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COURT OF GENERAL SESSIONS OF THE JUDGE,  
City and County of New York.

-----X  
THE PEOPLE

-against-

RICHARD MOORE  
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#10

Indictment filed December 17th, 1907.

Indicted for Murder in the First Degree.

A P P E A R A N C E S:

For the People, Assistant District Attorney Ely.

For the Defendant, Carl Fischer Hansen, Esq.,

Tried before Hon. Thomas C. O'Sullivan, Judge,  
and a Jury on the 23rd day of January, 1908, etc.

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January 23rd, 1908.

A Jury was duly empanelled and sworn.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment to January 24th, 1908.

January 24th, 1908.

Hon. Otto A. Rosalsky, presiding.

Gentlemen of the Jury, on account of the condition of the weather, Judge O'Sullivan is obliged to remain at home by the advice of his physician. I will therefore adjourn this case until Monday morning at 10:30 A. M. Do not talk among yourselves about this case nor permit any person to talk with you about it nor form or express any opinion regarding the guilt or innocence of the defendant until the case is finally submitted to you. There is no objection to the adjournment?

MR. HANSEN: No, none at all.

An adjournment is therefore taken to Monday morning, January 27th, 1908.

January 27th, 1908.

TRIAL RESUMED.

MR. RYAN'S OPENING ADDRESS TO THE JURY IN BEHALF OF THE PEOPLE:

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If your Honor please, and gentlemen of the jury:

This is one of the most serious cases known to the law. The Grand Jury of the County of New York have indicted this defendant Richard Moore with the crime of murder in the first degree, in that, as is alleged, on the 7th day of September, 1907, in the City and County of New York, at or in front of premises 412 West 39th Street, this defendant with premeditation, deliberation, and without justification, shot two shots at one Isaiah Rhett, one of which shots took effect in the abdomen of the said Isaiah Rhett, and the Isaiah Rhett died in the City and County of New York in Roosevelt Hospital about the 28th of September, 1907, as the direct result of the felonious shooting on the part of this defendant.

Before the People are entitled to ask for a verdict of guilty of murder in the first degree at your hands, they must prove three facts to your satisfaction beyond a reasonable doubt. The first is that Isaiah Rhett is dead. The second is that Isaiah Rhett came to his death at the hands of this defendant, and the third is that Isaiah Rhett suffering from injuries which resulted in his death, died from those injuries which were premeditatively and without justification inflicted upon him by this defendant.

When the People prove those facts to your satisfaction and beyond a reasonable doubt then you are bound under your oaths to find a verdict of murder in the first degree.

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In a case of this kind, where the crime charged is murder in the first degree, it is not incumbent upon the People to prove a motive. The motive may be collected from the act itself. Thus, if I draw a pistol and aim it at one of you, without justification, and I discharge it, and I aim at a point that is known to be a vital point, the law presumes the intent at least to do you grievous bodily harm, if I do not intend to kill you, and if I shoot again at you, that presumption is increased. All that is necessary in order to enable the jury to bring in a verdict of murder in the first degree is for them to decide that the design was formed before the act was performed. The human mind acts with such celerity that it is impossible to measure it; no appreciable time is necessary to elapse between the formation of the design and its execution. It may be almost instantaneous. All that is necessary is that the design shall be formed before the act is carried out. Just consider what the act consists of -- drawing a pistol, pointing the pistol, pulling the trigger, and if you shoot again in the same direction, at the same person, without justification, how can you get away from premeditation in that instance?

And, further, in this case, although we have the act itself, from which you can gather premeditation, still there is another reason and incentive for the act on the part of the defendant. It was jealousy -- jealousy on the part of

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this defendant because the woman whom he had been keeping company with for some time and whom he had frequently offered to marry, had left him owing to an assault he had made upon her, and had gone away to New York and there had met this deceased. When I say she had gone away to New York and met the deceased, I do not mean to say that she met him in New York for the first time, for that is not the fact, but the deceased was in company or constructively in the company with this woman, whom this defendant was jealous of, at the time that this defendant ruthlessly, premeditatively and without any justification at all, shot down Isaiah Rhett in the street like a dog.

The facts of the case are very simple indeed, and I shall not go into them to any great extent. I shall simply touch upon them.

From about 1899 up to the present time, this defendant Richard Moore was acquainted with a woman by the name of Frances Bridget, otherwise known as Frances Morris. From practically the time when the defendant first made her acquaintance, he was desirous of, and did to a certain extent keep company with this woman, Frances Bridget, otherwise known as Frances Morris. He never was a person whom the Bridget or Morris woman cared for. She spurned him almost continuously during these years. She had but little to do with him and as matter of fact she always has been a perfect

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ly hardworking colored woman engaged in respectable employment, whose life has been as far as the People have been able to ascertain a perfectly proper life, especially for a woman of her color and in her condition.

For a period of eight years, that is from 1899 down to the present time, as I say, this defendant was constantly endeavoring to get into her company and keep company with her. She repulsed him from time to time and eventually she went off and took a position and refused to give him her address. The defendant finally discovered her address and this was a short time before the homicide. In the early part of the summer she was with a Dr. Earl, doing general housework, and this defendant came to her and told her he was going to open a boarding house, a colored man's boarding house, over in Long Island at 96 West End Avenue I believe, and with a man by the name of Frazer, and he wanted her to come over and keep house there and run the boarding house. She never had sexual intercourse with the defendant in her life, except during the month of October, 1906, and then she said she did have sexual intercourse with this defendant on three occasions, but this was later that she went over there to Long Island City.

This defendant and Frazer opened this colored boarding house and she was there as a housekeeper. There was a man by the name of Rhett who was a very respectable negro,

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who was at work on the Long Island tunnel. He had been working for some time on the Long Island tunnel and he was boarding at this house that was kept by the defendant, and the defendant said to Frances Bridget "See here, you are allowing that fellow Rhett to make up to you" or words to that effect. She said "No, I am not". He said he thought she was. She said, no I am not. I did not come over here for any such purpose as that. I came over here to run the house. He said, that is all right, and then he went away and subsequently came back and he said "I know there is something between you and Rhett" or words to that effect. He made some general accusation again and she said there was not anything of that kind at all and it was her business anyway what she was doing. This was shortly before the 5th of September, 1907.

On the 5th of September, 1907, this defendant met Frances Bridget in the premises there at 96 West End Avenue and she was going out. He said, where are you going. She said, I am going out. He said, what are you going out for, and she said, that is my business; I have a right to go and I am going, and she went out. When she came back the defendant said, where have you been? She said, I was out shopping, and he said, what were you doing, and she said, I don't think that is any of your business; that is mine. It was

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in the summertime or early September and a warm day. As she went along upstairs she said, it is a pretty warm day, and he said, yes, but it will be hotter in a minute, and he came up and struck her once or twice, and thereupon she simply made up her mind she would leave. At first she thought she would complain and have him arrested and then she made up her mind that she would leave. So she went down and she saw Rhett. Rhett was there, and she had a conversation with Rhett that I cannot repeat to you because the defendant was not present and it is not evidence -- that is the reason I cannot and do not repeat it. Subsequently she met Rhett over in New York, that was I believe the 5th of September, 1907, and from the 5th until the 7th of September she and Rhett were more or less in each other's company; Rhett and she went around looking for rooms and they went around together and visited various people. She will tell you that she had no sexual intercourse with Rhett during that time. But, whether she did or not, makes no difference in the case. It has nothing to do with the case, but she says that, and as I believe she is a respectable colored woman, I say it. She and Rhett as I say were more or less in each other's company from the 5th of September, 1907, until the 7th of September, 1907, and on the evening of the 7th of September, 1907, Frances Bridget and Rhett went out and took dinner.

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This I believe was Saturday night. Rhett was about to go to his work. He worked at night on the Long Island tunnel and he was about to go to his work, but at the instance of Frances Bridget -- there was an Italian celebration of some description -- and he loitered -- took her up there and loitered around. She then met a woman of the name of Fanny Johnson and she stood there and talked with Fanny Johnson for some little time and Rhett stood about waiting for Frances Bridget and Fanny Johnson to get through their talk. He was standing waiting for her and Fanny Johnson and Frances Bridget did conclude their talk and Fanny Johnson went away and Frances Bridget came along and was about stepping away when she felt somebody catch her by the arm and drag her back, and she heard this person say, "Here, you come with me." She turned and she then found the defendant -- that she was in the hands of the defendant. Rhett was standing just behind her at a distance, and she says that thereupon this defendant said something about "God Damn Son of a Bitch" or words to that effect, and drew his pistol, and she said "Don't, stop," and this defendant then reached around Frances Bridget and shot two shots at Rhett, one of which took effect in the abdomen of Rhett, from the direct result of which shot Rhett died on the 28th of September, 1907, at Roosevelt Hospital in the City and County of New York.

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This defendant immediately fled. He ran through 39th Street -- this having occurred about 412 West 39th, at or about the place where Rhett had installed this woman near the domicile of Rhett -- near the domicile of Rhett was he shot down by this defendant. This defendant ran around and ran away, but there was a man who had been there and heard the two shots and saw this defendant running with something gleaming in his hand and he immediately pursued the defendant until he caught him, but, as the defendant ran holding in his hand this shining thing -- it was about eight o'clock on the evening of September 7th, 1907 -- as he ran holding in his hand this shining thing, he passed a vacant lot and a gesture of that description was made and the shining thing was seen to leave the hand of the defendant. When the defendant was caught he said "For God's sake, let me go", or words to that effect. Charles Sherer said no. Charles Sherer is a respectable citizen who has no interest in the case, who is simply down here losing his time because unfortunately for him he is a witness for the People -- "No" said Charles Sherer, you come with me. They brought the defendant back to a drug store at 515 Ninth Avenue. The defendant was taken into the presence of the deceased and he was identified by the deceased as the person who had shot him, and as Richard Moore. The defendant was then taken away

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to await the result of the injuries that he had inflicted upon the deceased and held subject to such injuries. Thereafter the deceased died on the 28th of September, 1907 as I have said, from a perforating wound of the abdomen, resulting from a pistol shot fired with premeditation and deliberation and without justification by this defendant Richard Moore.

Gentlemen, this is as I have said before a serious case. You must consider it with the utmost seriousness and when the People have proven the facts that I have narrated to your satisfaction and beyond a reasonable doubt, then you are bound under your oaths, throwing sympathy aside, to consider the evidence alone and bring in a verdict of murder in the first degree.

O T T O H. S C H U L T Z E, called as a witness in behalf of the People, duly sworn and examined, testified as follows:  
DIRECT EXAMINATION BY MR. ELY:

Q You are a physician? A Yes sir.

Q Duly admitted and licensed to practice under the laws of the State of New York? A Yes sir.

Q For how long a period of time prior to the 29th day of September, 1907, have you been admitted and licensed to practice? A Eighteen years.

Q Have you any official position? A Yes sir.

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Q What is your official position? A Coroner's Physician, Borough of Manhattan.

Q Were you Coroner's Physician for the Borough of Manhattan on the 29th of September, 1907? A Yes.

Q On the 29th of September, 1907, did you perform an autopsy? A I did.

Q At Roosevelt Hospital? A Yes sir.

Q And that is in the City and County of New York?

A It is.

Q At 59th Street and Ninth Avenue? A 59th and 58th, Ninth to Tenth Avenue.

Q On the body of whom did you perform this autopsy?

A On the body of a colored male.

Q A male cadaver? A Yes sir.

Q Was this body identified to you as being the body of anybody? A It was.

Q Was that prior to the performance by you of the autopsy that you performed upon this body? A It was prior or at the performance.

Q Before you concluded with the autopsy and had left the cadaver? A Yes sir.

Q Do you remember who it was who identified the body to you? A The name of the gentleman will appear in my own handwriting on my report.

Q You don't remember it now? A Not at the present

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moment.

Q You speak of a report which you say will refresh your memory? A Yes.

Q Kindly look at that paper and see if your report is there and if so refresh your recollection? A This body was identified before me by Dr. M. Earl Drennen, a member of the House Staff at Roosevelt Hospital.

Q Any police officers? A No sir.

Q Did you put down and police officers? A There were none at hand.

Q Whose body was it? A The body of Isaiah Rhett.

Q Tell me specifically what you found when you performed the autopsy on the body of Isaiah Rhett on the 29th of September, 1907, at Roosevelt Hospital, New York County?

A Shall I read my autopsy report.

Q You had better testify from memory and if there is anything you do not recollect, if there is any paper you know of which you can use to refresh your recollection, then with the permission of the court you can use it; you can look at the paper if you choose, if you cannot testify from memory? A The cause of death was bullet wound of the intestine. The point of entrance of the bullet -- I can get the exact dimension here -- was marked by a star two inches to the left and one inch below the level of the umbilicus, that is the belly button.

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Q Two inches to the left and one inch below? A Yes sir, the place is about here on my own abdomen, and the wound from which the bullet was removed, identified as the wound of removal of the bullet, was three inches from the first spine of the sacrum. That would be here on my own body.

Q It almost went -- A Went through him up to the skin and was removed from that point.

Q Under the skin? A It was removed from this wound. There was a laparotomy wound, that is a wound of operation over the left rectus muscle, that is this muscle (indicating); about four inches long from the level of the umbilicus downward. That would be a wound like that. That was the wound made by the surgeon.

Q Straight up and down? A A straight 4 inch wound. There was a sutured resection of the jejunum; that is the first portion of the small intestine, where a section or portion of that intestine has been cut out by the surgeon and the two ends united. There was a sutured wound of the descending colon, that is a part of the large intestine. Behind this large intestine and behind the left kidney there was a large abscess cavity that had proceeded from infection directly due to the wound, that had been made in his large intestine.

Q By the bullet? A By the bullet. There was an operation wound for drainage of this abscess in his left lum-

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bar region, that is, over here; that was done by the surgeon in order to evacuate the puss from that abscess.

BY THE COURT:

Q. Was the laparotomy wound of which you speak one of the operations by the surgeon in treating the wounded man?

A. Yes sir. About the lungs were found old adhesions of the lungs to the chest wall, and in the lungs were found several old spots of chronic tuberculosis. It is noted here that his heart was of small size; his mitral valves were thickened. His liver, spleen, stomach and kidneys presented nothing of special note. There was a bed sore, that is simply by laying on the back, necessarily, over the base of his sacrum. That is right here at this portion of his body, where it came in contact with the bed.

Q. Just about the base of the spine? A. Yes sir, exactly. The cause of his death was the bullet wound of his intestine.

Q. When you performed this autopsy was or was not the bullet removed from the body of the deceased Isaiah Rhett?

A. A bullet was shown me.

Q. Was it or was it not removed? A. There was no bullet in his body.

Q. Did you subsequently see any bullet? A. I did.

Q. And in whose possession did you see the bullet?

MR. HANSEN: I object unless the bullet can be con-

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nected.

MR. ELY: That is what we have to do, but we cannot connect it all at once. We have to do that by testimony of different people.

MR. HANSEN: I submit that this evidence is not proper now, as it has not and cannot be connected now.

MR. ELY: We have to build up by the testimony of various people.

MR. HANSEN: In a legal way.

THE COURT: I overrule the objection.

Exception.

(The question is repeated as follows: Q And in whose possession did you see that bullet)?

A In the possession of Dr. M. Earl Drennen.

Q Did he say anything to you about that bullet, yes or no? A Yes.

Q And after you had seen this bullet in the possession of Dr. M. Earl Drennen, in whose possession, if you know, was it left? A Left in his possession.

Q That is all you know about that bullet? A Yes.

Q Of your own knowledge? A Yes.

MR. HANSEN: I move to strike out all the testimony of this witness with regard to that bullet.

MR. ELY: I shall consent if I do not connect it.

THE COURT: Yes.

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MR. HANSEN: Do I understand it is subject to being connected?

THE COURT: Motion denied at the present with leave to renew.

No cross-examination.

WESLEY EARL DRENNEN, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are a physician and duly graduated? A Yes.

Q And you are a surgeon as well? A Yes sir.

Q You were duly graduated from the College of Physicians and Surgeons in 1906? A Yes, that is correct.

Q You are now what is known as an interne at Roosevelt Hospital? A Yes.

Q And for what period of time have you been an interne at Roosevelt Hospital? A Eighteen months the first of this year. Now House Surgeon.

Q You were an interne in Roosevelt Hospital then on the 7th of September, 1907? A Yes.

Q Do you remember on the 7th of September, 1907, that a wounded colored man was taken to Roosevelt Hospital? A No I was on vacation that day.

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Q When did you find a wounded colored man was in Roosevelt Hospital? A I think I returned next day, next morning.

Q On the 8th? A Yes I think it was, Sunday morning.

Q That is your best recollection? A Yes.

Q When you found this wounded colored man? A In bed.

Q Did you have anything to do with the operation if any that was performed upon the wounded colored man or were you present at any of the operations that were so performed? A At the second operation, the opening of an abscess, about two weeks later or something like that, for the first, I was present.

Q Was this wounded colored man that you say you found there on the 8th conscious during the period that you have mentioned, namely from the 8th to two weeks afterwards?

A He was.

Q And did you converse with him? A I did.

Q Was he made known to you, his identity? A Yes.

Q You had conversations with him himself? A Yes sir every day.

Q Who was he? A Isaiah Rhett.

Q You say you were present at the second operation which occurred about two weeks after the 8th? A Something in that neighborhood.

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Q And when you were present you saw what kind of a wound there was in this Isaiah Rhett? A Yes.

Q You saw the point of entry? A Yes I had dressed it before that.

Q You had made an examination of the person of Isaiah Rhett prior to the time that you say you saw this second operation performed? A Yes.

Q Tell what you saw and found when you made your first examination? A On the anterior of the abdomen about two inches to the left of the navel and <sup>the</sup> some distance below there was a bullet wound.

Q penetrating? A penetrating, and on the left hip, just behind -- the lower part of the body there (indicating) -- there was a small cut.

Q Incision? A Incision.

Q When you say a small cut and I say incision, I want to ask you whether or not that small cut or incision was made at the hospital or out? A It was said to have been made by the surgeon who operated upon him the first night to extract the bullet.

Q Then this Isaiah Rhett when you first saw him on the 8th was suffering from a bullet wound? A Yes, bullet wound of the abdomen.

Q Did you ever receive a bullet from anybody? A I received a bullet.

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Q That bullet, you did not see personally extracted from any body? A No I did not.

Q Who did you receive that bullet from? A I can't recollect.

MR. HANSEN: I object to this.

MR. ELY: The bullet will have to be connected, and we cannot connect a bullet until we do it in this way; it does not make difference except it is in the orderly proof of the case.

Objection overruled. Exception.

Q You know Dr. Peck? A Yes I do.

Q Who is Dr. Peck? A Dr. Peck is a practicing physician in the city and attending surgeon at Roosevelt Hospital.

Q Was he present when you received a bullet? A No sir.

MR. HANSEN: This is all subject to my objection.

BY MR. ELY:

Q And don't you recollect who was present when you received a bullet? A No sir I do not.

Q Where did you go if anywhere with this bullet? A I took the bullet from the hospital, the room adjoining the operating room, down to the Morgue, a distance of about 250 yards.

Q In the same building? A No you have to go across an

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open court.

Q It is in the same enclosure? A Yes the same enclosure.

Q What did you do with the bullet there?

MR. HANSEN: I object as incompetent, irrelevant and immaterial, and as having no bearing upon this case. It is not connected with the case. The witness distinctly testifies that he does not remember how he got that bullet which was given to him; that he never saw it in connection with the deceased or the defendant.

Objection overruled. Exception.

BY MR. ELY:

Q Did you see Dr. Schultze there? A Yes.

Q What did you do with the bullet? A I think I showed it to Schultze.

Q Don't you know you showed it to Schultze? A No I don't know it.

Q You don't know that? A No.

Q Didn't you go there for that purpose?

Objected to as leading; sustained.

Q What did you do when you got to the morgue with Schultze there?

MR. HANSEN: I object. There is no evidence that he ever went to the morgue with Schultze.

Objection sustained.

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Q You went to the morgue? A Yes.

MR. HANSEN: I withdraw my objection.

Q What did you do when you got to the morgue and saw Schultze there? A I saw him perform the autopsy.

Q Upon whom did he perform an autopsy? A The body of Isaiah Rhett.

Q Is that all you know about the case? A That is all I know about the case except that I identified the dead body.

Q You have already told us that?

No cross-examination.

MR. HANSEN: I ask the court to strike from the minutes the testimony of this witness in regard to the bullet upon the ground that it has not been connected.

MR. ELY: It is not yet, but it looks as if it might not be. But, we will see.

THE COURT: I grant the motion.

CHARLES HOWARD PECK, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your occupation? A Physician and surgeon.

Q How long have you been ~~ad~~ admitted and licensed to practice as a physician and surgeon under the laws of the State of New York? A Since 1892.

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Q Are you connected with any hospital? A I am connected with the French Hospital and with Roosevelt Hospital.

Q How long have you been connected with Roosevelt Hospital? A About four years.

Q Continuously? A Yes.

Q What if any connection with Roosevelt Hospital did you have on the 7th of September, 1907? A I was in charge of the first surgical division as junior attendant surgeon.

Q Did you see Isaiah Rhett there? A Yes.

Q When did you first see Isaiah Rhett? A On the evening of September 7th.

Q 1907? A 1907.

Q Were you at the hospital when Isaiah Rhett was brought in? A No.

Q About what time in the evening of the 7th of September, 1907, did you see Isaiah Rhett? A About nine o'clock.

Q Where was he when you saw him? A In Ward 5, Surgical Ward.

Q The Emergency Ward or Accident Ward or Operating Ward or what? A That is the men's Surgical Ward.

Q Was the body of Rhett clothed or unclothed at that time? A It was unclothed to the best of my recollection. I mean by that the street clothes had been removed and the night clothing or the night shirt put on.

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Q The night shirt furnished by the hospital? A Yes, by the hospital, to the best of my recollection.

Q You have said to the best of your recollection before, in the beginning of your answer? A Yes.

Q What did you do when you saw Isaiah Rhett there on the evening of the 7th of September, 1907, about the time you say? A I made an examination.

Q What did you find? A I found a bullet wound in the left side of the abdomen about two inches to the left of the navel and a little below. I found on the lower part of the back, on the left side, a prominent, a hard substance, just beneath the skin, which we took to be the bullet.

Q Is that all? A He had tenderness on pressure over the abdomen and the muscles were tense and rigid.

Q Is that all? A Those are the important points I remember at the examination.

Q What did you do then? A I ordered that he should be prepared for immediate operation.

Q I did not ask you what you said -- what was done -- what did you do? A Waited until the operating room was prepared for operation upon him.

Q Were you still waiting? A I was waiting until he was taken in the operating room.

Q I ask you what you did that evening, if you will be good enough to tell me? A When he was prepared and taken

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in the operating room, I operated upon him.

Q Tell me what you did in performing the operation?

A I opened the abdomen by an incision and searched for the wounds made by the bullets and found four bullet wounds in the small intestine, in the part known as the jejunum.

Q When you say you found four bullet wounds, do you mean you found four separate bullet wounds or the wound that was made by one? A I found four separate openings in the intestine.

Q That was in the track of one line or was it not?

A No.

Q Do you mean to say you found that he had been shot four times? A No I did not say that.

Q If you found four separate --

MR. HANSEN: I object to conclusions of the District Attorney.

MR. ELY: I am asking.

MR. HANSEN: I object to the District Attorney testifying.

BY MR. ELY:

Q I am asking what you did find, if you say you found four bullet wounds, what do you mean? A I mean I found four holes in the small intestine.

Q That is different.

MR. HANSEN: I object to the District Attorney's re-

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mark.

BY MR. ELY:

Q proceed? A I found one hole in the large intestine, the portion known as the sigmoid.

Q Did you find any point of entry other than the one point here on the left side of the abdomen two inches below the umbilicus or about two inches below? A I don't understand what you mean by point of entry.

MR. HANSEN: I object as leading. The question is what did you see?

BY MR. ELY:

Q You know if you stick your finger through a thing and make a hole, that that may be called a point of entry?

A Yes.

Q I ask if you found any other point of entry than this one at the left of the umbilicus, about two inches, and about the same distance below? A That was the only wound of the skin that I found.

Q That was the only penetrating wound you found?

MR. HANSEN: I object to the testimony. The witness did not say that, penetrating wound. He said that was the only wound he found.

MR. ELY: He did not. He said that was the only wound in the skin that he found. If you quote, be accurate. I press my question.

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THE COURT: Proceed.

(The question is repeated)

A It was the only wound on the surface of the body that I found.

Q And didn't it go in, didn't it penetrate, that wound?

A Yes.

Q I repeat, you understand what penetrating means?

A Yes.

Q Was that the only penetrating wound found on the body of Isaiah Rhett?

MR. HANSEN: I object. The witness has already testified that was the only penetrating wound that he found.

MR. ELY: If you agree to that I will end the question.

THE COURT: Let us proceed. The recollection of the court is that the doctor has not testified that there was any penetrating wound so far. Proceed.

BY MR. ELY:

Q Answer my question.

(The question is repeated as follows: Q Was that the only penetrating wound you found on the body of Isaiah Rhett?) A That was the only wound on the surface of the body.

Q I did not ask you that? A I have already testified that there was wounds in the intestines in two portions

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which may be termed penetrating wounds.

Q Were they not the same? A Presumably.

Q You made your diagnosis?

MR. HANSEN: I object upon the ground that he says presumably.

THE COURT: Strike out the answer presumably.

BY MR. ELY:

Q You made a diagnosis? A Yes.

Q You are a physician and surgeon and have been admitted and licensed to practice since 1892? A Yes.

Q That is about 15 years more or less? A Yes.

Q During that time have you had many cases of bullet wounds? A Yes.

Q And you have treated them and diagnosed them and formed opinions about them? A Yes.

Q This wound that you say that you found on the body of Isaiah Rhett, which you have described to the left of the umbilicus about 2 inches and about 2 inches below, was a bullet wound? A I had the appearance of a bullet wound.

Q You found a bullet in the body? A Yes.

Q You extracted that bullet from the body? A Yes.

Q You say that there was only one hole on the surface of the body? A Yes.

Q And you then have spoken of four wounds in the body?  
A Five.

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Q You have spoken of four, if you have spoken of five?

A Yes.

Q Now did you form an opinion as to whence came those four wounds in the body? A Yes.

Q What opinion did you form? A That they were caused by the bullet.

Q And the bullet that you extracted? A Yes.

Q Where did you form an opinion that this bullet that you found in the back had entered? A On the front of the abdomen about 2 inches to the left of and a little below the umbilicus.

Q And all these wounds that you say you found were the result of this one bullet? A That was my opinion.

Q You extracted that bullet? A Yes.

Q What did you do with it? A I gave orders that it should be --

Q I do not ask what you gave -- I do not want to know your orders. I want to know what you did with it? A I passed it to the nurse in charge of the operation to the best of my recollection.

Q What was the name of the nurse? A I don't remember.

Q You don't know anything more about the bullet? A No.

Q Of your own personal knowledge? A Not of my own personal knowledge.

Q You began about giving orders -- that was about the

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bullet I presume? A Yes.

MR. HANSEN: I object to what the District Attorney presumes.

MR. ELY: The witness has answered, the presumption was correct.

Q Is that all you know about this case? A No.

Q What happened afterwards, after you had extracted this bullet -- this was on the night of the 7th? A Yes.

Q Of September, 1907, that you extracted this bullet?

A Yes.

Q That you gave some unknown person, a person at present unknown -- but you did know the person? A I presume that I did.

Q Don't you know that you knew the person that you handed the bullet to? A Yes.

Q Then why did you say you presumed you did? A Because I don't recollect who the person was.

Q You know whether or not the person that you handed it to was known to you or a stranger, at the time, even though your memory is deficient now?

Objected to; objection sustained.

MR. ELY: I want to press my question as to whether or not you knew at the time the person that you handed the bullet to.

Objected to; objection overruled.

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MR. HANSEN: The witness says he does not remember whom he gave it to. How can he answer if he knew the man or not?

THE COURT: I will have no discussion. Answer the question.

BY THE COURT:

Q Do you know?

THE WITNESS: I am not sure I knew the name of the person I handed it to.

MR. ELY: I did not ask you about the name.

THE WITNESS: I don't remember the person I handed it to.

Q Was it a person that was in the employ of the hospital? A Yes.

Q You know that? A Yes.

Q And you know that you knew the person to whom you handed this bullet at the time you handed the bullet, as being a person in the employ of the hospital?

. Objected to; objection overruled.

MR. HANSEN: The witness said he does not remember.

Objection overruled. Exception.

A I don't know.

MR. ELY: Repeat my question.

(The question is repeated by the stenographer as follows: Q You know that you knew the person to whom you hand-

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ed this bullet at the time you handed the bullet, as being a person in the employ of the hospital)? A I answer yes to that.

Q Was it a male or a female? A I don't remember.

Q Dr. Drennen has spoken of a second operation, do you know how many operations were performed upon the body of Isaiah Rhett? A Two.

Q You performed the first? A Yes.

Q You have just described the first, have you? A Yes.

Q Who performed the second if you know? A I did.

Q When did you do that? A On September 23rd.

Q What did you find then? A A large abscess in the back.

Q And did you form an opinion as to what was the cause of this abscess? A Yes.

Q What was it? A Blood poisoning in the track of the bullet.

Q As a result of what? A Of the bullet wound.

Q Bullet wound? A Bullet wound.

Q In your experience you did what you considered proper under those circumstances? A Yes.

Q Do you know whether or not Isaiah Rhett died? A Yes.

Q Do you remember what day he died? A September 28th.

Q Did you form an opinion as to what he died of? A Yes.

Q What? A He died of the blood poisoning caused by

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the bullet wound.

Q This bullet you extracted and gave as you have stated? A Yes.

CROSS EXAMINATION BY IR. HANSEN:

Q You are sure that Rhett did not die from any mistake that you might have made in the performance of that operation? A Yes.

Q You are sure he did not die because of any unclean instruments that had been used in the performance of that operation? A Yes.

Q Pus had gathered in one of the wounds that you had made? A Yes.

Q And might not that be the result of unclean instruments having used?

MR. ELLY: I object. He has already testified on the subject directly as to whether or not the pus and so forth was the result of unclean instruments. He says it was not. Now it is immaterial, incompetent and irrelevant whether or what not ~~it~~ might have been if such a thing had happened.

THE COURT: I will allow the question.

(The question is repeated.)

THE WITNESS: No.

Q Might it not? A If unclean instruments had been used, yes.

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Q You understand English? A Yes.

Q I ask you might it not?

THE COURT: He said no.

THE WITNESS: I said no.

BY MR. HANSEN:

Q You said yes? A If unclean instruments had been used.

Q It might then have been the result?

Objected to; sustained.

Q In your experience as a doctor have you ever heard of people dying under similar circumstances as the result of unclean instruments having been used in the performance of an operation?

Objected to; objection overruled.

Q (continued) Have you ever heard of that? A No.

Q Never in all your experience have you heard of a human being dying as the result of unclean instruments having been used? A Not in similar cases. That was your question as I understood it.

Q Have you ever heard of any human being having died as the result of unclean instruments having been used in the performance of an operation upon his or her body?

Objected to; objection sustained.

Q If unclean instruments had been used in the performance of the operation on the body of the deceased in this

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case, might not that have resulted in his death?

Objected to as having been already answered. Ob-  
jection sustained; exception.

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J O H N J. G A L L A G H E R, called as a witness on behalf of the People, being duly sworn, and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are an officer connected with the Munisipal Police Force of the City of New York? A Yes.

Q How long have you been so connected? A Thirteen years.

Q What precinct are you attached to? A Attached now to the 22nd Precinct.

Q On the night of the 7th of September, 1907, what precinct were you attached to? A The 19th.

Q You happened to be on your vacation on that night, did you not? A Yes.

Q And did you see the defendant here on the night of the 7th of September, 1907? A Yes.

Q Where did you see him? A In 40th street between Eighth and Ninth avenues.

Q Was he with anybody? A No, a big crowd of men, about two or three hundred.

Q Was he with anybody -- do you know Scherer? A Yes.

MR. HANSEN: I object to leading.

THE COURT: Objection sustained.

Q Was the defendant with anybody when you saw him? A Yes.

Q Whom was he with? A Scherer.

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Q Do you see this man here (A man is brought to the bar)?

A Yes, sir.

Q Did you see this man Scherer on the night of the 7th of September, 1907? A Yes.

Q And what did you see Scherer doing when you saw the defendant? A Having hold of this man:

Q What man? A This man Richard Moore.

Q The defendant here? A Yes.

Q And what happened when you say you saw the defendant being held by Scherer? A Somebody in the crowd said, "He just shot a man."

Q Who? A Mr. Moore.

Q Who? A Richard Moore; and I get hold of Richard Moore, and when I get hold of him Officer Roland was standing alongside of me, behind me, and he comes over there and he said to me --

Objected to.

BY THE COURT:

Q In the presence of the defendant? A Yes -- he said "What is the trouble?" I said, "Somebody in the crowd said that this man shot a man," and so me and Officer Roland walks along Ninth avenue.

BY MR. FLY:

Q What did you do, take the defendant in your custody?

A Yes, sir, with Officer Roland. Walked along Ninth avenue

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to 38th and 39th streets, and at 515 is a drug store there, and walks in the drug store and sees a man laying down on two chairs.

Q Did you go in there with him? A Yes, sir, I went in. And I sees Officers Cavanaugh and Murray in there.

Q Then what did you do? A Walked out.

Q You left? A Yes.

Q That is all you know about the case? A That is all I know about the case.

Q Did the defendant make any reply when you said that this is a man that is said to have shot somebody? A No, sir, he did not.

No cross-examination.

P E T E R R O L A N D, called as a witness on behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Police officer.

Q Connected with what? A Police Department of the City of NewYork.

Q How long have you been connected with the Police Department? A Eleven years.

Q Do you remember the night of the 7th of September,

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1907? A Yes.

Q What were you doing that night? A I was on special duty attached to the 20th Precinct, now the 22nd.

Q Where is the 20th Precinct? A In West 37th street.

Q Does it continue all the way through West 37th street? A From Seventh avenue to the North River, the precinct --

Q I ask you the Police Precinct Station, do you know where it is? A 434 West 37th.

Q Did you see the defendant on the night of the 7 th of September? A Yes, I saw him.

Q When did you see him? A About 8:15.

Q Where? A On 40th street near Ninth avenue.

Q Just state what you saw -- who was with the defendant when you saw him?

MR. HANSEN: If anybody.

THE WITNESS: Officer Gallagher and Charles Scherer.

BY MR. FLY:

Q Tell me what happened when you saw Gallagher and Scherer in company with the defendant? A There was quite a crowd collected.

Q I didn't ask you about any crowd, I ask you what happened when you saw the defendant with Scherer and Gallagher? A I saw the defendant here between Officer Gallagher and Scherer.

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Q What was said, if anything? A They said that a shooting had occurred on 39th street in front of 412. I then said I was a police officer attached to the 20th Precinct.

Q Did they say who did the shooting? A They had this man in their possession.

Q As doing the shooting? A Yes.

Q Go ahead? A I then took the defendant with Officer Gallagher and Scherer back to 39th street, and I went into 515 Ninth avenue, a drug store, and there I saw lying on two chairs a man who said his name was Isaiah Rhett. He had a gun shot wound in the abdomen.

Q What happened there? A, I brought the defendant in his presence and I asked him, "Do you know this man?"

Q You brought the defendant into the presence of Rhett?  
A Of Rhett, and I said, "Do you know this man?" And he said "Yes, that is Richard Moore." I said "Is that the man that shot you?"

Q Who said "Is that the man that shot you?" A I asked him if that was the man that shot him and he said "Yes."

Q How far away from the wounded man was the defendant when you asked these questions and got these replies? A Very close to him.

Q I do not know how far very close is? A We were standing close up.

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Q Take two objects in this room and show the distance, if you can, that existed between Rhett and the defendant, at the time that you asked the deceased the questions you have now stated? A He was laying on the chair and I stood as close to him as from here to this desk.

Q That is two feet or a foot and a half? A About two foot.

Q How much is it? A That would be about two feet.

Q Then the defendant was two feet from the deceased when you asked the deceased these questions? A Yes.

Q And the deceased made these replies? A Yes.

Q Subsequently, or at that time did you see Cavanaugh and Murray? A Cavanaugh and Murray were inside at the time, in the drug store.

Q That is all you recollect, is it, about the occurrence? A That is all I recollect about it.

CROSS EXAMINATION:

Q You saw a wound, you say, from the pistol shot on the body of the deceased? A Yes.

M I C H A E L J. K A V A N A G H, called as a witness on behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are an officer connected with the Munisipal Police

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Force of the City of New York? A Yes.

Q How long have you been so connected? A The past thirteen years.

Q What precinct station are you attached to now?

A The 19th Precinct Station.

Q And on the 7th of September, 1907, what precinct were you connected with? A The 20th Precinct Station.

Q Where is the station house of the 20th Precinct?

A On West 37th street between Ninth and Tenth avenues.

Q What is the number? A I believe it is 434.

Q Where were you about 8 or 8:10 on the evening of September 7, 1907? A I was in the station house of the 20th Precinct.

Q Did you go anywhere about that time, yes or no?

A Yes.

Q Before you went, did you get any orders? A Yes.

Q Where did you go when you left the Precinct Station House about 8 or 8:10 on the evening of the 7th of September, 1907? A I went directly to a drug store at 515 Ninth avenue.

Q 515 Ninth avenue, that is between 38th and 39th street? A Yes.

Q What did you see when you got there? A I saw a colored man laying on two chairs in the drug store.

Q Go ahead? A I told the colored man that I was a--

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Q Do not say that -- was the defendant there at that time when you first got there? A No,,he was not.

Q Do not tell me what you said to the colored man or anything about that, but tell me what you saw when you looked at the colored man, if anything? A I saw him lying on two chairs.

Q I know, is that all you saw? A At that time until I questioned him later.

Q Then you questioned him -- do not say what you said -- then what did you see, did you see anything upon him? A In response to one of the questions, a bystander bared the lower portion of his body, his abdomen, and I saw a wound on the abdomen.

Q You recognize, do you or don't you, that a wound in the abdomen is a very dangerous wound?

Objected to. Objection sustained.

Q Do you know as matter of fact whether a wound in the abdomen is a dangerous wound?

Objected to. Objection sustained.

Q Tell me what else happened, after you had seen this wound in the abdomen? A After I saw the wound in the man's abdomen and after putting to him a number of questions, I asked him --

MR. HANSEN: I object to what he asked.

BY THE COURT:

Q Was the defendant there at the time? A He was not

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there at this time.

Objection sustained.

Q MR. ELY: It is a dying declaration he is about to testify to.

THE COURT: There must appear to be the proper foundation laid for it.

MR. ELY:; For that purpose I have asked the witness various questions as to what he knows as regards a wound of the abdomen.

THE COURT: It is not what he knew but what the other man believed he knew.

BY MR. ELY:

Q Did Rhett say anything about dying?

Objected to.  
you

Q After propounded certain questions to him and after you had looked at this wound that you say the deceased had in his abdomen, did Rhett say anything about dying, yes or no?

A Yes.

MR. HANSEN: I object. That is not fair. I have made an objection and the witness answered before I could get it in. I object upon the ground that it is leading.

MR. ELY: Under these circumstances it is proper to lead.

MR. HANSEN: Under what circumstances? I object

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and I move that the answer be stricken from the record and I ask your Honor to instruct this witness not to answer when an objection has been interposed, until the Court has ruled.

THE COURT: Yes. Officer, you had better not answer until the question has been passed upon. In this case it has been answered already.

MR. HANSEN: Yes.

THE COURT: The objection is overruled.

MR. ELY: I ask to have the answer read.

MR. HANSEN: I respectfully ask the Court to have stricken from the record the answer upon the ground that the question would not have been answered if the witness had not anticipated my objection and answered it.

THE COURT: Motion denied and exception.

BY MR. ELY:

Q Did you see the defendant there? A Later on I saw--

Q Yes or no? A Yes.

Q We talk about the night of the 7th of September, confine yourself to that and remember? A Yes.

Q Did you see the defendant there in the drug store?

A Yes.

Q Just state what happened in the presence of the defendant when the defendant was brought in? A When the defendant was brought in, in the custody of Officer Peter Roland,

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I drew the attention of Rhett --

MR. HANSON: I object to what hedrew.

BY MR. ELY:

Q State what you said -- that you drew the attention is a conclusion, but, if I speak to you and you answer me, I have drawn your attention to my question. A I said Rhett (pointing to the defendant) "Do you know this man?" And Rhett said, "Yes, that is Richard Moore, the man who shot me." I said "Is this Richard Moore, " still pointing to the defendant, "the man who inflicted the wound upon you from which you are now suffering?" "Yes" he said again, "that is Richard Moore the man that shot me."

Q Is that all that happened as far as you can recollect?

A In the presence of the defendant then --

MR. HANSEN: I object.

THE COURT: All that happened in the presence of the defendant is what you were asked for. There is no other question put to you and you are supposed to be silent.

BY MR. ELY:

Q Did you conclude your answer entirely -- you began to say something else? A Not in regard to everything that happened while the defendant was in the presence of the injured man.

Q Give me the rest of what happened in the presence of

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the injured man and the defendant? A The defendant thereupon said "I did not do it. I did not shoot him." I asked the defendant then if he still had the gun with him. He said "No, sir, I had no gun."

Q Is that all? A That was all the questions that I asked of the defendant or the injured man in the drug store at the time, in the presence of one another.

Q Did you have any further conversation with the defendant? A In court afterwards.

Q Give the conversation you had with the defendant in court afterwards? A I asked the defendant what he had done with the gun in court, afterwards, and he still denied that he had the gun, and I asked him --

MR. HANSEN: I object on the ground that the word denied is a conclusion.

THE COURT: What did he say?

THE WITNESS: I asked him what his reasons were for shooting Rhett, and he still maintained that he did not shoot him.

BY MR. ELY:

Q Is that all? A That was all the questions I asked him in court.

CROSS EXAMINATION:

Q Did anybody else tell you that the defendant had shot the deceased? A Yes.

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Q From observation, I mean? A A party who saw the shooting told me subsequently that they saw the defendant shoot Rhett.

P A T R I C K J. M U R R A Y, called as a witness on behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are an officer connected with the Munisipal Police Force of the City of New York?, A Yes.

Q You are attached to what Precinct? A The 22nd Precinct.

Q What is y our rank? A Patrolman.

Q You are in the 22nd now? A Formerly the 20th.

Q Youare in the 22nd now? A Yes.

Q When were you in the 20th? A It is the same precinct but the numbers have been changed since January 1st.

Q Then the 22nd Precinct Station House is where?

A 434 West 37th street.

Q On the 7th of September, 1907, it was the 20th Precinct, was it? A Yes.

Q You were connected with the 20th then, on the 7th of September, 1907? A Yes.

Q How were you assigned on that night -- were you in uniform or plain clothes? A Plain clothes.

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Q Where were you about 8 or 8:10 on the evening of the 8th of September, 1907? A The station house about 8:15.

Q Did you go anywhere from the station house at that time? A I received orders from Lieutenant --

Q Yes or no? A Yes.

Q Pursuant to orders from somebody? A Yes.

Q Where did you go? A 515 Ninth avenue.

Q Did you go in company with anybody or alone?

A Officer Kavanagh.

Q The witness who preceded you on the stand? A Yes.

Q Tell me what happened when you got there? A When I entered the drug store I saw a colored man stretched out on two chairs. Officer Kavanagh introduced himself to him and told him he was a police officer and asked him what was the matter. He said "I have been shot." Kavanagh said "Are you injured badly?" And he said "Yes, I am." He said "Where?" Just then a man standing by pulled his trousers down exposing the lower part of his body, and on his abdomen I saw a wound there. Kavanagh says "Who don that to you?" And he says "Richard Moore." Kavanagh then proceeded and asked him -- he said "What is your name?" He said "Isaiah Rhett." He asked him what was his name and address, and he said "Isaiah Rhett, 412 West 39th street." He said "Do you think you are badly injured?" And he said "Yes, I think I am." Kavanagh said "Do you think you are going to die?"

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MR. HANSEN: I object unless this conversation was had in the presence of the defendant.

BY MR. HANSEN:

Q Was the defendant there? A No.

MR. ELY: The objection might have been good up to this point.

THE COURT: I will allow the question.

MR. HANSEN: I except.

MR. HANSEN: It is a conversation had in the absence of the defendant.

THE COURT: I will allow the question as to dying declaration, if it is of that character.

MR. HANSEN: I except.

THE WITNESS: Kavanagh said "Do you think you are going to die?" And he said "Yes, I think I am. I guess it is all up with me." Kavanagh then asked him again, He said "What is your name?" And he said "Isaiah Rhett." Kavanagh asked him to spell his last name and he did so. He spelled it "R-h-e-t-t", and he said, "You say -- who did you say give you this injury?" And he said "Richard Johnson."

BY MR. ELY:

Q Richard what? A Richard Moore, I mean to say .

THE COURT: Strike it all out from the very beginning concerning the conversation overheard by this officer,

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between Officer Kavanagh and the deceased. Strike it all out.

MR. ELY: My question did not call for a conversation but what happened when he got there, he and Kavanagh.

THE COURT: You know, Mr. Ely,,quite well, that the solemn declaration which the law calls a dying declaration is admitted only when it is found that the deceased had no hope of recovery.

MR. ELY: That is exactly the point. If I say I believe I am going to die and I guess it is all up with me --

THE COURT: He was guessing at it. He said "I guess it is all up with me", and I instruct the jury that they are to pay absolutely no attention to the conversation which the Court has just ordered stricken out.

MR. ELY: Very well, sir.

BY MR. ELY:

Q You saw this wound in the abdomen of Isaiah Rhett?

A Yes.

Q Did you see the defendant brought in there? A?Yes, sir, I did.

Q What happened when the defendant was brought in?

A Officer Kavanagh spoke to Isaiah Rhett and asked him --

Q The defendant was there? A While the defendant was

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there.

BY THE COURT:

Q What was the distance between them? A About three feet.

Q Between the defendant and the officer who talked with him -- I mean between the defendant and the deceased, what was the distance between them? A About three feet.

Q How far was the officer from Isaiah Rhett? A He was to one side of the defendant, kind of bent over the deceased speaking to him.

THE COURT: What we want to know is this, how far from Isaiah Rhett was the defendant when the officer asked the deceased any questions?

THE WITNESS: About three feet.

Q How far was the deceased from the defendant?

A Right alongside of him.

Q Would you say how many inches? A Well, say probably a foot to one side.

Q A foot to one side of the defendant? A Of the defendant.

Q And how far was the officer from the decedent, Isaiah Rhett? A He was just about the same distance as the defendant would be from the deceased, being he was standing to one side.

Q And the conversation which you now are asked about

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while these distances were between the three parties, concerning whom you are testifying? A Yes, sir.

Q Was the deceased's eyes open at the time? A Yes.

Q And were they turned or could you see whether they were turned in the direction of the officer and the defendant? A He was looking straight up when the defendant was brought into the drug store. Officer Kavanagh was speaking to the deceased.

Q You can answer my question whether or not when the officer asked the deceased or Isaiah Rhett a question, whether Isaiah Rhett then looked upon the defendant? A Yes, sir, he did. He turned and looked at him.

BY MR. ELY:

Q Go on, what happened then? A Kavanagh asked him. He said "Do you know this man?"-- turning and looking at him, he said "Yes, that is Richard Johnson."

Q Richard what? A Richard Moore I mean to say-- "the man who shot me."

Q Is that all you recollect of the conversation other than that which has been stricken out, that occurred there at the drug store when the defendant was present? A That is all I can remember having taken place in the drug store.

Q In the presence of the defendant? A In the presence of the defendant.

Q What happened after that? A The defendant was

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taken from the drug store and brought to the station house.

Q Did you hear the defendant say anything in reply, when the deceased said "Yes, that is Richard Moore, the man who shot me?"

Objected to as leading.

Q Did you hear him say anything when the deceased said, "That is Richard Moore, the man who shot me?" A He made a sound but what it was I couldn't say.

Q You did not hear? A I did not hear.

Q Anything but a sound -- you did not hear anything that was intelligible to you? A No, nothing that was intelligible.

BY THE COURT:

Q How far from the officer were you at the time that he asked those questions, how far from the officer who asked the question?

BY MR. ELY:

Q How far from Kavanagh? A About four or five feet. I stepped back to just about the the deceased's feet.

BY THE COURT:

Q You were about the same distance from the defendant? A Kavanagh was between the defendant and myself.

Q How far from the defendant were you, that is what I want to know? A About five or six feet.

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BY MR. ELY:

Q ,What else happened, if anything, what did you do after this statement had been made by the deceased in the presence of the defendant, what did you do? A Well, Kavanagh and I proceeded to the station house in the meantime.

Q With whom? A Roland took the defendant to the station house and the deceased was taken away in an ambulance.

Q Do you know where he was taken? A Roosevelt Hospital.

Q Is that all you know about the case? A That is all, yes.

CROSS EXAMINATION:

Q When you came into the drug store and saw this deceased lying on the two chairs, you knew that it was a very serious matter? A Not until I had seen the injury on his abdomen.

Q And when you had seen that, you knew, did you not, that you were dealing with a very serious case, as a police officer? A I believed it to be a serious case, yes.

Q How many people were in the drugstore at the time you and Kavanagh and the defendant were there? A Three or four.

Q That was all? A Yes.

Q Did you have the door locked? A We did.

Q So that nobody could come in? A Yes.

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Q You were there in your official capacity as a policeman of the city of New York? A Yes, sir.

Q You have been on the force how long? A Over ten years.

Q And you knew therefore that everything said during that time between any one of you four men would be of the greatest importance, did you not? A Between us four?

Q Between any one of you, the defendant, the deceased or you men to the defendant or to the deceased, you knew that would be of the greatest importance? A I did.

Q Having that in mind, you noted carefully in your mind everything that was said? A Everything that I could possibly think of.

Q Everything that you heard? A Everything that I heard

Q You took a mental note of it? A Yes.

Q And nobody came in to disturb you while you four men were there? A Not until after the door was opened and the defendant brought in.

Q I speak up to the time when the door was opened when you left?

MR. ELY: I object. That is not what the witness said.

BY MR. HANSEN:

Q I will put this question to you, Did I understand you to say that while you, the deceased, Kavanagh, and the defend-

ant were in the drug store that the door was locked? A No, not when the defendant came in.

Q While the defendant was there was the door ever locked?

A No.

Q It was not? A No, not to my knowledge.

Q While you and the defendant and Kavanagh and the deceased were there, while you were there together, were there many people in the drug store? A Yes. There was quite a number came in behind the defendant. They came into the drug store.

Q You say you took a mental note of everything said by the defendant, the deceased and by Kavanagh and yourself to the defendant, or the deceased or both? A Yes, sir.

Q You knew it was important? A Yes.

Q And that is the reason why you are able to-day to testify in detail as to what was said?

Objected to. Objection overruled.

Q Is that so? A Yes.

Q You are sure that you had not omitted to say anything that you heard on that occasion that was said by the defendant or the deceased? A Not to my knowledge.

Q Of course to your knowledge -- your hearing is very good? A Yes.

Q Now state to the Court and jury all that you remember the defendant saying to you or Kavanagh, or the deceased,

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or any human being in that drug store at that time, while he was there with you? A The defendant had no conversation with me.

Q I did not ask you that. I ask you now to state to the Court and jury every word uttered by the defendant in that drug store on that day, that you heard of course, between the time the defendant came into the drug store and the time you left and walked off with him? A I had not heard a word yet from him.

