knife and this coat was never turned over to the Property Clerk, was never turned over to this clerk, and the only thing that was ever turned over to the Police Department Property Clerk was this iron bar now in evidence?

A Devine brought it to Jefferson Market with him.

MR. PALMIERI: I move to strike that out as incompetent.

THE COURT: Strike it out.

BY THE COURT:

Q Have you any knowledge on the subject? A No other knowledge.

BY MR. PALMIERI:

Q Do you know who could give me any knowledge on the subject?

MR. DeFORD: Objected to.

THE COURT: Sustained.

BY MR. DeFORD:

Q Did you have a special reason for observing this defendant that Saturday night? A Yes, sir.

Q Had you known him before that time? A Yes, sir.

Q Had you seen him in that neighborhood before that time?

A Yes, sir.

Q Did you know the name he was called by in that neighborhood before that time? A Yes, sir.

MR. PALMIERI: In a case before the Appellate Division, the District Attorney was reprimanded by the Appellate Division for using the very tactics which the Prosecutor is now

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using in this case. I object to it and say it is highly improper and unfair and prejudicial to our rights.

THE COURT: In this particular case it is neither improper or prejudicial. You have allowed without objection the circumstance that this defendant was known by a particular name.

MR. DeFORD: I am trying to exercise my right of cross examination.

THE COURT: Proceed now and ask another question.

BY MR. DeFORD:

Q Did you know the name of this defendant before you saw him that Saturday night?

THE COURT: Yes or no.

A No.

Q But you know him by a name he was called by? A Yes.

MR. PALMIERI: I object.

THE COURT: I will allow it.

A "The Turk".

MR. PALMIERI: I object to that as incompetent, irrelevant and immaterial.

MR. DeFORD: What was the answer?

(Last question and answer read by stenographer)

Q Did you pay special attention to what he did from the time you saw him until you saw him turn into the yard on Thirtieth street? A No.

Q Did you look at him? A Only as he passed by.

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Q Had you seen him prior to that time in that neighborhood? A On the same night.

Q At any time prior to this night? A Often.

MR. PALMIERI: This is a repetition of his former testimony.

THE COURT: Overruled.

MR. PALMIERI: Exception.

THE COURT: It is necessary by your examination of the witness.

Q Had you seen him prior to that time in association with any witness who took the stand on his behalf? A Yes, sir.

Q Had you seen him prior to that time in association with one Owney Madden?

MR. PALMIERI: I object to that as incompetent, irrelevant and immaterial.

THE COURT: I think I will exclude it.

Q Had you seen him prior to that time in company with more than one person in and about that neighborhood? A Yes.

Q How many persons? A Oh, as many as fifteen of them.

Q And where did they hang out?

MR. PALMIERI: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Sustained.

Q Where did you see him in company with those fifteen?

MR. PALMIERI: I object on the further ground that this is not proper cross or direct examination, or cross

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examination, as the District Attorney calls it, and it is incompetent evidence.

THE COURT: I will allow it.

MR. PALMIERI: The witness was fully exhausted on direct examination testimony with reference to these points.

THE COURT: You tried to bring out circumstances showing that the opportunities for identification that this witness had were certain things that appeared in answer to questions you put to him.

I will allow it to show what the opportunities for identification were.

MR. PALMIERI: Exception.

(Previous question read by stenographer)

A American Lunch Room.

Q Any place else? A Not with the same number.

Q Well, now, when you say that you saw him with these fifteen, do you mean there were fifteen other people in the lunch room; was he with a crowd? A Approximately that many in the American Lunch Room, where they used to hang out.

THE COURT: Strike out "where they used to hang out."

The jury will disregard that.

Q You mean to say simply, he was in a restaurant where fifteen other men were, is that all you mean to say? A That is all.

Q Just happened in there? A Yes, sir, they sat in there as a rule.

Q Have you ever seen him in association with fifteen or six-

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teen other men, whether there was a crowd or not?

MR. PALMIERI: Objected to as incompetent, irrelevant and immaterial.

THE COURT: I will allow it.

THE WITNESS: I could not say the exact numbers.

Q Well, with more than three or four? A Yes, sir.

Q And where did you see him? A In the immediate vicinity of Tenth avenue, varying from the playground to Thirty-fourth street.

Q And how frequently did you see him with a number of men consisting of more than four or five?

MR. PALMIERI: Same objection.

THE COURT: Same ruling.

Q How frequently, how many times? A I cannot say how frequently.

Q Were you on the lookout for him specially that night; or the men whom he associated with? A No, I had nothing to do with it.

MR. DeFORD: That is all.

THE COURT: Is that all?

MR. PALMIERI: One minute. Since you have so kindly given us this information --

MR. DeFORD: I object to the comment and ask the Court to instruct the jury to disregard it.

THE COURT: Disregard it, gentlemen.

MR. PALMIERI: I ask your Honor to instruct the jury

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to disregard anything that Mr. DeFord stated about Owney 184
Madden, or Owen Madden. Mr. DeFord is more acquainted
than I am with that, or any reference made by the District
Attorney to that name, upon the ground that it has nothing
to do with this case.

THE COURT: No, I will not instruct that. There were
certain questions asked witnesses whether they knew a per-
son named Owney Madden, and all these witnesses, with one
exception, said they did not, and the exception was the man
who testified that he knew a person of that name, or had heard
of a person of that name.

MR. DeFORD: That is all.

MR. PALMIERI: I didn't state that.

THE COURT: The examination is exhausted.

MR. PALMIERI: I wish to object to the Court refusing
to allow me to put the question. I didn't say to witness,
"that is all". It was the District Attorney, and I claim
I am being deprived of the privilege of cross examination.

THE COURT: There is a limit to cross examination and
in this case you have exhausted it.

MR. PALMIERI: I respectfully except.

THE COURT: Is that the case?

MR. DeFORD: I have rested some time ago.

MR. PALMIERI: I didn't know that.

MR. DeFORD: I rested the day before yesterday, in the
afternoon.

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MR. PALMIERI: Myers was not my witness.

MR. DeFORD: But you made him your witness. I only called him for one fact.

THE COURT: Proceed with the case. It is with you, Mr. Palmieri.

MR. PALMIERI: I am curious about the coat and hat. OFFICER SCHAEFER, was recalled.

CROSS EXAMINATION CONTINUED BY MR. PALMIERI:

MR. DeFORD: Is this for re-cross examination. I would like to know.

THE COURT: I understand it is for further cross examination.

MR. PALMIERI: Yes, your Honor.

Q Officer Schaefer, I show you a coat with certain cuts on it; first I wish to ask about the bar, this People's exhibit. This has been in the office of the Property Clerk, who is the custodian of exhibits in criminal cases, is that right, of the Police Department? A Yes, sir.

Q From the time it was found in this box car the following morning? A It was.

Q About ten-thirty o'clock, I believe? A Yes, sir.

Q Until the day of this trial it has always been there?

A Yes, sir.

Q Has this coat, with those cuts on, and this knife, ever been in the hands of the property clerk? A No, sir.

Q What is that? A No, sir.

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Q Was this coat and this knife shown to you on the day of the arrest of this defendant? A Not on the day of the arrest, no, sir.

Q How many days afterwards was this knife and coat shown to you, how many days after this arrest? A About four days after.

Q That was when the case was upstairs in the Grand Jury room? A Yes, sir.

Q And that was the first time you ever saw the knife and coat with the cuts on? A yes, sir.

Q Is that right? A Yes, sir.

Q Were they then placed in the hands of the property clerk? A No, sir.

Q Who had charge of this coat and the knife? A At the time that I saw the knife and coat it was in charge of Detective Devine.

Q That is the complainant in this case? A yes, sir.

Q You don't know whether he was a detective or not, do you?

MR. DeFORD: I object to that.

MR. PALMIERI: Well, all right. I insist on asking the question in view of the fact it has been shown now that on the night in question he hadn't been sworn in; I don't know whether he is a detective now.

MR. DeFORD: You can call him back.

THE COURT: I will sustain the objection.

BY MR. DeFORD:

Q At the examination before the Magistrate on the 4th of August you were present? A I had taken him personally.

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Q Were you present at the examination? A Yes, sir.

Q Were you there during the whole course of the examination?

A No, I left the court room.

Q Did you see the coat there? A No, sir.

Q Is it not a fact that this coat was referred to in this examination by Devine? A Yes, sir.

MR. DeFORD: Do you concede it, so it can go on the record?

MR. PALMIERI: May I see the coat. If I say something my friend will claim I am creating an atmosphere here. Now I will not concede it is proper.

