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CASE #1359

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
-against-
CHARLES BROWN.
-----X

#1567
Before:

HON. EDWARD SWANN, J.,

And a Jury.

Indictment filed June 30, 1910.

Indicted for assault in the first and second degrees.

New York, April 24, 1911.

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

FOR THE PEOPLE,

ASSISTANT DISTRICT ATTORNEY ROBERT E. MANLEY.

FOR THE DEFENDANT,

MR. EDWARD B. BROWN.

Peter P. McLoughlin,
Official Stenographer.

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(On motion of the defendant's counsel all witnesses were excluded from the court-room).

(During the opening address of Mr. Manley, defendant's counsel takes exception to the statement that, "At the same time and place Peter Gentile was cut".)

FLORENCE Mc CARTHY, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Now, Mr. McCarthy, where do you live at the present time? A 41 Water street, Red Bank, New Jersey.

Q Upon the 15th day of May last, where did you live? A Keyport, New Jersey.

Q Did you have any relatives living in West 69th street on the 15th of May last year? A My brother.

Q At what number was he living? A 309 West 69th street.

Q Is that on the block between West End avenue and the railroad tracks? A Yes, sir.

Q Is it upon the north or south side of the street? A On the north side of the street.

Q The north side of the street? A Yes, sir.

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Q Some time that evening did you come into the block between West End avenue and the railroad tracks in the City and County of New York? A Yes, sir; I did.

Q About what time was it? A I came down there about a quarter of two, fifteen minutes of two.

Q In the morning? A Yes, sir.

Q At that time were you alone? A Yes, sir; I was alone.

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

Q When you say home, where do you mean?

A To my brother's house.

Q 309? A 309 West 69th street.

Q Now, as you were walking in that block, from which way did you come? A The south side of the street -- I came from 65th street.

Q What avenue had you come up? A I came up West End avenue.

Q From 65th street? A Yes, sir.

Q As you reached 69th street did you turn into the block towards the railroad tracks, upon the south or north side of the street? A The south side of the street.

Q Tell us what occurred, what you saw when you got there? A I saw a commotion down the street, and as I did I ran down.

Q Where was that commotion? A Down in front of 316

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West 69th street.

Q Is that on the south or north side of the street?

A On the south side of the street.

Q Can you give us any idea about how far that number is from the southwest corner of 69th street and West End avenue?

A Well, about 100 yards.

Q About 300 feet? A Yes, sir.

Q When you saw the commotion down there -- did you see the commotion as soon as you came around the corner?

A Yes, sir; heard some shouting.

Q Was it the shouting that drew your attention to it?

A Yes, sir; the shouting drew my attention to it.

Q When you heard the shouting what did you do?

A I started to run down.

Q Now, when you got down there did you see anybody?

A I seen Brown, this defendant.

Q Where was he when you first saw him? A He was on the south side of the street, right in front of 316.

Q 316? A Yes, sir.

Q Anybody else besides Brown? A Two others; the rest had fled.

Q There were two others near where Brown was?

A Yes, sir.

Q How many feet were they away from Brown? A I should judge about six feet.

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Q Did you see anybody run away from that point as you came down?

Objected to. Objection sustained.

Q When you got down, or at any time as you were going from the corner of West End avenue and 69th street up to the time that you got down to 316, where you saw these three men, had you seen anybody else? A No, sir.

Q Did you see any other people around 316 except the three that you have spoken of? A There were four or five there when I started from the corner.

QX Well, what became of the other two then during the time that you started from the corner and the time you got down there? A They disappeared; they ran away.

Q Did you see them? A Well, I seen forms going down the street.

Q In what direction were the forms, which you saw, going? A Well, towards the railroad tracks.

Q Towards the west? A Yes, sir.

Q Can you give us any idea about how many forms you saw going in that direction? A I should judge at the start-off there was about four or five there besides Brown.

Q When you got there, there were three? A Yes, sir; when I got there, there were three.

Q Now, what took place when you got there? A He had a guitar in one hand like that (Illustrating).

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Q Who did? A Brown.

Q This defendant? A Yes, sir.

Q Will you stand up, Brown? (The defendant stands up).

This man here? A Yes, sir. He was whirling the guitar like that, shaking it over his head, he was holding them back, but I thought, at that time, he was entertaining them with the guitar.

Q In which hand did Brown, the defendant, hold the guitar?

A In the left hand.

Q Go right ahead? A As I came near him he makes a shot for me with the guitar in his hand, and as I dodged the razor comes out of his hand and he catches me right across the abdomen.

Q Indicating the left side? A Yes, sir.

Then I fell in Cpster's arms, a witness of mine; he carried me up, got the doctors, and I was taken to the hospital and I laid ten days.

Q Let us go back to the start. When you first went there, as I understand it, you saw this defendant standing in front of these two men waving a guitar in his left hand?
A Yes, sir.

Q At whom, if anybody? A Holding these back, these two.

Q He was waving this guitar at these two other men?

A Yes, sir.

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Q Holding them off with the guitar? A Yes, sir.

Q Did you know those two men? A No, sir.

Q Had you ever seen either of them? A No, sir.

Q How close did you get to where the defendant was when you first went up there while he was whirling this guitar? A I should judge about five feet, the distance between you and I.

Q Did you say anything to him? A No, sir.

Q Now, what was the first thing he did when you got up within five feet of him? A Rushed at me with the guitar in his hand, made a blow to hit me.

Q Did he hit you more than once with the razor?

A Just once, and then I fell.

Q You fell? A Yes, sir.

Q Were you on the sidewalk or in the street?

A I was on the street.

Q That was opposite the number -- A 316.

Q Now, you say they ran away and Coster carried you away? A Yes, sir.

Q Did you know Coster up to that time? A No, sir.

Q Did you see Coster before you came to where the defendant and the other two men were? A No, sir.

Q Do you know of your own knowledge, from seeing it, from which direction Coster came? A He must have come down the street, because I ran into him.

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Q Was Coster one of the two men that were there?

A I don't know.

Q Now, Coster took you where? A He carried me to 310.

Q Where? A West 69th street.

Q Whereabouts in 310 did he carry you? A On the third floor.

Q Into a room? A Yes, sir; into some room.

Q Did you see there that night a man whom you knew as Peter Gentile, or whom you have since found out to be Peter Gentile? A Yes, sir; he was brought in that same room with me.

Q You didn't see him until after you had been taken to that room? A No, sir.

MR. BROWN: I object to that question.

THE WITNESS: No, sir; I did not see him.

Q You had never seen him before in your life until taken to that room? A No, sir.

THE COURT: He had never seen Peter Gentile until he saw him in that room that night, is that right?

THE WITNESS: Correct.

MR. BROWN: Now, your Honor sees the application of my motion in bringing in these two indictments. This complaining witness says he never saw that man until they brought him into the room. How are they going

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to harmonize that?

MR. MANLEY: I will harmonize it and make music before we are through.

THE COURT: What are you objecting to?

MR. BROWN: I object to the question.

Objection overruled. Exception.

Q Now, what became of you that night after you left that room in that house at 310? A I was taken to the Flower Hospital.

Q How long did you stay in the Flower Hospital?

A I should judge about a week or ten days, I can't recollect now.

Q Will you tell us where that cut was that you got from the razor? A Do you want to see it -- from there to there (Illustrating and exhibiting the wound).

Q Did you have a coat on that night like you have on now? A No, sir; I had a striped coat.

Q You had on the same style of a coat, an ordinary sack coat? A Yes, sir.

Q You did not wear an overcoat? A No, sir.

Q I suppose, of course then, the razor went through your clothes? A Yes, sir.

Q Did you bleed very badly? A No, sir; I did not bleed at all.

Q About what time was it when you got to the hospital?

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A About, I can't tell you, I lost my senses for a while.

Q Were you unconscious on the way to the hospital?

A Yes, sir; I received absolution off the priest when I was conscious.

Q You received it while still in the house? A In the ambulance.

Q Can you tell us how many stitches they took in your wound in the hospital? A I cannot tell, I should judge about six.

CROSS EXAMINATION BY MR. BROWN:

Q Mr. McCarthy, where do you say you live now?

A 41 Water street, Red Bank, New Jersey.

Q Now? A At the present time, yes, sir.

Q With whom do you live there? A With my wife.

Q How long have you been married? A About eight months.

Q Since this occurrence? A Yes, sir.

Q Where did you live at the time of this alleged assault? A In Keyport, New Jersey.

Q How long had you been over in New York that day?

A I should judge I was there about twelve hours.

Q About twelve hours? A Yes, sir.

Q What were you doing over in New York that day?

A I came in for a visit.

Q A visit to whom? A To my mother.

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Q Where does your mother live? A 714 Ninth avenue.

Q Did you visit your mother? A No, sir; my mother was out on a case; my mother is a nurse.

Q Well, who, if anybody, did you visit? A I visited my brother.

Q Where does your brother live? A 309 West 69th street.

Q What time did you get to your brother's that night?
A Well, I visited my brother early in the afternoon before I was going home --

Q Did you see your brother at all that night?
A Not that night, not that night, no, I went out somewhere.

Q What were you doing in that neighborhood at two o'clock at night? A I went to a show, and after I went to the show, I went over to the Chinese restaurant.

Q What show did you go to? A Well, I went down to the Colonial Theatre.

Q What time did that let out? A About twenty minutes after eleven.

Q Where were you from twenty after eleven until two o'clock? A I was out with some friends of mine.

Q What place? A Upto 151st street.

Q How long did you stay there? A I stayed there about an hour and a half, not quite that, about an hour.

Q What friend was it? A His name is Farrell.

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Q What number? A 527.

Q What time did you get there? A About, I must have got there around twelve o'clock, or a little after twelve o'clock anyway.

Q Was he up? A Yes, sir; he was up.

Q You stayed there an hour and a half? A About that, I cannot judge.

Q Where did you go after you left your friend?

A I came right down.

Q Down to where? A I got off at the 66th street station, and I went over to the Chinese restaurant which is on 65th street and Broadway.

Q 65th street? A Yes, sir; and Broadway.

Q How long did you stay there? A Not very long.

Q Well, how long? A Well, about twenty minutes or so.

Q Did you eat anything there? A I had some chop suey.

Q Were you in company with anybody? A No, sir; no company at all.

Q Where did you go after you left there?

A I came right home, I was going down 69th street.

Q Going down 69th street? A Yes, sir.

Q You say your brother lives at what? A 309.

Q Where did this alleged assault take place?

A In front of 316.

Q 316? A Yes, sir.

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Q You got to your brother's house before you got by this assault? A No, sir; I went down to see what the row was about.

Q You got to your brother's house, 309, before you to got 316? A I was not on that side of the street.

Q I didn't say anything about the side of the street-- no matter whether on the other side of the street, you passed 309, your brother's house, to go to 316? A Yes, sir.

Q That is two o'clock at night? A About that time.

Q You were alone? A Yes, sir; alone.

Q You say you saw a commotion down the street?
A I did.

Q Well, you joined in the commotion? A I didn't do any such thing.

Q Well, you went down to where it was? A I did.

Q Now, how many persons did you see, who was there in that crowd at 316? A Well, about four or five there when I first saw them.

Q When you got there, I mean? A About three.

Q Were they white or colored? A Well, I could not see their faces because it all happened too quick.

Q You mean to say that you went down there, got assaulted, and could not see the persons who were there? A Their backs were turned towards me at the time; his was the only face in front of me.

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Q All the backs were turned to you -- you couldn't tell whether they were white or colored? A No, sir; they were fleeing, they were going.

Q I asked you the question. What was the color of thosemen? A I don't know.

Q What is that? A I don't know.

Q So you ran into a crowd of persons not knowing whether they were white or colored? A I did.

Q Was your friend Gentile there? A No, sir; no friend of mine.

Q Well, was he there? A No, sir.

Q He was not there? A No, sir.

Q Who did you say took -- who did you say carried you away? A Coster.

Q Coster? A Yes, sir.

Q Was he there? A No, sir.

Q Did you see him there? A No, sir.

Q You didn't see him there? A No, sir.

Q Did you see anybody else there? A No, sir.

Q Did you testify in the Magistrate's Court?

A I did.

Q Do you remember your testimony there? A I do.

Q You do? A Yes, sir.

Q Is your testimony to-day what it was then?

A Yes, sir.

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Q Sure about that? A Yes, sir; perfectly sure.

Q Perfectly sure about that? A I am.

Q Did you say in the Magistrate's Court, before Judge O'Connor, on the 15th day of May, 1910, that you came from your brother's house on a visit to your brother from Keyport, New Jersey? A I did.

Q You came out of the house and came down the street to where a crowd of white young fellows were, and they were holding a colored man there with a banjo, he was holding them at bay with a banjo, and you rushed up to him and got too near him and you got it -- that these men were setting upon him -- is that your testimony in the Magistrate's Court?

A I testified in the Magistrate's Court, --

Q Is that your testimony. (Question repeated).

A Not as I recollect.

Q Not as you recollect? A No, sir; I didn't state white people.

Q Do you remember anything about a banjo? A Yes, sir; I do.

Q And that you got too near him? A Well, you see I got the banjo mixed with a guitar.

Q That you got too near him and you got it, do you remember that part of your testimony? A I do.

Q Do you remember that? A Yes, sir.

Q Do you remember at that time you said there was only

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one colored man there? A Never said it.

Q Now, it isn't May now -- it isn't May?

A I can't recollect, I say.

Q Could your memory be refreshed if that evidence was read to you? A Yes, sir.

Q It could be? A Yes, sir.

Q You would not contradict it? A No, sir.

Q Now, Mr. McCarthy, the first time that you saw this man Brown, where was he? A He was right in front of 316.

Q Can you tell this jury now how many men were there besides the defendant Brown? A Four or five.

Q Four or five men? A Yes, sir.

Q Did you see the faces of any of them? A No, sir.

Q You did not see the faces of any man? A No, sir.

Q Neither white nor colored? A No, sir.

Q Didn't even see the face of Brown? A Yes, sir;
I did.

Q How did you? A Why, when he deliberately stabbed me, I don't see him doing it?

Q You saw him when you were struck? A Yes, sir;
I can see him yet --

Q How near did he approach you, did he approach you or did you approach him? A He approached me, of course, I wasn't going there to tell him to stab me.

Q you say you came from your brother's house, you

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walked down there, he was standing there holding men at bay, holding a crowd at bay -- you must have run up to him?

A No, sir.

Q He didn't chase you; did he? A Where I stopped short he came for me.

Q You stopped short? A Yes, sir.

Q Is that so? Where was he when you stopped short?

A There was nnbody around, I said.

Q You mean that you were alone on the street?

A At that time, yes, sir.

Q At that time? A Yes, sir.

Q At that time you were alone with Brown? A Yes, sir.

Q It was all of a sudden, you were struck so suddenly that you saw four or five men -- you were struck so sudden you didn't have time to recognize the faces of any of them, to tell whether white or colored? A No, sir.

Q That is your statement? A Yes, sir.

Q Where were you when the officer brought Brown before you? A I was up in the hospital.

Q How long after this alleged assault? A The next afternoon.

Q The next afternoon? A Yes, sir.

Q Were you taken to the hospital that night? A That morning; yes, sir.

Q Where did you stay that night? A No, I meant to say

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that Brown was taken before me Monday morning, that was it, Monday afternoon, I meant to say.

Q Monday afternoon? A Yes, sir.

Q What day of the week was this, this alleged assault occurred Saturday night? A Sunday morning.

Q At two o'clock? A Yes, sir.

Q Two o'clock? A Yes, sir; about that time.

Q About two o'clock? A Yes, sir.

Q Now, where were you going to stay that night?

A At my brother's house.

Q But you left your brother's house? A I didn't leave my brother's house.

Q Didn't leave your brother's house? A No, sir.

Q How long have you lived in Keyport, New Jersey?

A Since February 2nd.

Q Why were you in Keyport, New Jersey? A Well, sir --

Q Why were you living in Keyport, New Jersey?

A Because my brother lived there and he wanted me to live with him.

Q What brother? A My brother John.

Q Was that the brother that is in New York here?

A No, sir; that is a different brother.

Q You were living over there? A Yes, sir.

Q You did live with this brother in New York before you went to Keyport, didn't you? A No, sir; I lived with my

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mother then.

Q You lived with your mother? A Yes, sir.

Q Why was it you left your mother to go to Keyport to live? A Well, I had a chance for advancement.

Q You hadn't been in any trouble over here?

A No, sir.

Q That is the reason? A No, sir.

Q Had not been in any trouble at all? A No, sir;
not a bit.

Q You had ~~been~~ over there for two months?

A Well, I was over there a little over two months at that time.

Q Before you visited New York again? A Yes, sir.

Q Mr. McCarthy, have you ever been convicted of crime?

A I have.

Q Yes. In this county? A In this county.

Q What was the crime that you were convicted of?

A Do I have to answer?

THE COURT: Yes.

Q Go ahead and answer it? A Larceny.

Q Larceny? A Yes, sir.

Q Larceny? A Yes, sir.

Q From the person? A Sir?

Q From the person? A Yes, sir.

Q From the person, robbing people, how much did you

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get? A I was sent to the House of Refuge; I was sentenced to the House of Refuge.

Q Before what Judge were you convicted? A Well, I believe it was McAvoy, I ain't sure, in the Children's Court.

Q In the Children's Court? A Yes, sir.

Q In the Children's Court? A Yes, sir.

Q But it was a felony, for robbing people?

A Well, I could not ---

Q Now, have you been convicted since then?

A No, sir.

Q Since that time? A No, sir.

Q Isn't it a fact there are two convictions against you for the same offense? A I don't know.

