

0012

START

CASE # 3229

3229

CASE

INDEX

	Direct	Cross	Redirect	Recross
Edward J. Donnelly,	2	5		
Albert T. Weston,	8	11		
Anna Barrett	13	15		
Mary Jones	17	20		
Mrs. Mary Johnston,	25	32	35	
Edward C. Johnston,	36	41	42	
Daniel E. Walsh,	43			
William J. McCahill,	45	54		
James B. Shouldice,	55	69		
Lucian B. Breckenridge,	71			
Harry Schaefer,	78	101	124	
Edward C. Burgess,	125	128		
Harry Johnston,	133			
Josephine Schaefer,	134			

CASE #3229

5
N. Y. SUPREME COURT,
TRIAL TERM, PART 1. (CRIMINAL BRANCH)

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

-against-

HARRY SCHAEFER

2253

B e f o r e:

HON. VERNON M. DAVIS, J.,
and a special jury.

-----X
Indictment for Murder in the First Degree.
Indictment filed February 11th, 1914

New York, March 17, 1914.

A P P E A R A N C E S

Deputy Asst. Dist. Atty. George N. Brothers for the
People.
Messrs. Ware and Obermeyer for the defendant.

(The Defendant appeared at the bar)

THE CLERK OF THE COURT: Harry Schaefer, if you in-
tend to challenge an individual juror you must do so when
the juror appears and before he is sworn. Do you want that
repeated, Mr. Ware, as to each one?

MR. WARE: No.

(A jury was then duly empanelled)

(The Court admonished the jurors as required by
statute and an adjournment was taken until March 18, 1914
at 10:30 A. M.)

March 18, 1914.

(Mr. Brothers opened the case for the People)

6723-3229
CASE #

(PEOPLE'S EVIDENCE)

EDWARD J. DONNELLY, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Are you a member of the police force of the City of New York? A Yes sir.

Q Attached to what precinct? A 63rd.

Q On the 11th of August 1913 in what precinct were you?

A The 26th.

Q Were you on duty as a police officer on the evening of the 12th of August? A Yes sir.

Q A Tuesday night? A Yes sir.

Q At what place were you when somebody spoke to you about 453 West 57th Street? A 57th Street and Ninth Avenue.

Q Did you go to those premises? A Yes sir.

Q In what part of the premises did you go? A In the first floor in the rear.

Q What did you find there -- a room? A A sleeping room.

Q A furnished room house? A A furnished room house, yes sir.

Q Describe to the jury what you saw upon entering the room? A I saw the body of a man laying on the bed, with his feet on the pillows toward the head of the bed and his head towards the foot of the bed.

MR. BROTHERS: Now, we offer in evidence this diagram.

CASE #3229

(Admitted and marked Exhibit 1)

Q As you entered the door where was the bed? A To my right, as I entered.

Q Right near the door? A Right near the door, yes sir.

Q Was the body you saw that of a man? A Yes sir, it was the body of a man.

Q Was he alive or dead at that time? A He was dead.

Q In what position was he? A He was lying on the left side, faced partly down.

Q Could you see the face without disturbing the ~~the~~ body?

A Yes sir, you could see it; it was laying half way; the hands were tied behind the back with a gas tube and there was a towel around the mouth which covered the mouth and nose, tied tightly behind.

Q Covered all of the nose and mouth? A Yes sir.

Q What was tied tightly behind the head? A Yes sir.

Q And is this the gas tubing which you referred to (handing)? A Yes sir, that is the tubing.

MR. BROTHERS: We offer it in evidence.

(Admitted and marked Exhibit 2)

Q (Handing) I show you a towel. Can you identify that?

A Yes sir. That is the towel that was around his mouth.

Q How do you identify it? A I observe it from the blood that is on it that that is in the condition it was in when the Coroner removed it from the body.

CASE #3229

0010

MR. BROTHERS: I offer it in evidence.

(Admitted and marked Exhibit 3)

Q Who was present at that time? A Mr. Jones.

Q Mr. Theodore Jones? A Yes sir, and Mrs. Jones.

Q Anybody else there? A There were several other people there at the time.

Q How was the body clothed at that time? A There was no collar, coat or tie on, or no shoes; there was a pants and shirt on.

Q What color was the trousers? A Check.

Q Light or dark? A Light check.

Q Did you find a coat to match, in the room? A Yes sir.

Q And any hat? A Yes sir, on the table a hat.

Q (Handing) Is this the coat? A Yes sir, that coat was on the table.

MR. BROTHERS: I offer it in evidence.

(Admitted and marked Exhibit 4)

Q You said you found a straw hat. I show you this hat and see if you can identify that (handing)? A Yes sir, that is the hat.

MR. BROTHERS: We offer it in evidence.

(Admitted and marked Exhibit 5)

Q At that time did you know the dead man? A No.

Q Did any person come there while you were in the room?

A Yes sir.

0017

CASE #3229

Q who was that? A Several detectives came in there.

Q Do you remember a Mrs. Barrett who came there? A Yes sir, about an hour afterward.

Q and she saw the body, did she? A Yes sir.

MR. WARE: We object to the constant leading of the witness.

THE COURT: He says Mrs. Barrett came there.

Q What did she do? A She identified the body as William G. Martin of Canada.

Q Did you remain there until the body was taken away? A No sir.

Q Did you afterwards see the body at any other place? A Yes sir.

Q Where? A In the Morgue.

Q Where is the Morgue? A 26th Street and East River.

Q Who was present when you saw the body in the Morgue?

A The doctor was there, I presume, and Mrs. Barrett also.

Q She was there? A Yes sir.

Q Do you know the doctor's name. Was it Dr. Weston? A I could not say.

Q Did you identify that body to that doctor? A Yes sir.

Q And was it the same body you had seen in the room the night before at 453 West 57th Street? A Yes sir.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q Were you on post when you heard that some one wanted you

CASE #3229

to go to these premises? A Yes sir.

Q Who was it that notified you? A Mr. Theodore Jones.

Q And when you got there Mrs. Jones was there, was she?

A Yes sir.

Q And I understood you to say several other people? A Yes sir.

Q Who were they? A I could not say.

Q Was any other officer there at that time? A No.

Q Did you take the names and addresses of the people that were in the room? A Yes sir, some of them -- Mr. Theodore Jones and his wife.

She

Q ~~Which~~ was the one that brought you there? A Yes sir.

Q And they lived there in the house? A Yes sir.

Q Have not you any idea who the other people were? A Well the detectives are presumed to --

Q But there were not any other detectives there when you got there? A No.

Q And there were two or three other persons in that room? A Yes sir.

Q You don't know who they were? A No sir.

Q Who brought Mrs. Barrett there, if you know? A Sergeant Wydell or Detective Ford -- I don't know which.

Q What time did she get there? A About eleven o'clock.

Q And what time was it you got there? A Ten o'clock.

Q Do you know who sent for Mrs. Barrett? A No sir.

CASE # 3229

Q You did not send for her? A No sir.

Q You were not assigned to do any work on the case at that time? A No.

Q And that is all you know about it -- what you have testified to? A That is about all.

MR. WARE: That is all.

BY THE COURT:

Q Did you see the face of the man you referred to? A Yes sir.

Q Will you tell the jury how it looked. Describe its appearance? A The towel was over the nose and mouth and it was laying on the side, and blood was oozing from the mouth.

Q Anything else? A No, nothing else.

Q Did you notice whether or not the eyes were open or shut? A I did not notice.

Q The mouth open or shut? A The towel was over the mouth and I could not see it.

Q Did you rip the towel? A The coroner afterwards removed it.

Q Were you there? A Yes sir.

Q How did the face appear then? A There was a mark around here where the towel was tied (indicating); the cheeks were pressed in in that form, and the mouth flattened out.

Q Any other appearance that you noticed? A No other appearance that I noticed.

0020

CASE # 3229

BY MR. WARE:

Q You said just now that the blood was oozing from the mouth. Is that correct? A Yes sir.

Q You don't mean to say that at the time you saw the body the blood was actually coming out of the mouth? A No sir, I don't mean that. The blood had oozed from the mouth.

Q There were stains of blood around the mouth? A On the sheet and on the towels.

Q But of course that blood was dried up, was it not? A Apparently.

Q Did not you touch it? A No sir, I did not.

MR. WARE: That is all.

BY MR. BROTHERS:

Q Did you observe the color of the face? A It was apparently yellow looking color -- darkish yellow.

MR. BROTHERS: That is all.

MR. WARE: That is all.

ALBERT T. WESTON, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your profession? A I am a physician.

Q A graduate of what institution? A The medical part of the New York University.

Q And you have been practising and duly licensed of course

CASE #3229

9
as a physician in this State, how long? A Since 1882.

Q And are you one of the physicians attached to the Coroner office? A I am.

Q How long have you been a coroner's physician? A Twenty-five years.

Q During that time have you performed many autopsies on dead bodies? A I have.

Q Testified frequently in court? A I have.

Q Did you perform an autopsy on the body of a man who was identified to you as William C. Martin? A I did.

Q Do you remember the date? Look at your original papers (handing). The autopsy was on the 13th of August 1913.

Q Who identified the body to you? A A Mrs. Barrett and a police officer.

Q Tell the jury what you did at the time you performed the autopsy and what you saw? A I examined the body externally for any mark of external violence.

Q Did you find any external marks of violence? A Nothing of the character of any wounds or bruises or contusions. There was some post-mortem discoloration.

Q Where was that? A On the face and anterior portion of the chest.

Q Did you direct your attention at that time to the throat -- the external part of the throat? A I did.

Q What did you see there? A There was some discoloration,

0022

CASE #3229

some dark.

Q Where were they located? A On the throat, on the side.

Q Were they discolorations on one side or both sides of the wind-pipe? A They were apparently continuous with the decoloration which I have described as on the chest and face.

Q Then, do you say that it was on both sides of the wind-pipe externally? A Yes sir, both sides.

Q Then, what next did you do? A I performed an autopsy and examined the organs.

Q And did you at that time form an opinion as to the cause of death? A Yes sir, I did.

Q What was the cause of death?

MR. WARE: Objected to. It should be what is his opinion.

THE COURT: Are you able to state what the cause of death was?

THE WITNESS: I am.

Q What was it? A The cause of death was asphyxia.

Q Caused in what way? A By strangulation or suffocation.

Q Did you make any inspection of the muscles of the throat?

A I did.

Q What did you find? A I found some hemorrhages into the superficial muscles of the neck and throat.

Q Are you able to say with reasonable certainty what was the producing cause of these wounds? A Yes, some external violence.

Q Would the human hand be able to produce that condition?

0023

CASE # 3229

A Yes.

Q What was the evidence on the sides of the body that you found leading you to the opinion that it died from strangulation? A Well, there was the congestion and oedema of the lung -- the congestion being marked at the anterior portion of the lung as well as posteriorly; and also the condition of the blood which was dark and fluid.

Q You say you did find evidence of violence applied externally upon the throat? A I did.

BY THE COURT:

Q Describe in minutiae if you can, from memory, just everything you found there -- inside and outside of the throat and in the muscles and outside muscles? A The appearance of the throat would indicate that the discoloration was either post-mortem or due to violence; and the examination showed hemorrhages between the muscles of the throat which in my opinion could only have been produced during life. The entire lung -- both sides were congested. The air cells contained blood and fluid, and the blood itself was dark in color and fluid. There was no disease of any of the organs, of the vital organs, which could have produced this condition.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q When did you make this autopsy? A On the 13th of August

0024
CASE # 3229

Q Was that Tuesday night? A That was Wednesday.

Q Could you tell from your autopsy and examination whether the man died from strangulation? A I could.

Q At the time you made your autopsy? A Yes sir.

Q And you state positively that he did so die? A I do.

Q You have stated that the marks on the throat might have been made post-mortem? A The idea that I intended to convey was from the external appearance they might have been post-mortem.

Q In other words; if the one who strangled had held that man's throat until after he died, the appearance would be as you describe; if the man had died from the clutch of his throat and that clutch continued until after death, the result would have been as you stated -- the appearance? A I think they would, yes sir.

Q Would the appearance and the conditions that you have stated, of the throat, would they have been caused by the towel which, as has been testified, was over the man's mouth. It was over his mouth when you saw him, was not it? A No sir, it was not.

Q Would suffocation by a towel being wrapped around a man's mouth, preventing the breathing, would such a suffocation produce the same appearance the effect as you have testified to? A Well, as far as the conditions of the lung are concerned, I think it would.

CASE # 3229

0025

Q But if a man had been strangled, as you have testified this man was, and was strangled to his death, of course the subsequent wrapping of a towel around his mouth would not affect his condition at the time you made your autopsy, would it? A I don't think it would affect the condition of the lung in any way.

Q When you state positively that the death was caused by strangulation? A Well, it was caused by asphyxia.

Q And asphyxia was the result of strangulation? A I did so testify.

MR. WARE: That is all.

MR. BROTHERS: That is all.

ANNA BARRETT, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 355 West 58th Street.

Q In the City of New York? A Yes sir.

Q And you live there with your husband? A Yes sir.

Q Is it a private house? A An apartment.

Q Did you know in his life time Mr. William G. Martin of Toronto, Canada? A Yes, twelve or fifteen years.

Q Did he occasionally visit you in your home in New York City? A Two or three times a year.

Q In what business was Mr. Martin engaged? A Millinery.

0026

CASE #3229

Q Were they business trips which he made to New York? A
Two and the other was a visit.

Q Do you remember his coming to visit you in the month of
August 1913? A On the 11th of August.

Q He arrived here on the 11th? A On the 11th.

Q Do you remember what hour it was you last saw him on that
day? A About seven o'clock.

Q In the evening? A Yes sir.

Q Had he had dinner with you? A He had dinner with us.

Q You saw him when he went out of the house? A Yes sir.

Q How was he dressed that night? A In a black and white
check suit.

Q Did this appear to be his coat (handing witness Exhibit 4)
A Yes sir.

Q And did you see him again alive? A Not alive.

Q Did he return to the house that night? A No.

Q Where next did you see him? A At 453 West 57th Street.

Q How did you happen to go there? A Well, I met some of
the detectives on the street and they took me over there.

BY THE COURT:

Q On what date did you see him at 453 West 57th Street,
you say? A On the 11th.

Q Was it the same evening he dined with you as you say?
A No, the next evening.

BY MR. BROTHERS:

0027

CASE #3229

Q What hour did you see him? A About eleven o'clock. I had inquired of the officers and I went there with the policemen.

Q Whereabouts in that building did you see that body? A In the rear room on the first floor.

Q And did you recognize him? A Yes sir.

Q As Mr. Martin? A Yes sir.

Q Did you see his body again? A At the Morgue.

Q Where you saw Dr. Weston the physician? A Yes sir.

Q And you told him who this dead man was? A Yes sir.

Q Do you recognize this as Mr. Martin's hat. I show you Exhibit 5. (handing) A Yes sir. I was with him when he bought it.

Q When Mr. Martin left your house did you observe whether he was wearing any jewelry? A Two diamond rings, his watch, watch-fob, cuff-links with his initials on.

Q Do you know whether or not he had any money in his clothes when he went out? A He had some money but I don't know how much.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q How did you know he had any money on his person? A I was with him at five o'clock and he was going over to get his ticket to go home with, and he says "I must get my ticket quick or I will spend all my money". And he took out his

0028

CASE #3229

money then to do some shopping.

Q How long had he been in New York? A Just that day, Monday, and he was going back the next day -- the day we found the body.

Q Was he a married man? A No.

Q You had known him twelve or fifteen years? A Yes sir, that time.

Q Did he have any family? A He had a father and two brothers.

Q Do you know them? A I do, well.

Q How old was Mr. Martin, should you say? A I should imagine 68 or 70 -- his father.

Q No, Mr. Martin himself? A He was about 36 I should say.

Q Whenever he came to New York was he in the habit of stopping at your house? A Always -- never any where else.

Q He was a friend of yours? A Yes sir.

Q Did you ever know him to go back the same day or the following day? A Yes sir.

Q Do you know whether he was here on a business trip or not? A He was on a business trip.

Q Are you in business? A I am in the millinery business, not for myself.

Q Had you done business for him? A I used to work for him for five years.

MR. WARE: That is all.

MR. BROTHERS: That is all.

CASE # 3229

MARY JONES, called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 453 West 57th Street.

Q Did you live there during the entire month of August last year? A Yes sir.

Q You are married? A Yes sir.

Q What is your husband's name? A Theodore Jones.

Q Did you have charge of that house? A Yes sir.

Q A furnished room house, is it? A Yes sir.

Q Early in the month of August do you remember who occupied the sleeping room on the ground floor of that building? A Well, in the year where this affair happened the Johnstons occupied it.

Q A party named Johnston? A Yes sir.

BY THE COURT:

Q Who occupied that room? A Mr. and Mrs. Johnston.

Q What was their full name? A I don't know. I only knew them as Mr. and Mrs. Johnston.

Q Do you remember the date on which they came to that room?

A I don't remember the date they come, but I remember that it was just one week from the time they come until I went to see if they were gone. When their time was up I went to see if they were gone, when I discovered the man being dead. It was just one week from the day they come that I discovered the

CASE #3229

man was dead.

Q Did anybody else occupy that room with the Johnstons, so far as you know? A No, nobody else.

Q You say you went in that room and discovered a man was dead there? A Yes sir.

Q About what day of the week was that? A Tuesday night.

Q The 11th or 12th of August? A The 11th I think. I only know it was on a Tuesday night.

Q What time did you go in? A About nine o'clock -- it might be nine or a little after nine o'clock.

Q Was any one with you when you went into the room? A My sister come to the door with me.

Q Was the door locked or unlocked? A Unlocked.

Q When you went in what did you see? A I saw the cuspidor full of garbage and stuff and I thought that is what made the odor in the room.

MR. WARE: I move to strike that last out.

MR. BROTHERS: consented to.

THE COURT: strike it out.

Q Don't tell us what you thought or what you said, but tell the jury just what you saw when you went into the room? A I went into the room and I first saw a cuspidor and I thought the people had gone, and I brought my sister in and I says "The odor is awful". And then she comes and she says "They are not gone; there is a man in the room". And I says --

CASE #3229

THE COURT: strike out the answer; and the jury are directed to disregard it. Witness, we don't care to hear any of the conversation between you and your sister. Your sister went in there with you?

THE WITNESS: No, she stood at the door.

BY THE COURT:

Q And you went in? A I lit a match and went around the room.

Q And after you lit the match did you light the gas? A No, I did not light the gas.

Q What you saw was only by the light of the match? A Yes sir. I saw a man by the light of the match.

Q Tell us what you saw? A I lit a match and I saw a man lying on the bed, his feet were on the pillows. I supposed the man was intoxicated.

THE COURT: We don't care about your supposition. State what you saw?

BY MR. BROTHERS:

Q When you saw a man on the bed with his feet on the pillow did you stay in the room or go out? A I immediately went out.

Q And did you later go back in the room? A I went back later with my husband.

Q How much later? A About five minutes.

Q Was the gas lighted at that time? A No. He lit it.

Q Did you again look at the man lying on the bed? A Yes sir.

6728-3229
CASE #

Q Describe his appearance? A He had a towel over his face and a gas hose wound round him.

Q What part of his body did he have the hose on? A I think it was on his hands; I don't know, I run out.

Q Did you know from where that gas hose came? A From off the gas jet attached to the stove.

Q Does this appear to be it (handing witness Exhibit 2)?
A Yes sir, that was like it.

Q The same color? A I don't remember the color, but it looks like the hose.

Q Was the man on the bed dressed or undressed? A He was dressed. He had no coat or vest on.

Q Did you touch the body at all? A No sir.

Q Did he appear alive or dead at that time? A He was dead.

Q Did you know that man? A No, I did not know him. I never had seen him before.

Q Did you find any of the property of the Johnstons in the room at that time? A No, nothing.

Q Were you there when the police arrived? A Yes sir.

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

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q You knew the people who had occupied that room -- the

CASE # 3229

Johnstons? A Yes sir, I knew them.

Q Had you ever known them before they hired that room? A No, I did not remember them, although they told me they called at my house to see people in my other house, they remembered me; but I did not remember them before.

Q They came on a Wednesday? A They came on a Tuesday.

Q And therefore their week was up on the following Tuesday?

A Yes sir.

Q The door was unlocked you say when you opened it? A The door was unlocked. I knocked on the door and when I got no response I opened the door.

Q Of course you have a passekey that opens all the rooms?

A Yes I have; but I did not need it as the door was open.

Q Did the Johnstons have any of their own property there. When they moved in did they bring any property with them? A I believe they had some baggage -- they had a small baggage.

Q They did? A Yes sir.

Q And at the time that you found the body was any of that baggage there? A No, it had gone.

Q Nothing there at all? A Nothing at all.

Q Don't you remember whether the tubing was around the feet or the hands? A Around the hands.

Q Sure of that now? A Yes sir.

Q You were not sure of it when the District Attorney asked you -- you said you thought it was around the hands? A Well,

CASE # 3229

I am not very sure where it was because I was rather frightened. I know it was around him somewhere -- around his body.

Q Around his body? A Around his hands like that (indicating); his hands were twisted like that (indicating).

Q Did you make any inquiries about these Johnstons before you rented them the room -- any references? A Nothing more than they came from Harlem and they had visited in my other room house with people who were at my other house.

Q You did not make any investigation about them? A No, nothing more than they were both on the stage as ballet dancers.

Q But you made no effort to find out whether what they told you was true or not? A No.

Q Did you have any occasion to tell them to leave? A Well, I did on one occasion, yes.

Q What was that about? A well, that was a man coming in at two O'clock at night knocking at the door when every one was asleep, and he had a suit of clothes on his arm, and he knocked on the door and waked up the people in the house, and the next day I told them I wanted the room. They said that I might think they were rough people but they were not, that it would never happen again.

Q That was the only occasion you had to find fault with them? A Yes sir.

Q Did they have any other visitors? A No, but this man.

0035
CASE #3229

Q Did you ever see this defendant around? A No, I would not say that that was the man or not. I asked him what he wanted and he said he wanted the Johnstons. And he took his time to leave. It was dark --

Q Did you have a light in your hall? A Yes sir, I had a light in the hall; but I was not interested; I was interested in getting him out -- that was all.

Q Do you know whether anybody slept in that room or not except Mr. and Mrs. Johnston? A I could not say that. I know a young man came with them when they took the room, as Mrs. Johnston's brother-in-law.

Q Was it that man (indicating defendant)? A It was not that man. It was a little dark man.

Q Do you mean to say that you ever saw this man (indicating defendant) in the house that night? A I could not recognize him to say.

Q And the man you saw at two o'clock in the morning, you did not see him well enough in the dark to say that you ever saw him again? A No, I could not recognize him.

BY THE COURT:

Q You spoke of some man coming in at two o'clock in the morning, making a noise at Johnston's door? A Yes.

Q Did you also state that you told the Johnstons that you wanted their room on account of that noise? A Yes sir.

Q What day was that that you told it to them? A On a

CASE # 3229

Thursday -- two days after they took the room.

Q Well, did they afterwards give up the room? A They left on a Monday I believe.

MR. OBERMEYER: I think this is immaterial, your Honor.

THE COURT: You brought it out on the direct examination.