MR. DeFORD: I am not offering it.

THE COURT: Now we will proceed. Any further questions of this witness, Mr. Palmieri?

BY MR. DeFORD:

Q You were not there during the whole course of the examination? A No.

Q You didn't hear Devine testify before the Magistrate? A No.

Q You don't know whether this coat was there or not? A Not that I know of.

Q You don't know whether the knife was there? A No.

Q You went and got the bar? A I had the bar in my possession.

BY MR. PALMIERI:

Q On the day when this defendant was arrested, throughout that day, either at the station house, or anywhere else, was this knife or coat ever shown to you? A No.

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Q Or the following day?

MR. DeFORD: I object to it.

THE COURT: I think he has testified he didn't see it for four days.

MR. PALMIERI: That is all.

RICHARD CRONIN, was recalled.

BY MR. PALMIERI:

Q Did Devine have a coat on when you entered that car, or did he have it in his hands? A In his right hand, and his left hand leaning on the side of the car.

MR. DeFORD: I object; all this matter has been gone over and it practically reopens the case.

MR. PALMIERI: Here is a man who is said to have been helpless. I want to show the coat was off.

THE COURT: It has been testified that the coat was off.

THE WITNESS: This was the second visit I paid to this car and found the man in a helpless condition.

Q Have you given your name, or the names of persons who were putting out the fire in that car?

MR. DeFORD: Objected to.

THE COURT: Sustained.

Q Would you identify the person that was putting out the fire in that car? A Yes, sir, it was one of the switchmen.

Q And his name? A W. Fromhold.

Q Is he here? A I do not know, sir.

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MR. DeFORD: He was here the day before yesterday.

Q Mr. Fromhold, and what was the other man's name?

A I didn't see the second man; he was on the side of the man facing me.

MR. DeFORD: He testified to all this before and gave the names.

THE COURT: That is all. Step down now, Mr. Witness.

MR. PALMIERI: I want Mr. Devine on the stand.

THE COURT: He appears now as your witness.

MR. PALMIERI: I want to find out if he has been sworn in as a detective.

THE COURT: No, I will not permit any further examination. You may step down, Mr. Devine, unless Mr. Palmieri wants you as his witness.

MR. PALMIERI: Yes, your Honor.

THE COURT: Called for the defense.

JOHN F. DEVINE, was recalled.

DIRECT EXAMINATION BY MR. PALMIERI:

Q When were you sworn in as a detective, Mr. Devine? A I have never been sworn in as a detective.

Q You have not yet been sworn in as a railroad detective? A Never sworn in as a State railroad detective.

Q So you are not a State railroad detective today? A I am not.

Q Never have been? A Never have been.

Q You were serving your probationary period at the time

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of this occurrence, were you not? A I was.

Q And the probationary period is served for a length of time from thirty to sixty days, isn't it? A At the discretion of the railroad officials, whenever they see fit to send your papers to the Governor. I am still on probation.

Q So that your papers have not yet been sent to the Governor? A Not that I know of.

Q And you are still serving your probationary period, are you not? A I am.

Q And that probationary period means that you have got to make good in your job, is that it? A No.

Q It does not mean that at all? A No.

BY MR. DeFORD:

Q You were an employee of the New York Central at that time? A I was.

Q And you were under the direction of the roundsman who has charge of the policing of the yard? A The roundsman.

Q And you were there, were you not, for the purpose of protecting the property of the New York Central? A I was.

Q Inclusive of cars and their contents and the yards of the company?

A I was.

Q And you were engaged in the performance of that duty when this happened?

MR. PALMIERI: I object to that as calling for a conclusion.

Q When this assault occurred?

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MR. PALMIERI: I object to it upon the ground it is not proper examination of this witness.

THE COURT: He is testifying on cross examination.

Q You didn't carry a pistol? A No.

Q You didn't carry that because of the fact you were serving your probationary period?

MR. PALMIERI: Objected to.

THE COURT: Sustained.

MR. DeFORD: That is all. One more question. I will make him my own witness for that purpose.

Q Did you produce this coat before the Magistrate? A That coat was down before the Magistrate.

Q Did you testify concerning it before the Magistrate? A Whether I was asked I don't know; I had it in a bundle.

Q Did you produce it there? A I cannot quite recollect whether I had it before the Magistrate or not; I had it down in court.

Q I will ask you to refresh your recollection, if it was not a fact that you were before Magistrate McQuade on the 4th of August?

MR. PALMIERI: I object to the witness's recollection, on the ground that he has made him his own witness. He has been asked the very thing. He stated he had this coat in a bundle, and I object to the question on the further ground it is incompetent, and not proper direct examination.

MR. DeFORD: It is perfectly proper when the witness

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said he didn't remember, to refresh his recollection.

THE COURT: I think it is proper to refresh the recollection of the witness. You may show him the papers.

MR. PALMIERI: I except.

Q I want to call your attention to page 3 of the stenographer's minutes, and ask you to recollect if those questions were asked you and this answer made, and if you did the thing referred to? A Yes, sir.

BY THE COURT:

Q Now after you look at this piece of paper, is your recollection refreshed; can you say personally you produced it in the sense of showing the coat that is in evidence here, yes or no?

A Yes, sir.

Q Did you? A I did, give it to the District Attorney, I believe.

BY MR. PALMIERI:

Q You gave it to the District Attorney. What did the District Attorney do with it? A Held it in his hand, looked at it.

Q And gave it back to you? A After the defendant was held, I believe. They gave it back to me and we went inside, through a door, and looked at it.

Q The question is, did you ever show that coat to the Magistrate, that is the point? A It was right in front.

Q Did you ever show these cuts? A Yes, sir, he had the coat in front of him.

Q How long did you have the coat in your possession before

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you showed it to the Magistrate? A The first time I appeared in court; I had it all the time.

Q All the time up to the time you brought it into the court room? A Yes, sir, and had it since.

Q And the knife? A I never had the knife, never seen it.

Q Did you ever show the knife to the Magistrate? A I do not know; I didn't have it.

Q Was it shown to the Magistrate? A I do not know.

Q You were there; your recollection now has been refreshed by something shown you by the District Attorney; was the knife shown to the Magistrate? I don't know, the police had the knife.

Q You say the police had the knife? A I believe so.

Q Now do you swear to that, or is that your belief? A That is my belief.

Q Didn't you hear an officer say that he never saw that knife until you appeared in the Grand Jury room upstairs, four or five days after?

MR. DeFORD: I object to the cross examination. The witness has not testified to the fact.

MR. PALMIERI: He has volunteered that the police had the knife.

THE COURT: He has corrected that statement.

BY MR. PALMIERI:

Q Now do you wish to correct your testimony in view of the fact that the officer testified that he never saw that knife until he got to the Grand Jury room, and then for the first time saw it?

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A I don't know; I thought they had all the articles in the case except the coat; I never have seen the knife.

Q Could you identify the two persons who put out the fire in your car? A No.

Q You could not? A I could not.

Q Do you know whether they were switchmen or not? A I do not know.

Q Was it so dark that you could not see them in the car?

A See them in the car?

Q Yes? A Yes. Q Were there not two persons putting out the fire in the car? A I didn't testify to that.

Q I didn't ask you that. I asked you as a fact were there not two persons putting out the fire in the car? A I do not know.

Q Was there a dummy engine doing any work that night in the yard?

MR. DEFORD: I object to this. This is continued cross examination.

THE COURT: Yes. Sustained.

MR. PALMIERI: That is all.

GEORGE SULLIVAN, was called as a witness on behalf of the defendant, being first duly sworn, testified as follows: (I reside at 314 West 34th street, New York City.)

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Sullivan, what is your occupation? A A switchman.

Q This is your first experience incourt? A Yes, sir.

Q You don't have to stand up when you testify. Just sit

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down. I think you were examined by Mr. DeFord in this case last Friday, weren't you? A Yes, sir.

MR. DEFORD: By that you mean I had a talk with him in the hall. I didn't examine him in the case.

MR. PALMIERI: Yes.

Q Now were you working as a switchman in this yard on July 31st of this year? A Yes, sir.

Q What time did you go on duty? A 6:30 P. M.

Q And could you show your place in this photograph; where is the place you occupied in this photograph?

THE COURT: Referring to Defendant's Exhibit D.

A (indicating) Right here.

Q What is that place? A It is a switchman's cabin.

Q Is that a cabin there -- just show it to the jury, a switchman's cabin.

(The witness indicates to the jury.)

Q And now, Mr. Sullivan, between six and seven o'clock, or between six and eight o'clock, did you see Devine in the yard?