Q Well, you ought to know? A There is only one conviction I ever knew of.

Q Well, didn't you plead guilty to a crime after that?

A No, sir.

Q After that? A Never.

Q Did you ever serve any time besides the House of Refuge? A No, sir.

Q Have you ever served any time in any penal institution outside of the House of Refuge? A No, sir.

Q Wasn't you convicted in the Court of General Sessions?

A No, sir.

Q Up on this floor? A No, sir.

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Q You pleaded guilty and had a suspended sentence?

A No, sir.

Q Didn't you so testify in the Magistrate's Court on the 14th day of -- the 15th day of May, 1910? A No, sir.

Q In the testimony up there? A No, sir.

Q Well, do you think the reading of that -- do you think the reading of that evidence up there would refresh your memory? A Yes, sir.

Q If you so testified up there, on cross examination, would you say it was true? A You have to repeat that question, I don't know what you mean.

Q I say, if that evidence that you were convicted of a second crime? A yes, sir; sure, that would refresh me.

Q It would refresh your memory? A Yes, sir.

Q But now you have not any faintest recollection of it? A No, sir; I was never convicted, no, sir.

Q you did not plead guilty? A No, sir.

Q Now, isn't it a fact that by reason of your conviction for those crimes, your mother sent you over to Keyport to get you out of New York? A No, sir.

Q To keep you from getting convicted a third time?

A No, sir.

Q That is not the fact? A No, sir.

Q You did not so testify in the Magistrate's Court?

A Not as I can recollect.

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Q Now, on this night you didn't do anything to this defendant? A No, sir; not a thing.

Q The man with the banjo didn't do anything to you?
A Yes, sir; he did.

Q What did he do to you, -- you say that he had a banjo in the left hand, I think? A In the left hand.

Q He was waving it over his head? A Yes, sir.

Q What was it, giving a serenade there, waving it over his head? A I don't know what he was giving; he gave me something.

Q You went up to him, didn't you? A No, sir; I stopped short as soon as I seen the banjo going.

Q You passed ~~him~~ right by everybody else who was there and went up to him? A No, sir; he came for me then.

Q There wasn't anybody there? A No, sir.

Q But yourself? A No, sir.

Q You stopped still? A Yes, sir; I stood still.

Q Why did you go there if there wasn't anybody else there but himself? A I heard the commotion up the block.

Q Well, could one man make a commotion? A No, sir; I said before there was four or five there when I seen it.

Q You saw it all before you got there? A I saw this crowd before I got there.

Q After you got there, the crowd disappeared?
A Yes, sir.

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Q And left the man there waving over his head?

A yes, sir; that is just it.

Q He started for you? A Yes, sir; that is what he did.

Q Where were you, in the exact place that you were when he started after you? A Well, I was in front of 316, out in the street.

Q 316? A Yes, sir; there is a lamp-light there too.

Q A lamp-light? A Yes, sir.

Q That is where this alleged assault took place?
A Yes, sir.

Q There was a lamp-light lamp right there? A yes, sir.

Q You mean to tell this jury in that crowd under this lamp - light you could not tell whether they were colored or white people? A I do; I couldn't tell what kind they were; they were retreating as I got there.

Q you couldn't tell whether they were white or colored?
A No, sir.

Q Now, Mr. McCarthy, how long were you in the hospital?
A About a week.

Q Sure you wasn't there a month? A yes, sir; sure I wasn't there a month.

Q You were able to come to court inside of a week's time

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to testify in this case? A Ten days.

Q You have not been to the hospital since?

A No, sir.

Q That wound was all healed inside of that time?

A Yes, sir.

Q Inside of ten days? A Yes, sir.

Q - Mr. McCarthy, when you got to the hospital, --
when you got to the hospital, you say, the next day, Monday,
in the afternoon the defendant and another man was brought
there? A Yes, sir.

Q Had anybody seen you that day? A No, sir.

Q Wait a minute, if you please, had anybody seen you
before and had any conversation with you that day before
these defendants, immediately before this defendant and the
other defendant, was brought in there? A No, sir.

Q Didn't any one -- who brought the defendant there?

A Two officers.

Q Two officers? A Yes, sir.

Q Do you know their names? A Yes, sir.

Q What was the name? A Officer Kilgallen and
Officer Callanan.

Q What took place when they brought the defendant
there? A They brought the defendant and Roberts over
to the bed and I identified Brown.

Q What did the officer say to you? A Well, just

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asked me did I know who stabbed me, was these the parties that stabbed me, and I picked out Brown.

Q Was there anybody there standing up with Brown?

A Yes, sir; another boy named Roberts.

Q Those were the only two colored men? A Yes, sir.

Q You were on the bed? A Yes, sir; I was on the bed.

Q Were you lying down? A Yes, sir.

Q Or sitting up? A I could not sit up then.

Q Were you on the bed? A Yes, sir.

Q They brought in two colored men? A Yes, sir.

Q you identified Brown? A Yes, sir.

Q That had injured you? A Yes, sir.

Q How about Roberts? A I did not identify Roberts.

Q You did not identify him? A No, sir.

Q Didn't have anybody else there? A No, sir.

Q You say the officers, immediately before they brought Brown in, had not said a word to you? A No, sir.

Q Did you know that there was a colored man there that afternoon? A No, sir.

Q Did you know that the men charged with assaulting you were on the hospital premises? A No, sir.

Q Before they were brought into the room? A No, sir.

Q Had you worked at that time in Keyport? A Yes, sir.

Q What was your business? A I was farming at that time.

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Q What kind of farming? A Farming, of course, planting and plowing.

Q What did you use, an ox or a horse? A Just a blow.

Q Didn't you use an ox in plowing or a horse?

A A horse.

Q So at last you had got into some useful employment?

MR. MANLEY: I object to that as being quite unfair.

THE COURT: Objection sustained.
BY THE COURT:

Q What are you doing now. What were you doing at the time that you received this wound? A I was farming, your Honor.

Q Out there? A Yes, sir.

Q Now, this was about two o'clock in the morning?

A Yes, sir.

Q What was a farmer of New Jersey doing at two o'clock in the morning at that particular place? A I said that I was going, just came from a chop suey place.

Q Tell the last juror what you were doing there at two o'clock in the morning? A Well, I was only after coming from this here Chinese restaurant. I wrote my mother telling her I would be in to see her Saturday, but she didn't get the letter; and when she didn't get the letter I came up to my brother's place in the afternoon. I got the train out at 10:20 and that put me in here about twelve o'clock.

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Q Twelve o'clock? A Yes, sir.

Q Where does your brother live? A 309 West 69th street.

Q Did he expect you to make a call in the morning, if you know, did he expect you to arrive at his house at two o'clock in the morning? A Your Honor, I went to a show.

Q Well, now, what the defendant's counsel wants to get at is this. It seems to him strange that a man that had already been arrested and convicted of larceny from the person, such as you had been, you understand, to be out at two o'clock in the morning in a particular place where another man, according to your own statement, was holding off two men with a guitar, and you happened to come up just at that psychological moment and get cut with a razor. Now, tell us the whole thing. You can explain that to us, anything that you want to say. It looks very suspicious, Very candidly, there isn't a man in the room that don't think you were one of the men that was trying to hold him up. It looks that way to me. A Well, your Honor, I would not prosecute him-- I would not prosecute him if I --

Q We don't know what you would do. A man that will hold up another man and get convicted of it, there is not anything that he won't do. You can take my word for that.

A I am sure I wouldn't get stabbed and not try to be justified for it if I am in the right.

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Q It looks mighty suspicious, and we know nothing about it; it looks mighty suspicious that you, a man that had already been arrested and convicted of the same thing should be there at two o'clock in the morning, just at the right hour for hold-ups, that you should get there and get mixed up in a hold-up and get out. It is mighty difficult to explain to the jury. We will hear your explanation of that? A Well, I came down 69th street, and as I turned the corner of 69th street I seen this commotion down the street. Being curious I ran down there and when I got down the street some people were running down, I stopped up short, and a colored man came for me with the guitar, he waved the guitar like that (illustrating) and then he cut me. I did not bother him; I was of no crowd; just came down the street.

Q When he went at you with the guitar as you have indicated, you didn't know the man and nobody was bothering the man, why did you get near enough to him for him to cut you with a razor, why didn't you retreat? A I was retreating, your Honor, I was like that (illustrating).

Q Two o'clock in the morning? A I fell back like that.

Q you had been a convicted man. Now, why did you get yourself just exactly in that place? A Well, I was a

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convicted man, but that was --

Q Wouldn't that have warned you, for you to be mixed up at two o'clock in the morning, the evidence would look bad against you? A Yes, your Honor.

Q But still you went right into it, didn't you?
A Well, I happened to get it.

THE COURT: Well, I did not mean to interrupt your cross examination, Mr. Brown. I wanted to put it right up to the witness and have him try to explain to us.

MR. BROWN: That is my line of examination.

MR. MANLEY: Continue, go ahead.

BY MR. BROWN:

Q You say there were other people running down towards this ~~xxx~~ commotion besides yourself? A Yes, sir; not besides myself, I didn't say.

MR. MANLEY: Don't put words in his mouth.

Q Were there other people running towards this commotion? A They were running away from it.

Q Running away from it? A Yes, sir.

Q You were running towards it? A As I got there they were --

Q They were? A Yes, sir.

Q you don't know what kind of people they were?
A No, sir.

Q You were on the spot, and you have given your

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testimony to this jury, and they want to know from you the circumstances. Mr. McCarthy, when was the first time you saw the officer that night? (No answer).

Q How soon after you were injured that night, did you see the officer? A The officer -- it was while I was laying up in the room in bed.

Q How long after this injury? A About, well, may be half an hour.

Q Half an hour? A Yes, I don't know, I can't recollect the time.

Q Did you see any officer on the street that night while you were coming down to where this commotion was?

A No, sir; I did not.

Q Did you see any officer on the beat that night?

A Well, I passed one down the avenue.

Q Down the avenue? A Yes, sir.

Q Coming from 65th street? A Yes, sir.

Q You say you went up to One hundred and what street?

A 151st street.

got down

Q You there about half past one? A About that time.

Q You went into this Chinese restaurant and you got feed?

A I ain't giving the right time, I am just saying around that time.

Q You left the Chinese restaurant alone? A Yes, sir.

Q And came over to where your brother lived? A Yes,

sir.

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Q When you got to where your brother lived, you passed
you
your brother's house, and went down towards 316? A Yes,
sir.

Q Had you been drinking that night? A Well, I
may have had some, yes, sir.

Q Had you been drinking all along? A Well, I had a
little beer; I drank a little beer.

Q You don't drink anything stronger than beer?
A No, sir.

Q Wasn't it on account of beer and this crowd of gentlemen
with you, that you wanted to hold this man up for the beer?

A I don't know anything about that gentleman ---

Q You wanted to hold this man up for the beer, and
because he didn't have ten cents to give you, you pitched
into him? A I had plenty of money on me that night
as they will testify in the hospital.

Q But you were trying to hold this man up, you and
your crowd, to hold this man up because he did not give you
money for beer? A No, sir.

Q He was defending himself with the banjo?
A Not me.

BY THE COURT:

Q Anybody with you. That is the question that the
counsel is putting to you, did anybody with you?

A No, sir.

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BY MR. BROWN:

Q Hold-up the defendant and ask him for a treat of beer, or anything else? A No, sir; I was all alone.

Q Now, is there a restaurant in that neighborhood in a basement, as you know of? A No, sir.

Q Is there a restaurant in a basement? A No, sir.

Q In that neighborhood? A No, sir.

Q That you know of? A No, sir.

Q Didn't your friends go into this restaurant after this occurrence? A My friends?

Q Those that were with you? A I had no friends.

Q Well, these young men that were with you, didn't they go down in the restaurant? A There was nobody with me at all; I was alone.

Q Did you hear any of the people say anything in the Police Court, the officer say in the Police Court, that these men were down in that restaurant? A Well, they may have; I can't recollect.

Q Did they say so?

MR. MANLEY: I object to that.

THE COURT: It does not make any difference.

Objection sustained.

Q Did you hear in the police Court that this man in company with Roberts after his brother was injured and went to the house all bleeding, by the assault of you fellows,

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he came down, the defendant came down, and asked the officer on the beat to go down in the restaurant and arrest you fellows for that assault?

THE COURT: Objection sustained. It is entirely hearsay.

BY MR. MANLEY:

Q How much money had you with you that night?

A I had a dollar and twenty cents when I went to the hospital.

Q How long ago is this matter in the Children's Court?

A About six years ago.

Q How old are you now? A Twenty.

Q Fourteen at that time? A Yes, sir.

Q When this matter came up in the Children's Court?

A Yes, sir.

Q That was before Judge McAvoy? A I guess so.

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

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Gentile, where do you live? A 307 West 69th
street.

MR. BROWN: I object to this witness testifying
in this case. This witness could not testify as to the

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assault upon McCarthy.

THE COURT: At this point the objection is overruled. It is utterly impossible for me to divine, in advance, what the witness is going to testify to. I shall rule on the questions as they are put.

MR. BROWN: I wish to say this -- that this defendant here is charged with striking this man Gentile in a separate indictment. Now, if your Honor please, if he has got to recount that here before this jury when we are not on trial for that offense and when we are distinctly and separately charged with it, --

THE COURT: I do not know anything about the facts. It is possible that a man may commit two crimes growing out of the same transaction. A man may inside of a second cut two men in the same affray. If that is the fact, the fact that he has cut two, would not prevent the People from showing it in the trial of this defendant, provided it is all the same transaction. The jury will be properly instructed in regard to that. You take your exception. You may raise your objections as the questions are put. It is too early to make any objection now because you are anticipating something that is not on the record and that I have no knowledge of.

BY MR. MANLEY:

Q Now, Gentile, where do you live at the present time?

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A 307 West 69th street.

Q As loud as you can? A Yes, sir.

Q Throw your voice as far as you can? A Yes, sir.

Q Where did you live upon the 15th of May, last year?

A The same place.

Q Were you in the vicinity of West End avenue and 69th street on the evening of the 15th day of May, last year?

A Yes, sir.

Q Were you around West End avenue and 69th street on the 15th day of May, last year? A Yes, sir.

Q Talk up loud? A Yes, sir.

Q Now, about what time was it when you got there?

A Well, about two o'clock; about two o'clock in the morning. Wait until I get somebody to speak; I can't speak.

Q Do the best you can until we get an interpreter. Was it in the day time or the night time? A When I was there?

Q What is that? A When?

THE COURT: You had better call another witness.

MR. MAULEY: I have had a conversation with this witness, and I think I can get his story from him until we can get an interpreter.

Q Was it two o'clock in the afternoon or was it in the night time? A When I got hurt?

Q When you were around 69th street and West End avenue.

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As I understand it, you were in the vicinity of West End avenue and 69th street at two o'clock on the morning of the 15th of May, of last year, is that right? A Yes, sir; that is the place I was stabbed.

Q You lived at that time and you now live at 307 West 69th street? A Yes, sir.

Q Is that between West End avenue and the railroad tracks? A Yes, sir.

Q On the north side of the street? A Yes, sir; uptown.

Q Now, when you got to that block west of West End avenue, from which way had you come? A I was coming from the north.

Q You were coming down West End avenue or up West End avenue, which? A I was coming down West End avenue, going home to sleep.

Q When you turned into that block where you lived, did you walk on the downtown or uptown side of the street?

A The uptown side of the street.

Q Now, just tell us what you saw, if anything?

A I saw this Englishman named McCarthy that was cut by the razor; I went over there to see what was the matter, and I was cut by the razor too.

Q Whereabouts was McCarthy when you first saw McCarthy?

A In the middle of the street.

Q Well, near what number? A In front of 314.

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Q Now, whereabouts was McCarthy when you first saw him near 314, was he on the sidewalk or in the street? A When I saw McCarthy first he was going from the street to the sidewalk and a friend of his was going along with him, supporting him, because he could not go along; he was out then.

Q Did you see anybody cut McCarthy? A Yes, sir; I saw that man there.

Q Which man? A (Indicating the defendant) That man there.

Q Come down here and point? A (Witness points to the defendant).

Q Whereabouts was this defendant Brown at the time when he cut McCarthy, and tell us how he did it?

A He was in the middle of the street, in one of the hands of this defendant he held a guitar, in the other hand he held a razor, and he walks out and strikes McCarthy with the guitar with one hand, with the other hand he goes like this with the razor (Illustrating).

Q Now, did you see the defendant Brown run before Brown used the razor upon McCarthy? A No, sir; I did not see that; when I got down there this fellow had already cut McCarthy with the razor. So I went near to see what was the matter, he ran after me, I couldn't run any more, and he cut me.

Q How many times did you see this defendant strike McCarthy with the razor? A I couldn't exactly count how many

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times, because this defendant was striking McCarthy with the guitar and with the razor.

Q What became of McCarthy after he was hit with the razor? A McCarthy fell down on the street, and one of his and friends got hold of him, picked him up, took him home.

Q Can you tell us whether it was on the street or the sidewalk that McCarthy fell? A He fell on the street near the curbstone, just right by the sidewalk.

Q Near the uptown curbstone or the downtown?
A Downtown.

Q How far away were you from McCarthy at the time when McCarthy fell down at that curbstone? A About five or six feet.

Q What did you do when McCarthy fell down? A I went away to see what was the matter with the man and to help him if I could, but this defendant ran after me with the razor.

Q At the time when McCarthy fell down upon the curbstone, how far from McCarthy was the defendant Brown?
A He is the same distance that I am to you (Pointing to the interpreter and indicating about six, seven or eight feet).

Q You are pointing to the interpreter? A Yes, sir.