MR. OBERMEYER: I do not seriously object your Honor, but I remarked that it is immaterial.

Q When was it that you told the Johnstons that you wanted the room? A On a Thursday. They took it on a Tuesday, and it was about Friday morning at eleven o'clock when I was in their room; and Mrs. Johnston said --

Q Don't mind that. When was it you told them you wanted the room? A On the Friday morning at eleven o'clock.

Q Do you know when they left? A No, I don't. The last I see them leaving -- I see them on Monday afternoon -- not after.

Q When after that Monday did you first go into their room?

A On Tuesday night at nine o'clock or a little after.

Q Who hired this room off you? A Mr. and Mrs. Johnston.

Q Did they pay you the rent? A Yes.

Q In advance? A Yes sir. They owed me one dollar and they gave me that the day after.

Q How much did they pay you when they came in? A Four dollars they paid the day they came in and the other dollar the day after -- five dollars was the price of that room.

0037

CASE # 3229

BY MR. BROTHERS:

Q Was that per week? A For one week.

BY MR. WARE:

Q Who lived in the front room on that floor? A I lived in the front room. I occupied that myself.

Q So you have a good opportunity of seeing who goes in and out? A yes, I have.

Q And your door is open a good deal, the hall door? A I am upstairs in the parlor it is; but I am usually downstairs in the kitchen.

Q And yet you don't remember ever having seen this man (indicating defendant)? A No, I don't remember seeing him.

MR. WARE: That is all.

MR. BROTHERS: That is all.

MRS. MARY JOHNSTON, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q How old are you? A 18 years.

Q Are you married? A Yes sir.

Q Your husband's name is what? A Edward.

Q Were are you and your husband living at this time? A 836 Eighth Avenue.

Q Do you know this defendant Harry Schafer? A yes sir.

Q Do you know how long it is that you have known him? A About four years.

CASE #3229

Q Do you know him well? A Yes sir.

Q Do you remember living at 453 West 57th Street? A Yes sir.

Q When was that? A August 11th we lived there?

Q That is in the City and County of New York -- 453 West 57th Street? A Yes sir.

Q Do you remember when it was you went there to live? A No, I don't know the date; I don't remember the date.

Q Do you remember what date it was you left? A Monday.

Q You have not the day or month in mind at all? A August 11th.

Q What was the day you left? A Yes sir.

Q Do you remember what day of the week you moved in? A On Tuesday.

Q Was that the week before? A We were just there one week, yes.

Q Who lived there in that room -- you and your husband?

A Yes sir, and Mike Serago.

Q And who is Mike Serago? A He was an Italian fellow.

Q About how old is he? A About 23.

Q How old is Serago? A I don't know how old he is.

Q Well, apparently? A About 23.

Q How long had he stayed in these rooms in 57th Street with you? A He stayed there about a week.

Q He came there with you, did he? A Yes sir.

CASE # 3229

Q When was it that Schafer came there, if at all? A

Schafer used to come to see us.

Q Did he sleep there at any time -- Schafer? A No sir.

Q Schafer did not sleep there? A No.

Q But Serago did? A Yes sir.

Q Do you remember on the day that you left the rooms --
that was Monday the 11th? A Yes sir.

Q Where did you go? A I went down to my mother's in the
afternoon.

Q Where is your mother's place? A 445 West 49th Street.

Q Was your husband working at that time? A No sir.

Q During that afternoon did you see Serago in your room?

A Yes sir.

Q Did you see Schafer there? A Schafer came in as we
were going out.

Q You went out at one time in the afternoon. Tell us what
time it was? A That was about two o'clock.

Q Who went with you? A My mother came in the morning --

Q When you and your husband went out about two o'clock
where did you go? A Down to my mother's.

Q Did you return to your rooms in 57th Street? A Yes sir.

Q About what hour? A About four.

CASE #3229

1.

Q And when you returned to the rooms about four o'clock²⁸ was there anybody in the room? A Yes, sir.

Q Who? A Mike Serago.

Q What was he doing? A He was eating something.

Q Was Schafer there at that time? A No, sir.

Q Did he come later? A Yes, sir.

Q Do you know about what time it was he came in? A It was near five o'clock.

Q Did he know Serago? A Yes, sir.

Q (Handing) I show you People's Exhibit 1, a diagram of that room, and ask you whether you had any closets in that room?

A Yes, sir; there was a closet where the sink was.

Q And was there another closet to hang clothes in? A No, I don't think there was.

Q But you remember one closet where there a sink to wash?

A There was another closet to hang clothes in over towards the window.

Q And was there any gas stove in the room? A Yes, sir.

Q How did you get the gas to the stove? A The gas stove was in the middle of the room on the table.

Q How did you connect it with the gas? A On top, a gas jet.

Q It was not permanent plumbing then? A No.

Q You had atubing like that. I show you Exhibit 2. (Handing) A Yes, sir.

CASE #3229

Q And was that in the room that afternoon? A Yes, sir.
defendant

Q Do you remember when the/Schafer came in about five
o'clock whether he had any conversation with Serago? A Yes.

Q Will you tell the jury what you remember Schafer said to
Serago at that time? A He said he had a date with a man at
seven o'clock that evening, and he was a wealthy man because
he had diamonds on, he was from out of town.

Q What else did he say? Did he say where he had met the
man? A Yes, sir, at Columbus Circle.

Q Did he use any expression when he said he had a date with
a man? Did he say a man or did he say something else? A/ a
With
fairy.

Q Did Mike make any response to what Schafer said? A Mike
said he had a date at ten o'clock.

Q What else did Mike say-- anything else? A That is all
I can remember.

Q At that time you were packing up to leave, were you?
A Yes, sir.

Q Have you told us all you now remember was said by Serago
and Schafer at that time? A Yes, sir.

BY THE COURT:

Q Now, suppose you try again and tell us all you recollect
Schafer said -- everything. You say you remember his coming
in? A Yes, sir.

Q Now, give us your best recollection again of everything

0042

CASE #3229

and everything that Mike said. Speakloud so that the defendant's counsel can hear you. A He said he had a date with a man at seven o'clock and that he was an out of town fellow, you could easily see that or he would not wear diamonds around Columbus Circle.

Q State that again? A He said he had a date with a man at seven o'clock, you could easily see he was an out of town fellow or he would not wear diamonds around Columbus Circle.

Q What else, as near as you can remember? A That is all I can remember.

Q What do you remember that Mike said? A Mike said he had a date at ten o'clock.

Q Anything else? A No.

BY MR. BROTHERS:

Q Do you recall whether Mike said anything about--

MR. WARE: I object to this as leading.

THE COURT: She said it was all she recollected. He may lead in a slight manner.

Q Do you recollect whether Serago said anything about his joining Schafer that evening?

MR. WARE: Objected to as leading.

THE COURT: Objection overruled.

MR. WARE; Exception.

A Yes, sir, he said he would go with Schafer but he had a date at ten o'clock.

CASE #3229

Q Do you recall whether anything was said by either Schafer or Serago as to where they were to meet this man?

A No, sir.

Q You don't recall that? A No.

Q Outside of that conversation Schafer and Serago had about meeting this man who had the diamonds, was there any talk which you had with either Schafer or with Serago in the presence or hearing of Schafer, about the room? A Well, my husband told Serago that there was another day coming and we would not--

MR. OBERMEYER: Objected to. Does it appear that Schafer was present then?

THE COURT: That is the question asked.

Q When your husband said something about the room to Serago, was Schafer there? A No, I don't think he was.

Q When was that conversation? A That was when we came home from my mother's.

Q And that was before Schafer came in? A That was before Schafer came in, yes, sir.

Q When you went out that night it was at what hour? A It was about five o'clock.

Q Did you leave anyone in the room when you left? A Yes, sir; we left Harry and Serago.

Q Left them there? A Yes, sir.

Q What, if anything, did you do with the key of the room?

A We did not hand it to anybody but we left it there.

CASE # 3229

0044

Q Did you take away what baggage you had? A Yes, sir.

Q And where did you go? A Went down to my mother's.

Q Did you ever return to that room at 453 West 57th street?

A No.

Q Did you know the man Martin? A No, sir.

MR. BROTHERS: That is all.

BY THE COURT:

Q Did you ever see him? A No.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q What day of the week was it that you hired this room?

A On a Tuesday.

Q So that your week would be up the following Tuesday?

A Yes, sir.

Q Had ever you occupied ever any other room with this same landlady? A No.

Q Did you tell her so when you took that room? A Yes, sir.

Q Then you told her what was not true of course? A I never occupied the room with the same landlady.

Q No, I asked you did you tell her when you hired the room that you had occupied a room in her house before that time?

A No, sir.

Q Did you give her any references or did she ask you for any? A No, she did not.

Q Serago slept there every night? A Yes, sir.

CASE #3229

Q How long had Serago been living with you and Mr. Johnson? A Just that week.

Q Not before that? A No, sir.

Q But you had known him a long time, had not you? A Yes.

Q How long had you known him about? A I only know him personally about three months before then.

Q Serago? A Yes, sir.

Q You testified that Schafer never slept there? A No.

Q And that when Serago had a conversation with you about the room and your husband said that he could have the room for the following day, Schafer was not there, was he? A No, he was not there.

Q And nothing was said about that when Schafer was there either, was there? A No.

Q So that Schafer knew nothing about your going to leave?

A Oh, yes; he knew we were going to leave.

Q What did he know about it? A Oh, he seen us getting our things packed.

Q You did not tell him you were going to leave? A Oh, yes, my husband told Harry that I was going home and that he was going home to his mother.

Q Harry Schafer said that he had a date with aman there a seven o'clock? A Yes, sir.

Q And that is all that was said about that, was it? A Yes, sir.

CASE #3229

7.

Q How many times have you been convicted? A Have I been convicted?

Q Have not you ever been convicted? A Yes, once.

Q Only once? A Yes, sir.

Q What did that crime consist of? A That was before I was married. I ran away with my husband and he was held for rape.

Q Is that the only conviction? A Yes, sir.

Q You went to the House of the Good Shepard? A No, sir, the House of Mercy.

Q You were not convicted of a crime, were you, yourself?

A No, sir.

Q But only in conjunction with your husband? A Yes, sir.

Q I mean you were not punished-- at least you were sent to the House of Mercy on account of your husband's conviction of rape? A Yes, sir.

MR. BROTHERS: We object to this.

THE COURT: I sustain the reason for sending her because her husband was convicted--

THE WITNESS: He was not convicted.

BY THE COURT:

Q I suppose you were how old then? A Fifteen.

Q Under the age of sixteen. And the charge of rape was made against your husband? A Yes, sir.

Q Did he marry you? A Yes, sir, but it was not on ac-

0047

CASE # 3229

8
count of the case he married me.

MR. WARE: I only want to know and I will ask the question finally.

BY MR. WARE:

Q Have you ever been convicted of any crime? A No, sir.

MR. WARE: That is all.

REDIRECT EXAMINATION BY MR. BROTHERS:

Q When you were fifteen you ran away with your husband?

A Yes, sir.

Q And you were caught and were sent to the House of Mercy?

A Yes, sir.

Q And you were kept there how long? A About two months.

Q There was a charge made against your husband? A Yes, sir.

Q But he was not convicted of anything? A No, sir.

Q Later he married you where? A In Long Island, Newtown.

Q And were members of your family present at that time?

A Yes, sir.

Q And it was not because of any previous misconduct he married you? A No.

Q You have been living with him steadily ever since, have you? A Yes, sir.

Q You have never been arrested in your life, have you?

A No, sir.

MR. BROTHERS: That is all.

MR. WARE: That is all.

0048
CASE # 3229

EDWARD C. JOHNSTON, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

- Q Where do you live? A 838 8th avenue.
- Q And was the last witness your wife? A Yes, sir.
- Q When were you married? A August 8th three years ago.
- Q Do you remember the early part of August of last year living in a room at 453 West 57th street in the City and County of New York? A Yes, sir.
- Q Do you remember what day of the month it was you went there? A It was August 6th.
- Q Do you remember the day of the week? A No, sir.
- Q Do you remember leaving that room and going to your mother's? A Yes, sir.
- Q What day was that? A That was on the evening of August 11th.
- Q What day of the week was that? A Monday.
- Q Do you know the defendant, Harry Schafer? A Yes, sir.
- Q How long have you known him? A About three years.
- Q You also know a man by the name of Michael Serago?
- A Yes, sir.
- Q How long have you known Serago? A From about a month before that time.
- Q Was Serago stopping in your room in 57th street? A Yes.
- Q What was the occasion of his being there? A He had

6700
CASE #3229

no place to go and we gave him a place to sleep in.

Q At that time were you employed anywhere? A No.

Q When were you last employed before that time? A New York & Queens Railway Company.

Q In what position? A Conductor.

Q Had you met with an accident? A Yes, sir.

Q Did the accident have anything to do with your not working at that time? A It did, yes, sir.

Q You were injured? A Yes, sir; I was injured across the stomach.

Q Do you remember seeing Serago on the afternoon of Monday August 11th, the day you left the room? A Yes, sir.

Q Do you remember whether you saw Gochafer that afternoon?

A Yes, sir.

Q What had you done that afternoon-- do you remember what you and your wife did that afternoon?

MR. OBERMEYER: Object to as immaterial and irrelevant.

THE COURT: Objection overruled.

MR. OBERMEYER: Exception.

A I went to my wife's mother's house at two o'clock.

Q Did she go with you? A My wife went with me, yes, sir.

Q Do you remember whether you went back to the room in 57th street? A I went back at about four o'clock.

Q She went back with you? A Yes, sir.

Q Who, if anybody, was in your room when you returned? A The

0050
CASE #3229

Italian fellow was there.

Q Serago was there? A Yes, sir.

Q What was he doing? A Well, he was cooking macaroni when I came in.

Q About what time did you see Schafer? A About five minutes after I had gone in.

Q Did he come in? A Knocked at the door, yes, sir.

Q And had you had any talk with Schafer up to that time about Serago's sleeping in your room? A Did I had any talk with Schafer? No, sir.

Q Did you hear anything that Schafer said that afternoon after you had gotten back, after four o'clock? A He came in laughing and he said he met a fellow coming out of a restaurant.

Q speak loud. A Harry met a fellow coming out of a restaurant and he told me that he was going to meet him at seven o'clock.

Q Yes. What else? A And he asked the Italian fellow did not he want to meet him with him.

Q What else did Schafer say? A well, that is all Schafer says-- he says that the fellow seemed to be well-to-do and he thought he was a fairy.

Q what else? Tell us everything that Schafer said. A That is about all that I remember.

Q Is that all that you remember Schafer said at that time?

CASE # 3229

A Yes, sir.

Q You cannot remember anything else? Now, tell us what you remember Serago saying? A Well, he did not like the idea of going to meet this fellow.

Q No. Tell us what he said. A That the Italian fellow said?

Q Yes. A Well, he did not like the idea--

Q Use his language-- his words.

MR. OBERMEYER: We object to this last part.

THE COURT: Strike out the last answer.

Q Tell us what Serago said to Schafer at that time? A "I cannot go with you because I have to meet a man, somebody at ten o'clock."-- I don't know who it is.

Q Did Schafer make any answer to that? A Schafer said that they could meet him and be back by ten o'clock.

Q Did Serago reply to that statement? A Well, he made up his mind he would go.

MR. OBERMEYER: I move to strike out the answer.

THE COURT: Motion granted.

Q Tell us what he said? A What Serago said?

Q Yes. A He said if he can go and get anything out of him and be back by ten o'clock he would go, he said.

Q That he would go? A Yes, sir.

Q Do you remember anything else that Serago said? A That is all he said, only when I was going out of the door he ask-

622873229
CASE #

0052

ed me to sneak out and not let the landlady see us because she wanted to sleep there.

Q Who said that? A The Italian fellow.

Q Was Schafer there at that time? A Harry was washing his shirt.

Q Your rent was paid for several days before? A One day more.

Q Did you take all of your baggage out with you? A At five thirty I took out all the baggage.

Q Did you sneak out? A I went out so that the land lady could not see me, yes, sir.

Q What did you do with the key? A I left it on the table and told the Italian fellow to take it.

Q Now, in reference to what Schafer said about meeting this man, do you recall whether anything was said by Schafer about this out of town man having the appearance of prosperity?

A Well, he said he could easily tell-- no, the Italian fellow says, "How do you know that he came from out of town?" And Harry says, "You could easily tell because he would not be around Columbus Circle dressed wearing diamonds if he was a wise guy living here in New York."

Q Did you ever return to that room after that day? A No, sir.

Q Did you ever have any further communication with Schafer after that day? A No.

0053

CASE # 3229

Q Or with Serago? A No, sir.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q Was your wife present at any of these conversations?

A She was present all the time.

Q And, of course, the conversation was held in the room--
in your back room there? A Yes, sir.

Q And you and Serago and Schafer and your wife were there
in that one room? A Yes, sir.

Q So that your wife had the same opportunity to hear that
you did? A Yes, sir.

Q Do you remember having any conversation with the landlady
in regard to anybody calling on you at an early hour in the
morning? A About anybody calling on me?

Q Yes, or about any complaint? A Well, Harry came in there
one morning. Is that what you have reference to?

Q Did Harry ever sleep there? A No, sir.

Q Serago slept there every night, did not he? A Yes, sir.

Q Did the landlady object to some man coming there with his
suit of clothes over his arm and making a noise? A Yes, sir.

Q She did? A Yes, sir.

Q Were you ever convicted of any crime? A No, sir; never
convicted. I was arrested but I never was convicted of any
crime.

Q Were not you convicted of disorderly conduct and fined?

CASE # 3229

A No, sir, never.

Q Never convicted? A No and never fined.

Q And never sent to the Island? A No, sir.

MR. WARE: That is all.

REDIRECT EXAMINATION BY MR. BROTHERS:

Q You said the landlady complained about a man who came there early in the morning with a suit of clothes on his arm? A Yes.

Q Was that Harry Schafer? A Yes, sir.

Q Do you mean the defendant? A Yes, sir.

MR. BROTHERS: That is all.

MR. WARE: That is all.

(The Court duly admonished the jury and an adjournment was then taken until ten thirty a. m. tomorrow.)

CASE #3229

Thursday, March 19, 1914.

The Court met pursuant to adjournment.

The People vs. Harry Schafer, (Continued).

DANIEL WALSH, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Walsh, what do you work at? A Laboring.

Q And in August of last year did you live at 453 West 57th street in this City? A Yes, sir.

Q Are you related to Mrs. Jones? A Yes, sir.

Q Who runs the furnished room house? A Yes, sir.

Q Do you recall the night that the dead man's body was found in the ground floor back room? A Yes, sir.

Q The night before the body was found were you in the hall, between seven and eight o'clock, of that building on the ground floor? A I believe I was.

Q You remember the night that the body was found? A Yes, sir.

Q Do you remember the night before the body was found being in the hall of that building between seven and eight o'clock in the evening? A I went up to light the gas. The hall was dark.

Q Did you see anybody at that time going into that room on the ground floor at the back? A I met two men.

CASE #3229

Q Where did they go? A Went to the back parlor.

Q Do you know who lived in those rooms, the names of the people? A I knew there was a tenant there.

Q You are speaking now of the ground floor of the building?

A The back parlor.

THE COURT: On the ground floor.

THE WITNESS: The main floor, off the street-- what would you call that?

THE COURT: He does not know what to call it-- the main floor, off the street.

Q Do you know where your sister, Mrs. Jones, lives at?

A The lower part, the basement part.

Q Where is the parlor that she occupies? A Over that.

Q And was it on the same floor that the parlor was?

A Yes, sir.

Q In what part of the building did you live? A In the basement.

Q Did you know either one of these men whom you saw going into the back room? A No.

Q Had you ever seen either of them before? A I don't know.

MR. BROTHERS: That is all.

MR. OBERMEYER: No cross examination.

0057

CASE #3229

WILLIAM J. MCCAHILL, a witness called
in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your occupation? A Patrolman.

Q Have you any other duties than patrolman? A I am a
stenographer down in the detective division.

Q I want you to talk just as loud as you can. You are the
stenographer at the detective bureau? A Yes, sir.

Q At what place is that? A Police Headquarters.

Q How long have you been acting as the stenographer at
Police Headquarters? A Since January 9th, this year.

Q How long have you been a stenographer? A About six or
seven years.

Q Do you remember that you took, as a stenographer, a
statement from the defendant, Harry Schafer? A Yes, sir.

Q Do you remember the date? A Not the exact date. Around
the 21st or 22nd of January.

Q This year? A Yes, sir.

Q Where was the statement taken? A In Commissioner
Dougherty's room.

Q That is in Police Headquarters, City of New York?

A Yes, sir.

Q 240 Center street? A Yes, sir.

Q Who was present at that time? A Acting Captain Kerr,

0059

CASE #3229

Acting Captain Deevey, Commissioner Dougherty, myself and the defendant.

Q Anybody else? A And the defendant's father.
you

Q Have you with the original notes which you took at that time of the defendant's statement to Commissioner Dougherty?

A Yes, sir.

Q Did you take down all that the defendant said at that time? A Yes, sir.

Q Correctly? A Yes, sir.

Q Now, with the Court's permission, I will ask you to read from your original notes what the defendant said at that time.

MR. OBERMEYER: I object to this as incompetent, irrelevant and immaterial; on the ground that the same was obtained by covert threats, doubtful and uncertain promises, acts of intimidation and other questionable means by officers charged with the enforcement of the law, and therefore cannot be regarded as ⁱⁿvoluntary and made without compulsion.

THE COURT: You may cross examine him to prove the allegations of your objection.

BY MR. OBERMEYER:

Q Who was present, you say, at the time of this so-called statement? A Acting Captain Kerr, Acting Captain Deevey, Commissioner Dougherty, myself, the defendant over there (indicating) and his father.

Q Was Officer or Detective Fitzpatrick present at that

0059

CASE #3229

time, do you know? A I don't know the gentleman.

Q Was Officer or Detective Burgess present at that time?

A I don't know him.

Q Do you know Mr. Burgess? A No.

Q Did you ever hear that he was a Ward man attached to the 47th station or precinct? A Yes, sir.

Q Did you know that Fitzpatrick was a Ward man attached to that precinct? A No.

Q Were you present when this defendant was brought into the headquarters' room? A No.

Q You don't know who brought him in? A No.

Q Were you present during the entire conversation that took place on that occasion at that time? A Not previous to the time before I went up to the room.

Q So that you were not there on the arrival of this party? A No.

Q You don't know where Schafer was brought from to the headquarters? A No.

Q Do you know by whom he was brought? A No.

MR. OBERMEYER: Your Honor, you see a great deal of this contention--

THE COURT: I will overrule your objection at present.

MR. OBERMEYER: May I renew it?

THE COURT: yes.

Q While you were in the room did you hear any statement

0060

CASE # 3229

made to this defendant or in his presence, as to punishment or any slight punishment to be handed out to him in case he made a statement? A No.

Q Did you hear anything said to him before the statement was made? A No, sir.

Q When you came into the room? A As soon as I came in he started.

Q And nothing that transpired before you entered the room is known to you? A Nothing before I entered the room.

MR. OBERMEYER: Then I reserve the right to renew the objection.

