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COURT OF GENERAL SESSIONS OF THE PEACE

IN AND FOR THE COUNTY OF NEW YORK

PART THREE.

2555

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

-against- :

LOUIS RAFFO. :

B e f o r e:-

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

and a Jury.

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

THE DEFENDANT IS INDICTED FOR ASSAULT IN THE FIRST
DEGREE.

INDICTMENT FILED AUGUST 13th, 1915.

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

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

For the People.

JOHN PALMIERI, Esq.,

For the Defendant.

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

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

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

DIRECT EXAMINATION BY MR. DeFORD:

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

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

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

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Central Railroad.

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

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

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

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

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

Q Did you speak to him? A I did.

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

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

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

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

BY MR. PALMIERI:

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

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road bull will be getting killed around here".

BY MR. DeFORD:

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

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

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

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

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

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

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

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

A At seven.

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

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

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

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

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

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

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

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

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

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

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

Q Going east? A Going east.

Q Through the yard? A Through the yard.

Q Nobody with him? A Nobody with him.

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

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

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

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

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

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

Q You were hit? A I was hit.

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

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

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

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

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

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

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

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

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

BY THE COURT:

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

BY MR. DE FORD:

Q Did you see the bar? A I did.

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

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

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

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

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

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

Q Who did that? A Who did that?

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

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

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

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

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

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

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

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

A I made an effort to get up.

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

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

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

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

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

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

Q Was there anyone at the door? A Raffo.

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

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

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

BY THE COURT:

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

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

BY MR. DeFORD:

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

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

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

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

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

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

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

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

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

BY THE COURT:

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

A After the night of the assault?

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

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the West Forty-seventh street station house.

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

BY MR. DeFORD:

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

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

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

MR. DeFORD: You may examine.

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CROSS-EXAMINATION BY MR. PALMIERI.

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

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

A Yes, sir.

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

Q He was right there singly? A No.

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

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

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

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

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

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

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

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

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

THE COURT: Yes or no to that.

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

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

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

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

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

MR. DeFORD: I object.

THE COURT: Sustained.

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

MR. DeFORD: Objected to as immaterial.

THE COURT: Sustained.

MR. PALMIERI: Exception.

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

MR. DeFORD: Objected to as immaterial.

THE COURT: Sustained.

MR. PALMIERI: Exception.

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

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

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

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

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

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

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

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

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

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

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

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

Q About what? A About three.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. DEFORD: He did.

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

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

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

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

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

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

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

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

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

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

He had seen him twice before.

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

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

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

MR. DeFORD: I object to that as immaterial.

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

A Why, no.

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

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

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

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

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

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

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

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

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

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

A I didn't.

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

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

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

A I did.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q Yes. A Nobody.

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

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

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

Q Was it before you got to this yard?

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

MR. PALMIERI: All right, your Honor.

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

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

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

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

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

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

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

MR. PALMIERI: That is just what I want.

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

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there was no cut.

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

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

THE COURT: The right side, not the left.

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

THE COURT: You are.

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

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

THE COURT: It is not receivable now.

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

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

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

THE COURT: I will receive it.

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

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

Q By a strong blow? A No.

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

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know which hand.

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

Q What? A There is no mark.

THE COURT: He has answered you. Another question.

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

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

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

THE COURT: Yes or no to that.

A I don't know.

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

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

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

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

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

THE COURT: He has answered you. No comment.

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

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

A About fifteen.

Q About fifteen? A Fifteen.

Q Fifteen feet I said? A Yes, sir.

Q Was he facing you? A Facing me.

Q And you facing him? A Me facing him.

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

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

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

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

Q And you were crouching? A I was.

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

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

A Two shots.

Q From a revolver? A Yes, sir.

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

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

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

THE COURT: Yes or no.

A No.

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

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

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

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

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

A Those bullets?

THE COURT: Yes or no, now.

A No.

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

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

Q Just show me the cut?

MR. DeFORD: Where is the cut?

The Witness indicates on coat, which is produced.

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

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

MR. PALMIEREI: I will offer it..

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

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

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

A I don't know.

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

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

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

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

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

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

BY THE COURT:

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

A Yes, sir.

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

BY MR. PALMIERI:

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

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

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

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

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

Q You felt the gash? A I did.

Q You are positive about that; you cannot be mistaken?

A I am not mistaken.

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

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

A I felt the pin prick?

Q Yes. A No.

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

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

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

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

A I didn't.

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

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

A Dark.

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

A One.

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

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

THE COURT: Now answer the question.

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

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

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

BY THE COURT:

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

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

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

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

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

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

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

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Q They were both open? A Yes, sir.

BY MR. PALMIERI:

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

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

THE COURT: Objection sustained.

MR. PALMIERI: Exception.

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

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

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

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

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

A In the car, getting into it.

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

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

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

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

BY THE COURT:

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

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

THE WITNESS: I guess I did.

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

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

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

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

THE COURT: I may be wrong.

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

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

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

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

BY THE COURT:

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

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

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

BY MR. DeFORD:

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

BY MR. PALMIERI:

I think you said before that this yard contained many

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

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

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

THE COURT: He says he does not know.

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

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

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

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

A Before the assault?

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

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

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

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Q Between you and this defendant? A Around that.

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

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

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

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

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

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

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

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

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

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

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

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

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this defendant? A Yes, sir.

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

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

Q Where was this defendant? A Going east.

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

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

Q You have used the word east? A Yes, sir.
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Q Cannot you say this defendant was coming from the west?

A Coming east.

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

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

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

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

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

Q Slanting? A Yes, sir.

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

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dred feet away from you? A He was walking.

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

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

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

Q And you followed him? A I did.

Q And you were running? A I was running.

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

A I did.

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

Q How far was the nearest detective from you at that time?

A I don't know.

Q You say you saw three of them go on duty that night?

A I did.

Q At ten minutes of six. Besides shouting you whistled?

A I didn't have a whistle.

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

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

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

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

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

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

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

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

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

Q Yes. A No.

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

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

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

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

Q Yes. A No.

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

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

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

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

Q In a crouching position? A Correct.

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

A I was.

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

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

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

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

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

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

A There is no mark from the kick.

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

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

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

THE WITNESS: All around the side (indicating).

THE COURT: Just point to where you were kicked.

THE WITNESS indicates.

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

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

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

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

(The stenographer reads from the record).

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

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

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

MR. DeFORD: I object to that question.

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

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

A I felt many kicks.

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

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

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

MR. DeFORD: I object to that.

BY THE COURT:

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

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

BY MR. PALMIERI;

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

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

THE COURT: Objection sustained.

MR. PALMIERI: Exception.

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

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

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

BY THE COURT:

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

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

BY MR. PALMIERI:

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

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

Q Show me? A Right here (indicating)

Q Indicating where?

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

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

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

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

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

THE COURT: Yes.

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

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

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Q Is that your photograph? A That is mine.

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

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

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

MR. PALMIERE: No. After.

MR. DeFORD: Do you say after or before?

MR. PALMIERE: After.

MR. DeFORD: Then it is competent.

THE COURT: It may be marked for identification.

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

MR. PALMIERE: I offer it in evidence.

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

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

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

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

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

Q Did you permit the papers to publish your photograph three

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

BY THE COURT:

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

BY MR. PALMIERI:

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

MR. DeFORD: Objected to.

THE COURT: Sustained.

MR. PALMIERI: Exception.