Q The difference from you and me? A No, sir; the difference from the witness to the interpreter.

Q What happened right after McCarthy fell down?
A He ran for me afterwards, and I couldn't run no longer, and he caught me.

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Q Did you get close enough to McCarthy to pick him up before you were caught? A No, sir; I was away from McCarthy as far as from here to you (Pointing to the Assistant District Attorney).

Q Did you say anything to Brown when you got up that close? A No, sir; I did not; he did not give me a chance to say anything; I don't know that he was going to run for me; when I saw him run for me I started to run.

Q What happened then? A Well, I couldn't run any longer, he caught me and cut me with the razor.

Q Whereabouts were you cut? A (Witness illustrating) From here (The witness pointing to the left side of his abdomen) to the rear part of the body.

Q Now, did you afterwards go to the hospital? A Yes, sir; they took me to the hospital.

Q Now, after you were out, how far were you lying from the place where McCarthy was lying? A Well, I didn't fall; I ran, because after he cut me his friends ran after me with a baseball bat and I had to run in the house, up in the roof, and from one roof to another roof.

Q Who was it chased you with the baseball bat? A Another fellow, a colored man, a friend of his; I didn't know the name, if I saw him I will recognize him.

Q Had you seen him in this court-room or court-house

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to-day? A Yes, sir; I saw him in the court-room; he is outside now.

MR. MANLEY: I have just asked that he be brought in.

Q Did you see that man before? A I saw him that evening, yes, sir. (pointing to Roberts).

Q What did he do to you?

MR. BROWN: I object to this question as to what Roberts did. He is not on trial.

THE COURT: You have no interest in him.
He is not on trial. You are not his attorney.
How does it affect your client?

MR. MANLEY: I withdraw the question.

THE COURT: I overrule the objection.

Exception.

Q What did Roberts do that night? A After I was out, I started to run, and this other man ran after me with a baseball bat in his hands, and when I was coming up the stoop of 308 he struck me right in the back of the head; I ran up on the roof, there I wasn't struck by anybody any more, and I fell.

Q At the time when you saw this defendant Brown strike McCarthy with the razor, did you at that time see the man who came up to the bar here, Roberts? A I didn't see this man then.

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Q When was it you first saw Roberts? A I saw Roberts after this defendant cut me with the razor.

Q Now, from the time that you saw this defendant strike McCarthy-- from the time that you began to run, before you went into the house where you were chased by Roberts, did you again see McCarthy on the street? A No, sir; I did not see him.

Q Did you go to the hospital that night?
A They took me to the hospital.

Q Was that in the same ambulance with McCarthy?
A Yes, sir.

Q How long were you in the hospital? A A month and four or five days.

Q Did you afterwards see this defendant Brown at the hospital? A Yes, sir; the day after I saw him there.

Q Was that on Sunday or Monday that you saw him there? A I don't remember which day of the week it was; it must be Sunday or Monday, one of those two days.

Q Had you ever seen Brown before the night of the cutting?
A No, sir.

Q What took place when you saw him in the hospital?
A Before this defendant came in to the hospital the doctor said to me, "Peter, you are near dying. So it is the best thing you can do, tell us the man that cut you". I said, "I don't know, if you bring him before me I will recognize

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him". They brought this defendant in the hospital and I said, "That is the man what cut me".

Q Can you tell whether that was Sunday or Monday?

A I could not remember what day it was, but if I would say one day I would tell a lie.

Q Was Roberts brought to the hospital, the other man?

A Yes, sir; both men brought.

Q At the same time? A Yes, sir.

Q Did you identify each of them? A Yes, sir; I identified the one that cut me with the razor, and the one that struck me with the club.

Q Were they brought into the same room at the same time and on the same day? A Yes, sir; both were there together.

BY THE COURT:

Q Had you known McCarthy before that night and, if so, how long? A Yes, sir; I know McCarthy; I know McCarthy for about two years, he used to come down to see his brother.

Q Had you been with McCarthy that night?

A No, sir; the first time I saw McCarthy ~~was~~ that night was when he was cut.

THE COURT: Did McCarthy say he didn't know Gentile?

MR. MANLEY: He wasn't asked that question, so far as I know.

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THE COURT: What is the testimony?

(The stenographer reads the testimony).

CROSS EXAMINATION BY MR. BROWN:

Q Now, Mr. Gentile, do you live next door to McCarthy up there, did you live at 307 West 69th street? A Yes, sir.

Q Mr. Carthy's brother lives at 309? A yes, sir.

Q That is next door? A yes, sir.

Q You knew him when he lived there, when he used to come up to see his brother before he went to New Jersey, didn't you? A Yes, sir; I was acquainted with him by sight, I know he used to come down there to see his brother, but I was not a friend of his.

Q You knew him? A I knew that he was a brother of McCarthy.

Q You used to drink beer together, didn't you?

A No, sir; I never went in their company, because I am a laborer.

Q Well, were you in company with -- were you in the restaurant in 69th street that night? A No, sir; I was coming from 65th street, some bowling alley where I had to work that night.

Q How many people did you see on the street that night when you and McCarthy got out besides McCarthy and the defendant? A I do not know how many people were there; there were a few people what were running and this defendant

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was running after them with a razor.

BY THE COURT:

Q Were the people that were running white or black?

A White.

Q Sure they were white? A Yes, sir; I know they were white.

BY MR. BROWN:

Q McCarthy had been out at that time when they were running? A Yes, sir.

Q Were you running away with the people who were running? A No, sir; I was not running, but when I first seen McCarthy to see what was the matter with him, this defendant left McCarthy and started to run for me, and then I started to run.

Q Were the people running when you went up to McCarthy? A Yes, sir.

Q This defendant was running after McCarthy?

A Yes, sir.

Q With a razor? A Yes, sir.

Q Did the people run by you, did the people who were running run by you? A Well, yes, sir; they ran right in front of me.

Q Ran in front of you? A Yes, sir.

Q You got out of the way and you got it? A Yes, sir.

When I went near McCarthy to see how much he was hurt I got

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it.

Q Do you know the names of any of those people who were running? A No, sir.

Q About how many of them were running? A Two or three.

Q Two or three? A Yes, sir.

Q About how far had you gotten before you were struck?

A I was as far from McCarthy as here to where the District Attorney is now when I was cut. (Indicating about nine feet).

Q McCarthy said when he was cut he was standing alone with the defendant, or running away from the defendant and everybody else had run. Now, did you turn back or run towards McCarthy?

THE COURT: I think you had better separate his testimony from McCarthy's.

Q Where did you come from when you came up there to McCarthy and the defendant, where had you come from?

A I was coming from 65th street, from the bowling alley where I did work that night.

Q You were on your way home? A Yes, sir.

Q Your home is 307? A Yes, sir.

Q How did you come up from 61st street -- 65th street, what avenue did you come up? A I came up Broadway to 69th street, and then down to the railroad.

Q Down to where? A From Tenth avenue, and then I went near the track there, the railroad track.

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Q What street did you come up when you came to where these people were standing, McCarthy and the defendant, what avenue did you come up? A Up Broadway.

Q From 65th street? A Yes, sir.

Q What street did you come from Broadway to your home? A 69th street down.

Q Now, had you passed your home? A Yes, sir; I passed my home. When I saw that the English man was cut I went over there to see what was the matter.

Q You passed your home and went over there? A Yes, sir.

Q Why did you go over there? A Well, I heard the screaming and I seen people running and I went over there to see how much he was hurt.

Q How many people were running? A I could not exactly say how many there were, but there must be about three or four.

Q Three or four? A Yes, sir.

Q You made five? A Yes, sir.

Q Did you run in the direction of the defendant and McCarthy? A No, sir; I was not running; I just went right to go near McCarthy to look at him and then the defendant came and cut me with the razor.

Q Where was McCarthy when you started to go to him, was he on the ground, was he lying down or standing up?

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A McCarthy was down on the ground, and some friends of his were dragging him along to take him home.

Q You were going to where they were? A Yes, sir.

Q Where were the other men? A They were running away.

Q Running away? A Yes, sir.

Q Now, you hadn't done anything to the defendant for him to strike you or beat you? A No, sir; I didn't know anything was the matter there, only just the defendant came and cut me.

Q The man who was taking McCarthy up when you got there -- the defendant didn't strike the man that was taking him up, did he -- that was picking McCarthy up? A No, sir; he did not.

Q He didn't strike at the man? A No, sir.

Q Can you tell this jury now why he struck at you if you were not doing anything? A I did not say a word to anybody; this defendant just ran over for me and struck me with the razor.

Q I say, did you do anything? A No, sir; nothing.

Q Had you been drinking that night? A I was coming from work that night.

Q That does not answer the question. I did not ask you where you were coming from. Had you been drinking that night? A No, sir.

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Q Do you drink? A Once in a while at my meals I take a glass of beer.

Q Don't you drink some evenings in the saloon with these friends of yours? A Some time a countryman of mine that worked with me at the same place, we go out and have a glass of beer.

Q Where did you come from when you came to this country? A From Alvito, Province of Casserta.

Q How long have you been in this country? A Six or seven years.

Q How old are you now? A Twenty-one or twenty-two years.

Q Are you a citizen of this country? A I never had time to apply for citizen papers, because I have to work every day; I haven't got no father and no mother, I have to work to support myself.

Q Ever been convicted of crime? A I was never arrested in no place.

(The Court admonishes the jury calling their attention to Section 415 of the Code of Criminal procedure and adjourned the further trial of the case until tomorrow morning, April 25, 1911, at 10:30 o'clock).

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New York, April 25, 1911.

TRIAL RESUMED.

PETER GENTILE, a witness for the People,
resumes the stand:

CROSS EXAMINATION CONTINUED BY MR. BROWN:

Q Now, Gentile, you said yesterday that when you
got upon the steps of the house into which you were going,
you were struck with a baseball bat? A Yes, sir.

Q Now, where was this crowd running, had the crowd
run by you? A The crowd had passed me already, the crowd
was going in the direction of 309.

Q How many were there in that crowd that had passed
you, about? A I am not sure of it, but I believe there
was three or four.

Q Had you seen them before that night? A No, sir;
I did not know them, but they lived around that neighborhood.

Q You didn't know them but they lived there?
A Yes, sir.

Q How do you know they live there if you don't know them?
A Because I saw them very often around that neighborhood.

Q You say you came from 65th street and Broadway over
there at about one o'clock or two o'clock, what time was it?
A Must be half past one or two o'clock.

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Q Yes. Now, did you see Florence McCarthy at Broadway and 65th street that night before you left your place?

A No, sir; I did not see him.

Q What kind of a place is it that you work in?

A A bowling alley place.

Q Did you go into the Chinese restaurant that night before you came home? A No, sir.

Q Have you been in there? A Yes, sir; I was there a couple of times.

Q Isn't it a fact that you gentlemen, Mr. McCarthy, and Mr. Gentile -- you are Gentile -- and others frequent that Chinese restaurant? A No, sir; once I go there.

Q Have you ever been in that Chinese restaurant with McCarthy?

MR. MANLEY: I object to that. I don't know where the Chinese restaurant is.

THE COURT: McCarthy has spoken of a Chinese restaurant. He said he went into the Chinese restaurant just before he saw this alleged scuffle, went up to it and got assaulted.

MR. MANLEY: May I suggest that he ask the witness where the Chinese restaurant is, so that I may know?

THE COURT: Where is the Chinese restaurant?

THE WITNESS: 65th street near Broadway.

Q 65th street near Broadway? A Yes, sir.

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Q Between what avenues, Broadway and what avenue?

A Right on the corner.

Q Right on the corner? A Yes, sir.

Q Broadway and 65th street? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, what floor is that restaurant on?

THE COURT: Now, we had better get the distance of the bowling alley from there. Where is the bowling alley that you worked in?

THE WITNESS: The Chinese restaurant is across the way from that bowling alley.

Q Across 65th street? A Yes, sir.

THE COURT: Now, let us get down to something.

BY MR. BROWN:

Q McCarthy has testified that he left the Chinese restaurant and went to 69th street where he was hurt. Now, you have testified that you left the bowling alley at 65th street, which was immediately across the street from the Chinese restaurant, and you went to 69th street where you got hurt. Now, tell me whether or not you saw McCarthy that night or you were with McCarthy that night before you went to 69th street and got hurt? A No, sir; I did not see McCarthy that evening.

Q When did your bowling alley close up for the night?

A It has no exact hours at all, that bowling alley, sometimes

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we work as far as five o'clock in the morning ; it depends upon the people that remain there.

Q Well, that night do you remember when you closed up?
A About half past one or two o'clock; but the bowling alley wasn't closed at the time we left there, because two other men took our places.

Q Do you know what time the Chinese restaurant across the street from the bowling alley closed up at night, if you know? A No, sir.

Q You do not know? A No, sir.

Q Who was the first one that you saw after you got to 69th street? A No one.

Q Didn't you yesterday that you saw McCarthy on the ground and you went over to him? A Well, yes, I said yesterday that I went near McCarthy when I saw that he fell; I went over near him.

Q McCarthy testified that he had just come from 65th street and Broadway, and you had just come from 65th street and Broadway. Now, it appears that you got on that scene at the same time pretty near.

THE COURT: Yes, he says that.

MR. MANLEY: I object to that, as being argumentative.

THE COURT: That is true.

Q When McCarthy was on the ground, was that the first time you saw him that night? A Yes, sir; that was the first

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time I saw him that night.

Q You were nearer McCarthy than anybody else when he was on the ground? A No, sir; it was another man that was dragging McCarthy, near him.

BY THE COURT:

Q What did he do to McCarthy? A Dragging McCarthy.

BY MR. BROWN:

Q What is that other man's name? A Charles Coster.

Q Had you known Charlie Coster before that night?

A Yes, sir; I know him, because he worked with me one time.

Q Does he live in that neighborhood? A Yes, sir; he lives in 325.

Q Did you ever drink beer with Charlie Coster?

A No, sir.

Q Was Charlie Coster down in that restaurant on 69th street with you and the others that night? A No, sir; I did not see Charlie Coster at all that night with the exception of the time when he was carrying this other Englishman that was cut.

Q Was Charlie Coster hurt that night? A No, sir.

Q Now, what was the number of the house at which you were struck? A In front of 308.

Q 308? A Yes, sir.

Q That is pretty near opposite your own home, isn't it? A Yes, sir; opposite my own home.

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Q Were you struck with the stick first or were you cut first? A I was struck with a razor first.

Q Where was that, where were you struck with the razor, about what point in the street? A I was struck with the razor, I was in the street ^{but} near the sidewalk, when I got near 308 I was struck with the club there.

Q Did you see McCarthy after you were struck with the razor? A No, sir; I saw him the next morning in the hospital.

Q Did they take you up in the room of 308 after you were injured, West 69th street? A No, sir; I went to 308 because the other man was running after me with the club.

Q Did you stay there that night? A No, sir; I went up to the roof of that house and from that roof I jumped to the next house 310, and I live there.

Q You lived in 310? A Yes, sir; I lived in 307.

Q Where did you stay? A They took me to the hospital right away.

Q That night? A Yes, sir.

Q Why did you go to the roof? A To save myself from the other man that was running after me with the baseball bat.

Q Did you have to go to the roof then to save yourself?

MR. MANLEY: I object to that as frivolous and incompetent.

Q Before that night did you have to leave the street

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because the officers were after you and your friends?

Objected to.

Q Do you know when McCarthy went away? A I don't understand that.

MR. MANLEY: I object to it on the ground that it is vague.

MR. BROWN: He understands.

THE COURT: I think you had better make it a little more specific.

MR. BROWN: If I ask him about a conviction he won't know anything about that.

Q Do you know when McCarthy was convicted of crime?

A No, sir; I don't know anything about this.

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

Q Did you hear McCarthy testify in the Police Court he had been away twice?

MR. MANLEY: I object to that as being incompetent.

THE COURT: Objection sustained, because it implies or imports a state of facts which is not in evidence. You may ask him whether or not McCarthy did so testify in the Police Court before the City Magistrate. You may ask him if McCarthy did so testify before the City Magistrate, but you cannot allege it and ask him if he heard it.

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Q Did McCarthy testify before the City Magistrate that he had been convicted twice?

MR. MANLEY: I object to that. The stenographer's minutes are the best evidence. This man does not know the difference between a conviction and going away once or twice.

THE COURT: He can say if he does not understand it. Of course, the stenographer's minutes would be the best evidence, but we haven't got the minutes.

THE WITNESS: No, sir; I didn't hear nothing.

BY MR. MANLEY:

Q Now, just a minute. When this happened, as I understand it, you were living at 307 West 69th street, is that right? A Yes, sir.

Q Did you at that time on the 15th day of May know that the brother of McCarthy lived at 309? A Yes, sir.

Q Had you ever seen McCarthy coming to 309 before this night? A Yes, sir.

Q Had you ever seen McCarthy around that block before that night? A Yes, sir.

Q Whereabouts in the block had you seen McCarthy before that night? A When he was going up to see his brother.

Q That is what I asked you. Then you had seen McCarthy around 309 before that night? A Yes, sir.

Q Had you ever spoken to him before the night of the

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15th of May when this cutting took place? A No, sir; never spoken to him.

Q How long had you been working in the bowling alley before that night? A Three months.

Q Where do you work now? A I am a laborer now, I work with the pick and shovel at Seventh avenue and 52nd street.

Q What was it that you meant yesterday when the interpreter had you as saying that you knew McCarthy? A I meant to say this, that I saw him several times around there with his brother, and the brother that I knew told me that this McCarthy was a brother of the McCarthy that I know.