BY MR. BROTHERS:

Q Begin at the beginning and read it all and read it loudly and slowly.

THE COURT: Do you require that the witness read it from his original notes?

Q Is this the transcript which you, yourself, made? (indicating) A Yes, sir.

Q And is it correct? A Yes, sir.

THE COURT: Is there any objection to reading from a transcript?

MR. OBERMEYER: No, your Honor.

MR. BROTHERS: Beginning with the question that was put to him and then what he said in answer-- from there on may be read.

CASE # 3229

Q Begin there.

MR. OBERMEYER: You are to read everything that this defendant said.

Q Proceed. A "On 8th Avenue between 55th and 56th street--"

Q Did Commissioner Dougherty say something Schafer just before Schafer made any statement? A Yes.

Q Read that. A "I understand that you are willing to make a statement relative to what you know concerning the death of said Martin and the location of the property stolen from him. And the defendant said, "On 8th Avenue between 55th and 56th Street, west side, there is a restaurant. About 5 o'clock in the afternoon of August 11th as I was coming out of this restaurant a man smiled at me and asked me if he had not met me somewhere before. After some conversation between myself and this stranger I agreed to meet him at the corner of 58th street and 8th Avenue at 7 P. M. The stranger asked me if I had a room and I told him I had and took him to 453 West 57th street.

"After I left this stranger I went to Chick Johnson's house where I met Sirago. This was in the room where Martin was afterwards killed. I told Sirago that I had met a stranger and thought he looked as though I could get a little money from him because he was well dressed and had some jewelry.

0062
CASE #3229

Sirago asked me, being that he was broke, if I would let him in on it and so if I could not get any money I could force him to give us both money. Chick Johnson and his wife were there at the time, and she knew we were going to bring a man to the room. We intended to rob this stranger and at the time there was no intention to take his life. Johnson said he was going home, which he did, so I agreed with Sirago to meet this man and that he should stand across the street and when I met him to manage to get to the room ahead of us. We had no agreement to tackle him as we thought we could get what he had without any trouble.

"I met Martin at the appointed time, 7 P. M., and Sirago was across the street. As soon as Sirago saw me meet him he went to the room and got in ahead of us. Sirago got into the closet located on the west side of the room near the window and I went over and sat down on the couch on the opposite side of the room near closet. Somehow or other Martin got up from the couch where we were sitting and went over toward the door leading to the hall and I sat there and talked with him. Sirago came out of the closet, making a noise as he did so, and Martin turned around kind of dumbfounded but did not say anything. Sirago walked over toward the mantle and I suppose Martin thought nothing would happen to him. After Sirago walked around behind I thought he was coming over to stand alongside of Martin for the both of us to tell him we wanted money or have him arrested, but instead of that, just as Sir-

0063
CASE #3229

ago got in back of Martin he threw his left arm around his neck, Martin putting up a kind of fight, and I walked back to get out of the way. The first thing I knew they stumbled and fell, Sirago on top of Martin, and by that time Sirago and Martin were over near the door and as they fell he hit his head on the floor. I thought the lady of the house heard the noise. After that I was about to bend down and Sirago told me to leave him alone. During the scuffle his watch fell out of his pocket and I picked it up? While doing so Sirago was taking off his rings, giving them to me. After he took the jewelry off Martin Sirago said get something and tie his feet and while I was looking for something he pointed up and told me to get the gas tube down, which I did and tied it around his feet. After doing so he told me to get something to tie over his mouth, which I did, and soon his face was so red I thought there was no use in keeping it around his mouth as we could get away in time, so I took it off again. Sirago got sore and asked me why I did not leave it on and went back and put it on again. We then picked him off the floor and put him in the bed where we tied him.

"After putting him in bed Sirago and I went over to my father's home in Woodcliffe, N. J. I told my father I was going to ship away to a job but before I left I took the cuff buttons and gave them to him, saying I had got them cheap and had no use for them. I said nothing to him about the robbery

0064
CASE #3229

but just told him I was going to ship on a job. My father had never seen Sirago before. We staid at my home about an hour and a half after which time we left for Baltimore, Md., arriving there about 5 A. M., having paid our way with the money we got off Martin, about Six or Seven Dollars.

"We staid in Baltimore until the pawnshops opened and I pawned one ring and Sirago pawned the other one, I getting \$125 for the ring I pawned and Sirago getting about \$30 or \$35 for his. We threw the tickets away after trying to seal them. We came back to my father's house and told him I had changed my mind in regards to going away and stayed there long enough to get dressed and cleaned up, after which we left for New York City on the Weehawken Ferry. We never landed because I read in the paper about the murder and sent Sirago to but some papers. He bought five papers and we staid on the boat and went back to Jersey. I saw on the headlines of the paper 'Toronto milliner murdered in house on West 57th Street' so we went back on the same boat and then to my father's house. I told him we had to leave and was sorry I could not say good-bye to my sister and brother and if they did not hear from me for a while not to worry.

"From there we went to a saloon and Sirago phoned to Shapiro's drug store on 50th Street and 7th Avenue and told them to send someone to his house. He talked for about 1/2 hour in Italian and told me he was talking with his brother or some

relative, telling them he was in trouble or something like that and was going away and not to worry, and if anyone asked for him to tell.

"From there we went to Hoboken, the 13th, staying there long enough to take a train to St. Louis arriving there probably on the afternoon of the 14th or 15th of August. We went into this jewelry store or pawnshop in St. Louis and disposed of Martin's watch and locket after removing it from the fob, selling it outright for \$3 or \$4. The jewelry store where the watch was sold is located about six or seven blocks east of the railroad depot in St. Louis. The jeweler was a man about 40 yrs. of age, of American nationality, about 5'6" tall and wore glasses. There was a woman in the store with him, apparently his wife.

"We then bought some old blue shirts and I bought a big hat, Sirago getting a silk hat that could be rolled up and stuck in pocket. We left St. Louis the next afternoon going to Kansas City and then to Omaha, Neb. We shipped out of Omaha, and went to Casper, Wyoming, where we went to work in a railroad camp, building yards for some oil company, working there about a week and a half and Sirago two weeks. We received \$1.50 a day and board. After leaving there we went up into the town of Casper and shipped on to a ranch job in Bates Hole, Wyoming. We then went to Denver, Colo., staying there about a week, when I heard Sirago was arrested, after

0068

CASE # 3229

which I left Denver and went to Julesburg, Neb. This was about the middle of November."

Then there was a question put by Commissioner Dougherty about him sending somebody around to Johnston's house. And the defendant said: "We sent a boy to the home of Johnston in the basement of 416 West 47th street, and told them not to go near the house in West 57th street where they formally lived, that there was a trick pulled off and they were liable to be pinched. Johnston knew that we were going to bring someone to the room that evening to get what we could off him."

Then Commissioner Dougherty asked the defendant's father something. And Schafer's father stated that he gave the buttons which his son gave him-- after he read in the paper about the murder he was so nervous he threw the cuff buttons which his son had given him, in the East River.

"Since that time I have not seen Sirago and have been knocking around from one place to another, working at anything."

Q That last sentence was said by whom? A By the defendant.

Q Is that all? A That is all.

CROSS EXAMINATION BY MR. WARE:

Q When you did reduce these notes to transcript form?

A That same afternoon that I took them.

Q They were not reduced to transcript form during the stay of Schafer at Police Headquarters? A I don't know. He

0067
CASE # 3229

might have been upstairs.

Q So far as you know this statement was never signed by Schafer? A That I don't know.

Q As far as you know you cannot say? A I cannot say, no, sir.

MR. WARE: That is all.

MR. BROTHERS: That is all.

JAMES B. SHOULDICE, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where are you employed? A I am employed in the District Attorney's office.

Q Are you a stenographer? A Yes, sir.

Q How long have you been employed there? A About ten months.

Q You have been a stenographer how long? A Six or seven years.

Q On the 22nd day of January, 1914, did you take in shorthand, in question and answer form, a statement made by the defendant Schafer to Mr. Breckinridge, Deputy Assistant District Attorney in this County? A Yes, sir.

Q Where was that taken? A In Mr. Breckinridge's offices.

Q In this building? A Yes, sir.

Q And you took down correctly all the questions of Mr. Breck-

CASE #3229

inridge and the answers made thereto by the defendant? A I did, yes, sir.

Q Have you the original notes here with you? A Yes, sir.

Q Who was present at that time? A Mr. Breckinridge, the defendant, two officers-- officers Owens and Burgess-- and myself.

Q Did you take down all that was said by Mr. Breckinridge and all that the defendant replied? A Yes, sir.

Q Now, will you read from the beginning all that was said-- all you have in your notes?

MR. OBERMEYER: I desire to renew the same objection to these minutes as in the former offer, and they represent a statement obtained by questionable and improper means and under promises of threats which render the statements involuntary or inadmissible in evidence.

THE COURT: Objection overruled.

MR. OBERMEYER: Exception.

MR. BROTHERS: Do I understand that the counsel desires him to read from the original notes of the transcript.

THE COURT: Read from the original notes.

Q Read from your original notes. A "Statement of Harry Schafer taken in the office of Mr. Breckinridge, Deputy Assistant District Attorney on the 22nd of January, 1914, at 1:10. Present, Mr. Breckinridge, Deputy Assistant District Attorney, Detective Martin S. Owen of the 26th Precinct, and Detective Edward C. Burgess of the 26th Precinct and James B. Shouldice

CASE # 3229

stenographer.

"BY MR. BRECKINRIDGE:

"Q What is your name? A Harry Schafer.

"Q Where do you live? A 132 Greenpoint Ave., Long Island...

"Q My name is Breckinridge; I am a Deputy assistant District Attorney and was assigned to investigate the death of William G. Martin, who was found dead in premises 453 West 57th street on August 12th, 1913. -- You are not compelled to say anything unless you want to. Anything you do say will of course be used against you in case you are put on trial. You are charged with being implicated in his death. Do you understand me? A I do.

"Q Do you know these premises, 453 West 57th street? A I do.

"Q Did you live in those premises? A No, sir. I lived there for about a night or two.

"Q Where did you meet Martin? A I have got to start all over again, oh! I could not tell when I met Martin positively. I think it was -- I met Martin in August. I could not give you the date -- I am not positive. I know it was on the 8th or 10th, or something like that.

"Q whereabouts, do you remember? A Between 54th and 55th or 55th and 56th. I gave it between 55th and 56th at the Commissioner's office, but stop to think it may have been between 54th and 55th.

CASE #3229

"Q How did you happen to meet him? A Just like I might say by-- just like I would meet a stranger, by mere chance. In which way do you mean, how did I meet him?

"Q That is what I mean. How did you happen to meet him?

A Just like a mere stranger, like two strangers would make acquaintance. I just came out of a restaurant and as I came out he was a little south of me and he smiled. Then I looked at him and he came over and asked me if he had't seen me somewhere before. I told him, "not that I know of", and then we had a conversation for sometime. He asked me if I had any engagement or anything on for that night. I told him no.

"Q What happened then? A I make an engagement with him to meet him at 7 o'clock at 58th street and 8th avenue.

"Q On the corner? A On the corner.

"Q When were you to meet him? A Seven o'clock.

"Q The next day or that same day? A That same day.

"Q Did you meet him there? A Yea, sir, I met him.

"Q What happened then? A Right after we made the engagement he asked me where I was stopping, if I was stopping at a hotel or if I had a room. I told him I had a room. Then I went to the room.

"Q What room was that? A Before I went to the room, that is between the time he made the engagement and left me and the time I was to meet him, I had seen a party by the name of Surego or Sirocco.

CASE #3229

0071

"Q Did you have any particular purpose in seeing him?

A Yes, I think there was, on his part.

"Q What did you think it was? A Well, he was, you might say in plain English, a cock sucker.

"Q Who do you mean? Martin? A Yes.

"Q I meant was there any purpose in your seeing Sirocco?

A You ask me questions, you put it frontwards and backwards. If you want me to go on I will tell it.

"Q You tell it in your own way, then. That will suit me. You said, as I recollect, that after meeting Martin and making an appointment with him, that you saw Sirocco? A In between that time?

"Q Yes, and I asked you whether there was any reason for your seeing Sirocco. Was there any connection between your meeting with Martin and your seeing Sirocco? A What do you mean by 'connection'?

"Q I mean did you go to see Sirocco as a result of meeting Martin? A I went to see Sirocco and told him who I had met and what I had met.

"Q Did you have any reason for doing that-- any particular reason for it? I mean is it connected with this case at all, your going to see Sirocco? A What do you mean, is it connected with this case?

"Q Was your going to see Sirocco because of your meeting this man Martin? Do you understand what I mean? A I don't.

0072

CASE #3229

"Q What talk did you have with Sirocco when you saw him-- about this fellow? A Well, I told him that from the way-- I understood from the particular way that I had talked with Mr. Martin what he was-- I might say that he told me outright that he was that-- and I went down there to tell Sirocco that I had met him.

"Q Did you and Sirocco have any particular talk about Martin? A No, when I first ~~at~~ him I just told him and he asked me-- from the way I talked he asked me could he get in.

"Q You saw Sirocco and told him about meeting Martin and then did you meet Martin that night about seven o'clock according to your appointing? A I did, yes, sir.

"Q What happened then? A I took him down to the room.

"Q Where was that room? A In 57th street.

"Q 453? A Yes, sir, I think that is the number, I am not positive. I knew the number at that time.

"Q Did you occupy that room with anybody? A The room did not belong to me. A party by the name of Johnston rented the room out and I was acquainted with Johnston. I had no money and nowhere to go and I came to sleep there for a night or two. The room didn't belong to me in anyway, wasn't rented by me.

"Q Did Johnston know you were going to bring Martin there? A We knew I was going to bring somebody there, but he didn't know who it was.

0073
CASE #3229

"Q Go ahead. Tell us what happened. A If you ask me just what you want to know I will tell you.

"Q What did you do after you got ^{to} the room? A I sat down and talked to Mr. Martin.

"Q Alone? were you and Martin alone there? A No, sir.

"Q Who else was there? A Sirocco.

"Q You and Sirocco and Martin? A Yes, sir.

"Q What time did you get to the room? A I think it was about ten minutes after seven-- about ten minutes after I met him.

"Q How long did you talk together? A Well, I would say about ten minutes.

"Q Did you do anything else but talk? A No, not just then.

"Q How long before you did do something else? A Did hat?

"Q Anything else, anything but talk? A If you ask me the questions right I will answer them right.

"Q That is what I asked you; don't you understand the question? I asked you if you did anything else but talk and you said, 'not just then'. Did you do anything else but talk that night with Martin? A Yes.

"Q How long were you in the room altogether, the three of you? A I would say a half hour.

Q Did you have any unnatural relations with him that night?

A No, sir.

0074
CASE #3229

"Q Did anybody make any proposition of that sort? A Yes, sir.

"Q Who did that proposition come from? A Martin.

"Q Did he make it to you or to Sirocco? A To me.

"Q What did you say to him about that? A I told him no.

"Q Did he say anything when you said no? A Well, he asked me over again.

"Q Did you say anything to him the second time? -- Will you answer this then? what was your purpose in taking him down to the room? A To get some money off him.

"Q When you ent into the room was Sirocco in the room? A Yes, sir.

"Q What part of the room was he in? A In the closet.

"Q Was he in the closet by previous arrangement? A Well, not just exactly so; I might say he was not in the closet, I might say by previous arrangement. He went to the room and he was to go to the room without Mr. Martin knowing that he should be there. He didn't make any arrangements about going into the closet.

"Q Just to keep Martin from knowing that he was there? A Yes.

"Q And when Martin got into the room did he take off any of his clothes? A Yes, he started to take off some of his clothes.

"Q How much of his wearing apparel did he take off? A He

0075

CASE #3229

took off his collar and tie, I think his shoes, coat and vest, hat.

"Q Did he do that before he made the proposition to have unnatural relations or after? A Well, he took off his coat and vest before he made any propositions to have unnatural relations.

"Q After those propositions were made did you alone or you in company with Sirocco do anything to him? A Kindly repeat the question.

"(Question repeated) Q Did you or Sirocco and you together do anything to him? A All that was done was done by Sirocco, but I was there while it was done.

"Q What was it that was done? A Sirocco grabbed him by the neck while I was talking to him.

"Q He came out of the closet? A He came out of the closet.

"Q What did he say? Anything? A He didn't say nothing; didn't give him a chance to say anything.

"Q After he grabbed him by the neck what did he do? A He tried to throw him down and Martin fought him and then in the tussel both of them fell, Sirocco fell on top of him.

"Q What happened then? A Everything that was of any value upon him was taken off him by Sirocco and as soon as it was taken off it was handed to me.

"Q What did he get off him, do you remember? A Two

CASE #3229

0076

rings.

"Q What kind of rings? A Diamond rings.

"Q Anything else? A A watch and a fob, cuff buttons, about eight dollars in money, six or seven or eight dollars in money.

"Q Was Martin rendered unconscious by Sirocco? A Yes, he was, from all that I could tell by him; I don't know whether he was unconscious, I know that he laid there and didn't move.

"Q Did anybody tie him up and gag him? A Yes.

"Q Who did that? A After the jewelry was taken away from him Sirocco was just alongside of him bedding down and he told me to get the gas tube that was hanging up on the gas jet and told me to tie his feet, so I thought that was what I tied, but from what I understand ~~his~~ hands were tied.

"Q How about his mouth? A After his feet were tied by me-- I say his feet, but I understand now it was his hands-- he told me to get a towel and I got the towel and put it around his mouth and after I put it around his mouth I decided to take it off again as we would have plenty of time to get out of the room and so I thought there was no use in keeping the towel on to his mouth and I took it off and threw it in the corner and when I did Sirocco got sore and went back after the towel and tied it on to his mouth again.

Q Was the man unconscious all this time? Was he making any struggle? A No struggle, no, sir.

0077

CASE #3229

"Q Was he struck with anything? A No, sir, not that I know of. As they fell he hit his head on the wall or on the door-- on the groove of the door-- I don't know what you call it-- he hit the side of his head or his face on it somewhere.

"Q What disposition was made of the property that you got?

A Sold it and pawned it.

"Q Do you remember what articles you pawned? A Yes, sir.

"Q What? A The two rings.

"Q Do you remember where you pawned them? A In Baltimore is all I can tell you.

"Q Who pawned them, did you? A I pawned one ring and Sirocco the other.

"Q Both in the same shop? A No, sir.

"Q Different shops? A Yes.

"Q Were you together when you pawned them? I mean did you both go into the pawnshop together or did you do it alone?

A No, sir, I went in alone and Sirocco went in alone.

"Q What did you do with the watch? A Sold it; the watch and fob we sold.

"Q Do you know where you sold it? A In St. Louis.

"Q At a shop? A At a sort of curiosity shop-- a pawnshop and all combined-- I don't know what you call it-- call it a junk shop.

"Q Did the watch have any distinguishing marks on it, that

CASE #3229

you remember? A That is something I could not remember, positively; I know the fob or what you call it had initials engraved on it.

"Q How about the cuff links? A I gave the cuff links to my father.

"Q Has he got them yet? A No, sir.

"Q What did he do with them? A Threw them away.

"Q Did he know where you got them? A Not when I made him a present of them, but he knows now.

"Q He knows now? A Yes, sir.

"Q Did you tell your father what had happened? A No, sir, I didn't.

"Q Where did he learn about it? A That is something I could not tell you.

"Q When did you go away? A Right after we did this.

"Q Who went-- just you and Serago? A Yes, Serago and I.

"Q Johnston didn't go? A No, sir.

"Q Have you been all over the country? A I have been running around quite a little.

"Q How long were you in Baltimore? A I was there just long enough to dispose of what we had.

"Q Then where did you go after that? A I came back to New York.

"Q Then did you jump out of New York again? A Well, I just got on the ferryboat and got as far as 12th Avenue and 43rd street and we went right back on the same boat again--

CASE #3229

that is, after we had read that Martin was dead.

"Q When did you go to St. Louis? A That same night that I read he was dead.

"Q When you took him there did you have any idea of killing him? A No, sir; I didn't. I had no idea of even harming him. My idea was to get a few dollars and let him go his way and I go mine.

"Q Was that Serago's idea too? A Well, I haven't got his mind; I couldn't tell you that, sir.

"Q Well, you know you had some talk with him? A From all that I could tell you that was the same idea that Serago had.

"Q Was that the plan you made in the afternoon? A Well, we didn't make hardly any plan; it was ^{just} arranged that Serago was to go up to the room; you can't say it was a plan or anything. I made arrangements with him to go up in the room, but so far as making a plan, we didn't have time enough to.

"Q What did you say to Johnston about it? A I didn't say any more to Johnston than what I said to Serago and Johnson was then when I said it to him; it was in his room that I said it.

"Q In Johnston's room? A Yes, sir.

"Q That was after you met Martin? A Yes, sir. I made the engagement with him to meet him at seven o'clock. I went down to Johnson's house and there I met Serago or Sirocco and

CASE # 3229

told him about the fellow I had met.

"Q Had you ever done anything like that before? A No, sir; I never committed a murder before.

"Q I didn't mean murder. A No, sir; I never trimmed nobody.

"Q Do you know where Serago is? A No, I don't know where he is; I have got an idea where he is though.

"Q Is there anything else you want to say about this? A I don't know what I could say to you; I am willing to answer whatever you ask me as good as I can and as well as I know it.

"Q Did you have any agreement with Johnston about the division of spoils in this matter? Was Johnston to get anything out of it? A No, sir, not to my knowledge.

"Q Did Johnson raise any objections at all when you suggested using his rooms for this purpose? A No, sir.

"Q Was his wife there at the time you had the conversation? A Yes, sir.

"Q She didn't make any objections? A No, sir.

"Q What did they do about the room, the Johnston-- Johnston and his wife? They lived there? A Yes, sir, they lived there.

"Q Did they stay in the rooms? A Yes, sir, they slept there.

"Q Did they sleep there the night that this thing was pulled off? A No, sir, they slept there the night before that.

"Q What did they do this night? A From the way I heard

CASE # 3229

them say, they were going home. I don't know where they did go.

"Q Haven't you seen them since? A No, sir; I haven't.

"Q Have you heard anything of them-- directly or indirectly?
A No, sir; I haven't."

Q Is that all? A That is all.

CROSS EXAMINATION BY MR. WARE:

Q Did you transcribe these notes yourself? A Yes, sir.

Q And where was it done? A Upstairs in the District Attorney's office.

Q What date was this that you transcribed them? A I think it was a day or two after I took them down.

Q Have not you got the date in your book-- the date of the examination? A That was the 22nd of January.

Q Are you reading from your notes or are you reading from typewritten matter? A I am reading from my shorthand notes.

Q And these notes have been transcribed now into a written statement, have they not? A Yes, sir; they have.

Q Who were present when you took those notes? A Mr. Breckinridge and Detectives Martin Owens and Burgess, I think, and the defendant.

Q You hesitated on one or two occasions. Are your notes perfectly clear to you? A They are; yes, sir.

Q Do you recollect once you hesitated in regard to your notes at one time? A Well, just that particular word-- I don't

CASE #3229

0082

know why I hesitated there. I will tell you in a moment if you let me read it.

Q In regard to the remarks which I presume you read from your notes "I had never committed murder before", is that in your notes? A That is there, yes, sir.