A No, sir, I don't know him.

Q Did you see a detective in the yard take hold of a man by the arm and hustle him out of the yard at all? A Not past me.

Q Did you see a burning car that night, a car with hay in it, smoking? A Yes, sir.

Q About what time was it? A Between 8:30 and 9, I should judge:

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Q Now with reference to your cabin, will you show where that car was? A Yes, sir (Witness indicates to the jury on photograph).

Q And how far was that car burning away from your cabin? About? A Well, I should judge about two hundred feet.

Q Now what was going on in that yard that night; was it perfectly quiet, or was anything going on? A No, sir; it is never perfectly quiet; there is always switching being done.

Q Switching done by what? A Locomotives.
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Q And do locomotives make any noise? A Yes, sir.

Q What kind of locomotives were working that night? A Why, they had some, what they call dummies, all boxed in and regular locomotives.

Q Did you have any milk trains, what hour of night do they come in? A They don't come in until about ten o'clock.

Q Did you have a dummy engine working that night? A Yes, sir, in the lumber yard.

Q What time was that working? A That was the time I saw this fire.

Q And where was the dummy engine working? A Why, about thirty feet away from our shanty, our cabin.

Q And how far away from the box car that was burning, away from where you saw the smoke coming from? A Why, about a hundred feet.

Q And was it working at that time? A Yes, sir.

Q What was it doing, the dummy engine? A Switching cars.

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Q Now if any shots were fired, could you have heard them by reason of this noise? A No, sir.

Q Did you hear any shots? A No, sir.

Q Now, Mr. Sullivan, what attracted your attention to the smoke in the car; what was the first thing; can you tell your own story in your own way? A Yes, sir, I was sitting on the west side of my cabin outside and like westward in the direction of those cars. I saw flames coming out of the car, and the next thing I seen was the glaring of the light. I seen this detective running up towards Eleventh avenue and take off his coat and jump in the car. I picked up my lantern and ran through the yard with my side partner and both of us saw the detective in there quenching the fire out.

Q You saw whom?

BY THE COURT:

Q Who do you mean by the detective? A A railroad detective.

Q You mean that man? (indicating Witness Devine)? A That resembles the man; I could not swear to it because this night he had on a light suit, an old cap and a white handkerchief. There is a big difference in him now.

Q Listen to me for a moment, carefully. Which did you see first, the burning car, or the man that you say was the detective and who jumped into it? A I saw the burning car first.

Q In other words, you saw a car that appeared to be on fire?
A Yes, sir.

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Q And into the car which appeared to be on fire you saw a man jump? A Yes, sir.

Q Is that so? A Yes, sir.

Q And you call that man a detective? A Yes, sir.

Q Did you see that man whom you saw jump into the car later on that same night? A No, sir, I saw him earlier.

Q Do you know the name of that man? A No, sir, he was a strange man; he was not there to my knowledge more than two or three nights, so in daylight I could pick him out of a hundred if he had on the same attire that he had on that night.

BY MR. PALMIERI:

Q Did you say that he was one of the new men? A Yes, sir, a stranger to me. I am there a year and I never saw him there only these first couple of nights.

BY THE COURT:

Q You say, Sullivan, as I understand you, from where you were sitting you saw a car inside of the yard, and the car was on fire; is that so? A The fire was in the car.

Q There was a fire inside of the car? A Yes, sir.

Q And you saw flames? A Yes, sir.

Q And you saw a man running towards the burning car? A Yes, sir, from Eleventh avenue.

Q And you saw that man jump into the car? A Yes, sir.

Q And the man that you saw running and the man that you saw jump into the car was a detective? A Yes, sir.

Q And you saw the fire, you say, inside of the car before

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you saw that man; is that so? A Yes, sir.

Q Before that man got into the car; is that so? A Yes.

Q And you say that the man that you saw running and jump into a car that was on fire inside of the yard was a man that was a railroad detective? A Yes, sir, the same man that was around there inspecting those cars earlier in the evening.

Q The same man who had been around there earlier in the evening inspecting those cars? A Yes, sir.

Q Well, have you seen at any time since, that man? A I have seen this gentleman on Friday morning.

Q When you say this gentleman, you mean the complaining witness Devine, is that so? A Yes, sir.

Q Now are you, or are you not able to say whether Devine is the man whom you saw running towards the car, whom you saw jump into the car at the time when there was a fire inside of the car? A I cannot say that now, with the attire he has on.

Q In other words, you don't know now that the man you saw running towards the car and jumping into the car and whom you say was a railroad detective, was or was not the complaining witness Devine; you cannot say? A His face resembled him to me.

Q He resembles that man, but you are not sure? A No, I am not sure.

BY MR. PALMIERI:

Q Was the car dark or light? A Why, there was the glare of the light and the flame going out of the side of the car and that is how I saw him jump in.

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Q How high was the pile of hay, do you know? A I should judge that high (indicating).

Q Is that the only hay pile in the car, or was it full?

A From what I saw from the ground, there was other hay in it, that went into the car.

Q Was that hay burning? A No, sir.

BY THE COURT:

Q Did you see anybody else go into the car excepting that one man? A No, sir.

Q At any time that night? A No, sir.

Q Did you go into the car? A No, sir.

Q Did you see any railroad man go into the car? A No.

Q Except this man whom you call the railroad detective, did you see anybody else go into the car? A No, sir.

Q Did you go near that car that night? A Yes, sir.

Q How close? A Why, right alongside of it; I stood on the ground; looked in; I seen this man putting out the fire with the coat; I stood there until he got the flames out.

Q Was the man who put the fire out, the fire that was inside the car, the man that you saw running towards the car and jump into it? A Yes, sir.

BY MR. PALMIERI:

Q Did you see Cronin? A Why as soon as this detective had the flames out he was walking around on the floor of the car. I turned around and walked with the other men and I seen Mr. Cronin and Theodore Bradley walking on the tracks

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towards the roundhouse.

Q You saw Bradley and Cronin walk towards the roundhouse? A Yes, sir.

Q Did you know Bradley and Cronin? A yes, sir.

Q How long have you been connected or employed by the New York Central? A One year.

Q Did you tell your story on Friday to Mr. DeFord? A Yes, sir.

Q Was there anybody with you that night? A The man that works with me.

Q What is he, a switchman? A Yes, sir.

Q Is he here? A Yes, sir.

BY THE COURT:

Q What is his name? A James McIntyre.

BY MR. PALMIERI:

Q Did you observe the man who entered the car have his coat on and then take it off before he entered the car?

MR. DeFORD: Objected to as leading.

THE COURT: Sustained.

Q With reference to the coat, what did you observe and do as he entered the car before he jumped into the car? A He ran up and took his coat off and jumped into the car. I picked up my lantern and I said to the other man, "there is a fire in the car". He ran back of me and when I got down this man put the fire out with his coat.

Q Was there anybody else with that man? A No, sir.

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Q At that time Cronin and Bradley hadn't gotten there?

A No.

Q And it was after that Bradley got there? A Yes, sir.

MR. PALMIERI: You may examine the witness.

CROSS EXAMINATION BY MR. DeFORD:

Q I talked with you Friday morning after I rested my case? A Yes, sir.

Q I asked you if you were one of the switchmen who were there when this car was ablaze, and you said you were? A Yes.

Q You told me you were attracted to the car by the blaze? A Yes, sir.

Q And when you went there you saw a man whom you thought to be a New York Central detective, jump into the car? A No.

Q And put it out? A I said before I left my shanty I saw a man run up and jump in. Then I went down.

Q Didn't you tell me you saw a man whom you thought was a New York Central Railroad detective, jump into the car and try to put the fire out with his coat? A He did put it out.

Q Didn't you tell me that? A I told you he put it out.

Q And didn't you tell me he was a man whom you thought to be a New York Central detective? A Yes, sir.

Q Didn't you tell me that? A I told you he put it out.

Q Didn't you tell me he was a man whom you thought to be a New York Central Railroad detective? A Yes, sir.

Q And didn't I ask you if you went near enough to the car to see if there was any man lying prostrate; didn't I ask

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you that question? A Yes, sir.

Q And didn't you tell me you didn't go near enough to see whether there was a man lying in the car on the other side of the open doors? A No, sir; I said I was on the ground at the side of the car, and saw one man only in the car.

Q Didn't I ask you if the car was full of smoke? A Yes.

Q And didn't I ask you if you went near enough to the car to see into the car, either to the right or left of the open doors, and didn't you tell me you didn't? A No, sir.

Q Did you get in the car? A No, sir.