Q You had not heard a word? A No.

Q If he had said anything, from your position in the drug store and from the solemnity of the occasion, and by reason of your being a police officer, would you not have heard it?

MR. ELY: I object as a conclusion. He has already testified where he stood and that he heard the defendant mutter something but it was unintelligible to him. It is for the jury to say and answer that question, and not for the witness. It is simply a conclusion.

Objection sustained. Exception.

BY MR. HANSEN:

Q Was the distance between you and the defendant such, taking into consideration your ability or inability to hear, that if he had spoken and uttered words, you would have heard him?

Objected to as calling for a conclusion.

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Sustained. Exception.

Q Are you willing to swear that the defendant did not utter any words in your presence at that time except that which you call,-- what did you say? A A muttering sound.

Q Except that muttering sound, will you swear he did not say anything else?

MR. ELY: I object.

BY MR. HANSEN:

Q So far as you know?

MR. ELY: He can say positively if he heard anything or not. I do not object to that.

BY MR. HANSEN:

Q Will you swear now that you heard the defendant utter any words beyond that sound while you were there? A That was all the sound I heard.

Q Will you swear that he did not utter anything else?

MR. ELY: I object. He has already sworn that he did not hear anything else, and now he is asked if he will swear whether he did say anything else or not. It has been already answered.

Q (Question repeated). A I did not hear anything else.

Q You have already stated that you knew the importance of listening to everything that was said?

Objected to. Objection sustained.

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C H A R L E S     S C H E R E R,     called as a witness on behalf  
of the People, duly sworn and examined, testified as  
follows:

DIRECT EXAMINATION BY MR. ELY:

Q   What is your business?     A   Hog butcher.

Q   With whom, if anybody, are you connected in business,  
either as an employe or anything else?     A   Monroe & Craine  
is my employer-- a company.

Q   Where are they located in business?     A   At the foot  
of West 39th street.

Q   Where do you live?     A   521 West 52nd.

Q   Where did you live on the 7th of September, 1907?  
A   428 West 48th.

Q   Where were you at or about eight o'clock on the even-  
ing of the 7th of September, 1907?     A   Buying vegetables,  
Ninth avenue and 39th street.

Q   Just about what time was it you were buying vege-  
tables at Ninth avenue and 39th street?     A   About 8:10.

Q   And what happened there?     A   I heard the report of  
two shots and the defendant came running towards me, a crowd  
after him, and went up through Ninth avenue.

Q   Did you see anything?     A   Something shining in his  
hand.     I couldn't tell what it was, and he came to a vacant  
lot and raised his hand that way (indicating).

Q   When he raised his hand that way what did you see?

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A Something shining in his hand. Couldn't say what it was.  
It was so dark.

Q Leaving his hand? A Yes.

Q You say you saw the defendant come running towards  
you? A Yes.

Q Pursued by a crowd? A Yes.

Q After you saw the defendant running towards you  
with something shining in his hand, pursued by a crowd, what  
did you do? A I ran after him and caught him.

Q You ran after him? A Yes.

Q In what direction did he run? A Easterly towards  
Eighth avenue.

Q How far did he run? A About half way the street,  
333, and I captured him.

Q You are on Ninth avenue? A No, 40th street at the  
time I captured the defendant.

Q You were buying vegetables? A Yes.

Q At Ninth avenue? A Yes.

Q And 39th street? A Yes.

Q You heard two shots? A Yes.

Q And then you saw the defendant running towards you  
with something shining in his hand, pursued by a crowd?

A Yes.

Q You say that then you followed after the defendant?

A Yes?

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Q When you followed after the defendant, pursued the defendant, what way was the defendant running, where was he running? A He was running north.

Q Wait a minute, he was running northerly -- he must have been running on some street or avenue? A I will explain; he came from 39th street up to Ninth avenue and then turned north.

Q He ran north on Ninth avenue? A Yes.

Q You pursued him? A Yes.

Q And then how far did the defendant run?, A To 40th street and then turned eastward again.

Q What did you do? A I ran after him with the crowd and captured him at 333.

Q 333? A Yes.

Q 40th street? A Yes.

Q West 40th? A Yes, West 40th.

Q Where was it you say you saw him raise his arm like that and something glitter leave his hand? A As he was turning in east from 40th, an average of about 100 feet.

Q When he got about 100 feet down 40th going easterly? A Yes, sir.

Q What premises was he passing when as you say he threw something? A I think it is 365. There is a vacant excavation there of a building.

Q A vacant lot with an excavation? Is that right?

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A Yes.

Q Did you overtake the defendant? A Yes, at 333.

Q What happened when you overtook him? A He fell down and he said "Mercy, for God's sake let me go."

Q What did you say? A I said "No." And I fetched him down to the corner and turned him over to Officer Gallagher and Roland, and that is all I had to do with it.

CROSS EXAMINATION BY MR. HANSEN:

Q You are sure that No. 356 is an empty lot? A It was an excavation of a building there putting up at the time.

Q There is no doubt in your mind that you saw this defendant throw something down,-- some shining instrument?

A I saw him throw his hand that way (indicating).

Q There is no doubt in your mind as to that? A I seen something leaving his hand.

Q There is no doubt in your mind as to that? A That there is a doubt that I seen something leaving his hand?

Q I say there is no doubt in your mind that you saw him throw something shining in that lot? A I say I saw something leaving his hand.

Q I ask you now is there any doubt in your mind that he had something in his hand, an instrument, that he threw in that lot -- there is no doubt in your mind that you saw him throw an instrument in that lot? A I seen something leaving that man's hand as he passed that lot.

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Q Tell us what that something looked like? A Shining, I couldn't say what it was. It was something very shining, brightly -- it was very brightly.

Q Like silver? A Something like silver.

Q Tell the Court and jury all that you told the police officer when you handed the defendant over to the police officer? A I just handed him over to Officer Gallagher and Roland and said nothing to them. I said "I heard these shots and couldn't say what it was, a man already shot somebody," and I handed him over to Gallagher and Roland:

Q So that when you handed over the defendant to the police officer, you did so believing that he had some part in the shooting that you had heard? A I heard the shots and I seen this thing leaving his hand.

Q That made you believe that he had something to do with the shooting, didn't it? A I thought the man shot the man.

Q Now you handed him over to the police officer like a good citizen?, A Yes.

Q Do you remember anything you said to the police officers when you handed him over? A No.

Q Not a word? A I just handed him over to Officers Gallagher and Roland. Didn't say anything to them.

Q Didn't you tell the officers you had seen him throw this thing in the empty lot? A I didn't say it to the

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police officer.

Q You did not? A I said he shot somebody and I said I seen something leave his hand.

Q You say now that you did? A Yes.

BY THE COURT:

Q You do not say that you told the officers that you saw him throw anything glittering away? A No.

BY MR. HANSEN:

Q When did you first tell any human being that you saw this defendant throw any glittering instrument in an empty lot?, A Not any human being I know of.

Q Never told that to a human soul? A No.

Q So it never came over your lips until you spoke the words this morning in that chair? A I told it in the Coroner's Court.

Q You told it in the Coroner's Court? A Yes.

Q That was the first time? A The first time I spoke of it in the Coroner's Court.

Q Before you came to the Coroner's Court had you spoken to Mr. Fly? A No, sir.

Q You had spoken with the police officers? A No.

Q You never spoke to any of these police officers?  
A Not before.

Q You did not speak to them on the day you handed the defendant over to them? A Yes, I said he shot a man.

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Q And you walked with them? A I walked as far as the station house.

Q Did you tell the sergeant at the station house that you had seen this man throw away a glittering instrument in a vacant lot? A I told the sergeant that when I seen him.

Q Then you were mistaken when you said you never told anybody? A I didn't understand what you meant the first time.

Q Did you or did you not tell anybody that you had seen the defendant throw a glittering instrument into an empty lot?

Objected to. Sustained.

THE COURT: He said he told it to the Coroner's jury and told it to the Police Sergeant.

MR. HANSEN: Prior to that he said he never did.

MR. ELY: He explained. He did not understand your question.

BY MR. HANSEN:

Q On the day you handed over this defendant to the police officer, you didn't tell anybody about it?

Objected to.

BY THE COURT:

Q Did you tell anybody about it on the day you handed this man over to the police officer? A No, not at the time I did not tell anybody.

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Q On that day did you? A On that day yes, I told it in the police station.

BY MR. HANSEN:

Q Did you tell it to the police officers on the street?

A No, I told it to the sergeant at the desk.

Q Did you later on go back to the lot to look for that instrument? A Not that I have any recollection.

Q Did anybody, so far as you know, go to that empty lot and look for this instrument? A Might have been a police officer.

Q So far as you know? A I couldn't tell you.

Q Did the sergeant ask you to walk down to the empty lot with the police officers to try and locate what you had seen the defendant throw into that lot? A I am in doubt upon that.

Q Did any of the police officers ask you to go with them and show them the place where you had seen the defendant throw this glittering instrument? A No.

Q You did not have curiosity enough yourself to go back-- you did not go back? A No.

Q Did you on the next day go to that empty lot to look for that glittering instrument? A No.

Q You never did? A No.

Q It was not of any interest to you at all?

MR. ELY: I object as immaterial. No duty de-

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volves upon him to do anything of that kind.

BY MR. HANSEN:

Q You took an interest as a citizen and handed this man over to the police?

MR. ELY: I object. It has all been gone over before. That has been answered.

Objection sustained.

BY MR. HANSEN:

Q You heard the two pistol shots? A Yes.

Q You saw him run? A I did.

Q What did you say to the defendant when you apprehended him? A I didn't say anything to the defendant.

Q Did he say anything to you? A Yes, he said -- he fell down and he said, "God of mercy, let me go."

Q Did he act like a sane man or a rational man, or a man that knew what he was doing?

Objected to. Sustained.

Q How did he act as far as you know? A The crowd pursued him, so the man wanted to get away, I guess, but I wouldn't let him go.

Q What did he do -- did he act as a man would who was in possession of his senses?

Objected to. Sustained.

Q Can you explain to the Court and jury just what he did?

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Objected to. Objection overruled.

Q Explain just what he did, how he looked, how he acted and what he said? A He fell down and he said "Leave me go." There was a crowd around -- so much crowd pursued the man.

BY THE COURT:

Q Did he say anything? A He said "God of mercy, let me go." And I said "No."

BY MR. HANSEN:

Q Did you say anything to him about having heard two shots? A No.

Q Did he say anything to you about having heard two shots? A No.

Q Did you say anything to him about shooting a man? A I handed him over to the officers.

Q Did you say anything to him about shooting a man? A No.

Q Did he say anything to you about having shot a man? A No.

Q Did anybody else there talk about shooting at all? A Yes, the crowd around there said he shot a man.

Q Did anybody there talk to you and him about shooting a man?

MR. ELY: He said the crowd said that he shot a man.  
BY MR. HANSEN:

Q Did you say that? A Yes, I did.

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Q He and you had no conversation at all about the shooting?  
A No.

Q Have you ever seen a man in fear of danger, in fear of bodily harm?

Objected to. Objection sustained.

Q When you saw the defendant, did he act like a man who was in fear of bodily harm?

Objected to. Objection sustained.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until two o'clock.

AFTER RECESS.

S E L I N A H A S K I N S, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You do not read or write? A No.

Q Do you recollect the 7th of September, 1907?

A Yes.

Q Where did you live on that day? A 414 West 39th street.

Q How long had you been living at 414 West 39th street before the 7th of September? A I was living 414 West 39th

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street the first day of this year five years.

Q The 1st of January it was five years that you had been living continuously in 414 West 39th street?

A Yes.

Q Whereabouts in 414 West 39th street did you live on the 7th of September, 1907? A The same place I live now, 414.

Q The same place in the house? A Yes.

Q Now what were you doing about eight o'clock on the evening of the 7th of September, 1907? A I was starting to dress to make marketing and I stopped and went to look out the window to see the parade on a pillow.

Q You were leaning on a pillow? A Yes.

Q Looking at a parade? A Yes.

Q Whereabouts in 414 are your premises, tell me?

A Two flights up front, west side.

Q When you were looking out at the parade, this was an Italian parade? A Yes.

Q When you were looking out at the parade, what if anything did you see or hear? A I heard these two pistol shots.

Q Then what did you see? A I saw the man fall and the other man walk off up the street.

Q The man fell where? A On the sidewalk.

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Q The man fell where? A On the sidewalk.

Q On the sidewalk in front of what? A In front of 412.

Q You saw the other man do what? A Walk off up the avenue, towards the avenue.

Q Did he walk or run?

Objected to; sustained.

Q How did he proceed towards Ninth Avenue? A He proceeded in a right fast walk.

Q You were two flights up in 412 or 414? A 414.

Q Did you see the color of these men? A Yes sir, colored men both of them.

Q One of them fell in front of 414? A One fell in front of 412.

Q And the other proceeded rapidly towards Ninth Ave.?

A Yes.

Q You did not recognize either of these people other than that they were colored? A No I could not recognize either one of them.

BY THE COURT:

Q How do you pronounce your name? A Selina Haskins.

Q Selina Haskins, that is your name? A Yes.

CLOSE EXAMINATION BY J.R. HANSEN:

Q Are you Miss or Mrs.? A Mrs.

Q Who did you first tell this to?

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MR. ELY: Tell what?

BY MR. HANSEN:

Q The story you have told now, who first did you tell the story to? A I had no particular one whatever, because a colored man came in to me Saturday night and asked me did I know this party, this woman that was concerned in this and I said I know neither one of them, but I seen the shooting from my window.

Q Answer my question, when did you first tell any human being? A When did I first tell it?

Q When did you first tell any human being, any man, woman or child? A Saturday night was the first time I ever was approached.

Q When did you for the first time tell anybody? A Saturday night.

Q Wait one second, when did you first for the first time tell anybody that you knew anything about this shooting? A I didn't have no need to tell anybody.

Q When did you first --

MR. ELY: Wait a minute.

THE COURT: Let us try and find out when --

BY THE COURT:

Q If you can recall the first time you ever talked about it? A The first time I ever had the subject approached to me was Saturday night.

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Q Last Saturday night? A Yes.

BY MR. HANSEN:

Q Who did you talk with last Saturday night? A Shy Cannon, a big colored man.

Q Who is Shy Cannon? A He is a big colored man, that is all, he came up in front of these two houses.

Q If you will keep still, we will get at it.

MR. ELY: I object to instructing the witness. Your Honor may instruct the witness.

MR. HANSEN: I ask the court to instruct the witness to simply answer my questions.

THE COURT: Yes. Wait until the attorney has finished his question before you answer anything.

BY MR. HANSEN:

Q What was the name of the man who came to you last Saturday and spoke to you about this shooting? A Shy Cannon.

Q Had you ever seen Shy Cannon before you saw him last Saturday night? A Well I seen Shy Cannon the last seven or eight years of course.

Q You knew him very well? A Certainly.

Q Why did Shy Cannon come to you if you know?

Objected to.

Q On last Saturday?

Objected to; sustained; exception.

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Q If you know?

Objected to.

Q What did Shy Cannon say to you when he came to you at your house on Saturday? A What did he say?

Q Yes. A He asked me did I know this woman concerned in this shooting and I said I had never seen her.

Q What shooting? A Concerning the shooting of the night of the parade, in September.

Q You said you had never seen her? A Yes I said I never saw her.

Q What else did he say to you and what did you say to him? A He said, did you see the shooting, and I said yes, I was lying on my pillow looking at the parade when this shooting started, and he said, how many shots fired; and I said two.

Q Can you tell the court and jury how he came to come to you if you know? A I couldn't tell you.

Q And talk about this shooting? A I couldn't tell you because he was always a frequent visitor in my house.

Q Did he tell you who sent him to your house? A No.

Objected to.

THE COURT: It is answered. Remember what the court has told you, not to answer until the other lawyer Mr. Fly has a chance to object if he desires. You may take your time.

THE JURY: All right.

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BY MR. HANSTET:

Q Before you saw this gentleman last Saturday night, had you ever spoken with anybody about this shooting? A No.

Q This man sort of smelled in a way that you knew something about it?

Objected to; sustained.

Q Can you tell us how he could possibly know, this man Cannon, that you knew anything about the shooting?

Objected to; sustained and exception.

Q Did he tell you who sent him to your house?

Objected to; sustained and exception.

Q Who told you to come down here to-day? A I was subpoenaed from my laundry where I work.

Q And have you told us now all that you know about it?

A I have told you all I know.

Q How many people live in the same house where you live? A How many people?

Q Yes. A Four families on each floor so you can judge from that how many people there was in the house.

Q You have lived there five years? A Yes.

Q You know some of the people rather well? A What?

Q You know some of the people, some of the other tenants, don't you?

Objected to as immaterial. Objection sustained.

Q Do you know anybody living in that house where you

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live?

Objected to; sustained and exception.

Q Did you ever tell anybody in the house where you live anything about this shooting?

Objected to; objection overruled.

BY THE COURT:

Q Did you ever tell anybody in the house where you live about what you saw that night? A I never mentioned it, never spoke of it.

BY MR. HANSEN:

Q It did not make any impression upon you at all?

Objected to; sustained.

MR. ELY: Your Honor please, I will offer this diagram in evidence by consent. The diagram purports to show West 39th Street from premises 416 up to Ninth Avenue, on both sides of the street, and Ninth Avenue from the corner of 39th Street down to 515 and up to 527.

The diagram is received in evidence and marked People's Exhibit 1 by consent.

FRANCES MORRIS, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q How old are you, about? A I am thirty years old.

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Q You are now in the house of detention? A Yes.

Q Before you went to the House of detention, where were you living? A 42 East Avenue, Long Island City.

Q 42? A East Avenue, Long Island City.

Q Didn't you have a room at 412 West 39th Street?

A Yes.

Q And when did you leave that place in Long Island City? A I left there on Thursday.

Q Thursday the 5th of September, was it? A Yes I think so.

Q Thursday? A Yes.

Q Thursday before the Saturday of the shooting, was it not? A Yes.

Q Then you went to 412 West 39th Street? A Yes.

Q Do you know the defendant? A Yes.

Q For how long a period of time have you known him?

A Ever since 1899.

Q And have you seen him from time to time since 1899?

A Yes.

Q And before you went to West End, Long Island, where were you working? A I was working at West 91st Street for Dr. R. L. Reed.

Q Prior to going to work for Dr. Reed, that is before you went to work for Dr. Reed, did you see this defendant?

A Yes.

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Q About how long before you went to work for Dr. Reed did you see this defendant? A Well I saw him all the time.

Q Wait a minute -- did you have any conversation with him just before you went to Dr. Reed? A Yes.

Q What was the conversation? A Nothing only just, I don't know -- just something simple.

Q What? A I don't remember what it was about. It was nothing much. I can't remember it what it was about.

Q Do you remember whether or not the defendant asked you where you were going to work?

Objected to as leading; overruled and exception.

Q Do you remember whether or not the defendant asked you where you were going to work before you went to work for Dr. Reed? A I do not.

Q Can you read and write? A No sir I cannot.

Q Did you make this mark here -- do you see that -- do you recognize that as your mark (showing witness a paper)?

A Which?

Q That. A Yes that is my mark.

Q Before you made that mark was this read over to you?

A Yes.

MR. HANSEN: I object upon the ground that the witness does not know what was read over to her. Those pages may all have been detached. She can neither read or write and therefore I do not know how many pages, and while this

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may be her mark and she may have had some paper read to her, there is no evidence this was the paper that was read to her.

Q Was a paper that looks in all respects like this read over to you? A Yes sir.

Q Before you made your mark? A Yes sir.

MR. HANSEN: I object upon the ground the witness has not seen the papers and therefore cannot say whether those papers look like the paper or not.

BY THE COURT:

Q Look at the paper? A Yes.

Q Turn it over and look at it (the witness examines the paper).

THE WITNESS: Yes.

BY MR. FLY:

Q After you had seen a paper that looks in all respects similar to the paper that I now have in my hand, you made a mark? A Yes.

Q On one of the sheets of the paper which you now recognize? A Yes.

Q Then did somebody ask you if that was true so help you God? A Yes.

Q What did you say? A I said, So help me God.

Q It was true? A Yes.

Q This Mrs. Reed was living at 148 West 91st Street?

MR. HANSEN: I object. The District Attorney is

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holding in his hand several sheets of paper of which one only has the mark of the witness. She has been asked to identify that mark and she has identified that mark as her mark, but there is no evidence here that the other sheets are also marked by her. They are in every respect similar to ten thousand other sheets that are made every day in different law offices and for that reason I object to the District Attorney reading from this paper upon the ground that it has not been identified by the witness as being the paper that she actually did swear to, except the last page.

MR. ELY: I have not yet ready from it.

MR. HANSEN: You did.

THE COURT: Let us have no conversation.

(The former question is repeated.)

BY THE COURT:

Q Do you recall having seen a paper before, to which paper, or to one of the papers you signed a cross? A Yes sir.

Q Your mark? A Yes sir.

Q Do you recognize that mark as being yours? A Yes.

Q Were all the papers which you saw at the time you made that mark attached to the one which you signed? A Yes.

Q And to the best of your recollection you may say whether or not this paper appears to be the one which you signed with your mark at that time? A Yes.

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MR. FLY: We will go a little further.

BY MR. FLY:

Q You see this here (showing paper to witness)? A Yes.

Q Did you make that mark, there is the mark? A I don't know -- I don't think I did.

Q Did you make this one (showing another one)? A Yes I made this mark.

Q And did you make that mark? A Yes sir.

Q And did you make that mark? A Yes.

Q And did you make that mark? A Yes I did.

Q And did you make that mark? A Yes.

Q And did you make that mark? A Yes.

Q And did you make that mark? A Yes sir.

Q And did you make that mark? A Yes sir.

Q And did you make that mark? A Yes sir.

Q And did you make that mark? A Yes sir.

Q And you made that mark? A Yes I did.

Q And you made each one of these marks before you swore to it? A Yes.

MR. HANSEN: That of course I did not know and I therefore withdraw my objection.

BY MR. FLY:

Q Now when was it that you went to work for Mrs. Reed and Dr. Reed? A I think it was about two months before Christmas.

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Q Two months before Christmas in what year? A In 1906.

Q And where did Dr. and Mrs. Reed live? A 148 West 91st.

Q And at that time were you seeing the defendant right along as you say? A Yes, after I went to work for Dr. Reed I did not see the defendant.

Q Not for some time? A Yes sir.

Q Did you tell the defendant where you were going?

A No I did not.

Q Did the defendant ask you where you were going?

A Yes he did.

Q You did not tell the defendant where you were going when you went to work for Dr. Reed? A No I did not.

Q While you were working for Dr. Reed did you see the defendant? A Well after he found out where I was working.

MR. HANSEN: I object to that.

Objection sustained.

MR. ELY: We will strike that out.

MR. HANSEN: I ask the court to instruct this witness to simply confine herself to answers to questions put to her.

THE COURT: Yes, answer the questions that are asked and do not offer any information in answer to the question.

BY THE COURT:

Q Did you see him at all while you were working for the Doctor? A Yes.

BY MR. ELY:

Q You have told us you had not given the defendant your address although he asked for it, at Dr. Reed's? A Yes.

Q How long had you been working for Dr. Reed before you saw the defendant? A I guess about a month, just about.

Q That would make it, if you went in November, 1906, that would make it about the first of December, 1906? A I suppose so, yes.

Q When the defendant came there to see you at Dr. Reed's, what did he say to you? A Well he asked me why did I -- asked me why I did not tell him where I was working at and I told him I did not wish to tell him.

MR. HANSEN: I object upon the ground that it is improper, incompetent and immaterial what this defendant spoke of when he came to see the witness at the Doctor's and has no bearing upon this case.

THE COURT: If it is not connected in any way or is not competent or material, it will be stricken out.

BY MR. ELY:

Q What other conversation did you have with the defendant when he came to Dr. Reed's and found you there? A Did

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not have any more that night.

Q Did he say anything about Easter Sunday ?

Objected to as leading. Objection sustained.

MR. ELY: If your Honor please, this witness is evidently not of the most intelligent. This witness has stated that she --

THE COURT: I know, but she said she did not say any more to him that night.

BY MR. ELY:

Q Do you recollect the conversation with Moore at Dr. Reed's in which anything was said about Easter Sunday?

A No sir, not anything.

Objected to as leading.

BY MR. ELY:

Q For the purpose of refreshing your memory, I ask you if you did not state under oath on the 5th of December, 1907, "While I was working at Dr. Reed's --

MR. HANSEN: I object to the District Attorney reading from this paper upon the ground that the witness has already answered that she does not remember and that nothing more was said.

THE COURT: This is for the purpose of refreshing her memory.

MR. ELY: (continuing) "While I was working at Dr. Reed's Moore told me he was going to marry me on Easter Sun-

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day, 1907".

THE WITNESS: Yes.

Q Do you remember that? A Yes.

Q Did the defendant say that to you? A Yes.

Q There at Dr. Reed's? A Yes.

Q Now what else did Moore say to you while you were at Dr. Reed's?

MR. HANSEN: If anything.

MR. ELY: I object to counsel making any objection except to your Honor.

MR. HANSEN: I address myself to the court.

MR. ELY: He did not object. He simply made a suggestion to the Court and he has no right to make suggestions, but has a right to object, and your Honor will pass upon his objection.

THE COURT: Add the phrase, "if anything" to your question, Mr. Ely.

(The question is repeated as follows: Q What else did Moore say to you when you were at Dr. Reed's, if anything, as far as you now recollect)? A I does not remember him saying anything more to me at the present time.

BY THE COURT:

Q At that time? A At that time, no sir.

Y MR. ELY:

Q For the purpose of refreshing your recollection, did

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not Moore say anything to you about a man by the name of Frazer? A Oh yes sir, about the boarding house.

Q Tell me what the defendant said to you about Mr. Frazer and the boarding house? A He asked me would I come over to Long Island City to work with him in Frazer's boarding house and I told him I did not wish, I did not care to go over there, I had a good job and wanted to keep it, because his boarding house might not last very long and I will be out of a job, and he said, oh yes it will, and he said he would pay me the same wages I was getting at Dr. Reed's, five dollars a week. I did not care to go with him and I met him again the following Monday night and he insisted upon me going and I told him all right I would go over.

MR. HANSEN: I object to the word insisting.

THE COURT: Yes, strike that out.

MR. ELY: You strike out the word "insisted"?

THE COURT: Yes.

BY MR. ELY:

Q Go on? A I have forgotten what I was talking about.

Q You met him the following Monday night? A Yes.

Q Do not say "insisted" upon my going, and "I said I would not" -- but state just what he said to you and what you said to him? A He asked me would I go over there and I said yes, and on Tuesday afternoon I went over to Long

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Island City.

Q Do you remember about what month that was that you say on Tuesday afternoon you went over to Long Island City?

A Yes.

Q What month? A That was in February.

Q Whereabouts in Long Island City, do you remember?

A 96 West Avenue.

Q West Avenue? A Yes.

Q Who did you find over there at 96 West Avenue?

A I found the defendant over there and lots of more other men.

Q Was Frazer there? A No sir, not at the time; he was in New York.

Q What did you do? A Then I stayed at the boarding house after that.

Q You managed the boarding house?

Objected to as leading; objection sustained.

BY MR. ELY:

Q What did you do there, that is very important indeed, go on, what were your duties there? A Doing everything. I done all the washing and ironing and cooking and took care of the house as a housekeeper.

Q For what period of time did you do that? From February until when? A From February until September.

Q September, 1907? A Yes.

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Q Did you know Isaiah Rhett in his lifetime? A No sir  
I only knowed him.

Q Why, you know I do not mean know him in a certain  
way? A I know what you mean. I want to think. I think  
I met him -- I don't exactly know what month it was.

BY THE COURT:

Q You can answer the question whether you knew him or  
not? A Yes I knew him, sure .

BY MR. WILY:

Q When did you first meet Isaiah Rhett, when did you  
first see him and become acquainted with him? A In the  
winter time.

Q Where? A In 96 West Avenue.

Q In the defendant's premises? A Yes. He boarded  
there.

Q Did you know what Isaiah Rhett did for a living?  
A He worked in the tunnel.

Q In what tunnel? A Long Island City tunnel.

Q Do you remember about how long after you had gotten  
to the defendant's premises, which you managed, that it was  
that you met the deceased Rhett, about how long after you  
had gotten there, a month or two? A I guess it must have  
been about two months.

Q That would be about April? A Yes just about.

Q 1907? A Yes.

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Q Is that right? A Yes, that is right.

Q Now after you had met Rhett did you have any conversation with the defendant? A No sir, not at that time.

Q I do not say at any particular time -- you made the acquaintance of Rhett? A Yes sir.

Q That was in April? A Yes.

Q Since April, 1907, have you ever talked with the defendant? A Since April, 1907, yes sir.

Q Now after meeting the defendant in April, 1907, did you ever have any conversation with the defendant about Rhett? A I never had any, but the defendant did with me.

Q Tell us what the defendant did -- what conversation the defendant had with you about Rhett? A The defendant said to me one day, one morning, he came upstairs and he said to me -- he called me Fanny, and he said I heard some talk about you and Rhett, and I said, what was it, and he wouldn't tell me and I said, it is not so; I didn't come over here for anything like that. I came over here to work, you must be crazy, and that was all he said at that time, he turned away from me. Then the next time about three days --

BY THE COURT: Q How long after? A About three days as near as I can remember, he said to me, I have heard it all now. Then he said --

BY MR. FLY:

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Q "I have heard it all now"? A Yes.

Q The defendant said to you I have heard it all now?

A Yes. This was in the bedroom and I said what is it, and he said, I will not tell you. I can't remember all. He asked me did Rhett ever say anything to me and I said no, he did not. I said you must be crazy to think such a thing as that, I didn't come over here for anything like that, and that was all he said to me, and he walked away from me and this was on Thursday and the same day the defendant and I had a quarrel.

BY MR. ELY:

Q What you describe as a quarrel between yourself and the defendant, what was that? A He hit me.

Q Wait a minute -- did you have this conversation about Rhett on the same day that you, as you say, the defendant had a quarrel? A Yes sir.

Q After the conversation that you had with the defendant about Rhett, what did you do? A What did I do?

Q What did you do? A I went out in the street and stayed about an hour as near as I can remember.

Q Did you have any conversation with the defendant?

Objected to as leading; overruled and exception.

Q What conversation did you have with the defendant after you had this conversation about Rhett? A We didn't have any.

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Q You know that conversation is just talking, you said you did not have any conversation with the defendant about Rhett, but he had some with you; did the defendant say anything to you further on that day as far as you now recollect? A No sir not that day.

Q Do you remember stating this under oath, "In the afternoon of the same day when I was going out on the street I met Moore coming in and he asked me where I was going and I told him I was going about my own business"? A Yes sir.

Q Is that true? A Yes sir that is true.

Q That is the conversation you had with the defendant on the same day? A Yes sir.

Q That you had this conversation about Rhett? A Yes sir.

Q You went away and stayed away as you have testified? A Yes.

Q About how long? A About an hour as near as I can remember.

Q After going out and staying away about an hour, where if anywhere did you go after that? A When I went out I went on the street --

Q Do not tell me what special places on the street -- when you got through with the walk where did you go? A I came back to the house.

Q You came back to the defendant's premises, A Yes.

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Q West Avenue? A Yes.

Q In Long Island City? A Yes.

Q Did you see the defendant when you came back? A Yes.

Q Where was the defendant? A He was standing on the stoop.

Q What did the defendant say to you if anything? A He said to me, where have you been, and I said, none of your business, and I walked up on the stoop and I went in the bedroom and I said, it is very warm up here, and he said, it will be warmer than that in a few minutes, and at that time he struck me.

Q Where did he strike you? A In the face three times.

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Q What did he strike you in the face three times with?

A With his hand.

Q Was his hand open or shut? A I don't remember.

Q What did you say to the defendant if anything and what did he say to you, just before he struck you? A That was all I remember him saying to me.

Q For the purpose of refreshing your recollection I ask you if you said, "Oh, pshaw, you must be drunk," and more, the defendant then said, "I am not drunk", and struck you three times in the face? A Yes, sir, that is right.

Q Was anybody present at that time? A I think Walter Fraser was present at the time.

Q After Moore struck you what did you say to Moore?

A I said to him I would have him arrested, and I went to the yard to do so, and when I got out on the street I thought I would come back and would not have him arrested, and I said I would go away to New York, and Fraser was sitting on the stoop and he said to me --

Q Was the defendant there? A No, sir.

Q Do not say what Fraser said then -- after you had been struck this way and had gone out on the street and then again returned, what did you do? A I dressed myself and came to New York.

Q Prior to coming to New York did you see anybody?

A Only Rhett, that was all.

Q You saw Rhett? A Yes.

Q Was the defendant present when you saw Rhett?

A No, he was not.

Q Do not give me any conversation, but please answer my question yes or no,,when you saw Rhett, after the defendant had struck you, you were prepared to go away, did you have any conversation with Rhett? A No, sir, not then.

Q Now perhaps my question is blind and I will change it. After the defendant had struck you and you had gotten ready to go away, did you say anything to Rhett and did Rhett say anything to you? A Yes.

Q And then after you had had a conversation, after Rhett had said something to you and you had said something to Rhett, what did you do? A Then I came over to New York.

Q You came to New York? A Yes.

Q How did you come to New York, by what ferry?

A 34th street Ferry.

Q You landed at the foot of East 34th street? A Yes.

Q Did you see anybody there? A I waited for Rhett.

Q And subsequently did you see anybody? A Only Rhett.

Q This was on the afternoon of the 5th of September, 1907 ?

A Yes.

Q Thursday? A Yes.

Q When you saw Rhett at the Ferry on the afternoon, of Thursday -- about what hour on the 5th of September was it

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that you saw Rhett at the ferry? A It was not dark but I don't know just what time it was.

Q It was pretty near dark, dusk? A Pretty near, yes.

Q Somewhere after five o'clock or six o'clock? A Yes.

Q When you saw Rhett, did you have any talk with Rhett, yes or no? A Yes.

Q He said something to you and you said something to him? A Yes.

Q What did you do after you and Rhett had had the talk, do not give me the conversation because the defendant was not there and that is not proper? A We did not do anything only got on the car.

Q You got on the car, and when you got on the car you stayed and rode on it? A Yes.

Q Tell me? A Until we got to Eighth avenue.

Q And what? A 34th, and we transferred to 39th.

Q Transferred up Eighth avenue to 39th street? A Yes.

Q What did you do when you went to 39th street?

A Then after that I went to look for a room and he was with me, and we met another fellow by the name of --

MR. HANSEN: I object to this upon the ground that it happened in the absence of the defendant and cannot be binding upon him.

THE COURT: I will allow the question and answer.

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Exception.

THE WITNESS (Continuing:) We met another fellow  
by the name of Brush Marrow.

Q Do not give any conversation with either of them, you  
went up with Rhett and saw Brush Marrow, and what did you do?

A We got the room.

Q Who got the room? A I and Rhett.

Q You and Rhett got a room at what number? A 412 West  
39th street.

Q That was on the evening of the 5th of September?

A Yes, sir.

Q 1907? A Yes, sir.

Q After you had gotten this room at 412 West 39th  
street, what did the deceased Rhett do? A He and I after  
that we went into a restaurant and had something to eat.

Q Then what? A I stepped into the drug store and  
bought a bottle of witch hazel for my face.

Q With hazel for your face? A Yes, and then I came  
back and went to bed and Rhett went to work.

Q Rhett went to Long Island? A Long Island City.

Q He worked nights in the tunnel? A Yes.

Q You stayed then at 412 West 39th street? A Yes.

Q On the morning of the 6th of September, 1907, did you  
see Rhett? A Yes, sir, about half past eleven.

Q Go on, what did you do on the day of the 6th?

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A Then we went out to a restaurant and had something to eat and then we went around the street.

Q What? A We had something to eat in the restaurant and after that we went -- I forget what the number was, in 36th street.

Q Go ahead? A And the people was not at home and we came back, Rhett and I, and a friend of mine, Minnie Johnson, went upstairs and played cards.

Q Did you stay that night at 412 West 39th? A Yes.

Q Where did Rhett go the night of the 6th? A He went to work.

Q Come down to Saturday the 7th, did you see Rhett on the Saturday, the 7th? A Yes.

Q About when in the day did you see Rhett? A As near as I can remember, I think it was about half past twelve.

Q Half past twelve at noon? A Yes, sir.

Q On Saturday the 7th? A Yes, sir.

Q When you saw Rhett where did you go, if anywhere?

A We went to a restaurant just the same and had something to eat and went to this same house, 36th street, I forget what the number was.

Q That was where the Brushmans live? A Yes, sir, and there we stayed there for quite a while and all had something to drink and about three o'clock, I think, as near as I can re-

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member, we came home.

Q To 412 West 39th street? A Yes, sir, and Brush Marrow and his wife and Minnie Johnson came up with me to my room.

Q Did Rhett come up too? A Yes, sir, and he laid down across the bed and the rest of us all played cards, and about five o'clock in the afternoon Rhett said to me, "Come on out and get something to eat," and I got ready and went out on the street, and I don't know what time it was, but it was about half past seven, as near as I can remember.

Q What was about half past seven as near as you can remember? A When we went out on the 7th to get something to eat on Saturday evening.

Q Go ahead, did you have something to eat? A Yes.

Q You and Rhett? A Yes.

Q After you had gotten something to eat what happened?

A Then we were coming on back and we came down Eighth avenue to 41st street and came up 31st street, around 39th street -- Ninth avenue, I mean to say, and during the time when Rhett was standing on the corner, he and I, we met this fellow they call Brush Marrow, and I left him and this fellow Rhett standing talking. I went across the corner and I waited for him, and at that time I started on down street and Rhett overtook me and we started on down the street together, and then at that time I met a girl by the name of Minnie Johnson at 414,

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and I was talking to her, and before that I had said to Rhett, "Come with me down to the corner of Tenth avenue to see the Italian fire works."

MR. HANSEN: I object to any conversation.

MR. ELY: Strike it out.

THE WITNESS (CONTINUING): And at that time I started away from Minnie Johnson, and somebody pulled me by my hand and I turned around and looked and it was the defendant.

Q What did the defendant say when he pulled you by the hand? A He said as near as I can remember, I think --

he wanted to talk to me or something like that. I can't remember just what he said because I got all excited and at that time I said to him, "Don't be pulling me in the street."

Q Then what happened? A Then I seen the defendant the way he was standing, he put his hand in his pocket, in this pocket, like this, and here he was standing in front of me.

Q Wait a minute, which pocket? A In that pocket.

Q Hip pocket? A Just like this, while he was standing like that and I was standing there.

THE COURT: Show the gentlemen of the jury.

A Like that, he put his hand in his pocket, and then he pulled it out and he put it right back again and he pulled it out a second time and he pulled out the revolver, and at that time I heard him say to the fellow that is dead, I heard him

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say, he swore, "You son of a bitch, don't you come near me," as near as I can remember.

BY THE COURT:

Q Who said that? A The defendant said that to the boy that is dead.

BY MR. ELY:

Q The defendant said that to the boy that is dead?

A Yes, sir.

Q What happened after that?, A Then at that time the revolver was fired twice.

Q Who fired it? A The defendant.

Q Stand up, will you please-- now wait a minute-- take hold of me and just put me standing in front of you as the defendant was standing in front of you when he spoke as you have stated? A He was standing like this and he put his hand --- .

Q Put my hand where the defendant had his? A I don't know -- I cannot think just now.

Q What hand did he have the revolver in, right or left hand? A This pocket he pulled his hand out of that pocket -- no -- here (indicating the right side). Here I was standing and he was standing here, and he pulled the gun, his revolver out of his pocket the second time, and he fired, and I was standing there --

BY MR. ELY:

Q How did he have it? A He put it like that (indicat-

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ing), and when he fired that way like that, I screamed.

BY THE COURT:

Q You say he took hold of your hand? A Yes, at first.

Q And then he had some conversation with the deceased, that is with Rhett? A No.

Q What conversation did he have with you? A Only just those words he wanted to talk with me, that was all.

Q You say he took a pistol out of what pocket? A Out of this pocket.

Q Right hand trousers' pocket? A Yes.

Q Front or hip pocket? A Front.

Q The front or side pocket? A Yes.

Q What did you say he did with the revolver? A Then he fired twice.

Q How near to him were you when he fired the revolver?  
A The defendant?

Q Yes, how near to the defendant were you when he fired?  
A Just like that (indicating).

Q Was any part of his person in contact with yours, up against yours? A No, sir, but we were pretty close. We were as close as that.

Q As close as what? A About like that.

BY MR. ELY:

Q The defendant was here at the corner (indicating), and

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you were right in front? A Yes. When he fired he kind of touched me, the first time he fired, and then I run around like that and fell across the railing of 414 screaming.

BY THE COURT:

Q How near was his arm to you when he fired the re-  
held and  
volver, that is the arm of the hand in which he fired the re-  
volver, how near to you was he, was he touching you? A No.

BY MR. ELY:

Q Take my arm and show the way? A He pulled his  
arm out of his pocket like that, while he was standing like  
that (indicating); and he touched me and I went around like  
that. I didn't know who he was shooting at at first.

BY THE COURT:

Q His arm was up against you and you were facing him?  
A Yes.

Q And he was facing in the direction of Rhett? A Yes,  
sir.

Q When he fired? A Yes, sir.  
BY MR. ELY:

Q Before that, before the defendant pulled his gun and  
fired, what did you say you heard the defendant say?

O bjected to as having been already stated. He  
said, "You son of a bitch, don't come near me."

BY THE COURT:

Q Is that what you heard him say?

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THE WITNESS: Yes.

BY MR. ELY:

Q With an oath? A Yes, sir, with an oath.

BY THE COURT:

Q Tell us all, you heard, oath and all? A I heard the defendant say to this fellow --

Q To Rhett? A You son of a bitch, don't come near me, and at that time he fired the gun.

Q At that time he fired? A Yes.

BY MR. ELY:

Q Then you fell down? A Yes, I screamed.

Q You screamed and then what after that did you do?

A I didn't do anything. They took me upstairs in my room and that is all.

Q You don't know anything about what happened after that? A After, oh, yes, after Rhett was shot I went to him and I said to him, "Are you shot?" And he said "Yes," and at that time the crowd came around me and set him down on 414 stoop and had time to remove to the drug store Ninth avenue and 39th --

Q You went right up to Rhett after he had been shot?

A Yes, sir.

Q And did Rhett have anything in his hand? A No, sir, he didn't have anything at all, only his hat.

Q His hat? A Yes, sir, that was all.

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Q He was removed then directly from there to the drug store? A Yes.

Q And then after he had been taken to the drug store what happened? A Then the ambulance came.

BY THE COURT:

Q Were you there when the ambulance came? A Yes, I seen it come, but I don't remember, I can't tell what happened after that.

CROSS EXAMINATION BY MR. HANSEN:

Q How long did you say you had known the defendant?

A Ever since 1899.

Q He had always been very kind to you?

Objected to. Overruled. Exception.

Q During those five years that you and the defendant had known each other, he had never hit you before? A Yes.

Q How many times had he ever hit you before? A I don't remember; I know he hit me before this time.

Q You knew that he was going to have a boarding house in Long Island? A After he told me, yes.

Q You stayed at that boarding house for several months? A Yes.

Q You were all respectable people? A Sir?

Q You were all respectable people in that house? A Yes.

Q Nothing immoral or bad was going in in that house--

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you were all decent people in that house?

Objected to as having been already answered.

Q Were you not?

Objected to as having been already answered.

Q Were you not? A What is it again?

Q You were all respectable, decent people in that house? A Yes, I was in the kitchen all the time and never was around with the rest of the people.

Q And you would not have been there if it had been an immoral house?

Objected to. Sustained. Exception.

Q The defendant worked in the tunnel himself? A Not then he did not, not at that time.

Q While you were housekeeper in that boarding house?

A No.

Q What was the defendant's employment, what did he work at, did he work at anything? A He didn't do anything then because he was at the boarding house.

Q He was the one who accepted the boarders when they came in and asked for room and board?

Objected to as immaterial. Overruled.

Q He ran the business end of the boarding house?

BY THE COURT:

Q Who managed the boarding house? A Fraser and Moore.

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Q The two of them? A Yes.

BY MR. HANSEN:

Q How many boarders were living there in the month of March, if you remember? A I couldn't tell you; I don't remember.

Q Were there more than five? A More than that, but I don't remember how many there was.

Q Were there any women living there? A Yes -- no, the girls used to come there to see me.

Q But that was all? A Yes.

Q There were no women boarders? A Not at that time, no, sir.

Q You never had any argument with the defendant until this gentleman Rhett came into the house? A Oh, yes, we had.

Q But never about other men? A No, but we had arguments.

Q Not about men, not about affairs, or anything of that kind?

Objected to.

Q The defendant never found fault with you because of other men's attention to you? A I don't understand you -- yes he did.

Q Were there some men paying attention to you? A I suppose so, I don't know.

Q If I should read to you a few names, would it help

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to refresh your memory? A I don't know.

Q Do you know a man named Ben Green? A Yes, sir.

Q He paid you a little attention? A Not at this time.

Objected to as incompetent, irrelevant and immaterial.

MR. HANSEN: It is very material, because it is part of our defense that this defendant was a moral man, and the only quarrel he had in his house with this witness as has been brought out by this witness, was because of her misconduct with other men. I desire to show to the Court the relative position of these different people in that boarding house. I want to show this man is a man more sinned against than sinning.

THE COURT: You may answer the question and you need not be alarmed about answering as long as you are telling the truth. You need have no fear of anybody. You are under the protection of the Court. Proceed.

THE WITNESS: What is it?

BY MR. HANSEN:

Q Do you know a gentleman by the name of Joseph Curry?

A No, sir, I do not remember.

Q Never heard of such a name before? A Maybe I did but I don't remember.

Q Did you know a fellow by the name of George Monis?

A Yes, of course, he was a boarder over there in the board-

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ing house.

Q Did the defendant ever accuse you of misconduct with him? A No, sir, he did not.

Q You never had any misconduct with him? A No, sir, I did not.

Q You are sure of that? A Yes, I am sure.

Q And the same with Kid Rodden, you knew him? A I don't know anything --

THE COURT: Answer the question.

A There was people, all boarders at the house.

BY MR. HANSEN:

Q These people did not all board there? A Yes, sir, they did.

Q Did George Morris board over there? A Yes.

Q You had an affair with him? A No, sir, I did not, no more than anybody else. I spoke to him good morning and good afternoon, that was all.

Q You know a fellow by the name of Samuel Scaller?

A Yes, sir.

Q Did you have anything to do with him? A No.

Q Or Henry Simms? A All of them were boarders at the house; I didn't know anything about the people only boarders, that was all I can tell about them. I couldn't say anything except --

Q None of them ever slept with you? A No, they did

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not.

Q Never? A No, sir.

Q Did the defendant ever accuse you of having slept with any of them, did he ever accuse you and say you had slept with them, although you had not? A No, sir, he never accused me of sleeping with anybody.

What

Q Did he accuse you of, if anything? A He just said he didn't want me to talk to them, and like that, just said he didn't wish me to have any talk with them. Never said there was anything between us.

Q Did the defendant ever accuse you of being intimate or having had sexual intercourse with Rhett? A No, he did not.

Q A matter of fact you never did have sexual intercourse with Rhett? A No, sir, I did not.

Q The defendant was very careful about the reputation of his house, wasn't he?

Objected to. Sustained. Exception.

Q Did the defendant ever tell you that nothing of that sort, immorality, must go on in that house? A No, sir.

Q Did the defendant ever tell you that nothing immoral must go on in that house?

Objected to. Objection overruled.

A No, sir.

Q What? A No, sir, he did not. He never told me anything. Never was there.

Q I did not hear you? A He did not tell me anything like that because he was never there, very seldom was there, he was always in New York--I don't know where he was.

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Q Didn't you say a minute ago he ran the boarding house? A He and Frazer did in partnership.

Q Did Frazer ever tell you? A No sir.

MR. WILY: I object to anything about Frazer.

Objection sustained.

Q Did the defendant ever speak to you about not having any misconduct or anything immoral go on in his house? A No sir.

Q He never dispossessed any boarders for misconduct ?

Objected to; sustained.

Q Now, when you heard this shooting, you were standing with your back to Rhett? A Yes sir, my back to Rhett.

Q So you really don't know except what you guess, who if anybody the defendant aimed at, when he shot? A Yes.

Q You couldn't see, could you? A I couldn't see but I had an idea. I know who he was going to shoot at, I know it was one or the other, either me or Rhett.

MR. HANSEN: I object and ask that that be stricken from the record.

THE COURT: Strike it out.

Q What did the deceased Rhett so far as you know, do to make the defendant say to him "You son of a bitch, don't you come near me"?

Objected to; objection overruled.

Q You say the defendant said "You son of a bitch, don't

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you come near me", that is true? A Yes.

Q At that time he was standing looking this way?

A Yes sir.

Q And Rhett was back of you? A I was looking at the defendant.

Q And do you know what Rhett did to make the defendant say to him, "You son of a bitch, don't you come near me" do you know? A No sir, he didn't do anything.

Q Do you know, you didn't look at him? A I know he wasn't doing anything.

Q You did not see him? A I didn't see him but he didn't do anything.

Q Could you possibly know? A Well he didn't do anything to him.

Q So far as you know? A I know he did not.

Q So far as you know? A I know he didn't do anything to him.

Q Can you see what goes on behind you now? A No sir I cannot see but I know I was not standing so far when --

Q You were standing this way, show us again.

THE COURT: Let her finish.

THE WITNESS: When the defendant walked up like that, after he grabbed me by my hand I turned around and looked and saw Rhett standing there. In that way I was standing. At first I could see. I could not see Rhett behind me, but

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I know he did not have anything.

Q You didn't see him? A Yes I seen him -- I don't understand.

Q How could you see if you were standing that way, he was directly behind? A I was not facing, directly facing that way.

Q Show us? A I was standing like that.

Q I am the defendant? A Yes.

Q Show us what you did with Mr. Ely, didn't you stand this way before? A No I stood just like that.

Q You say he touched your arm when he shot? A Not as close as that.

Q He touched your arm? A Not right up on top of it.

Q You were standing looking that way? A I was not standing with my face like this. I was standing like this (indicating).

Q You now stand this way, which is it, this way or that way, which way was it? A I was stnding as I told you, cat-corner.

Q You told us several things, which one was it, show us again, how you stood and how the dffendant stood and where Rhett stood? A I don't know where Rhett was. Here was the defendant.

Q I am the defendant? A Yes, here is me standing like that, and you have your hand in your pocket and I will be

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standing like that. I don't know -- I don't know -- I didn't see Rhett behind me, but, before the defendant caught me by the hand I looked back and I saw Rhett standing about as far as that corner.

Q At the time he fired the shot? A At the time he fired the shot, the defendant fired the shot?

Q Yes. A I don't know what the man was doing behind me.

THE PEOPLE REST.

MR. HANSEN: I move the court to direct the jury to acquit this defendant upon the ground that the People have failed to substantiate the charge as laid in the indictment, namely the charge of murder in the first degree.

Motion denied. Exception.

MR. HANSEN: I ask your Honor to direct the jury to acquit upon the ground that the People have not as matter of law proved their case beyond a reasonable doubt.

Motion denied and exception.

MR. HANSEN: I also ask the court to direct the jury to acquit upon the ground that the only evidence in this case, of a murder, if any there is, is a statement made, or alleged to have been made by the deceased in the drug store, and that that statement in itself does not make it plain whether it was murder in the first or second degree or manslaughter, or what it was. Motion denied. Exception.