Q And the fact, if it is a fact, that the defendant denies he ever said that, are you sure that you put that in your notes at the time?

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

THE COURT: Objection sustained.

Q Are you sure of every question and answer you have got there is a correct statement of what this young man said at that time? A Yes, sir, I am sure of it.

Q Who did you say was there besides Mr. Breckinridge?

A Detectives Owens and Burgess.

Q What method of stenography do you use? A Graham with some changes.

Q Is that the usual method? I mean, is that a method in general use? A Oh, yes, very much so.

Q And could another stenographer read your notes? A Well, I don't know. Most stenographers make a lot of changes in their system after they have been at it a while-- change it to it themselves.

Q And you then are the only person that can read your own notes? A I think so, yes, sir; I don't know.

CASE #3229

MR. WARE: That is all.

MR. BROTHERS: That is all.

LUCIAN S. BRECKENRIDGE, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Are you an attorney? A I am.

Q Also are you a Deputy Assistant District Attorney in the County of New York? A I am.

Q And have you charge of the homicide bureau of the District Attorney's office? A Yes, sir, I have.

Q On the 22nd of January, 1914, do you recall taking a statement from the defendant Harry Schafer? A I do.

Q Was that taken down by the stenographer? A It was, by Mr. Shouldice.

Q The witness who just left the chair? A Yes, sir.

Q Under your instructions was he to take down everything that was said by anybody in the room at the time? A He was.

Q Have you since read over the transcript of his notes? A I have not.

Q I want you to read them over at this time. Any promises made by you to this defendant that you would be lenient with him or ask anybody to be lenient with him in consideration of his making any concession or statement about the case? A There

0084

CASE #3229

was not.

Q Nothing said on that subject? A No, sir.

Q Did you employ any threats? A None.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q Who was present at that time? A There was the stenographer Shouldice, Officers Owens and Burgess, the defendant and I.

I think that is all.

Q Did you hear any conversation between any of the officers and the defendant in regard to any clemency or leniency that was to be shown? A I did not.

Q As far as you know then there was no such promise made to this defendant as an inducement of any kind? A Not by me.

Q I say, there was none by anybody to your knowledge?

A There was not.

Q Would you remember any individual particular statement that was made at that time by this prisoner, in your recollection? A I could not give you his exact wording. I remember a good deal of it in substance.

Q Do you remember his saying anything that would indicate that he had been connected with or had actually committed murder himself? A I don't remember his using that word.

Q Well, if the defendant, at any examination of that kind confessed that he had committed murder, you surely would have remember it, would not you?

CASE # 3229

MR. BROTHERS: Objected to because it not only involves a matter of conclusion and opinion but involves the law governing homicide.

THE COURT: Objection overruled.

A I remember that he did confess.

Q You remember that he did? A Yes.

Q Do you remember what he confessed in substance? A Yes.

Q He did not confess to any actual commission of murder, did he? A Yes, sir.

Q He did? A Yes.

Q Did you make any statement to the defendant as to his legal right before you took this alleged confession? A What do you mean by his "legal right"?

Q As to whether he was waiving any right or by what authority you were taking the confession, or whether he was obliged to do it, or whether he would be punished if he did not do it? A Yes, I told him he did not have to.

Q Are you sure of that? A Yes, sir.

Q Is that in the minutes too? A I could not tell you now; it should be.

THE COURT: "You are not compelled to make a statement." Those are the words that were read by the stenographer.

BY MR. OBERMEYER:

Q Did you speak to Officer Burgess on the occasion of this examination or questioning? A Yes, sir.

CASE #3229

Q Did you speak to Officer Burgess before the statement was obtained from the defendant? A Yes, sir.

Q Did Officer Burgess tell you how he came to get custody of this young man, the defendant? A I don't remember which officer told me. One of them did.

Q Did he tell you anything about his talk or talks with this defendant, in reference to promises and statements of immunity and leniency? A No, he did not say anything of that sort.

Q You are very sure of that? A I am quite sure.

Q Did Officer Burgess tell you that he had called upon the parents of this young man, prior to his surrender? A No.

Q Did Officer Burgess tell you that this young man had voluntarily come into the station house and surrendered himself? A Yes, sir.

Q Did he say anything about the captain of the precinct examining him? A I think he said the Second Deputy Police Commissioner had examined him.

Q He said nothing about having examined him himself at the time of the surrender? A I don't recall it.

Q Do you recall whether Burgess had told you that he had personally in terms promised the parents of this young man and this defendant himself a full measure of leniency in case he would help them and make a clean breast of this case so that they might be assisted in apprehending Serago whom they

CASE #3229

0087

wanted? A No.

Q Did he tell you anything about the connection of one Serago with this case? A He did.

Q In the presence of this defendant? A Yes, sir.

Q At your office on that day? A Yes.

Q Tell us what he said if you remember it? A Why, the conversation came up by my asking them to give me an outline of the case-- that is, Officers Burgess and Owens. I asked them about the case with a view to being able to examine this defendant, as I personally knew nothing of it. And they told me in substance the outline of the case-- that this defendant and Serago had made an engagement with the deceased Martin to go to a room in West-- I think it was 453 some street-- I think West 47th street or something I believe; and that they had gotten into these rooms, which were hired by some people named Johnston, a man and his wife, and that after getting him in there they had robbed him of certain jewelry and strangled him and tied him up with some pipe from the drop light.

Q That was the statement to you by the officers? A Yes, sir, and that Serago was not apprehended.

Q And was a fugitive from justice? A Yes, sir.

Q And you knew at that time that Serago was under indictment for this murder? A I did not.

Q Do you know it now as a matter of fact? A Well, I have heard it.

CASE #3229

Q Mr. Burgess made no statement to you of any other talk personally had with this defendant at that time, did he?

A No, sir.

Q And you know of none? A I know of none.

Q And you have not learned of any since that time? A No, sir; I have not.

MR. OBERMEYER: That is all.

MR. BROTHERS: That is all. The People rest.

MR. OBERMEYER: Will Officer Burgess be here. If he is not to be called I want to call him.

MR. BROTHERS: If I have permission I will call him afterwards.

THE COURT: You get a subpoena and get him subpoenaed forthwith, no matter where he is.

MR. BROTHERS: We will be here; and counsel for defendant will have an opportunity to examine him.

(People rest).

MR. OBERMEYER: Now, I make a formal motion for a direction of acquittal of this prisoner for the crime of murder in the first degree as charged in the indictment:

Let: That the entire evidence does not, as matter of law, come up to the standard required by Section 389 of the Code of Criminal Procedure, which provides that a defendant is presumed to be innocent until the contrary be proved; and in case of reasonable doubt whether his guilt is satisfactorily shown, he

CASE # 3229

is entitled to an acquittal.

2nd: That there is no proof in this case showing any of the elements constituting a separate felony in whose commission defendant was engaged at the time of the homicide; and consequently, since there was no separate and independent felony, there is nothing in the evidence which can bring this case within the statutory definition of murder in the first degree, while in the commission of a felony.

3rd: On the ground that the so-called confession of the defendant was improperly received in evidence and must, therefore, be disregarded, owing to the fact that it was obtained by covert threats, doubtful and uncertain promises, acts of intimidation and other questional means by officers charged with the enforcement of the law, and therefore cannot be regarded as involuntary and made without compulsion. The so-called confession or statement obtained from the defendant was obtained after various promises and covert inducements held out by the police authorities whereby he should be leniently treated provided he made statements and cleared up this situation so that they might be assisted in their quest for Serago.

THE COURT: Motion denied.

MR. OBERMEYER: Exception.

(Mr. Ware opened the case for the defendant.)

(Defendant's Evidence.)

CASE #3229

HARRY SCHAEFER, the defendant, a witness called in his own behalf, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

- Q How old are you? A Twenty years old.
- Q Where were you born? A Philadelphia.
- Q How long did you live in Philadelphia? A Until I was about eight years old.
- Q And then where did you go? A Moved to New York.
- Q And have you lived in New York ever since? A Yes, sir.
- Q This is your residence? A Yes, sir.
- Q Where did you live? A At this time this thing happened I lived over in Woodcliffe, New Jersey.
- Q When did you go to New Jersey? A About three weeks before this happened.
- Q Did your parents live in New Jersey at that time? A Yes.
- Q Where do they live now? A Live over in Long Island.
- Q Now? A Yes, sir.
- Q I presume you went to school? A Yes, sir.
- Q Until how old? A Fourteen years old.
- Q What did you do after that? A I worked after that.
- Q Who did you work for? A I worked for the Postal Telegraph, was my first position.
- Q How long were you there? A Well, I was there for about

CASE #3229

two months when I got a job from a man named Wyselder on 7th avenue and 42nd street.

Q What was his business? A He had a drug store and had a sub station in the drug store.

Q How long were you employed by that man? A For about eight months.

Q What did you do after that? A As far as I can recollect, I went to work at the New York Athletic Club after that. I left him with the intention of finding somewhere where I could learn a trade, but I could not succeed. And I had a friend who worked at the Athletic Club, and he got me a job there. I worked there three different times.

Q What kind of work did you do? A I was bell boy the first time and as a waiter the second time, and then in the billard room the third time.

Q Did you work for anybody after you left the New York Athletic Club? A Yes, sir, for a number of people, I went to work in the Belleclaire Hotel, 77th street and Broadway.

Q In what capacity? A Bellboy.

Q You have been convicted of an offence against the law?

A Yes, sir.

Q What was it? A Stealing a half a dozen pairs of gloves in Philadelphia, Gimbel Brothers.

Q How old were you then? A Eighteen years old.

Q And you were convicted? A Yes, I was tried and convicted.

0092

CASE #3229

ed.

Q And you were sentenced, I presumed? A Yes, sir.

Q How long? A Six months.

Q Have you ever been convicted of any other crime in your life? A No, sir, I have not.

Q You came to New York when, this last time? What was the date? A I did not quite understand you.

Q The time you surrendered yourself to the police? A On the 25th of January, I think, as far as I can remember. It was the last time I came here.

Q Tell us what you did at that time? A After this happened, I came back and went away and came back again. And after I came back-- that is, after I was in New York here-- I went along the west side, I tried to see some friends of mine in 48th street; and these people were not at home-- the man and his wife were not at home. I went over to the restaurant, and I felt hungry, and I ordered something but could not eat it. That was at 53rd street and 9th avenue. As I walked down 9th avenue I met some lad I had known but he had not seen me for some time and we went in for a drink at 47th street and 9th avenue, the northeast corner; and I did ask him, did he hear anything about the trouble I was in; and he said no. I told him I was in a little trouble.

Q What did you mean? A I was referring to this trouble here. So he told me "No". And from there I walked up to

CASE # 3229

47th street, to the station-house, and I came to the door, and the door was closed-- that is, they were getting orders inside or something; I do not know what it was; and the policeman was standing outside of the door and I told him-- I says, "I am going to give myself up, I am wanted for a crime." So I walked into the station house and walked over to the lieutenant and I said, "My name is Schaefer; you have been looking for me for quite some." And he seemed to be a nice young man, and he says, "What is the trouble?" I says, "I am charged with murdering a man in 57th street." He says, "Wait here a few minutes, and I will see." And he went in the back room and came back and he said, "Come along with me."

Q Did you believe that you were charged with murdering a man in 57th street? Did you believe at that time that you had been charged with ^{the} murder of this man in 57th street? A Inas-much as I read it in the paper. That is the impression it put me under. It said in the papers as much as that I murdered the man.

Q You knew, of course, that the man had been murdered?

A At that time I knew that the man was dead.

Q Did you feel that you had anything to do with the murder of that man? A I don't think I did. If I did I do not think I would give myself up the way I did, because if I thought I was actually guilty of murdering the man I never would walk into the station house and give myself up.

CASE #3229

Q But you had been present when the man was murdered?

A Yes, sir.

Q Let us get back to August 11, 1913. That was the day that this thing occurred? A Yes, I think it was, as far as I can remember.

Q Now, start in with your first meeting with Martin, just what happened. Tell us slowly so that the jurors can hear with what you have to say, beginning your meeting with Martin.

A I had a room on 56th street between Broadway and 8th avenue. I had been out looking for work that morning. I worked at iron work. I came home that afternoon, I think, about twelve o'clock and laid down awhile, and got up and put on my good clothes-- took off my working clothes. It was around five o'clock, and I went out to get a little supper. I went into a restaurant between 54th and 55th streets on 8th avenue. I went in there and got something to eat-- I don't remember what it was. After I got through I paid and walked out. I stood outside the door with a toothpick in my hand, kind of looking around, and people were walking up and down. When I standing there awhile I noticed some fellow come from the south of 53rd street. He glanced over at me and sort of smiled. Well, I stared at him and I did not know what to make out of it. I thought he knew me and I kept on looking at him, and he again had passed me and kept rolling his eyes at me. It was around five o'clock that afternoon. The people were coming home from the theatre, I think. And I

0095

CASE #3229

watched him and looked at him as far as I could see him, until I lost him in the crowd. That is the last I thought of him. And I took my mind off him and decided where would I go-- I had no place to go; I did not want to go back to the room. It was quite warm that afternoon. I thought that I would take a walk to Central Park and sit down and read a newspaper. I started to walk up 8th avenue, and I got between 55th and 56th streets. There is a motorcycle store on the west side of the way. And I got about five feet away from this store and I recognized the same man that had smiled at me before. And when I got about even with him he made a sort of one-step towards me, and I kind of stopped, and he walked over towards me-- I could not walk any further unless I pushed him aside. And he said to me, "Have not I seen you somewhere before?" I said, "No, not that I remember." I says, "Were you ever a member of the New York Athletic Club?" And he says, "No; I am a stranger in Town but I have been there." He says, "Perhaps I have seen you there." I says, "Maybe, but I don't remember seeing you." He says, "Do you live in the neighborhood?" I said, "Yes." He said, "Do you live with your folks?" I said, "No, I have a room of my own." He says, "You have a room of your own?" I says, "Yes, sir." He says, "What work do you do?" I says, "I follow structural iron work." He says, "What work do you do now?" I says, "I am not working at present;" and people were walking up and down and he stood

CASE #3229

there and while he was talking to me he kind of looked down at my pants and stared. Women were walking up by on the street and he made some sort of remark, "Would not you like so and so?" Of course, I took it all in and did not say nothing to him. After standing awhile he said, "Have you got any engagement for tonight?" I says, "No, not that I remember; I have nowhere to go." He says, "How would you like to meet me?" "Meet you?" I says. He says, "Yes." I says "Where can we go?" He says, "Come up to the room and I will have a talk with you. I have got an engagement on for tonight but I can cancel it or postpone it to a later hour-- that is, to see you." So we talked there awhile longer and I don't know what was said-- I don't know the exact words; but he talked and I said some more, but I don't know just what it was. So he looked at his watch and he decided that it was time for him to get back to the house. He says, "You are going north, take a walk with me." I says, "I have no particular place to go, I will go with you." I did not know where he was going until we got to the 50th street corner and he says, "I am going to leave you here." I says, "All right." He says, "Don't forget to keep your appointment for tonight as I want to see you very bad." I says, "All right." He says, "Walk down with me and I will leave you down the street, you have nowhere to go and you can meet me up on the corner." So I walked along with him, and in going through the street, I talked with him but

CASE #3229

0097

85
I do not know what was said.

o Proceed. A So I left him and come back near 9th avenue-- I was walking on the southside of 58th street. I left him right near 9th avenue, and he walked across the street and he went in some house over there. I don't know exactly the house. And there I left him. So I walked down onto the corner and stood on the corner, just turned, you might say, trying to dope him out, figure him out, how it was that he had stopped me the way he did and talked to me the way he did-- because I had thought that he had met some more people before he met me and just by meeting me I did not give him no encouragement or anything and I tried to figure out what he might be. So that my idea was that he was what is commonly known as a fairy. So at seven o'clock, I did not know whether I was to meet him then-- I had not made up my mind then-- so I went to light a cigarette-- I had none with me, and I walked around 59th street, and right at 9th avenue I bought a pack of cigarettes, and while I was around there I decided I would go to Chick Johnston's house and wait until seven o'clock-- that is the time I was supposed to meet this gentleman-- and when seven o'clock came if I cared to meet, and if not I could go about my own way; and I did not know whether he would keep his appointment; and I did not know whether he wanted to see me just for the purpose that I thought he did. In fact, I did not know how to figure him out. Once I thought, "Well, yes,

0098
CASE #3229

he is that." And then again I thought not, maybe, I might be mistaken. So I walked down 9th avenue until I came to 58th street, and I walked through 58th street, always thinking of this man I had met. Finally I looked up at Chick Johnston's house, and I found I was about two doors past it, and so I walked back to that house, and the vestibule door was open, and I walked back into the hall. Mr. Johnston lives on the ground floor, and I came to the door and knocked there. Before I knocked I heard someone talking and someone whistling-- some said, "Who is there?" I did not know who it was-- I did not know whether it was Chick Johnston, his wife, or Serago. I says, "Schaefer." So someone of them came and opened the door. When I got into the room they were all sitting down-- I think Mike Serago was eating; I aint sure-- he kind of jumped at me for being up in the house-- I don't know, it was two or three nights before that; I got up there late one night; I think it must have been half past ten or eleven o'clock; I just had come from a party and it had started to rain, and I did not want to go to Jersey-- that is, I did not want to go home; and on account of getting wet, I thought I would stop up at Serago's house a while-- that is, Chick Johnston's house. I went in the back and knocked at the door, as she said. And she said, "This is no time to be calling around at night time; come around in the morning." And so I left. And as soon as I came in the house they all flew at me and argued at me on account of coming around

CASE # 3229

to the house at that hour of night, that it made a bad impression on the landlady. So I told them I was sorry I did that and there was no harm meant on my part. And so there was nothing more said about that. And I said to Mike? "I just met a man, I think he is a fairy." He says, "Yes, what makes you think he is a fairy?" "Well," I says, "from the absurd way he talks and acted." He says, "What kind of a fellow is he?" I says, "A big tall man with blond hair." He says, "I don't mean what is his looks. What is his general appearance-- did he look prosperous?" "Well," I says, "from the way he looks and talks he is a man of good education." He says, "Well, what does he want you to do; does he want you to meet him; are you going to meet him?" I says, "I don't know if I am, but he wants me to meet him; he wants me to bring him to a room." So Mike says, "Why don't you bring him to his room?" So then Chick Johnston says, "No, I don't want nobody down in this room; it will make trouble with me." So Mike says, to Chick Johnston, "Come here a minute." And they went out in the hall, and they came back--

Q Wait there a minute. Did you hear the conversation they had in the hall together? A No, sir; I did not.

Q Now proceed. A They came back and says-- Serago said, "You can bring the man down here if you want to meet him." I says, "Mike, what is your purpose in meeting him; I do not care to see the man?" "Well", he says, "bring him down here

CASE #3229

anyway, we will see what he is like." So there was a lot more talking going on-- I don't know just the words that were said or what was not said, or what I said. Chick Johnston said something and Mike said something and I said something. But finally Chick Johnston and his wife packed up their stuff and left the house and said they were going home. That left Mike and me in the room alone. After Chick Johnston and his wife had gone he says, "Schaefer, you bring this man down here to the room." He says, "Them kind of people all you have to do is to tell them you will have them arrested and you will be able to get some money off them. If he has fifty dollars or sixty dollars you can get it off them." I says, "You don't think a man will let you get the money that way." "Well," he says, "bring him down in the room anyway." I says, "All right, I will bring him down in the room, Mike, but you wait in the room here." I wanted him to wait in the room to overhear. I seen that he wanted me to bring him down to the room, and I thought that it might make a lot of trouble for me and Chick Johnston; and I did not want to say no, but I was not, you might say, I was afraid of Serago and I did not want him to say so and so. So I --

Q At that time, at the time you had that conversation with Serago, did you intend or did you have any idea that the man was to be robbed? A It was not my idea, no, sir, not to rob.

Q You intended to get some money from him if you could

CASE #3229

by asking for it? A Well, not exactly me. Serago was supposed to do that. I was supposed to bring him down to the room. That was all I was supposed to do.

Q Did you have any conversation whatever as to whether or not the man Martin was to be assaulted and robbed? A No, sir.

Q Did that thought ever enter your mind at that time? A Well, I don't know; I could not say at that time.

Q Proceed. A So Mike says, "It is pretty near time now; let us go and meet the man". I said, "All right. So we walked up 57th street and walked to 8th avenue and stood on the corner where we were supposed to meet him. And when I seen Mr. Martin come up the street I said to Serago, "Here is the man coming now." He says, "Is this the fellow?" And I says, "Yes." He says, "I will go back in the room," he says, "and when you and Martin walk in you will expect to find me-- to find me there unexpectedly"-- that is by surprise. So Mr. Martin came up to me and he says, "I see you kept your appointment." I says, "Yes, I see you kept your appointment." He says, "Where is your room", then. I says, "In 57th street." "Let us go down then," he says. So we walked down 57th street and through 57th street and came over to the house. We walked up the steps, into the house, and into the room. When I got into the room, I seen Serago was not there. Well, I thought that he had gone down someway or had not got to the room yet, or maybe did not want to come there. So I

0102
CASE # 3229

waited thinking he might come into the room later on. When we got into the room, Mr. Martin says, "It is a fine room, it is kind of warm, you don't mind my taking off my coat?" And so while he was doing that I went and sat down on the couch. And after he had taken his collar and coat off he sat down alongside of me and he said-- he said, "Schaefer"-- well, he did not say "Schaefer" exactly-- I introduced him to some name but I know later on it was not the right name. Well, he says, "Schaefer, what is--" well, I will let it go at "Schaefer". I will say, "Schaefer". He looked at me and he says, "What do you say," I says, "What do you mean, what do I say." And he put his hand over on me, over on my trousers. He says, "Let us go to bed." I says, "I don't want to go to bed." He says, "Ah, come on." I says, "No, I don't want to go to bed." So all this time he had his hand over on me, that is, over on my trousers. And while he had his one hand over on my trousers he was taking his out with his other hand, he wanted me to put my hand over on his. And I said, "No," and I got up and walked over away from him towards the door. He says, "I know you are going to bed; I know you are jollyng me along". I says, "No, I did not come down to go to bed with you." And so he started to take off his shoes and something else-- I don't know what. So he came over to me and he says, "Come and we will go to bed." I says, "No, I don't want to!" And just then the closet opened up and Serago walked out. Serago walked

CASE # 3229

over towards. When he got overabout even-- on the side of Mr. Martin he put his left hand around him and choked him. And while he had his arm around him Martin started hollering and he worked his way away from the door. Just when he started hollering I was going to leave the room but I heard someone coming down the stairs. So I walked back from the door-- it was a kind of milk colored glass, you could not see through-- and I walked back from the door. And people-- I don't know how many there were were coming down the stairs. They had walked back towards the door in the meantime and somehow they stumbled and Martin fell, and he was hollering, and he hollered and fell and hit his head against a wooden groove, and when he fell he stopped hollering and Martin fell and Serago fell on top of him; and Serago had sort his legs straddled over Martin's body that way (indicating) and Serago had his arms around Martin's neck. So I bent down on Serago's shoulders, sort of want to pull him off and get out of the door. And he says, "Get back." So I got back in the room. While I was walking back he had let go of him sort of and was taking his ring off. So I walked back towards the window and Mr. Martin's watch was laying on the floor,--

Q Did Martin move from the time that Serago got ^{up} off the floor? A No, not that I remember. So I went over and picked up Mr. Martin's watch and I walked back over to Serago and he says to me, "Here, take this junk here." So I took it and put

0104

CASE #3229

it in my pocket. So he says to me-- he had already taken all his rings off and was taking off his cuff buttons-- he says, "Get that gas tube off the chandelier" and I took it down. As far as I can remember I thought I tied it onto his feet, but the policeman told me it was tied on his hands. I did not tie it on his hands and I did not see Serago tie it on his hands. Anyway, I thought I tied it on his feet. Serago says to me, "Lift him by the feet and lay him in the bed." So we laid him in the bed.