BY MR. BROWN:

Q If you had not spoken to McCarthy before that night, why were you so anxious to go to him when he was on the ground and another man was assisting him? A Well, I didn't know first what it was when he fell on the ground I thought it was some countryman of mine, and I went over there to see it, and when I got there I saw it was McCarthy.

Q That is the only reason that you give for going over there? A Yes, sir.

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

DIRECT EXAMINATION BY MR. MANLEY:

Q Now, Coster, where do you live at the present
time? A 311 West 69th street.

Q Where did you live upon the 15th of May of last year,
1910? A The same place, 311 West 69th.

Q Where were you between one and two o'clock upon
the morning of the 15th of May of last year?

A Just coming home from work.

Q Where had you been working that night?

A Peddling.

Q What kind of material? A Vegetables.

Q You are a vegetable peddler? A Yes, sir.

Q Do you have a push-cart? A A horse and wagon.

Q What time was it when you were coming home and got
into the block at 69th street and West End avenue?

A About half past one.

Q Did you have your horse and wagon? A No, sir; I
put the horse and wagon in the stable, fed them and I came
right home.

Q Now, tell us what you did when you got into the block,
69th street and West End avenue? A As I hit the corner of
69th street, walking down the street, I seen a crowd running
around.

Q Where was that crowd when you saw it? A Down at

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316 West 69th street.

Q Were you walking on the south or north side of that block? A The south side.

Q Where had you been coming from before you got to that block? A Towards the avenue, Tenth avenue.

Q From Tenth avenue? A Yes, sir.

Q Is that west of West End avenue? A East of West End avenue.

Q One block east? A Yes, sir.

Q Were you coming south or going north upon Tenth avenue? A Coming south.

Q When you struck 69th street did you then walk west? A Yes, sir; then walked west.

Q Tell us what you saw when you saw this crowd at 316 West 69th street? A As I hit 316 West 69th street I seen Mr. Brown strike Mr. McCarthy.

Q Now, do you see the man that struck him in the courtroom? A Yes, sir.

Q Where? A There.

Q Indicating this defendant? A Yes, sir.

Q Go ahead. What else did you see? A Struck McCarthy and Mr. McCarthy took one step, happened to fall, I went and picked him up and he came for me with the razor.

Q Who came for you? A Mr. Brown.

Q How far away from McCarthy were you when the defendant struck McCarthy? A About two doors away.

Q How many feet would say that was? A About ten feet.

Q Were you walking on the sidewalk? A Right on the same side, yes.

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Q At the time McCarthy was struck was he on the sidewalk or in the street? A Well, they started -- I seen him in the middle of the gutter, then stepped on the sidewalk, and he fell.

Q How close to McCarthy did you get? A About two feet.

Q Did you put your hands upon McCarthy at all before this defendant tried to strike you? A Just as he stooped like that (illustrating) he made for me and I ran.

Q Did you say anything to the defendant Brown?

A No, sir; just ran in the hallway until he passed me.

Q Did he chase you then? A He ran past me and no more than he went past me, as he ran past me I picked McCarthy up and ran him in the hallway.

Q Into what hallway did you take McCarthy? 310 West 69th street, that is three doors away from where he got out.

Q What did you do when you got in the hallway?

A Run him into the house.

Q Did you carry him into the house? A Yes, sir.

Q Where was it you carried him? A 310, third floor back, I mean front.

Q How far was it that the defendant chased you, Brown?

A He only chased me to the hallway, for about six feet.

Q After he made a dash at you did he leave that spot?

A Yes, sir; he kept running up the street.

Q In what direction did he run? A Up towards West End avenue.

Q You picked up McCarthy and walked with him into the house? A Yes, sir.

Q Had you ever seen this defendant Brown before that night? A No, sir.

Q Did you see Gentile there? A No, sir.

Q How long do you think elapsed from the time you saw this defendant cut McCarthy up to the time you got McCarthy into the hallway, how long did it take? A Well, how long did it take to get McCarthy into the house? Well, I just got him there about in five minutes.

Q Were you acquainted with Gentile before that night? A I was well acquainted with Gentile but I hadn't seen him.

Q When was it you first saw Gentile that night? A I hadn't seen him all that night, because he was working that night.

Q Did you see anybody around McCarthy at the time you got up there with the exception of Brown? A As I came down the street I seen a few fellows run but hadn't seen who they were.

Q What direction did those fellows run in? A Towards

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West End avenue.

Q Is that the north side of the street? A One ran across to the north and one to the south.

Q They were running towards the direction from which you were coming? A Yes, sir.

Q Did you know either of them? A I did not look at them.

Q Could you tell their nationality at all? A Italian fellows I guess.

Q Then you must have looked at them, you must have seen them? A Well, I didn't just look at them because I ran right down the street.

Q Did you see anybody at any time on the south side of the block while you were walking towards 316

A Yes, sir, one fellow ran past me; that is all.

Q What is that? A One fellow ran past me, ran across the street.

Q Can you explain to the jury why you did not see Gentile if he was there that night? A Well, I haven't seen him, I might have been too late to see him; I don't know whether he got out the last --

Q Did you go to the hospital that night? A No, sir, I went there Monday morning.

Q Did you stay in the room until Gentile was taken and McCarthy was taken to the hospital? A No, sir;

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I went out trying to go up to his brother's to tell him to go up; as I got in the street I seen about 14 or 15 of them.

Q Of what? A Of the colored fellows.

Q Did you stay away then? A I ran.

Q You stayed away that night? A Yes, sir; hid that night.

Q Did you go to the Police Court the next day? A Yes, sir.

Q Didn't you go home all that night? A No, sir, I hid; I was ascaired to come out.

Q Why did you remain out of your own home? A I was hid; I went up to one house and down to another and hid.
BY THE COURT:

Q Why did you, why, wasn't your home safe? A No, sir; I lived across the way; I was afraid to go out of the building.

Q When was the next time you went into your own home?
A Sunday morning.

Q When did this thing occur? A Well, I mean Sunday morning about 10 o'clock I went home.

Q You went home at 10 o'clock? A Yes, sir.

BY MR. MANLEY:

Q Did you see a man there that night named Roberts?

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A Yes, sir.

Q Did you know his name at that time? A I did not know until I got in court.

Q When was it you found out his name? A I found out his name in the 54th Street Court.

Q That is in the Police Court? A Yes, sir.

Q Upon what day, Sunday or Monday? A Monday.

Q Did you see Roberts that night on the block?

A Yes, sir.

Q What did you see him do, if anything? A I never seen him strike anybody but seen him with a club.

Q Where was he standing or running, or whatever he was doing, when you first saw him with the club? A Running towards West End avenue.

Q Now at what stage in the proceedings that you have told us about was it that you saw Roberts with the club running towards West End avenue?

(No answer.)

Q Who did you see first, this man on trial or Roberts?

A Brown.

Q When was it you saw Roberts, before the stabbing or after the stabbing? A After the stabbing.

Q Well, how soon after the stabbing? A About two minutes; Not quite that.

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Q Did you see Roberts before you had taken McCarthy into the hallway? A No, sir; I didn't see Roberts before that; I seen him about two minutes after.

Q Did you first see Roberts then after you got McCarthy into the hallway? A After I got him into the hallway I seen Roberts with the club.

Q After you took McCarthy into the hallway, left him there, then came outside again? A No, sir; I stayed in the hallway; he came up on the same side of the street.

Q Roberts did? A Yes, sir.

Q How far were you from the door of that house into which you took McCarthy at the time when Roberts came where you could see him? A About two feet.

Q Did you see from which direction Roberts came? A Yes, sir; down the street.

Q What do you mean by down the street? A Down towards the railroad, towards the railroad tracks.

Q How close did he get to the hallway where you were? A He was only about two feet away.

Q What did you see him do, if anything? A I didn't see him hit anybody; I just seen him with a club.

Q Then you went right upstairs? A Yes, sir.

Q When you got down to where Brown was or McCarthy was, at the time when you saw Brown here, as you say,

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stab McCarthy did you see anybody else around there near where you were? A No, sir; not right near there.

Q How far away? A I seen them running down as I was coming down the street.

Q You saw somebody running? A Yes, sir.

Q Did you see anybody else running besides those two?

A No, sir.

Q But you say near McCarthy was the defendant Brown and two other men running up the street, is that right?

A Yes, sir.

BY THE COURT:

Q Witness, did you know McCarthy? A Yes, sir.

Q Did you know him before that night? A Yes, sir.

Q How about Gentile, do you know him? A I know him about five years.

Q You know Gentile for five years? A Yes, sir.

Q How long have you known McCarthy? A About a year and a half, or two years.

Q Now did you speak with Gentile or McCarthy that night before the assault? A No, sir.

Q You just happened along also? A Yes, sir; that was the first time I went down the street all that day or night.

Q Where do you live? A 311 West 69th street.

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Q Where does McCarthy live? A He lives out in Jersey, I don't know where.

Q Where does his brother live? A 309 West 69th street.

Q 309? A Yes, sir.

Q That is next door, isn't it? A Yes, sir.

Q Then where does Gentile live? A 307, right next door to him.

Q 307? A yes, sir.

Q 307 West 69th street? A yes, sir.

Q Do you know whether McCarthy was in the habit of living there with his brother at 309? A He used to go down to see him.

Q Did you ever see him go visit his brother as late as two o'clock in the morning before that? A Well, he has often stayed over night.

Q Did you ever see him call upon his brother at two o'clock in the morning? A No, sir.

Q He called at his brother's house before that night?
A I have often seen him call at the house, not at two in the morning.

Q The defendant's counsel has suggested, and I don't know but what from his side of the case it is rather a natural view, in his inquiries -- now is it not a fact that

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you and Gentile and McCarthy were together that night?

A No, sir.

Q Hadn't you been somewhere that night? A No, sir; I have my own horse and wagon.

Q Never mind about the horse and wagon. Weren't you together that night? A No, sir.

Q Didn't you try to get beer money from somebody, some colored men on the street? A No, sir, I had over \$30 in my pocket.

Q Hadn't you been drinking that night? A No, sir; I never drink.

Q Now, you tell the jury that your intent was perfectly honest and honorable that night? A Yes, sir.

Q Yet you were afraid to go home? A Yes, sir.

Q For fear of assault by these colored people?

A Yes, sir.

Q How long have you been in America? A Born here, 22 years.

Q Went to the public school? A Yes, sir.

Q You think that a man has to stay out of his house from on 69th street for fear of the colored men attacking him-- you don't think a man is safe in his own house? A Well, your Honor, I will tell you I came down,--

Q I never heard of it before; I never have had any

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myself and I live between 8th and 9th avenues myself;
I never felt fear? A On account of me going down to tell
his brother to go up to him, as I got outside I seen
15 or 16 of them, and I was afraid to go out.

Q Now didn't you think you could get protection from
the police? A Well, I hadn't seen no police around.

Q You knew where the precinct was, didn't you?

A Yes, sir.

Q Nearby? A Yes, sir.

Q It wasn't far away? A 68th street near Broadway.

Q You were not afraid to go there were you? A Well, I
was, if I would have to run from there down near the
railroad track.

Q Let us get at that. You did not go home-- where
did you run to? A 310.

Q You did not go for the police? A No, sir; I ran
in 310, over the roof and down 308.

Q You were across the street from where you live?

A Yes, sir.

Q You ran into 310? A Yes, sir.

Q That is across the street from where you live?

A Yes, sir.

Q 310? A Yes, sir.

Q The man lived at 309? A Yes, sir.

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Q McCarthy lived at 309? A I lived the same side.

Q Wasn't it just as easy to get him into 309 where he lived, where his brother was? A No, sir; it was further across.

Q I am asking you these questions; we don't know a thing about it; the jury wasn't there; I wasn't there; I am asking you to explain who lived at 310, what made you take McCarthy into 310? A Friend of mine.

Q Give his name? A Joseph Yesso.

BY MR. MANLEY:

Q He is here in court? A Yes, sir.

BY THE COURT:

Q Why did you take McCarthy in there instead of taking him into 309 where his brother lived? A Well, it is about 40 feet away from the house, he got out right across the street.

Q These parties were still after you, these colored people were still after you? A Well, they ran past me when I took McCarthy into the hallway.

Q Did they follow you at all? A No, sir.

Q Didn't follow you at all? A No, sir.

Q Now, did you look out into the street after you got into the hallway and see whether or not any colored men were about? A After I got him in the hallway I looked out

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Q See any colored men? A I seen Brown run past the door.

Q You saw Brown running past the door? A Roberts.

Q You saw Roberts running past the door? A Yes, sir.

Q Did they stay in the street or did they run up the street and away? A Well, I haven't seen whether they stayed in the street or not.

Q Explain in words as plain as you can, why after you got into the hallway you did not take the wounded man over to his own house, immediately across the street, 309?

A Well, I was afraid to go across the street with him, I had to carry him.

Q Did you see anybody there that would cause you any alarm? A No, sir.

Q Well were there any colored people in the street at the last time you looked out of the hallway? and before you took McCarthy upstairs to Messos room? A Not before I took him up, no, sir.

Q You did not see any colored people there at all?

A No, sir; not standing there.

Q Now, you lived at 311? A Yes, sir.

Q You did not see any colored people in the street?

A No, sir.

Q When you took him up? A No, sir.

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Q Were there any colored people in the street when you came down? A When I came down there were about 15 or 16.

Q Then you went back into Messo's room? A No, sir, I ran back over the roof down some other house.

Q What was the matter with Messo's room, wasn't that safe? A It was not safe for me because I wanted to try and go out and get his brother to go up after him, because he was telling me he was dying.

Q Did you send for a doctor? A No, sir, this here fellow Messo got one.

Q Messo got a doctor? A Yes, sir.

Q What became of you? (No answer.)

Q Did you think McCarthy was dying? A I got scared, he was as white as a sheet and stretched out.

Q Did you think he was dangerously wounded? A I thought he was.

Q Then what became of you? A I ran down to a friend of mine's house and stayed there all night.

Q Well who was that, where did you spend the time?
A Joseph Iello.

Q What was the number of that house? A 308 West 69th street.

Q 308 West 69th street? A Yes, sir.

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Q You stayed there until 10 o'clock Sunday morning?

A Yes, sir.

Q Who lives with you at 311 West 69th street?

A Father and mother.

Q Let me put it to you directly: Isn't the reason that you did not go to 311 West 69th street that you were afraid that you might be arrested if you did? A No, sir.

Q By the police? A No, sir.

Q That wasn't it? A No, sir.

Q You were afraid of these colored people? A Yes, sir;

I had no reason to be afraid of the police; the police up on the post know I work every day.

Q Was gentile brought into Messo's room before he was taken to the hospital? A I didn't see him there.

CROSS EXAMINATION BY MR. BROWN:

Q Mr. Coster, is that your business, peddling vegetables? A Yes, sir.

Q Where did you peddle that night? A 61st and 62nd streets, and Amsterdam avenue.

Q Now when had you seen McCarthy before that night?

A I hadn't seen him for, I guess, pretty near a week.

Q A week? A Yes, sir.

Q Did you see him within a week? A I don't think I

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did, no, sir.

Q When did you see him before that? A Well, just about a week from that.

Q Did he live there with his brother at 309?

A No, sir; he don't live there; he just stops down there once in a while.

Q Do you know where he lived at that time? A In Jersey I think.

Q In jersey, did you know where in Jersey? A No, sir.

Q You say you saw him over there within a week?

A Yes, sir.

Q In that neighborhood? A Yes, sir.

Q Did you know that it was McCarthy when you went to him? A No, sir; until I seen his face; he was falling.

Q He was on the ground? A Yes, sir; he was just falling, he just stooped to the sidewalk.

Q How near was the defendant to him? A He was about two feet away.

Q Two feet away? A Yes, sir.

THE COURT: Just a minute.

BY THE COURT:

Q How do you know it was this defendant and not some other colored person? A It was right under the lamp-

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post.

Q Had you ever seen this defendant before? A No, sir.

Q Now, you say that after you came out of 310 that there were about 15 colored people there? A Yes, sir.

Q Can you identify this man positively? A Well I seen him alone.

Q You saw him alone? A Yes, sir; under the lamppost.

Q You are sure it was this man? A Yes, sir.

Q Doyou think you can distinguish between colored people? A Well, I think I can.

Q You think you can? A Yes, sir.

Q How did it happen that you were there just about that time two o'clock in the morning, do you peddle as late as that? A Well we peddle on the avenue as late as one o'clock.

Q As late as one o'clock? A Yes, sir.

Q When did you begin to peddle, what time? A We get on the avenue there at nine oclock .

Q You begin to peddle? A Yes, sir.

Q Nine o'clock at night? A Yes, sir; we go through the streets all day, and what we got left we go on the avenue

Q Amsterdam avenue between 61st and 62nd street?

A Yes, sir.

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Q You peddle from nine o'clock until one? A Yes, sir.

Q People buy from you until one o'clock in the morning?

A Yes, sir, people buy up until one o'clock in the morning.

Q You don't cry your wares out? A No, sir.

BY MR. BROWN:

Q Where was your stable that you carried the horse to? A 64th street.

Q 61st street? A No, sir, 64th street.

Q 64th street? A Yes, sir.

Q between what? A Right off 11th avenue.

BY THE COURT:

Q Give the name of the stable? A George Bingle.

BY MR. BROWN:

Q Is the back of that stable next to that gas house there? A No, sir; up 64th street, the gas house is 66th street.

Q It is on the north side of the street, isn't it?

A The south side of the street.

Q In 64th street? A Yes, sir.

Q Is the stable on the south side? A Yes, sir; the stable on the south side.

Q Now, the defendant, what did he have in his hand, if anything? A A razor.

Well,

Q What else? A That is all I have seen, a guitar.