The Court admonishes the jury in accordance with Sec. 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning Jan 28 1968 at 10:30

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New York, January 28th, 1908.

T R I A L R E S U M E D.

THE DEFENSE.

MR. HANSEN'S OPENING ADDRESS TO THE JURY IN  
BEHALF OF THE DEFENDANT.

If the Court please, and you gentlemen of the jury: If the facts as stated to you by Mr. Ely in his opening yesterday or the day before, were so, I do not believe that we should have the audacity to come before you and ask you to acquit us.

So far as I have been able to glean from Mr. Ely's opening to you, there is only one fact that is absolutely true, and that is this, that Rhett was killed, and that the man who did it sits over there. That fact we concede, but beyond that we most emphatically deny that any murder was committed, and the sinned against man we shall show to you beyond a reasonable doubt is not the man who is dead. The sinned against man sits over there. The decent man in this tragedy is not the man who is dead. The decent man of the two sits over there. He is a man who was sinned against because he was a decent man and Rhett is a man who was an indecent man to say the least, who received his dues and his deserts.

Mr. Ely has told you that a deliberate, premedi-

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tated murder has been committed, a murder without any justification, a murder that was planned, pre determined, that the defendant sitting there was loitering around with a revolver waiting for his prey. That is not so. The thought of murder never entered the head or mind of this defendant -- never -- never. What he did, he did in self defense. What he did was this, that when he believed that his own life was in danger, then he defended himself and that is an inborn right that every American citizen has.

Although of the dead we should speak only in terms of charity, it becomes my duty to tell you that the deceased Rhett was one of the most despicable, one of the most dangerous creatures that ever walked on earth. He was a man who used to glory in the fact that he had already murdered two men, as we shall show; he was a man --

MR. FLY: They cannot show these things if your Honor please.

MR. HANSEN: We shall show that he gloried in the statement.

MR. FLY: It is absolutely improper to make these statements about the deceased in that way. It will be incompetent for them to endeavor to prove any specific act.

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THE COURT: We will rule upon that when the proof is advanced. There is some competency in showing that the decedent was a dangerous man and that this man knew it at the time.

MR. ELY: That is all right. I would not object to that.

THE COURT: The Court would admit evidence tending to show that.

MR. HANSEN: (continuing) I say to the court again and to you gentlemen of the jury that I shall not willfully utter one word in my opening to you that I shall not substantiate by proof, and if I should fail to do so it is not because we have not the proof, but it is because I have overlooked it, and I shall ask each of you to avail yourselves of your rights as jurors and call my attention to the fact that I have not made good my opening.

We shall show to you that this man Rhett came into the boarding house kept by the defendant and his partner Frazer, that he had been there but a little while when he began to take liberties with the woman who was the housekeeper in that boarding house, and that for that reason the defendant found fault with him and told him that such conduct could not be permitted in his boarding

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house; that he became so infuriated that he ran after him with a razor and tried to kill him; that he told the boarders in the boarding house that he would put lead in the stomach of this defendant, as he had done on two occasions before.

We shall show you that he **planned**, that Rhett planned the deliberate murder of this defendant. We shall show you that Rhett deliberately took this woman, this housekeeper out of the defendant's boarding house; that the defendant was led to believe that she had gone on a temporary visit over to Flushing; that the defendant had no idea that she had gone with Rhett. We shall show you that there could have been no premeditation on the part of this defendant to kill Rhett, because he had no reason to believe that of all the places Rhett would be in the place where this defendant met him, and if you do not believe what I say, I shall simply refer to the statement made in the opening by my learned brother Mr. Ely as follows: On this night, on the night of this murder, this defendant had gone up to this particular neighborhood, not dreaming that Rhett lived there or had ever seen that neighborhood; he had gone up there after a boarder to collect \$10.40 that this colored boarder owed him for board; Rhett did not live there;

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the housekeeper did not live there, the woman." Mr. Ely told you himself in his opening that the deceased worked at night on the Long Island tunnel. He was about to go to his work and at the instance of Frances Bridget, there was an Italian celebration of some description and he loitered and took her up there and loitered around. "

Now I ask you if this defendant planned the murder of the deceased, where would he go to commit that murder. Wouldn't he have gone to Long Island tunnel where this man worked.

MR. ELY: This not an opening. It is a summing up.

THE COURT: Yes.

MR. HANSEN: (continuing) We shall show you furthermore that on the night when the defendant came up looking for this man to collect his board bill, he met accidentally Rhett and Bridget on the street. Rhett had said to him several times that some day he would put lead in his stomach; he had told several witnesses that we have here to-day that he would blow the brains of that colored son of a bitch out; that he would do to him exactly as he had done to two others, and we shall show you that on the 7th day of September he carried a revolver and said on that very day he was going to get his life. The moment he came there, this defendant, looking for his man, the old boarder, he saw Bridget on the

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street with the deceased. He went over naturally to speak to his housekeeper. There was no jealousy in this case at all. There was no love existing between this defendant and the woman.

MR. ELY: This is not a proper opening. He is summing up again.

MR. HANSEN: (continuing) For that reason, his only one -- he will show to you that his only reason for speaking to the housekeeper was simply this, that he wanted to know when she was coming back, because he is a married man and had lived with his wife for nine years. The moment that he began to speak to her, the deceased stepped up and said, God Damn, you Son of a Bitch, and with that he pulled a revolver, or made such signs as if he were going to pull out a revolver from his pocket, and the defendant here in holy fear that his life was in danger, fired his revolver, and I will say to you here that we shall show that this defendant never carried a revolver until after he had been threatened by Rhett, but knowing the danger and terrible character of Rhett he carried a revolver for his own protection, because he knew that Rhett had said that he would murder him, and he knew that when Rhett said he would take a man's life he usually did as he said.

This poor defendant is a decent man. He has been

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North twelve or thirteen years. He has worked honestly and hard to make a living. He has lived in New York with his wife for nine years. He has worked over in the tunnel and established a boarding house over there in order to make both ends meet. This house we will show to you was a decent house; so far as we know the only indecent man who ever came in there was Rhett. The defendant had no ill will towards anybody, and we shall show to you there was no love in his heart for Bridget, that **she** was simply a housekeeper and nothing else; that all the love in his heart went towards his wife whom he lived with for nine years.

When we prove all this, we shall ask you to render a verdict of not guilty, because as the court will instruct you every man has under certain circumstances a right to kill, mainly when he has every reason to believe that he is in imminent danger himself.

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RICHARD MOORE, the defendant, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY J. L. HANSEN:

Q Where did you live prior to your arrest? A 219 West 61st Street.

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Q And who did you live with -- in New York? A In New York.

Q And who did you live with if anybody? A Who did I live with in New York? .

Q Yes. A My wife, that is my --

Q Your ommon law wife? A Yes sir my common law wife I have been with for nine years.

Q You have been with her nine years? A Since the 7th of November, 1898.

Q What was your business on the 7th day of September, 1907? A I left the boarding house --

Q What was your business? A What was my business?

Q What did you do for a living up to that date? A I was running a boarding house at 96 West Avenue, Long Island City.

Q What else if anything were you doing? A I also had a little barber shop there with one chair in it that I did the work for all my boarders and a good many others around the neighborhood.

Q Did you know a man by the name of Rhett? A Yes sir.

Q How long had you known him up to September 7th? A I have known Rhett since about the middle of May in 1907.

Q Where did you first meet Rhett? A I first met Rhett in the street in front of my boarding place, boarding house.

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Q After he came to live with you or before? A After -  
he came to live with me about the first of August.

Q When did he come to live with you? A About the  
first of August.

Q 1907? A Yes.

Q When did you say you first met him? A The middle  
of May.

Q Did you know him well before he came to live with  
you? A No I never saw him before.

Q You say you met him in May and that he came to live  
with you in August? A Sir?

Q You say that you met him in May?

MR. FLY: I object. Let the witness testify.

BY MR. HANSEN:

Q When did you first see Rhett in your life to know  
him -- when did you first see him? A The middle of May,  
1907.

Q When did he come to live with you? A The first of  
August, 1907.

Q Between May and August did you see him frequently,  
did you often see him? A I often saw him.

Q Where? A He came to my boarding house several  
times.

Q For what purpose if you know? A Well nothing in  
particular, only he just came there sometimes and he knew

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some of the rest of the boarders.

Q Now between August and September how many boarders did you have in your house? A I had from ten to twelve or fifteen.

Q And who was the housekeeper who kept house for you? A Fanny Bridget.

Q Was she the only woman who lived in the house? A No sir, sometimes we had others -- there was a couple of more boarders had their wives there during the time.

Q Now during the time that Rhett lived -- when did Rhett leave your boarding house? A I was not there when he left, but I was told --

Objected to.

MR. FLY: When did he leave -- when did he last see him in your boarding house?

THE WITNESS: When I last saw him was on Thursday the 5th of September, Thursday morning.

BY MR. HANSEN:

Q When you saw him on the 5th of September in the morning did he say anything to you about leaving your boarding house?

Objected to as leading; objection sustained.

Q Did you have any conversation with Rhett on the 5th of September? A No sir.

Q After having seen Rhett on the 5th of September, when

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next did you see him? A 39th Street near Ninth Avenue.

Q When did you see him there? A About eight o'clock.

Q In the morning or evening? A In the evening.

Q Will you try and raise your voice and speak to the jury -- what brought you up to 38th Street?

Objected to as incompetent, irrelevant and immaterial.

Q When you saw him up at 39th Street and Ninth Avenue were you looking for him?

Objected to.

MR. HANSEN: If it may please the court, the District Attorney has introduced evidence and said in his opening that he would show that this defendant was looking for the deceased.

MR. ELY: I did not.

THE COURT: You may ask him what he was doing.

BY MR. HANSEN:

Q What were you doing in 39th Street on the day of the 7th of September at eight o'clock in the evening? A I had just left my home.

MR. ELY: I object and ask to have it stricken out as not responsive.

BY MR. HANSEN:

Q What were you doing in 39th Street at Ninth Avenue on the evening about eight o'clock of the 7th of September? A I

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was looking for Biscoe, a boarder that owed me ten dollars and fifty cents. Biscoe had left the boarding house the Saturday previous to that and I was told --

MR. ELY: I object to what he was told.

BY MR. HANSEN:

Q Had you seen Biscoe -- was it before or after you had seen him that you saw Rhett?

MR. ELY: I object as improper. It assumes something that is not in proof and it calls for a conclusion and is incompetent evidence.

BY MR. HANSEN:

Q Did you as matter of fact see Biscoe that night?

Objected to as immaterial; overruled.

BY MR. ELY:

Q Yes or no.

BY MR. HANSEN:

Q Did you or not see Biscoe that night?

MR. ELY: I object. He says that night -- before the meeting with Rhett is the point.

THE WITNESS: I did not see Biscoe. I was looking for him.

MR. ELY: I object to looking for him. Your Honor directed that question to be answered yes or no.

THE COURT: He has already said he was looking for him in answer to the previous question.

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MR. FLY: But that is not proper.

BY MR. HANSEN:

Q Tell the court and jury how and where you saw Rhett on the 7th of September, 1907, in 39th Street? A I saw Rhett about 15 feet from me coming towards me and when he called -- he called Fanny. I heard some one say Fanny, and I looked back ; I had my back turned, and I looked back and he said "What in the hell do you want with that woman, you son of a bitch, you".

Q What? A He said what in the hell do you want with that woman?

Q What woman? A Frances Bridget.

Q Did you also see her? A I saw her.

Q Did you see her together with him?

MR. FLY: I object. Let him tell his own story.

BY MR. HANSEN:

Q Tell your own story, tell all that happened, what you saw and how you saw it and who spoke first and what they said and what you said? A I was coming down Ninth Avenue from 42nd Street and I got to the northwest corner of 39th Street and Ninth Avenue and I saw Fanny Bridget standing about twenty feet from the corner opposite me, which was the southwest corner.

MR. FLY: The southwest corner.

THE WITNESS: The southwest corner, about 20 feet

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from me on the southwest corner.

BY MR. HANSEN:

Q Go on and tell your story? A On the southwest corner and I started to walk towards her. When I got in about 20 feet of her she walked off a couple of steps further and stopped again and spoke to another woman and the woman passed her and passed me going towards Ninth Avenue. I walks up to Fanny and I walked up on the lefthand side of her and touched her like that and I said, what are you doing over here, just like that, and caught hold of her by the hand and I said, come here, I want to see you, just like that, and she turned around and I started to walk towards Ninth Avenue.

Q Go on? A I heard somebody call her name, Fanny, and I looked back, and Rhett said, what in the hell do you want with that woman, you son of a bitch, you, and ran his hand in his pocket. I said, don't come to me, like that, and at that I fired. He had his hand stuck back in his pocket coming toward me and I fired and he was about five feet from me coming with his hand in his pocket.

Q Stand up and describe to the court and jury what he did -- say that I am you and you are Rhett, what did Rhett do, act just as he did? A If you get up here I will.

Q Have you any revolver?

MR. FLY: I object to this horse play, such as have you any revolver; that is a perfectly improper question and

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he knows it.

BY MR. HANSEN:

Q Give us the position and what did he do? A He said what in the hell do you want with that woman, you son of a bitch, you, just like that, and I had the revolver in my pocket, in this pocket (side pants pocket).

BY MR. WLY:

Q In the pants pocket? A In the right hand pocket.

Q Pants pocket? A Pants pocket.

Q Front? A Yes. He had his hand in his pocket and he said, you son of a bitch, what in the hell do you want with that woman, just like that, and he was coming towards me and I said, don't you come to me and he rushed right on me and I pulled out the revolver once and turned and went on towards Ninth Avenue, walked on towards Ninth Avenue and when I got and to Ninth Avenue I stepped in the avenue, a gang got around me and commenced to punish me. They beat me all the way from there, as I walked around to 40th Street. When I got to 40th Street and Ninth Avenue I turned towards Eighth Avenue and some fellow ran up behind me and struck me in the back of the head with a box which broke all to pieces and I fell flat on the sidewalk and I never could get up any more.

Q Raise your voice? A I was hit in the back of the head with a box between Ninth and Eighth Avenue and fell right flat on my face and I got kicked in the side and I

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said, for God's sake, don't kill me; I begged them all the way down Ninth Avenue to not kill me. I was looking every minute for a policeman to come up for my protection. I really was not trying to run at all. I did not run.

BY MR. HANSEN:

Q When Rhett put his hand in his pocket and advanced towards you, did you think that he was going to do you harm?

A I had no other thought but what from the flash of his hand from behind, I would have been shot, knowing he had threatened my life before and said he would shoot me.

Q Had he ever threatened that he would shoot you?

A Yes.

Q Tell the court and jury all about it, when he said it and where he said and how he said it? A Before Isaiah Rhett came to my boarding house I went one night -- it was about the last of July, on Friday night, pay day on the Pier-son Company, in the Pennsylvania tunnel, I goes up there every other Friday night to collect --

MR. FLY: I object.

THE COURT: Let him tell it; either one thing or the other, either you get the story by questioning him as you may, or allow him to tell his story and if there is no very serious violation of the rule, let him continue without interruption.

BY MR. HANSEN:

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Q Tell your own story in your own way?

THE WITNESS: At the company's boarding house -- I missed one of my boarders from the office; I thought he was in the company's boarding house; this was five blocks from where I kept the boarding house at and I went in there and I sit -- I went in the boarding house and stood up and asked for this man. His name was George Morris, but he was not in there. One fellow said to me --

MR. FLY: I object to what one fellow said to him.

THE COURT: Let us see what the fellow said and if it is not proper we will strike it out.

BY THE COURT:

Q What did one fellow say to you? A I went in the dining room of the boarding house and a fellow they call Big Boy, that is all I know of his name, he said to me, I will play you a game of coon can. I told him no I didn't have much time.

MR. FLY: I object.

THE COURT: Then what happened?

A He asked me would I play him a game. I told him no I didn't have time and he said to me, he said, I will play you for some money and I said I don't play for money. I said I will play you one game to see if you know the game and I sat down and played one game with him and he got in an argument with me.

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THE COURT: What happened?

A He called me a son of a bitch.

MR. ELY: What has this to do with the case?

THE COURT: This man is being tried for his life and I am going to let him tell whatever may be reasonable from his point of view, but if it should violate the rules I shall have it stricken out.

MR. ELY: He says that he wants to play a game with Big Tom and Big Tom makes a threat. It seems to me that has no bearing on the issue here.

THE COURT: It may or may not have. Then what happened?

A I said, don't call me that, I don't use that kind of language. and he said, what in the hell is you any more than anybody else. I said I guess I will --

THE COURT: You had better get to whatever relation you may have had with Phett, instead of continuing with this man.

MR. ELY: Will you have this stricken out?

THE COURT: I will see.

BY MR. HANSEN:

Q Raise your voice, the jurors cannot hear you and come down to Phett, it is Phett we want to know about? A I said to this fellow, don't call me that. I will hit you in the mouth if you call me that, and I stood up on my feet and

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Rhett was sitting about the distance of that man from me.

THE COURT: That is to say, how far from you, about how far do you think?

A About six feet. He jumps up with a razor wide open and reached at me with it and I jumped backwards out of the door into the hallway and run about the distance over where Mr. Hansen is standing. He said, you son of a bitch, I will get you. He said, I will put you to sleep as I have a couple of more, and I walked on out the door and went on back to my boarding house and laid down and went to sleep. This was on Friday night. Saturday morning a man came to me by the name of Richard Harrison and told me that Rhett said he was going to pawn his clothes and get a revolver out and come down on Saturday night and shoot me. Saturday morning I went to the market to get some meat from West Avenue, 96 West Avenue, and I came around through Borden Avenue and I met Isaiah Rhett near Borden Avenue, near a pawn shop and he had his clothes on his arm and I stood and looked at him and he passed me and did not speak and he went in the pawn shop, and after knowing that Harrison had told me that Rhett was going to come to shoot me I noticed him particularly. He went in the pawn shop and I saw him go in the pawn shop and then I went back to the boarding house and I stayed in two or three days. I never came outside of the gate, because I was afraid he would do something to me.

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BY MR. HANSEN:

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Q When was this? A This was in the last of July, about the last or around the last of July.

Q Tell us when next did you have any dealings or transactions or conversation with Rhett? A I never had no more conversations with him. He walked past me for several days and never spoke to me. I went to Haverstraw about the first of August and stayed three or four days and when I came back Walter Frazer had taken him in the boarding house.

Q Your partner? A My partner had taken him in the boarding house.

Q In your boarding house? A Yes sir in my boarding house. He and I was in partnership. He had taken him in the boarding house and he told me --

Q Who told you? A Walter.

MR. ELY: I object to any statement Walter made to him.

BY THE COURT:

Q Who is Walter? A Walter Frazer who was in partnership with me. He had taken him in the boarding house while I was away.

BY MR. HANSEN:

Q When next did you have any talk or conversation of any kind with Rhett? A After Rhett had been to the boarding house about two weeks he had carried on a lot of misconduct around the place.

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MR. ELY: I object and ask to have it stricken out.

THE COURT: Strike it out.

Q What did he say to you and what did you say to him, tell what happened between you?

THE COURT: Instead of characterizing this man's actions as bad conduct, he may tell what he did.

BY MR. HANSEN:

Q Tell what if anything you saw Rhett do that displeased you?

MR. ELY: I object to the words "displeased him".

THE COURT: Ask him what he means by misconduct.

BY MR. HANSEN:

Q What do you mean by misconduct, what did he do that made you come to the conclusion that --

MR. ELY: I object.

BY MR. HANSEN: (Continuing) -- that he was misconducting himself?

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

BY MR. HANSEN:

Q What do you mean by misconduct, you said Rhett committed misconduct, what do you mean by that? A He swore in the boarding house and talked bad language and I told him that I didn't like it. He said to me --

BY THE COURT:

Q What bad language did he talk? A Well, there was

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two women there, Fanny Bridget and another woman by the name of Lillie Haines, and he often used bad language.

BY MR. HANSEN:

Q What did he say? The Court asked you what words did he use? A He would say to -- he would say to some of the boarders "You cocksuckers, don't do so and so and so" and I asked him to stop. I said, don't use that kind of language and he said to me, oh, what in the hell do I care about you and he said, I am going to fix you, I'm going to you. I said well, that is the second time you have said that.

BY THE COURT:

Q What other conduct on his part do you speak of as misconduct? A I was told in the boarding house that --

MR. ELY: I object to what he was told.

MR. HANSEN: It may influence his mind.

THE COURT: proceed.

THE WITNESS: I was told that he was carrying on bad when I was away, with this woman Frances, Frances Bridget, and I asked about it. I said now, this is a decent place and I don't want you to do that around here. I said I heard that you was going with Rhett around here and she said no, and I never said no more to her about it.

BY MR. HANSEN:

Q Did you say anything more to him about it? A I did.

Q What did you say and what did he say? A I told him

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he had either to cut it out or leave the boarding house. That was about a week before he left, and on the 5th of September as I have stated, I went to New York and I came over to New York and I never have been back any more. I never did go back any more. I came to New York.

Q Keep up your voice? A I left Long Island Thursday on the 5th of September and I went to 219 West 61st Street where I live at with my wife. I never did go back to the boarding house no more. On Saturday night the 7th I left home about seven o'clock and took the Amsterdam Avenue car and got a transfer. The Amsterdam Avenue car runs from 71st Street through 42nd Street into 34th Street, and I got off at 39th Street and Ninth Avenue or 42nd Street and Ninth Ave., and I looked to see was a car coming and there was no car and I said to myself I will walk down as far as 37th Street find this fellow Briscoe, to see if I couldn't find this fellow Briscoe that owed me this money.

BY MR. ELY:

Q Did you say 37th Street, that you were to walk down to 37th Street? A Yes sir I was going to walk as far as 37th Street.

BY MR. HANSEN:

Q When you went to 39th Street on that night, September 7th, did you go there looking for Rhett? A No sir I did not. I thought Rhett was in Long Island at the boarding house.

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MR. ELY: I object to what he thought and ask to have it stricken out.

THE COURT: Yes.

THE WITNESS: I left him.

THE COURT: You may answer it -- strike out what he thought.

BY MR. HANSEN:

Q So far as you knew, Rhett had no business in New York?

Objected to.

Q You knew where Rhett worked? A I knew where Rhett worked.

Q Where did he work? A In Long Island.

Q You knew that Rhett lived in your boarding house in Long Island City? A Yes sir in Long Island. I left him there.

Q When you went up to 39th Street on Manhattan Island, New York, did you go up there looking for Rhett?

THE COURT: He has already answered no.

BY MR. HANSEN:

Q Did you go up there looking for Bridget? A I did not.

Q Did you know where she was at the time? A No sir I did not. I left her at the boarding house in Long Island.

Q Did you on the 7th day of September, 1907, carry a

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revolver in your pocket? A Yes.

Q Tell the court and jury why you carried that revolver? A I carried the revolver, at the time I was at 219 West 61st Street, at home, I put in my pocket before I left.

Q Why did you carry a revolver? A I carried the revolver because he had threatened my life.

Q Who had threatened your life? A Isaiah Rhett, he had threatened my life and said he would kill me.

Q Did you believe he meant what he said? A I certainly did.

Q Had anybody else told you that Rhett said that he was going to kill you? A Yes sir.

Q Who had so informed you. Tell us the names of all the people, if any, whoever told you that Rhett said he was going to kill you? A Richard Harrison.

Q Who else? A George Morris.

Q Who else? A Emanuel. I don't know his other name.

BY MR. BLY:

Q Is he a colored man? A Yes.

BY MR. HANCOCK:

Q Who else if anybody? A That is all the names I remember came and told me.

Q What did they tell you?

Objected to.

THE COURT: That is a little bit too general.

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Q What did they say to you regarding this threat of Rhett, as to his taking or intending to take your life?

MR. ELY: I object, but I shall not object if he asks what each individual stated to him, but he cannot make it a composite statement.

THE COURT: Objection sustained.  
BY MR. HANSEN:

Q Tell us what Richard Harrison said to you regarding threats made by Rhett against your life?

MR. ELY: May I ask at the same time that the time of the alleged communication relative to a threat be located, at the same time that he tells what the threat was.

THE COURT: Yes.

BY MR. HANSEN:

Q Tell us when and where and what was said to you?

MR. ELY: By Harrison.

BY MR. HANSEN:

Q By Richard Harrison?

THE WITNESS: On Saturday morning, the last of July, I don't know just what date, Harrison told me that he had heard Rhett say he was going to the boarding house and kill me. On that Saturday night I saw Rhett come to my gate, three or four times, but I had a bad dog there and every time he came to the gate the dog barked so much he would go away and I stayed inside that gate for three days.

Q Did Harrison ever say anything to you after or be-

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MR. ELY: I object. The only point of doubt is raised by the question of counsel. He said on the second or third of September he said George Morris told him that Rhett was going to shoot him.

MR. HANSEN: It was ambiguous and I did not understand it.

THE COURT: It seems to me the answer is ambiguous enough for the second question to be asked.

BY THE COURT:

Q Did he tell you on that day, was it on that day he told you that or did he tell you that the man would shoot you on that day, which? A He told me on that day that he heard him say he was going to shoot me.

BY MR. HANSEN:

Q Tell us as nearly as you can what he said to you, the words he used? A George Morris said to me: "You better look out for Rhett, he told me that he was going to shoot you and that you had better look out for him". I said all right. And I said to him --

MR. ELY: I object to what he said to Morris.

THE COURT: Yes.

BY MR. HANSEN:

Q Did he ever again say anything to you about having heard Rhett say he was going to shoot you or anything like it?

A No sir. I did not see George Morris no more after the

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second.

Q Tell us what Emanuel said if anything and when and where he said it regarding threats made by Rhett to take your life? A Emanuel came to me on Saturday morning the last of July and told me that Rhett said he was going to pawn his clothes and get his revolver out and come down and shoot me. On Saturday morning, the last of July.

Q Did Emanuel ever say anything to you after that about it? A No sir, not after that he did not.

Q Did anybody else speak to you after that about threats made by Rhett? A No sir, only those that I have stated.

Q When you saw Rhett up in 39th Street on the 7th day of September, 1907, did you make up your mind to shoot him; did you intend to kill him when you saw him before anything had happened? A Explain that over again to me.

Q When you saw Rhett up in 39th Street did you intend

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MR. ELY: Didn't he mean to kill him before he did anything to him.

BY MR. HANSEN:

Q Did you mean to kill him before he did anything to you or threatened to do anything to you as you say he did?

A No sir.

Q Did you intend to kill anybody? A No, never did.

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CROSS EXAMINATION BY T. FLY:

Q Moore, if you don't understand any questions I ask please do not answer them, just tell me that you do not understand them, because I do not want you to be confused in any answer you make to me, do you understand that? A Yes.

Q You say that you saw Rhett in May, 1907? A Yes.

Q And that you saw him in front of your boarding house?  
A Yes.

Q And that you did not have any talk with him there at all at that time? A No.

Q And that you saw Rhett from time to time after you saw him in May, in the middle of May, in front of your boarding house, and that you never had any words with him or any talk with him at all until a certain occasion in July; is that right? A No sir.

Q When I say, is that right, is that what you say is true, that after having seen Rhett in May, when you did not converse with him, that you saw him from time to time after the middle of May and you never conversed with him until you saw him one time in the middle of July when you were playing a game, is that right? A I never did.

Q You never spoke to him or had any words with him or passed the time of day with him even? A No only when I passed him, hello, that is all.

Q You would greet each other in a friendly way, hello,

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is that right? A Yes.

Q And then from the time that you saw him in May until you saw him on a certain evening in July you had never had anything to do with each other except to say hello as you passed? A Never did.

Q You said I believe that it was about the 15th of July; is that right, that you went to play this game with Big Boy? A Yes sir.

Q Where was it you said that you went to play the game? A In the company's boarding house, Pierson's.

Q The Pierson Company's boarding house? A Yes.

Q Is Big Boy here? A Big Boy?

Q I mean to say is he one of your witnesses here?

A No sir I have not seen the man since.

Q Well he is not then -- you say you and Big Boy had a certain conversation about a game, what game was it? A Coon Can, a sociable game.

Q And after having refused several times you eventually did sit down and play this game with Big Boy? A Yes, one game.

Q And during the time that Big Boy was suggesting to you to play and you were refusing to play, Rhett took no notice or interest in the matter at all, did he? A Explain that again.

(The question is repeated.)

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A No sir, did not say anything.

Q Did not say a word? A No.

Q Had you noticed Rhett when you first went in? A No.

Q You did not say hello to him then on that evening?

A "Hello, boys, " there was more than one in there.

Q There had been no quarrel between you and this person whom you describe as Big Boy? A Not before that.

Q I mean up to the time of the suggestion to play this game? A No sir I never saw him before.

Q You never saw Big Boy before? A No sir I never saw Big Boy before.

Q You did sit down and play this game, just tell us again, I don't care about the preliminaries of his asking you to play and you not wanting to play, but come down to the game, when you did play the game and tell us all that occurred when you played this game with Big Boy, the game of Coon Can? A He asked me to play a game and I agreed.

Q Wait a minute. I said I don't care anything about those preliminaries, I just want you to come right down to when you played the game and tell about the game, the game between you and Big Boy as you say? A I didn't think he knew I said the game very well and after playing one game he insisted upon playing another and I said, no, you don't know how to play, and I ain't got no more time, and then he said "Oh, you don't know no more than anybody

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else..

Q Go on? A He said you don't know any more than anybody else about the game and I said, well, that might be, but I don't want to play no more, and he said, oh, you son of a bitch, he said --

Q Use every word that was said, of course it may be a little vulgar for you to have to repeat, but we will excuse it and it must be said? A He said "Oh, you son of a bitch, you don't know any more than anybody else" and I said "Don't call me that, I don't use that kind of language" and he repeated over again.

Q Just say -- do not say he repeated it? A He said "Yes, you are a son of a bitch" and I stood up on my feet.

Q You had been sitting down up to that time? A Yes I had been sitting down up to that time. I said if you call me that again I will hit you in the mouth and the minute I said that Isaiah Rhett jumped up.

Q The minute you said, if you say that again I will hit you in the mouth? A Yes sir.

Q Which you said to Big Boy? A Yes sir and Rhett jumped up and snatched a razor out of his pocket and put it over him and started right in to me with the razor wide open and I jumped backwards out of the door. He said "You son of a bitch, I will get you"; he said "I will get you".

Q Is that all? A No, that is not all.

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Q Finish the scene? A He said "I will put you where I have got a couple of more".

Q Is that all? A He said he would shoot me, he said he would shoot me.

Q Now, up to the time that you had said to Big Boy if you say that again I will hit you in the mouth, nothing had been done or said by Rhett up to that time? A Nothing.

Q And did you know what Rhett was doing, during the time that you were sitting there playing this game as you say? A No sir.

Q You did not notice him at all? A I did not notice him.

Q How far away from you was Rhett when as you say Rhett jumped up and took out this razor? A About six feet.

Q And had he been sitting down or was he standing up? A He was sitting down.

Q You don't know what he was doing? A No sir, only sitting there.

Q Had you noticed him before when you came in? A I saw him sitting there.

Q Was it when you came in or was it after you came in and were sitting down? A After I got in I saw him.

Q Now up to the time that as you say you had said to Big Boy that you would hit him in the mouth if he said that again, you had never had any words or any disagreement or

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any unpleasantness of any kind whatsoever with Isaiah Rhett?

A Never, no sir.

Q Do you know of any reason why he should have jumped up and dragged out a razor and rushed at you? A I didn't know, no sir. I don't know.

Q I beg your pardon? A I didn't know anything more than what I heard after.

Q At that time you didn't know of any reason at all? A No I did not know.

Q How far were you from the door when you say that you jumped out of the door when Rhett was coming for you?

A I was right at the door, sitting on the end of a bench.

Q Right by the door you mean? A Right by the door.

Q Was this a game, the Coon game, was it a game that only two played? A Only two played.

Q Were you against the wall, sitting against the wall?

A No sir.

Q How were you sitting with respect to the door? A The end of the table faced the door and the bench alongside of it. I was sitting on the end of the bench.

Q Then you were sitting say for example -- you were sitting right at the end of the bench facing the door, now if this was the bench and you were sitting as I am, the door would be right there, is that right, right in front of you?

THE COURT: He said the end of the table faced the

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door.

BY MR. FLY:

Q The end of the table faced the door? A The end of the table yes.

THE COURT: And he was sitting on the end of the bench at the side of the table.

BY MR. FLY:

Q Is that right? A Yes.

Q What was the distance from you to the door? A The distance, when I stood on my feet, when I got up on my feet I was only about two feet from the door.

Q Then you just jumped right out? A I jumped backwards.

Q Then you were not facing the door? A No sir I didn't say I was.

Q I did not ask you what you said? A No I was not facing the door.

Q Was the door open? A The door was open.

Q You took a backward jump and got out of the door and as you got out of the door did you close the door? A No sir.

Q You did not have anything with you at all? A No sir.

Q How did you go and report this alleged assault to the police? A No sir.

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Q You did not go to any police station and report either the assault or ask to be allowed a permit to carry firearms on the ground that you were in danger, did you? A No.

Q You did not speak of that to any one in authority, this alleged act that you say occurred on the 15th of July?

A No sir.

Q Now you say that Harrison told you subsequently in the same month, July, that Rhett was going to do you or words to that effect? A Yes.

Q Now, under what circumstances and what were the words again that he told you? A Harrison?

Q Yes. A He told me he heard Rhett say that he was going to pawn his clothes on a Saturday morning and get a revolver and come down to the boarding house and shoot me.

Q Did he say get a revolver or get his revolver or what? A Get his revolver out of pawn.

Q Out of pawn? A Yes.

Q Did he tell you whether Rhett's revolver was in pawn? A No sir.

Q You say this was Saturday morning in the latter part of July? A In the latter part of July.

Q Saturday morning? A Yes.

Q Where was the conversation held? A The conversation?

Q This talk between you and Harrison, where did it

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take place? A At the boarding house, at my boarding house.

Q What time of the day was it? A I don't remember exactly, but it was in the morning, before noon.

Q Was there anybody there with you, with you and Harrison, when this conversation occurred? A No sir.

Q Only between you and Harrison alone? A That was all.

Q What led up to it, did Harrison just come to you?  
A Just came to me.

Q And say Dick or Richard, or whatever he called you, "You had better look out for Rhett, he is going to pawn his clothes and get out his revolver from pawn and shoot you on sight" or words to that effect, is that what he said? A Yes.

Q Just came right up to you and told you that? A Yes.

Q You have told us that Rhett said some time shortly before this that he was going to have your life, was going to put you where he had put two others and at that time he had taken out his razor and came over with it open, and then also said he was going to shoot you? A Yes sir.

Q And you heard again, as you say, from Harrison, that he was going to pawn his clothes and get his revolver and shoot you; is that right? A On Saturday morning.

Q Yes, on this Saturday morning? A Harrison, yes.

Q Well now, there as you say were two threats and you had not seen Rhett to speak to between the time of this al-

leged threat at Pierson's boarding house and the time of the alleged conversation between you and Harrison? A Yes.

Q Had you seen him to speak to? A Rhett?

Q Yes. A I met Rhett.

Q To speak to? A I did not speak -- he did not speak.

Q You had not seen him to speak to him between the time of the alleged threats in the Pierson boarding house by Rhett himself, as you say, and the time, this Saturday morning that Harrison told you that Rhett was going to do you?

A Yes I met --

MR. HANSEN: I object. The witness has already said that he did see Rhett.

MR. ELY: Counsel has evidently been in a maze and has awakened -- I said to see him to speak to.

MR. HANSEN: I object to the District Attorney's remark. I am not asleep in this trial.

MR. ELY: I said to see him to speak to and that question I press. If there is an objection to that I should like to hear it.

MR. HANSEN: I object as ambiguous. Does it mean did you see him and speak to him, or did you see him at such a place that you could speak to him if you wanted to. It is ambiguous. I do not know whether it means did you speak to him or did you see him to speak to him.

THE COURT: I will allow the question.

BY THE COURT:

Q Did you see him to speak with him, you understand that? A Yes I think I do. I saw him.

BY MR. FLY:

Q The Court has asked you if you understand the question, and if you don't we will put it differently. We want you to understand exactly the questions you are answering before you answer them.

THE COURT: That is to say, if you simply saw him and did not speak to him, why you did not see him to speak with him, but if you talked with him you saw him to speak with him, that is the usual understanding of a question like that -- did you see him to speak with him means did you speak with him? A No sir, I saw him but I did not speak to him and he did not speak to me.

BY MR. FLY:

Q That is it exactly, you have answered the question exactly; now Moore, did you believe this threat that you say Harrison communicated to you, did you believe Rhett meant to do what Harrison said he was threatening to do? A Yes I really did.

Q You know, don't you, whether you believed it or not?  
A Yes.

Q Did you believe this threat? A Yes.

Q Had you armed yourself -- did you arm yourself im-

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mediately after the 15th of July -- do you know what arming yourself means -- did you take a weapon and carry a weapon immediately after the 15th of July, yes or no? A Yes.

Q And did you carry that weapon regularly all the time with you? A Yes.

Q And where did you get the weapon -- first I will ask you to characterize the weapon, what kind of a weapon was it?

A It was a blue steel Smith & Wesson.

Q Where did you get the weapon? A I bought it out of a pawn shop.

Q When did you buy it from a pawn shop? A I bought it the next week.

Q The next week what? A This happened on Friday night and I stayed inside of the gate, I did not go out for three days and when I came out I went to New York and bought it.

Q Where did you buy it and what was the name of the pawn shop and where was the pawn shop? A I bought it corner of Ninth Avenue and 59th Street.

Q Ninth Avenue and 59th Street? A Yes.

Q A pawn shop at 59th Street and Ninth Avenue? A Yes, but not -- not on the corner but a few doors from the

Q What is the name of the pawn shop? A I don't re-

Q How much did you pay for the revolver? A Seven dollars.

Q And what name did you give when you purchased the revolver? A I didn't give any.

Q And were you asked for your name? A Sir?

Q Were you asked for your name when you purchased the revolver? A No sir.

Q And this was about the 22nd of July, 1907, was it, as I understood you -- I do not want to mistake it, you have said about a week after you came to New York and got the revolver; is that right, a week after the occurrence there that took place in Pierson's boarding house as you say?

THE COURT: I understood him to say the following week.

THE WITNESS: I said the following week.

THE COURT: JULY:

Q How many days after this alleged occurrence in the Pierson boarding house did you come to New York and get the revolver? A How many days after?

(Question repeated.)

A Four days.

Q And you been out, going around, in 96 West Avenue, during any of those four days? A No sir I

Q Did you get the cartridges? A I bought the



cartridges between 61st and 60th Street.

Q 60th and 61st and what avenue? A On Tenth Avenue.

Q What was the name of the person you bought them of?

A I don't know.

Q Whereabouts on the block was the shop located that you got the cartridges? A Between 61st and 60th Street.

Q I understand that, but whereabouts on the block, was it nearer 61st Street or 62nd Street or was it in the middle of the block or what? A It was near the middle of the block.

Q How much did you pay for the cartridges, how many did you get first, did you get a box? A No sir.

Q How many did you get? A I only got five.

Q This was a five shooter? A Yes.

Q You bought five cartridges and what did you do after you bought these five cartridges? A I put them in my pocket and took them home.

Q Didn't you have the revolver with you, didn't you buy --

Objected to; objection overruled.

Q Didn't you have the revolver with you? A Yes.

Q And didn't you load your revolver then and there?

A No sir.

Q Four days afterwards -- do you remember what day of the week this was that you say you went to the Pierson

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boarding house and this occurrence happened? A I don't understand you.

(The question is repeated.)

Q In July, do you remember what day of the week it was? A When this occurrence happened in the boarding house?

Q Yes. A Pierson's boarding house?

Q Yes. A Friday night.

Q Saturday, Sunday, Monday, Tuesday, and you went Tuesday to New York and bought this revolver as you say, the following Tuesday, is that right? A Yes.

Q And did you go back to Long Island that night? A No sir.

Q Where did you go that night, that Tuesday night in July? A I went home.

Q Where is that? A 219 West 61st Street.

Q Who lives there? A My wife.

Q You are not married to her, are you? A No.

Q She has another husband living, has she not? A I don't know.

Q Didn't she ever tell you she had been married before? A Yes.

Q Didn't she tell you she was living apart from her husband? A Yes.

Q She told you that when you went to live with her? A No.



Q You knew it shortly before or after you went to live with her? A I knew it after.

Q You say you went to the place where you were living with this woman on this Tuesday night, what did you do with the revolver and the cartridges when you got there? A When I got there?

Q I talk about this place on 61st Street I believe, where you say you were living, 219 West 61st Street, do you understand my question? A You asked me what did I do with the cartridges and my revolver.

Q When you got to 219 West 61st Street, on this Tuesday night when you say you went to this place? A I put the cartridges in it and put it in my pocket.

Q You loaded it and put it in your pocket, what pocket? A In this pocket (indicating).

Q In your pants pocket? A Yes.

Q The right hand front pocket of your pants? A Yes.

Q When did you go home? A When did I go home?

Q I mean when did you go to Frazer's boarding house after this night, or your boarding house in Long Island? A I went back on Wednesday.

Q On Wednesday morning or afternoon? A Afternoon.

Q And was it during this week that George Morris, as you say, told you that Rhett was going to do something to you? A Yes.

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Q Was it Friday or Saturday of that week that George Morris communicated any alleged threat to you? A State that over again.

(The question is repeated.)

A Yes sir.

Q And when you went on Wednesday to Long Island, did you take anything with you? A Yes.

Q What did you take? A I took the revolver.

Q You took the revolver and you kept the revolver in this right hand trousers pocket? A I did not keep it in there all the time, no.

Q I talk about when you went with the revolver to Long Island City, I ask you whether you kept it in this right hand trousers pocket, the front trousers pocket? A Yes sir.

Q When you got to Long Island City what did you do with the revolver? A I put it at the head of the bed.

Q Rhett was not living there with you at that time? A No.

Q You put it -- do you mean under the pillow? A Under the pillow.

Q You left it under your pillow? A I left it there sure.

Q You did not carry it after that, or did you carry it? A

Q Talking of Thursday, you went back Thursday

night as I understand and I want to know whether when you went back you carried the revolver or left it there under the pillow where you say you put it? A I carried the revolver whenever I went out of the boarding house.

Q Then on Saturday, I mean Friday or Saturday of that week, you say that this man Richard Morris told you of another threat Rhett had made; is that right? A No sir.

Q I beg your pardon? A Of the same week?

Q Yes. A No sir.

Q Perhaps we have gotten tangled, but I understood you to tell me a few moments ago that it was on Friday of the same week that you bought the revolver that Richard Harrison told you again of a threat that was made? A George Morris.

Q I beg your pardon, George Morris, I got the names wrong, but it was Morris? A Morris.

Q And it was that week, was it, Friday or Saturday of that week? A Yes.

Q And were you armed at that time when George Morris as you say told you this? A Yes.

Q And where did you have your pistol? A Right hand pocket.

Q Did you take it out and show it to George Harris?

A No.

Q Did you tell him you were prepared for any attack?

A No.

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Q Did not say anything about a pistol at all? A No.

Q And then did you carry the pistol whenever you went out after this Friday or Saturday, when George Morris made this communication to you? A Yes.

Q How did it happen that you found it at your house on the 7th of September and put it in your pocket when you were going out, your house being at 219 West 61st Street? A Repeat that over again.

(The question is repeated.)

A I had left it there.

Q When did you leave it there? A I don't remember just what day.

Q About how long before the 7th of September, 1907, had you left it at your house 219 West 61st Street? A Repeat that again please.

(The question is repeated.)

A A week before.

Q That made it the first of September? A Yes.

Q How do you recollect that you left it at your house a week before, I mean at 219 West 61st Street? A Because I did not have it.

Q You did not have it at any time from the first of September until the night of the 7th? A That is right.

Q And then from the first of September until the 7th of September you did not carry the revolver at all? A No sir.

Q Now, going back to the night that you say George Morris told you of this threat, that was about the end of July you say, was it not? A I said about the first of August.

Q All right. And then when was it, if you want to change it go ahead? A Repeat the question over again. I want to change it.

(The question is repeated.)

BY MR. FLY:

Q The middle of July you told us about a threat that was made as you say by Rhett himself and then you told us that the next week, the end of the next week, Friday or Saturday there was a threat made to you by George Morris or repeated to you by George Morris as to what Rhett had said, this was about the 15th of July and a week after would be about the 22nd and I am asking you now whether it was towards the end of July and about the 22nd of July, somewhere about there, that George Morris as you say repeated this threat that Rhett made? A About the 22nd of July did you say?

Q Yes. A I don't know what date.

Q That is not exactly it, but was it about there, it might have been the 21st or the 20th or the 24th or the 25th, somewhere along there, but was that about the time? A Yes.

Q And then when was the next threat, if any made or repeated to you? A About the second of August.

Q What? A George Morris, you say.

Q No I did not say that. When next was any threat repeated to you after the one that George Morris had as you say repeated to you? A There was not any more after the second of September.

Q There was not any more until the second of September; is that what you mean? A By George Morris.

Q Do not let us get confused, you told us a threat made to you himself by Rhett in the middle of July, and you have told us of a threat that was repeated to you by George Morris about a week after and now I ask you when next any threat was repeated to you if any threat ever was, you understand that question, don't you? A No sir I don't understand.

(The question is repeated.)

A About the second of August.

Q The second of August; is that right? A Yes.

Q Are you sure of that? It is not the second of September -- it was about the second of August; is that right?

A That is right.

Q Who repeated that threat to you? A George Morris.

Q George Morris repeated another threat to you? A Yes.

Q What did George Morris say on the second of August?

A He said he heard Rhett say that he was going to shoot me and that I had better look out for him.



Q George Morris told you to look out for Rhett, that he heard Rhett was going to shoot you, and did you tell George Morris then that you were armed and show him your revolver, and say you were ready for him? A No sir.

Q And this then was the third time that you had either known or been informed that Rhett was after you, was it, first by Rhett himself, second by George Morris about the 22nd of July, and the next by George Morris again on the second of August; is that right? A That is right.

Q Did you on the second of August go and communicate with any of the authorities and ask for protection? A No sir

Q I thought you told us on your direct examination that you went away from the 30th or 31st of July or 1st of August for about a week, didn't you, and when you came back you found Rhett living in your premises and that Walter Frazer had taken him there, is not that what you told us on your direct? A Around the first of August I said, around the first of August.

Q Around the first of August you went away for a week.

MR. HANSEN: I object. There is no such testimony.

The objection is sustained.

Q You remember then it was three or four days, do you, that you went away to Haverstraw? A Yes.

Q Is that right? A That is right.

Q When did you go to Haverstraw? A Around the first

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of August.

Q And where was this conversation that you had with George Morris? A At the boarding house.

Q And that was on the second of August you say? A No I did not say directly.

Q What? A I did not say directly the second of August.

Q What did you say? A Around the last of July or the first of August.

Q All right. Now, when next if at all was any threat communicated to you? A September.

Q Is George Morris here? A I don't know whether he is or not.

Q And is Harrison here? A I don't know.

Q Who communicated any threat to you in September?

A George Morris.

Q What did he say in September? A About the second of September he told me that he had heard Rhett <sup>say he</sup> was going to shoot me.

Q That was just exactly the same thing he told you before? A Yes sir.

Q Did he say when he heard him say it or make this threat? A No.

Q He did not say that at all? A No.

Q You recollect this was the second of September?

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A Around the second of September.

Q Was it the first of September? A I do not know, directly the date.

Q Was it the second day of September? A I don't know direct.

Q Was it the third day of September? A I don't know.

Q Was it the fourth day of September? A I don't know.

Q Did you at the time that this threat, as you say, was repeated to you around the second of September, have your gun with you, your revolver with you? A No sir.

Q It was at home or it was at 219 West 61st Street was it? A Yes.

Q You did not go home and get it? A No.

Q You did not have your revolver or carry your revolver at any time from the first of September until the 7th, the night of the 7th? A Repeat that again.

(The question is repeated.)

A No sir.

Q You were down at West Avenue, 96 West Avenue on the 5th of September and saw Rhett there, didn't you? A Yes.

Q You were unarmed, you did not have any revolver at all? A No sir.

Q You had no weapon of any kind on your person? A No.

Q And Rhett did not do anything to you, did he? A Not on that day -- the 5th of September?

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Q Yes, when was it you first spoke to him about the witness Fanny Bridget or Fanny Morris? A repeat that again if you please. I don't know the direct date.

Q Give us your best recollection? A After he was in the boarding house about two weeks.

Q When did he come to the boarding house? A When did he come to the boarding house did you ask me?

Q Yes that was the question? A Around the first of August.

Q When around the first of August, when? A I don't know what date. I was not there when he came to the house to board.

Q Then, when had you seen him last before you saw him in the boarding house, that is, yours and Frazer's boarding house, how many days before you saw Rhett in yours and Frazer's boarding house was it, since you had seen him last? A I don't know.

Q You got back from Haverstraw on what day? A I don't know just what date.

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

Q Was it the 10th of August? A I don't know what date it was.

Q Was it before the 10th or after the 10th? A It was before the 10th.

Q How many days before the 10th? A I don't know.

Q Was it one day or two days or three days or four days or five days, what is your best recollection? A I don't know.

Q What is your best recollection? A I don't know.

Q Haven't you any recollection on the subject? A I said --

Q I will put that different, have you not any recollection of being in yours and Frazer's boarding house between the first and the tenth of September, 1907? A Repeat that again.

(The question is repeated.)

A Do I have any recollection?

Q recollection means remembrance, do you remember of being at your boarding house, yours and Frazer's boarding house, between the first of August, 1907, and the 10th of August, 1907? A Yes.

Q When were you there? A I was there most every day except the days I was gone to Haverstraw.

Q We are trying to find that out, I want to know about when you got back from Haverstraw? A I don't remember.

Q Anyway when you got back you found Rhett in your boarding house? A I did.

Q Did you at once go and tell him that he was a dangerous man and he must get out and leave? A I told him --

Q Did you, yes or no?

MR. HANSEN: I object upon the ground the witness is answering the question. He was just going to say --

THE COURT: Answer the question yes or no.

BY THE COURT:

Q The question is did you at once go to him and tell him? A At once did he say?

THE COURT: Yes.

THE WITNESS: No sir.

BY MR. ELY:

Q Did you go to the authorities and say there was a dangerous man in your house and you wanted him to be put under bonds? A No sir.

Q And were you armed with this pistol when you first saw Rhett in your house? A Yes sir.

Q And were you armed with this pistol when you first spoke to Rhett about Fanny Morris or Fanny Bridget? A No sir.

Q You were not armed with it then? A I didn't have it in my pocket, no.

Q You told me that you carried it constantly, didn't you, from the time you bought it until the first of September when you left it in your house at 219 West 61st Street? A I said when I went out from the boarding house.

Q I know, but you have told us that you bought this

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pistol to protect yourself from Rhett, haven't you? A After he threatened my life.

Q I did not ask you that, I ask you if you bought this pistol to protect yourself from Rhett? A Yes sir.

Q And when you found Rhett in your house, you did not find it necessary to carry the pistol all the time although you bought it to protect yourself from him? A Well when I came --

Q Answer that question yes or no?

THE COURT: I do not think he is bound to answer yes or no to that.

MR. ELY: If he can.

THE COURT: Your question, Mr. Ely, is an argumentative one.