Q Was there any sign of life at that time in him? A No, not that I remember. The man never moved after he fell on the floor.

Q Did you touch him during the time that this struggle was going on that you have described? A As far as I can remember the first time I ever laid my hands on him was when I lifted him up from the floor to the bed.

Q Cannot you remember? A I am sure. I am sure that I never touched him until I lifted him onto the bed.

Q Did he show any signs of life at that time? A No, sir; he did not.

Q Did you know whether or not he was dead? A From the looks of him I thought he was dead. I don't know. He did not move anyway. We had him laid on the bed and Serago was putting on his own shoes, which he had off, and while he was putting on his shoes he says to me, "Schaefer, take that towel and put

CASE #3229

it around his mouth." So I got on the back of the bed; Mr. Martin was around towards the end of the bed; so I tied one knot on the towel and threw it off and back on to the floor again-- from the way the man looked I could not feel like putting the towel on so I threw it on the floor. And Serago picked it up and going over he put the towel on his mouth. I was already by the floor and he said, "Wait a minute." When he got over to Martin and was tying the towel on his mouth or neck, I was halfway out the hallway already, that is, in between the vestibule and the door of Johnston's room. And he kept hollering, "Wait a minute Schaefer." I says, "All right, I am here." And he says, "Give me that junk". So I gave him the jewelry, and he stuck it in his pocket, and the both of us left the house together, went as far as 9th avenue and 55th street, and through 55th street to 11th avenue, and from there to 50th street. And when we got to 50th street, Serago thought it would be good to send someone around to Chick Johnston's house, that is, not to let him get in trouble, he would not want him to get in trouble anyway. He met some fellow there that I did not know-- I did not know him personally-- and he gave him a quarter to send him around to Chick Johnston's house to tell him not to go back to the room again.

(The Court duly admonished the jury and a recess was then taken until two p. m.)

CASE #3229

0106

AFTER RECESS.

HARRY SCHAEFER, the defendant, resumed the stand.

DIRECT EXAMINATION (continued) BY MR. WARE:

Q Now, Schaefer, you have heard read this morning the alleged confession which you made to the police and to the District Attorney's representative, did you not? A Yes, sir.

Q Are there any particulars about these confessions, as to whether any parts maybe true or false as you recollect them? Are those confessions, in other words, what you said to the police and the District Attorney's office? A You mean are they true?

Q Yes. A They are to a certain extent, yes, sir.

Q What do you mean by "a certain extent"? Can you point out any particulars in which they are not true?

THE COURT: Do you remember or can you now recollect what was contained in those statements which the stenographers read to the jury?

MR. WARE: I will withdraw the last question and ask this direct question.

Q Do you remember that in the reading of the alleged confession before the Assistant District Attorney who testified, Mr. Breckenridge, do you remember saying to him anything like this: That this the first time you had ever committed a murder. Did you say that? A No, sir.

0107

CASE #3229

Q Do you remember this question at that time?

"Q Had you ever done anything like that before? A No, sir, I never committed a murder before." Do you remember making that answer? A No, sir; I do not. I did not remember a thing I said until I heard it read out this morning to me. I did not remember a thing. For the simple reason when I gave myself up I did not know-- I did not think I was myself when I gave myself up.

Q Do you ever use drugs? A No, sir; I do not.

Q Have you ever been in any institution for the care of those mentally unsound? A No, sir.

Q You know what I mean. Now, if you used the word "murder" did you refer to the fact that the man had been killed and simply referring to his death. You knew somebody had murdered him? A Yes, I knew at that time, but I don't remember ever saying that. I am pretty sure I did not say that for the reason that they put in things in there that I never said. I can remember one thing in particular that they did not put in that, after I met Martin I stood on the--

Q Did you ever feel that you had committed murder? A No, I did not.

Q Do you feel at this moment that you are guilty of the murder of this man Martin? A No, sir, I did not. If I did I would never have come back and given myself up, because I might as well kill myself as give myself up.

CASE # 3229

Q When you made this alleged confession to the police, how many days was it after you had given yourself up? A The same day. I gave myself up about one o'clock in the morning.

Q And this confession was made up at Headquarters? A Some of it was made up at the police station in 47th street, some at Headquarters and some at the District Attorney's office, I think.

Q Who did you talk with at the police station? A Mr. Burgess, Captain Kerr, and six or seven others-- I don't know who they were. They all belonged to 47th street.

Q How long did they talk to ^{you} me? A All of them talked to me and at times I was with Burgess alone and at times I was with Mr. Kerr alone.

Q When did this begin-- about one o'clock? A Yes, sir.

Q And when did it end? A I might say until about five o'clock. Then he put me back into a cell.

Q So that for about four hours you were being quizzed continuously by one and another of these men? A Yes, sir; talking and sitting there.

Q When you got to Headquarters what time was that? A About nine o'clock in the morning as near as I can remember.

Q How soon after you got there did they commence asking you questions there? A As soon as I came there Mr. Burgess said to Dougherty that Schaefer is willing to tell you everything.

CASE #3229

Q About how long did you talk to him or did they talk to you at Police Headquarters? A I should think half an hour.

Q Were any promises made to you at either of these conversations either at the station house or Headquarters? A Yes, sir; there were lots of promises made to me at 47th street and a lot of my people while I was way. That is, Mr. Burgess made me the promises.

Q What did he say to you? A Here is some of the things that he did say: He said to me that in fact he knew that I was actually the man that killed him because he had a witness to bring up to testify against Serago, that Serago showed him how he could strangle a man with his one arm and this man he was referring to comes from a restaurant in Sixth avenue and 58th street. And he told me if I made a clean breast of it and could tell where Serago was at he would make it much easier for me. And then he asked what amount of time would I be satisfied to think I had enough punishment for what I did. I told him I had no idea. He says to give him a little guess. I says that is pretty hard to tell him because I will have to take anything they gave me. He says, "If you make a clean breast and tell us where Serago is at, on account of your age you will get Elmira and it will not be but ten years at the most." That is what he said.

Q Where? A At 47th street.

CASE #3229

Q Did Mr. Dougherty or anybody else at Police Headquarters make you any promises? A Not that I remember. Mr. Burgess wanted me to talk to nobody but him, so I did not talk to nobody but him. And someday Captain Kerr found out about it and he came down to me two or three days afterwards and asked me who was the one that told me not to talk to anyone up there. I told him I did not care to answer that question because if he could not trust the men working under him that I would not say anything more about it.

Q Did you have any subsequent talk at Police Headquarters-- any other talk except the one you have told us about with Mr. Dougherty on the day you were arrested? A No, not in regard to being shown any clemency or anything like that.

Q Is the statement that you made and the testimony that you have given this morning the exact truth? A Yes, it is.

Q Did not you state to your counsel that you did not know that Serago was in a closet? A Well, from the way he told me he was going to go down to the room, but I could not say exactly that he was going to be in the room, or he did not tell me that he was to be in the closet. I only understood that he was to be in the room when I came back. But as far as his being in the closet, I did not know nothing about it.

Q Did you tell the Police where you thought they could find Serago? A Yes, I told them, and I know as a fact that if they went there at that time they could have got Serago.

CASE #3229

0112

I wrote a letter--

Q Where was that? A In Denver, Colorado.

Q When was he there last? A It was when I left and I know he was there when I left.

Q When did you leave? A November 25th.

Q And he was then at Denver? A He was supposed to be arrested in Denver.

Q Had he been arrested in Denver? A No, I don't think so. It was ^{some} trick of his to get rid of me-- because I had often told him that I was going to give myself up.

Q How did you come to leave Serago? Did you have any quarrel or argument? A Well, I had several quarrels before. I went from Casper to Cheyenne and he came after me; and we worked there two weeks; and we went to Denver and we had a room there, and one afternoon two peddlers or Italians came up to my room and told me Serago was arrested.

Q What was it you were doing out West? A The first job I got was building tracks for the Mid-West Oil Petroleum and Standard Oil Company. I left there and got a job on the ball gang, that is, helped building tanks and raising tanks.

Q Did you work much of the time or most of the time or all of the time you were there? A I worked, you might say, nearly all the time. I had either to work or starve.

Q Did you commit any crime while you were with Serago?

A No, sir; I did not.

CASE #3229

Q You said something about his being arrested or threatened with arrest in Denver. Do you know anything about what for? A I don't know what for. I doubted his being arrested. It was some idea of his to get rid of me.

Q Did not he tell you the police were after him? A No, he did not tell me the police were after him.

Q What made you think he was arrested? A Somebody came up to my room and told me he had been arrested. It was some friends of Serago that he got acquainted with while he was there.

Q And you left Denver? A I left Denver, yes, sir.

Q Did you ever get any letter from Serago after that--- any other communication? A Serago never wrote. I got one letter. I don't know-- it was not Serago's handwriting. I got a letter.

Q Where was that from? A From Cheyenne.

Q Did it say where Serago was at that time? A No, it did not. The letter was mailed from Casper Wyoming before he came to meet me and it must have laid in the Post Office for three weeks. That is the only letter I ever got from him.

Q Is there any other statement in connection with this charge that you desire to make? Is there anything else you think of? A All I can say that while I was working, when I made my money and earned it, if Serago was not working and I did not give him any money we were bad friends but as long as

CASE # 3229

he and I worked we were on good terms; but generally as a rule he was out of work, and I had my meal ticket and I had to feed Serago, and if I did not, it would bring trouble between the both of us.

Q Did he ever threaten you? A Oh, a number of times. Here (indicating) my lip is broke from what he did to me.

Q At any time during your conversation with Officer Burgess that you told us about where he promised to help you very much-- do you remember those conversations? A Yes.

Q Did you tell the story which you have told and which is contained in substance in the alleged confessions-- did you make those confessions as a result of any promises Burgess made thus to you? A That was the only thing. Under them conditions that he made to me-- those promises.

MR. WARE: That is all.

CROSS EXAMINATION BY MR. BROTHERS:

Q You had some trouble with Serago out west, didn't you?

A Yes, sir; quite a little trouble.

Q And you had had so much trouble with him that when you came East you had a feeling that you would get even with him, if you could? A No, sir; no, sir; never had no feeling/that.
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Q Don't you remember that you stated to Mr. Murphy, this gentleman here, that that story that Serago had been arrested out there was a framed up story to scare you out of Denver?

A Well, it might have been--

CASE #3229

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Q Did you tell him that? A I would not say yes or no; but I know he was not arrested, he was still in Denver.

Q My question is did you make that statement to Mr. Murphy?

A Yes, sir; I made that statement to Mr. Murphy, that he was arrested there as far as I know.

Q Did you know what he was arrested for? A No, I don't know what he was arrested for. And those fellows that came up and told me that he was arrested told me that they were picked off the street--

Q And did they tell you at that time that you had better get out yourself? A Eh? No, I did not tell them that because I was afraid--

Q Did those friends of Serago when they told you that he had been arrested you, advise you to get out quick for fear you might be arrested? A No.

Q When you turned yourself in at the station house did you have in mind that you would tell the truth about the case at that time? A Yes, sir; I did.

Q Don't answer too much. You will have full opportunity. And having made up your mind to tell the truth about it did you require any police officer to make any promises to you before you would tell the truth? A Well, when I gave myself up I told him I did not have nothing to tell. I told them I wanted to wait until I seen a lawyer. They said I needed no

CASE #3229

lawyer.

Q Did you require any promises from any police officers before you were willing to tell the truth? A Do you mean that if they promised me anything that I would not tell?

Q Yes. A Well, no, not to an extent, but I thought this way--

Q Please answer the question. Your answer is "no"? A To what?

Q Again: Did you need any promise from any police officer of any kind, before you were willing to tell the truth? A Explain yourself a little more.

Q Did you try to make a bargain that unless you were promised certain things that you would not say anything? Do you understand that? A Try it again, please.

Q You said you were willing to tell the truth and had that in mind when you turned yourself in at the station house. That is right? A Yes, sir.

Q Did you also state to yourself that you would not say anything unless somebody promised you something? A No, not exactly. I did and then I did not. My mind was so that I could not think noway. I was in such a condition that in fact I did not know what happened to me.

Q And you made certain statements to Officer Burgess, Commissioner Dougherty, and you were not influenced by any promises you claim were made, is that right? A That I was not in-

CASE #3229

fluence? Sure they influence me. They told me that if I would tell before I ever opened my mouth-- they told me that if I told the truth they would see that I got off easily.

Q Who said that? A Mr. Burgess.

Q Did any other person say it? A Mr. Kerr didn't exactly say the same but he hinted.

Q Give me as well as you can remember what Kerr said?

A Kerr told me that he could help me a whole lot and that he could make it bad for me.

Q That was after you had made your statement to Mr. Dougherty? A No, before I made my statement.

Q Where was that? A In 47th street.

Q You saw him in 47th street? A Yes, sir. They telephoned for him that night.

Q Had you already told Burgess about the case before you saw Kerr? A No, sir; I did not tell nobody about the case.

Q Then why was it that Kerr came to you and wanted to know who it was that told you not to talk to anybody? A What is that?

Q You said that Captain Kerr came and asked who said you were not to talk to anybody? A Why, Burgess was the one that told me that-- not to talk to anybody.

Q Then you had already talked to Burgess before you saw Kerr? A Yes, sir.

Q And had you told Burgess what you had to do with the

CASE # 3229

Q Killing of Burgess? A I did not tell him nothing.

Q Did Burgess tell you that he had no authority to promise you anything? A No.

Q Did not he tell you that it was a matter you would have to take up with the District Attorney? A No. He told me he had already seen you or the District Attorney who had the case.

Q Just what did he say on that subject? A He said he had seen the District Attorney and that he was over already to my people's house, and that if my people were willing to tell him where I was at that the District Attorney would make it light for me provided I absolutely told where I could find Serago.

Q You knew all along that the Police were looking for you? A Yes, sir, I did.

Q And you had known it for a good many months? A Yes, sir.

Q And you knew that they were looking for Serago? A Yes, sir.

Q You knew the police had been to your house in Jersey?

A From what I read in the papers, yes.

Q What time was it you got to the police station? A About twelve or one o'clock.

Q Morning or night? A Night.

Q Who was the first person you saw? A Some officer standing out on the step.

Q Was the first man Burgess to whom you made any statement about the case? A Yes, sir.

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CASE #

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Q What hour was that? A That was in the morning after my father had come.

Q Was your father there when you talked with Mr. Burgess? A Yes, sir.

Q And that was about what time? A Well, I think about eight or nine o'clock.

Q What time did you go to Police Headquarters? A About nine o'clock or a little after.

Q What time was it you saw Captain Kerr? A I seen him several times.

Q The first time? A Some time in the morning-- I guess around half-past two-- two or three o'clock.

Q In the station house? A Yes, sir; Burgess telephoned for him.

Q Did you have in mind when you surrendered yourself, that you would seal on Serago? A Yes, sir, I did.

Q And did you have in mind that if you could ^{have} Serago convicted of murder, that you might escape yourself? A No, sir, I did not. I was willing to take my punishment as well as Serago.

Q Then, why was it that you exacted some promise, as you claim from the police officer before you would tell about Serago? A What is that?

Q Why was it you wanted Burgess to promise you immunity before you would tell about Serago?

6110

CASE # 3229

7 MR. WARE: Objected to.

THE COURT: Objection overruled.

MR. WARE: Exception.

A I did not want him to promise it to me. He told me himself that he would do this. So I don't see why I would have refused it.

Q And up to that moment you had not said a word about Serago? A Yes, sir. I told him I had left him in Denver.

Q And you had not seen Serago in Denver for over two months, had you? A No.

Q Did you want to have Serago arrested? A Well, I thought several times-- I don't know-- I was scared. Many times I laid down in bed with him and I did know--

Q Answer my question. Did you want Serago arrested?

A Why, yes, I wanted Serago arrested.

Q When was it when you first made up your mind that you wanted Serago arrested? A I wanted him to come back with me or have the both of us arrested-- fix it some way I could give myself up and have him arrested. Because he could make it any worse--

Q When was that? A Right after it happened.

Q Do you mean to say that you were pleading with Serago to give yourself and him up? A No, I was not exactly pleading with him. I told him we were up against it pretty bad and we might as well go back and make this thing clear.

CASE #3229

Q Then it was not because you got angry with Serago that you came back to New York and told about it? A No.

Q And what you said on that subject a little while ago you want to change? A What do you mean?

Q You said a little while ago that you came back intending to have Serago arrested? A I did not intend to have him arrested.

Q Had anybody told you before you came back to New York that if you had Serago arrested and testified against him, that you might get away with it? A Nobody ever told me to testify against him.

Q Did you think about it that way? A I knew nothing about law.

Q You had been convicted once? A Well, once.

Q Is that the only time? A That is the only time.

Q Is this the only time you met what you call a fairy in Columbus Avenue? A I met one or two before but I never had anything to do with them.

Q What did you get off of them? A Nothing.

Q Were not you and Serago running around trimming fairies in Columbus Circle? A No, sir.

Q How many have you stopped in Columbus Circle and talked to? A Never stopped nobody on Columbus circle-- nobody but whom I knew.

Q Never took any of them over to Central Park? A No, sir;

0121

CASE #3229

I never did.

Q Why was it that you suggested to Serago to have this man come around to the room? A I did not suggest. Serago suggested it to me.

Q Then, as I understand it, Schaefer, Serago was the man that engineered the whole thing. Is that right? A I don't know whether he did or not.

Q You were there. Do I understand you to say that you had nothing to do with this intended robbery? A There was no robbery intended.

Q How were you going to get any money out of Martin?
A From the way Serago told me-- that is, you might say blackmail or extortion.

Q And why did Serago think that you were willing to come in in any such deal? A I don't know.

Q Had not you done it before? A No.

Q Is not that why Serago suggested it? A No, sir.

Q Were you willing to fall into his hand? A No, not exactly, I was not.

Q Why then, did you meet Mr. Martin, if you were not willing? Why did you meet him at Seven o'clock? A Why, more to please Serago than anything else.

Q You were afraid of Serago? A To a certain extent.

Q To what extent? A I won't say that I knew but I always heard that he was a pretty bad fellow.

CASE # 3229

Q He was a friend of yours? A Well, he was a friend-- I could not--

Q Had not you come around to Johnston and complained because they let Serago sleep in their room and not you? A No. I always had a room of my own.

Q You were out of funds at that time? A No. Whenever I needed anything all I had to do was to go to my people and they would give it to me.

Q Had you plenty of money that day? A No, sir.

Q How much did you have? A I had enough to keep me up until I found work again.

Q You were not working at that time? A No.

Q And Serago was not working? A No.

Q He was broke? A Yes, sir; I was out of work something like two weeks when this thing happened.

Q You had been out of work two weeks? A Yes, sir.

Q You had a room over in 56th street, at that time? A Yes,

Q Why did not you take Martin over to your room? A Eh! Why did not I take him over to my room, because Serago's was a bigger room.

Q Why did not you take him to your room-- just because this other was a bigger room? A I did not want to take him over to my room.

Q Was not you afraid that if you took him over to your room that it would lead to your discovery? A No.

CASE #3229

Q Is not that the reason you went to Johnston's room and Serago was not a tenant there? A No.

Q This was not the first trip you made to Baltimore, was it?
A Why, no. I had been to Baltimore several times.

Q You had been in Baltimore just shortly before this matter of Mr. Martin, had not you? A About five months before, I think.

Q And don't you remember you came back and asked Johnston to lend you some money to get your suit case from the Adams Express Company? A Yes, I did that.

Q You told counsel a moment ago that you knew somebody had murdered Martin, did not you? A What is that?

Q You said to Mr. Ware: "I knew someone had murdered Martin"?
A Yes, sir.

Q Well, who murdered him? A Serago murdered him as far as I--

Q Your object in taking Mr. Martin to that room was to get all the property he had on him? A Not my object.

Q What was your object? A As I told you before.

Q Tell it again. A The intention, you may say, of extortion or blackmail.

Q By "extortion" you mean you were going to get all you could out of him? A To a certain extent, yes.

Q You saw he had diamond rings on that afternoon? A I know he had a rings on.

672873229
CASE #

Q They were diamonds too? A Well, I did not know they were diamonds at that time.

Q They looked like diamonds? A Yes, sir; as far as I know.

Q And you got \$125 for one of them? A Yes, sir.

Q And did you keep the \$125? A No, sir; I did not.

Q What did you do with it-- split it up with Mike? A No. He got it all-- he handled the money.

Q You did not get anything out of it? A He spent it with me.

Q He paid your expenses? A Yes, sir.

Q A moment ago you said you were afraid of Serago. Do I understand that is the only reason you fell in with Serago's plan to rob Martin, because you were afraid of Serago? A No, not exactly, I would not say. I would not say altogether I was afraid of him; but I thought if I said no he would-- I don't know what he would do or would not do.

Q It did not occur to you that you could fail to meet Martin? A That is what I tried to do.

Q You did not want to meet him? A I told him to stay in the room and wait until I came back; but he insisted on going over with me to see that I did meet the man.

Q He went right along? A Yes, sir, went right along.

Q And when you met Mr. Martin did not you make a signal to Serago like that? (Indicating) That it was all right? A No, I never made a signal. I never told you that I made a signal.

CASE #3229

Q I don't say you did. I asked if you made a signal to Serago that this was Martin? A No.

Q When you did meet Martin where was Serago? A He was coming up the street when Serago and I was standing together.

Q What street? A 58th street.

Q Did he come up and speak to you? A When he came I said, "Here comes Mr. Martin" and Serago went away down 8th avenue.

Q Did you know where he was going? A I think I did.

Q Where did you think he was going? A To the room.

Q When you met Mr. Martin and told him where you and he were going Serago was not in sight? A I did not see him, no, sir.

Q At that moment were you afraid of Serago? A No, I could not say I was afraid of him at that time.

Q And you voluntarily told Mr. Martin to go to 453 with you and you walked along the street with him? A I did not tell him to go. He asked me.

Q And you told him where it was? A Yes, sir, I told him.

Q And that was voluntary on your part? A Well, I don't know.

Q Were not you perfectly willing to come along? A Yes, sir; I was perfectly willing.

Q And did you unlock the door when you got there with a key? A No, the door was opened.

Q And you went in? A Yes, sir.

CASE # 3229

Q Was the light lit? A I don't think it was.

Q Who lit it? A It was daytime. I never lit it.

Q There was plenty of light there, was there? A Yes, sir, plenty light.