Q Did you try to put the fire out? A No, sir.

Q Was the blaze flaming when you got there? A Yes, sir.

Q You are perfectly positive that you didn't tell me you were not near enough to the car to see whether this was the man who put out the flames? A No, sir.

Q You did tell me that the car was full of smoke? A Yes.

Q How near did you get to the open door on the other side of the car? A Two feet.

Q You were on the ground? A Yes, sir.

Q And did you get any nearer than two feet of it? A No.

Q The smoke was pretty thick in the car, was it? A Yes.

Q And where was the man who put it out? A He was standing up.

Q Which side of the open door, left or right, as you looked into the car was there anything to the left or right. As you looked into the right of the car, was there any flame to the

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left door, as you looked in? A No, sir, right in front of me.

Q Where did you take your position with respect to the door, in front or how near? A Two feet away.

Q And you were not any nearer to it? A No, sir.

Q Where do you live? A 314 West Thirty-fourth street.

Q Do you live in the neighborhood of Tenth avenue and Thirty-second street? A No, sir.

Q Do you know this defendant? A No, sir, never saw him.

Q Do you know Ralph Tassalo? A No.

Q Do you know Dunn? A No, sir.

Q Never saw any of those fellows before? A No, sir.

Q And how far do you live away from the neighborhood of Thirty-second street? A I live between Eighth and Ninth avenues.

Q How many blocks are you from the corner of Thirty-first street and Tenth avenue? A It is three blocks north, and one and a half east.

Q How long have you lived there? A Only there a month and a half.

Q Where did you live before that? A 460 East 183rd street.

Q You only live there one month and a half at your present address? A Yes, sir.

THE COURT: We will now take a recess.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure.)

Whereupon an adjournment was taken until 2:30 P.M.

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THE COURT: About how much of your case is there yet, Judge Palmieri?

MR. PALMIERI: I have another photograph of Eleventh avenue that I would like to get in evidence, a view of Eleventh avenue looking towards the east. I was unable to get on the place because the company put me off the steps because that was railroad property, but I have a view from the sidewalk.

THE COURT: We will wait for Mr. DeFord.

MR. PALMIERI: The defendant offers this photograph in evidence, a view of Eleventh avenue between Thirty-first street, looking over the yard towards Tenth avenue.

MR. DeFORD: I consent.

(Photograph above referred to was received in evidence and marked Defendant's Exhibit E.)

(Photograph, Exhibit E, was handed to the jury for inspection.)

J A M E S M c I N T Y R E , was called as a witness on behalf of the defendant, being first duly sworn, testified as follows
(I reside at 416 West 29th street, New York City.)

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. McIntyre, how old are you? A Twenty-two years old.

Q And what is your occupation? A Switchman.

Q Are you now employed? A Yes, sir.

Q Where? A By the New York Central.

Q And for how long a time have you been employed by the

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New York Central Railroad as a switchman? A For the last eleven months.

Q Now do you work as a switchman in any particular yard? Have you been working at any particular yard as a switchman?

A No, sir, only the New York Central.

Q On July 31st, where were you working as a switchman?

A At a shanty they call the "Puzzle".

Q And that shanty is on what yard -- there are several yards -- what particular yard? A Thirty-third street yard.

Q Is that the yard of the New York Central Railroad?

A Yes, sir.

Q Between Tenth and Eleventh avenues? A Yes, sir.

Q Is this Defendant's Exhibit E a representation of the yard, with the cars, etc.? A Yes, sir.

Q Now at what time did you go on duty that night, Mr. McIntyre? A Six-thirty.

Q In the evening or morning? A In the evening.

Q And who did you work for as switchman, with anybody?

A With a partner named Mr. Sullivan.

Q And did you occupy any particular shanty in that yard?

A No, sir, only the "Puzzle".

Q And where is that place? A It is one shanty from Tenth avenue.

Q Can you show it in the photograph? A Yes, sir.

Q Where is it, please. Just show it to the jury, so the jury can see what you show? (Witness points out on photo-

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graph, Defendant's Exhibit E.)

Q Now, Mr. McIntyre, between six-thirty and eight o'clock what was going on in that yard? A Well, there is a regular routine of work.

Q What is the regular routine of work that was going on between six-thirty and eight-thirty? A Shaking out cars and making up all the fast freight.

Q About how many engines were working, doing that? A There is always three engines working, doing that.

Q And were they working that night? A Yes, sir.

Q And you were attending to this part of your switching work? A Yes, sir.

Q And what part of the shanty were you and what part of the shanty was Mr. Sullivan? The shanty that you showed to this jury? A I was on the west side, - on the east side of the shanty.

Q And where was Mr. Sullivan? A Mr. Sullivan was on the west side of the shanty.

Q Who was nearer to the car -- I will withdraw that.

Q Did you see a burning car that night? A Yes, sir. What drew my attention to it was Mr. Sullivan.

Q Did you see a car after your attention was drawn to it? A Yes, sir.

Q Now with respect to the burning car, who was the nearest you or Sullivan? A Mr. Sullivan was.

Q You were on the other side of the shanty? A Yes, sir.

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Q Mr. Sullivan was nearest to the fire? A Yes, sir.

Q Now you cannot say what Sullivan told you but after Sullivan told you something where did you see Sullivan run to?

A He ran towards the fire.

Q Did you run, or did you have to remain? A I had to remain there.

Q You had to remain? A Yes, sir.

Q For how long did you have to attend some duties there as switchman? A I had to throw a switch there.

Q How long did that take? A No more than a minute.

Q Now after that minute, after you were through throwing the switch, did you run to where Sullivan had run? A Yes, sir.

Q Now at that time had you seen anybody? A Nobody only Sullivan.

Q You saw Sullivan at the car? A Yes, sir.

Q Did you get near to Sullivan at the car? A Yes, sir.

Q Just tell this jury what you saw as you got near Sullivan?

A As I got near the car there was the railroad detective, he had off his coat, beating out the fire. When he got it all done he started to step all over it and put it all out and we walked away.

Q What was burning in the car? A Hay.

Q How big was the pile of hay? A About that high (indicating).

Q How near the door was it? A The door was open and the other door closed.

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Q And how near the door which was open was the pile of hay?

A It was closer to the door that was closed.

Q Closer to the door that was closed, and away from the door that was open? A Yes, sir.

Q And how was that detective dressed? A He wore a big peaked cap and had a handkerchief around his collar.

Q Now I show you a coat. Does this coat look like the coat that the man had in his hand with which he was beating out the fire, the blaze? Look at it; was it a dark coat or a light coat? A It was a dark coat.

Q Was it a coat like that? A (after examining) I could not exactly swear whether it was like that or not, but it was a dark coat.

Q Did the detective ask you for any help or anything? A No.

Q What did you do after? A After he put out the fire.

Q What did you do? A Came right up to my shanty.

Q Now had you seen that man with the cap, and a handkerchief around his neck, before that? A Yes, sir.

Q On how many occasions? A I seen him two nights before.

Q What did you say that man did around the cars? A He inspects the cars, looks over the wheels.

Q Did you learn his name subsequently? A Yes, sir.

Q What is his name? A Devine.

Q Would you know the man if you saw him? A Yes, sir.

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Q Is this the man? A Yes, sir, but he was not dressed 210
that way.

Q Not dressed that way, that night? A No.

GROSS EXAMINATION BY MR. DeFORD:

Q How near did you get to the car? A How near?

Q Yes? A Right about a foot away from the car.

Q Did you get nearer to the car than the other man? A
Yes, sir.

Q Did you get in the car? A No.

Q Was the car full of smoke? A Yes, sir.

Q Was the hay burning? A The hay was burning.

Q And you say one door of the car was locked? A Yes.

Q There was one opening to the car on the side, you
stated? A Yes, sir.

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

Q Now where did you first see this detective? A Where
did I first see him?

Q Yes? A Going around the yard.

Q I mean when you first saw him that night? A In
the car.

Q Did you see him for the first time while he was in the
car? A Yes, sir.

Q In the act of beating out this hay? A Yes, sir.

Q Did he have his face turned to you? A Down like that
(indicating).

Q Did he have his face turned toward you? A No.

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Q You saw the side of his face? A Got a kind of a glimpse of the side of his face.

Q The car was full of smoke? A Yes, sir.

Q Did you get into the car to look to the right or left of the car, to see if there was a man in there? A No.

Q Do you know whether there was a man in there? A Not besides the one beating out the fire.

Q You don't know? A No.

Q Because you didn't look to see? A No.

Q How many times did you say you saw this man before Devine? A I seen him a couple of nights before that.