(The question is repeated as follows: Q And when you found Rhett in your house you did not find it necessary to carry the pistol all the time, although you bought it to protect yourself from him? A No sir.

Q Why didn't you carry it all the time? A When I came back from Haverstraw Walter Frazer told me, he said --

MR. ELY: I object to anything Walter Frazer told you.

MR. HANSEN: The answer is responsive to the question why didn't you carry it.

THE COURT: Yes, go ahead.

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THE WITNESS: He told me that he had taken Rhett in that the boarding house and that Rhett said that between him and I was all over, that was what Walter said.

BY MR. WILK:

Q And that was the reason you did not carry the revolver during the time that Rhett was in the boarding house?

A That was right.

Q Walter told you that it was all over between you and Rhett, is that right, and then you were not in fear of Rhett any more?

Objected to; overruled.

THE WITNESS: Yes I stood in fear of him.

Q Why didn't you carry your revolver? A I carried it occasionally.

Q You told me that after you heard this that you did not carry the revolver.

MR. HANSEN: I object. There is no such testimony.

Objection sustained.

Q What were the occasions that you did carry your revolver after you say that Walter told you that Rhett had told him it was all over between you and him? A After he was in the boarding house for a couple of weeks I --

Q Give the date? A I cannot give the date.

Q A couple of weeks after you got back and found him there or a couple of weeks after he first came? A A couple

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of weeks after I came back and found him there.

Q You got back somewhere between the first and the tenth, did you, to the boarding house, from Haverstraw? A Yes sir.

Q And then it was somewhere between the 24th and the 14th, was it, in August? A Yes.

Q Oh, on, then what? A I called Rhett down for using bad language in the boarding house among the women and I was told after that that he said he was going to shoot me.

Q Who told you that and when was that? A George Morris told me that.

Q You said George Morris did not tell you about any threats except on or about the second of September, as I recollect, or about the second of August.

MR. HANSEN: I object. The District Attorney is bound by the answer and cannot argue to the jury now.

Objection overruled.

THE WITNESS: What is that question?

BY MR. ELY:

Q You said Morris, George Morris did not tell you about any threat except on or about the second of September, as I recollect, or about the second of August, is not that so? A No that ain't so.

Q How many threats did George Morris tell you of and when were they? A I have spoken of three.

Q Begin now with the three, one was towards the end of the month, about the 22nd of July? A I don't remember the date.

Q And one was towards the last of July, wasn't it?

A Yes.

Q And one was about the second of August, wasn't it?

A Yes, around that.

Q And one was about the second of September, is not that right? A Yes.

Q Now when was the other one that you say--this will make four? A He did not tell me any more after the second of September.

Q Was it between the threats about the second of August, that was communicated as you say by Morris, and the threat about the second of September that as you say was communicated to you by Morriss, that Morriss communicated to you a threat that Rhett made, after you as you say had called him down for bad language?

THE COURT: Do you understand that question?

THE WITNESS: Yes.

BY MR. ELY:

Q Please answer it.

BY THE COURT:

Q You say it was about the second of September?

MR. ELY: No, he said it was two weeks after he found

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the deceased in there, that he had occasion to call him down, and that he found him there when he got back from Haverstraw, and he got back from Haverstraw between the first and the tenth of August, and that he called him down two weeks after.

THE COURT: What is the question?

(The question is repeated as follows: Q Was it between the threats about the second of August that was communicated as you say by Morris and the threat about the second of September that as you say was communicated to you by Morris, that Morris communicated to you a threat that Rhett made, after you, as you say, had called him down for bad language.)

THE COURT: I do not catch that myself.

MR. BRY: I want to know whether it was between the second of August and the second of September that this other threat, as he says, was communicated to him?

THE WITNESS: Between the second of August and the second of September did you say?

THE COURT: Yes, was it between those two dates that the threat which you speak was made, was it between the second of August and the second of September that you heard of that last threat from Morris, that the threat was the second of September I said, the second of September.

THE COURT: Around the second of August -- we are

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not pinning you down to either the second of August or the second of September as being the dates upon which you heard, but you say it was about two weeks after you found Rhett in your place that you called him down or that you spoke to him and you used the term, you called him down for using bad language, you told us that a minute ago? A Yes.

Q Then you say George Morris told you that Rhett had communicated a threat against you, after that, after you as you say had called him down for bad language, is that right?

A Shortly after Rhett was in the boarding house?

Q Yes. A Yes.

Q When was that threat communicated to you, was that before the second of August? A That was after the second of August.

Q Was that before the second of September? A Yes.

Q Then on the second of September, that made four threats that George Morris had communicated to you? A It is only three, the second of August, between the second of August and the second of September and on the second of September.

BY MR. ELY:

Q But you told us -- A No sir I did not.

Q When as you say you called Rhett down for using bad language there in your boarding house, did he make any threats to you? A Not at that time, no sir.

Q Did he menace you in any way?

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THE COURT: Do you understand that, menacing?

A No sir.

BY MR. ELY:

Q Did he hit you, strike you? A No sir.

Q Did he kick you? A No sir.

Q Did he do anything to you? A No sir.

Q And he accepted your criticisms of him and did nothing, is that right?

THE COURT: Do you understand that?

A Yes, I understand that.

BY MR. ELY:

Q Is that right, did he? A He didn't say anything.

Q He didn't do anything? A No, not at the time.

Q He didn't do anything? A When I called him down --

Q He did not say anything and did not do anything did he? A No sir.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2 P. M.

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AFTER RECESS.

R I C H A R D M O O R E, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. ELY:

Q He went away and left you, he went away from you, did he?

A I went away from him after I called him down, I walked off from him.

Q You went away from him? A Yes.

Q In going away from him you turned your back upon him?

A Yes.

Q Did you say this morning that a person by the name of Emanuel ever reported any threats to you as having been made by Rhett?

A Yes.

Q What day was it that Emanuel, as you say, reported a threat?

A On Saturday morning after Rhett had threatened me.

Q Was it not Harrison that told you, that reported that threat on Saturday morning after you say Rhett had threatened you?

A I also said --

Q I ask you that question, was it not Harrison?

THE COURT: He is going to answer it. Let him answer.

BY THE COURT:

Q You also said what?

THE WITNESS: That Emanuel did also.

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BY MR. ELY:

Q Do you tell me that both Emanuel and Harrison each reported a threat made to you -- or reported to you a threat made by Rhett on the Saturday after as you say you had seen Rhett in the Pearson Boarding House? A Yes, sir.

Q And what time in the day did Harrison report the threat to you? A Sometime during the morning.

Q Where did he report the threat to you? A At the boarding house.

Q Was Harrison living at your boarding house, you and Fraser's boarding house in West avenue, Long Island? A Yes.

Q Was Emanuel living at your boarding house at this same time also? A He was not.

Q Where did Emanuel communicate to you this alleged threat? A In the boarding house.

Q At what time? A About half past six in the morning, Saturday morning.

Q Were you and Emanuel alone together when Emanuel reported this threat to you, as you say? A We were not, no, sir.

Q What? A No, sir.

Q Who was with you? A Frances was present, Frances Morris was present.

Q Frances Morris was present? A Yes, sir.

Q You mean this woman who appeared on the stand as a witness for the Prosecution? A Yes.

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Q You and Emanuel and Frances Morris were present when Emanuel, as you say, communicated a threat to you, is that right? A Yes.

Q Just state what Emanuel said to you at half past six on this Saturday morning? A Emanuel said to me -- he said "You want to look out for yourself, I heard Isaiah Rhett say that he was going to pawn his clothes this morning and get his revolver out of pawn and coming down here and shoot you.

Q Did Fannie Morris say anything when this statement was made to you by Emanuel, as you state? A She was a distance --

Q I ask you if she said anything?

MR. HANSEN: I object; that is an answer.

MR. ELY: I ask if she said anything.

THE COURT: Answer the question.

THE WITNESS: Yes.

BY MR. ELY:

Q What did she say? A She asked me -- she asked me what did he say, and I repeated the words he said over to her again.

Q Did she make any reply then, yes or no, or did she say anything to you after you had repeated the words that you say Emanuel had spoken to you? A I don't remember if she did.

Q Have you told us all about the threat that was made by

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Emanuel, that was reported by Emanuel as having been made, I mean, and have you told us all the people who were there on the morning of Saturday when it was told to you? A Walter Fraser was there.

Q Did Walter Fraser take any part in this conversation, yes or no? A Yes.

Q And how far was Walter Fraser from you and Emanuel, when Emanuel made this statement? A He was in an adjoining room at the time.

Q He was not in the same room? A He was not in the same room at the time.

Q At the time Emanuel repeated the threat to you, is that right? A I don't think he was right present at the time.

Q You are not sure of it? A I am not sure that he was present.

Q To the best of your recollection he was not present and he was in another room, is that right? A Yes.

Q Tell me what Harrison said on this same Saturday?

A Harrison say that he heard Rhett say at the boarding house during that Friday night that he was going to pawn his clothes next morning and get a gun and come down to the boarding house and shoot me.

Q Was this practically the same statement that Emanuel made to you? A Yes.

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Q And as I understand you, you and Harrison were together alone when this alleged threat was repeated to you by Harrison?

A I am not sure but I think we were.

Q Has anything occurred to alter your recollection of who was present, between this morning and this present time?

A Repeat that.

Q We are talking about the time you say that Harrison repeated a threat to you on a Saturday, after a threat had been made as you say directly to you by Rhett, and I ask you if anything has occurred since you testified on this subject this morning as to who was present, to make you doubtful now as to whether anybody was present other than you and Harrison. A That is too long.

The question is repeated.

BY THE COURT:

Q Has anything taken place since this morning to make it doubtful in your mind whether any other body was present besides yourself and Harrison, has anything happened since this morning to change your recollection of that? A No.

BY THE COURT:

Q Now what did you say to the deceased when you say you called him down for using bad language?

THE COURT: Rhett.

BY THE COURT:

Q What did you say to Rhett, when as you say you called

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him down for using bad language about two weeks after he had come to your and Fraser's boarding house?

BY THE COURT:

Q Just what language did you use to him? A I said to him "Don't use that kind of language, there is women there in the kitchen.

BY MR. ELY:

Q Is that all that you said to him on that subject?

A That was all I said to him on that subject at the time.

Q Did you at any other time speak to him on the same subject? A I did.

Q Was that before or after the occasion that you have just testified to?, A After.

Q When was that, how long after? A I don't remember just.

Q I don't ask you just exactly, but was it a day or two days or three days after this conversation, or was it a week?

A About a week, I guess.

Q Was it in September or August? A It was in August.

Q And then it was about the last of August, was it not?

A Yes.

Q Did you have that revolver present with you in your pocket when you had this next conversation with him? A No.

Q But as I recollect, you did testify that you had your revolver with you at the time you called him down, as you term

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it, first, didn't you?      A No, sir.

Q You did not have your revolver with you on either of those occasions, when as you say you called him down for using bad language?      A No, sir.

Q And what did you say on the second occasion when you called him down for using bad language?      A What did I say to Rhett, do you mean?

Q Yes?      A I said to him, "Now I asked you once before about using such language around the women," and he didn't say anything.

Q He didn't say anything in reply at all?      A No, only walked off.

Q He walked off?      A Yes, sir.

Q When was it, as you say, that you spoke to him about Frances Morris for the first time we will say?      A I don't remember just when.

Q Was it before or after      the first time when as you say you called him down for using bad language?      A Repeat that question again.

The question is repeated by the stenographer.

A After.

Q About how long after?      A I don't remember.

Q Was it before or after, as you say, you called Rhett down the second time for using bad language?      A After.

Q Then it was about the 1st of September, was it not?

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A It must have been.

Q I am asking you, you were there, and I ask you what your best recollection is? A I don't remember the date.

Q I ask you only about, it was about the 1st of September, was it not? A I think, around that.

Q And what did you say to Rhett and what did Rhett say to you when you spoke to him about Frances Morris, as you say?

A He said to me --

Q You say he said to you -- didn't you speak to him first about Frances Morris before he spoke to you about Frances Morris? A Did I speak to him, did you say?

Q Please listen, don't you hear me -- didn't I speak loud enough? A You spoke loud enough, yes..

Q Now will you please attend to the question? A Yes.

The question is repeated as follows: Q Didn't you speak to him first about Frances Morris before he spoke to you about Frances Morris?

A Yes, sir.

Q Please begin with what you said to him about Frances Morris and he of course is Rhett, begin with what you said to Rhett about Frances Morris? A I said to Rhett, I said to Rhett, "I was told that you and Frances were carrying on bad when I am away, and if you cannot do any better than that I do not think it would be wise you should stay here."

Q Go on? A That was all I said to him.

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Q Did he say anything to you after you made this remark to him, as you say? A Yes.

Q What did he say? A He said, "Oh, that is a lie, I don't care anything about you or Frances."

Q Is that all he said? A Yes, that was all.

Q That was all that Rhett said at that time? A At that time, yes.

Q At the time that you spoke to him about Frances Morris, did you have a gun with you, your revolver? A No, sir.

Q And after he said, "Oh, that is a lie, I don't care anything about you or Frances Morris, " or words to that effect, did he leave you or did you leave him? A I left him.

Q As you went away you turned your back upon him? A I did, I went out the kitchen door.

Q He did not at that time strike you or make any threat against you, did he? A No, not at that time, no, sir.

Q And he did nothing to you at all at that time? A No.

Q You have told all that occurred there at that time? A At that time.

Q Now when next, if at all, did you speak to Rhett about Frances Morris? A I didn't speak to him any more.

Q As matter of fact did you speak to Frances Morris about Rhett? A I did.

Q When? A Around the 1st of September.

Q What did you say to Frances Morris about Rhett?

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A I said to Frances that I heard that her and Rhett was doing-- was carrying on bad things when I was away.

Q I don't mean to interrupt you, except to ask you if you used the words, when you say bad things, carrying on bad things when you were away, whether those were the words you used to Rhett, when you spoke to him, and whether they were the same words that you used to Frances when you spoke to her, did you say to her bad things, and did you say to Rhett bad things, or did you use some other term to describe what you had in your mind? A I repeated just what I repeated to you.

Q And this was, you say, about the 1st of September that you said that to Frances Morris; and was that before or after you had spoken to Rhett on the subject? A After.

Q Now, what did Frances Morris say? A She said it was not so.

Q Nothing in it? A Nothing in it.

Q At any of those times, when you spoke to Rhett and when you spoke to Frances Morris, did you have the gun in your possession? A No, sir.

Q You had left the gun at 219 West 61st street before you had this conversation with Rhett and with Frances Morris, had you not, on the 1st of September? A Yes, I had -- I am not sure.

Q You told us this morning that you left the gun in your premises at 219 West 61st street on the 1st of September and

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you did not have it again until you took it on the night of the 7th of September, 1907? A I said around the 1st of September.

Q If you said the 1st of September this morning, you meant around the 1st of September, is that it? A Around the last of August or the 1st of September.

Q Please listen to the question, if you did say you left it at your house 219 West 61st street on the 1st of September, you meant to say around the last of August or around the 1st of September, is that right? A That is right.

Q Did you ever see Rhett in New York before in your life than on the 7th of September, 1907? A No, sir.

Q Now, do you remember the 5th of September, 1907?  
A Yes.

Q You heard Frances Morris testify here to-day that you struck her three times in the eye on that day? A I did.

Q Did you strike her? A I did not.

Q You did not lay your hand upon her at all? A I did not.

Q Do you know where Rhett had been working during the time or from the time you first met him there in May up to the 5th of September, 1907? A He was not working anywhere.

Q Who was not? A Rhett, at the time I first met him.

Q Do you know that he went to work at any time after you first met him and before the 5th of September? A Yes.

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Q When do you know that he went to work?, A I do not know when he went to work but he said he was working when he came to the boarding house.

Q He was working when he came to your boarding house, yours and Fraser's boarding house? A Yes, that was what he said.

Q What was he working at? A He said he was working in the tunnel.

Q What tunnel is that, the Pennsylvania tunnel at Long Island City? A Yes.

Q He was working nights, was he not? A He was working days when he came.

Q What? A Working days when he came.

Q He was working days when he came to your boarding house; when did he begin to work nights on the tunnel, if you know? A Well, the shift changes every two weeks. I don't just remember.

Q But you do know that during part of the time that he was living at your house he was working nights on the tunnel? A Yes, sir.

Q And do you know that he was working on the tunnel at night in September, 1907? A I don't know whether he was or not.

Q What was your knowledge and information at that time with respect to his working on the tunnel? A Repeat that over

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again.

Q What was your knowledge and information at that time with respect to his working on the tunnel? A On the 7th of September?

Q I did not ask you that, I said in September, I did not say the 7th? A No, sir.

Q What was your knowledge and information at that time with respect to his working on the tunnel? A I did not have any.

Q When was it that you last had any knowledge or information on the subject of Rhett working on the tunnel? A September the 4th.

Q Now, on September the 5th, was your knowledge and information that Rhett was working at night time in the tunnel? A Yes, sir.

Q And you say that you left West avenue on the 5th of September, 1907, in the morning? A No, sir.

Q Pardon me, what did you say on that subject? A I said I left in the afternoon.

Q You said, did you not, or as matter of fact, when you left in the afternoon of the 5th of September, 1907, when you left West avenue, you left, as you say, Rhett and Frances Morris there, didn't you? A I did.

Q You saw neither Rhett nor Frances Morris from the time you left Rhett and Frances Morris on Long Island, until the

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7th of September, 1907, in the evening, is that right? A Yes.

Q Did you see Frances Morris and Rhett on the 5th of September, 1907, before you left West avenue? A I did.

Q As matter of fact had not Frances Morris told you, after you struck her, that she was going to leave and she was going to get you arrested?

MR. HANSEN: I object. The witness has testified that he never struck her.

Objection overruled. Exception.

Q As matter of fact had not Frances Morris told you, after you struck her, that she was going to leave and she was going to get you arrested? A No.

Q Did not Frances Morris on the 5th of September, 1907, say that she was going to have you arrested? A No.

Q Did not you on the 5th of September, 1907, ask Frances Morris where she was going, when Frances Morris was going out? A No, sir.

Q Were you not, on Frances Morris' return on the 5th of September, 1907, standing on the stoop of your premises at West avenue? A Repeat that over again.

Q Were you not, on Frances Morris' return on the 5th of September, 1907, standing on the stoop of your premises at West avenue? A I don't know anything about her return.

Q I will ask you this, did you not see Frances Morris go out of your premises on the 5th of September, 1907? When I

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say your premises, I speak about the boarding house? A I don't remember seeing her go out.

Q I will ask you this question, did you not see Frances Morris at any time on the 5th of September, 1907, come back to the premises? A No, sir.

Q Did you not at any time on the 5th of September, 1907, ask Frances Morris where she had been? A No, sir.

Q Did not Frances Morris on the 5th of September, 1907, at anytime tell you it was none of your business where she had been and you must be drunk? A That I must be drunk?

Q Did not Frances Morris on the 5th of September, 1907, at any time tell you it was none of your business where she had been and that you must be drunk? A No, sir.

Q Did she not at any time on the 5th of September, 1907, tell you it was a hot day or a warm day? A No, sir.

Q And did you not at any time on the 5th of September, 1907 say it would be a good deal warmer soon, or words to that effect? A No, sir.

Q And did you not then strike Frances Morris? A No.

Q Will you tell me what time on the 5th of September, 1907 you came to New York? A Around three o'clock.

Q When you came to New York where did you go? A I went home.

Q Where is that, 219 West 61st street? A Yes.

Q You had no expectation of seeing Rhett on the 7th of

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September, 1907, had you? A No, sir, I did not have any expectation of meeting him in New York.

Q Now, from the 5th of September, 1907, until the 7th of September, 1907, did you remain continuously in New York?

A Yes.

Q And on the 5th of September when you went back, you did not have your revolver with you? A Repeat that over again.

Q I say when you went back -- if may be sort of obscure; on the 5th of September when you left Long Island and came to your house to premises 319 West 61st street, you did not have your revolver with you? A No, sir, it was at home.

Q It was at 319 West 61st street? A 219.

Q 219, I beg your pardon; you got to 219 West 61st street about what hour in the day; you left you said at two or three o'clock from Long Island and what time did you get to your home 219 West 61st street? A I don't remember just what time it was.

Q I do not ask you just, but about what time? A Before dark.

Q Before seven o'clock? A Yes, sir.

Q And then, on the 6th of September, 1907, did you have your revolver in your possession at all, carrying it about?

A No, sir.

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Q What time on the 7th of September, 1907 did you take your revolver? A September 7th did you say?

Question repeated.

A About half past six.

Q Half past six in the evening? A In the evening.

Q You had not had your revolver with you at all -- you had not had your revolver in your possession since about the last of August or the 1st of September, until half past six on the evening of September 7, 1907?

MR. HANSEN: I object upon the ground that the testimony is that the witness said he had it around the 1st of September.

Objection overruled. Exception.

A No.

Q Now, you say you took your revolver, and it was fully loaded when you took it at half past six on the 7th of September 1907? A Yes.

Q You knew it to be fully loaded when you put it in your pocket on the 7th of September, about half past six? A Yes.

Q What time, after putting it in your pocket, did you leave your house? A About seven o'clock.

Q And where did you go then? A I went up on the corner 61st street and Amsterdam avenue, and stood on the corner five or ten minutes and I took a car.

Q Did you have any definite purpose in mind as to where

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you were going when you took that car, yes or no? A Yes.

Q What was the destination that you proposed or desired to reach when you took the car at 61st street and Amsterdam avenue, about ten minutes after seven on the evening of the 7th of September? A My idea was to go through 37th street.

Q To go to? A To go through 37th street.

Q 37th street is a long street, it extends from the North to the East River? A I mean from Ninth avenue to Eighth avenue, and I had it in my mind --

Q Your destination, I just want to know the purpose you had in mind or the destination that you desired to reach when you took this Amsterdam avenue car at about ten minutes after seven, and your purpose was to get to 37th street so you could go between Eighth and Ninth avenues, is that right? A That is right.

Q You were at Amsterdam avenue, were you? A I came down Amsterdam avenue.

Q You were at Amsterdam avenue and 61st street when you took the car? A Yes.

Q What cars run on Amsterdam avenue? A Amsterdam avenue cars only.

Q Do those come down Eighth or Ninth avenues? A They come down Tenth avenue, come down Tenth avenue to 42nd street, through 42nd street to First avenue into 34th street and the East River.

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Q You can get transfers from the Amsterdam avenue to the Eighth and Ninth avenue cars? A Yes.

Q And you can get transfers at 42nd street or anywhere along, or immediately, by paying your fare, you can get a transfer, so you could have gone down Eighth or Ninth avenues, couldn't you? A Yes.

Q And did you know the number on 37th street between Eighth and Ninth avenues that you were seeking? A Yes, sir.

Q What number was it? A 320.

Q Did you take a transfer when you paid your fare on the Amsterdam avenue car for Eighth or Ninth avenue car? A Repeat that question again.

Q Did you take a transfer when you paid your fare on the Amsterdam avenue car for the Eighth or Ninth avenue car? A Yes, I took a transfer.

Q When you got to 42nd street did you use that transfer and get a Ninth or Eighth avenue car? A I did not.

Q It is five blocks, is it not, from 42nd street down to 37th street? A Five blocks, yes.

Q Why didn't you ride down? A I looked and I did not see no car coming at all and I started out to walk.

Q That is the only reason that you did not ride down because you did not see a car coming? A Yes, that is the only reason, and the short distance.

Q Can you read and write? A A little bit.

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Q Will you be good enough to look at this diagram, People's Exhibit 1, and look it over and see if you understand it, and if you understand it I will talk to you about it; and if you do not understand it I will not. You see that is Ninth avenue, that is supposed to be Ninth avenue, do you understand that? A Yes.

Q See if you understand that is Ninth avenue? A Yes.

THE COURT: Find out if he is looking up or downtown.

BY MR. ELY:

Q You see this is West 39th street, do you see that?

A Yes, sir.

Q Now you see that is 5 -- you ought to have it really like that -- you see this is 514, do you see that number 514? A Yes.

Q And you see that is 516? A 516.

Q You see that is 518, don't you? A Yes.

Q And you see that is 520? A Yes.

Q And that is 522? A Yes.

Q And this saloon on the corner of 39th and Ninth avenue is 524? A Yes, I see that.

Q Do you recognize that this is a northerly direction, seeing that these numbers are mounting up, do you recognize that is going north, in that direction? A I don't exactly understand that.

Q Wait a minute, you see this is 39th street? A Yes.

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Q Now, if you walk up Ninth avenue to the next block above, what street would that be, can you tell me that?

BY THE COURT:

Q Going up Ninth avenue what block do you find above Ninth? A 38th.

THE COURT: Above it?

BY MR. RLY:

Q That is going down?, A Yes.

Q As you walk up, that would be north? A 40th street.

Q That would be 40th street? A Yes.

Q Now if you went down from 39th street down Ninth avenue, that would be going down, and what street would you come to? A 38th.

Q You recognize this is the northerly direction, going that way you are going in a northerly direction, and going towards 40th street. A You will have to explain it over again.

Q What don't you understand -- turn it any way you want to and see if you understand it your own way? A If this was north, Ninth avenue, I would recognize this as 40th street, and that as 39th street.

Q And this as what? A 38th street.

Q You say you were going down Ninth avenue? A Yes.

Q And you came down Ninth avenue from 42nd street?



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A Yes.

Q Now upon which side of the street did you walk as you came down? A On this side (indicating).

Q That is to say you walked on the right hand side as you came down from 42nd street along Ninth avenue, is that right?

A Yes.

Q That is the westerly side? A Yes, the westerly side.

Q Is that right? A Yes.

Q Did you cross 39th street as you came down Ninth avenue, this is a crossing here, did you go across that space? A Yes, sir.

Q Or did you turn in and walk on West 39th street? A I walked across the street.

Q Now there is a saloon apparently on the corner of 39th street and that is the south west corner, is it not, of 39th street and Ninth avenue? A Yes.

Q You recognize that as being the south west corner of 39th street and Ninth avenue, don't you? A Yes.

Q Now, Moore, you say you were going right along down here to 37th street, to this number I believe it was 320?

A 320.

Q Who lived at 320 if you know? A I don't know no one that lived there. I was told that Briscoe lived in that house.

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Q Who told you that? A A man named Jones, a fellow who used to board with me.

Q When you got to 39th street, the southwest corner of 39th street and Ninth avenue, what did you do then?

A When I got to the northwest corner I saw Frances Morris standing about like that on the corner, from the southwest corner.

Q Make a cross there at the point where you say you saw Frances Morris standing when you got here to the northwest corner?

THE COURT: Do you remember about what number you saw her before?

A Yes, sir.

BY MR. ELY:

Q What number was it? A About 408.

Q There is 408 right there? A Yes, sir, about 408.

Q Then we will leave it at that; what did you do when as you say you saw -- this was what hour?? A This was around eight o'clock.

Q Around eight o'clock on the night of September 7, 1907, when you saw Frances Morris standing about in front of 408, what did you do? A I walked across 39th street and started towards her. When I got a few steps of her, she walked

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Q Walked away? A She walked away.

Q When you say she walked away in what direction did she go? A She went towards Tenth avenue.

Q Then she came over this way? A Towards Tenth avenue.

Q That is right, she went over in that direction, did she (indicating)? A Yes, sir, in that direction.

Q Then she proceeded westerly? A EShe did.

Q Then, you had not spoken to her or addressed her up to this time, had you, on this evening? A No, sir.

Q Now, as she proceeded in a westerly direction, did you overtake Frances Morris, that is, did you catch up with her, catch up with her? A I did.

Q And when you caught up with her was she walking or was she standing? A She was walking.

Q Before you caught up with her had she been speaking, had she stopped and been speaking apparently with another colored woman? A She was.

Q When you caught up to her her back was towards you? A Her back was towards me.

Q You caught hold of her arm, you say? A I touched her arm.

Q Didn't you say this morning that you touched her on the shoulder and the took hold of her arm? A I said her hand.

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THE COURT: Was there some evidence that he called her first?

BY THE COURT:

Q Did you call her or did you use her name before you put your hand upon her? A Yes.

THE COURT: I think there was some evidence to that effect.

BY MR. ELY:

Q And did she not say "What do you mean by taking hold of me?" A No.

Q Did she say anything to that effect? A No, sir, I caught hold of her hand. I walked up and touched her with my right hand. I had called her, I said "Fannie", and she did not hear me, and then I walked right up to her side and touched her like that on the arm and she turned facing me and I caught her by the hand and I said "Come here."

Q I haven't asked you what you said at all.

BY THE COURT:

Q What did she say? A I said "What are you doing over here?" And she said, --I don't remember exactly what she said. She said "Don't pull me", or something like that. I understood her to say, and really I did not --

BY MR. ELY:

Q The best recollection is that she then said "Don't pull me." A Now I am not sure what she said.

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Q You just told us, you just gave us that much and said you did not recollect the rest, and I asked you --

MR. HANSEN: I object. The witness distinctly now states that he does not remember.

Objection overruled. Exception.

Q You just gave us that much and said you did not recollect the rest, and I ask you now whether it is your best recollection that Fannie, when you took hold of her said, "Do not pull me"? A No, I do not say that.

Q Very well, but you did take hold of her arm or hand?

A I did take hold of her hand -- arm.

Q Which was it? A Arm.

Q As you took hold of her arm, she swung around in front of you? A Yes.

Q Then you and she were facing each other and you were looking in a westerly direction and she was looking in an easterly direction. Is that right? A Explain that over again.

Q And then you and she were facing each other and you were looking in a westerly direction and she was looking in an easterly direction, is that right? A That is right.

Q Where were you, in front of what premises were you, when as you say, you and she were standing facing each other?

A About 410.

Q It might have been 412, might it not, 410 or 412?

A 410.

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Q You are not sure it was 410, are you? A I am not really sure but --

Q That is the best of your belief on the subject?

A Yes.

Q Now did you look at the number when you took hold of Fannie and she swung around as you have stated? A I looked at 408 as I approached her.

Q And you estimated that she walked a distance that would take her in front of 410, and that is the way you make it 410? A Yes.

Q And it might have been 412 for all you know?

MR. HANSEN: I object to Mr. Ely testifying for the witness.

THE COURT: He says to the best of his recollection it was 410.

MR. ELY: His recollection is only dependent now upon the distance he walked. He started at 408, and I asked him if it might not have been 412, and I press that question.

MR. HANSEN: You say it might have been.

BY THE COURT:

Q Might it have been 412 or what is your best recollection? A About 410.

Q The District Attorney wants to know if it might not have been 412? A No, I do not think it was that far.

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BY MR. ELY:

Q What happened after you had swung her, or rather Fannie had swung around facing in an easterly direction and you were facing her looking in a westerly direction; did you say anything else to Fannie after she made this remark to you that you say now you cannot recollect? A She did not say anything to me. I said to her -- I caught hold of her by the arm and she turned around facing me.

Q We have you facing each other, go along from that -- I ask you if she said anything to you? A No; I said "Come here, I want to ask you something." I said "What are you doing over here;" like that, and when before she replied, before she said anything I heard somebody behind me say, "You son of a bitch, what in the hell do you want with that woman."

Q Up to the time as you say you heard somebody make a remark which you have just testified to, had you seen Rhett? A No, sir.

Q And as you said you did not expect to see him at all in New York that night? A No, sir.

Q You did not expect to see Fannie at all that night? A No, sir.

Q When you heard those words, did you recognize the voice? A I did not.

Q And then as far as you know, you cannot now tell us from what person those words emanated or came, as far as you

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you know you cannot tell who it was who spoke those words?

A Yes.

Q Can you? A I imagine.

Q I do not ask you to imagine, I want to know whether you know who it was who spoke those words, after you had told me that you did not recognize the voice of the person who spoke those words? A I knew that he spoke those words.

Q But you have just told me that you heard these words and did not recognize the voice of the person who spoke them?

A At the present, but I looked around and I saw this man rushing on me.

Q I have not asked you about that; I am simply asking you how it is, if you did not recognize the voice of the person who spoke those words, that you are able to say who did speak them?

A Well, the words frightened me, they were so harsh they frightened me, and I looked around and I saw this man rushing on me.

Q You cannot tell this jury that this man spoke those words, that Rhett spoke those words? A Yes.

Q You told me a minute ago that you did not recognize the voice of the person who spoke those words?, A Not until I saw him rushing on me.

Q A person rushing forward on you does not in any way enable you to recognize a voice that you have heard, before you see a person rushing on you? A Explain that again.

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Q A person rushing forward on you does not in any way enable you to recognize a voice that you have heard, before you see a person rushing on you? A I have said the words were so harsh that I really didn't know until I looked around and saw him rushing on me, and then by that means --

Q That is not an answer to my question, you heard certain words that you have testified to here, did you not?

A Yes.

Q As you were standing looking in a westerly direction and Fannie was facing you looking in an easterly direction, now you heard certain words, I am asking you, didn't you? A Repeat that over again, please.

Question repeated.

A I had turned my back --

Q I am only asking you a question, you heard certain words, did you or did you not? A I did.

Q What were those words again? A "What in the hell do you want with that woman, you son of a bitch. What in the hell do you want with that woman."

Q What the hell do you want with that woman, you son of a bitch, what in the hell do you want with that woman," was that the way the voice sounded and were those the words the voice spoke? A "You son of a bitch, what the hell --"

Q I ask whether he said both of those things, or was it in the first instance, "You son of a bitch, what in the hell

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do you want with that woman"? A Yes, sir, that was it.

Q Was that all the voice said? A That was all he said.

Q The words had entirely been completed before you say anybody rushing towards you? A I looked around immediately.

Objected to.

BY THE COURT:

Q The words had been completely spoken before you turned around and saw anybody? A No, sir.

Q Was he still speaking when you turned around? A Yes, sir.

BY MR. ELY:

Q You say you turned around -- you were facing in a westerly direction? A No, sir.

Q You were walking in a westerly direction along the south side of 39th street, were you not, when you overtook Fannie? A Yes, sir.

Q And then you caught Fannie by the arm and you swung her around so that she was facing you, and you were looking in a westerly direction and Fannie in an easterly direction, is not that right? A In an easterly direction?

BY THE COURT:

Q You were looking towards Tenth avenue and she was looking towards Ninth avenue, she was facing Ninth, and you were facing Tenth? A That is after I heard the words.

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Q When you took her hand? A When I took her hand,

Q And she turned about, how was she facing, Ninth or Tenth then, when she turned about? A Her face was --

Q No, after she turned about, when you took her hand, which way was her face turned towards, Ninth or Tenth avenue?

A Ninth avenue.

Q So she was looking east, she was facing east? A Yes, sir.

Q And you were facing Tenth avenue? A Yes, after --

Q After she turned about? A After I heard the words.

BY MR. ELY:

Q We have not got to that, we are trying to get it slowly and not get you confused; I understand you she was looking towards Ninth avenue and you were looking towards Tenth avenue before you heard the words, "You son of a bitch, what the hell do you want with that woman," or whatever it was. Is that right?

BY THE COURT:

Q From the direction of which avenue did that man come whose voice you heard? A From towards Tenth avenue.

Q So he came from behind the woman and not from behind you? A He came from behind the two of us.

Q He could not come from behind the two of you, if one was facing east and the other west? A We were not standing just-- as she turned to face me I caught hold of her arm, and swung

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her around facing me, and then I said "Come here," and then --

BY THE COURT:

Q And then when you caught hold of her arm and swung her about, in what direction did she face? A Ninth avenue.

BY MR. ELY:

Q In what direction did you face? A I also Ninth avenue at the time.

Q You were both looking towards Ninth avenue, is that right? A Well, I was more likely south.

Q If you keep to Ninth and Tenth avenues you would be less apt to confuse yourself.

THE COURT: He might not have been facing either.

He might have been looking towards the south or towards the north.

MR. ELY: Certainly, he might have been looking across the street or looking towards the houses, but he has testified here several times as to how he was looking, and we are trying to find out.

THE COURT: We had examined him only in regard to two cardinal points.

BY MR. ELY:

Q Look at this diagram, you have looked at this before, you see there is 410? A Yes.

Q When you took hold of Fannie and faced her around, you had been going in a westerly direction right along and over-

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taken her? A Yes.

Q Her back was to you when you did overtake her?

A Yes.

Q You caught her by the arm and she then turned around and faced you and she was facing Ninth avenue and you were facing Tenth avenue, is that not right? A No, sir.

MR. HANSEN: I object. That is not the testimony.

BY THE COURT:

Q Yes or no?

THE WITNESS: No.

BY MR. ELY:

Q Explain it yourself? A I caught hold of her here (indicating).

Q Here is 410? A I want to say --

Q Do not say what you want to say, we are trying to find the position?

THE COURT: Get acquainted with the numbers, there is 410 there and there is 408.

A I want to make it this way, that is going south of Ninth avenue. I was on the south side of the street at that time, and I walked up here from 410.

MR. ELY: That is 408.

THE WITNESS: 410, I was next -- she was next to the curbstone and I walked up on the left hand side of her and caught hold of her left hand and pulled on her hand,

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touched her hand, and she recognized me and then I reached for her right arm and I said "Come here. I want to ask you something, " I said "What are you doing over here?" And then I walked --

BY THE COURT:

Q Before you go any further, what Mr. Ely is trying to get at for the information of the Court and jury is, when you took her by the hand, she had been facing Tenth avenue, namely, looking west? A Yes.

Q Then what did she do, in what direction did she turn if she turned any? A She turned towards Ninth avenue.

Q Did she turn full face towards Ninth avenue? A Yes.

Q Did you also turn or keep looking west? A I turned.

Q Both of you turned to face Ninth avenue? A Yes.

Q You were facing full Ninth avenue,, or were you partly turned towards her? A I was partly turned towards her as I was walking.

Q When you turned partly towards her, did you turn towards the south side of the street and partly towards Ninth avenue? A Yes.

Q So it might be said that you turned in a southeasterly direction? A Yes.

Q About southeast, and she was facing the east? A Yes, she was facing east.

Q And you southeast?, A Yes --

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Q If you were turned partly towards the south side of the street and partly towards Ninth avenue, Ninth avenue is east?

A Ninth avenue is east.

Q And you were turned partly towards Ninth avenue and partly towards the building on the south side of 39th street, is not that it? A No, sir.

BY THE COURT:

Q Did you turn full face around to Ninth avenue when she turned -- you had been going away from Ninth towards Tenth?

A Yes.

Q When you caught her by the hand? A We both turned face around towards Ninth avenue and I made a step towards the curb stone, just like I wanted to turn her around out of the way of the people, that was my idea.

Q Facing in what you might say a generally easterly direction? A Yes.

BY MR. ELY:

Q You were then generally facing in an easterly direction?

BY THE COURT:

Q That is, towards Ninth avenue? A Yes, easterly across the street, towards the north corner.

Q Towards the north corner?

MR. ELY: That is the north corner (indicating).

THE COURT: He says after he took her hand he moved a little in the direction of the curb, out from the centre of the sidewalk to the curb.

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BY THE COURT:

Q Is that so? A Yes.

Q You moved a little in a northerly direction? A Yes, sir.

Q While you were moving in that northerly direction, in what direction was your face turned? A My face was turned towards Ninth avenue northerly.

Q What? A Towards Ninth avenue.

BY MR. ELY:

Q Your face was turned towards Ninth avenue? A Yes.

BY THE COURT:

Q And moved sideways towards the north side of the curb? A Yes.

BY MR. ELY:

Q And her face was towards Ninth avenue? A Her face was towards Ninth avenue, yes.

Q Then you were standing on the curb, you were looking towards Ninth avenue and she was also? A Yes.

Q And then you heard these words? A Yes, sir.

Q From what direction did the person that was speaking these words come? A From behind me and from towards Tenth avenue.

Q He came from behind you? A Yes.

Q But you were standing here at the curb, in front of 410, looking in this direction? A Looking towards Ninth avenue.

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Q He came from Tenth avenue, did he? A From that direction.

Q Yes, from that direction -- how far away from you was he when you first saw him? A He was near the distance of that corner over there.

Q From where you are sitting to the wall or corner? A Yes.

Q That was the distance he was from you when you first saw him?

BY THE COURT:

Q How far would you say that was?

MR. ELY: How far would the jury say it is?

THE COURT: I would not have them pass upon it now.

BY THE COURT:

Q What is your opinion of the distance at which the other man was, how far do you say in feet about that he was from you?

A When I saw him?

Q Yes? A About a distance --

Q How far in feet? A About 16 feet.

Q About 16 feet away? A Yes, sir.

BY MR. ELY:

Q Fannie was between you and this person then, was she not? A She was at my side, standing at my side.

Q Was she between you and this person that you say you saw 16 feet away?

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MR. HANSEN: I object. He testified that she was standing next to him and the deceased was behind them both.

MR. ELY: There is no necessity of an objection of that description at this time. I have a perfect right to ask that question and the suggestion of course may alter the answer.

THE COURT: I think the answer is sufficient. He said she was at his side.

MR. ELY: She might well be at his side and be between him and the person that was coming.

THE COURT: Perhaps.

MR. ELY: And I ask that.

THE COURT: We will find that out.

PY MR. ELY:

Q Was she between you and this person that you say you saw sixteen feet away? A No, sir.

Q You say you were standing at the curbstone looking east? A I was not at the curbstone. She was between me and the curbstone looking east.

Q She was between you and the curbstone? A Looking east, yes, sir.

Q She was looking east and then you were further in on the sidewalk? A I was.

Q She was on the curbstone? A Nearer the curbstone.

Q You see that black mark there, would that about indicate

the position that Fannie occupied when you as you say saw this person coming towards you? A Not quite that close on the curbstone, no.

Q That is of course made to a scale, and it is right on the curbstone -- it seems to be pretty near -- but any way you were this side of Fannie? A Yes, sir, next to the building.

Q You were between the person who was coming behind you and Fannie? A No, sir.

Q If you want to, you may indicate the relative positions; now look at this, you see this is 39th street? A Yes.

Q There is 412 and there is 410, and there is 408, do you see that, do you understand that? A Yes, I understand that. (Mr. Ely makes a diagram).

Q Now between these two lines here, is supposed to be the sidewalk? A Yes, sir.

Q You see this is a broken line here, that represents the stoop line or the house line, and between these two lines is the sidewalk, do you see? A Yes.

Q Do you understand that in every way? A Yes, if I turn it around I can.

Q Do you understand that in every way? A Yes.

Q This is 39th street and this is supposed to be the sidewalk and there is 410, 412 and 408?

THE COURT: Tenth avenue here and Ninth avenue over there.

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MR. ELY: Yes, I did not put that down-- now, is that clear?

THE COURT: I should imagine so.

BY MR. ELY:

Q Look at that, you see there are two arrows and one is pointing towards Tenth avenue and the other towards Ninth avenue, do you understand that now? A Yes.

Q Will you take that pencil and make a cross for where Fannie stood, and make an O, a little o, to represent yourself, and do you know how to make an R, the letter R? A I think so.

Q That is an R, do you see? A Yes.

Q You make an R there on that and let us see what sort of an R you make?

(The witness writes.)

Q What I want you to do is to make a cross on this paper here to indicate where as you say Fannie stood and an O where you say you stood, and an R where you say the deceased came from?

THE COURT: Remember, in doing all that, keep your eye on this,,that this is towards the river (indicating)?

THE WITNESS: I understand that.

THE COURT: Or towards Tenth avenue, namely, west from 410.

A Yes.

Q And this is towards Ninth avenue? A Yes.

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Q What Mr. Ely wants is to have you put a little cross right there to indicate where the woman stood? A Yes.

Q This being the sidewalk or the curb? A Yes.

Q Just a small one to show where the woman stood?

A Yes.

Q This is in the street and here is the sidewalk from this black mark up to this, now the heavy line is supposed to be the curb --

MR. ELY: Yes, and the broken line --

THE COURT: Do you know where you were standing?

THE WITNESS: Yes.

MR. ELY: 410.

BY MR. ELY:

Q Make a small cross where she was standing?

(The witness complies.)

BY THE COURT:

Q Now make the figure O where you were standing?

MR. ELY: Make it small.

(The witness complies.)

THE COURT: Now the figure R for where he was coming from -- you said at about 16 feet.

(The witness complies.)

THE WITNESS: You understand me, this is where I stood.

THE COURT: The cross is where she stood and the

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O is where you stood, and the R is where he was when you saw him first.

A Yes, where I saw him first.

MR. ELY: The cross is where Fannie stood, the O is where the defendant stood, and the R is supposed to be where the deceased stood when the defendant saw him first. He was coming from the direction of Tenth avenue up in this direction.

A JUROR: In an easterly direction.

BY MR. ELY:

Q Now then, what happened after that, when you say you were standing as you have indicated on this paper and you saw the defendant at a distance which you estimate was 16 feet, what happened after that?

BY THE COURT:

Q What happened after what you have last described, when you took her hand and turned her about and asked her what she was doing over there, and you heard a voice, then what happened?

A When I heard the voice I turned, and turned to my right, looking towards Tenth avenue, and he was rushing on me.

BY MR. ELY:

Q About how far was the deceased from you, as you say, when you turned and looked towards Tenth avenue? A He was about 16 feet.

Q To repeat? A He was about 16 feet.

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Q Go ahead, you have said that, what next? A He said to me, "You son of a bitch, what the hell do you want with that woman."

Q Did he say that again? A No, he did not say that again, but I wanted to show you just what --

Q I do not want to know what he said unless he said it again after you turned to look at him? A When I turned to look at him he run his hand in his pocket.

Q He did not say anything to you after you turned to look at him?

MR. HANSEN: I object upon the ground the testimony is that the witness saw him finish his sentence after he turned around.

MR. ELY: After having been thus prompted, perhaps the witness will be allowed to answer.

THE COURT: That appears to be the record, Mr. Ely.

MR. ELY: I press the question.

THE WITNESS: The question was finished or repeated as I turned.

BY MR. ELY:

Q What? A He finished the question.

BY THE COURT:

Q He finished? A He finished the question as I turned and looked at him still rushing on me:

BY MR. ELY:

Q You did not know he was rushing upon you before you

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looked at him? A No.

Q Then what happened? A When he run his hand in his pocket I said, "Don't you come near me," and he kept continuing coming and when he got within about four or five feet of me, I snatched the revolver out and fired.

BY MR. ELY:

Q Fired twice, didn't you? A No, sir, I don't remember.

Q What? A I don't remember firing twice.

Q Are you sure you did not fire twice? A I pulled the trigger, I don't know how many times.

Q You don't know whether you fired twice or more?

MR. HANSEN: I object. The witness has not testified that he fired twice.

THE WITNESS: He excited me so I do not know.

THE COURT: I sustain the objection to the form of the question, twice or more.

BY MR. ELY:

Q You say you pulled the trigger, do you? A Yes.

Q And you kept on pulling the trigger, did you? A No, sir.

Objected to. Overruled. Exception.

Q Did you keep on pulling the trigger? A No, sir.

Q You said you were so excited that you did not know how many times you fired a minute ago, didn't you? A I did.

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Q Then how do you remember that you did not keep on pulling the trigger? A Well, when he --

Q Just answer that question, how do you remember that you did not keep on pulling the trigger, if you were so excited that you did not know how many shots you fired? A Repeat that over again:

The question is repeated.

A Well, I am not really sure how many I fired.

Q You have told us you did not keep on pulling the trigger, and I ask you if you were so excited that you did not know how many shots you fired, how you can swear here or state positively that you do know that you did not keep on pulling the trigger of the pistol? A I pulled like that, a flash like that.

said I

Q Twice? A No, sir, I pulled like that and turned off.

Q You remember you only pulled the trigger once, is that right? A I know I pulled the trigger and heard the report of the revolver.

Q I ask you to answer my question? A I know I pulled it once. I am not sure how many reports.

Q You are not sure how many times more than once you pulled it, is that what you mean? A I did not aim to pull

Q Just answer the question if you can, and if not we will proceed to something else? A I only pulled the trigger

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once, only pulled the trigger once and then turned.

Q How can you remember that you only pulled the trigger once and then turned, if you were so excited that you don't remember how many shots you fired? A I pulled the trigger.

Q I know, you have told us about pulling the trigger; answer my question if you can and if you cannot we will try and pass to something else. A I simply pulled the trigger. I simply pulled the trigger like that and heard the report. I don't think that I fired over once. That is all, but I am not sure.

Question repeated.

THE COURT: He knows he did fire once. The larger number includes the smaller. He is positive he fired once, but he is not positive that he did not fire more than once, that is his statement.

MR. ELY: We will let it go at that.

BY MR. ELY:

Q Then you turned? A Yes.

Q At no time did you see any pistol in Rhett's hands on that evening, did you? A No, sir.

Q And at the time that you say you saw Rhett coming towards you, no one was holding you, was there? A No one was holding me, no.

Q No one had any hand upon you in any way? A No, sir, no one had a hand upon me, no.

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Q You were perfectly free to run away if you wanted to?

A Yes.

Q And it was at that time dusk, was it not? A It was.

Q Do you understand what dusk means? A Dark.

Q Not exactly dark, but it was pretty nearly dark or approaching darkness? A Approaching darkness, yes.

Q What? A It was about dark.

Q What? A It was dark.

Q It was dark? A Yes.

Q You would say it was dark? A Yes, I think it was.

Q Why didn't you run away?

BY THE COURT:

Q What time of the night was it?

MR. FLY: 8:10.

BY THE COURT:

Q Answer that question, what time of the night was it?

A About eight o'clock.

Q September 7th? A Yes.

Q Was it raining, do you remember? A No, sir.

Q It was clear weather? A Clear weather, I think.

Q Do you say it was dark at eight o'clock on the night of the 7th of September, in clear weather? A I mean to say it was about dusk.

Q That is what Mr. Fly has been asking you,--about dusk--you know there is a great distinction between dark and dusk?

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BY MR. ELY:

Q I ask you why you did not run away when you saw this man coming to you and simply saw him with a hand in a pocket?

MR. HANSEN: I object upon the ground that it is not that he saw a hand in a pocket, but he saw him put a hand in his pocket.

MR. ELY: I press my question.

THE COURT: I allow the question.

THE WITNESS: Why I did not run -- I was afraid of him shooting me.

BY MR. ELY:

Q After shooting one shot or more, what did you do?

A I turned around and walked off to the corner.

Q Walked alowly? A Yes, I did not run.

Q Did not run? A No,,sir.

Q Didn't you walk very fast? A No.

Q You say that you didn'this in self defense? A Yes.

Q You say you believed at the time that you fired that one or two shots, that your life was in imminent danger?

A Yes.

Q Why did you leave, why didn't you stop and call every one to bear witness that you had been in this danger?

Objected to. Objection sustained.

MR. ELY: This is a question going to show motive and intent, and if the contention is that he was absolutely

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innocent, it is a question as to whether or not an innocent man would not then and there have stayed, and that is the reason of my cross-examination. I think I have a right to ask him.

THE COURT: I will rule it out.

BY MR. ELY:

Q What did you do with your pistol? A I dropped it in the avenue.

Q What? A I dropped it in the avenue.

Q What did you do that for? A Well, I did not want to use it any more.

Q Did you believe the purpose for which you had purchased it had been effected?

Objected to. Objection overruled.

BY THE COURT:

Q Did you believe that the purpose for which you had purchased it had been effected, that means to say, did you think that you had done the thing that you bought the pistol to do, and therefore that you threw it away, did you think that?

A No, sir, I did not.

BY MR. ELY:

Q Why did you throw it away? A I don't know.