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Q A guitar? A Yes, sir.

Q What was he doing with the guitar when you first saw him? A I haven't seen him doing anything with the guitar.

Q He had it in his hand? A Yes, sir.

Q What was the first thing you saw him do when you first saw him? A Well, the first thing I seen him do was just trying to get at McCarthy again.

Q The first thing you saw him do was what? A Trying to cut McCarthy again.

Q Had he already cut him before you saw him? A Yes, sir and as I stooped he went for me.

Q Did he reach you? A I ran.

Q With that you ran into McCarthy, ran up to McCarthy although he tried to cut McCarthy again, you ran up to them? A I ran away when he came closer to me.

Q You say you ran to McCarthy and picked him up?
A When he fell; when McCarthy fell I was about to go down to pick him up, he came for me and I ran in the hallway.

Q You ran where? A Yes, sir.

Q When did you pick McCarthy up? A When he passed.

Q When he passed? A Yes, sir.

Q Did you see anybody else there? A Not right there.

Q When you came back to pick him up? A No, sir; nobody at all.

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Q Didn't you see any one else? A No, sir.

Q Where were your friends, where was the crowd?

A I didn't see anybody in the street at all.

Q Didn't you say that what attracted your attention was the crowd? A Yes, sir, when coming down the street.

Q What became of that crowd? A I don't know.

Q You were there. You ought to know where the crowd was. You were on the street and you saw it. We didn't see it? A I seen the crowd as I was coming down the street.

Q You went towards that crowd? A Yes, sir, I went towards the crowd, and as I got there --

Q Did you see anybody in that crowd do anything at all except the defendant? A That is all.

Q Didn't see anybody? A Seen one fellow run one side of the street and one on the other, that is all I seen, outside of him.

Q You don't know why McCarthy was struck? A No, sir.

Q You don't know why he was struck? A No, sir.

Q Did you look at the defendant, the man that you saw strike McCarthy, did you look at him good? A I certainly did.

Q It was under the gaslight? A Yes, sir.

Q Did you see any blood on his face? A I hadn't seen no blood on his face.

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Q But you looked in his face? A I looked at his face.

Q You didn't see any blood? A No, sir.

Q Did you see any blood on his clothing? A No, sir.

Q Did you see him with a banjo, with aguitar holding that crowd at bay, keeping them off? A Only where I seen when I reached him, he was going at McCarthy; that is all I have seen.

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

Q You don't know what McCarthy was doing? A No, sir; I don't know that he did a thing.

Q Did you see Peter Gentile that night? A No, sir.

Q You did not see him at all? A No, sir.

Q Now, did McCarthy say anything to you when you went over to pick him up? A No, sir; he just went "Oh," and he fell.

Q Well, he didn't say anything to you? A No, sir.

Q Did McCarthy tell you when you picked him up "Don't take me in my brother's house, they just sent me to Jersey to keep out of trouble"? A No, sir.

Q And he came back to visit that night, and he is right in it again, didn't he tell you he was just out and went to New Jersey? A No, sir.

Q Sure about that? A Yes, sir; sure about that.

Q Sure you carried him to 310? A Yes, sir.

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Q Not at his request, he being a friend of yours?

A No, sir, I just took him where I wanted to myself.

Q You wanted to go there? A Yes, sir.

Q He didn't tell you not to take him to his brother?

A He hadn't told me anything until I got in the house with him; then he says, "I am dying;" that is all he said to me.

Q How did you get out of that house? A I crossed the roof to get out.

Q You crossed the roof too? A Yes, sir; I had crossed the roof to get out.

Q You often cross the roof, don't you? A I certainly do, is that anything to cross?

Q When the police are after you? A There was never no police after me.

Q Ever been locked up? A No, sir.

Q For anything? A No, sir.

Q Ever been arrested? A No, sir.

BY THE COURT:

Q Sure of that? A Yes, sir.

Q Sure of that? A Yes, sir.

Q That you never were arrested? A Yes, sir.

Q In your life? A No, sir.

Q Just think that over again. I will ask you that

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over again. Refresh your memory.

MR. MANLEY: I object to that as an absolutely incompetent question -- Mr. Brown's question.

BY MR. BROWN:

Q Haven't you been as a witness down in the Magistrate's Court, 54th Street Court?

MR. MANLEY: I object to that as being incompetent.

THE COURT: I know but he may ask you. I will tell you, under the peculiar circumstances of this case I think that we ought to go into the record of any witness very carefully and very throughly.

BY THE COURT:

Q Now, Witness I am going to ask you again--

MR. MANLEY: I have never seen this witness before I went into this case.

THE WITNESS: This is the first time that I appeared as a witness.

Q Have you not been arrested? A No, sir.

Q In your life? A No, sir.

Q At any time? A No, sir; not that I can remember unless when I was very small.

BY MR. BROWN:

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Q Unless you were very small? A Yes, sir; that I could not remember.

Q Can't you remember whether you were ever arrested or not? A Well, I can remember I never was arrested, never done anything wrong to be arrested.

Q Were you born in New York? A Yes, sir.

Q Haven't you been a witness in a cutting case down in the 54th Street Court here? A Not outside of this case.

Q Did you testify in the 54th Street Court in this case? A Yes, sir.

Q What day was it if you know? A About the 17th.

Q What is that? A The 17th. of May.

Q Well, was McCarthy there? A McCarthy was in the hospital.

Q That day? A Yes, sir.

Q Did you go to the hospital? A I did.

Q When did you go there to see him? A On Monday.

Q In the morning? A Yes, sir.

Q Quite friendly with McCarthy, aren't you? A Well, I know him about a year and a half; if it hadn't been that I had known him I would not have stayed there to pick him up.

Q Do you know how McCarthy went away? A Yes, sir.

Q Within two years-- from his brother's house to prison?

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A He did.

Q You know that, don't you? A Yes, sir.

Q Do you know that he testified here yesterday that he was a little boy, five or six years ago when he was arrested?

A Well, I don't know.

Q But you know that within two years he was sent to prison? A I have found out, yes, sir, I don't know it ; I don't know whether he went within two years, but I found out within two years.

Q You saw him when he came out did you? A Out of where.

Q You knew him before he went, didn't you? A I knew him about a year and a half or two years; I don't know if he has been in jail two years or not, only I heard he had been in jail before.

Q Did you know what he went to jail for?

THE COURT: He wants to know whether this witness knew that McCarthy had been convicted before and served ascertain, and if so, what he knew about it.

MR. MANLEY: Under what principle of evidence is that admissible.

THE COURT: It may be directed towards credibility of this witness.

MR. MANLEY: I cannot conceive under what principle of evidence it is admissible. McCarthy testified that he had gone to the House of that Refuge and this witness says he knows it.

THE COURT: Would you be willing to believe a man as quickly who associated with a man who had been convicted and served a term as well as you would a man who did not associate with such persons?

MR. MANLEY: That is not the question whether he associated with him or not. If he asks that question I have no objection.

THE COURT: He already said that he knew him.

BY MR. BROWN:

Q Did you go to the hospital where he was? A I went to the hospital to see Gentile and I seen Curley at the same time.

BY THE COURT:

Q What did you know McCarthy by? A Used to call him Curly McCarthy on account of his hair.

BY MR. BROWN:

Q Well, did you know McCarthy well for a year and a half? A A year and a half, not to associate with him.

Q You did not associate with him? A No, sir.

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Q How well did you know him? A I have known him coming around, stay around a day or two and go back again.

Q Haven't you talked with him on several occasions when you have seen him there? A No, sir.

Q Never? A No, sir.

Q You knew him to come around a day or two, and not to speak to him? A No, sir; as long as I have known him I worked every day.

Q All you fellows work on that hill?

MR. MANLEY: I object to that.

Q Now you say you went over to McCarthy because you knew him, when on the ground? A Yes, sir.

Q You took him to be a friend of yours, and he had to be cared for that night? A Yes, sir.

Q You knew the friend's house to which you were carrying him? A Yes, sir.

Q You stayed there until he was comfortable? A No, sir.

Q You stayed there for awhile, then you went over the roof? A Yes, sir.

Q Went to another person's house, not to your own house? A And stayed there all night.

Q And stayed there? A Yes, sir.

Q Is that your testimony? A Yes, sir; that is my testimony.

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Q That was Sunday morning at 10 o'clock that you went home? A Yes, sir.

Q Now Monday morning you say you went to the hospital to see McCarthy? A I have gone first to court.

Q I am not talking about the court. I am talking about where you went Monday morning, if you went to the hospital to see him Monday morning? A No, sir, I didn't go right to the hospital.

Q Where did you go? A To the court.

Q Did you go to the hospital that day? A That day, yes, sir.

Q Did you see McCarthy? A I did.

Q Did you have any talk with him? A I just said, "How do you feel", he couldn't hardly talk the first day.

Q Your friendship being concerned you asked him that question, didn't you? A Yes, sir.

Q Well, you are not friendly enough to him-- you were not friendly enough before that to have a word with him?

A No, sir,

Q In the year and a half you knew him? A Well, I had not been with him.

Q Was there anybody else in that party there that night at two o'clock on 69th street there that you saw, any other white friend besides Gentile, McCarthy and your-

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self? A I hadn't seen Gentile.

Q You didn't see him that night? A No, sir.

Q Well, you say you saw a crowd there; you said you saw a crowd there? A I seen just some fellows running away.

Q Did you see any other colored men besides the defendant? A Not just then, no, sir.

Q When he was struck, when McCarthy was struck?

A No, sir.

Q But you did see other men? A Afterwards.

Q You did see other men before you got there? A Yes, sir.

Q They were all running? A Two went on one side, and one on the other.

Q You did not see any blood on the defendant's face?

A No, sir.

Q It was right under the lamppost? A Yes, sir.

Q Did you go to the hospital more than once? A Once.

Q Did you testify in the police court more than once?

A Once, that is all.

Q Do you know the officer that was on the beat that night? A Yes, sir, that is, I think he was on the beat because he came up there.

Q Well, you saw him in the Magistrate's Court, didn't

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you? A Yes, sir.

Q You saw him down here, didn't you? A Yes, sir.

Q He is an Italian, isn't he? A What is that?

Q The officer? A No, sir.

Q Isn't one of the police officers an Italian?

A Not as I know of.

Q The officer in uniform on that beat, isn't he an Italian? A No, sir, not as I know.

Q Do you know Officer Leonard? A Yes, sir.

Q Who is he? A Sir?

Q If Officer Leonard -- how many officers in this case, do you know? A Officer Leonard and officer Kilgallen, I don't know his name really.

MR. MANLEY: Mr. Michael Kilgallen.

BY MR. BROWN:

Q Isn't he an Italian? A No, sir.

Q Now, have you told this jury all that you know concerning what happened that night? A Yes, sir; I told all I know.

Q You have honestly told the truth? A Yes, sir.

Q You have had frequent conversations since you have been here with the District Attorney, haven't you? A I explained my testimony, that is all.

Q Did you explain it more than once? A No, sir; only once.

Q Only once? A Yes, sir.

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Q How many times have you been up in his office?

A Once.

Q How many times were you up there yesterday?

A Once.

Q Only once? A That is all.

Q Is that the only time you had a talk with him?

A That is the only time.

Q In the office? A Yes, sir.

Q Didn't talk with him out in the hallway? A No, sir.

BY A JUROR:

Q Didn't I understand you to say that you had seen two men running from you, and that they were white, did not you say that? A Well, I said I ain't sure what they were.

Q You thought they were white? A Yes, sir; I didn't say I thought--

Q You were positive you said deliberately that they were white? (No answer)

BY A JUROR:

Q Did you have any chop suey that night? A No, sir.

Q Were you at the shop suey restaurant? A No, sir.

Q Did you come right direct from the stable? A No, sir.

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Q Did you say in the earlier part of your testimony that you saw some men running, and they were Italians?

A I said I thought, I ain't sure.

Q They were Italians? A Yes, sir.

BY MR. BROWN:

Q Do you know that there is a restaurant in that street there? A Yes, sir.

Q Down in the basement? A Yes, sir.

Q Have you ever been in there? A I was.

Q Were you in there that night? A No, sir.

Q Did you see McCarthy in there? A No, sir.

Q Did you see Gentile in there? A No, sir.

Q Did you ever see any of the young men of your size, acquaintances, in there? A Just a couple of friends of mine working together.

Q A couple of friends of yours? A Yes, sir; working on the wagon together, that is all.

Q Did you see them there that night? A No, sir.

Q Do you go in there frequently into that restaurant do you go in there frequently? A No, sir; because I am home, I only eat there once in a while.

Q Did you ever rush the growler in there? A I don't drink.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q Now, were you acquainted before that night

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with Peter Gentile? A I was.

Q How long have you known him? A About five years.

Q On Sunday morning you first went to court? A Yes, sir; not Sunday morning, Monday.

Q Had you upon Sunday been asked by the officer to go to court? A Asked by the officer?

Q Minday, that same day you went to court, you went to the Flower Hspital? A Yes, sir.

Q Did you there see Gentile? A Yes, sir; and McCarthy.

Q You there also saw McCarthy? A Yes, sir.

Q Did you go to the hospital alone? A His brother and I.

Q Whose brother? A McCarthy's brother, Joseph McCarthy and I.

J O S E P H M E S S O, a witness called on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Is your name Messer or yesso? A Messo.

BY THE COURT:

Q Did I understand that your name was Messer?

A M-e-s-s-o.

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BY MR. MANLEY:

Q Now, Mr. Messo, upon the night of the 15th of May, where were you living? A 310 West 69th street.

Q How long had you been living at that number?

A About six months.

Q Where do you live now? A 308.

Q 308 West 69th street? A Yes, sir.

Q On the 15th of May at the time of this stabbing, did you know Peter Gentile? A I did not.

Q Did you know Florence McCarthy? A No, sir.

Q When I say no I mean -- yes or no? A No, on both occasions.

Q Did you know McCarthy on that night? A No, sir.

Q Did you know Gentile that night? A No, sir.

Q Did you know Coster that night? A Yes, sir.

Q Did you know him? A Not the same night, before that night I did.

Q Charles Coster? A Yes, sir.

Q You knew him? A Yes, sir.

Q Had known him sometime before? A Yes, sir.

Q Now when I say know McCarthy I mean to shake hands with him, to pass the time of day with him, do you understand that? A Yes, sir.

Q Had you ever seen him before that night? A No, sir.

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Q Had you ever seen Peter Gentile before the night of the thing? A Once.

Q Now how long have you known Charles Coster?

A About two years.

Q Now, were you in the vicinity of your house 310 that night between one and two o'clock? A Yes, sir; just coming home.

Q You were coming home with whom? A Charles Coster.

Q Whereabouts was it that you met Coster, and how far had you walked with Charles Coster before you went into that block? A From 61st street and Amsterdam avenue to 69th street.

Q When you got into that block, tell us what you saw?

A As I got in the block, the first thing I know Mr. Coster ran ahead of me; I seen him pick up somebody and run in the hallway with him.

Q When Coster began to run about where was Coster?

A On the corner of 69th street.

Q Did Coster begin to run on the corner of 69th street and West End avenue? A Yes, sir.

Q Did he say -- just answer this yes or no-- did he say anything to you when he started to run? A No, sir.

Q When he began to run did you run? A I ran-- I hesitated awhile m then I ran.

Q Now in which direction did he run? A Down the

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street, 69th street.

Q Towards the railroad track? A Yes, sir.

Q Did you begin to run after him? A Yes, sir.

Q Did he get very far ahead of you? A Yes, sir.

Q Did you see anybody when you started to run?

A Well, I seen Mr. Coster go there and pick up this McCarthy.

Q At the time you began to run, at the time when Coster began to run, did you see anybody way down the block? A Yes, sir; seen a lot of people running upside down there.

Q You saw some people running down there? A Yes.

Q Can you give us any idea how many feet from that corner of 69th street and West End avenue these people were running? A About 150 feet.

Q Did you run very fast down there? A No, sir not exactly.

Q When you got there what did you see? A I seen both of them cut.

Q What do you mean both cut? A Mr. Gentile and Mr. McCarthy.

Q Had they been cut when you got there? A Yes, sir.

Q Whereabouts was McCarthy? A Lying in the hallway.

Q Was he already in the hallway when you got there?

A In front of the door.

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Q On the sidewalk or the street? A Right in the door.

Q Well which do you mean? A Right in the house.

Q Inside of the house, on the threshold or on the steps? A In the house.

Q He is already inside the hall? A Yes, sir.

Q Now whereabouts was Gentile? A He was trying to run up the street.

Q Where was Gentile -- when I say where, I mean where with reference to numbers, where with reference to the street or sidewalk? A 308 on the stoop; he was tired out, couldn't run any more,

Q 309 is one door away? A Three doors away from where they claim this thing was done.

Q You were at 310? A Yes, sir.

Q You saw McCarthy brought into the hallway of 310? A Yes, sir, I did.

Q Now then 308 is next door, isn't it? A Yes, sir.

Q Now is that where Gentile was, 308? A Yes, sir.

Q Next door? A Yes, sir.

Q Were you born in America? A No, sir.

Q How long have you been here? A 10 years.

Q How old are you? A 21.

THE COURT: He understands it thoroughly.

BY MR. MANLEY:

Q Now talk loud so the last juror can hear you. Now,

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was gentle running or was he standing when you first saw him? A Running.

Q Was he saying anything? A No, sir.

Q Was anybody running after him? A Well, Mr. Brown.

Q Do you see Brown in the court room? A Yes, sir.

Q Where? A Right here. (Pointing to the defendant)

Q Had you ever seen Brown before that night?

A No, sir.

Q Referring to the defendant at the bar? A Yes, sir.