Q When did you first see him and what was you doing when you first saw him? A When I first saw him he was waiting for what they call a Fast Freight, to inspect it.

Q When was that? A A couple of nights before.

Q You saw him the night of the fire, Saturday, July 31st? A Yes, sir.

Q Then you say you saw him on the preceding Thursday, is that right now? A Yes, sir.

Q And at that time, what time and where did you see him? A Six-thirty when I reported for work.

Q What was he doing then? A Waiting around for this freight to come up.

Q And where was he sitting? A Right near up Tenth avenue.

Q On the railroad property or away from it? A On the railroad property.

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Q Near the office of the railroad? A Yes, sir.

Q Near an office of the railroad, or the headquarters of any of its employees? A The office is away down Eleventh avenue.

Q Standing on a platform or near a car? A No, sir, sitting by a sand pile there.

Q Was anybody with him? A Yes, sir.

Q Who was with him? A Some other man.

Q And you recognized him? A Yes, sir.

Q Who is he? A Some big tall man.

Q Is he here? Have you seen him around here today? A Yes, sir, he was here today.

MR. DeFORD: Any of the New York Central employees in the Court room? Please stand up.

Q There he is (indicating a gentleman standing in the court room) Is that the man? A Yes, sir.

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

MR. DeFORD: Secor is his name.

Q Is this Secor the one you saw on the Thursday before that at 6:30 o'clock sitting on a sandpile? A Yes, sir.

Q You didn't see this man until you looked in the car, as you have testified? A Yes, sir.

Q Did you stand looking at him for any length of time? A I was not there over a minute.

Q How long were you looking at him? A Just seen him putting out the fire.

Q You got a side look at his face? A Yes, sir.

Q And the car was full of smoke? A Yes, sir.

Q And you went away? A Yes, sir.

Q And you say it was the man you saw two days before?

A Yes, sir.

Q Who first told it to you? A If anybody came up to the yard?

Q Did you tell anybody about this since the arrest? A No, sir.

Q Were you subpoenaed here? A Sir?

Q Were you subpoenaed here; did you get a subpoena, a paper telling you to come down here? A Yes, sir.

Q When did you get it? A I got it Saturday.

Q Where do you live? A 416 West Twenty-ninth street.

Q 416 West Twenty-ninth street? A Yes, sir.

Q How far do you live from the corner of Thirty-first street and Tenth avenue? A Two blocks away.

Q Did you ever see this man with these men? A Yes.
the (referring to Mr. Jones)

Q Was he at the sandpile at same time? A No, sir.

Q He was not there? A No, sir.

Q How far do you say you live from the corner of Thirty-first street and Tenth avenue? A Two blocks away.

Q How long have you lived there? A For the last ten years.

Q Do you know any of these defendants' friends? A No.

Q Ever see Raffo before? A No, sir.

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Q Ever see Ralph before? A No, sir.

Q Ever see Dunn before? A No, sir.

Q Did you associate with any of the boys in that neighborhood at all? A No, sir?

Q Do you know where that saloon is on the corner of Thirty-first street and Tenth avenue? A The saloon at Thirty-first street and Tenth avenue?

Q Yes? A Yes, sir.

Q Ever been there? A No.

Q Ever been in the neighborhood of that saloon? A No, sir.

Q You don't know any of those people? A No, sir.

Q Do you know Owney Madden? A No, sir.

Q Do you belong to his club? A No, sir.

Q Did you ever hear of Owney Madden in that neighborhood?

A No, sir.

MR. DeFORD: That is all.

REDIRECT EXAMINATION BY MR. BALMIERI:

Q Will you indicate on this photograph where was this burning car, Mr. McIntyre? (Witness indicates and shows same to jury).

Q Is that next to the dirt car? A It is right away, that space is.

Q The next space to the dirt car? A Between the two cars - there is space there.

RECROSS EXAMINATION BY MR. DeFORD:

Q Now, McIntyre, will you describe the appearance of this

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man, will you describe the sort of clothes the man had on? A He had like a dark suit and a peak cap, and he had a handkerchief around his neck.

Q Anything else that appealed to you? A No, sir.

Q Have you ever talked this over with any of these other men? A That work in the yard?

Q Yes? A I told the men in the yard what I seen.

Q Have you ever talked it over with Sullivan, who preceded you on the stand? A Yes, sir; he is my partner.

Q When did you tell Sullivan? A That same night.

Q Have you ever talked over with Sullivan what you would testify to here? A No, sir.

Q You told Sullivan you had been subpoenaed? A Yes, sir.

Q And did you tell him what you were going to testify to?

A No, sir.

Q Did he ask you? A No.

Q Did you talk about the testimony at all? A No, sir.

Q Did you ever tell Sullivan who this man was that you saw in this car? A No, sir.

Q Never told Sullivan about it? A No, sir.

Q Why didn't you? A Because I didn't.

Q Why? A Because I didn't tell him; I didn't speak anything about the man at all.

Q You have talked with Sullivan since you were subpoenaed?

A Yes, sir.

Q And you came down with him? A No, sir.

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Q Where did you see him after you were subpoenaed, to talk to? A Met him down in the corridor - downstairs.

Q Have you ever told Sullivan who the man was that you saw there that night? A No, sir.

Q Did you ever tell anybody until you came here? A No.

Q Did you tell Mr. Palmieri; did you talk this case over with him? A I told Mr. Palmieri.

Q When did you see him for the first time? A Down in the corridor.

Q When? A This morning.

Q Now had you told him before that? A No, sir.

Q Not a word to him? A No, sir.

BY MR. PALMIERI:

Q Now, Mr. Sullivan, you said that very night you talked about what you had seen in that very office and you talked about it ever since, you made no secret of what you had seen? A No, sir.

Q You talked to how many people you had seen? A All the fellow workers there, I told them.

Q You told all the people that work there? A Yes, sir.

Q Now how many feet was the burning car from your shanty? A Just about a hundred feet or so.

Q How much further away were Cronin and Bradley from that burning car? I mean from the shanty, your place? A Mr. Cronin's shanty is right over there (indicating); it is right over, about seventy-five feet from where the car was on fire.

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Q Did you see Cronin and Bradley after you had been at the car? A After I came back to my shanty I saw them.

Q You saw Cronin and Bradley go into the car? A Yes.

Q And that is all you know about this case? A Yes, sir.

Q You have no interest in this one way or the other? A No, sir.

Q See the fire out when you left? A Yes, sir.

Q You saw this man there you say putting it out? A Yes.

Q With his coat; then when he got it all out he started to step on the sparks.

BY MR. DeFORD:

Q Was he in the car when you left? A Yes, sir, just stepping on the sparks.

Q And anybody else there at the time? A No.

Q Except you and your friend? A Walked right away.

Q Did anybody come there while you were there? A No.

Q Was his coat off or on? A Off.

Q Using it to beat out the flames? A Beat out the fire.

MR. DeFORD: That is all.

BY MR. PALMIERI:

Q How was that afire? Can you describe it? Was there a large flame or a small flame? A Just like an up flame; just like enough to light the car.

Q The car was not full of flames? A No.

It only showed out like through the open door; that is all.

MR. PALMIERI: I guess that is all.

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MR. DeFORD: Have you any more witnesses?

MR. PALMIERI: I would like to hear from Mr. Hogan if he is here.

MR. DeFORD: Call him.

MR. PALMIERI: I cannot. If you will agree to have him as the Court's witness, I will agree to have him, because Hogan is a complainant with the other men.

MR. DeFORD: I have nothing to prove by Hogan.

MR. PALMIERI: The complainant has testified here that Hogan said --

THE COURT: Hogan is not a witness in this case, unless he is called by one side or the other.

MR. DeFORD: Mr. Hogan is here, if you want to call him.

MR. PALMIERI: Call him as your witness.

MR. DeFORD: Mr. Hogan, take the stand.

PETER THOMAS HOGAN, was called as a witness in

rebuttal, and having been duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. DeFORD:

Q Mr. Hogan, were you a detective in the service of the New York Central on the 31st of July last? A I was.

Q Do you know Devine? A I do now.

Q When did you first become acquainted with Devine? A On the first of August when I went to his home.

Q Were you in the New York Central Yards at any time between seven and nine o'clock P. M., on the evening of July 31st?

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A Yes, sir, I was.

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Q And did you see Devine there then? A I was there then.

Q Between seven and nine o'clock? A P. M.?

Q Yes? A No, not P. M.

Q Did you see this burning car at all that night? A I did not.

Q Do you know anything about what transpired in the yard between seven and nine? A No, I do not.