Q You paid seven dollars for this revolver you have testified? A Yes -- I did not really --

Q You did not really what? A I took it out of my

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pocket, that is, I had my hand on it in my pocket and I pulled my hand out of the pocket and it fell in the avenue and I never had a chance to get it any more.

Q Why didn't you stop and pick it up, you paid seven dollars for it? A Yes.

Q And it was a thing of value to you, was it not? A Yes.

Q And you now say that you did not throw it away, that it dropped out of your pocket? A I pulled it out of my pocket and it dropped in the street, in Ninth avenue.

Q When did you put it back in your pocket after you shot one or two shots with it? A When did I?

Q That is the question? A Immediately, I put it right back in my pocket when I turned off.

Q And then you just walked right along towards Ninth avenue? A Yes.

Q You did not have your hands in your pocket, your hands were at your side? A I still had my hands in my pocket, I walked that way.

Q Then as I understand you, you shot one, not less than one, or perhaps more shots, out of this revolver, and then put it and your hands in your pockets, and walked along that way, is that right? A I walked to the corner.

Q With your hands in your pockets? A Yes.

Q And then you turned and walked up Ninth avenue with your hands still in your pockets? A When I got --

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Q Answer my question? A No, sir, when I got to the corner of Ninth avenue and 39th street I got struck.

Q You got struck there? A Yes.

Q And is that where you fell down? A No, sir, I did not fall.

Q Do you know who struck you?, A No.

Q What part of the body did that blow touch you? A I received it in the jaw.

Q And did that blow in the jaw knock the pistol out of your pocket? A No.

Q How did the pistol get out of your pocket? A There was a big crowd around me, a big crowd around me as I was walking and I got punched every step.

Q The crowd is behind you? A They were in front of me and behind me and beside of me too, and all around me as I was walking along, and I hollered murder two or three times, thinking that a policeman would come because they were beating me something terrible.

Q I have not asked you anything about that, but we will let it stand; I have asked you when it was that you dropped your pistol or threw it away? A The last of my recollection of having the revolver was in between 39th and 40th street, in my pocket.

Q Then you do not know how it left your pocket, is that it? A In the crowd --

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Q Wait a minute, I ask you if you say now that you don't know when that revolver left your pocket? A I dropped it in the street.

Q You took it out of your pocket, did you, again? A It dropped out.

Q ?You took it out of your pocket again?, A Again?

Q Yes? A Well, that was the first time I took it out.

Q What? A That was the first time I took it out afterwards.

Q You did not shoot through your clothes? A No, sir.

Q You did not shoot through your pocket when you shot this one or two shots? A I said after.

Q I ask you if you took it out of your pocket again? A I did.

Q What did you take it out of your pocket this time for, to shoot again? A No, sir.

Q You say that you were being punched and hit by everybody as you were going along there? A Yes, sir.

Q Didn't you believe you were in danger then? A I had no --

Q Can you answer that question? A I knew I was in danger then.

Q Didn't you believe you were in danger of your life, considering the way you were being punched by everybody? A I

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had no thought about that, only I know I was getting punched every step.

Q Didn't you think about what the result of this general attack might be? A No, sir, I had no time to think.

The diagram which was made by Mr. Ely and upon which the defendant placed certain marks indicating where the woman stood and where he stood and where the deceased stood, when he, the defendant, first saw him, is offered and received in evidence and marked People's Exhibit 2.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until to-morrow morning, January 29, 1908, at 10:30 o'clock.

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CASE

New York, January 29th, 1908.

TRIAL RESUMED.

MR. HANSEN: If your Honor please, I ask your Honor's attention to a statement I desire to make. A very important witness in this case, Richard Freeman, was here at the opening day of this trial and he was subpoenaed also yesterday. He told the man who subpoenaed him that he would not come over here because two detectives had been over to see him and told him not to come over and I ask your Honor to issue an attachment to have him produced here. He is one of the most important witnesses we have. The man who served him is outside and he made the statement to him this morning that he would not come over.

THE COURT: Bring the process server inside.

(A man is arraigned at the bar.)

THE COURT: What is your name? A My name is Oscar Green.

THE COURT: Do you know Richard Freeman? A Yes.

Q When did you last see him? A I saw him last night about six o'clock.

Q Was there any transaction between you and him? A No sir, not between me and him.

Q What was your object in seeing him last night? A I went over there to see him to call him to court to-day, to

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ask him to come over to court to-day.

Q Did you serve him with any sort of paper at all?

A Yes.

THE COURT: (To Mr. Hansen:) Is this the man to whom you gave the subpoena?

MR. HANSEN: I did not personally give it, but they all went to my office yesterday and got new subpoenas.

THE COURT: (To Oscar Green)

Q Where did you get the subpoena you served upon Freeman?

OSCAR GREEN: Over at the office, at the lawyers office.

Q What did Freeman say to you? A I gave this paper to him and he said he would take it, but he can't come, there was two detectives came over the night before that and told him not to interfere with this case at all, and not to come over here.

THE COURT: Let the attachment issue.

RICHARD MOORE, the defendant, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. ELY:

Q How long before the time that Frances Bridget went down to your boarding house at West Avenue, Long Island City, had you known her? A I had seen her since about 1899.

Q You had known her since 1899? A Yes I had seen her

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from time to time.

Q I ask you how long you had known her, not how long you had seen her. I may see you today and remember I saw you today at a period after today, but I do not know you, and I ask you how long you have known Frances Bridget? A I had known her four or five years.

Q When did you meet her, you said 1899, is that the right date? A Yes I met her in 1899.

Q Where was she working when you engaged her to come down to Long Island? A I don't know where she was working. I met her in the street.

Q Entirely by accident? A Yes.

Q You had not been looking for her? A No sir.

Q Had not been looking for her at all? A No sir.

Q You met her entirely by accident and then asked her to come down and manage this boarding house?

MR. HANSEN: I object. There is no such evidence.

MR. ELY: Of course there is not. I ask for it now.

Objection overruled. Exception.

BY MR. ELY:

Q Answer the question? A repeat it over again.

(The question is repeated.)

THE WITNESS: Yes I asked her.

Q You met her entirely by accident? A Yes I did.

Q And you then, after having met her entirely by accident, asked her to come down and manage your boarding house;

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is that right? A No that is not right.

Q What is it? A I asked her if she wanted a cook's place.

Q Go ahead? A And she said yes. I asked her if she wanted a cook's place. I asked her if she wanted a cook's place.

Q And then she said she did? A Yes.

Q Now as matter of fact didn't you go to Dr. Reed's house and ask the witness Frances Bridget to give up her job there and come down and manage yours and Frazer's boarding house in Long Island? A No sir.

Q Didn't she say she did not want to give up her job, that she had a good job and did not know how long your job would last? A No sir.

Q And didn't you say that you would give her the same wages that she was receiving there? A No sir.

Q What did you pay her? A Five dollars a week.

Q She was getting five dollars a week from Dr. Reed, was she not? A I don't know what she was getting from Dr. Reed.

Q You have been keeping company with Frances Bridget from time to time, as far as she would let you, since 1899, have you not? A No sir.

Q Never kept company with her at all? A No sir.

Q Didn't you tell her you would marry her on Easter

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Sunday, 1907? A No sir.

Q Never said anything of that description to her at all? A No.

Q And you have heard her testify on that subject have you not? A I did.

Q You heard her state that you have been keeping company with her and you had asked her --

MR. HANSEN: I object. There is no such testimony on her part or anybody else's part that he or she kept company. There is nothing in the proof to establish even a hint of that and I object to the question.

MR. ELY: Keeping company I do not mind. I will withdraw that, if that is so objectionable to counsel for the defendant.

THE COURT: It is not on that ground, but on the ground that it is incompetent, and that no such admission or testimony is on the record.

MR. ELY: The testimony is according to the witness Francis Bridget, that she had known him for some time and that he had been coming around to see her, that she had refused to give him an address and he had found her address out and he had been there, and he had then gotten her to go to the house after she had refused to go and he offered

COURT: I will exclude the question.

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MR. FLY: The question was not completed, but as it is stricken from the record we will reframe it.

BY MR. FLY:

Q You have heard the testimony with respect to what your attentions to her were, have you? A I heard her say she knew me since 1897.

Q You have heard her testimony as to what your attention to her were, have you not?

Objected to. Objection sustained.

Q You have heard her testimony? A I did.

Q And you heard her testify that she had refused to give you her address when she went to Dr. Reed's? A I don't remember.

Q You don't remember that? A No.

Q Is that right? A That is right.

MR. HANSEN: May it please the Court, I did not object to the answer because the answer was that he had heard her testify or that he was right that she did. I think the District Attorney make his question a little more definite, so that he may know just what his answer is.

MR. FLY: The witness makes no such suggestion.

Q Put that pistol in your pocket for on September, 1907, at 7 o'clock just



before you were going out, that loaded revolver? A My attention --

Q Just answer me.

MR. HANSEN: I object. That is an answer.

THE COURT: I will allow the answer.

BY THE COURT:

Q The question is why did you do it, and before it can be decided whether the answer is responsive or not, it must be answered.

THE WITNESS: I had made an appointment to go to Huntington, Long Island, on Sunday afternoon to a brickyard to see a friend, Oscar Green, and the brickyard is five miles from Huntington through a dark road and I thought of taking it for protection. I thought of taking the revolver around for protection. That is why I had it in my pocket that night.

BY MR. ELY:

Q That is the only reason you carried this revolver that night? A And that I had left it at home and I forgot -- I left it at home and I had forgotten to put it in my pocket -- I had forgotten to put it in my pocket, and thinking about going to Huntington on Sunday night reminded me of it being at home.

Q Do you remember that yesterday or the day before when you counsel interrogated you on this subject? A Re-

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peat the question.

(The question is repeated.)

A I don't just remember the question.

Q Now, was this question asked you, "Tell the court and jury why you carried that revolver" and you said "I carried the revolver at the time I was at 219 West 61st Street, at home, I put it in my pocket before I left" --

THE WITNESS: Before I left 219 ?

MR. FLY: Yes, that question was asked you and you made that answer, according to the stenographer's minutes; is that right? A That is right.

Q And your counsel then asked you "Why did you carry a revolver" and you answered "I carried the revolver because he had threatened my life. Q Who had threatened your life", your counsel asked you, and you said "Isaiah Rhett, he had threatened my life and he said he would kill me." "Q Did you believe he meant what he said? A I certainly did." -- Now, will you explain the difference between your answers as to the reason for carrying the revolver that you made to your counsel, and the reason that you now say was the one that caused you to carry the revolver on the night of the 11th of September, 1907? A The only difference in the question, that I left it at home and I forgot it, I had forgotten the revolver.

Q That is all the explanation you have to make, is it?

A Yes.

Q The only reason is that you left it at home and had forgotten your revolver, what do you mean by that, I don't understand you? A I mean I had carried it home and laid it down and forgotten it. I had taken it home and put it in the drawer, in the bureau drawer and came away and forgot it.

Q When was this? A That I forgot the revolver?

Q That you are talking about, I don't know.

MR. HANSEN: The witness is entitled to know what the District Attorney wants to know.

THE COURT: Yes.

BY THE COURT:

Q When did you leave it there and forget it, answer that question? A Around the last of August or first of September.

BY MR. ELY:

Q You had not thought of your revolver then or remembered it at all from the last of August until the first of September? A I had.

Q You say you had put it there and forgotten it around the last of August and first of September, what do you mean by that, I do not know? A I mean by that the revolver was in New York and I was over in Long Island City at the boarding house and when I went over I forgot it.

Q When you went over from New York to Long Island City

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you had forgotten it; when you left New York you forgot to take the revolver with you when you went back to Long Island, is that what you mean? A Yes.

Q And then from the last of August <sup>or</sup> to the first of September, up to the 7th, you had not had your revolver in your possession at all? A From the last of August up until the first of September?

Q No, from the last of August or the first of September to the 7th of September you had not had your revolver in your possession at all? A No.

Q And on the night of the 7th of September you took your revolver out, knowing that it was loaded, and put it in your pocket at 7 o'clock in the evening? A The 9th of September did you say?

Q No.

BY THE COURT:

Q On the night of the 7th of September?

THE WITNESS: Yes.

BY MR. ELY:

Q I ask you explain the difference between your testimony on the subject of why you put it in your pocket, that you have given to-day, and the explanation that you gave to our counsel?

THE COURT: Does the record show that the counsellor asked him why he carried that revolver on the night of

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the 7th of September?

MR. ELY: I will tell you in a minute. I read exactly from the record when I was reading before. "Q Did you on the 7th day of September, 1907, carry a revolver in your pocket? A Yes. Q Well the court and jury why you carried that revolver (that locates it definitely at that time)? A I carried the revolver at the time I was at 219 West 61st Street at home, I put it in my pocket before I left. Q Why did you carry a revolver? A I carried the revolver because he had threatened my life."

THE COURT: I simply wanted to have your question directed to the time concerning which the defendant's attorney questioned him.

MR. ELY: Thank you very much, but it appears.

BY MR. ELY:

Q I want you to explain the difference between your testimony to your own counsel as to the reason why you carried this revolver on the night of the 7th of September, 1907, and the explanation that you gave me as to the reason why you carried the revolver on the night of September 7th, 1907.

MR. HANSEN: I object to the question upon the ground that there is no difference in the testimony. He carried the revolver and he bought the revolver for one particular reason, namely, that he was afraid of this man. Now, in the interval he may have used that revolver and put it in his pocket

for different purposes, but the point is that he never would have had the revolver but for the fact that this man had threatened his life. Having the revolver he may have said I will put it in my pocket as long as I am going through a dark alley.

THE COURT: I overrule the objection.

Exception.

(The former question is repeated.)

A I stated about going to Huntington, Long Island. I was only trying to show you what refreshed my mind to think about the revolver, that I wanted to take it with me to Huntington, Long Island.

BY MR. ELY:

Q Explain the reason why you did not tell your counsel that you simply took the revolver that night for the purpose of protection in going to Huntington, Long Island, and did tell him that you had taken the revolver because, as you have testified here, this man Rhett had threatened your life and you were in fear of him, and because you certainly thought he was going to take your life?

MR. HANCOCK: I object unless the District Attorney will stipulate that it would be impossible for Rhett to be in Long Island that he was going to take in or-

THE COURT: Overruled. Exception.



THE WITNESS: repeat the question.

(The question is repeated as follows:

Q Explain the reason why you did not tell your counsel that you simply took the revolver that night for the purpose of protection in going to Huntington, Long Island, and did tell him that you had taken the revolver because, as you have testified here, this man Rhett had threatened your life and you were in fear of him and because you certainly thought he was going to take your life?

THE WITNESS: I have explained the difference in the two questions to my best knowledge.

Q That is the best explanation you can give, is it?

A Yes.

RE DIRECT EXAMINATION BY MR. HANSEN:

Q On the evening of September 7th, 1907, when you met or when you spoke to Bridget and heard a voice saying: "You son of a bitch" or words to that effect, did you see anybody else around you except Rhett?

MR. ELY: I do not care to interpose a technical objection, but this is not proper re-direct. He has already testified on this subject and said that he saw a woman with whom the witness Frances Bridget had been speaking.

THE COURT: The relationship of the question to the conditions that night concerning the place, makes it a proper

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question.

MR. FLY: very well, sir.

BY MR. HANSEN:

Q You heard a voice say "You son of a bitch" or words to that effect, did you not?

Objected to; overruled.

Q When you heard that voice did you see any man or anybody of a man except the deceased Rhett? A No sir.

Q So that voice could not have been anybody else but Rhett's?

Objected to; objection sustained.

Q You testified that you intended to go to Long Island, and that is why you armed yourself on the particular night of the 7th of September with a revolver? A Repeat that over again please.

Q On the 7th of September in the City of New York, in the year 1907, at your home, you put a revolver in your pocket, did you not? A I did.

Q Now you intended you said to go to Long Island; is that so?

Objected to as leading.

Q What was the name of the place you said you intended to go to? A Long Island.

Q What was the name of the place in Long Island?

A 96 West Avenue in Long Island.

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Q Didn't you just testify --

MR. ELY: I object. You have no right to lead the witness on re-direct and that is the reason I object. He has now testified in response to the counsel's question that he took a revolver because he was going back to West Avenue.

Objection overruled.

BY MR. HANSEN:

Q What was the name in Long Island City that you just told Mr. Ely you intended to go to? A Huntington, Long Island.

Q How far from your boarding house is that? A About forty miles.

Q Had you any reason to believe on that night that Rhett might be there?

Objected to.

A No sir.

THE COURT: I sustain the objection and the answer will be stricken out.

BY MR. HANSEN:

Q Did you ever hear Rhett make any threat about shooting or cutting up anybody else besides yourself?

Objected to; objection sustained.

BY THE 12TH JUROR: :

Q When did you intend to go to this place in Long Island, Huntington? A Sunday afternoon.

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Q Did you intend to go back to the house that night before you started on your trip, your house in 61st Street?

A No sir.

BY THE SIXTH JUROR:

Q Was it your intention to walk that forty miles?

A No sir.

Q Was it your intention? A No sir.

Q It was not? A No sir.

BY MR. HANSEN:

Q Would you have to walk any distance at all in order to get to the place on Long Island that you intended to go to? A Yes.

Q Where would you have to walk? A From Huntington down to the Bay.

Q How far a distance is that? A Between four and five miles.

Q Woodland, or open land, what kind of land is it?

A Water -- oh, wood land.

Q Any trees? A Trees, of course.

RE CROSS EXAMINATION BY MR. FLY:

Q Have you ever been to Huntington at all? A Yes.

Q Have you been there recently? A I was there -- I was to Huntington, on Tuesday during the week of September 5th

Q You were not armed then on Tuesday, during the week

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of September 5th, were you? A I was not.

Q You did not have any gun or weapon of any kind? A I did not.

Q Did you go down to the Bay, Huntington Bay, from the station? A I did.

Q Don't you know that is an open road, and that there are houses all along the way and there is electric lights installed on the road all the way from Huntington station down to Huntington Bay, and that there is a very large plant down there at Huntington Bay of the Bozar people, people who run the restaurant at 40th Street and Sixth Avenue -- don't you know that? A The way I walked down there ~~was~~ crossed the field.

Q You did not go by the road at all? A Not all the way.

Q You went on other people's land, did you, crossed other people's land? A Sure, somebody's land.

BY THE COURT:

Q Was it night or day when you went down this time you speak of in the week of September 6th? A It was in the day when I went down and night when I was coming back.

BY MR. RLY:

Q Where were you going to stop this night of the 7th of September, 1907? A Where was I going to stop?

Q Yes, sleep, where were you going to sleep that night?

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A 96 West Avenue.

Q You say you were going to 96 West Avenue that night, do you? A I do.

Q You were not going back to 219 West 61st Street?

Objected to; objection overruled.

Q You were not going back to 219 West 61st Street that night? A I am not sure whether I went home that night or not.

Q What? A I am not sure whether I went back to 219 61st Street or not.

Q Wait a minute, don't get confused, I ask you whether you were going back -- whether you intended, after you had seen Briscoe and collected the money as you say, whether you intended to go back to 219 West 61st Street that night? A I do not understand the question.

Q If you don't understand it I will withdraw it and put it in a different way; you remember you have told us that on the night of the 7th of September, 1907, you took a car at 61st Street and Amsterdam Avenue with the intention of riding down to 37th Street? A That is another question altogether. I was speaking about on Tuesday.

Q I have not asked you any question. I am just refreshing your recollection so that I may ask a question. There are questions that I asked you you told me you did not understand and I withdrew them, don't you see -- now, this is

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something different, if you will please listen to this I think we will get along; you remember that you told us that on the night of the 7th of September, 1907, about seven o'clock, you took a car at 61st Street and Amsterdam Avenue with the intention of going down and seeing a fellow by the name of Briscoe who you said lived at 320, or could be heard of at 320 West 37th Street, for the purpose of collecting some money, you remember that? A Yes.

Q That is the fact? A Yes sir.

Q Now did you intend to go back to your house that night at 219 West 61st Street? A I did.

BY MR. HANSEN:

Q Do you understand the question put to you by this juror, he asked you if you intended on the 7th of September, after having left your house in the City of New York with your revolver, if you intended to go back to that house on that night and you said no.

MR. HOLY: That is improper.

BY MR. HANSEN:

Q Mr. HOLY is now putting the same question to you and he is right, did you or did you not intend to go back to that house? A I intended to go back to that

Q On September 7th? A On September 7th?

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Q Yes. A Now I understand -- no sir, I was on my way to Long Island -- the question was did I intend to go back.

Q You know English, did you intend to go back to that house that night or did you not -- you did not intend to go back to your house in New York? A No sir.

Q You intended to go where? A I intended to go to Long Island that night.

BY THE ELEVENTH JUROR:

Q Where in Long Island that night?

BY MR. HANSEN:

Q Where in Long Island that night? A That night, to West Avenue.

Q And then when did you intend to go to Huntington, Long Island? A I said on Sunday night.

Q On Sunday night you intended to go to Huntington? A Yes sir.

Q You did not intend to go back to New York before you went to Huntington? A No.

FRANCES MORRIS, recalled by the defense.

MR. ELY: This witness appears now as a witness for the defense. She is called by the defense in their case.

THE COURT: Yes.

MR. HANSEN: I make her my witness.

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BY MR. HANSEN:

Q Do you remember when Rhett moved into your house in Long Island? A I think it was --

MR. ELY: I object. It was not her house.

BY MR. HANSEN:

Q I mean the house in which you were employed as a housekeeper or cook, or whatever it was? A Well I think about -- it was during the summer. I don't know what month it was.

Q Do you remember seeing a dress suit case belonging to Rhett?

Objected to as leading; objection sustained.

Q What things if any belonging to Rhett did he bring with him into the boarding house or came after he had arrived?

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

Objection sustained.

Q What if anything came with Rhett when you saw Rhett come there or after he had been there a little while, did anything come?

Objected to; objection overruled.

Q Did anything come belonging to Rhett so far as you know?

MR. ELY: That involves a conclusion.

THE COURT: The record say so far as you know.

MR. ELY: That is a conclusion as to whether she

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knows it or not. I have a right to examine upon that subject.

MR. HANSEN: Surely.

THE COURT: You may take the right if you desire.

MR. FLY: I do not.

BY MR. HANSEN:

Q What came belonging to Rhett so far as you know?

A Well, when he first came he did not bring anything.

Q Later on, what came so far as you know? A A dress suit case with some clothes in it.

Q I want you to tell the court and jury all that you saw in that dress suit case when it was opened? A I was not looking inside when he opened it. I did not see anything in there but a suit of clothes and handkerchiefs and clock.

Q What else? A I did not see anything else.

Q Did you ever tell the defendant that you saw a lot of cartridges in that suit case, bullets? A No sir.

Q Did you not as matter of fact see a number of bullets in that? A No sir I never saw the man when he opened it but I seen a suit of clothes and handkerchiefs and things that a man would have.

Q And cartridges for revolvers? A No sir.

Q Did you have a conversation with Rhett about cartridges? A No sir.

Q Didn't he say they were meant for his body? A No sir.

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Q He did not? A No sir.

Q You are sure about that? A Yes I am sure.

Q Did you ever tell the defendant to be careful?

A No sir I did not.

Q Will you wait one second -- did you ever tell the defendant to be careful, that Rhett had in his dress suit case a number of cartridges that he had told you, that Rhett had, that they were meant for his stomach? A No sir.

Q And you never had any conversation with this defendant about anything Rhett had said to you about shooting him or having cartridges in his dress suit case for him?

A The men -- no sir -- they were not even mad with each other.

Q He never told you that? A No.

R I C H A R D M O O R E, recalled.

BY MR. HANSEN:

Q Did you ever have a conversation with Frances Bridget regarding some bullets or cartridges that Rhett had in his dress suit case?

Objected to; objection overruled.

MR. ELY: This is an attempt to impeach a witness they have already said was their own.

THE COURT: I will allow it.

BY MR. HANSEN:

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Q Did you? A I did.

Q Tell the court and jury what conversation you had, what she said to you and what you said to her? A I will tell the jury just how it was. After Isaiah Rhett was at the boarding house one week, he brought a dress suit case there on a Saturday morning, and he gave the dress suit case to Fanny Bridget and asked her if she would clean his clothes for him. She cleaned his clothes and hung them out on the line, and she brought the dress suit case to my room door and she said, look at the cartridges he has got in here, he said them is some he bought for you. That is what she said to me, and I think she showed them to Walter Frazer too.

MR. ELY: I object to that and ask to have it stricken out.

THE COURT: Strike that part out: "I think she showed them to Walter Frazer too".

BY MR. HANSEN:

Q Did you see the cartridges? A Yes sir.

Q How many were there? A About fifty.

BY THE COURT:

Q When you stated here on your direct examination the names of the persons who had told you to beware of this man, that he intended to do you harm, that he was going to kill you, did you include in those names the name of Frances Bridg-

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et, did you say she was one of the persons who told you?

A Your Honor please, repeat that over again.

Q When you told your attorney the names of the people who had informed you that Rhett was going to attack or injure you and warned you to beware of him, did you tell him at that time that Frances Bridget was one of the persons who told you to beware of Rhett, that Rhett had threatened to injure you; did you tell him that she was one of those?

A I am not sure.

Q You did not state in the trial, when you were asked to give those who had warned you, that she had also warned you, you did not state that on the trial? A I am not sure.

BY MR. ELY:

Q Didn't you tell the court and jury on your direct examination, that the only people who had ever threatened your life there, whoever told you that Rhett had threatened your life, were George Morris, Richard Harrison and one Emanuel, not including Rhett himself? A I know I stated that those three told me.

Q Now, you testified in your direct examination as follows: "Q Had anybody else told you that Rhett said he was going to kill you? A Yes. Q Who had threatened your life? A Isaiah Rhett, he had threatened my life and said he would kill me. Q Did you believe he meant what he said? A I certainly did. Q Had anybody else told you that Rhett

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said that he was going to kill you? A Yes sir. Q Who had so informed you. Tell us the names of all the people, if any, who ever told you that Rhett said he was going to kill you? A Richard Harrison. Q Who else? A George Morris. Q Who else? A Emanuel, I don't know his other name. (By Mr. Ely: Q Is he a colored man? A Yes. (By Mr. Hansen) Q Who else if anybody? A That is all the names I remember came and told me" -- Why didn't you tell us on your direct examination that Frances Bridget had come to you and showed you these cartridges and told you Rhett said that they were for you or words to that effect? A I didn't think of it at the time. If I did not tell it I did not think of it at the time, that is the reason.

Q That is the best reason you can give that you did not think at the time? A I did not think of that at the time.

BY THE COURT:

Q You said at the time that was all that you remembered? A Yes.

Q You wish to add this name now of Frances Bridget to the names that you now remember of the persons who told you that? A Yes.

BY MR. ELY:

Q Nobody said anything about this between yesterday and today, about this case or your testimony? A No sir.

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Q You have not conferred with anybody? A No sir, no body.

Q You have not spoken to your counsel even about it?

A No I have not.

BY MR. HANSEN:

Q When did you first tell me this , what you have testified to now? A This morning.

Q How did you tell me -- I now show a paper and I ask you if that is a paper you gave me this morning? A Yes sir, that is a paper I gave you this morning.

Q With the statement on you have just now made?

A Yes.

Q Have I had any consultation or talk with you since I left this court room yesterday? A No sir.

Objected to; objection overruled.

Q Have I? A No sir.

Q Or has anybody from my office? A No sir, not since the trial went on have I seen anybody from the office.

Q You left the court room yesterday before I did?

THE COURT: That will do.

WALTER FRAZIER, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q What is your business? A I have a restaurant now on 61st Street -- 243 West 61st.

Q New York City? A New York City.

Q County of New York? A Yes.

Q Do you know the defendant? A Yes I know him.

Q Did you know a man by the name of Rhett? A Yes I knowed him.

Q The deceased? A Yes sir.

Q Did you ever have any business association with the defendant Moore? A He and I was doing business in Long Island, we had a boarding house over there together.

Q Where did you have this boarding house? A 96 West Avenue.

Q When did you start that boarding house? A We started -- I disremember the month now we opened, but it was shortly after Christmas that we opened.

Q What year? A Last year.

Q Shortly after Christmas? A Yes shortly after Christmas.

Q Do you mean in the month of January, 1907, or the month of December, 1906? A 1907 we opened there; I think it was right after Christmas, in January I know.

Q You continued in business over there how long, until when? A I was over there until October.

Q What year? A 1907.

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Q Did you have a boarder by the name of Rhett? A Yes sir.

Q Do you remember when he came to live in your boarding house? A Yes I remember when he came to live there.

Q Do you remember who brought him there if anybody? A Who brought him there?

Q Yes. A He came there himself. He was by himself and he spoke to me. I was there alone when he came -- outside of the cook of the place -- the rest of the boarders were out -- some were out.

Q Where was Moore the defendant when he came? A He was in New York at the time when he came there.

Q How long did Rhett stay at your boarding house? A About six weeks I think he boarded with me, about that time I think.

Q During that time, that is to say, during the six weeks that he stayed at your boarding house, did you ever hear any quarrels between Rhett and the defendant? A Not at my house, but there was something said about him before he came there.

MR. ELY: I object to the latter part of the answer.

THE COURT: Strike it out.

BY MR. HANSEN:

Q So far as you know, from your personal observation, were the defendant and Rhett on good terms while Rhett lived

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at your house, were they on good terms? A He did not want me to take him in and he was not there and I took him.

MR. ELY: I object. That is not responsive.

Objection sustained.

MR. ELY: I ask to have it stricken out.

THE COURT: That is, that the answer is not responsive.

BY MR. HANSEN:

Q Will you direct the witness to just answer my question?

THE COURT: Just answer the question and volunteer no answer.

BY MR. HANSEN:

Q While Rhett was living at your boarding house, so far as you know, were Rhett and the defendant on good or bad terms? A They were on bad terms when he came there, but he was not there when I took him in.

MR. ELY: I object and ask that that part be stricken out.

THE COURT: It is responsive enough, they were on bad terms when he came to his house.

BY MR. HANSEN:

Q So far as you know? A So far as I know.

Q Confine yourself to answering what I ask you, so far as you know, from personal observation, from hearing and see-

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ing, did you ever observe anything on the part of the conduct of the defendant and Rhett, that would lead you believe there was bad blood between them?

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

Objection sustained.

Q What if anything did you ever see or what if anything did you ever hear the defendant say to Rhett or Rhett say to the defendant regarding matters of dispute? A I never did hear him say anything to Rhett, but it was first brought to him through other people, boarders that lived with us, what Rhett threatened he was going to do.

Q What was he going to do?

MR. ELY: I object to the form of the question, what was he going to do, for the reason that the witness has said he did not see anything that was disagreeable between Rhett and the defendant or hear any threat.

THE COURT: I will let the answer in and if improper it will be stricken out.

BY MR. HANSEN:

Q What did you hear said? A News was brought to him that he had threatened to kill him some time in July.

Q Who had threatened to kill who? A Rhett had threatened that he would do it to him, Richard Moore.

BY THE COURT:

Q Were you present when any such news was related to

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this man? A No sir I was not present together but I spoke to him.

Q He told you that somebody had told him? A I spoke to him about --

BY MR. HANSEN:

Q Who is him? A Rhett, while he was boarding with me. I asked him what was the trouble between him and Moore. He said that he had nothing strictly against Moore, but he and Moore was not on good terms and he valued his life as good as Moore's and if Moore attempted to do anything to him he was going to try to do it to him first. I said I don't think he has anything against you in that way and he said that he was a small man, but he didn't care anything about anybody, any way, shape, fashion or form, and in the presence of Moore he never said anything to my recollection, where I was -- he and Moore never had any bad words, but anyway he bought this gun. I remember the time he bought the gun for security.

Q Who bought the gun? A Rhett.

MR. ELY: I object.

THE COURT: Objection sustained.

MR. ELY: I ask to have the answer stricken out, except -- I do not object to the statement that was made before the jury and this witness, but I ask to have the answer stricken out as to threats that were made against this

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defendant which were communicated to the defendant by others, for the reason that it now appears from the testimony of this witness that the only threats that were made against the defendant and communicated to the defendant, were communicated by the defendant to this witness here.

THE COURT: It is not necessary that they should have been communicated to the defendant at all.

MR. ELY: I do not make my point clear. I do not object or ask to have any disposition made by the court of the testimony that this witness has given in respect to a conversation that he says he had with Rhett himself. I do however object to his statement that he was told by others that threats had been made against the defendant by Rhett, for the reason that it now appears that the source of his information were communications to this witness by the defendant himself.

THE COURT: That does not appear yet. I asked a question of him previous to this last answer and I want it repeated, and I want it answered. I will pass upon that as soon as I hear that question.

(The stenographer reads the following: "By the Court: Were you present when any such news was related to this man? A No sir I was not present together, but I spoke to him. Q He told you that somebody had told him? A I spoke to him out of. Q Who is he? A Rhett, while he was board-

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ing with me I asked him what was the trouble between him and Moore and he said that he had nothing strictly against Moore but he and Moore was not on good terms and he valued his life as good as Moore's and if Moore attempted to do anything to him he was going to try to do it to him first."

BY MR. HANSEN:

Q Did you ever hear anybody say to Moore, the defendant, that Rhett had threatened to do him harm? A Yes.

Q Who did you hear say that to Moore? A George <sup>Harris</sup> ~~Harris~~ brought the news to him.

Q Who is George <sup>Harris</sup> ~~Harris~~? A George <sup>Harris</sup> ~~Harris~~ brought the news to Moore that Rhett started down to the house to have a battle out with him and met him on the way of West Avenue and asked him was Moore home and he told him no Moore was not home, that he was down to Pierson's collecting money that we had coming to us for board, and he turned around and goes back, Rhett did. He did not come down after he told him that, Moore was not home.

BY MR. HANSEN:

Q Did you ever see a revolver in the possession of Rhett? A Yes sir I did.

Objected to; objection overruled.

Q Did you ever have a conversation with Frances Bridget? A Yes.

Q Did you ever have a conversation with Fanny Bridget

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regarding something in the dress suit case belonging to Rhett?

Objected to; objection overruled.

A Yes.

Q Well us what was that conversation? A At the time he brought this dress suit case.

Q Who brought it? A Rhett brought it there and he had his clothes taken out of that for us to put away for him, because he was stopping in an empty room and it was only two rooms we had in the house to lock things up in for security; he wanted the clothes put in that and did not want to have them in the dress suit case because it was too small and would rumple them, and taking these out he had one hundred or more cartridges in there and he told her that she could shove under the bed and leave the cartridges in the case.

Q Did he say what he intended to use those cartridges for, or whom? A No he did not tell me. He just left them in the case.

Q Did Frances Rhett tell you anything he had said about that? A No she did not tell me anything he had said about that.

Q Did you have any conversation this morning with me regarding your testimony?

Objection sustained.

THE COURT: I will have the answer stricken out.

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THE COURT: Yes, strike the answer out.

Q Did you ever see Rhett after the 7th of September?

A No, not until I went to the hospital. I went and saw him there.

Q You saw him there? A Yes at the hospital.

Q When did you see Rhett in the hospital? A I saw him about I guess two weeks after he was in there. I guess it was about that time. I disremember the date.

Q What if anything did Rhett say to you on that occasion?

MR. ELY: I object. That is absolutely incompetent under the case of the People against Driscoll and has absolutely no connection with the case at all and I object to any offer being made as to it.

THE COURT: Yes, certainly. Mr. Hansen knows it is absolutely incompetent.

MR. HANSEN: If it may please the Court, a declaration that was made by Rhett in the drug store, on the 6th of September, has been introduced in evidence, in which he stated that the defendant had shot him. If I can show by the statement made by Rhett in the hospital, a statement made by him --

THE COURT: In the presence of the defendant?

MR. HANSEN: In the absence of the defendant.

THE COURT: The other was admitted because it was in

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the presence of the defendant and it was simply for the purposes of identification and to see what effect if any the declaration would have had upon the defendant.

MR. ELY: That was all.

THE COURT: That was the only reason it was admitted.

MR. HANSEN: Will you hear me?

THE COURT: No, not any further, if that is the only reason you have.

MR. HANSEN: I think I can convince your Honor that it is perfectly proper and competent testimony. A charge is made against this man --

THE COURT: If you could surround your statement with the corroboration of a dying declaration, then and in that instance perhaps it would be all right.

BY MR. HANSEN:

Q What was the date of your interview or talk with Rhett in the hospital? A I disremember the date that I was there, but I talked with him and he talked with me.

Q Answer me and do not answer anything more? A I can't remember the date I was there.

Q How many days before Rhett died did you see him if you saw him? A Three days after that -- I was there on Tuesday and on Sunday morning I think.

Q Where was he in the hospital three days before

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he died, did he say anything to you about believing he was going to die? A He told me the fix he was in, he brought it on himself.

MR. ELY: I object to that.

THE COURT: Strike it out.

MR. ELY: And I ask your Honor to tell the jury to disregard this absolutely.

THE COURT: Yes, they will disregard it, according to the instructions of the court.

MR. ELY: Will you please tell the witness not to answer any questions except those propounded to him?

THE COURT: Yes, Witness, do not volunteer any information.

BY MR. HANSEN:

Q When you saw Rhett in the hospital three days before he died -- do not answer question put to you until the court tells you to answer -- when you saw Rhett three days before he died did he say anything to you about believing he was going to get better or believing he was going to die? A He did not tell me that he believed he was going to die.

Q He did not? A No.

Q Did Rhett give you a message to deliver to Moore?

Objected to. Excluded.

Q Without saying what it is?

Excluded.

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## CROSS EXAMINATION BY MR. ELY:

Q You say that you were present when you heard George Morris tell the defendant about a threat that Rhett had made against him; is that right? A Yes.

Q Did you ever hear anybody else tell the defendant that Rhett had made a threat against him? A I heard several people.

Q Yes or no? A Yes.

Q You yourself? A Yes I heard it.

Q Who did you hear? A I heard George Morris, I know personally.

Q You have testified about that, just listen to my questions and answer them if you can and if you don't understand them tell me so and I will try and change the form, but you have already testified about George Morris; now the question is not about George Morris. I ask you if you ever heard anybody else tell the defendant about a threat that Rhett had made against him, anybody else? A Yes I heard other people.

Q Who? A I heard one man, I know, Richard Freeman. I heard him tell him.

Q I do not ask you what the threat was, but when did you hear Richard Freeman tell him? A That was during the same time or shortly after.

Q I do not understand what the same time is, give us

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the day of the month or if you cannot give the day at least the month? A I could not give you the day, but it was in the same week.

Q What week, in what month? A That was in the month of July.

Q In the month of July that Richard Freeman told the defendant of a threat that had been made against him by Rhett? A He cautioned him of Rhett.

MR. ELY: I ask to have that stricken out.

THE COURT: Strike it out.

Q Don't you understand the question I asked you?

A You asked me --

Q Tell me whether or not you understand my question and if you don't understand it the stenographer will read it to you again and then I will change it if you cannot understand it? A You want me to tell what he told?

Q He I do not ask you to tell that at all -- in the month of July Richard Freeman told the defendant of a threat that had been made against him by Rhett? A Yes.

Q Who else if anybody, you understand the question is, I want you to tell me who else besides George Morris and Richard Freeman, as you say, ever reported any threat that Rhett made against the defendant, that you heard? A I do not know if I could tell you the names, but it was several people who brought the threat. I know those two personally.

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Q When you say you know those two personally, you mean you heard them? A I heard them.

Q You did not hear anybody else? A Yes I heard others but I couldn't place all the people.

Q What do you mean that you heard others? A I know those two personally. I was present with them and we all sat and talked over it.

Q You were not present when any other person --  
A Yes I was present, but not at all times did I pay attention to it. I was present and there was a lot of kidding going along.

Q This was kidding? A I say it was some that naturally kidded him about it, but these men brought personal news and warned him to look out for him.

Q The two people that you say brought threats to the defendant, that they said Rhett had made against the defendant, whom you heard, were Morris and Freeman? A Yes.

Q And the others were simply men that were kidding the defendant over the threats that Morris and Freeman had brought is that right? A No sir, they were not threatened over them -- a lot of the other boys kidded him about it. These were people that brought personal news to him to be careful of himself.

Q That is two people who brought this news were Freeman and Morris? A Yes sir.

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Q And all the rest of the persons whom you say were speaking of these threats were kidding the defendant as to what Morris and Freeman had said, is that right? A No sir I did not say that.

MR. ELY: repeat the question.

THE COURT: He denies that he said it and my understanding corresponds with that statement.

BY MR. ELY:

Q As matter of fact did you tell the defendant that the fuss between him and Rhett, if ever there was one, was all over? A Was all over?

Q Yes. A I did not tell him. I did not know if it was all over or not. I did not tell him anything about that.

Q I only ask you if you told him that? A I told him what Rhett told me.

BY THE COURT:

Q What did you tell him? A I told him what Rhett told me, that he had nothing strictly against him.

BY MR. ELY:

Q What? A I told him <sup>what</sup> Rhett told me ~~and~~ after he came to board with us. He got after me about taking Rhett in; that was why I should ask Rhett what was the trouble between him and Moore and then I told Moore what Rhett told me.

BY THE COURT:

Q What was that? A That he had nothing strictly against him but he values his life as good as his, that they

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were not on very good terms and I went and told him -- told Moore what Rhett told me.

BY MR. ELY:

Q That is all? A That is all I told Moore what Rhett told me.

BY MR. HANSEN:

Q Do you remember a time when the defendant Moore remained in the house three days in succession?

Objected to as leading and as calling for a conclusion.

Objection overruled.

Q Do you remember a time when the defendant remained in the house for three days in succession? A I remember when he would not go out nights, afraid he was hurt by Rhett, I remember that very well. I remember when he could not go down to the office to get his money for fear of trouble with Rhett. He was not boarding with us then. He was stopping at the corner boarding house.

Q Who was? A Rhett was at the time.

Q The defendant did not dare to go even to get his pay?

Objected to; objection sustained.

BY THE COURT:

Q Did anybody ever tell you about any threat Rhett had made against this man outside of the hearing of the defendant? A Only George Morris and Freeman was the only one

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I was in conversation with about the threat that was made.

Q Freeman told you about this too? A He told him at the same time.

Q You were present? A Yes we were all present.

W. HANSEN:

That is the witness that refused to come over on a subpoena because two detectives had told him not to come over last night after he was subpoenaed.

MR. ELY: We will get him here all right.

MR. HANSEN: We have another witness who has refused to come also by the name of Carl Harrison, a very important witness who has been here in attendance and who has been duly subpoenaed but told the subpoena server he would not come.

THE COURT: Let an attachment issue.

O S C A R G R E E N, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q Do you know a man by the name of Carl Harrison?

A Yes.

THE COURT: What is this for?

MR. HANSEN: As a witness in this case.

THE COURT: proceed.

BY MR. HANSEN:

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Q Do you know the defendant in this case? A Yes I know the defendant.

Q How long have you known him? A That gentleman there

Q The defendant? A I have been knowing him quite a while, number of years. I can't say how long I have known him; but I have known him for quite a while.

Q Did you ever live in the defendant's boarding house in Long Island? A Yes.

Q And when did you live there? A When did I live there.

Q Yes. A I lived there -- I went there last June and stayed up until the latter part of July and went back again and stayed until the latter part of August, the last of August and went away again.

Q While you lived in the defendant's boarding house in Long Island, did you meet there a man by the name of Rhett? A Yes.

Q Did you ever have any conversation with Rhett, talk with him? A Yes sir I had different conversations with him.

Q Did you ever see the defendant Rhett in possession of a pistol, a revolver?

Objected to; objection overruled.

A Yes sir I did.

Q And did you ever hear the deceased Rhett say anything about the defendant Moore?

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Objected to; objection overruled.

BY MR. HANSEN:

Q During the time you lived in the boarding house of the defendant in Long Island City, did you hear a man by the name of Rhett say anything whatsoever to you about the defendant Moore?

MR. ELY: I object unless he puts it in the nature of a threat.

Objection overruled.

BY MR. HANSEN:

Q Did you ever hear him say anything about Moore?

A Rhett?

Q Yes? A We and Isaiah Rhett were sleeping together in the bed at the boarding house and we talked at times of different things, what he would do.

BY THE COURT:

Q Whom did he talk to? A To me.

Q What did he say? A He had a gun in his pocket, underneath the head of his bed and he said if a man ever did anything to him what he would do, he would kill him, that was all he ever talked to me about. Different other things he talked to me. I asked him what he was going to do with the gun and he said if he ever did anything to him, he would shoot him and he would kill him, but

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BY THE COURT:

Q Did he say anything about this man in relation to what he would do, about this defendant? A He never called that man's name.

BY MR. HANSEN:

Q What? A I never heard him call that man's name.

MR. FLY: Then I ask to strike it out.

THE COURT: Motion granted.

MR. FLY: And the jury instructed to disregard it.

THE COURT: Yes.

BY MR. HANSEN:

Q Did the defendant Moore ever tell you that he, Moore, was afraid of Rhett, was scared of Rhett? A He was scared of Rhett?

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Q Yes. A I never had any talk with him about him and Rhett's affairs.

Q Did you go to the hospital, Roosevelt Hospital, in the month of September, and speak to Rhett? A Yes, I did.

Q At the time you saw Rhett there, what did Rhett say to you that he was very sick and thought he was going to die, or did he say he thought he would get well?

Excluded.

THE COURT: What did he say.

BY MR. HANSEN:

Q What did he say to you? A I went to see Rhett in the hospital, and asked Rhett how he was feeling. He said, I feel pretty good, what I can expect. I said, What is the matter with you?

MR. ELY: I object.

THE COURT: I sustain the objection, and the testimony concerning the hospital is stricken from the record.

THE WITNESS: I have not finished.

MR. ELY: Never mind.

No cross-examination.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until two o'clock.

AFTER RECESS.

MR. ELY: As I understand, at the close of Court,

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your Honor directed that counsel should apply to the District Attorney for some one to serve the attachments that you issued for these witnesses, that counsel says were under subpoena. Immediately after the adjournment of Court I directed the Chief Clerk to send somebody, and I found that none of the so-called subpoena servers were people who could go, because they were people who could not serve attachments, not being peace officers, and I then sent the attachment down to the Detective Bureau, which is composed of police officers, and there was no one in at the time, but I left instructions that as soon as anybody should come that he should forthwith execute those warrants of attachment, and that is all I have to report with respect to the premises.

MR. HANSEN: I have one witness that I desire to call, and I would say that I have been informed that the men who refused to come were working in the Belmont tunnel, in what they call the air, underground, and it will be impossible, even if all the detectives go over, to produce them here to-day, but they will be at their homes in the evening, and I have no doubt we will be able to produce them here tomorrow morning, and for that reason I will ask your Honor to permit me to call this one witness and then adjourn the case until the two reluctant witnesses can be apprehended.

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MR. ELY: I make no objection to that.

MR. HANSEN: In so far as the attachments are concerned, I thought I would not go to that extreme if I could avoid it, and for that reason I ask the Court to give me a detective to go over with the subpoena server and perhaps bring them over here without any attachment. I am not aware that any attachment has been issued.

MR. ELY: As far as that is concerned I have no authority to direct anybody to go and assist in doing anything. I have authority to direct people to go and execute warrants.

THE COURT: I think the better way to do is to send the officers who by their official designations are authorized to make such service.

MR. HANSEN: I shall do that.

MR. ELY: You mean to execute the attachments.

THE COURT: Exactly.

MR. HANSEN: As soon as I get to my office I will make them out and submit them to your Honor for signature.

LEONORA WILLIAMS, called as a witness in behalf of the defence, being duly sworn and examined, testified as follows:

DIRECT-EXAMINATION BY MR. HANSEN:

Q Where do you live, Miss Williams? A 206 West 27th

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street.

Q Do you know the defendant Moore sitting there? A I have known him about five years.

Q Do you know him? A Yes.

Q Did you know a man by the name of Rhett? A Yes, sir.

Q Did you ever live in a boarding house kept by the defendant Moore and a man by the name of Frazer, in Long Island City? A Yes.

Q And did you ever have any conversation--

MR. ELY: I object until she locates the time.

BY MR. HANSEN:

Q Did you live at the boarding house kept by the defendant Moore and a man by the name of Frazer last summer?

A Yes.

Q State to the Court and jury when you lived in that boarding house? A I went to the house on the 5th of March last and stayed until the 1st of October.

Q Last? A Yes.

Q While you were in that boarding house, did you ever have any conversation with the defendant Moore, did you ever have any talk with him? A No more than--

Q Did you ever talk with him at all? A Yes.

Q Did you ever talk with a man by the name of Rhett?

A Yes, sir, no more than saying good morning and good even-

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ing and like that.

Q Did you ever hear anybody in that boarding house, or did you ever state to the defendant Moore that Rhett was going to take his life?

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

Objection sustained.

Q Did you ever hear anybody say anything to Moore regarding Rhett or what he intended to do against the defendant Moore? A Yes, sir, I heard a conversation.

Q Yes or no? A Yes.

Q State to the Court and jury what you heard and who said it?

MR. ELY: I object. I will not object if Mr Hansen locates the time and place and the individual.

THE COURT: Yes.

BY MR. HANSEN:

Q When, if ever, did you ever hear anybody express any threats or words that might be construed into threats against the defendant Moore?

Objected to.

THE COURT: The last part is stricken out.

BY MR. HANSEN:

Q When, if ever, did you ever hear anybody say anything as to any harm that would be offered the defendant Moore?

MR. ELY: I object. I understand that your Honor

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would allow the question, which there is no objection to, "When, if ever, did you hear anybody make a threat against Moore"--that I do not object to.

THE COURT: I will allow that.

BY MR. HANSEN:

Q When did you hear that? A I heard it one night, it was about half a dozen fellows in the yard, it was a big yard--

Q When, in what month? A I can't tell positively when it was, it was along around in say July or August--it was about the first part of August or the last part of July somewhere, around in there. One Saturday it was; some fellows was in the yard and they had an argument about this Isaiah Rhett coming down to the house to do some harm to Richard, and he was not there at the time.

Q Who was not there? A Richard Moore was not there at the time. He had gone to New York, gone on Friday, and this conversation came up on Saturday morning.

Q Can you give us the conversation?

MR. ELV: I object, that is entirely too indefinite.

We have to know something about who said it.

THE COURT: Yes.

BY MR. HANSEN:

Q Who was in the company and who spoke those words that you heard? A It was George Morris and a fellow they call him, but I don't know what his name is.

Q What did they say? A They said is Richard Moore home, and we in the back said no, and he said it is a good thing he is not home because we are going to put him off--that was the fellow Big Boy and this Isaiah Rhett.

MR. ELY: I object unless she knows which one was the person who made that statement.

THE WITNESS: The Big Boy asked for Richard. I do not know what his name is--they all have nicknames.

BY THE COURT:

Q Which one of them said, "I am going to put him off"?

A First Big Boy asked the question, and when we told him no, he said, "We are going to put him off". The two of them were there together and they kind of hid--it is a stoop--

MR. ELY: I object and ask to have it stricken out.

THE COURT: Motion granted.

BY THE COURT:

Q What, if anything, did you hear Rhett say? A Rhett he has several times, he had always said--

Objected to.

THE COURT: On that night.

MR. ELY: Your question was directed to this occasion.

THE COURT: To that particular occasion on that night.

A This was not at night. It was in the morning.

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BY THE COURT:

Q On that occasion to which you refer as having heard some conversation in the yard, what, if anything, did you hear Rhett say? A Rhett did not say anything. It was this Big Boy that done the talking, and Rhett was supposed to do what Big Boy said.