Q Your answer to the last question is no, sir? A No, sir.

Q Now how much ahead of you was Coster, when Coster went down the block and met you at the corner? A Some 25 feet.

Q How much behind him were you, in point of time, how much longer did it take you to get down there than it did Coster? A Say a couple of minutes or so.

Q Did Coster run all the way down there? A He did.

Q Did you run all the way down? A I did, but I was cut short at 310.

Q Now when you got down there pretty close to where these people were, about how many people did you see there?

A About five or six.

Q Were they all standing or were they running?

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A All chasing from one side of the street to the other.

Q Can you tell us how many you saw running on the north side of the street? A About three.

Q Did you go right to where McCarthy was, and did you stop at 308 where Gentile was? A I stopped not long, I just looked at McCarthy and Brown made for me.

Q Did you see him chase Coster? A I did.

Q Whereabouts was it that this defendant, Brown, chased Coster? A Into 310.

Q Did Coster go inside the house? A Yes, sir.

Q He then chased you after that? A Yes, sir.

Q Now where were you with reference to the numbers when the defendant, Brown, began to chase you? A On the opposite side of the street, the north side of the street.

Q Now, when was it that you had left the south side of the street and gone to the north side of the street?

A When Brown went in the hallway after Coster.

Q Were you standing over on the north side of the street? A Yes, sir.

Q Brown came right across? A Yes, sir.

Q What did he do when he came across? A Well, he chased me, I ran into No. --

Q Did you see anything in his hands when he began to chase you? A A razor.

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Q Where did you run? A I ran into 305.

Q What happened when you got into 305? A I got into 305; Brown was five feet behind me when he made a trip on the ground floor, I took advantage of the trip to hide myself in a toilet. Finally when I got in this toilet I climbed through the window and hung on a pipe.

Q Where was this? A Between the Air shaft.

Q On the back side of the house? A Yes, sir.

Q On what story were you? A Second story.

Q Hanging on to a pipe? A Yes, sir.

Q Have anything to put your feet on? A No, sir.

Q You got right out of the window of the toilet?

A Yes, sir.

Q When you got through hanging on the pipe where did you go to? A I got tired out, and I had to let go, I had to drop down and get killed or get killed at the same time I go out, I went to the roof, looked down and nobody down there.

Q The roof of what? A 305.

Q Where did you live? A In 310; I go out through the roof, came to No. 309, when I go down there I went across the street No. 304, a little restaurant, and I inquired there was everything over, what was the matter, so one of the people in there told me that Mr. Gentile had gone to a

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house; I asked what house; they didn't know; so I found on the sidewalk there blood, and I followed the blood spots until the second floor.

Q You followed the blood spots into what house?

A 310.

Q You found it in 310? A I got to the third floor where I live and I found Mr. Gentile lying there in the hallway.

Q That is on the third floor? A Yes, sir.

Q Anybody around him? A No, sir.

Q Was he alone? A All alone.

Q Was he conscious or unconscious? A Unconscious.

Q How long do you think that was from the time you were chased by this defendant into the house before you found Gentile? A One hour.

Q What did you do when you got there? A I knocked in at the door, they would not get up.

Q What house? A The door of my house. Finally, I went back and tried to kick, and finally they waked.

Q They worked up or waked up? A Waked up; I told them to let him in; I says, even if it was a dog I would try to help him out." I got hold of Gentile and dragged him in.

Q Was that the place where you boarded? A Yes, sir.

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Q Your relatives live there? A No, sir, no relatives at all.

Q You got him inside? A Yes, sir, at the same time McCarthy was brought in, up in the same room by whom I don't know.

Q Do you know where McCarthy had been in the meantime?

A In the hallway on the ground floor.

Q Nobody with him? A No, sir.

Q Been there for an hour? A Yes, sir.

Q Had you been down there on that ground floor?

A Yes, sir.

Q Did you see him put into the door way? A Yes, sir.

Q Before you got away? A I did.

Q Who put him in the hallway or into the doorway?

A Mr. Coster.

Q Mr. Coster? A Yes, sir.

Q Didn't you do it yourself? A No, sir, I did not.

Q What house did you go into? A I went into 310.

Q Where were you during the hour -- did you go into one of those houses? A 305.

Q Why did you go into 305 instead of your own house?

A It was the only way I had to run.

BY THE COURT:

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Q Others couldn't go across the street and that was the only place you could go. Gentile testified he had to go into 310, because he could not go across the street, and this man went across the street because he could not go into 310.

BY MR. MANLEY:

Q Now who lives at 310, that you board with? A Three more boarders and the owner.

Q Who is the owner? A Well, I only know she was Rosy, that was her first name.

BY THE COURT:

Q You don't know her last name? A I do not your Honor.

Q Then three more boarded? A Yes, sir.

Q At that time? A Yes, sir.

Q Who were they? A I don't know their names.

Q You don't know the names of any of them? A No, sir.

BY THE COURT:

Q Have you got Rosy here or any of the other boarders here where this man lived at 310?

MR. MANLEY: No, sir.

BY THE COURT:

Q What made you stay away from your house for an hour?

A Well.

Q Then go down to 304, which is on the same side of the

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street with you? A I was afraid if I came out there they might get me.

Q Who might get you, the colored people? A Yes, sir.

Q You hadn't done anything wrong? A No, sir.

Q Why did they want to get you? A All excited, I seen people go down for nothing, I seen Coster run, and I thought I would run myself.

BY MR. MANLEY:

Q Now, you say that you finally saw both McCarthy and Gentile in your house where you live? A Yes, sir.

Q How long were they in there before they were taken away in an ambulance? A Some three quarters of an hour.

Q Did you see a wound upon McCarthy? A I did.

Q Can you describe, it, tell us what it was? A It was a small wound.

MR. MANLEY: The reason I ask this question is because the doctor in this case is sick.

THE WITNESS: It was a wound about an inch on McCarthy.

Q Did you see whether it went through his clothes or not? A Well I lifted his short up and I seen the wound plainly without his short.

Q What part of his body, if you recollect, was the wound?

A Left side.

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Q Did you see the wound on Gentile? A I did.

Q Tell us about it? A Well, the wound, I recognized it, about something like a half a foot.

Q Where was it, what part of the body? A Well, on the left side also.

Q Did it go through the clothes? A Through the clothes.

Q Did you see anything hanging from the wound?

A No, sir.

Q Was he bleeding very badly? A Yes, sir.

CROSS EXAMINATION BY MR. BROWN:

Q You say that you met Mr. Coster where that night?

A 61st street and Amsterdam avenue.

Q What did he have with him? A Well he had nothing with him.

Q Didn't have anything with him? A No, sir.

Q Did you walk from 61st street up to 68th street?

A Yes, sir.

Q You did? A I did.

BY THE COURT:

Q What were you doing out at two o'clock in the morning?

A Well, as my business is butcher, Saturday night, in that part of the city, it is very busy, we generally get through at one to half past one, many times at two o'clock.

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Q Where is your place of business? A 44 Amsterdam avenue.

Q 44? A Yes, sir.

Q Near what corner is that? A Near 61st street.

Q Saturday night you were out -- what time did you close your butcher shop? A We generally close about, latest, 12 o'clock, and by the time we clean up and everything else it gets to be half past one.

BY MR. BROWN:

Q Then you are sure Mr. Coster did not stop at 64th street to leave a horse and wagon before he went to 69th street with you? A Yes, sir, I am sure of that.

Q Sure he did not? A Yes, sir, he did not.

Q You walked from 61st street up to 68th street with him? A Yes, sir, I did.

Q When you got to 69th street you saw this crowd?

A Yes, sir.

Q How near were this crowd to the man that was lying on the ground? A Some twenty-five feet.

Q Twenty-five feet? A Yes, sir.

Q Could you tell whether it was a white man or a colored man at the distance? A I could not.

Q Did you know who it was? A No, sir.

Q You saw a man lying on the ground? A I certainly

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did.

Q Who got to the man on the ground? A Mr. Coster.

Q Mr. Coster? A Yes, sir.

Q Where were these other people? A Standing right there in front of 316.

Q Were they white or colored? A Mixed.

Q Were they white or colored? A White and half colored.

Q At that time? A Yes, sir.

Q What did Brown have in his hand besides the razor?

A A guitar.

Q Now how many white people were there and how many colored people were there? A Well, I would say about four and about five white.

BY THE COURT:

Q Were they all chased away by this one colored man with the razor? A Yes, sir.

Q Five white men? A Started by Brown, followed up by Mr. Roberts.

Q Two colored men? A Yes, sir; later Mr. Brown got a little called down half of his section, that is all.

Q What is that? A Half of his people.

Q Did the white men run in the same direction that the colored men ran? A One direction.

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Q Well, did the white men in that crowd run in the same direction that the colored men in the crowd ran?

A Did not.

Q They did not? A No, sir.

Q Ran in different directions? A Certainly.

Q You didn't see any other colored man do anything but Brown? A And Roberts.

Q Brown and Roberts? A Yes, sir.

Q What did you see Roberts do? A He had a club.

Q Where? A On the south side of the street.

Q How near had you been to him? A I was on the opposite side.

Q On the opposite side? A Yes, sir.

Q What number was that? A 311, on the opposite side where I was.

Q About 311 -- into what house did Coster and McCarthy go? A In 310.

Q 310? A Yes, sir.

Q Who lives at 311? A Mr. Charles Coster.

Q What were you doing at 311? A I was on the opposite side after I ran from 310.

BY MR. BROWN:

Q Why didn't you go to your own home? A I could not, when Brown chased me I was just trying to cut across the

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street.

Q After Brown got into 310 was Coster over there at 311 with you? A No, sir.

Q He ran to 310 after he left McCarthy? A He left because he was chased by Brown, being afraid he would be cut by Brown he left this McCarthy lying there, and he ran; I seen that Brown ran as far as 310 hallway and then came out; then I was standing across the street, he made for me and he says, "There is one of the white" and something connected with it; of course, I seen him make for me and I started; I thought if I ran as far as the corner somebody might be coming from there and I might get it. I ran into the hallway there; I ran into 305; I tried to find an empty place, tried to get into the toilet on the first floor. Brown almost had me on the ground floor, but he tripped; I took advantage of the trip and at the same time I had time enough to look for a place if I could get in; I found one empty toilet on the second floor and I got out --

Q Now, if Coster says that Brown did not come in the hallway where McCarthy and himself were is that right or wrong?

A Into the hallway?

Q Into the hallway of 310? A He didn't go in? Certainly he did.

Q Well, he says on his direct examination here that

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Brown did not come in? A Well --

THE COURT: Did Brown go in?

MR. MANLEY: I object to that.

THE COURT: You may ask him whether or not Brown, the defendant, went into the hallway of 310.

BY MR. BROWN:

Q Did he? A Yes, sir, he did.

Q He went into the hallway of 310? A Yes, sir.

Q What did he do there in the hall? A He ran as far as the stairs and seen he could not connect with Coster, he turned back and made for me.

Q He chased you? A Yes, sir; he chased me.

Q Now, this one man was doing all this chasing, this defendant and Roberts, is that right? A Yes, sir.

Q You fellows were not armed at all, is that right?
A Yes, sir.

Q You had no weapons of any kind? A No, sir.

Q Was there any light there?

(No answer.)

BY THE COURT:

Q I would like to ask this witness a question. Tell us your theory as to why this defendant was chasing you, why was he chasing you, what had you done? A Well, I suppose I might have got into the fight in the street

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or thought we were one of them or something of that sort, and I suppose he made for me and being afraid of getting out or something I seen the thing shine and the row in front of 311 and I started to run.

BY MR. BROWN:

Q What number do you say you finally got into, 305?

A Yes, sir.

Q You went upstairs? A Yes, sir; I went upstairs.

Q Where did you go to as you got upstairs? A The second floor in the toilet.

Q How long did you stay there? A Three-quarters of an hour.

Q About three-quarters of an hour? A Yes, sir.

Q Did you come down to the street when you came out? A Going up through the roof and came down through No. 309.

Q 309? A I did.

Q Why did you come down 309? A I ghought Brown might be waiting for Coster there --

Q You knew McCarthy lived in 309? A Yes, sir.

Q Didn't you think McCarthy was home and you called by there to see if he was home? A No, sir.

Q You didn't stop there at all? A No, sir.

Q Well, how did you get into 309? A Well, I got out by walking down, walking out right across the street, walk-

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ing right in through a little restaurant 304 West 69th street owned by a colored man.

Q You live in 310? A Yes, sir.

Q Where did you find McCarthy? A In the hallway of 310, ground floor.

Q Did he recognize you? A He did not. I passed by him without recognizing him; I went upstairs first off; I tried to open the door so as to let him in; when I got there I found Gentile lying in front of the door; I got a little excited, I thought it wasn't right to leave a man in the hallway with a wound in his side.

Q Well, Mr. Gentile was upstairs? A Yes, sir; and McCarthy downstairs.

Q That was three-quarters of an hour afterwards?

A Yes, sir.

Q There was nobody else inside? A Inside where?

Q Inside in the hallway besides you? A No, sir, nobody in the hallway besides me and two with me--

Q Now, what did you do after you saw this man prostrated there? A I knocked at the door.

Q At your door? A Yes, sir, at my door.

Q Was he in front of your door? A Right in front of my door lying there.

Q What did you do? A Knocked at the door; they wouldn't open it, I suppose they were asleep.

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Q They didn't open it? A Yes sir.

Q How did you get in? A I kicked it, and finally they waked up, and then when they waked up I told him to let them in because I had as much right in the house as anybody else.

Q Did you carry Gentile in? A Yes, sir; and Mr. McCarthy was brought up at the same time by whom I don't know.

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

Q Did he come in your rooms? A He came in my room in my house, certainly.

Q You don't know who brought him up there? A No, sir.

Q A quarter of an hour afterwards? A Surely there was more people there after that than anybody else--

Q Why did they bring him up to your apartment?

THE COURT: If you know?

A Brought him up to my house, certainly, because I sent down for him.

Q But he lived next door, why did they bring him to your apartment?

THE COURT: He said McCarthy was downstairs in the hallway, lying down.

MR. BROWN: But he lived next door, 309 .

THE WITNESS: He lived on the opposite side, 309.

Q Why was it that they brought him upstairs to 310?

A Well, because.

Q The third floor where you lived from the basement?

A We brought him up there and gave him the last resolution because they thought he was dying.

Q Did you send for the priest? A I went over to the priest's house, I got in there, I volunteered to go, I went there, we got the priest and he came over at the same time the ambulance was telephoned for and the ambulance got there as the priest did and they gave him the last resolution in the ambulance.

Q Did you have any acquaintance with McCarthy before that night? A No, sir.

Q Had you ever seen McCarthy before that night?

A Once.

Q Where? A In No. 309 talking to his brother.

Q Talking to his brother? A Yes, sir.

Q The brother's apartment? A Yes, sir.

Q You were there? A I was there, Yes, sir.

Q Do you know upon whose invitation you were there?

A By his wife.

Q Whose wife? A McCarthy's wife, not the victim, but the bartender.

Q Did you meet Mr. McCarthy there? A I did.

Q Do you know how long before this occurrence it was you met him there? A Some four months.

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Q Four months? A Yes, sir.

Q Your relations with McCarthy had been pleasant ever since, haven't they? A Well, my relations with him,-- it had been with Mr. McCarthy's mother-in-law.

Q I am not talking about the mother-in-law but about McCarthy. Your relations with the McCarthy who was wounded, your relations with him and how you became acquainted with him? A No, sir; no relations at all; I did not become--

Q Were they not pleasant? A I didn't --

THE COURT: We will suspend here for recess.

BY THE COURT:

Q I want you to tell us just what the facts were when we come back from lunch. Just how that thing occurred. Did you white fellows and the colored fellows mix it up or not? A No, your Honor.

Q Was there a scrap of that sort or not? A I don't know.

Q What was that? A I don't know; if there was I got there too late.

THE COURT: Well we don't seem to have any witnesses here that were there at the very beginning of it according to the testimony.

(The Court then admonished the jury call-

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ing their attention to Section 415 of the Code of criminal procedure, and took a recess until two o'clock.

AFTER RECESS.

J O S E P H M E S S O, a witness for the People resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. BROWN:

Q Mr. Messo, how long have you known Charles Coster?

A Two years.

Q You say your business is a butcher? A Yes, sir.

Q On Amsterdam avenue? A 61st street.

Q And 61st street? A Yes, sir.

Q How long were you with Coster that evening before you started home? A Well, he waited for me outside of my place.

Q Waited for you outside of your place, that is 61st street? A Yes, sir.

Q Did he have a horse and wagon there? A Not at that time; unless he brought it to the stable before he met me as he has often done.

Q I am not talking about before? A No, sir.

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Q You didn't stop at 64th street? A No, sir, I did not

Q And leave any wagon? A No, sir.

Q But continued to 68th street? A Yes, sir.

Q You say that you ran along to your house, not in your house? A No, sir.

Q To 305? A Yes, sir.

Q You are sure you stayed there three-quarters of an hour? A Yes, sir.

Q When you did go to your home did you retire?

A No, sir.

Q You did not retire? A I retired after I got the priest and everything ready.

Q After you got what? A After I got the priest and after they were taken away then I retired.

Q Did you go to the premises No. 329 that night after all this was over? A I did not.

Q Were you present when --

THE COURT: What is 329? --

MR. BROWN: That is where the defendant lived, where he was arrested sometime after that with about 20 others.

BY MR. BROWN:

Q You did not go there? A No, sir, I did not.

Q When was the first time that you knew that this defendant was arrested? A On the next morning.

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Q Who told you? A I inquired in the neighborhood and found out a couple of colored people were arrested.