MR. DeFORD: You may cross examine.

MR. PALMIERI: What is there to cross examine him for?

MR. DeFORD: I am giving you the chance.

THE COURT: Do you want to ask him any questions, Mr. Palmieri.

MR. PALMIERI: No.

THE COURT: You may step down, Mr. Witness.

H A R R Y L . J O N E S , was called as a witness in rebuttal, and being first duly sworn, testified as follows:
(I reside at 373 Eighth avenue, New York City.-)

DIRECT EXAMINATION BY MR. DeFORD:

Q What was your employment on the 31st of July, 1915?

A A New York Central Railroad Detective.

Q Talk so that the last juryman can hear you. How long have you been in the employ of that railroad, in that capacity?

A About twenty-three years.

Q Were you in the yard of the New York Central Railroad Company between 10th and 11th avenues, near Thirty-second street,

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on the evening of July 31st, 1915? A Yes, sir.

Q Well, did you see this burning car that evening? A No, sir.

Q Did you go near the car that evening? A I think I did later on, after it was put out.

Q Well, now, do you know the defendant there? A Yes, sir.

Q How long have you known him? A A couple of months, I should judge.

Q And how many times have you seen him during the course of that couple of months? A I seen him quite often.

Q Where have you seen him? A Around the entrance to the yards.

Q What was he doing? A Well, they loaf around there, quite a bunch of young fellows, who make that a loafing place.

MR. PALMIERI: I object to the testimony "quite a bunch of young fellows who make that a loafing place", and I move to strike that out.

THE COURT: You may strike it out.

Q Had you seen him at the place you describe in company with other young men? A Yes, sir.

Q How many would you see him with; how many have you seen him with at different times? A Well, four or five, as a rule, would be the limit.

Q Do you know the names of any of them? A Yes, sir.

Q Who are they? A I have seen him with Mr. Ralph and Mr. Dunn.

Q Anybody else? A No, I have not.

Q Did you see the defendant at Thirty-first street, July last?

A Yes, sir.

Q State what time you saw him? A I judge it was seven o'clock in the evening.

Q Where were you then? A I was near Thirtieth and Eleven avenue.

Q Were you with anybody, or alone. A Mr. Myers.

Q Where was the defendant then? A The defendant was walking down Eleventh avenue.

MR. PALMIERI: Is this testimony competent.
Should not this testimony have been offered here in-Chief.

MR. DeFORD: No, it is rebuttal.

MR. PALMIERI: I don't think it is proper rebuttal and I object to it as not proper rebuttal and as incompetent.

MR. DeFORD: It is rebuttal because the defendant swore he hadn't been near the yard.

THE COURT: I will allow it.

MR. PALMIERI: Exception.

Q Did you see him there as you described? A Yes, sir.

Q Where did he go? A Walked south on Eleventh avenue to Thirtieth street and turned east.

Q Is that the last you saw of him then? A No.

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

Q Where did you next see him? A About ten o'clock -

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this fire was called to my attention by --

THE COURT: No.

Q Where did you next see him? A At 31st street and 10th avenue, at 10:30.

Q Who with then? A About five or six young men in the crowd, Mr. McArdle was one of them; I don't know the others.

Q Was there a girl there? A No, sir.

Q Did you see him with these other men? A Yes, sir.

Q Was he talking to them? A Yes, sir.

Q You didn't see any girl at all? A No.

Q Could you have seen the girl if there had been one there? A I certainly could.

Q How near did you get up to him? A I walked right by him, almost brushed by him.

Q What were those men doing? A There is a saloon on the corner. They were sitting in front of the saloon on a small curbstone, sort of like what they have there.

MR. DeFORD: You may examine.

CROSS EXAMINATION BY MR. PALMIERI:

Q Did you speak to him at 10 o'clock? A No, sir.

Q Did you speak to him at seven o'clock? A No, sir.

Q Did you have any conversation with him at all? A No.

Q When you say you saw him on Eleventh avenue, where were you? A I was right near Thirtieth street on Eleventh avenue; there is a little office there.

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Q Now I show you defendant's exhibit E, that is a view of 11th avenue from the sidewalk on the opposite side of the street, looking at the yard, is it not? A It is a view of Eleventh avenue; I don't know which side.

Q Can't you say where the yard is? A I see the yard, yes, sir.

Q Can't you see, you are acquainted with the place?
A Yes, sir.

Q I take it that you are acquainted with the office there? A Yes, sir.

Q On the opposite side of the street? A Yes, sir.

Q There is an office of some kind? A yes, sir.

Q Naumes & Bryce, they are on the other side of the street? Don't you see their place? A Yes, sir.

Q On the other side of the street? A Yes, sir.

Q This side (indicating) is the sidewalk on what the delivery office is? A Yes, sir.

Q Isn't it? A Yes, sir; that is right.

Q Looking towards Tenth avenue? A That is not looking towards Tenth avenue way. It looks towards the, it is then down Eleventh avenue, you could look toward Tenth and Eleventh avenues both.

Q Now you were on what sidewalk? A I was right across from this place here (indicating) directly across.

Q Oh, you were right on the other side of the street?
A Yes, sir.

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Q Was the defendant walking right by you? A No, he didn't.

Q Why, Myers said that he saw this defendant on the sidewalk across the street; did you hear that testimony?

MR. DeFORD: Objected to.

THE COURT: Sustained.

Q Was this defendant on the sidewalk? A He was.

Q And was he walking? A He was.

Q Well, then he passed by you, did he? A Yes, sir.

Q Was he in the company of anybody? A No, sir.

Q And when he got to Thirty-first street, where did he go?

A He was going towards Thirtieth street.

Q On the sidewalk? A Yes, sir.

Q Not on the railroad property? A No, sir.

Q Now, about how long did you stay there? A I was only there about ten minutes after the boys.

Q Now, about ten minutes; how ^{many} people passed you in that time? A Well, maybe half a dozen.

Q Do you know their names? What did they look like?

A That would be only a rough estimate.

Q You only know this defendant was one of the ten men that passed? A He was one of the men that passed.

Q Well, did you follow him? A No, sir.

Q Did he do anything that attracted your attention, your suspicion in any way? A No, sir.

Q Then you say you saw him again after this occurrence?

A Yes, sir.

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Q Well, would not the fact that you saw him at seven o'clock, the burning of the car and other things, cause you to go near him and talk to him? A Yes, sir.

Q And you didn't talk to him? A I really wanted to arrest him.

Q But you didn't? A I didn't have sufficient evidence because I hadn't talked to Mr. Devine yet.

Q I see. So you went to Devine the following morning? A No, sir; I didn't see Devine until next Monday; I was off the following day.

Q You didn't see Devine? A No, sir.

Q But didn't Devine describe the man to you? A No, sir, I didn't see Devine from seven o'clock no more until the following day

Q Well, you heard about the burning of this car? A Yes, sir.

Q Didn't you? A Yes, sir.

Q And you knew that this defendant had served a time in prison, didn't you? A No, not then I didn't.

Q When did you learn it? I learned it after he was arrested.

Q You said you knew the defendant very well? A I knew him as a man.

Q I didn't ask how you knew him. I thought you knew him as one who had been convicted of crime? A I didn't say that.

Q But you wanted to arrest him at ten o'clock? A Ten-thirty.

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Q Although you did not know he was the fellow who did it or not? A Mr. Secor came back from the Hospital and gave a very minute description of him, and I readily could think it out in my mind. I would not take the chance of going over and making the arrest. I called to my Captain and he said: "Let it go until tomorrow."

Q Were you not afraid he might get away by the following morning? A No, sir; not as long as I was obeying orders.

Q But you took a chance on his staying there; is that right? A It did not make any difference to me whether he stayed or went.

Q But you had a pretty good idea he was the man? A I thought he was the man?

Q Did you go immediately to the station house right near there and tell any public officer? A I sent a man immediately to the Thirty-second street station house, to call the Second Branch Detective Bureau.

Q I ask you whether you did? A I didn't.

Q Well did you get an officer to go along with you to arrest him? A I didn't arrest him.

Q It seems your orders were to wait for another day? A My orders didn't affect it at all. I simply imagined he was the man; I figured it to myself; I knew I had seen him there; I figured the class of man he was.

Q And you figured he was the fellow? A Yes, sir.

MR. PALMIERI: That is all.

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JOHN F. DEVINE (recalled) testified further as follows:

DIRECT EXAMINATION BY MR. DeFORD:

Q Mr. Devine, I want to ask you when your coat was taken off that evening? A When was it taken off?