MR. ELY: I object.

THE COURT: Strike out the latter part of the answer.

BY MR. HANSEN:

Q Have you ever heard Rhett say anything, you began to say something and you were interrupted, what, if anything have you ever heard Rhett say about what he was going to do if anything to the defendant? A He said the first time--

Q When did he say it? A While he was at this argument, you see--

BY MR. ELY:

Q What argument?

THE WITNESS: While they were out to the door, he said it is a good thing he is not here, because we are going to put him off--that was what Big Boy said.

THE COURT: Strike that out.

BY MR. HANSEN:

Q What did Rhett say? A Rhett said that same day, The first time we catch him at the boarding house I will fix him. He was to be caught down at the company's boarding house.

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MR. ELY: Will your Honor strike out everything but the words "the first time we catch him at the boarding house we will fix him".

THE COURT: Yes.

BY MR. HANSEN:

Q Please tell the Court and jury if Rhett ever said anything in your presence to anybody regarding anything he was going to do to the defendant, tell us what he said and when he said it? A He never said anything to me about it--I don't know.

Q Not to you? A Not to me.

MR. ELY: May the witness finish her answer. She said before that he never said anything but good morning and good evening.

THE WITNESS: Good evening.

MR. ELY: Now she says he has never said anything to her about this--have you finished your answer?

MR. HANSEN: I ask for the privilege of examining this witness, and I will then hand her over to Mr Ely. I am able to take care of myself.

MR. ELY: I am willing that she should examine the witness, but I ask that the witness be allowed to finish her answer without being interrupted in the middle of it.

MR. HANSEN:

Q Have you not finished any answer to any question?

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A I have answered everything you asked me.

MR. HANSEN: Then I move that the District Attorney's remarks be stricken from the record.

BY MR. HANSEN:

Q Did you ever hear Rhett speak to anybody, not to yourself, but to anybody, anything about the defendant Moore?

MR. ELY: I object to that. If he will add to his question in the nature of a threat, I will not object to it, but the other question I do object to.

THE COURT: Exactly.

MR. HANSEN: I understood that the District Attorney objected because a threat was a conclusion.

MR. ELY: I have not made any such objection that I remember.

BY MR. HANSEN:

Q What did you say if anything, regarding anything he was going to do or had done to the defendant Moore, in your presence, to anybody? A He never said anything to me. I only know what I heard people--

BY THE COURT:

Q To anybody, did you ever hear? A He never said anything to me, never had any talk to me.

Q That is not what you are being asked. We want to know if you heard him say anything to anybody in the nature of a threat concerning the defendant? A Yes, I have.

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Q What was it and when? A On Borden avenue.

Q When? A It was during the middle of the week. I couldn't say what date.

Q What month? A It was right after that Saturday, between the two Saturdays.

Q Early in the month of August? A Yes, early in August or the latter part of July. He said one Saturday standing out in front of 67 Borden avenue, he said, There goes Richard, and now is my chance to put him off, but, Frazer was with him and Frazer walked in front--let Richard walk in front of him, and says to Moore, "You go ahead," he said. "I don't think if Rhett is going to do anything he will harm me to get you."

BY MR. HANSEN:

Q Is that all you ever heard? A Yes, that is all I know of it.

CROSS-EXAMINATION BY MR. ELY:

Q What were you doing down at this boarding house?

A When Walter Frazer was away I was running the boarding house.

Q What relation do you bear to Frazer? A I am his cousin.

Q How long a time have you been at that boarding house?

A I was there from the 5th of March until the 1st of October.

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Q You do not know anything of your own knowledge as far as any communication that Rhett made to you is concerned, about this business at all? A No, I know nothing of it.

Q Who did you tell first about the time, as you say, that the person by the name of Big Boy came around on Saturday morning accompanied by another? A Who did I tell, I told Frazer and--

Q You did tell Frazer about that? A Yes, I told him when he came back.

Q I did not ask you when you told him. You say this was in the latter part of July? A July or the first part of August.

Q Nobody had talked to you about this case at all?  
A No.

Q You have not talked about it with Frazer? A No.

Q Are you living with Frazer now? A No; I live with my mother.

Q Are you married? A No.

Q When did you first see Rhett to know him? A When he came to the boarding house--he came there--he used to come up to the house with the boys--I don't know when it was, just what month.

Q As matter of fact, didn't he frequently between May and the 1st of August, didn't he frequently come up to the boarding house to see the boys? A He never came in the gate. He

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used to come just around--

Q Don't tell me about running around gates, listen to the question? A He never came into the house until he came there to live.

Q Please wait--as matter of fact, didn't he frequently between May and the 1st of August, didn't he frequently come up to the boarding house to see the boys? A Yes.

Q And that continued up to the time that he went there to lodge? A Yes.

Q And when did he come there to lodge? A I couldn't positively tell you what month.

Q You were housekeeper there? A Yes, but I--

THE COURT: Do not answer any more than the question calls for. If it can be answered by yes, answer yes, if by no, say no. If it is something which requires more than that, you are at liberty to state, and you should state, but do not give of your own free will any information which is not called for.

BY MR. ELY:

Q And for how long a time were you housekeeper there?

A From the 5th of March until the 1st of October.

Q And then Frances Bridget was not housekeeper? A No, sir, she was not. She was the cook.

Q I did not ask you what she was, I asked you if she was the housekeeper? A No.

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Q Be so good as to follow the order of the Court. When according to your best recollection did the deceased, Rhett, come to live at the premises in question, the boarding house?

A He lived there about five weeks. He came there about the second Saturday in August.

Q And how long did he live there? A He lived there until the Thursday he went away.

Q When did he go away, what month? A He went away in September.

Q When did he go away in September? A The Thursday before the Saturday that he got shot. I cannot positively tell you the date.

Q You say he went there the second Saturday in August? A Yes, about that time.

Q When did you first know him by sight, do you remember that? A I knew him by sight about the second time after he came up there in July.

Q In July? A Yes.

Q You never heard Rhett say anything in your presence with respect to a threat except this time in front of 67 Borden avenue? A No.

Q Who was there? A Frazer and Moore and Rhett and several other fellows, I cannot call them by name.

Q And you were there? A Yes, sir, myself.

Q What is Borden avenue? A 67 Borden avenue is

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another boarding house kept then by Dave Desparte--he has gone South.

Q You and Frazer and Rhett and Moore? A And Big Boy.

Q Was Big Boy there too? A Yes.

Q Did you all go there together? A No.

Q What time in the day was it that you were there?

A In the forenoon.

Q What did you go there for? A To tell Frazer to come down to the house because the boys--

Q I didn't ask you that?

MR. HANSEN: I object. I ask that the witness be allowed to answer.

THE COURT: Proceed.

MR. ELY: I object to what the boys were doing.

THE WITNESS: I was not going to tell.

BY THE COURT:

Q The question is, Why did you go there, what did you go there for? A I went there to tell him to come down to the house because the boys were home and he could collect his money.

BY MR. ELY:

Q Because the boys were home and he could collect his money, I ask to have stricken out.

MR. HANSEN: That is why she went there, and I submit to your honor it is an answer.

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THE COURT: I will allow the answer to stand. That is an answer to why did you go there.

BY MR. ELLY:

Q And what time in the day was it? A In the forenoon about half past eleven.

Q And where was Rhett when you say he made this statement? A Standing on the edge of the curb.

Q Where? A In 67 Borden avenue.

Q In front of 67? A In front of 67, right at the curb.

Q Where was Moore? A Moore was coming out of 67 door, he and Frazer.

Q Frazer and Moore were coming out of the door and were facing Rhett? A Were facing him at the time.

Q Where were you? A I was just coming up the street as they came out of the door, I was coming up the street.

Q I didn't ask you anything about anything else except to say where you were? A In the street coming towards them.

Q How far away from you was Rhett when you say Rhett made this remark? A Say about five or six feet.

Q How far away from Rhett was Moore and Frazer when you say he made this remark? A I guess he came close to him about two feet.

Q They were just two feet? A They came side by side

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together.

Q They came out facing the curbstone? A Yes, they came out facing the curbstone.

Q They came out facing the curbstone and then they were facing Rhett? A Yes, sir.

Q When as you say Rhett made this remark, how far away from Moore and Frazer was Rhett? A Rhett walked towards them. I couldn't exactly tell you how far they were.

Q About how far? A Sat about three foot.

Q Is that right? A Yes; they were about close together as that, because Rhett walked up to him so, and Walter pushed Moore in front of him, and he told him, he said, Richard, I don't think if Rhett was going to do anything to you he will do me any harm.

Q Rhett was standing on the curb? A No, he walked towards them.

Q Rhett was standing on the curbstone alone? A No. I told you Big Boy was with him.

Q You did not, you said Big Boy was there, but you have not located Big Boy on the curb? A Them two stood there together.

Q Can you wait a minute, you have not told us before that Big Boy was with Rhett on the curb; now, in what tone of voice did Rhett speak? A In a low tone, he always spoke low.

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MR. NEL: I move to strike out the words "he always spoke low".

THE COURT: Strike it out.

Q You were five feet away? A About five feet away, as far from him as I am from you.

Q That is all of the occurrence that you say took place in front of Borden avenue? A Yes, that is all.

Q You have never spoken to anybody of this since? A No.

Q Never to anybody? A No, to no one at all.

Q That is all.

BY MR. HANSEN:

Q Did you ever speak to me in your life before until I spoke to you now in court? A No.

MR. NEL: I object as incompetent, irrelevant and immaterial, and move to strike it out.

THE COURT: Strike it out.

MR. HANSEN: I have no more witnesses, and for that reason I respectfully ask your Honor for an adjournment.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes an adjournment until to-morrow morning, January 30th, 1928, at 10:30.

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January 30th, 1908.

T R I A L R E S U M E D.

Mr. Michaelson appears in behalf of Mr. Hansen.

MR. MICHAELSON: If your Honor please, Mr. Carl Fischer Hansen, counsel for the defendant, I am informed is sick in bed and I have submitted a certificate from a physician to that effect. I therefore ask your Honor to adjourn this case until Monday of next week.

THE COURT: Do you know anything at all about the attachments?

MR. MICHAELSON: Yes, I have been informed that there are two witnesses who are now in the Tombs. Attachments were issued yesterday because they disobeyed the subpoena. I think that those witnesses ought to be brought before the court and admonished.

THE COURT: Have those men brought in.

MR. MICHAELSON: If your Honor will request them to appear on Monday morning they will do so without any further trouble.

THE COURT: The Court has received from the attorney for the defendant, Mr. Carl Fischer Hansen, a doctor's certificate to the effect that the doctor has advised Mr. Hansen not to come out of the house to-day, that he seems to be threatened with illness which makes it advisable for

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the physician to direct Mr. Hansen to remain indoors. It will be necessary therefore for the court to adjourn this case, and it will be adjourned until Monday next.

Two colored men by name Richard Freeman and Carl Harrison are now brought to the bar.

THE COURT: Freeman, it is reported to the court that you were subpoenaed and that you refused to come as a witness to this court and that you reported to somebody who asked you about coming, or told you to come, that you would not come because two persons calling themselves detectives, had told you not to come. What have you to say?

MR. FREEMAN: I came over here last Thursday, the day it snowed so bad, and Monday I came. On Thursday when I came I met three lawyers and I was told the case was put off until Monday and on Monday I came and didn't know which way to come. Some fellow told me to go to Part V and after a while I met another fellow and he said the case was put off again, and this fellow came over there the other night and gave me a subpoena and I didn't have the money to come from Long Island over to New York and last night when he came and got me I just came out of the hole. I had not got off the tunnel grounds.

THE COURT: Do you not know that you are subject to a fine or imprisonment for your failure to obey a subpoena

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from this court?

MR. FREEMAN: I did not have money to come over.

THE COURT: I cannot help that. What is the name of the other man?

MR. MICHAELSON: Carl Harrison.

THE COURT: Harrison, you heard what I said to Freeman? A Yes.

Q Now what answer have you to make why you refused to come over here when a summons was served upon you? A I came when a summons was served upon me Friday and didn't come any more.

THE COURT: Why didn't you come yesterday? A I didn't get a subpoena to come yesterday.

Q When did you last get a subpoena? A Friday.

Q Were you over here Friday? A I was here Friday.

Q Did you come into this court room Friday? A Yes.

Q What was ~~the defendant~~ doing here Friday? A I don't remember.

Q Did you see me here Friday? A I think it was him came and questioned me what business I had in here.

Q You came into this room last Friday? A Yes I think so.

Q And these gentlemen were sitting there when you came? A Yes I think so. I was here when I got a subpoena and I didn't come any more.

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BY THE COURT:

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Freeman,

Q Now, what about the statement that a detective called upon you and told you not to come over here? A I don't know anything about it.

Q Did a detective call upon you and tell you not to come? A No sir. I tell you how it is, two detectives was over there and they questioned around and he said to me, what is your name, and I said Freeman, and he said, you are the man.

THE COURT: I want to say to you that the court is very much inclined to punish both of you and punish you severely. A human being is on trial for his life and it is very important that witnesses come when they are called, and whether it is important or not it is your duty to come, and if you do not come it is the duty of the court to punish you.

MR. FREEMAN: I came two days and didn't have the means to come the other day. I couldn't do any more than that. I would like to come. That is all I could do.

THE COURT: If you are not here Monday morning the Court will see to it that your quarters for some time to come will be just where the court will know that you are. That is what will happen to both of you if you are not here Monday morning at 10 o'clock.

MR. FREEMAN: I will come if I have to swim the waters.

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THE COURT: Do you hear, Harrison, what the court has to say to you?

MR. HARRISON: Yes.

THE COURT: You be here at ten o'clock Monday or you will find yourself where you will not be permitted to come and go and where your refusal to come and go will do you no good. You will come to this room on Monday morning and the officer at the door will tell you then where to go. The officer at the door will remember that when these witnesses call he will direct them whether to stop here or go down to the new part, either one or the other. You may go now.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until Monday morning next, February 3rd, 1903, at 10:30 A. M.

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February 3rd, 1908.

TRIAL RESUMED.

FRANCES BRIDGET (Frances Morris), recalled by the defense:

MR. RILEY: If your Honor please, this witness was originally called by the prosecution and the witness, as I recollect, was called on Wednesday by the defense and was exhausted as I understood. Now she is recalled. I do not understand the reason for that.

MR. HANSEN: She is recalled again by the defendant.

THE COURT: Proceed.

BY MR. HANSEN:

Q You are a married woman, are you not?

MR. RILEY: I object as incompetent, irrelevant and immaterial, and no bearing upon the issues in this case, and furthermore it is not proper re-cross or it is not proper direct.

MR. HANSEN: The People in this case have set up the claim that the defendant at the bar deliberately planned a murder, and that the motive was jealousy, that he wanted to marry this witness.

THE COURT: I will allow the question.

BY MR. HANSEN:

Q Are you a married woman? A Yes, I have been married

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Q What? A I have been married, yes.

Q When were you married? A 1894.

Q What was the name of your husband? A Morris Bridget

Q Is he still alive? A I do not know.

Q How long since you last saw him? A I have not seen him since we parted in 1897.

Q Where was he when you parted from him? A In Haverstraw,

Q So far as you know he may still be in Haverstraw?

Objected to; objection sustained.

Q When did you last hear from him? A Not since we parted.

Q Have you any reason to believe he is dead? A I do not know.

Objected to; objection sustained.

THE COURT: Strike it from the record.  
CROSS EXAMINATION  
BY MR. ELY:

Q You have not heard any more or had any communication and no knowledge of the whereabouts of your husband since 1897?

A No sir.

Q Is that right? A Yes.

BY MR. HANSEN:

Q After you left him, you went to live with a man by the name of Alexander Williams? A No.

Objected to; objection sustained.

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Q Did you ever live with a man by the name of Mr. Breen?

Objected to; objection sustained.

GEORGE MORRIS, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q What is your business, Mr. Morris? A I cannot talk very loud. I have had a sore throat for a week -- what is my business?

Q Yes. A Tunnel work, generally.

Q Tunnel work? A Yes, for the last seven years.

Q Do you know the defendant Richard Moore? A Do I know him -- yes.

Q And how long have you known him? A Well, twelve months I guess, something like that.

Q Did you ever live in a boarding house kept by the defendant Moore in Long Island? A I did.

Q And when did you live there? A I came there the 7th of last March.

Q When did you start to live there? A The 7th day of last March.

Q When did you leave that house? A I couldn't tell you the date of the month I left there really.

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Q About what month? A I couldn't say. I didn't pay any attention to the time I left there.

Q Half a year ago? A No, not more than a couple of months or three months, something like that.

Q Did you know a man by the name of Rhett who lived in the same boarding house? A What?

Q Do you know the deceased in this case by the name of Rhett? A Yes.

Q Did you ever state to this defendant that Rhett had told you or made threats against this defendant to you? A Yes.

Q State to the court and jury just what Rhett said to you and what you said to the defendant?

MR. ELY: May he locate the time?

THE COURT: Yes.

BY MR. HANSEN:

Q State the time? A I will as near as I can.

Q And the place and the names of the different people who heard either your conversation on the subject with the defendant or Rhett's conversation with you?

MR. ELY: I object to the last, for that is a conclusion. He can tell who was present, but he cannot tell who heard.

THE COURT: Yes.

BY MR. HANSEN:

Q State what was said and when? A I was coming

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from West Avenue where he run the boarding house at and I meet  
Bum Rhett -- I called him Bum Rhett --

THE COURT: When?

THE WITNESS: This was in July I think or somewhere  
along about the middle of the month -- I cannot say exactly  
the day of the month.

BY MR. ELY:

Q The middle of July? A It was in June, that was when  
it was I think, but I am not sure; it was in June I think.

Q In June, 1907? A Yes and he asked me was Moore at  
home, Richard Moore he called him. He said "Is that son of a  
bitch at home". I said, I don't think he is, why, what is the  
matter with you. He said, that is my business, I want to see  
the son of a bitch. I said, what is the trouble with you  
now; and I asked him what was the trouble with him, and at that  
time Richard Moore was at home, but I told him he was not. He  
turned around and came back with me and we went to a saloon and  
he started talking to me, and I said, the first time  
I see that son of a bitch I am going to put it on  
him good and strong.

BY MR. ELY:

Q What do you mean? A Going to put it on him good and  
strong, what do you mean? He said, I am going to  
see him.

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Q Rhett said that to you about Moore? A Yes.

Q What else was said? A Not much more said about it.

He said I will get him if ever I see him. I talked as a friend to him and I said I wouldn't do anything like that and I came out of the saloon and he goes away and I goes back and tells Richard Moore about it. There was only me and him, two colored lads together.

BY MR. HANSEN:

Q Did you ever see a revolver in the possession of Rhett? A Not but one time in my life.

Q You saw it once? A Yes.

Q State when you saw it?

MR. ELY: I object. That is a specific act and it is immaterial and irrelevant.

MR. HANSEN: Ie denied that Rhett had a revolver when he came to the boarding house. I take it as competent to show that he did have one.

MR. ELY: We make no denial or make no suggestion as to whether Rhett had any revolver at any other time than on the night in question, and on the night in question we have proved that he had nothing in his hand except his hat.

BY MR. HANSEN:

Q State to the court and jury when and where you saw a revolver in his possession? A The morning before the trial, he had a revolver, at five o'clock

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in the morning in his hand, a nickleplated one about so long. That was the first time I ever saw him with one, and the only time I ever saw him with one.

Q That was on the 6th of September? A That was, I don't know what date, but it was the morning that Bum got shot that night.

Q Where did you see him with a revolver in his possession? A In the morning before he got shot. I was foreman over at Pierson's in Long Island. He was on my shift, he was a soft ground man, and we went to work at 12 o'clock and came off at 8, and we came up for lunch at 5 o'clock in the morning and he and me goes across the street to get a drink of beer or have a sandwich and that morning I saw him with the gun. He said when he came up at eight o'clock: "You wait for me, I am going around to Richard Moore's house." I said, all right, I will do it, but I did not.

Q What else? A That was all.

Q When did you see the revolver? A Going across the street I said, I cannot go with you this morning. I said, I have all I want, and showed it to me, crossing the street cars, all the cars standing there at 34th Street Ferry, Long Island City, about 20 minutes to 5 o'clock in the morning, he and me walking along with two big overcoats, and he said, do you see this, that is what I am going to beat him to it with.

BY MR. LAMSON:

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Q Did you go home and tell Moore that, what he told you? A I told him later in the day.

Q What did you say to Moore? A I said, you had better look out for yourself. That was all I know about it.

BY THE COURT:

Q What time of the day did you tell him that? A I guess it was about -- I don't really know what time.

Q To the best of your memory in the evening or afternoon or what? A In the afternoon I told him about it, along about that time.

Q Where was he when you told him that? A He was on Borden Avenue, 67.

BY MR. HANSEN:

Q Have you had any conversation with the defendant Moore or anybody connected with his defense in this case?

Objected to; objection sustained.

Q Have you been in court before you were here today?

Objected to; objection sustained.

CROSS EXAMINATION BY D. ELY:

Q You say the ~~was the~~ first time you saw Rhett, and was in June, Rhett made a threat against the defendant 1907; is that right? A Yes.

Q You are sure of that? A Sure. I would not say it if I wasn't.

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Q Some people's recollection sometimes is faulty, that is the only reason I ask you if you are sure it was in June, 1907? A Yes.

Q And from the time in June, 1907, up to the 6th of September, 1907, you never heard Rhett make a threat against Moore? A I could hear it ever day or two.

Q What? A I could hear it every day or two. I could hear the boys speaking about; that is all I know about it.

Q You don't seem to understand my question. I ask you if you heard Rhett himself make a threat against Moore except in June, 1907, and in September, on the 6th, 1907? A That was the only time.

Q Those were the only times? A Yes.

Q That you heard Rhett say -- Yes, Rhett.

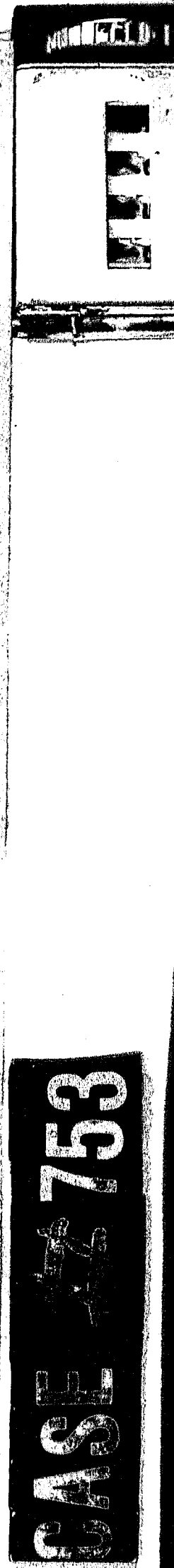
Q You told Moore on the day before the shooting, did you? A The day of the shooting.

Q The day of the shooting? A I told him about -- he made two threats.

Q I do not ask about the threat of June, you have told us about that; I ask you if you communicated the threat that you say Rhett made against Moore on the 6th of September, to Moore on the 7th of September? A I just told him to look out for himself.

Q I only ask you for the day.

THE COURT: When did you tell him, on the 6th or the





6th or the 7th.

BY MR. ELY:

Q On the day of the shooting? A The shooting happened that night and I told him that evening.

Q You told Moore that evening? A Yes.

Q The evening of the shooting, answer me, you told Moore on the evening of the shooting to look out for Rhett, that he was going to shoot him? A No.

Q That was what you said a minute ago.

BY THE COURT:

Q Do you say no to that? When did you tell him? A I told him in the afternoon what I told you just now.

BY MR. ELY:

Q When, what afternoon? A What afternoon, I don't remember what day it was he got shot, but it was the same day he got shot that night, I told him that day in the afternoon.

Q You told Moore on the day that Moore shot Rhett, to look out for Rhett, is that right? A Yes.

Q Those were the only two times you ever spoke to Moore on the subject of threats? A Yes.

BY THE COURT:

Q Where did you tell him? A On Borden Avenue the last time.

BY MR. ELY:

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Q What time of the day was it that you told Moore on Borden Avenue, on the day of the shooting, to look out for Rhett? A Between one and two o'clock I think.

Q Between one and two o'clock in the afternoon? A As near as I can guess to it.

Q You are confident those were the only two threats you communicated to Moore, one was in June and the other the day of the shooting; is that right? A Yes.

BY MR. HANSEN:

Q Are you sure it was on the day of the shooting that you told Moore about this?

Objected to; objection sustained.

MR. HANSEN: If your Honor please, the witness's testimony is so uncertain, he said in one place that he did not remember. May I not ask him?

THE COURT: The testimony is that this man says that he told Moore twice of threats which Rhett uttered to the witness concerning Moore; that he told Moore in June and that he told him again on the day of the shooting, and your question is "Are you sure". The District Attorney has asked him the same question and I will allow the question.

BY THE COURT:

Q Are you sure it was on the afternoon of the day upon which this man was killed, upon which the decedent was killed that you told Moore? A Am I sure? I is.

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BY MR. HANSEN:

Q Do you remember the date?

MR. ELY: I object. He said he did not remember the date.

THE WITNESS: I really don't remember.

Objection overruled.

Q Do you remember the date? A No sir.

Q Do you remember whether it was Monday, Tuesday, Wednesday, Thursday, Friday or Saturday.

BY MR. ELY:

Q The day of the week? A I don't know what day it was.

BY THE SIXTH JUROR:

Q Were you working the same day when the shooting went on, all day? A I did not work in the day. I worked from 12 o'clock at night until 8 o'clock in the morning.

BY MR. HANSEN:

Q And Rhett worked nights also? A Came off the same time I did.

Q Did Rhett work nights? A Yes.

Q What time was Rhett supposed to go to work in the tunnel? A Twelve o'clock.

Q At noon? A At night.

Q Twelve o'clock at night? A Twelve o'clock at night.

Q What you go to work? A Yes sir.

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Q What time do you leave work? A Eight o'clock in the morning.

Q At that time you lived in a boarding house kept by the defendant? A No sir.

JAMES FREEMAN, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

MR. HANSEN: I ask your Honor to direct this witness to tell the truth in this case.

MR. ELY: I object to these remarks. This is his witness.

MR. HANSEN: If it may please the court, the witness tells me that he has been threatened by detectives if he did testify and that he will be sent to prison for two months. He is the man who stayed away after being subpoenaed because he had been intimidated by detectives. I ask your Honor to direct this witness to tell the gospel truth and not be fearful of anything.

THE COURT: No, I say to the jury they must not pay any attention to motions which are made by counsel. They have nothing to do with them. This witness is called here and the presumption is that he understands the importance of an oath.

BY THE COURT:

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Q You know what you are doing when you are taking an oath? A Yes sir.

Q You are calling upon God to bear witness of the truth of what you say? A Yes.

MR. ELY: If your Honor please, you will remember this witness was called by your Honor, I think it was on Friday or Thursday, and this statement had been made by counsel before, that he had been intimidated, and he was also interrogated on that point in the presence of the jury. Now, I think it is manifestly improper for counsel to repeat the remark which he has already repeated with respect to intimidation, especially after this witness has stated specifically on that point, as he did --

THE COURT: We have devoted enough attention to that incident. We must regard it as closed.

MR. HANSEN: I was not here on Friday and I have not seen this witness until this morning.

THE COURT: I say that we must regard that incident as closed and I hope that counsel will pay no attention to that.

DIRECT EXAMINATION BY MR. HANSEN:

Q What is your name? A James Freeman.

Q What is your business? A I works in the tunnel.

Q Did you know the defendant Moore? A Yes.

Q Did you know a man by the name of Rhett? A Yes I do.

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Q Did you ever live in the boarding house kept by the defendant Moore over in Long Island? A Yes.

Q Did you ever hear Rhett, the deceased, say anything that he was going to do to the person or the life of the defendant Moore? A I did.

Q State to the court and jury --

MR. ELY: When and where?

MR. HANSEN: (continuing) -- what you heard and when you heard it and where you heard it? A Well, it was this summer, but I don't know exactly what month it was in.

Q What was said? A He asked me, he said do you know a fellow named Richard Moore and I said, yes, I know him. He said, well he is one man if I ever get a chance I am going to put him off the earth. Those are the words he said to me. He did not tell me for what.

Q Did you ever see a revolver in the possession of the deceased Rhett?

Objected to.

THE WITNESS: Yes.

MR. ELY: I object and ask to have it stricken out unless the time is located.

THE COURT: Well, it may depend upon the next question which ought to be when and where.

THE WITNESS:

Q Then did you see a revolver in the possession of the

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deceased Whett? A Well I seen it, that morning as he was coming out from work, getting paid off that Saturday morning.

Q In what month? A I couldn't say exactly what month it was in.

Q Where did you see it, on the street or where? A I seen it in Pierson's dry house.

Q When you saw that revolver in his position did you hear him say anything or did you say anything to him? A No he and I didn't speak then.

Q Tell us if you did say anything or not?

MR. MEY: I object. He said "He and I did not speak."

THE WITNESS: He and I did not speak at that time.

Q Did you ever before or after that see a revolver in his hand? A Yes.

BY THE COURT:

Q When? A I saw it that evening.

Q What evening? A That Saturday evening.

Q Saturday evening of what month or week? A I couldn't say what week or what month.

Q How long ago? A It was about five months and two weeks, something like that.

Q Cannot you go back five months and two weeks and find out what you can tell about? A No I could not. It has been about five months and two weeks, something like that.

MR. MEY: Ask him if it was in the Summer.

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THE WITNESS: Yes it was in the summertime.

BY MR. HANSEN:

Q During last summer? A Yes.

Q State to the court and jury if anything was said by Rhett to you, when you saw him with the revolver on that evening? A No sir.

BY THE COURT:

Q Was anything said that you heard, anything said by him that you heard at that time? A No sir I did not.

BY MR. HANSEN:

Q Did Rhett ever try to take your life with a revolver?

Objected to; objection sustained.

Q State to the court and jury how often you had seen Rhett with a revolver and what you saw him do if anything?

Objected to; objection sustained.

THE COURT: Unless he saw something concerning the facts of this trial.

BY MR. HANSEN:

Q How often so far as you remember have you seen Rhett in possession of a revolver, on how many occasions? A He has been carrying one ever since I know him and I know him the last year.

Q How many times have you ever heard him say to anybody that he was going to do anything to the defendant Moore?  
A He has never been around the boarding house.

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BY THE COURT:

Q How many times did you hear it? A I heard him say it several times, indeed I did.

CROSS EXAMINATION BY T. ELY:

Q You say at one time you and Rhett were not speaking?

A Yes.

Q Were you friendly or unfriendly with Rhett, yes or no, were you friendly or unfriendly with Rhett?

Objected to; objection overruled.

A Not at the time that he --

Q I do not ask you that, at any special time -- I ask you if your relations at any time with Rhett were friendly or unfriendly? A We have been friends.

Q Were they at any time unfriendly, yes or no? A Yes.

Q Were they unfriendly at the time you say you did not speak to him? A Yes.

BY THE COURT:

Q You are still under oath? A Yes.

Q Something has been said in this court about detection and about intimidation, intimidation means to threaten a man, to make him afraid; do you know anything about such things, or any detectives trying to make you keep away from this court? A I don't know if they are detectives or not, but I know two gen-

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tllemen came over to the house there.

Q You do not know who they are? A No.

Q You do not know whether they are detectives or not?

A No, I don't say they are detectives and I cannot say they is not.

BY MR. ELY:

Q Have you told freely and fully and without fear all you know that will aid the defendant in this case? A Well, yes.

MR. HANSEN: May I ask your Honor to ask the witness, because you brought it out, to repeat the statement he made to me this morning?

THE COURT: No.

MR. HANSEN: Because it was predicated upon that statement that I made my statement in court.

THE COURT: I can see from the statement made by the witness what your attitude was; he says whoever said anything to him, he does not know if it was a detective or not.

THE WITNESS: If I saw them I will know them.

MR. HANSEN: Will your Honor ask Mr. Ely to produce the detectives who were sent to Long Island to get this witness?

THE COURT: We will consider that matter later.

BY MR. ELY:

Q You told me that you have without fear or in-

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timidation told the truth and the whole truth to this jury and told everything that you know about this case to this jury

A Yes sir.

BY MR. HANSEN:

Q Why didn't you come over on the subpoena when you were subpoenaed in this action?

Objected to; objection sustained.

CHARLES HARRISON, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q Where do you live? A 96 West Avenue, Long Island City.

Q What is your business? A I have been on tunnel work the last three or four years.

Q Do you know the man sitting here, the defendant in this case, Richard Moore? A Yes.

Q How long have you known him? A About two years, pretty much long.

Q Do you know a man by the name of Rhett? A Yes sir.

Q Have you ever lived in the boarding house kept by the Long Island City? A Yes.

Q Did you lived in the boarding house kept by

, Rhett also live there?

MR. RLY: I object as leading and the time should also be located. I would prefer to have the time located, when he did live at the boarding house.

THE COURT: Yes.

BY MR. HANSEN:

Q You have stated that you lived in that boarding house about two years? A No, sir I didn't say I lived there --

MR. HANSEN: He said he knew the defendant about two years.

BY MR. HANSEN:

Q How long did you live in that boarding house kept by the defendant in Long Island City? A Six or eight months. I disremember.

Q When did you move there and when did you move out? A I don't remember when I moved in but I moved out about, I guess it was one of the summer months, but I disremember them now -- I disremember just the date and day; never had no cause to remember it.

Q Did you live in that boarding house kept by the defendant in Long Island City during the month of August, 1907? A I think so, yes.

Q Did you ever hear anything said by the deceased Rhett against the life of this defendant Moore -- did you ever hear anything said by the deceased Rhett regarding this defendant? A In what way?

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Q Anything that could be construed into a threat?

MR. ELY: I object to anything that could be construed into a threat. I object to the form of the question. I do not mind if he asks him if he heard any threats or if he heard Rhett say anything against the defendant. I do not mind that. These are broad questions, but I do object to the question "Anything that could be construed into a threat".

MR. HANSEN: May it please the court, Mr. Ely objected last week on the ground that a threat was a conclusion. Now I am trying to frame my question to suit Mr. Ely. If he does not want it that way I will put it the other.

BY MR. HANSEN:

Q Did you ever hear the deceased Rhett make any threats against the life of the defendant Moore? A Yes.

Objected to; objection sustained.

THE COURT: Strike the answer out.

THE COURT: What did you hear him say if anything about or against the defendant Moore?

MR. HANSEN: That was the way I put it first.

BY MR. HANSEN:

Q State to the court and jury what you heard said by Rhett regarding Moore? A I heard him say several times that he did not like him, that he would hurt him the first chance he got. I heard him say that several times.

Q Did you ever tell the defendant Moore that? A No I

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did not.

Q Did you ever tell him anything you heard? A No sir.

Q Did you ever tell anybody? A I spoke --

Objected to; sustained.

Q These remarks were made by Rhett while he lived at the boarding house? A Yes.

MR. FLY: I object as assuming something. We have not had the time located when Rhett was living at the boarding house, and my best recollection is we have not had the fact brought out. It was assumed and I objected to the question and then he went on with something else.

MR. HANSEN: The witness has testified this was in the month of August.

THE COURT: I will allow the question.

BY MR. HANSEN:

Q Did you hear them over a telephone? A No.

MR. FLY: I object.

THE COURT: I sustain the objection and the answer will be stricken out.

CROSS EXAMINATION BY MR. FLY:

Q You said that you heard the deceased Rhett say, as I understood you, to you, on some occasion, that he did not like Moore and that he would like to hurt him or was going to hurt him? A That he would hurt him the first chance he got.

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Q Is that all he said to you on that subject? A Yes.

Q That is the only thing he said? A Yes.

Q He said that to you two or three times as you recollect? A Yes.

Q You never told that to Mr. Moore at all in your life?

A No sir.

C O R A M O R G A N, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q What is your name? A Cora Morgan.

Q Where do you live? A I am in Long Island now.

Q Where do you live now? A 96 West Avenue, Long Island City.

Q Do you know the defendant? A I know something about the character --

Q Do you know? A No, I don't know what occurred.

Q Do you know the defendant Richard Moore? A Yes I know him.

Q How long have you known the defendant Richard Moore?

A About a year.

Q Do you know other people who know him, do you know anybody who knows him? A Yes.

Q And what is his reputation among those people for truth, veracity, honesty and peacefulness?

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MR. ELY: I object. The proper foundation has not been laid and secondly the defendant's honesty is not in issue.

THE COURT: The trait involved is --

MR. HANSEN: I did enumerate that, peacefulness.

THE COURT: There is no use in going through all the cardinal virtues.

MR. ELY: My objection is that the proper foundation has not yet been laid.

THE COURT: I will allow the question.

BY MR. HANSEN:

Q What is his reputation for peacefulness among those

-- A When he was with me, when I was doing business with Bradley he was with me, he first stayed at my house --

Q I ask you what is his reputation among the people you know that know him, for peacefulness, good or bad?

THE COURT: Not what your personal knowledge about him is, but what you have heard about his reputation from those who know him? A Just robbing and stealing.

BY THE COURT:

Q About this man? A This man here, yes -- I don't know anything against this man. I never saw him in my life to know him before.

Q You don't know anything about him? A Not anything about this man, but about the other man I know something about

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him, but about the gentleman sitting there I never saw him in my life.

BY MR. HANCOCK:

Q What you said did not refer to him? A I never saw him. I was brought up here about the reputation of another man that is dead.

THE COURT:

Q How did you happen to come here? A I was brought here to tell the reputation of the man that is dead.

Q Who brought you here? A Well the lady came after me, Mrs. Moore, and another gentleman, I don't know who he was.

BY MR. FLY:

Q A colored man? A Yes, I don't know anything -- I never saw Mr. Moore in my life, but the other man I know a great deal about his character.

MR. FLY: Will your Honor direct the jury to disregard absolutely any of the remarks of this person.

THE COURT: Yes, you are instructed, gentlemen, that the last witness who appeared before you in the witness chair is a witness for no purpose whatever, and you therefore cannot regard anything she said as evidence and you are instructed to disregard whatever she has said completely and will not permit you to hear it, and permit it to play no part whatever in your investigation of the testimony.

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in this case.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal procedure and takes a recess until two o'clock.

AFTER RECESS.

GEORGE MORRIS, recalled by the defense:

BY MR. HANSEN:

Q Mr. Morris, is there anything in your testimony this morning that you would like to correct; you testified this morning --

MR. ELY: I object to any statement of what the testimony is.

BY MR. HANSEN:

Q Is there anything in your testimony of this morning regarding --

MR. ELY: I object.

THE COURT: I sustain the objection as to any explanation to the witness of his testimony this morning.

MR. HANSEN: If the witness since this morning has refreshed his recollection and inadvertently has made a mistake in a date, may I not ask the permission of the Court that he may correct that statement? He is here subject to cross

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examination -- if an honest mistake has been made.

THE COURT: The recollection of the court is that this morning, after this witness had stated that he saw and spoke with the defendant, on the afternoon of the day when it is alleged that the defendant committed the act here which is in issue, he was thereafter questioned by the attorney with regard to that act and the attorney for the defendant himself asked him several times concerning the day and the time, and as the Court recalls it he still adhered to the testimony that he did upon that afternoon referred to, speak with the defendant. If it is to go into that same evidence again, after the witness has left the stand, the Court is going to exclude any questions now by the defendant's attorney having relation to that testimony.

MR. HANSEN: If it may please the Court, if we can show that this witness has refreshed his recollection by certain acts and events, that he was mistaken this morning, is not that relevant, when he is subject to cross examination?

THE COURT: Did you not ask every question this morning with regard to that which you could have asked, or which you desired to ask?

MR. HANSEN: I did.

THE COURT: And you finished with the witness?

MR. HANSEN: Yes.

THE COURT: The evidence is excluded if it concerns

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nothing else than the testimony of the witness which was given just previous to recess, and concerning which the defendant's attorney had repeatedly asked of the witness questions regarding the accuracy of his statement to the effect that the witness with the defendant about threats which the decedent had made relative to the defendant and conveyed to him by the witness on the afternoon of the day upon which it is alleged that the act in issue was committed. Questions concerning testimony of that character will be excluded on any further examination of this witness.

MR. HANSEN: Will you hear me one moment. If we can show by a number of facts and from the lips of this witness that he was honestly mistaken, if we can show that, is not that relevant on a trial for murder in the first degree?

THE COURT: Do you wish to show that after the witness left the stand you or some one else went to him?

MR. HANSEN: No, I will do nothing of the kind if your Honor means to imply that I have intimidated this witness?

THE COURT: No I do not wish to imply that. I wish to know now what is the reason that you did not ask these questions this morning, when you say that you had full liberty to ask all the questions that were necessary to ask, and that you could find no more reason to ask any other question.

MR. HANSEN: I do not ask your Honor's permission to

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ask any more questions. I am not saying that I did not have leave to ask all the questions I desired, but I base my motion on the ground that the witness this morning made certain statements that he subsequently has learned were incorrect.

THE COURT: How do you know that he learned them?

MR. HANSEN: I have been so informed during recess.

BY THE COURT:

Q Did you talk with anybody during recess about your testimony? A No sir I did not.

Q Did you talk to anybody at all? A No.

Q Did you talk with anybody about this testimony since you testified this morning? A No.

MR. HANSEN: That shows how unintelligent this witness is. I myself spoke to him coming in and he made a statement to me that is absolutely contrary to what he says now regarding his testimony. My attention was called to that by four men.

THE COURT: I will allow the question. Proceed.

BY MR. HANSEN:

Q Have you anything you would like to correct; is there anything in your testimony of this morning that you desire to amplify or correct?

MR. HANSEN: Yes or no.

THE WITNESS: One thing.

MR. HANSEN: Yes or no.

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BY MR. HANSEN:

Q Is there or is there not? A Yes, that is on the day of the second time that I replied -- that is about the time telling him about having this gun, this last time.

Q Tell us what it is? A I do not know what they was, but this day I told him the second time about the gun he was in New York at that time. I meets him in New York at that time, when I told him about the gun the second time, on Saturday morning I think it was, Saturday some time, in the afternoon.

BY MR. FLY:

Q It was the Saturday of the shooting? A Yes.

Q You want to say you did not make the communication in Long Island? A Yes.

BY THE COURT:

Q You want to say what? A I met him in New York on Eighth Avenue in the afternoon on Saturday, the shooting occurred that evening I think. That is all.

BY MR. HANSEN:

Q When you stated to the court a moment ago that you had not discussed your testimony of this morning with anybody, did you say yes or no to that? A I don't understand you.

Q The Court asked you if since you testified you had talked with anybody about your testimony of this morning, you heard the court ask you that? A Yes.

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Q And you said no? A Yes.

Q Didn't you speak to me about your testimony as I came into the court about two minutes ago? A About what I said before, about what I said on the stand, you spoke to me at the door. I will tell how it is. You asked me do you want to correct your mistake or something like that you said.

MR. FLY: I object to the conversation.

BY THE COURT:

Q You recall that this morning under oath you said you met the defendant Saturday afternoon, or the afternoon of the day upon which this act in issue, namely, the charge that the defendant shot the decedent, occurred, you met him on Borden Avenue, is that it? A Yes.

Q Did you say Borden Avenue this morning? A Yes.

Q Where is Borden Avenue? A The first street leading up from the ferry, Long Island ferry, in Long Island City.

Q In Long Island City? A Yes.

Q With whom have you talked to since you testified to that? A Nobody, had no talk with nobody, just spoke a word, two or three, to him out there at the door a minute ago.

Q To whom? A To the gentleman there. He spoke to me.

BY MR. FLY:

Q Name him? A I really don't know him.

Q Is this the person you speak of -- that is Mr. Hansen

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A Yes.

BY THE COURT:

Q With regard to that, you have said that you had not talked to anybody? A I did not mean to say nobody, not talk to nobody, lots of men I spoke to --

Q With regard to the testimony you gave this morning, when you were first in the chair, the Court asked you a little while ago if since that time you talked with anybody and you said no, do you desire to change your answer? A No, I don't mean to say nobody talked to me. He spoke a word or two to me, that was all, he spoke two or three words to me.

BY MR. ELY:

Q You said several people came up and spoke to you?

A They have spoke to me, but not in regard to what I said here.

Q What? A Not in regard to what I said here.

Q You mean to say not a single soul has spoken to you -- when I say speak -- I am speaking to you now? A Yes.

Q You are answering me, and you are speaking to me?

A Yes.

Q You understand that? A Yes.

Q You understand what the meaning of the word speak is?

A Yes.

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Q You mean to say to the Court and jury that not a single individual had spoken to you about the statement that you made, that you told the defendant of this alleged threat on the day of the shooting in Long Island City, that there is not a single soul that has suggested to you that it was New York?

Objected to; objection overruled.

A He spoke to me twice.

Q Who? A That gentleman said two or three words, that was the only-est man.

The former question is repeated as follows:

Q You mean to say to the Court and jury that not a single individual has spoken to you about the statement that you made, that you told the defendant of this alleged threat on the day of the shooting in Long Island City; that there is not a single soul that has suggested to you that it was New York? A That is the only gentleman spoke to me about the case.

BY THE COURT:

Q Has anybody suggested to you that it might have been in New York that you met that man and told him that on that day? A That it might have been in New York?

Q Yes, that you might have met that man in New York and told him? A Yes.

BY THE COURT:

Q Who did it? A That gentleman sitting there.

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Q When you say that gentleman sitting there, you refer to counsel for the defendant who is now standing up looking at you? A He is the onlyest man that spoke to me.

Q Answer me. A No, he did not tell me did I know whether it was New York.

THE COURT: Answer the question.

The former question was repeated as follows:

Q When you say that gentleman sitting there, you refer to counsel for the defendant who is now standing up looking at you; is that the man you refer to me? A That is the gentleman spoke a couple of words --- I don't understand.

THE COURT: Answer Mr. Ely's last question.

The question was repeated as follows:

Q When you say that gentleman sitting there, you refer to counsel for the defendant who is now standing up looking at you? A I do.

Q And his name is Mr. Carl Fischer Hansen.

THE COURT: That will be sufficient.

BY MR. HANSEN:

Q What did I say to you and what did you say to me?

A I told you what I said.

Q How many people were standing there with you?

THE COURT: We are not going any further into that question. We will not enter into any side

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issue that will take us away from this case.

BY MR. HANSEN:

Q What did you say to me? A I called him and told him I wanted to correct the mistake I made. I called him over to me.

Q What did you say? A I said -- I didn't know what his name was -- I said "Come here a minute", the only mistake I made, when I said in Long Island, Saturday afternoon. I said it was not in Long Island, and I believe in telling the dying truth to my heart --- it was in New York, Eighth Avenue.

Q That was the conversation you and I had --- A Yes sir.

Q Did I say one other word to you? A No, you walked away from me.

Q Do you remember I said to you, you must tell the truth? A Yes, that was the last words you said when you walked away.  
BY THE COURT:

Q At the time of which you speak, you were working at night work? A Yes.

Q What time did you quit work that morning? A Eight o'clock.

Q Where do you live? A Borden Avenue.

Q That was where you were living at that time? A Yes.

Q Borden Avenue? A Yes.

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Q Have you a family? A No.

Q Where were you living at Borden Avenue? A 67.  
from

Q You went ~~mm~~ your work to Borden Avenue? A Yes.

Q Who was with you? A I don't know, different  
boys.

Q Name some of them. A I couldn't name one of them.

Q Not one of them? A No.

Q Now, you left your work and went up to Borden Avenue?

A Yes.

Q How long did you stay at Borden Avenue? A I stayed  
there about three hours, I guess, something like that.

Q About three hours? A Yes.

Q Then what did you do? A I came to New York to get  
a shave.

Q Where had you been accustomed to getting shaved?

A 38th Street between 8th and 9th Avenue.

Q So you left Long Island City to come over to New  
York to get a shave? A Yes sir.

Q What time did you reach Eighth Avenue then? A I  
got there about 11 o'clock' or ----

Q About what time? A Half past eleven.

Q What time did you meet the defendant on Eighth  
Avenue that day? A I guess about two hours after that.

Q So you met him there about one o'clock? A One or  
one-thirty, somewhere like that.

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Q On Eighth Avenue? A yes.

Q Near what street? A I don't know much about how the streets run there - Thirty-Eighth Street.

Q What did you say to the defendant when you met him that afternoon? A I said: "Hello there, Mr. Moore, me and Bum Rhett were together and he is very angry with you this morning; I saw him have a gun", and he just laughed and went on and didn't say anything.

Q When did you tell him on that day about the threat that you say Isaiah Rhett had made against him? A That was a month or two before that.

Q Hadn't you told him anything on that day about it? A No, I ain't seen him before that day. I mean I hadn't been with him and told him -----

Q You didn't tell him then --- you wish to say you didn't tell him on that day that you heard Rhett make any threat against him. A I told him he made threats one time, and I met him on the street over in Long Island the first time.

Q But on the day ---- A Of the shooting?

Q Yes. Did you tell him anything about it that day?

A Yes.

Q What did you say to him that day? A I told him he had a long gun looking for him, and I said he was going to -

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I said "What are you going to do with that?" He said, "I am going to put it upon him good and", something -----

Q You said this morning you told him that in the afternoon, at Borden Avenue in Long Island City. A This was on Eighth Avenue, New York City.

Q You testified this morning that you told him of that threat in Borden Avenue, Long Island City? A Yes, I think I said that.

Q The fact is you were not in Long Island City on the afternoon of that day? A Yes, I went back home on Eighth Avenue from the barber-shop; I went back home about -----

Q You went back home? A Yes, and went to sleep and went to work.

Q But you did not meet the defendant on Borden Avenue on that day? A No sir, in New York.

Q You did not tell him on Borden Avenue on that day the about threats? A About the fuss-----

Q No, you did not tell him on Borden Avenue on that day about the threats. A No sir.

Q But you did tell him in Eighth Avenue in the City of New York? A Yes sir.

Q At about one o'clock? A Or 1:30.

Q About 1:30? A Yes.

Q Where was the defendant about 1:30 o'clock that afternoon when you told him? A He was on Eighth Avenue between

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37th and 38th Street.

Q Had you had a talk with him? A No, I didn't have no talk with him. I just met him.

Q You said something to him? A I spoke a few words to him.

Q Tell us what you said to him on that afternoon.

A I said: "Helloe, Mr. Moore, I saw your friend this morning and he said he had a long gun for you."

Q What else did you say? A That was all I told him then.

Q Who had the long gun? A Rhett.

Q You told the defendant that at half past one o'clock?

A Yes sir.

Q On Eighth Avenue near what street? A Between 37th and 38th Streets.

BY MR. ELY:

Q Your memory was defective this morning, you find you are wrong? A I have been sick.

Q Yes or no? A Yes.

Q Your memory was defective this morning as to the place where you say you had this conversation with this defendant? A What do you say?

Question repeated.

Q If you knew that the defendant here had testified "I did not see George Morris no more after the second of

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of September." Would that make you doubtful as to the place you say you had a conversation with the defendant on the 7th? A Would that make me doubtful?

BY THE COURT:

Q Doubtful if you met him on Eighth Avenue between 37th and 38th Street at half past one o'clock on that day, if he says he did not see you any more after the <sup>2nd</sup> ~~5th~~ of September? A I am sure I saw him on Eighth Avenue.

BY MR. ELY:

Q You are not sure that you communicated any threat to him? A I am sure I saw him on Eighth Avenue.

Q You are not sure that you communicated any threat to him, are you? A Communicated any threats to him?

Q Yes. A Telling him what Bum Rhett said?

Q Yes. A I did tell him so.