Q You inquired? A Yes, sir.

Q Do you keep that meat market there right on the corner of 61st street? A No, sir; two doors from the corner.

Q On the corner? A Yes, sir.

Q About how long did Coster wait outside for you?

A I don,t know.

Q How did you know he was waiting for you?

A I did because that had been continued for about two years, every Saturday I would wait for him or he would wait for me.

Q You don't know how long it was that night that he was waiting for you? A No, sir.

Q Was your place closed when you left there? A It was.

Q That was about what time? A About half past one.

Q About half past one? A Yes, sir.

Q Coster comes to your house, your residence many times?

A Once in awhile.

Q You go to his residence? A Once in awhile.

Q You do? A Yes, sir.

Q Does Mr. Gentile visit you? A No, sir, never had anything to do with Gentile whatsoever.

Q Never knew him? A No, sir.

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Q Did you know him that night? A Seen him a couple of times, that is all.

Q You knew he lived in that neighborhood? A I did.

Q You knew he lived therethat night? A I did.

Q You knew when you went upstairs and saw him in front of your door where he lived? A I did.

Q Why did you instead then take him into your apartment? A Well, I was doing it in charity.

Q Charity? A Yes, sir.

Q Although this thing happened one hour before you took him into your place out of charity? A Yes, sir, I did.

Q And waited for the priest? A I went over for the priest myself.

Q Where does the priest live? A 67th street.

Q Did the priest return with you? A No, sir, returned in about ten minutes after I left.

Q And you were not afraid to go where the priest was? A No, sir.

Q Everything was quiet on the street then? A Yes, sir, it was.

Q As far as you know arrests had been made? A No, sir.

Q Still you did not go to your own home? A I went right away home after I called the priest I went to the house, then I was met by the surgeon of the -- by the ambulance doctor and also met by two or three officers.

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Q You say in your direct examination you did not go home until the next morning? A I went home right after.

Q You went right home? A Yes.

Q Where was Mr. Gentile? A Gentile was in my house.

Q When did they take him from there? A They took him a half an hour after that.

Q Did they take Mr. McCarthy at the same time? A They did.

Q He was up in your apartment? A He was.

Q Was Mr. McCarthy conscious at any time? A He was.

Q Did he talk? A Only spoke once, the only thing he could say was to "Get my brother" and he fell unconscious, couldn't do anything else.

Q He knew he wasn't home? A Certainly he did.

Q Knew he wasn't at his home? A Yes, sir.

Q He said get his brother? A Yes, sir.

Q Did anybody get his brother? A I sent one fellow down to get his brother.

Q Did his brother come? A He did.

Q While he was there? A Yes, sir.

Q Did his brother, if you know, go to the hospital with him? A I never was in the hospital--

Q You were there when they went to the hospital, that these two wounded men went? A When they left my house

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I was there, yes, sir.

Q Do you know whether or not his brother went with him?

A No, sir, I do not.

Q Well who came after they had taken them to the hospital?

A Why there was about three or four officers there and the priest, the doctor and the ambulance driver.

Q Have you seen the officers who came that night?

A Yes, sir.

Q Who came that night? A Yes, sir.

Q Now that was over an hour then when they came, from the time of this cutting until they took them to the hospital, wasn't it? A Yes, sir.

Q Because you had been there when they arrived at your flat? A Yes, sir.

Q Taken out of it? A Out of my house.

Q They also brought McCarthy up there? A Yes, sir.

Q You had left there and gone for the priest? A Yes, sir.

Q Gone for the priest? A Yes, sir.

Q That took time? A Yes, sir, that took time.

Q About what time do you think it was when they were carried to the hospital? A About half past two.

Q When you went up into that water closet you stayed there for three-quarters of an hour? A Yes, sir.

Q Did you hear anybody pass in the hallway? A No, sir.

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Q Ask for any one? A No, sir.

Q Why did you go into the water closet and hide?

A Because that was about the only where I could go.

Q You hadn't done anything to hide at all? A No, sir; I wouldn't be a fool to stand there and get out.

Q Didn't anybody follow you in the house? A Certainly Mr. Brown that I could recognize him as plain as daylight.

Q In the house? A yes, sir.

Q Did he follow you to the water closet? A No, sir.

Q You ran upstairs? A Yes, sir.

Q Why did you stay in the water closet three-quarters of an hour? A I would not come out, being afraid Mr. Brown might be hiding behind some doorway.

BY THE COURT:

Q Did anybody strike Brown, the defendant, that night?

A I don't know your Honor.

Q Did you see anybody strike any of the colored men?

A I did not, your Honor.

Q Were these two men out by Brown the defendant with a razor? and they not hit Brownback? A No, sir.

Q You didn't see them hit Brown at all? A No, sir.

BY MR. BROWN:

Q Brown was the only colored man that you saw in a-

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tion? A Yes, sir.

Q Everybody else that you saw was not doing anything?

A Except Mr. Roberts on the opposite side of the street.

Q Just running? A Yes, sir, running with a club.

Q How far were you from Roberts when you saw the club?

A On the opposite side of the street.

Q What was the size of the club? A Well about two and a half feet, two feet long.

Q Well about what size? A About that size. (Indicating)

Q That is the length of it, what size of it around?

A (Indicating)

Q All the way? A Yes, sir; according to what I saw.

Q Was it light wood? A I don't know because I didn't feel it.

Q Was the color of it light? A I could not see the color.

Q You could not see, you couldn't tell whether a light color? A No, sir.

Q Have you seen policemen's night sticks? A I did.

Q Was it anything of the color of them? A Something like.

Q Was it as large as that? (Illustrating) A Larger.

Q Larger than a policeman's night stick? A Yes, sir.

Q Was it longer? A Well about the same size as the policeman's club.

Q How long did you have this club under observation?

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A Well just about a minute.

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5W1. Q About a minute? A Yes, sir.

Q Were you running at the time that you saw it?

A No, sir; I was standing in front of 311 seeing what was going on as Brown walked into 310; I still stood there; while standing there Brown came walking towards me and when about, say four or five feet away from me, I seen Brown making a dive, I seen him with the razor and I ran; I wouldn't stand there.

Q I am talking about Roberts with the club?

A He was on the other side.

Q On the otherside? A Yes, sir.

Q Directly opposite? A Yes, sir; directly opposite.

Q Did Brown cross the street? A Yes, sir; he did.

Q After you? A Yes, sir.

Q you were the only man standing there? A I was.

Q Where was McCarthy at that time? A In the hallway.

Q Near the door that you were standing at?

A No, sir; on the opposite side, 310.

Q When was it that you commenced to run? A Right at the same time when Mr. Brown ran after Mr. Coster; when Mr. Coster had Mr. McCarthy dragging him in the hallway; finally Coster seen Brown running after him and he left McCarthy lay there and he ran for his life, but Brown ^{saw he} couldn't get him and he started for me; as he started for me, he was about ten feet away, he says, "There is one of the whites", and something else connected with it.

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Q Tell it? A He said, "There is one of the white bastards", and of course I still stood there not thinking it was me. but he made a dive and I ran.

Q How far were you from the doorway that you dived in? A Well, about forty feet.

Q About forty feet? A Yes, sir.

BY THE COURT:

Q Was there or was there not a fight on between the whites and the blacks? A I don't know.

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

Q Did you know that you didn't do anything?

A Yes, sir.

BY MR. BROWN:

Q Do you know how Mr. McCarthy got in the hallway?

A Well, they found out the next morning.

Q Not that night? A That night he was dragged in by Coster.

Q How do you know that? A I seen it:

Q But you said that Mr. McCarthy was dropped by Mr. Coster? A Sure.

Q You ran into the hallway? A Yes, sir.

Q Brown chased you in -- hold on now -- Mr. Coster is on the sidewalk, laying on the sidewalk, Brown chased you into that hallway? A No, sir; you got it all wrong. Mr. Coster ran down the block ahead of me; when he picked

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up Mr. McCarthy and brought him in the hallway, at the same time Brown made for Charlie Coster, but failing to get Mr. Coster, when Coster left McCarthy drop out of his hands, left him there, ran for his life, Brown failing to get Coster ran for me.

Q Did Mr. Brown go into the hallway? A About five feet in the hall.

Q How do you know it was five feet? A Well, because he came right out.

Q You were on the other side of the street?

A Yes, sir.

Q Mr. McCarthy and this Mr. Coster had just gotten in there? A Yes, sir.

Q Where was the body of Mr. McCarthy when you discovered it, when you finally returned home, how far into the hallway?

A Well, about the middle.

Q The middle of what? A The middle of the hallway.

Q Did you at any time after you say that you saw this stick in the hands of Roberts see it, examine it?

A No, sir.

Q After that? A No, sir.

Q Did you see it in the Police Court? A No, sir.

Q How far were you away from Roberts when you say you saw the stick? A Right on the opposite side.

Q Of the street? A Yes, sir.

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Q You can't tell its color? A No, sir.

Q Nor its weight? A No, sir; nor its weight.

Q So far as you know you don't know whether it was a small walking cane or a stick? A No, sir; it was a regular club as far as I could see.

Q A regular club as far as you could see?

A Yes, sir.

Q Might it not have been a broom-stick? A No, sir; it was not a broom-stick.

Q You observed it, how long was it under your observation? A Just about one minute.

Q You were standing still? A Yes, sir; standing still.

Q How far was Roberts from you at that time?

A On the opposite side of the street.

Q Were you the only person out on the street?

A Yes, sir.

Q The only person? A Yes, sir; the only person outside of the two colored people, Mr. Brown and Mr. Roberts.

Q Everybody else had fled? A Yes, sir; everybody else had fled.

Q The two other men had fled? A Yes, sir; everybody had gone.

Q Well, when you came up there after Mr. Coster there was a crowd there? A Yes, sir; a crowd all over the

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street after that.

Q Did you see Brown strike Coster? A No, sir.

Q Or strike this man McCarthy? A No, sir.

Q Did you see him strike Gentile? A No, sir.

BY THE COURT:

Q Did McCarthy ever tell you how this thing happened?

A He told me afterwards.

Q Afterwards? A Yes, sir.

Q Did Gentile tell you how it happened? what was the first part of it he saw? A No, sir.

Q He did not? A No, sir.

THE COURT: Mr. Brown, would you mind his telling us just what McCarthy told him as to how this thing happened?

MR. BROWN: Yes, sir. I am perfectly willing. I want to get at that.

MR. MANLEY: I will waive the rules of evidence on the point.

THE COURT: Of course, it is against the rules of evidence, and that is the reason I suggested whether or not it would accessible.

BY THE COURT:

Q Now, you state to us what McCarthy told you as to the first thing he saw of this matter. Now, that last juror seems to be very interested in this thing. Now, you talk to

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him? A Well, the only thing about he told me that he had been out.

Q Just how did he say it happened. He must have told you just how the whole thing happened, where he first saw it, where he first got into it. Just tell it to that last juror. He does not understand? A He told me he was coming home and he ran down, and while mixed in the crowd there he found himself out.

Q Did he tell you this, or are you guessing at it?

A He told me this.

Q Just tell us what he said. He probably told you the whole thing, didn't he? A No, sir; he did not.

Q How much of it did he tell you? A That is just what I said.

Q Let us have that again, all that you can remember that McCarthy told you, the first thing he knew of this trouble in the street, where he first saw it, what he was doing and all that. Now, tell us, please? A He told me was coming home and while he ran down the block a sort of crowd there, and the first thing he found out he was in it and found he was cut.

Q Did he tell you how he got in it? A No, sir.

Q He didn't say how he was in it? A No, sir; he did not.

Q Is that all he told you? A Yes, sir.

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Q Tell you anything else? A No, your Honor.

BY A JUROR:

Q Did he tell you there were colored and white people?

A He told me it was colored people, yes, sir.

Q Tell you there were any white people there too?

A Yes, sir; he told me there was white people among them.

Q White and colored? A Yes, sir.

BY THE COURT:

Q Let us have just exactly what he said? A He was coming from from where, he did not say, and he seen a lot of people running around down there, mixing up, he ran down I suppose to see what was the matter or something, and he found himself right in it, somehow or other, and somehow or other he found himself lying in the street until he got picked up.

BY MR. BROWN:

Q Isn't Mr. McCarthy, among his acquaintances around there, known as the leader around there?

MR. MANLEY: I object to that as incompetent and immaterial.

THE COURT: It might go to the question of self defense.

MR. MANLEY: I cannot conceive how it is material whether he was a leader or not.

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THE COURT: It may be. We don't know what the defense is. The defense does not have to disclose its defense now. Now, it may be that the defense, one part of it may be identity or self defense. It may be that they will allege that these colored men were assaulted by a gang, and it may be that they will want to prove or attempt to prove that McCarthy was the head of the gang.

MR. MANLEY: Is there any rule of evidence that allows one man to express an opinion that another man is known as a leader?

THE COURT: I think that is probably the only way that we could prove leadership. Leadership is not an official position; it is something that is by mutual consent.

MR. MANLEY: Personally I don't know anything about McCarthy. Suppose this witness says he is known as a leader, will that throw any light upon what happened that night?

THE COURT: Suppose he is known in that community, where he lives, as the leader of a gang, and suppose that one of the defenses here is that these defendants were assaulted by a gang led by McCarthy. I don't know whether that is so or not, but it seems to me that that would be relevant to the issue on that defense.

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MR. MANLEY: If that is the defense and that is coupled with the question, I have no objection to it in that form, but simply to have this witness go on the stand and without anything to justify it ask him whether or not a man is known as the leader, I don't see how that that gives any right to the defendant to cut him.

THE COURT: No, it does not in itself. The leader of a gang is entitled to protection just as much as any member of the gang or any member of the church.

MR. BROWN: I want to lead up to this.

THE COURT: I will allow the question.

BY THE COURT:

Q Was McCarthy known in that community as the leader of a gang? A No, sir; never such a thing as a leader in 69th street.

Q Well, did he lead the young men, was McCarthy looked up to as the leader in all fights and things of that kind? A No, sir; nobody cared for him; there was no such thing as a leader, but if there was a fight there any of these kids might fight --

BY MR. BROWN:

Q So they were all leaders. Now, the testimony of the Mr. McCarthy was that he saw this crowd, ~~of~~ a colored man in front with guitar holding them at bay and the crowd was there

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and he got too near him and he was the one that got hit.
That is his testimony.

THE COURT: Put a question to this witness because this witness does not know what McCarthy testified to nor is he responsible for it. Put it in the form of the question and the District Attorney may object if he so desires, and the Court will rule upon it.

Q You say that you went -- did you go to the hospital?

A No, sir.

Q Can you tell this jury what time you got home that night? A From where?

Q From the water-closet? A About two o'clock or a little after.

Q What time was it when you left your place of business? A A quarter after one.

Q A quarter after one? A Yes, sir.

Q How do you know it was about two o'clock that you left the water-closet? A Well, I am just about positive, about three-quarters of an hour.

Q About two o'clock? A Yes, sir; about two o'clock.

Q Going for the priest and everything?

A No, sir; after I got out of the water-closet it was two o'clock.

Q After you got out of the water-closet? A It was two o'clock; yes, sir.

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Q This fight must have taken place about one o'clock?

A I couldn't say.

Q Well, it was in progress when you got to 68th street?

A It was.

Q How near were you to it when you first discovered it?

A Up at the corner.

Q Corner of what? A 69th street and West End avenue.

Q How far away? A Oh, some 150 feet.

Q About 150 feet? A Yes, sir.

Q Mr. McCarthy and Mr. Coster then left you --
you didn't stop walking? A I did; I just happened
to turn around and see Coster gone, looked up, he was 25 or 30
feet away from me.

Q You followed? A Yes, sir.

Q When you got there -- A When I got there I seen
him dragging Mr. McCarthy into the hallway.

Q In this hallway? A Yes, sir.

Q How far did he drag him? A About from 314 to 310..

Q You were getting to him, nearer to him all the time
from 314 to 310? A No, sir; I was getting nearer from
the corner.

Q Well, I say, you were getting near him, you were
in motion? A I was.

Q Going towards him? A Yes, sir.

Q Where was Brown, at that time? A In the middle of

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the street.

Q Was McCarthy dragged from the middle of the street?

A From about the gutter.

Q From the gutter? A Yes, sir; on the south side of the street.

Q Two or three houses? A Two houses.

Q Two houses? A Yes, sir.

Q Up into the hallway? A Yes, sir.

Q Was Brown in motion all of that time?

A Yes, sir; he was.

Q He was up to him when he cut him, wasn't he?

A He was up to him.

Q Brown was up to him? A No, sir; Brown was standing in the street, trying to get on the opposite side; as he seen me start coming down he starts for Coster; I suppose he would have started for Coster and tried to ~~fix~~ put the finishing touch on McCarthy.

Q We are not asking you about your supposition, but you had stopped on the other side of the street? A No, sir; I came down on the south side of the street.

Q You saw Brown go into the hallway? A After Mr. Coster.

Q You say the body of McCarthy was about middle way in that hallway? A It was.

Q How far from the door? A About ten or twelve feet

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from the door.

Q You did not go in the hallway? A I did not --

Q You went in and came right out, you say?

A No, sir; I didn't go in at all; Mr. Brown went in.

Q He came out again? A Yes, sir.

Q Saw you standing on the street? A Yes, sir;
and walked over.

Q What did you stand there for? A To see what was
going on.

Q You hadn't seen what was going on until that time?

A That is all.

Q You hadn't seen that? A No.

Q So you jumped into the hallway? A yes, sir;
after I got chased.

Q Stayed in there three-quarters of an hour?

A Yes, sir.