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

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

THE COURT: Now, proceed to something else.

Q You are fond of publicity, are you not?

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

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in public life.

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

MR. DeFORD: I object to that statement.

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

(Question read by stenographer).

THE COURT: The objection to the question is sustained.

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

A I didn't; no.

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

Q Yes. A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

THE COURT: I sustained the objection.

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

RE-DIRECT EXAMINATION BY MR. DEFORD:

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

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

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

Q Who were the men that came to your assistance?

A I think Secor was one.

Q And Bradley the other? A Yes, sir.

Q Who is Bardley? A The yard man.

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

A One of the detectives.

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

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

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

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

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

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

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

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

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

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

A Probably an hour.

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

Q Was your face bandaged or anything of that kind?

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

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

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

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

A It was.

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

Q Had you known him three nights before this assault?

A That is all.

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

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

A That was.

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

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A Peter Hogan.

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

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

A I had never known him.

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

Q How long was that before you charged the defendant?

A About half an hour.

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

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

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

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

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

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

A Up at my house.

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

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

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

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

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time? A No, sir.

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

Q Yes. A No.

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

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

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

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

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

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

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

MR. DeFORD: That is all.

RE-CROSS-EXAMINATION BY MR. PALMIERI:

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

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

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

A Myers.

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

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

THE COURT: The objection is sustained.

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. DeFORD: I object to that.

BY MR. DeFORD:

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

BY MR. PALMIERI:

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

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

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

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

Q Or learned it there? A No, sir.

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

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

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

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

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

A Yes, sir.

Q And do you remember saying also as follows:

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

Q Did you say that? A I did.

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

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

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

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

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

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

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

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

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

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

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

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

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

RE-DIRECT EXAMINATION BY MR. DeFORD:

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

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

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

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

RE-CROSS EXAMINATION BY MR. PALMIERI:

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

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

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

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

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

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

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

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

THE COURT: Very well. Proceed.

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

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

DIRECT EXAMINATION BY MR. DeFORD:

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

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

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

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

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

Q Swollen? A Swollen very much.

BY THE COURT:

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

Q In the evening? A In the evening.

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

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

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

MR. PALMIERI: Objected to.

THE COURT: Sustained.

BY MR. DeFORD:

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

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

Q Did you find anything there? A Nothing.

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

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

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

MR. PALMIERI: Exception.

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

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

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

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

BY THE COURT:

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

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

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

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

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

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

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

BY THE COURT:

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

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

BY MR. DeFORD:

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

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

MR. PALMIERI: I object.

THE COURT: Allowed.

MR. PALMIERI: Exception.

A He did.

BY MR. DeFORD:

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

MR. PALMIERI: Same objection.

THE COURT: Objection overruled.

MR. PALMIERI: Exception.

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

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

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

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

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

MR. PALMIERI: Same objection.

THE COURT: Allowed.

MR. PALMIERI: Exception.

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

MR. DeFORD: That is all.

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CROSS-EXAMINATION BY MR. PALMIERI:

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

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

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

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

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

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

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

THE COURT: No, that is not so.

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

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

THE COURT: Yes. Now, yes or no.

A I did not take his pulse.

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

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

THE COURT: Sustained.

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

MR. PALMIERI: Thank you, Doctor.

RE-DIRECT EXAMINATION BY MR. DeFORD:

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

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

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

(I reside at Ossining, New York).

DIRECT EXAMINATION BY MR. DeFORD:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: No. You heard something?

THE WITNESS: Yes, sir.

THE COURT: And then what did you do?

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

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

MR. PALMIERI: Objected to.

THE COURT: Sustained.

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

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

MR. PALMIERI: Objected to.

THE COURT: Sustained.

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

Q What is his name? A Richard Cronin.

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

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

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

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

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

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

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

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

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

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

Q Anybody else? A That is all I remember.

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

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

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

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

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

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

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

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

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

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

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

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

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

Q Then at that time or later? A Later.

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

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

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

BY THE COURT:

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

BY MR. DeFORD:

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

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

THE COURT: Admitted.

MR. PALMIERI: No objection.

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

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

A No, sir.

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

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

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

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

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

CROSS-EXAMINATION BY MR. PALMIERI:

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

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

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

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

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

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

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

Q Right in the centre? A Yes, sir.

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

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

A He was lying in the smouldering hay.

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

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

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

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

BY MR. DeFORD:

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

BY MR. PALMIERI:

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

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

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

MR. PALMIERI: Thank you.

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

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

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

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

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ceed with the case.

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

THE COURT: The witness may be recalled.

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

CROSS-EXAMINATION CONTINUED BY MR. PALMIERI:

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

RE-DIRECT EXAMINATION BY MR. DeFORD:

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

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

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

DIRECT EXAMINATION BY MR. DE FORD:

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

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

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

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

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

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

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

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

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

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

Q Thirty-second street? A Yes, sir.

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

Q 1915? A Yes, sir.

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

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

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

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

THE COURT: Not what he said to you.

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

Q Told who? A Secor.

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

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

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

Q Who said so? A Mr. Cronin.

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

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

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

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

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

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

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

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

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

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

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

Q What was the condition of the car with reference to

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atmospheric conditions? A Very smoky.

Q Afire and smoking? A Yes, sir.

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

Q What was afire in the car? A Hay.

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

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

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

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

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

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

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

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

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

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

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

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

A No, sir, I had no time.

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

A No, sir.

Q Never seen it? A No, sir.

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

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

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

A Yes, sir.

CROSS EXAMINATION BY MR. PALMIERI:

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

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

Q There was a blaze? A Yes, sir.

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

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

MR. PALMIERI: That is all.

RE-DIRECT EXAMINATION BY MR. DeFORD:

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

MR. DeFORD: That is all.

RE-CROSS EXAMINATION BY MR. PALMERI:

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

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

BY MR. DeFORD:

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

BY MR. PALMIERI:

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

MR. PALMIERI: That is all.

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

DIRECT EXAMINATION BY MR. DE FORD:

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

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

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

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

Q Of a roundsman? A Yes, sir.

Q You are the yardmaster? A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q Anything in the car? A Burning hay.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Yes or no.

A No, sir.

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

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

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

A Yes, sir, with brooms.

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

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

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

Q Will you do so? A Yes, sir.

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

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

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

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

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

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

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

THE COURT: No.

Q Did you ever make any search of the car? A No, sir.

Q For the purpose of discovering anything? A No, sir.

Q Now have you told us all you know about this? A Yes.

CROSS EXAMINATION BY MR. PALMIERI:

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Q You don't know how Devine came to get into the car, or whether this was an accident, or whether this was an assault, or whether this was a put up job or anything?

MR. DeFORD: I object to that question. Don't answer it, Mr. witness.

MR. PALMIERI: Don't answer it until I finish my question.

MR. DeFORD: I beg your pardon. I thought it was finished.

(Question read)

Q And all you knew about it is the fire in the car? A Yes.

MR. DeFORD: I would like to get a ruling. I object to it as to its form.

THE COURT: I will sustain the objection as to form.

MR. PALMIERI: Exception.

BY THE COURT:

Q You have no independent knowledge of what transpired in the car, what happened in the car before you got there? A No, sir.

BY MR. PALMIERI:

Q Just one more question, Mr. Cronin: You said when you went over to the car you found the car full of smoke? A Yes.