Q Would it in any way affect your memory on the subject of this threat that you say you communicated to the defendant, if you knew that the defendant himself said: "George Morris told me that he heard Rhett say he was going to shoot me about the second or third of September; I did not see George Morris any more after the second." Would that in any way affect your memory as to what occurred on the afternoon of the 7th of September on Eighth Avenue, as you say? A I told you all I know.

Q Answer my question. A That wouldn't affect me.

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BY MR. HANSEN:

Q Let me ask you this, and I ask your Honor to please direct the witness not to answer unless he is sure.

THE COURT: That is right.

BY MR. HANSEN:

Q Are you sure it was on the 7th day of September that you saw the defendant; are you sure of the date?

A No, I ain't sure of the date. I couldn't say what day of the month it was; On my life I don't know what day it was.

MR. ELY: I ask to strike that all out.

THE COURT: I will let it stand.

MR. ELY: If he would put it the day of the shooting, that would locate it better.

BY MR. HANSEN:

Q Are you sure, Mr. Morris, that you saw this defendant on the day of the shooting; are you sure it was on that day?

A No, I am not sure it was on that day. It was Saturday morning.

BY THE COURT:

Q Why did you swear it was; why did you swear twice that it was on that day? A It was on the day of the shooting that happened that night, but I don't know what day of the month it was.

Q Are you swearing to things that you don't know anything at all about? A No, I am telling the truth and nothing else.

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Q You know that you did speak to him about that threat on the day when the shooting ----- A When the shooting occurred that night.

Q When the shooting took place? A Yes.

BY MR. HANSEN:

Q Where were you on the night of September 7th, when the shooting occurred; where were you? A I went to work that same night at twelve o'clock.

Q When did you first learn of the fact that there had been a shooting? A Twelve o'clock that night when the shift went down. We was not there when the shift went down.

BY THE COURT:

Q Twelve o'clock on the night of the shooting? A Yes.

BY MR. HANSEN:

Q Over in Long Island City? A Yes.

Q Would you mind telling the Court and jury who told you.

Objected to; objection sustained.

BY THE COURT:

Q All you know is, that at twelve o'clock that night, after you had come from New York, and after you told the defendant about this threat, you heard at 12 o'clock that night that he had shot the other man? A Yes.

BY MR. ELY:

Q If I understood it, you said you knew it because Phett was not there when the shift went down; is that right?  
A Yes.

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Q And somebody told you? A Yes.

The defense rests.

C H A R L E S H. J O N E S, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. FLY:

Q Do you know the defendant? A I have seen him, yes.

Q For how long a time have you known him? A About six months.

Q And do you remember the 7th of September, 1907, the day of the shooting? A Yes.

Q And do you remember at what hour the shooting occurred?  
A About eight o'clock if I am not mistaken.

Q In the evening? A Yes.

Q Where were you on the evening of the 7th of September, 1907, about eight o'clock? A I was standing in front of the hotel I think 406 is the number of it.

Q Look at this diagram and see if you understand it; what saloon or hotel were you standing in front of? A It was 416 I was standing.

Q You were standing in front of 416? A Yes.

Q About eight o'clock? A Yes.

Q And did you know a man by the name of Rhett in his lifetime, who was known as Bum Rhett? A Yes.

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Q Just describe the appearance of Rhett. How big a man was he? A He was a spare made fellow, and weighed about 135 or 140 pounds.

Q Will you stand up? A Yes.

Q Will you indicate on your figure about how high up he came on you?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

Q About how high up did he come up on you? A Might be a little taller than my shoulder, not very much.

Q Just a little above your shoulder? A Yes.

Q How tall are you? A About five feet 10 or 11.

Q Between five feet ten and eleven? A Yes.

Q Now, did you see Rhett on the night of September 7th, 1907? A Yes.

Q Did you speak to him, yes or no? A Yes.

Q About what hour was it that you spoke to him? A It was about four o'clock when we first met.

Q Not when you first saw him in the afternoon, but in the evening; did you see him in the evening? A He left me at eight o'clock, a little before eight.

Q He left you a little before eight o'clock? A Yes.

Q When he left you where were you standing?

, Objected to as incompetent, irrelevant and

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immaterial where this witness stood after Rhett left him, and as having nothing to do with this case.

MR. ELY: I will disclose, if there is any desire for me to make a disclosure -----

MR. HANSEN: I do not ask for any disclosure, but I say it is incompetent, irrelevant and immaterial.

MR. ELY: This will be strictly in rebuttal. It is improper for me to state before the jury what I propose to prove, but I will make it strictly in rebuttal and show your Honor that it is strictly in rebuttal in a few minutes. I cannot show it unless I am allowed to do it by degrees.

THE COURT: You may perhaps be able to ask some other question.

BY MR. ELY:

Q Did you hear the report of a shot on the evening of the 7th of September, 1907?

Objected to as incompetent, irrelevant and immaterial.

Overruled; exception.

A I heard two shots.

Q Just preceding the shot you heard, did you see Rhett?

A He was lying down when I saw him.

BY THE COURT:

Q Just before that? A Just before that, yes, he left me.

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BY MR. ELY:

Q Did you see Rhett fall?

Objected to as leading; objection sustained.

Q What did you see; just tell me what you saw; when you saw Rhett leave you on 38th Street on the night of the 7th of September, 1907. A 39th Street, I said.

Q I mean 39th Street. A I saw him when he fell and I asked another fellow -----

Q Did you see the defendant there? A Yes.

Q Did you see anything in the defendant's hand after you heard the shot? A I never saw anything, only a revolver.

Q Then what did the defendant do after he had shot?

A He ran on up 39th Street.

Q Towards what Avenue? A Towards 9th Avenue.

Q Just before you saw or heard these shots, can you state what Rhett was doing? A I don't think he was doing anything.

Q Was he standing? A Yes.

Objected to as leading; overruled; exception.

Q And after you had heard these reports and saw Rhett fall and saw the defendant run towards 9th Avenue what did you do? A I run back and looked over at him.

At whom? A Rhett.

And did you see his hands? A Yes.

What, if anything, did he have in his hand? A He

had a revolver in his hand.

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Q Did he have anything else? A No, I didn't see anything.

Q You saw his hands? A Yes.

Q Do you know what was done with Rhett then? A They took him to the drugstore and I went on home.

Q Did you ever hear any conversation between Rhett and Mr. Moore in June, 1907? A Yes.

Q About when was it in June, 1907, that you heard a conversation between Rhett and Moore? A About the latter part of June.

Q Where was it that you heard this conversation?

A Me and Bum was coming from Long Island and met this fellow.

Q Met the defendant? A Yes sir.

Q Where did you meet him? A We were coming down Eighth Avenue and met him in Long Island.

Q You met him on Eighth Avenue on Long Island? A Yes sir.

Q What conversation, if any, occurred between this defendant and Rhett? A He said to Bum: "I hear you have been out to my whore", and Bum said "I never bothered with her", and he said, "Nigger, I ought to put you out."

Objected to; Objection overruled.

A (Continuing:) We said: "I promised God a man anyway."

Q Did Rhett say anything? A He said: "Go on", and I told Rhett to come on, because I had to go back home to work.

Q After that did you hear any conversation between this defendant and Rhett? A Once in Newburgh.

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Q When was it in Newburgh that you heard the conversation?

A The latter part of August.

Q What was the conversation you heard at Newburgh in August between the defendant and Rhett? A He said to Rhett ---

Q Who? A This fellow said to Rhett, "I see you are up here, you got my whore up here", and Rhett said "No", and then I said "No, he has not got her up here, he just came from down the corner."

Q What else did the defendant say and what did Rhett say?

A He didn't say anything. He said he was going to get out of his way because he was a bad man and he didn't want to have anything to do with him, and went to Garrison.

Q The deceased said to the defendant that he didn't want to have anything to do with him? A Bum said to this fellow:

Q Rhett is the deceased. Bum said to this fellow, the defendant, what? A He said: "I ain't got your woman up here and I don't want her; I want to get away from New York to keep ~~man~~ from being bothered; I don't want her and she kept after me and I am going to leave New York and go away," and this fellow didn't say anything more. He went up Washington Street.

Q Who is this fellow, the defendant? A Yes.  
BY THE COURT:

Q By Bum, you mean Rhett? A Yes sir.

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## CROSS-EXAMINATION BY MR. HANSEN:

Q You are sure you know this defendant? A Yes.

Q Sure? A I know him six months.

Q Tell the Court and jury when and where you first met this defendant in your life. A The first time I saw this man was on 37th Street here in New York.

Q Did you speak with him? A No more than just as with the rest of them.

Q Did you speak with him? A Yes, the same as did the rest of them.

Q What did you say to him? A "How are you?"

Q What did he say to you? A Didn't say nothing.

Q Who introduced you to him? A Nobody, only the fellows who were in the tunnel over there.

MR. HANSEN:? I want to show that this witness never met the defendant in his life and never heard of this man.

## BY MR. HANSEN:

Q Nobody introduced you? A I asked Henry Cooper who this man was and he told me who he was.

Q Who is Henry Cooper? A The man that works in the Long Island tunnel.

Q Where is Henry Cooper now? A In Buffalo.

Q Can you give us the name of a single human being in New York or Long Island who saw you meet this defendant?

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A Only Charley Coles, if he is around here.

Q This defendant's brother? A Ain't no brother of his, but Charley Coles, he knows Charley Coles.

Q Where does Charley Coles live? A I don't know where he is now. He used to work in Long Island.

Q You met this defendant? A Yes.

Q You said "How do you do?" A Yes.

Q And he didn't say anything? A Lots of them ---- yes.

Q He didn't say anything? A The same thing to me.

Q When after that meeting did you meet him again, if ever? A I met him in Long Island.

Q Where? A I met him over there in the hotel just up this way from the work.

Q When did you meet him there? A I met him there the first of March.

Q With whom? A Nobody, only two or three tunnel fellows.

Q Who were they? A Henry Cooper and Charley Coles and Rock Island Jack, and Pistol Jack and Goggle Eye Jack.

Q Have you seen Pistol Jack and Goggle Eye Jack or any of those men recently, do you know where they are? A I don't know where they are. I don't know. I don't work down there now. I don't live here.

Q You are sure there was nobody there at that time who

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is now in the city of New York? A I don't see them.

Q When next did you meet this defendant, if ever?

A I met him in Long Island again after I left him and went to Cornwall.

Q Give us the name of the place, house number and all.

A I met him at the same saloon.

Q Who was with him or with you at the time you met him again. A Bum Rhett was with me when we met this fellow.

Q Who else? A Nobody, only some white fellows, and I didn't know them at all.

Q So you never had met this defendant in the presence of anybody who is now in New York or Long Island? A I couldn't tell you where they are; I couldn't say where they are.

Q Relate to the Court and Jury a single conversation that you ever had in your life with this defendant. A A single conversation?

Q A single one, that you ever had with him in your life? A I had no conversation with him any more than I would with anybody else, single, by himself.

Q What did you talk about with him, if anything?

Objected to; objection overruled.

A What did I ever talk to him about?

Q You understand English.

BY THE COURT:

Q Have you ever talked to him at all, and what did you talk to him about? A I talked to him once in a whole about

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playing five up and Coon Can.

Q You have played Coon Can with him? A No, I have not.

Q I ask you now to tell me anything, any subject that you ever discussed with this defendant in your life. A I told you I talked with him about playing five up or coon can.

Q Where did you talk with him about that? A In the hotel ~~me~~ and Bum Rhett both were talking about it, and I said: "Come on, if any of you two fellows want to play five or Coon Can."

Q What did the defendant say? A He didn't say anything to me.

Q He didn't say anything? A No.

Q He has never said one word in his life to you, not when you said "How do you do." A Anymore than I met him one day coming out of the tunnel and he said, "Hello, big boy"; that is all he said to me. A

Q You are the young man called Big Boy? A I don't know, anymore than anybody else.

Q Is that the name you go by? A It is not.

Q You know somebody who goes by the name of Big Boy; it has been testified here some man is identified by the name of Big Boy; is that you? A It is not me. They call me Big Boy the same as you would.

Q You have told the Court and Jury all the conversations you ever had with this defendant in your life? A Yes.

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Q You say you saw him up in Newburgh? A Yes.

Q If this defendant should tell you that he has not been to Newburgh the last eight years would you still insist that you saw him up there? A I say I saw him at Newburgh.

Q Where did you see him at Newburgh? A I saw him on Washington Street, Italian Hotel there.

Q What was he doing when you saw him there? A Talking with Bum Rhett about some old gal.

Q Where were you standing?? A In front of the hotel.

Q Anybody else with you or with them? A Yes.

Q Who lives in the City of New York or Long Island City? A Somebody else in Buffalo, New York. They have all gone up thereon that job.

Q Now, Big Boy, tell us -----

Objected to.

MR. HANSEN: What is your name, Jones? A Yes.

Q When did you first tell anybody that you had seen Rhett fall dead in the street? A When did I first tell anybody?

Q Yes.

THE COURT: Is there any such thing in the testimony that he saw him fall dead?

MR. HANSEN: That he heard the shot and saw him fall.

THE COURT: He said that he saw him fall in the street.

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Q When did you first tell anybody that on the 7th of September in the evening you saw Rhett lying dead or drop dead?

Objected to; objection sustained.

Q When were you first subpoenaed to come over here as a witness? A Last Saturday.

Q Do you know this case started about two weeks ago?

Objected to.

Q Can you tell the Court and Jury why you were not subpoenaed when the people's case opened?

Objected to; sustained.

Q Who have you talked this case over with since this trial began? A I have not talked it over with any one, only my own wife and my own people.

Q Can you tell this Court and jury how anybody came to know that you knew anything about this case? A Yes, there was a message came to Cornwall looking for a fellow they called Big Boy. I was supposed to be called Big Boy around there because I was the biggest fellow, and he asked me what was my name.

Q Who asked you? A Mr. Wood.

Q Who is he? A Constable or sheriff or policeman, or whoever he was.

Q From New York? A From Cornwall, Cornwall Landing.

MR. ELY: Here is Wood (indicating a gentleman who comes to the bar.)

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BY MR. HANSEN:

Q You say this gentleman came to you? A Yes.

Q When did he come to you? A Saturday.

Q This last Saturday? A Yes, last Saturday.

Q What did he say to you? A He asked me what was my name and I said Charles H. Jones. He said do they call you anything else, and I said, they sometimes call me Harry and sometimes call me Big Boy. He said I guess you are the man I want. I have a subpoena for you. I said I don't know anything about it, what do they subpoena me for. And he said, Well, that is all right, you are subpoenaed. And he showed me a subpoena, and I saw this fellow's name on it, and I knew the fellow and I came on down here.

Q He didn't say a single word to you about the name of the case? A No sir.

Q Or what you knew or anything? A No. If he had told me I wouldn't have been here.

Q He did not? A No.

Q Did anybody else talk to you about this case before you took your seat this afternoon in that chair? A Not that I know of.

Q You ought to know. A Didn't talk to me anything about the case.

Q Who did you speak with before you took the chair?

A That man showed me the way in here. I spoke to that man.

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I don't know where he is. He brought me in awhile ago.

Q Did you speak to this gentleman sitting here? (Indicating.) A Yes, that is the gentleman I spoke about. I asked him when was the trial going to be.

Q Did you speak to Mr. Fitzsimmons? A That man?

Q Yes. A I might have asked him was he going to let me go home.

Q Did you speak about this case to that gentleman?

A I didn't speak about that case to this gentleman. I asked him when he was going to let me go home.

Q When did you see him? A We came past with some papers.

Q Why did you ask him that? A I saw him first. If I had seen you I would have asked you.

Q You saw many people in the Court when you saw him?

A When he carried papers I thought he had something to do with the Court.

Q You never had any conversation with him at all?

A I asked him when he was going to let me go home.

Q That was all you ever discussed with him, when he was going to let you go home? A Yes.

Q Did you say one word to him about this case? A No.

Q Not a word about Rhett? A Rhett ---- I told him I knew Bum Rhett.

Q Just state what you said to Fitzsimmons and what he said to you.

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THE COURT: That is, this man right here (n-  
dicating.) What did you say to him?

A I asked him when he was going to let me go home, was  
he going to let me go today. I told him I wanted to go to  
Canada and work, and he said "Yes, yes." I said "I wish that  
Rhett trial and Moore trial was all over", and I asked him  
when he was going to start, and he says right away.

BY MR. HANSEN:

Q Have you told us all you said to him? A All I know  
about.

Q Have you told us all? A All I can remember.

That is all I remembertelling him.

Q You knew Rhett very well? A I knew Bum Rhett.

Q You neverheard Rhett say anything against this defend-  
ant, did you? A No sir.

Q Never? A No sir.

Q You never saw Rhett carry a revolver? A No sir.

Q Rhett was a very peacable, quiet man, wasn't he?

A He was ever since he left twin tunnel' and I knowed him  
since that time.

Q You have never known him to be anything except a quiet,  
peacable little man? A I never have.

Q I only speak about you? A I never have.

Q You never heard him say he was going to take the life  
of anybody? A I never did.

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Q You never heard him say he had taken the life of two men? A No, I never did.

Q You never saw him with any revolver? A No, I did not.

Q Or with any cartridges? A No, I never saw him with any cartridges.

Q You never heard him say one unkind word against this defendant? A I never did.

BY MR. ELY:

Q How long did you work down there at the Long Island tunnel? A I worked there about five months.

MR. ELY: If your Honor please, I have been led to believe that I am on the track of the original Big Boy. If I am on the track of the original Big Boy, and I can produce him here tomorrow, it is just as much in the interests of the defendant that he should come and give his testimony here as it is in the interests of the people, because if what occurred at the Pearson Boarding House is so, the defendant ought to have the ~~defendant~~ benefit of it. He says, as you will recollect -- and I am not going to quote the testimony -----

MR. HANSON: I object to summing up on the part of Mr. Ely or to a resume of any evidence now. We do not ask for Mr. Ely's sympathy at all.

MR. ELY: I have no sympathy to give, but my duty as a public prosecutor is to see that the defendant

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gets as fair a trial, as it is that the People's evidence is brought in, and it is just as much in the interests of the defendant that I am now making these remarks as it is in the interests of the People.

MR. HANSON: I object to the statement being made by Mr. Ely. It is irrelevant and improper for Mr. Ely to make such a statement.

THE COURT: We will strike it from the record and the jury will pay no attention to it.

MR. ELY: The only point is that I desire --- having only heard of this person today -- he is up at Cornwall -- I desire to have until tomorrow morning for the purpose of putting him on the stand, if I think it is advisable for either the People or the defendant.

Mr. HANSEN: I desire to call the defendant in rebuttal of this last witness.

MR. ELY: You will have the right to go on in sur-rebuttal after the People's case is in.

MR. HANSEN: To save time I might do it now.

THE COURT: If Mr. Ely has another witness for the prosecution, it may be desirable to put this man on again, and if so, you can question him at that time.

The Court admonishes the jury in accordance with section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, February 4th, 1908, at 10:30.

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New York, February 4th, 1908.

TRIAL RESUMED.

THE COURT: I regret very much, gentlemen of the jury, that we shall have to adjourn this morning. Mr. Ely is now under the care of a doctor. This morning the doctor was in attendance and told him it would be a reckless thing for him to attempt to leave the house. Each one of us, the Court itself, the attorney for the defendant and now the attorney for the Prosecution has had his turn, and we can all sympathize with each other, but you gentlemen who are held beyond your term are the people who are suffering the most from this, and if there is any way in the world I could make amends for it I would be glad to do it, but I do not know of any. In view of the fact that Mr. Ely's doctor has not said how long it may be necessary for him to remain in the house, I can do no better than to adjourn until tomorrow morning, but before you go I must admonish you again that you are not to enter into any conversation with anybody about this case, and above all things, after the length of time which you have devoted to this case, you are to observe as strictly as possible the rule that you are not to discuss or talk with anybody about any subject connected with this trial until the case has been submitted. You are not to form or express any opinion until then. We will adjourn until half past 10 tomorrow.

Adjournment is taken until tomorrow morning, February 5, 1908, at 10:30.

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New York, February 5th, 1908.

TRIAL RESUMED.

Owing to the continued illness of Assistant District Attorney Ely, the jury are admonished in accordance with Section 415 of the Code of Criminal Procedure and an adjournment is taken until tomorrow morning, February 6th, 1908, at 10:30 o'clock.

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New York, February 6th, 1908.

TRIAL RESUMED.

MR. HANSEN: If your Honor please, I ask for the privilege of reopening my case for the purpose of calling three witnesses as to the character of the defendant.

MR. ELY: I have no objection.

W I L L I A M    H A H N , called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q What is your business?    A I work in the Government service, weigher.

Q In the City of New York?    A Yes.

Q Do you know the defendant Richard Moore?    A Yes, I do.

Q How long have you known him?    A About four or five years.

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

Q State to the Court and jury what his reputation is among those people for peacefulness, quiet and decency?

MR. ELY: I object to the decency.    To peace and quiet

I do not object.

BY MR. HANSEN:

Q For peace and quiet?    A Ever since I have known him--

Q Do you know what his reputation among those people is

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for being a peaceful and quiet man? A Very good.

Q Do you know what it is, yes or no? A Yes.

Q Is it good or bad? A Very good.

CROSS EXAMINATION BY MR. ELY:

Q What did you say your name was, Hahn? A Yes, William Hahn.

Q Now, Hahn, you say you are a weigher in the Government service, do you mean in the General Appraiser's office? A No, at the docks.

Q How long have you been a weigher at the dock? A Been there over ten years.

Q Are you still employed there? A Yes.

Q When did you first meet this defendant? A I couldn't say exactly when. I know him about--

Q I do not ask you that. I ask you about when you first met him? A About five or six years ago.

Q In what capacity did you meet him? A In what capacity did I meet him?

Q Yes. A Why, I was captain then in the election district.

Q Captain of the election district? A Yes.

Q Go ahead. A And through that I became acquainted with him.

Q With this defendant? A Yes.

Q You met him in politics; is that right? A Well--

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Q Yes or no? A Not exactly, no.

Q You say you were captain of an election district?

A Yes.

Q You met him in that way? A Yes, in canvassing.

Q That was about five or six years ago? A As near as I can recollect.

Q Where was the defendant living at that time? A I believe he was--

Q Do you know? A What?

Q Do you know where? A I do not know exactly where he was living.

Q And was that acquaintance a casual one or was it more than a casual acquaintance with the defendant?

Objected to to as calling for a conclusion.

Objection overruled.

A I met him in company with other colored men.

Q On how many occasions did you ever meet and converse with this defendant, about? A No more than probably three or four times.

Q That was about five or six years ago? A I can't say exactly.

Q About, I do not say exactly. I ask you if it was about? A About four or five.

Q And it was about four or five years ago that you had these three or four conversations with him; is that right?

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A No; later than that.

Q How much later? A I believe last spring.

Q Are you sure about it? A I am quite sure.

Q Where was it? A In 62nd street.

Q You had one conversation with him last spring; is that right? A Yes.

Q And how long did that take? A I couldn't call it a conversation. I met him and bid him the time of day.

Q Said hello? A Yes.

Q And that was all? A That was all.

Q Prior to that when did you meet him before last spring when you saw him and said hello? A Of course, I met him off and on on the street.

Q I know, but you only just saw him and said hello and pass the time of day; is that all? A That is about all.

Q That comprises your whole acquaintance with him, except when you saw him three or four years ago, when you were captain of an election district, is that right? A Yes; and I was introduced to him.

Q You never went with him at all, did you? A No.

Q You never went out with him and about with him and you know nothing about his private life, do you, of your own knowledge? A No.

Q Tell me the circumstances under which during those four years, under which you say you ever heard his reputation for peace

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and quiet discussed, did you ever hear anybody talk about the reputation of this defendant for peace and quiet? A I did not. I only know myself--

Q You know only yourself what? A That he is a sort of a jolly fellow and peace and quiet.

MR. ELY: Then I ask to have the evidence stricken out.

BY THE COURT:

Q Did you ever hear any conversation at all by and among people who knew this defendant, anything said about him at all?

A I heard a man by the name of Benjamin--

Q I do not ask you what you heard or when or where; did you ever hear anything among other people concerning the character of this defendant? A Oh, yes.

Q And other people who lived in the locality where this man lived? A Yes.

Q And where you live? A Yes.

Q You heard those people discussing this man's reputation for peace and quiet? A Yes.

Q You heard conversations which in effect were concerning his reputation for peace and quiet, and from that you determine his reputation was what? A That his reputation was a good citizen.

BY MR. ELY:

Q You told me you never heard anybody discuss his reputation for peace and quiet, and now you say you did, tell us when and

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where you ever heard anybody discuss his reputation for peace and quiet? A I heard it in 62nd street last summer.

Q That was after the shooting or before the shooting?

A I believe after.

Q That was after the shooting? A Yes.

BY MR. HANSEN:

Q The discussion concerned his prior reputation and his character as a man up to the time of the shooting? A That was what the discussion was about.

S A M U E L F. S I N G L E T O N , called as a witness on behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q What is your business? A I am in the employ of the Park Department.

Q In the employ of the City of New York? A Yes.

Q Employed by the City of New York? A Yes, by the City of New York.

Q How long have you been in the employ of the City of New York? A Sixteen years.

Q As what have you been employed by the City of New York for sixteen years? A As a driver and a sweeper at one time in the Department of Street Cleaning and then went over to the Park

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Department as a park laborer.

Q Do you know the defendant Richard Moore? A I do.

Q How long have you known Richard Moore? A About four years.

Q Do you know other people who know Richard Moore?

A I do.

Q And can you state to the Court and jury what Richard Moore's reputation among those people is for peace and quiet?

A Very good.

CROSS EXAMINATION BY MR. FLY:

Q Where do you live? A 244 West 62nd street.

Q And you have known the defendant during these four years you say pretty well? A Yes.

Q And did you ever hear his reputation for peace and quiet discussed before the 7th of September, 1907? A Yes, on several occasions.

Q And what was the cause of the discussion of his reputation for peace and quiet on any one of those several occasions you speak of before the 7th of September? A At one time I can remember he was passing by the house I live in and there was several fellows standing on the stoop talking and I made mention and I said, do you know this fellow Dick and several of them said yes, and I said, he is a nice fellow, and he said, yes, he seems to be such a quiet fellow and hard working man.

Q What occasion was that, was there any special occasion that called forth this statement that he was a hard working and quiet fellow? A No.

Q Did anybody charge him at that time to your knowledge with being a dangerous character? A Not to my knowledge.

MR. ELY: If your Honor please, before Mr. Hansen calls the defendant in rebuttal I have several witnesses.

MR. HANSEN: I object to the People opening their case for the third time. The case on the part of the People has been closed, as I remember, twice. If they are to reopen this case, of course, I will have to produce witnesses in rebuttal and this case will go on and on like Tennyson's brook, and we will never finish.

THE COURT: The Court will have something to say about that.

MR. HANSEN: Here is a new witness called and we are unprepared to meet any new witnesses.

THE COURT: You do not doubt the absolute right of the Prosecution, if once you have given testimony to the character of the defendant-- not only the right of the Prosecution to do it, but obligation under which the Prosecution may be,,to go into that same character?

MR. HANSEN: I have no idea what the witness is called to testify to, but if it is new matter I shall object.

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M I L E S       S P R U E L , called as a witness in behalf of the  
People in rebuttal, being duly sworn and examined,  
testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business?    A Common laborer.

Q Do you know the defendant?    A Yes, sir, I know  
Mr. Moore there.

Q The defendant?    A Yes.

Q How long have you known the defendant Moore?    A Between  
five and six years.

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

Q Do you know his reputation for peace and quiet?    A No.

Q You do not know his reputation for peace and quiet?  
A No.

Q Have you ever heard his reputation for peace and quiet  
discussed?

MR. HANSEN: I object.    The witness has already answered  
that he does not know.

Objection overruled.    Exception.

Q Have you ever heard his reputation for peace and quiet  
talked about by other people?    A I have heard his reputation  
spoken of by others.

Q When did you hear his reputation discussed by other  
people?    A I have heard it ever since I have been acquainted  
with him.

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Q Do you know what his reputation is as discussed by these other people, yes or no? A Why, no.

Q Yes or no. A No.

Q You have heard it discussed? A Yes, I have heard it, but I do not know for myself.

Q I did not ask you about knowing for yourself, I ask you if you know his reputation among others, you say you have heard it discussed? A Yes.

BY THE COURT:

Q Reputation depends upon what people around in the community where he lives, say about him. A Yes.

Q That is what Mr. Ely is trying to get. A Yes.

Q Mr. Ely wants to know if you know. A Yes.

Q What that reputation is among those people who know him.

A Yes.

BY MR. FLY:

Q For peace and quiet, is it good or bad? A It is bad.

CROSS EXAMINATION BY MR. HANSEN:

Q What is your business? A Common laborer.

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

Q What? A No, sir.

Q You have never been convicted? A No.

Q Sure? A Yes.

Q How long do you say you have known this defendant?

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A Between five and six years.

Q Where did you first meet him? A In Haverstraw.

Q Can you tell us the date? A No, sir.

Q Can you tell us the month? A No, sir.

Q Can you tell us the year? A From six years down to now.

Q About how many years ago did you meet this defendant in Haverstraw? A I did not meet him in Haverstraw. I ain't seen him between last June and last August.

Q You say you have known him for five years and that you first met him in Haverstraw? A Yes, I knew him in Haverstraw.

Q Did you or did you not? A Yes.

Q Did you meet him in Haverstraw? A Yes, I met him in Haverstraw.

Q Did you or did you not meet the defendant in Haverstraw? A Yes, sir, I met him in Haverstraw.

Q What did you mean by saying just now that you did not meet him in Haverstraw? A I did not say that I did not meet him in Haverstraw.

Q You say you did not say that? A I did not say that I did not meet him in Haverstraw.

MR. HANSEN: May the Stenographer read the answer where the witness said he did not meet him in Haverstraw but saw him in New York a few months ago?

THE WITNESS: I did not say I saw him in New York a

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few months ago.

BY MR. HANSEN:

Q You did not? A No.

BY THE COURT:

Q Did you say you did not meet him in Haverstraw or that you did?  
A I say I did meet him in Haverstraw.

MR. HANSEN: He said he did not, if your Honor please, and it is on the record if the Stenographer will read it.

The Stenographer reads the following question and answer: "Q About how many years ago did you meet this defendant in Haverstraw? A I did not meet him in Haverstraw. I ain't seen him between last June and last August."

BY THE COURT:

Q What did you mean by saying that you did not meet him?  
A He asked me did I meet him-- the year I met him he asked me and I told him I didn't know the year. I met him. I knowed him from six years down to now.

Q What did you mean by saying that you did not meet him in Haverstraw, did you intend to say that, that you did not meet him?  
A I did not say that I did not meet him.

Q You are down on the record as having said so-- you say you did meet him there? A Yes.

BY MR. HANSEN:

Q You did meet him in Haverstraw? A Yes.

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Q Tell the year, if you remember, when you met the defendant in Haverstraw?

MR. ELY: I object. He said it was five or six years ago.

THE COURT: Answer the question.

THE WITNESS: I do not know the date of the year.

BY MR. HANSEN:

Q Do you know the year? A Do I know the year?

Q You understand English? A I do.

MR. ELY: I object.

BY MR. HANSEN:

Q What year did you meet this defendant in Haverstraw?

A I do not know the date of the year.

Q What year did you meet him in Haverstraw, what year?

A I don't understand you.

Q Did you meet him in 1901, 1902 or 1867 or 1812? A I told you I didn't know the date of the year.

MR. ELY: I object to the question as ridiculous.

THE WITNESS: I cannot read or write.

THE COURT: I sustain the objection to the question.

BY MR. HANSEN:

Q What year did you meet this defendant whom you claim to know and whom you claim to have met in Haverstraw, what year did you meet him there? A I don't know the date of the year.

Q What time of the year did you meet him there, in the

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winter or summer, spring or fall? , A It was in the summer.

Q What was he doing when you met him in Haverstraw in the summer? A He wasn't doing nothing at that time except walking around the same as a man would be.

Q He was not employed in Haverstraw? A Not at that time, no, sir.

Q Tell us the circumstances under which you met him in Haverstraw? A I met him in Haverstraw. He was walking around among the majority of the colored people the same as any other man would do, walking around.

Q Tell the Court and jury any conversation you had with this defendant when you met him in Haverstraw several years ago, when he was walking around circulating among the colored people? A I didn't have any private conversation with him at all.

Q You didn't have any conversation? A I didn't have any private conversation with him.

Q Did you have any public conversation with him? A No more than to speak to him when I met him and pass on, like that.

Q Who introduced you to the defendant in Haverstraw? A Who introduced me to him?

Q Yes. A Didn't nobody introduce me to him.

Q Tell a single conversation you ever had in your life with this defendant Moore? A I never had any private or secret conversation with him, only met him as I would any other man passing.

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Q Tell us any human being, the name of any human being who ever saw you together with this defendant Richard Moore?

A There ain't nobody here that I could explain that saw me with him.

Q Is it not a fact that you have never seen him in your life before and that you are now committing perjury, is not that the fact? A I have seen him.

Q Is it not a fact that you have never known this defendant Moore? A Yes, I know him.

Q And that you are lying, wilfully lying?

MR. ELY: I object. That is improper. He said he has seen him and knows him, and the rest of it is improper.

THE COURT: Yes; strike out the conclusion in the question of the attorney that you are lying and so forth.

BY MR. HANSEN:

Q You are sure you are not an ex-convict?

Objected to.

THE COURT: I sustain the objection. He said he was not.

MR. HANSEN: I ask your Honor to direct this witness to remain in this court room or this building until this case is over.

RE DIRECT EXAMINATION BY MR. ELY:

Q You say you saw the defendant last summer? A Yes.

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Q Where did you see the defendant last summer? A In  
front of Washington Hall.

Q Where is that? A In Newburg.

Q When did you see him in front of Washington Hall?

A It was between July and August.

Q Last summer? A Yes.

Q Did you see anybody else there with him that you know  
of? A I saw him and Jones and the fellow Rhett.

Q And you are sure are you, that you have known this  
defendant for five or six years? A Between five and six years.

Q And that you saw him last August or July, or August,  
in Newburg. A Between last August and July.

BY MR. HANSEN:

Q Can you tell the Court and jury how you came to be a  
witness in this case, if you know? A Why yes.

Q Tell us it? A Jones asked me.

Q Who is Jones? A The fellow from Cornwall, a colored  
fellow from Cornwall.

Q Was he a witness in this case? A I don't know. I  
think he is.

Q He asked you to do what? A He asked me did I know  
Richard Moore, and I said yes, and that is all that I know  
of being here.

Q How long have you known Jones? A Well, I have only  
been acquainted with him about-- I don't know, three or four

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years, something like that.

Q And that was all he said to you, do you know Moore, and you said, yes, I know Moore? A Yes.

Q You have now stated the whole conversation? A That was all he said to me, and that was why--

Q All you said to him? A Yes.

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

Objected to. Objection sustained.

Q State to the Court and jury the entire conversation between you and Jones regarding your acquaintanceship with this defendant Moore, what you said to him and what he said to you?

Objected to. Objection overruled.

THE WITNESS: He asked me did I know him, and I said yes.

Q Tell us exactly the words he said to you, as he said it, quote him? A I was sitting in a chair the same as I am now, and he came in a saloon with a white gentleman, I do not know his name.

Q A detective? A I don't know.

Objected to. Objection sustained.

THE WITNESS: (Continuing) I don't know what he these was, and we stood at the counter talking.

BY THE COURT:

Q Do you know if they were looking for witnesses?

A No, sir; I don't know. And they stood at the counter talk-

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ing and through that he said to me, he said, "Father Land-- they call me Father Land-- "don't you know Richard Moore," and I said yes, I am acquainted with him, just like that.

BY MR. HANSEN:

Q You are sure that is all the conversation you had?

A Yes; and he goes back to this man.

Q To the whiteman? A Yes, I don't know his name, and so he said, I will subpoena you, he said, to come to the Court.

Q So the white man subpoenaed you? A Yes.

Q The white man subpoenaed you? A Yes; that was all I know about being here.

Q And Jones knew that in this saloon was standing a man called Father something, who knew this man, and they came in to subpoena you?

Objected to. Objection sustained.

Q When they asked you if you knew Moore, did you know which Moore he meant, did you ask what Moore, did you guess just what Moore they meant? A I did not ask them what Moore.

Q And yet you knew Moore? A I knew Richard Moore. He said he was-- he said the fellow when they were out doors talking-- they said did I see him, and I said yes, I saw him.

Q The whiteman and Jones said that? A That was Jones. The whiteman did not ask me anything.

Q Jones said that on the night you were subpoenaed?

A Yes; he asked me.

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BY MR. ELY:

Q You have been asked for this conversation, and you say that Jones asked you what? A Did I not see him, Richard Moore, out there that day when they were talking.

Q That day when? A Last summer.

Q Where were they talking last summer? A On the corner of Washington Street Hall and Washington Hall.

Q What City or town was it? A Newburg.

BY MR. HANSEN:

Q In Newburg? A Yes.

Q Last summer in Newburg? A Yes.

Q You saw this defendant last summer in Newburg? A Yes.

MR. HANSEN: I ask your Honor to direct this witness not to leave this building until this case is over.

THE COURT: Remain about the corridor, or in the Court until the trial is over.

THE PEOPLE REST.

R I C H A R D M O O R E, the defendant, recalled in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. HANSEN:

Q Were you in Newburg last summer? A No.

Q Tell the Court and jury if you have ever been to Newburg in your life?

Objected to as immaterial. Sustained.

Q Were you in Newburg last summer?

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MR. ELY: I object. He just said that he was not. 383

THE WITNESS: I was not in Newburg last summer.

BY MR. HANSEN:

Q That is the truth? A That is the truth.

Q Do you know a man by the name of Charles Jones who testified here the day before yesterday that he met you in Newburg? A No, sir; I never saw him before I saw him in Court here.

Q Never saw him before in your life? A No, not in my natural life.

Q Did you know anybody that knows him? A No.

Q Did you ever have any communication with him? A No, sir.

Objected to. Objection sustained.

Q Do you know this man who has just testified now by the name of Spruel? A No, sir.

Q Have you ever seen him in your life? A No. Never saw him to know him in my life.

Q Have you ever met him in Newburg? A No, sir.

Q How many years did you work for the New York Central Railroad?

Objected to.

No cross-examination.

TESTIMONY CLOSED.

MR. HANSEN: If your Honor please, I renew the motion.

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made at the close of the People's case on the grounds stated, that your Honor direct this jury to acquit the defendant upon the ground that the crime of murder in the first degree, as charged in the indictment, has not been substantiated; that the People have not proven their case beyond a reasonable doubt; that, in fact, they have not proved motive; they have not proved premeditation, that they have utterly failed to prove the defendant in this case has committed any crime whatsoever.

Motion denied. Exception.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until two o'clock.

AFTER RECESS.

Mr. Hansen sums up in behalf of the defense.

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MR. ELY'S CLOSING ADDRESS TO THE JURY  
IN BEHALF OF THE PEOPLE.

If your Honor please, and gentlemen of the jury:

As I said to you in my opening, this is a most serious case. It involves the life of a human being, this defendant, and as such you will give it your profoundest consideration.

If I recollect, when you were sworn as jurors in this case, you said that you had never sat in a capital case before, and I do not wonder at all if you approach the consideration of this case with some dread, and if you should approach the consideration of this case with some hope if you could find a reasonable doubt upon which to find the defendant not guilty. But, you must bear in mind that sympathy has nothing to do with the consideration of this case. You must take the evidence and consider the evidence and decide ~~upon~~ upon the evidence. As an individual the prosecutor may have sympathy for the defendant in his forlorn condition, but the public prosecutor is <sup>armed</sup> ~~honored~~ with the duty to present the People's evidence without fear or favor, and your duties are akin to his, to

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consider the evidence of the People without fear or favor, without sympathy for the living or without sorrow for the dead, and bring in a verdict in accordance with the evidence in this case, allowing no extraneous consideration of any description to influence you one jot or one tittle.

I have said that if there be a reasonable doubt in this case you must give the benefit of that doubt to the defendant and acquit him. The benefit of a reasonable doubt is the defendant's by law and his by right. But, if on the other hand you should, after consideration of all the evidence in the case, find beyond a reasonable doubt that the defendant had feloniously taken the life of the deceased, Isaiah Rhett, then it would be your bounden duty under your oaths to find him guilty of some degree of homicide, and if you should find that he, without justification, with premeditation and deliberation----

MR. HANSEN: I submit, if your Honor please, that it is for the Court to give the jury the law and not for the District Attorney. So far the District Attorney has spoken of nothing but the law, and I prefer that that should come from the Court.

THE COURT: The Court will charge the jury on the point of the law, but there are certain latitudes

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allowed to counsel also in the discussion of the law before the jury.

Mr. ELY (Continuing:) If you are convinced beyond a reasonable doubt by the evidence that the defendant without justification, but with deliberation and premeditation, took the life of the deceased Isaiah Rhett, then you are bound to find him guilty of murder in the first degree. And, in connection with premeditation and deliberation, you are entitled to consider the locus in quo, that is the place where the act was committed by this defendant, namely, far from the domicile of the defendant, either his Long Island domicile or his so-called New York domicile-- far from the domicile of the defendant, and at or about the domicile of the deceased. You are to take into consideration that fact Why was he there? On the evening of the 7th of September, 1907, at a place in New York City, where, as far as the evidence is concerned, he had never been before, and where he had no business-- at 39th Street-- armed with a loaded revolver. Why was he there? Was it because he was jealous? Was it because he found the deceased had gone away, left his premises in Brooklyn? Did he not leave them quietly? Was there any ruction? Was there any fracas? Was

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there any fighting there? Was it because of jealousy when he found that deceased had gone away from the Long Island premises and taken the person whom the defendant himself describes as the housekeeper away at the same time? Was it that? You must bear in mind these things, gentlemen-- the place where the shooting occurred; the fact that the defendant <sup>went</sup> ~~got~~ there to that place ~~on it~~; the fact that shortly before this occurrence, two days before, the deceased left Long Island City, and at or about the same time that the deceased left Long Island City the housekeeper Fanny Bridget left. You must bear all those things in mind, and if you do find it was jealousy, there is the motive.

I am not going to go into a discussion of self defense or the theory of self defense at this time, other than to point out to you one very significant fact. This defendant comes here and says that he committed this act in self defense, and you will bear in mind the testimony of Officer Kavanaugh, who swears positively that on the night in question, namely, the 7th of September, when he took this defendant into custody, he asked the defendant if he did it, and the defendant said no, he did not shoot the deceased. He denied it. He asked him what he did with the revolver. The defendant said he had

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not had any revolver, and he repeated the denial of the shooting later in the Police Court, and he repeated the denial, of having a revolver again in the police court. What are you going to make of that? Do you not know, and does not each of you know, that under the circumstances of the case, there was a duty devolving upon the defendant to make good, that is, there was a duty devolving upon the defendant to show that he was justified in that act. Do you not believe that if he really was justified and had known that he was justified, he would have clung to that revolver, and held it and held it aloft as the instrument which had prevented his having suffered serious bodily harm. Would he have denied immediately after he committed the act that he had done the shooting? Would he have thrown away the weapon which had enabled him to defend himself? Why, gentlemen, these are facts that you are to consider, but, I want you to understand and remember, that if there was any reason for the act, such as jealousy, and this defendant came away from his domicile to a place in the City of New York, which was then where the deceased then had his domicile, why, there is an element from which you can --- shall I say irresistably draw premeditation and deliberation, and conclude that

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the act of the defendant was one of premeditation and deliberation?

If you believe this defendant is guilty of premeditation and deliberation and lack of justification in this killing, and you believe that beyond a reasonable doubt from the evidence, and you bring in a verdict for a lesser degree of crime, you do all in your power to tear down the safeguards that are raised by the law of the land, and to aid and abet crime and criminals.

Before I proceed with an analysis of the evidence in this case, I will refer to the three points which I said the People must prove beyond a reasonable doubt, when I opened, before they are entitled to ask for a verdict of murder in the first degree. The fact that Isaiah Rhett is dead is conceded; second, that Isaiah Rhett came to his death at the hands of the defendant is not now disputed-- nay, the defense absolutely concede that. The sole question is did or did not Isaiah Rhett come to his death at the hands of this defendant by reason of the premeditated and unjustifiable act of the defendant. That is the question. The defendant comes in, and he is the only witness for himself as to the main issue, namely, the killing, and he says, "No, I

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am justified. It was self defense." Well, gen- 391  
tlemen, we have his statement that it was self de-  
fense, and you will bear in mind that the defendant  
is more interested in the result of this case than  
any other human being. His life is at stake. He is  
interested in the result, and therefore he is a biased  
witness, and you are to take his testimony and give  
it whatever credence you believe it to be worth, but  
you are to remember that a witness who is testifying  
in this way for himself is more interested in the  
result than anybody else, and therefore that interest  
might tend ~~him~~ to cause him to tell such a story as  
he thought would enable him to escape from the re-  
sults of this act of his. But he comes here and  
he says "No, it is self defense." What does he pre-  
dicate that upon? He begins by saying, "I saw Isaiah  
Rhett for the first time in May, and I saw Rhett fre-  
quently from May down to some time in July; we  
never had a single word; we passed the time of day  
together; we never had a single word and never any  
quarrel; we never had any unpleasantness at all up  
to a certain occasion in July. The end of July I  
went down to Pearson's boarding house, and there I  
saw a man by the name of Big Boy, and we got into  
a game of coon can, and after some argument Big Boy

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got up and told me I was a Son of a Bitch and I stood up on my feet and hauled off, and I said 'If you say that to me I will hit you in the mouth.'" He admits that Rhett was there during all this time that they had had no words. That Rhett said, "Hello", that he came in and said, "Hello, fellows"; that while he Rhett was sitting by doing nothing, and this person called Big Boy were engaged in this game with him. The defendant tells you that as soon as he, the defendant, told Big Boy that he would hit him in the mouth if he called him that name, that Rhett jumped up-- and mind you, gentlemen, Rhett was a little fellow; you will remember that; even Frazer, the defendant's familiar friend and partner said he was a little fellow; and Jones said he was a little fellow--- that this little fellow immediately jumped up, drew a razor and covering himself with the razor rushed at the defendant. What traveler's tale is that? Do any of you believe it? Can you believe it? What was there on earth that should have aroused this little fellow to jump up and attempt to assault upon this defendant at that time? There was absolutely nothing. Why, as well might I have assaulted upon anyone here-- a great deal better reason if I had taken up the remarks that were made

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by counsel about subornation and perjury and one thing and another. There was not any reason on earth which then transpired why the deceased Rhett should have done anything, and there is not a single human being on earth who comes to say that the deceased did anything such as the defendant described, except the defendant himself. Is not that a traveler's tale? What reason was there? The defendant said "He came at me with a razor", and he said "I put two more to sleep, or words to that effect, and I will put you to sleep." And on cross-examination he added, "I am going to shoot you, I am going to shoot you"--- as coming from Rhett. That, mind you, is only the testimony of this defendant who is on trial here before you for murder in the first degree. There is no corroboration of that, and you must consider the testimony and ask yourselves whether or not it appeals to you as reasonable men; whether you would believe that anything like that did really happen for no apparent cause at all? Here is a man sitting quietly by while two men are playing a game, one man calls the other man an epithet; the other man gets up and says "If you call me that again I will hit you in the mouth", and then this person who has been sitting quietly by is said to have jumped

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up and drawn a razor and rushed towards this big man, making threats, telling him he has done other people and he is going to shoot him. It is absurd. It is absurd on the face of it. It is absolutely ridiculous. It is not even shown that Big Boy, the person with whom the coon can game is alleged to have been played, was a friend of the deceased. But, so much for that. Then they say "But, all these threats." Well, you know, gentlemen, threatened people live long. That is an old adage. Do you believe if I have a grouch or you have a grouch against anybody, you are going to raise a flag and get a brass band and say "Here I am; I am going to kill; have you seen so and so, I am going to kill him; have you seen him; I am going to kill him?" That is not the way they do it. That is not the way that people, having an intent to do greivous bodily harm, go about to do it, because that would frustrate the efforts which they might have in mind. Who tells of these threats? The defendant himself. The defendant himself only, except in so far as Leonora Williams, I believe her name is, endeavors to bring in a new one that the defendant himself did not tell you about; Frazer; and two other threats, as I believe, that neither of the persons who

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said they heard them testified that they communicated them to the defendant. I speak now of Carl Harrison and Freeman. But, here we have the defendant and his threats. The defendant says that the very next day after this Friday when he went down there to the coon can game, that one Harrison came up--- this was Richard Harrison--- came up to the boarding house and he told him that the deceased then had said he was going to pawn his clothes and get out a revolver and shoot him that Saturday night, and he said Emanuel, another person described as a colored person, whose first name was Emanuel, but the rest of whose name was unknown, also came on that same day, on Saturday, and made exactly the same statement-- repeated exactly the same threat, and the defendant tells you that on the Saturday morning he went out to buy some meat, and he saw Rhett walking around with a package under his arm, clothes, and he saw him going into a pawnshop, and he said he looked at Rhett hard because of the threat, but Rhett did not do anything, he just went in and went about his business, and in the next breath--- this was Saturday morning, mind you--- on Saturday morning that he went down and saw all this-- he saw Rhett going about as he described. He says that in his

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direct examination, and later on he says "From Friday night I didn't go out of my house because I feared Rhett. I didn't go out of my house until I went away to New York to get the pistol." What do you make of that?

Those are the two threats. He said that no one except Emanuel, Morris and Richard Harrison ever reported threats to him. The first time he said that he did not remember whether anybody did or not except those three, and later on he says those were the only three who reported threats to him; that Emanuel and Harrison told him this threat on the Saturday succeeding the Friday upon which this alleged assault had been made by Rhett, and that, on the first of August, Harrison again repeated the threat, and on the second of September George Morris repeated a threat; those were the three threats that he said were reported to him and those were all. He said then that he went to New York, after he had stayed in his house from Friday for three or four days; that he went over to New York and he immediately bought a revolver just below 59th Street; and, I want to call your attention to this fact: Here is a person who says that a person with whom he was then friendly, had made this horrible assault

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upon him with a razor on a certain evening, and then that he repeated such threats to him that he feared to come out of his house. What would you do or what would you have done under such circumstances? Would you not have been afraid, if you really believed in such threats, and such an assault as that had been made, that the person would have carried it out, and wouldn't you have gone to the nearest police station or gone and made some complaint; wouldn't you have gone to your friends and conferred with them and asked them what to do? Why would you have done that? Why, because this bloodthirsty person might possibly have gotten the drop on you and you would not want to run the chance; you would not take any such chance as that if you had known or knew that a person had made an assault upon you and you had heard and believed that he had made threats afterwards. You would not have taken any such chance as that, of going and arming yourself. You would have gone to the authorities and immediately complained. You would have had the man put under bonds, or at least you would have stated the facts and said "My life is in danger, I must have a permit to carry a revolver", and under such circumstances a permit would have been granted; or, if a permit had

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not been granted, measures would have been adopted to put this dangerous little man, this little man, in a position where he would not be able to carry out any of these threats. But, so much for the threats. You will bear in mind that after having testified positively that George Morris never communicated any threats to the defendant at all except on the second or third of September, 1907, the defendant swore positively that he had never seen the witness George Morris after the second of September, George Morris comes and says, "Oh yes, I told him of the threat on the day of the shooting." Don't you believe that if that had ever happened the defendant would have recollected it? Don't you suppose that would have been indelibly impressed upon his mind, if any threat had been made then? And do you remember George Morris coming back here and telling first that it was at 67 Borden Avenue, and swearing positively that there were only two threats ever communicated by him to the defendant; that one was made by Rhett in June, and he was positive it was June, and the defendant said it was in September, the 1st; and, the defendant said the first threat that Rhett ever made was the last part of July, but this witness says June, and he says that on the day of the

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shooting it was at 67 Borden Avenue, and he is interrogated on that over and over and over again, and after recess he comes back to the stand with a change of heart, and he says oh no, it was not at Borden Avenue at all; it was not in Long Island City, it was in New York. He was asked "How do you recollect that?" And he answered, "Well, I was going over to be barbered that afternoon, and I saw the defendant between 37th and 38th Street on Eighth Avenue in New York ." Who is telling the truth about that, the defendant or Morris?