Q Yes, sir? Oh, I don't quite remember; I had it on it when I was in the hospital; I don't know whether I had/on at Eleventh Avenue or not.

Q Did you have that coat off of you at any time during the time you were in the car? A No, I don't believe I did.

Q Would you know if you did? A I would.

Q Was your coat on you when you first began to recover your entire senses and poise, was this coat on you? A Yes, sir.

Q And was it in the condition that it practically is now? A I had on a white shirt and not a mark on it.

BY THE COURT:

Q Did you take off your own coat inside of the car while, as you say, you were engaged in fighting with two other men? A I could not very well while I was fighting them.

BY MR. DeFORD:

Q Your coat was not off of you while you were in that car? A No, sir.

Q Did you ever use your coat for the purpose of putting out the flames in that car? A No, sir.

Q Did you fight any flames in that car yourself at all? A No.

Q Why didn't you? A Why I couldn't.

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Q Why? A Because I could not; my legs were gone on 228
me.

Q Now, when you were left, after you were assaulted in the
the manner you have described, what part of the car did you fall
in? A Right where I was, inclined up right near the door; my
head facing east.

Q Your head was facing east? A Yes, sir.

Q Were both doors of the car open that night, or only one,
the front door --

MR. PALMIERI: Pardon me. Were both doors open. Now
you want to bring him back ^{up} to correct himself.

MR. DeFORD: That is not the truth. I want to find out
the truth in this thing.

MR. PALMIERI. This witness stated when this case began
last week --

MR. DeFORD: What is the objection to the question?

MR. PALMIERI: If you will only let me address his Honor,
to which I have the right. This witness stated that both
doors of this burning car were open at the time of the alleged
assault upon him. Now, the District Attorney brings him
back to ask him whether both doors of the car were open or
only one door. I insist that this witness has already given
testimony upon this proposition, which is in direct conflict
with other testimony in this case.

MR. DeFORD: He may want to correct it if it is wrong.

THE COURT: He has the right to correct it.

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Q Now, I want you to tell this jury whether both doors of the car were open or only one of them? A One door was open all the way; the other door they went out was open that much (indicating).

Q Both doors were open? A Both doors were open.

BY MR. PALMIERI:

Q Mr. Devine, you had this defendant indicted for arson in the first degree?

MR. DeFORD: I object to that.

Q You were the principal witness against this defendant?

MR. DeFORD: He was a witness for the People.

MR. PALMIERI: I want to show that --

MR. DeFORD: I don't think that tends to discredit him at all.

MR. PALMIERI: May it please your Honor, besides in this indictment for assault, he caused the indictment for arson in the first degree, and he was the principal witness against my client before the Grand Jury.

MR. DeFORD: He is distorting the facts and making mistatements, and Mr. Palmieri knows that. The complaining witnesses in a case have nothing to do with the indictments, and nobody knows that better than Mr. Palmieri himself, because he has had experiences with Grand Juries himself. He knows the complaining witness has absolutely nothing to do with the testimony before the Grand Jury, and that statement is made to induce an improper effect. Now, I object to the question.

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THE COURT: That question is objectionable. The objection is sustained.

MR. PALMIERI: Exception.

Q Mr. Devine, will you kindly tell me upon what occasion you gave your photograph to the newspapers of New York?

MR. DeFORD: Objected to as repetition.

MR. PALMIERI: I want to show, may it please your Honor, the desire for publicity on the part of this officer, whoever he is, or whatever he is, on the first of January, 1915, --

THE COURT: I won't allow it.

MR. PALMIERI: Exception.

THE COURT: Gentlemen of the jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, form or express no opinion thereon, until the same is submitted to you.

The Court stands adjourned until tomorrow morning at half past ten o'clock.

Whereupon at 3:15 P. M., an adjournment was taken.

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New York, September 14, 1915.

T R I A L R E S U M E D .

Appearances as before.

MR. DeFORD: I would like to recall a witness.

MR. PALMIERI: I thought we had rested. Of course I have no objection to his reopening the case. I suppose it may be done if your Honor desires.

R A L P H T U S S A L O , (recalled)

THE COURT: There being no objection, I will permit the witness to testify.

MR. PALMIERI: When will you rest? (addressing Mr. DeFord)

(No answer)

MR. PALMIERI: Is this rebuttal?

THE COURT: Wait until I hear the question.

DIRECT EXAMINATION BY MR. DeFORD:

Q I will ask you is it not a fact that yesterday at noon Ralph, you, McArdle, Sullivan, McIntyre and Dunn^{were} not taking luncheon together in the restaurant over there (indicating across the street)? A No, sir.

MR. PALMIERI: I object to that as incompetent, irrelevant and immaterial, and for the purpose of prejudicing this defendant.

THE COURT: Were any of the other persons witnesses?

MR. DeFORD: The persons whose names I refer to were

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all witnesses in the case with the exception of McArdle and he was referred to by one of the witnesses in the case, as "the boy who was with him on the corner up to the time May Murphy stopped."

Yesterday I think I asked Dunn, I am not sure, that I asked Dunn - I asked McIntyre if he knew any of these people and I am trying to find out just what the relations are between them.

MR. PALMIERI: If that is the purpose of the District Attorney I object to it as incompetent. The ground was fully covered yesterday.

MR. DeFORD: This is for the purpose of showing the relations of these people to each other. This witness Ralph and Dunn were witnesses for the defendant, as also were Sullivan and McIntyre.

THE COURT: I will let him answer.

MR. PALMIERI: Exception.

Q Were you there yesterday? A No, sir.

Q Were you in that restaurant at all for lunch yesterday?

A No, sir.

Q You were not there? A No, sir.

Q You didn't sit at the same table with any of these other men? A No, sir.

Q Did you take lunch with any of those other men? A No.

MR. DeFORD: That is all.

I want to call Dunn.

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JOHN DUNN (recalled)

MR. PALMIERI: I object to any communication being made to the District Attorney by an assistant in the presence of the jury. I thought I just overheard him asking his assistant as to the location of Center and White streets. I don't think that is fair. If you are trying to create an atmosphere you ought to do it by legal evidence and through witnesses upon the stand.

MR. DeFORD: I was asking this assistant if that corner I just described was Center and White streets. A perfectly innocuous and harmless question. I don't know how the streets run around here though I know their location.

Q Did you take luncheon in the same room with this witness who just preceded you on the stand, McArdle, Sullivan or McIntyre?

A No, sir.

MR. PALMIERI: One moment. I want to put in my objection. My objection is that this is entirely improper.

THE COURT: Do you object to his answer, "No, sir."?

MR. PALMIERI: No, I don't. I knew what the answer was going to be. I am here to protect my client's interests, and I desire to take an exception.

THE COURT: I will strike out the answer.

DIRECT EXAMINATION BY MR. DeFORD:

Q Now, I will ask you if you were in a luncheon room at the north-east corner of Center and White Streets for your luncheon yesterday? A No, sir.

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Q You were not there at all? A No, sir.

Q Did you see the witness, Ralph, who preceded you on the stand, or Sullivan or McIntyre at luncheon yesterday? A No, sir.

Q You were not together during lunch hour yesterday? A No, sir.

Q Or during the interval of adjournment until our re-assembling? A No, sir.

Q You did not see them? A No, sir.

Q Perfectly positive of that? A Yes, sir.

Q You were not at the same table with them, or any of them?

A No, sir.

MR. PALMIERI: Remain here Dunn.

MR. DeFORD: And Sullivan and McIntyre.

MR. PALMIERI: Now, if you had wanted you could have asked Sullivan and McIntyre while they were on the stand, and gotten it from them. I object to Mr. DeFord calling out the names when he could have interrogated them.

MR. DeFORD: I did not get the information on which I based my examination until just before the Court convened.

MR. PALMIERI: If you wanted you could have put Sullivan and McIntyre on the stand.

MR. DeFORD: I know how to get my information, and I do not need any information from you.

MR. PALMIERI: You certainly do by the way you are acting.

THE COURT: You will recall that I said at an early stage of the trial that I should want to see you both at the close

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of the case.

MR. DeFORD: That is all, your Honor.

THE COURT: Proceed with your case.

MR. PALMIERI: Has he rested now?

MR. DeFORD: I have.

MR. PALMIERI: I thought he was going to prove a gigantic --

THE COURT: Proceed with your case.

MR. PALMIERI: I would like to have that arson indictment, Mr. Penney. I wish to offer it in evidence.