Q You didn't say anything about flames. I wish to ask you did you see flames when you went there? A The car was full of smoke and the two switchmen were trying to beat out the burning hay in the car.

THE COURT: You did not answer the question.

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THE WITNESS: There was no flame.

Q No flame? A No, sir.

Q And you got there before Bradley got there? A Previous to that, yes, sir.

Q The first time? A Yes, sir.

Q You saw the car full of smoke but no flame? A Yes, sir.

Q And it was about how long afterwards that you brought Bradley there? A Well, that was from three to five minutes.

Q How long? A From three to five minutes.

Q Now is that all you know about this case? A Yes, sir.

MR. PALMIERI: That is all.

MR. DeFORD: The People rest -- just one minute. I have another witness. I want to establish the finding of this bar of iron.

WILLIAM SCHAEFER, (32nd Precinct) was called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DeFORD:

Q Are you an officer of the Municipal Police Force and were you such on the 31st of July, 1915? A Yes, sir.

Q Did you see the witness Devine, John F. Devine, on that date? A No, sir.

Q Did you make a search of a box car in the New York Central Yards on the next day? A Yes, sir.

Q The 1st of August, 1915? A I did.

Q About what time did you go there? A About 10:30.

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BY THE COURT:

Q In the morning? A In the morning.

BY MR. DeFORD:

Q Were you accompanied by anybody? A Yes, sir.

Q By whom? A Officer Hogan of the New York Central.

Q And what did you do when you got there? A We looked into the box car, and found a rod of iron there.

Q Is this the rod of iron you found, look at it (showing defendant's exhibit A)? A (after examining) Yes, sir.

Q And where did you find it in the box car? A Lying on the floor.

THE COURT: Designate the rod.

Q The rod referred to is Defendant's Exhibit A. Did you make an investigation, Mr. Schaefer, for the purpose of ascertaining whether there were any bullet holes in the car?

A At that time I did not know of any shots being fired; I was only informed of it later.

Q You did not make any search then? A No, sir.

Q Did you ever make a search of the car for the purpose of determining that? A No, sir.

Q Did you arrest the defendant here? A Yes, sir.

Q When and where was he when you arrested him? A I arrested him on the south-east corner of Thirty-first street and Tenth avenue.

Q At what time? A About ten-thirty.

Q In the morning? A Yes, sir.

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Q What day? A The 1st of August.

Q That was the day after the assault? A Yes, sir.

Q Did you have any conversation with him? A Yes, sir.

I walked him through the yard and I asked him, "What was you up to now?" He said, "I do not know what you are talking about." I said, "They want you down here for an assault on a detective." He said, "I don't know anything about it." I took him down to Eleventh avenue and from there to the station house.

Q Did you notice him do anything on the way down?

MR. PALMIERI: I object.

Q Did you notice that he did anything out of the ordinary while you had him in your custody? A No, sir.

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

MR. DEFORD: You may cross examine.

CROSS EXAMINATION BY MR. PALMIERI:

Q Officer Schaefer, when was this assault reported to the police office? A Ten o'clock on the 1st of August.

BY THE COURT:

Q Ten o'clock in the morning? A Yes, sir, on the 1st of August.

BY MR. PALMIERI:

Q And the assault is alleged to have occurred at 8:30 the night before? A Yes, sir.

Q Who reported it? A I don't know, but I believe Officers Hogan and Myers.

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Q Is Hogan here? A Yes, sir.

Q And that is the first time you as a police officer knew anything of an alleged assault at these yards? A Yes.

Q Did Hogan tell you who perpetrated this assault?

MR. DeFORD: Objected to as not proper cross examination.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Did you have a talk with Hogan? A Yes, sir.

Q Well, as a result of that talk, where did you go with Hogan?

MR. DeFORD: Objected to as not proper cross examination.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Well, your Honor has permitted evidence in here to show that this defendant was arrested and that Hogan was present at the time of this defendant's arrest. Now under the rules of evidence I have a perfect right to cross examine him upon this proposition and upon this fact.

MR. DeFORD: As to the details of the arrest -- I withdraw my objection.

MR. PALMIERI: That is the reason I --

MR. DeFORD: I withdrew my objection.

THE COURT: Proceed.

Q And Myers I think you said was with Hogan; now is that right? A Yes, sir. I left Officers Hogan and Myers on the

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northwest corner of Thirty-first street and Tenth avenue and walked over to the southeast corner of Tenth avenue and Thirty-first street, where I saw the defendant Louis Raffo, and placed him under arrest.

Q Well, at the place where you arrested Louis Raffo, where, with respect to that place, was his house, his residence, where he lived? A On the corner.

Q How far was the residence of Louis Raffo, the defendant, from the place where you arrested him? A He was standing right at the door of his residence.

Q How far is the residence away from the yard where this assault is alleged to have been committed? A About one city block.

Q Were Hogan and Myers in your company at the time you arrested this defendant at the door of his residence? A No, sir; they were on the opposite corner.

Q When you placed the defendant under arrest, did you confront him with Myers and Hogan? A After I placed him under arrest and started across the avenue, Myers and Hogan walked through the railroad yard towards Eleventh avenue and Thirty-first street. I took the defendant down there, and Hogan said: "That is the fellow."

Q And after Hogan told you, that is the fellow, you instructed Hogan to go and get Myers and Devine? A I took the defendant to the station house, and took him in the back room. Hogan and Myers were ^{sent} uptown for the complainant, Devine, and came back

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at about one o'clock.

Q Well, then it was after Hogan told you, "That is the fellow", that you told Hogan and Mayers to go and get the complainant Devine? A The Lieutenant instructed them to get the complainant.

Q Well, whoever it was -- you were ^{with} the lieutenant? A Yes, sir.

Q What went on between Hogan and Devine you know not? A No, sir.

MR. DEFORD: I object. It is perfectly obvious --

THE COURT: The witness has answered he does not know.

That finishes that.

Q Was this iron bar found in the burning car, do you know, the bar which is now in evidence? A Found it in the box car, lying on the floor.

Q Was that box car the car where the fire had taken place? A Yes, sir.

Q And who found it? A Officer Hogan.

Q That is the man whom you say is here now? A Yes.

MR. DEFORD: He is outside.

Q Did he find it in your presence? A Yes, sir.

Q Did you ask him why it was that he made no search from 8:30 that night until 10:30 the following morning; he waited until you got there and made this search for the first time and discovered this iron bar?

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MR. DeFORD: I object to the question both as to its substance and form.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Do you know any reason why this bar was not discovered before, if you know?

MR. DeFORD: Objected to.

THE COURT: I will allow the answer, yes or no.

A No, sir.

Q Was the defendant present when you found the bar, the iron bar? A No, sir.

Q Well, when the complainant, Devine, came to the station house at one o'clock, did he come there in the company of Myers and Hogan? A yes, sir.

Q Were you present? A I was, I was in the rear room of the station house.

Q Was the defendant brought out? A Yes, sir.

Q Before them? A Yes, sir.

Q And did you or somebody else ask him, "Is this the man?"

A I asked him was this the one who was wanted for assault, and he said, "Yes, sir, that is the man that assaulted me."

MR. DeFORD: That is the man that assaulted him?

THE WITNESS: Yes, sir.

Q Was this defendant placed in the line with other persons when brought out for identification? A No, sir.

Q What did this defendant say, if anything, with reference

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to the assault, to you or anybody else? A He denied all knowl-⁸⁴
edge of being at the scene.