BY A JUROR:

Q Can you tell us how many minutes you had been with
Mr. Coster before you came up to that block at 69th street?

A Walking?

Q Yes. A About ten minutes.

Q About ten minutes? A Yes, sir.

Q Do I understand that you owned the meat market, or
work in one? A I work in one.

Q Whereabouts is the meat market where you work?

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A 44 Amsterdam avenue, two doors from 61st street.

Q How long have you worked there? A Three years.
BY MR. MANLEY:

Q When was it, about how long after the 15th of May that McCarthy told you something as to what had happened to him? A When he came out of the hospital.

Q Do you remember how many days after it happened?
A About ten or eleven.

Q Do you remember where it was he told you that?
A In front of the saloon of his brother.

Q Did he tell you where he was standing, what he was doing at the time when it happened? A Yes, sir; he told me he was coming home; he was walking down the street, he seen a lot of people run upside down in a mix-up.

Q Did he tell you how many people were there?
A No, sir.

Q Did he tell you what each one of those people did?
A No, sir.

Q Did he tell you where each one of those people stood?
A Well, there was a few in the middle of the street, and a few on each sidewalk.

Q Did he tell you what Brown did, this defendant?
A He told me he cut him.

Q Did he tell you what Roberts did, the otherman?
A Well, I almost seen everything that Roberts did.

Q The question is, -- you have been asked what was told

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15.

you by a certain man named McCarthy, and I wanted to know if McCarthy told you what Roberts had done to him?

A No, sir; nothing about Roberts.

Q Did he tell you how far from the corner of West End avenue and 69th street this defendant Brown was when he had struck at him? A No, sir.

Q Did he tell you on which side of the street Roberts was when he did anything to him? A No, sir.

BY MR. BROWN:

Q Did you see the defendant attempt to assault Coster?

A He did.

Q How near was he to him? A Well, about, as he ran in the hallway, near the hallway, was some ten feet away from him when Coster, I suppose, saw him.

Q You saw him near him? A Yes, sir.

GIUSEPPI RUFFO, a witness called on behalf of the People, being duly sworn, and examined through Official Interpreter Mustaki, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Where do you live? A 309 West 69th street, City and County of New York.

Q Where did you live upon the 15th of May, of last year? A Same address, second floor.

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Q How long had you lived at that address No. 309?

A Four months.

Q That is four months before the 15th of May last year? A Yes, sir.

Q Are you acquainted with Florence McCarthy? A No, sir.

Q You didn't then know him upon the 15th of May, 1910? A Who is Florence.

Q Florence McCarthy, one of the men that got out.

Did you know him on the 5th of May last year? A No, sir.

Q Were you acquainted on the 15th of May last year with Peter Gentile? A Yes, sir.

Q How long have you known him? A Well a countryman of mine, I knew him all the time; I have known him for six years.

Q Had you ever seen Florence McCarthy, the man that got out before May 15th, 1910? A No, sir.

Q Did you know Charles Coster upon that day? A I saw him by sight, in the street.

were you

Q Now whereabouts on the evening or the morning rather of the 15th of May? A I was there at 304.

Q What is 304 West 69th street? A A restaurant where we have out meals.

Q What time did you go there? A About half past one in the morning.

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Q Anybody go there with you? A Yes, sir, there were three of us.

Q Now what are their names? A Louis Tocci.

Q Who else? A Alexandro.

Q Do you know him? A Yes, sir.

Q Where did he live at that time? A 313 69th street.

Q Do you know where he is now? A Yes, sir.

Q Where is he now? A At the village called Katonah.

Q Is that up here on the Hudson? A Yes, sir.

Q Who else was with you that night except Tocci?

A Citrone.

Q Where was it up on the 15th of May that Alexandre Citrone lived? A 306 West 69th street.

Q Where is Citrone now? A In Katonah, I am not sure about that, it is on the Aqueduct.

Q How long did you three men stay in the restaurant No. 304 before you came out, or was there another man?

A Two and myself make three.

Q How long did you stay in the restaurant before you came out? A About a quarter of an hour.

Q Now what did you see, if anything when you came out?

A I went out and I saw Pietro Gentile with the blood oozing out from (witness pointing to his left side) and I went to see what ailed him and I saw him have a cut there; he had a cut there. (Illustrating)

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Q How far is 304 from the corner of West End avenue and 69th street? (Witness pointing from the witness chair to the back wall of the court room about 70 or 60 feet).

MR. MANLEY: I guess that is about it.

Q Whereabouts was Gentile as you saw him when you came out of the restaurant near what number? A No. 308.

Q What did you do when you saw Gentile with blood on his side? A I just had time to go and see what ailed him and then I had to run away because the blacks were after me.

Q How many were after you when you went up to where Gentile was? A About one yard.

Q How many blacks were after you -- you said the blacks were after you? A Three.

Q Did you see anybody, any of the colored men do anything to Gentile? A One hit him with a club.

Q Do you know the name of that man that hit him with the club? A I did not know his name, but I could recognize him.

Q Have you ever seen that man before? (Pointing to Roberts) A This is the man.

Q Now what was it that you saw that man (indicating Roberts do) A I saw him hitting Pietro Gentile on the neck with his club.

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Q What did Gentile do after he was struck? A Gentile ran up, he ran away through the roof.

Q Do you know into what house he ran? A He went to the roof leading to No. 308, after that, I don't know where he went.

Q Now, did you see a man whom you afterwards found out was McCarthy upon the street at that time? A No, sir.

Q Did you see McCarthy later in the evening? A No, sir.

Q What happened after Roberts struck Gentile with a club? A Nothing happened, after the police arrived, nothing else happened.

Q Did anything happen to you, did anybody attempt to do anything to you? A No, sir; they ran after me, but I ran into the restaurant and they did not touch me.

Q Who was it that ran after you? A The last witness that came inside the court room had a club, another man had a razor; they both were running after me.

Q Now, Roberts the one who was brought in from outside--

Q What restaurant did you run into? A No. 304.

Q How long did you stay in there? A Ten minutes.

Q Did you see this defendant down upon the street that night? A Yes, sir.

Q Where was Brown when you saw him? A He was there

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near the restaurant door, where I ran in, and the defendant had a razor in his hand.

Q Did you see him do anything when you came out?

A No, sir.

Q Did you see him run anywhere or go anywhere?

A Yes, sir; he was coming after us.

Q Well where were you when he was coming after you?

A I was talking, while I was talking to Gentile.

Q Where was gentile when you were talking to him?

A In front of No. 308.

Q Well, you had seen Gentile run to 308 then, did you yourself go there? A Yes, sir, I ran after to see what was the matter.

Q Did you go into the hallway of 308? A No, sir, outside.

Q Well did you say anything to Gentile before Gentile got to the hallway of 308? A Yes, sir, I said to him, "What is the trouble?"

Q How soon was it after you said to Gentile what the trouble was before Brown, this defendant, came to where you were? A About five minutes.

Q Now, how far was it that he chased you -- where did it begin to chase you, where did he start from and how far did he pursue you? A The defendant began running from across the street from where I was standing with Gentile and

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till we reached the door of the restaurant.

Q Now at that time while you ran into the restaurant where was Louis Tocci and Alexandro Citrone? A They were together, the three ran into the restaurant.

Q When you went into the restaurant did you look the door or do anything to the door? A No, sir.

Q Did you hold the door inside or did the defendant Brown stop outside?

MR. BROWN: I object to that as leading.

A No, sir.

MR. MANLEY: Now what was my question.

Q (Question repeated).

BY MR. MANLEY:

Q Did you hold the door inside or did Brown not come all the way to the door? A No, sir; he stayed right in front of the door because the police was there; he did not attempt to come in.

Q How long did he stay in front of the door?

A Seven or eight minutes.

Q Did he stay right in front of the door during those seven or eight minutes? A Yes, sir; he was there all the time because there was two steps in front of the door; he was standing on those two steps.

Q How long was it, if you can tell me about, after you went into the restaurant before the police came? A Four

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or five minutes.

Q How many police came? A One.

Q Did you speak to him, that same police officer?

A Yes, sir.

Q Will Officer Kilgallen step inside. Now is that the police officer that came? A Yes, sir.

MR. MANLEY: (Addressing the officer)

Your name is Kilgallen?

THE OFFICER: Yes, sir.

MR. MANLEY: Michael Kilgallen?

THE OFFICER: Yes, sir.

BY MR. MANLEY:

Q Was that police officer in uniform on that night?

A Yes, sir.

Q Now, what did you see that police officer do, if anything? A He took them, he brought them to their own home.

Q Who did he bring to his own home? A He took the three home.

Q The three home, can you tell who they were, colored men or white men? A These two, the defendant and the one you brought in just now, but the third man I do not know.

Q Whereabouts was it that the police officer took those three men? A 320 West 69th street.

Q This is one of the men, this defendant Brown?

A Yes, sir.

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Q And the man that came into the court room and answered to the name of Roberts is one of them? A Yes, sir.

Q There was another one too, was there? A Yes, sir.

Q Now these other two were they in front of that restaurant during all the time from the time you went in there up to the time that Officer Kilgallen came there? A Yes, sir, right in front of the door.

Q How is it, if you know, that the officer took them to this number that you told us about, did you see him go there? A Because I followed them I was on my way home, and I saw the police bringing them right there; I came out of the restaurant there and saw thme going there.

Q Did the policemen bring these men into the restaurant where you and Tucci and Citrone were before he took them to their house? A No, sir.

Q Did you have any talk with that police officer Kilgallen the one that just came in? A No, sir.

Q Did you later in the evening have any talk with any other police officers? A No, sir; because I went home.

Q Did you go home immediately after you had seen Officer Kilgallen take these three colored men to their house?

A Yes, sir.

Q Were you present at the time the ambulance from the Flower Hospital came into that block? A No, sir.

Q You were not? A No, sir; I didn't see any ambu-

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lanes.

Q Were you present at the time the defendant, Charles Brown, and the co-defendant Charles H. Roberts were placed under arrest? A No, sir.

CROSS EXAMINATION BY MR. BROWN:

Q Mr. Ruffo, what time do you say you went to that restaurant that night? A Between one and half past one o'clock in the morning.

Q How long did you stay in there? A About 15 minutes.

Q Did you have a meal in there? A No, sir; waiting until the food was getting ready.

Q The food was getting ready? A Yes, sir.

Q Did you finally have a meal there? A No, sir.

Q Where did you come from when you went to the restaurant? A From the theater.

Q That kept in until one o'clock? A No, sir; we remained there until 11 o'clock at the theater.

Q Where had you been from 11 o'clock until half past one o'clock? A In the bar, in the saloon No. 308.

Q 308 what? A West 69th street.

Q What were you doing in the saloon and hour and a half or two and a half hours? A Well, I was there enjoying myself watching some countrymen of mine dancing a certain Italian dance.

Q Sunday morning? A Yes, sir.

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Q Enjoying yourself in the back room of a saloon on a Sunday morning at half past one? A No, sir, up until half past twelve I was in the saloon but then I went out and took a little promenade with some friends of mine.

Q Where did you take your promenade at half past twelve until half past one? A We went to the park in 72nd street.

Q In the park? A Yes, sir.

Q How long did you remain in the park at 72nd street? A Well, we were walking and we had no watch so I couldn't tell how long ^{were} we walking in the park.

Q Who was with you in the park? A These other two friends of mine.

Q So you got to this restaurant at half past one, the restaurant? A Yes, sir; I could not exactly state it was half past one but if there is a ny difference in the time it could have been no more than ten minutes difference.

BY THE COURT:

Q The restaurant is 304? A Yes, sir.

BY MR. BROWN:

Q You were in the saloon there until half past twelve, were you not? A Yes, sir.

Q Did you have anything to drink in there? A No, sir.

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Q Did you go in there and stay an hour and not to have anything to drink, not order anything to drink?

A No, sir; I am a temperate man and I was there with a brother of mine, and I was watching this dance, but I drank a soda.

Q You drank a soda? A Yes, sir.

Q What did your brother drink? A I do not know what he drank.

Q Did he drink anything to your knowledge? A While he was with me no.

Q Did your other friend drink anything in that saloon?

A No, sir, because I was not continually with my friends, we were keeping apart sometimes, but whether they drank or not, I could not say.

Q Do you go to that saloon often? A Yes, sir -- now I go there.

Q Always at night? A No, sir; I did go there but not working days, only on Sunday.

Q Who keeps this saloon? A Pasquale Vaccara.

Q Is he an Italian? A Yes, sir.

Q What time does the saloon close-- that night before you left there? A Always on Sunday.

Q Had it closed when you left there at half past twelve?

A Well, the bar was closed at half past twelve, but in the rear of the bar there is a dancing hall and that was open.

Q Then after that you went to the park? A Yes, sir.

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Q Did you sit down in the park? A No, sir.

Q Just walked around? A Yes, sir.

Q But you were there one hour about? A In the park?

Q Yes, in the park? A I was walking around the park,
I could not state whether I was there an hour or less.

Q When you got to this restaurant 304 West 69th street,
did you meet anybody before you got there? A No, sir.

Q Did you see a razor in Brown's hands? A Yes, sir.

Q Where was Brown when you saw he had the razor? A He
was across the street where we were with Peter Gentile;
he was coming towards us.

Q Was Peter Gentile injured then? A Yes, sir.

Q Where did Peter Gentile go? A He ran up to
the roof because they were running after him.

Q He was out, Peter Gentile was out, and he ran up
to the roof? A Yes, sir.

Q What number was that? A 308 West 69th street.

Q How do you know he ran up to the roof? A I saw him
going up to the roof, and I ran into the restaurant.

Q Now, you say you ran into the restaurant, and he
ran to the roof? A Yes, sir.

Q I am asking you how do you know he ran to the roof?
A I saw him going into the building into the yard, but
I didn't see him on the roof.

Q Where did you see Roberts if anywhere? A Who is

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Roberts?

Q The colored man that they brought in here just now?

A Yes, sir he was together with the one who had the razor.

Q Was he near Gentile when gentile ran into the house? A No, sir, because gentile was in front of No. 308 and the others ran from across the street.

Q Did you see a stick in Roberts hands? A Yes, sir.

Q Did you see him strike Gentile with it before he ran in the house? A Yes, sir he did.

Q Where did he strike him? (Indicating on the left side of the neck)

BERNARD HUGHES, M. D., a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q You are a physician and surgeon in the Flower Hospital?

A I am.

Q You were there during May of last year? A I was.

Q Do you know who had the ambulance call from Flower Hospital in a case on West 69th street upon the early morning of the 15th of May last year in which the injured men were Florence McCarthy and a man named Gentile? A Dr. Arnold.

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Q Where is Dr. Arnold at the present time? A South America.

Q Who had charge of these men in the hospital?

A Dr. Henderson.

Q Where is Dr. Henderson? A I haven't heard of him in about three months, he was then in Hempstead, Long Island.

Q That is he has left the hospital? A Yes, sir.

Q Did you yourself have anything to do with these two cases in the hospital? (A No, sir; not to my knowledge.

Q Have you looked up the records in the hospital? A I have.

Q Can you state from the hospital records what injuries those two men, Florence McCarthy and Gentile had when they were brought there? A Well one man had an injury, that is a stab wound.

Q Take Florence McCarthy first? A You see I am not conversant enough with the case to differentiate.

Q Have you looked at the records? A Yes, sir, I have.

Q Are the names Florence McCarthy and Peter Gentile there? A Yes, sir.

Q Have you got a copy of the record? A No, sir, not with me.

Q Well are the records sufficiently in your mind so that you can tell us, in substance, what is contained in the

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record? A Yes, sir.

Q Tell us what injury you found in the record on the person of Florence McCarthy? A Well, he had a bullet wound in the left side.

Q What is that? A Bullet wound, a stab wound rather on the left lumbar region.

Q Are you or are you not sufficiently familiar with the hospital records to testify to what they contain? A I will tell you I knew absolutely nothing about these cases until you called me up.

Q You don't understand me. Are you familiar enough with the records of the Flower Hospital to as to the injuries of these two men so that you can tell us what the record says? A I can tell you what the record say about these cases.

THE COURT: It is a pity you didn't bring the records.

THE WITNESS: I was not asked; they subpoenaed me down here.

BY MR. MANLEY:

Q If you cannot I don't want to ask you the question because you said something about a bullet wound? A I meant to say a stab wound.

Q What do you say as to the contents of the hospital records as to the injuries upon Florence McCarthy? A I will

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say that one man was stabbed on the left side of the abdomen and one man the left side of the back.

Q I will put the question again. Just take your time -- if you are sick that accounts for it? A Well I haven't studied these cases; I never saw them.

THE COURT: He probably cannot distinguish between the two.

MR. MANLEY: That is what I am trying, as intelligently and logically as I can, to find out.

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BY MR. MANLEY:

Q Now, the question is are you familiar, or not, with the records of the Flower Hospital as to the injuries upon a man named Florence McCarthy, to tell us the substance of what that hospital record says about the injuries to Florence McCarthy? A Well, the best of my knowledge is the hospital record had stated that this man, McCarthy, had been stabbed in the left side of the chest here (Indicating).

Q Did it state the extent of it? A No, sir; it did not.

Q Did it state it was a wound which caused about how many stitches -- A No, sir; it did not.

Q There is no such record then as to the extent of the wound? A No, sir.

Q Merely a stab wound? A Yes, sir.

Q We will take Gentile. Can you tell me the substance of the hospital record as to Peter Gentile? A Gentile's wound was on the left side and was supposed to have punctured the kidney; had punctured the kidney.

Q How far is the kidney from the exterior of the skin on the left side, how far in the body? A Oh, a half an inch.

Q Is there any way of determining from the hospital record the length of that wound and its depth? A There

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