Q And when you got into the room did not you look around to see where Mike was? A No, I did not have to look around. I just opened the door and walked in. I seen there was nobody in the room.

Q You said you were tried down in Philadelphia for petty larceny? A Yes, sir.

Q Did you testify in that case? A What do you mean did I testify?

Q Were you a witness? A No, I was not a witness. Witness for whom?

Q For yourself? A Yes, sir, I was a witness for myself.

Q You testified you were innocent? A Eh! Yes, I testified I was innocent of taking these gloves.

Q And you were innocent? A Eh! I was innocent of taking these gloves but I was with the fellow who took him.

Q Just as you are here-- you were Serago when this crime was committed? A You don't have to ask me that question Mr. District Attorney. You can find who took these gloves there.

Q You shared in the gloves? A I shared in them.

Q You were caught red-handed? A He was caught red-handed.

Q You were perfectly willing to share in the robbery? A I

CASE #3229

did not know there was going to be any robbery.

Q You were perfectly willing to share in the robbery?

A There was to be no robbery. I would not call it robbery.

MR. WARE: Does the District Attorney mean before or after?

Q After. A After?

Q Yes. A Why, yes, I think so.

Q It did not occur to you to notify the police that a crime had been committed? A Occur to me to notify the police?

Q Yes. A No, sir; it did not.

Q And that never occurred to you until you got into a fuss with Serago out in Denver, Colorado? Is not that right? A I did not get in no fuss with Serago at that time.

Q Did it occur to you the first time to notify the police about Serago while you were in Denver, Colorado? A Why, I thought that if I had notified the police they would lock me up too.

Q When you took Mr. Martin over there you were prepared to do whatever was necessary to get the money from him, were not you? A All I was prepared, you might say, was to bring him up there. That was all.

Q And then what were you going to do when you got him there?

A I was not going to do nothing.

Q You had some thoughts upon the subject. What were they?

A My thoughts were when he came in the room to find him there

CASE #3229

unexpectedly and tell Mr. Martin that we would have him arrested.

Q For what? A For trying to do what he tried to do.

Q Do you know that the suggestion that you claim Martin made, would be a crime? A I did not, no.

Q Did Serago? A I don't know whether he did or not.

Q How then did you expect that Mr. Martin was going to give up his money willingly? A That is only what I understood Mr. Serago; I did not know.

Q When did you and Serago discuss that part of it? A Right after I told him.

Q Tell us what he said about it. A He said, "Just bring him down to the room here."

Q Is that all he said? A "And I will tell him if he don't give me so and so we will have him arrested."

Q Did he say anything more? A No.

Q Did you ask him how he expected Mr. Martin to give up his money on such a statement? A Yes, sir; I did.

Q What did he say? A "Just leave it to me," he said.

Q And you were perfectly willing to leave it to him? A I don't think I can say that.

Q Do I understand that you were unwilling to have anything to do with this transaction? A No, I was not unwilling to have anything to do with the transaction; that is, you might say--

Q If Martin gave up any money you expected your share of it?

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CASE #3229

A I expected-- I don't know whether he would give it or not.

Q You did pawn a ring for \$125 and one for \$35? A I pawned one.

Q Serago pawned the other? A Yes, sir.

Q And you sold the watch in St. Louis? A I did not sell it. Serago sold it. I tried to pawn that once and could not; and he went in and sold it.

Q Is not it your intention to put this all up to Mike?

A No, sir, it was not.

Q Has not it been your intention ever since you started the trial of this case? A No, sir. I knew that what I said I would have to prove. I knew there was no good in lying about it.

Q What, if anything, did you do to stop Serago when he grabbed hold of Mr. Martin? A I was too dumbfounded to do anything, could not do anything.

Q Did not you stand right there and as he choked him take rings and money from him as he handed them to you, and put them in your pocket? A Yes, I did.

Q The door was unlocked? A I don't know whether it was or not.

Q You did not lock it after you came in? A I don't know whether I did or not. I don't think I did.

Q What is your best recollection? A I would not say.

Q You did not lock this man in there? A I don't think I

CASE #3229

did. I would not say yes or no.

Q Was there anything to prevent your running out and running away? A These people coming downstairs was the only thing that prevented me from going out at one time; and then when Serago and Martin were up against the door when I tried to get out.

Q How big was Serago? A A little shorter than I am.

Q And you are a pretty big fellow? A I am pretty big.

Q And you say you have been an iron worker? A Yes, sir.

Q How long? A I will say three years.

Q Off and on? A Yes, sir.

Q You expected, in other words, that Serago would do the dirty work while you would get the money? A I did not expect nothing.

Q You expected that he would put up the threats to this man Martin, and then whatever came you would take your share?

A No, sir, I did not.

Q Did not you have any expectation of your share? A Yes, I did.

Q Why did you speak about Martin at all to Serago? A Do you mean when I first went into the room?

Q Yes. A Well, the peculiar way I met him, that is how.

Q You say that is the first time you met a person under those circumstances? A Well, I talked to one or two before, I think, that I am sure were the same kind of ones.

CASE # 3229

Q How much did you get off of these two? A Never got nothing.

Q You know Johnston pretty well, don't you? A Well, I would not say pretty well. I know him.

Q What is that? A I would not say I know him pretty well. I know him.

Q Did you ever tell him anything about how you used to go over in Central Park and get in conversation with men that you thought were fairies? A Did I ever tell him?

Q Yes. A No, sir.

Q Never told him anything like that? A No, sir.

Q Mr. Martin never moved a muscle after he fell to the floor? A well, I could not see. His face was down after he fell.

Q You could see his legs and hands there? A I was too nervous. I did not stop to know.

Q You tied the towel on pretty tight? A No, sir. That towel that was found on him was not tied by me.

Q You did not tie that towel? A I tried once but I threw it on the floor and Serago tied it on again.

Q Who tied the gas tube on? A I don't know.. I thought that I had tied it on his feet. I could not have tied it on any part of him if it was found on his hands.

Q Did you tie it on him at all? A If it was on his hands, I did not tie it.

Q Why did you tell the police that you tied it on? A As

CASE #3229

far as I can remember that was what happened in that thing. I was so excited that I did not know what was what.

Q Did not you tell the District Attorney that you tied him up with the gas pipe? A No, sir; I did not. I told him that I took it off and tied it on his feet. And when I told that up to the police headquarters, Mr. Burgess said to me, "it was tied on his hands." I says, "If it was tied on his hands I did not do it."

Q Did you tie it on any part of him? A I will say no if it was on his hands.

THE COURT: You were asked if you tied it on any part of his body. What is your answer?

THE WITNESS: No, sir.

Q Did you see this man's face as he was lying on the floor before any tying of the pipe tube on him was done? A No, sir, I could not see him.

Q When was it when you first observed his face? A When I first met him.

Q I mean in the room after Serago knocked him down? A When he laid on the bed.

Q You did not look at his face until he laid on the bed?
A No, sir; I did not.

Q What was the color of his face at that time? A I cannot remember.

Q Did you ever say anything about the color of his face?

CASE # 3229

A If I did I cannot remember ever saying about the color of his face.

Q Do you remember saying this to the Police Commissioner: "After tying it around his feet he told me to get something to tie over his mouth, which I did, and soon his face was so red I thought there was no use keeping it around his mouth."? A No, sir; I never made that. If I said that I do not know about it now.

Q You have forgotten? A I won't say that I have forgotten it.

Q Was his face pretty red at that time? A I tell you I don't know.

Q Did you see Serago taking the rings off the dead man's hands? A No, I did not. When I went over to pick the watch up off the floor and came over, he had them off.

Q Did not he have a great deal of difficulty to get them off?
A Not that I don't remember.

Q Did not he have to wet his fingers to get them off? A I don't know.

Q Did not you stand there and watch him do it? A No, sir. When I went to get the watch--

Q Where did you get the watch? A Right in the middle on the floor.

Q Was the watch on the floor this way? (indicating) A Over here. (Indicating).

CASE #3229

Q Had he gone towards the door? A He must have if he fell down by the door.

Q You told us this morning that Martin was calling out all the time? A Yes, sir; until he fell.

Q And did you see Serago grab him by the throat as he was calling out? A He did not call out until Serago got hold of him.

Q As he was calling out did not Serago grab him by the throat and choke off his wind? A Yes, sir.

Q What were you doing all the time? A I was by the door going to get out and I heard someone coming down the stairs.

Q You were trying to run away? A Yes, sir.

Q Why? A Because I thought there would be a lot of trouble in this thing and I did not want to get into it.

Q And those people were coming down stairs? A Yes, sir.

Q And as they were coming down stairs they were going away from where you were? A I did not know. They were coming back towards the room where we were.

Q Did you then lock the door? A No, sir.

Q If you look at the diagram (handing diagram)-- if they turn down to the basement here, you will see they were going away from the door? A They were going here. (Indicating).

Q How do you know that? A Because I only heard the foot-steps.

Q And when they were going then Martin called out? A He

CASE # 3229

was laying on the floor then.

Q Serago never said anything about money to Mr. Martin?

A Eh?

Q Serago never said anything to Mr. Martin about money, did he? A No, I don't think he did.

Q He simply went for him as fast as he could? A Yes, sir, he walked over to him and put his arms around his neck.

Q And he had his shoes off and was in his bare feet?

A Who?

Q Serago? A Yes, sir, he had his shoes off.

Q Did not make any noise as he walked? A I don't think he did. The closet door was opened with enough noise.

Q Which closet was it? A Towards the window.

Q You don't dispute that what was read here this morning was the truth, do you? A What is that?

Q You don't claim that what was read here by the stenographers this morning, is not true, do you? A I won't say yes or no to that.

Q You won't say it is the truth and you won't say it is untrue, will you? A (No answer).

Q Did not you tell Mr. Breckinridge the truth? A That is the same thing you are putting to me only in a different form.

Q Well, did you tell him the truth? A (No answer).

Q If you don't want to answer you may say that? A I don't want to answer.

CASE #3229

Q Did you tell Commissioner Dougherty the truth? A I don't want to answer.

Q You don't care to answer that? A No.

Q Did you say anything to Mr. Breckinridge that you would not make any statement about this case unless he promised you something? A No, I did not say that.

Q Did you say anything to anybody in the District Attorney's office that you must have a promise of some sort before you would open your mouth? A That I must have a promise of some sort-- no, I was only told that if I would tell where Serago was at it would make it much lighter for me.

Q And you know that Serago never has been found? A Not to my knowledge, he has not.

Q Did you tell us the truth when you told us where you thought Serago was? A Yes, sir; as far as my knowledge was concerned I told you the truth.

Q And you know we have never been able to find him? A I think if you went there as I directed he could have been found.

Q You would be glad to have Serago here in Court? A I don't see how it would make it any better for me. His word is as good as mine, and mine is as good as his.

MR. BROTHERS: That is all.

REDIRECT EXAMINATION BY MR. WARE:

Q Did you take any jewelry or any property of any kind from the person of this man Martin? A No, sir, I did not. I took

0137

CASE #3229

it after Serago handed it to me. I did not take it off him personally.

Q And did he move from the time Serago got off his body when he was lying on the floor? A No, he did not.

MR. WARE: That is all.

MR. BROTHERS: That is all.

MR. WARE: Now, if your Honor please, we are perfectly willing to close subject to the right to re-open in case we desire to put in any testimony in reply to what Officer Burgess may testify to.

THE COURT: Do you rest then?

MR. WARE: We rest.

(Defendant rests.)

(PEOPLE'S REBUTTAL).

EDWARD C. BURGESS, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Are you a member of the police force of the City of New York? A I am.

Q Attached to the detective bureau? A Yes, sir.

Q How long have you been a police officer? A Six years.

Q In January of this year you were attached to what precinct? A The 26th.

Q Did you see this defendant Harry Schaefer? A I did.

CASE #3229

Q Do you remember the date? A I don't recall the date now.

Q If I said it was the 21st of January, would that refresh your recollection? Was it shortly after he came to the station house? A It was.

MR. BROTHERS: Was that the 21st?

MR. OBERMEYER: Somewhere thereabouts.

Q Did you have any conversation with him? A I did.

Q In the station house? A Yes, sir.

Q Tell the jury what that conversation was? A First, he told me who he was, and I told him that they had been looking for him for the murder of William G. Martin; and I told him that the crime as it stood-- well, I asked him if he wanted to make a statement to me. He said, "no, not at this time until I see my parents or counsel." So I informed him that the crime, I understood was murder in the first degree and he need not make any statement if he did not so desire. And he then said again that he did not wish to make any statement until he had seen his father or counsel. So I asked him if I would send for his father and he said, "No, not at this hour of the night."

Q What hour was that? A This was possibly about twelve thirty. And I asked him what time would be a good time to notify his father. He said in the morning, that he usually gets up around six or half past six. So I continued to talk to him about the case possibly up until three o'clock, when Acting Captain Kerr came in and we went on out to Captain Ormsby's

CASE #3229

office.

Q While you were talking with Schaefer, did you say this, or in substance this, that you knew that he, Schaefer, was not actually the man who killed Martin because you had a witness who had seen how it happened? A No, sir.

Q Did you tell him that if he told the police or the District Attorney where Serago could be found that he was liable to get off with an Elmira sentence. Did you say that in words or substance? A No.

Q Now, what was said by you to Schaefer on the question of his making any statement and what chances of leniency he had? A Well, I told the defendant that if he should see fit to give us information that would result in the apprehension of the co-defendant Serago, that the District Attorney would probably consider that assistance on his part and would be willing to offer him a minor plea.

Q What, if anything, did you say at that time about your having authority to make any such bargain with him? A Well, I told him that I was not in a position to make him any promise but that I would be in a position to inform the District Attorney's office of the assistance that he had rendered us.

Q And did you tell him in words or in substance that that was a matter which he would have to take up with the District Attorney himself or his representatives? A I informed him to that effect, yes.

6733229
CASE #

Q Did you make any threats to him of any kind? A I did not.

Q What would happen to him if he did not talk? A I did not.

Q And when he did speak of the case did he voluntarily speak willing about it? A He did. He did not speak of the case at all until his father arrived and in the presence of his father.

Q His father had some talk with him, did he? A Yes.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. OBERMEYER:

Q This was in January of this year? A Yes, sir; I believe it was.

Q And at that time you were an officer charged with the enforcement of the law, a member of the uniformed police force of this City? A I was.

Q Had you been working on this case for some time prior? A I had.

Q Had you, in the course of that investigation, had occasion to look up this defendant's people? A Yes, sir.

Q Did you see his father and mother? A Yes.

Q Did you have any conversation with them in reference thereto? A Yes.

Q Did you, in the course of that conversation to the parents of this boy, say anything as to leniency as to this defendant? A I did.

0141

CASE #3229

Q Tell us what you said? A I told them, as I stated to you and the Assistant District Attorney, that if he was apprehended and made a clean breast of the story, of the occurrence and assisted in the apprehension of Serago, the District Attorney might possibly consider that assistance on his part, and show him leniency, that it rested entirely with the District Attorney.

Q Did not you tell them that he, undoubtedly, would show leniency and would be cause of that assistance? A I did.

Q Did you leave your card with the parents of this boy at that time? A I did.

Q (Handing) Look at that card and tell me if that is the card you left? A I don't know whether I left it or my partner. It is my partner's name in print and mine in handwriting on there. (Indicating).

Q Is that your handwriting? A No.

Q But that card shows the names of yourself and your partner working on this case? A Yes, sir.

Q And was undoubtedly given to this defendant's parents in connection with a talk in reference to the treatment to be accorded to him? A It was.

Q Now, when you say that you wanted to assist Schaefer in case of his apprehension and assistance to you in apprehending Serago, you meant in case of Schaefer's surrendering himself, did you not? A I arranged it that way with the

0142

CASE # 3229

father.

Q You arranged what? A I had a conversation with the father. Do you wish to hear that conversation?

Q I surely do. A We told the father, Mr. Schaefer, that if he could at any time learn of the whereabouts of his son and would notify us, that we would take the father to the Second Deputy Police Commissioner-- Dougherty at that time-- and he could make arrangements with the Second Deputy to be taken to the District Attorney's office, and could make some sort of an agreement with the District Attorney's office as to the surrender of his son and also the possible apprehension of the other defendant Serago.

Q And also leniency of treatment for his boy you could undoubtedly arrange? A We claimed that we could not promise that. That we were not in a position to promise it. But that was the idea in taking him to the Second Deputy Commissioner's office and from there in turn to the District Attorney's office.

Q Did you, after the surrender of this boy, at any time, try to carry out the statement you have made in reference to seeing the District Attorney in reference to this so-called leniency of treatment? A Yes, sir.

Q Who did you see at the District Attorney's office? A Mr. Murphy, I believe-- no, I believe it was Mr. Breckinridge.

Q Did you tell Mr. Breckinridge of this tacit understanding

CASE #3229

you had made either to this defendant or his parents prior to his surrender? A I told Mr. Breckinridge of the agreements we had or the conversation we had to that effect.

Q Officer, when you took Schaefer to the Second Deputy Dougherty, it was in pursuance of your earlier talk with this defendant in reference to giving information to the District Attorney in his behalf for leniency of treatment. Is not that so? A Yes, sir.

Q How did you come to take him there? A It was that partly and then it was the regular custom.

Q It was the carrying out of your half promise? A It was.

Q And, so far as you know, at that time, in view of the conversation had between the defendant's parents and the defendant and yourself he so understood at that time? A He did, I believe.

Q When he went down and made the statement at Police Headquarters it was in carrying out that proposed program of supposed leniency to be thereafter maintained? A It was.

MR. OBERMEYER: That is all.

MR. BROTHERS: That is all.

MR. OBERMEYER: I think that in view of this testimony that I ought now to renew motion that the so-called confession to police was made in pursuance of this agreement with the police-- I think that comes within the Section of the Code.

CASE #3229

THE COURT: A Police Officer has not right to make a promise such as would relieve the defendant. Motion denied.

MR. OBERMEYER: If a police officer charged with the enforcement of the law--

THE COURT: But there is no evidence here that the police made a promise of leniency. There is a definite statement that he told him that he had no authority to do it. He might promise to do all he could to help him.

MR. OBERMEYER: May I have an exception to the ruling, your Honor.

THE COURT: Yes, the motion is denied.

MR. OBERMEYER: Exception.

THE COURT: Are there any other witnesses you want to send for, Mr. Ware. Are there any other witnesses you want to call. If you would like to have the rest of the day to consult as to whether you should put on any more witnesses I will take a recess here.

MR. WARE: I would like very much to avail myself of that suggestion, your Honor.

THE COURT: You may want to consult with the parents of the defendant. You may take that time to make up your mind as to what you want to do. Be ready to go tomorrow morning at half-past ten.

(The Court duly admonished the jury and an adjournment was then taken until tomorrow at ten-thirty a. m.)

CASE # 3229

Friday, March 20, 1914.

The Court met pursuant to adjournment.

The People against Harry Schaefer, (con't.)

THE COURT: The case is with the defense.

MR. WARE: I would like the Stenographer to make a note of this inquiry of the defendant: Schaefer, do you desire to take the stand again?

THE DEFENDANT: I will only take the stand and deny what I have told.

MR. WARE: Do you desire to take the stand and deny it?

THE DEFENDANT: No, sir, I don't, not now.

HARRY JOHNSON, a witness called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q What is your business? A I am a foreman in the iron works.

Q Do you know the defendant at the bar, Harry Schaefer?

A I do.

Q About how long have you known him? A Well, a little over a year and a half.

Q Has he been in your employ? A Yes, sir.

Q At times during that time? A Yes, sir. I can tell you the exact job he worked on.

Q Well, that is not necessary. He has been in your em-

0146

CASE #3229

ploy? A Yes, sir.

Q You know other people that know him? A Yes, sir.

Q Do you know what his reputation for integrity and general good character has been during the time that you have known him? A Well all I can tell you, I found out nothing but good of him.

Q Did you ever know that he had been convicted of petty larceny some time ago in Philadelphia? A No, never heard of it.

Q But, as far as you-- A He would obey my orders and orders of my foreman I had under me.

MR. WARE: That is all.

MR. BROTHEPS: No cross examination.

JOSEPHINE SCHAEFER, a witness called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Mrs. Schaefer, you are the mother of the defendant?

A Yes, sir.

Q Harry Schaefer? A Yes, sir.

Q Did you have conversations with any police officers before Harry Schaefer surrendered himself to the police?

A Yes, sir.

Q What police officers, if you know, did you talk with?

A Mr. Burgess and another stout man. As much as I know, his

CASE #3229

name was Fitzpatrick. It was marked on a little visiting card-- on a card. Of course, I did not know who the man was at the time they came.

Q Is that the card? (Handing). A Yes, that is the card. That is the card the men gave us when they went away.

Q Did you have more than one conversation with these men?

A No.

Q You had one conversation? A One conversation.

Q Just state what that conversation was. A He came to us in a Sunday afternoon. I was in the store, and he asked could he see Mr. Schaefer--

Q Where is the store? A 132 Greenpoint avenue, Blissville, Long Island. I called my husband out and they spoke to him a few words. Then he said to me, "Mamma, they want to see me about Harry? I says, "Have they got Harry?" He says, "No." Well, he says to the men, "Let us sit down at the table," right in the store. We have an ice cream and candy store. And the four of us sat down at the table and so one of the men said, "Now, don't think we come here to you to mean bad, we come to you to find out whether you know where Harry is, and if you can bring Harry back, have anyway--at all-- you know to have any correspondence with him-- he says they will try to get him off as easy as they could." He says, "We don't really want Harry but we want Serago as we have a man that will go on the stand and swear that Serago had showed

CASE #3229

that man how he could render a man unconscious with his left arm."

Q In this conversation was anything said about what would happen to Harry if he gave himself up? A He said he would get off as easy-- he would get off very easy. He says, "How old is Harry?" I says, "He is twenty years old." Well, he says, "Then you can do that. We will bring you to the district Attorney and get you the assurance that he will get off as easily as possible by making the thing clear how everything was." He says, "We know that this Martin was a man high in society but low in character and although his parents are rich they want nothing at all to do with the case, it is the State what does it; and that he was three months on the case and he could find nothing. And that is why he came to us to find out." And he says, "Don't he write to you?" I says, "No, he did not." He says, "Yes, he wrote to somebody in the City somewheres." I says, "Well, if he did, he did not write to us." And he looked at us. And I said, "I guess Officer you are a man of intelligence and knowledge, that you would be able to tell you a lie that I did know it when I did not, that you would be able to tell by my face." And then I says, "If I know where Harry was I would not tell you alie, I would say 'I know where Harry is but I will not tell you.'" I says, "You know you could not compel me to tell you."

Q When did this conversation happen? A About three months

CASE #3229

after it happened.

Q Did you afterwards get in communication with Harry?

A Harry came home to us on January 8th unexpectedly without knowing anything-- he came; it was about nine or ten o'clock in the evening. I had retired already.

Q Did you tell him about this conversation? A I certainly did. He came in and he says, "Have they got Serago?" I says, "Not as I know". He says, "I bought almost any paper I could find for information whether they had Serago and I could not find any information about it, so I came to you to find whether you know if they have got Serago." I said, "No, I don't think they have; I don't know anything about it."