Q Well, you asked him whether he had assaulted Devine? A
Yes, sir.

Q And did he tell you he had not? A Yes, sir.

Q Did you ask him where he had been that evening? A No,
I did not.

Q Didn't you think that was important, Mr. Schaefer?

MR. DeFORD: I object to that as not proper cross
examination. It does not make any difference whether the
witness thought it was important. He did not do it.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q Did you have that knife, which is now in evidence --
was this knife shown to you by Hogan and Schaefer that day of
the arrest?

MR. DeFORD: Not Schaefer.

Q (continuing) Myers and Hogan and Devine, the three de-
tectives, the three yard detectives? A No, I only had the bar
in my possession. It is kept in the possession of the Police
Department as evidence.

Q How about the knife? A I didn't have no knife.

Q Was any knife produced at the station house? A Not
at the station house, no, sir. The only thing entered on the
blotter was the bar, the iron bar.

Q Did you see that knife before today, Mr. Schaefer?

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A No, that is the first I saw the knife.

Q Did anybody tell you that they found a knife? A No.

MR. DeFORD: I object to that.

THE COURT: Sustained.

MR. PALMIERI: Object to what? The officer was about to give some opinion which I consider very valuable in this case.

THE COURT: I know. I have ruled on it. The question apparently was not a proper one.

MR. PALMIERI: Your Honor, I respectfully bow to your ruling.

THE COURT: Conversation between this witness and somebody else in the absence of the defendant is not receivable.

Q Did the complainant tell you that anybody had found the knife that night?

MR. DeFORD: Objected to.

THE COURT: Sustained.

MR. PALMIERI: Exception.

Q But you know these railroad detectives carry revolvers, Mr. Schaefer? A They do when they are sworn in, yes, sir.

Q Do you know the calibre of the revolver they carry?

MR. DeFORD: Objected to.

THE COURT: Not proper cross examination. I sustain the objection.

MR. PALMIERI: Exception.

Q Do you know anything else of this case, Mr. Schaefer?

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A No, sir.

Q That you would like to tell the Court and jury? A No.

MR. PALMIERI: That is all.

(Witness excused)

MR. PALMIERI: Oh, pardon me, your Honor, I would like to ask another question.

(Witness returned to the stand)

MR. PALMIERI: On the question of identification.

Q Did you ask Mr. Devine how he particularly remembered this defendant when you brought him before him?

MR. DeFORD: Objected to.

THE COURT: Sustained.

MR. PALMIERI: Why, your Honor, this is very important to us.

THE COURT: Entirely incompetent.

MR. PALMIERI: I respectfully except.

THE COURT: It may be important, but it is incompetent.

MR. DeFORD: Whether it is important depends on the witness's answer, not upon the question.

MR. PALMIERI: With all due respect to your Honor's opinion, I believe I have the right to ask the question in the interest of my client.

THE COURT: You have asked it and I have ruled.

MR. DeFORD: I will state, your Honor, that Officer Hoganis here and was subpoenaed by the People, but I

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don't propose to use him unless it is necessary on rebuttal, but if defendant's counsel wants to use him, Hogan is on hand.

The People rest.

MR. PALMIERI: I want Mr. Hogan examined. He is a very important man.

THE COURT: The People rest.

MR. PALMIERI: I am taken very much by surprise, your Honor, by the abrupt ending of this case. I expected Mr. DeFord to call this man Hogan.

THE COURT: Any motion?

MR. DeFORD: Your Honor, he has no right to expect anything about my case.

MR. PALMIERI: I thought you would try the case in the regular way.

MR. DeFORD: I object to that statement.

THE COURT: The statement is objectionable.

MR. DeFORD: You are not the judge of how I should try my cases.

MR. PALMIERI: I thought the District Attorney had evidence to introduce here.

THE COURT: The People rest.

MR. PALMIERI: Your Honor, then I must ask your indulgence to give me until tomorrow morning to decide as to whether I shall put in any defense at all. In view of the abrupt ending of this case I will probably rest on the People's case.

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THE COURT: I will give you until tomorrow morning to determine what course you care to pursue.

Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial or form or express any opinion thereon until the same is committed to you.

The court stands adjourned until half past ten tomorrow morning.

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COURT OF GENERAL SESSIONS OF THE PEACE

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IN AND FOR THE COUNTY OF NEW YORK

PART THREE.

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

: B e f o r e:-

--against--

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

L O U I S R A F F O .

:
-----X

New York, Friday, September 10th, 1915.

THE DEFENDANT IS INDICTED FOR ASSAULT IN THE
FIRST DEGREE.

INDICTMENT FILED AUGUST 13th, 1915.

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

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

For the People.

JOHN PALMIERI, Esq.,

For the Defendant.

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DEFENSE.

ROBERT ALBERTSON, called as a witness on behalf of the Defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you reside? A 62 West 106th Street.

Q Are you a married man? A Yes, sir.

Q And how long have you lived in this country? A Born here, sir.

Q Have you any occupation? A I am foreman for John P. Clarkson.

Q Do you know the defendant at the bar, Louis Raffo?

A I do.

Q Has he worked under you for this company? A Yes, sir, for the last year, off and on.

Q As what? A As a laborer.

Q And was he working for you up until the month of July last? A Yes, sir, off and on, working up to the month of July last.

Q And what were his hours of work, from what time to what time? A Seven to six. Of course sometimes we have work for him at nights.

BY THE COURT:

Q Seven in the morning? A Yes, sir, seven in the morning until six at night.

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BY MR. PALMIERI:

Q Do you know whether it was September of last year that he began his work with you? A Now, I could not answer that; I have so many men to employ, sometimes one hundred to one hundred and fifty.

Q It is at least that long he has been working for you? A I think from last year.

Q When you say from last year, you mean one whole year? A Working for me off and on same as all the employees, not a steady man.

Q When you say off and on, you mean whenever there is a ship in? A Whenever there is work.

Q When there is no ship, there is no work? A Yes, sir. Then they go somewhere else.

MR. PALMIERI: That is all.

CROSS-EXAMINATION BY MR. DeFORD:

Q How many days did this defendant work for you altogether? A I could not answer that.

Q How many days off and how many days on during that period? You said "off and on". A We might have a ship in this week. That is the only way I can explain it.

Q Can you tell me approximately how many days this defendant has worked for you in the past year? A No, I could not answer that question.

BY THE COURT:

Q About. For example, how many days a week did he work?

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A We will say for the last year one hundred and fifty.

BY MR. DeFORD:

Q When you say, "We will say that", are you saying that to make me an answer? A No, not to make an answer. I should judge one-hundred and fifty days.

Q You think he has worked five months steadily during the past year? A Yes, sir.

Q When did he begin to work for you? A I could not answer that.

Q What month? A Well, I do not know that.

Q Did he begin to work for you last year? A I don't keep track of these things. I am not the bookkeeper; I am the boss.

Q When did he last work for you? A In July.

Q And when did he commence to work for you? A I do not know when he started.

Q Cannot you tell me whether he began to work this year, or the Fall of last year, or the Summer of last year? A I don't know whether he started in the Fall or Summer of last year.

Q All you know is that he worked for you one hundred and fifty days and worked for you the last time in July? A Yes, sir

Q What kind of work did he do? A Longshoreman, pulling a truck, carrying bags in the hole, or anywhere else.