Was the defendant on Eighth Avenue between 37th and 38th Street about half past three in the afternoon of that day, and was he then lurking around to find out where Rhett and the housekeeper had gone, or was he in Long Island City, where the defendant had found out that the deceased had gone away peacefully?

MR. HANSEN: If your Honor please, I respectfully submit that the District Attorney does not state the evidence correctly. The evidence in this case is that when the defendant left his home in Long Island, he left behind him all the boarders including Rhett, and that he did not know that they had left.

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THE COURT: The gentlemen of the jury will remember what the testimony is. The Court will instruct them that they are the sole judges of it. Of course, if the Court should find that the District Attorney is misquoting any material part of it, it would be the duty of the Court to say so, but in this instance the Court deems it sufficient to say that you gentlemen will remember the testimony under discussion now.

MR. ELY: What I am arguing is the difference in the testimony between Morris, who says he saw the defendant on a certain date, at a certain place, namely, 67 Borden Avenue, on the day of the shooting, and he also says that he saw him in New York.

THE COURT: As the Court remembers it, the testimony in the forenoon was that he had seen the defendant and spoke with him at Borden Avenue in Long Island City; that he came up in the afternoon and desired to correct that testimony by stating that he saw the defendant not in Long Island City on that morning, but between 37th and 38th Street on Eighth Avenue, here in New York, at about one or between one and half-past one o'clock, on the day of the shooting.

MR. ELY: That is absolutely so. I have a right to discuss which one is correct.

THE COURT: Exactly.

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MR. ELY: And I have a right to discuss, as I am discussing, which is correct, and what the conclusion is with respect to the testimony of the defendant who says he left on the 5th of September, and did not return again. That was where I was when interrupted.

Now, gentlemen of the jury, was the communication, if it was ever made by Morris to the defendant, made in Long Island City, or was it made in New York, this alleged threat, which the defendant swears he never heard, for he says that after the 2nd of September, 1907, he never saw George Morris. If it was in New York, was the defendant lurking around the neighborhood where he subsequently shot down the deceased, and did he then go and get his pistol after finding out where the deceased was, and come down in the evening prepared to shoot him, or was the communication made by Morris to him in Long Island City two days after the defendant says he had left Long Island City not to return there again, and did the defendant then know, as he must have known, that if the communication was made to him there, that Rhett and Bridget had left Long Island City and gone away, and did he then go to his premises and get the pistol for the purpose of shooting the deceased, as he subsequently did. That is for you to take into consideration. Here is an absolute contradiction between the defendant and his witness Morris. His witness

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Morris says there were two threats made and only two threats made which he carried to the defendant, one in June and one on the day of the shooting. The defendant says no, Morris told me the 2nd of September only. Subsequently, he says he told him on the 2nd of August and the 2nd of September, and once between the 2nd of August and the 2nd of September. What are you going to make out of that? What are you going to make out of these contradictions in the defendant's own testimony? False in one, false in all, is a maxim of the law. But, we will go on a step further.

Here is Frazer, who comes and says, "yes, I heard of this threat and Freeman communicated a threat to me in the latter part of July. That was before the deceased went to live in the defendant's domicile, in the boarding house, and Frazer, as I recollect, says that he knew before about the bad blood that had been between them. Do you believe for an instant that if any of these threats had been made, and the alleged assault had been committed by the deceased, do you believe for an instant that Frazer would have allowed the deceased to come into that boarding house. Do you believe that for an instant? Of course he would not. Such a dangerous character, who would pull out a razor for no reason at all, and who had tried to assault his partner-- do you suppose he would have had him in there for a second-- a fellow who had been making

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threats, and whose threats had been communicated to him, Frazer, by another? Absurd. He would not have had him in the house for a second. But, gentlemen of the jury, just remember that the defendant himself tells you that after these threats had been made on Friday night, or this threat had been made by Rhett on Friday night, and these threats had been communicated to him on Saturday, he tells you in one breath that he went out on Saturday morning, and went around and saw Rhett, and in the next breath he **stayed** in from Friday night until the following Tuesday, when he went to New York and bought a revolver and some cartridges, and he loaded the revolver and put it in his pocket, his right hand pants pocket. Do you remember that? That right hand and pocket. He took it home, and that then he went down to the boarding house in Long Island City on Wednesday or Thursday carrying this pistol, and he said that at the time that George Morris told him of one of these threats that he had this pistol in his pocket, but he did not show it to him, nor tell him he was armed. Suppose a friend of yours came to you and said, here you better look out, by Jove, there is somebody after you, you had better look out, somebody is going to kill you-- would it not be the most natural thing for you to say to your familiar friend, "I am prepared for him, <sup>all right,</sup> do not ~~have~~ fear for me." But, he said never a word. Then I want you to bear in mind two things,

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namely, that on three occasions, according to the defendant, he chided the deceased, he found fault with the deceased. Once he said he found fault with him for using bad language, and on his direct examination he said that this deceased spoke about cock-suckers in the presence of two women, and he said, as I recollect on this first occasion, on his direct examination, that Rhett replied, "I have got it in for you anyway, I don't care, I have got it in for you any way, I am going to do you," or words to that effect, and the defendant replied, "Well, that is the second time you have said." That was on the direct examination that he made that statement. On cross-examination I asked him what Rhett said to him when he was called down, and he said not a word, he didn't say a thing, he didn't do a thing. They both parted one from the other. Do you believe, if there had been any such threat, if this man was a man of blood, who for no reason at all, jumped at the defendant with a razor and slashed at him, do you believe he would have stood a calling down? Don't you believe that if he had happened to have a revolver and cartridges, that he would have used them? But no, he answered never a word, and each one went away from the other. The defendant said that he carried his revolver all the time after he got it, and then he said he didn't carry it all the time, but only when he went out. But, Rhett was in the boarding house. If

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he wanted it for his protection, why didn't he carry it in the boarding house where he was meeting Rhett? Why didn't he have it if he thought he needed it for protection, when he went and chided Rhett for alleged bad language in the presence of women. But, no, nothing was done at all. There was not an unpleasant word spoken. There was not an overt act of any kind by Rhett, not a thing. He spoke to him again about bad language, and he said I have spoken to you about that before, and you must cut it out, or get out of here. He says this was a week before, or about a week before the deceased left the premises, or rather before the 5th of September. Rhett did not do a thing. He did not say a thing, not a thing. Then he says that he spoke to Rhett about going on bad with Frances Bridget, and nothing was done. The deceased did not do a single thing. Upon all these occasions, this person whom they would have you believe had made an assault this dead man whose mouth is closed so that he cannot rise and deny these assertions that have been made against him, this dead man whom they say had made an assault and sent these foolish threats, did absolutely nothing-- did absolutely nothing under what might be construed as provocation-- not a thing. What do you make of that? What do the threats amount to? Consider how the threats that are testified to by other witnesses are contradicted by

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this defendant. Because, if the defendant's testimony is true, Morris never communicated the threats to him that Morris says he did. If the testimony of the defendant is true, Leonora Williams never communicated the threat or the threat was never made in the presence of the defendant that Leonora Williams says was made. What are you going to do. Here are witnesses who absolutely contradicting the defendant, and the defendant is contradicting them and himself. What do you make of it?

Now, gentlemen of the jury, we will go a step further.

On the morning of the 5th of September, 1907, Frances Bridget tells you that she had a conversation with the defendant, and that the defendant then spoke again to her about the attention paid to her by Rhett, and which she denied, and that then she was going out and that the defendant, when she came back, struck her three times in the face, and she told the defendant she was going to get him arrested, and then she had a change of heart and decided she would leave. She then said she went down and spoke to Rhett, and had a conversation with him, and that shortly after she had this conversation with Rhett, she met Rhett, that is, shortly after, on the same evening, namely September 5th, 1907; that she met Rhett over at Long Island City at the foot of east 34th Street, and they got on a car and went to look for rooms. Now, gentlemen, I

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want to ask you this: If this person had been making threats against the defendant, don't you believe, that if he had any desire to do a single thing to this defendant, don't you believe that after he had the conversation with Frances Bridget on the afternoon of the 5th of September, 1907, after she says she had been beaten up by the defendant, don't you believe that he would have done it then and there in Long Island City instead of leaving the premises, leaving the boarding house, and going quietly away to a park in New York where, as far as the evidence is concerned, this defendant had no business, and where, as far as the evidence is concerned, this defendant had never been before? Gentlemen, he did withdraw, -- after having been criticized in this house, and doing absolutely nothing to the defendant, he did withdraw and go away. He left the scene where this defendant was one of the proprietors, and he went away. He went to 412 West 38th Street, and he and Frances Bridget hired a room there, and according to the testimony, he went to work at night and he came back where-- to 96 West Avenue? Oh, no, oh no. He came back to 412 West 39th Street every day after left having the premises 96 West Avenue, until the day that he was shot down.

We will now come to the defendant, and we will take the defendant's own testimony. The defendant testifies

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that he had never seen Rhett before in New York, before the 7th of September, 1907-- he had never seen him in New York; that he had no expectation of seeing him in New York on the 7th of September, 1907; that he had no expectation of seeing Frances Bridget in New York on that same evening, and yet he tells you that he was around 39th Street looking for Briscoe, first; then he says that he was not; he was going down to 37th Street looking for Briscoe, but, he tells his counsel that the reason he took his loaded revolver, which he knew then to be loaded on the night of September 7th, 1907, and put it in his right hand pants pocket, was because he feared for his life from Rhett, and that he had it there for his protection as against Rhett, a man whom, as far as his testimony goes, and it is definite on that point--

MR. HANSEN: This quotation of the District Attorney is so absolutely incorrect--

THE COURT: Do not let us have any characterization of it.

MR. HANSEN: The testimony is, your Honor, that he took his revolver to go to Long Island and had to walk several miles through the woods, and it is not that he took it for the purpose of meeting Rhett; that he was to go to Long Island.

MR. ELY: As my statement of the testimony has been criticized, I will have to read it exactly as it is on the

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record. Page 138-- this is in answer to counsel for  
the defense: "Q And did you on the 7th day of September,  
1907, carry a revolver in your pocket? A Yes. Q Tell  
the Court and jury why you carried that revolver? A I  
carried the revolver at the time I was at 219 West 51st  
Street, at home, I put it in my pocket before I left.  
Q Why did you carry a revolver? A I carried the revol-  
ver because he had threatened my life. Q Who had threa-  
tened your life? A Iziah Rhett, he had threatened my life  
and said he would kill me. Q Did you believe he meant  
what he had said? A I certainly did."

That is the explanation that he gives for carrying  
the revolver to his own counsel on the direct examina-  
tion.

THE COURT: That is my recollection of the testi-  
mony, and I hope that counsel will desist from objecting  
unless there be good grounds for it. Proceed Mr. Ely.

MR. ELY: (Continuing) That is the explanation that  
he gives for carrying this revolver, to protect himself,  
because his life had been threatened by Iziah Rhett at  
a time when, according to the testimony, he had left and  
believed Iziah Rhett was not in the County of New York,  
but was in Long Island City, and at a time when he had no  
expectation whatsoever of seeing Iziah Rhett. And gentle-  
men, I asked him, "Why did you drop the revolver," and he  
said, "Well, I did not want to use it any more." He had

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put it in his pocket, according to testimony that he gave on his direct examination, in response to his counsel's question, for the purpose, as he said, of protecting himself against a man that he did not know was in New York, and whom he had never seen in New York County, and whom he had no expectation of meeting, according to his own testimony, and when I asked him why he dropped it, he said, "Well, I did not want to use it any more." Have you not there, gentlemen of the jury, the whole case before you? Can you spell or twist or torture self-defense out of that? "Well, I did not want to use it any more." He told Officer Cavanaugh that he did not have any revolver on that night, and he told him that he did not shoot the deceased on that night. What are you going to make of it? Here is a defendant on trial for his life, who is the only witness for himself as to any of the material facts, other than the few so-called threats, and you have seen what they amount to, and you can know whether you believe that those threats were made.

MR. HANSEN: I dislike to interrupt Mr. Ely, but this is not a faithful quotation. I asked him, "Why did you carry a revolver?" - not on this night, but I asked him as a general principle, why did you carry a revolver, and he answered, I carried a revolver because he had threatened my life. I did not ask him why did you carry a revolver on this day.

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THE COURT: I will read you from page 138 of the 411 record: "Q When you went up to 39th Street on Manhattan Island, New York, did you go up there looking for Rhett-- did you go up there looking for Bridget? A I did not. Q Did you know where she was at the time? A No, sir, I did not. I left her at the boarding house in Long Island. Q Did you on the 7th day of September, 1907, carry a revolver in your pocket? A Yes. Q Tell the Court and jury why you carried that revolver? A I carried the revolver at the time I was at 219 West 61st Street, at home, I put <sup>it</sup> in my pocket before I left. Q Why did you carry a revolver? A I carried the revolver because he had threatened my life. Q Who had threatened your life? A Isaiah Rhett, he had threatened my life and said he would kill me. Q Did you believe he meant what he said? A I certainly did."

Gentlemen of the jury, there is the evidence as the Court rehears it, and as Mr. Ely has criticized it, it strikes me.

MR. HANSEN: I asked wh y did you carry a revolver on general principles.

THE COURT: Proceed, Mr Ely.

MR. ELY: All I have to say to you is that you have the record. It is for you to decide from the record what the facts are. I have read the record to you, and I say that this defendant has told you, as stated there, that he carried the revolver on the 7th day of September, 1907, because he feared for his life from a man whom he had no expectation of meeting in New York, whom he had never seen in New York County before and whom he had left somewhere else, and that the defendant also said, when I asked him why he dropped it, "Well, I did not want to use it any more."

I say, taking those facts, the testimony as given by the defendant, as I have quoted it, as far as the reason is concerned as to why he carried the revolver, and as far as the reason is concerned as to why he dropped the revolver, it points irresistibly to but one conclusion, namely, that he armed himself for the purpose of shooting Rhett on the night in question, and that he went to a place far from his own home, where he had not any business, for the purpose of carrying out that intention that he had in mind, and that it was premeditated.

Now gentlemen of the jury, how can you escape from

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that. Here is the testimony of Frances Bridget. She says she had known the defendant from 1899, and she had been seeing the defendant right along; that she saw the defendant all the time, to quote her accurately, just before she went to Dr Read's to take a position, and she did not tell the defendant where she was going although he asked her to tell him, and the defendant subsequently appeared at Dr Read's and asked her why she had not told him where she was going, and she said she did not want him to know. That is her testimony; that he then asked her if she would come down and work at the boarding house in Long Island City, that he and Frazer had opened, and she said no, she would not, because she had a good job and did not know how long that would last, and he asked her again, and she subsequently saw him the following Monday, and on Tuesday she agreed to go down, and did go down, and, on cross-examination she was asked whether or not the defendant had ever struck her before the 5th of September, 1907, and she said yes, and Mr Hansen asked her if she and the defendant had ever had any arguments about men, and she said yes; and he asked her further about that, and she said, Well, the defendant did not want her to be speaking to these men. Then she further tells you that the defendant asked her to marry him.

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Something has been said about her being a married woman. But, a woman who is separated from her husband for seven years and has not heard from him at all, there is a presumption which arises as to the death of the person who has not been heard of for seven years, or seen for seven years, and she may have presumed that her husband was dead, and she says that the defendant asked her to marry him.

There is her testimony. It is a fact that she went down and acted there as housekeeper, and it is a fact that the defendant spoke to the witness Frances Bridget on one or perhaps two occasions. She says two and the defendant admits only to one, and that the defendant did speak to Frances Bridget about Rhett. She said there was nothing in it, that she had not come down there for anything like that, and there was nothing in it. There is her testimony. Do you not from that believe that the defendant was interested in Frances Bridget; that the defendant did not want Frances to associate with anybody or anybody to speak to her except himself. Don't you believe that the defendant was jealous of Frances Bridget, and don't you see the motive that just as soon as the defendant found that Rhett had left those premises, left and gone away, and that <sup>Frances</sup> Bridget also had left and gone away, don't you believe that wrath arose in his mind, and

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that he then and there decided that he would take it out of Rhett.

MR. HANSEN: If your Honor please, I object. I must interrupt the District Attorney.

THE COURT: What testimony do you dispute?

MR. HANSEN: The statement made by the District Attorney that when the defendant found that Bridget and Rhett had left the house, then the wrath came up in him, and he went out looking for him. The testimony is that the defendant did not know that Rhett and Bridget had ever left; that he left Long Island for New York leaving everybody there.

THE COURT: The gentlemen of the jury will remember the testimony, and I have further to say that while both attorneys may draw their inferences from the testimony, and make their arguments accordingly, the jury are to remember that arguments can be made only from testimony which is in the case, and the District Attorney may make his inferences or deductions or arguments from either negative or positive statements made by any of the witnesses. Now, then, if there be a <sup>positive</sup> statement made by the defendant that he was not at a certain place when another witness swears that he was at that certain place, if there be such testimony, it is quite within the rules of

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proper argument that the District Attorney should argue why is this contradiction here, was it because, and so forth.

MR. HANSEN: There is no such testimony here. The testimony is uncontradicted that he had left Long Island with everybody there.

THE COURT: I ask you if you remember that testimony of one witness, to which Mr Ely perhaps is referring, who testified that he talked with the defendant at Borden avenue on the afternoon of the 7th day of September.

MR. HANSEN: Later on he corrected that statement.

THE COURT: Yes. It is for the jury to say which of those statements that witness made is the correct one, and it is within the province of proper argument for Mr Ely to discuss either one which he believes to be true or false, and to draw any deductions properly therefrom.

MR. ELY: (Continuing:) Don't you believe that the wrath of the defendant was kindled and that he then and there made up his mind to do just exactly what he did do subsequently? We will go a little further. We have the night of the encounter, when the defendant admits that he fired one shot, and he does not remember whether he fired more or whether he pulled the trigger more, but he fired one shot, and then he turned, and he said "I walked away, I did not run, I did not run." But, gen-

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tllemen, it appears affirmatively by the testimony of Jones and by the testimony of Frances Bridget that the deceased did not have anything in his hand at all except his hat, and the defendant himself says that he did not see any revolver in the possession of the deceased on the evening in question. Now I will ask you to trace the acts of the defendant and to say whether in your mind the acts of the defendant, after having shot this shot from which the deceased eventually died, whether the acts of the defendant as testified to, and not contradicted by the defendant, with respect to the testimony of Officer Cavanagh--whether the acts of the defendant were those which you believe would be the acts of an innocent man. The defendant says that he went away. That he did not run, and he says, "I dropped the pistol because I did not want to use it any more." He says he was taken into custody, and he does not say a word to any explanation that he vouchsafes to any officer. The officers come and say that he told them he did not do the act, and that he had not had any revolver in his possession. I have touched upon that point before. If he had done that act in self-defence, he would have proclaimed it then and there to the housetops, because if it had really been done in self-defence it would have been a perfect

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defence to this suit, a perfect defence here, and after the act had been performed he would have been so full of fear that he would have immediately--"Out of the fullness of the heart the mouth speaketh"-- he would immediately have said, if it had not been for this revolver, if it had not been for that, I should be no more. I did the deed in my own protection." Would not that be the usual--~~xxx~~--Nay, the only thing anybody conscious of right would say under those circumstances. But, the defendant, the officer says, answered never a word. As far as the situation of self-defence was concerned, he denied having done the shooting, and he denied having had a pistol.

Picture to yourself the scene as described by Charles Schirer. He says that he was there on the corner of Ninth avenue and 39th street, and he saw the defendant running ahead of a crowd and that he ran up and that he saw there was something bright in the defendant's hand, and he followed him up, and they ran through 40th street,--going up Eighth avenue from 39th to 40th--and as the defendant was running along he saw the defendant throw out his arm, and he said he saw something shiny leave the arm of the defendant, and that he ran after him and caught him and threw him down or hit him, and that the defendant fell, and he said, "Lord of mercy, let me go," or words to that effect.

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MR. HANSEN: I object to the District Attorney impeaching his own witness. 419

THE COURT: State your objection.

MR. HANSEN: My objection is this, that the District Attorney cannot impeach his own witness. He now states to the jury that this man fled, ran from the scene, and his own witness, Felina Haskins, says, "I saw the man fall and the other man walk off up the street."

THE COURT: Was there more than one who testified?

MR. HANSEN: Yes, two.

MR. ELY: I quote from the testimony of Schärer, and I further quote from the testimony of Jones, who was there and saw the defendant running away after this act.

THE COURT: Before we leave that point, it is the recollection of the Court that as far as Scherer is concerned, the man who testified that he followed the defendant and struck him, that that man did not testify that the defendant ran, but that he walked.

MR. ELY: At page 62: "Q When you followed after the defendant, pursued the defendant, what way was the defendant running, where was he running? A He was running north."

THE COURT: The Court's memory is in error. The testimony of that man is as the District Attorney states it, Mr Hansen.

MR. HANSEN: If you will read the last five lines

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on page 51.

THE COURT: Are you now speaking of the testimony which is the basis of your objection?

MR. HANSEN: No--yes, I am, in a sense.

THE COURT: I overrule the objection.

THE COURT: You cannot get up and talk about testimony which has nothing to do with your objection.

MR. HANSEN: This has to do with my objection. It is what the defendant did after the shooting, did he run or walk, and an eye-witness says that he walked up towards the street.

THE COURT: But Mr Ely is now discussing some other testimony, and the other testimony is to the effect that he was running. I do not see what reason or logic or lawful right you have to stand up and discuss, in objecting to that, a different question altogether.

MR. HANSEN: Exactly the same question .

THE COURT: But not by the same witness.

MR. HANSEN: By his own witness.

THE COURT: Not by that witness, and I trust, Mr Hansen, that you will have regard for the suggestion that the Court made a little while ago, and not object unless there is good ground. I understand what a lively interest you take in the welfare of your client, and you are absolutely justified in being vigilant and watchful to

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enter as many objections as you think the case calls for, but not to enter an objection on a ground which will not sustain it.

MR. HANSEN: Do I understand the Court's rule to be this, that the District Attorney may take his choice among his own witnesses and take the testimony that suits him?

THE COURT: Proceed, Mr Ely.

MR. ELY: We have the testimony of Scherer that this defendant was running away, as I have stated, and that as he ran through 40th street something gleaming left his hand just before he was caught. Now, was that gleaming thing the pistol, and did the defendant throw it away then for the purpose of having it lost, for the purpose of its not being found, or for the purpose of not having it in his possession if he was caught. If what so, ~~it~~ becomes of the defence of self-defence? What becomes of your defence of self-defence, when he throws away and he admits that he drops it because he did not want to use it any more--when he throws away the only thing that would enable him to substantiate a defence of self-defence, namely, that he has this revolver, that he did use this revolver, and that he used this revolver in the protection of his life, and if that had been the case he would have held it closer to himself than any

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other thing on earth; he never would have given it up, if the defence interposed here was genuine.

Have I not made out--have not the People made out the opening address of the prosecution's officer; was not this act done by this defendant at or about the domicile of the deceased? Who sought the deceased out? After the deceased had left the neighborhood of the defendant, severed, as far as the evidence is concerned, all connection with the defendant--you remember the woman, Frances Bridget, whom the defence made a witness for themselves, was asked whether or not she communicated any threat to the defendant made by the deceased, and she said, "Why, no, they were not even mad with each other," or words to that effect.

Was it after the housekeeper, Frances Bridget, had left the premises 96 West avenue, Long Island City, and was it after she had gone away and met the deceased, that the defendant formed the plan to get his revolver and shoot him, and did he lurk around in the neighborhood, as you may believe, if you believe one version of the testimony that Morris gave--did he ~~lurk~~ lurk around on the afternoon of the day of the shooting in the neighborhood where he finally committed the deed, or did he, as he said, arm himself on the night of the 7th, because he was afraid of his life from Rhett, from a man that he had

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never seen in New York and never had expected to see in New York?

It is true that the second day, when the defendant was examined again, that he said, Oh, well, I put that revolver in my pocket because I was going down on Long Island City on Sunday, and going through a dark place down to Huntington--that was the reason I put it in my pocket. But he could not explain his failure to tell or give that explanation as the reason for putting it in his pocket on the night of the 7th of September, when he was interrogated before, and, he could not say whether he intended to go back to his house 261 West 61st street, or whether he intended to go back to Long Island--he was in doubt about that. It was a traveler's tale. Having seen that he practically had admitted inadvertently that this crime was done in cold blood, he sought then to give a different explanation.

Gentlemen of the jury, it is not necessary for me to further analyze the testimony in this case. You are charged with a duty, a true verdict to bring in accordance with the evidence without fear or without favor. You have heard the testimony. You are able to weigh it. You are able to say whether or not, or to decide and determine whether or not there really existed any cause of animosity on the part of this deceased towards the defend-

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ant, arising as the defendant says, from such a trivial circumstance as occurred. You are able to consider whether or not any threats were ever made, and if they were made whether they ever amounted to anything, considering with respect to the threats, that the defendant contradicted each one of his witnesses who comes to tell about threats in this case, and you will remember that as a fact there is not a single overt act that has been testified to here, that was performed by the deceased during the whole period from the end of July up to the date of his death, not a single overt act. He did not do a single thing according to the testimony of the defendant. He did not offer to do any bodily harm to anybody. He quietly left the boarding house in Long Island City, and withdrew to a place here in New York, where he had never seen the defendant, and where the defendant had never seen him, and where, as far as either knew, the place was unknown to the other, and the defendant there was found, and the defendant shot him down on the night of the 7th of September, 1907, at a time when, as far as the testimony is concerned, the deceased did not have a single thing on his person by way of a weapon, but merely had his hat in his hand.

You will remember the testimony of the defendant immediately afterward, that he did not do the shooting; that he did not have a revolver. You will remember that

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he th~~h~~rew it away, and you will remember that he told me that he dropped it because he did not to use it any more.

In the light of all these facts--and I am talking to you about the evidence which you are bound to accept and upon which you are bound to decide this case--I ask for a verdict of murder in the first degree.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes an adjournment until to-morrow morning, February 7, 1908, at 10:30 A. M.

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New York, February 7th, 1908.

T R I A L   R E S U M E D.

THE COURT: Gentlemen, on each occasion during this trial, when you were leaving the Court or about to leave the Court for recess or an adjournment, the Court admonished you to discuss no subject connected with the case, and that you were not to talk of it amongst yourselves or with others. The great importance of this case makes such an admonition doubly necessary, and if at any time since the beginning of this trial or since you last left this Court, if anybody has talked or attempted to talk with you about this case, it would be your duty both in fairness to the State and in fairness to the defendant to say so before the case goes into your hands.

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## THE COURT'S CHARGE:

Gentlemen of the jury, the defendant Richard Moore has been indicted for the crime of murder in the first degree. The indictment charges in substance that on the 7th day of September in the year 1907, in the City and County of New York, Richard Moore wilfully and feloniously and with malice aforethought, from a pistol held by him, shot a bullet into the body of Isaiah Rhett, thereby inflicting a wound on the body of Rhett, from the effects of which, the indictment alleges, Rhett died, on the 28th of September, 1907, in the City and County of New York.

The killing of one human being by another is called in the law homicide. As the facts which relate to the act of killing may differ in separate and distinct cases, the law distinguishes between the various cases with regard to the facts which surround them, and classifies the taking of human life into four different kinds of homicide: namely murder, manslaughter, excusable homicide or justifiable homicide. The difference between the several kinds of homicide arises principally, if not solely, from the condition of the mind with regard to the commission of the act. It is important then, gentlemen, that you carry that in your memory as the Court defines for you the different kinds of homicide. First as to the definition of

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murder, which is divided by the law into two degrees, the first and the second degree of murder: the killing of a human being unless it is excusable or justifiable is murder in the first degree when committed from a deliberate and premeditated design to effect the death of the person killed. But, you will notice and be careful to remember, gentlemen, that there must be a deliberate and premeditated design to kill, to bring the act under the first degree of murder.

The killing of a human being is murder in the second degree when committed with a design to affect the death of the person killed, but without premeditation and deliberation. Observe gentlemen the difference between the elements of murder in the first degree and murder in the second degree. In the first degree there must be a deliberate and premeditated design. In the second degree there is not necessarily any premeditation or deliberation. If there be design, it is enough to bring the crime under the second degree of murder.

Homicide is justifiable in the slayer, if the slayer that is the person who takes life, commits the act in his own lawful defense, when there is reasonable ground to apprehend, that is reasonable ground to fear, a design on the part of the person killed to do some great personal injury to the slayer and there is imminent danger of such

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design being accomplished.

Now, then, Gentlemen, bearing in mind these definitions of homicide and the several degrees mentioned, namely taking the life of a human being with deliberate and premeditated design to kill--- murder in the first degree; taking such life without premeditation and deliberation but with a design to kill --- murder in the second degree; taking life without premeditation and deliberation and with <sup>out</sup> a design but in the heat of passion and by means of a dangerous weapon -- manslaughter in the first degree; and , bearing in mind the law that there are circumstances in which the taking of human life may be justified, you will proceed to determine from the evidence before you whether the defendant Richard Moore did commit this act charged against him in the indictment. You will not be called upon to determine from the evidence generally who shot and killed Isaiah Rhett, as the act of shooting and the fact of death are not disputed. On this point is the Court correct, Mr. Hansen?

MR. HANSEN: Yes sir, the court is correct.

THE COURT: (Continuing) Mr. Hansen answers that the defendant does not dispute the shooting by him of Rhett, nor the fact of Rhett's death. But, it will be your duty to determine from the evidence before you and from nothing else than the evidence before you, whether

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the defendant from a deliberate and premeditated design to effect the death of Isaiah Rhett, did commit the act which caused the death of the deceased, that is, did commit it from a deliberate and premeditated design to cause his death.

The evidence which will guide you to a conclusion on this question may be either direct evidence or circumstantial evidence. By direct proof the law means that proof which results from the evidence of a witness who testifies to facts directly, and from his own knowledge of them, that is knowledge which comes to a witness through his own senses, such as sight, hearing, touch and so forth. It may be well to state that a fact can be proved as well by circumstantial evidence as by direct evidence. In the affairs of everyday life, men reach satisfactory conclusions about the truth or the falsity of statements, or about the existence or the non existence of conditions or things, without the opportunity or the possibility to test the matter by sight or hearing. Now, reasonable men may learn whether a thing is so or not by their knowledge of the relation between other circumstances and familiar facts, when the mind in such a case leads the judgment from one fact to the other to a knowledge of the thing in question. So in courts of law where jurors are the sole judges of the facts, their everyday reason still continues

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to guide their judgment. It is not necessary that you shall have direct evidence of a fact to prove it. There are many instances where you might well prefer to apply your own judgment to a circumstance of a case than to rely upon the direct testimony of certain witnesses. When your reasoning can pass from one circumstance to another, through the logical relations between such circumstances, <sup>until</sup> your judgment reaches the question indispute, you are then dealing with circumstantial evidence; but you cannot do all in circumstances which do not apply to the case. Your judgment must be confined to the circumstances which are presented to you by the evidence for and against the defendant.

It is a <sup>rule</sup> presumption of law that a defendant in a criminal case is presumed to be innocent until the contrary appears, and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to an acquittal.

A reasonable doubt in criminal actions is the doubt of a reasonable man who for the existence of the doubt can give a good reason arising from the evidence in the case. Thus the burden is upon the prosecution to prove the defendant's guilt beyond a reasonable doubt, and unless that be done, the defendant is entitled to an acquittal at your hands, but the prosecution is not bound to prove guilt to a mathematical certainty, and if from all the evidence in the case your judgment is convinced of the guilt of the defendant to such an extent as to place it beyond a reasonable doubt, it would be your duty to convict.

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No doubt can be brought into the case from any facts outside of it. The reasonable doubt to the benefit of which the defendant is entitled must arise, if it arise at all, from all the evidence in the case which includes the evidence presented in behalf of the defendant. Such a doubt may arise from evidence of good character. This does not mean that such a doubt must arise from such evidence, but that it may. It is for you to say whether the character evidence is of such a kind as to make it reasonably doubtful that such a defendant actually committed the offense charged against him. While on this subject it is proper to remind that if you find the defendant guilty, but you have a reasonable doubt whether he be guilty of the crime in the degree charged in the indictment, you may find him guilty of any inferior degree of crime consistent with the evidence in the case. But, you must have the authority of the evidence -- not for any mere whimsical reason to reduce the degree or to reduce the crime, if one be found, from a higher to a lower degree, but there must be reason in the evidence, and you are to judge whether or not there be such reason.

As a means to aid you in reaching a proper conclusion you may examine the evidence for any motive which might prompt the defendant to commit the crime charged against him. Motive is not necessary to the proof of a

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criminal act, but if you can find a motive in the evidence, it may throw such light on the act as may be very helpful to you. For instance, what were the relations between the defendant and Isaiah Rhett? Was there any subject of discord between them? If so, was it such as was likely to create <sup>a</sup> the bitterness of feeling, rivalry and ill will between them? Did the defendant accuse Rhett of interfering in any matter which concerned the defendant? Did Rhett do anything to inflame the anger of the defendant against him? These are all proper questions for your consideration with regard to motive. But, in order to find motive, you must confine your search for it to the evidence in the case.

The indictment charges that the defendant shot and killed Isaiah Rhett wilfully, meaning intentionally, with an evil intent; feloniously, that is with intent to commit a crime, and with malice aforethought. Commonly speaking malice means ill will, but in law it means a wrongful act done intentionally without just cause or excuse, and is equal in meaning to deliberation and premeditation which carries you to the law defining murder in the first degree. Was it from a deliberate and premeditated design to effect death that the defendant shot Rhett on the night of September 7th, 1907? To deliberate means to weigh in the mind reason for or against the performance of an act,

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and when the mind determines beforehand, that is, before the act, in favor of the act or design, then premeditation has taken place, and to kill a human being after such deliberation and premeditation to take his life, is to commit the crime of murder in the first degree. If the accused balanced the thought in his mind and determined to kill, before he shot, the act was murder in the first degree. If the design to kill flashed upon him instantly, then and there for the first time, and he had not thought and determined to kill before he shot, it was murder in the second degree. If in sudden heat of passion the defendant shot and killed and there had been no thought and there had been no previous determination and there had been no design to kill, it was manslaughter in the first degree. You are not required by law to find that any particular time or length of time intervened or passed between premeditation to kill and the act of killing. It is enough to support the charge of murder in the first degree if there was premeditation and deliberation before the act. But as that, meaning premeditation and deliberation, is an operation of the mind, how are you to find proof of it? If there were no means of proving the movements of the mind, the most flagrant crimes would go unpunished, but the mind of man reveals itself in his conduct. Human experience teaches that the actions of a man often show

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more clearly than his words what is in his mind. Therefore you are to weigh his words, his actions and his conduct, and all the circumstances leading up and surrounding the main act, to find what was in his mind with regard to that act.

In relation to the question which you are to determine here, did the defendant deliberate and premeditate the killing of Isaiah Rhett, you may inquire from the testimony whether he had made any threats against Rhett; whether he provided himself with a weapon for the purpose stated by him, or for what other purpose; where did he keep the weapon? When did he carry it and where? Was the defendant jealous of Rhett? Did he entertain desires of revenge against him? When did he learn that the woman and Rhett had left Long Island City? Did he follow them to New York City. Did he lurk about the place near 39th Street on the afternoon of September 7th? Of so, for what purpose? Why did he go armed into the locality where Rhett had taken rooms with the woman, and shoot him there? These are all questions for which you may examine the testimony to determine the guilt or innocence of the defendant, but you must not confine your examination of the testimony to any particular part of it; you are to consider it all, that which stands for the defendant as well as that which stands against him. Then if after a fair ,

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careful and impartial scrutiny of it, you are satisfied beyond a reasonable doubt that the defendant with pre-meditation and deliberation to effect the death of Isaiah Rhett, shot and killed him, it will be your oath-bound duty to find him guilty of murder in the first degree.

The defendant, as you know, admits the killing by him of Isaiah Rhett, but contends that he killed Rhett in defense of himself. If you believe from the evidence that the defendant when he shot Rhett, had reasonable ground to fear that Rhett, at the time, intended to do great bodily injury to him, and there was danger that Rhett was about to do him great injury, you will find that he committed justifiable homicide, and it will be your duty to acquit him. The law of the land does not take from us the right to self protection, when our lives or our persons are in great danger. An act which would be otherwise criminal may be excused if it was done only to avoid the danger which threatened or appeared to threaten at the time of the act. Every man has a right to defend himself against an attack threatening him with death or serious bodily harm, even to the extent of taking the life of the assailant, but, the defense must be an honest one. It must be a reasonable one. It is not necessary that there should be real danger present, if the person attacked honestly believed that he was in real danger and there was reason

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to believe that he was. Which all means that it is not necessary to find that if this man had not shot the other, the other would have shot him in fact. But was the appearance of the transaction such as to indicate immediate danger, imminent danger, injury to life or body? If the defendant met Rhett and he performed any overt act which would impress the mind of the defendant reasonably and that there was imminent danger, that is all that the law requires. Was there real imminent danger is not necessary to prove, but what reason does the defendant give for taking the life of Isaiah Rhett? He swears and so do others that Rhett had threatened to take the defendant's life; that he was in great fear of Rhett on account of such threats. He swears too that Rhett had previously procured a revolver with which he declared he would kill the defendant; that on the night of September 7th he accidentally and without intention met Rhett in West 39th Street; that Rhett rushed towards him calling the defendant vile names and placing his hand in his pocket as though to draw his revolver, whereupon the defendant swears he drew his own revolver and shot Rhett. In determining the truth or falsity of his excuse for taking the life of Rhett, you will go over all the facts and circumstances in the evidence from the beginning of the defendant's relations with

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Rhett until the night of September 7th. Does the evidence show any reason for the first trouble between Rhett and the defendant? After Moore heard the threat did he by his conduct appear to be afraid of Rhett on account of such threat? Is there anything in the testimony to show that he feared him up to the time when he swore that Rhett rushed upon him in 39th Street? Are his statements about his purpose in purchasing a pistol reasonable and consistent? Did his statement about where he was going on the night of September 7th, and his reason for putting his revolver in his pocket that night appear to be true? Can you gather from the testimony where he spent the day before the shooting, and the afternoon of the day when Rhett was shot? Was he in fact honestly afraid of Rhett when he met him on the night of September 7th or did he go in search of Rhett? Was there in fact any reason on the part of the defendant to fear Rhett on that occasion, and did the defendant believe when he shot that Rhett was about to do him great bodily harm?

You may also examine the evidence to find what occurred immediately after the shooting. If he ran away from the scene of the shooting is a matter for your consideration. What he did with the revolver directly after the shooting you may also consider; did he or did he not

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deny that he shot Rhett when he was brought into Rhett's presence. These are all questions, the answers to which may shed much light upon your investigation of the testimony.

Submitting the matter to you, I desire to say again that if on the whole case, including the evidence for the defendant as well as that against him, you have a reasonable doubt whether his guilt has been proved, he is entitled to an acquittal. On the other hand if you find from the testimony that from a deliberate and premeditated design he killed Isaiah Rhett and not in defense of himself, it will be your duty to find him guilty of murder in the first degree, or any inferior degree consistent with the evidence.

MR. HANSEN: May I ask your Honor to charge the jury --- I have enumerated certain requests which I intended to ask your Honor to charge. It may be of course that your Honor has covered some of them.

THE COURT: Which requests do you refer to?

MR. HANSEN: I will read them now to your Honor.

THE COURT: You have your requests numbered?

MR. HANSEN: Yes and I intend to ask your Honor to charge them as numbered.

THE COURT: You have submitted your requests to charge in writing?

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MR. HANSEN: No. I merely gave your Honor a memorandum.

THE COURT: Proceed.

MR. HANSEN: I ask your Honor to charge the jury that an act otherwise criminal is justifiable when it is done to protect the person committing it or another whom he is bound to protect, from inevitable and irreparable personal injury, and the injury could only be prevented by the act, nothing more being done than is necessary to prevent the injury.

THE COURT: refused, except as charged.

Exception.

MR. HANSEN: Also to charge the jury that if the deceased advanced upon the defendant in a menacing or threatening manner with his right hand in his pocket, and if the defendant had previously been notified that the deceased had threatened to kill him or to do him great bodily harm, and that by reason of such threats and menacing conduct of the deceased at the time of the alleged homicide, and if the prisoner had reason to believe that under the circumstances it would have been dangerous to retreat, and that he believed he was in danger of death, or of suffering great bodily harm or irreparable injury, he was justified in firing at the deceased and of taking his life, and it would be the duty of the jury to return a verdict of not

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guilty.

THE COURT: Refused except as charged.

Exception.

MR. HANSEN: That if the jury should believe that prior to the alleged homicide the deceased had threatened to kill the defendant or to do him great bodily harm or irreparable injury, and that these threats had been communicated to the defendant prior to the commission of the alleged homicide, and if the deceased had advanced upon the defendant in a threatening manner with his hand in his pocket, and the defendant had reasonable grounds to believe in the opinion of the jury, it was not the duty of the defendant to first invoke protection against an anticipated assault from persons near the scene of the homicide, but that the defendant would have the right to repel the attack upon him and if necessary to protect himself from death or great bodily harm and if necessary to take the life of the deceased.

THE COURT: Refused except as charged. Exception.

MR. HANSEN: That if the defendant went in search of Frances Bright for the purpose of inducing her to return to his boarding house, or for any other lawful purpose, and while in search of her he casually and accidentally met the deceased, and a certain quarrel followed by a mutual encounter and the defendant killed the deceased in

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the heat of passion but without deliberation or premeditation and without malice and without an intent to kill, the defendant would not be guilty of murder in either the first or second degree?

THE COURT: I so charge.

MR. HANSEN: That if the defendant fired two shots at the deceased for the purpose of frightening him or wounding him, but not fatally, he would not be guilty of murder either in its first or second degree?

THE COURT: Refused, except as charged.

Exception.

MR. HANSEN: That if the defendant killed the deceased without a deliberate and premeditated design to effect his death, he would not be guilty of murder in the first degree and the jury must be satisfied beyond a reasonable doubt that he did kill the deceased because of a deliberate and premeditated design to effect his death.

THE COURT: Refused except as charged. Exception.

MR. HANSEN: That if the jury believe beyond a reasonable doubt that the defendant killed the deceased but without a design to effect his death and without deliberation and premeditation he would not be guilty of murder in either the first or second degree.

THE COURT: Refused except as charged. Exception.

MR. HANSEN: That the jury must be satisfied beyond

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a reasonable doubt that the defendant killed the deceased with malice, before they can convict him of murder in the first degree.

THE COURT: refused except as charged. Exception.

MR. HANSEN: That the term malice has a well defined legal meaning, and that malice is when one with a sedate and deliberate mind and formed design, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention, as lying in wait, antecedent menaces or concerted schemes to do him some bodily harm.

THE COURT: refused except as charged. Exception.

MR. HANSEN: That if the jury believe that the defendant killed the deceased without a design to effect his death, in the heat of passion or by means of a dangerous weapon he would not be guilty of murder in either the first or second degree.

THE COURT: refused except as charged. Exception.

MR. HANSEN: That the mere fact that the killing was effected by the use of a deadly weapon raised no presumption against the defendant as to the commission of any particular degree of murder or manslaughter, but that it is incumbent upon the prosecution to prove clearly and beyond a reasonable doubt what specific crime, if any, the defendant has committed.

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THE COURT: I so charge.

MR. HANSEN: That in order to constitute murder in the first degree, it is necessary that the jury should find that the execution of the guilty purpose has been settled and determined upon reflection before the crime of murder in the first degree can be committed. A full and determined purpose is rendered necessary as distinguished from a mere impulsive fatal act.

THE COURT: Refused except as charged. Exception.

MR. HANSEN: That in this case the People have offered no competent evidence of deliberation and premeditation, and therefore the defendant cannot be convicted of the crime of murder in the first degree.

THE COURT: That is for the jury to determine and it is the issue in the case. Refused.

MR. HANSEN: I except.

MR. HANSEN: That where a person is charged with the crime of murder and interposed a plea of self defense, he is not obliged to establish that if he had not committed the deed great personal injury would have been inflicted upon him by the deceased or his life would have been taken; if the appearances were of such a character as to furnish a reasonable ground for believing that danger of great personal injury be imminent he was justified in acting upon such appearances.

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THE COURT: refused except as charged. Exception.

MR. HANSEN: That the burden is upon the People to throughout the entire trial to establish the crime charged beyond a reasonable doubt, and if upon all the testimony given by the prosecution and by the defendant, a reasonable doubt is presented as to the defendant's right to believe that he was in imminent danger of great bodily harm, he is entitled to an acquittal.

THE COURT: Reasonable doubt must arise from all the evidence in the case, including that for the defendant as well as that against him.

MR. HANSEN: You refuse to charge as requested?

THE COURT: As requested I refuse. Exception.

MR. HANSEN: That in this case the defendant is entitled to the benefit of a reasonable doubt not only to the case as made by the prosecution but in the defense interposed.

THE COURT : refused except as charged. Exception.

MR. HANSEN: That communicated threats, taken with overt acts, indicating hostility, may be sufficient to impress upon the person threatened a reasonable and honest conviction that killing the threatener is immediately necessary to save himself from loss of life or grievous bodily harm and should be taken into consideration and weighed in connection with such overt acts in determining

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as to the existence of such a conviction.

THE COURT: refused except as charged. The jury are to be the judges of the situation which confronted the defendant.

MR. HANSEN: Exception.

MR. HANSEN: That a movement to draw a deadly weapon is sufficient when known ill will and previous threat to kill appear to warrant the defendant in defending himself and taking the life of his adversary.

THE COURT: refused except as charged. Exception.

MR. HANSEN: That an overt act in the nature of an assault by a violent and turbulent person, who has made threats to kill the defendant or to do him great bodily harm, may justify more prompt action on the part of a person against whom it is made, as a necessary means of self defense, than would be required if he were an ordinary person.

THE COURT: refused except as charged. Exception.

MR. HANSEN: The deliberate and premeditated design which is an essential element of murder in the first degree must precede the killing for an appreciable space of time sufficient for some reflection and consideration and the formation of a definite purpose.

THE COURT: refused except as charged. Exception.

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MR. HANSEN: A person threatened with attack or who has reasonable grounds to believe that he is about to be attacked may, in the exercise of the right of self defense, strike first.

THE COURT: Refused except as charged. Exception.

MR. HANSEN: That a man who believes himself about to be assaulted with a deadly weapon and has reasonable ground for such belief, is not required to wait until his assailant is upon equal terms with him before he can lawfully slay him.

THE COURT: I so charge.

MR. HANSEN: That the right of self defense is not impaired by mere preparation by the defendant by carrying a deadly weapon where the deceased had threatened to kill him or to do him bodily harm, and raises no presumption against him of deliberation or premeditation.

THE COURT: That is a matter for the jury to determine; whether or not the preparation which the defendant might make was a preparation to commit crime, or to defend himself against a violent act, is a matter for the jury to determine.

MR. HANSEN: That a man is not bound to retreat before killing when without fault on his part another attacks or advances towards him in a menacing or threaten-

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ing manner in a public highway or in a city street.

THE COURT: refused except as charged. Exception.

MR. HANSEN: That a man walking upon a public highway is presumed to have been there for a lawful purpose.

THE COURT: I so charge.

MR. HANSEN: The mere fact that a man has been threatened to be attacked by another does not deprive him of going to places where he has a right to go, and going to such places with such knowledge does not deprive him of the right to plead self defense where he is attacked and compelled to kill his assailant in order to save himself. And the person whose life has been threatened is not required to remain at home and abstain from transacting business or appearing in public. And the threatened person is not required to leave his home or secret himself to avoid his foe.

THE COURT: I so charge.

MR. HANSEN: That a person assaulted by another, or who is menaced or threatened with an assault by another who has threatened to kill him, is not bound to run or retreat and thus escape the assault where the danger is left still impending and perhaps increased by the act of running.

THE COURT: The jury will be the judges of the situation with regard to that, if there is any evidence in the

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testimony to support it.

MR. HANSEN: That where a person is assaulted with a firearm or threatened with assault with a firearm by a person who has threatened to kill him or do him great bodily harm, the person assaulted is justified in believing that his death is intended and may act accordingly and he will be relieved from the duty to retreat.

THE COURT: The jury will be the judge as to whether or not there was reasonable ground for fear in this case, that his life was in danger. I refuse to charge further, except as already charged. Exception.

MR. HANSEN: That a person threatened with attack may lawfully, in the exercise of the right of self defense strike first. He has the right to strike first. He has not to wait until he is attacked.

THE COURT: The right to kill includes the right to strike first. It is not necessary that he should wait until a fatal blow or any kind of blow which he believes would endanger his body, but if he be under the honest impression that he is about to suffer injury, he need not wait for the blow to be struck. You may consider the threats with regard to that, if there were any, and the Court will say further that a man is not justified in going out to shoot down another because he threatened him. He must be in the presence of imminent danger, surrounded

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by the probability of personal injury to his body. That must be honest fear; it must be a reasonable fear.

MR. HANSEN: I except to your statement.

MR. HANSEN: That a man about to be assaulted with a deadly weapon is not required to wait until his assailant is upon equal terms with him before he can lawfully slay him. I think I have already asked your Honor to charge that. And then I ask your Honor to charge the jury that if they believe that any witness has wilfully sworn falsely as to any material facts in this case, the jury is at liberty to disregard that witness or those witnesses entire testimony.

THE COURT: I so charge. It is your duty, gentlemen, to examine the testimony on both sides to find from your view of it what the truth of it is. In so doing, if you come to the examination of certain testimony which you have reason to believe was not only false, but that the person giving that testimony testified falsely, wilfully to a material point, no matter who that witness was or on what side he was, you may disregard everything that he said, not only that which you believe to be false, but everything else that he has said, or as you are the judges of the facts, you may determine how much of his testimony you will believe and how much of it you will discredit. You may believe so much of it as impresses you with truthful-

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ness, especially if it be supported by any other evidence which you believe to be true, but you are not bound by that rule to believe a word of his testimony or any part of it, if you do believe that under oath he wilfully and falsely testified to any material fact.

The case is with you, gentleman, and I want to say that if in your deliberations you desire any further instructions upon any point, you may ask for them and come back to receive them.

THE SPOKESMAN: May I ask the Court if we can have the diagram?

THE COURT: Are you willing, Mr. Hansen, that they should take the diagram?

MR. HANSEN: Yes.

THE TWELFTH JUROR: Can we take the testimony with us?

THE COURT: No, but any time that you are in doubt about the testimony you may come back into court and have it read to you. You may take any exhibit that both sides are willing you should take, but the evidence is a thing which we should have in Court.

The jury retired.

The jury rendered a verdict of Guilty of murder in the second degree.

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