Q As a consequence of that conversation you had with the police officer and afterwards with Harry on January 8th, is that why Harry gave himself up? A Yes, sir, he told him that he better try and find Serago again, One thing I forgot to tell you is what the officer told me-- of course, on account of mental worriment my mind is sometimes blank, but one thing the officer said is that-- what was it now I was about to say?

THE COURT: Take your time Madam.

THE WITNESS: I have marked here a few things down here (indicating) and if I see the beginning of it I may certainly recall it.

THE COURT: Read it.

A (After examining paper) Yes, he asked for a picture of Har-

CASE #3229

ry. I said, "We did not have any only when he was very small". Then when Harry went away we gave him enough money and told him "Do you think that if you had enough money that you could go back and find Serago"? He said, he did not know but he will try. That is what I was going to say-- he said if Harry-- that they did not want Harry but if we know where he was that he should not leave Serago escape. That is what the detective said, not to leave Serago escape.

BY THE COURT:

Q Is that all you remember? A That is about all. There is one thing that I may have overlooked but they told us he should not leave Serago escape. Then he went away then, and we told him that if he should find him again he should do so and then come or he shall write to some friends of ours as he knows the address, to give us some idea that that he would be known and we could notify the police then. But without letting us know anything he gave himself up all of a sudden.

BY MR. WARE:

Q In your conversation with the police officer do you remember whether they said anything about what your son's punishment would be if he gave himself up-- about how long or where? A Not as I can think of. Not on that conversation. He says he will get off very easy, maybe with five years. That is what they said.

MR. WARE: That is all.

MR. BROTHERS. No cross examination.

CASE #3229

THE COURT: Anything further?

MR. WARE: No, sir.

THE COURT: Do you rest?

MR. WARE: Now, if your Honor pleases--

THE COURT: All I want to know is whether you rest or not?

MR. WARE: What I want to do is to have this man--

THE COURT: Perhaps you had better communicate privately with the Court and not in the hearing of the jury.

(Mr. Ware consults with the Court.)

MR. WARE: Counsel for the defendant asks now that your Honor appoint a commission to examine the defendant, Harry Schaefer.

THE COURT: Motion denied.

MR. WARE: Exception.

THE COURT: Do you rest now?

MR. WARE: Yes, sir.

THE COURT: Both sides rest?

MR. BROTHERS: Yes, sir.

(Evidence closed.)

THE COURT: Any motions.

MR. OBERMEYER: The defendant contends that there is no proof in this case showing any of the elements constituting a separate and independent felony in whose commission the defendant can be said to have been engaged at the time of the alleged homicide. Consequently this case is not within the

CASE #3229

statutory definition of murder in the first degree, while engaged in the commission or attempt to commit such a felony.

2nd. There is no proof here of premeditation and deliberation to bring the case within the statutory definition; and consequently we move for the direction of an acquittal in so far as the indictment charges murder in the first degree.

THE COURT: Motion denied.

MR. OBERMEYER: Exception.

THE COURT: Anything else?

MR. OBERMEYER: We now renew our motion that insofar as the statements made were received as confessions-- made by this defendant to the police and subsequently to the District Attorney as voluntary statements on his part, the same were incorrect and should have been rejected because they were not voluntarily made ^{but} must have been made pursuant to the promises held out by those charged with the prosecution of the law.

THE COURT: Motion denied.

MR. OBERMEYER: Exception.

THE COURT: Is that all now?

MR. OBERMEYER: Yes, sir.

THE COURT: Then, gentlemen, you can go to the jury.

(Mr. Ware sums up for the defendant and Mr. Brothers, Assistant District Attorney, sums up for the people.)

CASE #3229

CHARGE OF COURT -- DAVIS, J.

Gentlemen of the Jury: The defendant is charged with the crime of murder in the first degree, committed on the 11th day of August 1913. He is charged with having killed a man named William G. Martin in the city of New York.

The first thing for you to determine is whether William G. Martin was killed. Our law upon that point is as follows: "No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of the killing by the defendant as alleged, are each established as independent facts -- the former by direct proof and the latter beyond a reasonable doubt". So your first inquiry in this case is, whether or not William G. Martin died, and then whether or not he was killed, and then whether or not beyond a reasonable doubt he was killed by this defendant.

You will recall the evidence in the case as to the finding of a body, and the evidence that it was identified as the body of William G. Martin, and the evidence as to the circumstances under which it was found, with the gas pipe tied around it and the towel over the face, and the testimony of the Coroner's physician who made the autopsy, in which he described the appearance of the

CASE #3229

muscles of the neck and the appearance of the face and finally his statement that the cause of death was asphyxiation by strangulation. And also upon this preliminary but important point you may take the testimony of the defendant himself.

After considering all that testimony, what conclusion do you come to? Did William G. Martin die on the 11th of August 1913, and was he killed by violence? And was his death encompassed through the instrumentality of this defendant either alone by himself or acting in concert with another? The criminal connection of the defendant with the homicide -- if you find there was a homicide -- must be established to your satisfaction beyond a reasonable doubt before you can convict him.

The defendant is presumed to be innocent of this charge, and that presumption clothes him all through the case, and it exists until it is overcome, to your satisfaction by competent evidence and beyond a reasonable doubt. And the burden of proving the guilt of the defendant rests upon the People. It never shifts during the case, to the defendant. And the People are required to prove to your satisfaction beyond a reasonable doubt that the defendant was guilty before there can be a conviction.

I refer to the term "reasonable doubt". It is a

CASE # 3229

term which has a very clear meaning in the criminal law, and those jurors who have served in criminal cases before doubtless understand exactly what it means. It would seem that a mere statement of the words themselves would carry clearly to the mind what the meaning is. But courts have attempted to define it. The word "doubt" is used, but you will observe that it is qualified. It is a "reasonable" doubt that is referred to. Therefore it does not mean every kind of doubt -- a speculative doubt for instance. It means a doubt which arises in the mind of a conscientious juror after he has carefully and conscientiously examined the evidence on both sides. If, after doing that, he feels that his judgment is not convinced of the guilt of the defendant, why then he has a reasonable doubt in his mind which belongs to the defendant and he must acquit him. But, if after such an examination jurors' minds are convinced, their judgments are convinced to a moral certainty, that the defendant is guilty, it is their duty to convict him of such grade of crime as they find beyond a reasonable doubt the evidence establishes.

The defendant has introduced one witness to prove his good character. Therefore it is an issue in the case. Good character evidence may sometimes of itself create the

CASE #3229

0156

reasonable doubt I have referred to when without it there would be no reasonable doubt. When I say good character evidence, I mean such evidence as was introduced here. But I do not mean to say that it will always create that reasonable doubt or that it necessarily creates it. But I say that it may of itself sometimes create a reasonable doubt which would entitle the defendant to acquittal where without good character established there would not be any reasonable doubt.

Now, on the question of whether the defendant had good character or not, you have a right not only to consider the testimony of the last witness, his employer, but the testimony of the defendant himself as to his life -- his admission that he was convicted of petit larceny in Philadelphia, and served a term there. It is your duty to consider that as well as the testimony of the other witness who testified to good character. And then determine for yourselves whether he has a good character, whether he was himself a man of good character, and whether or not that testimony raises in your minds a reasonable doubt of his guilt.

He is charged with murder in the first degree in this indictment. That is a grade of homicide, homicide being divided into murder, manslaughter, excusable homi-

0157

CASE # 3229

cide and justifiable homicide. There is no defense here of excusable homicide or justifiable homicide.

Murder in the first degree is defined as follows:

"The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed

1. From a premeditated and deliberate design to effect the death of the person killed or of another; or

2. By an act imminently dangerous to others and evincing a depraved mind regardless of human life although without a premeditated design to effect the death of any individual; or

3. Without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise".

In this case the District Attorney claims that the defendant killed the deceased without a design to effect death, but while he was engaged in committing a felony upon the property of the deceased, to wit, the felony of robbery. As I understand it, he does not claim that the defendant himself choked the deceased. He does not claim that he strangled him and did the manual acts which deprived this man of his life. But he does claim that he was acting in concert with Serago and was there aiding and

CASE # 3229

abetting and assistin in the robbery of the deceased.

It is not necessary in this case that you should find that this defendant actually manually choked the deceased, in order to find a verdict of guilty. Our law says "A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, or whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime is a principal".

So, if you find that this defendant was engaged with Serago in a common criminal scheme to rob him, and pursuant to that scheme took him to this room, and pursuant to that scheme Serago choked him to death in an attempt to commit a felony upon his body and against his property, being aided in that attempt to rob by the defendant, and as the result of that robbery -- if you find that he did rob him -- Serago killed him, then this defendant is equally guilty with Serago if, as I have said, you find that he was actuated by the same common criminal purpose that Serago had and was there aiding, abetting and assisting Serago in the commission of a felony against the person and property of the deceased.

The indictment, charges murder in the first degree; and I read you the definition. If you find

CASE #3229

that this defendant killed the deceased from a deliberate and premeditated design to effect his death, unless it was excusable or justifiable, it would be your duty to convict him, provided, ~~as to say~~, you find that beyond a reasonable doubt. In that view of the case there must be a design to effect death preceding the killing; the killing must be the result of a design to kill; and that design must be a design which was formed after some premeditation and deliberation.

Premeditation and deliberation are acts of the mind, and the law requires, before there can be a conviction of murder in the first degree under that subdivision of the Statute defining murder in the first degree, that the killing should be the result of a design, upon which design the defendant must have premeditated.

Now, how much deliberation and premeditation is necessary under the law? It does not require any specified length of time within which the mind must form a design to kill. The design to kill must have been preceded by some deliberation and premeditation, and I will read you upon that the language of our Court of Appeals which explains very clearly what deliberation and premeditation mean. The Courts say:

"There must not only be an intention to kill but there must also be a premeditated and deliberate

0160

CASE # 3229

design to kill. Such design must precede the killing by some appreciable space of time. But the time need not be long. It must be sufficient for some reflection or consideration upon the matter, for choice to kill or not to kill, and for the formation of a definite purpose to kill. And when the time is sufficient for this, it matters not how brief it is. The human mind acts with celerity, which it is sometimes impossible to measure, and whether a premeditated or deliberate design to kill was formed must be determined from all the circumstances of the case".

The District Attorney in this case, as I have said, claims that the act of the defendant comes under the latter part of that Section, and he asks you to convict the defendant under that latter part. The latter part referred to is as follows: "The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed without a design to effect death, by a person engaged in the commission of or in an attempt to commit a felony either upon or affecting the person killed or another".

Now, do you find from the evidence in this case that the defendant, with a design to effect the death of the deceased, which design was the result of deliberation

0161

CASE # 3229

and premeditation, killed the deceased without excuse or justification? If you do find that beyond a reasonable doubt, it would be your duty to convict him.

If you do not find that he committed deliberate and premeditated murder, as I have defined it, but do find that beyond a reasonable doubt, without a design to effect death, he was engaged in the commission of a felony or in an attempt to commit a felony upon the person or property of Martin, and that in the course of the commission of that felony, or attempt to commit a felony, he killed the deceased, then he is guilty of murder in the first degree.

You see the difference. In one class of murder in the first degree there must be the design to kill, which design must be preceded by some premeditation and deliberation; in the other class of murder in the first degree there need not be the design to kill but there must be the act of committing a felony or the attempt to commit a felony against the person or property of the deceased, in the course of which and while carrying out that felony the defendant killed the person.

There is another grade of murder -- murder in the second degree. That is defined as follows: "Such killing of a human being is murder in the second degree when committed with a design to effect the death of the

0162

CASE # 3229

person killed or of another but without premeditation or deliberation".

You see the difference between the two grades of murder. Murder in the first degree is the result of a deliberate and premeditated design to effect death and murder in the second degree there need not be deliberation and premeditation, but there must be a design to kill.

It is possible to have a design to kill which design is not the result of any deliberation or premeditation. The suddenly formed intent to kill followed by the act of killing immediately, would be a design to kill without premeditation and deliberation, and when death is encompassed in that way by such a design to kill, if the killing is not justifiable or excusable, it is murder in the second degree.

In this case if you have any reasonable doubt as to the guilt of the defendant of murder in the first degree, you should acquit him of murder in the first degree, and then investigate the evidence to determine whether or not he is guilty of murder in the second degree, as I have defined it -- that is, the killing of Martin as the result of a design to kill him, the design, however, not being the product of any mental operation or deliberation or premeditation.

If you have any reasonable doubt as to his guilt

672373229
CASE #

of murder in the second degree, you should acquit him of that grade, and inquire whether he is guilty of manslaughter in the first degree. Manslaughter in the first degree does not ^{require} ~~imply~~ any design to kill. It is a killing without a design to effect death. Our statute defines that as follows:

"Such homicide is manslaughter in the first degree when committed without a design to effect death

1. By a person engaged in committing or attempting to commit a misdemeanor affecting the person or property either of the person killed or of another, or
2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon".

And then there are some other parts of that Section which do not apply in this case. I draw your attention to the first sub-division of that Section: "Such homicide is manslaughter in the first degree when committed without a design to effect death, first, by a person engaged in committing or attempting to commit a misdemeanor affecting the person or property either of the person killed or of another".

You will recall that I read you the definition of murder in the first degree and particularly that part of it which refers to the commission of a felony or

0164

CASE # 3229

homicide committed while the person is engaged in the commission of a felony. I will read it again: "The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise". And manslaughter in the first degree is a homicide "when committed without a design to effect death, either, by a person engaged in committing or attempting to commit, a misdemeanor, affecting the person or property either of the person killed or of another". So you see the difference between the two grades of homicide, so far as this particular kind of homicide is concerned, is whether or not the person charged with the crime committed the homicide while engaged in the commission of a misdemeanor, or a felony. If he was engaged in the commission of a felony, it would be murder in the first degree. If he was engaged in the commission of a misdemeanor it is manslaughter in the first degree.

Therefore, it will become your duty here to determine whether or not this defendant was engaged in committing any crime against the deceased in the course of which the deceased was killed.

As I have stated before, the District Attorney claims that he was engaged in the commission of a robbery -

CASE # 3229

which is a felony and not a misdemeanor.

Now, I will define for your guidance what robbery is -- so that you may determine upon this evidence what actually took place in that room which resulted in the death of the deceased. "Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of the family, or of any one in his company at the time of the robbery". The law further says "To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it doesnot constitute robbery".

Robbery in the first degree is defined as follows: "An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this chapter, is robbery in the first degree when committed by a person,

1. Being armed with a dangerous weapon; or
2. Being aided by an accomplice actually present, or
3. When the offender inflicts grievous bodily

harm or injury upon the person from whose possession, or in whose presence, the property is taken, or upon the wife,

0169

CASE # 3229

husband, servant, child or inmate of the family of such person, or any one in his company at the time, in order to accomplish the robbery.

Robbery in the second degree is defined as follows: "Such unlawful taking or compulsion, when accomplished by force or fear, in a case specified in the foregoing sections of this chapter, but not under circumstances amounting to robbery in the first degree, is robbery in the second degree, when accomplished either

1. By the use of violence, or,
2. By putting the person robbed in fear of immediate injury to his person or that of some one in his company".

And then there is a grade of robbery in the third degree. All these grades of robberies are felonies -- not misdemeanors.

If you have any reasonable doubt of the defendant's guilt of manslaughter in the first degree, it will be your duty to acquit him of that also, and investigate the evidence and determine whether or not he is guilty of manslaughter in the second degree. That grade of crime is defined as follows. "Such homicide is manslaughter in the second degree when committed without a design to effect death

1. By a person committing, or attempting to commit, a trespass or other invasion of a private right, either of

0167

CASE # 3229

the person killed, or of another, not amounting to a crime;
or

2. In the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual; or,

3. By an act, procurement or culpable negligence of any person which, according to the provisions of this Statute, does not constitute the crime of either murder in the first or second degree, nor manslaughter in the first degree".

If you have any reasonable doubt of his guilt of that grade of crime, then you must acquit him, and your verdict will be "not guilty".

It is your duty to find him guilty of such grade of crime as is proved to your satisfaction beyond a reasonable doubt he is guilty of, whatever that grade may be.

There was some suggestion or claim by counsel defendant that while he was present there he was acting under duress. If that is true, he is not guilty of any grade of crime, and should be acquitted. The rule of law on that subject is: "Where a crime is committed or participated in by two or more persons, and is committed, aided or participated in by any one of them, only because during the time of its commission, he is compelled to do or to aid or participate in the act, by threats of another person engaged in the act or omission, and reasonable apprehension on his part

0169

CASE # 3229

of instant death or grievous bodily harm, in case he refuses, the threats and apprehension constitute duress and excuse him".

Now, gentlemen, these are the rules of law which should guide you in considering the evidence in this case, and up to the present time I have not referred to the evidence. The rules of law as I have laid them down for your guidance of course you will adopt and use ~~them~~ for your guidance. You are the sole judges of the facts in this case. It is for you to say whether or not the defendant is guilty and of what grade of crime he is guilty.

Under the law and under this indictment, you are at liberty to find him guilty of murder in the first degree, if you are satisfied that he is guilty of that crime beyond a reasonable doubt; and you may convict him of murder in the second degree or manslaughter in the first degree or manslaughter in the second degree, or you may acquit him. But it is your duty to find him guilty of such grade of crime as you believe this evidence establishes to your minds beyond a reasonable doubt. Acquit him, of course, if you find that he is guilty of no grade of crime ^{if} or you have a reasonable doubt about that.

I will refer briefly now to the evidence in the case. The Johnstons went on the stand and testified that their lease of their room expired a day after they left.

CASE # 3229

They testified they gave up the room and that they left Serago and Schaefer. As I understand it, they were allowed to remain there the remainder of the term, which would be a day or perhaps a little over. The witness Johnston and his wife, both of them, testified to some conversation on the part of the defendant with Serago concerning somebody that the defendant knew -- a man -- and I think he stated where he met the man and he referred to him as a "fairy". What is meant by that term was not explained in detail, and you are left to infer what is meant.

And then there is testimony that Serago and the defendant spoke about meeting this man together; Serago said he had some other employment, and I think it was testified to by the Johnstons, or one of them, that this defendant said that they could meet the man and get through with their business any time to enable Serago to keep his appointment, which was about ten o'clock. That is my recollection of the evidence. And then I think some reference was made, as appears from the testimony of Mr. or Mrs. Johnston, that an inquiry was made by Serago as to the appearance of the man to be met, as to his prosperous appearance, how he was dressed and so forth. And then, without referring to the testimony of the defense, testimony was introduced into the case as to the finding of the body of this man in the condition in which, according to the wit-

0170
CASE # 3229

ness, it was found. You will recall all that.

What inference do you draw from that testimony? Because I bring it to your minds independent of anything that the defendant testified to here and independent of any so-called confession that he made. Do you conclude that the deceased met his death at the hands of this defendant and Serago?

Then, I call to your attention the testimony here of the defendant himself, and I will not rehearse that in great detail. You will recall what he said took place in the room while the Johnstons were there and while Serago was there. He spoke of the man, according to his own testimony, said something about his look of prosperity and, as I recall his testimony, he made an arrangement with Serago to go out together and to bring that man into the place. He said his purpose was to blackmail him. You will remember the defendant used those words. And he testified also that he and Serago went forth, that he met the man, that Serago then left under an arrangement to be at the room when he brought Martin there. Then you have heard the testimony of what took place after. The testimony of the defendant himself given in this witness chair, of the attack by Serago upon the deceased, and then as to what the defendant did. He testified that he helped tie something around his feet; that while that was going on the

CASE #3229

ring was taken from the deceased and handed to the defendant; a handkerchief was put over his face; the man was choked, according to the statement of the defendant himself here on the stand. You will recall all this testimony. Now, what were they doing there? Was Serago attempting to rob the man? Was he attempting to commit a felony upon or against his person or property? And was the defendant there aiding and abetting him in that felony? That is a question solely for you to determine.

I have not referred at all to the alleged confession of the defendant made to the police officers and to the Assistant District Attorney, for the reason that these confessions alone, standing by themselves would not be sufficient to convict. You would not be permitted to convict upon those confessions standing alone. There must be additional proof -- additional to this in the confessions -- that the crime charged has been committed.

The District Attorney claims that there is additional proof; and that that additional proof ~~comes~~ comes from the mouth of the two Johnston witnesses and from the testimony of the coroner, and from all the other witnesses and also from the lips of the defendant himself here upon the stand. The law says that the confession of a defendant whether in the course of judicial proceedings or to a private person, can be given in evidence against him, un-

0172

CASE # 3229

less made under the influence of fear produced by threats, or unless made upon a stipulation of a district attorney that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction without additional proof that the crime charged has been committed".

The alleged confessions have been given in evidence before you. The defendant says that some parts of them are not true, that some parts he did not say. For instance, he says he did not say, in answer to one of the questions put to him, that he had never committed a murder before. Well, that is testimony for you to consider. Did he say it or did he not? If he did not say it, why then what conclusion do you come to upon the other parts of the alleged confession?

Of course a confession to be of any value must be a voluntary free confession. That is to say, it must not be made under the influence of fear produced by threats. Is there any evidence in this case that those statements made to the police officers or to the District Attorney, were made by the defendant under the influence of fear produced by any threat? Did anybody threaten him? Was he forced to make the statements to the police through threats producing fear? I do not recall any testimony in the case that he was threatened by anybody. If I am mistaken about that, you will remember and you must substitute your recol-

0173

CASE #3229

lection for mine. The police, according to the evidence, did say something to him about telling the truth and giving a statement and they would do what they could to help him, and there is some evidence that the police made statements of a similar character to the mother. Do you find that that language constituted a threat or was it mere police work, detective work, design to get the defendant under arrest, and after getting him under arrest, get him to make a statement concerning the homicide? There is no evidence here that the District Attorney made any stipulation for the defendant as a consideration of his making any statement or confession. However, all these questions are left for you to determine.

If you find that he made his statement to the officer and to the District Attorney as the result of threats you should ~~if you do only~~ cast out of consideration those alleged confessions. Or if you find that he made the statements upon a stipulation, that is, an agreement of the District Attorney's, ~~you should~~ disregard them. But before you disregard them, you should be satisfied that they were confessions gotten by threats or upon an agreement or stipulation with the District Attorney.

Now, gentlemen, that is all I have to say about this case. The defendant claims that he is not guilty of any crime. The issue of fact must be determined by you,

0174

CASE #3229

without sympathy and without prejudice. Give every statement made by the defendant and by his witnesses a fair, full, conscientious examination, and attach to that evidence the importance which ~~seems to your minds~~ ^{to} it is entitled. Examine carefully the evidence on the part of the People and on the part of the defendant, and ^{then} come to the conclusion that is forced upon your minds, as to the guilt or innocence of this defendant, and find him guilty of such grade as you think the evidence establishes to your satisfaction and beyond a reasonable doubt; or if you have a reasonable doubt as to his guilt of any grade of crime, acquit him.

The case is with you. Your verdict under this indictment may be any one of four verdicts: Guilty of murder in the first degree, guilty of murder in the second degree, guilty of manslaughter in the first degree, guilty of manslaughter in the second degree, or not guilty.

Any requests?