Q Just a common laborer? A Yes, that is what he done.

MR. DeFORD: That is all.

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LOUIS RAFFO, the defendant, called in his own behalf,
being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you live? A 460 Tenth Avenue.

Q Mr. Raffo, how old are you? A Twenty-two years.

Q Where were you born? A Brooklyn.

Q Are your father and mother living? A Living.

Q Now, during the twenty-two years of your life have you
lived in New York and Brooklyn all the time? A New York and
Brooklyn.

Q You never moved out of the State? A No.

Q Have lived always in this City or Brooklyn? A Yes, sir

Q Now, tell the jury all the truth, they want to know all
of it? A Well, gentlemen of the jury, I was arrested once for
taking a package, and I was arrested once for taking some pigeons.

Q Now the first time you were arrested for what? A For
a package.

Q And the judge gave you how long? A The judge gave me
a year in the penitentiary.

Q And then you were arrested for what after that? A The
second time I was arrested for pigeons, and I got nine months
and the penitentiary, and since I came out of the penitentiary--

Q And you came out when? A Last September.

Q Of last year? A Yes, sir.

Q Now, outside of those two occasions have you ever had

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any trouble at all? I mean by trouble, arrested or convicted of any crime outside of these two unfortunate occasions? A No, sir.

Q Have you ever been arrested for assault? A No, sir.

Q Or for hitting anybody? A No, sir.

Q When you came out last September, did you go back to your mother's on Tenth Avenue to live? A Yes, sir.

Q And your sister's? A Yes, sir.

Q And how far is that from the railroad yard? A About a block and a half.

Q Your mother has kept a stand I believe right there in the neighborhood, has she not, a vegetable stand or store? A She keeps it in 34th Street.

Q How far is that from the railroad yard? A That is about three blocks, I think.

Q Only three blocks away? A Yes, sir.

Q And for how many years have your mother and sister lived in that neighborhood, how many years? A Seven or eight years.

Q And during all that time, outside of the two times that you happened to be so unfortunate as to be in prison, you were always living there? A Always lived there.

Q Outside of the two times you were in prison? A Yes, sir.

Q During all those seven or eight years, did you have any trouble with these railroad detectives? A No, sir.

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- Q Did you associate with them in any way? A No.
- Q Did you have any fight with them in any way? A No, sir.
- Q When I say "fight" I mean trouble of any kind? A No, sir.
- Q Did they ever charge you with anything? A No, sir.
- Q Did you know who these detectives were? A No, sir.
- Q Did you know them at all? A No, sir.

Q Now, Mr. Raffo, you have heard the charge here yesterday, did you not? You are charged with striking Mr. Devine with an iron bar, with a knife, kicking him with a shoe, shooting at him twice with a revolver, point blank at him, and then setting fire to the railroad car, or box car, containing hay; did you do anything of the kind? A No, sir, gentlemen of the jury, I didn't do anything of the kind.

(The witness during the last answer rose from the witness chair).

THE COURT: Sit down.

Q Now, you restrain yourself, Mr. Raffo, and the judge and the jury will give you a square deal. Now, can you tell the circumstances of your arrest? A Yes, sir.

Q That Sunday morning? A Yes, sir.

Q When you went to bed that Saturday night, did you go to the same bed you slept in all the time while you were working for the Panama Railroad? A Yes, sir.

Q Did you change your clothes in any way? A No, sir.

Q From Saturday to Sunday? A No, sir.

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Q Did you have the same striped shirt and the same striped dark suit that you have on now, that you had on that Saturday and Sunday? A Yes, sir.

Q You made no effort to change or disguise yourself?

A No, sir.

Q On that Sunday morning did you come down from the house? A Yes, sir.

Q I mean the Sunday morning of your arrest? A I came down.

Q And when you came down, about what time was it? A Nine o'clock.

Q And where did you go? A I went down around the corner to buy a newspaper.

Q And did you buy a newspaper? A I bought a newspaper.

Q And where did you go that day? A I was going around to the house, and then while I was walking there was a man looking at me, so I was looking at him.

Q Pardon me. Did you know who that man was at that time?

A No, I did not know him.

Q Now, after that, did you stay in front of the house?

A I stayed in front of the house on a pipe, that big, (indicating) right next to my brother-in-law's barber shop.

Q And began to read the paper? A Yes, sir.

Q And how long had you been reading the paper before anything happened? A Five or ten minutes, and this man who had been looking at me came over and asked me, "Young fellow," he said, "what do you want?" --

Q Just a minute. Is Mr. Hogan in Court? I thought all

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of the witnesses were excluded from the Court room.

MR. DEFORD: The people rested their case.

Q Is this gentleman (indicating Mr. Hogan) the one whom you saw walking up and down the street in front of you? A Yes, sir.

Q And finally after reading the paper over about ten minutes he came up to you? A Yes, sir.

Q That is Mr. Hogan? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, when he came up to you, don't answer this question until his Honor has ruled, if there is any objection: will you tell this jury all that transpired between you and Hogan, all he said to you and all you said to him, now, if there is no objection?

(No objection).

THE COURT: I think I will allow him to tell the circumstances under which the arrest was made.

A Gentlemen of the jury, at nine o'clock Sunday, I came down out of the house. I walked around the corner to buy a paper. When I bought this paper, on my way back, this man was looking at me. In the meantime, I walked around the corner, I sat down by my brother-in-law's barber shop on a big pipe, that wide, indicating, and I sat down on that. I read the paper about ten minutes and this fellow comes over. He said to me: "Eh, you! What is your name?" I said, "My name is Louis Raffo." I said, "Why?" He said: "Where were you last

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night? I said, I was on the corner last night." He said, "You were on the corner last night, eh? I said, "Yes." He said, "You know you are wanted for assault." I said, "What do you mean for assault? He said, "For hitting a railroad detective." I said, "You are going crazy, I never hit a railroad detective." He said, "You, on the corner last night! I said, "Yes, talking to a girl. Her name is Mae Murphy." So in the meantime he goes away.

Q Now, wait a moment. When you said, "I was talking to a girl by the name of Mae Murphy," what did he say to you before he went away?

MR. DeFORD These were conversations that preceded the arrest.

THE COURT: I think that is so.

MR. DeFORD: I have introduced no evidence concerning them at all, and I would not have been permitted if I had.

THE COURT: I think I will exclude it.

MR. PALMIERI: I would have had no objection if you had. Exception.

Q After Hogan went away and told you about assaulting somebody in the railroad yard, did you run away? A No, sir.

Q Did you continue to read the paper. A I continued sitting down where I was.

Q For about how long? A About when he went away; I continued there about ten minutes. I had to go up into the

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toilet. When I came down it was about a quarter after ten, and I stood there. In the meantime there was an officer came over to me.

Q About what time did the officer approach you? A About half past ten.

Q Who was that officer, what name? A Mr. Schafer.

Q You were right in front of your door at that time?

A Yes, sir, same spot as I was when reading the paper.

Q What did Schafer tell you? A He said, "Young man, you are wanted under arrest." I said: "What do you mean, under arrest?" He said, "You assaulted an officer." I said, "Not me." He said: "Come with me, anyhow." I said, "All right, I will walk with you." So Mr. Scahfer took me down to the railroad, and Mr. Schafer called the railroad detective, not that detective, spoke to him, Mr. Hogan. Then he said, "Mr. Hogan, go up and call Devine," which I did not know Devine until he said the name. He goes up and gets Devine, brings him into the station house, and I was lying in the back. The officer gets up, walks in the station house. When he sees Devine come in leaves me in the back, comes in the back, takes me up and puts me in the front where the judge was in the station house.