May it please your Honor, I wish to offer in evidence an indictment for arson, secured against this defendant upon the testimony, as it appears on the back of this indictment, of the same complainant here in the assault case, John F. Devine, and I wish to offer it in evidence, showing that the same data on which the indictment for assault was found is also the same data on which the indictment for arson was found. The object of this is --

THE COURT: I will receive it. You need not argue it, as bearing on the bias or otherwise of the complainant.

(Received in evidence and marked Defendant's Exhibit "F")

THE COURT: Now, is that the case on both sides?

MR. PALMIERI: One moment, Judge. The District Attorney has asked your Honor to permit him to prove a certain fact in this case. He has called two witnesses and he has not proven that fact. I ask the District Attorney now, and I ask

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your Honor to give the District Attorney whatever time he wishes to prove that Mr. Dunn and the other witness, Ralph, did have luncheon yesterday with this party.

THE COURT: I should not receive the evidence.

MR. DeFORD: I am prepared --

THE COURT: I should not receive the evidence.

MR. PALMIERI: I made that offer --

THE COURT: I told you that I would not receive the evidence. Counsel (addressing both Counsel) sum up your case if you intend to do it.

MR. PALMIERI: Do you think this case ought to be summed up? I ask, your Honor, most respectfully do you think this case ought to be summed up at all? I am willing to leave this case entirely upon your Honor's charge.

MR. DeFORD: You may sum up.

THE COURT: Do you wish to sum up, Mr. Palmieri?

MR. PALMIERI: I am willing to leave this to the Judge's charge.

MR. DeFORD: You may sum up.

THE COURT: I will regard Mr. Palmieri as having declined to sum up. Mr. DeFord will either proceed or you will. You will either sum up at once or Mr. DeFord will.

MR. PALMIERI: All right.

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As all the exhibits are on thattable, may I be permitted to use it?

THE COURT: You may.

MR. PALMIERI: May I know what time your Honor will adjourn? I want to sum up in as short a time as is agreeable to the Court. I do not want to take up too much time, but I would also like Mr. DeFord to sum up today.

THE COURT: He will sum up as soon as you get through.

MR. PALMIERI: I would like to have the knife which was one of the exhibits in the case.

THE COURT: You are entitled to it, Mr. Palmieri, or you may proceed without it.

MR. PALMIERI: That exhibit is a very important one. I consider it very important in this case.

THE COURT: That does not answer the question.

MR. PALMIERI: I will try to sum up without it.

THE COURT: Proceed.

MR. PALMIERI: I ask Mr. Devine, and I will stake my entire case on this very evidence, did you hear Hogan say to the District Attorney that he saw this defendant and heard this defendant say he carried a 38 calibre pistol. This defendant said he did, and he was going to kill a railroad bull. He said "I heard him say that in the Magistrate's Court."

WITNESS DEVINE: I don't remember.

MR. PALMIERI: I ask if it is in the record?

(Mr. Palmieri then summed up)

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Mr. DeFord summed up. During his summing up, Mr. Palmieri objected as follows:

The District Attorney, Mr. DeFord, has said that the defendant is a gangster and is a member of a gang. Mr. Jones and Mr. Ralph Tussalo have also been referred to by the prosecutor as gangsters and members of a gang. I ask your Honor to instruct the jury at this time and also warn the District Attorney that there is no such evidence that the defendant or any of his witnesses is a member of any gang, and I desire to ask your Honor to instruct this jury at this time as to that.

MR. DeFORD: I say this is a presumptive fact predicated on what the witnesses say they saw happen three times.

MR. PALMIERI: There is no proof that my client belonged to any gang, was a member of any gang, was ever a gangster.

THE COURT: It is an inference which the Assistant District Attorney seeks to draw from the evidence in the case, and the jury will understand that it is stated by the Assistant District Attorney as an inference rather than a statement by him that there is such direct evidence in the case.

MR. PALMIERI: Then I take it your Honor instructs the jury that there is no direct evidence in this case that my client is a member of any gang.

THE COURT: I do not think there is any direct evidence in this case that the defendant is or was at any time a member of a gang. It is an inference that is sought to be drawn from the testimony in this case.

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MR. PALMIERI: Thank you.

THE COURT: Gentlemen, in view of the hour I shall not charge you this afternoon.

You are admonished not to converse amongst yourselves on any subject connected with this trial, form or express no opinion thereon until the case is submitted to you.

You are excused until tomorrow at half past ten.

Whereupon the court adjourned.

New York, September 15, 1915.

Trial Resumed.

MR. PALMIERI: May I now have the pleasure of addressing the Court in this case?

MR. DeFORD: Just a moment. I would like to know the purport of this address?

THE COURT: You may come around here and speak to me privately.

(Whereupon Counsel did so)

The Court then charged the jury.

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MR. PALMIERI: I ask the Court to state to the jury that if they desire the exhibits they have a right to demand them.

THE COURT: The rule of law is that it is dependent upon the consent of both sides.

MR. PALMIERI: I consent.

MR. DeFORD: I have no objection if the jury at any time desire the exhibits in the case.

THE COURT: There being consent on both sides if you, gentlemen of the jury, desire the exhibits in the case you may have them, or any that you desire.

The jury retired at 11:35

At 12:35 the jury returned into the court room.

The Clerk of the Court called the names of the jurors, to which each responded.

THE COURT: I understand, Mr. Foreman, you desire to make a request on behalf of the jury that a certain part of the stenographer's minutes be read. Is that so?

THE FOREMAN OF THE JURY: Yes, your Honor.

THE COURT: You will indicate that part which you desire to have read and I will have it read by the stenographer.

THE FOREMAN OF THE JURY: On the second identification how far was Devine away?

THE COURT: You want a portion of the testimony of Devine read?

THE FOREMAN OF THE JURY: Yes, your Honor.

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THE COURT: You want that part read which relates to the distance that Devine claims to have been away from the defendant at the time when Devine claims that he was running after the defendant on the second occasion; is that so?

THE FOREMAN OF THE JURY: Yes, your Honor.

THE COURT (addressing the stenographer) You will now turn to the testimony of the witness Devine, and to that part of it where he purports to state, if he does, the distance, or about the distance, that he was away on the second occasion when, as he said, he pursued this defendant. When you find it, kindly read that to the jury.

(The stenographer, after looking through his notes, informed the Court that a portion of the testimony, which might have the reference required by the jury, had been taken by a previous stenographer, who was been taken ill, but that during the recess hour, the same could be procured).

THE COURT: We will adjourn now, and the stenographer will procure the portion of the testimony requested by the Foreman of the Jury.

Whereupon, the jury again retired.

AFTER RECESS.

2:30 P.M.

THE COURT: Mr. Foreman and gentlemen of the jury, I regret more than I can tell you the trouble to which you have

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been subjected to in this case, which seemingly has been unavoidable. I have only within the last five minutes received from the stenographer a copy of the minutes, as taken, in so far as they were transcribed in long hand.

I am in a position to say to you that on the direct examination of the complaining witness he did not mention at any time the distance that the defendant is said by him to have been away from the complaining witness at the time when the complaining witness says that he was pursuing the defendant upon the occasion when he says that the defendant ran and entered into a box car. I find that ^{on} the cross-examination of the complaining witness by Mr. Palmieri, he did make certain answers bearing on the matter. During that cross-examination a question was put by myself to the complaining witness and in response to that question, he made an answer bearing upon the question which you asked, and he made two answers in response to questions put to him by Judge Palmieri. That is all so far as I have been able to learn that the complaining witness said upon the particular subject of your inquiry at any time during the trial and those questions and those answers will now be read to you by the stenographer from the official minutes.

(The stenographer read from the official minutes as directed by the Court)

The jury again retired, at 2:35 P. M. At 3:15 P.M. the jury returned into the court room, the Foreman announcing

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they had found the defendant guilty as charged in the indictment.

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MR. PALMIERI: During the progress of the trial I omitted to ask your Honor to advise the jury to acquit at the close of the People's case, and also at the close of the entire case. May I ask your Honor to consider that those motions have been made and denied, and exceptions taken?

THE COURT: I regard it as a mere inadvertence, and I think it would be unjust not to regard you as having made the motions. I shall consider you made the motions, that I denied them and you took exceptions. I will put you in the same position as if you had made your motions, that they had been denied and you had your exceptions.

MR. PALMIERI: I move to set aside the verdict upon the grounds that the verdict is against the evidence and against the law.

THE COURT: I will deny the motion. You have an exception.

Now, I will remand the defendant for a week for sentence. Remanded until the 22nd of September. The proper probation officer will investigate.

Peter P. McLoughlin,
Official Stenographer.

*Motion for
new trial
granted*

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