MR. OBERMEYER: I would ask these three requests:

First, that if upon the whole evidence there is reasonable doubt of the guilt of the accused, he is entitled to the benefit of that doubt, as well with respect to the degree of crime as to every essential requisite of that degree. And the burden never shifts from the Prosecution of overcoming this doubt.

0175

CASE #3229

THE COURT: I so charge.

MR. OBERMEYER: And I ask your Honor to charge that if the jury are satisfied that the defendant is guilty of the crime of homicide and there is a reasonable ground of doubt in which degree he is guilty, he must be convicted of the lowest of those degrees.

THE COURT: I have already charged the jury to that effect; and I will charge it in your language. You are so charged, gentlemen:

MR. OBERMEYER: And I ask your Honor to charge that whether the crime proved was murder or manslaughter in one of the degrees specified in the statute, depends upon the intention and circumstances of its perpetration; and mere proof of the death or killing of Martin raises no legal implication that the crime of murder in the higher degree has been committed.

THE COURT: I so charge, ~~gentlemen~~

MR. OBERMEYER: That a conviction of murder in the first degree for homicide committed while in the commission of a felony, is not warranted herein, since the facts as disclosed by the testimony show that at the time of the killing the only felony, if any, in whose commission the defendant might be deemed engaged, was a constituent part of and became merged in the homicide; and could not, therefore, be regarded as a separate and independent felony,

0176

CASE #3229

which, although "committed without a design to effect death" would bring the case within the Statute.

THE COURT: I decline to charge that.

MR. OBERMEYER: Exception.

THE COURT: You may retire now, gentlemen.

(The jury retired at 12:50 P. M. and returned into court at 3 P. M., finding the defendant guilty of murder in the second degree.)

THE COURT: Do you wish the jury polled?

MR. OBERMEYER: No, your Honor, we waive that. May we reserve the right to make motions on whatever day your Honor shall set?

THE COURT: Next Wednesday, the 25th.

CASE # 3229

Wednesday March 25, 1914.

The Court met pursuant to adjournment.

The People vs. Harry Schaefer, resumed)

MR. OBERMEYER: I make a formal motion for a new trial on the ground that the verdict is contrary to law, against the evidence, and against the weight of evidence and on the ground of errors in the admission of testimony over objections during the trial.

THE COURT: Motion denied.

MR. OBERMEYER: Exception.

*The foregoing is a complete and
correct transcript of my stenographic
notes of a fore case*

*Bartholomew Maynehan
Official Stenographer -
Trial Term Part I. Supreme Court.*

CASE # 3229

PEOPLE VS. HARRY SCHAEFER.

March 18, 1914.

OPENING ADDRESS OF MR. GEORGE N. BROTHERS, Assistant
District Attorney, for the People:

May it please Your Honor and Gentlemen of the jury:

As you already know, the defendant is charged by the
Grand Jury with having committed murder in the first de-
gree on the 11th of August of last year. This young man
was an acquaintance of a fellow named Edward Johnston, who
had a room in 453 West 57th street, on the ground floor at
the back. Johnston was married and lived there with his
wife, and had been there, I think, about a week. Johnston
is a young man about 21 years of age, and his wife is a
little younger than he. They had been married some two or
three years.

Schaefer was an acquaintance of theirs and also an-
other man by the name of Mike Serago. These men came to
this room where Johnston lived at that time. And finally,
Schaefer, pleading that he was hard up, got permission to
sleep there. The Jonstons say that the rent was paid for
the room up to Wednesday. The crime occurred on Monday.
Mrs. Johnston, either because this man Schaefer insisted.

CASE #3229

on being there or whether Mike Serago thought if Schaefer could sleep there that he might come there, or whether the reason that she had assigned that she had permission to return to her mother and stay for a while until her husband got a job, is something that is ^{not} particularly material but will be inquired into. At any rate, they had determined to give up that room on that Wednesday.

Mr. Martin, who was a milliner about 38 years of age, a rather prosperous man, doing business in Toronto, was in the habit of coming to New York on business two or three times a year; and when he came, he took up his residence, for the time being with Mr. and Mrs. Barrett, who lived in 58th-street-- 355 West 58th street. He came down in August on this trip. And when he went out on Monday he met Schaefer in that neighborhood, and they had some talk, and the intimation coming from the defendant in his statement to us, after his arrest, would indicate that he believed at any rate, that Mr. Martin was a moral degenerate. He had, at that time, two very valuable diamond rings, carried a gold watch and some money-- giving all the evidence of being a prosperous business man. And he and Schaefer had some talk on the street with the result that they made an appointment to meet at seven o'clock that evening.

After that conversation Schaefer returned to Johnston's

CASE #3229

rooms, and there he found Mr. and Mrs. Johnston and Mike Serago, and he stated there in the presence and hearing of Mr. and Mrs. Johnston and Serago that he had just met a fairy who seemed to have a good deal of coin and jewelry and he thought there was something doing, and did Mike want to come in on it, and he thought he would if he could get in from a job at ten o'clock; and he and Serago arranged to meet on the street where they were to meet Martin.

Serago was there when Martin was met by Schaefer, and Schaefer intimated by signals to his friend Serago that it was all right, and by previous arrangement Serago hurried back into the room and hid himself in one of the closets.

We have prepared a diagram showing the position of the furniture there and the closets at the time.

Then and there these two men came back to the room. Martin was a stranger to that place-- never had been there in his life until brought there by Schaefer. Schaefer told us and told the Police-- and his father was present during one interview-- that his purpose in taking Martin to that room and his purpose in having Mike Serago there was to rob Martin of his jewelry and money. And the reason that Serago was in the closet was to overcome any resistance which Martin would make.

CASE #3229

0182

There was a little boy who lived in that house, who is only twelve or thirteen years old, who happened to be in the hallway of the building when he saw two strangers come in, between half past seven and eight o'clock and go in and one of the men opened the door with his key.

When the Jonstons went away that afternoon about half-past five they left the key there, telling Schaefer he could use the room until the rent was up.

When Martin got into the room there was a conversation between Martin and Schaefer. As to what occurred there we are going, in this case, to show you what Schaefer himself says what happened there. From him comes the story of what occurred in the room. He told us and the Police on three different occasions that Martin made a certain proposition to him and that he demurred to it; they waited; presently Martin, who had a black and white checked summer suit, had removed his coat, took off his collar and necktie, and talked a little while longer, and finally took off his shoes; and then as he was standing up-- either by signal or otherwise-- Serago came quickly out of the closet and grabbed this man by the throat. Martin put up a fight. He was overpowered and thrown to the floor, and he never regained consciousness; he remained there like a log, this man clutching him by the throat.

CASE #3229

The Doctor will testify as to the condition of the throat and that there were signs of violence by the hands. He was held there and he could not do anything. The rings were taken from his fingers and handed to Schaefer by Serago. His money was taken. And then Schaefer took the hose connecting the gas jet overhead with the gas stove used for cooking and then he ~~trussed~~^{thrust} this man up with the-- he had an ordinary hand towel, and he tied it tightly over the man's nose and mouth and knotted it behind and he kept it there until the man got black in the face, as he says. And then he says he took it off and Serago put the towel back again. In the meantime Martin had not moved a muscle. And at this time bear in mind a human being ^{not} can live with his wind shut off this way.

After they did this they threw this body up on the bed with his feet on the pillow and they went out and went away. That was Monday night, August 11, 1913.

Living in the house and having some charge, were Mr. and Mrs. Theodore Jones. And the following day-- I do not recall the exact hour, Mrs. Jones smelt something, or something attracted her attention to that room, and she went and pushed the door open and looked in; and she saw a man on the bed with his feet on the pillow; and she thought at first that the man was drunk, and so told the husband. The husband

CASE #3229

came in and looked, and concluded it was something more than intoxication and summoned the police and Officer Donnelly arrived; and he found that this man had been partially disrobed, and that his body had been tied up with this gas pipe-- which we have here in Court-- and over his mouth was a towel tied behind his neck so that he could not breathe. The man was dead at that time. An investigation was had and the Johnstons were found who had occupied that room and a search was made for the defendant and Serago.

When they left that room that night Serago and the defendant left New York City. They went over to Jersey. They came back a day or so after on the ferry and they got the New York papers and they saw an account of this. They sent word to Mr. and Mrs. Johnston not to come near that room because they pulled off a trick there and the Johnstons might get into trouble. They then went over to the elder Mr. Schaefer's house in this place over in New Jersey and presented the cuff links of the dead man to Mr. Schaefer senior, saying they got them cheap and they did not need them. Then they went from there to Baltimore and there pawned the diamond rings of the dead man, getting \$125 on one and \$30 or \$35 for the other one. From Baltimore they went to St. Louis, and there sold the dead man's watch.

CASE #3229

And from there they went to Wyoming, and they wandered from place to place until finally Schaefer came back to New York and on the 23rd of January, this year, he walked into a police station and said that his name was Schaefer. Nobody knew then who he was or what he was wanted for. And from there he was sent to Police Headquarters, and there he made a statement of the facts I have outlined to you.

Thereafter he came down to the District Attorney's office and he was warned there, that if he did not care to he need not speak, but he did speak and in answer to certain questions put to him by Mr. Breckinridge, a Deputy assistant District Attorney, he repeated again the story which he had told at Police Headquarters.

Now, that is, in substance, the material facts of this case. This differs from what you have ordinarily regarded as a murder case, in one particular, and with the permission of the Court I will state what that is. Ordinarily, you remember, that a man charged with murder where he goes up and deliberately kills another man. However, the State goes further and says that if a man is engaged in the commission of a felony on the person of another human being and kills that man in the perpetration of that felony, it constitutes murder in the first degree. In other words, if two men set upon another man and by force and violence

672873229
CASE #

rob that man and with such force that they kill that man, that is murder. And that is this case.

From the defendant's own mouth we will prove to you that his intention in bringing that man to the room was to rob him and that great force was used. Doctor Weston, who performed the autopsy will tell you that this man died from strangulation. Mrs. Barrett will tell us that when he went out from her house about seven o'clock he said something to her about an appointment, and that at that time he had on his rings and jewelry and had ~~seen~~ shown her some money; that he did not return; and growing alarmed about his absence, the next day she went out and made inquiries. She ran into a police officer who told her that a dead man had been found lying in a room, and she went there and found it was Mr. Martin. She went the following day to the morgue and identified him to Doctor Weston.

We ask the jury in this case to listen attentively to the evidence. All that the Johnstons will tell you you will find later corroborated in what the defendant told the police officers and the District Attorney. If, upon this evidence you are satisfied beyond a reasonable doubt that Sergao and Schaefer lured that man, either through the man's own willingness to come or his suggestion, took him

CASE #3229

to that room for the purpose of robbing him, and then while robbing him killed him-- if you are satisfied that that is the truth of this case, under the law it will be your duty to find him guilty of murder in the first degree.

MR. WARE: Will your Honor exclude the witnesses from the Court room during the hearing of the testimony?

THE COURT: Yes. The witnesses on both sides. It is so ordered.

CASE #3229

0199

OPENING ADDRESS OF MR. WARE, counsel for the defendant:

If your Honor please, and gentlemen of the jury, I shall be very brief in opening this case, because from the lips of the defendant himself you will hear his story, and that is, in effect, that he went there with this man expecting to get money in some way I presume possibly, although I don't state it, by extortion, but he knew the character of the deceased and he intended to prey upon him in some way undoubtedly. Now, we don't claim that this defendant is an angel of purity or is even normally respectable. He got into bad company. There is no question about that. He had once before been convicted of petty larceny down in Philadelphia and he had been thrown in with bad associates, possibly beginning with his prison term which was a short one but long enough to get him into these subterraneous channels of viciousness that were dragging him lower and lower. But he tells us that he never conceived, either before or during the commission of this crime by Serago-- that he never had any desire or intention of injuring the dead man; he did not know that Serago was going to make any assault on the dead man; he supposed that Serago, who apparently was broke, would be there because Serago knew

CASE # 3229

that the defendant was going to meet this man Martin, and Martin had money and jewelry and Serago needed it.

Serago strangled this man to death. And-- although it may not be proper at this time to say so-- we assert, and the defendant asserts that he believed that the man was dead when Serago unloosed his hold, that the crime had been committed at that time by Serago, that this defendant was afraid of Serago who was notoriously a bad man, an Italian of peculiarly passionate and dangerous nature, and that the defendant did not dare to interfere although he did not know what Serago was doing until the deed was accomplished.

As to these so-called confessions it seems that this boy, tormented by the recollection of this awful scene and feeling that while he was not guiltless, that he had something to answer for, comes back to the city and voluntarily gives himself up to the Police. That, of course, is granted by the prosecution. There is no question about it.

When he went into the Police station he will tell you that it was some time before they would believe that he was wanted, or that his statement as to who he was and that he wanted to give himself up, was taken with any seriousness by the officers of the law.

However, he did give himself up. And the Police Department apparently turned right around, and, according

CASE #3229

to him have put words into his mouth.

Now, the defendant will take the stand. He has been a boy who has worked for a living. Prior to his one lapse from honesty he had borne a good reputation, lived at home and had been an industrious youth.

CASE # 3229

CLOSING ADDRESS OF MR. WARE, counsel for the defendant:

If your Honor pleases, and gentlemen of the jury: We are entitled to form our opinion of this defendant from our observation and acquaintance during the last few days of this trial. He acknowledged yesterday on the stand that he had made statements to counsel which when he went on the stand he told a story in direct contradiction; and this very morning he has stated--

MR. BROTHERS: I object to this.

THE COURT: That won't do. That is something outside of the evidence, Mr. Ware.

MR. WARE: Well, we will confine ourselves to the statement yesterday. You all have that statement. If you believe that a person can be mentally sound and make such a statement then, gentlemen--

THE COURT: There is no defence of insanity interposed here.

MR. WARE: No.

THE COURT: You must discuss the evidence.

MR. WARE: Cannot the jury determine for themselves--

THE COURT: Whether he is sane or not?

MR. WARE: Yes, sir.

THE COURT: No. There is no proof of insanity.

CASE #3229

Discuss the evidence before the jury as it has been admitted by the Court.

MR. WARE: The evidence of Johnston was perfectly compatible with a defence which would imply the innocence of this defendant. Mrs. Johnston testified in effect that she heard this defendant say that he was going to meet this man at seven o'clock-- the deceased. Serago also heard that. Serago, a man who, the minute this boy utters those words Schaefer knew that Serago was going to participate, if he could, in the looting of this deceased man. Schaefer, even in his evidence here, stated that he did not know and did not think that Serago was in the room until he saw him step out of the closet. There is no question, ~~xx~~ from any aspect-- I do not think that this jury believes for a moment that under any circumstances this boy had anything to do with the actual strangulation of the deceased. And Doctor Weston, who has had a long experience in autopsies and in the Coroner's Court, tells us that the deceased came to his death positively and absolutely by strangulation. And the evidence that this boy gave us yesterday was that when Serago put his left arm around this deceased and choked him and then grasped his ~~thru~~ throat in his hands, and they fell to the floor, Serago on top, Serago stayed there until the boy of this man lay limp and lifeless. And when Sera-

672873229
CASE #

go got up from that floor that this man was dead.

Now, according to the story that we have here from the defendant, he was there. He did not call out. He did not raise an alarm. He has said that he was somewhat in fear of this Serago. It is only natural to suppose that a man who would kill another in the presence of a third person, that the third person, if they were a boy of twenty years of age, with a weak and vacillating disposition of this defendant, would be somewhat in awe, would be terror stricken of the murderer-- a man whom they had just seen put another to death.

He tells us that he wanted to go out by that he heard steps in the hall and feared that if he went out that discovery would be made and he would be perhaps accused of the actual physical murder. At any rate, he did not go out as he told us yesterday, until this Serago had stripped the jewelry ~~had stripped the jewelry~~ and money, valuable, except the watch, which was on the floor, from the deceased, and, as I remember, handed them over to Schaefer.

Then they went away together. And this defendant worked most of the time and Serago probably pursued his own usual vicious ways.

But, in the meantime something was developing there in New York and vicinity. The two police officers who had

672873229
CASE #

been hunting vainly for Serago and Schaefer, called upon the parents of Schaefer and by promises made by Officers Burgess and Onsley, confessed yesterday, made offers and inducements that when this boy came out from the West and came to see his mother and father, seemed to offer a haven of hope out of this black despair. And the mother and father undoubtedly said, "Why, tell the truth, give yourself up, pay your penalty. The officers say it will only be five years or a little more; do the right thing, and then you have paid your debt to Society you can look the world in the face once more." And Harry gave himself up, and you know the rest.

Now, gentlemen, his Honor will instruct you as to the various degrees of homicide-- of murder and manslaughter. And I ask you, gentlemen to search the law, particularly to see what degree you can find for this boy of twenty, that will keep him from the electric chair. He never intended to commit a murder. He never premeditated a murder. The murder was committed in his presence, just as if we were on the street. Only a few months ago a man was shot right here on this corner and killed. There were spectators, of course. They had nothing to do with the killing. But they had to stand there and see one man shoot another, because it was all done in a flash. And that is what happened. I don't believe Serago intended to kill, because I don't believe

0194
CASE #3229

5

that he knew that the man was dead. But I believe the man was dead because Doctor Weston tells us that the man died of asphyxiation, produced by strangulation, and the only strangulation^{there} ^{the clutching} was, was depressing of the throat. The towel would not have produced the effect that Doctor Weston has described. That towel, besides gentlemen, was a useless thing because the man was dead. Serago told this boy to put the towel around him and he did, and then Schaefer undid it and threw it away. Serago evidently feared that this man would come back to consciousness and raise an alarm. And that is what the towel was for and that is what the strangulation was for-- to shut off this noise. Because-- nobody unfortunately heard it-- if some one had ever gone in there, then there would be no trial for murder; there would have been a trial for robbery, or some other kind. But there would have been no murder committed. Serago wanted to stop the noise.

Afterwards, Schafer testifies, Serago picks up the towel and ties it in the brutal manner which we have heard described.

7 Gentlemen, this boy of twenty years may possibly-- if your verdict allows him to-- someday be a credible member of Society. Life, human life, is something that none of us should take and none of us can give. I do not know whether his Honor will stop me when I say that I think the present

627373229
CASE #

law in this case is a relic of barbarism. It like the time two or three hundred years ago when they burned women at the stake as witches. Why, a few years hence we will look back at the present condition of things and wondered that we ever allowed such brutality, such murder to be perpetrated in the name of the law. And you will be told that it is the law--

THE COURT: You had better stop now. Discuss the evidence. The law of the State is the law and you must obey it as well as the jury. It is for the Court and jury and every body to obey it.

MR. WARE: Well, I feel very strongly, your Honor, in this matter.

THE COURT: Restrain your feelings.

MR. WARE: Gentlemen, finally I will ask you to do something which maybe his Honor will say I have no right to do. I believe that the jury can show sympathy. I believe that the jury was put by the law between the defendant and the Court and the inflexible statutes. Why, otherwise should there be a jury,-- a jury of twelve men? I will ask for your sympathy for this poor, unfortunate boy and for his father and his mother, and for us, his counsel, who are trying and have tried to help him.

I don't know, gentlemen, what I can say further. You have heard the evidence. You have heard his statements on

627373229
CASE #

the stand. Consider his demeanor, consider what he has said. And then, gentlemen, remember he is entitled to the benefit of every reasonable doubt, and give him all the benefit of every doubt that his own actions may inspire in your mind.

CLOSING ADDRESS OF MR. GEORGE N. BROTHERS, Assistant District Attorney, for the People:

May it please the Court and Gentlemen of the Jury:

There is not very much that I care to say. I would like to remind you that the defendant has had a very fair and impartial trial. His rights have been fully protected from the day of the murder to the present moment. The Police did their duty. Counsel have done their duty. ^{Hampered} ~~Hindered~~ as they are with a guilty client, what can they do further than they have done? They have been conscientious and diligent. They have done all they could. There is nothing further that human effort can do than they have done here.

We have heard considerable in this case about the surrender of the defendant. As I take it, the claim is made that if a guilty man-- guilty beyond any doubt, reasonable or otherwise,-- walks into the station house and says, "I am the man you are looking for", that that is a good defence. It is done day in and day out. A Guilty man fre-

CASE #3229

quently comes and walks in and says "I am the man you are looking for." But it paves the way for a plea to the jury. The plea is made to the jury. Why, the police were hot on his trail and had been looking for him for months. They were to his father's house and guarding every outlet of information. They were looking for him.

He had a fight with his friend Serago out West; he could not make a living out there any longer. And he came back here, as he told us, determined to turn himself in. He had not heard anything from his family at that time, and he was going to see if he could not purchase his own life by having Serago executed. He was perfectly willing to have Serago put to death by the state if he could purchase his own life. That is the kind of ^{chap} ~~cat~~ he is.

Now, those considerations have nothing to do with the jury. The jury is not here to dispense mercy, to indulge in sympathy. You are here solely and only for the purpose of determining whether, upon the evidence before you, this defendant is guilty or innocent. And if he is guilty, of what is he guilty. That is all you have got to do.

If you are convinced beyond a reasonable doubt that this defendant aided and abetted, counseled or advised in the killing of this man, or the robbing of him, and shared in it, profited thereby, he is guilty of murder in the first

0198

CASE #3229

degree under the statute. And any juror who finds any different verdict, believing in his own conscience that that is the proper verdict in this case, is committing a grievous wrong. This jury one by one under oath said that they would ^{be} actuated not by prejudice or sympathy but that you would render a true verdict, no matter whom it hurts. You said you would render a true verdict.

Now, take this as a suppositious case: Two thugs on the highway creep up behind a pedestrian and with a club one of them hits a man on the head and he falls senseless and they rob the body. How long a time would the jury wait to render a verdict? You would say that was a desperate man. You would say, "They committed a grave crime, we cannot have this; the man is guilty and we must say so as honest men."

Now, how much worse is this case? The defendant goes out on the highway. He sees a man-- one of those unfortunate beings so constructed that he is immoral in that way, and for whom I have no defence-- but whatever he was, he probably was in business, he employed people, he was of some use in the community. But whether he was or was not, if he was the lowest creature on earth, he was entitled to life; he was entitled to the equal protection of the law, and nobody had the right to rob him. And ~~xxxx~~ certainly no

6 6 1 0

CASE # 3229

one had the right to kill him. And he goes out and finds such a man, and he plays to his passion and suggests things. He goes, not to his own home, ^{but} to Johnston's room, and he sees Serago and he says, "I met a fairy, who has lots of jewelry and he is prosperous looking and he is from out of town." And he says, "Bring him over here and we will get money out of him." and he asks, "How are you going to do that," and then he says, "Them people give up when they are threatened with arrest." And the defendant said, "He won't give up that way, you don't think a man would let you get money that way, do you?" And right then and there this crime was planned, and he went back and met the victim on the street. He took him to the room, and he knew, you have a right to say, that Serago was in the closet. And when Serago came tiptoeing out in his stocking feet, would he take off his shoes if he was going to say, "You are going to be arrested." Mind you, Serago never said a word. The man had valuable rings and jewelry. They were going to take no chances with this man. They were going to rob him and use violence to get it from him. And the defendant has told the story himself under oath. And he has corroborated every word that we have said. And don't you know that he has told the story in the best light for himself. He is trying to put it all

CASE # 3229