Q You mean the lieutenant, not the judge. A The lieutenant. Hogan said, "Aint this the man?" Devine turned around and said, "That is the man."

Q And was Hogan right there with Myers? A Yes, sir,

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in the station house.

Q They did not give you any line-up? A No line-up.
The cop took me out and Hogan said, "Is that the man?"

Q What did you say? A I said, "You got me wrong."

Q Now, Mr. Raffo, have you any cuts on your face? A Yes, sir (indicating).

Q Will you show it to Judge Crain and then show it to the jury?

(The witness shows his face to the Court)

Q Now just show that to the jury?

(The witness shows his face to the jury)

Q Now, Mr. Raffo, after your unfortunate experiences in prison, you came out last September, and you went to work for whom? A The Panama Line.

Q Under who? A Under Mr. "Al." We call him "Al."

Q The previous witness, you call "Al" for short? A Every workman calls him "Al."

Q This foreman? A This foreman who was sitting in the chair.

THE COURT: Albertson.

A We called him "Al."

Q You worked for the Panama Railroad from September to when? A From September to the date I got arrested.

Q Were you working on that day? A I was not working Sunday. I worked on Saturday and got off on Saturday.

Q Was a ship in? A Yes, sir.

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Q Were you working as a longshoreman? A Yes, sir, that is it.

Q From what time to what time? A Seven to six.

Q And after you got through with your work you came home?

A Yes, sir, I went home.

Q Did you have your supper? A Yes, sir.

Q And after you came down from your supper where did you go? A I went down on the corner.

Q And on the corner did you meet anybody? A Yes, sir, I met a girl.

Q What is her name? A Her name is Mae Murphy.

Q And did you stay with her any length of time? A Stayed with her to about a quarter to eleven.

Q And then where did you go? A Then she asked me if I would walk up with her, I said, yes.

Q I only want to know where you went after that. Where did you go after a quarter to eleven? A Where did I go?

Q Where did you go after that? A I went home.

Q During that time were you drunk or getting drunk? A No, no.

Q Now, you had Mae Murphy in the police court? A Yes, sir, in the police court.

Q Is she here? A Yes, sir, she is here today.

Q Is there anything else? A No, nothing else.

Q Oh, had you ever known Devine in your life? A No, never seen him in my life.

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Q Or Hogan? A No, sir.

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CROSS-EXAMINATION BY MR. DeFORD:

Q Now, Mr. Raffo, you were where about seven o'clock on this Saturday night, July 31st, 1915? A Up in the house.

Q Your house? A Yes, sir.

Q And who were you with in your house about seven o'clock that night? A My sister and my mother.

Q And how long did you stay in the house? A I went on the corner.

Q Then where did you go? A I went on the corner.

Q Out on the corner? A Yes, sir.

Q And why did you go out on the corner? A Why did I go out?

Q Yes. A I went out to get some air.

Q Did you have an appointment when you went out on the corner? A With nobody.

Q Had no appointment? A No, sir.

Q During that time in the house from seven to half past, what were you doing? A What was I doing?

Q Yes. A I had just come in from work about six o'clock. I went up in the house, washed myself, cleaned myself, had something to eat, and my mother was talking about did you work hard.

Q I understand you went home from work at six o'clock, and from that time until half past seven you were in the house with your mother and sister, cleaned up and was sitting around?

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A Yes, sir.

Q And then about half past seven you went downstairs?

A Yes, sir.

Q And then you met the Murphy girl? A I met the Murphy girl at eight o'clock.

Q Now, between half past seven and eight o'clock where were you? A Between half past seven and eight o'clock?

Q I understood you to say -- I don't want to confuse you-- I understood you to say you left your house about half past seven? A Half past seven.

Q And went down on the corner? A Yes, sir.

Q And that you had no appointment, that you met the Murphy girl at eight o'clock? A Eight o'clock.

Q I am asking you to tell the jury where you were between half past seven and eight o'clock? A I was on the corner.

Q And were you talking to anybody? A I was talking to Mae Murphy at eight o'clock.

Q Well, no. I am trying to get you to tell us where you were between half past seven, when you came downstairs, and eight o'clock when you met Mae Murphy? A Before I met Mae Murphy I was on the corner talking to a fellow. In the meantime --

BY THE COURT:

Q What is his name? A Ralphy.

BY MR. DeFORD:

Q Is he here? A I do not know. Mr. Palmieri ought to

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know. I think he is here.

Q Go ahead. A (Continued) I was speaking to him. In the meantime while I was speaking to him on the corner this Mae Murphy passed. I stopped her off. I said, "Mae, when would you think my girl would be in from the excursion?" So she said, "Louis, I cannot tell you what time she will be in from the excursion." So she said, "She is liable to be in any minute." In the meantime, while I was speaking with this girl, her and her mother passed up on the car, while I was speaking with this girl, and she waved her hand at us.

Q Who is that you mean? Your girl and her mother passed on the car? A My girl and her mother passed on the car.

Q And they waved their hands to you while you were talking with this other girl on the corner? A Yes, sir, while we were speaking about this excursion. Mae Murphy said, "There goes your girl. I think I had better go home, it is getting late." So she goes over and looks at the time in the beer saloon. You can look through the window -- it is on the wall. She said, "Louis, it is a quarter to eleven. Do you want to walk up with me?" I said, "Yes, I will walk up with you." I gets up by the door and leaves her there. Wishes her good-night. I gets up at eleven o'clock, and I get home at a quarter past eleven.

Q Now, let me see, Louis, you met this girl at eight o'clock? A Yes, sir.

Q And you stood and talked to her until eleven, did you?
A Yes, sir.

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Q What! A No, I stood there until a quarter to eleven.

Q Then you stood from eight o'clock to a quarter to eleven talking to your girl's friend? A Yes, sir.

Q On the corner? A Yes, sir.

Q Now, you realise that was two hours and three quarters you stood there talking to her? A Well from half past eight to a quarter to eleven.

Q You stood on the corner talking to your girl's friend?
A Yes, sir.

Q What is your girl's friend's name? A My girl's friend's name?

Q Yes. A Mae Murphy.

Q And what is your girl's name? A Her name is Anna Schultz.

Q And Mae Murphy and Anna Schultz go together a great deal? A Yes, sir.

Q And are intimate friends? A Yes, sir.

Q Who goes with Mae Murphy, who is Mae Murphy's fellow?
A I don't know who she goes with. She goes with some fellow I don't know.

Q Have you ever gone out with Mae Murphy, your girl, and another fellow? A No, sir.

Q You don't know who Mae's friend is? A No, sir.

Q You know she is an intimate friend of your girl? A Yes.

Q What were you talking about to Mae during the two hours and three quarters? A I told her, stopped her off. I

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said, "When do you think my girl will be in from the excursion?" She said, I cannot tell. She ought to be in." So, in the meantime, while we were speaking --

Q I am not asking that. You told me about those people passing up while you were talking to Mae, I am asking you what you talked about during the two hours and three quarters before you went home? A That is what I am talking about.

Q Go ahead. A (Continued) I told Mae Murphy "When do you think my girl will be in?" She said, "She ought to be in any minute." Meantime, while I was speaking to her, Mae, her and her mother passed by on the car.

Q That is what you were saying. You just described that. A Sir?

Q Did they pass, I mean at the time when you asked Mae about your girl? A No.

Q How long was it after you asked Mae when did she think your girl would come back from the excursion, that her and her mother passed on the car? A One hour and three quarters.

Q You stood talking with Mae an hour and three quarters until your girl passed on the car, is that right? A No, just as my girl and her mother went by the girl went over and looked at the time. She came over to me and said, "Louis, will you walk up with me?" She said, "It is a quarter to eleven; I got to go home."

Q You met her at eight o'clock? A Yes, sir.

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Q And have you narrated all the conversation you had with her from the time you met her up until the time you started home? A I was speaking to her.

Q Have you told me all that you said to her during that time? A We were joking, joking along, standing.

Q You were with her about two hours and three quarters on that corner, is that correct? A Yes, sir.

Q Now, when you left your house at about seven o'clock, about half past seven, whom did you leave in your house? A I left my mother and my sister.

Q Did you say anything to them when you left? A No, I didn't say anything to them.

Q Did they see you go out? A From what they said they did. They saw me go out of the door.

Q Did you have your hat on? A Yes, sir.

Q And the same shoes you have got on now? A Yes, sir.

Q And you returned to your house about what time? A A quarter to eleven -- a quarter after eleven.

Q Did you see your mother and sister when you went in? A My mother was sleeping. My sister was up waiting for me.

Q Did you talk to your sister? A I told my sister where I was.

Q Told her where you had been? A Yes, sir.

Q Is that all the conversation you had with her? A That is all.

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Q Now, how long have you been going with this girl of yours? A For the last two months.

Q Engaged to her? A Yes, sir.

MR. PALMIERI: Is this material? I don't like to object, but the fact as to whether they are engaged --

THE COURT: I will hear the next question.

Q Now, you were convicted, were you not Louis, of stealing pigeons? A Yes, sir, I was.

Q You were convicted of that? A Yes, sir.

Q You were guilty of that? A I am guilty of it.

Q And you also stole a package worth \$87.00 from the Wells Fargo Express Company? A Yes, sir.

Q Took it from the wagon of the Express Company, didn't you? A No. It completely fell off, and I ran with the package down to him. He thought I was going away, and the people on the corner saw me, and he thought I was running away with the package and grabbed hold of me.

Q Did you take the package from the Wells Fargo wagon? A No.

Q Where did you find the package that you were accused of stealing? A In the middle of the block.

Q In the road? A In the middle of the street where the wagon was going.

Q Then you saw the package in the middle of the street? A Yes, and I picked it up and ran towards the wagon.

Q You picked it up and was taking it back to the true owner? A Yes, sir, and the owner jumped off and took the pack-

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age. In the meantime, the policeman grabbed me while I was running, and he said, "You are under arrest." So, I went under arrest.

Q And you were convicted, were you not, of taking the package from the wagon? A Yes, sir.

Q And I presume you swore at that time, did you not, that you hadn't taken the package from the wagon, but picked it up in the street and was running after the Wells Fargo wagon to put it back? You told that story. Is that correct? A Yes, sir.

Q Now, how long was it after you got out, after serving your term for stealing pigeons until you were arrested for stealing the package? A I cannot exactly tell. The first time I came out in October, that I can remember.

Q You don't know how long it was from October -- A (Interrupting) At the time I was arrested?

Q Until January, wasn't it? A Yes, sir.

Q You were out three months before you were sent back for stealing this package? A Yes, sir, the package.

Q Now, I will ask you if you were in the New York Central yards at any time from the time you left your mother's house at half past seven, or at any time from six o'clock of July 31st until the time you were arrested? A No, sir.

MR. DeFORD. That is all. Oh, just a moment.

Q Do you know Owney Madden? A No, sir.

Q What? A No, sir.

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Q Never heard of Ownny Madden in your life? A No, sir.

Q Don't know Owney Madden lived in the neighborhood in which you lived? A I don't know; I don't know him.

Q Never heard of him? A No.

Q Where did you get that cut which you have got on your face? A Since I was a boy.

Q Did you get that cut on your face when you were a baby?
A Since I was ten years old.

Q Is that a knife cut? A A glass cut. I fell on some glass.

Q It is not a knife cut? A No.

Q It was not given to you by anybody in a saloon fight?
A No, sir.

Q And this knife cut you have had on your face since you were ten years old? A A glass cut.

Q Were you living with your mother when you got that cut? A Yes, sir.

Q How did you get it? A I fell down and I fell on the glass.

Q What glass? A The glass that was lying on the street.

Q What kind of glass was lying on the street? A It was a bottle; you could see the rim of the bottle -- it was lying on one side.

Q You were running along the street and stumbled?

A We were playing.

Q You were playing on the street and stumbled and fell

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on the glass and you got that out? A Yes, sir.

MR. PALMIERI: Your Honor, may the record show how big that cut is for the purpose of perfecting the record?

MR DeFORD: It is about an inch and a half or an inch and three quarters in length.

MR. PALMIERI: Show where the cut begins and ends.

THE WITNESS: It ends right here (indicating).

THE COURT: Mr. Foreman, I will let you state the length of it.

THE FOREMAN: An inch and a half to an inch and three quarters.

MR. PALMIERI: I concede that.

MR. DeFORD. That is all.

M A E M U R P H Y, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Where do you work, Miss Murphy? A Western Electric.

(The witness stood up in the witness chair).

Q You must not rise when you come to Court. Is this your first experience as a witness? A Yes, sir.

Q You work for whom? A Western Electric, in Twenty-third street.

Q How long have you been working there, Miss Murphy?

A About a month.

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Q Where were you working before that? A Thirty-Seventh Street, right off Fifth Avenue, dress-making.

Q Dress-making? A Yes, sir.

Q How long were you working at dress-making? A Two years.

Q And do you live with your mother and father? A Yes, sir

Q Where do you live? A 493-1/2 Tenth Avenue.

Q Would you mind telling us your age? A I am sixteen years old.

Q Do you know Mr. Raffo, the defendant at the bar, do you know him? A Yes, sir.

Q Have you ever been in his company? A Yes, sir.

Q Do you remember the Sunday that he was arrested in July? A No, sir.

Q Did you hear of Mr. Raffo's arrest? A Yes, sir, Sunday afternoon.

Q The day before you heard he was arrested had you been anywhere? A Well, I was on Saturday night. I was going down to the dance about a quarter to eight, with that I passed about a quarter to eight; I passed about eight o'clock. With that Ralph and Louis was standing up the street, and with that they called me. I stood there and I waited until they came down with me. So Louis asked me where was his girl. I told him on the Victoria Revue excursion. So we stood there talking all the time until a quarter to eleven, about that. I said to Louis, "I guess I will be going home." Louis said, to this

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fellow, "We will walk up with her." We met his girl there.
That is the 1st I saw of Louis Raffo.

Q Has Joe been here as a witness? A No, sir.

Q What is his name? A Ralphie.

Q Where is Ralphie? A He is outside.

MR. PALMIERI: All right. Your witness.

CROSS-EXAMINATION BY MR. DeFORD:

Q How long have you known Ralphie? A Not very long.

I know him through Louis. Got an introduction to him.

Q Had you ever gone out any place with Joe, with Louis,
before? A Only one time, went over to a picnic like over in
Jersey. That was the only time, and he took his girl.

Q Did you go along? A Yes, sir.

Q Who went with you? A Well, a friend.

Q What? A A boy friend.

Q What is his name? A Frank Hillgarten.

Q Frank went with you? A Yes, and Louis with Katy
Schultz.

Q His girl? A Yes, sir.

Q Did you ever go out with Louis any time after that?

A No, sir.

Q That was the only time you ever went any place with
Louis? A Yes, sir.

MR. PALMIERI: I object, he is trying --

MR. DeFORD: I am not trying to deceive anybody.

Q Now, how long have you known Katy Schultz? A I am

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going with her as a girl friend. She lives across the street from us.

Q Have you gone with her a good deal? A Yes, sir.

Q Visited at her house? A Yes, sir.

Q And has she visited at your house? A Yes, sir.

Q Have you seen Louis with her frequently? A Yes, sir, while she used to go down about twice a week or three times a week to meet Louis.

Q Did you see her go down? A Yes, sir, I was with her.

Q So you and she went down two or three times a week to meet Louis? A Yes, sir.

Q Where did you meet him? A On the corner of 31st street, and then I would leave Katy and go down to 28th street sometimes to go over to the dance hall there.

Q You said you met Louis with Katy, go with her two or three times a week. For how long a period of time did you meet them; how long have you known Louis and gone with Katy to meet Louis? A About three months.

Q So you saw Louis very frequently during the three months? A Yes, sir.

Q Did you know he had been convicted of petit larceny and sent to the penitentiary? A No, sir.

Q Did you know that? A No, sir.

Q Did you know he had been convicted of burglary and sent to the penitentiary?

MR. PALMIERI: He was not convicted of burglary.

MR. DeFORD: Larceny.

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MR. PALMIERI: Quite a distinction.

MR. DeFORD: I will make the distinction and give him the benefit.

Q Did you know he had been convicted of larceny? A No, sir.

Q Were you introduced to him by Katy Schultz? A Yes, sir.

Q Have you talked this case over with Katy since you heard Louis was arrested? A Yes, sir.

Q What have you said to Katy about it? A She didn't have nothing to say.

Q When you talked with Katy about this case, did Katy ask you what you would testify to? A No, sir.

Q Did you tell Katy what you would testify to? A Yes, sir, that I was going as a witness.

Q Did you tell Katy what you were going to testify to when you came down here as a witness? A No, sir.

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

Q Who did you tell what you were going to testify to before the Magistrate -- you were there? A Yes, sir.

Q Did you tell anybody what you were going to testify to before you went to the Magistrate? A Yes, sir, the lawyer.

Q Who did you see? A The lawyer, and his pals.

Q The lawyer sent his pals? A Yes, sir.

Q Did the lawyer send his pals? A Yes, sir.

Q Did the lawyer come to your place? A No, sir.

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Q Did you go to his office? A I met the lawyer down in the Court, Tenth Street.

Q Who told you to be down in the Court in Tenth Street?

A That Sunday that Louis got arrested, well Sunday night I met this fellow by the name of Ralph, he came up around our way, and told me, would I go down as a witness on account I was standing with Louis on Saturday night on the south-east corner of 31st street and Tenth Avenue, and I said I would go.

Q Then you went to the police court next night.? A Next morning.

Q That was Monday morning? A Yes, sir.

Q Had you seen Katy Schultz between the time you heard Louis was arrested and the time you appeared in the police court? A No, sir.

Q And you never talked over this case with Katy except to tell her that you were going to be a witness? A That is all, sir.

Q Where did you start from the Saturday night you met Louis? A I started from home at about a quarter to eight to go down to the dance in 28th street.

Q Did you start alone? A Yes, sir, because Katy was gone to the Victoria Revue excursion.

Q You were going to the dance alone? A Yes, sir.

Q Did you have a fellow? A No, sir.

Q Had you any arrangements to meet a fellow? A No, sir.

Q Where was this dance to be held? A On 28th Street,

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near Ninth Avenue.

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Q And then you met Louis on the way down? A Yes, sir.

Q And you became so interested in your conversation with Louis you did not go to the dance? A Yes, sir.

Q Now, did you see Louis' girl that night, Katy Schultz?
A When we went up home, about a quarter to eleven, about that, we met Louis' girl. Then we stood talking.

Q Did you see Louis' girl that night until you went home and met Louis' girl? A No, sir.

Q Did you hear anything about her that night? A No, sir.

Q Until you met Louis' girl? A I did not meet her until I went up the Avenue.

Q Did you hear or see Louis' girl that night until you went home about a quarter to eleven? A No, sir.

Q Now, where did you meet Louis' girl when you went home about a quarter to eleven? Just where was she? A Between 37th and 38th streets on Tenth Avenue.

Q Was she on the street? A Yes, sir.

Q And did you stop and talk to her? A Yes, sir, and Louis was talking to her.

Q Who? A Louis.

Q So that you met Louis' girl and you and Louis met the Schultz girl and had quite a talk with her? A I only stood there fifteen minutes. Louis made a break to go home, so I went upstairs. I don't know where he went to then.

Q About what time was it, you think, that you and Louis

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met Louis' girl, the Schultz girl? A About eleven o'clock.

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Q Where did you meet her? A Between 37th and 38th streets on Tenth Avenue.

Q Was she with anybody? A No, sir, she walked over to us.

BY THE COURT:

Q Did you see the mother of Louis' girl that night? A No, sir. I only saw his sister looking out of the window about a quarter to nine.

Q Did you see Mrs. Schultz, the mother of the Schultz girl that night? A No, sir.

Q Did you see her at any time from the time you left your house until you went to bed that night? Did you see Mrs. Schultz? A No, sir.

BY MR. DeFORD:

Q Did you hear anything about Mrs. Schultz from anybody that night? A No, sir.

Q About the girl? A We saw the girl.

Q You saw the girl and you had a fifteen minute talk with her? A Yes, sir.

Q She came across the street to you and Louis? A She didn't come across the street. Between 37th and 38th, we were just about going down and she walked over to us.

Q Was she alone? A Yes, sir.

Q How old is she? A About sixteen.

Q And she came over towards you and Louis? A Yes, sir.

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Q And you had a fifteen minute talk with her? A Yes, sir. We didn't stand very long.

Q Did you go home alone then or did Louis and Katy take you home? A I just live across the street. I ran up.

Q And you left Louis and Katy up there together.? A I don't know -- standing there. I know I said good night, and I walked across.

Q When you said good night and walked across the street were Louis and Katy together? A No, sir; Louis was walking alone.

BY THE COURT:

Q Did you see the Schultz girl on a wagon or a car that night? A Yes, sir, she was going by in the Belt Line. We were not sure whether it was her or not. Somebody waved out.
BY MR. DeFORD:

Q Why didn't you tell me that a while ago? I asked you if you had seen or heard of the girl that evening? A Well, we didn't know if it was really the girl on the Belt Line car.

Q Did you see her mother that evening? A No, sir.

Q Did you hear anything about her mother from anybody that evening? A No, sir.

Q You think now you saw somebody in the car whom you thought was Louis' girl waving to you? A Yes, sir.

Q On a Belt Line car? A Yes, sir.

Q About what time was that? A About half past ten.

Q About half past ten? A Yes, sir.

Q And that was about an hour or two hours after you had met Louis, wasn't it? A No, before.

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